

PENINSULA TOWNSHIP

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MI 49686

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**Township Board Regular Meeting
September 10, 2024, 7:00 p.m.
Township Hall
Minutes**

1. **Call to Order** by Wunsch at 7:01 p.m.
2. **Pledge**
3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown

4. **Citizen Comments**

Fred Woodruff, 48244 Forest Ave: I have two questions I would like addressed by legal counsel when he gives his update on the winery litigation. First, I've been trying to get a handle on the potential for the substantial money damages awarded if the judge issues a judgment lien. PTP's [Protect the Peninsula] website continues to state that WOMP [Wineries of Old Mission] could be awarded \$130 million in damages. However, PTP went on to publish a summary of the April 5 pretrial rulings, saying that the judge also rejected the wineries' arguments for "takings" and damages for not being allowed to operate restaurants, catering, amplified music, and late hours. My question is, does this mean the judge has decided the wineries are not entitled to any money damages? What about the other activities: weddings, conferences, and logoed merchandise? What about another basis for damages other than the regulatory takings claims? The judge apparently did allow the wineries to introduce expert testimony outlining their damage claims. Why? Second, all the parties have been under a gag order so getting information on each party's position has been difficult unless one attended and understood what was going on during the trial itself. Now the trial is over, and briefs were filed summarizing each party's final arguments. How can one get copies of those briefs other than through PACER? Can the township post them on its website so that we can all read and understand the positions? Thank you.

Nancy R. Heller, 3091 Blue Water Road: in reference to business item 10, the Maner Costerisan organizational analysis, I read what was in the packet and appreciate that the public is going to have opportunities for input. Has anyone at this time reviewed any of the draft?

Shanafelt: we've had a little bit of back and forth with them, but I have not reviewed the draft.

Heller: in this back and forth, do you have the authority to edit it?

Shanafelt: no, it's third party.

Wunsch: if you could ask questions, Armen [Shanafelt] can address them during his presentation.

Heller: will there be an opportunity to ask during his presentation?

Wunsch: no, it's not appropriate for the board to engage in back and forth during comments.

Heller: when will I have an opportunity to ask my questions? I just need clarification.

Shanafelt: why don't you ask your questions now and I'll address them during my piece.

Heller: thank you. Was it edited during these conversations? The people having these conversations, I would like to know who they are. Just for information, nothing else. The public will have an opportunity to comment. Will staff have the opportunity to review and comment and be

included in a packet? Thank you.

Kyle O'Grady, 901 South Garfield Avenue: I am requesting the potential relocation of business item 9 further up on the agenda. That should be a fairly quick item, given our request to table. If you have any questions about that, I'm happy to answer, but I would refer to the correspondence that you have email copies of. I'm here for any questions. Thank you.

Curt Peterson, 1356 Buchan: I have a comment on the minutes and then correspondence D, E, and F. With respect to the minutes, I've sent you a letter. I hope you can add those comments to the minutes. I don't know if I need to actually make that request when you go to the minutes in the meeting or if I can just do that now.

Wunsch: you can do that when we get to the consent calendar.

Peterson: thank you. With respect to the correspondence, yesterday or the day before, there was a letter in social media concerning the issue with the last board meeting and the [alleged] Open Meetings Act violation. That letter by a prominent citizen in our community said, "The township board publicly approved a draft memo to send to MDARD." Well, that actually did not happen. The board approved the motion. Becky [Chown], you made that motion to have Isaiah Wunsch and our township attorney draft a letter to be sent on behalf of the township board to the MDARD committee after the board meeting. That was done in open session. The wording of that proposed draft was not known to the public until we saw it in the *Old Mission Gazette*, and that was about a week and a half later. That's the first that anybody in the public that I'm aware of saw that draft memo. But the decision to draft that letter was made in closed session, which is in violation of the Michigan state statute relating to the Open Meetings Act.

Act 267 of 1976 is fairly clear. You don't need to be a lawyer to understand it. 15.263 says, "All decisions of a public body must be made at a meeting open to the public." It's that simple. Also, the discussion concerning that action or decision you made in closed session was not available to the public. The only discussion you were supposed to have under those conditions was to discuss the written, specific legal opinion of the township attorney. That night, Chris Patterson gave you a written legal opinion. That was the only thing you were supposed to discuss in closed session. But you went way past it. Now it's done. You can't correct it. It's out of the box. You sent the letter, and the public had no ability to even comment on it. You talk about an open government, but we're just not seeing it. Thank you.

Louis Santucci, 12602 Center Road: I want to congratulate the board on setting a high bar for other municipal entities around the state to follow. One could say you've created the gold standard, or should I say the lead standard for bad government. What is the bar other municipalities need to meet if they are to top you? They need to make sure that whenever they are going to take a position on a matter of import to their citizens, they do so in secret. They give no one a chance to comment on a public position on a publicly published document. They must claim it is about a legal opinion when in fact it's about a comment on a public matter not in any way protected as discussion of a pending lawsuit. But more importantly, if it's a matter of importance to the farmers, you need to make sure they are left out of the process. Only then can they match your chicanery, deceit, opaqueness, and disdain for the citizens of their community. Again, congratulations. Let's hope you stay at the top. I wouldn't want to wish similar actions on others in the state.

Bern Kroupa, 3183 Shorewood Drive: I don't have any interest in how meetings are conducted, only when information is not sought by, in this case, what they've just been talking about in the agricultural community. Once upon a time, Governor Milliken said, "Let's get together and have a conference on agriculture." We did, everything from horses to ornamentals to fruit to nuts to grains and so forth. At the end of that, here in Traverse City, we were proud, a few of us on the

fruit council, to stand next to Bill Milliken when he signed the Right to Farm law. It was one page. That was the beauty of it. Now we've been told in recent years it doesn't give you the right to have hotels and nightclubs and all that. I think most of us understood that pretty well at the time. But Dean Pritchard, at the time the secretary dean of agriculture, said you'd better get to work on the GAAMPS because that's where the new battle is going to be fought if indeed we're going to have viable, dynamic agriculture. And, of course, that's where we are today. My point is, how the devil do we get a township involved in GAAMPS with no real farm input? That's the real issue. How meetings are conducted, I really don't care. At our family meeting in December with two lawyers in the family, they said, "Dad, you know, if we're going to return to the farm, I guess we really are going to need legal counsel on staff." And I said, "Yes, that's why we're counting on the two of you." I hope that's not the case. I hope we can work it out. But not the way we're going. And I really think we can work it out. I hope I'm not charging yet one more windmill.

5. Approve Agenda

Sanger moved to move item 9 to item 2 with a second by Shanafelt.

Motion approved by consensus

Sanders moved to make correspondence item 3 on the business agenda per Curt Peterson's request with a second by Wunsch. (No consensus taken)

Chown: I have a correction to original item number three, the parks committee update, to change the wording so that we table that item to the next board meeting.

Shanafelt moved to approve the agenda as amended with a second by Sanders.

Motion approved by consensus

6. Conflict of Interest

Chown has a conflict of interest with new business item 2, Peninsula Shores.

7. Consent Agenda:

1. Invoices (recommend approval)
2. Reports
 - A. Cash Summary by Fund
 - B. Fire Department
 - C. Peninsula Community Library
3. Minutes from August 12, 2024, township board regular meeting
4. Peninsula Township Fire Department Open House
5. Correspondence
 - A. Ron Patel
 - B. William and Cary Harrod
 - C. David McClary
 - D. Curt Peterson
 - E. Isaiah Wunsch
 - F. Curt Peterson

Rudolph moved to approve the consent agenda as amended with a second by Achorn.

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

8. Business:

1. Litigation update (Chris Patterson)

Patterson: all the trial briefings in the winery case were filed. That 30-day period ended at the end of April. Three briefs were filed. One by the township, one by PTP, and one by the wineries. At this point, the court is going to take time to digest those. The court has also, for purposes of public attendance, scheduled oral arguments. There will be a briefing, the court will be able to review the

briefing, and then the parties' legal counsel who submitted the briefings will be able to make oral arguments in front of the court.

The briefs take completely opposite positions regarding what has been or has not been settled. Things are discussed from First Amendment speech issues to whether or not there have been constitutional violations for prohibiting small events, large events, etc. The township has taken a position as it relates to whether damages at the liability phase are even appropriate as well as whether or not the damages expert who testified has credible opinions.

In addition, the wineries have filed their trial briefs. Their damages expert provided tables that identify what each plaintiff's claim of damages is per day. I think the total of what they believe is due is in the tens of millions of dollars. All that is set to proceed in front of Judge Maloney. At this point, we are preparing for oral arguments, and then we will be waiting to see if the judge wants any further briefings or direction from the parties before he likely resolves the issue. The hearing date [for oral argument] is October 28, 9:00 a.m. in Kalamazoo at the federal courthouse.

The other case is the Family Orchards matter. Last time, I updated you that the judge had issued an order denying a pending motion to dismiss, allowing them to amend their complaint. They did so, a new motion to dismiss was filed with a response, and that case is pending before the court. There's no oral argument that's been sent down per updates from insurance counsel, but that case now is pending before the same judge, Judge Maloney. He previously issued a written decision with no oral arguments, so he may do the same.

That case is in the early stages. The winery case is kind of at the end of the spectrum where you've already had testimony, witnesses, a full record. Now we're waiting for that decision on the trial record. The Family Orchards case is in the early steps of litigation where there are some early motions related to the allegations and whether or not they would state a claim based on the complaint itself. The township is suggesting there aren't any claims in that case and that the judge should dismiss it early before further factual discovery.

I want to address the letter submitted to MDARD [Michigan Department of Agriculture and Rural Development]. The letter is in the packet. Largely we worked with Isaiah [Wunsch] in looking at a lot of the pieces and governmental interests from the master plan. We looked at private research that exists at the township as to the position of agriculture. From my perspective, having signed the letter and included content in it, I think we maintained the township's strong position of protecting agriculture and being extremely pro value-added agriculture.

The letter addressed the Agricultural Commission's draft 2025 Farm Market GAAMPs [Generally Accepted Agricultural and Management Practices]. We were indicating through our experiences in the planning department or as people who attend board meetings have heard at public meetings some ambiguity and concern about how the Right to Farm Act preempts zoning in the township and under what classifications of activities or principal or accessory uses does that happen.

The letter outlines some of those situations. It addresses the fact that there are two pending lawsuits in the township and, in part, that both present arguments related to the preemptive effect of the Right to Farm Act and how the GAAMPs control and that the GAMMPs as written, if you compare those standards, are guidance documents. They're not written with the same type of precision as a zoning ordinance. Our point in the letter was to express to MDARD some of the difficulty and ambiguity that's going on under the 2024 GAAMPs and at least endorse the direction that the farm market committee had already recommended for purposes of public comment to then be taken up at the agricultural commission level. The farm market committee meetings themselves don't allow for seeing those 2025 draft GAAMPs for farm markets come together. When the committee recommends those GAAMPs, they get put on a website, and the public window for comment is less than 30 days. This township board meets once during that time.

There's a procedural issue in trying to fit within the state's framework of providing input that I assume will be taken up at the agricultural commission meetings tomorrow.

The conclusion of the letter basically says we appreciate the efforts to try to reduce the ambiguity between zoning and the Right to Farm Act and tries to have a dialogue about situations that occur without sufficient guidance in those Farm Market GAAMPS when planning and zoning administrators are getting requests for zoning compliance permits and special uses. We've got projects that are going through planning commission review. We are looking for clarity on those activities, whether or not the township zoning ordinance is preempted, and if that's the intent of the commission. We're looking for guidance and direction.

2. Applicant's request to table final action on Peninsula Shores SUP #123, Amendment #5, tabled from the August 13, 2024, township board regular meeting (Cram)

Rudolph moved to recuse Chown from the board with a second by Achorn.

Motion approved by consensus

Patterson: the background behind the emails is in the packet. At the last board meeting, staff was directed to prepare a resolution of denial based on the discussion of the township board members' application of the standards to that amendment. The goal was to return with a draft resolution for denial consistent with the application of the standards by the board during deliberation.

I received a phone call the following week from counsel of the applicant, Peter Wendling, indicating he had reviewed the board meeting, understood the board was proceeding at this meeting to have staff present that resolution, and that he would like to see what type of process was available for the board to engage in some conversation of understanding of whether amendment #5 can be altered, changed, or anything done to otherwise satisfy concerns of the township board. I asked him to put it in writing. Those were sent in two separate emails, the first one indicating an interest after talking to the township supervisor to say we don't have authority to make any changes as to the direction provided to the board without a written request.

We received the first written request that you have in your packet. He followed up to make it clear that the request also included not only meeting or having some deliberation, not necessarily at this meeting, but also to have that specifically postponed or tabled so that whatever process this board would otherwise authorize could take place.

I did communicate to him last week that we were putting the emails in the packet as a written request for the board to consider because the last direction we had was for staff to present a resolution of denial. Staff doesn't have the ability to pull it off the agenda, whereas we might in a planning process when it's just an applicant requesting it and there hasn't been direct board action or direction, so we thought it best to bring it before the board and decide what you want.

We did not present the resolution of denial because, depending on the direction, we didn't want to spend the additional time preparing something. As proposed, the applicant is seeking some type of process to discuss or further develop. That could be done at a board meeting. You could do it during this board meeting. You could host a work session on it. You also have authority under the Zoning Enabling Act to refer it back to the planning commission [PC].

Second option is deciding whether some sub-forum of this group and others you want involved meet with the applicant to understand what concerns exist or what's possible to change. If you do that, my recommendation, because it is a zoning request, is that any sub-forum of the board working on some type of changes to that project should be posted, keep minutes, etc., so those can come back to the township board when there's final action.

The third option is that the board could deny the request and proceed, and we'll prepare the resolution and it'll be back at the October board meeting.

Wunsch: in summary, the options are basically send it back to staff and the planning commission,

create a standing committee of several members, including the applicant, to try to talk through potential solutions, or proceed to vote on the item.

Paterson: fourth option could be to have a discussion with the applicant this evening, and then you could decide if you're going to postpone for further discussion or otherwise take action. The third option again would be to reaffirm the direction you gave to staff and come back with a resolution for denial. That hasn't been prepared, so you can't actually take final action.

Sanders: any change that would be made to this amendment, because the amendment is already a change to the original plan, would be a rewrite, and it would start the process over. In my mind, it would be its own brand new amendment, and that would start at the PC.

Wunsch: if the board wants to deny this and kick it back to the PC and applicant, without weighing in on the options that the board would like to see considered, that could be a frustrating situation, both for our PC and the applicant.

Sanders: we looked at potential changes prior to the last meeting. Those came up for discussion then too. After we all went around, we ultimately decided to table this and deny it.

Shanafelt: the request sounds like it's to create a new process or a different process than what we already have. I'm certainly not in favor of creating new legislative pathways for unique situations for single individuals or groups. This has been going on for a long time. Unless there's new information, we've discussed this enough to be able to make a decision.

Sanger: we do have a process in place, and that's the PC and the township board. I sense that this body, myself too, disagree with the findings of the PC. So the question is, what do we do about that? I think the appropriate thing is to send comments back to the PC for reevaluation. They're the ones who did all the research. If their research was short, it could be amended. If their research is firm, then we would be understanding it at the board level, I would hope. We need to remand this back to the PC or deny it entirely. I would not be in favor of a small subcommittee trying to negotiate. That takes this matter pretty much out of the public realm.

Sanders: let's give the applicant a couple minutes to discuss.

Kyle O'Grady: thank you for the opportunity. I respectfully disagree with some of the sentiments here. A couple things are important. One is to look at how we got here. It is what it is. Two, look at where we are and what we do to move forward. I am opposed to denying this without the opportunity for discussion. I can appreciate the comments about how we don't want to make another avenue for this to move forward or we've talked about it enough, but last time I checked, this is exactly how we got to where we are. I proposed amendment #4, and it was denied. I came back and made adjustments based on why it was denied. From our perspective, we see this to be the government in operation, as I expressed to the PC. The PC got feedback from Chris Patterson. At one of the meetings here, we discussed substantial improvement. Last month, at one point a board member was in opposition to approving amendment #5 and sought further guidance from legal counsel, asking for his input on substantial improvement, as if you are applying for a PUD, and does amendment #5 meet that or offer substantial improvement of amendment #5 versus how it exists today?

There was an "aha" moment. As I understand, the record shows that it is a substantial improvement as a whole, including the amendment to the zoning ordinance. And that is how we got here today. It's how we got the unanimous yes at the PC. Some items were brought up for discussion last time. They include, for example, maintaining the open space. If we are able to approve this, are we able to guarantee we're going to keep our open space in the same location? It sounded like potentially, a month ago, that seemed like something of interest to the board. That maybe "I wish we could do that" or maybe "I wish we could tell them not to come back for additional amendments, but we don't want to put ourselves in a bind that is not appropriate."

What I say to that is, I think we're closer to getting to a position of no further amendments, of considering this with any new potential conditions of approval that I was hoping to discuss with the planner, potentially with the board, outside of a no vote to the project, such as keeping the open space in the same location. These are items that were mentioned by the board as items of interest that would allow them to consider this amendment to potentially meet the zoning ordinance. So although I disagree with that, by stating that we have the findings of fact that show this amendment meets every standard of the zoning ordinance, I want to be open to considering the feedback of the board and understanding what in your eyes would make us meet the standards. Administratively, from a time perspective of you, your legal council, the PC, the applicant, giving it a simple no vote versus having the discussion of what would fit the township ordinance is a direction I propose. I would like to discuss these options that you all were discussing as options that may allow you to see this amendment meet the zoning ordinance. That was the purpose of these emails between our legal counsel and your legal counsel, to say, at the last meeting, I took your feedback, I understand your feedback. We met at the property, scheduled different appointments to have you there to understand the context. It appeared that the discussion relay that, if we're willing to have the discussion of not having further amendments or of maintaining open space where it is in perpetuity beyond this or not moving any lot lines, that that is something you would consider.

Is that a conversation we can have? I am looking for answers other than, "This doesn't meet the zoning ordinance" to "It meets the zoning ordinance if..." We've gone through a large process to get here. We had a unanimous yes vote at the PC, and it sounded like, at the last meeting, you would be open to seeing amendment #5 meet the zoning ordinance if there were additions to the conditions of approval. I would punt it back to you again, one, to ask to table this decision so we can have these further discussions or, two, to have these discussions tonight for you all to reconsider and restart the conversation from last month. It's a lot of flexibility from the applicant's position to have an understanding of where you are. I respectfully disagree with it but also am open to it if that's what it takes for you guys to see it meets the zoning ordinance and for this to not come back to you, in your words, in the future.

Kevin O'Grady: I live in Peninsula Shores. When I watched the town board meeting last time, it seemed like several board members had a motion towards what they saw, what had happened, and how they felt. And I want to base this on the approval, like the PC did. Jenn Cram did a great job of working with us and with the PC to get to unanimous approval. I've asked myself over the years, would I ever purchase, develop, and, as a family, do Peninsula Shores again? And my answer is emphatically yes. I've always been passionate about it. I live there. It's been a dream of mine. I did it, and I did it with my family. The zoning we're asking for does meet the ordinance. I ask for an approval please. We would put into that approval that there would never be another amendment. As far as adding property, adding lots, moving any open space, that would stay in perpetuity. I was talking with a fella that lives off Bluff Road, and he said, "Kevin, how's your goings on at the township?" I gave him an example of what happened after the findings of fact that were drafted on the fifth of August, and it was to approve this. And then on the sixth, it seemed like after that, things changed. I explained this, and he said, "It should be as simple as you asking for permission, and you should be granted permission to move your couch in your break room." I happen to agree with him, and I thought it was a great analogy. There is a neighbor that's very outspoken against our development and always has been.

I just got another \$62,000 plus bill in property taxes. We've been paying taxes there for 10 years and hundreds and hundreds of thousands of dollars. And I will ask for something that the PC emphatically agreed with because it was a six zero vote and the findings were very thorough.

We're willing to say at this point, no more amendments to add anything lot wise, to take anything away from the open space. We really feel that what we have proposed meets the ordinance. If I had to do it again, I would do it because I love Peninsula Shores and I love Peninsula Township. I get some naysayers' feedback, and I don't appreciate it because I'm a good human being, a hard worker, and I'm kind. The bottom line is, I ask for a yes on amendment #5. I firmly believe it meets the zoning ordinance. We're the property owners. We should have more say than what a neighbor doesn't like about what we're doing on our own property. Thank you very much for listening, and I hope you all have a great evening. Thank you.

Shanafelt: clarifying the perspective of substantial improvement, always going back to the beginning, is a possible interpretation. It's not the only interpretation. The interpretation I presented last meeting, which we need to use at each amendment to avoid scope creep and things changing from what was intended in the first place, is important. That took a long time to develop. It's exactly why substantial improvement is in the ordinance. This whole thing hinges on substantial improvement. I will say the PC is not united in its belief on how to interpret substantial improvement. How do we address the amendment itself as a planning issue?

Wunsch: my understanding is that we as the board either kick things back to the PC, which we used to do frequently, much their chagrin, or, provided there aren't major amendments, we can work through changes on our own. The feedback I heard from the board in our last meeting was there was not substantial improvement. Reading through the correspondence that the attorney for Peninsula Shores sent back and forth to our legal counsel, it sounds like they're willing to look at including conditions of approval that would get us to a point where the board feels the substantial improvement bar is being met. The question is, do we want this board to figure out how to pull those things across the finish line? Do we want to kick it back to a PC that's going to be rather hostile to us for doing that? Or do we want to deny and restart the process?

Sanders: you already set yourself up saying the board used to kick things back to the PC often. What I don't want to do is make a decision on any of this in a vacuum, and the town board isn't the board that should be making any changes.

Shanafelt: right, like the concept of in perpetuity, I don't know how that plays out in the context of a PUD legally. I'm not sure that what's being discussed fulfills the substantial improvement concept. Part of it is the confusion: what does in perpetuity mean in this application or generally because now we create precedent by doing this. I agree that we don't have enough information to make that call tonight.

Wunsch: I agree we don't have enough information. The question is what our course of action should be. Do you want to have the board as a whole or a committee of the board?

Shanafelt: I don't want to create a new process.

Wunsch: it's not really a new process. The board can choose. We have discretion.

Shanafelt: sure, so do we as a board have time to spend on this?

Sanger: I heard the applicant tonight. I didn't hear much in terms of what he was willing to offer. I heard that if we approve amendment #5 he will offer no change in lot lines and open space down the road. If we're going to keep this at this board level, I would like to have at the next meeting what is on the table, what the developer will give to get what he wants. I still have a problem with substantial improvement. When I look at moving a lot up there, I see that being right next to lot 12. Having someone build right next to you is not a substantial improvement. I voiced the point last month about another lot going across the street. The view from across the street is beautiful, up into the farmland. Cramming another house up there in that open space doesn't make sense. The question of whether it's a substantial improvement inside the development or outside the development, in my mind, is immaterial. What I'm looking at are absolutes. If the developer can

bring what's on the table, I can look at it and see if that changes my opinion of the definition and the application of substantial improvement.

Wunsch: my read is the consensus of the board is "No" to trying to sort it out at the board level. Which of the remaining two do we want to pursue? Remand to the PC or move forward with denial?

Sanger: the third one. If I had something on the table from the applicant that satisfied my concerns, I could vote for this, with the changes. Movement of the lot to the top of the hill and encroaching on that open space is a non-starter for me.

Wunsch: I'm hearing from Sanders and Shanafelt that they wouldn't want the board to make that decision. Marge [Achor] or Rudy [Rudolph], do you have thoughts on what would be appropriate?

Rudolph: the appropriate thing, if the applicant wants to make a change to his amendment, is it needs to go back through the planning commission. I agree, I'm having difficulty with the term substantial improvement. I'm looking at substantial improvement to the Old Mission community as a whole, and I don't really see where this is improving the situation.

Wunsch: general consensus seems to be taking it back to the PC.

Cram: I will do as I'm directed, but it's a cumbersome process for the PC. They vetted the project. They made a recommendation. To send it back, we have to tell them [the board] has a different interpretation of the zoning ordinance...I believe the only body that can interpret the zoning ordinance is the ZBA [zoning board of appeals]. The planning commission did its job. If the board disagrees, then it should work through detailed findings as to why it doesn't meet the standards.

Achor: the board cannot make a decision tonight. All I have are four pieces of paper to refer to. I agree with Dave [Sanger] that I don't see a give and take from the developer in order to do this. As I recall, if I were one of the owners along the shore, I would gladly go along with the added open space near the shoreline. That would be flat open space. Perhaps the developer would be willing to subtract a lot. I don't know what the offer would have to be to make it palatable to the board. I don't think it should go back to the PC. I think the board has enough information once we gather it into one place to make a decision. But I struggle with substantial improvement. It might be substantial for people who are on the lower level. It might be a substantial improvement at the end of the upper lot where there's two lots instead of one. What improvement is it to the neighborhood? What improvement is it to me? I have not seen that it would be a substantial improvement to the community. We need something from the developer to sweeten the deal.

Wunsch: how do we want to handle that?

Achor: gather this information and evaluate all the documents but not tonight.

Sanders: all documents, with new site plan information?

Achor: and old. Give us the opportunity to go back and look at the minutes of the PC. Reread them, evaluate them, go through the different procedures. I think this board can make a decision when we don't agree with the PC.

Sanders: my concern is timing. If this did get kicked back to the PC, what does that look like and how long does it take to work through the process versus us putting a pin in it and telling the applicant that we need to see everything.

Wunsch: we're disagreeing with the PC and asking them to reverse their decision. It's probably cleaner for us to work through any changes. If the board has a disagreement, it's best for the board to work through whether there's a way to get to a yes between the developer and the board.

Sanders: in fairness to the applicant and to us, I like to have dates on a calendar.

Rudolph: if we find some compromise with the applicant, does that mean amendment #5 is different than when it went through the PC? Does the PC need to vet it?

Wunsch: if we feel that additional conditions of approval are necessary to satisfy our

interpretation of the zoning ordinance, it would be appropriate for us to move forward with an approval of the applicant's proposed amendment, maybe with some set of modifications and additional conditions of approval. If you blew the whole thing up and started from zero, it would be going through the planning commission.

Sanger: the elephant in the room is lot 11. I propose we table this till the next meeting and ask the applicant to bring creative ideas to satisfy what many of us have commented on tonight and last month. I didn't hear anything tonight except "We won't do it again." That doesn't address my concern of the movement of the lot. It does get into a debate over what is substantial improvement and what is not.

Wunsch: in fairness to the applicant, they have come forward with the proposal that we look for a solution. We didn't ask them to propose conditions of approval.

Sanders: without assigning time for staff to start working on this with the applicant, I would like to see a list from the applicant of what they propose. Let's see if that's even something we're able to work with. I don't want to wait till the next meeting.

Achorn: we don't want to waste staff time.

Sanders: the applicant can email the board their ideas. We can independently do our research. We can have a special meeting with the applicant.

Sanger: I support that. I'm hankering for more information. I want to give the applicant the opportunity to bring to this board, to determine if the board can move forward or does nothing.

Board discussed holding a special meeting considering the availability of applicant. Asked applicant for materials for consideration by Monday, September 30.

Sanger moved to table business item 2 to a special meeting on Wednesday, October 16, at 11:00 a.m. with a second by Sanders. Motion approved by consensus

Wunsch moved to bring Chown back to the board with a second by Rudolph. Motion approved by consensus

3. Correspondence items D, E and F

Patterson: procedurally, let's first look at the proposed minutes. The Open Meetings Act requires the public body to hold its meeting open and to keep minutes. Those minutes are then described in the act itself. The minutes are required to be drafted within a certain statutory time period. The clerk's office makes those available within at least eight business days of the meeting. Then they have to be approved at the next subsequent meeting following that regular session. The act is designed so the public body itself keeps the minutes when the minutes are then provided as drafts. It's the public body's decision to then approve or amend what will be the final minutes of the prior meeting. Once they're approved, they become the official record of the board meeting.

As far as submitting amendments, alterations, notations, or edits to the minutes, we've never recommended or seen a public body accept comments or draft minutes from the public.

Ultimately, the board decides, by a vote, if it's going to accept the minutes as official. You as a board get to decide what you're putting in there. The Open Meetings Act itself is pretty limited in what you're required to keep in those minutes. My experience is that you in Peninsula Township go above and beyond what's required. Other public bodies only include when the meeting starts, ends, motions, actions taken, who is present, public comment, and if there are any public hearings, summaries of those comments presented during the action item. The framework is pretty simple for purposes of statutory compliance. You regularly exceed that.

As far as entering closed session, multiple exceptions are permitted in the Open Meetings Act. I would agree with the general tenet that all business is conducted in the open but for those items that are provided for as exceptions within the Open Meetings Act. Two we used before the board to address issues of legal implications, one of them being pending litigation. The one that was used

with respect to advising on the Right to Farm Act and the GAAMPS as it relates to zoning as well as claims that are being put forth in two pending cases with the township was subsection H.

Generally, we rely on a position that's set forth in the Michigan attorney general's open meetings handbook. You can look at the attorney general's position as it relates to that provision covering written legal opinions of a public body's counsel.

Regarding the correspondence, there are a couple of pieces to tease apart. Before we went into closed session, I did go beyond the motion and provide preparatory commentary as to why we were going into open session and the goal of the legal concern that was going to be then discussed in the opinion. We made the motion. The motion contains the contents for meeting. On a legal opinion related to the Right to Farm Act, there are certain courts that would even uphold a motion that indicates that we're going into closed session as it relates to legal advice because there is a general thought that disclosing even the subject matter could potentially disclose the relationship as it relates to the legal advice defense provided in the meeting.

We try to be extremely transparent while protecting the township's interests regarding the goal and purpose of going into closed session. The case that is helpful for closed sessions is the Booth case with Wyoming. It addresses that you are allowed to go into closed session to receive legal advice from your counsel, and that can include items related to the written legal opinion as well as those necessarily related or included in that advice.

There's been some analysis at the Supreme Court and even some non-privileged pieces as part of the opinion that still provides the basis to be included in the written legal opinion and entering the closed session. That's not the issue here; I'm just saying the exemptions are narrowly tailored by the courts. The board has a right to enter into closed session, particularly as it relates to issues that are being litigated in cases involving the township.

Consistent with what occurred in many of the court cases on this topic, coming out of closed session, the board at that point had the opportunity to take action. We are allowed to go into closed session with a written legal opinion. We're allowed to discuss the legal advice and analysis of that opinion in closed session. Otherwise, having made it public, we would destroy the privilege. We are allowed to make recommendations, and the board can take no actions or vote in the closed session. The board did not: they came into open session and made a vote as it relates to taking action on the recommendation and legal advice that we provided.

I think the AG [attorney general] updated within the last few years references that support that analysis. There are published cases in the court of appeals level, probably the Supreme Court, that provide that same analysis.

I think everything's been done appropriately under the Open Meetings Act. I don't think there's anything inconsistent with that. And the letter itself is actually prepared and submitted by our office, working with the supervisor, and some of the anecdotal evidence, the public members who attend these meetings, are aware of through the planning commission, through the litigation updates, through the case pleadings that are online, that have been discussed in the past.

The board didn't need to look at any of those materials in closed session. Nor is it inappropriate for the board to make a motion in open session to allow the supervisor and township attorney to submit that letter, particularly a letter from our perspective that was drafted to indicate to MDARD that we would like clarity as it relates to where the line is going to be for purposes of the GAAMPS because there's an interesting interplay for purposes of this community on how zoning and the current Farm Market GAAMPS, particularly the 2024 GAAMPS, exist. We provided our input to the commission. It's not binding on the commission. It's their position as to what they want to do.

Wunsch: so you would say that an accusation that we are in violation of the Open Meetings Act is unequivocally false?

Patterson: correct.

Wunsch: you work with a lot of other municipalities. Would you say that we set the lead standard in terms of transparency in Open Meetings Act compliance?

Patterson: “Lead standard?” I disagree with that. You followed all the appropriate processes and procedures. The Open Meetings Act is here so that the public body can deliberate before the public. The convenient piece for purposes of the township is that you provide this information. You stream it on YouTube. You provide participation outside of the individuals who are present in the township hall. You draft robust minutes. You distribute packets, packet additions, explain motions. A leading example is preparing agendas and being very organized with respect to your consent agendas, the proposed action items, the motions, the topics. The clerk's office does a phenomenal job of putting those materials together. They're on the website. You have a policy that you are putting packet additions out in advance so they are available to the public. So I certainly would disagree with that position.

Wunsch: the minutes weren't actually removed from the consent calendar and moved down to business. Technically, only the three correspondence pieces were. But I think if you wanted to take action, perhaps the reaffirmation of our vote to approve the minutes would be appropriate.

Achorn moved to accept the minutes from the August 13, 2024, meeting with a second by Chown. Motion passed by consensus

4. Grand Traverse County Road Commission update (Dan Watkins)

Watkins: good evening. A couple updates. We updated our website recently. On it is the township link. It talks about primary roads, local roads. We did start our second brining on August 19. Overall we did 26.76 miles of brining for both the first and second brine in Peninsula Township. So far this year you've had 135 service requests. Getting ready to start our second mow. You're probably going to see us on M-37 next week. Trying to get grass out of the way so snow will blow and have a place for it to pass through.

A big project we're working on is going through and cleaning out all our catch basins. There's roughly 800 in the county. Most are MDOT's, so they pay for the rental of that back truck. I think there's about six at the base of the peninsula. Those have already been taken care of. We're getting ready for winter. Have our salt in, our sand in, our winter blades. The shops are getting the trucks ready.

Wunsch: do you have salt left over from last year?

Watkins: actually, the less snow we get, the more salt we use.

Sanders: there's a letter in our meeting packet regarding the corner at Blue Water and Center. I think this was before your time as manager, but one of the residents said that corner is dangerous. Lots of potholes. Will that come back on the hot list for project work?

Watkins: I'm not aware of anything currently.

Sanders: I can forward this letter to you.

Wunsch: I can make this connection by email as well. Maura [Sanders] is going to be taking over as supervisor, and I want to make sure this doesn't slip past us. I'm talking about complaints from the residents of Forest Avenue about the brining. I've gone out there to check it out, and it's just a mud path. We should make sure to take Forest Ave off the brining plan for next year.

Rudolph: it's a seasonal road; it doesn't have gravel surface. The grader was out there, and it was very much appreciated.

Wunsch: some of the residents down there looking at... did you request that, Fred?

Fred Woodruff from audience: yes, and it was half a million dollars.

Wunsch: so stick with the status quo.

Rudolph: this spring it was terrible with that brine on it. It formed mud that stuck to everything.

Watkins: we'll take it off the list.

Sanders: have we gotten anywhere with the road end discussion?

Alan Leman, road commission representative: we sent a representative, our engineer, who met with the committee and the officers. Like I said three months ago, we're willing to work with you, provide signs, if you have an ordinance.

Chown: so we do need an ordinance.

Watkins: yes. We would put [on the sign] the ordinance number.

5. Parks Committee Update (Michele Zebell)

Wunsch moved to table the discussion on a road end ordinance to a future meeting with a second by Sanger. Motion passed by consensus

6. Interview Torey Caviston to fill opening on parks committee, Bowers Harbor Park assignment (Wunsch)

Torey Caviston: I've been a Peninsula Township resident almost two years now. My children and I enjoy recreating at the various parks, particularly Bowers Harbor and the lighthouse parks. I want to be more involved in my community, especially the one I live in, so I thought that joining the parks committee would be a good idea. I work at the Grand Traverse Regional Community Foundation as their youth and community impact coordinator. Previously I worked in outdoor education. I taught environmental and outdoor education at a nature center downstate. I have experience in some of the work I think might happen on the parks committee.

Chown: how old are your kids?

Caviston: I have a six month old and a three and a half year old. Six months old today.

Sanders: so your organizational skills are solid.

Chown: the parks committee is thrilled that you came forward and are interested in joining. They're hoping the board will appoint you this evening and give you the Bowers Harbor Park assignment, which sounds like it would be appropriate.

Caviston: we are there most days.

Chown: you'll see if a board is down on the fence or if there's another issue. Somebody may come up to you, as people get to know you better, and ask for your help or ask if you know the answer to a question. You'll find there's a pretty good bench of people willing to help you learn how things work and who to go to when there's an issue such as a missing bolt on the playground.

Caviston: or wasps in the slide.

Wunsch: when Torey reached out to ask if we were looking for board members, she told me she was looking for the ability to replace those bolts or put WD 40 on rusty swing sets with impunity.

Caviston: pretty much I just want permission to do those things.

Chown: I can't wait to introduce you to Bob Wilkinson, our maintenance man.

Chown moved to appoint Torey Caviston to fill the opening on the parks committee, Bowers Harbor Park assignment, with a second by Rudolph. Motion approved by consensus

7. Update on Peninsula Township Cemetery and discussion on proposed columbarium design per Resolution 2024-09-10 #1 with possible action to occur (Chown and Achorn)

Chown: Peninsula Township Cemetery was established in 1989. Constructing a columbarium has been a goal for nearly 15 years. It's something that former clerk Monica Hoffman was working on as far back as 2010. Marge Achorn [township treasurer] and I, along with our Sexton Bob Wilkinson and our longtime cemetery advocate and resident Mary Swift, have been working for more than a year with Eickhoff Columbaria to create a design that aesthetically complements our small, rural cemetery and that we could construct in phases as resources allow. Mary in particular was instrumental in the creation and design of Peninsula Township Cemetery. I feel it's important to work with Eickhoff and Mary to complete the design phase so that the columbarium that is

ultimately built, whenever that might be, complements the rest of the cemetery. I am not asking for approval tonight to construct a columbarium but rather for approval of the design concept via resolution so that future boards can get to work as soon as the resources are available.

Achorn: I want to emphasize the heavy lifting done by Mary Swift over the last 15 years. [The cemetery is] beautiful and has been well thought out. We just tweaked around the edges and helped make the final decisions. It's mainly her foresight, her experience, and her encouragement to keep this design project moving along over the last 15 years. Once you see it on the screen, I think you'll agree that it's beautiful.

Chown: Charles is here tonight from Eickhoff Columbaria to present the project and answer questions.

Charles: pleasure to be here. A columbarium is a structure for the memorialization of funerary urns. Sixty-five percent of Michiganders are being cremated today as opposed to traditional burials. It's the predominant form of disposition, slated to reach north of 70 percent by the end of the decade.

Cemeteries have actively been introducing columbaria and will continue to follow this shift in the industry and continually serve their constituents in a new way, still providing memorialization as you would for a traditional burial with a tombstone.

Pull up this video and keep it paused here for a second. We're looking at the cemetery, which is on the east side of Peninsula Drive. You can see the columbarium space is slated to be at the far eastern portion in front of that tree row. The idea is to have a phased approach. You can start with some niches, which are the individual compartments. You can see phase one is one wall segment. The entire scheme is comprised of these similar wall segments, and they would be implemented over time and as demand calls for it.

Mary Swift was instrumental in setting the direction for what the design should be, one that doesn't dominate the landscape but rather is a part of it. We're trying to keep the hardscape minimal, making use of the lake rock, which is an artifact already present on property.

When you move to phase two, you have two more of these walls that flank that initial center one. Phase three, another wall segment. Then phase four, adding the last wall segment on the left. Then you have the walkways, which are an aggregate, trying to keep the actual amount of concrete at a minimum.

The stone used here is called Golden Brazil, which takes on a lot of the tan that is conducive with the lake rock and other existing elements. Blossoming trees will be planted alongside the columbarium development and some low maintenance hostas and other native plantings to the right of the columbarium wall. The benches, which are very popular among columbarium visitors, are a place to sit and reflect. When people are in urns, their names will be engraved on the exterior of the stone that covers the receptacle they're in. The base trim would be that same stone but in a sand finish, so a little bit rougher. The capstone is Indiana limestone in a sandy finish. The end is made up of that native lake stone. The first phase for each wall segment has a total of 208 companion niches. There are two sizes, which gives a greater mix of inventory, provides different price points, and meets different needs.

Chown: it's beautiful. Thank you for working with us over many months and patiently accepting all our suggestions.

Shanafelt: about how long does it take to build a phase?

Charles: roughly 30 weeks. That would be on-site construction. We would be manufacturing the product in Minnesota and transporting it via truck to location. The lead time on production is roughly 30 weeks. In this case, the foundation would be completed by someone local, and then our company would install. They're segmented in transit, so you don't need the full force of a crane but

rather a capable forklift or telehandler to do the job. On-site time is a couple of weeks.

Shanafelt: by accepting the design, what is our commitment?

Chown: that when township finances allow us to construct a columbarium, or demand is so great for space at our cemeteries that we must do something, that this design is what we use. The board will have agreed that this is what we like, that it suits the ambience of the existing cemetery. Mary actually designed Peninsula Township Cemetery. I like the continuity of having her work on the columbarium as well. It is a rural cemetery. We want it to fit into the environment.

Shanafelt: what we're doing is approving a thing so if we say, "Let's go," we'll know what we're doing.

Chown: yes.

Shanafelt: let's say it takes us 30 years to get more money and opinions change. We're not locked in on the design?

Chown: we are locked in insofar as the board has passed the resolution. If it wanted to change to something different...

Wunsch: having an approved design enables you to start to take pre-bookings or slots. From a business operations standpoint, you could say this is not a completed project, but you could cost it out. Here is what you will be paying for.

Sanders: it's good business practice.

Wunsch: it's easier to fundraise against a project that's designed.

Sanger: I worked with this company for the columbarium at St. Joseph church. My only question is, is this a legally binding document down the road? Is the board tied into using this company only?

Chown: I didn't see that in here.

Wunsch: I would think we wouldn't be bound to this project until they start to collect non-refundable payments for construction.

Achorn: the other reason we want to agree to this resolution for the design is that once there is money, we're not saying, "We have to come up with a design." Then it's three years down the road. It's a matter of finding the funding for it. Whenever you go for grant monies or private donations, people want to see what it is.

Sanger: my only concern is from a business point of view, if we're accepting the design, is that committing the township to doing anything? I suppose the answer is we could not shop this design with the competitor of Eickhoff. It bothers me that in this resolution, we're merely stating that we're accepting almost a copyright on this design. I want to ask Chris Patterson to weigh in on this. Has he had a chance to review this?

Chown: yes, Fahey Schultz created the resolution.

Sanders moved to accept Resolution 2024-09-10 #1, Accepting the Columbarium Design for Peninsula Township Cemetery created by Eikhof Columbaria, with a second by Achorn.

Shanafelt: when I read the resolution, it's weird in that it doesn't bind us to anything except a design. I do like the idea that if we have something, it lets us move forward.

Wunsch: it shows commitment on our part, should we set up a business operation or donation campaign.

Chown: it does bind the township to using this design.

Wunsch: once you start taking money from people, it's more difficult to change course.

Chown: money aside, if a board in 20 years wanted to change course, they would have to amend the resolution.

Shanafelt: it makes it harder to make a change. I see this as, near midterm, perfectly fine. Twenty years from now, all of a sudden, we're suburbia and rural doesn't make sense.

Sanders: we have the ability now to have a line under the cemetery fund in order to start planning

for this.

Chown: it's very rural. I think it's going to stay that way. And the cemetery itself is rural.

Sanders: the lot next to it at 31 and a half acres is fully developable with no zoning restrictions.

Sanger: I would like the minutes to reflect that it has been reviewed by our legal counsel.

Chown: and created by legal counsel.

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

8. Community-wide campaign close-out challenge grant to construct the sustainable boardwalk in the Hemlock Wing at Pelizzari Natural Area (Chown)

Chown: it is my sincere pleasure this evening to announce that Peninsula Township has received a generous campaign close-out challenge grant to construct a sustainable elevated boardwalk in the Hemlock Wing at Pelizzari Natural Area [PNA]. As the materials in your packet explain, we are \$143,000 short of our \$320,000 goal. The challenge grant offered by the Thomas Family Foundation and the Tim and Libby Ash Family Foundation is for a combined \$80,000. These two foundations will match every dollar that is donated up to \$80,000, a sum that will put us over our goal with sufficient funds left to construct interpretive signage along the boardwalk and throughout the natural area. It's an incredible offer by these two family foundations.

I am working with a small group of committed volunteers to craft a letter that will go out to everyone who lives within five miles of PNA asking for support.

We know how incredibly popular the park is. I am hopeful that our community will step up and support this effort to save the hemlocks. The importance of doing so is highlighted in the packet material, and the benefits are numerous and compelling beyond saving the trees.

We have a year-end deadline to raise the money. All donations are welcome, and all donations are tax deductible. I hope the community will embrace this opportunity to leave a legacy for future generations that will make them proud of our foresight in protecting these magnificent trees that can live to be 800 years old.

Sanders: I also recommend sending this to TC Tourism and Traverse Connect.

Chown: I'll have some material on the website soon. I've got people in Port of Old Mission who are willing to sign letters to send to their neighbors. We have three months and a couple of weeks to raise hopefully \$80,000. Thank you.

9. Fee schedule updates from the assessing as well as planning and zoning departments (Murray and Cram)

Cram: as the board is aware, we do our best to cover our cost of doing business. The last time we looked at the fee schedule was October of 2023. In conducting regular business, both Sally Murray, our assessor, and I noticed some gaps related to assessing under the land division application. The land division review committee recommended adding an escrow fee of \$1,000 in addition to the application fee. For the most part, the \$1,000 would cover it. This escrow would be similar to other escrows in that any unused amount would be returned to the application. The first proposal to amend the fee schedule is related to the assessing department under the land division application with an escrow.

Similarly, I've received the first private road application since I have been your director of planning and zoning. There is professional review related to that application from both legal counsel and engineering and others. I realized we didn't have an appropriate escrow for that. The \$5,400 that we see for SUPs and so on seemed a bit much. To put something in a scaled approach for private roads, we're proposing to add a \$2,500 escrow for any application that comes in.

The last item I would like to discuss, included in your packet, is section 7.4.4, removal of shore cover, so you can see what the existing zoning ordinance notes. Since I have been acting as the zoning administrator, I've received a handful of requests for people to come out and look at trees

on their shoreline. Most just want to remove dead trees, diseased trees, or thin branches, but a few wanted to remove some trees to improve their view.

When I received those requests, I looked at the fee schedule and saw there was no fee associated with removal of shore cover. It seemed awkward to charge someone. The lowest fee we have is \$100 for a change of use. I've done a couple of inspections, and I have not charged the applicants to do so. I went out, looked at the total number of trees on the shoreline, looked at the number that were to be removed, and made sure they weren't removing more than the 30 percent within the 100 feet. I carry pink survey tape in my car. I mark the trees, take photographs, and put that information into the file. That has been helpful because, inevitably, when someone is removing shore cover, we get a phone call from the neighbor. By having the property documented in the file, I can say, "Yes, they called us. We inspected, and they're following the zoning ordinance."

I want to know if you're comfortable not charging a fee for that. We're encouraging people with honey rather than vinegar to follow our zoning ordinance. By having this documentation in our files, we can document that the 30 percent doesn't creep up over time. If someone removes 30 percent one year and then calls the next year, we could end up with no shoreline vegetation. As your zoning administrator, I make determinations on the zoning ordinance, and I want to make sure I'm following proper protocol and that you are comfortable not charging a fee for this. Even though we try to cover our cost of doing business, these inspections don't take a lot of time.

Shanafelt: I actually thought not charging for this was really inspired for all the reasons you stated. The shoreline vegetation issue affects everybody on the peninsula. We want to encourage people to work with us, to do things correctly. Not charging a fee for this makes sense to me.

Chown: I agree 100 percent. Let's leave it as is.

Sanger: is this actually a land use permit with no charge, or is it just a site view without issuing a land use permit?

Cram: it's a site view. Our land use permit application doesn't really pertain to this. As the zoning ordinance is written, it does require zoning administration approval, which is usually a land use permit. But this is something different. We can address it by making this change to the fee schedule that we're going out and doing an inspection but not charging a fee.

Sanger moved to approve the three recommended changes to the fee schedule as proposed with a second by Rudolph.

Sanders: those are pretty hefty additional fees. Private road application, \$1,000, and then an additional professional review escrow of \$2,500. What is that for?

Cram: cover review by Gourdie-Fraser, our engineer, which is pretty extensive for private roads as well as legal counsel. With every private road application, they look at the grating, storm water, private road maintenance agreements. There's quite a bit of review that \$1,000 does not cover.

Sanders: was it even coming close?

Cram: no.

Sanders: so we were taking a hit there.

Cram: we will be taking a hit on the application that is currently under review.

Sanders: then in assessing, the application is \$1,000 and the additional attorney review is another \$1,000?

Cram: yes.

Sanders: I haven't seen if there's going to be anything returned to the applicant I just went through it with. I'm a little nervous because I want to see how the numbers fall out.

Sally Murray: we have been reviewing it over time. Initially, our fee was \$500 and it wasn't enough all the time. All the easy divisions are done. Everything is more complex and convoluted as fewer pieces of land are available to split. We often have interpretations that are needed to make sure

we're on the right course, and that does take legal review. We try to keep that as minimal as possible. The \$1,000 escrow isn't punitive. There is a refund. What's been awkward in the past is coming back to the applicant saying we need more money. We're trying to scoop up enough initially with plans to refund. Now to your point, when are we getting our money back?

Sanders: or if there's money, how does that look?

Murray: the attorney's office has been great in working with us to determine when their final invoicing is accomplished. In review committee, we work with the attorney to get the approval. The attorney submits his review and approval and then it goes through their invoicing. Depending on when our paths collide, if you miss that 30-day invoicing, you're into that next 60-day invoicing. We want to make sure we have adequate time to make sure everything's gone through the proper invoicing on the attorney side. Our plan was to return the money on a quarterly basis. We work with legal counsel's accounting to get their blessing that we're all completed on these last land divisions and are good to go. So the quarterly return will likely be utilized.

Sanders: if an applicant called two months into that quarterly, would you know if there was anything left in escrow?

Murray: hopefully. We're trying to put ourselves in that sweet spot of not hen-pecking the attorney's office too much in getting those monies back. Any and all money due back does go back to the applicant. It saves us from asking for more in the middle of the process.

Sanders: I don't remember reading that going through this application, but I may have missed it. Is it worthwhile putting in a couple sentences, the process for escrow review?

Murray: we can add that to the application.

Cram: I think it would make sense to refund all escrows on a quarterly basis. We want to make sure we receive all the legal bills, engineering bills, etc. We could adopt a standard process for working with staff, working with the treasurer's office to refund any remaining escrow.

Achorn: there has to be closure and there has to be a direction. The treasurer's office cannot initiate this. The ones who are asking for the escrow, having the work done, must tell us that the file is closed and that any escrow can be [refunded].

Murray: absolutely. On our last few land divisions, I've secured that from the attorney's office and gotten the email confirmation that will allow us to work with your office to have the comfort factor for you that, yes, it has been closed and X number of dollars will be refunded.

Cram: planning could do a similar thing as a special use permit moves through the process to let you know what was approved by the board on a given date so we're on the lookout to make sure invoices run through.

Achorn: there will have to be an official request for refund.

Cram: yes.

Sanders: I like the quarterly review. Seems like it streamlines it from your end.

Achorn: it doesn't work that well with escrow.

Sanders: we haven't done it yet, so we don't know how it would work.

Murray: by the time we're communicating again with the attorney's office, it seems like we're hitting that third month. That third month is generally the safe spot. We often know in the 60-day mark what might be due back, but we have had a couple kind of slip through so that cautionary interpretive dance we've been doing to try to figure it out seems to be smart to park it at a quarterly basis. And if that isn't working, we can review it again.

Wunsch: it's not an actual quarterly basis, a backward looking 90 days?

Murray: it seems like a lot of our divisions come through in groupings. We are trying to group them as best we can and assure that each applicant has a generalized quarterly basis to expect a refund. One of the other things the board might want to consider in the fee schedule is that we may

potentially have a first appeal to a land division decision to the town board. The town board is the appeal body for any land division denial. We would like to understand if you would like an escrow to be levied for that potential action as well. Anyone making a formal appeal to a land division denial needs to come to this board, and you are hearing it de novo. The land division review committee is done with the work and rendered a decision. The applicant is aggrieved by it and is coming to you for a hearing. We expect that legal counsel may need to weigh in on some items, interpret some items, potentially communicate with the applicant's attorney. We're trying to figure out a way to proactively determine what might be a suitable escrow for that particular line item. Do you want to bake it into the professional review, an additional escrow fee that's highlighted already in the fee schedule? Or would you like us to add an additional line item to the assessment department for land division appeals? Maybe it's for discussion and we can bring it back later. Or maybe you'd like to make an amendment to the fee schedule you're adopting tonight.

Cram: section 4.3, escrow, per amendment 196, was included in your packet. It does say that if the director of planning or zoning or any township commission or board determines that the fees will not cover the cost of the application review, then the applicant will deposit with the township treasurer additional fees and an escrow account. The existing ordinance amendment may already cover the situation because this appeal would be coming to the board, and the board could request the escrow. Or we could make it very clear, if you look at the fee schedule that was included in your packet, appeals to the ZBA already have that \$1,200 fee to take an appeal. Plus, we have the ability to ask for the escrow. We did that recently with an appeal that went to the ZBA. This is our first appeal. We're trying to be responsible to cover our cost of doing business.

Sanders: if we're going to do this, I do like having a separate line item under assessing for clarity.

Wunsch: would you set it at the \$5,400 that we typically use for professional review?

Murray: in discussion with the land division review committee, we thought that seemed a prudent benchmark. It kind of matched the baseline of other professional review. If there are going to be challenges, it's because there's going to be a lot to interpret.

Wunsch: not only is it not punitive, but it's saving the taxpayers from carrying the cost of development.

Sanders: it's just such a large number when [what's being split] could be something very small. I know you said there's not a lot of land to split, but there are still some pieces out there, or a lot line adjustment versus a development. It's a big cost on the front end for a small project.

Murray: we did have a land division come in that was seemingly simple. I expected it to be streamlined, one of our cheaper ones, and it ended up exceeding our \$1,000 by 50 percent. We used that as a baseline. The wheels can indeed come off.

Shanafelt: \$5,400 is only 20 hours of legal cost. That's not a lot.

Sanders: not for some.

Shanafelt: land division is a specific application. If it does cost us that much money to do it, we have to make sure we are careful with what we do. If we need legal review, we use legal review as opposed to saying we can't afford it. Is \$5,400 enough? Appealing a land division issue sounds incredibly contentious. To your point, \$10,000 looks punitive, dissuading people from pursuing what they feel is right. But I do think having something reasonable in there makes sense.

Sanders: education is key. What exactly do these fees cover? What can applicants expect in the process? Looking at a potential quarterly [review], getting your money back at the end of that quarter. Having that knowledge up front is going to help.

Wunsch: the escrow is not a fee we're charging for our services. It's a claw back of money that we put out the door. And part of the reason these escrows have been introduced is that we charge very little compared to Grand Traverse County. We basically subsidize out of the general fund the

smaller kinds of things. But these escrows have come into place because if you want to appeal something all the way to the end, if you want to have a custom job from the township, or if you want to rush something, it typically winds up incurring significant costs. Not costs internally with staff but significant external costs. And the direction of the board for the last couple of years has been not to make the taxpayers foot the bill. So both applicants and our residents need to understand these escrows are not fees that are incurred by the township. They are chargebacks for engineering and legal services the township has to pay.

Sanders: that's the education piece.

Sanger: there is a motion on the table.

Shanafelt: does that motion include adding the \$5,400 escrow?

Shanafelt moved to amend the motion and add the \$5,400 escrow fee for a land division [denial] under the assessing department with a second by Chown.

Motion approved by consensus

Sanger and Rudolph agree to the amendment.

Motion approved by consensus

10. Resolution 2024-03-27 #2, Amendment #1, to add MI Class to the list of approved financial institutions for online banking (Achorn)

Achorn: the treasurer has the authority to use whatever investment financial organizations she chooses. However, there is a second resolution that needs to be specified as to which financial institutions we are conducting online banking with. Because each movement is towards more online banking, we need to add Michigan CLASS [Cooperative Liquid Asset Security System], which is an additional investment that the treasurer would like to utilize for funds that will not be used currently so that we can get additional interest. It is used by Michigan municipal organizations, cities, townships, school systems. In order for us to complete the application to open an account with Michigan CLASS, we need this resolution approved by the board. I added an amendment to the resolution that we made on March 27, Resolution 2024-03-27 #10. This would be amendment #1, to add MI CLASS to the approved financial institutions that we can do online banking through.

Sanger: MI CLASS is not a bank, correct? It's an investment firm?

Achorn: I'm not sure if it's a firm. It's used by municipalities in Michigan solely.

Sanders: it's an investment pool.

Sanger: my concern is that when I looked it up on the website today, they said investments are not guaranteed.

Achorn: that's right.

Sanger: that bothers me. California went down this path many years ago. There's a high percentage of commercial paper in this fund. It is risky, and we need to disclose that to the board. This is different than having money in the bank. I'm not prepared tonight to vote in favor of putting any township money with Michigan CLASS company without further information.

Rudolph: is Michigan CLASS run by the state of Michigan?

Achorn: no, its investments are totally through the municipalities. The municipalities pool their money, and it is invested in AA plus commercial paper, repurchase agreements, money markets. It is not U.S. treasuries, such as where our other money is held. This has a one-day turnaround for online withdrawals.

Shanafelt: it's staged investing, longer investments over time with money you don't need immediately. What is the improvement in basis point return in MI CLASS versus what we're already doing?

Achorn: one percent more. I've been looking at this for a year, and I've had the same questions. I've come to the conclusion that it is safe for what we are using it for. It's for the longer term, for the items that are restricted that we don't want to accidentally spend. When we write checks

through our normal accounts payable procedures, we don't want to spend down our restricted monies, such as the \$250,000 requirement that the PDR ordinance states we have to have set aside. Same thing with the cemetery, where one-third of any cemetery purchase is restricted for future maintenance for after we're totally sold out and aren't bringing in any more money. The cemetery in particular is at risk right now because the budget includes using that restricted money to pay all its maintenance expenses this year. As an example, I want to take that out of the general fund banking opportunities. It's not that much money, not that I would put everything in. It's a targeted fund, plus it will be used long term or sometimes short term. Perhaps the fire department has something that will be needing money but we don't need it right now. We can earn another one percent by keeping it in here.

Wunsch: I've served on a couple of boards that have been faced with this question about investing public dollars. The reason you have this scheme where municipalities or governments are pooling their funds in this kind of an investment pool is that it only invests in assets that are approved by the state department of treasury as sufficiently low risk for public dollars.

Sanger: as a trustee of the township, I can't put public funds into something like that. If there's a minimal chance of risk, that doesn't mitigate the fact that these are public funds. I cannot chase yield and take risks as a trustee for the township.

Achorn: before I came here, before I was deputy treasurer working with Brad Bickle, only a certain sum was protected. We dealt with one bank. None of the rest of the township money was protected.

Sanger: that doesn't forgive the action you might take tonight. I cannot vote for it. We don't have anything that backs up a decision to put our money with this pool. I looked up their board of directors. It consists of treasurers of cities. I didn't see investment people on the board. It sounds good. I can't stand for reelection and support any of our money going into an investment pool run by...I don't know who runs this thing.

Achorn: I understand your questioning. However, the treasurer is given the authority to utilize financial institutions of her choice as provided by law.

Sanger: if you take that risk, that's your risk, not mine.

Achorn: I would not risk this township needlessly.

Sanger: you're chasing one percent. I don't know why we're doing this. Maybe this opens up the entire question: are other bank assets with Independent Bank and State Savings Bank, are these at the FDIC limits? Are funds not at risk if the bank goes bankrupt?

Achorn: no, they're fully guaranteed by the U.S. government.

Sanger: I did look up MI CLASS. It is not guaranteed by the FDIC. It states very clearly that your investments are at risk. We can argue all night that it's only a fractional risk, but I can't support it.

Sanders: I would rather table it and do more due diligence. I don't feel comfortable having any township money put in something that doesn't have a guarantee because we have some rather large outstanding financial burdens that we may or may not be assessed. I'm not comfortable doing it right now. It doesn't mean my mind won't change in the future.

Shanafelt: I asked about yield because there's always risk reward. A full percent is a lot, depending on how much goes there. What fraction of our available funds would you propose putting in MI CLASS?

Achorn: I didn't bring the sheet with me, but it is not a lot.

Shanafelt: if it's not a lot, and it's one percent, then it doesn't really matter; it's going to be incremental. I would like to know more as well.

Sanders: what you think might not be a lot, I might think, "Holy crap, that's a lot of money."

Sanders moved to table the request to add MI CLASS to the list of approved financial institutions

for online banking until the October meeting with a second by Shanafelt.

Motion approved by consensus.

11. Update on Maner Costerisan organizational analysis (Shanafelt)

Shanafelt: we're expecting to get their report this week. The process we're looking at is, first, ensuring it's factually correct. They have done the work independently. We've had a couple touch points to ensure they're moving in the right direction. We'll look at this final draft, go through it, and make sure the details are captured accurately so they can modify the report as appropriate. The point of putting out a draft report is not to get opinions about any conclusions they have drawn. That will happen later once we have a final report.

Once we receive the report, we'll probably put it in one of our meeting packets. We would like people to read it and provide written feedback. Following issuance of the final report, the hard work begins. I was told it's well over 100 pages. It will take time for both the board and the community to digest. I imagine there will be multiple opportunities for discussion with the next manifestation of this board.

To answer Nancy's [Heller] question, no, this has not been edited by anyone except Maner Costerisan. I've had maybe one call with Rod Taylor, who is taking the lead on this. I had a couple of clarifying questions. He was in town for a meeting. I took the opportunity for him to come by and touch base with the working group to make sure they were headed in the right direction. Rod met with the working group, at least most of us. Fred Woodruff, Wes Cowen, Dave Murphy, and I. As all the trustees were involved in the interviews, we also invited Maura [Sanders] and Dave [Sanger]. Rod gave us a high-level look at what was going on. No editing was done. What I remember coming out of that was, "You've done a five-year projection. We asked for a 10-year projection. Would you please include that and also, in your executive summary, if you draw conclusions during the document, make it clear in the executive summary what those conclusions are." We didn't discuss anything of deep substance, and it was along the general direction of how the original RFP was written.

Sanders: I know there were a lot of questions and confusion in the office, and it carried over to the public thinking this was a meeting where we had this final report and we were going to accept all of this and make blanket changes, but we weren't. There were a lot of holes in the information he provided. What we sat down and went through was, what did we go out for bid for so that we could make sure all of those pieces of the contract are being addressed.

Shanafelt: any good third party touches base to make sure they're fulfilling what they need to do.

12. Planning and zoning department update (Cram)

Cram: the shoreline regulation study group is a committee formed by the planning commission to advise on future zoning ordinance regulation updates. The group has been well attended, with constructive conversations. A policy direction was forwarded to the planning commission on August 21, and at the September 3 meeting, the PC authorized staff to proceed with drafting zoning ordinance amendment verbiage and diagrams related to single waterfront ownership and shared waterfront ownership. Staff will be working with legal counsel to do that.

We agreed we had a strong base document in the zoning ordinance rewrite draft that was circulated in 2021, 2022, with the intent and purpose statements and diagrams created by McKenna. Chris Patterson and I will be using that to direct some verbiage that will then go back to the PC. Monnie Peters has offered to assist. She was a large part of the zoning ordinance rewrite group and also participated with the shoreline regulation study group. I hope to have a draft in November, December, for the PC to discuss.

With regard to the third component of shoreline regulations, we've had some wonderful conversations. Rudy [Rudolph] gave a presentation on wave attenuation to help educate the study

group on how dynamic our shoreline is. We also had a presentation from Heather Smith, the Baykeeper. With that, Randy [Hall] and I realized that it's going to be duplicative for us to continue bringing guest speakers in to educate the study group on the issues facing shoreline development, then turn around and educate the PC, and then educate a new board convening in the new year. I had a discussion with Isaiah, Becky, and Marge. We agreed to pause the study group to allow the new board to be seated and so that we could schedule an educational forum where the PC, the town board, the community, and the shoreline study group members can participate. An email follow up was sent to all the study group members.

I am looking for a landing place on the website where we can put shoreline regulation information and to do an email blast in the coming days for people who are on the distribution list to let them know the study group is paused. We also encouraged people to reach out to Robin [deputy clerk] if they're not currently signed up for the email distribution of PC and town board meeting minutes and packets and agendas.

As the zoning ordinance amendments move forward, there will be public hearings with the PC and board and additional opportunities for the public to participate. What came out of the study group is by no means a decision. We educated the study group that, as things move forward, the PC may recommend changes, and the board can additionally recommend changes after the PC makes a recommendation.

There is [currently] a severe shoreline violation. The contractor made a significant cut on a steep slope adjacent to Peninsula Drive. We are working with the Grand Traverse County Road Commission and the Grand Traverse County Health Department to mediate the situation and address immediate erosion in the event that we get weather. We are requiring the contractor to work with a professional engineer to develop a remediation plan. The road commission is concerned about the safety of vehicles traveling on Peninsula Drive and the future failure of Peninsula Drive. The road commission and health department were very responsive.

The planning commission listened to the board discussion about Peninsula Shores. They are looking at the zoning ordinance verbiage related to substantial improvement and would like to improve that. It tends to be an area that troubles the PC. How does it apply to the whole thing? How does it apply to an amendment? We did discuss this at the last PC meeting. We formed a study committee of Randy Hall, Kevin Beard, Susie Shipman, and I. We already have several pages of examples from other municipalities to look at. The goal is that when something is approved, we want to know there is a public benefit. What is the community getting? We can develop better language that is more objective rather than subjective to help guide the PC and board with future special use permit review and approval.

Last, I put information in your packet about the new agricultural advisory committee. At our last meeting, we talked about the sample questions, and I heard that you would like the interested parties to complete the questions prior to interviews. I included an outline of what this committee would look like based on my experience with the agricultural advisory board with Larimer County. Generally, you appoint an advisory committee of seven to nine members with diverse backgrounds. They select their own chair, vice chair, and secretary. Staff would help create agendas and packets. We would have a representative from the board whose role would be to help communicate to the agricultural advisory committee the big issues the board is facing, things happening in the community, as well as make sure the committee is staying on track with goals. There would also be a liaison from the PC. Both of those liaisons would report back to the PC and board and help guide the committee's work. I would like to see an action item come out of the committee so that there would be a report to the board.

The hot topic this year is signage for U-picks; it's what we're going to focus on. The benefits are

that this group has a voice with the board and can help educate the community about the issues farmers are facing. We would like to hold interviews on September 30. When would you like to have the responses back? I will ask to have the answers returned by a specific date for you to review. We originally received 16 letters of interest but two people have changed their minds.

Wunsch: I'm going to sit it out. I've got too many entanglements with agriculture.

Chown: you mentioned we have too many questions. Five and six are very similar. I think we can eliminate six. We can simplify three. Just keep, "Should any segment of agriculture get special treatment?"

Cram: we are trying to select a diverse group. I thought about, "What are you currently farming?"

Board agreement.

Wunsch: do you all agree I should recuse myself from the selection process?

Shanafelt: probably makes sense. It will certainly relieve some NextDoor junk.

Rudolph: [questions] eight and nine are almost the same thing, asking how agricultural tourism effects your operation. You have to define what agricultural tourism is to answer.

Cram: simplify three, remove six and eight, and add, "What do you currently farm?" Also give them the outline so they know what the expectations are.

Board discussed when to schedule interviews and settled on October 14 from 2:00-5:00 p.m.

9. Citizen Comments

Craig Haddox, 4150 Trevor Road: commenting on Peninsula Shores #5. Moving a lot here is not like moving a couch in your living room. The developer can't complain about having to meet the substantial improvement standard. He chose to subject his property to the SUP standard so that he could develop a more lucrative project. He received the benefits of the SUP ordinance. He should not now be allowed to evade one of its requirements. The substantial improvement standard is not met by the developer agreeing to the condition that the lot lines not be moved or that there be no more amendments. What would prevent the developer from coming back in the future for another amendment to eliminate this condition? The condition itself cannot be a substantial improvement. If the amendment absent the condition does not meet the ordinance standards, a condition to not do something else in the future cannot be the substantial improvement. If it can, then something that does not meet the ordinance standard becomes allowable if the developer agrees to a condition not to make it even worse in the future. That is a bad standard and would set a horrible precedent to the detriment of township residents. Thank you for your consideration.

Fred Woodruff: I didn't hear a response to my questions. Is someone going to pursue that?

Chown: I'll email Chris [Patterson] tomorrow and ask if we can post trial briefs on our website.

Woodruff: have any of you tried to get to PACER to find legal documents of a federal case? You have to join and pay money, etc.

Wunsch: I think there are some complications of doing that. I think PACER controls the dissemination of those documents. It's frustrating that the portions of the lawsuit that can be public require you to pay some federal contractor to get released.

Woodruff: do you understand my frustration? I'm trying to find out what the damages are. You've got a co-defendant who on the one hand is saying we're exposed to \$130 million but then publishes something that says those claims have been rejected by the court. Is somebody going to follow up and have Chris respond to that or not?

TJ Andrews, 619 Webster Street, County Commission District 7: quick update about a couple things happening at the county. First, we've spent a lot of time in the last couple of years focusing on our facilities. We learned there is a lot of deferred maintenance and costs coming at us. What has risen to the top is what we're calling Project Alpha. It involves our dispatch building. Our dispatch is driven by the demands during Cherry Fest and other high-season times when dispatch is

bursting at the seams. We're looking at building a new facility out on the Lafranier campus. Combined with that, we'll be building a large storage facility. Right now, our facility's main headquarters are next to the civic center. That's not a great use of that space. It's dilapidated and definitely not big enough. We are moving both of those structures up to Lafranier.

The second major investment is going to come in terms of deferred maintenance to existing facilities. Our buildings are old and have not been taken care of for a long time, but we don't have a good perspective on what our short- and long-term needs are in that regard. Having a sense of when the boilers are going to need replacing and when the roofs are going to be replaced is not something we have accessible. There's a growing frustration on the part of the county commission that we get that information sooner rather than later.

Another major bucket of facilities investment is going to relate to law enforcement. Our courts, our sheriff, and the city police department are in a shared facility that is also old and dilapidated. Most importantly, our jail was way beyond its useful life 20 years ago. It didn't get better in the last 20 years, especially as the needs of our jail are changing substantially in this community. That's a conversation that's going to involve elected officials well beyond the nine county commissioners. The funding source is the county, but the needs of elected judges, elected sheriffs, and others are involved. Those are harder conversations, and they are on our horizon. They are needs, and those conversations need to happen.

That leads to my second point, which is good news: we have a budget surplus. We have almost \$8 million in a budget surplus last year mostly driven by two main factors. One is that property values are going way up in our community. Housing affordability is the number one issue. The flip side to that is that our land base is going way up. We earned in excess of about \$5 million over what we budgeted from property taxes last cycle in 2023.

Also, we're underspending, partly driven by the fact that we can't hire. We have empty seats. We budget for those seats. We budget for road patrols and lots of positions, and if they don't get filled, then we underspend.

So combined, we have about an \$8 million surplus from 2023. We know a bunch of that's going into our pension. We lost a bunch of money in 2022 with the stock market in our dedicated pension obligations, so we're going to be refunding that. We know our maintenance needs are incredible, and we know we have also underfunded our parks and other facilities. Those are all conversations that are coming at us as soon as budget cycle is upon us.

My last point is, Camp Greilick will be having a ribbon cutting tomorrow at 3:00 p.m. It's a great asset for our community, and everyone is welcome to come. That's all I have. I'm always happy to talk to anybody about anything going on at the county or anywhere else. Thank you for your time.

10. Board Comments

Sanders: let's go get those Pelizzari matching funds.

Cram: I'll have material on the website hopefully tomorrow.

11. Adjournment

Sanders moved to adjourn with a second by Shanafelt. Motion approved by consensus

Adjourned at 10:16 p.m.