UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

v

PENINSULA TOWNSHIP, Michigan Municipal Corporation,

Defendant.

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

PLAINTIFFS' RESPONSE TO PROTECT THE PENINSULA'S BRIEF ON ITS INTERESTS IN COMMERCIAL SPEECH, CONTENT BASED RESTRICTIONS, AND COMPELLING SPEECH ISSUES

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FACTUAL BACKGROUND

The Sixth Circuit determined "the property interests" of PTP's members satisfy the substantial interest requirement. *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 771 (6th Cir. 2022). But the Sixth Circuit did not find a substantial interest in the current zoning scheme, prohibiting commercial activities, spot zoning, preserving agricultural land, protecting the zoning plan, ordinance and process, or any of PTP's other allegations.[1] Rather, "[PTP] is comprised of members who are focused on the effects this litigation will have on their properties." *Id*. at 774 (emphasis added). "Whatever else they may think about the state of public finances, these members are primarily concerned with safeguarding their land values, ensuring the quiet enjoyment of their homes, and preserving the viability of their farms." *Id*.

I. ARGUMENT

A. Standard of Review.

This Court, in determining which portions of its June 3 Order to set aside, framed the issue as whether PTP would face "manifest injustice" if it was not given "the opportunity to raise defenses to the Wineries' claims that implicate PTP's interests." ECF No. 301, PageID.10696. "[E]ven if a portion of the June 3 Order [affects PTP's property interests or relates to a claim the Township failed to defend] [if] PTP's intervention would not have affected how the Court concluded on that particular issue, then such portion of the Order will not be set aside." *Id*. at PageID.10697. Because on "certain issues [] PTP possesses such an attenuated interest in (if any interest at all) [] the Court is not inclined to automatically permit PTP to defend against simply because the corresponding portion of the June 3 Order has been set aside." *Id*. at 10699. "Of the

[1] See Document 20 in Sixth Circuit Case 21-1744 at pages 28-31, 33-34, and 38. (**Exhibit 1**).

claims that are still live, PTP may participate in defending against these claims if it has an interest in the claim, or in other words, if the adjudication of the claim would affect PTP's members' property interests." *Id*. at 10702. "[O]nly those claims that could affect PTP members' land values, quiet enjoyment of their properties, and the viability of their farms will be the claims that PTP may participate in."

Thus, the questions to be answered are whether a claim affects PTP's members' land values, quiet enjoyment, or viability of their farming operation, and whether PTP's intervention would affect how the Court rules. The commercial speech, compelled speech, and content-based restriction claims do not affect PTP members' land values, quiet enjoyment, or viability of their farming operation. Even if they did, PTP's involvement cannot affect the outcome of the dispute.

B. <u>The Claims do not Affect Land Values, Quiet Enjoyment, or Farming Operations.</u>

The position of the five PTP affiants is exemplified by Ms. Wunsch: "I believe the invalidation of these zoning provisions would result in increasing commercial and industrial activity, with the potential result including bringing additional trucks and other vehicles onto the peninsula, which would adversely impact my access to my home and my use and enjoyment of my property, and my family farm operations that need to efficiently move equipment, crews, and produce around and off the peninsula." ECF No. 304-4, PageID.10931. This is insufficient. First, the affidavits contain nothing more than subjective speculation unsupported by admissible evidence. Second, "generalized concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision." *Saugatuck Dunes Coastal Alliance v. Saugatuck Township*, 509 Mich. 561, 597 (2022) (citations omitted).

1. **PTP's Affidavits Should be Stricken.**

"Courts should [] disregard statements in affidavits that are not based upon personal knowledge, are speculative or otherwise unsubstantiated, or are conclusory and self-serving." *Aludo v. Denver Area Council*, 2008 WL 2782734, *1 (D. Col. July 8, 2008)[2] (citing *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006)). "[A]ffidavits that contain speculation or hearsay without factual support, and statements in an affidavit prefaced by the phrases 'I believe' or 'upon information and belief' or those made upon an 'understanding,' are properly subject to a motion to strike." *Id*. (citing *Tavery v. United States*, 32 F.3d 1423, 1426 n. 4 (10th Cir.1994)); *see also Thomas Well Serv., Inc. v. Williams Nat. Gas Co*., 873 F. Supp. 474, 480–81 (D. Kan. 1994) ("To the extent that an affidavit is based upon the affiant's...beliefs...or speculation, the court is compelled to enforce Rule 56(e) and disregard those portions of the affidavits filed by the plaintiffs); *Mitchell v. Toledo Hosp*., 964 F.2d 577, 584–85 (6th Cir. 1992).

PTP's affidavits are replete with speculative and repetitive statements:

Variations of the phrase "I understand" are used 94 times.

Variations of the phrase "I believe" are used 98 times.

Variations of the phrase "I am concerned" are used 32 times.

Numerous instances of the following speculative phrases:

"would likely result in increased commercial activity";

"would likely result in more visitors"

"may also mean increased traffic"

"may result in more visitors, staff, traffic, deliveries, maintenance, and noise"

"could increase the frequency, number, and size of those activities"

[2] Unpublished cases attached in **Exhibit 5**.

"the potential for nuisance conditions"

"likely decrease the value of my property"

"may require we change our farming operations"

"would likely lead to sales of such merchandise"

The affidavits are improper lay opinions of what might happen in the future. "We have never accepted mere conjecture as adequate to carry a First Amendment burden." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000). "The mere fear of injury does not equate to a concrete manifest injustice." *United States v. Hoepf*, 2022 WL 2669378, *1 (S.D. Oh. June 29, 2022.); *U.S. v. Palmer*, 956 F.2d 3, 7 (1st Cir. 1992) ("speculation cannot equate with manifest injustice") (internal quotation omitted).

PTP's speculation about traffic is also untrue. In November 2022, the Grand Traverse County Sheriff's Office addressed "rumors" regarding traffic. (**Exhibit 2** at 1.) At a Town Board meeting an officer informed the Township that "[a] lot of times I get calls about the tourists causing all the problems, all the speeding, but statistics don't lie: 77% are the locals." (***Id.***) PTP's speculative fear of the sky falling does not carry PTP's burden.

2. **Invalidation of the Commercial Speech Restrictions, Content-Based Restriction and Compelled Speech Requirements do not Affect PTP Members' Substantial Interests.**

The Sixth Circuit recognized that to bring a nuisance claim members of PTP must "demonstrate standing." *Wineries*, 41 F.4th at 773 (citing *Towne v. Harr*, 185 Mich. App. 230, 232 (1990)). In the zoning context, a citizen must "show damages of a special character distinct and different from the injury suffered by the public generally." *Towne*, 185 Mich. App. at 232 (citations omitted.)

The Sixth Circuit stated that PTP's members could prove standing "by showing that the 'defendant's activities directly affected the plaintiff[s'] recreational, aesthetic, or economic interests.'" *Id*. (quoting *Kallman v. Sunseekers Property Owners Ass'n, L.L.C.*, 480 Mich. 1099 (2008); *Mich. Citizens for Water Conservation v. Nestlé Waters N. Am. Inc.*, 479 Mich. 280, 295 (2007)). According to *Kallman*, however, a plaintiff "must show that they have a substantial interest that would be detrimentally affected in a manner different from the citizenry at large." *Kallman*, 480 Mich. at 1099. And, according to *Towne*, "an individual bringing suit to abate a public nuisance [bears] the burden of proving special damages." *Towne*, 185 Mich. App. at 233; *see also Ansell v Delta Co Planning Comm*, 332 Mich. App. 451, 461 (2020) ("special damages" required for public nuisance claims). "[A] an individual's proof of special damages has been a long standing requirement under Michigan's common law, dating back at least as far as 1872." *Id*.

Put another way, to have standing a litigant must 1) demonstrate a substantial interest and 2) demonstrate that its substantial interest will be detrimentally affected differently than the public at large, *i.e*., special damages. Five days before the Sixth Circuit issued its opinion, the Michigan Supreme Court clarified what constitutes special damages in the context of the Michigan Zoning Enabling Act. First, to the extent prior holdings required a party to own property, the court overruled several such holdings.[3] *Saugatuck Dunes*, 509 Mich. at 590-91. The court then turned to what *was* required to confer standing: 1) "one must have a *protected interest or a protected personal, pecuniary, or property right that is or will be adversely affected* by the substance and effect of the challenged decision;" and 2) the party must "demonstrate special damages as a part

[3] Those cases are *Joseph v Twp. Of Grand Blanc*, 5 Mich App 566 (1967); *Olsen v Chikaming Twp.*, 325 Mich. App. 170 (2018); *Unger v Forest Home Twp.*, 65 Mich. App. 614 (1976); *Western Mich. Univ. Bd. of Trustees v Brink*, 81 Mich. App. 99 (1978); and *Village of Franklin v City of Southfield*, 101 Mich. App. 554 (1981).

of demonstrating aggrieved-party status." *Id*. at 593-594. (emphasis in original). "Such a requirement is necessary to balance the rights of private-property owners seeking zoning approval and the interests of third parties seeking to ensure that local zoning ordinances are correctly and lawfully administered." *Id*. at 594.

As to what did *not* qualify as special damages, the *Saugatuck* court was explicit and retained those portions of the decisions cited in footnote 2, above, which it had otherwise overruled: "It also remains true that *generalized* concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision." *Id*. at 597 (citing *Olsen*, 325 Mich. App. at 185; *Unger*, 65 Mich. App. at 617).

"Generally, a neighboring landowner alleging increased traffic volume, loss of aesthetic value, or general economic loss has not sufficiently alleged special damages to become an aggrieved party because those generalized concerns are not sufficient to demonstrate harm different from that suffered by people in the community generally." *Eveleigh v. City of Charlevoix*, 2021 WL 4932573, *2 (Mich. App. Oct. 21, 2021) (quoting *Olsen*, 325 Mich. App. at 183 (overruled on other grounds)). "It has been held that the mere increase in traffic in the area is not enough to cause special damages." *Unger*, 65 Mich. App. at 617 (citing *Joseph*, 5 Mich. App. 566; *Victoria Corp. v. Atlanta Merchandise Mart, Inc*., 101 Ga. App. 163 (1960); *Bersch v. Hauck*, 122 Ga. App. 527 (1970)). "Nor is proof of general economic and aesthetic losses sufficient to show special damages." *Id*. (citing *Joseph*, 5 Mich. App 566; *City of Greenbelt v. Jaeger*, 206 A.2d 694 (Md. 1965); *Downey v. Incorporated Village of Ardsley*, 152 N.Y.S.2d 195 (Sup. Ct., 1956)). In *Unger*, the plaintiff alleged that he owned property on the same lake as the property at issue. The court determined that this did not show special damages as the "only inferences one

might draw from those stated facts are that the traffic on the lake might increase, and that property values in general for lake property might go down." *Id*. at 618.

"Thus, a neighboring landowner merely alleging a likely increase in traffic volume, or a loss of aesthetic value, or a general claim of economic loss, has not alleged special damages sufficiently to become an aggrieved party." *Tobin v. City of Frankfort*, 2012 WL 2126096 *2 (Mich. App. June 12, 2012) (citing *Village of Franklin v. City of Southfield*, 101 Mich. App 554, 557 (1980); *Unger*, 65 Mich. App at 617). Like the present case, *Tobin* involved intervenors who presented affidavits. Like the affidavits here, they were insufficient:

> The relevant declarations by FOBB members in their September 2000 affidavits primarily detail concerns about (1) increases in population, traffic, noise levels, lights, air pollution, and property taxes; (2) decreases in home values, aesthetics of the neighborhood, and environmental value caused by tree and vegetation removal attributable to the development; and (3) the potential presence of commercial establishments. The generalized concerns relating to environmental impacts, population increases, aesthetics, and pecuniary harm do not suffice to demonstrate "special damages ... different in kind from those suffered by the community, so as to qualify [intervenor] as an aggrieved party.

Id. (quoting *Joseph*, 5 Mich. App. at 571). The *Tobin* court continued, "[a]lternately phrased, development-related aesthetic changes, population increases, environmental impacts, and pecuniary harm will be experienced by other community members to the same extent as affiants." *Id*. Finally, evidence "relative to the depreciation of property values in the area since the commencement of" an alleged nuisance is not helpful because "the mere fact that [the alleged nuisance] may lessen the value of other property in the locality does not constitute . . . a nuisance." *Garfield Twp. v. Young*, 82 N.W.2d 876, 879 (Mich. 1957).

Similarly, in *Grandview Beach Association v. County of Cheboygan*, 2021 WL 1049882 (Mich. App. March 18, 2021), neighboring landowners asserted that a nearby "[f]arm will adversely affect the residential character of the surrounding properties, the use and enjoyment of

Association members' property, property values in the area, the local environment and wildlife, storm-water-discharge and water-treatment systems, traffic flow, the degree of noise and light in the area." *Id*. at *8. The court rejected these assertions: "they do not suffice to establish special damages or unique harm dissimilar to the effects on other similarly situated property owners [and] '[i]ncidental inconveniences such as increased traffic congestion, general aesthetic and economic losses, population increases, or common environmental changes'…are 'insufficient to show that a party is aggrieved." *Id*. (quoting *Olsen*, 325 Mich. App. at 185). As for noise, "[t]o render noise a nuisance, it must be of such a character as to be of actual physical discomfort to persons of ordinary sensibilities." *Smith v. Western Wayne County Conservation Ass'n*, 380 Mich. 526, 536 (1968). None of the affiants assert noise of this character.

The Sixth Circuit did not hold that PTP's members have standing or suffered special damages and PTP has not demonstrated either. Generally, PTP's position is that invalidation of any of the ordinances "would likely lead to more commercial activities, more visitors, traffic, deliveries, staff, and activity taking place." ECF No. 304, PageID.10858. But those are generalized concerns common to the community, not special damages.[4]

For example, John Jacobs avers that he resides three miles from Two Lads and Chateau Chantal. ECF No. 304-1, PageID.10866. His complaints regarding noise and traffic would be common to everyone within this radius. Mark Nadolski avers that if the restrictions placed upon Peninsula Cellars were removed then commercial activity would increase. ECF No. 304, PageID.10889. He resides 4.8 miles from Peninsula Cellars. His complaints are common to any resident within this radius; essentially the entire Township. Finally, Barb Wunsch does not allege

[4] There is also not evidence that these occurrences are a problem.

that she lives near a winery, but rather if any of the ordinance restrictions are lifted then there will be more visitors to wineries, and more traffic. These are allegations common to every resident.

The only affiants who live near a winery are Mr. Phillips and Ms. Zebell; and Mr. Nadolski as it relates to Black Star. But their affidavits contain nothing more than complaints common to all residents. Mr. Phillips complains that if the ordinances are struck down this "would mean more traffic on Center Road and on East Shore Road where I live." ECF No. 304-3, PageID.10899. He also complains that it may result in more "visitors, staff, traffic, deliveries, and noise for reasons unrelated to agriculture." *Id*. at PageID.10902.[5] Ms. Zebell lives near Bowers Harbor Vineyard and complains that "[a]t times" traffic makes it difficult to get to and from her home. ECF No. 304-5, PageID.10937. Like others, her complaint is a common complaint of traffic on a public road. Ms. Zebell also asserts that noise from Bowers Harbor "disrupts both the act and purpose of her gardening." *Id*. at PageID.10943. This can be solved by a general noise ordinance. Regardless, her complaint is common to all residents near Bowers Harbor – and the two restaurants which offer events close to her home.[6]

Finally, Ms. Wunsch believes that she may need to change her farming operations due to possible "complaints about spray drift resulting from spraying operations and potentially causing claims that the spraying interferes with wedding and other activities at wineries." ECF No. 304-4, PageID.10917. Such a statement from a so-called farmer is shocking. It is settled law that a

[5] The only allegation in Mr. Phillips' affidavit which relates to his property is his concern that lost drivers turn around in his driveway. This can be solved by spending $10 to buy a sign a sign directing drivers not to use his driveway. https://www.amazon.com/Driveway-Turnaround-Reflective-Rustfree-Resistant/dp/B093C9DV4C/ref=sr_1_4?keywords=no%2Bturning%2Bin%2Bdriveway%2Bsign&qid=1673298249&sr=8-4&th=1

[6] The Boathouse Restaurant (.5 miles) and Mission Table (.76 miles) are both located near Ms. Zebell's home and both host events. www.missiontable.net, www.boathousewestbay.com

farming operation is strictly liable if it allows pesticide drift. *See Motors Ins. Corp. v. Aviation Specialties, Inc.*, 304 F. Supp. 973 (W.D. Mich. 1969); Mich. Admin. Code R. 285.637.10, R. 285.637.4; *see also* Michigan GAAMPS for Pesticide Utilization and Pest Control. (**Exhibit 3**.) The solution is not for Ms. Wunsch to support ordinances to keep others away, but for her t comply with her legal obligations.

PTP is a group of local citizens who use a loud voice to complain about common issues. But a loud voice does not confer standing or special damages.[7] This Court should preclude PTP from participating in the commercial speech, compelled speech, and content-based restriction claims and reinstate its prior summary judgment on these claims.

C. PTP's Intervention Cannot Affect This Court's Rulings on Certain Issues.

PTP's arguments cannot affect the outcome of many issues and PTP does not explain how its argument would affect the outcome of any issue.

1. Any PTP Defense on Commercial Speech is Irrelevant.

This Court concluded that the Winery Ordinances "unquestionably regulate commercial speech." ECF No. 162, PageID.6008. In its brief, PTP, in once sentence, argues that the ordinances do not regulate commercial speech. This statement has no support and is waived. *See United States v. Barr*, 960 F.3d 906, 916 (7th Cir. 2020); *Woods v. Cockrell*, 307 F.3d 353, 357 (5th Cir. 2002).

Even assuming PTP's complaints about traffic were admissible, those complaints are not relevant to the *Central Hudson* test. As to the first part of the test, the Township's alleged justification was, "in a nutshell, …to preserve the agricultural environment in the Agricultural

[7] This is akin to a Heckler's Veto. *See Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 237 (6th Cir. 2015.)

district of the Township." ECF No. 162, PageID.6006. PTP desires the Winery Ordinances "to preserve agricultural character of the area." ECF No. 304, PageID.10848. PTP has nothing new to add. On the second and third prongs, this Court concluded that "[n]ot only does the Township's motion completely fail to address the last two prongs of the Central Hudson test, but Supervisor Manigold's deposition also confirm that these challenged sections of the Township Ordinances likely do not advance the stated interests, and that the Township never considered less-restrictive means." ECF No. 162, PageID.6006. PTP does not address these two prongs and how its involvement would change this Court's conclusions. Further, any PTP testimony regarding *Central Hudson* would be inadmissible. *Presque Isle Twp. School District No. 8 Board of Education v. Presque Isle County Board of Education*, 111 N.W.2d 853, 856 (Mich. 1961) ("[s]uch evidence cannot properly be admitted."); *Simon Property Group, Inc. v. Taubman Centers, Inc.*, 240 F. Supp. 2d 642, 648 (E.D. Mich. 2003); *see also* ECF No. 254, PageID.9019-9023.

PTP members want to restrict the Wineries' commercial speech for the selfish reason that PTP members want Peninsula Township's public roads all to themselves. This has no relevance in a First Amendment case. PTP has no role to play related to the *Central Hudson* factors.

2. **PTP Admits it Has no Interest in the Compelled Speech Claims.**

The First Amendment "presume[s] that speakers, not the government, know best both what they want to say and how to say it." *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 791 (1988). "Laws that compel speakers to utter or distribute speech bearing a particular message are subject to [strict] scrutiny." *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 579 (1995). This Court concluded that "Plaintiffs' motion demonstrates that the Township is indeed enforcing these sections as a mandate, and as such, the Township failed to meet its burden." ECF No. 162,

PageID.6016. PTP does not dispute that the ordinance operates as a mandate. PTP also does not assert that it has an interest in defending the compelled speech claims and admits that its members do not have a property interest in defending 8.7.3(10)(u)(5)(a) as compelling speech. ECF No. 304, PageID.10859. Instead, PTP alleges that it has an interest in defending 8.7.3(1)(u)(1)(b) not as it relates to compelling speech, but as it relates to commercial speech. *Id*. Thus, summary judgment should be reinstated in the Wineries' favor on their compelled speech claim.

3. **Any PTP Defense on the Content-Based Speech Restrictions is Irrelevant.**

It is a fundamental precept of the First Amendment that the government cannot favor one private speaker over another. *Rosenberger v. Rector & Visitors of Univ. of Va*., 515 U.S. 819, 828 (1995). Accordingly, content-based restrictions are "presumptively invalid." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009). An especially "egregious" form of content-based discrimination is that which excludes a viewpoint from the marketplace of ideas. *Rosenberger*, 515 U.S. at 829.

PTP recognizes the fundamental issue related to this claim: the Winery Ordinances allow speech so long as it relates to agriculture, otherwise it is precluded. Oddly, PTP admits that it has no interest in 8.7.3(10)(u)(5)(a), which requires the Wineries to promote agriculture, but contends it has an interest in the remaining content-based restrictions. According to PTP, it has an interest in ensuring that the only events and meetings allowed are those that promote agriculture. Yet, it believes it does not have an interest in agricultural advertising by the Wineries. In essence, PTP draws a line between those issues which bring visitors to Wineries and those that do not. PTP's claims all come back to traffic. But "traffic safety interests are not compelling enough to justify content-based restrictions." *Thomas v. Schroer*, 248 F. Supp. 3d 868, 884 (W.D. Tenn. 2017) ("[N]o binding authority supports the State's compelling interests of aesthetics and traffic safety.")

II. THE RIGHT TO FARM ACT PROTECTS THE WINERIES FROM NUISANCE CLAIMS.

Even if PTP could demonstrate standing, it still could not maintain a nuisance claim because Michigan's Right to Farm Act ("RTFA") preempts such claims. Under the RTFA, "[a] farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture." Mich. Comp. Laws § 286.473(1). "[A] local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act." Mich. Comp. Laws § 286.474(6). "The RTFA was intended to 'protect farmers from the threat of extinction caused by nuisance suits arising out of alleged violations of local zoning ordinances and other local land use regulations as well as from the threat of private nuisance suits.'" *Lima Twp. v. Bateson*, 838 N.W.2d 898, 905 (Mich. App. 2013) (citation omitted).

Further, the uses at issue are accessory uses related to farm operations and agritourism. *See, e.g.*, *Geiselman v. Hellam Twp. Bd. of Supervisors*, 266 A.3d 1212 (Pa. Commw. Ct. 2021) (finding arguments that weddings at wineries were not agritourism were "without merit"); *Jefferson Cnty. v. Wilmoth Fam. Properties, LLC*, 2021 WL 321219, at *5 (Tenn. Ct. App. Feb. 1, 2021) ("The entertainment at issue, farm weddings, is necessarily conducted in conjunction with the production and operation of the farm . . . We, like the trial court, believe that the present use of the property is in keeping with the legislature's obvious intent to allow the necessary supplementation of farming income with income from related activities as long as such activities are secondary to the commercial production of farm products and nursery stock."); *Litchfield Twp.*

Bd. of Trustees v. Forever Blueberry Barn, LLC, 129 N.E.3d 1035, 1037 (Ohio Ct. App. 2019) (holding weddings and social gatherings were accessory uses).

In proclaiming October "Michigan Agritourism Month," Governor Whitmer noted that "agritourism provides ways for farmers to diversify their operations by offering value-added products and activities to protect their businesses against challenging weather conditions and market fluctuations." (**Exhibit 4**.) Examples of agritourism "include farmers markets, on-farm markets, wineries, roadside produce stands, on-farm weddings and events, corn mazes and much more." *Id*. The RTFA protects the Wineries' proposed uses.

III. THIS COURT PROPERLY LIMITED PTP'S ROLE

The remainder of PTP's brief requests reconsideration of this Court's order limiting PTP's role. PTP recently filed a motion for reconsideration making these same arguments. If necessary, the Wineries incorporate the arguments contained in ECF No, 294, PageID.10392-10398 and ECF No. 271, PageID.9748-9751.

CONCLUSION

Peninsula Township is home to residents, businesses, farms, restaurants, convenience stores, factories, marinas and more. Each has a right to use public roads both for their personal use and their business uses. PTP does not have a substantial interest in the Wineries' commercial speech, content-based speech, or compelled speech claims. Wherefore, the Wineries request that this Court reinstate those portions of its June 3, 2022, Order.

MILLER, CANFIELD, PADDOCK AND STONE, PLC

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Dated: January 17, 2023

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(b)(i)

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 4,280 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, I filed the foregoing document via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
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