



PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board and Planning Commission

Joint Special Study Session

September 13, 2022, 7:00 p.m.

Township Hall

Minutes

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

2. **Pledge**

3. **Roll Call**

Present: Sanger, Wunsch, Achorn, Shanafelt

Also present: Fahey via Zoom

Absent: Chown, Wahl, Rudolph

4. **Citizen Comments**

Louis Santucci, 12602 Center Road: I'm glad that you put in the invoices what these legal fees are costing us so far. Last month was \$170,000. The month before that was \$50,000. While a lot of people probably think that's well worth it, I don't. I just would like to caution the board to try to get a handle on what this is going to cost going forward. At this rate, I see very high expenses for the cost of litigation. The other thing is, I just want to thank you for putting the PDR list there. That was quite enlightening. I always wondered who sold their PDR land and how much they got. I'm thankful for that.

5. **Approve Agenda**

Sanger moved to approve agenda as submitted with a second by Achorn

Roll call vote: yes – Sanger, Achorn, Wunsch, Shanafelt

Passed unan

6. **Conflict of Interests:** none

7. **Consent Agenda**

Sanger: I request item four and item five from the consent agenda be pulled and placed as business items.

Cram: the spelling of Mr. Knysz's name in the minutes needs to be corrected.

Shanafelt moved to approve the consent agenda as amended with items number four and five pulled to be addressed as the first business item with a second by Sanger.

Motion approved by consensus

8. **Business**

1. Discussion of the Peninsula Community Library Art Fair sign request and the Home Builders Association Parade of Homes sign request

Board Discussion.

Sanger moved to approve the request from the Peninsula Community Library to place 18 by 12" directional signs for their art fair on September 24 on five road locations, not the library premises; the signs will be placed outside of the road right of way at the locations on September 18 and removed after the event on September 24 with a second by Achorn. Motion approved by consensus

Wunsch: we'll be working on editing the sign ordinance so that sign requests can be handled through planning rather than have to go before the board.

Sanger moved to approve the request from the Home Builders Association Parade of Homes to place 18 by 18" directional signs on 14 road locations in the township; these locations are not on the premises of the homes on the parade but will be placed outside of the road right of way at the locations on September 14 and removed after the event on September 18 with a second by Achorn. Motion approved by consensus

2. Public hearing on Family Orchards LLC waiver request from Ordinance 2022-6-14

Sanger moved to open the public hearing on the Family Orchards LLC waiver request from Ordinance 2022-6-14 with a second by Shanafelt.

Roll call vote: yes – Sanger, Wunsch, Shanafelt, Achorn

Passed unan

Cram: we received a letter from the applicant, Family Orchards LLC, on July 28, requesting a waiver from section six of ordinance 2022-06-14 regarding the current moratorium in the A1 agricultural zone. The applicant would like to be able to submit an application for a new winery-chateau. On August 9, the township board made a motion to schedule the waiver request for a public hearing this evening. Sufficient public notice was given to conduct the public hearing. The applicant has included a letter as well as a letter from his legal counsel. We have also received some public comments. We received additional public comment today prior to the noon deadline, but with Becky [township clerk] being out, I didn't make a packet addition. This additional public comment came from Susan Tarczon. I will follow our new procedure and include this letter as part of the public record in the next packet for the township board. We also forwarded some questions that were prepared by the township attorney to the applicant and their legal counsel in hopes of getting some answers that would help the township board make a decision on this waiver request. I have yet to receive any answers to those questions. I have placed a copy of the questions before you. At this point, staff and legal counsel recommend that you conduct the public hearing to hear any additional public comments, comments from the applicant, arguments, and so on, and then make a motion to take action at the October 11, 2022, meeting. Again, that's just a recommendation and we have placed a suggested motion before you. The attachments that were included as noted in my memo are the letter from Walter Knysz, a letter from Family Orchards LLC dated September 6, a letter from Andrew Blodgett, the applicant's legal counsel, and correspondence from Jim Raphael and Rose Skurski as well as a copy of ordinance 2022-06-14. I'm happy to answer any questions about the material included in the packet or the process, and our township attorney is here this evening with us via zoom.

Wunsch: we'll start with the applicant to introduce the project and rationale for the waiver of the moratorium. We'll follow with comments from the public.

Walter Knysz, 15259 Smoky Hollow Road: good evening, everyone, and thank you for this opportunity. I own the property at 15259 Smoky Hollow Road, which is located in the A1 agricultural district of the township. I've requested a waiver from the moratorium on filing my SUP application for a winery-chateau. When I filed my SUP application this past April, the township refused to accept it under the pretext of the first moratorium resolution. I filed the SUP application again in July and the township refused it again, this time citing the second moratorium, which was adopted by ordinance. The township refused to process it and sent it back to me. They did the same thing again last month when I sent it again under the second moratorium. In short, both the first moratorium resolution and the second moratorium ordinance are invalid as they were not adopted in accordance with state law for reasons my lawyer, Andy Blodgett, will explain in more detail. Before going to court, I'm giving the township an opportunity to avoid more litigation by doing the right thing and accepting my SUP application. Even under the moratorium resolution and ordinance as written, I can satisfy both criteria for a waiver, even though I just need to satisfy one of them. One of the criteria is whether I will suffer immediate and irreparable harm. If this delay continues and the township proceeds to amend the zoning ordinance to no longer allow winery-chateaus, my entire project for the vineyard is jeopardized. I would not even have a chance to apply for the SUP permit. That is the very essence of irreparable and immediate harm. Second, and even more directly, I satisfy the other criteria for getting a waiver, which is whether the moratorium violates state or federal law. Both the first moratorium resolution and the second moratorium ordinance were not adopted in accordance with state law. Therefore, they're not effective. The township planning director sent me a list of questions regarding this matter, but they aren't relevant to this waiver request. She asked if there were other uses for the property. Of course, I could put up a pig farm or sell the property to some tribe, but that's not relevant. I want to put up a winery-chateau. She also asked many questions about what I'm planning. These are all good questions that are addressed in my SUP application and are relevant only in considering my application. They're not relevant as to whether I should be allowed to file my SUP application. Finally, I want to underscore that I am pro-farmer and definitely want to keep this peninsula agricultural in character. What the township board and planning commission are doing by prohibiting and restricting me from pursuing a winery-chateau sends a message to all the township farmers, which is, "We don't care if you make money or not." To make money, farmers need to supplement their incomes vertically and integrate their operations and utilize their land. That doesn't apply just to vineyards and wineries. As you know, cherry farmers in northwest Michigan are struggling. Are you determined to keep them and other farmers from making money in the township? It isn't wineries that cause traffic on the peninsula. It's urban sprawl, which is spreading to the peninsula more and more in the form of subdivisions and housing projects. Is that what we want, more housing on the peninsula? Wineries are actually one of the most effective and practical ways to maintain the agricultural nature of the peninsula and to stop urban sprawl. With that I would like to ask Andy Blodgett, my attorney, to discuss the legal issues.

Andrew Blodgett: good evening, Andy Blodgett of Parker Harvey in Traverse City. For continuity in the minutes, I am taking over from Joe Quandt, who was here last meeting for this matter. We are seeking a waiver under both ordinance 2022-6-14 from June and the resolution that was passed on January 3. That's 01-03-2018 #1. The heading only references the moratorium that was passed by ordinance. I suspect the reason for this is that the planning director and the attorney implicitly recognize that the moratorium passed by resolution in January is invalid. I'll speak on that later. As factual background, Doug Mansfield on behalf of the applicant, Family Orchard LLC, attempted to submit a special use permit application on April 11 during the first moratorium and in July after the second moratorium. He attempted to hand deliver the SUP application to the township offices and was told it would not be accepted. To have something on record, he FedExed the packet to the township. To our understanding, it was or is still there. In the meeting minutes of August 9, there is a statement by Ms. Cram that an application was submitted during the first moratorium, so there is no factual question about that. I do want to make clear that we are requesting a waiver under both the January resolution and the June ordinance moratorium. This position might surprise you, but I don't believe that Family Orchards LLC actually needs a waiver. The reason is that both of the moratoriums are invalid and one would not need a waiver from an invalid moratorium. The first moratorium was an attempt to legislate by resolution. This was not a ministerial function; it was not a temporary delay; it was a preemptive elimination of land use, specifically winery-chateaus. It was passed without any comment in the minutes by this board, and it's squarely aimed at winery-chateaus. So we have an attempt to legislate by resolution, which is a violation of the legal doctrine of legislative equivalency. The second moratorium was passed as an ordinance under police powers, but I believe it's also invalid. The minutes from the June 14 meeting say this moratorium is an extension of the earlier invalid moratorium. The purpose is clear that it is to stop winery-chateaus. The comments in support of passing the moratorium clarify that the purpose is to prevent any winery-chateaus from receiving permit approval before the full zoning ordinance rewrite deletes them forever. That makes the June 14 moratorium a regulation of the land use, not a police power, and so it's effectively a zoning amendment. That is something this board can do, but to be valid, you have to go through the Michigan Zoning Enabling Act with all the notice requirements for an amendment. That June 14 moratorium did not do that and thus we believe it's invalid. So your question might be, "Why are you in front of me if you think you don't need a waiver?" We're seeking a waiver instead of filing suit. We want to give the township a chance to correct this mistake and avoid litigation by allowing the waiver. I understand there's a lot of moving pieces. You have the WOMP lawsuit, you have the ordinance redraft, but that does not give the township board cause to deny a landowner the right to a special land use permit application by going through an invalid process. The last thing we need is another lawsuit. We don't want that; you don't want that. We want our special land use permit application to be reviewed fair and square because we don't believe the two moratoriums are valid. We could have simply marched into court but we wanted to be here tonight to seek a waiver. We think that's an orderly way to do it. I do want to

reiterate what Dr. Knysz said: the waiver as written in both moratoriums is an “or,” meaning if there is irreparable harm OR if there is a violation of law. That is what I set out for you tonight. It’s pretty simple. Everyone knows the aim of the ordinance rewrite is to eliminate the land use he was applying for. I’m going to give you a proposed solution and then address two things that Ms. Cram mentioned about the questions and the suggestion to table until next month. My proposed solution: I believe our strongest argument as an applicant is that the initial moratorium from January, which was passed by resolution only, is invalid. I invite you to grant a waiver under the June 3 request. That will leave the township capable of defending its moratorium, which was passed on June 14, 2022, by ordinance, if you wish. I think this would minimize exposure to the township of possible future lawsuits going forward. But it's also the right thing to do. We would like a waiver on both but that is my suggestion to you. You heard from Ms. Cram about the questions that were submitted. My general response is those are excellent questions that are appropriate in the review of a special use permit application. I heard tonight that they came from an attorney. I don't know why they arose, but from our perspective, they speak to both the invalidity of this process and they feel a bit like gamesmanship. First, the fact that these questions were proposed underscores my argument that the real purpose of the moratorium is land use legislation. You're trying to dictate uses but you did not pass the amendment in the proper way. A waiver request should not delve into the substantive details of a project to bring a list of positives and negatives for the township board to consider. It's another way that this board seems to be legislating land use, which is prohibited. Second, and here's where I could be wrong, but that list of questions seems to me to be geared toward allowing this board to determine whether granting or denying this waiver request would be a benefit or detriment to this board's position in the WOMP lawsuit or to the draft ordinance rewrite. I submit that's the part that feels a bit like gamesmanship. I know this is interrelated, but we have a valid application and we shouldn't have to respond to those items to get a thumbs up or thumbs down. Regarding tabling this request until next month, again, our reasons are that both moratoria are invalid and we're here tonight seeking a waiver not because we need it but because we think it is the right thing to do at this point. Because of that, I don't see a need to wait a month and I don't see how this situation gets improved plus or minus for anybody in this room by waiting a month. It seems like a decision to try to steer this to a predetermined outcome. Thank you for your consideration.

Peter Kohl, 9466 Rolling Ridge: that was a very nice presentation. [The attorney] did a nice job even though I don't agree with him on some of the issues. I'm here tonight to speak against granting a waiver at this time. Family Orchards claims that there is immediate and irreparable harm. Clearly if there has been some harm, and if there has been some violation of the law, then of course they would be entitled to money damages compensation. They also say that there's been some constitutional and state law violations. I've heard that before in other circumstances, and I don't believe those claims are very credible. Matter of fact, I think they are dubious as far as immediate and irreparable harm as well as the violation of constitutional law. I'm not addressing the other

legal issues faced by counsel, but those two issues I respectfully disagree with. Now, it's my understanding that you have a proposed amendment to your ordinance and your ordinance would not prohibit wineries. It would allow selling wine by the glass. It would allow selling wholesale. Your ordinance would allow people to come in to sit down and have a glass of wine. Nothing would preclude them from following that process. I suggest that you wait until your ordinance is finalized and then have a process for everyone so that you're looking at an orderly and fair process. I don't necessarily see the need for a waiver. I certainly can understand the frustration on the part of Family Orchards. They want to get moving and I don't blame them, but I don't think this is connected in any way to the wineries' lawsuit. This is a separate issue. Before, the township didn't have such an experienced township attorney. We have an outstanding attorney now who is very versed in township law. I would follow his recommendations. I suggest you stay the course and not grant the waiver at this time. I know this is a tough one, and as I said before, you folks do a great job. I really appreciate how hard this is and I thank you for your time.

Jim Raphael, 14826 Mallard Drive: I did submit a letter that is in your packet opposing the granting of the waiver for the winery-chateau project. The main reason for my concern at this point is that when you look at where this is sighted, it's not isolated agricultural property. It's sandwiched between two subdivisions, Mission Hills to the south and the Cove to the north. To the east you have Bluff Road totally built out with houses. About a month ago, we passed a new millage for the PDR, which is going to get tens of millions of dollars to protect agricultural property from encroachment by residential properties. This is sort of a situation where the shoe is on the other foot. We have established residential neighborhoods in close proximity to the proposed winery-chateau project. The question is, what is the township board going to do to minimize the impact of this mega agribusiness? It will basically change our living environment and perhaps diminish our property values. Granted, a winery is an agricultural activity, but a chateau is a hospitality business. As I understand the ordinance, the owner can also build six residences on that property plus a residence for his manager. That's not agriculture. My point is, without clarity as to how the WOMP lawsuit is going to end and what's going to happen to the current ordinance, I don't see how you can pass judgement on, approve, or disapprove a special use permit if we don't know what the ground rules are. What's the ordinance going to look like? What gives me pause is what's happening tonight. This looks like an effort to ramrod through as quickly as possible this proposal through the township. As far as I know, neither the owner of the property nor his agents have reached out to any of the neighbors of the land in question. Why not? If you are going to try and work with your neighbors and put something in place that is going to work for all of us, it seems to me that would be a first step. The other thing lurking in the background that maybe the owners aren't aware of is that due east of the property in question there have been significant erosion problems on Bluff Road for the last three years. That includes two major sinkholes in Bluff Road itself and some degradation to the shoreline. The road commission has hired a consultant group that concluded a major problem with what's happened with Bluff Road is ground water runoff to the west of Bluff Road, including the property in question. Perhaps in the haste

of trying to get a proposal before you, a very short timeline for someone to buy property in February, March, and submit the SUP request two months later, the owner hasn't done a lot of due diligence. I just don't know if the group submitting this is aware of the potential problems on their property and how it might impact people on Bluff. It strikes me that rather than submitting this, they should sit down and talk with neighbors about what they have planned to get reactions from people, suggestions etc., so that we can all have a win win. I urge you to uphold the moratorium for now and I urge the new owner of this property to come and visit some of us neighbors and talk about what he has in mind so that we have a better understanding. Thank you.

Louis Santucci, 12602 Center Road: what this gentleman was referring to is, of course, what would transpire when the SUP is submitted. All these issues will be dealt with when the SUP is submitted. Going back to the moratorium, I stood here in the July meeting and told you folks that the moratorium was illegal. You paid no attention to that and now you have legal opinions coming at you. I read the letters and so forth and I just want to make a point. A moratorium was put in place in Leelanau County under the same rubric of a police action or whatever you want to call it and it was declared illegal by that court. You folks sit here, knowing that this could potentially be illegal, and cause us to go to yet another lawsuit, making Mr. Fahey very wealthy. He's already gotten \$157,000. I would project by the end of the year it's going to be \$500,000. And if the Protect the Peninsula or as I call it the "Impoverish the Peninsula" people force you folks to go through court again because they don't like the decision that the judge may issue, that's going to be another couple hundred thousand dollars. It's very simple to grant the request for the SUP tonight and then deal with all these issues as the SUP is reviewed by the planning people and then we go through the public hearings and all that. Putting it off till October is, in my opinion, just kicking the can down the road as somebody previously said. Also, at the last meeting, there was a comment made, "What's your substantial harm?" Where do these people go to learn their economics? The substantial harm is immediate because the person spent probably a million dollars to buy that land with an intention to use it for something. The worst thing you can do to a business is create uncertainty, and this moratorium has created a whole host of uncertainty. We don't even know what's going to happen when it expires. Are you going to extend it again? Could you make a commitment tonight that you will not extend the moratorium so people have some certainty or do you want to sit there and basically say, "We'll just wait a couple of months and see what happens"? At another meeting, one of the board members said, "What's the big deal? We're only talking a couple of months here." That is a big deal. I do not agree with kicking this can down the road till next month because I think we're going to have the same issues, and I also support their request for a waiver. Not only for the reasons they said but because I stood up here last July and told you it was illegal. Thank you.

Grant Parsons, 66936 Mission Ridge: I understand the question on the table is not the substance and content of the eventual SUP but the procedure and whether the moratorium should be granted. I helped draft the original winery ordinances and I'm currently on the agricultural citizens' advisory committee. We're working very hard and I

hope Mr. Knysz knows there is nobody in this room who doesn't want agriculture to succeed. And that committee Ms. Cram is heading is working on two fundamental ways to enhance agricultural revenue. One is through enhanced activities, more square footage, that kind of thing. The other is the parity issue. Arriving at parity for both wineries and what we call traditional farms, which probably pisses people off because everybody considers themselves a traditional farmer. But we are working extremely hard. We are taking this seriously. I oppose the moratorium [waiver request] this evening because the board is under so much pressure from a lot of directions but mainly because we have a work product coming. And I don't know exactly what standards, as Mr. Kohl pointed out, you would apply to a current applicant. New standard, old standard, what is going to be applied? I would add this: Mr. Blodgett probably knows more law on this than I do, but I'll defer to Mr. Fahey on this issue, as we all know he's represented 80 townships in Michigan. He knows township law. On this issue of damages, the lawsuit that is being suggested, I would just like to lower a little bit of the pressure by saying that before damages were proved, there would be two steps. They'd have to prove the moratorium was illegal, and then they would have to prove that the special land use permit would have been approved. That is far from established, so I hope Mr. Knysz and Mr. Blodgett think about that. They came into this township in the middle of a very volatile period of time. I think they bought the land probably with notice. I don't know if they applied after the first moratorium. I can tell you this: I saw the Michigan State articles saying moratoria are valid for the reasons this township used them for. If there was a minor flaw in the process, that is not grounds to say that the eventual purpose of the moratorium was wrong. It's just like the Supreme Court issue on the spacing and the changes between the computer and the printed version. There may be a futility defense. There may be a number of defenses, but I appreciate you people sticking to your guns. Keep close confidence with Mr. Fahey as you examine this, and I think on a procedural grounds, you are correct as it stands. That's why I oppose a waiver of the moratorium for this or any other applicant at this time. Thank you.

John Wunsch, 17881 Center Road: I will not comment on the legal side because there is great expertise in your attorney. I urge you to listen to him. He knows the law regarding these questions quite well. I will speak somewhat to give perspective to the claims of harm, and one of the points has been made by Mr. Kohl: there is no intention to stop agricultural wineries. There is merely an intention to identify within the winery-chateau [portion of the ordinance] issues that could be reduced by replacing it with a better ordinance. There will always be wineries. We want wineries. We need wineries. This is just about the format. So in that context, thinking about harm, it's not as if you simply cannot do your business. But your business may not be the same format that has been done by others many years ago. Additionally, in that context, we don't know, we can't know, what's going to happen with this lawsuit. Two months ago, it looked like the wineries were going to win and there would need to be a good bit of change. But in the last two months, with the multiple successes on appeal from Protect the Peninsula, it looks far more like the wineries are going to lose, in which case we are not going to need some of these dramatic changes that were being discussed. This is why I think it's wise that the township stopped

when they saw that things were turning. They saw that it would be hard to know where we would be legally. They stopped and did not proceed with a proposal that very likely would not have gone through anyway the way it is laid out. There was going to be a great deal of public comment, a great deal of input. We have always compromised. If you look at what happened between 1988 and 2001, we came to great compromise after we had complete opposition. So I don't think it's possible to say there's this huge harm. Yes, I respect this has got to be frustrating. You have a vision, you have a dream, you want to proceed with it. It can be difficult to wait. But when you join a community with a very significant history of working hard back and forth and taking time to make things right before moving forward, when you enter a situation where there is a well-known lawsuit causing disruption, when you enter a situation where there is discussion of potential change and elimination of it, I think you have to expect this. I hope we're going to come up with a great replacement ordinance that we will be happy with. If there is harm, you can see it coming; it's almost self-inflicted. So my position is, in terms of the harm issue, I don't think that is justification to waive. I will leave the legal questions to the legal minds.

Dave Murphy, 6930 Shore Road: I'll probably echo several things that John just said. First on the legalities. You have your expert and we'll put our faith in his work. John also mentioned community and it seems I found myself drawn into a large number of community issues of late. I'll be speaking on another community proposal coming up later on your agenda. I just want to say that I support the rationale of the moratorium, both of them. I understand why they were done. The legality is going to be worked out. To the applicant, I understand the frustration. To think about the decades of work that some of us have put into agricultural preservation, the \$20 million raised to date, and the new effort led by John that will raise that much more and beyond for agricultural preservation, we are a community dedicated to agriculture. We may disagree on how to do it, but we are dedicated to agriculture. The timing is extraordinary bad and that's not your fault. These are harsh circumstances. I have people asking me about the \$135 million claim, where that's going to be paid from. There are people in this community frightened by that. It's a risky time for this community. We need to get the lawsuit understood and under control and behind us. That is why the moratorium took place. As to the legality of that, we'll trust our experts. Thank you.

Mark Nadolski, 10 McKinley Road: I second everything you've heard recently. I've lived on the peninsula since 1973. When I moved here, I thought I'd died and gone to heaven. I committed myself to helping the farmers because this is why I moved here. The cherry orchards, the bays, just the peninsula itself, draws people because of what's here now, not what people would like to see. Many times, we come in with the wrong impressions of what this community is about. It's time to understand that we're fighters. We fight for what we believe in. We fight for the farmers. We're fighting for the wine people, providing they follow the ordinances that the township has worked hard on over many years to create. If they can understand that, we can work with them. If they don't and they want to fight, that's up to them. We appreciate the job the township, the planner, and everybody in the committees is doing to try to make this ordinance work for everybody. We

appreciate all their efforts, and I hope the people of this community do also. Thank you.

Jed Hemming, 2455 Neahtawanta Road: I just have a question. How long? How long are you going to hold business back without doing damage? Because it's not just wineries.

There are other people that have applied and been put on hold. How many people have been thinking about applying, and they're going, "No, I think I'll go to Leelanau County or someplace else." My question is, how long are you going to wait?

Sanger moved to close the public hearing with a second by Shanafelt.

Roll call vote: yes – Sanger, Wunsch, Shanafelt, Achorn

Passed unan

Fahey: I appreciate the comments I heard from both sides. I want to echo something that Mr. Santucci said, which is, if I can paraphrase, we need some certainty. I agree. How much uncertainty have we had in the township over the last several months? Even before the lawsuit, you were trying to revise your ordinance. The lawsuit has put a lot of pressure on the community and on the board as a result. That led to an injunction that seemed to say some things were not legal but never really told us what we could do. Then we had another change, from a higher court that now says that injunction is off the board, the township ordinances are back in place. I don't think the situation we're in now is satisfactory to anyone. The board has already put in motion a process to try to get that certainty by clarifying and amending the ordinances in respect to wineries. You've set a public hearing on the ordinance amendments for wineries for October 11. That's going to be your next meeting. At that time, everyone can have an opportunity to be heard on what's being proposed to be included on that new set of ordinances for wineries. To Dr. Knysz's point, he would like to develop a winery. Under those proposed ordinances, Dr. Knysz would be able to file an application for a special use permit to develop what is referred to as a retail farm processing facility. I have shared that with Andrew Blodgett and encouraged him to talk with Dr. Knysz about that proposed ordinance and to come to the October 11 hearing with any ideas or concerns they have about those proposed amendments. But the only way we're going to get any certainty is to go through the process of amending the ordinance, clarifying it the way that the township wants it to be, and to adopt provisions that we can use to go forward. Looking at where we are now, it is my recommendation that it makes absolutely no sense to grant this waiver. If you grant the waiver, then Dr. Knysz will be filling an application under an ordinance that will be obsolete in a matter of weeks. That's going to be a waste of everyone's time. We all know that even after an application is filed, it's going to take many months of review before an application is acted on. Don't start making an application under an ordinance that is likely not going to even exist in a few weeks. Let's get the ordinance put in place and then have Dr. Knysz make his application under the new ordinance for a winery. It will be considered in due course, and you [the township board] can make a decision. In the meantime, Dr. Knysz in no way is going to suffer irrepressible harm. I would suggest it would be a worse situation to file an application under an ordinance that isn't going to exist and then have to come back and re-file an application. It makes so much more sense to wait until we have solidity. My recommendation is, number one, deny the waiver. You could deny it tonight or you could wait until next month. In some ways, putting it off might make some sense if

you consider adopting as a part of your zoning ordinance a moratorium that would be geared to the zoning ordinance itself. That would be one reason to delay the decision on the waiver, to be able to adopt an ordinance that would clear up any uncertainty that anyone might have about the moratorium being legal. The only argument I heard made about the unlawfulness of the moratorium is that you didn't go through a correct process. Nobody has said that there's anything about the moratorium that is unreasonable. If it's a question of holding a public hearing, let's do that in October. Let's re-adopt the moratorium in a way that nobody can claim is invalid. But then let's put that behind us, let's go forward, adopt the amendments to the ordinance, the substantive amendment that Dr. Knysz and others can use to submit their projects to the township for consideration. My recommendation is to defer this until October 11. In the meantime, think about the issues with respect to Dr. Knysz and his claim of irreparable harm. Consider putting on our agenda on October 11 a zoning ordinance amendment that would correct the claimed procedural violation that there was not a following of the zoning process. That's my thoughts, happy to answer any questions.

Sanger: the word "uncertainty" sticks in my mind. What I heard tonight, if I was in the business, I would not want to take any more risk than I have to. For government to give an approval tonight, in the face of uncertainty, creates more uncertainty. It makes sense and is fair to everyone here to table this until next month. We need to get to work amending the zoning ordinance so there's no question about the time out we're taking. We were all prepping for a trial three weeks ago that got canceled. We need to take the time to make sure that if there is an issue, we're not compounding it.

Shanafelt: in my mind, the concept of the moratorium made total sense in the context of what was going on. In the middle of the zoning ordinance re-write, the context of the lawsuit, things were evolving. The purpose of the rewrite is to harmonize how we view agriculture. Wineries in the context of the peninsula are an aspect of agriculture. The aim is to create a unified, comprehensible, non-contradictory set of ordinances so agriculture can evolve and develop in in a sensible way. The moratorium allows us to complete that process and allows them the ability to understand what they're applying for, what they can do, how to approach the process, what is allowed, what makes sense, in the context of what we want to do here on the peninsula. Things are going to change and everything becomes moot. I think we just need to finish the process here so we can move forward in a sensible manner.

Wunsch: I agree. I also want to address something that has come up a couple times, once internally within our offices and now from Mr. Knysz. I feel a need to address a threat that has been made, which is that we will sell to a tribal entity. We would welcome any tribal entity purchasing real estate in the township. We would welcome a winery presenting plans to us that adhere to our ordinance. And we would welcome a pig farmer provided that they adhere to GAAMPS and our zoning ordinance. I feel it's a bit offensive for the industry to be denigrating tribal entities by threatening to sell to them.

Achorn: I agree that we should wait. There is absolutely no way, as a former CPA, that I would advise a client to proceed with a major project without knowing what the rules are.

Here, the township doesn't even know what the rules are. How can we allow someone to spend the money on a project with no rules? It is the wisest thing to wait till everybody knows what we're dealing with. It's just common sense.

Shanafelt: given that the lawsuit resolution could take years, it's incumbent upon the township to define a set of ordinances as best we can until that issue is resolved.

Obviously, if there's some legal things going on that we have to change, we will. Until then, it is incumbent upon us to put something together. Jenn and her crew and the agricultural committee put in yeoman's hours to make this happen and get it done as quickly as possible. It's not as if we're not doing anything. We want to get it done. We just want it to be a good working product.

Sanger moved to table the decision on granting the Family Orchards LLC waiver request until October 11 with a second by Achorn.

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

Sanger: do we want to take on Mr. Fahey's suggestion that we establish a temporary moratorium in the zoning ordinance?

Fahey: I think that would be a wise course. We're already going to be holding a public hearing on October 11 anyway on the winery ordinance. We could also notice a public hearing on a zoning amendment to authorize a moratorium that would simply run co-extensively with the moratorium that was already ordered back in June. That would resolve the arguments that have been made that the present moratorium was not adopted under a correct statute.

Wunsch moved that the township board initiate a proposed zoning ordinance amendment to establish a temporary zoning moratorium on the consideration, approval, location, erection, construction, installation or commencement of any new or abandoned farm processing facility or new or expanded use permitted by special use permit within the A1 agricultural district and to schedule a joint public hearing with the planning commission on October 11, 2022, to consider and possibly adopt such a zoning ordinance amendment with a second by Sanger.

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

3. Public Hearing on Lemanski Bed & Breakfast SUP #141

Cram: the Lemanski Bed & Breakfast SUP number 141 is located at 550 Camino Maria. The property is zoned R1A, rural and hillside residential. The applicants are requesting rental of two bedrooms for up to four guests. No exterior improvements or changing character to the single-family residence are proposed. Required parking for the proposed use will be accommodated in the existing garage and driveway. Adequate water and sewage disposal also exist for the existing residents and proposed bed and breakfast use. This item was before the planning commission on July 18 for a public hearing, where the planning commission unanimously recommended approval. Both staff and the planning commission found that the application met all of the general standards of section 8.1.3(1) as well as the specific standards under section 8.1.3 (3) for special use permit applications. In addition, the staff and planning commission found that the application met all of the standards for section 8.7.3(6) specific standard requirements for bed and breakfast

establishments. The property is 2.74 acres according to the assessor's records. As noted, the applicant meets required parking and other things. The planning commission recommended approval with nine conditions of approval that are included in your packet. With that, I would be happy to answer any questions you have.

Sanger: I know this property quite well. It is a good thing to do. The property is easily able to accommodate guests in the home and property.

Cram: I forgot to note that we did receive two letters of support, which are included in the packet. We have received no public comments in opposition to the requests. The applicant is not present this evening but I do have a phone number if there are any questions.

Achorn: I have also walked the property when it was under construction. I think there is adequate land and parking in addition to excellent separation in the house.

Shanafelt moved to go into public hearing with a second by Sanger.

Roll call vote: yes – Sanger, Achorn, Shanafelt, Wunsch Passed unan

Grant Parsons, 6936 Mission Ridge: the B&B ordinance requires it to be owner occupied, correct?

Cram: correct.

Shanafelt moved to close the public hearing and go back to regular session with a second by Wunsch. Motion passed by consensus

Sanger moved to approve SUP #141 for the Lemanski Bed & Breakfast based upon the findings of fact and the nine conditions of approval with a second by Shanafelt.

Roll call vote: yes – Wunsch, Shanafelt, Achorn, Sanger Passed unan

4. Public hearing on Cooley Bed & Breakfast SUP #142

Cram: the Cooley Bed & Breakfast is located at 6901 Mission Ridge and is zoned R1A rural and hillside residential. The application includes the request for rental of three bedrooms for up to eight guests. Again, no exterior improvements or change in character to the existing single-family residence are proposed. Required parking for the proposed use will be accommodated in an existing driveway. Adequate water and sewage disposal exist for the existing residents and proposed bed and breakfast use. This item was heard at a public hearing before the planning commission on August 15, 2022, where the planning commission unanimously recommended approval. There were originally nine conditions of approval. One condition was added. At that time, the staff and planning commission found that the application met all of the standards for section 8.1.3 on the general standards for an SUP as well as section 8.1.3(3), the specific requirements of an SUP. The minimum lot size requirement of one acre is met. The property is currently 2.3 acres according to the assessor's records. The applicant has met all of the fire safety requirements. The tenth condition of approval that was proposed was based on access. The planning commission discussed this and the applicant participated and agreed to the proposed condition of approval about advertising to make sure that guests use the primary roads and the most efficient means to find the bed and breakfast. With that, there are 10 conditions of approval, and we recommend the township board approve the application.

Acorn: it allows up to 10 sleeping rooms?

Cram: you're looking at a copy of the certificate of occupancy from the uniform

construction code. The reason I provided that information is that a bed and breakfast is a use that is allowed in a residential structure. We want to assure that residential structure was built according to the current building code. By providing a copy of the actual building code, you can see that our zoning ordinance is consistent with the construction code. They have received the appropriate certificates of occupancy for the original residents as well as the conversion of a former attached garage into living space where this proposed bed and breakfast use is taking place. The construction code allows for more than what our zoning ordinance does.

Achorn: the reason I ask is that this house has a lot of bedrooms.

Cram: it has several bedrooms. One of the conditions of approval that the applicant is aware of is that Christina Deeren, the director of zoning, and I actually go out and do a field inspection to confirm the number of bedrooms. We also do that to make sure the water and sewage disposal is adequate for the proposed use because of the on-site septic system. We want to make sure that the number of bedrooms that were approved by the environmental health department are indeed there.

Sanger: this previously was an adult foster care facility. I don't recall how many rooms were in operation. I think it was six. It's been a fully licensed adult foster care facility for more than 20 years.

Shanafelt: it makes a huge amount of sense.

Sanger: this meets the need for temporary lodging on our peninsula. Frankly, I would rather see this bed and breakfast than short-term rentals. This is owner occupied. Short-term rentals by and large are not.

Cram: this application also received two letters of support from neighbors. That helps to reassure us that it is a good fit for the neighborhood.

Shanafelt: at the planning committee meeting, one request was made. Due to the presence of a private road near the area, they had to ensure as best they can that traffic adheres to public roads. This was requirement number 10. They agreed to include this as a house rule.

Board discussion.

Sanger moved to open public hearing with a second by Shanafelt.

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

Erin Cooley, 6901 Mission Ridge: I want to express my gratitude for being considered for the SUP and I'm happy to answer any questions.

Grant Parsons, 6936 Mission Ridge: I sent a letter that coordinated the nearest neighbors to the proposed bed & breakfast. We all support it, and not just because they're nice people. Jenn, you've set some very good standards for this stuff. The owner occupation is critical, as David raised. That maintains the neighborhood. Thank you for your consideration.

Dave Murphy, 6943 East Shore: I support this application again as I did at the planning commission level. Although I adamantly oppose non-owner-occupied short-term rentals, an owner-occupied B&B at this property is appropriate. The property meets all criteria, and it was previously used for assisted living, which was a more intense use than a B&B

will be. Neighbors support this use and community approval is a huge factor to me. In addition to the neighbors' support, the Cooleys have already proven to be good neighbors by continuing to allow access through their property to Pelizzari Natural Area, which spares walkers from adjacent neighborhoods from driving onto Center Road, thus mitigating traffic in a busy portion of the township. To summarize, we have an appropriate use of an owner-occupied B&B that's supported by neighbors and the owners have already demonstrated goodwill to our community.

Jed Hemming, 2455 Neahtawanta Road: I have nothing against this. What's the difference between a three-bedroom bed & breakfast and a farm stand? If I applied for a farm stand on Neahtawanta, half this room would be in opposition. What's the difference?

Mark Nadolski, 10 McKinley Road: I strongly support this. Fight short-term rentals.

Shanafelt moved to close the public hearing with a second by Sanger. Motion approved by consensus

Sanger moved to approve special use permit #142, the Cooley Bed & Breakfast, based upon the findings of fact and 10 conditions of approval with a second by Achorn.

Roll call vote: yes – Sanger, Shanafelt, Wunsch, Achorn Passed unan

5. Renewal of PDR monitoring contract for one year at the 2021 rate

Wunsch: the best way to move forward is to renew the existing contract.

Shanafelt: I had a couple questions. Is there a legal requirement that we monitor every year?

Cram: yes.

Shanafelt: do we know how much time is spent monitoring?

Cram: monitoring happens constantly. But each fall, per the contract, Christina [zoning director] and Sally [assessor] go inspect all 114 conservation easements the township holds. They split those up and then each of them prepares an annual report to the township board with recommendations, noting any violations.

Board discussion.

Sanger moved that the supervisor be authorized to enter into an agreement with Ms.

Deeren and Ms. Murray to extend the current PDR monitoring contract for one calendar year, 2022, at a rate not to exceed the 2021 rate, with a second by Shanafelt.

Roll call vote: yes – Sanger, Achorn, Wunsch, Shanafelt Passed unan

6. Parks Committee update

Skurski: I passed something around. What you're seeing is the playground at pavilion number one [at Bowers Harbor Park]. I have a couple of requests. We need some additional funding. Our volunteers did a great job cleaning up the parks. We have six new volunteers and need about \$175 to outfit and train them. They'll be out in the parks in October. We need specific signage for some of the unauthorized activities we're seeing. Can't have dogs in the baseball diamond. We need additional signage for staying on the trail. We're seeing a lot of off-trail hiking at Bowers Harbor, the lighthouse park, and Pelizzari. I'd like about \$500 for that. So that's an additional \$675 that we'll need. Then, looking at the discussions we've had with the executive group on putting together a playground at pavilion one, we want to remove the old items and replace them with two

items, a swing set and a playground designed for five to twelve year olds. In addition, we want to add a zip line at the large playground. The cost for the zip line is about \$17,000. The playground is normally \$31,500. It's on sale for \$20,400 if we can get the cash and even get a purchase order together by the end of October. The swing set is about \$3,000. We've been targeting about \$49,000, which includes a \$14,000 fund that the community has assembled for the parks. Then also a \$35,000 addition from the board. Those three pieces of equipment are \$40,000. In addition, we need some materials for the flooring and also a guard rail. We're assuming about \$10,000. So we will be right about at our estimate. Unfortunately, we weren't able to get an estimate from Sinclair in time for this meeting. If we can get a purchase order done by mid October, we could probably get it installed in November, before the ground freezes. That would lead to a public event, the fundraising kind where we could show the new equipment, bring people in, and hopefully start generating some more cash for future projects. On that issue, are there any comments or questions from the board? We would come in and make a formal request with basically a laid-out plan and the detailed pricing. We don't really want to miss this opportunity to get a \$10,000 discount on the materials and installation that we are looking at.

Shanafelt: I don't think we need more information. I just want to clarify, these are modular? We can add on to them later?

Skurski: yes. Game Time is the manufacturer. It's what we have at Haserot.

Board discussion.

Sanger: can I ask the treasurer, is this in the budget for this year? Can we fund this?

Ahorn: it's not in the budget. We do have the restricted funds that came from the donations; that was about \$14,000. We could touch the ARPA money, about \$30,000, for the balance. I know it's limited, but it's a small amount that we can start earmarking for the ARPA money. With the public events, we can talk to the public and get more input regarding what they want. They can make donations or promises to fund specific items they want. In a way, they would be voting for what they want in the park by putting some money behind that.

Sanger: the number one item of concern on the survey was flush toilets. We just keep pushing that back.

Shanafelt: this came up. Flush toilets are a huge cost. If we do a little bit of repair work, we can make due with what we have. The playground was number two and we can address it now. This is impact.

Sanger: I would like to have the board set a goal for when we can get flush toilets.

Board discussion.

Skurski: we're getting ready to do the next five-year plan. Looking at those surveys and public meetings, we get reinforcement on what the public wants. It's a lot easier to buy a \$35,000 playground than a \$250,000 toilet system. We'll start laying out the financial impact of the plan. I did planning in the business world. When you lay it out in time and dollars, you and the community get a better look. We're starting at a low baseline. Number three is getting the boat launch for Kelley. We're looking for consultant help. We'll have community involvement. First January meeting, we'll have our proposal.

Tonight we need the approval for the \$675.

Achorn: I can see the need for the \$675; it's a safety matter. We'll have to make it happen.

Board discussion.

Wunsch moved to approve additional \$675 for parks budget with a second by Shanafelt.

Roll call vote: yes – Achorn, Sanger, Wunsch, Shanafelt.

Passed unan

7. Correspondence in packets

Wunsch: I realize I skipped original business item number five. We're looking at a change to administrative policy on how to handle correspondence in packets. We've had some requests to put dozens of pages of material into the packet in the last couple of meetings, so we're just going to set a standard three-page limit on material to be submitted as correspondence. Obviously, if someone has an item that is on the agenda, they may submit more than that. We just want to avoid abuse of the correspondence section. I'm looking for consensus from the board.

Shanafelt: seems reasonable. If someone has more to say, there's always the option to put it on the agenda for discussion.

Sanger: it's okay with me.

Achorn: I agree with that. It's a burden on the staff and our copier.

Shanafelt: that is not insignificant.

Cram: we get a lot of last-minute submittals. Can we formalize our process for last-minute additions?

Wunsch: at the last meeting we touched on this. We looked at a 24-hour lead time so the clerk's office can fold it in.

Cram: I volunteer to review this and get a policy finalized.

8. Motion to enter closed session in order to consult with the township attorney regarding trial strategy in the winery litigation pursuant to MCL 15.268(1)(e)

Wunsch: before entering closed session, are there any citizen comments?

9. Citizen Comments

Andrew Blodgett, 4591 Brook View Dr in Acme Township: as a positive comment, thank you for Bowers Harbor Park. That's the main way my family engaged with this township for 15 years. We had kids in baseball, and I went from hating the long drive out there to really enjoying that park. We ran there, we made our way to the nature preserve, played tennis there, enjoyed the playground. It's a really important, underused asset; we really love it. Andrew Blodgett of Parker Harvey has some somber comments. I think that the four of you had good intentions tonight, but I think you made a mistake. Sometimes you miss the forest for the trees. I expected some pushback tonight that your moratorium were valid, and I didn't hear that from you or your attorney. In fact, I heard that we need a motion for a third moratorium to get it right. I think that is an implicit acknowledgement that a fix was needed, meaning something was wrong. I think the summation you would like is that it's okay to overlook these procedural mistakes because you have good intentions. I don't doubt your good intentions; you're in a hard spot. But the position that I overlook mistakes because you have good intentions works if you're a spouse, if you're a parent, but not if you're government. That is due process rights. You're taking away my client's due process

rights by making procedural mistakes that cost him. I think that's disappointing. Thank you.
Jed Hemming, 2455 Neahtawanta Road: quick comment on pickleball. I am a good supporting spouse; I'm not on the front lines on this. Some of you guys know I kind of like cars. If somebody came to me and said, I know where there is a \$330,000 Lamborghini for sale, and I'll give you \$300,000 of that, by God, I'd come up with a \$30,000 to buy it. That's where you guys are with this pickleball thing. I think it's up to you to make this happen because this is an opportunity. I live by there; I play pickleball. Last time I played, there were 30 people playing. They're there every weekend and four or five days a week. This is an opportunity to leverage a hell of a lot of money for the benefit of this township and parks. Thank you.

Monnie Peters, 1425 Neahtawanta Road: I'm not going to talk about the zoning rewrite tonight; I'm going to talk about roads. Many months ago, I remember this board discussing whether we were going to support the Grand Traverse County Road Commission [taking jurisdiction of] Center Road or whether we would stay with the state. Every time I drive on Center Road, I say, "This road is so well done." It was a fabulous decision and I'm really glad we went that way. I see Peninsula Drive has a little bit of new stuff on it, but then there's Neahtawanta Road. This isn't really your purview but maybe you can talk with the road commission to do something about our potholes. Everybody who drives down Neahtawanta drives down the middle of the road unless there's someone else coming because the sides have gotten so bad. I don't know what you can do, but if anything comes up with the road commission, tell them there's people in Neahtawanta who would really like Neahtawanta Road to be improved.

10. Board Comments

Shanafelt: the peninsula is complex. The general township structure wasn't designed to handle these complexities. Is there another form of government that could help? I'd like to ask Bill if there's a more appropriate form of government and research that.

Wunsch: I've avoided talking to the road commission about Neahtawanta because they're going to cut down trees.

Sanger moved to enter closed session pursuant of to MCL 15.268(1)(e) with a second by Shanafelt.

Roll call vote: yes – Shanafelt, Wunsch, Sanger, Achorn Passed unan

Wunsch moved to leave closed session pursuant to MCL 15.268(1)(e) with a second by Sanger.

Roll call vote: yes – Achorn, Shanafelt, Wunsch, Sanger Passed unan

Wunsch: any updates or comments?

11. Adjournment

Shanafelt moved to adjourn with a second by Sanger. Motion passed by consensus
Meeting adjourned at 10:18 p.m.