

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA (WOMP) ASSOC., a Michigan
Nonprofit Corporation, et al.,

Plaintiffs,

v

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**EXPEDITED CONSIDERATION
REQUESTED**

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT OR
FOR SANCTIONS AGAINST PENINSULA TOWNSHIP**

I. INTRODUCTION

This case settled through a lengthy mediation process on September 13, 2021. On more than one occasion, Magistrate Judge Ray Kent has strongly encouraged, even implored, the parties to settle this dispute concerning Defendant's violations of the First Amendment, the Commerce Clause, and Michigan law. The Plaintiff Wineries (the "Wineries") took that message to heart and negotiated in good faith with Defendant Peninsula Township (the "Township"). Sadly, it appears that good faith was not reciprocated. After approximately twenty-five hours of negotiations across five sessions, mediator Joseph Quandt announced the parties had reached a deal. That deal was reduced to writing and was approved by the Township's attorney, who declared that he had no changes to the document, that it accurately reflected the mediated settlement, and that "it's a done deal." Yet when it came time to sign the settlement agreement, the Township balked and reneged on the agreement.

The Wineries ask the Court to enforce the parties' unambiguous agreement or, in the alternative, order the Township to show cause why it has wasted so much time and money by negotiating in bad faith.

II. STATEMENT OF FACTS

The Wineries filed their Complaint in this matter on October 21, 2020. (ECF No. 1.) Subsequently, the Wineries filed a First Amended Complaint on January 4, 2021. (ECF No. 29.) Although some discovery has taken place, the parties largely have focused their efforts on finding an agreeable solution. The parties selected Attorney Joseph Quandt as their mediator and engaged in their first mediation session on March 6, 2021. It was not fruitful and certainly not successful.

On June 10, counsel for the Township reached out to counsel for the Wineries asking if we could have an "attorneys only" settlement conference. (Exhibit 1.) Counsel for the Wineries agreed though the first meeting was canceled due to counsel for the Township having a family emergency. Counsel for both parties continued to discuss how continued settlement discussions would work and counsel for the Township agreed with the Wineries' demand:

I also understand your client's fears that we will simply request that all items be referred to the planning commission and public review as a solution. We tried that. You have made it clear to me that such a request would not be granted by your clients, although I still believe it is the proper process. However, regardless of my view, I heard your prior statements and we understand and respect your position. Again, my purpose for engaging was to talk with you and determine if there was a basis for more detailed discussions and engagement.

(Exhibit 2.) Counsel for the Township then asked for a few days to meet with his clients before sending a settlement proposal. *Id.* Counsel for the Township emailed on July 8th that he had met with his clients. (Exhibit 3.) Counsel for the Wineries responded that a settlement proposal from the Township was still a prerequisite to a settlement meeting to ensure the Wineries were "not wasting their money." (*Id.*) Counsel for the Township responded that he understood and that he

would respond in a few days with a proposal. (*Id.*) When the settlement proposal was not received, on July 15th counsel for the Wineries inquired into the status. (Exhibit 4.)

On August 2, 2021, Attorney Greg Meihn, on behalf of the Township, emailed Attorney Joseph Infante stating that “the Board is meeting next Tuesday and will go into closed session to provide me authority to provide a specific proposal.” (Exhibit 5.) Then, on August 10, 2021, Meihn stated in an open session of the Peninsula Township Board that “[t]o save this expense on both sides, perhaps we can begin talking again with the wineries looking for agreement on some or all the issues.” (Exhibit 6.) The Peninsula Township Board subsequently went into closed session, after which the Board unanimously approved a motion “to approve Meihn to open discussions with attorney Joseph Infante, who represents the wineries.” (*Id.*)

On August 11, 2021, Attorney Meihn wrote to Attorney Infante,¹ stating:

I plan to have 3 Board members present at the in person negotiations. I will have the other Board members available by telephone. While I will not violate the OMA, having the others on the line will allow me to communicate with them and ensure that the end process is something the Board will approve.

Please let me know if your clients are willing to engage with the Township as outlined above.

(Exhibit 7.)

Attorney Infante responded the next day,² stating:

Also, it was not clear from your email, but I presume your position is that if the Town Board is involved in the settlement meeting we are able to reach a resolution

¹ The remainder of this email was redacted according to Federal Rule of Evidence 408. The unredacted portions fall into Rule 408(b)’s exception that “[t]he court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.” Because these unredacted portions are being used to “prove the existence and terms of the settlement agreement itself . . . Rule 408 does not apply.” *Glen Elec. Holdings GmbH v. Coolant Chillers, Inc.*, 2013 WL 2407613, at *6 (W.D. Mich. May 31, 2013).

² The remainder of this email was redacted according to Federal Rule of Evidence 408.

without further process. If you believe any resolution needs to go through a further township meeting and notice process then that will be an issue.

(Exhibit 8.) This was consistent with the discussions of counsel on June 23rd, Exhibit 2, that the Wineries would not agree to a settlement process which included additional steps after mediation or public review in order to reach a final settlement agreement. Attorney Meihn responded the following day and stated that his “Team can meet with you next week on the proposals that we have outlined.” (Exhibit 9.) The Township did not object to the demand that in order for the Wineries to reengage in mediation, any agreement reached at mediation would be final and not require further process. The parties then moved directly into mediation.

All told, the Wineries and the Township engaged in twenty-five hours of mediation spread across five sessions with mediator Joseph Quandt; March 6 (in-person), August 23 (Zoom/phone), September 1 (Zoom/phone), September 8 (Zoom/phone), and September 13 (in-person). (Exhibit 10; Infante Declaration ¶ 3.) All eleven Winery owners/representatives were present, either in person or by phone/Zoom, for these sessions. (*Id.*) At least three members of Peninsula Township’s Board, including Supervisor Rob Manigold, were present at each session with the remaining members of the board participating as needed by phone as agreed by the parties as a condition precedent to the mediation. Thus, the Township had either a quorum or constructive quorum for the mediation.

Following the September 8 mediation session, the parties were close enough to discuss a final settlement agreement and agreed that an in-person mediation would likely be necessary to finalize the settlement agreement. The parties scheduled a mediation session for September 13 and “plan[ned] to stay until we get a deal or determine no deal is possible[.]” (Exhibit 11.) Counsel for the Township commented: “Agree on finalizing. I want it finished so I can get it to the Board on Tuesday.” *Id.*

At the final mediation session on September 13, 2021, ending around 8:15 PM, mediator Joseph Quandt announced to the parties that they had reached a settlement resolving all issues in the case. (Exhibit 10, ¶ 4.) Thereafter, counsel for Wineries drafted a settlement terms sheet (the “Settlement Agreement”).³ (*Id.*, ¶ 5.) Counsel for the Wineries circulated the Settlement Agreement to the mediator and counsel for the Township at 9:27 the following morning stating: “We can fill in the standard agreement terms once the operative terms are agreed upon. This is still pending review from my clients and may be missing items though I think I covered everything. Greg [Meihn], I have also drafted a consent judgment which follows the same format.” (Exhibit 12.) Counsel for the Township responded that he would await the final draft. *Id.* The final Settlement Agreement was sent to opposing counsel and the mediator at 11:49AM. (Exhibit 13.) Counsel engaged in a telephone conference at 4:00PM to discuss any edits to the Settlement Agreement. (Exhibit 10, ¶ 6.) Counsel for the Township stated that the Township did not have any edits to the Settlement Agreement. (*Id.*)

The Wineries then prepared to attend a Town Board meeting that night for the Settlement Agreement to be signed after the “formality” of the Town Board holding a vote. Before the start of the Town Board meeting, counsel for the Township represented to counsel for the Wineries that he had done a good job drafting the Settlement Agreement and that “it’s a done deal.” (*Id.*, ¶ 7.) Yet the Township Board, minus one member, voted to table the signing of the Settlement Agreement reportedly due to the absence of the one member. (Exhibit 14.)

The Township scheduled another meeting for October 6, 2021 and encouraged members of the public to attend and provide comments on the lawsuit. Proposed Intervenor Protect the

³ Because of the confidentiality requirements of the parties’ mediation agreement, Plaintiffs have not filed the Settlement Agreement with the Court. Plaintiffs will make copies available to the Court if so ordered by the Court.

Peninsula (“PTP”) seized on this opportunity and sent out several mailers to Peninsula Township residents encouraging them to attend the meeting and to voice opposition to the Settlement Agreement. (Exhibit 15.) Counsel for the Wineries questioned the purpose of this meeting and whether the purpose was to “give PTP another chance to rant and rave” and to then “give [the Township] cover to back out of the settlement?” (Exhibit 16.) Regardless, counsel for the Wineries again traveled from Grand Rapids to Peninsula Township to attend the Board meeting. Each Plaintiff Winery signed the Settlement Agreement prior to the Town Board meeting. (Exhibit 10, ¶ 9.)

During the public comment portion of the meeting, PTP members, their supporters and even PTP’s attorney of record in this case spoke out against a Settlement Agreement which, presumably, they had not even viewed given that it was still subject to mediation confidentiality. Some of the public commentators seemingly threatened, or at least strongly implied, that if the Township signed the Settlement Agreement the political future of members of the Township Board would be at risk. After more than an hour of public comments, the Township Board voted 7-0 to reject the Settlement Agreement, even though at least three members of the board were at the September 13, 2021, in person, and the other four members had participated by phone when the Township had approved the Settlement Agreement. In explaining the vote, counsel for the Township stated: “I suspect they were influenced by the number of people on both-sides of the issue wanting to be involved in carving out the solution to our problem.” (Exhibit 17.)

The Wineries now move to enforce the terms of the settlement as written and agreed upon at mediation. In the alternative, the Wineries request that the Court order the Township to show cause why an order of sanctions should not issue for mediating in bad faith and without settlement

authority after having induced the Wineries to engage in lengthy mediation with the representation that the representatives were cloaked with authority to reach a final settlement.

III. ANALYSIS

A. The Court should enforce the Settlement Agreement as written.

Federal Courts have inherent powers to enforce agreements executed in settlement. *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir. 1976). “Before enforcing settlement, the district court must conclude that agreement has been reached on all material terms.” *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). Ordinarily, an evidentiary hearing is required where facts material to an agreement are disputed. *Kukla v. Nat’l Distillers Prods. Co.*, 483 F.2d 619, 622 (6th Cir. 1973); *Aro Corp.*, 531 F.2d at 1372. However, no evidentiary hearing is required where an agreement is clear and unambiguous and no issue of fact is present. *Aro Corp.*, 531 F.2d at 1372. Thus, summary enforcement of a settlement agreement has been deemed appropriate where no substantial dispute exists regarding the entry into and terms of an agreement. *Kukla*, 483 F.2d at 621. Ultimately, “[t]he court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement.” *Brock*, 841 F.2d at 154.

Additionally, “[t]he existence of a valid agreement is not diminished by the fact that the parties have yet to memorialize the agreement.” *RE/MAX Int’l, Inc. v. Realty One, Inc.*, 271 F.3d 633, 646 (6th Cir. 2001). “[A] district court ‘has the inherent authority and equitable power to enforce agreements in settlement of litigation before it, even if that agreement has not been reduced to writing.’” *Moore v. U.S. Postal Serv.*, 369 F. App’x 712, 717 (6th Cir. 2010) (citation omitted). Rather, “[w]hen parties have agreed on the essential terms of a settlement, and all that remains is to memorialize the agreement in writing, the parties are bound by the terms of the oral agreement.” *Id.* (citing *Brock*, 841 F.2d at 154; *Kukla*, 483 F.2d at 621). Furthermore, the Court can look to

the objective acts of the parties after mediation to support the conclusion that an agreement has been reached. *Id.*

Here, there is no dispute that the parties reached agreement on all material terms. As stated above, the Wineries will make a copy of the Settlement Agreement available to the Court if order by the Court. Without disclosing the terms in this public pleading, the Wineries can represent to the Court that the Settlement Agreement unambiguously resolves all claims in this case and that it contemplates entry of a consent judgment that will result in dismissal.

There is no dispute that the Township representatives at the mediation, who represented that they were cloaked with settlement authority, gave their consent to the terms of the Settlement Agreement. Mediator Joseph Quandt announced to the parties that they had reached a settlement resolving all issues in the case. (Exhibit 10, ¶ 4.) Counsel for the Wineries drafted the Settlement Agreement and circulated it to the mediator and counsel for the Township. (Exhibits 12 and 13.) Counsel for the Township responded that he did not have any edits to the Settlement Agreement and confirmed that it incorporated the parties' agreement. (Exhibit 10, ¶ 6.) The same day, counsel for the Township represented to counsel for the Wineries, "it's a done deal." (*Id.*, ¶ 7.) And even if the Court finds that the Township has not reduced its assent to writing, that does not stop the Court from using its inherent authority to enforce the Settlement Agreement. *RE/MAX*, 271 F.3d at 646; *Moore*, 369 F. App'x at 717.

Moreover, there is no dispute that counsel for the Township Meihn had the authority to have settlement discussions on behalf of the Township. On August 10, 2021, the Peninsula Township Board unanimously approved a motion "to approve Meihn to open discussions with attorney Joseph Infante, who represents the wineries." (Exhibit 6.) Following that approval, counsel for the Township engaged counsel for the Wineries and represented that all Board

Members would participate to “ensure that the end process is something the Board will approve.” (Exhibit 7.) Reportedly, at least three Board Members did appear in every mediation session and the remaining members either participated by phone or were available by phone which created a constructive quorum.

This Court has enforced a settlement agreement following mediation on nearly identical facts. In *Glen Elec. Holdings GmbH v. Coolant Chillers, Inc.*, 2013 WL 2407613, at *2 (W.D. Mich. May 31, 2013), at the end of a voluntary mediation session, the mediator brought the parties together to confirm the terms of their settlement. Due to the late hour, the parties asked defense counsel “to send a confirmatory e-mail in the morning.” *Id.* The confirmatory email set forth the terms of the parties’ settlement agreement. *Id.* The plaintiff’s counsel responded by making “several minor suggestions for language changes and raising questions concerning the mechanism for entry of the consent judgment in the event of default, but affirming the material terms of settlement.” *Id.* at *3. Based on this exchange of emails, this Court found “as a fact that plaintiffs and defendants reached a final and binding agreement to settle this lawsuit at the mediation in accordance with the terms set forth in those e-mails.” *Id.* This Court also relied on *RE/MAX*, 271 F.3d at 646, when it concluded that “the parties reached a full and binding oral settlement at the February 14, 2013, mediation session.” *Id.* at *6. “There is no requirement that a settlement agreement be reduced to writing to be enforceable.” *Id.* at *8 (citing *Remark, LLC v Adell Broad*, 817 F. Supp. 2d 990 (E.D. Mich. 2011); *Kloian v. Domino’s Pizza, LLC*, 273 Mich. App. 449 (2006)). Finally, this Court also rejected the argument that the agreement contained an unspecified condition precedent that did not appear in the written terms as stated in the confirmatory email. *Id.* at *8. Therefore, the settlement agreement was enforced as written. *Id.* at *9.

In *Duarte v. City of Lansing*, 1997 WL 33343925 (Mich. App. Sept. 2, 1997), the trial court and Michigan Court of Appeals rejected the City of Lansing’s argument that regardless of its agreement to a settlement during a settlement conference in open court, the trial court erred when it “enforced their settlement agreement because the city council’s failure to approve the settlement agreement at a later city council meeting was a ‘discretionary act.’” *Id.* at *1. Members of the city council were present, at various times, at a settlement conference and stated “on the record that they would vote to approve the settlement at the next council meeting.” *Id.* The trial court enforced the settlement agreement despite the city council later changing its mind. *Id.* Further, the Court of Appeals affirmed the trial court’s sanctions against the city, finding that the city’s “position was devoid of any arguable legal merit and sanctions were properly imposed.” *Id.* at *2.

In a similar case from Texas, the parties orally agreed to settle a lawsuit and subsequently reduced it to writing. *Daftary v. Metro. Life Ins. Co.*, 136 F.3d 137 (5th Cir. 1998) (per curiam). When one party refused to sign, the district court enforced the settlement agreement and the Fifth Circuit subsequently affirmed. *Id.* Similarly, where a public body agrees to a settlement, a board vote at a public meeting is not a condition precedent. *See Old Peachtree Partners, LLC v Gwinnett County*, 315 Ga. App. 342 (Ga. Ct. App 2012.) Instead, “a contract was formed ... and a condition of contract performance was the approval [of the agreement] by a Board vote in a public meeting.” *Id.* at 348. “[W]hile a vote in a public meeting was a required formality to effectuate the [settlement], the Board’s failure to complete that formality in good faith when voting in the public meeting cannot destroy an already existing settlement agreement.” *Id.*

Like the decisions to enforce the settlement agreement in cases above, the Court here similarly should enforce the Settlement Agreement reached on September 13, 2021. Just like those cases, the parties here reached a Settlement Agreement on all material terms that would resolve all

issues and result in dismissal of this case. Also, like *Glen Electric*, the mediator announced to the Wineries that the Township had agreed to the Wineries last counterproposal and agreed to the terms of the settlement. Further like *Glen Electric*, *Old Peachtree Partners* and *Daftary*, counsel for the Wineries drafted the settlement terms and circulated them via email the following day. And again just like *Glen Electric*, the Township's attorney offered no substantive changes to the Settlement Agreement as written. But that is not all. Going beyond those cases, counsel for the Township also verbally confirmed that the Settlement Agreement drafted by counsel for the Wineries when he stated via telephone that he had no edits to the Settlement Agreement. Counsel for the Township further solidified the Township's position (and made this case even stronger than the one presented above) when he said "it's a done deal." Like *Old Peachtree Partners*, the Settlement Agreement does not contain any condition precedent and specifically does not require further approval by the Township or vote by the Township Board before it becomes effective. Finally, like in *Old Peachtree Partners* and *Duarte*, regardless of the Town Board's vote to reject the Settlement Agreement, this Court should enforce the Settlement Agreement as the vote was a mere formality and the settlement had already been reached.

The Wineries have all signed the Settlement Agreement. The Settlement Agreement is unambiguous. Because this Court enforced a settlement agreement on strikingly similar facts in *Glen Electric*, and because the Township's actions go even further to confirm the Settlement Agreement here, the Court should enforce the Settlement Agreement as written.

B. If the Court does not enforce the Settlement Agreement, it should order Peninsula Township to show cause why it negotiated for 25 hours and agreed to a deal without settlement authority.

If the Court finds that the parties did not reach an unambiguous agreement resolving all material terms, Plaintiffs request that the Court order the Township to show cause why it did not negotiate in good faith when it represented that the Town Board members participating in the

mediation had authority to reach a binding agreement and award the Wineries their actual attorneys' fees if the Township cannot make that showing.

“On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . is substantially unprepared to participate—or does not participate in good faith—in the [pretrial settlement] conference.” Fed. R. Civ. P. 16(f)(1)(B). Where a party is substantially unprepared or does not participate in good faith, “the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified, or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 16(f)(2).

Additionally, “as part of its inherent powers, a district court may award attorney fees in its discretion without statutory authorization for willful violation of a court order by the losing party and for bad faith or oppressive litigation practices.” *Jaynes v. Austin*, 20 F. App’x 421, 427 (6th Cir. 2001). When the Court uses its inherent authority, it must find that the sanctioned party or its attorney engaged in conduct rising to the level of “bad faith.” *Id.*

The circumstances surrounding the mediation and the subsequent renegeing by the Township cause serious questions about the Township’s intentions and actions leading up to and during the mediation. Why, if the Township did not actually intend to settle, did it induce the Wineries into spending twenty-five hours in mediation? Why, if the Township did not intend to sign the Settlement Agreement, did the Township cause mediator Joseph Quandt announce to the parties that they had reached a full and final settlement without correction by the Township? Why did the Peninsula Township Board members switch 180 degrees from apparent unanimous agreement to the Settlement Agreement at mediation to unanimously voting against signing the

Settlement Agreement at the October 6, 2021 Board meeting? And why was a second meeting even necessary when Attorney Meihn stated on behalf of the Township “it’s a done deal” to counsel for the Wineries? These actions highly suggest the Township acted in bad faith.

Courts have ordered sanctions, including attorney fees, in similar circumstances. For example, where a party repudiated a settlement agreement, attempted to impose new terms, and engaged in “threats, insults, and intransigence,” an award of attorneys’ fees and costs was justified. *Tocci v. Antioch Univ.*, 967 F. Supp. 2d 1176, 1202 (S.D. Ohio 2013), *aff’d* (June 10, 2014). And the Sixth Circuit affirmed an award of attorneys’ fees under Rule 16(f) where a party showed up to mediation without full settlement authority. *Spradlin v. Richard*, 572 F. App’x 420, 429 (6th Cir. 2014). One of two things happened here. Either the Township agreed to a settlement with the Wineries, then reneged on that Settlement Agreement at the October 6, 2021 Board Meeting, or it came to mediation without authority, after representing that it had such authority to enter into the Settlement Agreement.

The Township’s agreement and subsequent about-face merits sanctions, including the payment of the Wineries actual attorneys’ fees for the mediation process. In reliance on counsel for the Township’s representation that all Board Members would participate in mediation to “ensure that the end process is something the Board will approve,” the Wineries and their attorneys spent significant time and expense engaging in the process in good faith. Eleven Wineries sent eleven representatives to twenty-five hours of mediation. These Wineries paid for their attorney to travel to and from Traverse City several times for mediation and for the subsequent supposedly pro-forma approval of the Settlement Agreement by the Peninsula Township Board. If the Township cannot show why its actions were not taken in bad faith, the Court should order the Township to reimburse the Wineries for the time and money they wasted as a result.

IV. CONCLUSION

Plaintiffs request that the Court hold the Township to its word and enforce the Settlement Agreement as written. In the alternative, the Wineries request that the Court order the Township to show cause why an order of sanctions should not issue.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: October 12, 2021

Exhibit 1

Infante, Joseph M.

From: Matthew T. Wise <mwise@foleymansfield.com>
Sent: Thursday, June 10, 2021 11:14 AM
To: Infante, Joseph M.; Gregory M. Meihn
Cc: Ragatzki, Stephen M.; Gartman, Christopher J.
Subject: RE: WOMP v Peninsula Township


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Appreciate it, Joe. We are good with this and you have my permission to file with the Court.

Also, Greg and I wanted to inquire as to whether you and your team would be interested in meeting “attorneys only” sometime in the near future to further discuss potential resolution efforts. We would be happy to come to your office if you are so inclined. Please let us know and if so, some dates/times that would work.

Thanks.



Matthew T. Wise | Partner | T: 248-721-8152 | F: 248-721-4201
130 East Nine Mile Road | Ferndale, MI 48220 | foleymansfield.com 

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Exhibit 2

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Wednesday, June 23, 2021 11:19 AM
To: Infante, Joseph M.
Cc: Matthew T. Wise
Subject: Meeting To Discuss Issues-Resolution

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[REDACTED]


I also understand your client's fears that we will simply request that all items be referred to the planning commission and public review as a solution. We tried that. You have made it clear to me that such a request would not be granted by your clients, although I still believe it is the proper process. However, regardless of my view, I heard your prior statements and we understand and respect your position. Again, my purpose for engaging was to talk with you and determine if there was a basis for more detailed discussions and engagement.

I have taken your request to my clients and I am in the process of getting responses. I cannot be ready for a meeting next week, due to the Board members I need to speak with are engaged in the field spraying or engaged in other farming activities. So, give me a few days and I will get back with you.

[REDACTED]

Greg.



Gregory M. Meihn | Partner | T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

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Exhibit 3

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, July 8, 2021 11:25 AM
To: Infante, Joseph M.
Cc: Rebecca M. Dedene
Subject: RE: Lawsuit/WOMP


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[REDACTED]

As to the proposal, understand. I do not want you to waste your time or mine. I am trying to find a way to get to the nuts and bolts of what is important to your clients and what is not. I am struggling on a way to find this out. If you think the proposal process will work, give me a few days and I will respond.

Greg



Gregory M. Meihn | Partner |
T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

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From: Infante, Joseph M. <infante@millercanfield.com>
Sent: Thursday, July 8, 2021 10:38 AM
To: Gregory M. Meihn <gmeihn@foleymansfield.com>
Subject: RE: Lawsuit/WOMP

Greg

I am always willing to have a discussion. But, as I've said before, I need something from you beforehand so I know I am not wasting my time and my clients know I am not wasting their money. [REDACTED]

Joe

Joseph M. Infante | Attorney and Counselor at Law
Miller Canfield
99 Monroe Avenue NW, Suite 1200

Grand Rapids, Michigan 49503 (USA)
T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199
infante@millercanfield.com | View Profile + VCard
LinkedIn | Twitter | Facebook | YouTube


From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, July 8, 2021 9:44 AM
To: Infante, Joseph M. <infante@millercanfield.com>
Subject: Lawsuit/WOMP

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Joe, I finally have been able to speak with all of the Board members and the insurance carrier (they have now come on into the case as of last week). Can we talk.

greg



Gregory M. Meihn | Partner |
T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

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Exhibit 4

Infante, Joseph M.

From: Infante, Joseph M.
Sent: Thursday, July 15, 2021 3:22 PM
To: Gregory M. Meihn
Cc: Rebecca M. Dedene
Subject: RE: Lawsuit/WOMP

Greg

Are you still putting together a proposal for me? [REDACTED]
[REDACTED]

[REDACTED]

Joe

Joseph M. Infante | Attorney and Counselor at Law
Miller Canfield
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503 (USA)
T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199
infante@millercanfield.com | View Profile + VCard
LinkedIn | Twitter | Facebook | YouTube

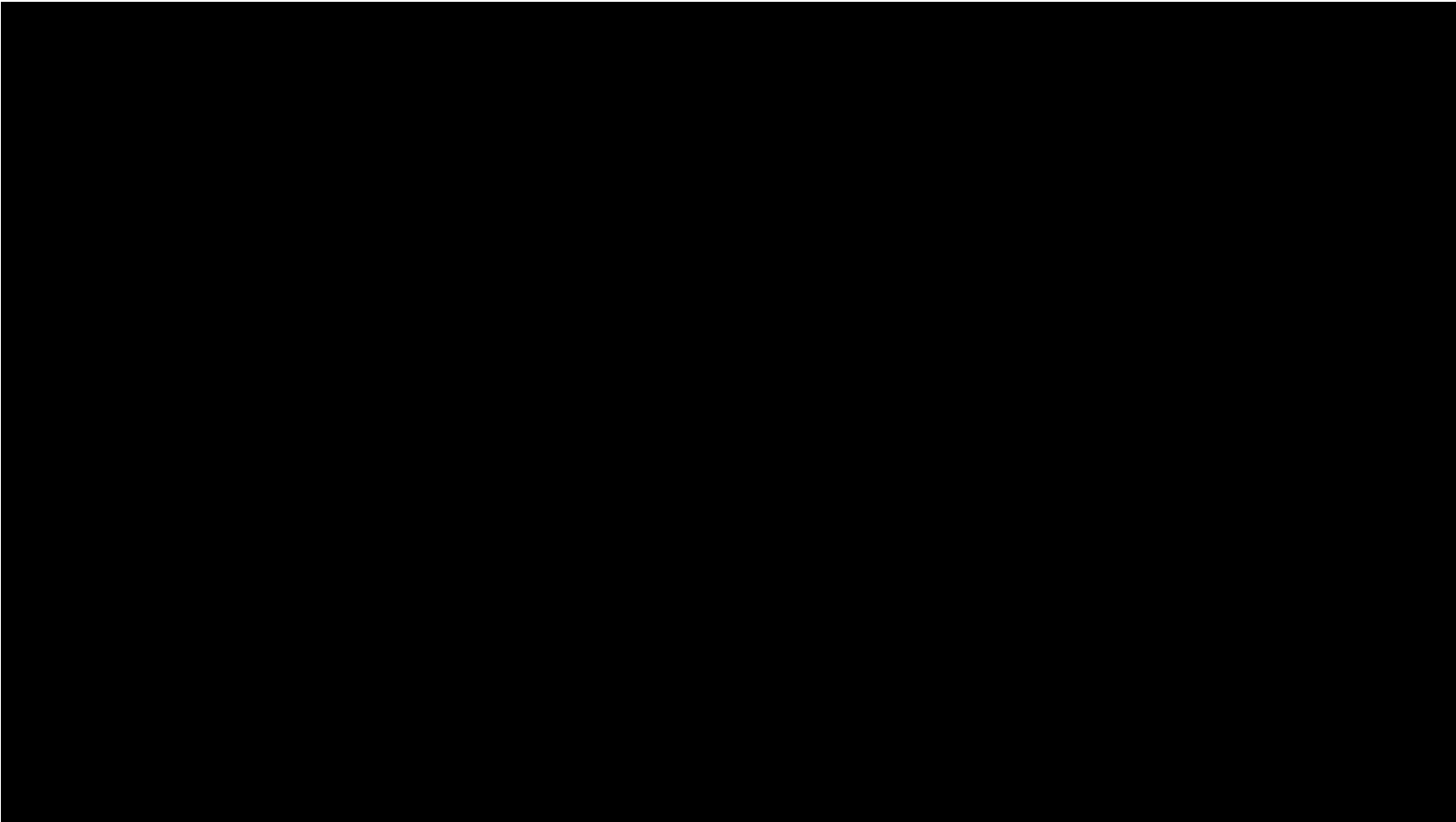


Exhibit 5

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Monday, August 2, 2021 3:29 PM
To: Infante, Joseph M.
Cc: Gregory M. Meihn
Subject: Lawsuit-Proposal

CAUTION EXTERNAL EMAIL: DO NOT open attachments or click links from unknown or unexpected emails.

Joseph, the Board is meeting next Tuesday and will go into closed session to provide me authority to provide a specific proposal. I will have the proposal to you Tuesday evening. The meeting is at 7 p.m. An in person will be requested after the proposal.

Greg.



Gregory M. Meihn | Partner |

T: 248-721-8183 | F: 248-721-4201

130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

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Exhibit 6

Peninsula Township
Township Board Regular Meeting
August 10, 2021
Lola Jackson Recording Secretary

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

www.peninsulatownship.com

Township Board Regular Meeting

August 10, 2021, 7:00 p.m.

Township Hall

MINUTES

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

2. **Pledge**

3. **Roll Call:**

Present: Wunsch, Wahl, Sanger, Achorn, Chown, Manigold, Bickle

Also present: Greg Meihn, township attorney

4. **Brief Citizen Comments (for agenda items only):** none

5. **Approve Agenda**

Chown: there is one addition to the agenda. The Friends of the Peninsula Community Library are requesting the use of the Charlie Doe Sign located on Center Rd. for the annual book sale September 11-18, 2021. They are asking to advertise the book sale from September 4-18. If the sign is in use, they would like September 10-18.

Wahl moved to approve the amended agenda, second by Wunsch.

Passed Unan

6. **Conflict of Interest:** none

7. **Consent Agenda:** any member of the board, staff, or the public may ask that any item on the consent agenda be removed and placed elsewhere on the agenda for full discussion

1. Invoices (recommend approval)

2. Reports

A. Peninsula Township Fire Department for July 2021

B. Cash summary by fund for Peninsula Township for July 2021

C. Peninsula Community Library for August 2021

D. Peninsula Township Ordinance Enforcement Officer for July 2021

3. Minutes from July 13, 2021, township board regular meeting,

4. Sign request for historic Peter Dougherty Homestead

5. Event and sign request for St. Joseph's Catholic Church Fall Festival

6. Announcement of open house at Peninsula Township Fire Department Station No. 3 on Sunday, August 15, 12:00-3:00 p.m.

7. Request from fire department to use restricted funds to buy a battery-operated ventilation fan

8. Correspondence

A. Jennifer Hodges

B. Sara and Eric Bergsma

C. Mike Skurski/Bill Catinella

D. Cathy Adams

Peninsula Township
Township Board Regular Meeting
August 10, 2021
Lola Jackson Recording Secretary

E. Kent and Margaret Rabish
F. Howie and Trish Van Houten
G. Pam Miller
H. Linda Marsh Raetz
I. Mike Skurski/Jeff Henkel
J. Brian Kaplan
K. Bud Stych
L. Dave Murphy
M. Dave Murphy
N. Fred Gilstorff
O. Ethan Passalacqua
P. Barb and Jamie Marsh
Q. Joe Gorka
R. Barbara Bolden
S. Stuart Jeffares
T. Joel Gaff
U. Jason Clark
V. Colleen Rucker
W. Douglas Endicott
X. Christine Tibbits
Y. Kathleen Spillane
Z. Mark Ware and Philip Hustedde
Aa. Jonna Brown
Bb. Douglas Yingst
Cc. Donna Olendorf
Dd. Kurt Strasser
Ee. Rachel H. Plum

Wunsch moved to approve the consent agenda, second by Wahl.

Roll call vote: Yes-Sanger, Bickle, Wahl, Manigold, Chown, Achorn, Wunsch Passed Unan

8. Business:

1. Second of three public hearings on Peninsula Township Zoning Ordinance rewrite (Manigold) (no action will be taken; visit www.peninsulatownship.com to see draft)

Meihn: there are several more public hearings. The legal review of the zoning ordinance rewrite continues. The version of the original and the new rewrite are to be available side by side for easy understanding of the changes.

Manigold: we are not rushing this process and we want to do it right the first time. As suggested by Mr. Valdmanis, we are going to wait until the master plan is completed. I am closing the regular town board meeting and requesting any public comments on the zoning ordinance rewrite.

Manigold closed the regular town board meeting and opened the public portion for comment.

Nancy R. Heller, 3091 Bluewater Rd.

The section saying trees cannot be higher than 40 feet is not practical. I have fruit trees higher than 40

Peninsula Township
Township Board Regular Meeting
August 10, 2021
Lola Jackson Recording Secretary

feet. One does not know when they plant a tree how high it will grow. It is important that items that are not practical are pointed out. I will write up my questions as requested by Mr. Manigold. As an example, on 5-2, item 9, who is going to do the analysis and take responsibility? On page 6-12, who determines junk versus a farm operation? Items regarding pre-existing, non-conforming properties are mentioned on 2-6 Item 49 and 3-13. Enforcement going forward needs to be legally and properly executed.

Manigold: closed the public comment portion and returned to the regular town board meeting.

2. Update from Peninsula Township Parks Committee (Murphy)

Murphy: the entire committee and especially Mike Skurski, committee chair, has been working to resolve the pickleball court surface issue. The committee voted to approve a temporary \$4,000 repair. The committee continues to work with LIAA in creating the parks budget.

Achorn: I have looked extensively in years 2017, 2018, and 2019 and cannot find any payment made through the township for the tennis/pickleball court repair.

Wunsch: I remember the board approving private funding to make the repair.

Murphy: the basketball court is rarely used due to its bad condition. Committee member Pete Dahl invited Fire Chief Fred Gilstorff to our meeting. Gilstorff gave a fire prevention presentation and discussed resources the township has to fight park fires. The fire at Pelizzari was a wake-up call. The only access to that portion of Pelizzari is over private land. The land conservancy has volunteered to help us make the Pelizzari fence repair, and this is saving us several thousand dollars. There is a massive oak tree off Center Rd. near Pelizzari that has been damaged. To take down the tree is \$3,000 and to repair and seal the remaining tree limbs is \$1,500. The committee thanks the board for approving the money for LIAA; this work is proving to be extremely helpful.

Meihn: a check for \$4,500 plus the \$500 attorney fee has been obtained from the utility regarding the damage at Archie Park.

Manigold: State Farm Insurance is using Bluff Rd. and a drone for five minutes. They have approval from appropriate sources. They are giving us \$1,500 and this will be given to the parks.

Meihn: I am recommending giving my updates, to have citizens' comments, and then go into closed session.

Board agrees.

9. Presentation by Attorney Meihn regarding enforcement issues: there are no new updates on the winery lawsuit. The court is waiting to see if we can resolve the issues between us. I have a memo to present to the board in closed session regarding the winery lawsuit. Discovery should begin in late August or early September. Depositions of current and past township members will occur. This process is expensive. First, the witness has to be prepped and thousands of pages of documents reviewed. This means familiarizing the witness to actions taken in the past 5, 10, 15 years. This includes what they know, what they think they know, and what they heard. To save this expense on both sides, perhaps we can begin talking again with the wineries looking for agreement on some or all the issues. We will be taking the winery depositions first and the township depositions will follow.

John Jacobs: Protect the Peninsula requests being part of the closed session.

Meihn: Protect the Peninsula is not a party in the lawsuit and is not allowed into the private session.

10. Presentation by Attorney Meihn and zoning director on issuance of permits

Enforcement issues are discussed between Sanger, Deeren, and me. If there is no resolution on a written

Peninsula Township
Township Board Regular Meeting
August 10, 2021
Lola Jackson Recording Secretary

ticket, the matter is filed with the county court. Unfortunately, the zoning director could not be here to update you regarding zoning activity due to a family matter.

11. Update by Attorney Meihn on COVID-19 practices

Currently, the recommendation is for unvaccinated people to wear a mask indoors and those who are vaccinated do not need a mask. I am recommending that citizens entering the township wear a mask, practice social distancing, and have hand washing made available. Employees of the township should wear a mask if they are outside of their office. As Covid protocols can change rapidly, we will continue to update the township.

12. Citizen Comments

Andrus Valdmanis, 1484 Chimney Ridge

I want to look at the zoning ordinance rewrite from an industry perspective as it applies to construction, landscape, and contractors. These new zoning regulations, if implemented over the past year, would have required 100 more land use permits to be written.

Meihn: the comparison between the proposed zoning ordinance update and the current ordinance will occur. The state of Michigan has statutory laws applicable to right to farm and the construction code. Zoning ordinances exist to protect the public and concern sanitation, health, DEQ, and more.

Brian Hammer, 10429 Warren Dr.

Discussed a property at 12018 Peninsula with the board; has been unable to resolve property drainage issues. Requests accountability and help in resolving this three-year-old problem.

Meihn to assist Mr. Hammer (see letter at end of minutes).

13. Board Comments: none

Manigold: legal update on township litigation matters; possible closed session per MCL 15.268(e) to discuss the winery lawsuit and return to open session per MCL 15.261.

7:55 p.m.

Sanger moved to go into closed session, seconded by Wahl.

Roll call vote: Yes-Sanger, Bickle, Wahl, Manigold, Chown, Achorn, Wunsch Passed Unan

9:15 p.m.

Manigold: legal update on township litigation matters; possible closed session per MCL 15.268(e) to discuss the winery lawsuit and return to open session per MCL 15.261.

9:15 p.m. (Achorn excused)

Bickle moved to come out of closed session, seconded by Wahl

Roll call vote: Yes-Sanger, Bickle, Wahl, Manigold, Chown, Wunsch Passed Unan

Wahl moved return to open session, seconded by Wunsch.

Roll call vote: Yes-Sanger, Bickle, Wahl, Manigold, Chown, Wunsch Passed Unan

Wahl moved to approve Meihn to open discussion with attorney Joseph Infante, who represents the wineries, seconded by Wunsch.

Roll call vote: Yes-Sanger, Bickle, Wahl, Manigold, Chown, Wunsch Passed Unan

9. Adjournment Sanger moved to adjourn the meeting, seconded by Wahl.

Passed Unan

Meeting adjourned at 9:20 p.m.

Exhibit 7

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foyleymansfield.com>
Sent: Wednesday, August 11, 2021 5:09 PM
To: Infante, Joseph M.
Cc: Rebecca M. Dedene
Subject: FW: Protected by Rule 408 Settlement Discussions-Proposal

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I plan to have 3 Board members present at the in person negotiations. I will have the other Board members available by telephone. While I will not violate the OMA, having the others on line will allow me to communicate with them and ensure that the end process is something the Board will approve.

Please let me know if your clients are willing to engage with the Township as outlined above. [REDACTED]

Please let me know.

Greg



Gregory M. Meihn | Partner |

T: 248-721-8183 | F: 248-721-4201

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Exhibit 8

Infante, Joseph M.

From: Infante, Joseph M.
Sent: Thursday, August 12, 2021 4:34 PM
To: Gregory M. Meihn
Cc: Rebecca M. Dedene; Gartman, Christopher J.; Ragatzki, Stephen M.
Subject: RE: Protected by Rule 408 Settlement Discussions-Proposal
Attachments: [REDACTED]

Subject to FRE 408

[REDACTED]

Also, it was not clear from your email, but I presume your position is that if the Town Board is involved in the settlement meeting we are able to reach a resolution without further process. If you believe any resolution needs to go through a further township meeting and notice process then that will be an issue. [REDACTED]

[REDACTED]

Joe

Joseph M. Infante | Attorney and Counselor at Law
Miller Canfield
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503 (USA)
T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199
infante@millercanfield.com | View Profile + VCard
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Exhibit 9

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foyleymansfield.com>
Sent: Friday, August 13, 2021 1:06 PM
To: Infante, Joseph M.
Cc: Rebecca M. Dedene; Gartman, Christopher J.; Ragatzki, Stephen M.
Subject: RE: Protected by Rule 408 Settlement Discussions-Proposal

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So, to that end, my Team can meet with you next week on the proposals that we have outlined. Thank you for your efforts.

Greg



Gregory M. Meihn | Partner |

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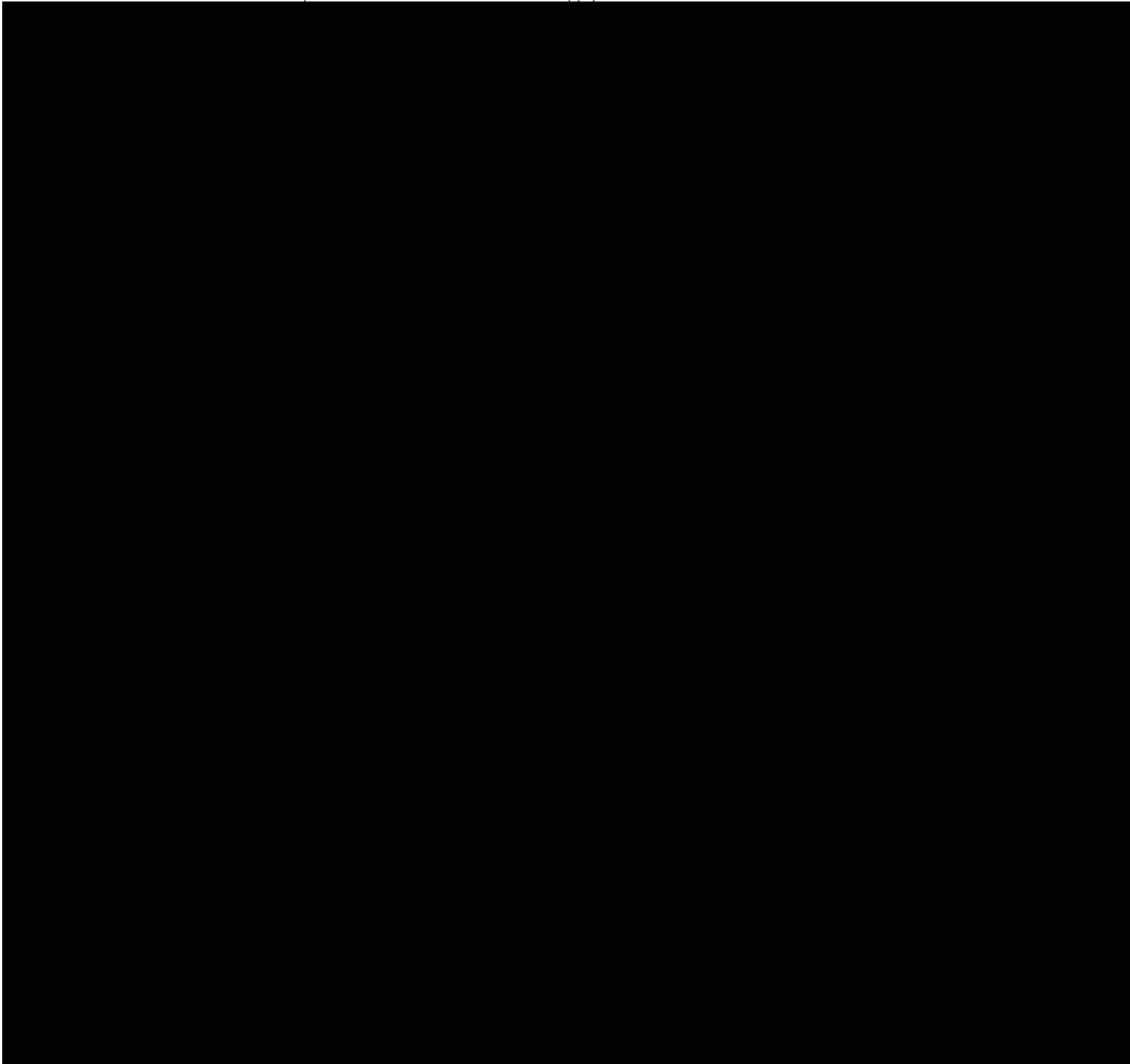


Exhibit 10

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA (WOMP) ASSOC., a Michigan
Nonprofit Corporation, et al.,

Case No: 1:20-cv-01008

Plaintiffs,

v

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant.

Honorable Paul L. Maloney
Magistrate Ray S. Kent

DECLARATION OF JOSEPH M. INFANTE

1. My name is Joseph M. Infante. I base this declaration on personal knowledge. If called as a witness, I could testify competently to the matters addressed in this declaration.

2. I am the attorney for Plaintiffs in this matter.

3. Plaintiffs and Defendant Peninsula Township engaged in approximately twenty-five hours of mediation spread across five sessions with mediator Joseph Quandt. These sessions occurred on March 6 (in-person), August 23 (Zoom/phone), September 1 (Zoom/phone), September 8 (Zoom/phone), and September 13 (in-person). All eleven Winery owners or their representatives were present, either in person, by phone or Zoom, for the majority of these sessions and all were present at the final mediation session. I understand that at least three members of Peninsula Township's Board, including Supervisor Rob Manigold, were present at each session. During the mediation sessions, the parties went point by point through the allegations of the First Amended Complaint.

4. At the final mediation session on September 13, 2021, ending around 8:15 PM, mediator Joseph Quandt announced to the parties that they had reached a settlement resolving all issues in the case.

5. After the mediator announced we had reached a settlement, I drafted a settlement terms sheet (the "Settlement Agreement"). I circulated the Settlement Agreement to the mediator and Attorney Meihn via email on September 14, 2021.

6. Attorney Meihn and I had a telephone call at 4:00 PM on September 14, 2021, to discuss any edits the Township might have to the Settlement Agreement. During that call, Attorney Meihn stated that he did not have any edits to the Settlement Agreement. Attorney Meihn also confirmed that the Settlement Agreement incorporated the parties' agreement.

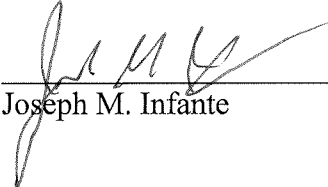
7. Later in the day on September 14, 2021, I appeared at a Peninsula Township Board meeting. Before the start of the meeting, I asked Attorney Meihn if he needed anything from me. He responded by telling me I had done a good job drafting the Settlement Agreement and said to me "it's a done deal."

8. Unfortunately, the Peninsula Township Board tabled their vote until all members were present.

9. On October 6, 2021, the Township Board held another meeting. I again traveled from Grand Rapids to Peninsula Township to attend the Board meeting. Before the meeting, each of the Wineries signed the Settlement Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 12, 2021



Joseph M. Infante

Exhibit 11


Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, September 9, 2021 10:19 AM
To: Infante, Joseph M.; Joseph E. Quandt
Cc: Sherri H. Pell
Subject: RE: WOMP v Pen Twp

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Okay, let's do it at Joe's office. I found it more efficient using zoom from our prospective.



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130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

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From: Infante, Joseph M. <infante@millerkanfield.com>
Sent: Thursday, September 9, 2021 9:47 AM
To: Gregory M. Meihn <gmeihn@foleymansfield.com>; Joseph E. Quandt <jeq@kuhnrogers.com>
Cc: Sherri H. Pell <shpell@kuhnrogers.com>
Subject: Re: WOMP v Pen Twp

That process is very inefficient and if you want to present to the board on Tuesday, in person is the only way that will occur in my opinion. If we continue by zoom I expect it will take more than one more meeting.

I'm happy to jump on a call to discuss where we are and how we get to the finish line and when we want that to occur by.

Sent from my Verizon, Samsung Galaxy smartphone
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From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, September 9, 2021 9:36:33 AM
To: Joseph E. Quandt <jeq@kuhnrogers.com>
Cc: Infante, Joseph M. <infante@millerkanfield.com>; Sherri H. Pell <shpell@kuhnrogers.com>
Subject: RE: WOMP v Pen Twp

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I would prefer that we continue on with the same process where we attend by phones and zoom please.



Gregory M. Meihn | Partner |

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From: Joseph E. Quandt <jeq@kuhnrogers.com>

Sent: Thursday, September 9, 2021 9:04 AM

To: Gregory M. Meihn <gmeihn@foleymansfield.com>

Cc: Infante, Joseph M. <infante@millerkanfield.com>; Sherri H. Pell <shpell@kuhnrogers.com>

Subject: Re: WOMP v Pen Twp

Okay, I'll plan to reserve conference rooms for Monday starting at 11am. Thanks

Joseph E. Quandt, Esq.
Kuhn Rogers PLC
412 S. Union St.
Traverse City, Michigan 49684
(231) 947-7901 x 115

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On Sep 9, 2021, at 7:46 AM, Gregory M. Meihn <gmeihn@foleymansfield.com> wrote:

Yes, 11 works. Agree on finalizing. I want it finished so I can get it to the Board on Tuesday. Thanks

[<image3c5a4d.JPG>](#)

Gregory M. Meihn | Partner |
T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com

[<image6ced33.PNG>](#)

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From: Joseph E. Quandt <jeq@kuhnrogers.com>
Sent: Thursday, September 9, 2021 8:34 AM
To: Infante, Joseph M. <infante@millercanfield.com>
Cc: Gregory M. Meihn <gmeihn@foleymansfield.com>; Sherri H. Pell <shpell@kuhnrogers.com>
Subject: Re: WOMP v Pen Twp

I'm fine with that if it works for Greg.

Joseph E. Quandt, Esq.
Kuhn Rogers PLC
412 S. Union St.
Traverse City, Michigan 49684
(231) 947-7901 x 115

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On Sep 9, 2021, at 7:29 AM, Infante, Joseph M. <infante@millercanfield.com> wrote:

If the township wants to present a settlement at its meeting on Tuesday then an in person meeting Monday will be needed to hammer out the last few items/details. Can

we start at 11:00 and plan to stay until we get a deal or determine no deal is possible? If we get a deal right away we can discuss how the Tuesday meeting will go and how my clients can be of assistance.

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From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, September 9, 2021 8:14:50 AM
To: Joseph E. Quandt <jeq@kuhnrogers.com>
Cc: Infante, Joseph M. <infante@millercafield.com>; Sherri H. Pell <shpell@kuhnrogers.com>
Subject: Re: WOMP v Pen Twp

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Monday is good? 12 noon?

Sent from my iPhone

On Sep 9, 2021, at 7:23 AM, Joseph E. Quandt <jeq@kuhnrogers.com> wrote:

Gentlemen:

I was pleased to see some additional progress from our mediation session yesterday. Greg had mentioned that it would be helpful to see if we can complete the mediation process on this coming Monday, September 13th. This would allow a complete agreement to be submitted to the township board for their review on Tuesday the 14th. As strange fate would have it, I have Monday the 13th mostly available. Please let me know if Monday is convenient for both of you and your clients. Joe had suggested, and I tend to agree, that it may be helpful to have an in person mediation session at my office on Monday. If that will work for you please advise and I'll plan to accommodate you both here at my office.

Please advise if Monday works, what time Monday will work, and if you want to meet in person.

Regards, Joe.

Joseph E. Quandt
Kuhn Rogers, PLC
412 S. Union Street
Traverse City, MI 49684
231-947-7901 x115



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Gregory M. Meihn | Partner |

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Exhibit 12


Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Tuesday, September 14, 2021 10:02 AM
To: Infante, Joseph M.; Joseph E. Quandt
Subject: RE: Status

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I will await the final draft Joe



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From: Infante, Joseph M. <infante@millercanfield.com>
Sent: Tuesday, September 14, 2021 9:55 AM
To: Joseph E. Quandt <jeq@kuhnrogers.com>
Cc: Gregory M. Meihn <gmeihn@foleymansfield.com>
Subject: Re: Status

Note there is a typo [REDACTED] I'll fix that.

Sent from my Verizon, Samsung Galaxy smartphone
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From: Infante, Joseph M.
Sent: Tuesday, September 14, 2021 9:27:06 AM
To: Joseph E. Quandt <jeq@kuhnrogers.com>
Cc: Gregory M. Meihn <gmeihn@foleymansfield.com>
Subject: RE: Status

See attached. We can fill in the standard agreement terms once the operative terms are agreed upon. This is still pending review from my clients and may be missing items though I think I covered everything.

Greg, I have also drafted a consent judgment which follows the same format.

Joseph M. Infante | Attorney and Counselor at Law
Miller Canfield
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503 (USA)

T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199

infante@millercanfield.com | View Profile + VCard

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From: Joseph E. Quandt <jeq@kuhnrogers.com>

Sent: Tuesday, September 14, 2021 9:01 AM

To: Infante, Joseph M. <infante@millercanfield.com>

Cc: Gregory M. Meihn <gmeihn@foleymansfield.com>

Subject: Re: Status

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Certainly understandable. Thanks

Joseph E. Quandt

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On Sep 14, 2021, at 8:59 AM, Infante, Joseph M. <infante@millercanfield.com> wrote:

I'm just finishing it up and will circulate in a few minutes. As you might expect it was a little difficult to draft.

Joseph M. Infante | Attorney and Counselor at Law
Miller Canfield

99 Monroe Avenue NW, Suite 1200

Grand Rapids, Michigan 49503 (USA)

T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199

infante@millercanfield.com | View Profile + VCard

LinkedIn | Twitter | Facebook | YouTube

From: Joseph E. Quandt <jeq@kuhnrogers.com>
Sent: Tuesday, September 14, 2021 8:57 AM
To: Gregory M. Meihn <gmeihn@foleymansfield.com>; Infante, Joseph M. <infante@millercanfield.com>
Subject: Status

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Greg/Joe:

I'm assuming you are working together on the term sheet to present to the township board for this evening's meeting? Please let me know if there is anything I can do to help in the process.

Regards, Joe.

Joseph E. Quandt
Kuhn Rogers, PLC
412 S. Union Street
Traverse City, MI 49684
231-947-7901 x115



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Exhibit 13

Infante, Joseph M.

From: Infante, Joseph M.
Sent: Tuesday, September 14, 2021 11:49 AM
To: Gregory M. Meihn; Joseph E. Quandt
Subject: Settlement Term Sheet
Attachments: Settlement Term Sheet(38134225.1).docx

Attached is an updated term sheet. This should be good for final review. Please let me know any issues you see or whether we have a final agreement.

Joseph M. Infante | Senior Principal
Miller Canfield
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503 (USA)
T +1.616.776.6333 | F +1.616.776.6322 | **Mobile** +1.231.740.8199
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Licensed to practice in Michigan and Illinois

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CLICK HERE:
COVID-19 Resource Center



Exhibit 14

Peninsula Township
Town Board Regular Meeting
September 14, 2021 7:00 p.m.
Lola Jackson Recording Secretary
DRAFT MINUTES

PENINSULA TOWNSHIP
13235 Center Road, Traverse City MI 49686
www.peninsulatownship.com
Township Board Regular Meeting Minutes
September 14, 2021, 7:00 p.m.
Township Hall

**Masks Are Required for Those Who Are Not Vaccinated; Please Also Keep
Six Feet between Yourself and Others**

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

2. **Pledge**

3. **Roll Call**

Present: Sanger, Bickle, Manigold, Chown, Achorn, Wunsch

Absent: Wahl

Also present: Greg Meihn, township attorney, and Christina Deeren, director of zoning

4. **Brief Citizen Comments (for agenda items only)**

Curt Peterson, 1356 Buchan Rd.: we want to see the current zoning ordinance laid side-by-side with the proposed changes for comparison. Need to extend the public comment period until we have this document and have time to review.

Manigold: The master plan is going to be approved first and then the zoning rewrite. The vote on the zoning ordinance might be in two to three months.

Jim Raphael, 14826 Mallard Dr.: only has time to convey some of his remarks. Urges the township board to pass a Bluff Rd. resolution tonight and would prefer even stronger language. Bluff Road is one of the very few north-south throughway roads on the peninsula. The township spent considerable resources building and manning a third fire station last year for the public good. Bluff Rd. needs to be approached in that same spirit. Unfortunately, the county road commission is not being run for the public good. We are dealing with a management team bent on pursuing their own agenda, which is to spend on big megaprojects and high profile roadwork at the expense of local road maintenance. (A complete copy of his remarks is included at the end of the minutes.)

Jim Carruthers 14114 Bay View: has lived on the peninsula for 30 years. Worked for the Grand Traverse Regional Land Conservancy and with Barbara Wunsch on the PDR program. Is currently the mayor of Traverse City. Is here to provide the Traverse City point of view regarding the traffic at the base of the peninsula. This portion of Traverse City is residential, and the city will do whatever is required to mitigate the traffic congestion at the base. The increase in traffic will add 15-20 minutes in getting on and off the peninsula. We will do whatever is necessary to improve traffic flow in the M37/Garfield interchange and preserve easy access to Bryant Park.

Todd Wilson, 782 Neahtawanta Rd.: Read letter in packet, item T.

Chris Taylor, 1042 Neahtawanta Rd.: has been coming here most of his adult life and is now a full-time resident and voter. Some members of the wineries have suggested we mimic Leelanau County and allow some wineries to have longer hours and additional events. Leelanau County has 11 townships, and only two of them allow what our wineries request. Peninsula Township has one winery for every 2.8 miles while Leelanau has one winery for every 125 square

Peninsula Township
Town Board Regular Meeting
September 14, 2001 7:00 p.m.
Lola Jackson Recording Secretary
DRAFT MINUTES

filed to intervene in the suit as well, and the judge has not ruled on this yet. This prohibits PTP from participating in the discussions and having access to internal court documents. You can get on the Michigan Western District Court website and see the motions that have been filed, the briefs, and the arguments to date. I can provide public documents to those who contact me. I am recommending the board set up a public meeting at St. Joseph Catholic Church to go over the existing public documents. After five meetings with the mediator, the two parties have come up with a proposal for the town board tonight.

Manigold moved to go into closed session per MCL 15.268(e) to discuss the winery lawsuit and return to open session per MCL 15.261, seconded by Chown.

Roll call vote: Yes – Sanger, Achorn, Wunsch, Bickle, Chown, Manigold

Passed Unan

Board entered closed session at 9:45 p.m.

Manigold moved to go back into open session per MCL 15.261 with a second by Bickle.

Roll call vote: Yes – Wunsch, Bickle, Chown, Manigold, Achorn, Sanger

Passed Unan

Meeting returned to open session at 10:25 p.m.

Bickle moved to schedule a closed session meeting on the proposal brought by the negotiation committee to discuss the terms and conditions of the settlement proposal; the proposal requires the input of the full board, and with trustee Wahl absent and board members unable to fully review the proposal handed to them today, a short delay is necessary, seconded by Wunsch.

Roll call vote: Yes – Wunsch, Bickle, Chown, Manigold, Achorn, Sanger

Passed Unan

Chown moved to schedule a meeting within the next few weeks at a sufficiently large local venue to allow full public participation to learn about and speak on the allegations leveled in the complaint, seconded by Bickle.

Roll call vote: Yes – Wunsch, Bickle, Chown, Manigold, Achorn, Sanger

Passed Unan

9. Citizen Comments: none

10. Board Comments: none

11. Adjournment:

Sanger moved to adjourn the meeting with a second by Chown.

Roll call vote: Yes – Sanger, Achorn, Wunsch, Bickle, Chown, Manigold

Passed Unan

Adjourned at 10:28 p.m.

Exhibit 15

Upcoming Community Meeting about WOMP Litigation on Oct. 6

PTP asks elected officials on Township Board to lead presentation on Oct. 6 at 7 pm at St Joseph's Church because their constituents have a right to hear directly from them, in lay terms, about what's at stake.

WOMP's Demands: Stay open until 2 a.m., full restaurant & catering services; large events; no obligation to buy local grapes/produce; outdoor amplified music; & unrestricted merchandise sales.

Dear Neighbors and Friends of Old Mission Peninsula,

For decades, Protect the Peninsula, Inc. (PTP) has been committed to preserving the scenic and rural character of the peninsula as well as quality of life for all residents. Therefore, PTP supports the Township in defending the zoning ordinance against the litigation. We appreciate the difficult task in front of the Township Board, and realize *a good settlement for all is possible*, but if ordinance modifications are warranted, then PTP supports a transparent process that brings all such modifications into the open so all community voices are heard before an agreement between the Township and WOMP is officially accepted.

Good News: There will be a public meeting at **St. Joseph's Church on Oct. 6 at 7 p.m.** and there will be **PLENTY OF ROOM** for everyone.

PTP urges the township trustees to lead the presentation because their constituents deserve to hear directly from them, in lay terms, what's at stake.

PTP asks the Township address the following topics:

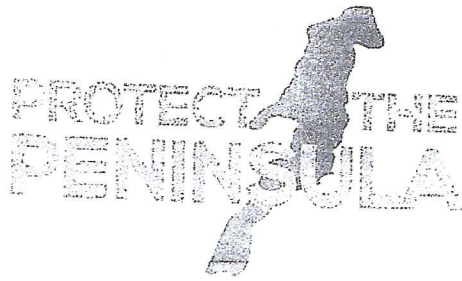
- **Timeline:** When and why the original negotiations (~2018) began and fell apart; key dates related to the lawsuit, including when the trial is currently scheduled.
- **WOMP Claims:** What are the specific provisions of the zoning ordinance that WOMP alleges are illegal and under what general theory?
- **Township Response in the Lawsuit:** The township denied WOMP's claims. What is the reasoning for this response?
- **Legal Process:** How is the litigation generally proceeding?
- **Potential Outcomes:** What is the range of outcomes, from best case to worst case to settlement?
- **Public Participation:** When and how can the public stay informed, and what are effective ways for constituents to speak with the board about the lawsuit?
- **Future Process:** Would the township support an immediate restart of a public process to improve its ordinance?

PTP also requests:

- A public comment period after the Board's presentation.
- The Township add the lawsuit public filings to its website so that the public can access all the filings directly.

Sincerely,

Protect the Peninsula



Advocating for Quality of Life on Old Mission Peninsula Since 1979

Protect the Peninsula is made up of people in our Township who have been working hard for the common good of all residents.

VISIT

www.protectthepeninsula.com

Where you can learn more and join many neighbors who support our work.

Citizen Involvement Drives Our Future And It Can Be Easy!

The Township's 2019 survey gave residents an opportunity to voice concerns, but the new Participate Old Mission online tool invites ongoing participation. Those who speak up will determine our future, and if you continue to revisit and participate you will have even more impact.

Survey results can guide the Township, but citizen participation determines what happens.

Visit <https://participateoldmission.com/> for an opportunity to have your voice heard.

Visit often and speak out.

If You Want to Do More

The master plan review process is well under way and the subcommittees need members to help shape our future. Write the Town Board or Planning Commission if you are willing to serve. Attending and commenting at these Master Plan Meetings is also important: May 17 at 3 & 7p.m.

The 2019 survey results revealed strong concerns about traffic, non-motorized transportation, impact of wineries, preservation of our rural character, support of PDR and direction of future growth. Those who participate and voice their opinions will determine how we address these issues and others.

Will we encourage more overnight lodging businesses?

Will we improve road safety for bikes, cars, and pedestrians?

Will wineries be allowed to become restaurants and hotels?

Will the Township keep video records of public meetings or delete them?

Will we support alternative energy?

Will there be a commercial town center?

Will we allow overnight rentals?

What else matters to you?

**Help answer these and other questions –
Get involved!**

Peninsula Wineries Have Sued the Township

The wineries' lawsuit is significantly disrupting progress in key Township efforts such as preserving more farmland, completing a full update of the zoning ordinances, and timing around improvement of parks and other service improvements. *Protect the Peninsula* supports finding common ground through the community zoning process, but Wineries of Old Mission's (WOMP's) pending federal lawsuit prevents Township leaders, community members, and interested groups from looking for common ground to support local farmers and residents.

Our Township's ordinances guide land use and set the balance between residential, agricultural, and commercial activities. The current lawsuit by WOMP seeks to undo over 30 years of careful work that maintains that balance. WOMP seeks to remove current guidelines and limitations of commercial events such as business conventions, weddings, and reunions. They want the Township to allow full bar alcohol service from 7 a.m. to 2 a.m. seven days a week, along with concerts and outdoor amplified music until 2 a.m., full restaurant service including catering and food trucks, unlimited retail sales of merchandise other than wine and items that promote the winery. They are also trying to remove requirements to use a percentage of grapes from Peninsula Township, a current requirement that ensures wineries actually support agricultural use of land within the Township.

There is a wrong way and a right way to make sure everyone can be heard. The wrong way is through a federal lawsuit. The right way is through the Michigan community process to amend a zoning ordinance. All community members have the right to be heard in different ways in that process. Appointed planning commissioners and elected officials consider and vote on proposed changes. Subcommittees with key stakeholders can tackle thorny or complex issues and make recommendations. Professional planners can bring expertise and perspective to ensure forward progress.

The wineries' lawsuit also seeks financial damages from Peninsula Township that will be paid by our residents, blaming rules they understood and accepted when they applied to operate under the existing ordinance.

Protect the Peninsula currently awaits the judge's decision on a motion to join the lawsuit in order to help the Township defend against this wholesale gutting of rules in Peninsula Township that guide winery uses.

Ordinance Sections Outside of Agriculture / Wineries Are In Redraft

The resulting draft from the Peninsula Township zoning ordinance redraft process is now posted on the Township web site near the bottom of the landing page www.peninsulatownship.com. Many topics are addressed. We encourage residents to be informed and consider participating in the zoning and master plan process. Write the Town Board or Planning Commission if you are willing to serve.

Correcting the Record

We have recently heard some misleading or false statements about winery regulations and Protect the Peninsula. We correct the record with the facts below:

- **"The Township broke off talks with WOMP"** FALSE- the Township did not "break off talks". After 5 meetings between September 4th 2019 and March 23 the April 14th 2020 meeting was cancelled due to COVID-19, with the assumption talks would restart in the future. Before any request for a restart was made by either side, WOMP sued the Township in October 2020.
- **"WOMP has been trying since 2008 to work with the Township on a new ordinance"** FALSE- There is no record of any discussions in 2008 or 2009. In 2010 the planner at the time initiated an effort to revamp the ordinance to satisfy requests by some grape growers. After the departure of that planner, in 2013, interest in the new approach was inadequate and the planning commission abandoned the effort. The only record of any proposals being brought to the Township between 2013 and the recent discussion between WOMP & the Township, was the revision to expand production capability farm processing wineries brought to the planning commission and shepherded through passage at the town board in July 2018 by Protect the Peninsula board member John Wunsch.
- **"Old Mission wineries are not allowed to buy any grapes outside of Old Mission Peninsula"** FALSE- Wineries operating under the "Farm Processing" permit can buy up to 15% of their grapes from any location, any given year, and more on any year when there is a shortage of crop production. This 15% provision, known as appellation, ensures that as a winery sells more wine by bringing more traffic to the peninsula, they will automatically put more Old Mission Peninsula farm land into production. And the volume of that 15% of course grows with their increase of production, naturally allowing them to buy more and more product off of the peninsula. Alternatively, Chateau SUP wineries are only limited to the 15% restriction for wine served at guest activity events.
- **"Protect the Peninsula never supports any changes to winery ordinances"** FALSE- Protect the Peninsula supported board member John Wunsch as he worked from 2016 – 2018 to propose and gain approval from the Township to expand production capability for farm processing wineries in order to improve their ability to compete. And in 2001 – 2002 Protect the Peninsula representatives met every 1–2 weeks for over six months with representatives of WOMP's predecessor, the Agricultural Preservation League, in order to create a new use by right small winery ordinance, it is the current Farm Processing winery use under which a number of our current wineries operate. As a use by right permission, it also allows for easier and less expensive investment to open a winery. And most recently Protect The Peninsula advocated in a March 19, 2021 press release, as well as in the Old Mission Gazette for WOMP to come to the table and work with citizens in the planning process to resolve our differences.
- **"The Township never even allowed wineries to serve food until the state forced it to do so"** FALSE- The Township has always allowed small plates of food to be served in the tasting rooms. The March 13, 1990 Special Use Permit for Chateau Chantal made no reference to disallow or allow cheese and crackers or other small plates with tastings, and they were considered a typical tasting activity in the tasting room to cleanse the pallet between tasting. The Township never made any effort to restrict that activity. The end result of a request in 1996 by Bob Begin to make an amendment to his special use permit was that the Township Board passed specific standards to define small plate service for tastings in the tasting room. At that point the common practice of food with tastings, which the Township had all along allowed, became a stated and clearly defined allowed use. The state liquor commission never ordered the Township to allow this food, which it was already allowing. The liquor commission eventually allowed sale of wine by the glass in wineries, with a minimum amount of food be served with that wine sold by the glass. Since it was now legal for wineries to sell by the glass, the wineries requested that right be included in the ordinance and the Township honored that request by allowing sale of wine by the glass. The Township was already compliant with the common practice that a minimum amount of food be served with that wine sold by the glass, due to the same small plate food previously allowed. Appropriately that small plate service is still allowed to this day.

Join your neighbors by donating to support our work to defend against the WOMP lawsuit

Online at www.protectthepeninsula.com

Or by mail: Please make your check payable to

Preserve Old Mission

Memo: on behalf of Protect the Peninsula

c/o Mark Nadolski, PO Box 1529

Traverse City, MI 49685

Other Ways to Stay Involved and Informed

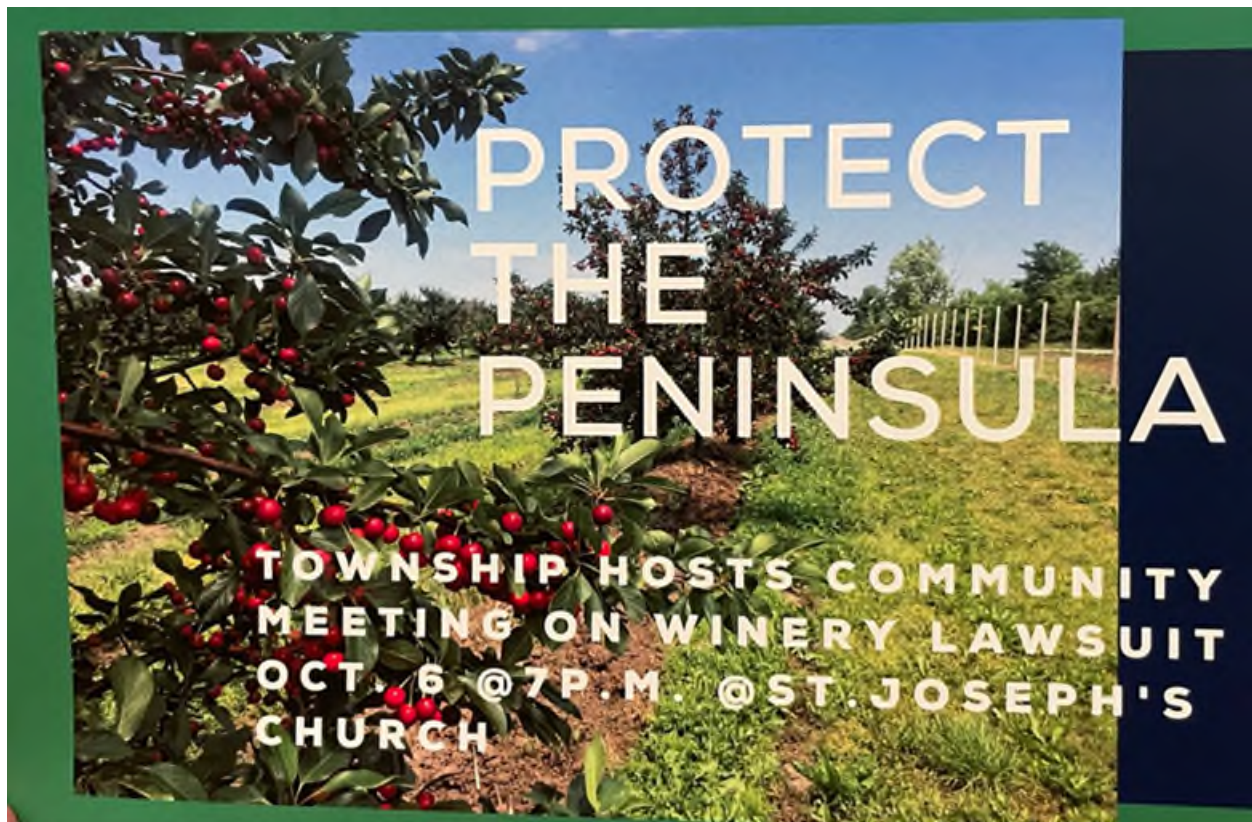
Sign up for email updates at www.protectthepeninsula.com

Volunteer to help in our efforts at info@protectthepeninsula.com.

Follow and like Protect the Peninsula on Facebook/ProtectthePeninsula & Instagram@ProtectOMP

NOTE: a brand-new private entity has formed under the name "Protect The Peninsula Farmers LLC". That group is not affiliated with Protect the Peninsula, a non-profit which has been active for over 40 years.

"Protect the Peninsula has been there for you and will continue to be, because we care about the entire Peninsula Community." -Mark Nadolski, President



PROTECT THE PENINSULA
P.O. BOX 1529
TRAVERSE CITY, MI 49686
WWW.PROTECTTHEPENINSULA.COM



Help Protect the Peninsula!

Let the Township trustees know how you feel about the wineries' demands.

**Come to the Community Meeting
on Oct. 6 @ 7 p.m. @ St. Joseph's.**

Invite your friends and neighbors! Our agricultural heritage and quality of life are worth fighting for!

*If you can't come, share your views by
emailing the Township Clerk Becky
Chown: clerk@peninsulatownship.com
who will share with the Township Board.*

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Brys Patrick J & Outcalt Erick N
Or Current Resident
15437 Dunn Dr
Traverse City, MI 49686-8704

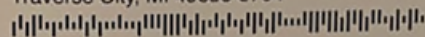


Exhibit 16

Infante, Joseph M.

From: Infante, Joseph M.
Sent: Wednesday, October 6, 2021 12:02 PM
To: Gregory M. Meihn; Matthew T. Wise
Cc: Rebecca M. Dedene
Subject: Re: Status of Settlement

If this is the case then I am unclear what the purpose of the meeting is. Is it just to give PTP another chance to rant and rave? Or is it to give your client cover to back out of the settlement?

Sent from my Verizon, Samsung Galaxy smartphone

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From: Gregory M. Meihn <gmeihn@foyleymansfield.com>
Sent: Wednesday, October 6, 2021 11:36:23 AM
To: Infante, Joseph M. <infante@millercanfield.com>; Matthew T. Wise <mwise@foyleymansfield.com>
Cc: Rebecca M. Dedene <rdedene@foyleymansfield.com>
Subject: RE: Status of Settlement

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Joe, you have not been added. The Board position is that you can speak during the public meeting as everyone else. The Board is not speaking at all during the meeting and I am not providing any opinions. It is going to be pure straight forward.

greg



Gregory M. Meihn | Partner | T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foyleymansfield.com 



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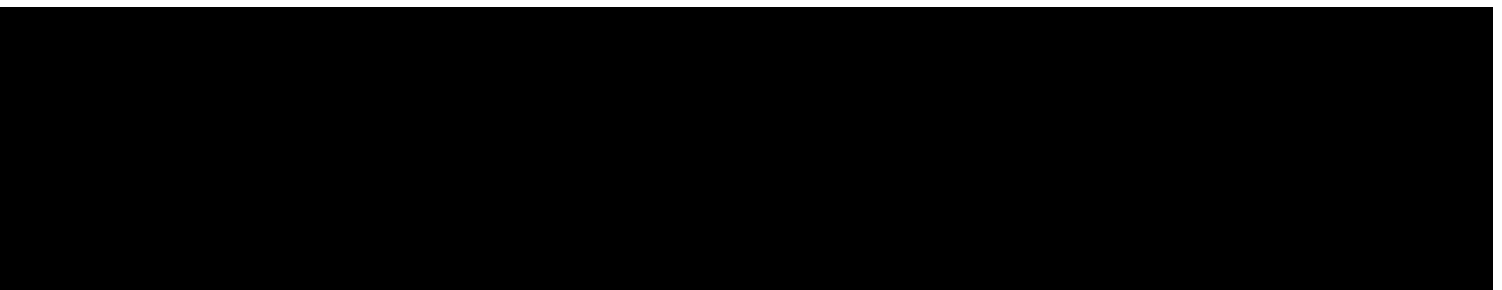


Exhibit 17

Infante, Joseph M.

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, October 7, 2021 10:02 AM
To: Infante, Joseph M.
Cc: Matthew T. Wise; Rebecca M. Dedene
Subject: WOMP settlement

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Joe, for the first time in my career I was unable to predict the Board's decision last night. [REDACTED]

[REDACTED] I suspect they were influenced by the number of people on both-sides of the issue wanting to be involved in carving out the solution to our problem.

[REDACTED]

Greg.



Gregory M. Meihn | Partner | T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 



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