

# PENINSULA TOWNSHIP

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## PENINSULA TOWNSHIP

### PLANNING COMMISSION MEETING MINUTES

TOWNSHIP HALL

13235 Center Road

Traverse City, MI 49686

October 19, 2020

7:00 p.m.

Corrected by Beth Chan 11/17/2020

1. **Call to Order:** 7:00 p.m. by Hornberger
2. **Pledge**
3. **Roll Call:** present: Dloski, Couture, Shipman, Hornberger, Oosterhouse, Hall, Wunsch; also present: Mielnik, Deeren, Attorney Miehn (via phone)
4. **Review for Conflict of Interest:** none
5. **Brief Public Comments:**

**Nancy R. Heller, 3091 Blue Water Road, Traverse City:** In reference to business item b., the zoning update public hearing: concerned that residents do not understand that it is a zoning ordinance public hearing.

**Kurt Peterson, 1356 Buchan Drive, Traverse City:** Agrees with Heller's comments. The packet that was sent out on October 14, 2020, was only sent to 200 people on an e-mail list. There are significant changes to the zoning ordinance. Peterson states the legal requirement of the Michigan Zoning Enforcement Act. There is a legal issue to inform the public. Peterson reads the Record Eagle notice and states it is unclear about making significant changes. The packet additions are against meeting notifications and ask that they be removed.

**Lou Santucci, 12602 Center Road, Traverse City:** The citizens did not know there was a public hearing on the zoning ordinance. Requests that the hearing is tabled and the township does a better job advertising the nature of the hearing.

**Mielnik:** The township attorney approved the legal ad of the public hearing. The ordinance update has been ongoing and it has been on the township website since January. The notice requirements have been satisfied. It is possible to continue the hearing to the next meeting.

**Miehn:** The legal requirements have been satisfied and you are fine to move forward.

**Hornberger:** The language is correct for a hearing? It says zoning update versus zoning ordinance.

**Miehn:** The language is correct for a hearing. You can continue the meeting (hearing) to the next month if needed.

**Wunsch:** We are doing the first run-through, if the public has concerns with language inserted in the draft, there is an opportunity to comment.

**Mielnik:** Dave Sanger and Christina Deeren weighed in recently with edits on the ordinance. There were additional comments included in the packet. The draft has been on the website since January and subsequently updated.

**Hornberger:** We are at item six, to approve the agenda, as presented. If anyone feels uncomfortable with a public hearing, now is the time to request that it be postponed until next month.

**6. Additions to Agenda/Approval:**

**Moved by Dloski to approve the agenda as is, including the zoning update, seconded by Wunsch, open to pulling any items that the public has problems with to reevaluate at a subsequent meeting.**

**No action, discussion**

**Hornberger:** Can the public pull an item from the agenda? I don't think they can pull it.

**Dloski:** No

**Shipman:** We can have the hearing tonight, and continue to the next meeting.

**Discussion on the public hearing.**

**Mielnik:** The planning commission bylaws indicate that typically no action is taken the night of the public hearing.

**Hornberger:** We will leave the agenda the way it is, start the public hearing tonight, and likely continue the public hearing next month at the November meeting.

**Moved by Dloski to approve the agenda as presented, seconded by Wunsch.**

**pass unan**

**7. Consent Agenda:**

**a. Approval of Meeting Minutes: Planning Commission Meeting, September 21, 2020**

**Hornberger:** Pointed out three minor changes to the minutes: on page one, add "seconded," on page three, page three, sentence correction to "troublesome without. ~~Without,~~" and remove the motion that is redundant on the middle of page three.

**Moved by Wunsch to approve the consent agenda, as amended, seconded by Shipman.**

**pass unan**

**8. Reports:**

**a. Zoning Board of Appeals (Couture):** No meeting, no report. Next meeting October 20, 2020.

**b. Master Plan Update (Mielnik)**

**Mielnik:** On October 5, 2020, the steering committee previewed the online engagement tool that will be rolled out to the community. Expecting some refinement before it is rolled out.

**9. Business Items:**

**a. Lavender on Old Mission Peninsula - SUP #138 Public Hearing**

**Hornberger closes the regular meeting and opens the public hearing.**

**Mielnik:** Lavender on Old Mission was introduced last month, this meeting was advertised, and the notices were sent. This is an application for a lavender operation that will grow and sell lavender products under a farm stand designation. A special use permit for a nursery and greenhouse is being requested.

**Amy Parker, 4133 Old Mission Road:** We currently grow about 8,000 lavender plants and have an agricultural building which is twenty-four by twenty-four. Would like to use the entire square footage of our building.

**Deeren:** A roadside stand is 150 square feet and can be used for retail, so they can only use the 150 square feet for retail out of the twenty-four by twenty-four building now under construction.

**Mielnik:** The building proposed is larger will be used for processing and more retail sales. What is not permitted without ~~and~~ an SUP is the larger sales area, processing of lavender, packaging of lavender, and making products.

**Tom Menzel: 9704 Edgewood Avenue, Traverse City:** Owns the property at 11654 Center Road and supports the project.

**Lou Santucci, 12602 Center Road, Traverse City:** Present on behalf of his brother, who owns the farm across the street from Lavender on Old Mission. He, along with his brother, expresses support for the operation and encourages farm operations on the peninsula.

**Josh Schexnaildre, 11553 Center Road, Traverse City:** Owns the property close to the Carrol Road property. He fears the added traffic will impact his property on the south end of his field, due to parking issues. Secondly, he was approved for a 150 square foot farm stand, and unclear why Parker has a larger building.

**Parker:** Will provide a copy of the deed restriction and her attorney's research.

**Mielnik:** The packet contains e-mails and letters (from Arnold and Allison Moomart and Paul Conlin) that have come in concerning the deed restriction. Also, there are letters in the packet concerning the deed restriction.

**Parker:** Reads a portion of the letter from the packet from Ruzak. Points out the deed restriction and reads item number one. We do comply with agricultural zoning. It does not restrict us to 150 square feet. It is not an accessory building.

**Dloski:** The building was built larger than what was required by the zoning ordinance?

**Mielnik:** There is an existing farm stand, now under construction, that is going to be incorporated into the larger building if approved as a SUP. The building under construction is (24x24) includes a farm stand with 150 square feet being used for retail space. The balance is used for processing and agricultural uses. If approved, a larger building will allow for more retail space and mores space for processing of lavender.

**Wunsch:** There is not much of an allowance in the zoning ordinance between a 150 square foot building and a larger building (i.e. a winery). The 150 square foot retail space would be separate or in the larger building.

**Hornberger:** How many acres?

**Parker:** 10.75 acres

**Mielnik:** If it were forty, it could be a farm processing facility, but it is not. It would be a use by right which would not require a special use approval.

**Hornberger:** Right now, the small building is approved and being built as we speak. Now we are talking about the larger building that will be built in the future.

**Parker:** Right now, we are looking at using the entire 24 by 24 space.

**Mielnik:** The approval is for the larger building. What products are coming in for processing?

**Parker:** We make culinary and body care products. Everything we sell contains our lavender in some form and are value-added products.

**Mielnik:** What other raw materials will be brought in?

**Parker:** Distilled water. The soap is made off-site. Everything is natural and non-toxic.

**Hornberger:** You are currently growing the lavender and the value-added products are made off-site.

**Parker:** They are created at our home.

**Hornberger:** So, you will be going from creating the lavender products in your home to then creating the products in your building.

**Parker:** Yes, currently in our detached garage.

**Dloski:** What type of public interaction would you expect if this is approved?

**Parker:** A fundraiser event for veterans. On a daily basis, if you use Harbor View as an example, there are a dozen cars there on average. Brys Estate is a different story with their tasting room.

**Hornberger:** Is the product line to include other plants?

**Parker:** During the time period May to October, there is a need to add plants, pumpkins, and “u-pick” flowers. This will extend the season. The lavender is limited to two weeks.

**Couture:** What is the parking situation?

**Parker:** There is ample space.

**Mielnik:** The site plan illustrates six parking spaces.

**Dloski:** Do the products that are sold here have to be grown on-site?

**Mielnik:** That can be a condition of the SUP that the retail activities are limited to what is grown on-site. We are putting it under a nursery/greenhouse, which is the closest category.

**Wunsch:** Historically have allowed some flexibility.

**Wunsch:** The finished agricultural products should be grown on-site, lavender plugs could be brought in.

**Hall:** Should the retail stand have soap produced off-site and sold at the stand with the lavender grown on-site? Does the soap have other ingredients that are not grown on-site? There should be flexibility

**Mielnik:** Is there outside storage of raw materials such as containers or bottles?

**Parker:** They will be contained inside the building.

**Wunsch:** It makes sense when looking at the nursery items and should meet the specifications of items sold at a farm stand or roadside stand.

**Mielnik:** There is concern that material would be brought in from elsewhere.

**Parker:** This is not my business model.

**Wunsch:** Want to keep alignment between this and the ordinance language.

**Dloski:** It is a little amorphous and hard to define a farm product.

**Wunsch:** With value-added products in a farm stand, the principal ingredient, or branded ingredient should be grown on-site.

**Mielnik:** Affiliate farm language could be connected.

**Wunsch:** If we imposed those limitations, products could not be imported.

**Josh Schexnaildre:** Is there a requirement of what percentage is grown, in your product, since it is being made off-site?

**Parker:** When you create a product, it has to have an accurate label.

**Discussion of ingredients in products and other operations on the peninsula.**

**Deeren:** An example is Brys Secret Garden Lavender Fields and Store.

**Hornberger:** Brys Secret Garden Lavender Fields and Store and Harbor View Lavender Farm.

**Hornberger closes the public hearing and opens the regular meeting.**

**Couture:** In favor of the project as presented.

**Mielnik:** There are issues to navigate with what is grown on-site, will put language to that.

**Wunsch:** Comfortable moving this forward as long as there is alignment with protecting local product requirements.

**Hornberger:** It works with two lavender farms already. We are directing the planner to come up with verbiage to look at for the November planning commission meeting. If we are comfortable, it will be approved at that meeting to pass onto the town board. The township board will have a public hearing and a vote.

**Mielnik:** An actual document will be prepared.

**Moved by Dloski to table the Lavender on Old Mission Peninsula - SUP #138 to the next meeting and direct Mielnik to prepare finding of fact and conclusions consistent with what was discussed tonight, seconded by Oosterhouse.**

**Roll call:**

**pass unan**

**Shipman:** Will legal counsel look at the deed restriction?

**Hornberger:** Yes

**Hall:** Concerned about the traffic at the corner and the potential for accidents. It is a state road, there are dangers in these types of intersections.

**Discussion of the intersection and status of Center Road.**

### **b. Zoning Update – Public Hearing**

**Hornberger closes the regular meeting and opens the public hearing.**

**Mielnik:** The zoning ordinance dates back to 1972 and it has been amended many times. It has now been updated. This began in 2015 when a consultant was selected. Then, from 2016-2017, a diagnostic review was done, and from 2016-2018, drafts were created. A committee was in place and did a lot of work. Recently, from 2019–present, planning, the attorney, the township engineer, and other departments have reviewed the zoning ordinance. A new zoning map has been created, and informal public comments have been taken since January. COVID has discouraged large gatherings to discuss the update. Presents a PowerPoint presentation on the ten reasons to update a zoning ordinance.

**Planning Commission members discuss the new, restructured, and updated definitions and aspects of the updated zoning ordinance. Discussion of how to proceed.**

**Monnie Peters, 1425 Neahtawanta Road, Traverse City:** It is unclear what you are asking this evening. If it is the whole document and the additions, it should have been stated. The additions/corrections are excellent. It should have been better advertised.

**Discussion of a larger space for the continuation of public input and the possibility of a virtual discussion.**

**Terri McDermott, 12372 Center Road:** This is a huge undertaking and there are bigger changes. If the (citizens of the) township know of the changes, there would be more involvement. Suggests listing every change and send to the township residents. Pull out the changes and send them to the citizens.

**Dloski:** What are some of the drastic changes you are concerned about?

**McDermott:** This is huge and should be supported by the citizens of the township, unaware until recently.

**Hornberger:** Has read it and has not seen radical changes and would like to know specifically what is wrong and what is changed. The purpose was to make it clearer.

**Kurt Peterson:** 6.2 was changed. Discusses how it was changed. States that the packet additions contain three substantive changes. Cites 6.2.2 E on page 29, the short-term rental, and the R1-A zoning district. It now applies to all zoning districts, not just R1-A. Peterson does “home share” through Airbnb and now will be wiped out. Explains how he does business.

**Hornberger:** What in the previous ordinance permitted you to do this and have paying guests?

**Peterson:** A house designed for or used by one family. The ordinance did not disallow this.

**Hornberger:** If the ordinance permits it, it will say it.

**Peterson:** Reference the last meeting of the zoning ordinance committee: I asked how it looks like short-term rentals won't be allowed in all zoning districts. It applied to R1-A. Refers to the discussion of the group at the time.

**Miehn:** Will give a legal opinion on this topic.

**Peterson:** Gives an example of Susan Reaume v Township of Spring Lake. Recites MCL 125.3207. Since 2015, there are over twenty-two new Airbnb listings in the township, there is a demonstrated use for Airbnb.

**Couture:** The intent of the rewrite was not to change what the ordinance says.

**Peterson:** Suggests a short-term rental discussion between the township and a citizen group.

**Hornberger:** There are different opinions on this issue. This is not a change for 6.20.

**Miehn:** An opinion will be prepared for the next meeting.

**Peterson:** No complaints from neighbors with home-sharing.

**Mielnik:** For context, there was an expectation that state laws would change in the near future regarding short-term rentals. That did not happen. The township was on pause (in conversation) waiting for this.

**Deeren:** The opinions that I have received, ~~says~~ say these are dwelling units. We do not have a way for a room rental by a SUP, B and B for less than thirty days. It says dwelling, and even on agricultural property, it is a dwelling unit. Believes it applies to all districts of the ordinance.

**Miehn:** It does apply to all districts, case law in Michigan indicates that. Miehn will provide clarity before the next meeting. The legislature on the AirBandB issue has been frozen in committee due to COVID-19 and executive orders. It is not appropriate to pick out sections of the ordinance in a meeting like this. Miehn would rather address it in a more organized manner.

**Lou Santucci: Reads a statement from his brother Mark who lives on Center Road:** These last few years have been a trying time for tart cherry farmers. It appears that the problems farmers face will continue into the foreseeable future. Those who have been paying attention can see the results, more farms being sold and turned into housing developments. Short-term rentals are partial solutions to the financial problems of cherry farmers. Peninsula township officials do not seem to recognize the financial pain these farmers have faced. Instead of promoting ways these farmers can hold onto their farms, they seem to be doing everything they can do to push the farmers out. This proposal to eliminate short-term rentals is just another case in point. When I first bought my farm in Peninsula Township it was a farming community with a few retirement homes for the wealthy. Now we are a wealthy retirement community with a few farms. Farms in the rural landscape are what brought these people here. If you want more five-acre housing and fewer farms, then keep doing what you are doing. One of these days a farmer will sell his or her land to someone who wants to build an apartment complex and then your abuse of zoning rules will come back to bite you.

**Lou Santucci:** I totally disagree with the township attorney, there are two different viewpoints on legal issues and the courts decide the issue. For example, the zoning ordinance does not say anything about me inviting someone to stay overnight at my house. Does that mean I can't have someone stay at my house because the zoning ordinance doesn't allow it? No. His point that basically that the short-term rentals are limited to the ag area and the counter-argument as well. Anything that is not in the zoning ordinance is not allowed. That is not true. Here are my reasons why I am against the proposal that is brought forth for Airbandbs. It is a substantive change. The provision is in there that this has not been in the zoning ordinance and says something to the effect that you advertise it is an admission that you are in violation of the ordinance. That is a substantive change. There has not been a discussion on this proposal. There was an informal meeting, two

years ago, and there was not a follow-up. At that time, there were three people against Airbandbs, and several people were in favor. The problems highlighted by the people opposed, related to whole-house rentals, and that was solved by the township. In our situation, let people have an owner-operator situation. There does not seem to be a need to discontinue this. Santucci does not understand the opposition to Airbandbs. We should offer accommodations to visitors. We receive referrals from those who can't afford hotels in the area. The description of the website says this is an update and it is a major change. Santucci views this peninsula as anti-everything. Wineries were not allowed to serve food and you were putting people in danger. The wine was free at the time. The township changed its rule and food could be served. The township bans things as a selfish view. The language of the proposal can be struck down because the language is vague. Table this aspect of the zoning changes.

**Nancy Heller:** Likes the setup of the zoning ordinance. This packet should be available for residents to pick up a copy. The revisions have been on since January. Heller attended meetings, about seventy meetings, with the ordinance reaching this stage, it gets confusing until you see the draft. I have not gone through the whole ordinance. For example, on page one, 2-13, roadside stands, does this have to be an agricultural zone or anywhere?

**Hornberger:** Must be operated as an accessory use of a farm.

**Heller:** It was not incorporated in the last one under roadside stands.

**Mielnik:** On p. 213, you can find the definition, the change was to move the requirements out of the definition.

**Heller:** On p. 3, 3-15, what is the definition of a registered engineer?

**Mielnik:** Typically, a PE, a professional engineer that is registered in the state of Michigan.

**Heller:** Referring to p. 4, 4-1, reference the A-1 agriculture under the maximum lot coverage by all structures, 25%, this is a drastic change Also, minimum building width twenty-four feet. That is a big change.

**Deeren:** That is currently in the ordinance, twenty-four feet minimum width is now consistent to all zones.

**Heller:** On page five, having a hard time with the phrase private party sales.

**Heller:** On p. 6, 6-15, define primary road and it is more restrictive or not from the current draft?

**Mielnik:** There is no definition in the ordinance.

**Shipman:** Number 110 in the definitions. Reads definition in the ordinance.

**Heller:** What is a prohibitive sign?

**Deeren:** One found in the road right away.

**Heller:** On p. 9, 11-1, questions non-conforming parcels? What happens if you have meets and bounds but a continuous parcel that is not conforming?

**Mielnik:** You cannot build on non-conforming land if you have an adjacent parcel that you could add land to make it ~~continuous~~ contiguous.

**Heller:** On p. 13, 2-11, a non-conforming building/structure. What happens to the PDR contracts? People sold their development rights, signed a contract, are they now, if this passes, going to be prohibited?

**Deeren:** This is not PDR. Those have specific regulations within those easements that they have to adhere to. They gave up residential building rights.

**Mielnik:** Referring to p. 4, footnote H, which is an existing provision in the existing ordinance. That deals with a reduced lot size if it is in your agreement.

**Heller:** If it is not in your agreement, the concern is if the township asks for additional millage. Concerned about the future. If you sell your development rights, then your position has changed.

**Hall:** Researched 3-15, registered engineers, some states use licensed engineers (in Michigan), which is the better term.

**Shipman:** Looking at the roadside stand definition, the description remains in the text. Operates as an accessory use to a farm.

**Heller:** Her concern is that someone coming in “from the cold” will not go to the text.

**Hornberger:** We might consider expanding roadside stand definitions.

**Deeren:** Currently, some definitions are in multiple zoning ordinances.

**Mielnik:** You do not want zoning standards in your definitions.

**Hornberger:** Tables the public hearing and will “untable” it in November.

**Moved by Shipman to continue the Zoning Ordinance Update public hearing until the November planning commission meeting, seconded by Hall.**

**pass unan**

**c. Peninsula Shores (81 on East Bay) SUP #123 (Amend. #2) - Application Withdrawn**

**Mielnik:** There is a letter in the packet stating that the application for amendment number two has been withdrawn.

**d. Discussion regarding amending zoning regulations for solar panels**

**Mielnik:** At the last meeting we had a discussion about solar panels on PDR land. It went to the township board and the board approved it, adding in the requirement that it is not permitted in a viewshed. A solar panel as a structure can be considered an agricultural structure and that is what matters for the PDR unless it is in a viewshed. The viewsheds were designated. There is a need to look at larger solar panels in the future to serve agricultural operations. Refers to the memo in the packet, there are five points to consider. The attachments about solar panels from Consumer's Energy is. It should also be noted that the use of solar panels relates to the net metering program offered by Consumers Energy, the program can be used if not using more than demand.

**Hornberger:** The amendment to Chateau Chantel was for a larger solar array.

**Discussion of solar array size.**

**Wunsch:** Substantial setbacks would work better for agriculture. That is better than a SUP process, especially for the production agricultural people.

**Dloski:** One of the members of the audience last meeting had a deadline. It is a long time for a SUP.

**Deeren:** There should be a maximum limit on what we are going to allow.

**Mielnik:** The administrative review was for the A-1 zone up to 10KWh, that number could be thirty unless it is located in a viewshed, then it would be a SUP permit. Parcels could be placed strategically. Now we have a better viewshed map to reference for evaluation.

**Oosterhouse:** We can gage usage over a year from Consumers for the size of their system, and consider viewshed. A year's use should be considered.

**Planning commission discussion of needs, efficiency, caps, and limiting ground size.**

**Hornberger:** Direct Mielnik to create language for the November meeting.

**Mielnik:** The process involves a public hearing.

**Moved by Dloski to authorize Mielnik to draft an ordinance on solar panels on agricultural land, seconded by Couture.**

**pass unan**

**10. Public Comments:**



**Monnie Peters:** Comments on the use of solar and the use of Consumers for historic use on a farm. Can see solar increase in the years to come. Does not want to force people to use net metering. Comments on viewshed in terms of a swale, and it could not be seen. That is a more important standard.

**Discussion of viewshed and the varied topography for the placement of solar arrays.**

**Nancy Heller:** Concerns brought forward in the town board meeting. The township is concerned with their viewsheds, what about private property?

**Couture:** Typically, a private property owner does not have a say in viewsheds.

**Heller:** Expressed concerns about farming.

**11. Other Matters or Comments by Planning Commission Members:**

**Shipman:** Does not see the old (current) ordinance on the website.

**Deeren:** The website is not ADA compliant.

**Miehn:** Explains ADA compliant websites lawsuits that have become very common. A disclaimer may be used for the website.

**Planning commission discussion on the website; adding comments on the process on the current situation, and letting the public know of progress and opportunities on the zoning ordinance.**

**12. Adjournment:**

Moved by Wunsch to adjourn, seconded by Dloski

pass unan

Meeting adjourned at 9:38 p.m.