

LELAND TOWNSHIP PLANNING COMMISSION  
Wednesday, April 7, 2021 - 7:00pm  
Leland Township Office meeting room  
123 N. St. Joseph St. Lake Leelanau, MI  
and Zoom Meeting Room  
<https://us02web.zoom.us/j/82183750000>

**PRESENT:** Chair Dan Korson; Clint Mitchell, Township Board Rep;  
Ross Satterwhite, ZBA Rep; and Vice Chair Skip Telgard

**STAFF:** Tim Cypher, Zoning Administrator

**ABSENT:** Sam Simpson, Secretary

**GUESTS (IN-PERSON):** Chris Bunbury, Chris Grobbel, PhD, Lisa  
Psenka, Greg Jollif, Charles Psenka, Marlis Mann, Gene Mann, Jim  
Simons and Shirley Affalter

**GUESTS (ZOOM):** Zoom meeting participants: Nancy Smith, Gloria  
Garrett, Jack Wixted, John Wellborn and Jonathan Psenka, MD.

**CALL TO ORDER:** Chair Dan Korson called the meeting to order at  
7:05pm with the Pledge of Allegiance.

**AGENDA:** Chair Korson called for a motion to approve agenda for  
April 7, 2021, meeting as presented. Satterwhite moved to  
approve the agenda as presented; supported by Telgard. All in  
favor, motion carried.

**DECLARATION OF POTENTIAL CONFLICTS OF INTEREST:** No conflicts of  
interest declared.

**APPROVAL OF MINUTES:** Chair Korson asked for a motion to approve  
minutes from the March 2021 meeting. Mitchell requested to  
change a sentence in last paragraph, line 13 and 14, to state  
"Mr. Mitchell has concerns about Mr. Bunbury paying for a  
document that would include more Planning Commission Board ideas  
than his own." Chair Korson moved to approve the March 3, 2021,  
minutes as presented with changes updated on page five; Mitchell  
seconded. All in favor, motion carried.

**PUBLIC COMMENT:** No public comment currently.

**REPORT FROM TOWNSHIP BOARD REP:** Clint Mitchell reported on the annual meeting with a lot being accomplished and many people in attendance who were able to share their opinions for the township.

**REPORT FROM ZBA REP:** Ross Satterwhite reported there are no updates at this time.

**NEW BUSINESS** - No new business

**OLD BUSINESS**

**Psenka - Conditional Rezoning Application - Public Hearing**

1. Presentation by Applicant - Dr. Grobbel reviewed on behalf of Psenka's, the conditional rezoning application. Dr. Grobbel advised that basically there are three issues which include the terms of the conditional rezoning, with the planning commission having the authority to establish the timeframe. Dr. Grobbel feels that through the normal course of business, the zoning administrator has the ability to write a stop use or stop work order in this case. Dr. Grobbel reported, as specified last month, the Psenka's are asking for a conditional rezoning for a cidery on the property of the Snowbird Inn that would be in perpetuity. Dr. Grobbel stated that the second item has to do with the required permits and as he has stated since the beginning of this process that that any and all permits and documentation would be provided to the township for their records that is in accordance of all the statutes, standards and regulations. The third item, per Dr. Grobbel consists of the hours of operation and as he said last month the Cidery would mirror the hours of operation of the Good Harbor Tasting Room and Winery to the south. Dr. Grobbel reported that the site plan and required narrative was submitted in December with the hope that after the public hearing the planning commission can make a decision on the proposed conditional rezoning application.
2. PC Questions/Discussion with Applicant - No questions at this time.
3. Public Comment

Jim Simons asked for a review of the hours of operation.  
Cypher read into the record the following hours of April to

November, Monday to Saturday are 11am to 6pm, with Sunday hours of 12pm to 5pm. December to March hours are Thursday through Sunday, 12pm to 5pm.

Nancy Smith asked if a liquor license is required, and if so, has it been obtained or is it in process? Cypher reported that the license would need to be obtained from the Michigan Liquor Commission. The license will not be granted in advance, with township approval needed prior to application for a liquor license.

Gloria Garrett, who resides at 543 N. Birdsong Road, reported she was just made aware of this a few minutes ago and is very concerned because of this request being in perpetuity and may possibly have to be stopped in the future. Garrett expressed concern about this conditional rezoning will bring potential harm, destruction and upset the quietness of the area. Garrett feels that with the amount of money she spent on living in a quiet, wooded area, this would affect her lifestyle and the roads.

Jack Wixted, a homeowner, who is also representing his wife, Carol, is concerned about the significant wetland area, which goes back two acres of his property at 347 Birdsong Road, a has a conservancy easement. Wixted inquired if the conservancy was notified of the conditional rezoning and does the DNR and EGLE need to be involved.

Smith has concerns about the conditional rezoning being in perpetuity along with questions from Wixted about Tandem Cidery and does Good Harbor Winery have rezoning in perpetuity also?

Chair Korson asked Dr. Grobbel to speak to questions asked at this point. Dr. Grobbel advised that hours of operation are what is already in the neighborhood, with the Good Harbor Winery not being subject to a conditional rezoning as it is a winery not a cidery. Dr. Grobbel advised that there are no new buildings or events being proposed, only a new use. The proposal is for hard and soft cidery products and donuts. The Leelanau Conservancy is an easement holder and property owners are only required under Michigan Law to be notified, Dr. Grobbel reported. Dr. Grobbel advised that no legal requirement for an environmental impact study is needed, with no EGLE involvement as this is a township rezoning matter.

Cypher advised that a notification was sent to the property owner, Helen A. Osborne Trust, and not to the conservancy as they do not own the land and have burdened part of the land with a conservation easement on the property.

John Wellborn, 385 N. Birdsong Rd, had a procedural question as to whether tonight is about the conditional rezoning with the site plan being part of a separate hearing, with Cypher stating this is correct.

Wixted asked about the Tandem Cidery rezoning being in perpetuity with Cypher advising that Tandem Cidery is in another township. The public would need to get with Suttons Bay Township regarding the specific approval and what that entailed.

Smith strongly recommends not granting conditional rezoning in perpetuity as that leaves the township wide open to other alcohol usage that may not be approved. Smith had a question about what type of alcoholic beverage would be included with licensing. Dr. Grobbel reported that the Psenka's are only asking for a cidery tasting room and donuts with no tavern or bar being proposed. Dr. Grobbel stated that Psenka's are asking for conditional rezoning in perpetuity, as long as use is in agreement with township ordinances in order not to be back every few years to request approval, which he feels is a reasonable request. Discussion followed.

Dr. Grobbel advised that he is just now hearing that the site plan review is not slated for approval tonight and it was his understanding that it was to be approved tonight. Dr. Grobbel reported why has there not been any feedback on any issues with the site plan. Dr. Grobbel disagrees with another meeting for the site plan approval next month. Discussion followed regarding conditional rezoning and site plan.

Marlis Mann asked why a liquor license is needed for the cidery. Dr. Grobbel advised that hard cider is being proposed and the State of Michigan requires a liquor license not the township. Mann shared the 52-year history of the Snowbird Inn when she lived there before they sold to the MacFarlands. Mann has concerns of parking on M22 and loud music. Dr. Grobbel advised no music events are being planned and Psenka's are not anticipating a significant increase of traffic and parking has to be off street and on-site. Lisa Psenka stated that they are proposing something that mirrors the winery just

down the street. Discussion followed regarding parking, noise levels, along with protocol on moving the meeting forward.

Garrett, 543 Birdsong Rd., is very concerned about having alcohol consumption at the beginning of the road, which could make current alcohol surrounding Snowbird Inn even worse. Garrett and Wixted have concerns of the parking situation.

Chair Korson asked for anymore public comment via zoom attendees.

Wellborn reiterated his question of is tonight's meeting strictly about the rezoning or will the public be asked to comment on the site plan itself. Chair Korson advised that during planning commission with staff discussion, it will be determined if one or two separate meetings are necessary for the site plan and conditional rezoning requests.

Commissioner Mitchell questioned why there was not more effort in making property owners aware the Psenka's plans.

Jonathan Psenka, MD, one of owners of the Snowbird Inn, shared the family's plan of having the cidery since the planting of the apple trees. Psenka had discussions with Cypher 8 to 10 years ago regarding the cidery plans. Psenka advised that Birdsong Road characterization with alcohol, etc., is not very accurate in his opinion. Psenka stated this is their home and they have raised their families at the Snowbird Inn, with the Cidery not being a new idea. Discussion followed.

Chair Korson closed the public comments at this time and asked for response from the applicants.

#### 4. Applicant's Response to Public Comment

Dr. Grobbel shared that he feels they are getting through the issues and that property owners within 300 feet were notified of a public meeting, with no legal requirement to go door to door. Dr. Grobbel advised that this process has been ongoing for more than two years with the applicant asking the planning commission how to proceed and Psenka's have been given the process with everything being completed (e.g., site plan, narrative, public meeting) in December. It is now April and the Psenka's are hoping, in good faith, that the township continues with the conditional rezoning application and site plan review tonight.

## 5. PC Discussion with staff

Cypher read into the record the following email from legal counsel, Robert Parker, on Friday March 5, 2021, to Tim Cypher, ZA about addressing the issue of running the applications side by side:

"The question you have raised is whether the Township may or should conduct site plan review of the proposed activities at the same time that it considers the conditional rezoning of the applicant's property from Low Density Agricultural Residential to Agricultural Conservation.

I see nothing in the Township's ordinance which would compel the Township to address this application in the manner suggested and believe that there may be some practical reasons for it not to do so.

As you know, that section of the Zoning Enabling Act which permits conditional rezoning specifically provides that the Township "shall not require a landowner to offer conditions as a requirement for rezoning" MCL 125.3405(5). Although cideries are permitted within the AC district, the applicant must seek and obtain site plan review and approval and in certain instances may be required to obtain a special land use permit. That process necessarily involves some give and take between the Township and the land owner in terms of design and performance assurances. My concern is that without a bright line, those discussions could be viewed as the Township imposing requirements upon the land owner as a condition to approving the rezoning. Completing the rezoning process separately from the site plan review, avoids this confusion and protects the Township from subsequent legal challenges. I know it's more time consuming but it is much cleaner."

Cypher advised that based on this directive from the attorney, he posted the public notice for the April 7, 2021, meeting for the conditional rezoning. Cypher reported that he concurs with Mr. Parker and there will not be a site plan review at tonight's meeting. Cypher advised that if Dr. Grobbel is aggrieved by his decision, it can be taken to the Leland Township Zoning Board of Appeals. Cypher feels that the Planning Commission has done its best to move along this conditional zoning request. Larry Sullivan commented that addressing the site plan prior to the Township Board deciding would be in vain if the conditional rezoning application is denied. Discussion followed with consensus to abide with legal counsel and the zoning administrator's decision of a two-part process.

Dr. Grobbel advised that information for the conditional rezoning and site plan was supplied in December and that there is no reason to bifurcate the process.

Chair Korson directed the planning commission to move on to the conditional rezoning request.

Mitchell asked about the perpetuity request with Cypher advising that the applicant is asking for that, which is what the Planning Commission needs to take at face value. Discussion followed. Sullivan advised that can recommend approval (in which case it goes to the County Planning Commission), recommend denial or table. Discussion followed with input on conditional rezoning request procedure from Dr. Grobbel.

#### 6. PC Deliberations/Findings of Fact

Discussion ensued regarding in perpetuity versus reviewing on a regular basis if complying with conditional rezoning.

Cypher advised to follow the handout on Article 5, Section 5.04.D, as those six questions should be asked procedurally:

- a. What, if any, identifiable conditions related to the application have changed which justify the proposed amendment? Cypher advised that applicants want to mirror the winery requirements with the cidery conditional rezoning. Discussion followed regarding procedures.
- b. What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition? Chair Korson feels that precedent will be set in the AG/RES district with other owners requesting the same; Telgard has no comments; Mitchell disagrees that an official precedent does not exist; Satterwhite questioned how much AG area the township really has. Discussion followed with 9% zoned AG being reported.
- c. What is the impact of the amendment on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future if the proposed amendment is adopted? Cypher advised no buildings being added so public services will not be affected. Telgard sees no adverse effects; Mitchell states police and fire will be affected; Korson and Satterwhite agree with Mitchell.

- d. Does the petitioned district change adversely affect environmental conditions, or the value of the surrounding property? Telgard doesn't see anything destructive to the surrounding properties due to existing bed and breakfast with Korson, Mitchell and Satterwhite in agreement.
- e. Does the petitioned district change generally comply with the adopted Comprehensive Development Plan? Telgard states it does comply; Mitchell agrees generally; Korson stated that information from community is about rural characteristics of the township, with this application being commercialization. If it continues being allowed, it could change what the planning commission is trying to accomplish in the township with respect to the Master Plan; Satterwhite agrees that this request is not an established use in the Master Plan.
- f. Is the property in question able to be put to a reasonable economic use in the zoning district in which it is presently located? Satterwhite asked if it is reasonable economic use. Discussion followed. Telgard, Korson and Mitchell in agreement.

Cypher advised that the applicant would not have had to even apply through the Planning Commission if the Psenka's just put up a roadside stand to sell the hard apple cider product and the review is about use of an existing building. Discussion followed with input from the applicants as well. Psenka's feels the land-use with the heritage apple orchard is a better use. Psenka stated does the township want to see the land cut up into sections for development?

Cypher clarified for Korson that there are no other wineries or cideries in the AG/RES district in Leland Township, but to be aware that there has been no audit.

Chair Korson reviewed the application request in perpetuity usage. Discussion followed regarding amending the proposal. Dr. Grobbel advised there are existing safety controls if the conditions are violated. More discussion ensued. Dr. Grobbel requests a number of years to come back versus in perpetuity with the fact that \$5,000 cost to come back for re-approval.



Discussion followed. Cypher advised that normally zoning runs with the land.

Satterwhite stated that this is a hard decision, so it does take a while and does not want to keep bringing people back for approval over and over. Satterwhite feels there are a reasonable set of rules and coming back a few years later makes it harder to invest in your business. Mitchell is fine either way. Telgard understands both positions and the money piece is pretty onerous, with the inclination of having them come back after two or three years, with neighbors perhaps being more on board with it. Cypher reiterated that the conditional rezoning runs with the land and the use has abide by the established conditions. Discussion followed with Dr. Grobbel advising that the application as it stands in perpetuity is the Psenka's request.

7. PC Motions/Action - Chair Korson asked for a motion to vote on approval or disapproval of the Psenka's conditional rezoning application. Satterwhite moves to approve the Psenka's conditional rezoning application based on the conditions set forth in the applicant's presentation, which includes in perpetuity, required permits and documentation, and hours of operation. Mitchell seconded. Roll call vote: Telgard-yes; Mitchell-yes; Korson-yes because it was in works before the property was rezoned, otherwise he would have voted no; and Satterwhite-yes. All present in favor, motion carried.

*Ten-minute meeting break. Meeting resumed at 8:45pm.*

#### **Zoning Amendments - Status - Lot Coverage/Character Clause**

Cypher reported on discussions with Sullivan, with updated information in the planning commission meeting handouts. Discussion followed. Satterwhite shared that this Lot Coverage/Character Clause is important for the planning commission to do as there are no guardrails now. Satterwhite feels an obligation to tackle it, get more information from the public and see if the planning commission can do something reasonable. Korson states that he feels there are some guardrails in place, which can be improved upon, especially the waterfront. Korson feels the planning commission can tighten things up without being too restrictive. Extensive discussion followed. The consensus of the planning commission is that Satterwhite will work on an analysis and do some math with

respect to the parcels and structures. Bunbury appreciates all the work and willingness of the planning commission members to take on this project.

**Master Plan - Status - Update from Planner and ZA**

Cypher advised to table the Master Plan update from the Planner and Zoning Administrator until the next meeting in May. If there are any comments on the update in the packets, send directly to Cypher who will disseminate to the commissioners. Cypher clarified with Mitchell that he will get him the 2010 census data for comparison from 1990 to 2010. Satterwhite moved to table the Master Plan update until the May Planning Commission meeting, Telgard seconded. All in favor, motion carried.

**OTHER BUSINESS (as required)**

No other business presented.

**Zoning Administrator Comment:** Mr. Cypher reviewed March monthly report and reports has been a busy month.

**Planning Commission Comment:** None currently.

**Public Comment:** None currently.

The next meeting is scheduled for Wednesday, May 5, 2021

**Adjournment:** There being no objection, Chair Korson adjourned the meeting at 9:40 p.m.

Respectfully Submitted

Sandra Dunkin, Recording Secretary

Date Approved: May 5, 2021