

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

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Township Board Special Meeting December 11, 2024, 7:00 p.m. Township Hall Minutes

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

2. **Pledge**

3. **Roll Call**

Present: Sanders, Clark, Milliken, Alexander, Sanger, Chown

Absent: Wunsch

4. **Governmental Updates:** none

5. **Citizen Comments:** none

6. **Approve Agenda:**

Sander: the applicant has requested a couple things be shuffled around on the agenda. I will present them for a vote. He is asking to present after the attorneys for both business items.

Milliken moved to approve the applicant's request with a second by Sanger.

Motion passed with nay by Chown and Clark

7. **Conflict of Interest:** none

8. **Consent Agenda:** none

9. **Business:**

Sanders: I have the original approved Peninsula Township Board Rules of Procedure dated June 11, 2013, signed by Clerk Monica Hoffman. The document says, "The township board shall not begin considering any matter on the agenda after 10:00 p.m. Matters on the agenda which have not been considered shall be placed on the agenda of the next regular meeting or on the agenda of a special meeting if one is called." Procedurally, I'm requesting [this be adhered to] by all our committees.

1. Appeal of Land Division Applications

A. Staff Presentation of Land Division Basics

B. Land Division Appeal 357

a. Staff Report

- Presentation and Review of Application
- Reasons for Denial

Sally Murray, Peninsula Township Assessor: I will outline the land division process and then give a preface to each appeal. This is new to me, much like it is to you, so I will do my best to get you the information as concisely as possible. Anything needing clarification, I am happy to offer. I will start with the land division basics. Parcels and applicants wishing to divide property do so locally at the township. We have a land division review committee. It consists of the township assessor, the planner, the zoning administrator, and legal counsel. We typically meet Tuesdays weekly.

Applicants who are aggrieved by a decision of the land division review committee have appeal

rights before the township board. These are the first formal appeals we've had.

From our Peninsula Township Land Division Ordinance: "During the appeal, the town board shall conduct a de novo hearing on the matter, and to that end, it shall have all the powers of the review committee."

"De novo" means anew, from the beginning, fresh. When applicants and proposals are brought before the land division review committee, we rely on several acts and ordinances: the Land Division Act, which was last amended March 31, 1997, and was formerly known as the subdivision control act, the Peninsula Township Land Division Ordinance, the Peninsula Township Zoning Ordinance, and the Purchase of Development Rights [PDR] Ordinance.

Because you have a lot of material before you, I thought it would be a good exercise to go through your packet material. The first item in the packet deals with land division basics, which I'm outlining for you broadly.

Exhibit one is an excerpt from the Land Division Act (LDA) of pertinent parts we routinely rely on. Exhibit two is our Peninsula Township Land Division Ordinance. I included the entirety of that in case we need to refer to it.

Exhibit three is an excerpt of our Peninsula Township Zoning Ordinance. Of the three pages in that exhibit, we have section 6.8 of our zoning ordinance, a quickie guideline for minimum standards and sizes, acreage, frontages for each of the zoning districts we have.

Exhibit four is the PDR Ordinance.

A broad overview of Land Division Appeal #357 and reason for denial is next.

Exhibit five is the land division application itself, Land Division #357. I refer to that as the Croft, Villa Mari division. In it you'll find all the supporting documents we relied upon to process that division and aid us in making our decision. There is a survey in exhibit five that I will be referencing. Exhibit six is two versions of aerial maps of the area, one with a little more detail and the other a little cleaner, that give an overview of the parent parcel.

Exhibit seven is the series of tax maps that represent this parcel. It covers several pages. I highlighted the parcel in yellow.

Next is Land Division Appeal #358, which I refer to as Croft at Swaney Road as well as the background on that parcel and reason for denial.

Exhibit eight is that land division application, which includes the survey.

Exhibit nine is an overview of all the parcels at play before any divisions take place.

Exhibit 10 gives a different perspective. It highlights the parcels and indicates whether they have any restrictions or not.

Exhibit 11 is probably the most useful. There's a lot going on, and it's a good visual aid for discussion.

Exhibit 12 is the deed of conservation easement that one of those parcels is subject to. I have that in its entirety in the exhibit.

The LDA exists to regulate the division of land. We rely primarily on sections 108 and 109. They are formulas for the number of divisions allowed and the standards necessary for approval. Section 109 does give deference to a local zoning ordinance if it has been enacted. The Peninsula Township Land Division Ordinance exists to prevent the creation of lots and parcels that do not comply with our local ordinances. "This shall be accomplished by regulating the division of existing lots and parcels and property transfers between two or more adjacent lots or parcels."

Peninsula Township Zoning Ordinance Section 6.8 will be a handy guide.

Collectively, these acts and ordinances help us look at the standards. Does this proposal meet the standards we need to adhere to in granting an approval? The proposal has to have an accurate legal description for all resulting parcels. There are width-to-depth ratio standards. We need to

make sure all resulting parcels meet minimum parcel width requirements for the zoning ordinance, that they meet minimum parcel size requirements, that they be accessible, that they have adequate easements for public utilities, and that they not have any unpaid property taxes for special assessments due for the past five years. That is what we look at when we render these decisions.

As you can see in the aerial map of this parcel, the parent parcel is pretty large. It's about 28 acres and uniquely shaped. On the western boundary, we have a projection that I refer to in documents as the "kite tail." Another southerly parcel boundary I call the "kickstand." I'll be referring to those areas as such.

From the review and summary of the application, included in one of the exhibits in your packet, "[Parcel] contains 28 acres of land. Property is dual zoned due to its size and expansive nature. It's agriculturally zoned and also zoned R1B along the shoreline."

Because of those zoning distinctions, the frontage requirements for the resulting parcels, particularly parcel B, are 100 feet of frontage. This application and proposal do not meet the road frontage standards. The kite tail projection heading toward Peninsula Drive is 54 feet at that widest point along the ordinary high water mark. You can see it narrows along Peninsula Drive. One hundred feet of frontage is the minimum standard for the R1B district, and it doesn't meet that. They also had a representation on the survey of having access rights. Parcel B did have a denotation that there is 33 feet of ingress and egress preserved at liber 9 11, page 127. That document does exist. It is an easement right. In and of itself, it is not enough to provide the 100 feet of minimum frontage standard for parcel B. This appeal was limited to the inadequacy of the road frontage standard for parcel B.

Sanders: that 33-foot recorded easement, that is to the west of the kickstand?

Murray: it is.

Sanders: and that comes off of –

Murray: Peninsula Hills Drive.

Clark: is Peninsula Hills Drive a road? I looked in the tax database. I didn't see any addresses on it.

Murray: it is. It goes through a subdivision that doesn't have a lot of lots. I'm not sure if they're vacant, if that would prevent seeing any address assignments there, but it is a county road. The county GIS department provided confirmation of that today. As an access easement, projecting from Peninsula Hills to the south, it did not provide the necessary frontage for that parcel. Parcel B's legal description did not contain a reference to which road it was contemplating having its frontage on. This was a little strange. It could have been an error or an omission from the surveyor. Typically, a legal description will outline the boundary of a parcel and indicate with verbiage "subject to a 33-foot easement or 66-foot easement described as such and so." That is not in there. We talked about that 21-footish kite tail not being adequate frontage. The applicant in his evidence documents today did highlight that 33-foot access easement. We've already talked about why it didn't meet the standard.

One of the things to consider is that we have several parcels in the township that don't meet current zoning standards. We often refer to them as "pre-existing non-conforming parcels." We can't take those rights away, but we don't create those parcels anymore. If something is sub standard, we can't carry it forward when an applicant asks to create a new lot configuration. There was some additional information provided in the applicant's packet. I'm not sure I need to address that material now. I'll reserve follow up. Simply, parcel B did not meet that 100-foot standard.

C. Presentation by Fahey Schultz/ Matt Kuschel (with time for questions from board)

Technical difficulties connecting with attorney via Zoom. Attorney could not hear assessor's

presentation.

Kuschel: land divisions are the process by which real estate can be divided and created into parcels or lots that can be sold. The most formal way is a subdivision, and you get a nice platt map and a lot in a subdivision. More rural areas, most land division pieces, you describe the parcel by 100-foot by 100-foot square and you say where it is using the coordinate system in Michigan.

Divisions can be subject to local ordinances as well as the Land Division Act. Sections 108 and 109 in the act give those criteria. Section 108 tells you how many divisions you can have. If you have a 40-acre parcel, can you divide that into four 10-acre parcels? If you have 10 acres, can you divide that into four two-and-a-half-acre parcels? Section 109 gives the criteria for whether or not a division is permissible under the statute and ordinance. Those requirements are, among other things, having an adequate legal description and meeting a depth to width ratio. Here in the township, that's a three to one ratio. If you're 100 feet wide, you can't be deeper than 300 feet. You have to meet the minimum parcel width and minimum parcel size.

There's the ability to reference and incorporate separate ordinances, most often the zoning ordinance, which is what the township does. The parcels must be accessible, and that's a definition under the LDA. It means you can get to a public or private road with a driveway. There are easements for utilities or sewer use. And then there's the requirement that all the taxes are paid. That's the LDA in a nutshell.

Processing land divisions is done at the local level. A land division review committee is established in your land division ordinance. The act authorizes municipalities to undertake the heavy lifting for these divisions. When the land division review committee receives an application, it reviews the criteria based on the LDA, the land division ordinance in the zoning ordinance, and any other applicable ordinances. Here, the committee looked at the PDR Ordinance for one of the parcels. One piece we're always looking at is section 6.8, the table that has the minimum requirements. The committee reviews those and either grants or denies the requested land division.

The land division ordinance does have an appeal procedure. If the applicant disagrees with the decision, they can appeal to the township board, which is why we're here tonight. The township board then receives all the information and considers the application anew. It takes all the information and any additional information submitted and makes a decision to grant or deny the request wearing the shoes of the land division review committee. It's healthy to have that back and forth discussion and deliberation. Any different opinions of board members, we air those out. If there's a consensus of the board, you can make a decision whether to grant or deny. The decision must be in writing under the appeal criteria of section eight.

I did circulate to staff some decision forms that lay out the details of each appeal. If you come to a consensus but want to craft a separate document, you could do that as well, with the assistance of staff, and then review and finalize that at the next meeting.

Kuschel overviewed packet elements again.

We have #357 up first, which is a division of one parcel into two parcels that stretches out to the west side of the bay from the interior by the vineyard there.

- b. Presentation by Appellant Villa Mari LLC/ Marty Lagina (with time for questions from board)

Marty Lagina, 232 West McKinley: I had set this up to start with Swaney Road.

Sanders: we posted the agenda a couple days ago. It has appeal 357 first.

M. Lagina: if you force me to, I will. But why not just put them both on there?

Sanders: because we approved the agenda as is. As a board, we would have to change that.

M. Lagina: I'm requesting you go through both of them. You have control of the slides. My person doesn't. I'm going to have to say "Go forward" and "Go back." I mean, if you have to...

Sanders: to do this correctly, we're looking at them individually.

M. Lagina: it's somewhat awkward, but I'll do it. You want me to make my rebuttal to the Croft at Villa Mari? Start at slide 32.

Sanders: happy to. Please introduce yourself.

M. Lagina: my name is Marty Lagina. I live at 232 West McKinley and have for almost 40 years. First, congratulations to the new board. I think it's great that we have some new faces and new thoughts. I want to make a couple general observations. I'm not going to get pedantic or anything like that. I think it's relevant to what we're talking about. I've lived here for 40 years. I think I've lived here longer than some of you –

Sanders: I request that you just address the board.

M. Lagina: I wasn't addressing them. I was just wondering if they're older than me. Okay. You got it, Maura. Okay if I use first names?

Sanders: yes.

M. Lagina: I am aggrieved over multiple things that have happened to me in Peninsula Township, but I'm going to leave that at the door. I'm trying to be positive and proactive. I'm trying to make win-win solutions. But my experience has been that Peninsula Township, for 40 years, has had an "ends justify the means" attitude. I have experienced it dozens of times. "You will do this or you won't get your permit." There's some of that still left. We have new leadership and new board members. I'd love to see that approach go away and I think the citizens would too. In these 40 years, I've seen a gradual degradation of property rights. Taxes keep going up. We landowners have to deal with that. It is part of Peninsula Township culture to decide what it wants, and oftentimes there seem to be hidden agendas, and then get somebody like Matt Kuschel to get you there, and that's not the right way. I'd like to address that. I'm not going to spend a lot of time with this, but I think it's important.

I really like Peninsula Township. I liked raising my kids here, and I'm most upset about how polarized this township has become over issues. This board has a chance to change that. I'd like to be part of that, part of a progressive... This business about pitting neighbor against neighbor is a bad thing. Some of that will be relevant here because the one I wanted to talk about first involves PDR. That's a hot topic. It has to be figured out.

Why am I handling this myself? Because I would like to show that a common citizen can do it. I could have hired lawyers to do this. I'm hoping to do it informally. I'm hoping to do it like it used to be, where a group of rational people looked at rational data and made rational decisions without citing a bunch of cases, Ogden vs. Nash, all those things. I would rather not do that. Now that has already started here with your attorney, so I will address it as necessary, but I really don't want to. I don't think the average citizen – you said this was the first one? [Correct.] Have you ever turned down land divisions before? [No.] And nobody's appealed it? [Correct.]

Because it's too difficult would be a logical conclusion. I'm already into this for \$15,000. If I had hired an attorney, I'd be into this for \$50,000. I will add to what Matt said about the LDA. It's called the subdivision control act, or the plat act, for a reason. It is a very complicated, comprehensive, and difficult act that applies to subdivisions, 30, 60, 100, 400 lots. It's difficult for anybody to get through it. It's expensive, time consuming, and comprehensive. That's all as it should be because we don't want 80-lot subdivisions to be haphazard. They're important; they have to be done right. But the legislature realized that for a person such as me, who has some land they've owned for a long time and they want to set free...

My son and his new wife want to build a house on this lot. That should be easy. It should be an exception. There shouldn't be a lot of hurdles to jump. That's what you're looking at today. I'm here to tell you, it hasn't been easy. It has been very difficult.

One thing that's important is that I was never asked to talk to the committee. I would have been willing at any time to come in. I have background on all this. I've owned it for 32 years. That's part of the polarization I'm talking about. Why would they sit in their ivory tower? No offense, Sally, but you know I was available anytime and inquired all the time. The first thing I get is "Denied," and you haven't even talked to me. I wonder, did you do a site visit?

Murray: we did a site visit, and I did speak with you about this.

M. Lagina: you did a site visit?

Murray: Yes, and I did speak with you about this division.

M. Lagina: but you never sat down in your little committee and talked about it. It would be nice as a matter of course to have the person who's doing a division in one of these meetings say, "Hey, could we be missing something?" Because as it turns out, you're missing a lot. This is somewhat awkward because I have more stuff that kind of involves the other one. I'm going to move right to that. That [slide] is to show you roughly where we're at, basically where Peninsula Drive hits the Peninsula Hills Drive. You'll recognize that, the brick condo building. Okay, so we move up the hill from there. Next slide. As Matt already said, there's one division requested over the 28-acre parcel. The Lagina family has owned it for 32 years, purchased in 1992. My recently married son and his wife would like to build a house.

Next, here's where it would have been helpful to start the other way because I laid out the six requirements under the LDA. They're really quite simple. There's not any controversy about parcel description, taxes, access to utilities. It comes down to this accessibility and road frontage. Here's an important thing, and it's very frustrating. When I was talking to your attorney about this and the other one, it went on and on and on. The Michigan Land Division Act statute says that when it's denied, all the reasons for denial must be set forth. When I asked Mr. Kuschel to stipulate to that, he would not do it. It is required by the law. The citizen shouldn't have to play Whack a Mole. In other words, if I successfully refute these, I believe I'm done. Is that correct?

Sanders: you mean if you, Marty Lagina, think you have refuted all of them –

M. Lagina: no, if you do. If I set forth, here are the reasons for denial, and I say these are wrong, and you say, "You're right, they are wrong."

Sanders: the board has the ability to say yay or nay.

M. Lagina: but do they have the ability of the land division committee to come back and say –

Sanders: this is de novo, brand new. All of this is starting from ground zero.

M. Lagina: you're not following me.

Sanders: yes, I am.

M. Lagina: I don't think so. For instance, they didn't tell me whether they looked into how many divisions were available here. If you say, "You're right; access is fine," I want it to be done.

Sanders: that's what we're here to vote on.

M. Lagina: okay. I'm going to accept that because that's what the statute says. But your attorney wouldn't do that. He would not stipulate to anything. I am relying on the Michigan State statute that says all the reasons for denial were given to me. Is that correct, Sally? All of the reasons have been given to me?

Murray: the denial was identified on the application.

M. Lagina: that's not an answer. Were all the reasons given to me or could there be more?

Murray: what you received was what we noted as the deficiency.

M. Lagina: okay, I'll note that's a similar answer to what your attorney said. I just asked if these are all of them because if there are more, I'd like to address them. That's what the \$2,000 was for, in order for you to tell me what all is wrong with this. Are these the only ones? I'll ask one more time, and I'll move on. The board needs to know. Just say yes.

Murray: the deficiency that caused a denial on this application was the lack of adequate frontage.

M. Lagina: I give up. Okay, we're looking at this picture. Here's what it looks like today. You can see we're asking to divide it into two lots, A and B. B would be the remaining parent parcel. I'll show you why. Different criteria apply to the remaining parent parcel than the other divisions. Does anybody have any questions at this point as to how that lays out?

All right, then the next slide is the reason for denial. Inadequate road frontage and insufficient width. The Land Division Act defines accessibility. Interestingly enough, MDOT, which approves driveways and has to approve each one of these divisions, says, "We have looked at the LDA requirements and we approve this as accessibility." [Alex Lagina made a comment to Marty Lagina.]

Sorry. In this case, it's the county road commission; MDOT is the other one.

If someone has a question as I'm rambling on up here, please jump in. I'd like that. So it's the county road commission, and their approval says this meets the requirements of the LDA. You as a municipality only can weigh in on three things under that act. Width to length, width itself, and the area required under your act. That's it. Accessibility is defined by the act, and you can't redefine it. However, you have taken the position for years and years that it must meet your zoning ordinance. Okay, so, "Parcel has adequate road frontage pursuant to the LDA and the definition of accessibility." Want to look at the definition of accessibility?

Sanger: we keep talking about this frontage, yet what I have read all has to do with what's on Peninsula Drive. Is there other frontage we should be looking at?

M. Lagina: yes. The frontage for this lot because of how it was developed was never on Peninsula Drive and it's still not. Next slide. Controlling factor. Parcel B has been legally accessed on an approved frontage road since 1992. The road standard was adopted in 1991. Before that, as Sally has correctly said, lots could be accessed by easements of any sort. After 1991, you had to have an approved road.

Next slide. This is your ordinance adopted in 1991: "No parcel of land to be created after the adoption of this amendment shall be issued a land use permit without having the required lot width or frontage width along public road or private road or approved frontage road." Keep that in mind.

Next slide. It's interesting how this evolved, but it shows why the analysis of the review committee was wrong. This is how it looked when I purchased it in 1992. Remember, this is just after the road ordinance was in place. The only access to that property was off a tiny piece of Peninsula Hills Road. Underwood Ridge Road was not there. Underwood Ridge Road emergency access was not there. The only access was at that corner. I'll talk about the kite tail in a minute.

Next slide really tells the whole story. Later in 1992, I sold 9.1 acres to Lou Smith. Lou and Karen Smith subsequently built a house. First, I said to Lou, and it was actually a requirement of the land contract, a payoff of the land contract, and this is the kind of background that would have been nice to have gone through the committee, but you guys are looking at it now.

I was still under a land contract with the rest of it, but I paid off enough to sell it to Lou Smith. Part of the condition of the land contract was to guarantee township-approved access to the balance of the parcel. And Mr. Smith went to the township and got a road put in to serve the remaining parcel I have, what's in white there, and to serve his parcel. It was an approved frontage road. I can prove that because subsequently Mr. Smith got a land use permit. We just read a second ago, "No land use permit will be issued unless it's off an approved frontage road." That is an approved frontage road. It's also the approved frontage road and the only access to the rest of the property.

The so-called kite tail is a pedestrian path. It was limited in my land contract to pedestrian and, interestingly enough, farm use but no motor vehicles. Remember, the requirement is that it has to

be a motor vehicle that can pass for proper access. If that wasn't the legal access to this property, then there was none at that time. This business about Peninsula Drive is ridiculous. Nobody would say that a pedestrian path establishes your frontage, especially when your frontage is on an approved township road. Now let's stop there. Is anybody missing that?

Sanders: that recorded driveway road, what year is that?

M. Lagina: 1992. Next slide. Lou Smith before he could get it, before the vendor would agree, he had to go to the township and get approval that the road he was creating would serve both parcels. It's proven that he did because he had a land use permit. That couldn't have happened after 1991 unless that was an approved frontage road.

Milliken: that was the only way that Lou Smith accessed his nine acres?

M. Lagina: yes, it was the only way he could have the required frontage and the proper road. I don't know if you went out there. Did you tell me you went out there?

Murray: I do have follow up on this.

Sanders: when was his home built?

M. Lagina: probably 1993, 1994.

Sanders: that section of the property is A1?

M. Lagina: it's all agricultural. He has 9.1 acres. The piece I want to separate out for my son is like eight. There's only two there. The road is blacktopped. I paid for half of it. I've used it off and on for 32 years. That is the township-approved access to this parcel. I see Sally shaking her head.

Sanders: do you have a road maintenance agreement for this?

M. Lagina: yes, an approved township –

Sanders: where is that recorded? The road maintenance?

M. Lagina: it's on here. It's the next thing. It's a good question because to be an approved road, you have to have that. Liber 9 11 page 127. That's the road maintenance approved by the township. Next slide. This is how much was the entrance and still is the entrance to this property. It's a little hard to see, but there's a blacktop road that meets township standards, that goes through Lou Smith's property to my property. I paid for half the blacktopping. I paid for half the maintenance. There are those lovely stone pillars at the base. Lou even went to equalization and got an address. Somebody asked about an address earlier. His address right next to me is 12 Peninsula Drive. He said to equalization, "What will the Lagina address be off of this road?"

Sanders: you said Peninsula Drive.

M. Lagina: Peninsula Hills. Thank you. Sorry, I think he's 14 Peninsula Hills Drive and I'm 10 Peninsula Hills Drive. Equalization never formally did that. They told him that's what it will be when he comes. This is what we're going to require. This is the only place that the county road commission will allow access to this. They will not allow access off Peninsula Drive. I'm not asking to be grandfathered or anything. This is the access. It was the access as set forth in the zoning ordinance. At the time, the concept of a cul-de-sac weren't required. The road ordinance, you have to recall, was brand new. Lou went and got approval for what it took for his lot to be legal and my lot to be legal. It is not a stretch. When a road stops like that and it's actually 53 feet wide, when you add up all the easement distances, when it stops and dead ends on somebody's property and it hits that property line, what is the frontage along that road? The entire property line. If you're not going to require a cul-de-sac, if that's the road dead ending and this is the property, then this is the frontage along the road, the entire bit. That's how they interpreted it in 1992. That's how we interpret it now because a cul-de-sac wasn't required.

Let's see if there's any more slides here before I get to what I call the logic of the situation. It's actually 21 foot. Actually, if you look at your ordinance, at your definition of lot width down at Peninsula Drive, if that was the right place to do it, it would actually be 21 feet, and that's just

ludicrous. That never had anything to do with this lot. It was a pedestrian walkway to get to the water. The approved access, approved by Peninsula Township, was off Peninsula Hills.

Sanders: on that 21-foot pathway, is the intention to keep it semi natural as a pathway down to Peninsula Drive to the water?

M. Lagina: you mean do we intend to pave it?

Sanders: I'm just curious because if you have something paved, people turn their cars onto it.

M. Lagina: no, you'd get into run-off issues. There's no intention to do that. It's been like that for 32 years, and it accesses that 50 feet of water. It was just a negotiated trail to the property. I mean, when you start doing logical thought experiments, you say, "Geez, if I hadn't purchased that, I wouldn't have this problem right now?" Seems absolutely nutty.

Milliken: where's the pathway you're talking about? Oh, that? I thought that was the access road.

Board looks at aerial map.

M. Lagina: this is the situation in 1992 and it was the legal situation. This was the approved frontage road, which you see with the pillars and the paving. This is where Lou got his LUP. And he couldn't have done it unless this was approved. This wouldn't have been an allowable split based on what we just heard from Sally unless this was approved. This has never been an access to this property. Your question is perfect because if it was, then it's inadequate.

Clark: because at the time, the parcel is all one, correct? You split off a piece of property that has frontage, has access to a road. But at the time, this, as now, is all one piece of property. Really, just by splitting it is what's causing the frontage issue?

M. Lagina: no. It's a great question because your attorney and the committee said the other piece is fine.

Clark: there isn't another piece because it's all one.

M. Lagina: no, after the split, there will be two.

Sanger: we missed the survey showing the four lots on Underwood on top. The access to those four lots is from above on Underwood Farms.

Clark: but that accesses the entire property because it's all one piece.

M. Lagina: your question is valid, but I have the answers here. The only parcels requested here are this big one and this one.

Clark: which are currently one parcel.

M. Lagina: correct. But after the split, the question is, do they both have adequate legal access.

Kuschel: I'm not sure if you are setting up an alternate mic, but I haven't been able to hear you for a while.

M. Lagina: after the split, the question is, do they both have legal access. I'm here to show you that they do.

Clark: is that a road?

M. Lagina: yes, that's the road with the blacktop. That road has served the property since 1992.

Clark: that little piece from Peninsula Hill to his property is a road?

Chown: where is the disconnect? Why doesn't the township recognize it?

Sanger: the survey that's in the packet, conducted by Mansfield of this year, shows it's a township private road. It's shown in the survey as a 33-foot ingress, egress, and utility easement, liber 9 11, page 127, established in 1992. We've missed the point somewhere that it is actually a township private road. As Marty I think has mentioned, there is the width to the road, also the easements on each side for utilities.

M. Lagina: which makes the width of this parcel 1,194 feet. The width is measured where your access goes to. Not 21 feet. Becky [Chown], you asked a good question. Why isn't the township recognizing this? That's why I'm standing here.

Chown: that's what we have to get to the bottom of.

Murray: I can address some of that.

Sanger: we should look at the survey that's in exhibit five, third page in. The most recent survey.

Chown: page seven of exhibit 5.

Board indiscriminately speaking

Sanders: one at a time.

M. Lagina: once everyone's ready, I can make one other comment. Unless, Sally, anytime you want to...

Murray: I would. This is what I spoke about in my intro, exercising a right to come back to. One of the things to keep in mind when you're looking at some of these surveys is they're not all in a north orientation. The Smith parcel that was sold off in 1992 was via a land contract as the applicant evidence indicated. A little snip of that was included in your evidence. But there was no reference to where that land division was recorded. The entirety of the land contract.

M. Lagina: there's a warranty deed.

Murray: I saw the warranty deed in fulfillment of that land contract, but the entirety of the land contract was not in your packet. I was unable to find it.

M. Lagina: you want it? It's here.

Murray: it would be nice to get that. I did look through the Register of Deeds information and couldn't find it. You sold that in 1992. Further, the existing parent parcel, one of the considerations of the land division review committee, going back to one of the primary points, was that grandfathering status doesn't propel forward to the child parcels. Right now, this parent parcel has 500 and some odd feet of frontage on Underwood Ridge. In the kickstand area, 100 plus feet of frontage. When we are being asked to create parcels and they don't meet the standards, it's important to recognize why and how. The Smith parcel, when it was sold off, had 140 feet of frontage on Peninsula Hills Drive according to the plat and road it abutted. They gave you a 33-foot ingress egress through their own property –

M. Lagina: it's 53 but okay.

Murray: it's 33 on the survey. 33 feet of ingress and egress to your parcel. That was a private agreement between you two parties. There's no evidence I can locate where the township considered that frontage for your property. It wasn't accessible.

M. Lagina: would you have allowed the split if that was adequate frontage?

Murray: what we would need would be a 53-foot-wide roadway according to private road standards with the necessary cul-de-sac.

M. Lagina: there was no cul-de-sac required in 1992.

Murray: true. But this is new. Land divisions are coming to a new standard.

M. Lagina: no, once a road is approved, you can't add –

Murray: there's no evidence that it was approved.

M. Lagina: the evidence is the LUP.

Murray: the LUP was for the Smith property because they have 140 feet of frontage on an existing road.

M. Lagina: is what we're coming down to the ridiculous position that if I put a 70-foot little tail on that road, then everything's good? Because the road itself is approved. You agree?

Murray: the road maintenance agreement exists, but it's not a road.

M. Lagina: yes, it is. How did Lou get an LUP?

Murray: Lou got an LUP because he has 140 feet of frontage on Peninsula Hills Drive.

M. Lagina: no, he doesn't.

Murray: yes, he does. It's on the plat map. I have that exhibit here. That was why he got an LUP.

“140.84 feet of frontage” is what the Smith parcel enjoyed. This is a plat of Ledgemore where Peninsula Hills goes through. They didn't benefit at all by that 33 feet –

M. Lagina: even more to my point, he got that road to access my parcel, which had to be approved by the township.

Murray: that road existed.

M. Lagina: what would you suggest be done here?

Murray: I'm not a developer. If I can back up and speak to the board, what's interesting about a lot of properties in Peninsula Township is that all the easy ones are done. Often there are complexities that make things difficult. But in my opinion, there is an option, a workability, where you could ultimately get what you're looking for.

M. Lagina: I just remembered something. He's agriculturally zoned so 140 feet of frontage on a public road is not nearly enough. You need 330 feet of frontage on a public road. He did need that private road.

Murray: I don't know what the Smith parcel is zoned. I don't have that in front of me.

M. Lagina: it's agricultural. You are incorrect. He needed more frontage.

Murray: I'm not conceding that.

M. Lagina: get your map out. It's zoned agricultural. Please concede facts. I know he needed that road. You need 100 feet on a private road, approved, or 330 feet on a public road. Is that not true?

Murray: that is not true. Parcels in the agricultural district, if they have frontage on two roads, then it would need 330 feet on that public road and 100 feet on the private road.

M. Lagina: right. You're saying the same thing I am.

Murray: it would need doubled frontage.

M. Lagina: yes. So he needed that road. It needed to be a township-approved road or he would not have gotten an LUP. Correct?

Murray: I don't know what the standard was back when he got an LUP. I'm not sure what they based it on.

M. Lagina: it's the same standard. It hasn't changed since the road ordinance went into place.

Murray: parcel B –

M. Lagina: why are you fighting so hard?

Murray: I'm not fighting so hard. The land vision review committee doesn't have discretionary allowances. It will either meet the standard or it doesn't. And parcel B did not have adequate road frontage according to the –

M. Lagina: can we agree that the frontage Lou Smith had was an approved frontage road or he would not have gotten an LUP?

Murray: I don't know the answer to that.

M. Lagina: okay. How did he get an LUP? It wasn't that 140 feet on Peninsula Hills.

Murray: another thing you should know is that the county has no record of your address assignment on Peninsula Hills.

M. Lagina: I know; I had my guy look at that. It was 32 years ago. We never built a house. I could go ask them now; I'm sure they would assign 10 to it. I don't know why they wouldn't. It's the only access approved by the county road commission. Your own ordinance says... [stops speaking].

Chown: Sally, a couple minutes ago, you were going to suggest an option you thought might work?

Murray: if parcel B could achieve appropriate frontage on a private road meeting Peninsula Township standards, then it could be approved. Now, what does that mean? Peninsula Township's private road requires a 53-foot easement, 33 feet and 10 feet on each side, with a 60-foot radius cul-de-sac dedication. It doesn't need to be built out; it needs to exist for ingress and egress, for emergency vehicles. And if it could be engineered and deemed to be located properly and have

that dedication, I don't know why it couldn't be approved. The frontage standard was the difficulty on parcel B. It wasn't meeting the standard on Peninsula Drive, where it had frontage. And it wasn't meeting the standard on the 33-foot easement, which abutted the property. That throughway to get there, this is a new parcel. All parcels creating and remaining have to adhere to the standards of our zoning ordinance and the land division ordinance.

M. Lagina: excuse me. Underwood Ridge is an approved private road, right? Serves all those houses?

Murray: it's an existing road. I don't know if it's public or private. I don't have that information.

M. Lagina: it's private. So, are you telling me that if day after tomorrow you say private roads must be 100 feet wide, that's going to be retroactive to all the approved private roads? Because that's what you're trying to put on me. You're trying to use the standards that are now retroactive to an approved road.

Murray: I'm not applying any retroactivity. I'm indicating all parcels that are created and remaining from proposed divisions need to meet the standards. What are the standards? Peninsula Township's private road standard is 53-foot wide with a 60-foot radius cul-de-sac.

M. Lagina: but it wasn't in 1992 because it was approved.

Murray: I can't speak to what happened in 1992, and that's not what the acts and statute –

M. Lagina: your predecessor –

Murray: guide in 2024 in applications before us. It doesn't meet the standards of today. We can't grandfather –

M. Lagina: it's not grandfathered. I'm pointing that out. It was approved and is approved. Let's keep going because there's more in your ordinance that would allow for this. Before we do, is there any common sense left? It's one lot. Do you really want to build a whole other road? Is it not township policy to preserve agricultural land? Are we really going to build a whole other road with a cul-de-sac to serve one lot when all you have to do is accept the fact that there's an existing approved road that's been there for 32 years?

Murray: it's not an existing approved road. It's a 33-foot easement for your benefit.

M. Lagina: then how did Lou get his LUP? Look, Sally, it shows you want to make this your way no matter what the facts are because when I pointed out –

Sanders: Marty, we're not going to have an argument. Please just address the board. You can ask questions, but it's question for question.

M. Lagina: I'm asking why, when I pointed out the 140 was wrong, she wouldn't accept it. Why? That's not how he got his LUP. Correct?

Sanders: I would like to know for a fact if that property is truly zoned agricultural or residential. I just looked at the tax record and it's showing residential 401, so I would like to know via the zoning department –

Clark: it's zoned A1. Was it then?

M. Lagina: yes.

Sanger: if we can focus on this easement. Looking at exhibit five, that survey goes on to state, "Subject to and together with a 30-foot-wide access road easement and a 10-foot-wide utility easement." In part of section nine that goes on. Sometimes we find that they talk about the 10 foot being on each side. Do we have any evidence tonight that this private road meets the current township standard?

Murray: we don't.

Sanger: let us assume that it does meet the township standard. Then we'll be dealing with the need for a cul-de-sac.

Murray: and engineered plans.

Sanger: I sat at a ZBA [zoning board of appeals] hearing many years ago about a property with the same situation where we have a dead-end road. Basically, before this was a driveway, these people wanted to build. The question was, there was no cul-de-sac. The road came to a dead end just like what we have here. The zoning board issued a variance for what was an agreement between the township and the fire department that the cul-de-sac could be met with a T in such a way because there wasn't enough property for the cul-de-sac.

Murray: we don't want roads piled on top of each other.

Sanger: if we're focusing on this other means of access, apart from Peninsula Drive, and we're talking about a private road, and I think I've described what is on this survey, if there's any way we can provide the access through addressing the issue of the requirement for the cul-de-sac, would that solve this problem?

Murray: I would imagine the review committee, seeing that the road frontage deficiency was the reason for denial, if that is solved according to what's allowable in zoning –

Sanger: the ordinance also states you can have five driveways on a cul-de-sac. No more than five. The ordinance doesn't have a sketch, but it does anticipate the idea of a circle in the properties coming off the circle, and obviously they can't all have 100 feet on a circle.

Murray: I don't think this parcel has that many. I think it's restricted to the number of divisions it ultimately has. Through an agreement with Smiths and [Lagina], I think there's limited divisions. They're not looking to create five or more. When you look at the aerial map and the 33-foot easement that was allowed by Smiths and the other what appears to be a pretty solid roadway or through-way in that kickstand area, it seems reasonable to imagine that either one of those could go through a private road application process, and if that private road is approved, they could glean access in that vein. But to have a 33-foot easement abut and no private road application, it didn't meet the standards. Are there other alternatives and ways? Maybe, but what was presented to us did not meet the standard for frontage.

M. Lagina: I disagree. And I guess the board, when we're done, can vote on who's right. That's what you do. I will say again, that was and is an approved frontage road. She wouldn't admit, in the face of hard data, that it had to be. I'm sorry, Sally, I don't mean to be aggressive, but you won't be cornered even with hard facts. Lou Smith needed that to be an approved frontage road. Once an approved frontage road, always an approved frontage road. You can't go back and change every road in Peninsula Township today. You try to do it to this one –

Murray: if there's evidence on file –

M. Lagina: no, let's say you want to make it 100 feet wide. You're going to go back and make everybody make them 100 feet wide? Even if they were approved erroneously? It doesn't matter. They're approved. How wide is that lot really? Before we move on, the frontage width is measured off the primary access. Is that not where width is measured? Because let's at least talk about that. The primary access, is that what your ordinance says? That's where you measure width?

Murray: I'll rely on what the ordinance says.

M. Lagina: let's look at it because that's what we're here for. How does the Peninsula Township Zoning Ordinance define width? Lot front of is defined as "The line which is or contains the road line or the principal right of way providing access to the lot." And we've at least established what that is, have we not? It's the only access to this lot. So the width of parcel B is 1,124 feet. Is that correct?

Board looks through packet material.

Murray: do you have a section?

M. Lagina: it's in your definitions, "Lot, width of." [Alex Lagina approaches podium and speaks with Marty]. Thank you. "Lot width of frontage, the frontage width is measured along the front lot line

and is a straight line connecting two points where the front lot line intersects the two adjacent.”
Okay, that's just common sense. “Lot front of, that lot line which is or contains the road line of the principal road or right of way providing access to the lot.” There's only one here. The lot width, can we agree, is 1,124? I'm sorry, the section, its definitions, is under “Lot, width of and lot front of.”

Murray: no, I don't think so. The review committee is comprised of planning, zoning, and assessing.

M. Lagina: since this is the review committee today, here it is. I've just read it to you; you can look it up. I'll ask you, when we're done, to vote that the width of this proposed lot B is 1,124, feet. I'm going to ask you to do that. I'm actually going to ask you to agree that this is a proper division.

That's what this is all about. You are the review committee.

Sanders: correct.

M. Lagina: so we're just about done with this.

Sanger: you cited the lot width and frontage in the ordinance, is that correct? That was added by Amendment 88, adopted by the township board August 13 of 1991.

M. Lagina: same as the road ordinance.

Sanger: under section 7.10.4, right of way, “Right of way or easement excess minimum width of 33 feet.” This is the section that says, “The following right of way, temporary grade easement, utility easement are required of all private roads.” It states, “The frontage road, including shoulders, ditches, shall be located in the right-of-way easement access, minimum width of 33 feet.” And then it states, “The utility easement for public and private facilities shall be provided on each side of the right of way and may be within the grading easement minimum width of 10 feet.” That's what I recall; 10 feet on each side. So we're looking at 33 plus 20 or 53 in terms of each zoning ordinance requirement.

Sanders: would you like to continue, Marty?

M. Lagina: yeah, I'm just about done. I like to refer to what Albert Einstein used to do, not by any comparison, but it's a thought experiment. The thought experiment goes like this: if I *hadn't* got all those other accesses, this wouldn't be an issue? That seems bizarre. Why would you be penalized by getting accesses to the other piece of property that's in everybody's benefit? There is another section of the ordinance that says that an existing access, even if it doesn't meet the zoning ordinance, you can use to build a house. You just can't use it for the next lot. That's also in your zoning ordinance.

So if you think this through, in 1996, I could have built a house on parcel B, and using the fact that you could use the right of way even after your road ordinance, you can use an existing right of way, and then what happened? Then this other access occurred. So what? It doesn't make any sense that getting extra accesses to a parcel somehow penalizes you from the one that was approved when you purchased it. What is the message to landowners? Don't you dare get another piece of property that has an access and attach it to yours because we will interpret that later against you? It doesn't make any sense. It doesn't meet any of the township's goals, and neither would putting in a great big township-approved road for one piece of property.

With that, I would ask two things. I'd like this board to vote...Well, let me summarize. It meets all the requirements of the LDA. It has sufficient access as determined by the road commission. It has plenty of area. Has adequate number of divisions. It has an adequate and accurate legal description. It comprises the three items set forth in the Peninsula Township Zoning Ordinance, the only ones you're allowed to change, which is depth to width ratio, which does not apply to a remainder parent parcel.

I don't know if Sally will agree with anything I say, but that's a fact. We've established its width is extremely wide, and its area is plenty. It needs to be five acres in Peninsula Township. Adequate easements for public utilities. Yes, there is power all the way to that property already. Taxes must

be paid. Katie [Clark], are you the one who know that taxes are paid?

Sanders: you got it from the county treasurer.

M. Lagina: it must be accessible as defined by the LDA. Well, it is. The LDA definition of accessible is really easy. I can read it, if you like. Does anybody want to go down that road?

Sanders: not necessary.

M. Lagina: having said all that, I'd like this board, being the land review committee, to say that this, having been established as I have set forth, meets all the requirements to be split into two parcels and that the width of parcel B is 1,124, feet. I'm asking that happen.

Break 8:42–8:50

c. Citizen Comments to the Board (three minutes)

Alex Lagina, 112 East Ninth Street, Traverse City: you heard the logic from my dad. We went through it together. I strongly agree with all of it. I think the language of the ordinance itself is open and shut. It defines this as adequate. It meets all the standards. But that's not what I'm here to tell you. I want to give you some perspective on why this is important to us, myself and my wife, who's here as well. My wife's parents live a short walk away from this parcel in Underwood Farms on Underwood Ridge Road. My own parents are hoping to one day build their forever home on lot A, which is going to be hopefully adjacent to us. My wife and I hope to build our home on lot B. This is not just about creating a buildable lot for us. This is about creating a place where our future children, if we're so lucky, can grow up walking to Grandma and Grandpa's house or walking to [the other] Grandma and Grandpa's house without ever setting foot on a road with a speed limit more than 23 miles an hour.

I know the town board is tasked with being the custodians of the health, safety, and welfare of the township. I believe that stems from the health, safety, and welfare of each individual person in the township, each family in the township, collectively and individually. It's a product of a lot of small decisions as much as it's a product of the big, sweeping decisions. Not only in this situation, which applies to me and my wife and my family, but in all situations where you as the town board have a chance to help create the kind of community we want on Old Mission Peninsula. I think you should do it. To some degree, I think we're splitting hairs on the justification for this split, which kind of sounds like it's not a big deal, but I promise you, it is a very big deal to me and my family. Thank you.

d. Board Deliberation and Possible Vote

Milliken: I'm going to take kind of a practical approach. The legal stuff gets too complicated. From a practical standpoint, it looks like the access road would be functional and safe. I'm going to dovetail on what Dave [Sanger] said. I've been through the same thing about a road going to a house, big concern about the fire trucks being able to get to it. At one point, they wanted us to knock all the trees out. We came up with a common sense thing. Has the fire chief been there to say this is safe for them to get to if they built the house?

Murray: not that I'm aware of. If a private road application came in, they would review all that.

Milliken: I'm assuming by the pictures I saw that it would be easy to do. From my standpoint, from a common sense thing, I would say this totally makes sense. And I would try to somehow from the legal part say, geez, let these guys build this. Alex talked about it from a family standpoint. I have a question. Marty, do you have plans? Alex, I'm assuming by what he said, the property next to Lou Smith's, is that going to be his one house there and that's it? Same thing on the other lot?

Alex Lagina: I'll answer your first question. Yes, it's just going to be our house on lot B.

M. Lagina: from a legal standpoint, it can't be more than one because there's covenants between us and Lou Smith. The other question is good, that actually is, in my opinion, a success story for the neighborhood. Because almost all of lot A is covered in vineyards and has to stay in vineyards

because it's part of the SUP for the winery. There's not enough acreage left. There's going to be one more house. Maybe there could be a split to get it out of there, but the bulk of that is going to be vineyard. It has to be in order to keep the SUP.

Sanders: is any of that A in conservation?

M. Lagina: no. It's part of the requirement of the SUP for Mari Vineyard. If we didn't plant that we would be out of conformity with the SUP. And also those four lots that I'm trying to sell –

Sanders: is that Cavalieri Court?

M. Lagina: yes. They all have view easements that prohibit any building on probably 20 acres. It's two and done.

Milliken: from my standpoint, I would look at this as almost a dream of what we want on the peninsula. You have a large amount of acreage, you're putting in very few houses, and as long as it's safe for those houses to be there, my vote would be to say, let's move on and let them do this and give them the variance.

Sanders: the variance comes under zoning, correct? That wouldn't be part of the land division?

Murray: a variance is a different process than what you are dealing with here. If what I'm hearing you say is a recommendation, then the town board would act on that as the de novo review committee. I hear what you're saying. I look at the map and I see the same thing. No, we don't want to litter the landscape with roads, but we do have standards. We, the review committee, don't have any ability to make interpretive concessions, even though they may fundamentally seem reasonable. We are often in a situation where we know what they're going after and it makes sense. We just don't have that discretion. That's why we were hoping a private road application would come in. Even though the width and cul-de-sac seem large, they don't need to be built out. We just need that dedication. We need to make sure they could be built, that you can traverse safely. It's not in a gulch or a swale. An extra layer of oversight, to make sure it can be assessable, passable egress.

Milliken: then I ask the board, what are we deciding tonight if we're limited by that?

Sanders: we are deciding if we want to create new law because this is de novo or if we would like to request the applicant to make changes that he would be agreeable to or whether we just don't agree at all.

Clark: would the correct process have been to get a private road first before exploring the option of getting a division? Because if we approve dividing the land and there's no interest or...

Murray: sometimes we suggest that property owners work with their neighbor. "Hey, you've got this easement that almost meets the standard; can you get a little more?" Would they be amenable to expanding that a little bit?

Clark: what would happen if we allowed the division of the property and they went in to get an LUP to build the home and then they found the private road didn't meet standards?

Sanger: the amendment to the ordinance in 2017, section 7.10.11, did talk about non-conforming frontage roads. If we find this road to be non-conforming, which we don't have the basis tonight to know for sure, it says, "The non-conforming frontage road shall not be used to access new lots and parcels created after the effect of this ordinance, July 24, 2017, unless the road is brought into compliance." What I'm thinking is that if there is an issue with this frontage road, the applicant could seek a variance from the zoning board of appeals, much like I referenced when we addressed the issue of the T being put in as opposed to a big circle. With that variance in hand, assuming there's nothing else wrong with this existing private road, then the applicant could go back through the review process. Or the board could approve this tonight with the condition of a variance being granted by the zoning board.

Chown: a variance that would allow them to what?

Sanger: to allow them, in effect, to violate section 7.10.11 in terms of the non-conforming frontage road. We're going tonight on the assumption that we don't know for 100 percent certain that this frontage road meets the current ordinance. Based on some work I did today, I think it meets the ordinance. It was in effect back in 1992. We have evidence that the county road commission issued a curb cut for the property off this private road.

Sanders: question for Marty: is there a reason why you haven't exhausted options with the neighbors for adding onto the width?

M. Lagina: if I was the neighbor, as much as I get along with Karen Smith, I would say "No" because it's all trees. It's beautiful. [Cutting them down] is another thing we don't want to do. Plus she would correctly point out the absurdity of where we're going here. I could bring in a road from Underwood Ridge, a 13,120-foot road with a cul-de-sac for one house.

Sanders: what about that other property with the long driveway?

M. Lagina: that's interesting too because that was issued an LUP in 1999. I call it the millennium barn. There was no access to Underwood Ridge at the time, which means –

Sanders: but that has the access to Peninsula Hills.

M. Lagina: but I heard Sally say it's not a legal road either.

Sanders: it's not a road; it's a driveway.

Sanger: that's a fire access road.

M. Lagina: wait, which one are you asking?

Sanders: I'm talking about the kickstand.

M. Lagina: she's talking about the kickstand. You're talking about the piece that goes to the kickstand.

Sanger: that's correct. The piece that goes to the kickstand from Underwood Ridge is a fire [access road].

M. Lagina: I do have a recorded easement on it.

Kuschel via chat on Zoom: access and standards in 1999 are not relevant today's standards.

M. Lagina: 1999? Oh, when I built that barn. He's confused.

Alexander: you were talking about the possible option of a private road application coming through. If they apply for a private road, would that facilitate this process, just to document that we have a private road?

Murray: if they came in and sought a private road application, they would work with the zoning office to make sure it adheres to the standards. It's feasible. All they need to do is confer with the neighbor to see if that additional width could be secured.

M. Lagina: can I say a little more?

Sanders: no, we're going to finish talking.

Alexander: if that happened and both parties were in agreement, then nothing would have to be built or changed. It would just have a designation that this is a private road and then they could proceed with this piece?

Murray: the private road application does go through the planning and zoning office. I'm not sure I can answer every specific topic you're talking about. I'm not sure what the easement on each side creating the 53 feet is; I'm not sure if that can be maintained with the trees or not. Maybe it can. The other option, if you're talking about options, would be the ZBA. The review committee itself doesn't have the discretion to make deviations. Section 5(c) of the land division ordinance does allow applicants to see if the ZBA will grant use of this existing thing.

Sanders: so this could go on pause until the ZBA has a chance to review?

Murray: it's an avenue.

Sanger: I think what we're dealing with is section 7.10.11, "Existing non-conforming frontage

roads.” What needs to be done is a determination by staff in terms of the adequacy of the existing road, in terms of meeting the current regulation. If it's deficient, the applicant property owner has a choice of either improving it to that level, assuming additional work has to be done, or seeking a variance. We don't expect five more parcels to be coming off a cul-de-sac.

Sanders: I am inclined to request the ZBA route essentially requesting a variance for your drive to access the property.

Alexander: I like that because it's transparent. It's not just us saying yes or no. It's looking at the existing ordinances and using those as a guideline, saying there is a way we can do this that may not require any additional work on the property.

Sanders: the hard part is that I know Alex's timeline, and I appreciate that. But you are the first [to appeal a land use division decision], so however this plays out does set precedence. I want to do it correctly.

Sanders invites Marty Lagina for comment

M. Lagina: you have to vote to say yes or no tonight.

Sanders: we can also table it.

Sanger: if we turn this down, I hate to see you go through that division process all over again if we can pause and fix what appears to be a newly found problem tonight, assuming it is a problem.

M. Lagina: just to understand, table it and we go to the ZBA?

Sanders: correct.

M. Lagina: we don't have to agree to that. I mean, you can table it. I don't know. These things are hard for a guy my age. I don't expect you to feel sorry for me, but it's frustrating. My son wants to build a house. It's emotional. I'm trying to be respectful, but I don't deal with not straight answers real well. I'm sorry about that. Really, I genuinely apologize. I would like you to vote. You are the review committee. I ask you respectfully, is the lot 1,124 foot wide? There's no ZBA issue about that. The ordinance is clear. They made a determination that it was 21 feet wide. I'm asking you to make the real determination because that is important in the land division.

Sanders: if you think it's that wide, where are the other access points that you would be running a driveway?

M. Lagina: there are no other; there doesn't need to be. The width is determined by where you enter your lot. You could have 100 feet.

Alex Lagina: that's in the definitions of the township zoning ordinance. It's explicitly spelled out; that's how you measure the width.

Sanders: your driveway is part of your property. The width of that driveway –

Kuschel via zoom chat: the board could use conditions, but they should be limited to the conditions and process in the land division ordinance. The review committee may grant conditional approval of an application subject to the applicant obtaining any necessary variances from the ZBA pursuant to section seven of this ordinance. Sufficient documents have not been submitted showing that parcel B fronts a frontage road.

Chown: can we get those documents? I'm still stuck on the frontage road part.

Alex Lagina: I don't believe it has to be a frontage road. If you look at the 7.1 Dave quoted, it says, “No parcel of land or lot created after the adoption of this amendment shall be issued a land use permit without having the required lot width or frontage width along a public road, a private road, or an approved frontage road.” This is a private road, which is not defined in the ordinance and isn't subject to the frontage road standards.

Sanders: isn't it a township road?

Alex Lagina: what's shown on the survey is the 33-foot easement and the utility easement. It's a private road that's been approved by Peninsula Township.

Sanger: it's not a driveway; it's a private road.

Chown: it's a private road that the survey didn't recognize?

Murray: what's a private road?

Clark: the 33-foot –

Sanger: the private road would be 33 plus 10 on each side for a total of 53.

Alex Lagina: yes. It's not a non-conforming frontage road that needs to be brought up to standard; it's a private road. That's the proof that parcel B fronts on that private road, making the width the east to west distance of the lot. Because that's the definition of the township zoning ordinance.

Chown: I might be incorrect, but I think the survey failed to adequately recognize that road.

Murray: it's an easement.

Kuschel via Zoom call: the documents don't show whether it's a frontage road or private road. I understand the argument that there's an easement, but there's no survey of that road and where it's coming into the proposed parcel B. There is an access road to the barn that is going to stay on parcel A. So maybe that could be where access is coming from. But there isn't enough documentation to make that decision at this point. It simply hasn't been provided.

Chown: so we're missing a survey of the private road.

Murray: of that easement.

Chown: so that the township has the comfort and the proof in our records.

Sanger: it would have required a land use permit back in '92, whenever it was put in. In terms of 7.10 Road Standards, let me read: "No parcel of land or lot created after the adoption of this amendment shall be issued a land use permit without having the required lot width," which has been addressed by the applicant, "or frontage width along the public road, a private road, or approved frontage road." The ordinance makes it clear there are three categories of establishing the front. I believe we're dealing with a private road here.

Chown: that has not been surveyed or recognized in the township records.

Sanger: we don't know. We know the property owners recorded a road maintenance agreement, which is required by the ordinance, for a private road. There's enough tracks in my mind of what happened.

M. Lagina: I'm certain there is a survey we can provide.

Sanders: Sally, if that had been part of the application in the packet, and we got a blessing that it's recorded, the survey is done, then it's much easier to make a decision as far as this being a brand new thing. I don't know how your office would have handled it had that been a part of the original application.

Murray: we were not presented with Peninsula Hills Drive as being the frontage road or access easement. Parcel B, as described on the survey, was absent any "subject to right of way along such and so." It was devoid of any commentary as to where they were attempting to secure that or assuming that it was located.

Sanders: I would conditionally approve this, given that information is provided and accurate. But if it can't be provided, if it's not recorded somewhere, then we are back to continuing this meeting.

Sanger: you're thinking of an approval conditioned on meeting the requirements for the private road frontage.

Milliken: what's their option if it's not?

Sanger: there's two options from a zoning perspective. Number one, the property owner can bring it up to standards today, which is required by the ordinance, or seek the variance for any deficiency they feel they may qualify for.

Milliken: which would be to the ZBA?

Sanger: correct.

Alex Lagina: there are a few more definitions in the Peninsula Township zoning ordinance. [Dad] went through a lot of other reasons we feel this should be approved. Putting all that aside just to look at the Peninsula Township Zoning Ordinance, there are a few other definitions that may help you reach a conclusion. It actually defines adequate permanent access as "An easement or right of way of sufficient width for roadway and snow storage purposes without infringing on neighboring or adjacent property. The minimum adequate permanent access shall be 33 feet in width."

Sanders: with this land division, if it goes through and gets recorded, all of this, including the survey, updated private road, etc., are all included. It is still a piece of the puzzle we're missing.

Chown: the township was only able to analyze the documentation that it received, and the documentation it received didn't address the required frontage. Seems to me the applicant maybe made some assumptions about what he knew from his experience to be the frontage but that wasn't demonstrated. The committee didn't see that and had to make a decision on the basis of the information it had. It had to deny because it wasn't recognized. I hope that's fair.

M. Lagina: very fair. I mean, it is on the survey, but maybe not adequately. It does underscore my request that the division committee involve the landowner because it would have come out and we wouldn't be here. That piece at least would have come out. I think it does show in the survey where access is. It says 33-foot easement.

Indiscriminate board comments

Alex Lagina: the county road commission also requires access through that area in the application. It has said access must be through this area from Peninsula Hills Drive, so that is in the original packet.

M. Lagina: is the thought that you would approve getting this recorded survey? I would be fine with that.

Sanders: yes, and if it meets the standard we are assuming it meets...

M. Lagina: the survey or the road? Road is lots of stuff –

Sanders: we need the survey regardless.

M. Lagina: I'm just trying to understand the potential motion.

Sanders: I'm suggesting we move to conditionally approve assuming we receive the full survey, with full ingress and egress.

Chown: that shows the required number of feet.

Sanders: and any and all recorded documents and instruments between you and the Smiths.

Alexander: and provided the survey meets the standard.

M. Lagina: are we disregarding the cul-de-sac concept? In other words, if the road is an approved frontage road, are we done?

Murray: Matt just chimed in.

Kuschel via Zoom chat: we're asking for the survey as a piece to show whether or not the claimed private road satisfies the requirements of the ordinance to make that his front lot line.

Alex Lagina: as I said earlier, the ordinance does define the frontage as being measured on the side of the lot through which access is obtained. That's the requirement under the ordinance. It's not the survey.

Sanders: we have 35 minutes if we're going to finish conducting this particular business tonight. Otherwise it will have to be tabled.

Sanger: I sense we're close on this 357 matter. I keep looking back to the ordinance in terms of the amendment made in 2017, which I think is what I'm seeing up here. Essentially, if what you suggested, Maura, to approve this with the condition that I believe probably the assessor or the review committee would confirm, establish, and codify, that the private road supplies the proper ingress and egress to the property per the ordinance...I'll get that section.

Sanders: the question I was going to ask you, Sally, is that it shouldn't prevent the need to have that cul-de-sac or that T for fire safety, etc.?

Murray: it looks as though there's adequate space to provide for that. It sounds like the applicants would be willing to assure that there's either a T junction or a cul-de-sac. If what you're saying is conditional on whether or not it's a private road meeting the standard, we would just have to take a dive into all the township zoning records and any county records. I don't recall ever seeing anything to suggest that 33-foot easement was anything other than an easement for a private agreement between the Smiths and the Laginas, presumably for the purpose of subdividing this land.

There is another document that was agreement of restricted covenants that the two parties executed, which contemplated a good way to share that area and have it be cohesive and harmonious to agricultural fields and minimum building standards. I think they contemplated this potential lot split. But, again, the review committee didn't have the discretion, and there was nothing on file to suggest that this would meet the standard for a private road. It could, with the proper due diligence and seeing if additional utility easements might be secured, or if those utility easements could perhaps stay treed, assuming other methods for utility easements can be used for the house. I don't imagine they would pull it up through that easement area, but I'm not sure.

M. Lagina: did you search your files? I think there's an approval of that road in your files. There has to be.

Murray: I am willing to look.

M. Lagina: that hasn't been done yet? Because that could cure everything.

Murray: we look at the zoning files and we look at the assessing cards.

M. Lagina: where do you file approved roads?

Murray: in the zoning files.

M. Lagina: and there's nothing in there?

Murray: no.

Sanger: we read earlier tonight the liber page for the survey.

Murray: the survey does indicate that easement. It's 9 11, page 127. And the Smiths and Laginas in 1992 executed that easement. The Smith property would be burdened for the benefit of the Lagina property, for certain concessions, harmonious in nature. We're going to agree to share this space in a way that helps it continue to be beautiful. But there was nothing in the record that we discovered to indicate that it met private road standards.

Sanger: given the amendment in 2017, I think that's water over the dam. When the language says that non-conforming shall not be used to access new lots created after the effective date, the job at hand is to review the situation, both that recorded easement and the physical situation with the roadway, and determine if it meets today's standard or not.

Murray: I think the review committee might say a non-conforming road, but this is an easement. We've got a lot of non-conforming roads identified as roads. There's nothing we've seen to date to indicate that this segment of dedicated easement meets a road standard, conforming or not.

Chown: what would it be lacking if it's not meeting that? What would it need?

Murray: it might be worth diving into the Smith parcel. I'm not certain. We would just have to canvas everything around it that abuts it, that it goes through.

Chown: because it is a private road for the Smith parcel, correct?

Sanger: and from what we've heard tonight, for the Lagina parcel as well.

Murray: I don't know that. It does have 140 feet of frontage on the platted portion of Peninsula Hills. I'm not sure how a zoning administrator in 1992 contemplated it.

M. Lagina: can I ask your attorney something? If an LUP was issued pursuant to a private road that

had to be a frontage road in 1992, is that not, in and of itself, sufficient evidence that it was a township-approved frontage road?

Kuschel: the question I heard was whether the land use permit previously issued would be sufficient evidence to show that it's a private road for access. My answer is no, for two reasons. First is that the standards when that was issued could be different and so it might have satisfied it then but not satisfy it now.

Second, as I understand the layout of the parcels here, parcel 40 20, where the Smith property is, does run along the current Peninsula Hills Drive constructed and approved road. There is no constructed and approved road over their parcel to the proposed parcel B. Even if the standards are all the same from when the Smith parcel was constructed and they did get a proper land use permit, that's based on their property coming out to the constructed Peninsula Hills Drive. For parcel B to then meet those same standards and qualify, there would need to be some kind of construction or there has to be satisfaction of several different definitions throughout the zoning ordinance and whether one of those can create compliance for the parcel. They might, but there's not enough evidence here.

M. Lagina: this is where a site visit would have been good. There is a constructed road. Obviously you're unaware of that. We've established that 140 feet on Peninsula Hills Drive was not enough then and not enough now, under the ordinance. The road standards have not changed. Actually, what you said was an eloquent description that, yes, it is good enough that an LUP was issued. Because it is constructed and needed. It had to have it. You obviously thought there was just an easement there. There's a paved road there.

Sanders: we need to keep deliberating. My final question is, assuming the applicant can provide those pieces we're missing, the survey, etc., can we as a board approve this, calling that easement, going forward, a non-conforming road?

Sanger: in 2017 the board went through this same discussion over quite a few roads in our township that were private roads and in various states of condition and repair and compliance. That was the basis in 2017 for the board stating no more grandfathering of these private roads. The board made it clear it's okay to split lots of the future, but when you're dealing with a split and it's dealing with a private road, you have to take a look and be sure it meets the current standard. I don't know between 1992 and 2024 what changes have been made. I know that cul-de-sacs came in. The matter of this private road needs to be clarified and documented and proved that it meets the ordinance. It could be subject to meeting the requirements of 7.10.11, which is the existing non-conforming frontage road requirement.

Sanders: the existing non-conforming frontage road.

Sanger: that's the title that has the caveat.

Chown: those words would need to be in the motion.

Sanger moved to approve Land Division #357 subject to the condition that it meets the conditions of Peninsula Township Zoning Ordinance 7.10.11 for existing non-conforming frontage roads as amended by Amendment 192, i.e., "non-conforming frontage roads shall not be used to access new lots and parcels created after the effective date of this ordinance, July 24, 2017, unless the road is brought into compliance with the current zoning ordinance requirements" with a second by Milliken.

Roll call vote: yes – Sanders, Clark, Milliken, Alexander, Sanger, Chown **Passed unan**

M. Lagina: I'll make it quick. It's a snowy night. This is not easy for you either. I am frustrated with everything having to do with Peninsula Township but it doesn't mean I don't appreciate your time. I do. It's a lot. I would have been happier with a different decision but I will run with what you decided.

D. Land Division Appeal 358

a. Staff Report

Sanders: we do not have time to start this tonight. It would be better to start fresh with an additional special meeting.

M. Lagina: yes, I think it would be appropriate to table this one until a convenient time where everybody can get together. I would obviously like it as soon as possible.

Murray: the clerk will look at the calendar, and we will reach out and see when we can get all parties at the table.

M. Lagina: can I talk to the land division committee in the meantime?

Sanders: talk to the assessor's office. If she can convene the land division...

M. Lagina: okay. Thank you.

Sanders: we are tabling C, Land Division Appeal #358, to a later date to be selected, probably within the first few weeks of January.

Sanger: [publish] this?

Chown: just post it. It's not a public hearing.

10. Citizen Comments:

Alex Lagina, 112 East 9 Street: I want to thank all you for your time and patience. This has been a long one, and I appreciate it. Thank you.

11. Board Comments:

Chown: I think most of our problems are caused by a lack of adequate communication, and we've got to work to communicate clearly. That's verbally, in writing, double checking, second guessing, and not making assumptions. I see it all the time in my work. It's human nature to make assumptions, but they cause a lot of problems.

Sanger: I will echo your comments. It's communication. Office staff are overworked. The sheer volume of calls coming in, the people coming in. It's tempting to work fast and get the job done, but haste makes waste. Thank you, Sally, for your work on this. I think there was maybe a communication gap somewhere. I hope you and [staff] don't take it personally.

Murray: I don't think so. I think it's a sensible result. We don't have a lot of discretion.

Chown: on the basis of the information you had, you made the decision you had to make.

Murray: we did talk about some options and alternatives, but it's a learning experience for everybody.

Sanders: there is no easy land left in the township; it's going to continue to be complicated. We are grateful we have you. To the public, there's a certain amount of, and I'm not just addressing you guys, there's a certain amount of patience needed. By statute and by law, you do have to check all the boxes. There's a lot of research involved. Sally, we appreciate you and Jenn.

12. Adjournment

Milliken moved to adjourn with a second by Clark.

Motion approved by consensus

Adjourned at 9:46 p.m.