

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

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**Township Board Special Meeting
November 18, 2024, 2:00 p.m.
Township Hall
Minutes**

1. **Call to Order** by Wunsch at 2:04 p.m.

2. **Pledge**

3. **Roll Call**

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

4. **Citizen Comments:** none

5. **Approve Agenda**

Rudolph moved to approve the agenda as presented with a second by Sanders.

Motion passed by consensus

6. **Conflict of Interest:** none

7. **Consent Agenda:** none

8. **Business:**

A. Review of Nicholas Farm and Vineyards, LLC Conservation Easement and Baseline Documentation

Cram: thank you all for coming. This is very exciting. This is the first time I've gone through the PDR process. I will look to Laura Rigan and Will Manty of the Grand Traverse Regional Land Conservancy to guide us. We have a draft resolution for this conservation easement, the proposed easement, and the baseline documentation and appraisal in your packet.

We received 11 applications, and the PDR Selection Committee deemed 10 of them eligible to participate in the program. All were ranked. The top ranking application was for the Mark Kelly Farm. The second highest ranking application was for the VM3 family application. This one, for Nicholas Farm and Vineyards, was ranked third, but the others were more complex so the process was slowed. To move things forward, we are bringing this one before you today.

With the amendment to our PDR ordinance, this is the first application moving forward that is not only selling the development rights for single-family dwellings but also any farm processing facility for anything that involves alcohol or the retail sale of alcohol. This is a unique application.

Will Manty: thanks, Jenn. That was a great introduction and covered a lot of important points. We hope to close the week of Thanksgiving, so thank you, board, for meeting today. The easement we're discussion is just shy of 41 acres on the west side of Center Road just south of where we are now. It's an active vineyard site that the owner, Chris Fifarik, intends to maintain and expand. It's fully restricted – no residences will be constructed and the owner is selling his rights to process and sell alcoholic beverages.

There's a small building envelope for an agricultural building on the southeast corner of the property right along Center Road that Mr. Fifarik wants to retain in expectation of building an equipment shed. You can see that ag building envelope (shows map).

This draft conservation easement will have a few final tweaks. In the final version, there's a survey of this building envelope that I'll include as an exhibit that slightly changes the shape. It's not really a square; it's more of a triangle and it's smaller.

Chown: does it also give the dimensions of the building envelope?

Manty: yes, there's a maximum of a 1,500-square-foot building and it gives the dimensions of the envelope in the survey.

Cram: that's helpful. It's much easier to determine if the building is in the envelope if we have those dimensions.

Manty: yes, that's included in the baseline with the intent of making it as simple as possible going forward and also to monitor it. It will be monitored annually.

Achorn: you said the shed will be for tractors and such. What about the house?

Manty: there's no retained home site on the property.

Achorn: is the house included in the easement?

Manty: no. This simple rectangle cuts out what was originally being considered, five acres to the south, but it's not included in the easement.

Achorn: so that cutout isn't shown.

Wunsch: the only allowed building would be the storage shed.

Manty: yes, in addition to maintaining the existing ag building and farm stand at the northeast corner. Those buildings can be maintained.

Chown: on p. 6 of exhibit b, under the header "Building Structures, Roads," there's two spaces waiting to be filled in with measurements.

Manty: thank you. There will be a couple of minor tweaks. I had to go out and measure those buildings. The final version will include those measurements.

Chown: directly under that, where it says "Building Envelope," it says, "As described in the PDR easement, there's an ag building envelope near the southeast." This would probably be the place to put those building envelope dimensions. I don't know where else they would fit as well.

Something amused me, having not read a PDR easement before. On p. 2, number 3, it says, "The useful life of the property is hereby determined not to be less than 15 years." That struck me as really odd.

Manty: we were discussing that in the office this morning. I think that language was carried over from a previous project. I don't think it's necessary to include it if anyone wants to strike it. It doesn't hurt or help. It probably has to do with IRS codes.

John Wunsch from audience: I think it has to do with the length of the bond. It seems unnecessary.

Cram: I interpreted it differently to mean that the land would have to stay in farming for 15 years and then it would be okay if it were fallow. So maybe we should clarify or strike it?

Chown: I would strike it. I have one more thing, on p. 8 at the bottom. There's wording in green.

Manty: yes, it's a note from a previous draft that I neglected to delete. I've since deleted that in the final version.

Sanders: my question is more general. On p. 7-8, 7 b, "Rights of the Township," the right to enter is pretty obvious, but right to preserve...Does that mean you can drive onto that property if something's not following the conservation easement?

Manty: [reads number 7b aloud] "The township has the right to prevent any activity on or use of the property that is inconsistent with the purposes of the conservation values or uses described in this conservation easement."

Sanders: does that mean a warning letter goes out or if there's something that's an active violation that the township has the right to act?

Manty: I believe the answer is that it depends on the township's policies and stance on how the township wishes to enforce these easements.

Rigan: the township has the right to enforce the easement.

Manty: does that answer the question?

Sanders: kind of, but I think I'll work on this with Jenn for a better understanding. Thank you.

Cram: the PDR ordinance also says the township board is charged with enforcing the ordinance, and we have an ordinance enforcement officer position created via ordinance to enforce all our ordinances, both zoning and police power ordinances.

Sanders: it's that whole police power question...Are these immediate responses or are there two types of responses? The immediate versus the "Hey, we've noticed this and we're going to come check it out" type of deal.

Cram: we amended the PDR ordinance in 2022 when I was new. We had conversations at that time about formalizing the enforcement process. There's more work we can do to perhaps improve it based on things we've learned recently.

Sanders: okay. Thank you, Jenn.

Wunsch: I think this looks good. Both conservancy staff and the PDR selection committee – do you approve these before we see them?

John Wunsch: we saw this final draft when you saw it. We approved moving forward with this. Our main function is to let you know what's ready when. We recommended that this be brought forward to you.

Wunsch: I have a broad comment, not related to this easement in particular. I'm somewhat familiar with this parcel. I encourage staff and everyone, and I'm speaking as a farmer here, when you're negotiating these, where there's the possibility to achieve both township good with preserving viewsheds and preserving some of the usability of the ag land by allowing for more liberal construction of [agricultural] structures in the future, that can be helpful. I'm familiar with some of the PDR easements out here where the owners negotiated away all but the 1,500-foot shed they had right in their sights. It can create challenges if you need to build another storage building for some reason. Trying to achieve public good of preserving that viewshed while having a more robust building envelope out of view can be helpful.

Cram: can you remind me, Will, does this conservation easement prohibit future splits?

Manty: yes.

Cram: that's also something newer. It's challenging to track all these easements when there's multiple splits. Where we can, we are trying to minimize or prohibit future splits so we can track the easement more easily.

Shanafelt: maybe you could run through the valuation and valuation process before we go to the resolution.

Manty: for all the properties in this round, we've worked with Steve Nichols, our certified appraiser.

Cram: the appraisal is in the packet addition.

Manty: Steve looked at all the applicable comps and appraised value leading up to the effective date, which was March 1 for this round. It's \$862,000 at a per acre easement value of \$21,024.39.

Shanafelt: for the edification of everyone, the audience as well as the board, what is the process to come up with the number? It would be great to explain which comps were used and why those comps and also the thinking that goes into coming up with that cost. Could be as simple as you subtract the land value from the building value but it would be great to have that verified.

Rigan: to reach the easement value, the PDR value, the appraiser looks at two values. The first is the before value – the fair market value with all the rights intact. For PDRs, we are not valuing the

improvements. Those are essentially a wash because they remain. We value every property as vacant land. The before value is with all the rights intact per zoning. With 40 acres, he could potentially have seven, eight homes. The appraiser looks at the terms of the easement and what is being restricted and analyzes that and calculates an after value. He takes the before and subtracts the after and that's how you get the PDR value. The difference is the easement value.

Comparable sales do come into play because the before values look at other market sales with adjustments for improvements such as an existing home or infrastructure for grapes or apples. All of that is taken out of that valuation.

Similarly with after values, those improvements are going to be valued when you're looking at market rates. Those are all adjusted accordingly. That's how he comes up with the easement value. Each site is drastically different. It's all tailored to the individual property. You have to look at what's being retained and what's being restricted. Each is tailored to the individual property. It's why you see different prices because different things can be retained.

Sanders: when you say infrastructure for grapes, etc., is that stakes and lines or is it actual fruit?

Rigan: he's not valuing the fruit or infrastructure or trellis systems or anything like that. It's valued as vacant land.

Shanafelt: so what it would sell for if you could build homes on it versus...

Rigan: essentially. It's the development right versus the agricultural right. That's the very basic version of it but there's a lot of detail that goes into that analysis.

Sanders: in the past couple of years, there's been turnover with PDR land so the comparable analysis is a lot easier to figure out.

Rigan: yes, we have a lot of after-value sales out here, which is unique. Usually that's the harder data point to come up with, but we're recently had a couple of pretty big after-value sales so we're seeing the easement value trend down a little. That's also because we have limited vacant land out here and people are picking up whatever's available, and that tends to be restricted land. That after value is increasing faster than the before values.

Sanders: for example, I've done some restricted lots that are centered among other lots that have access off of main roads. Those are very different than something right on Center Road with immediate access. The price is different too.

Rigan: easement values are similar to market value rates, but things like view sites play into that. When restricting development lots, if they have great views, the easement value is more expensive because you're restricting more valuable lots.

Shanafelt: it all gets back to comps.

Sanders: it's nice to have comps.

Shanafelt: it's highly useful.

Rigan: Will pulled together the rest of the application list and what those values look like. There's a pretty large range because you're comparing something on the north end with very little access to something with Center Road frontage and view lots...It's not apples to apples.

Wunsch: they both tend to be really volatile over time. Your unrestricted values aren't necessarily linear, and your restricted values aren't really linear, so the spread actually wiggles around a lot.

Shanafelt: yes, they run independently.

Rigan: this one is unique because of the additional right to restrict farm processing with alcoholic sales. That we don't really have a comparable to go off of. It's new for the program. The conservancy holds a few PDR easements, but at the time, how much this dual restriction would add value to the property wasn't really considered. That's also why it took time to figure this out.

Cram: so we can assume the property owner is comfortable moving forward and has not requested another appraisal.

Manty: correct.

Sanger: has the property owner accepted the numbers?

Rigan: yes.

Sanger: you said there are 10 applications in the hopper and this is number three. I'm trying to figure out how we spend a total sum over 20 years of 2 mils. Have you been able to place a ballpark amount on what is likely to be spent on these 10?

Cram: we have estimates. We've been working with the treasurer's office to understand how much money is in the fund. Our goal is to purchase as many easements as possible before bonding because of the interest rates.

Sanger: so you are not going to bond this. It will be paid out of cash.

Wunsch: correct. It's much to our advantage not to bond this because of the rates. We can probably go for a while without bonding. It could be a couple of years before the rates improve.

Sanger: I want to assure all of us that as we spend this money, we're not going to come to the point where we say we wish we hadn't done this or that easement because we have a more attractive PDR easement down the road. If this ranks as number three, at roughly 20 grand per acre, it's high, but it's a valuable easement for the money. The two ahead of it, are they likely to come in with the same magnitude cost wise?

Rigan: this is why we decided to batch them. Based on what we have in the fund, we can get through all these projects. The order doesn't really matter. When the landowners are ready to move forward, we have sufficient funds. There are some matching funds too. For one of the applications, we have some state funding. It's a 50/50 match. That will leverage the taxpayers' money even more. It's not just millage funds available but state and federal monies as well.

Cram: that was one of the updates to the PDR ordinance – application grants rank higher or earn more points if the landowner is interested in participating in a matching grant.

Rudolph: how does this affect the assessed valuation of the property then, or does it?

Sanders: do you mean how does having a PDR easement impact it?

Rudolph: yes, for tax purposes.

Rigan: it should lower property taxes. It doesn't guarantee the agricultural exemption – the land still has to remain in active agriculture – but because that development right is taken out...It's up to the assessor.

Cram: I could ask our assessor to get some comparables. It's part of the intent of the program that it allows farmers to earn a fair market value for the rights they're selling so they can invest it back in their farms or retire. It keeps the cost of the land lower so hopefully it keeps the land available for future farmers.

Wunsch: it will be interesting for Sally to look at. To the best of my knowledge, this is the first easement sold in the township where the taxable basis hasn't been separating from the market basis for decades. There's a chance that Sally would look at this one and look at reducing down the taxable value. Typically you're looking at properties purchased 50 years ago at a much lower basis so the taxes are capped at a lower rate even post PDR.

Rigan: when you sell development rights, it locks in that current basis so it's exempt from the pop-up taxes when it sells, except for improvements. That's a real benefit when you're transferring land to the next buyer.

Rudolph: I was just curious. I hadn't heard that addressed. Sounds like it would be most valuable to someone who's just purchased at a higher valuation than somebody who purchased 50 years ago.

Wunsch: it's most valuable for someone who's buying from someone who purchased 50 years ago.

Chown: this exemption is on PDR land only?

Wunsch: yes.

Sanger: this drop-in assessed value factors into the Maner Costerisan (MC) study we're awaiting. The \$800,000-some value reduction is a tax benefit for the landowner and an income reduction for the township. Not to be negative, but that's what the MC study will highlight as a financial challenge.

Rudolph: it's something that needs to be managed or thought about.

Sanders: are we set to make a motion on this resolution?

Manty: we're working with Corporate Settlement Solutions as the title company. Once we have a closing date, we will have Greenstone Farm Credit send a payoff statement to the title company. There is a mortgage on the property that will be discharged at closing. Depending on how quickly Greenstone can get that statement over, they can close as early as this Friday or definitely next week.

Rigan: [gave more detail on the mortgage]

Sanders: so the closing statement goes through you guys and the township gets a pre-closing statement?

Rigan: yes, Marge has looked at it.

Achorn: when do you project to close?

Manty: as early as the end of this week or next week.

Achorn: it's going to take some time to get this money through the bank. I assume they want it wired.

Manty: yes, I put the title company in touch with you last Friday. They will give you wire transfer instructions.

Achorn: it will be Katie because Wednesday is my last day.

Cram: in looking through the PDR ordinance under section 8, Closing, Monitoring, and Enforcement, legal counsel has reviewed the easement. That added some time. The conservancy drafted it, the property owner reviewed it, and then it came to us. Legal counsel has not seen the baseline documentation. Is there anything else legal counsel should review?

Rigan: the final title.

Cram: you'll send it to us when you get it?

Rigan: yes.

Cram: I think we have everything checked off.

John Wunsch: the appraisal values the fact that there's no production or sale of alcoholic beverages. This is justified in the PDR ordinance. It says you can buy development rights *or other rights*. Right now, if you balance the two different sections in the easement, one section says you can't do any processing of alcohol and the other says you can't sell retail alcohol. Rather than have to look at two different sections, I recommend they go together in one section for pure clarity.

Chown: let's do it.

John Wunsch: in response to Fred [Woodruff's] [emailed] letter, we have proceeded on the assumption of previous selection committees that since the negotiations are done by the conservancy with the individuals and discussions by the selection committee contain personal information about the property owners, we continued in that format [closed meetings with no minutes taken and no ability to watch the meetings on YouTube], but I'm open to two things. First, the documents Fred referenced should be shared. I thought they would have been shared a year or so ago. If they weren't in the packets, there's no reason not to share them. Second, we can ask the township attorney how to handle circumstances when we are discussing personal information. Should they be open meetings or not, etc. How do we handle that? We can investigate that further. We are open to change if appropriate.

The speed of the process isn't due to a lack of staff but the fact that the appraiser needs to

comprehend new circumstances, which took several months to sort out. And the families have had a slow time making decisions. There's been some lag time as we figured out how to function as well.

Cram: I just realized this resolution should be numbered like we usually do them. My apologies.

Chown: let's amend it. I'll make those corrections.

Wunsch moved to amend the resolution to say Resolution 2024-11-18 #1, Authorizing a Conservation Easement for the Purchase of Development Rights for Nicholas Farm and Vineyards with support by Shanafelt.

Motion passed by consensus

Chown moved to adopt Resolution 2024-11-18 #1, Authorizing a Conservation Easement for the Purchase of Development Rights for Nicholas Farm and Vineyards with a second by Sanders.

Roll call vote: Wunsch, Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown passed unan

Sanders: thank you, land conservancy.

Chown: yes, thank you, Laura and Will.

Wunsch: thanks to everyone. It's all much appreciated

9. Citizen Comments:

Dave Murphy, 6943 East Shore Rd: I want to get into the public record and most of you know about it already that the DNR is taking some long overdue action to improve the parking lot at the intersection of Center Road and East Shore Rd. The parks committee and most of you get complaints about the condition of the parking lot. It's a step they need to take to improve it. It was brought to my attention by Scott Phillips, a direct neighbor to the parking lot, that the DNR intends to reroute the exit from the parking lot onto East Shore Rd. That's a great concern to Scott and immediate neighbors and it's a concern to us as well. Thank you, Jenn and Maura, for taking the lead on it. I want to be sure everyone is informed and what the concern is to residents of East Shore. With the next town board meeting not planned until December and a planning horizon of beginning construction in March, they're looking for bids on the project now. I sent a note to the county road commission to see what their perspective is, and they had no information on it. They knew nothing about it. It's an MDOT issue – I'm sure they're looking at curb cuts and where to orient them. Obviously the DNR has primary responsibility. It's a road commission issue. It's even a city issue because we're talking about transportation routes on and off East Shore Rd. We know the safe roads initiatives being taken by the city...I'm just waiting for them to hit Birchwood Avenue as it approaches East Shore and how we're going to coordinate with that.

Those of us on the master plan committee riddled the master plan with references to the shoreline roads, how to treat them as neighborhood roads and recreational routes. We formed a non-motorized transportation committee that just received significant planning funding thanks to Jenn and Susie Shipman. We just want to make sure the township is looking at this. I'm really concerned with routing traffic onto East Shore. The DNR is saying no left turn, but how do we enforce that? Even if you send everything to Center Road...I have trouble making a right-hand turn onto Center Road at times due to the traffic we have now. The sight lines are better on Center...There's a lot in play here. To get this late notice with an early spring timeframe...I hope Maura and Jenn can get the right parties involved, especially the county. The neighbors are so concerned.

Wunsch closed citizen comment.

Cram: we received a hard copy plan from the DNR regarding the parking lot on October 15. I responded and requested electronic copies so we could forward them to our engineer for review to look at storm water. When we first met with the DNR, we asked them to meet the intent of our stormwater ordinance. They agreed to do that. I hadn't received a response about the electronic plans until we heard from the community. Emails have been sent and we have the road

commission engaged. If anyone wants to see the plans, we have them in the planning and zoning office. I can walk you through them. I think we're early enough in the process to get feedback to the DNR and hopefully address community concerns.

Rudolph: I remember we talked about this at the last township board meeting. We had the same concern about traffic turning onto East Shore Rd. I understand the DNR is sweeping that entrance onto East Shore so that it would be extremely hard for someone to turn left.

Cram: that's correct. There will be physical improvements that will encourage movement onto East Shore and then onto Center Road. It would be difficult for a vehicle and trailer to make that left turn, but I would like to hear from the road commission. Is there a better design? Is there something that would not just encourage but require that right-turn movement? Are there other alternatives?

Sanger: we say goodbye to three of us one more time. On behalf of the board, I thank Armen and Rudy and Marge for their service.

Township board shares its gratitude.

Shanafelt: it's been fun.

Rudolph: it's been a privilege.

Wunsch: and we got a conservation easement in under the wire.

Chown: I think we need a round of applause for the conservation easement. Thank you, Peninsula Township, and thank you, Grand Traverse Regional Land Conservancy.

10. Board Comments:

11. Adjournment

Rudolph moved to adjourn with a second by Sanger.

Motion approved by consensus

Adjourned at 2:58 p.m.