PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686
Ph: 231.223.7322

PENINSULA TOWNSHIP PLANNING COMMISSION MINUTES

December 18, 2023
7:00 p.m.
Corrected by Beth Chan on 1-23-24

1. Call to Order: by Hall at 7:00 p.m.
2. Pledge:
3. Roll Call: Present: Shanafelt, Shipman, Alexander, Hall, Hornberger, Dloski, Beard; Also present: Jenn Cram, Director of Planning and Zoning, Christopher Patterson, Fahey Schultz Burzych & Rhodes, and Beth Chan, Recording Secretary

4. Approve Agenda:
Hall: asked Cram to share additional details for the addition of agenda item 9d.
Cram: will share notes from the township board strategic planning meeting held on December 13, 2023.
Moved by Shipman to approve agenda, as amended, seconded by Beard **approved unanimously**

5. Brief Citizen Comments (For Non-Agenda Items Only)
Hall: briefly discussed the non-agenda items and agenda items for this evening's meeting.
Cram: clarified that the public hearing for Peninsula Shores was held in September.
Jay Milliken, 7580 East Shore Road: read the letter, *included in minutes.
Judy Spencer, 6450 Peregrine Court: read the letter, *included in minutes.

6. Conflict of Interest: None

7. Consent Agenda:
a. Approval of Meeting Minutes: Planning Commission Regular Meeting, November 20, 2023
Hornberger: correction to November 20, 2023 minutes: replace from with front.
Moved by Hornberger to approve the consent agenda, as amended, seconded by Shanafelt
approved unanimously

8. Business:
a. Special Use Permit (SUP) – Peninsula Shores Planned Unit Development (PUD) #123, Amendment #4 – Continued Discussion with Draft Findings of Fact and Conditions for Consideration and Possible Action (Waters Edge Drive and Shoreline Court)
Cram: gave a brief history of the SUP. The packet contains draft findings of fact and conditions; there are several areas where the standards have not been met. Gave a history of the approval of the three previous amendments. For the board to approve this SUP amendment, they must find that all standards within section 8.1.3 (1), the general standards have been met; in addition, section 8.1.3 (3), specific standards, must also be met. Because this is a PUD, the standards in Section 8.3 must also be met. In total, staff found that nine standards within the three sections had not been met.
Hall: describe the conditions that have not been met.
Cram: refers to page three of the Findings-Section 8.1.3(1) General Standards, summarized standard. Read and summarize from (b) on page four.
Shanafelt: understood that the thirteen lots in the original actually existed, everything else is hypothetical because they did not complete the plating procedure or anything. So really, we are looking at forty-one versus thirteen.

Cram: thirteen lots was possible as use by right, the hypothetical fifty-five units that has been documented was possible through the state plating process, and was considered by the planning commission and the board when they were going through the process.
Shanafelt: it was my understanding that it was never officially done and never pled that way.
Cram: while the proposed forty-two units would be less than the fifty-five hypothetical units, it is not a substantial improvement. The amendments to the SUP/PUD that were previously approved by the township does not mean that there is any requirement to approve this proposed amendment, as each amendment stands on its own. Forty-one units were historically regarded to be the maximum number that was appropriate for the development as an incentive in exchange for the open space and original parcel configuration on the property. The number of units in this type of PUD residential development is foundational to the development and remains one of the most critical parts of the development, as the balance between the number of units and the open space was a significant component of the intent behind approving the original SUP. The increased expansion would erode the justifications of the original SUP approval and impact the balancing of the PUD provisions that warranted approval of the project in the first instance. The applicant has indicated to the planning commission that the sole reason for the proposed fourth amendment was to add an additional lot to the development; a purely financial motivation is not a sufficient reason to amend the SUP, while Planned Unit Developments can certainly be amended. Such amendments should further carry out the objective as a PUD rather than maximize economic realization. Staff finds that the standard has not been met. Summarized Section 8.1.3 (3), the specific requirements for an SUP (c) found on page six of the packet, this standard has not been met. Under (p) on page eight of the packet, this standard has not been met. Read 8.1.3, Planned Unit Development, number three, page ten, this standard has not been met. Read number five, page ten, this standard has not been met. Read under Findings-8.3.3, qualifying conditions, number four, on page ten. Finally, under number seven the proposed PUD development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1, and Article VII. This has not been met. Staff has recommended that the planning commission recommend denial of the requested amendments to the township board. If the planning commission has a different perspective, there are draft conditions of approval for consideration provided on pages twelve and thirteen.
Dloski: staff has recommended denial, but has also prepared findings for approval, what is the overriding consideration for approval as opposed to denial?
Cram: if the commission has a different opinion on the findings, it should be discussed.
Dloski: how much emphasis was placed on trip calculations?
Cram: marginal, looked at the project as a whole.
Hall: asked for clarification on section 8.3.3, qualifying conditions, paragraph one, page eleven. The requirement seems to be saying that the density of the proposed development cannot be greater than the density that was permitted, the maximum density permitted, by the applicable use by right provisions.
Cram: for the original approval, the planning commission and the board would have considered the forty-one units as proposed, as opposed to thirteen as a use by right, fifty-five as a plat, or approximately seventy which was the maximum for the underlying zoning. However, the planning commission and the board approved forty-one for the maximum density. Looking at the amendment, that maximum density is being eroded.
Hall: the planning commission and the board agreed on the maximum density allowable or the density that they approved; these are different things. This condition is talking about the maximum density allowed and it seems to me that we are either talking about fifty-five or seventy-three.
Shanafelt: thirteen, that is the use by right and that is the only thing that had ever legally been done prior to this approval.
Cram: when I drafted this, my thought process was looking at the original approval, that had been vetted during multiple meetings (in reviewing the minutes of the planning commission and the board). It was found, in talking to planning commissioners that were present at the time, that forty-one was the

maximum number of units that they felt was a substantial benefit and so any addition would be an increase to the density that was approved.

Patterson: I wanted to participate as it relates to one of the findings, which is part of one of your factual findings, there is a reference, not only of staff, but it includes a comment by the township attorney (as to) having looked at the submittals of the applicant. I think it goes directly or sheds some light in context with the planning commissioners, in looking at this sort of density component, and looking at that forty-one units in contrast and balancing the fifty-five as was discussed in the original approval. We were asked to comment on administrative precedent by the planning commission, and I just wanted to make sure that consistent with the staff's review, and those proposed findings of fact, it was part of the record. This is the fourth amendment: there are prior Peninsula Shores approvals that have been done by the planning commission (obviously) including the original decision. One of the questions that stems from two different letters that have been submitted by the applicant's lawyer, as well as attachments, is citing other zoning decisions, as well as court cases, resulting from an appeal of this decision. Those present some guardrails or limitations in how you would view the standards, as it now applies to this amendment. I think based on what the planner is suggesting and looking at forty-one; looking at what the applicants' lawyers are arguing and (looking in) that we are bound by administrative precedent: the original PUD approval, as well as, the reference to the Grand Traverse Circuit Court opinion (that would have been a letter to exhibit one). If we take them at their word on binding administrative precedent and we do not look at any distinguishing characteristics (or even) the original approval of the PUD, the planning commission has already historically set the precedent that for purposes of the two particular benefits that we heard from the applicant over several meetings that: the shoreline protection, the configuration, and size of the lots, as well as the percentage of open space is ultimately a balance of forty-one units. That is the administrative precedent that was set- that is what was provided, that is what they are asking us to follow, that which was submitted in letter one exhibits one, three, and five. If you look at that- one of the things that you are seeing in those proposed findings of fact is being harmonious and consistent with what, the applicant's lawyer is attesting to, as administrative guidance from this plan; that not you as current members, but as the planning commission's prior decision does strike a balance (on those) on that property, the approximately eighty-one acres. When you look at open space, shoreline protection, the size of the lots, the configuration of them, and then the number forty-one, set forth in the original decision, they are asking us to then follow that precedent. If that decision is binding on us, and that decision is not distinguishable from the decision that is presented today, then I do think part of that balance is talking about these proposed findings of fact between forty-one and fifty-five, and that forty-two is too far. The commission already struck the balance in the prior findings of fact as to how we balance, or how this commission previously thought you should balance, shoreline protection, reconfiguration of those lots below, the permitted acreage size in the district, as well as the open space. I just point that out because it goes to one of the comments in the findings of fact that we have referenced; it responds to a question that we received from the planning commission that we distributed to the commissioners. I also just want to make it clear on the record that we did look at the other exhibits as well, and I do not want to spend too much time on, for purposes of the planning commission, that you have already reviewed and studied them and do not have questions. I think the particular ones I thought that were relevant to address are in letter one, exhibits one, three, and five, and of course letter two, exhibit one, because those particular decisions do relate to this project. I think when reviewing those I think they are in support of the township staff's recommendation for denial because of the guidance that was previously provided by the commission as to how you balance these standards under the PUD and the SUP standards; those that have been identified here. We also looked at additional exhibits four, six, and exhibit two (one), and then exhibits six and seven. I think you all probably have your own personal experiences or at least your own knowledge about the Seven Hills SUP and the Vineyard Ridge PUD, but in getting some actual information, and looking at those decisions that are provided in the letter, we just do not think they are particularly on point. So even if this commission is bound by administrative precedent, I think you can distinguish those by treating those two decisions as different from the decision that is being

presented. If you distinguish those, you are not bound by them to the extent that they even provide any guidance for your decision this evening. I think as far as the prior approvals that are in the history of this development, I think I did discuss those and I am happy to elaborate.

Hall: I would like to go back and focus on your comments. I understand the precedential value of the commissions and boards' earlier determination that forty-one units strike the right balance and what was approved. There must have been more than forty-one units that were possible, it could not have been thirteen, because if it were thirteen then this standard 8.3.3(4) would not have been met and the project should have been turned down at that time.

Cram: the thirteen units would have been if they did not go through any process; if they just wanted to come in by right. The upper bound of allowed density based on acreage and zone district would be the seventy-three units per section 8.3.

Hall: It seems to me during the initial approval process there could have been more than forty-one units.

Patterson: correct. I think that is the reason you have to be careful because I think in some of the comments, the applicant has made, there is some conflation of 8.3.5 as being an objective standard that actually applies to your approval, and I do not think that's correct, it is a procedural question. But 8.3.5, is actually implicated as part of, and reference, in that condition that you referenced subsection four of 8.3.3. What I think is important is: that we were asked a question that was raised by the applicant's legal counsel, are we administratively bound by our prior decisions? I think there is some; it is a little bit difficult to find case law directly on point in the zoning world, but you are an administrative body, and there are administrative decisions that do suggest that if you have made a prior decision, and is on point for the decision that is presented to you, again for purposes of consistency, it could be arbitrary or capricious (to just sort of unreasonably decide in some other direction). What we had told the commission (you understand) is that we think, yes, that prior decisions are of value to at least look at them, which then takes you to letters one and two that are submitted by council. I think if you take the position that those original decisions, particularly the Circuit Court opinion, stand for something. That says the planning commission is bound by this decision and the factual findings that were on appeal, and you take from the applicant legal council's letter that you need to look to those findings, and the balancing that was done in the initial PUD approval. Then, one of the conclusions that you can glean from that if you take their letter and their argument at face value, is that the planning commission has set the balance for those benefits that you heard the applicant talk about: the forty-one units in exchange for the shoreline protection, the size of the lots, and the open space. Take that administrative precedent, if it is going to be binding on you, according to their letter. Fast forward to today, practically speaking, I understand that the main benefits that were bargained for and discussed in the commission in the original approval remain relatively the status quo, looking at the Mansfield consultant report. But from a significant perspective, the answer is no. Then the question comes with all you have done is at a unit and if there is some precedential effect for that prior approval, the commission would follow it by indicating the previous balance that was struck is still consistent, and it would not be the same by just adding a unit, without understanding how do you depart from that prior approval. And suggest that adding a unit still satisfies that special use in the PUD standards.

Hall: if the planning commission's judgment calls for balancing compromise, if those are going to be legally binding on us, we need legal direction. Let us suppose that that is generally true what about a non-material change, what if this change that they are proposing could be construed as non-material; that a one percent increase in traffic flow is not material?

Patterson: I think the problem there is that, in this construct, there is no condition that says you satisfy it under either the prior approvals or in the plain language of the zoning ordinance by it just being non-material, right? I mean prior precedent cannot overrule the plain writing of the zoning ordinance you need to apply today. We have to find the condition or the standard that we are applying that proves that it is sufficient to then satisfy all the standards. If you give deference to those prior decisions the reason is that typically, those decisions do not cause much of an impact. Most zoning projects approval and decisions are always different.

Discussion of the plain language of the amendment, the zoning ordinance and substantial improvement, 8.3.2 and 8.3.3, and the standards, satisfaction of the criteria

Hall: it appears that the planning commission is constrained by the earlier decision that was made to approve this project with forty-one units.

Patterson: if you look at the findings, this goes back to the planner's report; if you agree with those factual findings. One of those findings is indicating some review of these administrative decisions, it is in one of the conditions. But if you accept the applicant's representation that these particular decisions are binding, that they are administrative precedents, then I am saying the conclusion that you would reach is still in support of the staff recommendation (particularly that condition that started this conversation) that you looked at the qualifying conditions, I think it was 8.3.3 sub 4.

Todd Millar, Parker Harvey, representing the 81 Development Company and the O'Grady family: we have supplied you with blow-by-blow responses in two very lengthy letters with a lot of exhibits as to why we believe that the conclusions reached by the planning and staff are not the correct results to reach; that this amendment does meet all of the standards set forth in the Peninsula Township zoning ordinance. I am not going to go through each one of those blow-by-blow because of the detail that we have in the letter but there are essentially four things that I would like to talk with you about tonight and I do not think that there is any dispute about what this amendment does. What this amendment does is, it provides for a septic system on lot twenty-four, which by the way has already been approved by the health department, or at least passed off on the health department. It adjusts lot lines for lots twenty-five through twenty-nine and forty-one. According to the planning department which is correct, it is reducing lots twenty-five through twenty-nine by a total of 4,718 square feet. This is improving the bluff buffer increasing the bluff area that is being preserved in this development. It is adding 4,652 square feet to lot forty-one, which is actually a net decrease of 66 square feet in the overall project, and as is painfully aware, it also creates a proposed lot forty-two; all while preserving the sixty-five percent open space, preserving the 1,500 feet of shared waterfront and maintaining the 11,633-foot minimum lot size in this development. This seems to be one of the big issues that you are struggling with, is this concept of going from forty-one lots to forty-two lots, and what does that mean, and what is the significance of the forty-one lots. If you have done any review of the record in this case going back to 2015; the only conclusion that you can reach is that that was not an agreed-upon maximum number of units in the development. There is one instance in the record from the 2015 meeting where Commissioner Leak asked about the first plan being thirty-six lots and now there are forty-one lots. Where were these lots added? The architect said to look at lot width, it was reduced in some of the lots, and also reducing the depth to make up for the open space. No other discussion in this record about forty-one lots. Let us not kid ourselves, forty-one lots were approved because forty-one lots are what was asked for by the applicant, and it was not a maximum that was set by the planning commission or the township board to be applied to further potential amendments. The other issue that seems to be forefront and the discussion you just had with the attorney, I think is very telling, and that is this concept of substantial improvement and whether or not this amendment standing alone has to meet this burden of substantial improvement. I heard the attorney say, no that it does not have to meet that. The township board and your predecessors on the 2015 planning commission clearly ruled that this proposed development was a substantial improvement. Your review of this matter, should not the question be, is this amended development still a substantial improvement as was found by the previous planning commission and the township board? I would encourage you not to place too much emphasis on a particular amendment when looking at the analysis of substantial improvement but look at the amended project as a whole. Otherwise, minor amendments to a project are never going to get approved because they can never meet this standard of substantial Improvement. What I would ask you to ask yourselves tonight is if this project came before you at forty-two units instead of forty-one would you approve it? If you would, I think you have got to approve the amendment that gets us to forty-two lots.

Kyle O'Grady, 901 South Garfield Avenue: Todd outlined the facts well. How did we get to this point and the history; we have supplied the information. We have an understanding of the ordinance while building

out this community. We urge the planning commission to look at this amendment and approve it this evening.

Dloski: where did the forty-one units come from?

Hornberger: I was on that board at that time, the forty-one came because they needed sixty-five percent open space. In order to figure out how many units they got their sixty-five and then they figured out the lots for what was left, and they ended up with forty-one.

O'Grady: correct and we are doing that again and ending up with forty-two.

Discussion about the number of lots approved in 2015

Hall: would like to revisit a question because I think it is important (at least for my thinking) on This- the substantial improvement requirement, does it apply to an amendment? Does the amendment, what is proposed by the amendment itself have to be a substantial improvement?

Patterson: I think what the zoning ordinance would require is that the amendment has to satisfy the standards of the zoning ordinance, and I think in October we talked about two different interpretations that were even discussed among the commissioners. I do agree that there is an interesting practical impact for some amendments to the extent that you may always deny them or "lack of" a substantial improvement because the dictionary definition of substantial improvement would probably be a pretty high burden. What we had discussed before and what I agree with, is that you could look at the amendment- even in isolation but then pull it back into the context of amending the entire PUD and decide if the PUD as proposed would satisfy all of those criteria. I think the one thing that is particularly on point with this, and I just want to be clear, I do not think that the administrative precedent suggests that forty-one is a maximum in a vacuum, but I think the administrative precedent that has been cited by the applicant's lawyer shows you is that forty-one was the administrative guidance on forty-one units in exchange for those benefits that were discussed by the applicant's attorney: preserving the open space, waterfront, that minimum lot size requirement and the fourth item that was discussed. That is what I am suggesting, is that if you look at that original approval and you are bound by the administrative precedent with respect to that; what I am saying is that the forty-one has already been balanced against those other benefits that the applicant provided. I do not think that there is anything substantial, that they have suggested, as to providing, to depart from the prior decision to add a unit. What has been sort of affected or substantially changed since the prior approval that suggests the balancing of forty-one units in exchange for that open space protection, the shoreline development, what exactly is going to move the needle for a planning commissioner to decide that they could add that unit?

Discussion of substantial improvement requirement and the amended project as a whole.

Susie: we are being taken through this history by both Jenn and the applicant's legal counsel and then I have been thinking about how I am processing it, where my decisions are being based. I am looking at how we have handled things previously. I can look at how we have handled the previous amendments, I can look at those amendments and say on their own they were beneficial, and for the project as a whole, they were beneficial. When I look at this, you could argue there is a sliver to me that is not a practical benefit, so I do not believe that that sliver of shoreline, I do not put it in the benefit category, just it is not really enough. Maybe that is just my take on that, I am not sure what the line is it just, practically, it does not seem like enough, and I see in black and white that we are being told we are increasing density and to me, that is a drawback. There is an argument: we get another taxpayer. Our master plan is not craving more residents, nothing in our master plan states that we want more taxpayers, more residents, and more traffic so I am going to point to that when I think about this project as a whole and this amendment independently or sort of on its own. But I can put them together and say I do not believe that there is enough in the positive column to approve this application for this amendment. I have voted to approve other amendments because there was, and I can also say that this amendment in the context of the whole project; I do not see it as a benefit we already have sixty-five percent open space, we have protection of the shoreline, we have all those benefits they are in place and so how does this, in the context of the whole development, result in a net benefit it does not change that. It does not adjust it is one more unit it is increased density, so even if I try and contort it to look at the specifics and say does

this meet it does it not meet it, I cannot seem to get to yes on a couple of them. I might be able to massage it a little bit to get to yes, but I certainly cannot do it. That is where I am.

Kevin: this is the fourth time this has been discussed at the planning commission level; we are hearing that some of the commissioners are reaching conclusions. I think we need a motion on the table to debate.

Moved by Beard to approve amendment number four to the Peninsula Shores Planned Unit Development Number 123, subject to the five conditions as detailed in the December 12, 2023 staff report and finding of facts, seconded by Hornberger, for the purpose of discussion.

~~**No action taken**~~

Hornberger: that was the date that Jenn distributed that to us, and for the purpose of discussion, I will second the motion. I was here in 2015 and we were not given an opportunity to vote on forty-two units, so whether or not I would have approved that or not is moot because it was not brought before us. I know that it was heavily discussed at the time and when forty-one units were approved, we had the sixty-five percent open space, and we had the lots. I do not see pulling units twenty-five through twenty-nine back a little bit from the bluff as significant enough to add another unit.

Beard: there is no question in my mind that even however slightly this amendment increases density in this development, and there is no doubt in my mind that even however slightly it increases traffic and noise and lighting in this development, I do not see how it benefits the residents of that neighborhood, that development, or the community as a whole. The mathematical calculations necessary to maintain the 65/35 ratio does not truly result in any additional usable common space for the residents of that development, and nor does it improve anything for the community as a whole. The resulting smaller lot sizes in forty-one and forty-two are in fact not consistent with the adjacent lots and I do not believe these are an improvement. We have heard this tonight (you can argue) that what is being requested here is a minor change, a modest change, a marginal change, an insignificant change, but the letter of the law that we have to find uses the phrase substantial improvement. The code does not say that minor changes shall be approved, the code requires approval if the modification is of substantial improvement and so in the plain language of the code, I do not think amendment number four does in fact meet that threshold. I do not think it is an improvement at all in the neighborhood, or in the community as a whole, substantial or otherwise. I think that the staff report and the findings of fact are dead on and I think what the attorney shared with us this evening is right on point as well. If I recall correctly by the applicant's own admission, forty-one was put on the table because that is what their engineer/architect put on the table, and they went with that. Now sometime down the road you crunch numbers differently and you have a different result does that create an obligation on us to change, I do not think it does, given that there are some downsides to approving. This in my opinion. I will be voting no.

Alexander: I would agree with you, Mr. Beard. One of the things in the ordinance talks about open space being available and usable for the residents. If you are just taking a little bit out of somebody's yard that does nothing to increase the amount of available space that is specifically set aside for the people that are in that development to use, this open space does not pan out. It does increase density which is something I am not in favor of and I just do not think it is an improvement to do that. As mentioned earlier, talking not approving or approving things; I do take issue with that because we did just move lot one and change that. This in our opinion, was an improvement. For this particular one, I am in agreement; it is not substantial enough. To refresh my memory: we are talking about the shoreline and saying we are obligated to preserve the shoreline, and that is one of the things that you really care about. There has been a discussion at one point about separating that piece out and taking those five lots. Was there a discussion of saying can we take those lots on Shoreline Drive if preserving the shoreline is the main intent here, and going ahead and tweaking those without considering the lot? I remembered discussing that at one point.

Cram: I am not recalling that conversation.

Alexander: to clarify, could the planning commission just approve the changes to lots twenty-five through twenty-nine separate from adding a lot? If the main consideration was definitely to preserve the bluff the

applicant was really concerned about preserving-meant bluff. Their main consideration was to preserve the bluff and the amendment, as it is written, changing those lot sizes- moving them, it would seem that a responsible builder would do that anyway.

Shanafelt: I agree with largely what has been said. What strikes me in general is that everything is going to be case by case; I think this one is particularly interesting. I understand in the background there is a lot of contentious disagreement about this approval in the first place in 2015, and this is where I really find myself grounded in the decision made at that time. In this particular case, that is what sways me almost, more than anything. I agree with Kevin totally. I cannot think of why this is a benefit in any way shape or form, and thus it is really hard to support it just because everything about it ends up making it not as good as it is currently. That is where I stand. I understand the discussion- everything that happened, this is why I actually go back to the case-by-case perspective because in the future we will have a different case that we will consider differently.

Larry: I think that this is a very nice development. It is a high-class development, well done, and I think it is a benefit to the community. However, if we have to analyze it under substantial benefit, I cannot see where adding a home is a substantial benefit, unfortunately. I would like to approve this but I cannot. The only reason I cannot approve it is because we are bound by the constraints of the zoning ordinance or I would vote yes for it in a New York minute.

Hall: Chris, I understand what you are saying: the amendment by itself, viewed in isolation does not have to be a substantial Improvement, yes or no?

Patterson: I think that is the way that you could apply the zoning ordinance.

Hall: I agree with the comments that have been made that the various findings of fact by staff indicate that the proposed amendment would not be an improvement, and in fact will be detrimental; traffic and other features. However, my view is that- since we do not have to look at the amendment by itself and find a substantial improvement, we should be looking at the project as a whole, as amended by the proposed amendment to see if it still is a substantial improvement. I think that it is and I would approve it.

Dloski: asked for clarification.

Discussion

Hall: motion on the floor by Beard:

Moved by Beard to approve amendment number four to the Peninsula Shores Planned unit Development Number 123 subject to the five conditions as detailed in the December 12, 2023 staff report and finding of facts, seconded by Hornberger.

Roll Call: Beard, no; Shanafelt, no; Hornberger, no; Dloski, yes; Alexander, no; Hall, yes; Shipman, no

motion failed

Beard: when will this show up on the board's agenda?

Hall: we are not sending it on

Cram: the board has the final approval.

Patterson: my understanding is the motion was made in the affirmative. Under the zoning enabling act, we could consider this still action by the commission and take it to the board. There also is the alternative motion which is to then make a motion that you are recommending to the board to deny it; you should appreciate the fact that right now you are giving the board (not specific) direction; meaning you made a motion to recommend, it did not pass. If you want to make a motion of some sort to send it to the township board with a recommendation, if you decide to take no action, then we will have to take the commission's direction and we will work with whatever you give us.

Beard: in my past life this was a clear message to the legislative body. It was five to two against approval.

Patterson: if nobody wants to take any action, we are fine with that. We will take it as it is presented in the minutes to the township board.

Cram: normally in in my experience that motion failed and then there would be another motion made

to recommend denial to the board, but if Chris feels we have enough information. I just have not done it in the reverse like that.

Patterson: can I ask for one clarification from the commission? I just want to clarify you all understand that the decision that you made, just so this is on the record, that you understand that that was a final recommendation and that this action can now go to the township board with the findings of this meeting and the prior meeting and the public hearing.

Discussion

Moved by Shipman that we recommend denial to SUP Number 123, Amendment Number 4, as presented. ~~**no action taken**~~

Dloski: reference the staff findings

Discussion

Moved by Shipman to recommend to the township board denial of the SUP amendment in conformance with the recommendations made by staff in the findings of fact presented in our meeting packet, presented and discussed on December 18, 2023, seconded by Alexander.

Roll call: Beard, yes; Shanafelt, yes; Hornberger, yes; Dloski, no; Alexander, yes; Hall no; Shipman yes

motion passed

9. Reports and Updates:

a. Application Received for an Amendment to SUP #132 – Bowers Harbor Vineyard

Cram: we have received an application and the plan is to bring that forward to the planning commission at the January 22, 2024, meeting for an introduction. It is an addition to the single-family residence, and the single-family residence was part of the original special use permit approval because of needing as much of the total acreage as possible. That is why the single-family residence was encapsulated into that SUP.

b. Building Height Study Group Update and Policy Recommendations

Cram: gave a brief update/summary from the building height study group, memo is in the packet. Will advertise for a public hearing for the January 22, 2024, planning commission meeting; will prepare draft verbiage.

Hall: gave brief comments on the activities of the building height study group.

c. Shoreline Regulations Study Group to Begin January 2024

Cram: plan to move this group forward in 2024. Summarized the purpose of this group and proposed participants.

d. Notes from the township board strategic planning meeting held on December 13, 2023

Cram: summarized the main topics of the strategic planning meeting, where all of the board members were asked to write down priorities for 2024. The notes can be found on the wall. A priority for planning was getting the draft master plan across the finish line in quarter one. Second, hiring a planning and zoning administrator and additional staff. Third, a complete update to the zoning ordinance also ranked very high. Also, specific strategic updates to shoreline regulations. In addition, there are police power ordinances that are also a priority, including the stormwater ordinance and the junk ordinance. Also, to look at recent legislation that is moving its way through the state with regard to wind and solar and housing density. The planning commission will work with staff to prioritize near-term zoning ordinance amendments. Finally, continuing the study groups and hiring assessing staff.

10. Public Comments:

Fred Woodruff, 4824 Forest Avenue: I read a number of months ago that there was the

formation of a metropolitan planning council. I noticed there are lots of things on the agenda including the master plan and the new zoning ordinance. Is the planning commission participating in that in any way because yes, we are unique and we have this little finger thumb, whatever you want to call it, sticking out in the middle of Grand Traverse Bay. We are one of four or five townships surrounding the City of Traverse City. It also has a planning commission; it also has a master plan; all of the others have a master plan. Does it make sense as we go through this for you all to participate in that in some way?

Cram: yes and no; there is a technical committee and a policy committee that is part of the new formation of the metropolitan area and so myself and Isaiah Wunsch, the supervisor, have been participating in these meetings. They had to designate voting members and I, as the Director of Planning and Zoning, am the voting member representing the township on the technical committee. Isaiah is the voting member on the policy committee. The township board authorized us to participate in these meetings. We both have the authority to be the alternate vote if one of us is not able to attend that meeting. There are fourteen townships and four transportation agencies. Some bylaws have been adopted, and as the representative for the township, I will be bringing updates to the commission as they come forward. We have been in a lot of red tape meetings adopting bylaws and procedures. We have not gotten to any policy decisions but that will be coming. The technical committee meets every other month so there are six meetings per year and the policy committee meets every other month. I have been participating in all meetings and going to all of them to make sure that the township has a voice and a vote.

Woodruff: there are lots of issues that come out of the master plan and the rewrite of the zoning ordinance. Let us not reinvent the wheel, there have got to be policies behind things. Leelanau County has as much shoreline as Peninsula Township. I imagine if you go all the way.

Cram: the metropolitan area is specific towards transportation and because we have become an MPO we qualify for federal dollars; to qualify and receive those dollars we have to have this group. Everybody gets an equal vote; those are all the things that we have been working through.

Lauren Tucker, 558 Brackle Point, representing the Home Builders Association: I do look forward to seeing the policy recommendation. I am disappointed because I thought we had reached a consensus with a good recommendation. I was hoping to hear that tonight and see that process move forward. That is a disappointment. I agree with you, Randy, that the process was constructive and productive. One thing that I would like to highlight is in the shoreline study group: I would ensure and encourage you to corporate engineers, landscape architects, of that sort. I didn't hear any of that listed. I would also like to be added to that group if possible as I do represent many of those professions and can add a different layer of expertise. So again, I thank you for what you do and for giving your time. Make sure that you are consulting the professionals because I think that is the thing that leveled that up.

Spencer: I just wanted to piggyback quickly off of that because that was going to be one of my follow-up comments. If you would not mind providing publicly the list of people who are already participating and perhaps if they have a role on the board, or if they come from a certain industry. I would also like to see who are the non-biased or the professional experts; I had recommended in the public packet. Jenn, there is the association that you belong to, there are other people that we could pull in to come in with an unbiased view. Inherently, we all have a biased opinion on this because depending where you are on the spectrum. It needs to take an outsider's perspective on what the law is; and how to limit the number of lawsuits our township gets into as a result of the decision that plays out in the study group and the decision that comes from that.

Monnie Peters, 1425 Neahtawanta Road: I packed this room five years ago when the water was rising, it reached its top, and the panic that was out there about what was going to happen to my shoreline. When I saw that this was coming back. From comments, I have heard shoreline means a lot of different things to a lot of different people. There is the boating community and how they look at the shoreline. Some people want to grow grass to the water and want to have lawns so they are looking at their yards. Various other communities look at shorelines. I think five, six seven years ago the person I found most interesting to talk about a lot of the serious issues was Dick Norton from University Michigan, an absolutely

incredible guy who has been involved in shoreline issues and he was dealing with the communities as they marched up along the coastline. There are multiple issues and multiple different things, so I can see that one of the important things is to start by having an open conversation about what are people's different views of the shoreline and how are they impacted. Then figure out where one needs to go on this. I think there is a fairly low water level and I read in the weekend's paper that they are suggesting that spring will be even four inches lower, something like that. So, there is not the panic that the citizenry had about what was going to happen and how can I save my shoreline and do I have to build a seawall. One of the things that we will have to do is to put our thinking caps on about what was happening four and five years ago as this was coming up and not forget that the water is down now, but the water was up not very long ago. I just suggest that to you all and say it has been interesting to have been in this area of study for the last four five six years: because it goes up and then it comes down and maybe it will be up again.

Hall: shoreline encompasses a lot of sub-issues, Jenn has subdivided these issues for discussion: single lot ownership and docks, size and location, shared waterfront, land use and shoreline maintenance, etc.

Cram: the builders and the architects are committed to working on the building height study group. The shoreline group is a longer timeframe and experts will be invited to speak on topics to get resident and expert input.

Shanafelt: the building-height study group worked cooperatively with all of the agendas involved.

Scott Norris, 5250 Lone Tree Road: I have the privilege of participating with you all in that study group and I agree I think that consensus was reached; it feels like things we are pretty clear about the finished grade, how that was going to be measured, and how we are going to measure the natural grade. We talked about a five-foot maximum between where that finished grade might be and the bottom, the average grade, the halfway point between the natural grade, and a finished grade would not be more than five feet above the natural grade. In other words, one might raise it ten feet but it could not be more than five feet higher than that- the halfway point could not be more than five feet higher than the natural grade. Whether you pick five feet or not, I think that is what we talked about around the table. There was some discussion about some exceptions to that particular rule: high water table was one, particularly steep slopes, maybe thirty percent slopes or greater if the house footprint was below the level of the road if they had a large acre parcel and the house was out in the middle of it, would it matter if it was raised more than the five-foot mean, if the parcel footprint was maybe more than x amount of feet from a property line. Jenn mentioned that those things could be handled by a recommendation from the zoning administrator for a variance. The time it takes to acquire a permit, as a builder, I and maybe the zoning administrator does not want to take on this added responsibility; but if there was a language that was included that where those exceptions would be allowed, you know for high water, table steep slopes so that the zoning administrator could have some latitude to approve those without having to refer us to a board of appeals. It takes a long time to get permits and this just adds more expense and time to the permitting process; if the zoning administrator denied the plan and it met those exceptions, then we could go to the zoning board of appeals. I think that to make the permitting less cumbersome than it already is, we could give some latitude to the zoning administrator and those particular exceptions that we talked about. It was an honor to be involved, it was very productive and felt positive.

Ellis Begley, 5419 Dunn Drive: also a participant in that study group, I think it has been productive. It has been very beneficial; we have been talking about definitions and creating diagrams. I am very thrilled and eager to continue working with that group to provide diagrams that hopefully everyone in the room can understand, every resident on the peninsula. We benefit from going through this process and studying more buildings on the peninsula, ones that have been built recently and historically, to ensure that we do not create several non-conforming structures. One thing that I have noticed that has been stalling the process: it is pretty clear that we are all in understanding about the definitions of where we measure from, and where we measure to. However, it seems pretty evident that these new definitions; if we continue to use this thirty-five-foot number, if we measure from a flat grade of natural grade to thirty-five feet up to the average, or mean elevation of the roof the lowest halfway point between the lowest point

of the roof in the top building height, then building heights on the peninsula will increase. This is based on how they are measured currently. Thirty-five might be the right number. I am certainly open to that discussion again during that meeting. I think it has just been incredibly worthwhile to review projects built on the peninsula already, to make sure that we are determining the correct number for these, with others in the group. It has not happened yet, but I think we are getting there. It is worth taking this time because there will be some public input if all of a sudden houses are five feet taller than what they are currently allowed to be.

11. Other Matters or Comments by Planning Commission Members:

Shanafelt: commented on the discussion on the Peninsula Shores amendment.
Shipman: absent in January
Shanafelt: absent in January
Shipman: commented on the building height group's productivity.

12. Adjournment: @9:10 p.m.

Moved by Dloski to adjourn, seconded by Shanafelt **approved by consensus**

*Letters from public comment, item 5:

Good Evening…

Jay Milliken

7580 east shore road

I am very disappointed to find myself here tonight. There should be no cause for my presence in this situation. I find it extremely challenging to understand the recent angle and actions of the township administration. Regrettably, there appears to be a recurring theme within the township involving misinterpretations, inconsistent interpretations and new interpretations of long-standing laws and ordinances.

I am here with reluctance to formally read a letter for the record...

Dear Mr. Wunsch,

As owners of one of the very few commercial properties on Old Mission, Seven Hills, we are constantly striving to create a more inclusive community hub. Since our opening in June of 2023, we have worked diligently to establish a safe and inviting community center for people of all ages and backgrounds.

Our establishment has become a preferred spot for many local residents, serving as an ideal location for setting up remote workstations, allowing children to play on the expansive lawn, and providing a venue for friends and family to gather for various celebrations. We take pride in the positive community atmosphere we continue to foster on Old Mission.

Our property is classified as commercially zoned (C-1) and is contiguous to the largest section of commercially zoned property on Old Mission. Additionally, we possess a special use permit that allows for various uses on our property, including but not limited to a bar, tavern, and tasting room.

At Seven Hills, we have obtained licenses from the Michigan Liquor Control Commission that permit us to serve spirits and wine. These licenses are authorized under our current zoning (C-1), our special use permit, and the existing township zoning ordinance.

Throughout the first seven months of our business, we have, and continue to make numerous adjustments based on the needs of the local community and the business itself. Frequent questions and comments from the community on a daily basis include:

"Why don't you offer any beer?"

"I don't drink hard alcohol."

"You should really offer something with a lower alcohol content."

Embarking with just a small distiller's permit and gathering feedback from the community, we quickly recognized the need to incorporate beer and wine into our offerings. Daily, we observed

customers entering, taking a seat, and subsequently leaving when they realized we lacked options beyond hard liquor. We acted quickly and added a wine license.

The community members are extremely pleased with the addition of wine in our tasting room.

The next step for us as a business was to initiate the application process for a microbrewer permit. Introducing a low ABV (alcohol by volume) beer option to our tavern menu is an excellent way to ensure that all guests can enjoy our establishment. We often have guests who spend the entire day with us, enjoying their time on the lawn playing games and catching up with family and friends. Beer is obviously a great daytime beverage option compared to higher proof wine or spirits. By offering a beer option, we aim to contribute to creating a safer environment for all residents and visitors of the Old Mission Peninsula.

We recently learned that the Peninsula Township planner has submitted an opposition letter to MLCC concerning our pending microbrewer application.

The filed opposition claims that we would be in violation of the zoning ordinance and would need to amend our current special use permit. Furthermore, it states that we are only approved for a small distiller permit for our approved tavern, bar, and tasting room. However, all of these assertions are inaccurate. A micro brewer permit is surely allowed (as was the small distiller license and small wine maker license) within our existing SUP for tavern use (section 6.6.2 (1))

Given the limited size and development plan for our commercially zoned (C-1) property at 13795 Seven Hills Road we are unable to, and not planning to brew or make beer in a traditional, full production manner.

We have purchased a five-gallon glass carboy for fermenting third-party purchased wort on-site, at Seven Hills. This process will appease the MLCC licensing department and must be done, at a minimum, once a year. In total, we will create *maybe* 10-20 gallons of process and wastewater/liquid **annually** to meet the minimum on-site brewing requirements of the MLCC.

The beer we serve will be coming from our five-gallon fermentation carboy and from a local, licensed brewery. We will be purchasing five-gallon ("pony") kegs for service in the tasting room. No bottling, no retail, just tastings of beer in our already licensed tasting room.

Our supplier, a local brewery, is licensed and contracted to create our products for us, off-site at their licensed and bonded facility. Our products will be brought from their legally licensed and bonded facilities and delivered to our licensed, bonded facility.

Would the township require a tavern that only served cocktails and wine to amend their special use permit if they wanted to take a keg? No. (Would the township require Seven Hills to amend our special use permit to press old mission grown apples into apple cider and serve from a keg? Which we currently do? NO.) Serving kegged beer will not burden the existing infrastructure.

The nearby residential parcels will probably benefit from being walking distance to a nice place where they can snag a beer.

With the issuance of the microbrewer license, we will continue operating in accordance with the township ordinance and within the parameters of our Special Use Permit. We have provided all the necessary information to proceed with our business endeavors. Now, we will be able to offer our beer-loving clients an option they prefer.

Thank you for promptly addressing this matter and for assisting in securing the rescission of the Peninsula Township planners' letter of opposition with the Michigan Liquor Control Commission.

Sincerely,

Jay Milliken
OMP Seven Hills
Partner

My name is Judy Spencer, I live at 6450 Peregrine court, with my husband AND 3 young boys. My husband grew-up on the Peninsula, as well as his parents, and generations before that as well. One of the greatest gifts each of these Spencer-generations provided to their respective children was access to the Great Lakes, with Private or Shared frontage.

So when Jeff and I decided to raise our Family in Traverse City 13 years ago, we made it a financial goal of ours to some day get water access, to provide the same wonderful Travers City memories and experiences his parents provided to him.

We worked really hard – both working fulll-time – and were blessed enough to be able to fulfill our goal to afford a lot with Shared Frontage. We were living a dream: building a new house, getting a hoist and a boat, all under the impression we had proper permitting from the US Army Corp of Engineers.

When I look back, some of our greatest family memories were spent on the water of East Bay on our boat. It is simply why we live in Traverse City. Our boat and access to the water holds such significance in our family, which was amplified, unfortunately, during Covid, when the only thing we *could do* was go out on our boat, and spend time as a family, just the 5 of us. While the dark days of Covid seem to be in the rear view mirror, you have to understand, that was a major portion of my kids' lives; a good portion of their childhood. So the significance of being on the water on our as a family is even more significant in my children's eyes.

Fast forward to today, boating and access on East Bay, provides a sense of community meeting up with neighbors on the water, exploring nature over at Tobecco, and the latest is our kids are getting into water sports. The smiles on their faces truly reflects the beauty of Northern Michigan summers.

I guess my point is, while there is a fundamental legal disagreement on who has jurisdiction over the Great Lakes, Which I submitted information for next Month's meeting packet with my best interpretation of the Federal Law in response to the Planning meeting on November 20, at the end of the day, we are asking for 3 months out of the year to have access to our boats so we can pass on the enjoyment of the Great Lakes to this generation and generations to come.

The intent of our ordinance Section 7.4 as it stands today is to "protect the water quality and land resources related to the Great Lakes Shoreland for the future health, safety and welfare of Township residents."

If we didn't have a dock, all the boats would be Moer'd, and the same amount of people would still be crossing the roads to access their moerd boats. So limiting the number of hoists wouldn't increase the safety of our residents.

Even worse, if we had to explain to our kids we could no longer have access to our boat on East Bay, I can say for certain that we are not protecting the welfare of the Township citizens who want to share the beauty of being on the Great Lakes.

I am optimistic that the Shoreline Study group will look at other ways of improving the health, safety, and welfare of the Township Citizens, and look to remove ordinances in place today that conflict with Federal and State laws, resulting in less lawsuits and legal fees for us all in the future.

I hope to be a part of that study group, and want to thank you for your service.