

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP PLANNING COMMISSION MINUTES August 21st, 2024, 7:00 p.m.

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

2. Pledge

3. Roll Call

Present: Alexander, Beard, Dloski, Hall, Hornberger; **Absent/Excused:** Shanafelt, Shipman; **Legal Counsel:** Chris Patterson, Fahey Schultz, **Staff:** Jenn Cram, Director of Planning and Zoning

4. Approve Agenda

Motions made to approve agenda with additional items:

- 1) Statement by Township Board trustee Rudy Rudolph regarding August 13th, 2024, Township Board meeting - becomes Item #5 on agenda. Motion by Dloski, seconded by Hornberger. **Motion passed by consensus**
- 2) Introduction of Chris Patterson, of Fahey Schultz Burzych Rhodes, representing legal counsel for Peninsula Township - becomes Item #6 on agenda. Motion by Dloski, seconded by Alexander. **Motion passed by consensus**

Items on the Agenda following two additional items will be renumbered accordingly.

5. Statement by Township Board Trustee, William Rudolph, 4784 Forest Avenue

“During the August Township Board Meeting on 13 August 2024, in a clear case of the tongue and brain being utterly disconnected, I made a statement on record to the effect that - and this is paraphrased because I do not have access yet to the official record - ‘the Planning Commission had made an ethical and moral error in recommending approval of Amendment #5 to the Peninsula Shores Planned Unit Development’. Although this is in the public record, I want to also publicly and emphatically state that this is not at all what I intended to convey. It was never my intent to suggest that members of the Planning Commission were, in any way, morally or ethically remiss in their deliberations or in their recommendations on this matter. I sincerely apologize to each member of the Planning Commission for any hurt or concerns this misstatement may have caused. Indeed, in the two-plus years I have served as a “stand-in trustee” I have seen the members of the Planning Commission to be ethical, fair, and open-minded fellow citizens who take on some of the toughest considerations presented to our community. Members of the Planning Commission serve voluntarily, at high cost to their independent lives, no doubt experiencing sleepless

nights as they struggle with the weight of making the best decisions for their community. I very much value and appreciate their service to my community. I hope this statement will set the record straight. Once more, I sincerely apologize to the members of the planning commission for my own failure to express myself clearly. Thank you very much.

Hall: Thank you. And thank you for your service on our Board of Trustees for the township.

6. Self-Introduction of Chris Patterson, of Fahey Schultz Burzych Rhodes

Thank you, chairperson. I'm not normally here in person, nor am I at every planning commission meeting but because this meeting was rescheduled and I was already in town, it worked out for me to be here in person. I've been with the firm for going-on eleven years. I've been practicing for 14, almost 15 years. My time has been spent mostly doing municipal law, zoning and planning, other than the two years that I clerked for a federal judge in Detroit. I'm happy to be here this evening. My wife and 26 month old dropped me off - he wasn't driving. I appreciate the introduction. Thank you.

Hall: Thanks for being here and thank you for your continued good counsel.

7. Brief Citizen Comments (For Agenda Items Not Scheduled for Public Hearing): Hall notes that in the absence of any public hearings on this particular agenda that it would be appropriate to take any comments about anything on the agenda at this point. However, the preference of the Planning Commission would be to provide the opportunity for public comment after each individual agenda item is discussed. **None.**

8. Conflict of Interest: none

9. Consent Agenda

a. Approval of Meeting Minutes: Planning Commission Regular Meeting, July 2nd, 2024

Beard: On page 7, under b. Draft Master Plan - which starts on page 6 - Jenn Cram went down a list of folks that reviewed comments and redlines and says "then myself (meaning her), Sara Kopriva, Randy Hall, and Maura Sanders reviewed those". I was also at the table.

Cram: Sorry, Kevin.

Beard: Just wanted to note that I was also at the table.

Cram: Thank you.

Hornberger moved to approve the consent agenda with edits as discussed, with second by Beard.

Motion passed by consensus

10. Business

a. Special Use Permit (SUP) #138 Old Mission Lavender Farm dba Lightwell Lavender, Amendment #1 - Continued Discussion

Jenn Cram, Director of Planning and Zoning for Peninsula Township: Recaps proposed Amendment #1 for Planning Commission - Since the July 2nd, 2024, public hearing the applicant has updated the site plan to show the proposed location of the aromatherapy sauna/cool-off zone. Cram walks through the changes noting the orientation of the sauna changed slightly; rotated 180 degrees. You can see where the existing portalet is. In the last application there were 14 parking spaces shown, some parking has been added. Points to grass and gravel parking area, which is unimproved. (The applicant) also provided additional detail on proposed hours of operation and capacity. In the last two days, in meeting with the applicant to prepare for this meeting she has also informed me that she would only like to focus on the aromatherapy sauna. The workshops, farm tours and curated picnics are something she would like to propose in the future. The only accessory use that she is looking for approval on is specifically the aromatherapy sauna, focused on the use of lavender products. I wanted to make that clear so that moving forward we can make amendments to the findings of facts and conditions to focus on that request. The other thing included in the packet is the 2025

Draft GAAMPs. For those in the audience, GAAMPs are the “Generally Accepted Agricultural Management Practices. MDARD - the Michigan Department of Agriculture and Rural Development - and the Right to Farm Act establishes and adopts different practices for different types of agricultural uses, whether for livestock or farm markets, etc. GAAMPs are updated every year. When we last met, we were looking at the 2024 GAAMPs and now the draft 2025 GAAMPs have come out. There are some proposed revisions that we believe are helpful for us in public administration of zoning ordinances. Revisions include an appendix that clarifies some things by addressing some of the vagueness in the 2024 GAAMPs. We wanted to make sure that we were looking at the most recent GAAMPs/potential changes. At our last meeting, we talked about how if a use is considered to be protected by the Right to Farm Act and the associated GAAMPs, those farms that are GAAMP-compliant are protected. There may be sections in our zoning ordinance that may be preempted by that protection. We still need to have solid zoning regulations for farms and farm uses because there will be those farms that choose not to participate in the GAAMPs and our zoning ordinance would clearly apply. All of this means that as staff and the planning commission and even the board, we need to thread the needle about what things our zoning ordinance applies to, and what things might be protected under the Right to Farm Act. We also received input from the Grand Traverse County Health Department on the use of portable toilets. Attached in the packet for reference (in Exhibit #4). The one portable toilet with hand-washing station is sufficient for the proposed use. Had the applicant looked at proceeding with the curated picnics - adding the potential for food on the property - then one additional portable toilet would need to be located on the property. That accessory use is no longer on the table. Based on Health Department comments, the existing portable toilet and hand-washing station with the existing well provide adequate water and sewage disposal for the property and its principal use of active production. The special use permit that was approved allowed lavender to be processed into essential oils and other things, so I want to be sure that is clear.

Hall: Pardon me, Jenn. In your earlier remarks you said that the scope of the requested accessory uses is dramatically narrowed and limited to the aromatherapy sauna. In the list on page 2, it says “aromatherapy sauna and cold-plunge.

Cram: Those are associated with one another.

Hall: They are related. So, the cold plunge is included in the requested accessory use?

Cram: Correct. Thank you for pointing that out. I will let Erin (the applicant) speak to this, but my understanding is that people would go into the sauna to have this lavender essential oil aromatherapy and then part of the experience of being in the hot sauna is to then sit in the cold plunge. There are health benefits to the heat and then cold plunge. When we talk about the aromatherapy sauna, we need to include the cold plunge as well. Thank you for clarifying that. Based on the information from the last meeting and this meeting, and in listening to/reading the minutes from the last Planning Commission meeting, there were some changes made to the findings of facts. I did try to note those in red so that you could see those changes. I believe that the areas we need to focus on are those in Section 8.1.3(1) - General Standards for the determination of a special use permit. 8.1.3(1)(a) - “be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed”. At the last meeting we talked about how staff believed that some of the requested accessory uses may be considered incidental to active production of lavender if there were specific conditions of approval and other things may not. Now, of course, that scope has been limited. This evening, we will focus on the aromatherapy sauna and cold-plunge. If the planning commission, based on additional information that has been included and after tonight’s discussion finds that the requested aromatherapy sauna and cold

plunge that always utilize dried lavender and lavender essential oils or lavender hydrosol spray, “farm products” is accessory to the active production of lavender and the processing of lavender approved by special use permit then it can be considered harmonious to the surrounding area, which is agricultural in nature. Staff believes this to be true because this requested accessory use is related to the approved special use permit that authorized the processing of lavender into essential oils because one learns about lavender products produced on the farm while using the aromatherapy sauna. If you agree with this, and again we need to discuss it. It’s my job - as staff - to give you my professional experience and thoughts but I hope that you’ll ask questions and inevitably you need to be comfortable with this to move forward. If we could craft a condition of approval that gives you some level of comfort that that’s always the case - I did have the opportunity to not only meet with Erin, the applicant, as well as her (business) partner, Nick Olson, who is the sauna operator. He assured me that he would be comfortable and has proposed to update his website so that this specific aromatherapy sauna would be unique from the other sauna experiences he offers. He will brand the side of the sauna, and the marketing will promote the inclusion of the lavender experience. As Erin’s business partner, he committed to that. Based on all that, I believe it could be accessory as well as a unique experience. We now have the proposed hours of operation and the capacity so that we can understand the intensity of this accessory use. If the Planning Commission agrees that the use is indeed accessory to the production and processing of lavender, it would be harmonious with the surrounding area because it is agricultural in nature. With regard to Section 8.1.3(1)(b) - “not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to the property in the immediate vicinity and to the community as a whole”, I amended the findings based on comments received from Mr. Dloski. With appropriate conditions of approval to limit negative impacts on surrounding properties, and to ensure conformity with the intent of the A-1 Agricultural district, this accessory use may be considered a substantial improvement to the property and the community as a whole by providing experiences incidental to, and supportive of, the active production of lavender and other field crops and the approved processing of lavender. It is very specific to how this farm will operate and is incidental to producing and processing lavender. The hope is the approved accessory use will help to support this farm by educating people on the uses of lavender and related farm products. I think the best use of our time this evening is to really drill into this. I, and the applicant, would like to hear how you feel about this proposed accessory use to the active production and processing of lavender.

Hall: Before we hear from the applicant, I would like to be clear on the relevant law here. So, we have our zoning ordinance, and you broke down Section 8.1.3(1) into two subsections and those requirements need to be satisfied. But you’re also referencing the GAAMPs and the GAAMPs are powerful in that if they address a topic, they supersede our ordinance.

Cram: Possibly.

Hall: Well, explicitly, Chris?

Patterson: Jenn and I have discussed this, particularly that the 2024 GAAMPs are vague as to what on-farm activities are protected. Just setting the GAAMPs aside, the applicant has a special use permit, and we need to follow the same standards and process to amend that special use permit. The applicant has a principal use of producing lavender and has been approved for special uses and is asking for an additional accessory use that may or may not be permitted. You have a definition in the zoning ordinance for accessory use, the language that’s in your findings of fact relates to it being incidental, etc... Then, on the GAAMPs side, as it relates to the Right to Farm Act (RTFA), it says we’re not allowed to have an ordinance that otherwise conflicts with the (RTFA) and the GAAMPs. You have to apply the ordinance because it reduces risk for the applicant in the event that they are ever non-compliant with the GAAMPs. – If they have an approval from

the township that provides them a vested right to continue to conduct whatever activity you allow here. They may also be compliant with GAAMPs for the requested activity and would also be protected by the RTFA. The GAAMPs are a moving target, as they are updated yearly. From a simple, straightforward perspective, Jenn and my position is: apply the zoning ordinance as written, the applicant is willing to seek a special use permit, if an approval is in place, if for some reason their accessory farm activity does fall under GAAMPs then there may also be GAAMPs protection as it relates to any sort of enforcement action or compliance with the special use permit.

Hall: I think that's getting at my question, because if we find that the ordinance is difficult to apply because of ambiguity, for example, then in this case, do the current GAAMPs say that we should allow this?

Patterson: No, certainly not, whether you grant it or deny it, there may be RTFA and GAAMPs protections for a specific activity. The reason that, in talking to Jenn, we provided the 2025 GAAMPs - and appreciate that those are drafts, so the commission understands that these change over time. We don't know what the GAAMPs may provide with regard to further distinctions as it relates to what on-farm activities may or may not be considered "marketing" as part of a farm market. The general idea and perspective of what the applicant is requesting, I would say, is very consistent with the 2024 and the draft 2025 GAAMPs. There could be GAAMPs implications here either way. Now whether she's compliant with them today, if you were to grant it, it's just going to be a question of how certain aspects of her activities meet the standards of the zoning ordinance. The other parallel I can provide is under the zoning ordinance when we look at an accessory use and we look at whether it is incidental and customary to a particular processing facility, you might make the determination that it doesn't satisfy that threshold question, or you may decide that specific standard has not been met. If you deny it, there's still potential that if she complies with the RTFA and the GAAMPs that she still may be protected as to an activity that she conducts at the farm.

Dloski: Chris, that leads me to the question - under the 2025 GAAMPs, and I know they're not effective right now, but they say, "protection may not extend to sales of non-farm products". So, a sauna - I assume - is a non-farm product.

Patterson: Exactly. And I think, to some extent, what they are attempting in the revisions to the GAAMPs - is to clarify that any service that you're selling where there happens to be a farm product used may not be protected by the GAAMPs. I agree, and I think that's why the applicant is here, because one of the benefits is that if she gets a special use permit, she has a vested use whether she is or is not compliant under the GAAMPs, and it would be the same for the township. We have more control of the situation under the amended special use permit and approval conditions.

Hall: From my point of view, these questions are important because while my policy bias is in favor of helping the ag community here in Peninsula Township and allowing accessory use activities is one way of doing that. I think that as a policy our ordinance should support that. But I'm concerned how it works if the GAAMPs supersede our ordinances and the GAAMPs are saying that marketing activities are protected. If the idea here is...if your analysis is that the sauna is, in effect, marketing under the Farm Market GAAMPs, then I'm wondering what wouldn't be? Any farm product, anything that's produced on any farm, if there's some way that can be promoted, it sounds like it falls under marketing, and if it does, does that mean that it's protected under the GAAMPs and doesn't matter whether it's truly an accessory use to agriculture, we have to permit it because the GAAMPs override... I'm trying to understand. I like the project, but I want to understand how the zoning ordinance relates to GAAMPs protection.

Cram: Understood. And that's why I'm grateful that Chris happened to be in town and can help us to navigate this. I want to go back one layer and help you with the thought process that staff went through in looking at this. I'm going to Section 6.7.1 - the intent and purpose of the A-1 Agriculture district - and it says

that “this district is intended to recognize the unique ecological character of the peninsula and to preserve, enhance, and stabilize existing areas within the township which are presently being used predominantly for farming purposes, yet recognize that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses which are deemed to be compatible with agricultural and open space uses.” That’s the intent and why we have standards for the A-1 zone district. Then under Section 6.7.2 - uses that are permitted by right (4) – “field crop and fruit farming: truck gardening, horticulture, aviaries, hatcheries, apiaries, greenhouses, tree nurseries, and similar agricultural enterprises along with accessory uses incidental to the above.” What we’re all questioning is whether an aroma therapy sauna is incidental to producing lavender and processing lavender, as this applicant also has a vested right to process lavender. The property holds a special use permit and has been approved for a greenhouse and nursery and to also process lavender. I always start my analysis with understanding the intent and purpose. Then I consider the uses allowed by right. Next, I consider the uses that are allowed by special use permit. I also base it on the information that the applicant has presented, and the applicant has stated that this sauna will always utilize lavender farm products. If it were just a sauna and someone could pay to use the sauna on this farm without the use of lavender farm products, they might see some lavender and maybe they’d be encouraged to purchase some, but you’d really be selling a sauna experience. However, what the applicant has said is that they’re committing that this would be an experience that is specific to educating people on the use of lavender products and hopefully people will be encouraged to buy the lavender farm products that are produced on the property. That’s where I believe for us to have a level of comfort, that this is truly something that is customary and incidental to the production and processing of lavender, there must be a defined relationship with the sauna experience. Again, that’s my professional take on it as Jenn Cram the planner thinking aloud and sharing that with you. The Planning Commission, ultimately, must make a recommendation as to whether or not you believe it meets those standards. The more difficult standards to meet are the two standards I read: 8.1.3(1)(a) and (b). The other ones such as, does the applicant have the right to apply for this amendment, or do we have a site plan...all those other things such as, is there going to be negative impacts to public infrastructure are straightforward. The area that we need to dig in are those two standards.

Hall: I think we need some time on this. Larry, do you share my concern about the GAAMPs? Let me articulate it this way: I’m still fuzzy on the logic here because in your comments under 8.1.3(1)(a), fourth paragraph, you’re talking about you believe this is an accessory use specific to the approved SUP that authorized the processing of lavender into essential oils but then it looks like you’re saying that the marketing is allowed under the GAAMPs and since the sauna uses lavender oil it’s ‘marketing’ and therefore it’s okay. Seems to me that’s what you’re saying.

Cram: That was my initial interpretation as staff, but I don’t get to make the decision.

Patterson: I think, in working with Jenn, the key part - let’s go back to the GAAMPs first and then I think we can go to the findings. You were very careful in the findings to indicate that, to some extent, there could be GAAMPs implications but not making any conclusions at this level because we don’t control them. I think the key part to look at in the GAAMPs is the ‘marketing’ definition, and to your point, you’d made the comment that GAAMPs would not protect non-farm product sales. I agree with that position. The ‘marketing’ definition itself is looking at educational and promotional activities and the reason that it sounds like these two standards conflate is because there’s similar terminology used. We also need to look at the zoning aspect. If you look at the activity that she’s described - is it incidental and customary to the principal use of processing lavender? Then we have, of course, a little bit of overlap in terminology as it relates to the actual GAAMPs themselves because the marketing definition is sort of interjecting the same

term. But it's modifying different terminology. In the marketing definition it's saying these promotional and educational activities are they literally incidental and supporting the sole purpose of selling farm products and not the sale of a non-farm products. That's a different analysis than we go through under the zoning ordinance, which is a question of: do you want to amend this SUP to take the position that the business plan she's provided you in the application to educate people on the use of lavender products within an aromatherapy sauna is incidental and customary to the production, or cultivation and processing of lavender.

Hall: If I may interrupt, it seems to me - maybe I'm missing the logic here - that operating a sauna which always uses lavender oil is not necessarily incidental to processing lavender, and therefore in order to allow that, it seems to me that we've got to ignore the GAAMPs, which say that 'marketing' is okay. I do agree that operating a sauna on this farm using lavender oil is promotional and educational and incidental to the farm product with the intention of selling more lavender oil.

Patterson: I don't think that as a planning commission, that you should look at zoning ordinance standards and determine that an accessory use is, by itself, implicated by the term 'marketing' in the GAAMPs. I would not conflate the two. We were very careful in the findings of fact to try to describe what staff's position was as to the standards and definitions of the zoning ordinance. Ultimately, it's you as the commissioners (who) are appointed to decide if you agree or disagree, so to your first point - if you stop at that first step: if you're looking at an accessory use and saying "look, I don't think that it's incidental or customary to the growth, cultivation and processing of lavender that was in the original SUP" then under the analysis there, you have a threshold issue which is you don't have the use that qualifies as an accessory use, therefore you don't have a means to move forward and approve it, if that's this commission's position. You would not, at that point, go to the GAAMPs. The GAAMPs is a separate issue to the extent that, if you take that position, and there's a recommendation of a denial - an ultimate denial - it's going to be a separate analysis if there's a way that she can conform her activity under the GAAMPs. Our position, and I think this is true with Jenn's analysis, is that there are two different sort of parallel lines of law that's going on here. We included the GAAMPs because it doesn't make sense to think about it in a vacuum - that's why we said, look, there may be GAAMPs protection as to these activities. It could be different at any point in time if she conducts the activity, the year in which the GAAMPs protect the use, etc... I think, as the commission, you're not charged with the enforcement of complying (with) GAAMPs, etc...we put it in here so you're not deciding in a vacuum and I think the applicant themselves have raised GAAMPs, so it's not like we want to ignore them, but your analysis is first under your zoning ordinance. If you don't think it satisfies the accessory use piece, then there is a definitional problem, and we can't get the use approved under ordinance standards.

Hall: Thank you.

Dloski: I agree with that 100%. The GAAMPs, in this situation, wouldn't apply because the marketing definition does not affect non-farm products, and a sauna is clearly a non-farm product. The GAAMPs are only going to apply if, at some point in time, this applicant is GAAMPs certified and has an issue on her farm and somebody sues them, maybe for a nuisance? They can say "Hey, we're GAAMPs certified" and that would protect them from the nuisance. But that's not what we're doing. What we're doing today is trying to approve an accessory use, and we need to approve it, as Chris said, under our ordinance and forget about GAAMPs.

Patterson: I agree with the approach.

Hall: I don't think that the sauna is the farm product, I think the lavender oil is the farm product.

Dloski: That's what I'm saying. The sauna is not a farm product and therefore doesn't come under the GAAMPs. We don't even need to think about it. We don't need to consider it.

Hall: Well, you do if you don't think that a sauna is incidental to the processing of lavender. I don't want to belabor this anymore. I appreciate the explanation and think we should move on.

Hornberger: This is not marketing. She is going to be charging people to go into the sauna. This isn't like putting a billboard up and saying, "buy my lavender".

Dloski: What's it called then? If it's not marketing, what is it?

Hornberger: I don't know but it may be an ancillary use.

Dloski: They're going to have signs. They're going to have a website...

Hornberger: But she's going to be charging people to come there.

Cram: This was the discussion that I hoped we would have to help the applicant understand what the planning commission believes and how the requested amendment meets the standards of the ordinance. I wanted to note that I did receive seven emails from people that expressed support for this amendment, and as you know we do have a process for submitting things in the packet, and so because they came in today after the deadline for the packet and/or packet addition, I wanted you to know that I received comments. I can read them into the record and/or include them in upcoming packets so that they become part of the public record. I did want you to know that since the public hearing, we have received seven letters of support for the proposed amendment.

Hall: Thank you.

Alexander: Can I ask a question? My question is mainly for the applicant. I am torn because I really want her business to be successful and I welcome a new, different and interesting agricultural use. The question that I have is the commercial nature of some agricultural uses and where to draw the line. So, aromatherapy, to me, implies that someone is a therapist and is providing a service. That's what it implies to me. When you say aromatherapy, I believe it's to calm you but that's just my interpretation when I read this. I would like to understand the applicant's vision for the aromatherapy sauna. What do you see as the outcome being for people?

Erin Hafeli, 13387 Blue Shore Drive: Sole-Owner of Lightwell Lavender Farm (referred to in original SUP as Old Mission Lavender Farm) at 2150 Carroll Road: I would like to read my statement, and also answer that specific question. Aromatherapy is the process of smelling something to alter your mood. You do not need to be a therapist to utilize aromatherapy. Many moms use this in their baby's rooms. Any individual, or average consumer may purchase my lavender essential oils already to do their own novice aromatherapy treatment whether it's diffusing earrings that they wear or dryer balls that use lavender oil on them. There are many aromatherapy applications of lavender and many other lavender based products. I believe that the planner outlined a path for approval for this accessory use and I have demonstrated what I believe to be the incidental nature of the proposed use as a natural extension, subordinate in scale and purpose to the primary agricultural activities already occurring on my farm. This accompanies and is connected to the processing of lavender oil. I am able to process lavender oil on site and it can directly go into aromatherapy for use to educate people on how they can do this with their home sauna. I followed the necessary steps for approval, in alignment with the direction of the Master Plan, and streamlined my request tonight to narrowly focus my efforts on this one use. I steward the only farm on Old Mission Peninsula that has explicit approval through a special use permit to distill essential oil. I'm not the only one who does it, (but) I'm the only one that has approval explicitly to do this activity. The request tonight is compatible with agriculture and open space uses at the farm. Unique agricultural products such as lavender and essential oil production

require creativity in marketing, advertising, and in differentiating myself among the other lavender farms in the region and on the peninsula. I found an opportunity in partnership with Old Mission native, Nick Olson, who owns Hearth Sauna. Hearth has committed that this location will be handled in compliance with safeguards and conditions discussed throughout this process, including but not limited to: lavender or lavender-related goods produced on site will be used at all times in the sauna operation, they've developed a unique logo, standards of operation, training, and language for their website and employees to differentiate the Old Mission location of this aromatherapy sauna from their other locations in the area, in accordance with safeguards. Two points of context for the planning commission to consider: I'll briefly mention excerpts from the 2024 Master Plan and specific context to substantiate my track records of community focus for the site. First, "the combination of increases in land value and growing trend of prime farmland being converted to subdivisions created a concern among farmers and homeowners about the future of Old Mission Peninsula agriculture. Early projections suggested the Peninsula Township could reach 30,000 people or more if fully built out, unless other measures were taken. Residents and township leadership viewed this level of development with alarm as it would inevitably reduce the viability of agriculture, diminish scenic views, and add huge additional infrastructure costs. Further, a charge to constructively and collaboratively work toward the goal of adding value to local agricultural products while mitigating negative impacts. The township supports local agriculture and efforts to retain rural character. More efforts are needed to balance production agriculture with non-production, or value-added and commercial activities deemed to be compatible with agriculture and open space uses. Most people agree that since residential development pressures remain high, more effort is needed to continue protecting agricultural land to preserve the township's rural character. Preserving agricultural land invites discussions about the continued viability of agricultural operations. Carefully relaxing certain requirements is considered to be a logical step towards enhancing and supporting local agribusiness." I know the commission knows the master plan and where those excerpts were taken from, so I'll pause here to remind the township that this farm was saved from residential development. My history of stewardship has demonstrably put community at the center of my business plan. I've retained and expanded plant enhancements, activated existing infrastructure as a retail service to this community, and continue operations in compliance with regulations. I initiated the only community compost site on the peninsula – Carter's Compost – owned and operated by lifelong peninsula resident and female business owner, Megan Alexander. I added irrigation and a garden on former pastureland and invited the community to grow with me. Including sponsorship from the Grand Traverse Regional Community Foundation sponsoring Project Heart – harvesting equity and agricultural resilience together – and a partnership with the Grand Traverse Children's Garden who initiated their first Children's Garden Outpost not in the Woodmere location for the first time in their 25-year history. I'm leveraging a no-spray, regenerative, closed-loop farming model in addition to integrating to a 3 to 5-year carbon farming plan developed in conjunction with the Grand Traverse Conservation District, NRCS, and Crosshatches Carbon Farming Guild. I have just been made aware that my grant proposal and request through NRCS for a quarter acre native pollinator field has been approved for spring 2025 and I hope to work with the Parks Committee and Michele Zebell to identify the appropriate species for this opportunity. I've been videoed as a spokesperson for Protect the Peninsula (PTP) highlighting the many reasons that I took the risk to purchase and save this farmland on the peninsula. I developed and continue to host a website for all farmers on the peninsula. It's called OldMissionYouPick.com. I've designed, printed, produced, and distributed informative brochures detailing the you-pick experiences available on the peninsula, including those farms that I deem to be competitive to mine. In closing, this process of land stewardship is personally rewarding but financially disparaging. I am

still funding the farmland site and operations at a considerable margin. The site is not currently financially viable despite existing rights, infrastructure, and existing perennial crops. I want nothing more than to make this farmland work, and I would be heartbroken to pivot on my strategy to eliminate another farm in favor of residential development. A supportive approval is in direct alignment with township goals and meets all outlined criteria for approval. I understand that the SUP will need to be amended, modified to reference the narrow accessory use that we're talking about tonight. I've taken all other ambiguous topics off the table in an effort for a cleaner approval on this matter and I would hope that the commission signs off affirmatively. As Jenn mentioned, you do have some letters of support, and I know there's also members of the community here tonight who would like to say something as well, if given the opportunity.

Cram: Thank you, Erin. I also want to note that there is the opportunity, you know the previous property owners went through the special use permit process specifically to have a commercial nursery, lavender farm, and the processing of lavender. The zoning ordinance under the A-1 zone district also allows the Township Board to approve other special open space uses within that district. There isn't a lot of clarity about what those special open space uses are but that is another avenue that the applicant would have in order to consider this particular use. The additional information that she provided to you was that the capacity of these sauna experiences would be 10 people. There might be some overlap between 10 people in the sauna and cold plunge, but the capacity has been defined and I think it's relatively small. The hours of operation indicate this wouldn't be open late at night. They're proposing to close by 8:30 PM. The closest residential structure is over 600 feet away. That's not to say that other residences couldn't be developed in the future, but they would be developing after this farm use is approved. I thank you (commission) for considering this creative proposal.

Hafeli: I'm sorry. Just to add before we move on the special open spaces...with regard to MDARD and GAAMPs and Right to Farm, I just wanted to communicate again that I am Right to Farm compliant. This farm is certified under GAAMPs after a proactive inspection from MDARD, as well. The farm has been Environmentally Verified since 2017 and I do view the aromatherapy sauna as the activity for marketing my essential oils.

Hall opens up a public comment session.

Craig Mason, 13334 Blue Shore Drive: I've been a resident since 1991 out on Old Mission and I've always lived close in Northern Michigan – Higgins Lake and our area. To Jenn and the rest of the officers of the board, I would like to make a point that I believe that the farm is compliant with all that they have addressed, because she has the 14 parking spots. For the aromatherapy part, the one point that I do want to note: I've been to Japan. I served in the United States Marine Corps as a Sergeant, and I used caves. I did go in and breathe in caves and it did help me because I was part of hazardous training – EMT, crash crew – so it did help me breathe and relax. I think in the therapeutical age we are in that there is no limit on it. It would help our older generation as well as younger people that would come to the farm. I've been to the farm several times. I'm a little biased because my son raises lavender over in Rose City, Michigan, over by West Branch and he's just really enthused with the beekeeping (with) my two granddaughters. I see this as something that's very virtuous because it is a magnet in that it brings people in to look at different forms of agriculture, but it has them look at aromatherapy as a new way of healing and a new way of expression. I think it's good for the body. I know when we talk about the cold weather, I remember "Grumpy Old Men" with Walter Matthau and Jack Lemmon, and they looked at Ann-Margret jumping in the snow and going back in the sauna. We all remember that, right. It was just a little bit funny. That's some of the things, you know, the coldness with the heat of the sauna and allowing the body to breathe. It's very therapeutical (sic). Like, you have acupuncture where they're dealing with the inward part and the breathing and the opening

up of the pores and skin. So, I just want to make that one point. I believe that this is compliant as I read through for Erin and her farm, but I also believe in the therapeutic part of it because as a Marine I did experience that. We do have aromatherapies like salt therapy within town over by Apache Grill, they do have the salt therapy which opens up the pores as well. The lavender, I think, is a little bit more soothing and it helps a little more with the breathing. I thank you all for your time.

Jeff Spencer, 6450 Peregrine Court: I wasn't planning on coming up here to speak out on Erin's behalf. I just wrote a few notes down here, so first of all: as a dad of three awesome and crazy kids, a lavender sauna sounds amazing to me as a parent from a relaxation standpoint. I wanted to say, as a note, aside from the gymnastics of interpreting conflicting zoning laws, I'd just like to add another economic consideration. It's my belief that farming is obviously a commodities business. It is subject to extreme cyclicity and global competition. As a resident of Old Mission Peninsula, I would not only like to support entrepreneurship like Erin's - of this kind - but also creating services and experiences that are clearly tied to the production of the crop to help create ancillary demand, to help keep our farmers in the business long-term. We have to recognize that farming is getting squeezed out of this community - whether or not we like it. While we can try to use conservation efforts or zoning to try to prevent commercialization squeezing that, we have to support our farmers, like Erin, to provide these services to stay competitive in the global economy. I don't know Erin personally, but I know Nick Olson, her business partner. He went to Old Mission School with me. He's run several businesses here in Traverse City that have been very community focused. I have no doubt that someone like Nick and Erin, after hearing her story, would be supportive of what I feel would be very common-sense farming ancillary services tied to their production crops. Thank you.

Amanda Kogelmann, 13277 Blue Shore Drive: I am here to express my support for the proposed aromatherapy sauna on Erin's lavender farm. This initiative represents a unique opportunity to introduce an alcohol-free wellness activity to our community. In a region known for its wineries and tasting rooms, the aromatherapy sauna offers a refreshing alternative that promotes relaxation and well-being without the presence of alcohol. It's a nice way to bring people together for a health-focused experience aligning perfectly with the natural and serene atmosphere that we cherish on Old Mission. Furthermore, this project is vital for small business sustainability, as we've already discussed. Many local small businesses struggle during the quieter months and this sauna would provide a consistent revenue stream, helping to keep the sauna (sic) operational for an extended season. With our short summers it really would be beneficial. It also has the potential to attract visitors during the winter months, supporting other local businesses in the process. Allowing the aromatherapy sauna would not only benefit the farm but would also contribute to the diversity and resilience of our local economy while offering residents and visitors alike a new, healthy way to enjoy the beauty of the peninsula. Thank you for your consideration.

Sherry Holman, 1481 Chimney Ridge Drive: I just think that a lavender sauna and cold plunge would be great for the winter months here, and frankly, I don't like to go into town. I like having things out here and I like that it's focused on wellness and alcohol-free. I just wanted to add that I would love to have it out here. I would use it all the time. Thank you.

Teri Mulcahy, 7202 Peninsula Drive: I've never met her, but my heart just breaks. Everything that she's gone through, all the hoops; what she's doing for the community, for farming. I just hope that you don't get drawn into some of the semantics. I mean, I think she's proven herself and so we hope (and are) in total support.

Rebecca Hite, 13443 Blue Shore Drive: I'm also in support of the sauna. I think there's numerous health benefits, many of them you can find online, scientifically proven, reduces the risk of stroke. So many good things, as well as a cold plunge. They're wonderful. I think Erin's lavender oil will be really amazing as a part

of that experience, as a part of that kind of soothing, de-stressing experience. It helps her directly sell her product that she makes on her farm. In my mind - I know there's a lot of ordinance and GAAMPs talk that I don't understand - but in my mind, she's selling her product. This is helping her sell her product in a way that makes her farm a destination. It's not a winery. It's healthy. It's for the community. It's good for us. So that's what I wanted to say.

Hall: Obviously a popular proposal.

Alexander: I really appreciate your comments and all that you have done. It's wonderful. We need more people like you. Thank you. My first thought is, you know, the sauna is a commercial activity, but I love what you said when you noted "educate as to the benefits of lavender and how to use it in your home sauna". That, to me, should be your focus right there. Focus on that and less on the sauna. That's my opinion.

Dloski: In that same regard, I've read a number of articles regarding aromatherapy, and it seems like the main emphasis of aromatherapy is inhalation and dermatological - putting it on your skin - and I haven't read one article that talks about saunas on a farm using aromatherapy. Are they doing anything to try to accomplish that through inhalation and dermatological...how are they marketing?

Hafeli: You're breathing it in.

Dloski: The articles I have read have talked about inhalation without saunas. I haven't read one article that talked about inhalation with the sauna, so I'm not quite getting the sauna aspect. I see the sauna on West Bay and across from the state park in the summertime, I mean, I'm not quite sure what it's doing there...

Hafeli: It's not this operator.

Dloski: I'm not quite getting the sauna aspect of it, I'm sorry.

Renee Walter, 12908 Peninsula Drive: I do not know Erin. Didn't even know the sauna was on the agenda. I just want to speak to the inhalation of lavender. I personally do it for migraines and I boil lavender in a pot and I put a towel over my head and breathe it in and it takes care of my migraines. I don't know if you want to research that, you might find something online about it.

Dloski: That's what I've been reading. You don't need to be in a sauna for it to work.

Walter: I tell you what, I would totally be in that sauna because it's a life-saver for me. I don't know if any of you have had a migraine but it's remarkable how it works. I don't have a sauna to do it. If I had one, I would use it, absolutely.

Hall: Jenn, what's next on this application.

Cram: The introduction for this item took place in May. The public hearing took place in July. This is continued discussion. We brought back additional information for the planning commission to consider. The proposal has changed. The focus has been narrowed. I believe that the applicant would like to know the direction that the planning commission is heading. Is there more information that you need to make a decision? Research we need to do? What information do you need to make a decision? Clearly, we would need to continue to discuss this at the next regularly scheduled meeting of the PC which is actually two weeks away. Erin and/or I would have a short turnaround to get you more information for consideration but we're up for that challenge. I think getting a sense of where the PC is at and/or if additional information is needed so that you can hopefully take action and make a recommendation sometime in the near future.

Hall: Okay. I'm going to make a comment and then I'm going to recognize Larry and Donna. I'm thinking that what we should do is go around the table here of the commission members and maybe each one talks succinctly about whether they have questions, what additional information they might have, and then if they want to indicate their position on the request, they could do that as well.

Dloski: We could decide this tonight, couldn't we? We've had the public hearing. It's been fully vetted.

Cram: You could but the findings of facts and conditions do include a lot of other information, and the conditions of approval haven't been vetted, but yes, you could. You could take action because it's the meeting after the public hearing and that's what the bylaws say.

Dloski: Would you feel more comfortable if we did not so that you could clean up what you need to?

Cram: I would be more comfortable if we could clean it up and that the findings of fact would be specific for this narrow request.

Hall: Next meeting is?

Cram: September 3rd, Tuesday.

Hall: So, not a full month away.

Cram: It's two weeks.

Dloski: Randy, I think it would be better for us to wait until staff cleans it up and brings it back and then we can comment on it individually rather than tonight.

Cram: Unless there's more information requested.

Hornberger: But I think as long as we're asking her to clean it up by September, we should at least tell her how we feel. Frankly, when I looked at the various things that were on our plate, this is the one that rose to the top for me as being most easily passed.

Hall: Well, I'm going to exercise a little prerogative here and ask if you have anything more to add to that statement. Any questions for Jenn or the applicant?

Hornberger: I think I've asked a few.

Hall: You don't have to.

Hornberger: I'm comfortable asking Jenn to narrow this down to just the sauna and vote on it in September even though I won't be here. I'm comfortable having it go forward.

Beard: I agree that we need a stripped-down staff report and we need whatever relevant conditions remain clarified and articulated. I'm not sure, with the narrow focus, what that might entail now. We heard tonight that the hours of operation on a daily basis would be some time until 8:30. I'd like that in print. I'm assuming that this is a year-round operation, so does that mean 7 days a week for 365 days or 5 days a week or something like that? If we're going to approve this kind of activity on agricultural land, I'd like to know what those parameters are.

Cram: Asks for clarification from Beard for notes.

Beard: In any research you and the applicant are going to provide, I think it would be helpful to give us some specifics on the therapeutic aspect of the lavender. We've heard anecdotal information here but if there is something scientifically researched that would support that, I would like to read that. I understand that it can be administered in a number of different ways, and I understand that you would be inhaling the lavender in the water vapor, in the steam, in there. It may not be the only way it can be administered but it sounds as if administering it in steam is a fairly common thing. I would like that sorted out as well. I think we've got plenty of examples around the peninsula of A-1 land that has some accessory use using products grown and processed on the property and delivered not dissimilarly to what the applicant is offering here. So, right now my inclination would be to approve it, but I think we need clarification on a few things and a cleaned up, stripped down staff report ready for September 3rd.

Alexander: I agree with you, Kevin. I also, as I said, think that the benefits of the lavender and the aromatherapy and education should be the focus. If you have that as the focus and say "okay, this is how you use this product and this is what it can do for you" rather than the sauna being the center, I'd be more inclined.

Cram: Can I ask for clarification, Julie? If we could structure the findings of fact that the incidental component of this is that it educates people on how the sauna experience utilizing lavender can be a health benefit we could maybe look at this not only as agriculture but a special open space use that is very specific to this farm and the approval on this farm, that helps you to see how it's accessory and incidental?

Alexander: Accessory and incidental because it's specifically focusing on what we are using this product for and what the benefits of this product is and this is a way that I can teach you how to do this. It's a sort of class.

Hall: I agree with Kevin's statements in all respects except I don't need any scientific or evidence-based medicine support for aromatherapy. I'm comfortable with the public comment that people use it, they find it helpful, and I'm satisfied with that. I'd like to have, as Kevin said, the findings of fact cleaned up, narrowed specifically focused on the now-limited proposal and I would support the application.

Dloski: I think it's very clear that a sauna is not a farm product under the GAAMPs, so we don't have to worry about being preempted by the GAAMPs. The issue then is: is the sauna an accessory farm use and in my mind, it absolutely is not, period.

Hall: On that point, Jenn, perhaps you and Chris can talk because this relates to what I was talking about at the beginning: what are we doing and what is the legal basis for it? I don't want to belabor the point now.

Patterson: I was only going to make a comment that based on the questions and the conversation I think Jenn and I can work on cleaning up the findings of fact to make that clearer.

Hornberger: And we certainly don't want unintended consequences.

Beard: I will just draw your attention to the minutes which said that action on this was tabled but I don't think a motion to approve was made, so I'm not sure what was tabled.

Cram: I don't think that we technically had to table this to the next meeting because we had the public hearing. The public hearing was closed. We were going to continue the discussion. The bylaws for the PC note that, the PC doesn't take action the night of the public hearing and so I don't think we needed to officially table it to have this discussion and to come again at the September meeting with additional information.

No further Commission comments at this time.

b. Special Use Permit (SUP) #35, 7 Hills Development, Amendment #3 – Introduction

Cram: The 7 Hills Development is a newer business on our peninsula. I want to compliment the owners of 7 Hills for their entrepreneurship in creating an establishment that has successfully become a community asset. Many people gather there. I believe that it's a wonderful addition to our community and we learned going through the process. I have outlined some things that have occurred with the final approval of Amendment #2 between when the PC recommended approval for the outdoor uses and increased capacity from 32 to 70 and when the board approved it. I think with all new businesses - we heard it tonight with the lavender farm and we experienced it with the 7 Hills Development - that as you're trying something new and trying to make something successful that you need to experiment to see what works. Their original business plan was to open a restaurant/tavern which is a use that is allowed in the C-1 Commercial zone with the approval of a special use permit. We discussed, then, the amendment to allow the outdoor seating because the PC and the Township Board believed that that was accessory and incidental to the restaurant/tavern use. I think, in most of our minds, when you go to a restaurant/tavern, you enjoy being able to order a glass of wine with your dinner or if you're a vodka/soda person or if you enjoy a beer... Most restaurant/taverns hold a Class C liquor license that allows them to serve a variety of alcohol and they don't

have to manufacture it in order to serve it. Peninsula Township, based on our geography and population, is allowed four Class C liquor licenses. Those four are currently being used. There is the potential to transfer in a Class C liquor license from another township but there would have to be one available and it is cost prohibitive. The original intent of the 7 Hills business when they came to the PC was to do a distillery and offer craft cocktails. They started their business plan with this. As they noted in their letter, they noticed people would come to their establishment and they wanted something else besides a cocktail. Between going to the PC and the Board, we received notice that they were applying for a small winemaker license. That gave us reason to pause to say “okay, we don’t normally see the processing of grapes into wine in the C-1 zone district, is it a use that’s allowed?” We have a permissive zoning ordinance, so if a use isn’t specifically listed, we assume it’s prohibited. Our C-1 zone district is very limited and I’d like to ask the PC to consider what the intent and purpose of the C-1 commercial zone is. It currently says: per Section 6.6.1 - Intent and Purpose, “establishes the C-1 Commercial district to allow for convenience type shopping for townships residents and for limited marina and transient lodging facilities. It is the purpose of this regulation to avoid undue congestion on major highways and to promote smooth and safe traffic flow along highway routes. Commercial activities within this district are those which primarily offer goods and services which are generally required by a family at intervals of a week or less.” There are no uses that are currently allowed by right in our C-1 zone district. All of the uses that are allowed require a special use permit, including “retail stores and shops, warehousing of products sold at retail on the premises, service institutions, utilities, restaurants and taverns, recreational unit sales, farm supply and implement dealers, professional offices and off-street parking lots.” Then we allow gasoline service stations, marinas, wind energy conversion systems, hotels, motels and tourist courts, and self-service storage facilities. Those are the things that are allowed. We grappled with the small winemaking use and its processing and/or manufacturing component. When you think about other urban areas where you have breweries and/or wineries, we know that with the processing of wine or grapes there are smells associated with that, there are noise(s) related with that, particularly with breweries. Having moved from Fort Collins to here - I think Fort Collins is the microbrewing capital of the world - when I first moved there, I could smell the breweries. I could smell Old Belgium (sic) and then after I lived there for a year, I didn’t notice it anymore because it was part of living in that community.

Dloski: Aromatherapy.

Cram: Aromatherapy! So, there are smells, there are sounds, there are fumes associated with manufacturing, so that opens up “do we want other manufacturing type uses if we allow this?” We realized that the board had approved the MLCC license to allow the 7 Hills Development to operate as a small distiller with a tasting room and we wanted to be true to this because they were headed out on this path. They were very transparent that they wanted to be a distillery so the path forward at the board at that time was to amend the findings of fact and conditions. What we learned from the 7 Hills Development is that the small distiller license and the small winemaking license allows manufacturing, and those MLCC licenses don’t put a minimum limit on manufacturing, but they do have a maximum limit. For instance, in your packet I provided information that they could manufacture up to 60,000 gallons. There are some impacts to being able to do that. If the township were to authorize that use, there could be negative impacts for using that license to its maximum capacity. What the 7 Hills Development represented to the Township Board was “we’re going to do the minimum amount to meet the requirements of the license. We’re only going to have specific equipment on our premises, and we have to – at a minimum –blend it, bottle it, put our label on it in order to sell it.” That gave the board a level of comfort that – okay, there isn’t going to be large scale manufacturing happening in the C-1 Commercial district that might have other negative impacts. The path

forward at that time was to amend the findings of fact and conditions to be very specific on the level of manufacturing that would be allowed as well as a resolution that they are agreeing to only do the minimum amount. That approval also made it very clear that if they wished to change their liquor license from anything more than a small distiller that they would come back and amend the special use permit. There are other things that we need to consider with alcohol manufacturing because there is waste associated with that. Whenever we are looking at any use, in any district, we always ask the basic questions: do we have adequate water, do we have adequate sewage disposal, is there parking...all of those things. As it turns out, the Grand Traverse County Health Department also had concerns about the maximum potential of manufacturing because – as we know – their onsite septic system is limited. Their septic system couldn't handle anything else going into the system related to manufacturing. We also, included in your packets, a letter from Grand Traverse County Health Department noting that they required that the existing on-site septic system add a flow meter to give them a level of comfort that there isn't going to be additional waste from this use going into that system, and they also required that a Use Affidavit be recorded that runs with the land. With that, they could support the approval of the additional liquor licenses being requested which include a small winemaker and wine-tasting, as well as a microbrewery and beer tasting. With that, we believe that the path forward is to come and go through the process to amend the special use permit and legal counsel can assist us with drafting similar resolutions. We're embarking on that process.

We have experienced some growing pains with this new business, and we have received some complaints. We've talked with the applicants about those complaints, and we believe that they want to be good neighbors. We want you to be aware of issues and believe that they can be addressed. At this point, I believe that our community police officers would support working with the Grand Traverse County Road Commission to put some signage on the road that there's no parking because they have witnessed (situations) where there has been overflow, cars parked along 7 Hills that has caused safety concerns. We could get some cooperation to help alleviate future issues with that. There has been a noise complaint that they are aware of, so again we can work with them to understand that and abide by the noise ordinance and conditions of approval of the special use permit.

The applicants are asking for an amendment to their special use permit to allow these two additional, very specific and narrowly focused liquor licenses. The proposed amendments don't change capacity, which will still be a maximum of 70. They have adequate parking for that.

Hall: Are we ready now for questions from the commission?

Cram: I did see one of the applicants here and so Troy Daily can also answer any questions that you have. Troy, if I missed anything you're welcome to provide more info.

Dloski: I'm always one to jump into the pool with no water but, you know, I've got a fundamental problem with this whole thing to begin with because, I don't know about Chris, but this is one of the few zoning ordinances that I've ever read that has no C-1 Commercial uses as a right. Everything is special use. You've got to jump through our hoops to do anything. I mean, this is a really good use. They're successful, I've been there, and we're going to make them now go through a myriad of special land use. Am I wrong, Chris? We have no uses of right, do we?

Patterson: Based on the community and background I'm not surprised by that commercial uses require a special use permit approval. What I think is particularly true of municipalities lately is looking at zoning ordinance amendments that target these types of liquor licenses. So, you will see that putting them in as permitted by special use as a listed category, but I think – and this has been true of our conversations with

Jenn through this process – that at some point I’m sure you’ll look at your commercial district and decide if you want to list additional land uses. One of them particularly would be making the distinction between restaurant in the conjunctive with tavern. There’s no definition for tavern. Taverns are defined in the liquor control code related to these Class C licenses or resort licensing separately. The thing that we’re really trying to do is provide flexibility under the zoning ordinance as it’s currently written in the C-1 district to allow a use that is consistent with a restaurant and tavern without opening up manufacturing. As the applicants have provided and presented – I think they’re doing a good job of trying to narrow the use to that of the restaurant and tavern use and they’re agreeing that they’re going to waive the right to the full use of this MLCC license to get it to fit under what’s currently allowed. The Peninsula Township Zoning Ordinance (PTZO) doesn’t actually list what other municipalities have done, which is including ‘craft brewery’, or ‘distillery’, they list them as a specific use, particularly by addressing them with specific standards.

Dloski: ...as a use by right?

Patterson: Well, either as a use by right with performance standards or you still have a special use requirement. When you say “jump through hoops” you still wouldn’t probably list them in the commercial district with no performance standards, so you’re either going to be listing a whole host of performance standards or you’re still going to be putting together a special use permit process. That part’s not really the problem for us. The particular issue that we had on the planning side is trying to help the applicant get through the process when the ordinance lists only one use – tavern – that is sort of applicable to them. We’re dealing with a different animal. I think they’ve done a nice job with tailoring what they’re proposing so that it fits into the special use permit process and now we must do these amendments.

Cram: And furthermore, they had the distiller license, they were approved, all the minutes, everything talked about them being this distillery – we didn’t want to hold them hostage to wait to amend the zoning ordinance, which needs to go through a public process. They’re being quick on their feet and committing to doing the minimum allowed and to say those limited uses are accessory and incidental to the allowed use of a restaurant/tavern.

Beard: I just wanted to say, to Larry’s point, that in my previous community there were a lot of uses by right in the commercial/business/office district but every use with liquor went through a special use permit. It just required a lot more scrutiny. So, whether it was an Applebee’s restaurant or an operation like this one they both got treated under the SUP process.

Alexander: I have some questions. When you say, ‘the minimum amount’, what is that?

Hall: Asks Troy Daily to approach the podium.

Cram: I have the packet pulled up here. The applicants did show the equipment they would have so I’ll get that for the listening audience.

Alexander: I’m reading your affidavit here, that’s why I was curious.

Troy Daily, 16169 Hill Rise Road: I think I can probably clarify a couple of things in my notes here. We are a small distiller, however in our SUP and at our location we cannot actually manufacture anything on site. We don’t make anything. We aren’t allowed to. We just don’t have the room or capacity, and the Health Department won’t allow us either as you can see in everything you have there. What we’re doing is adding beer and wine but we’re not going to actually be making anything on site. It’s all going to be outsourced from two other manufacturers off site. We have to “manufacture” a minimum for the MLCC requirements which is having a system on site, which as you can see is a one-gallon container.

Cram: It’s the home-brew size.

Daily: Yes. It's home-brew size for experiments that we do or something like that. It won't really be enough for sale at the establishment. To be clear on that, we're not actually making anything on site, we're just putting it into bottles and then labels on the bottles.

Alexander: So, beer and wine.

Daily: Beer and wine, yes.

Alexander: So, you're getting both of those from other sources, you're doing the same thing with spirits.

Daily: Yes, it's made with our recipes and the wineries that we're going to use are going to be Old Mission wineries.

Alexander: And you have a license to sell it?

Daily: Yes. If you guys approve it. The MLCC will approve that, yes.

Alexander: Is it being sold now?

Daily: We do serve cider and wine, yes. Also, the reason we're doing this is because we are a small distiller and we have learned, just because of all the wineries and everything out here, that people want a lower ABV option. That's why we want to have beer. We're going to have 1-3 beers on tap and may offer 1-2 (wines) like a red and a white wine.

Alexander: I totally get that because I'm not a hard liquor drinker and I totally appreciate that, but I also know that it says you must have all the required state and local licenses before you sell it on your MLCC license. Just thought I'd mention that.

Hornberger: So, how many gallons will you be making/selling a year?

Daily: We won't be making anything on-site. This is all going to be made with other manufacturers and co-partners. We don't know yet because we haven't ever sold it. Our distillery operation, we're still learning what that is, and I don't have the numbers in front of me but depending on what the cocktail consumption is, it just depends.

Cram: The MLCC requirements – I have pulled this up on the screen and it's in your packets – they have to purchase the base product that they blend and mix and those have to come from a bonded facility and come to a bonded space. This amendment doesn't change anything on site, within their floor plan. They will keep storing the wine-fermenting and beer-fermenting equipment in the same location where they have the still and things for the small distillery license. They're buying equipment – the home brew would allow for five gallons of wort. They know that those five gallons that they make to meet MLCC requirements can't go into their on-site septic system, so we can address that with further conditions of approval, if needed. With the wine, that kit includes a two-gallon plastic fermenter but again, they must have this equipment on-site to meet the minimum requirement. They know that this can't go into their on-site septic system. The actual manufacturing that would take place would be mixing, blending, bottling, labeling, and capping. All of those things were specified in the findings of fact for Amendment #2 and the resolution.

Hall: In your view, what is the timeline, then?

Cram: The timeline would be: if more discussion is needed, we would love to have it now. If you have questions or concerns, we would love to hear them. Because we have another meeting in two weeks there could be more discussion or if you authorize us to move forward with the public hearing, we could come back in October for that. As Larry said, this can be a cumbersome process. Our existing process to amend an SUP is the same as the original approval process. The planning commission would have the opportunity – if you felt that you had all the information you needed – you could make a motion the night of the October public hearing, you could take action the same night. If you need more time, you could take action at the November meeting.

Hall: I'm missing something. Why is it October, not September?

Cram: Because we can't meet the public noticing requirement of fifteen days by the September meeting. I take responsibility for that. I got COVID and that's why we're having this special meeting. I'm trying my best to move applications forward in a timely manner and so it's unfortunate that in order to meet that 15-day requirement we would have to come back in October. Staff would support – if you have all the information you needed – making a motion to take action the night of the public hearing.

No further questions from the Planning Commission.

Motion made to schedule the public hearing in October made by Dloski, seconded by Hornberger.

Motion passed unanimously.

Cram: At the public hearing we will have findings of facts and resolutions drafted for consideration.

11. Reports and Updates

a. Shoreline Regulations Study Group – Policy Recommendation for Single and Shared Waterfront Ownership

Cram: It's exciting to be at this place and sharing this policy framework with the PC. The Shoreline Regulation Study Group is a sub-committee of the PC, and they have been meeting every other Monday since January. We broke our discussion up into three topics with regard to our current shoreline regulations. The first topic that we tackled was single waterfront ownership. The second topic was shared waterfront ownership. The study group felt comfortable with these two topics and wanted to move them forward sooner than later because we know that our property owners that have shoreline property are already starting to think about what they might be doing next season. The third topic, which is still under discussion, is how to address development standards on the shoreline. When we looked at all three topics we started with the question 'why'. Why does the Township have an interest in regulating these types of things? The study group agreed that the number one reason is for public health and safety. The second reason was to protect our natural resources. Peninsula Township is unique in that we have 42 miles of shoreline so having reasonable regulations that the community agrees to will help the community to sustain this wonderful natural resource. The third reason was for conflict resolution. Since I have been in the role as the zoning administrator we receive a lot of complaints between neighbors. Neighbors putting their docks and hoists in front of another neighbor's property and things become contentious. There was a need to further clarify our regulations to help everyone to be able to enjoy their waterfront. The policy framework begins with that 'why' statement. Why do we have an interest? We talked about what activities are taking place on our waterfront. People walk the shoreline. There is swimming. There is more happening on our shoreline than just boats and boat hoists. We wanted to consider all those things and the relationships of all those activities on the shoreline. Our current zoning ordinance allows one dock per parcel and so this would allow a 'T' or an 'L' which has one point of contact at the shoreline. Everyone agreed that that's working pretty well. There was one thought about allowing one more dock if someone has 600 feet of shoreline or more, so we talked about that, but the group thought that one dock per parcel was working well. Then we talked about size of docks – how big are these things – so we put some parameters around these things. Generally speaking, the average dock is 3-4 feet wide. The current ordinance says that it can't be wider than 7 feet and we couldn't figure why that was so 8 feet seemed reasonable. We talked about the length of the dock, and everybody agreed that the existing standard – the length of the dock is determined by how far out a property needs to go to reach that critical depth in order to have a boat there – was okay. There are other configurations of docks and people create these patio areas so that they can watch the sunset from their patio chair and/or have swim platforms, so we put some parameters around that. The real crux issue is how many hoists are reasonable. To help alleviate some of the conflicts that we experience we talked about having some setbacks. The recommendation is that no dock should be located closer than 15 feet from the side property line. This entails us projecting an imaginary line out into the water where the property line

ends at the ordinary high-water mark, then the 15 feet is measured from that imaginary property line. When we discussed this a few PC meetings ago, Susie Shipman – who is not here this evening – noted that there was a concern that this may not work for all shoreline configurations. Projecting the property lines out into the water doesn't work for every parcel. Here's an example where if you project them out into the water it creates a triangle. It's not fair to not allow that property owner to locate their dock and/or hoist in a reasonable location. (Shows examples on screen from the packet.) In another example, if you look at the parcel to the south, those property lines are parallel to one another, so that situation would work. We could project those out and look at the 15-foot setback, but the parcel to the north of this shows that triangle where it doesn't work. We need to have an alternative for those properties where projecting the property line doesn't work, there could be a parameter that the dock should be located generally in the center, so they still have the opportunity to have a dock and hoist. That's the current policy direction. In a perfect world we would project property lines out into the water. If every property line was parallel to one another, it would work but we need to consider those situations where it doesn't work.

Hall: Pardon me, Jenn. I don't recall that we got to this level of detail on that point., We touched on the geometry of some shorelines causing these problems. The point that I'd like you to keep in mind is that it isn't just the geometry. they may need to have their dock come out in a different location because of shallow water, we should allow remedies administratively. Please make a note of that because I don't recall in the study group that we talked about this situation. That idea of centering really should apply to both.

Cram: Again, we're at the policy statement level. We're simply talking about these things. Maybe, to have a reasonable ordinance rather than looking at the setbacks, we need to just look at the docks being generally centered.

Hall: My personal opinion on that is: if someone has enough frontage, I don't want to tell them they have to center their dock because a lot of people don't want to look at their dock necessarily. They want to offset.

Cram: I think where we're landing is that we want the reasonable approach. We want people to have the flexibility of where to locate docks and hoists that doesn't negatively impact their neighbor, but we need to have enough flexibility for unique situations. We don't have to dig into it today, but the study group reviewed this draft and agreed that this was ready for the PC. The ideal situation would be looking at a setback, allowing for flexibility, but we know that we need to provide an alternative.

Hall: One more comment on that. I think, Chris, we're going to need your help on what should the mechanism be when we have shoreline like this. Is it an administrative determination of where the docks can be? Does that hold up? I mean, in a situation like this, if the property owners can agree then that's fine. If they can't agree or there's some dispute, then we're going to want them to come in and talk to the zoning administrator. I would imagine that the ordinance should then provide for some administrative determination.

Patterson: You'll see ordinances that have sort of a dual layer in this situation. You could do a couple of things: you could do administrative level and make a sort of classification standard where you defer to the discretion of the zoning administrator when they think "okay, too complex for me" then it would kick it to the Planning Commission. Doesn't mean it needs to be a public hearing.

Hall: We don't want to see that.

Patterson: Otherwise, you develop some other standard where discretion rests with the zoning administrator. Disagreements with the zoning administrator would always go to the Zoning Board of Appeals. Part of your goal that you should discuss is when you have these sort of situations, I think you still probably want to be streamlined and deal with it administratively, so if you're sitting in the shoes of the zoning administrator, often they're left as the ones discussing with the applicant "hey, here's the consequences of the situation with your parcel" and it's best for the zoning administrator to have sufficient clarity in the standards that they can address the applicant and explain what would need to be done. Then,

if they disagree, obviously there's already an appeal process built into the zoning ordinance. I think you just need to be thoughtful about what the standard is.

Cram: Just to add to that: what we agreed at the study group is that we came together with a united purpose and that was to improve our existing zoning ordinance; to make it better for the community. We wanted to have reasonable standards that brought most situations that exist out there today into compliance, that allow for flexibility because we heard loud and clear that there are more people with boats and our existing zoning ordinance isn't working, that we need to accommodate this, and we want to help alleviate some of the community disputes. It's true with any zoning ordinance that if there is a process - which, I'm thrilled with the process - we've been meeting two times a month. We learn things, we hear things. The process has evolved. Zoning ordinances are so much easier to administer where there is community buy-in, and the community has been a part of the process.

Beard: I was just going to say that I think the idea of having a setback makes a lot of sense, but I think the magic word here is "unless". Unless the geometry of two neighboring parcels would block or inhibit one of those parcels from open access to the lake. You probably can craft language that will go to the zoning administrator to determine proper or appropriate location for the dock in those situations.

Cram: Thank you. Moving on then, we talked about hoists, and we talked about the average size of the hoist. One of the things that was made clear is currently our zoning ordinance allows for one dock per parcel and one hoist per 50 feet. People who have jet skis - one jet ski currently counts as one boat hoist. The study group agreed that two jet skis would equal one boat hoist, so we clarified that and would like to make that recommendation. With the number of hoists per linear foot, the existing zoning ordinance allows for one per 50. The study group looked at most of the existing shared waterfront situations as to how many lots were in the subdivisions, what's the lineal footage of each of those shared situations, how many docks and hoists do they currently have, do they comply with the existing zoning ordinance or not - that's where we realized that most of our shared waterfront systems as they exist today are not compliant. We didn't want, in amending our zoning ordinance, to create multiple non-conforming situations so, again, how can we make most of these compliant and be reasonable. The recommendation is to allow three hoists per 50 lineal feet which would triple the number of hoists per lineal foot as to what the existing zoning ordinance currently allows. Then, of course, if you had jet skis you could have two per one boat hoist. With regard to policy direction, we are considering an increase from one (1) per fifty (50) to three (3) per fifty (50). The location of hoists would be handled similarly to the location of the dock. In an ideal situation we would project the property lines out into the water. Those hoists would have to be fifteen (15) feet from that property line unless the geometry prohibits them, then we would generally center it, and it would probably need to have some neighbor discussion.

We talked about where docks and hoists should be stored because these are seasonal docks on the Great Lakes. We agreed that all of the docks and hoists should be stored: within the property lines, that they would be stored four (4) lineal feet from where the water meet the land to allow the public to walk along the shoreline, nothing stored in the road right-of-way, to avoid storage in the floodplain where possible. Again, these are temporary things so in an ideal situation, if shared waterfront or single waterfront ownership can store it out of the floodplain that is preferred. As you know, we have many single and shared waterfronts where access to the beach is like this (gestures to show a steep grade) so the only place you can store it is maybe within the floodplain, we didn't want to limit that. Again, we wanted to encourage people to be good neighbors and neatly stack dock sections to be consolidated. The existing zoning ordinance requires a fifteen (15) foot setback from the side property lines to be maintained. The study group thought that that requirement for storage in the winter when not in use was restrictive. They just want to make sure it's stored on the property, not in the road right-of-way, and to allow the public to walk the shore.

We also talked about parking. Single ownership isn't really a concern with parking. People who have single ownership can park in their driveway, or in their garages. People can park outside of the traveled way, on the edge of the right-of-way outside of the fog line, or the white line. The discussion of how we address parking with the shared waterfront is a bit more complex. Some shared waterfronts do have designated parking. We all agreed that we didn't want to pave our beaches just for the sake of provided parking. The consensus of the study group was parking has been working okay for these shared waterfront ownerships, let's allow them to address where people park to access the beach. We agreed that parking could be flexible.

The existing zoning ordinance says that shared waterfront property should come in every year and file a land use permit. That is not happening. The land use permit process isn't really tailored for (that). Again, we wanted to have buy-in to this. We wanted to make it easy, so we agreed that rather than the land use permit process there would be a registration for the shared waterfront properties. It would be a form – that is really easy: what's your subdivision, how many lots, how much lineal footage..., check the boxes - and then we can confirm that they're meeting the zoning ordinance that we all agree to. There'd be either a nominal fee or no fee, to encourage compliance. Rather than the land use permit we just wanted to create a registration process that's easy to complete. The reason for that, our number one reason is for public health, safety, and welfare and natural resource protection. The study group felt that was reasonable. The one thing, Chirs, that you see here is that the study group wanted to have legal review with regard to parking to allow the homeowners to manage it. Do we need a disclaimer that they are taking responsibility for the safety of their shoreline? We didn't want to make this cumbersome. We also didn't want to open the township up for any future liability because we're not requiring parking on-site and things like that, but we didn't want it to be onerous to the shared waterfront properties. The other thing that was brought up at the last meeting was that maybe the registration form for shared waterfronts that have four (4) or less people in them is overkill, so maybe there would be a minimum of five (5) or more that would participate in the registration to make sure that they're following the standards and we're promoting public health, safety, and welfare.

That's a summary of where the study group is at. I'd love to hear from you about any questions, comments, concerns...Staff is ready to work with legal counsel to start on drafting actual zoning ordinance language if you're comfortable with where we're at with this policy direction. We don't believe that we would be starting from ground zero. There was a lot of information in the zoning ordinance rewrite that we put on the shelf. We reviewed the intent and purpose statement and diagrams. We could use that as a starting place and then incorporate these policies with regard to increasing the number of hoists per linear foot, the registration form, and things like that.

Hall: Let's open it up to discussion among the commission members first. Seeing no comments, I have some comments. Let's go to the first page and size of docks. The third bullet point.

Cram: (Pulls up the document so that the audience may follow along.) For everyone in the audience, this is in the packet so it's now part of the public record. All these documents will continue to be available online as needed.

Hall: Third bullet point says, "length no greater than what is required to achieve a four (4) foot water depth". Then there is a parenthetical question: should there be an exception for larger boats? Yes. Does anybody have a boat that requires more than four (4) feet? (Several audience members affirm this.) So, there's our answer.

Cram: So, should this just be that "a length no greater than what is required to achieve the appropriate depth for the size (of the) boat or something? The four (4) feet came in from a previous discussion.

Hall: It's arbitrary. Well, I don't know if it's entirely arbitrary. I don't know what the average depth required is, but probably just don't put a specific measurement in there.

Cram: Okay, thank you.

Hall: The second point is for Chris. Let's go to the third page under 'shared waterfront ownership' the second bullet point about the disclaimer. Chris, during the discussion in the study group, a question was raised - I will say, by a non-lawyer - that if the township (and this is not verbatim) approved a shared waterfront ownership project should the township include, or get a disclaimer from the association, that the homeowner's association is liable for resident and guest safety? What was motivating the question was that if there were a parking arrangement, an approved site plan, that was unsafe and somebody got injured, would the township be liable? I don't think so. I wouldn't make the HOA make an affirmative statement that they're liable. Just leave it. Leave it to tort law. Can you help us to address this?

Patterson: Generally speaking, we do not require...there's two things. One is the question of, is it being noted on the registration form, and sort of addressed in your question: if it's some type of hold harmless or some piece of that...I mean, certainly I think that's definitely more extensive than what's required for a zoning approval. Two, even to the extent that you made them acknowledge that they understand they're liable for residents and guests - I mean, they are liable for residents and guests, period. Just under state law, they are liable for those people that they invite on their property. We would have to, as a township, exercising its governmental function whether it's approved by the zoning administrator or through the zoning ordinance itself with no approval. Generally, you're going to be immune from any tort liability and I don't even think that it's negligent to not require a disclaimer anyways, right? So, even if it wasn't governmental immunity and you were just in general tort law, I think you have a hard time putting together any connection between the ordinance and any injury to happen. I think there's a lot of reasons you don't need it.

Hall: Thank you. Simpler is better.

Cram: So, we don't need it.

Hall: We don't need it.

As there are no further comments from the Commission, Hall opens up to public comment.

Michael Mulcahy, 7202 Peninsula Drive: I'm trying to figure out the smartest way to compress all of this. I'm brand new to the subject. That we even had somebody looking for a method to this. There is a longstanding business principle called the principle of subsidiarity, and this means to move the decision making as close to the affected people as possible using the lowest powered competent authority. I think that is how the definition works. You brought up a great point, Jenn, that I think should be expanded on. This was when you got to the parking problem. You said, you know, I think we should leave that to the five households that are there. Who knows the smartest way to do that? It's the people who live there. I don't know how many people have actually argued with their neighbor/brought it to your attention but take five houses as an example: if you're the middle one then there are two on each side, if there's a dispute have them figure it out. What you can do to control that is to say if they can't come to an agreement within 90 days or something like that, fine them \$1000 bucks. They'll figure it out. There are some lots I know where there is a gabion - do you know what a gabion is? - and it could very well be that this landowner and this landowner each want to put their dock almost right next to each other, but if you have a fifteen (15) foot setback they're going to be going "who put this regulation together? This is idiotic." Or you might have some guy that takes care of everybody in the neighborhood because he's really wealthy. Everybody likes him. He wants to put five (5) jet skis out there. They're going "hey, we get to borrow his jet skis, let's put ten out there. Come on, we've got a lot of kids." Let them do it. If you try to micromanage it, you're going to tick off a lot of people. But I think the parking example that you had is a real good one. You ought to expand on that.

Chris Radu, 1328 Londolyn Terrace: I want to expand on that. I'm the president of my association. I have twenty-eight (28) lot owners. We've got twenty (20) houses. We have thirteen (13) vessels out in the water. I grew up six houses down from the house that I live in. I had private frontage back then and our neighborhood back then had a single easterly dock finger that went out and there was a boat on each side. I bought my house in the neighborhood in 2015 and there are pictures on Zillow of the frontage, and it was the same single section that went out with a boat on each side. It wasn't a problem when I lived on Center Road from 1993 to 2015. But from 2015 to present we went from two (2) boats out on the water to thirteen (13) boats out on the water and one of them has got stilts on it, so it made it easier. We self-regulate our association. We have no parking. Our master deed - our site plan - wasn't designed with parking. You go to the Liber pages, and I have, and there's nothing in there that talks about any regulation about number of docks or the number of hoists that have to go in there. So, if we arbitrarily create these rules in an ex post facto manner I'm supposed to go to my neighborhood and pee in someone's Cheerios and say "hey, you're going to come off the dock because this arbitrary standard was set"? We self-regulate, you know, the lowest common denominator. I also have some questions in regard to even the legal authority to do this. Part 301 of EGLE specifically says permanent docks or permanent dock hoists which are left in year-round require a permit. Seasonal docks and hoists do not require a permit if they are for private, non-commercial use by a landowner, do not unreasonably interfere with the use of the water by others, and do not interfere with water flow, and will not be placed in wetlands. So, EGLE is responsible for controlling riparian rights. Where does the township even fall on that category? So, I guess those are my concerns. I get that there's been a study group. I've been trying to get the information for that. I have another member of my community who's retired who has the luxury of coming to those meetings. The majority of them were three o'clock in the afternoon. I mean, I work for a living. I couldn't come to those things. We had one that got canceled. (To Cram) I'm sorry that you got COVID, that's unfortunate to hear and I'm glad you're doing better. I was actually trying to come to that one and I was almost all the way here when I found out that it was canceled. And the people that are on it, yes, they may represent some neighborhoods, but they certainly don't represent our neighborhood. If you said four (4) hoists per fifty (50) feet, fine. Then we're in compliance. But at three we would continue to be out of compliance. At the end of the day, all that's doing is degrading the value of our property and so on one hand we talk about all these services that we want to pay for out here and being able to collect the necessary taxes and on the next hand you guys are lowering the value of property of shared frontage when that's not what was originally outlined when our neighborhoods were formed. I mean, the last amended document to our neighborhood was 1988. I don't understand how that's serving the public good by devaluing our shared frontage versus private frontage. Thank you.

Hall: Thank you. I'm going to respond to a couple of those points. Let me take this opportunity also, if any of you have comments that you don't get out tonight and you want to make those comments, please send them to Jenn. This is a topic of great interest, and we take it very seriously. A couple of points: for shared waterfront we've got...there aren't two that are identical. We've got a great variety of shared waterfront, some that self-regulate and it works for neighbors, others - because of challenges of underwater topography - have enormous challenges. So, we have a whole wide range. We recognize it. We're not trying to prevent people from using boats, but to answer part of what you're talking about...you're saying that some of this is going to devalue property values...that's not the point. You go back to the 'why'. Why are we doing this, and that's why we're doing it. Because of those bullet points there. I know that's not a specific answer to your question, but we're not trying to penalize people or anything. We're trying to address these 'whys'. We think the 'whys' are good questions and need to be answered. Parking - we've struggled with that one and we've talked about what we do with existing projects. We recognize some projects - some shared waterfront projects - don't have community parking and so on. We've also talked about what we do when a new project comes in and that's different because we have a blank slate there and I recognize the

difference. Last thing I want to say is you raise the question about legal authority. With that comes under the category of jurisdiction and jurisdiction is a complicated set of laws that apply. You have federal law because these are navigable waters out here. You have EGLE because the state owns the bottomlands and trust for the public. And we have the shoreline, and it is our legal counsel's opinion that because these seasonal docks are used in connection with land that is in the township, the township has the authority under the Zoning Enabling Act to regulate the use of those docks. If you want a more detailed discussion with case law and reasoning, I'd be happy to send that to you. Just send me an email and I'll send it to you. You can share it with your attorney and whomever.

Radu: I know that may not be your intent but that is a side effect of what you're ultimately doing under the current structure. You are going to lower the land value of shared property owners. I can appreciate that there's a topography thing. I have countless emails that go out to my residents that have said 'because of the topography challenges that we have as an association that if the water level were to recede as it was back during the earlier years that we were going to operate on a last on/first off policy simply because we could not accommodate'. As a result of the water receding, we had to change where the starting point of our dock was. Historically, it was on the southernmost point, this time it had to go to the center because that was the deepest area available. So, again, it falls under that self-regulatory aspect, and I understand the opinion that you guys believe per legal counsel that you have the right to govern the shoreline above the high water mark but below the high water, my understanding of riparian law as I read it and as my counsel has told me, and other associations are dedicated to protection of riparian rights. Some of, most of them, located here in Michigan is that you don't have the authority to regulate that. So, if we were to start our dock, say, underneath the water mark then that would technically fall under riparian rights.

Hall: (Due to overlapping talk in the audience, Hall states that he wants to follow protocol and does not want back and forth on jurisdiction. Invites members of the audience to send an email.) I will just comment that the advice you're given is contrary to the advice we have from legal counsel. I'll also make the observation that there's no reported case in Michigan holding that municipalities with shoreline on navigable waters do not have jurisdiction of the legal power to regulate seasonal docks. I can't even find - I haven't found - any cases that even raise the issue. That isn't to say that it couldn't be raised but I think that your understanding is imperfect on that. I invite you to send me an email and I'm happy to send you what I have, which I think is pretty thorough and sophisticated and then you could consider that.

Cram: We are at 9:25. This is just a policy discussion. It's the first time we've heard it. Rather than us trying to respond to all the comments let's hear them and we know that there will be more time. Let's try to limit time to three (3) to five (5) minutes so that everybody that's here can speak. We'll just listen and take notes and get through this item.

Hall: I understand that but the jurisdiction issue - it's been like whack-a-mole. We talk about it, and it keeps coming up. I respect the fact that people haven't been in attendance at prior meetings, but it keeps coming up and we need to not spend more time on it. That's why I invite you to just send me an email. Anybody who's concerned about the jurisdiction questions. Send me an email and I'll get back to you.

Judy Spencer, 6450 Peregrine Court: I want to be cognizant of Chris's time because I think we're paying you hourly so it seems like we're getting free access to legal counsel when in fact I think you should be representing the community. Having legal counsel...Randy, you also said many times you're a lawyer, past-lawyer. Chris, I'm glad you're here. But I'm not a lawyer. I wish I had a lawyer here. I don't want to not talk about jurisdiction because actually I was part of the study committee, and we wanted to bring a diverse opinion to that study group. We wanted to say "hey, if we put an ordinance in place that might very well go just slightly beyond or very much beyond your jurisdiction, this will result in more legal costs for our township". Now, we're in a state of our taxes potentially going up because of high legal costs because we have overstepped our boundaries. We've sat here, listened to many cases where others feel that you continue to overstep your boundaries. So, while the intention, your intention - you wrote them down - that

why we're doing this is because of the public health, to protect our shoreline and to avoid conflict. I talked about, at the study group, before I left because Randy, you said the same exact thing, you're tired of hearing about jurisdiction. You wouldn't let us bring it up one more time. So, it wasn't a diverse opinion from our whole entire community. We don't want further lawsuits. So, when you have ambiguity about where the shoreline goes out in an imaginary line, do you think that that's going to not bring any lawsuits? When someone loses that argument? It's going to bring a full-fledged flow of lawsuits, right, so avoiding conflict resolution...in fact, I don't, actually, Donna you used the term earlier "unintended consequences". Okay, this whole process sounds great but what are the unintended consequences of extending your jurisdiction? Having an ordinance that goes beyond your jurisdiction, it's going to be more lawsuits, right? You also mentioned, Randy, that there's no other cases raising this issue. Let me tell you: our small little community, we should not be on the headline. We do not have enough funding to pay for a Supreme Court lawsuit. Let's sit on this for a while. Let other communities that have more funding, that haven't just been sued by WOMP and let them fight it. Let them set the precedent. We don't want to spend our money going to court on this. Safety. Okay, if I have a boat on a hoist or on a moor because I have a permit from the Army Corps - even if I don't have a boat - I will use my shared frontage at any time I want. So, if I have a boat there or not, I'm going to be using that land the same way. Just getting to that water. So, the usage of the land, I think it's...yes, I'm not a lawyer but I don't think that having a boat or not determines how I use my land that I own. I just want to lastly say this: I am in a subdivision that has an abnormally long dock. We do it due to topography and we do have a permit from the Army Corps of Engineers for the amount of boats - actually we're underneath the amount that the Army Corps of Engineers allowed us - and I also mentioned before that in 2016...

Hall: (Speaking to Spencer) Please address the chair.

Spencer: In 2016 when I bought my lot, built the house with my own money, bought a boat and a hoist, it was based off of your predecessors that said the township does not have jurisdiction over the water, go ahead and have a boat. Go ahead and build a house. And we did that. I was a law-abiding citizen and four (4) years later you come back and you're going to make my husband, who is the president of our association, tell anywhere from three (3) to five (5) people that they have to get rid of their boat that they just spent their money on? This is not an easy decision. So, I'll leave you with one thing: if you're looking to avoid conflict and reduce legal fees, I think you need to think long and hard about the unintended consequences of this discussion. Thank you.

Randy McClure, 1297 Londolyn Terrace: Chris is our association president. I attended some of these meetings, these work group meetings. I found out about it late, but I wanted to get involved and it was not a transparent process. We could come to the meetings, but you had a private document, a working document, that you wouldn't share with people. So, I couldn't go home and read things and look at what was going on and make comments or ask questions at the next meeting. That's why I'm here tonight because number one: I'm not happy with that. It wasn't an open and transparent process. The second thing are these interests that you all agreed on that are supposedly in the public interest, but I challenge you to take all these changes that you've got listed here and explain to me how they add to public safety or how there's natural resource protection or how there's conflict resolution. You know, that's a bunch of crap. That's not true. Furthermore, not once did you mention private property rights. The whole purpose of this thing is not to promote or protect private property rights, it's to put onerous regulations and fines on people using their own property. That's wrong. The number of docks, the size: who cares what size the dock is. Tell me, does that improve conflict resolution or is that green space and view corridor preservation? None of your business. Location of docks. I agree with Chris. I don't think you've got any business regulating the bottomland. You can't draw any line out there that makes any sense to me. Lastly, why do you treat shared frontage differently than you do individual frontage? Why don't all waterfront property owners have to fill out a little registration form of how they're doing their dock. If you've got regulations that affect those

property owners, then they should have to sign a form, too, and say “I’m in compliance with your regulations” but you continually pick on shared waterfront people. Especially regarding the insurance issue, a disclaimer that the homeowners association is liable for resident and guest safety. That’s shared waterfront. What about individual people? Don’t they have to have the same requirement? Yeah, I’m not happy with this whole process and I think it goes against our individual property rights and when you get further into this, I’m going to have more to say. Thank you.

Terry Mulcahy, 7202 Peninsula Drive: I have a question for Jenn. You mentioned the ‘T’s’ on docks, the regulation on that and I understand about how far you can go out because every year it seems we’re moving in closer or farther. We come from a big family so what was recommended is we put the dock out and then on the end this ‘T’ for adults and kids on each side, so it’s three sections and three sections, so it’s a ‘T’. Is that...

Cram: That’s one dock.

Mulcahy: That’s one dock. We own 100 feet and it’s one dock with a ‘T’. Just wanted to clarify that. And then, with you Randy about the jurisdiction about the rules and laws, before I came, because I just found out about this, I looked up riparian rights and it’s just really clear - they go over and over - and this is why there might be that confusion for people that are just quick looking it up on Google. It says you’re allowed a dock and you’re allowed a boat, so maybe that’s part of the problem because they don’t go into great detail about it.

Hall: I can assure you it’s a highly technical area of the law and we are trying to understand the interplay of federal, state, and local jurisdiction. Most real property lawyers - if you asked them - wouldn’t be able to explain it to you because it’s a specialty area. I appreciate the question and it’s a natural question. People say, “if my dock doesn’t touch the land then you shouldn’t be able to regulate it” and that’s just not true.

Mulcahy: We’re putting our finger in a pencil sharpener with this. Thank you.

Jeff Spencer, 6450 Peregrine Court: Just going to add to this conversation, not talk about jurisdictional arguments. I just go back to the ‘why’ which is safety, and I’ve lived in neighborhoods off of East Shore Road for over thirty (30) years, in my life I’ve probably crossed East Shore Road probably 10,000 times in my life to use the boat and not use the boat. Never once thought about ‘I’m going to sue Peninsula Township if I cross the road and get hit by a car’ unfortunately I’m not but besides that point, I guess I just look at this and say, ‘what besides people complaining about potential safety hazards has ever been a documented safety incident with shared water frontage in East Bay or West Bay?’ I’ve never heard of one person getting hit by a boat exiting or entering a dock in my entire life. Why is there a safety problem? I’ve never once experienced one in my entire life. Most boaters on this bay are very responsible boaters if you ask me. What I personally think, again to reading the complaints about our HOA which is unfortunately at the epicenter of a lot of the complaints, it’s all about length of the dock. It’s all about views. And that’s not the ‘why’ with this. People are mad about their view being blocked and you live in a neighborhood that is several houses down and your view is impeded, I’m sorry that’s happened. It’s not our intent. But that’s not a reason to write regulations about limiting boats in the water, if you ask me. That’s all I wanted to say. Thank you.

Debbie Pasco, 6525 Peninsula Drive: I would just like your email.

Hall: My email address is on the website. Just go to the Peninsula Township website.

Discussion between audience member(s) and Commission/Planner. Cram offers to locate Hall’s email address for the audience and commission clarifies that all email addresses are listed on the website under Departments and Planning. Cram also reminds that the Shoreline Regulation Study Group meetings are every other Monday. The next meeting will be Monday the 26th from 3-5pm. The agendas are posted to the website and there is a distribution list if residents want to receive an email with the agenda. Everything that the committee discusses is also shared publicly so that all those who participate in the meeting have an opportunity to read along with the document. The format of a study group, rather than

the Planning Commission, ZBA or Board, does not lend itself to the taking of minutes or the posting on YouTube, and there are not packets made publicly available because of limited staff resources. All are, however, welcome to attend and public comment is welcome at that time. The Township hopes that residents continue to be part of the discussion.

Pasco: What do you do about people who aren't able to attend daytime meetings?

Cram: If you're not able to attend a daytime meeting you're welcome to provide comments or see what topics are on the agenda. As this moves forward with the Planning Commission, packets are published, minutes are taken, things are available on the website.

Hall: My email address is rand.plancom@gmail.com. That's news to me.

Hornberger: Do you ever look at it?

Hall: I do, I just never send anything to it.

Mike Mulcahy, 7202 Peninsula Drive: In your sub-committee meetings did you consider shutting it down and not doing anything?

Cram/Hall: Never.

Mulcahy: There was a gentleman that questioned whether the three purposes...to me, in business, to start a committee to do something and then you get there and say 'why are we doing this', if we don't already have a problem to solve. That is why we're doing it, but if we go to the meeting first and start a big process and then say 'why are we doing this' and we don't even understand why we should have a big meeting, I mean...the health - I ask myself: "what? How can that possibly be?" The second one was protect the environment and I ask myself "how can that possibly be?" And the third one might have made sense, I just don't understand the magnitude of the problems that maybe have occurred. Most people can solve them within two households...

Cram: But they are not, sir. So, that's the issue. That's why this study group started meeting is because of the numerous conflicts out there.

Mulcahy: What were those problems?

Hall: Pardon me, we're not going to get into a specific description of all of the problems that have come up but Jenn, approximately, this year: 2024, how many complaints have you had from shoreline owners about docks.

Cram: 37

Hall: There you go. We didn't make this up.

Cram: And they've gotten to the point where the Sheriff's department was called and there's violence and so it is an issue that we were asked to address because of life safety. Because neighbors aren't getting along. They aren't being kind to one another and violent things are happening. We have an existing zoning ordinance that was adopted in 1972, and we want to make it better so that we can support those people and hopefully prevent...so that we can function as neighbors. So that we can come up with reasonable guidelines that work that we can all agree to...

Mulcahy: These aren't guidelines, are they? They're laws.

Cram: They will be standards.

Hall: They will result in changes to the zoning ordinance, they won't be guidelines.

Judy Spencer: Well, I understand your stance on the jurisdictional question I think it would be helpful, and I don't know if this is appropriate or not, but as the township's legal counsel are you able to lay out the two different jurisdictional stances? Because some people aren't familiar with the law. You were saying, Randy, it's very complex and you lawyers understand it very well. I'm doing my best to play Erin Brockovich to try to learn it, to save money on my lawyers. I don't have ample access to a lawyer. So, it would be really nice if we could lay it out really clearly. These are the laws, the US code, the state law, the Michigan Enablement Act (sic) that allows you to do local ordinances within your jurisdiction. And then why we think that going beyond the ordinary high-water mark is actually beyond your legal jurisdiction and therefore the Michigan

Enablement Act (sic) doesn't even apply. So, I think we want - I know it's complex - but if we were to outline to the general citizen what the laws are, why we think, why your legal guidance is saying "yes, you have the ability to provide these ordinances" but also be transparent and say, 'this is why some of the citizens think that you don't have jurisdiction'. And that should have been the discussion amongst the public. And once you decided, yes, this is something we want to move forward with, then we should have gotten into the specifics but instead, when I went to the study group and tried to talk about the jurisdictional topic we were asked to state our opinion about jurisdiction for about thirty (30) seconds maybe in two (2) minutes, I probably took up five (5) and we were asked not to bring it up again. So, that would be a nice ask if that's something the township could provide in a transparent manner. Thank you.

Mike Frederick, 14877 Shipman Drive: Back to the jurisdiction thing, I think it would be very important through this process that I know, Randy, you think you believe that whatever opinion you have is gold, I think it would be very smart for the township to consider both sides of the argument, so you don't get in another lawsuit. Because we will have lawsuits for sure if this happens. You know they're going to come from shared waterfront, not individual, but it will happen. I think you guys should get your ducks in a row, so you don't have another big lawsuit on your hands because we end up paying for that when it happens.

Hall: I certainly understand the point of view. It is my view that it would be a failure of government for us not to answer these questions. The 'why' questions dealing with changes to our zoning ordinance dealing with docks and shoreline.

Brad Niergarth, 8717 Peninsula Drive: I'm a numbers guy so you answered one of my questions I was going to ask, how many calls do you get on property disputes, so thanks Jenn. I had an observation with the detail that you go through with the aromatherapy and the other issue that you discussed tonight. You're a busy person. I can't imagine how much time and effort you put in, and with that in mind, I'm surprised that you want to take time to then tackle this issue. How many waterfront property owners do we have in Peninsula Township?

Cram: About 2,100. We did send a letter out to all shoreline property owners this spring to let them know that the study group was meeting and going to be talking about these issues and invited them to participate.

Niergarth: Thank you. I think I got that letter. I remember now. So, if I said 2,000 and we round up to 40 complaints, percentage-wise we're dealing in the 2% range or something like that? So, it sounds like part of your response here and your efforts are aimed at solving a 2% problem which I think the other 98% of the taxpayers probably do not want to pay for, as we've heard. I've also done some study of the Peninsula Township financial statements and I'm trying to complete that study with comparing your legal costs compared to other townships in the state and country to see where you fall in that. Obviously, I agree with the previous comment that if you get sued too many times for issues, you might be overreaching, so I caution you on that. I guess I'm just concerned. When you're looking at this kind of detail, as to how many chairs I can have on my dock or how many boats I can have on my dock, are you going to hit my front porch next and tell me how many people I can have on my front porch and what they're going to do? I know there's disputes with trees and interference with the views, but I would just caution you and maybe have you step back just from a common sense...is this something you want to spend the time and effort to tackle and leading to probably more legal situations? I'd hate to see our township incur the kind of legal costs we are, as somebody said, we're paying for that. Thank you for your time and thank you for all the effort you put in, Jenn.

Scott Duensing, 1777 Buchan Drive: I've been on the Peninsula as a resident for almost 23 years. I am on the study group, and I joined the study group in January when it started. Didn't know what I was going to get from the study group, but I came with an open mind, basically to listen, learn, and participate in improving an ordinance that's already in place, whether it's being enforced or not is up for discussion. The intent was to study the challenges that we've had and listen to the complaints and encourage public

participation. I know it is challenging for some people to make a meeting 3-5 on a Monday but there's a lot of us that do sacrifice to do that. We do ask public to attend. We do ask public to participate even more than comment and I do want to encourage everyone in the audience that if you're really passionate about this, please come. We'd like to listen. I've seen ideas, thoughts, and creativity come together in a group and we're improving an ordinance that isn't currently as good as it's going to be. Now, jurisdiction, that's a whole different topic. We put that aside. We're trying to improve something that's already in place. I would encourage this to be a living experience, a living document, and keep coming. I think there's a lot of positivity that can come out of it, even for those that feel most challenged out there with their situations. I believe that these people are listening and want to learn more, and no, we don't want lawsuits. That's kind of why we're listening and trying to bring more conformity into the ordinance. That's my point. Thank you.

Cram: I just want to thank Scott Duensing because on the study group he has also taken on a role in trying to reach out to other shared waterfront parcels and brought information back to the group. As a study group member, he's gone above and beyond to listen. Thank you, Scott.

Hall: Yes, it's been very helpful.

Fred Swaffer, 1045 Gray Road: I have shared frontage at the end of Gray Road. Thank you for your work. I know it's brutal at times. Anyway, thank you for getting rid of the land use permit. I think that's a wise idea. Registration, you know I don't know, but if there's no fee, you'll probably get better compliance. Also, we're a small group of shared owners, three hoists. If you would consider 8-10 families as a small group instead of 4? Other than that, I wish you well.

b. Peninsula Shores Amendment #5 - Update and Discussion on Substantial Improvement

Cram: I just wanted to update the planning commission. As you are likely aware, this is moving through the board and the board has asked staff and legal counsel to draft a resolution for denial, so we will be doing that. Based on this process, I want to compliment the planning commission, and I think Rudy echoed that. We followed the process. We looked at the facts. We looked at the conditions of approval. We went out and visited the site. I want to commend you for following the process and making a recommendation to the board based on facts. Sometimes the board sees things differently and so we need to continue to trust in the process and move forward. I think that the process could be improved, and what I have learned is that Section 8.1.3(1)(a) and (b) - substantial improvement is challenging. There is a lot of room for interpretation. It can be subjective. What I would like to recommend is that we look at that and talk about it and improve our zoning ordinance so that it is easier for applicants to understand the standards they need to meet in order to have a special use permit approved, the standards that they need to meet if they want to amend that original approval. We could go a long way by getting rid of the subjectivity, making it objective, maybe even having standards for a new SUP and an amendment and the different levels of amendments. It's an onerous process to come back to the planning commission for these minor things. So, if we could start working on improving the language in the zoning ordinance so that it is clear and help the planning commission and the board to make decisions, that would be my recommendation. I would like to start working on this. I would like to put this on the agenda for September, sooner rather than later and continue to work on this. What I will do is look for other examples of ordinances because I think the crux of looking at the substantial improvement is: what is the public benefit for doing this thing and then what are those standards. I believe there is room for improvement with regard to that standard in the ordinance.

Hall: I'd like to add to that. The problem with the current ordinance is twofold. One is what does substantial improvement mean and what qualifies. The other problem is when an amendment is proposed, does the amendment as proposed, does the amendment itself have to meet the substantial improvement test? Or is it the project as amended, with the proposed amendment, that has to meet it? It's a twofold problem and it's easy to fix.

Beard: I'm not sure it's easy to fix. I wonder if, in what we sent to the board, maybe we didn't articulate our rationale for recommending approval clear enough or in detail enough. I wonder if we would benefit from having the board refer it back to us and let us expand that record. I know that is not a desirable thing, but we had a unanimous vote in favor of that. It looks like the board is going to go unanimous to deny it.

Dloski: We had a unanimous vote at the planning commission, and we had a member of the planning commission go the other way. So, what are we going to do? Let them handle that. If they're going to second guess it.

Beard: That was my perception. Maybe we didn't supply them with enough rationale and maybe they would benefit from having more of our comments and thoughts to it. If the rest of you don't see it that way, that's fine.

Dloski: We had enough rationale, we had enough facts, we had enough support that a township board member voted in favor of it and then turned around at the board meeting and voted against it! So, what should we have done with him? Draw pictures?

Hornberger: I went back and couldn't see the video because it wasn't on the site anymore, so I went back, and I read the minutes. I was shocked to see, from those minutes what I was seeing the township board doing, and the township board member who was on our commission doing a 180. It just didn't make sense to me. And another thing that bothered me is that we went out there and we looked, and we figured out what was going on and I'm not sure that they took that into consideration at all. I've been on this commission forever, and I was on this commission when this was first approved. Nowhere did this commission have any qualms about where things were and make that part sacrosanct and don't touch it. Never did we do that. We never said, "you cannot build a house on this part of the property". Never.

Alexander: I was surprised. But the question is 'is that within their purview'? Do they have the right to disagree with us and I think that they do. One of the things I feel like they need to do is when they disagree with us, they need to say explicitly why. If you're going to vote against this, please explain. I think that what I got from it - see if I'm wrong - was, they thought that the internal benefits were real but the external benefits to the community as a whole were the issue. The question I have is, number one: have we ever operationally defined "substantial improvement"? Maybe that's where we need to start. What constitutes a substantial improvement. What does that actually mean? What are some examples - some concrete examples - of other places where other communities with a similar process we can look at to say.... Number one, I do think our process is onerous. If you're a businessman or person who has to come in and spend this much time away from your work, spend this much money on amending your permits - and I don't think there's a problem with amending an SUP, that is a right to do so. But I do think the process needs to be looked at. We had talked about major versus minor. Is this an administrative process or is this a planning commission process? I think that's something we really need to look at.

Cram: I like to look at everything as a learning opportunity and so I think the other thing, back to what Donna said, is that we have to think about making sure that when the planning commission recommends something, the findings of fact are detailed. If there is something that is critical about a development that you're approving, we need to make sure there's a clear condition of approval. Ten years from now there's going to be a different planning commission and a different planner and we're going to look back and say 'why did they approve this'. Again, I want us to move forward. I think we should look at that standard and we need to think about drafting clear findings of facts and conditions moving forward. I don't want to take any more of your time. It's been a long night.

Hall: I think that Jenn did an excellent job with findings of fact and recommendation and organizing site visits and so on. We did everything that was appropriate. I'm comfortable with the vote that we had. I don't think it's fruitful to ask the planning commission to give their explanations. If you watch the video carefully, each commission member gave their rationale. I think it's a dead issue at this point and I would like to be involved in the conceptual fix to our problem with the SUP approval.

10. Public Comments none

11. Other Matters or Comments by Planning Commission Members none

12. Adjournment

Dloski moved to adjourn at 10:03 p.m. with a second by Beard.

Motion passed by consensus.