

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal  
Corporation,

Honorable Paul L. Maloney  
Magistrate Judge Ray S. Kent

Defendant,

**EXPEDITED CONSIDERATION  
REQUESTED**

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

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**PLAINTIFFS' MOTION FOR PROTECTIVE ORDER**

On August 31, 2023, Defendant Peninsula Township received a request under the Michigan Freedom of Information Act, Mich. Comp. Laws § 15.231 *et seq.* from an arguable agent of Intervenor-Defendant Protect the Peninsula. PTP's agent requested that Peninsula Township publicly disclose the confidential settlement communications the parties exchanged prior to the settlement conference with Magistrate Judge Kent on August 28, 2023. Pursuant to *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 977 (6th Cir. 2003) (holding settlement communications are privileged), LCivR 16.1(d) ("Confidentiality - All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408."), and the Stipulated Protective Order (ECF No. 75), Plaintiffs request that this Court enter an order enjoining all parties from disclosing confidential settlement communications.

Counsel for Plaintiffs sought concurrence in this motion from counsel for Peninsula Township and Protect the Peninsula. Peninsula Township did not say whether it would concur because it expressed an intent to deny the FOIA request under the litigation exemption to the FOIA,

Mich. Comp. Laws § 15.243(1)(v). However, even doing so does not obviate the need for the relief requested by this motion as the person who submitted the FOIA request could file suit in Michigan state court to compel production of the requested documents. PTP refused to concur in the relief sought by this motion. Plaintiffs request expedited consideration because Peninsula Township must respond to the FOIA request by September 25, 2023, meaning that any action by the Township must occur before a response would be due under this Court's normal briefing schedule.

WHEREFORE, Plaintiffs request that this Court enter an order enjoining all parties from disclosing confidential settlement communications to the public and grant Plaintiffs any other relief this Court deems necessary.

Respectfully submitted,

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

By: /s/ Joseph M. Infante  
Joseph M. Infante (P68719)  
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Dated: September 15, 2023

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

**I. BACKGROUND**

On August 28, 2023, the parties and their counsel attended a settlement conference with Magistrate Judge Kent. Prior to the settlement conference, the parties were ordered to exchange settlement letters:

Settlement Letter to Opposing Party. A settlement conference is more likely to be productive if, before the conference, the parties have had a written exchange of their settlement proposals. Accordingly, at least fourteen (14) days prior to the settlement conference, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defendant's counsel with a brief explanation of why such a settlement is appropriate. No later than seven (7) days prior to the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate. This may lead directly to a settlement. If settlement is not achieved, plaintiff's counsel shall deliver, fax or e-mail copies of these letters to the chambers of the magistrate judge conducting the conference no later than three (3) business days before the conference.

(ECF No. 343, PageID.12548.) These letters, as part of ADR proceedings, were deemed confidential. *See* W.D. Mich. LCivR 16.1(d) ("Confidentiality - All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408."). Consistent

with this Court's order and this Court's Local Civil Rules, the parties exchanged settlement letters. Each party marked its letter confidential.

On or about August 31, 2023, Defendant Peninsula Township received a letter from Peninsula Township resident David Taft. A copy of Mr. Taft's letter is attached as **Exhibit 1**. Mr. Taft requested, under the Michigan Freedom of Information Act, copies of the following:

1. The settlement proposal document submitted by WOMP . . . according to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.
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**(Id.)** On September 13, 2023, Peninsula Township's attorney notified the attorneys for Plaintiffs and PTP of the FOIA request. A copy of the notification letter is attached as **Exhibit 2**. The Township's attorney explained that the Township "has issued an extension letter, and the response is presently due on September 25, 2023." **(Id.)** The Township's attorney also explained that:

It is our understanding there are no applicable exemptions to FOIA that would allow the Township to deny the request. The Township, therefore, is obligated to produce the documents – including the Township's, Plaintiff's, and PTP's demand letters that were exchanged between the parties pursuant to the CMO. All of these documents are considered public records since the Township is in possession of them.

(*Id.*) Plaintiffs' counsel responded the same day and requested confirmation that the Township would not take any action on the FOIA request until September 25, 2023. (**Exhibit 3.**) The Township's counsel responded the next day and confirmed that no action would be taken until September 25, 2023. (**Exhibit 4.**)

On September 14, 2023, counsel for the parties attended a status conference with Magistrate Judge Kent. During the conference, counsel for the parties notified Magistrate Judge Kent about the pending FOIA request and informed him that this motion would be filed. Following the status conference, counsel for Plaintiffs requested concurrence in this motion from counsel for the Township and PTP. (**Exhibit 5.**) Subsequently, on September 15, 2023, counsel for Plaintiffs followed up with detailed emails containing the case law cited below and a draft of this motion while requesting that the Township and PTP join in the relief sought. (*Id.*) Counsel for Peninsula Township indicated that the Township intends to deny the FOIA request under Mich. Comp. Laws § 15.243(1)(v) ("A public body may exempt from disclosure as a public record under this act . . . Records or information relating to a civil action in which the requesting party and the public body are parties."). (*Id.*) PTP's counsel, meanwhile, disclaimed Mr. Taft's affiliation with PTP with respect to the FOIA request, which likely indicates a question of fact for the FOIA denial. (**Exhibit 6.**) However, Mr. Taft likely would file a FOIA lawsuit in the Grand Traverse County Circuit Court, which would leave Plaintiffs without any relief and this Court without any ability to enforce its orders after the suit is filed. Plaintiffs, therefore, request that this Court enter a protective order to prevent Peninsula Township (as well as PTP and Plaintiffs) from disclosing these communications and resolving this issue without needing to wade into the fact question of whether Mr. Taft is indeed an agent for PTP.

## II. ANALYSIS

### A. **This Court may protect confidential information from disclosure, regardless of whether the information fits within an exemption to the Michigan FOIA.**

This Court has the inherent authority to manage its docket “so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962). Consistent with that inherent authority is the “supervisory power over its own records and files,” which this Court may use to deny access “where court files might have become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). Therefore, this Court may enjoin the release of the confidential information such that Peninsula Township will not violate the FOIA by refusing to release it. *See GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*, 445 U.S. 375, 387 (1980) (explaining Congress did not intend “an agency to commit contempt of court in order to release documents” under the FOIA and reversing lower court decision compelling disclosure when district court had enjoined parties from disclosing the information).<sup>1</sup> Therefore, “[t]he proper test for determining whether an agency improperly withholds records under seal is whether the seal, like an injunction, prohibits the agency from disclosing the records. If it does, the FOIA does not compel the agency to release the information.” *Morgan v. U.S. Dep’t of Just.*, 923 F.2d 195, 197 (D.C. Cir. 1991).

In situations like these, courts routinely enter protective orders to prevent confidential information from being disclosed to third parties. *See, e.g., United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 858 (2d Cir. 1998) (“We have previously recognized that settlement documents in draft form are not part of the public record of a federal case, that the district court may seal documents in order to foster settlement, and that the district court’s power

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<sup>1</sup> Michigan courts look to the federal FOIA for guidance. *Evening News Ass’n v. City of Troy*, 339 N.W.2d 421, 427 (Mich. 1983).

to seal documents ‘takes precedence over FOIA rules that would otherwise allow those documents to be disclosed.’”); *F.D.I.C. v. Ernst & Ernst*, 677 F.2d 230, 232 (2d Cir. 1982) (holding district court properly protected settlement materials from disclosure regardless of the exemptions set forth in the federal FOIA); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 271 F. Supp. 3d 264, 275 (D.D.C. 2017) (ruling documents exchanged under local rule deeming mediation proceedings confidential were not subject to disclosure under the FOIA, regardless of stated exemptions in FOIA), *aff’d sub nom. Jud. Watch, Inc. v. United States Dep’t of Just.*, 719 F. App’x 21 (D.C. Cir. 2018); *Agility Pub. Warehousing Co. K.S.C. v. Nat’l Sec. Agency*, 113 F. Supp. 3d 313, 335 (D.D.C. 2015) (collecting cases and explaining that “where a court order circumscribes an agency’s ability to produce documents such that the agency has ‘no discretion’ to release the documents, the agency’s failure to release documents will not be deemed improper.”).

*Glen Falls Newspapers* is instructive. A newspaper submitted a FOIA request for draft settlement documents in a federal CERCLA<sup>2</sup> case regarding a town in northern New York. *Glen Falls Newspapers*, 160 F.3d at 855. Like this case, the parties in *Glen Falls* had a consent protective order that covered settlement negotiations. *Id.* at 854. A state trial court ordered that the consent protective order prevented disclosure of the settlement documents under the New York FOIA, so the newspaper intervened in the federal action. *Id.* at 855. The district court denied the newspaper’s request to vacate the consent protective order and the Second Circuit affirmed. *Id.* at 855-56. The Second Circuit reasoned that because the town could, for example, enter closed session or exempt from disclosure litigation records, there was no “presumption of public access”

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to settlement discussions and documents. *Id.* at 857. The Second Circuit also recognized the need for private discussions to encourage settlement:

Few cases would ever be settled if the press or public were in attendance at a settlement conference or privy to settlement proposals. A settlement conference is an opportunity for the parties, with the court acting as an impartial mediator, to have a frank discussion about the value of avoiding a trial.

*Id.* at 858. Therefore, the “release of these discussions and documents is likely to impair materially the trial court’s performance of its Article III function of crafting a settlement of this case” and “the district court’s power to seal documents ‘takes precedence over FOIA rules that would otherwise allow those documents to be disclosed.’” *Id.* at 858 (quoting *City of Hartford v. Chase*, 942 F.2d 130, 135 (2d Cir. 1991)).

In sum, these cases set forth a rule that this Court may protect confidential settlement discussions from disclosure by enjoining the parties from disclosing them. Plaintiffs demonstrate below that these documents are confidential and worthy of protection.

**B. The settlement letters are marked “CONFIDENTIAL” and therefore protected from disclosure by the Stipulated Protective Order.**

The parties are subject to a Stipulated Protect Order. (ECF No. 75; *see also* ECF No. 302, PageID10810 (PTP’s counsel stating “PTP is bound by the protective order.”); PageID.10832 (same).) The Stipulated Protective Order governs the handling of, among other things, “court filings or submissions, including, without limitation . . . any information produced, given, or exchanged, including any information contained therein or derived therefrom . . . [.]” (ECF No. 75, PageID.3201, ¶ 2.) The Stipulated Protective Order defines all this information as “Discovery Material.” (*See id.*) Any party “may designate any Discovery Material as ‘CONFIDENTIAL’ if the Party or Producing Party reasonably believes that such discovery material contains non-public,



confidential, proprietary, commercially sensitive or personally sensitive information that requires the protections provided in this Agreement.” (*Id.*, PageID.3201-3202, ¶ 3.)

When information is marked confidential, it may be disclosed to specific individuals “only for the purpose of preparing for and conducting litigation relating to this Litigation, and for no other purpose, and no person receiving any Confidential Material or Attorneys’ Eyes Only Material shall disclose such material to any person other than those described above.” (ECF No. 75, PageID.3203-3205, ¶¶ 6, 9.) The Stipulated Protective Order also contemplates relief in the face of potential disclosure. “Any Party or non-party, if it has cause to believe that a violation of this Agreement has occurred or is about to occur, has the right to petition the Court for appropriate relief.” (*Id.*, PageID.3208, ¶ 19.)

Plaintiffs have demonstrated all facts necessary for this Court to protect the settlement letters from disclosure. First, the parties submitted their letter to this Court and to the other parties. Therefore, the letters qualify as “Discovery Material” because they are “court filings or submissions” and/or “information produced, given, or exchanged.” Second, each party marked its settlement letter as “CONFIDENTIAL,” thereby invoking the protections of the Stipulated Protective Order. Third, there is a potential for disclosure of this confidential material to a third party, Mr. Taft, and by Mr. Taft to other nonparties, for some purpose other than use in this litigation.<sup>3</sup> Recently, Mr. Taft has publicly declared that he formed an “expanding citizen group” of “many OMP residents—not representing the parties” to “act as facilitators” for this lawsuit. **(Exhibit 7: August 8, 2023 Peninsula Township Board Meeting Minutes at 1–2; Exhibit 8:**

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<sup>3</sup> Mr. Taft is not a party, although he is apparently an agent of PTP. PTP previously described Mr. Taft as person “who may act on its behalf.” (ECF No. 428, PageID.15379. (“PTP has volunteers and committee members who may act on its behalf, including Mr. Taft.”).) However, after the issue was raised at a status conference with Magistrate Judge Kent, PTP’s counsel disclaimed Mr. Taft’s affiliation with PTP with respect to the FOIA request. **(Exhibit 6.)**

**Taft Op-Ed.**) Plainly, then, Mr. Taft’s intention with this information is to disclose it to a group of citizens—nonparties to this litigation—in violation of ¶ 9 of the Stipulated Protective Order.

Because the settlement letters are confidential within the meaning of the Stipulated Protective Order, this Court may enter an order clarifying that the parties may not disclose them, even when confronted with a FOIA request. *See Glen Falls Newspapers*, 160 F.3d at 858.

**C. This Court’s local rules also demand confidentiality and nondisclosure.**

This Court’s Local Civil Rule 16.1(d) states “Confidentiality - All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408.” Additionally, the Sixth Circuit has held that “statements made in furtherance of settlement are privileged and protected from third-party discovery.” *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 977 (6th Cir. 2003). This privilege “serves a sufficiently important public interest” of facilitating open and frank discussion:

There exists a strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations. This is true whether settlement negotiations are done under the auspices of the court or informally between the parties. The ability to negotiate and settle a case without trial fosters a more efficient, more cost-effective, and significantly less burdened judicial system. In order for settlement talks to be effective, parties must feel uninhibited in their communications. Parties are unlikely to propose the types of compromises that most effectively lead to settlement unless they are confident that their proposed solutions cannot be used on cross examination, under the ruse of “impeachment evidence,” by some future third party. Parties must be able to abandon their adversarial tendencies to some degree. They must be able to make hypothetical concessions, offer creative quid pro quos, and generally make statements that would otherwise belie their litigation efforts. Without a privilege, parties would more often forego negotiations for the relative formality of trial. Then, the entire negotiation process collapses upon itself, and the judicial efficiency it fosters is lost.

*Id.* at 980. Ideally, these discussions would lead to a settlement, as this Court repeatedly has urged the parties to reach. However, public disclosure of the parties’ respective settlement positions will have the opposite effect. If Plaintiffs’ settlement positions are going to be publicly disclosed, then they will have no intention of mediating this case any further. Plaintiffs cannot fairly negotiate

this case simultaneously on the merits during mediation and in the court of public opinion.

Case law supports that Local Civil Rule 16.1(d) and the *Goodyear* settlement privilege are sufficient to protect the settlement letters from disclosure. In *Judicial Watch*, the parties exchanged settlement letters pursuant to a local rule “prohibit[ing] the mediator, all counsel and parties and any other persons attending the mediation from disclosing any written or oral communications made in connection with or during any mediation session.” 271 F. Supp. 3d at 267 (citing LCvR 84.9(a)(1)). After the agency received a FOIA request for the settlement discussions, the district court protected them from disclosure. While recognizing that the documents did not fit within any FOIA exemption, the district court still protected them from FOIA disclosure because the order requiring confidentiality would be in tension with mandated disclosure. “It cannot be, then, that FOIA requires the Department to disclose documents made in connection with mediation at risk of being found in civil contempt.” *Id.* at 274. Further, the district court found it incongruous that the parties could be required to create settlement letters by court order and subsequently be ordered to produce them under the FOIA. *Id.* at 275.

The same rationale applies here. LCivR 16.1(d) makes all ADR proceedings confidential. *Goodyear* applies an additional layer of settlement privilege over those discussions. There is no reason that this confidential information should be disclosed pursuant to a FOIA request, regardless of whether a FOIA exemption applies. Therefore, LCivR 16.1(d) and *Goodyear* are a separate and independent basis for this Court to enjoin the parties from disclosing their settlement communications.

### **III. CONCLUSION**

For these reasons, Plaintiffs request that this Court enjoin all parties from disclosing the confidential settlement letters. That will have the dual effect of (1) allowing the parties to keep negotiating in good faith to resolve this case without outside interference from the public and (2)

protecting Peninsula Township from liability in a potential FOIA lawsuit by Mr. Taft.

Finally, even if this Court finds that the Stipulated Protective Order does not give protection, the parties may request an amendment or this Court may do it *sua sponte*. (ECF No. 75, PageID.3208, ¶¶ 20–21.) If necessary, Plaintiffs request that this Court amend the Stipulated Protective Order to include confidential settlement communications.

Respectfully submitted,

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

By: /s/ Joseph M. Infante  
Joseph M. Infante (P68719)  
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99 Monroe Avenue NW, Suite 1200  
Grand Rapids, MI 49503  
(616) 776-6333

Dated: September 15, 2023

#### **CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(B)(I)**

This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 3,039 words.

/s/ Joseph M. Infante  
Joseph M. Infante

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I filed the foregoing 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  
Joseph M. Infante

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to settlement discussions and documents. *Id.* at 857. The Second Circuit also recognized the need for private discussions to encourage settlement:

Few cases would ever be settled if the press or public were in attendance at a settlement conference or privy to settlement proposals. A settlement conference is an opportunity for the parties, with the court acting as an impartial mediator, to have a frank discussion about the value of avoiding a trial.

*Id.* at 858. Therefore, the “release of these discussions and documents is likely to impair materially the trial court’s performance of its Article III function of crafting a settlement of this case” and “the district court’s power to seal documents ‘takes precedence over FOIA rules that would otherwise allow those documents to be disclosed.’” *Id.* at 858 (quoting *City of Hartford v. Chase*, 942 F.2d 130, 135 (2d Cir. 1991)).

In sum, these cases set forth a rule that this Court may protect confidential settlement discussions from disclosure by enjoining the parties from disclosing them. Plaintiffs demonstrate below that these documents are confidential and worthy of protection.

**B. The settlement letters are marked “CONFIDENTIAL” and therefore protected from disclosure by the Stipulated Protective Order.**

The parties are subject to a Stipulated Protect Order. (ECF No. 75; *see also* ECF No. 302, PageID10810 (PTP’s counsel stating “PTP is bound by the protective order.”); PageID.10832 (same).) The Stipulated Protective Order governs the handling of, among other things, “court filings or submissions, including, without limitation . . . any information produced, given, or exchanged, including any information contained therein or derived therefrom . . . [.]” (ECF No. 75, PageID.3201, ¶ 2.) The Stipulated Protective Order defines all this information as “Discovery Material.” (*See id.*) Any party “may designate any Discovery Material as ‘CONFIDENTIAL’ if the Party or Producing Party reasonably believes that such discovery material contains non-public,

confidential, proprietary, commercially sensitive or personally sensitive information that requires the protections provided in this Agreement.” (*Id.*, PageID.3201-3202, ¶ 3.)

When information is marked confidential, it may be disclosed to specific individuals “only for the purpose of preparing for and conducting litigation relating to this Litigation, and for no other purpose, and no person receiving any Confidential Material or Attorneys’ Eyes Only Material shall disclose such material to any person other than those described above.” (ECF No. 75, PageID.3203-3205, ¶¶ 6, 9.) The Stipulated Protective Order also contemplates relief in the face of potential disclosure. “Any Party or non-party, if it has cause to believe that a violation of this Agreement has occurred or is about to occur, has the right to petition the Court for appropriate relief.” (*Id.*, PageID.3208, ¶ 19.)

Plaintiffs have demonstrated all facts necessary for this Court to protect the settlement letters from disclosure. First, the parties submitted their letter to this Court and to the other parties. Therefore, the letters qualify as “Discovery Material” because they are “court filings or submissions” and/or “information produced, given, or exchanged.” Second, each party marked its settlement letter as “CONFIDENTIAL,” thereby invoking the protections of the Stipulated Protective Order. Third, there is a potential for disclosure of this confidential material to a third party, Mr. Taft, and by Mr. Taft to other nonparties, for some purpose other than use in this litigation.<sup>3</sup> Recently, Mr. Taft has publicly declared that he formed an “expanding citizen group” of “many OMP residents—not representing the parties” to “act as facilitators” for this lawsuit. **(Exhibit 7: August 8, 2023 Peninsula Township Board Meeting Minutes at 1–2; Exhibit 8:**

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<sup>3</sup> Mr. Taft is not a party, although he is apparently an agent of PTP. PTP previously described Mr. Taft as person “who may act on its behalf.” (ECF No. 428, PageID.15379. (“PTP has volunteers and committee members who may act on its behalf, including Mr. Taft.”).) However, after the issue was raised at a status conference with Magistrate Judge Kent, PTP’s counsel disclaimed Mr. Taft’s affiliation with PTP with respect to the FOIA request. **(Exhibit 6.)**

**Taft Op-Ed.**) Plainly, then, Mr. Taft’s intention with this information is to disclose it to a group of citizens—nonparties to this litigation—in violation of ¶ 9 of the Stipulated Protective Order.

Because the settlement letters are confidential within the meaning of the Stipulated Protective Order, this Court may enter an order clarifying that the parties may not disclose them, even when confronted with a FOIA request. *See Glen Falls Newspapers*, 160 F.3d at 858.

**C. This Court’s local rules also demand confidentiality and nondisclosure.**

This Court’s Local Civil Rule 16.1(d) states “Confidentiality - All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408.” Additionally, the Sixth Circuit has held that “statements made in furtherance of settlement are privileged and protected from third-party discovery.” *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 977 (6th Cir. 2003). This privilege “serves a sufficiently important public interest” of facilitating open and frank discussion:

There exists a strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations. This is true whether settlement negotiations are done under the auspices of the court or informally between the parties. The ability to negotiate and settle a case without trial fosters a more efficient, more cost-effective, and significantly less burdened judicial system. In order for settlement talks to be effective, parties must feel uninhibited in their communications. Parties are unlikely to propose the types of compromises that most effectively lead to settlement unless they are confident that their proposed solutions cannot be used on cross examination, under the ruse of “impeachment evidence,” by some future third party. Parties must be able to abandon their adversarial tendencies to some degree. They must be able to make hypothetical concessions, offer creative quid pro quos, and generally make statements that would otherwise belie their litigation efforts. Without a privilege, parties would more often forego negotiations for the relative formality of trial. Then, the entire negotiation process collapses upon itself, and the judicial efficiency it fosters is lost.

*Id.* at 980. Ideally, these discussions would lead to a settlement, as this Court repeatedly has urged the parties to reach. However, public disclosure of the parties’ respective settlement positions will have the opposite effect. If Plaintiffs’ settlement positions are going to be publicly disclosed, then they will have no intention of mediating this case any further. Plaintiffs cannot fairly negotiate

this case simultaneously on the merits during mediation and in the court of public opinion.

Case law supports that Local Civil Rule 16.1(d) and the *Goodyear* settlement privilege are sufficient to protect the settlement letters from disclosure. In *Judicial Watch*, the parties exchanged settlement letters pursuant to a local rule “prohibit[ing] the mediator, all counsel and parties and any other persons attending the mediation from disclosing any written or oral communications made in connection with or during any mediation session.” 271 F. Supp. 3d at 267 (citing LCvR 84.9(a)(1)). After the agency received a FOIA request for the settlement discussions, the district court protected them from disclosure. While recognizing that the documents did not fit within any FOIA exemption, the district court still protected them from FOIA disclosure because the order requiring confidentiality would be in tension with mandated disclosure. “It cannot be, then, that FOIA requires the Department to disclose documents made in connection with mediation at risk of being found in civil contempt.” *Id.* at 274. Further, the district court found it incongruous that the parties could be required to create settlement letters by court order and subsequently be ordered to produce them under the FOIA. *Id.* at 275.

The same rationale applies here. LCivR 16.1(d) makes all ADR proceedings confidential. *Goodyear* applies an additional layer of settlement privilege over those discussions. There is no reason that this confidential information should be disclosed pursuant to a FOIA request, regardless of whether a FOIA exemption applies. Therefore, LCivR 16.1(d) and *Goodyear* are a separate and independent basis for this Court to enjoin the parties from disclosing their settlement communications.

### **III. CONCLUSION**

For these reasons, Plaintiffs request that this Court enjoin all parties from disclosing the confidential settlement letters. That will have the dual effect of (1) allowing the parties to keep negotiating in good faith to resolve this case without outside interference from the public and (2)

protecting Peninsula Township from liability in a potential FOIA lawsuit by Mr. Taft.

Finally, even if this Court finds that the Stipulated Protective Order does not give protection, the parties may request an amendment or this Court may do it *sua sponte*. (ECF No. 75, PageID.3208, ¶¶ 20–21.) If necessary, Plaintiffs request that this Court amend the Stipulated Protective Order to include confidential settlement communications.

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: September 15, 2023

#### **CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(B)(I)**

This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 3,039 words.

/s/ Joseph M. Infante  
Joseph M. Infante

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I filed the foregoing 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  
Joseph M. Infante

# **Exhibit 1**



**David D. Taft**  
**952 Neahtawanta Road**  
**Traverse City, Michigan 49686**

August 31, 2023

Becky Chown, Township Clerk  
Peninsula Township  
13235 Center Road  
Traverse City, MI 49686

Dear Becky:

I have read the minutes of the August 28, 2023 Township Board Special Meeting held at 1:30 pm in the Ford Federal Building in Grand Rapids, the meeting considered a public meeting of the Peninsula Township Board at that time and place. I noted in the minutes after the closed session that the settlement proposals were discussed in an open session of that meeting.

Pursuant to the Michigan FOIA statute, Public Act 442 of 1976 and the Peninsula Township Procedures and Guideline policy regarding FOIA, I am requesting a copy of the following documents:

1. The settlement proposal document submitted by WOMP (The wineries of Old Mission Peninsula) according to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.
2. The settlement proposal document submitted by Protect The Peninsula (PTP) pursuant to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.
3. The settlement proposal document submitted by Peninsula Township pursuant to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.

I have attached FOIA Request for Public Records Form of Peninsula Township. On delivery method I can either pick up, can make my own copies on site, or email to my email address ([ddtaft@mac.com](mailto:ddtaft@mac.com)) – whichever is most convenient for you and allows me to receive these quickly for review. Of course, I am responsible for paying for this FOIA request.

Thank you in advance for your prompt attention to this request.

Sincerely

A handwritten signature in black ink, appearing to read 'D. D. Taft', with a stylized flourish at the end.

David D Taft



**Township:** Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

Peninsula Township, Grand Traverse County  
13235 Center Road  
Traverse City MI 49686  
Phone: 231-223-7322

**Request Form**  
Note: Requestors are not required to use this form. The township may complete one for recordkeeping if not used.

**FOIA Request for Public Records**  
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

**Request No.:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_ **Check if received via:** ☐ Email ☐ Fax ☐ Other Electronic Method  
**Date delivered to junk/spam folder:** \_\_\_\_\_  
**Date discovered in junk/spam folder:** \_\_\_\_\_

(Please Print or Type)

Name	DAVID D TAFT		Phone	650-521-2285
Firm/Organization			Fax	
Street	952 Neahtawanta Rd		Email	ddtaft@mac.com
City	Traverse City,	State	MI	Zip 49686

**Request for:** ☒ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

**Delivery Method:** ☒ Will pick up ☒ Will make own copies onsite ☐ Mail to address above ☒ Email to address above  
☐ Deliver on digital media provided by the township: \_\_\_\_\_

**Note:** The township is not required to provide records in a digital format or on digital media if the township does not already have the technological capability to do so.

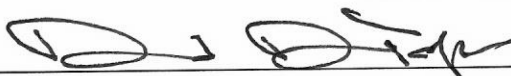
**Describe the public record(s) as specifically as possible. You may use this form or attach additional sheets:**

see detail in my letter (attached to email to Becky Chown) to Becky Chown dated 8/31/2023.

**Consent to Non-Statutory Extension of Township's Response Time**

I have requested a copy of records or a subscription to records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq. I understand that the township must respond to this request within five (5) business days after receiving it, and that response may include taking a 10-business day extension. However, I hereby agree and stipulate to extend the township's response time for this request until: \_\_\_\_\_ (month, day, year).

**Requestor's Signature**



**Date**  
8/31/2023  
(Complete both sides)



**Records Located on Website**

If the township directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

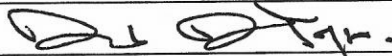
If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the township must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the township must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the township has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the township must provide the public records in the specified format (if the township has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

**Request for Copies/Duplication of Records on Township Website**

I hereby stipulate that, even if some or all of the records are located on a township website, I am requesting that the township make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature



Date

8/31/2023

**Overtime Labor Costs**

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

**Consent to Overtime Labor Costs**

I hereby agree and stipulate to the township using overtime wages in calculating the following labor costs as itemized in the following categories:

1. ☐ Labor to copy/duplicate      2. ☐ Labor to locate      3a. ☐ Labor to redact      3b. ☐ Contract labor to redact  
6b. ☐ Labor to copy/duplicate records already on township's website

Requestor's Signature

Date

**Request for Discount: Indigence**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**  
2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,  
(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

**Office Use:** ☐ Affidavit Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

**Request for Discount: Nonprofit Organization**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.  
(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.  
(iii) Is accompanied by documentation of its designation by the state, if requested by the township.

**Office Use:** ☐ Documentation of State Designation Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931:

Date:

Requestor's Signature:

(Created by Michigan Townships Association, April 2015)

Peninsula Township FOIA Request for Public Records effective 7/1/2015

# **Exhibit 2**

**McGraw Morris** P.C.  
TROY | GRAND RAPIDS

---

THOMAS J. MCGRAW  
G. GUS MORRIS  
CRAIG R. NOLAND  
STACY J. BELISLE  
KEVIN K. KILBY  
CHARLES E. LOVELL  
THOMAS D. LANDA  
BOGOMIR RAJSIC III  
JOHN T. GEMELLARO  
ANNA M. LACROIX  
ANGELO L. BERLASTI, JR.  
TRACEY R. DEVRIES

300 OTTAWA AVENUE, NW  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
TELEPHONE: (616) 288-3700  
FAX: (616) 214-7712

September 13, 2023

GLENN A. DIEGEL  
OF COUNSEL

**Via Electronic Mail**

Joseph M. Infante, Esq.  
Miller Canfield  
[infante@millercanfield.com](mailto:infante@millercanfield.com)

Tracy Jane Andrews, Esq.  
Law Office of Tracy Jane Andrews, PLLC  
[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)

RE: *Wineries of the Old Mission Peninsula, et al v. Peninsula Township, et al*  
Case No: 1-20-cv-1008

Dear Joe and TJ –

Peninsula Township has received a FOIA request from a resident requesting that the Township produce the settlement demands/offers that were exchanged between the parties in advance of the settlement conference of August 28, 2023. The Township has issued an extension letter, and the response is presently due on September 25, 2023. We are writing in good faith to advise you of the request before taking action in response.

It is our understanding there are no applicable exemptions to FOIA that would allow the Township to deny the request. The Township, therefore, is obligated to produce the documents – including the Township's, Plaintiffs', and PTP's demand letters that were exchanged between the parties pursuant to the CMO. All of these documents are considered public records since the Township is in possession of them.

With that in mind, we understand if Plaintiffs and/or PTP intend to take action in advance of the Township's compliance deadline. But we again want to advise that the Township must comply with its FOIA obligations by September 25, 2023.

Please do not hesitate to contact me should you wish to discuss further.

Very truly yours,

**Beau Rajsic**  
Bogomir Rajsic, III  
[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)  
Direct dial: (616) 288-3703

BR/

# **Exhibit 3**

Founded in 1852  
by Sidney Davy Miller



STEPHEN M. RAGATZKI  
TEL +1.616.776.6317  
FAX +1.616.776.6322  
E-MAIL Ragatzki@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.  
99 Monroe Avenue NW, Suite 1200  
Grand Rapids, Michigan 49503  
TEL (616) 454-8656  
FAX (616) 776-6322  
millercanfield.com

MICHIGAN  
ILLINOIS  
NEW YORK  
OHIO  
WASHINGTON, D.C.  
CALIFORNIA  
CANADA  
CHINA  
MEXICO  
POLAND  
UKRAINE  
QATAR

September 13, 2023

Beau Rajsic  
McGraw Morris P.C.  
brajsic@mcgrawmorris.com

*Re: Wineries of the Old Mission Peninsula, et al. v. Peninsula Township*

Dear Beau:

Thank you for informing us about the FOIA request. Our team needs some time to evaluate this issue and discuss it with our clients. Preliminarily, the Plaintiffs object to the production of those settlement demands/offers before having a chance to make their evaluation. I understand your letter to mean that the Township does not intend to respond until September 25, 2023. If the Township's intentions change or if I have interpreted your letter incorrectly, I ask that you give me sufficient notice to take any action, if necessary, before the Township responds.

In the meantime, can you please send me a copy of the FOIA request so that our team can fully evaluate the Plaintiffs' options? I intend to have a more thorough response on Plaintiffs' intentions back to you by September 20, 2023.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 

Stephen M. Ragatzki

SMR

cc: Tracey Jane Andrews  
tjandrews@envlaw.com

# **Exhibit 4**



**McGraw Morris** P.C.  
TROY | GRAND RAPIDS

---

THOMAS J. MCGRAW  
G. GUS MORRIS  
CRAIG R. NOLAND  
STACY J. BELISLE  
KEVIN K. KILBY  
CHARLES E. LOVELL  
THOMAS D. LANDA  
BOGOMIR RAJSIC III  
JOHN T. GEMELLARO  
ANNA M. LACROIX  
ANGELO L. BERLASTI, JR.  
TRACEY R. DEVRIES

300 OTTAWA AVENUE, NW  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
TELEPHONE: (616) 288-3700  
FAX: (616) 214-7712

September 14, 2023

---

GLENN A. DIEGEL  
OF COUNSEL

**Via Electronic Mail**

Joseph M. Infante, Esq.  
Stephen M. Ragatzki, Esq.  
Miller Canfield  
[infante@millercanfield.com](mailto:infante@millercanfield.com)  
[ragatzki@millercanfield.com](mailto:ragatzki@millercanfield.com)

RE: *Wineries of the Old Mission Peninsula, et al v. Peninsula Township, et al*  
Case No: 1-20-cv-1008

Dear Steve –

Regarding your correspondence from September 13, 2023, you are correct, the Township will not be producing the requested documents before September 25, 2023, which is the response deadline.

I have enclosed the FOIA request received from Mr. David Taft. Please do not hesitate to contact me should you wish to discuss further. We look forward to hearing from you regarding Plaintiffs' thoughts and/or intentions.

Very truly yours,

*Beau Rajsic*

Bogomir Rajsic, III  
[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)  
Direct dial: (616) 288-3703

BR/  
Enclosure  
cc: TJ Andrews ([tjandrews@envlaw.com](mailto:tjandrews@envlaw.com))



# **Exhibit 5**

**Ragatzki, Stephen M.**

---

**From:** Beau Rajsic <brajsic@mcgrawmorris.com>  
**Sent:** Friday, September 15, 2023 3:25 PM  
**To:** Ragatzki, Stephen M.; Infante, Joseph M.; TJ Andrews  
**Cc:** Tom McGraw; Christopher Patterson; Holly Hillyer  
**Subject:** RE: Concurrence

**Caution:** This is an external email. Do not open attachments or click links from unknown or unexpected emails.

Steve –

Good to talk with you. Confirming our conversation that the Township is going to deny the FOIA under MCL 15.243(1)(v). We believe this obviates the need for the motion. Thank you and have a good weekend.

Best,

Beau Rajsic  
Attorney  
**McGraw Morris P.C.**  
300 OTTAWA AVENUE, N.W.  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
DIRECT: (616) 288-3703  
FAX: (616) 214-7712  
E-MAIL: [BRAJSIC@MCGRAWMORRIS.COM](mailto:brajsic@mcgrawmorris.com)  
Website: [www.mcgrawmorris.com](http://www.mcgrawmorris.com)

\*\*\*\*\*  
\*\*\*\*\*

CONFIDENTIAL AND ATTORNEY/CLIENT PRIVILEGED: This e-mail and any attachments are confidential, intended for the addressee only and may be attorney/client privileged. If you are not the addressee, then please DO NOT read, copy or distribute the message or any attachment. Please reply to the sender that you received the message in error and delete it. Thank you.

 Please consider the environment before printing this e-mail

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**From:** Ragatzki, Stephen M. <Ragatzki@millercanfield.com>  
**Sent:** Friday, September 15, 2023 1:16 PM  
**To:** Beau Rajsic <brajsic@mcgrawmorris.com>; Infante, Joseph M. <infante@millercanfield.com>; TJ Andrews <tjandrews@envlaw.com>  
**Cc:** Tom McGraw <tmcgraw@mcgrawmorris.com>; Christopher Patterson <cpatterson@fsbirlaw.com>; Holly Hillyer <Holly@tropospherelegal.com>  
**Subject:** RE: Concurrence

Beau and TJ,

Following up on my earlier email, here is a draft of the motion we intend to file today. I have also included the exhibits for your reference. Exhibit 5 will be this email chain. If both parties concur, I can change this to a joint motion before we file today. I am planning to file this at 4pm today, so I would appreciate your response before then.

Thanks,  
Steve

---

Stephen M. Ragatzki | Senior Attorney  
**Miller Canfield**

T +1.616.776.6317 | F +1.616.776.6322 | M +1.586.817.0762

---

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**From:** Ragatzki, Stephen M.

**Sent:** Friday, September 15, 2023 11:26 AM

**To:** Beau Rajsic <[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)>; Infante, Joseph M. <[infante@millercanfield.com](mailto:infante@millercanfield.com)>; TJ Andrews <[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)>

**Cc:** Tom McGraw <[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)>; Christopher Patterson <[cpatterson@fsbirlaw.com](mailto:cpatterson@fsbirlaw.com)>

**Subject:** RE: Concurrence

Beau and TJ,

I'm following up on Joe's request for concurrence yesterday and to provide some additional support for our proposed motion. I understand that Peninsula Township is concerned about potential liability under the FOIA if it denies Mr. Taft's request. There is a substantial body of case law holding that a governmental body does not violate the FOIA when it is prevented from disclosing information by court order. See a sample of the cases below:

*GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*, 445 U.S. 375, 387, 100 S. Ct. 1194, 1202, 63 L. Ed. 2d 467 (1980)

There is nothing in the legislative history to suggest that in adopting the Freedom of Information Act to curb agency discretion to conceal information, Congress intended to require an agency to commit contempt of court in order to release documents. Indeed, Congress viewed the federal courts as the necessary protectors of the public's right to know. To construe the lawful obedience of an injunction issued by a federal district court with jurisdiction to enter such a decree as "improperly" withholding documents under the Freedom of Information Act would do violence to the common understanding of the term "improperly" and would extend the Act well beyond the intent of Congress.

*United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 858 (2d Cir. 1998)

We have previously recognized that settlement documents in draft form are not part of the public record of a federal case, that the district court may seal documents in order to foster settlement, and that the district court's power to seal documents "takes precedence over FOIA rules that would otherwise allow those documents to be disclosed."

*Jud. Watch, Inc. v. U.S. Dep't of Just.*, 271 F. Supp. 3d 264, 275 (D.D.C. 2017), *aff'd sub nom. Jud. Watch, Inc. v. United States Dep't of Just.*, 719 F. App'x 21 (D.C. Cir. 2018)

Similarly, Local Civil Rule 84.6 requires mediation participants to submit "confidential mediation statement[s]" outlining their settlement positions "[n]o later than seven days prior to the first mediation session." LCvR 84.6(a). This Rule, in other words, requires litigants to create documents in advance of mediation which, by definition, are "confidential" and within the protection of Local Civil Rule 84.9, but, in cases involving federal agencies, are outside the protection of any FOIA exemption because the documents have left the executive branch. See 5 U.S.C. § 552(b)(5) (exempting from disclosure only "inter-agency or intra-agency memorandums or letters"). It is inconceivable that FOIA requires disclosure of such documents created under court order; yet

the only basis for protecting them is Local Civil Rule 84.9. In sum, then, after consideration of all four Morgan factors, I am persuaded that "FOIA [simply] does not apply to a court's [rule] directing an agency not to reveal the terms of an agreement crucial to the settlement of an action." Ernst & Ernst, 677 F.2d at 232.

Based on that case law, we believe that the settlement communications are already protected by the Stipulated Protective Order, the Second Amended Case Management order requiring the creation of these settlement documents, LCivR 16.1(d), and the *Goodyear* case we cited yesterday. However, to avoid any doubt, we are proposing that the Township and PTP join our motion and request that all parties be enjoined from disclosing settlement discussions. That should protect the Township from any potential liability under the FOIA if Mr. Taft were to file a lawsuit.

Please let me know your thoughts as soon as possible. We are going to file this motion before the end of the day. We are happy to discuss on a call if that is more efficient.

Thanks,  
Steve

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Stephen M. Ragatzki | Senior Attorney  
**Miller Canfield**  
T +1.616.776.6317 | F +1.616.776.6322 | M +1.586.817.0762

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**From:** Beau Rajsic <[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)>  
**Sent:** Thursday, September 14, 2023 5:24 PM  
**To:** Infante, Joseph M. <[infante@millercanfield.com](mailto:infante@millercanfield.com)>; TJ Andrews <[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)>  
**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>; Tom McGraw <[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)>; Christopher Patterson <[cpatterson@fsbrlaw.com](mailto:cpatterson@fsbrlaw.com)>  
**Subject:** RE: Concurrence

**Caution:** This is an external email. Do not open attachments or click links from unknown or unexpected emails.

Joe –

Thank you for passing along these citations. Give me a chance to discuss and I will be back to you tomorrow.

Best,

Beau Rajsic  
Attorney  
**McGraw Morris P.C.**  
300 OTTAWA AVENUE, N.W.  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
DIRECT: (616) 288-3703  
FAX: (616) 214-7712  
E-MAIL: [BRAJSIC@MCGRAWMORRIS.COM](mailto:BRAJSIC@MCGRAWMORRIS.COM)  
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**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>  
**Subject:** RE: Concurrence

We are in the process of drafting the motion. One citation I have handy is 332 F.3d 976. We believe also that they are confidential under Local Rule 16.1(d) and the Stipulated Protective Order (ECF No. 75) as the documents were designated confidential.

In addition, during our call you alleged that I misrepresented Mr. Taft's role to the court. I direct your attention to ECF 428 at PageID.15379 wherein PTP represented "PTP has volunteers and committee members who may act on its behalf, including Mr. Taft." I would appreciate you advising the court that my representation was in fact correct.

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~tj

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**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>  
**Subject:** Concurrence

Beau and TJ, as noted on our call a few minutes ago, we plan to file a motion for a protective order prohibiting the township from sharing the confidential settlement communications with a third party. Please let me know if you concur in the relief and/or if you would like to have a call to confer. We also plan to seek expedited consideration given the short timeframe we are dealing with. Regardless of whether you concur in the motion for a protective order, please let me know if you concur in the request for expedited consideration.

Joe

---

**Joseph M. Infante** | Senior Principal  
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Grand Rapids, Michigan 49503 (USA)  
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# **Exhibit 6**

**Ragatzki, Stephen M.**

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**From:** TJ Andrews <tjandrews@en law.com>  
**Sent:** Thursday, September 14, 2023 5:05 PM  
**To:** Infante, Joseph M.; Beau Rajsic  
**Cc:** Ragatzki, Stephen M.  
**Subject:** RE: Concurrence

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In the context of discussing your opposition to the FOIA release, you said Mr. Taft is an agent of PTP and speaks for PTP. I understood you to be saying Mr. Taft was acting as PTP's agent and speaking for PTP with respect to this FOIA request, which is not accurate.

---

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Subject: Concurrence

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Joe

---

**Joseph M. Infante**  
**Miller Canfield**

**T F Mobile**

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# **Exhibit 7**

Peninsula Township  
Township Board Regular Meeting  
Laura Martin, Recording Secretary

# PENINSULA TOWNSHIP

13235 Center Road, Traverse City  
MI 49686

[www.peninsulatownship.com](http://www.peninsulatownship.com)

## Township Board Regular Meeting

August 8, 2023, 7:00 p.m.

### Township Hall

### Minutes

1. **Call to Order** by Wunsch at 7:02 p.m.

2. **Pledge**

3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Rudolph, Shanafelt, Chown

4. **Citizen Comments**

**Alan Leman:** I'm from the Grand Traverse County Road Commission and am here with an update. The first thing is the MPO [Metropolitan Planning Organization] you're going to vote on tonight. I'd like to encourage you to join the MPO. We need cross-governmental collaboration in our community. This is a big step to allow that to happen. It comes with some strings, but the positives generally outweigh the negatives.

We are working on the engineering department to start some corridor studies. There has been a lot of talk about crosstown transit, how we get from one side to the other. We're looking at how people from outlying communities get to town. We're also looking at some of the through local roads. In our cost-sharing agreement, the road commission will take care of these and upgrade them without a township contribution. Blue Water is the first one that comes to mind. Engineering has started evaluating that.

Most of you know the Bluff Road grant application was denied. It was for a \$3 million grant to the state. Apparently we didn't stand a chance. The whole program only had somewhere between \$6 and \$7 million. We were told the highest award was about \$400,000.

Finally, our manager Brad has volunteered to be in the dunk tank at a fundraiser out here, and I encourage you to go and help Brad raise a lot of money for the township.

**David Taft, 952 Neahtawanta Road:** I want to report the responses to my July 10 letter sent to the township board, Protect the Peninsula, and the wineries. The purpose of that letter was to bring the parties together to reach some form of compromise in this lawsuit. My letter formalized our request to meet with the parties to consider compromise. We are offering as a citizens' group to act as facilitators to start this discussion. We mentioned some innovative ideas we've agreed to that should interest all parties. We committed at the end of this process to help amend 201 [the farm processing ordinance], which might need amending if there's some compromise reached. We've had a positive response to participate from your general counsel, Chris Patterson, who indicated interest in a way to resolve this lawsuit and continued discussions on the zoning amendment. Protect the

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Peninsula, PTP, responded with unanimous board consent, a willingness to participate so long as the other parties are willing. I've not heard from WOMP or the wineries. Our expanding citizen group will continue to maintain our offer to come together with the township and PTP for compromise discussions, but as concerned citizens, we recognize the formal court order that has settlement discussions starting the end of this month. This is the second amended case management order that was filed late 2023 by the court. We ask the WOMP wineries to "come to the table" to listen and discuss as good neighbors. We will assist and facilitate these discussions and introduce some fresh ideas we believe will be attractive to all parties. We undertake this effort with the hope of reducing conflict and bringing peace and harmony back to the community. Thank you.

**Louis Santucci, 12602 Center Road:** I'm asking that the issue of the administrative fee for collecting taxes be made an agenda item at the next meeting. You can't tell from the budget information that's put out how much was collected for the administrative fee. How much was spent and how did you determine how much was spent? How much is left over? If there's anything left over, where does it go? Into the general fund, or where? When this issue was first brought before the board, when Brad was the treasurer, he said that you would make an assessment and see whether or not that administrative fee could be reduced. To get to the answer to that question, it would be interesting to see how you determine when you collect the money and how it's spent.

**5. Approve Agenda**

**Shanafelt moved to approve the agenda as presented with a second by Chown. Motion approved by consensus**

**6. Conflict of Interest:**

**Wunsch has conflict of interest with business item number seven.**

**7. Consent Agenda:**

1. Invoices (recommend approval)
2. Reports
  - A. Fire Department
  - B. Ordinance Enforcement Officer
  - C. Cash Summary by Fund
3. Minutes from July 11, 2023, Township Board Regular Meeting
4. Township board vacancies and service opportunities
5. Road name change request
6. *Wall Street Journal* article on summer's best beach vacation
7. Correspondence
  - A. David Shambaugh

**Rudolph moved to approve the consent agenda with a second by Shanafelt.**

**Roll call vote:** yes – Achorn, Sanger, Rudolph, Shanafelt, Chown, Wunsch **Passed unan**

**8. Business:**

1. Resolution on joining the region's new metropolitan planning organization (MPO) and approving its bylaws (Cram)

**Cram:** in your packets is a cover memo with the details of what Alan [Leman] mentioned earlier, the Traverse Transportation Coordinating Initiative, or TTCI. There is a resolution,

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inter-governmental agreement, and bylaws in your packet for consideration that would authorize Peninsula Township to participate in this working group related to transportation in our region. Rob Carson is here from Networks Northwest.

**Carson:** we have been through a shortened process that was proposed by MDOT due to the delay in census data. We weren't notified of the urbanized area boundaries until about the end of 2022. What would have been about a year and a half process for designation of an MPO was condensed to about six to nine months. I appreciate your cooperation and your staff's cooperation as well as cooperation of all the other eligible entities: the townships, the city of Traverse City, the Grand Traverse County Road Commission, the Leelanau County Road Commission, and both the Leelanau County and Grand Traverse County Boards of Commissioners. We have received approval from each of the eligible entities except Peninsula Township and Whitewater Township. Whitewater has not had interest in joining, although now with the movement they've seen, they want me to present to their planning commission in October. The benefit of having an MPO and being an eligible entity is that you can join at any time. We're seeking to get the documentation before the governor October 1 and then, following that, official designation. Then we begin the processes spoken about by Mr. Leman in regard to long-range transportation plans, a transportation improvement program (a four-to-five-year plan), and a yearly unified work plan.

Regarding collaboration, this is a regional approach with all participating entities at the table discussing potential transportation alternatives and improvements, prioritizing and placing them within the plan. That makes them eligible for the funding that comes directly from the Federal Highway Administration, the Federal Transit Administration through MDOT to our region. Beyond that, there are at least four different large grant programs we would be eligible for with tens of millions to hundreds of millions of dollars.

**Chown:** what kind of time commitment is it for a municipality like Peninsula Township?

**Carson:** we meet every other month as a policy board. We have a technical committee meeting and an executive committee meeting of the policy board on the off months. You're looking at about six times per year. I don't expect that to change. I doubt we will go to monthly meetings until we get to a process where we're working diligently on a large grant application. The Hartmann Hammond corridor the Grand Traverse County Road Commission has been working on will likely be one of those projects.

**Achorn:** what are the dues?

**Carson:** about \$3,700 per year per entity. The more entities involved, the lower the dues. The structure is a single vote per unit and equal dues based on that voting percentage. That is the starting point. Half the MPOs in Michigan have some other structure in place, but each of them was established with a level playing field and morphed from there based on input from the eligible entities and the actual work that was brought forward.

**Shanafelt:** this is a large group of municipalities working together to identify large projects; do you see this group impacting smaller projects?

**Carson:** yes. There really is no differentiation of project size for whether or not it's eligible. What dictates eligibility are those roads that are federally aided. Local roads are typically not eligible unless they fall under that category.

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**Achorn:** that means M-37 is the only road in the township that would be impacted?

**Carson:** no, there are other eligible roads within your township. I'd have to rely upon the road commission manager to tell me exactly which those are but there are a number of other Act 51 roads that are federally eligible.

**Shanafelt:** we would work with the other municipalities to build a hierarchy of those more local projects and decide which ones make sense to pursue?

**Carson:** exactly. One of the benefits is representation from the Michigan Department of Transportation on the policy board, as they serve on all MPOs in the state of Michigan. They can help guide that process with a lot of firsthand experience.

**Rudolph:** this entity acts to go out and get grant applications?

**Carson:** the MPO policy board is a complete standalone entity made up of those eligible local units of government, transportation agencies, and transit agencies. They are served by the Community Development Department that I oversee at Networks Northwest. The MPO is standalone from Networks Northwest. It's been the model in Michigan because most MPOs span more than one county. Regional planning agencies have been utilized because they encompass that entire planning area. We don't have membership that serve on actual policy boards as voting members. We're impartial, serving at the discretion of the MPOs. The projects are prioritized by the MPO policy board.

**Sanger:** this is an annual commitment. In other words; we can leave at any time. This is not a long-term commitment that the board is making.

**Carson:** correct, you are eligible to join and leave at any time.

**Cram:** we do have a deadline to get this before the governor. In your packet is a resolution. We need a motion to adopt the resolution in support of the establishment of an interim municipality committee under Michigan Public Act 200 of 1957 for the purposes of transportation planning in the greater Traverse area. There's also the intergovernmental agreement. You would make a motion to participate in that for the Metropolitan Planning Organization. I would need a signature from Isaiah and Becky.

**Wunsch moved to approve Resolution 8-8-23 #1, Traverse Transportation Coordination Initiative, with a second by Shanafelt.**

**Roll call vote:** yes – Sanger, Rudolph, Shanafelt, Chown, Wunsch, Achorn **Passed unan**

**Sanger moved to authorize the supervisor and clerk enter into an agreement with the Traverse Transportation Coordination Initiative with a second by Rudolph. Motion passed by consensus**

2. Update from parks committee (Murphy)

**Michele Zebell:** Mike Skurski arranged to have Muriel Garbarino, the Invasive Species Network representative, come and visit our parks. It was very informative and helpful. She provided resources [in the packet] so residents can see ways of dealing with invasives. We are continuing to work toward a park logo and park signage. Pelizzari will be the first place that happens and will be the template for our other signs.

At Bowers Harbor Park, we have a new native garden created by Deb Larimer, Katie Grier, Russ Larimer, and the Chown family stones. It is around our historic marker and is a nice model for native plantings. The tennis court will be resurfaced and painted. Once that happens, it will be unavailable for play for 30 days. I believe it will be chained and we

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should post something on the township website as well. The pickleball courts and basketball courts will be completed in the near future and available for play. They need lines painted and a little bit more surfacing work done. I want to thank you for supporting the improvements to Bowers Harbor Park. The minute those hoops were up, there were people on the basketball court. I've seen more people on the volleyball sand court than I've ever seen in all the time I've lived here.

An enormous thank you to the members of the Old Mission Pickleball Club for all they've done: the work, the effort, the vision, and the fundraising to give us such an amazing facility. It's a real gift to the community. I'm excited about the [September 30] celebration because it gives us an opportunity to do a ribbon cutting and recognize the individuals who played a huge role in what is going to be a gorgeous facility. That celebration itself has taken a bit of a reshaping and is going to focus on each of those sports venues plus the play structure with a scavenger hunt. We're also hoping to have a more passive aspect to the celebration, where people get a map and move through the park, to make everyone more aware of all the park has to offer. We have a meeting next week with a portion of the committee.

**Dave Murphy:** Michelle has been tying many pieces together, and we can't thank her enough for that leadership. I want to compliment this body again for the way we've set up the structure in recent years with collaborative, routine effort between the two bodies. It's showing with the things we're getting done in the recreational parks. The lighthouse has always been a big undertaking, and I know Marge [Achorn] continues to stay on top of that, which allows us to work with these other parks. Thank you for that.

At Pelizzari, the expansion effort is ongoing. The conservancy is leading that. If [the board] would like to attend any of the upcoming walks, it's an opportunity to see what is still private land that will become part of Pelizzari. We are continuing to work with neighbors to create the tie back to the original park area. There's always ongoing volunteer work with plantings, watering, invasive species removal, and vegetation management. Thank you, Jenn [Cram], for bringing the new ordinance to the parks. We're trying to work within that.

The large tree removal at the front of the parking lot at Pelizzari, a massive maple that we didn't want to lose, was in MDOT's right-of-way. We brought in a tree service to get estimates to take care of it. In the end, MDOT said, "When it needs to go, we'll take it at our discretion." We opted not to invest the money into preserving it, and it's gone now. There was a second tree taken but it wasn't on Pelizzari property.

There is a need for some type of sustainable trail in the hemlock wing of the park. It gets so much use that the hemlocks' root systems are being damaged. They are sensitive to compaction. We're looking at a boardwalk system that will protect the hemlocks. We've had some pushback. "Why would you put a boardwalk in that's going to harm the hemlocks?" It's the other way around; it will protect and preserve them. Becky [Chown] has been doing a lot of outreach to find new grant sources. Thank you. I've been working with neighbors to make sure the plan that is up for review is agreeable to neighbors.

You have a September [7] meeting with a discussion of township structure. I hope within that discussion there might be some review of what that could mean for a parks budget



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and whether we're going to need to look at a parks millage, which we considered a couple of years ago and took off the table. I thought it was an appropriate move with PDR coming, but we are at the point where if we want to continue work on the parks, we need to upgrade the budget. How that fits into this larger discussion, I think, is critical. Thank you.

**Mary Beth Milliken:** this year Archie Park is seeing some nice improvements. We received a grant from DTE to replace trees that were removed by a neighbor on the hill. It would have been nice to put in trees of the same size but it wasn't possible. I purchased eight native dogwoods. They should be nice once they start flowering. They are watered twice a week. That's an effort. I do have someone who's offered to help; we just haven't connected yet. At the township, I pick up the 35-gallon tank. After I put it in my car, I fill it up, drive to Archie Park, connect the hose, and go up the hill and water each of the eight trees. Each gets about four gallons at a time. I think we spent about \$1,000 in this effort. The second improvement to Archie Park is the addition of a bike repair stand and pump. We got a sizable grant from Cherry Capital Cycling Club. Brick Wheels offered to buy it at cost for us and we paid them back. It's arrived and will be put in as soon as we get a cement pad, which Bob [Wilkinson, township maintenance man and sexton] has ordered and will install. [Archie Park] is a launch site for bikers going up the peninsula who want to avoid riding on Center Road. They go on Bluff and make the big loop. A stand that can repair their bikes and pump up tires is a really nice addition.

3. Presentation by Carie Wilie, executive director of the Traverse City Track Club (Wunsch)

**Wilie:** I wanted to take this opportunity to reintroduce the track club and give an update on what we've been up to. I started as the executive director in February. [PowerPoint presentation]

The Traverse City Track Club [TCTC] is a nonprofit organization, a 501 (c) (3). We are membership based. We have 13 board members and are the largest running club in Michigan. We serve the five-county area: Antrim, Benzie, Grand Traverse, Kalkaska, and Leelanau. We put on events and programs for members and non-members throughout the year. We own and produce a large race event you're familiar with, the Bayshore Marathon. We also operate a robust charitable giving program.

Our mission statement is, "We promote and encourage health, fitness, fellowship, community service, family, recreation and competition via running and walking, and we welcome all ages and abilities." Last year, our board established our core values, which are as follows: "Welcoming, community, active lifestyle, and quality." We try to be welcoming in all our events, whether for newcomers or people who have been involved for years.

Even though we're known as a running club, we have a great contingent of walkers who come to our weekly Fun Runs. They start a little bit earlier and go on the same route. It's a great opportunity for camaraderie amongst walkers and runners. We work to create a sense of community among our membership and also the community at large.

Active Lifestyle: we promote health and wellness in the programs we put on.

Quality: we don't add new programs or new races very often. When we do, we want to make sure they're well run, so we emphasize quality as one of our core values.

Timeline: we've been around for 60 years. The track club started in 1962, when our first

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program, the Summer Series, began. Bayshore started in 1983. It was a full marathon and a 10k. The half marathon didn't start until 2006. Our first executive director was hired in 2017, and that brings us to 2023, when we added a new event, Loop the Lake.

We are currently undergoing a strategic plan update. We're in the information-gathering phase, working with key stakeholders, members, non-members, and organizations we work with or maybe would like to have relationships with, businesses and organizations we might impact with our races. Then we'll establish our priorities and goals and potentially we will have program updates.

Here's our membership chart [in packet]. That peak in the middle is 2019, when we had more than 1,000 members. That correlates with what we're seeing in the running industry nationwide from COVID. A lot of running clubs and races saw a peak in 2019, and then we saw a dip. We've slowly been coming back up, and this year we have more than 900 members. This is the second largest number of members we've had since our inception. If you want to see what the track club is all about, our weekly Fun Runs and walks happen year-round. We meet at different establishments around the community and walk and run three or five miles at whatever pace. You can stay around for socialization afterwards. We also put on popular monthly trail runs. We do a summer series, The Grand Prix Circuit, which is an opportunity for our members to go out and experience other races that we don't put on. We have a racing team, and we also have a training program that helps people get ready, whether for their first 5k or to set a personal best in the marathon. Youth involvement and investment is an important part of the TCTC. One of the events we do is the Bayshore Kids Fun Run. That happens early in the afternoon on the Saturday of Memorial Day, after the adult races. This year, we had just under 400 kids registered. They get Moomers ice cream at the end. We also sponsor the Cherry Fest Kids Fun Run. We help put that on, provide volunteers, and help organize. We work with the festival foundation and provide discounted youth membership rates, discounted youth race registrations, and a charitable giving program.

We put on six races throughout the year. The Bayshore Marathon is our largest event. Our other five races we call more community-sized races. Good Fight 5k occurs in October. All proceeds are donated to the Munson Patient Needs Care Fund. Proceeds from Loop the Lake, our newest race, are donated to TART Trails. Loop the Lake takes advantage of the courses around the Boardman Lake Loop Trail, which was completed last summer. There are several races throughout the region that are not put on by the track club. I love to support other races. Especially if they're well run, it's good for the running community and the greater community.

Bayshore Marathon: we utilize your wonderful roads for that course. It is our original race. We recently celebrated our 40th anniversary. We now put on a full marathon, half marathon, 10k, and kids' race. It's known as the fastest marathon in Michigan; that statistic is pulled from the number of people who qualify for the Boston Marathon. The actual marathon course is well known as being scenic and also flat. On our half marathon, we utilize Devils Dive Road. It's hilly at the start but then very flat into the finishing line. Last year, to celebrate the 40th anniversary, we started a live podcast taping with a famous running podcaster and brought Desiree Linden to be interviewed. This year we

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moved the location downtown and were able to accommodate three times the number of people. Our packet pickup and runner expo moved from Traverse City Central High School to the Civic Center based on feedback on timing and the logistics of getting in there after school closed. We hope it also alleviated some of the congestion at the high school. The races occur on the Saturday of Memorial Day weekend.

This year, we had more than 7,460 registered participants representing 10 countries and 42 states and more than 1,000 volunteers. More than 400 gallons of Moomers ice cream were consumed.

After the 2022 Bayshore Marathon, we worked with a professor from Kent State University who looked at the economic impact. He concluded that the Bayshore Marathon weekend activities resulted in a \$7.75 million increase in economic activity in the region. I mentioned the number of volunteers we have, but that doesn't include the vendors and other partners we work with. We work very closely with our emergency service partners, including your fire department, the county sheriff's office, the Traverse City Police Department, the Traverse City Fire Department, and our medical response team. Due to bus driver shortages, we went from utilizing the TCAPS bus drivers to bringing in BATA as well as the Blue Lakes by the Bay Bus system to help us transport our half marathon participants to the start line and also get people to the high school area, which is kind of our start and finish line hub area.

We do a survey after the event every year. One of the questions is, "What was your favorite moment of the 2023 Bayshore Race?" I could have included hundreds of comments about the beauty of the course, but what I thought was neat about this slide is that it highlights how the participants are encouraged by residents and spectators along the course. From a participant standpoint, that's very appreciated. Thank you to the board as the permitting authority because we do recognize that Peninsula Township is a very special place. We appreciate the opportunity to invite these participants to run here. Regarding our charitable giving programs, our organization has evolved into a more formal process. We now have a formal scholarship and grant program as well as a Golden Shoe fund. This year alone, we were able to award \$30,500 in scholarships for the upcoming academic year to high school graduating seniors as well as current college students from our five-county region. Since 2013, we have been able to give more than \$260,000 in scholarships to students. This year our grant cycle has not opened up yet for the fall, but we are budgeted to hopefully grant \$100,000 to nonprofit organizations within the region whose projects align with our mission. Our Golden Shoe fund is a program that allows for coaches of area high school runners and middle school runners to provide an opportunity to partner with us and donate shoes to students who need running shoes for either cross country or track season. Through our races, we give donations back to the organizations that come and work at our races. This year, we were able to donate \$46,000 to those work groups for volunteering their time. Overall, we've given more than \$2 million back to the greater community through our charitable giving programs.

In Peninsula Township, the organizations that have been impacted over the years include the Friends of Peninsula Community Library, Old Mission Women's Club, the school and PTO, the township, Old Mission American Legion, Peter Dougherty Society, Peninsula Fire

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and Rescue Association, and Mission Point Lighthouse. The Bowers Harbor Park Trail was granted \$25,000, and in 2016 the Peter Doherty Society Trail was granted funds. In 2008, funds were donated for track improvements at the school. The Peninsula Community Library and Friends of the Peninsula Community Library have received close to \$15,000. In 2023, three specific groups from Peninsula Township volunteered at Bayshore: Old Mission Women's Club, OMPS PTO, and Peninsula Community Library. We had eight teams from Traverse City Central High School. Those organizations were given \$13,400. That doesn't include other organizations such as the Grand Traverse Hiking Club and VASA Ski Club. Our policy is, if there is an organization that's based on the Old Mission Peninsula, they get priority. In terms of scholarships, I understand Central High School is not in Peninsula Township, but given its proximity to the township, I thought I'd point out that we gave \$14,500 in scholarships to seven students from Traverse City Central High School this year.

**Rudolph:** what is the projected number of runners for next year?

**Wilie:** this year, we were ready to cap it at 8,500, but we didn't reach that cap. We were at 7,500 registered runners. Our marathon numbers have gone down slightly. Our half marathon still continues to be the most popular race. If I could predict, I would say that we would be around what we were this year.

4. Letter of resignation from Peninsula Township Board Trustee Warren Wahl (Wunsch)

**Wunsch:** Wahl's letter of resignation in your packet says, "Isaiah, I've realized I'm no longer able to give the time commitment the board and Peninsula Township residents deserve. Please accept this as my resignation. I wish you all the best, Warren."

**Sanger moved to accept the letter of resignation from Warren Wahl with a second by Shanafelt.**

**Roll call vote:** yes – Rudolph, Shanafelt, Chown, Wunsch, Achorn, Sanger **Passed unan**

**Wunsch:** regarding recruiting and appointing a replacement, the next step is to post the vacancy on the website. We have 45 days to fill the position. With everyone's consent, I recommend that we leave the position posted for two weeks and then look at the number of resumes we receive. As the supervisor, I'm able to bring a recommendation for a candidate. Do you want me to review the resumes that are submitted and bring forward a recommendation or would you prefer an open interview process?

**Shanafelt:** given our time limitations before the next series of elections, from a point of expediency, it makes sense for you to identify your recommendation. We then have the obligation to support it or not.

**Wunsch:** in the interests of transparency, I will circulate resumes that are submitted to the board and put them in the packet so residents can see who has applied. I will review resumes and bring a recommendation forward. Should you choose to not accept the recommendation, you'll be able to sort through the resumes that have been provided and choose the candidate.

5. Discussion on going out for bid on engineering for parks projects, including Kelley Park Boat Launch (Wunsch)

**Wunsch:** Beckett & Raeder assisted us with the grant application for the Kelley Park boat launch project. The officers feel it's appropriate to allow Beckett & Raeder to bid on the remaining design work. I've got to give Becky [Chown] credit for being ambitious about

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pursuing philanthropic, state, and federal funding for our park system. This goes back to what we heard in the parks report about the historical lack of funding for our park system. This course of action we've taken at Kelley Park, where we find a qualified grant writer to put together a grant application for us to secure state or federal funds, is something we may be doing in the future.

Instead of just bringing the concept of approving Beckett & Raeder as the design firm for the boat launch, we wanted to have a conversation about what our policy for design work should be on these projects moving forward. I've spoken with Jennifer Graham, our engineer of record. She thinks we're moving in a good direction. She said there are a lot of situations where her firm collaborates with Beckett & Raeder or other firms that specialize in grant writing and design. Jennifer recommended that we put out an RFQ, which she can assist with. If we receive grant funds, we will look for firms to bid on specific components of the project. There are firms that specialize in the design work and firms that specialize in the hard engineering work, which is what Gourdie-Fraser does. I wanted to check in and make sure this is a process you all agree with.

Beckett & Raeder did the design work on the boat launch. We've received a \$600,000 [\$562,000] grant from the DNR. The next step, according to the advice of our engineer of record, is to put out an RFQ that would have the design work in all likelihood done by the company that has been working with us thus far. Then a separate response from our engineer of record who would be able to do surveying and soil borings.

**Chow:** what does the "Q" stand for?

**Wunsch:** qualifications. It's like an RFP, but they'll bite off separate parts of the project.

**Shanafelt:** this general process would be applied to any project?

**Wunsch:** to projects in the parks where we've pursued significant grant funding.

**Chown:** sensitive parks projects, where there is a sustainable trail component or something that's not just nuts and bolts.

**Rudolph:** it's important to get a grant proposal writer or an engineer who has expertise in what we're asking them to do. Our engineer of record does not have expertise in boat ramps. We need to go to an engineering firm that knows how to do that and can work with the DNR to get the approvals we need.

**Wunsch:** in the same way that the MPO represents a professionalization of transportation infrastructure, this RFQ process, according to our engineer of record, will also improve our scores on a number of the grants that we could apply for. It will improve our competitiveness in a lot of grant scoring.

**Shanafelt:** this should be done in collaboration with our parks committee.

**Sanger:** I've been impressed with this firm. I've looked at master plans they have prepared for other communities. There comes a point in time when you don't have the internal resources. It makes sense to get a consulting firm to help us package the scope of work and to package exactly what is going to be delivered. We sat here a couple of years ago, excited about putting a boat launch in Kelley Park to get the traffic out of Haserot. Unfortunately, we have not been able to meet our wishes up to this point. I suggest we move ahead.

**Chown:** we would put out an RFQ for the detailed engineering work, not the construction



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of the ramp?

**Wunsch:** Gourdie-Fraser would help us put out an RFQ, the bid process where individual contractors could bid on parts of the design work. You're not asking for Beckett & Raeder to bring all elements under their roof. They coordinate with each other to put together a bid that's broken up into different chunks.

**Chown:** but this wouldn't be to construct the launch; the construction would be a different bid process. Okay.

**Sanger:** it's akin to hiring an architect, but it's a much broader scope.

**Wunsch:** an RFQ would allow the contractors to break out components of the project, whereas an RFP would ask applicants to submit bids for the whole project. Gourdie-Fraser does a lot of the RFQ writing and they've indicated they'd be excited to work with Beckett & Raeder on this project if that's the direction we're leaning in.

**Board indicates agreement.**

6. Discussion of proposed fall festival at St. Joseph Catholic Church (Cram)

**Cram:** St. Joseph's Catholic Church is proposing its third annual fall festival to take place entirely on church property at 12675 Center Road on October 7 from 12:00 p.m. until 5:00 p.m. In your packet, they've given a description of what the fall festival entails. It includes a food tent that is hosted by the Our Lady of Guadalupe Parish; people pay for the food. The cost of the food pays for the ingredients and the time and preparation to make it. They would also be doing a wine tasting in the parish hall. They would charge for those tastings. They have included all their information with regard to signs and meeting the requirements of the large event ordinance. This is the third year they've done this. The two previous years, it was a new event and didn't follow the formal process of our large event ordinance. It was just placed on the consent agenda before the township board. They hope to have 250 or more participants. They are following the large event ordinance. There is an application fee. They have asked for that fee to be waived. We have tried to adjust our permit fees to cover staff time and resources for these things. I will leave it for the board to decide whether or not to waive the \$1,000 application fee. Father Rexroat is here to answer questions. They've checked all the boxes with regard to requirements. The one thing I need to follow up on is liability insurance.

**Shanafelt:** what is the rationale to waive the fee?

**Cram:** the rationale is that they were not charged the fee the two previous years and they are a non-profit. They are trying to follow our process and weren't aware there was an application fee because it hadn't been mentioned previously.

**Chown:** in general, I'm not inclined to waive fees, but I want to acknowledge and thank St. Joseph Catholic Church for hosting our elections year after year and waiving our fee to hold elections at the church. It could be something that I would support for that reason. We have a meeting coming up on September 7 at the church. I didn't ask if there would be a fee for that.

**Sanger:** I served as the business manager to the church for a number of years previously. The church has always welcomed the township once they had the larger facility. We've met there several times in the last couple of years for special meetings.

**Achorn:** did the township incur any cost out of pocket for this event?

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**Cram:** staff time and mailing resources.

**Achorn:** mailing is minimal?

**Cram:** yes.

**Achorn:** did we have to publish this in the Record-Eagle?

**Cram:** the large event ordinance does not require that we publish for large events.

**Achorn:** how many mailers went out?

**Cram:** eleven. This was the legal notice to meet the requirements of the large event ordinance.

**Achorn:** minimal.

**Wunsch:** I'm comfortable with moving forward on approval of the event. We should ask for brief legal comments on the advisability of waiving the fee.

**Matt Kuschel, with Fahey Schultz Burzych Rhodes, via Zoom:** I tend to advise against waiving fees. The next person in line is going to want a waiver. There is historic precedent you could hang your hat on, but it's not risk free. I see the argument. There are some distinguishing factors that the board could link to. I would still advise against it. Another alternative would be to have a lower fee, half a fee or something. You could take it into consideration for future fee schedules. This organization is working through the ordinance, and they want to comply. They just realized they reached the population threshold to fall under the ordinance, so it's a bit of a scramble to get the application in. That might justify a half fee.

**Achorn:** we have the races that are 501 (c) (3); could they claim a similar waiving of fees?

**Chown:** they could always request them.

**Achorn:** what if we paid rent when we used the facilities? I think that is normal, speaking as a former tax CPA. Bartering is not wise.

**Sanger:** I'm concerned that we do not have the full story of our involvement with non-profits in our community. We let people use the township hall without charge. I am not prepared tonight to change course from the last two years. If we wish to later, that's fine, but I don't have a complete picture of the total relationship this government has with anyone in the community who is in the business of renting or allowing use of their facility.

**Chown:** I have a decent handle on litigation these days in Peninsula Township, and I certainly don't want to invite more problems, but I also don't want to stop being neighborly. That is a fine line to walk.

**Father Rexroat:** as a point of clarity, we cannot charge you rent. If we did, we would have to start paying taxes on our parish hall.

**Chown:** so we misspoke on that.

**Rexroat:** there is a gift to the church for use that people can [offer]. When we began several years ago, we saw the large event ordinance. We talked to the manager [supervisor] at the time and said, "We have more people that come to Christmas Mass than this ordinance allows." When the former fire chief had his funeral at St. Joe's, he wasn't a parishioner, but we were the only venue that could host it. We did it with no charge. That was larger than the event ordinance allows. The question is, do we operate a little differently when the occupancy of our grounds is about double what the event [ordinance] allows? That's just the legal occupancy of the building. We're not having a



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10,000-person race that goes on the roads. When we talked with the manager [former supervisor], that was his understanding of what this ordinance was aimed at. It even asked for things like, "Where is the course?" There is no course. That's why he said, "Okay, we'll just have this as an approval item." Our expectation was that we would continue this way. I'm uncomfortable with the large event ordinance because where does that end? We normally have more than 250 people on Easter, the Fourth of July, and whoever comes to mass. We're going through this process, trying to answer the questions in good faith, but it's a tough ordinance for the church.

**Cram:** this is part of the reason we need to look at the large event ordinance. St. Joseph Catholic Church has a special use permit, so does it make more sense to allow these types of things as part of their special use? The regular services are considered part of the special use permit. We didn't consider the other events that are not religiously oriented. Our large event ordinance specifically says if you're having an event, on either private property or public property, with 250 people or more, you go through this process.

**Chown:** can churches be exempt if the church facility has the capacity?

**Cram:** we could look at that. The ordinance specifically exempts schools. We did talk to our legal counsel. That's why we're treating them the way we would treat anybody else who wants to have an event with 250 people or more on their property.

**Kuschel:** the distinction that was made is religious versus non-religious. I think there's a material difference between a parish festival and Easter Mass.

**Achorn:** is there any guidance you can give us?

**Kuschel:** I would not be concerned about the large event ordinance when you have Christmas and Easter and more than 250 people coming to church because that's what a church does. That is its land use. The question on the parish festival and how that relates to the rest of the parish grounds is not as clear as the very explicit religious exercise. That's why, when we look at the the festival, we take a different approach. We're going to continue to look at those land use questions to get a broad picture and then drill down into a specific understanding to get some guidance for you to move forward.

**Achorn:** how will that help us tonight?

**Kuschel:** the application is before the board. The material question is the fee waiver request, with no policy or guidelines to help you decide that. Whether the fee is waived or not waived, the next question is whether or not to grant this specific event.

**Cram:** start with the latter: does the board approve this event as presented? And then are you comfortable waiving the fee or do you want to table that to another meeting?

**Sanger:** we've assumed that the large event ordinance is applicable here. This is not really open to the public in the sense that it's not trying to draw in everybody on the peninsula. It's not like a football game. This is no different than other non-profit events that have gone on in our township that we didn't even talk about.

**Shanafelt:** like what?

**Sanger:** First Congregational Church has had events for their own group –

**Shanafelt:** that's different; this is open to the public.

**Sanger:** so was the event at the other church. We are partially penalizing this group by coming forward and asking a question about which I don't know the answer tonight.

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**Cram:** the ordinance reads, "Event shall mean any organized and open to the general public event where 250 people or more will be in attendance at one time and held on either public or private real property or on the roads within the township, and may be held at one or more sites provided however, an event shall not include an activity of any size that is sponsored by an elementary or secondary school recognized as such by the state of Michigan." I thought it was clear that this did apply. It has been brought before the board two years previously for consideration on the consent agenda.

**Shanafelt:** I don't have a problem approving the event. My issue is hearing about a potential fee waiver for the first time. I propose we need to table the fee waiver.

**Cram:** I can work with legal counsel and look at past minutes.

**Rudolph:** need to look at whether churches should be exempt as well as schools.

**Cram:** you can't just do churches. I discussed this with legal counsel prior to moving forward with this application. In order to not face future litigation, we need to treat the churches the same as all other private organizations.

**Wunsch:** looks like we have agreement on the event and just need more time to consult on the fee waiver.

**Cram:** that allows them to move forward with planning.

**Wunsch:** the problem with the large event ordinance is it appears it was designed for events like this. Those types of events were undersubscribed, so it was tweaked to cover the large public races, and our fee schedule anticipates the larger public races. This year we may be in a bind, where the applicant would have to pay the \$1,000 fee. We could do some policy work during the off season, and the planning commission could recommend that we look at a two-tiered system for approval of large events. One would be largely self-contained on private property, and a second would be public. Then we could more reasonably split up the fee schedule. The problem is that we've approved the fee schedule. We don't have certainty that the existing ordinance will be amended.

**Sanger:** we've approved a special use permit for a building that seats 300. The parking has capacity to meet the needs of this particular building and its uses. We are trying to put an event under the umbrella of the special event ordinance, which really was more aimed at large events like the Bayshore [Marathon] that don't have a physical property. We probably shouldn't be applying the large event ordinance to an SUP that allows for a funeral of 500 people and anything else that might go on in that facility.

**Wunsch:** the guidance [Cram] received is that we should apply the large event ordinance because there are enough differences between this event and normal religious activity.

**Cram:** or we should be considering these in the special use permit to note that in addition to the use of the property for religious activities, they may also have up to three events, for example, per year, as part of their special use permit. That is how I've handled these types of situations in the past. Or I like the tiered approach for the different types of events. There are many things we can consider moving forward.

**Wunsch:** it sounds like we don't need formal approval at this evening's meeting. You both are going to keep working on planning the event and putting together the permit application, and then we're going to get with legal on what we can do about a fee waiver.

**Rexroat:** would the event be cancelable? The fee is a different issue. We're not promoting

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this right now because we don't know if we can have it.

**Wunsch:** does anyone have objections to the event as presented?

**No objections**

**Kuschel:** you can approve the application on the condition of submission of an application fee as determined by the township, and it sounds like the insurance certificate is still outstanding.

**Cram:** the board has the authority to set the permit fees. It could be a decision of the board after we talk to legal counsel that we could look at again if needed.

**Sanger:** I suggest that the legal review include a review of the applicability of that large event ordinance to an SUP.

**Cram:** I already had that discussion with legal counsel. That's why this is before you.

**Sanger:** where do we draw the line between a church event, be it any denomination, that is going to bring in more than 250 people, and a large funeral or wedding?

**Shanafelt:** what differentiates this is the activities. They are different than any of those ceremonies you identified.

**Sanger:** if it's only going to attract members and immediate family members, how is that different than the use of the soccer field on Sunday morning by more than 250 people?

**Wunsch:** Jenn has talked about these issues with legal counsel. It's why she thought it advisable to bring this project through the large event process.

**Shanafelt:** I would vote to approve the pending application.

**Sanger:** I'm afraid that puts the applicant out on a limb.

**Rexroat:** we will have the event either way.

**Shanafelt moved to approve the large event with a pending review of the fee waiver with a second by Rudolph.**

**Motion passed by consensus, Sanger abstained**

7. Resolution to suspend end enforcement of sign ordinance for u-pick operations for the remainder of the 2023 growing season (Cram)

**Shanafelt moved to recuse Wunsch from the board with a second by Chown. Motion passed by consensus.**

**Cram:** as discussed at our July meeting, I requested the board's permission to suspend the enforcement of temporary signage for u-pick operations and off-premise signage for u-pick and farm stands to give us the opportunity to see how creative our farmers get and to see about making changes to our sign ordinance to support farmers with regard to seasonal operations. The board was comfortable doing that. This is the resolution to formalize that recommendation.

**Chown:** I'm happy to see vintage trucks and tractors are included.

**Cram:** I have received a couple of emails from farmers who are appreciative of allowing this flexibility. I'll be working through this topic winter to bring some amendments to the sign ordinance prior to next season.

**Sanger moved to approve the resolution with a second by Rudolph.**

**Roll call vote:** yes – Shanafelt, Chown, Achorn, Sanger

**Passed unan**

**Shanafelt moved to bring Wunsch back to the board with a second by Sanger. Motion passed by consensus**

8. Litigation update (Chris Patterson from Fahey Schultz Burzych Rhodes) [Litigation

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update provided by Matt Kuschel instead of Patterson]

**Kuschel:** regarding the SUP lawsuit that is in discovery now, the insurance company Tokio Marine was contacted to provide insurance defense. The written discovery is ongoing. Depositions will likely start to be scheduled in the second half of September and October. Family Orchards litigation: motions have been filed and are pending before the court. Wineries case: depositions are closed. We are finished with the additional discovery. There is a pending motion regarding the insurance policy. The insurance defense is taking the lead on that.

There is a settlement conference scheduled for the end of the month. Insurance counsel will again coordinate with the township and our office in terms of staffing and updates. There is some tax tribunal litigation going on regarding personal property tax exemptions. The initial paperwork has been filed and is moving forward.

#### 9. Citizen Comments

**John Kendra, 17630 Smokey Hollow:** with regard to the boat launch, you said the Michigan DNR gave the township [almost] \$600,000 to do some design work and then after that go out for some bids for building?

**Wunsch:** the [almost] \$600,000 covers approximately 50 percent of the design and build costs of the entire project. We are looking to find a \$600,000 match to the grant.

**Kendro:** you expect the budget to be 1.2 [million]? You said you are going to go ahead and get the design work, then go out with an RFQ for the quote, then construction. So we'll probably see this constructed in 2025?

**Chown:** if we can find the match, in 2024.

**Kendra:** it won't come from township revenue funds from taxpayers?

**Chown:** we don't have that kind of money in our revenue fund.

**Kendra:** have you actually received the [nearly] \$600,000?

**Wunsch:** no, it's a match. We need to [come up with] the other 50 percent.

**Kendra:** with regard to the church, with all the litigation going on, it's very simple. You have to charge them. No waivers until you change the ordinance.

**Maura Sanders, 20202 Center Road:** I want to give a shout out to the parks committee on an outstanding job. It's been a couple of years since I was on the park commission; I miss it dearly. Everything that's been going on up and down the peninsula is outstanding. I am sad to see Warren go, but you will receive my resume to fill the town board position, and I hope you take a good look at it.

**Louis Santucci, 12602 Center Road:** as you struggle through this church thing, I don't understand why you couldn't do a moratorium on enforcement like you did with the sign ordinance. You put a moratorium on the winery situation two times last year. There aren't any more events that I know of for the rest of the year. If you put a moratorium on enforcement of the ordinance with regard to large events, then you don't have to deal with a constitutional issue, favoring a religious order over something else. I live across the street from the church, and I attend a lot of their events. From a noise point of view, I never hear anything over there. That's a lot of people. Good food too.

**Molly Stretten, 2822 Devils Dive Road:** circling back to the conversation about waiving fees or charging non-profits fees, since 2001, I have either worked for, volunteered for, or

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 Laura Martin, Recording Secretary

served as a board member for various non-profit organizations. I have an affinity for them, many of which provide valuable services. I'm not a churchgoer. I don't have any skin in the game with what's happening, although they have an amazing Mexican food vendor there that I love so I will be going. I would encourage some sort of carve out for non-profit organizations. I don't think we should be charging them for large-scale events. I have in the past rounded up veterinarians with the city of Burbank to hold large-scale pet vaccination clinics. These were not large moneymakers. They were in compliance with public health ordinances, and we helped folks get in compliance with licensing. I think you would have community support if we took a look at that zoning ordinance where non-profits were concerned and considered not charging large fees. Thank you.

**Steve Kroupa, 12724 Center Road:** the church is a fantastic neighbor. I live straight across the road from them. I look out the window and see their beautiful lights at night on the stained glass. My other issue is not very pleasant. I have talked to the police several times. I've tailed these people right down to where they live. They seem to like drag racing their motorcycles. I'm getting tired of it. They've got three or four crotch rockets, and they go 80 to 90 miles an hour past my house. I talked to the cop several times and heard, "We have to catch them in the act." I wanted to see if there's anything you guys can do. They drive like fools. There's no excuse for that. One weekend, we had a crew of Corvettes go by at about 90 miles an hour. I don't know what their problem is. I guess they just like to hot rod and show off their fancy cars. This isn't the Indy 500. This issue of motorcycles is getting old; it's been going on for two years. Thank you.

**Nancy R. Heller, 3091 Blue Water Road:** this board needs to review the community police officer scheduling. We don't have enough night or weekend coverage. We've got two officers. When it was put up for approval on the ballot, my interpretation was that we would get better coverage. I think we have two great officers; I have nothing negative to say about that. I don't know who does the scheduling, but I suggest this whole board look at the scheduling. They are sometimes double scheduled. I don't know why. We're paying a lot of money. Fair money; they're worth it. But we're not getting the coverage. I keep hearing, I've seen no statistics, that Peninsula Township is a low crime area. We don't get any coverage from the county. We pay for coverage. I know everybody is spread thin. But it would be good to possibly research some of this.

#### 10. Board Comments

**Chown:** about the occasional double booking of our two CPOs [community police officers]: when they are double booked, one will park somewhere and then people will pass that officer and think they're home free and step on the gas. The other officer's waiting a mile or two up ahead. They've been very effective at surprising some fast drivers. I do think an occasional usage of double booking is a good idea.

**Sanger:** I read in a legislative update today there is a deadline on the designation of ARPA funds. I understand we have till December 31 to benefit from a 1 percent additional transfer of funds to the township if we show we have designated those ARPA funds by the end of this year.

**Chown:** there's a group of us working to determine how to best leverage those remaining ARPA dollars for park infrastructure needs. We are looking at some significant grant

Peninsula Township  
Township Board Regular Meeting  
Laura Martin, Recording Secretary

deadlines. We don't have all the information we need to proceed regarding which grants to apply for, but I'm thinking specifically Trust Fund grants. If we're going to do that, we wouldn't make this deadline.

**Sanger:** it seemed it was an enticement to allocate the funds. I'll send it to you.

**Rudolph:** with the boat ramp, does it help with going out for grant applications if you have monetary pledges of support from individuals in the community?

**Chown:** yes. We need people to pledge money for this boat launch. [To the community] Let us know if you can make a contribution.

**Wunsch:** the boat launch fits within the DNR's framework as a community boat launch. In the scope of our parks budget, we will be fully leveraging years' worth of current park funding to do the [nearly] \$600,000 match. We're essentially relying on charitable contributions, or other grant dollars, to make up the other half of that match. We've had a number of conversations about significant philanthropic gifts. That's basically what we're looking for in order to make the boat launch happen.

#### **11. Adjournment**

**Chown moved to adjourn with a second by Sanger.**

**Motion approved by consensus.**

**Adjourned at 9:10 p.m.**

# **Exhibit 8**



# Opinion: OMP Group Seeks to Resolve Winery Lawsuit, Bring Harmony to Community

By **David Taft** - July 24, 2023



Feel free to share this post...

(. *David Taft is part of a group of Old Mission Peninsula residents working to bring the various parties together to find a resolution to the ongoing [winery lawsuit](#). Read his note below, addressed to the Peninsula Township Board, Protect the Peninsula, and the Wineries of Old Mission Peninsula (WOMP). -jb*

We the People – a citizens’ group of many OMP residents — not representing the parties to the ongoing federal litigation, Peninsula Township, Protect the Peninsula or Wineries of Old Mission Peninsula — are trying to bring the parties together to reach some form of compromise to “the lawsuit.”

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We have made contact with the parties involved and have received disturbing answers. For example, the Township cannot respond, as it would potentially lead to an inadvertent violation of the confidentiality requirement of the earlier mediation between WOMP/Wineries and the Township.

The WOMP leadership indicated little interest, instead awaiting the outcome of the court trial. Yet, the U.S. District Court has issued a second Amended Case Management Order noting an Early Settlement Conference in late August 2023, and a second Settlement Conference in March 2024.

We the People, many residents of this township, are exasperated with the excessive legal costs of this lawsuit, money that could be better spent on Parks and Recreation, a third boat launch, more police coverage, and other causes that benefit the future of OMP.

The wineries, in receiving Special Use Permits over the years from this Township, have established successful commercial wineries, including tasting and retail facilities on agriculturally-zoned land. The wineries want to expand their operation, which has led to the lawsuit.

This lawsuit could potentially force our community into bankruptcy and create a high level of animosity toward the Township and toward WOMP and the wineries.

After our contacts with the Township and WOMP, we feel extreme frustration, as we do not see any willingness for discussion and compromise among the parties involved in this lawsuit, thereby pushing any settlement aside and leading to a Court resolution sometime in the future — already delayed twice.

We want the parties to come together and consider compromise on this lawsuit. We are available to act as facilitators to bring the parties together for discussion.

We have some innovative and fresh ideas on many areas of interest to all involved parties, including...

- Hours of operation
- Amplified music
- Food service
- Expanded events

Also, we have many ideas to help the wineries in other areas of this dispute. If we can catalyze a start towards compromise, we will also commit, as residents working with the Township, to help resolve these issues with amendments to the 201 Zoning Ordinance Amendment — once compromise is reached.

We reach out to you to try and bring the Trustees of Peninsula Township and the WOMP/Wineries together for serious discussions on compromise and ultimate resolution of this lawsuit.

How can we help make this happen?

We need to bring peace and harmony back to this community.

We ask for your responses to this request by August 2, 2023.

– *David D. Taft*



**David Taft**

<https://www.oldmission.net>

*Brys Estate Vineyard and Winery | Jane Boursaw Photo*

---

# **Exhibit 1**

**David D. Taft**  
**952 Neahtawanta Road**  
**Traverse City, Michigan 49686**

August 31, 2023

Becky Chown, Township Clerk  
Peninsula Township  
13235 Center Road  
Traverse City, MI 49686

Dear Becky:

I have read the minutes of the August 28, 2023 Township Board Special Meeting held at 1:30 pm in the Ford Federal Building in Grand Rapids, the meeting considered a public meeting of the Peninsula Township Board at that time and place. I noted in the minutes after the closed session that the settlement proposals were discussed in an open session of that meeting.

Pursuant to the Michigan FOIA statute, Public Act 442 of 1976 and the Peninsula Township Procedures and Guideline policy regarding FOIA, I am requesting a copy of the following documents:

1. The settlement proposal document submitted by WOMP (The wineries of Old Mission Peninsula) according to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.
2. The settlement proposal document submitted by Protect The Peninsula (PTP) pursuant to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.
3. The settlement proposal document submitted by Peninsula Township pursuant to the Case Management Order (Second Amended Case Management Order, ECF No. 343, filed May 2, 2023) related to Case No. 1:20-cv-1008. This settlement proposal document was discussed at the scheduled settlement conference that took place on Monday, 1:30 pm, August 28, 2023 in the federal courthouse in Grand Rapids, Michigan and was subject to a public meeting of the Peninsula Township board at that time and place.

I have attached FOIA Request for Public Records Form of Peninsula Township. On delivery method I can either pick up, can make my own copies on site, or email to my email address ([ddtaft@mac.com](mailto:ddtaft@mac.com)) – whichever is most convenient for you and allows me to receive these quickly for review. Of course, I am responsible for paying for this FOIA request.

Thank you in advance for your prompt attention to this request.

Sincerely



David D Taft



**Township:** Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

Peninsula Township, Grand Traverse County  
13235 Center Road  
Traverse City MI 49686  
Phone: 231-223-7322

**Request Form**  
Note: Requestors are not required to use this form. The township may complete one for recordkeeping if not used.

**FOIA Request for Public Records**  
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

**Request No.:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_ **Check if received via:** ☐ Email ☐ Fax ☐ Other Electronic Method  
**Date delivered to junk/spam folder:** \_\_\_\_\_  
**Date discovered in junk/spam folder:** \_\_\_\_\_

(Please Print or Type)

Name	DAVID D TAFT		Phone	656-521-2285
Firm/Organization			Fax	
Street	952 Neahtawanta Rd		Email	ddtaft@mac.com
City	Traverse City,	State	MI	Zip 49686

**Request for:** ☒ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

**Delivery Method:** ☒ Will pick up ☒ Will make own copies onsite ☐ Mail to address above ☒ Email to address above  
☐ Deliver on digital media provided by the township: \_\_\_\_\_

**Note:** The township is not required to provide records in a digital format or on digital media if the township does not already have the technological capability to do so.

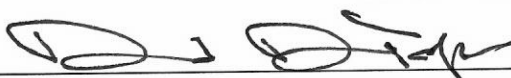
**Describe the public record(s) as specifically as possible. You may use this form or attach additional sheets:**

see detail in my letter (attached to email to Becky Chown) to Becky Chown dated 8/31/2023.

**Consent to Non-Statutory Extension of Township's Response Time**

I have requested a copy of records or a subscription to records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq. I understand that the township must respond to this request within five (5) business days after receiving it, and that response may include taking a 10-business day extension. However, I hereby agree and stipulate to extend the township's response time for this request until: \_\_\_\_\_ (month, day, year).

**Requestor's Signature**



**Date**  
8/31/2023  
(Complete both sides)



**Records Located on Website**

If the township directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

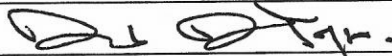
If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the township must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the township must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the township has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the township must provide the public records in the specified format (if the township has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

**Request for Copies/Duplication of Records on Township Website**

I hereby stipulate that, even if some or all of the records are located on a township website, I am requesting that the township make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature



Date

8/31/2023

**Overtime Labor Costs**

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

**Consent to Overtime Labor Costs**

I hereby agree and stipulate to the township using overtime wages in calculating the following labor costs as itemized in the following categories:

1. ☐ Labor to copy/duplicate      2. ☐ Labor to locate      3a. ☐ Labor to redact      3b. ☐ Contract labor to redact  
6b. ☐ Labor to copy/duplicate records already on township's website

Requestor's Signature

Date

**Request for Discount: Indigence**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**  
2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,  
(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

**Office Use:** ☐ Affidavit Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

**Request for Discount: Nonprofit Organization**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.  
(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.  
(iii) Is accompanied by documentation of its designation by the state, if requested by the township.

**Office Use:** ☐ Documentation of State Designation Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931:

Date:

Requestor's Signature:

(Created by Michigan Townships Association, April 2015)

Peninsula Township FOIA Request for Public Records effective 7/1/2015



# **Exhibit 2**

**McGraw Morris** P.C.  
TROY | GRAND RAPIDS

---

THOMAS J. MCGRAW  
G. GUS MORRIS  
CRAIG R. NOLAND  
STACY J. BELISLE  
KEVIN K. KILBY  
CHARLES E. LOVELL  
THOMAS D. LANDA  
BOGOMIR RAJSIC III  
JOHN T. GEMELLARO  
ANNA M. LACROIX  
ANGELO L. BERLASI, JR.  
TRACEY R. DEVRIES

300 OTTAWA AVENUE, NW  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
TELEPHONE: (616) 288-3700  
FAX: (616) 214-7712

September 13, 2023

GLENN A. DIEGEL  
OF COUNSEL

**Via Electronic Mail**

Joseph M. Infante, Esq.  
Miller Canfield  
[infante@millercanfield.com](mailto:infante@millercanfield.com)

Tracy Jane Andrews, Esq.  
Law Office of Tracy Jane Andrews, PLLC  
[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)

RE: *Wineries of the Old Mission Peninsula, et al v. Peninsula Township, et al*  
Case No: 1-20-cv-1008

Dear Joe and TJ –

Peninsula Township has received a FOIA request from a resident requesting that the Township produce the settlement demands/offers that were exchanged between the parties in advance of the settlement conference of August 28, 2023. The Township has issued an extension letter, and the response is presently due on September 25, 2023. We are writing in good faith to advise you of the request before taking action in response.

It is our understanding there are no applicable exemptions to FOIA that would allow the Township to deny the request. The Township, therefore, is obligated to produce the documents – including the Township's, Plaintiffs', and PTP's demand letters that were exchanged between the parties pursuant to the CMO. All of these documents are considered public records since the Township is in possession of them.

With that in mind, we understand if Plaintiffs and/or PTP intend to take action in advance of the Township's compliance deadline. But we again want to advise that the Township must comply with its FOIA obligations by September 25, 2023.

Please do not hesitate to contact me should you wish to discuss further.

Very truly yours,

**Beau Rajsic**  
Bogomir Rajsic, III  
[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)  
Direct dial: (616) 288-3703

BR/

# **Exhibit 3**

Founded in 1852  
by Sidney Davy Miller



STEPHEN M. RAGATZKI  
TEL +1.616.776.6317  
FAX +1.616.776.6322  
E-MAIL Ragatzki@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.  
99 Monroe Avenue NW, Suite 1200  
Grand Rapids, Michigan 49503  
TEL (616) 454-8656  
FAX (616) 776-6322  
millercanfield.com

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OHIO  
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CALIFORNIA  
CANADA  
CHINA  
MEXICO  
POLAND  
UKRAINE  
QATAR

September 13, 2023

Beau Rajsic  
McGraw Morris P.C.  
brajsic@mcgrawmorris.com

*Re: Wineries of the Old Mission Peninsula, et al. v. Peninsula Township*

Dear Beau:

Thank you for informing us about the FOIA request. Our team needs some time to evaluate this issue and discuss it with our clients. Preliminarily, the Plaintiffs object to the production of those settlement demands/offers before having a chance to make their evaluation. I understand your letter to mean that the Township does not intend to respond until September 25, 2023. If the Township's intentions change or if I have interpreted your letter incorrectly, I ask that you give me sufficient notice to take any action, if necessary, before the Township responds.

In the meantime, can you please send me a copy of the FOIA request so that our team can fully evaluate the Plaintiffs' options? I intend to have a more thorough response on Plaintiffs' intentions back to you by September 20, 2023.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 

Stephen M. Ragatzki

SMR

cc: Tracey Jane Andrews  
tjandrews@envlaw.com

# **Exhibit 4**

**McGraw Morris** P.C.  
TROY | GRAND RAPIDS

---

THOMAS J. MCGRAW  
G. GUS MORRIS  
CRAIG R. NOLAND  
STACY J. BELISLE  
KEVIN K. KILBY  
CHARLES E. LOVELL  
THOMAS D. LANDA  
BOGOMIR RAJSIC III  
JOHN T. GEMELLARO  
ANNA M. LACROIX  
ANGELO L. BERLASTI, JR.  
TRACEY R. DEVRIES

300 OTTAWA AVENUE, NW  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
TELEPHONE: (616) 288-3700  
FAX: (616) 214-7712

September 14, 2023

---

GLENN A. DIEGEL  
OF COUNSEL

**Via Electronic Mail**

Joseph M. Infante, Esq.  
Stephen M. Ragatzki, Esq.  
Miller Canfield  
[infante@millercanfield.com](mailto:infante@millercanfield.com)  
[ragatzki@millercanfield.com](mailto:ragatzki@millercanfield.com)

RE: *Wineries of the Old Mission Peninsula, et al v. Peninsula Township, et al*  
Case No: 1-20-cv-1008

Dear Steve –

Regarding your correspondence from September 13, 2023, you are correct, the Township will not be producing the requested documents before September 25, 2023, which is the response deadline.

I have enclosed the FOIA request received from Mr. David Taft. Please do not hesitate to contact me should you wish to discuss further. We look forward to hearing from you regarding Plaintiffs' thoughts and/or intentions.

Very truly yours,

*Beau Rajsic*

Bogomir Rajsic, III  
[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)  
Direct dial: (616) 288-3703

BR/  
Enclosure  
cc: TJ Andrews ([tjandrews@envlaw.com](mailto:tjandrews@envlaw.com))

# **Exhibit 5**



**Ragatzki, Stephen M.**

---

**From:** Beau Rajsic <brajsic@mcgrawmorris.com>  
**Sent:** Friday, September 15, 2023 3:25 PM  
**To:** Ragatzki, Stephen M.; Infante, Joseph M.; TJ Andrews  
**Cc:** Tom McGraw; Christopher Patterson; Holly Hillyer  
**Subject:** RE: Concurrence

**Caution:** This is an external email. Do not open attachments or click links from unknown or unexpected emails.

Steve –

Good to talk with you. Confirming our conversation that the Township is going to deny the FOIA under MCL 15.243(1)(v). We believe this obviates the need for the motion. Thank you and have a good weekend.

Best,

Beau Rajsic  
Attorney  
**McGraw Morris P.C.**  
300 OTTAWA AVENUE, N.W.  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
DIRECT: (616) 288-3703  
FAX: (616) 214-7712  
E-MAIL: [BRAJSIC@MCGRAWMORRIS.COM](mailto:brajsic@mcgrawmorris.com)  
Website: [www.mcgrawmorris.com](http://www.mcgrawmorris.com)

\*\*\*\*\*  
\*\*\*\*\*

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Please consider the environment before printing this e-mail

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**From:** Ragatzki, Stephen M. <Ragatzki@millercanfield.com>  
**Sent:** Friday, September 15, 2023 1:16 PM  
**To:** Beau Rajsic <brajsic@mcgrawmorris.com>; Infante, Joseph M. <infante@millercanfield.com>; TJ Andrews <tjandrews@envlaw.com>  
**Cc:** Tom McGraw <tmcgraw@mcgrawmorris.com>; Christopher Patterson <cpatterson@fsbirlaw.com>; Holly Hillyer <Holly@tropospherelegal.com>  
**Subject:** RE: Concurrence

Beau and TJ,

Following up on my earlier email, here is a draft of the motion we intend to file today. I have also included the exhibits for your reference. Exhibit 5 will be this email chain. If both parties concur, I can change this to a joint motion before we file today. I am planning to file this at 4pm today, so I would appreciate your response before then.

Thanks,  
Steve

---

Stephen M. Ragatzki | Senior Attorney  
**Miller Canfield**

T +1.616.776.6317 | F +1.616.776.6322 | M +1.586.817.0762

---

---

**From:** Ragatzki, Stephen M.

**Sent:** Friday, September 15, 2023 11:26 AM

**To:** Beau Rajsic <[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)>; Infante, Joseph M. <[infante@millercanfield.com](mailto:infante@millercanfield.com)>; TJ Andrews <[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)>

**Cc:** Tom McGraw <[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)>; Christopher Patterson <[cpatterson@fsbirlaw.com](mailto:cpatterson@fsbirlaw.com)>

**Subject:** RE: Concurrence

Beau and TJ,

I'm following up on Joe's request for concurrence yesterday and to provide some additional support for our proposed motion. I understand that Peninsula Township is concerned about potential liability under the FOIA if it denies Mr. Taft's request. There is a substantial body of case law holding that a governmental body does not violate the FOIA when it is prevented from disclosing information by court order. See a sample of the cases below:

*GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*, 445 U.S. 375, 387, 100 S. Ct. 1194, 1202, 63 L. Ed. 2d 467 (1980)

There is nothing in the legislative history to suggest that in adopting the Freedom of Information Act to curb agency discretion to conceal information, Congress intended to require an agency to commit contempt of court in order to release documents. Indeed, Congress viewed the federal courts as the necessary protectors of the public's right to know. To construe the lawful obedience of an injunction issued by a federal district court with jurisdiction to enter such a decree as "improperly" withholding documents under the Freedom of Information Act would do violence to the common understanding of the term "improperly" and would extend the Act well beyond the intent of Congress.

*United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 858 (2d Cir. 1998)

We have previously recognized that settlement documents in draft form are not part of the public record of a federal case, that the district court may seal documents in order to foster settlement, and that the district court's power to seal documents "takes precedence over FOIA rules that would otherwise allow those documents to be disclosed."

*Jud. Watch, Inc. v. U.S. Dep't of Just.*, 271 F. Supp. 3d 264, 275 (D.D.C. 2017), *aff'd sub nom. Jud. Watch, Inc. v. United States Dep't of Just.*, 719 F. App'x 21 (D.C. Cir. 2018)

Similarly, Local Civil Rule 84.6 requires mediation participants to submit "confidential mediation statement[s]" outlining their settlement positions "[n]o later than seven days prior to the first mediation session." LCvR 84.6(a). This Rule, in other words, requires litigants to create documents in advance of mediation which, by definition, are "confidential" and within the protection of Local Civil Rule 84.9, but, in cases involving federal agencies, are outside the protection of any FOIA exemption because the documents have left the executive branch. See 5 U.S.C. § 552(b)(5) (exempting from disclosure only "inter-agency or intra-agency memorandums or letters"). It is inconceivable that FOIA requires disclosure of such documents created under court order; yet

the only basis for protecting them is Local Civil Rule 84.9. In sum, then, after consideration of all four Morgan factors, I am persuaded that "FOIA [simply] does not apply to a court's [rule] directing an agency not to reveal the terms of an agreement crucial to the settlement of an action." Ernst & Ernst, 677 F.2d at 232.

Based on that case law, we believe that the settlement communications are already protected by the Stipulated Protective Order, the Second Amended Case Management order requiring the creation of these settlement documents, LCivR 16.1(d), and the *Goodyear* case we cited yesterday. However, to avoid any doubt, we are proposing that the Township and PTP join our motion and request that all parties be enjoined from disclosing settlement discussions. That should protect the Township from any potential liability under the FOIA if Mr. Taft were to file a lawsuit.

Please let me know your thoughts as soon as possible. We are going to file this motion before the end of the day. We are happy to discuss on a call if that is more efficient.

Thanks,  
Steve

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Stephen M. Ragatzki | Senior Attorney  
**Miller Canfield**  
T +1.616.776.6317 | F +1.616.776.6322 | M +1.586.817.0762

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**From:** Beau Rajsic <[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)>  
**Sent:** Thursday, September 14, 2023 5:24 PM  
**To:** Infante, Joseph M. <[infante@millercanfield.com](mailto:infante@millercanfield.com)>; TJ Andrews <[tjandrews@envlaw.com](mailto:tjandrews@envlaw.com)>  
**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>; Tom McGraw <[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)>; Christopher Patterson <[cpatterson@fsbrlaw.com](mailto:cpatterson@fsbrlaw.com)>  
**Subject:** RE: Concurrence

**Caution:** This is an external email. Do not open attachments or click links from unknown or unexpected emails.

Joe –

Thank you for passing along these citations. Give me a chance to discuss and I will be back to you tomorrow.

Best,

Beau Rajsic  
Attorney  
**McGraw Morris P.C.**  
300 OTTAWA AVENUE, N.W.  
SUITE 820  
GRAND RAPIDS, MICHIGAN 49503  
DIRECT: (616) 288-3703  
FAX: (616) 214-7712  
E-MAIL: [BRAJSIC@MCGRAWMORRIS.COM](mailto:BRAJSIC@MCGRAWMORRIS.COM)  
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**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>  
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We are in the process of drafting the motion. One citation I have handy is 332 F.3d 976. We believe also that they are confidential under Local Rule 16.1(d) and the Stipulated Protective Order (ECF No. 75) as the documents were designated confidential.

In addition, during our call you alleged that I misrepresented Mr. Taft's role to the court. I direct your attention to ECF 428 at PageID.15379 wherein PTP represented "PTP has volunteers and committee members who may act on its behalf, including Mr. Taft." I would appreciate you advising the court that my representation was in fact correct.

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~tj

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**Cc:** Ragatzki, Stephen M. <[Ragatzki@millercanfield.com](mailto:Ragatzki@millercanfield.com)>  
**Subject:** Concurrence

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Joe

---

**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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# **Exhibit 6**

**Ragatzki, Stephen M.**

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**From:** TJ Andrews <tjandrews@en law.com>  
**Sent:** Thursday, September 14, 2023 5:05 PM  
**To:** Infante, Joseph M.; Beau Rajsic  
**Cc:** Ragatzki, Stephen M.  
**Subject:** RE: Concurrence

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In the context of discussing your opposition to the FOIA release, you said Mr. Taft is an agent of PTP and speaks for PTP. I understood you to be saying Mr. Taft was acting as PTP's agent and speaking for PTP with respect to this FOIA request, which is not accurate.

---

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Joe

---

**Joseph M. Infante**  
**Miller Canfield**

**T**                      **F**                      **Mobile**

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# Exhibit 7

Peninsula Township  
Township Board Regular Meeting  
Laura Martin, Recording Secretary

# PENINSULA TOWNSHIP

13235 Center Road, Traverse City  
MI 49686

[www.peninsulatownship.com](http://www.peninsulatownship.com)

## Township Board Regular Meeting

August 8, 2023, 7:00 p.m.

### Township Hall

### Minutes

1. **Call to Order** by Wunsch at 7:02 p.m.

2. **Pledge**

3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Rudolph, Shanafelt, Chown

4. **Citizen Comments**

**Alan Leman:** I'm from the Grand Traverse County Road Commission and am here with an update. The first thing is the MPO [Metropolitan Planning Organization] you're going to vote on tonight. I'd like to encourage you to join the MPO. We need cross-governmental collaboration in our community. This is a big step to allow that to happen. It comes with some strings, but the positives generally outweigh the negatives.

We are working on the engineering department to start some corridor studies. There has been a lot of talk about crosstown transit, how we get from one side to the other. We're looking at how people from outlying communities get to town. We're also looking at some of the through local roads. In our cost-sharing agreement, the road commission will take care of these and upgrade them without a township contribution. Blue Water is the first one that comes to mind. Engineering has started evaluating that.

Most of you know the Bluff Road grant application was denied. It was for a \$3 million grant to the state. Apparently we didn't stand a chance. The whole program only had somewhere between \$6 and \$7 million. We were told the highest award was about \$400,000.

Finally, our manager Brad has volunteered to be in the dunk tank at a fundraiser out here, and I encourage you to go and help Brad raise a lot of money for the township.

**David Taft, 952 Neahtawanta Road:** I want to report the responses to my July 10 letter sent to the township board, Protect the Peninsula, and the wineries. The purpose of that letter was to bring the parties together to reach some form of compromise in this lawsuit. My letter formalized our request to meet with the parties to consider compromise. We are offering as a citizens' group to act as facilitators to start this discussion. We mentioned some innovative ideas we've agreed to that should interest all parties. We committed at the end of this process to help amend 201 [the farm processing ordinance], which might need amending if there's some compromise reached. We've had a positive response to participate from your general counsel, Chris Patterson, who indicated interest in a way to resolve this lawsuit and continued discussions on the zoning amendment. Protect the

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Peninsula, PTP, responded with unanimous board consent, a willingness to participate so long as the other parties are willing. I've not heard from WOMP or the wineries. Our expanding citizen group will continue to maintain our offer to come together with the township and PTP for compromise discussions, but as concerned citizens, we recognize the formal court order that has settlement discussions starting the end of this month. This is the second amended case management order that was filed late 2023 by the court. We ask the WOMP wineries to "come to the table" to listen and discuss as good neighbors. We will assist and facilitate these discussions and introduce some fresh ideas we believe will be attractive to all parties. We undertake this effort with the hope of reducing conflict and bringing peace and harmony back to the community. Thank you.

**Louis Santucci, 12602 Center Road:** I'm asking that the issue of the administrative fee for collecting taxes be made an agenda item at the next meeting. You can't tell from the budget information that's put out how much was collected for the administrative fee. How much was spent and how did you determine how much was spent? How much is left over? If there's anything left over, where does it go? Into the general fund, or where? When this issue was first brought before the board, when Brad was the treasurer, he said that you would make an assessment and see whether or not that administrative fee could be reduced. To get to the answer to that question, it would be interesting to see how you determine when you collect the money and how it's spent.

**5. Approve Agenda**

**Shanafelt moved to approve the agenda as presented with a second by Chown. Motion approved by consensus**

**6. Conflict of Interest:**

**Wunsch has conflict of interest with business item number seven.**

**7. Consent Agenda:**

1. Invoices (recommend approval)
2. Reports
  - A. Fire Department
  - B. Ordinance Enforcement Officer
  - C. Cash Summary by Fund
3. Minutes from July 11, 2023, Township Board Regular Meeting
4. Township board vacancies and service opportunities
5. Road name change request
6. *Wall Street Journal* article on summer's best beach vacation
7. Correspondence
  - A. David Shambaugh

**Rudolph moved to approve the consent agenda with a second by Shanafelt.**

**Roll call vote:** yes – Achorn, Sanger, Rudolph, Shanafelt, Chown, Wunsch **Passed unan**

**8. Business:**

1. Resolution on joining the region's new metropolitan planning organization (MPO) and approving its bylaws (Cram)

**Cram:** in your packets is a cover memo with the details of what Alan [Leman] mentioned earlier, the Traverse Transportation Coordinating Initiative, or TTCI. There is a resolution,

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inter-governmental agreement, and bylaws in your packet for consideration that would authorize Peninsula Township to participate in this working group related to transportation in our region. Rob Carson is here from Networks Northwest.

**Carson:** we have been through a shortened process that was proposed by MDOT due to the delay in census data. We weren't notified of the urbanized area boundaries until about the end of 2022. What would have been about a year and a half process for designation of an MPO was condensed to about six to nine months. I appreciate your cooperation and your staff's cooperation as well as cooperation of all the other eligible entities: the townships, the city of Traverse City, the Grand Traverse County Road Commission, the Leelanau County Road Commission, and both the Leelanau County and Grand Traverse County Boards of Commissioners. We have received approval from each of the eligible entities except Peninsula Township and Whitewater Township. Whitewater has not had interest in joining, although now with the movement they've seen, they want me to present to their planning commission in October. The benefit of having an MPO and being an eligible entity is that you can join at any time. We're seeking to get the documentation before the governor October 1 and then, following that, official designation. Then we begin the processes spoken about by Mr. Leman in regard to long-range transportation plans, a transportation improvement program (a four-to-five-year plan), and a yearly unified work plan.

Regarding collaboration, this is a regional approach with all participating entities at the table discussing potential transportation alternatives and improvements, prioritizing and placing them within the plan. That makes them eligible for the funding that comes directly from the Federal Highway Administration, the Federal Transit Administration through MDOT to our region. Beyond that, there are at least four different large grant programs we would be eligible for with tens of millions to hundreds of millions of dollars.

**Chown:** what kind of time commitment is it for a municipality like Peninsula Township?

**Carson:** we meet every other month as a policy board. We have a technical committee meeting and an executive committee meeting of the policy board on the off months. You're looking at about six times per year. I don't expect that to change. I doubt we will go to monthly meetings until we get to a process where we're working diligently on a large grant application. The Hartmann Hammond corridor the Grand Traverse County Road Commission has been working on will likely be one of those projects.

**Achorn:** what are the dues?

**Carson:** about \$3,700 per year per entity. The more entities involved, the lower the dues. The structure is a single vote per unit and equal dues based on that voting percentage. That is the starting point. Half the MPOs in Michigan have some other structure in place, but each of them was established with a level playing field and morphed from there based on input from the eligible entities and the actual work that was brought forward.

**Shanafelt:** this is a large group of municipalities working together to identify large projects; do you see this group impacting smaller projects?

**Carson:** yes. There really is no differentiation of project size for whether or not it's eligible. What dictates eligibility are those roads that are federally aided. Local roads are typically not eligible unless they fall under that category.

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**Achorn:** that means M-37 is the only road in the township that would be impacted?

**Carson:** no, there are other eligible roads within your township. I'd have to rely upon the road commission manager to tell me exactly which those are but there are a number of other Act 51 roads that are federally eligible.

**Shanafelt:** we would work with the other municipalities to build a hierarchy of those more local projects and decide which ones make sense to pursue?

**Carson:** exactly. One of the benefits is representation from the Michigan Department of Transportation on the policy board, as they serve on all MPOs in the state of Michigan. They can help guide that process with a lot of firsthand experience.

**Rudolph:** this entity acts to go out and get grant applications?

**Carson:** the MPO policy board is a complete standalone entity made up of those eligible local units of government, transportation agencies, and transit agencies. They are served by the Community Development Department that I oversee at Networks Northwest. The MPO is standalone from Networks Northwest. It's been the model in Michigan because most MPOs span more than one county. Regional planning agencies have been utilized because they encompass that entire planning area. We don't have membership that serve on actual policy boards as voting members. We're impartial, serving at the discretion of the MPOs. The projects are prioritized by the MPO policy board.

**Sanger:** this is an annual commitment. In other words; we can leave at any time. This is not a long-term commitment that the board is making.

**Carson:** correct, you are eligible to join and leave at any time.

**Cram:** we do have a deadline to get this before the governor. In your packet is a resolution. We need a motion to adopt the resolution in support of the establishment of an interim municipality committee under Michigan Public Act 200 of 1957 for the purposes of transportation planning in the greater Traverse area. There's also the intergovernmental agreement. You would make a motion to participate in that for the Metropolitan Planning Organization. I would need a signature from Isaiah and Becky.

**Wunsch moved to approve Resolution 8-8-23 #1, Traverse Transportation Coordination Initiative, with a second by Shanafelt.**

**Roll call vote:** yes – Sanger, Rudolph, Shanafelt, Chown, Wunsch, Achorn **Passed unan**

**Sanger moved to authorize the supervisor and clerk enter into an agreement with the Traverse Transportation Coordination Initiative with a second by Rudolph. Motion passed by consensus**

2. Update from parks committee (Murphy)

**Michele Zebell:** Mike Skurski arranged to have Muriel Garbarino, the Invasive Species Network representative, come and visit our parks. It was very informative and helpful. She provided resources [in the packet] so residents can see ways of dealing with invasives. We are continuing to work toward a park logo and park signage. Pelizzari will be the first place that happens and will be the template for our other signs.

At Bowers Harbor Park, we have a new native garden created by Deb Larimer, Katie Grier, Russ Larimer, and the Chown family stones. It is around our historic marker and is a nice model for native plantings. The tennis court will be resurfaced and painted. Once that happens, it will be unavailable for play for 30 days. I believe it will be chained and we

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should post something on the township website as well. The pickleball courts and basketball courts will be completed in the near future and available for play. They need lines painted and a little bit more surfacing work done. I want to thank you for supporting the improvements to Bowers Harbor Park. The minute those hoops were up, there were people on the basketball court. I've seen more people on the volleyball sand court than I've ever seen in all the time I've lived here.

An enormous thank you to the members of the Old Mission Pickleball Club for all they've done: the work, the effort, the vision, and the fundraising to give us such an amazing facility. It's a real gift to the community. I'm excited about the [September 30] celebration because it gives us an opportunity to do a ribbon cutting and recognize the individuals who played a huge role in what is going to be a gorgeous facility. That celebration itself has taken a bit of a reshaping and is going to focus on each of those sports venues plus the play structure with a scavenger hunt. We're also hoping to have a more passive aspect to the celebration, where people get a map and move through the park, to make everyone more aware of all the park has to offer. We have a meeting next week with a portion of the committee.

**Dave Murphy:** Michelle has been tying many pieces together, and we can't thank her enough for that leadership. I want to compliment this body again for the way we've set up the structure in recent years with collaborative, routine effort between the two bodies. It's showing with the things we're getting done in the recreational parks. The lighthouse has always been a big undertaking, and I know Marge [Achorn] continues to stay on top of that, which allows us to work with these other parks. Thank you for that.

At Pelizzari, the expansion effort is ongoing. The conservancy is leading that. If [the board] would like to attend any of the upcoming walks, it's an opportunity to see what is still private land that will become part of Pelizzari. We are continuing to work with neighbors to create the tie back to the original park area. There's always ongoing volunteer work with plantings, watering, invasive species removal, and vegetation management. Thank you, Jenn [Cram], for bringing the new ordinance to the parks. We're trying to work within that.

The large tree removal at the front of the parking lot at Pelizzari, a massive maple that we didn't want to lose, was in MDOT's right-of-way. We brought in a tree service to get estimates to take care of it. In the end, MDOT said, "When it needs to go, we'll take it at our discretion." We opted not to invest the money into preserving it, and it's gone now. There was a second tree taken but it wasn't on Pelizzari property.

There is a need for some type of sustainable trail in the hemlock wing of the park. It gets so much use that the hemlocks' root systems are being damaged. They are sensitive to compaction. We're looking at a boardwalk system that will protect the hemlocks. We've had some pushback. "Why would you put a boardwalk in that's going to harm the hemlocks?" It's the other way around; it will protect and preserve them. Becky [Chown] has been doing a lot of outreach to find new grant sources. Thank you. I've been working with neighbors to make sure the plan that is up for review is agreeable to neighbors.

You have a September [7] meeting with a discussion of township structure. I hope within that discussion there might be some review of what that could mean for a parks budget



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and whether we're going to need to look at a parks millage, which we considered a couple of years ago and took off the table. I thought it was an appropriate move with PDR coming, but we are at the point where if we want to continue work on the parks, we need to upgrade the budget. How that fits into this larger discussion, I think, is critical. Thank you.

**Mary Beth Milliken:** this year Archie Park is seeing some nice improvements. We received a grant from DTE to replace trees that were removed by a neighbor on the hill. It would have been nice to put in trees of the same size but it wasn't possible. I purchased eight native dogwoods. They should be nice once they start flowering. They are watered twice a week. That's an effort. I do have someone who's offered to help; we just haven't connected yet. At the township, I pick up the 35-gallon tank. After I put it in my car, I fill it up, drive to Archie Park, connect the hose, and go up the hill and water each of the eight trees. Each gets about four gallons at a time. I think we spent about \$1,000 in this effort. The second improvement to Archie Park is the addition of a bike repair stand and pump. We got a sizable grant from Cherry Capital Cycling Club. Brick Wheels offered to buy it at cost for us and we paid them back. It's arrived and will be put in as soon as we get a cement pad, which Bob [Wilkinson, township maintenance man and sexton] has ordered and will install. [Archie Park] is a launch site for bikers going up the peninsula who want to avoid riding on Center Road. They go on Bluff and make the big loop. A stand that can repair their bikes and pump up tires is a really nice addition.

3. Presentation by Carie Wilie, executive director of the Traverse City Track Club (Wunsch)

**Wilie:** I wanted to take this opportunity to reintroduce the track club and give an update on what we've been up to. I started as the executive director in February. [PowerPoint presentation]

The Traverse City Track Club [TCTC] is a nonprofit organization, a 501 (c) (3). We are membership based. We have 13 board members and are the largest running club in Michigan. We serve the five-county area: Antrim, Benzie, Grand Traverse, Kalkaska, and Leelanau. We put on events and programs for members and non-members throughout the year. We own and produce a large race event you're familiar with, the Bayshore Marathon. We also operate a robust charitable giving program.

Our mission statement is, "We promote and encourage health, fitness, fellowship, community service, family, recreation and competition via running and walking, and we welcome all ages and abilities." Last year, our board established our core values, which are as follows: "Welcoming, community, active lifestyle, and quality." We try to be welcoming in all our events, whether for newcomers or people who have been involved for years.

Even though we're known as a running club, we have a great contingent of walkers who come to our weekly Fun Runs. They start a little bit earlier and go on the same route. It's a great opportunity for camaraderie amongst walkers and runners. We work to create a sense of community among our membership and also the community at large.

Active Lifestyle: we promote health and wellness in the programs we put on.

Quality: we don't add new programs or new races very often. When we do, we want to make sure they're well run, so we emphasize quality as one of our core values.

Timeline: we've been around for 60 years. The track club started in 1962, when our first

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program, the Summer Series, began. Bayshore started in 1983. It was a full marathon and a 10k. The half marathon didn't start until 2006. Our first executive director was hired in 2017, and that brings us to 2023, when we added a new event, Loop the Lake.

We are currently undergoing a strategic plan update. We're in the information-gathering phase, working with key stakeholders, members, non-members, and organizations we work with or maybe would like to have relationships with, businesses and organizations we might impact with our races. Then we'll establish our priorities and goals and potentially we will have program updates.

Here's our membership chart [in packet]. That peak in the middle is 2019, when we had more than 1,000 members. That correlates with what we're seeing in the running industry nationwide from COVID. A lot of running clubs and races saw a peak in 2019, and then we saw a dip. We've slowly been coming back up, and this year we have more than 900 members. This is the second largest number of members we've had since our inception. If you want to see what the track club is all about, our weekly Fun Runs and walks happen year-round. We meet at different establishments around the community and walk and run three or five miles at whatever pace. You can stay around for socialization afterwards. We also put on popular monthly trail runs. We do a summer series, The Grand Prix Circuit, which is an opportunity for our members to go out and experience other races that we don't put on. We have a racing team, and we also have a training program that helps people get ready, whether for their first 5k or to set a personal best in the marathon. Youth involvement and investment is an important part of the TCTC. One of the events we do is the Bayshore Kids Fun Run. That happens early in the afternoon on the Saturday of Memorial Day, after the adult races. This year, we had just under 400 kids registered. They get Moomers ice cream at the end. We also sponsor the Cherry Fest Kids Fun Run. We help put that on, provide volunteers, and help organize. We work with the festival foundation and provide discounted youth membership rates, discounted youth race registrations, and a charitable giving program.

We put on six races throughout the year. The Bayshore Marathon is our largest event. Our other five races we call more community-sized races. Good Fight 5k occurs in October. All proceeds are donated to the Munson Patient Needs Care Fund. Proceeds from Loop the Lake, our newest race, are donated to TART Trails. Loop the Lake takes advantage of the courses around the Boardman Lake Loop Trail, which was completed last summer. There are several races throughout the region that are not put on by the track club. I love to support other races. Especially if they're well run, it's good for the running community and the greater community.

Bayshore Marathon: we utilize your wonderful roads for that course. It is our original race. We recently celebrated our 40th anniversary. We now put on a full marathon, half marathon, 10k, and kids' race. It's known as the fastest marathon in Michigan; that statistic is pulled from the number of people who qualify for the Boston Marathon. The actual marathon course is well known as being scenic and also flat. On our half marathon, we utilize Devils Dive Road. It's hilly at the start but then very flat into the finishing line. Last year, to celebrate the 40th anniversary, we started a live podcast taping with a famous running podcaster and brought Desiree Linden to be interviewed. This year we

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moved the location downtown and were able to accommodate three times the number of people. Our packet pickup and runner expo moved from Traverse City Central High School to the Civic Center based on feedback on timing and the logistics of getting in there after school closed. We hope it also alleviated some of the congestion at the high school. The races occur on the Saturday of Memorial Day weekend.

This year, we had more than 7,460 registered participants representing 10 countries and 42 states and more than 1,000 volunteers. More than 400 gallons of Moomers ice cream were consumed.

After the 2022 Bayshore Marathon, we worked with a professor from Kent State University who looked at the economic impact. He concluded that the Bayshore Marathon weekend activities resulted in a \$7.75 million increase in economic activity in the region. I mentioned the number of volunteers we have, but that doesn't include the vendors and other partners we work with. We work very closely with our emergency service partners, including your fire department, the county sheriff's office, the Traverse City Police Department, the Traverse City Fire Department, and our medical response team. Due to bus driver shortages, we went from utilizing the TCAPS bus drivers to bringing in BATA as well as the Blue Lakes by the Bay Bus system to help us transport our half marathon participants to the start line and also get people to the high school area, which is kind of our start and finish line hub area.

We do a survey after the event every year. One of the questions is, "What was your favorite moment of the 2023 Bayshore Race?" I could have included hundreds of comments about the beauty of the course, but what I thought was neat about this slide is that it highlights how the participants are encouraged by residents and spectators along the course. From a participant standpoint, that's very appreciated. Thank you to the board as the permitting authority because we do recognize that Peninsula Township is a very special place. We appreciate the opportunity to invite these participants to run here. Regarding our charitable giving programs, our organization has evolved into a more formal process. We now have a formal scholarship and grant program as well as a Golden Shoe fund. This year alone, we were able to award \$30,500 in scholarships for the upcoming academic year to high school graduating seniors as well as current college students from our five-county region. Since 2013, we have been able to give more than \$260,000 in scholarships to students. This year our grant cycle has not opened up yet for the fall, but we are budgeted to hopefully grant \$100,000 to nonprofit organizations within the region whose projects align with our mission. Our Golden Shoe fund is a program that allows for coaches of area high school runners and middle school runners to provide an opportunity to partner with us and donate shoes to students who need running shoes for either cross country or track season. Through our races, we give donations back to the organizations that come and work at our races. This year, we were able to donate \$46,000 to those work groups for volunteering their time. Overall, we've given more than \$2 million back to the greater community through our charitable giving programs.

In Peninsula Township, the organizations that have been impacted over the years include the Friends of Peninsula Community Library, Old Mission Women's Club, the school and PTO, the township, Old Mission American Legion, Peter Dougherty Society, Peninsula Fire

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and Rescue Association, and Mission Point Lighthouse. The Bowers Harbor Park Trail was granted \$25,000, and in 2016 the Peter Doherty Society Trail was granted funds. In 2008, funds were donated for track improvements at the school. The Peninsula Community Library and Friends of the Peninsula Community Library have received close to \$15,000. In 2023, three specific groups from Peninsula Township volunteered at Bayshore: Old Mission Women's Club, OMPS PTO, and Peninsula Community Library. We had eight teams from Traverse City Central High School. Those organizations were given \$13,400. That doesn't include other organizations such as the Grand Traverse Hiking Club and VASA Ski Club. Our policy is, if there is an organization that's based on the Old Mission Peninsula, they get priority. In terms of scholarships, I understand Central High School is not in Peninsula Township, but given its proximity to the township, I thought I'd point out that we gave \$14,500 in scholarships to seven students from Traverse City Central High School this year.

**Rudolph:** what is the projected number of runners for next year?

**Wilie:** this year, we were ready to cap it at 8,500, but we didn't reach that cap. We were at 7,500 registered runners. Our marathon numbers have gone down slightly. Our half marathon still continues to be the most popular race. If I could predict, I would say that we would be around what we were this year.

4. Letter of resignation from Peninsula Township Board Trustee Warren Wahl (Wunsch)

**Wunsch:** Wahl's letter of resignation in your packet says, "Isaiah, I've realized I'm no longer able to give the time commitment the board and Peninsula Township residents deserve. Please accept this as my resignation. I wish you all the best, Warren."

**Sanger moved to accept the letter of resignation from Warren Wahl with a second by Shanafelt.**

**Roll call vote:** yes – Rudolph, Shanafelt, Chown, Wunsch, Achorn, Sanger **Passed unan**

**Wunsch:** regarding recruiting and appointing a replacement, the next step is to post the vacancy on the website. We have 45 days to fill the position. With everyone's consent, I recommend that we leave the position posted for two weeks and then look at the number of resumes we receive. As the supervisor, I'm able to bring a recommendation for a candidate. Do you want me to review the resumes that are submitted and bring forward a recommendation or would you prefer an open interview process?

**Shanafelt:** given our time limitations before the next series of elections, from a point of expediency, it makes sense for you to identify your recommendation. We then have the obligation to support it or not.

**Wunsch:** in the interests of transparency, I will circulate resumes that are submitted to the board and put them in the packet so residents can see who has applied. I will review resumes and bring a recommendation forward. Should you choose to not accept the recommendation, you'll be able to sort through the resumes that have been provided and choose the candidate.

5. Discussion on going out for bid on engineering for parks projects, including Kelley Park Boat Launch (Wunsch)

**Wunsch:** Beckett & Raeder assisted us with the grant application for the Kelley Park boat launch project. The officers feel it's appropriate to allow Beckett & Raeder to bid on the remaining design work. I've got to give Becky [Chown] credit for being ambitious about

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pursuing philanthropic, state, and federal funding for our park system. This goes back to what we heard in the parks report about the historical lack of funding for our park system. This course of action we've taken at Kelley Park, where we find a qualified grant writer to put together a grant application for us to secure state or federal funds, is something we may be doing in the future.

Instead of just bringing the concept of approving Beckett & Raeder as the design firm for the boat launch, we wanted to have a conversation about what our policy for design work should be on these projects moving forward. I've spoken with Jennifer Graham, our engineer of record. She thinks we're moving in a good direction. She said there are a lot of situations where her firm collaborates with Beckett & Raeder or other firms that specialize in grant writing and design. Jennifer recommended that we put out an RFQ, which she can assist with. If we receive grant funds, we will look for firms to bid on specific components of the project. There are firms that specialize in the design work and firms that specialize in the hard engineering work, which is what Gourdie-Fraser does. I wanted to check in and make sure this is a process you all agree with.

Beckett & Raeder did the design work on the boat launch. We've received a \$600,000 [\$562,000] grant from the DNR. The next step, according to the advice of our engineer of record, is to put out an RFQ that would have the design work in all likelihood done by the company that has been working with us thus far. Then a separate response from our engineer of record who would be able to do surveying and soil borings.

**Chow:** what does the "Q" stand for?

**Wunsch:** qualifications. It's like an RFP, but they'll bite off separate parts of the project.

**Shanafelt:** this general process would be applied to any project?

**Wunsch:** to projects in the parks where we've pursued significant grant funding.

**Chown:** sensitive parks projects, where there is a sustainable trail component or something that's not just nuts and bolts.

**Rudolph:** it's important to get a grant proposal writer or an engineer who has expertise in what we're asking them to do. Our engineer of record does not have expertise in boat ramps. We need to go to an engineering firm that knows how to do that and can work with the DNR to get the approvals we need.

**Wunsch:** in the same way that the MPO represents a professionalization of transportation infrastructure, this RFQ process, according to our engineer of record, will also improve our scores on a number of the grants that we could apply for. It will improve our competitiveness in a lot of grant scoring.

**Shanafelt:** this should be done in collaboration with our parks committee.

**Sanger:** I've been impressed with this firm. I've looked at master plans they have prepared for other communities. There comes a point in time when you don't have the internal resources. It makes sense to get a consulting firm to help us package the scope of work and to package exactly what is going to be delivered. We sat here a couple of years ago, excited about putting a boat launch in Kelley Park to get the traffic out of Haserot. Unfortunately, we have not been able to meet our wishes up to this point. I suggest we move ahead.

**Chown:** we would put out an RFQ for the detailed engineering work, not the construction



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of the ramp?

**Wunsch:** Gourdie-Fraser would help us put out an RFQ, the bid process where individual contractors could bid on parts of the design work. You're not asking for Beckett & Raeder to bring all elements under their roof. They coordinate with each other to put together a bid that's broken up into different chunks.

**Chown:** but this wouldn't be to construct the launch; the construction would be a different bid process. Okay.

**Sanger:** it's akin to hiring an architect, but it's a much broader scope.

**Wunsch:** an RFQ would allow the contractors to break out components of the project, whereas an RFP would ask applicants to submit bids for the whole project. Gourdie-Fraser does a lot of the RFQ writing and they've indicated they'd be excited to work with Beckett & Raeder on this project if that's the direction we're leaning in.

**Board indicates agreement.**

6. Discussion of proposed fall festival at St. Joseph Catholic Church (Cram)

**Cram:** St. Joseph's Catholic Church is proposing its third annual fall festival to take place entirely on church property at 12675 Center Road on October 7 from 12:00 p.m. until 5:00 p.m. In your packet, they've given a description of what the fall festival entails. It includes a food tent that is hosted by the Our Lady of Guadalupe Parish; people pay for the food. The cost of the food pays for the ingredients and the time and preparation to make it. They would also be doing a wine tasting in the parish hall. They would charge for those tastings. They have included all their information with regard to signs and meeting the requirements of the large event ordinance. This is the third year they've done this. The two previous years, it was a new event and didn't follow the formal process of our large event ordinance. It was just placed on the consent agenda before the township board. They hope to have 250 or more participants. They are following the large event ordinance. There is an application fee. They have asked for that fee to be waived. We have tried to adjust our permit fees to cover staff time and resources for these things. I will leave it for the board to decide whether or not to waive the \$1,000 application fee. Father Rexroat is here to answer questions. They've checked all the boxes with regard to requirements. The one thing I need to follow up on is liability insurance.

**Shanafelt:** what is the rationale to waive the fee?

**Cram:** the rationale is that they were not charged the fee the two previous years and they are a non-profit. They are trying to follow our process and weren't aware there was an application fee because it hadn't been mentioned previously.

**Chown:** in general, I'm not inclined to waive fees, but I want to acknowledge and thank St. Joseph Catholic Church for hosting our elections year after year and waiving our fee to hold elections at the church. It could be something that I would support for that reason. We have a meeting coming up on September 7 at the church. I didn't ask if there would be a fee for that.

**Sanger:** I served as the business manager to the church for a number of years previously. The church has always welcomed the township once they had the larger facility. We've met there several times in the last couple of years for special meetings.

**Achorn:** did the township incur any cost out of pocket for this event?

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**Cram:** staff time and mailing resources.

**Achorn:** mailing is minimal?

**Cram:** yes.

**Achorn:** did we have to publish this in the Record-Eagle?

**Cram:** the large event ordinance does not require that we publish for large events.

**Achorn:** how many mailers went out?

**Cram:** eleven. This was the legal notice to meet the requirements of the large event ordinance.

**Achorn:** minimal.

**Wunsch:** I'm comfortable with moving forward on approval of the event. We should ask for brief legal comments on the advisability of waiving the fee.

**Matt Kuschel, with Fahey Schultz Burzych Rhodes, via Zoom:** I tend to advise against waiving fees. The next person in line is going to want a waiver. There is historic precedent you could hang your hat on, but it's not risk free. I see the argument. There are some distinguishing factors that the board could link to. I would still advise against it. Another alternative would be to have a lower fee, half a fee or something. You could take it into consideration for future fee schedules. This organization is working through the ordinance, and they want to comply. They just realized they reached the population threshold to fall under the ordinance, so it's a bit of a scramble to get the application in. That might justify a half fee.

**Achorn:** we have the races that are 501 (c) (3); could they claim a similar waiving of fees?

**Chown:** they could always request them.

**Achorn:** what if we paid rent when we used the facilities? I think that is normal, speaking as a former tax CPA. Bartering is not wise.

**Sanger:** I'm concerned that we do not have the full story of our involvement with non-profits in our community. We let people use the township hall without charge. I am not prepared tonight to change course from the last two years. If we wish to later, that's fine, but I don't have a complete picture of the total relationship this government has with anyone in the community who is in the business of renting or allowing use of their facility.

**Chown:** I have a decent handle on litigation these days in Peninsula Township, and I certainly don't want to invite more problems, but I also don't want to stop being neighborly. That is a fine line to walk.

**Father Rexroat:** as a point of clarity, we cannot charge you rent. If we did, we would have to start paying taxes on our parish hall.

**Chown:** so we misspoke on that.

**Rexroat:** there is a gift to the church for use that people can [offer]. When we began several years ago, we saw the large event ordinance. We talked to the manager [supervisor] at the time and said, "We have more people that come to Christmas Mass than this ordinance allows." When the former fire chief had his funeral at St. Joe's, he wasn't a parishioner, but we were the only venue that could host it. We did it with no charge. That was larger than the event ordinance allows. The question is, do we operate a little differently when the occupancy of our grounds is about double what the event [ordinance] allows? That's just the legal occupancy of the building. We're not having a



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10,000-person race that goes on the roads. When we talked with the manager [former supervisor], that was his understanding of what this ordinance was aimed at. It even asked for things like, "Where is the course?" There is no course. That's why he said, "Okay, we'll just have this as an approval item." Our expectation was that we would continue this way. I'm uncomfortable with the large event ordinance because where does that end? We normally have more than 250 people on Easter, the Fourth of July, and whoever comes to mass. We're going through this process, trying to answer the questions in good faith, but it's a tough ordinance for the church.

**Cram:** this is part of the reason we need to look at the large event ordinance. St. Joseph Catholic Church has a special use permit, so does it make more sense to allow these types of things as part of their special use? The regular services are considered part of the special use permit. We didn't consider the other events that are not religiously oriented. Our large event ordinance specifically says if you're having an event, on either private property or public property, with 250 people or more, you go through this process.

**Chown:** can churches be exempt if the church facility has the capacity?

**Cram:** we could look at that. The ordinance specifically exempts schools. We did talk to our legal counsel. That's why we're treating them the way we would treat anybody else who wants to have an event with 250 people or more on their property.

**Kuschel:** the distinction that was made is religious versus non-religious. I think there's a material difference between a parish festival and Easter Mass.

**Achorn:** is there any guidance you can give us?

**Kuschel:** I would not be concerned about the large event ordinance when you have Christmas and Easter and more than 250 people coming to church because that's what a church does. That is its land use. The question on the parish festival and how that relates to the rest of the parish grounds is not as clear as the very explicit religious exercise. That's why, when we look at the the festival, we take a different approach. We're going to continue to look at those land use questions to get a broad picture and then drill down into a specific understanding to get some guidance for you to move forward.

**Achorn:** how will that help us tonight?

**Kuschel:** the application is before the board. The material question is the fee waiver request, with no policy or guidelines to help you decide that. Whether the fee is waived or not waived, the next question is whether or not to grant this specific event.

**Cram:** start with the latter: does the board approve this event as presented? And then are you comfortable waiving the fee or do you want to table that to another meeting?

**Sanger:** we've assumed that the large event ordinance is applicable here. This is not really open to the public in the sense that it's not trying to draw in everybody on the peninsula. It's not like a football game. This is no different than other non-profit events that have gone on in our township that we didn't even talk about.

**Shanafelt:** like what?

**Sanger:** First Congregational Church has had events for their own group –

**Shanafelt:** that's different; this is open to the public.

**Sanger:** so was the event at the other church. We are partially penalizing this group by coming forward and asking a question about which I don't know the answer tonight.

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**Cram:** the ordinance reads, "Event shall mean any organized and open to the general public event where 250 people or more will be in attendance at one time and held on either public or private real property or on the roads within the township, and may be held at one or more sites provided however, an event shall not include an activity of any size that is sponsored by an elementary or secondary school recognized as such by the state of Michigan." I thought it was clear that this did apply. It has been brought before the board two years previously for consideration on the consent agenda.

**Shanafelt:** I don't have a problem approving the event. My issue is hearing about a potential fee waiver for the first time. I propose we need to table the fee waiver.

**Cram:** I can work with legal counsel and look at past minutes.

**Rudolph:** need to look at whether churches should be exempt as well as schools.

**Cram:** you can't just do churches. I discussed this with legal counsel prior to moving forward with this application. In order to not face future litigation, we need to treat the churches the same as all other private organizations.

**Wunsch:** looks like we have agreement on the event and just need more time to consult on the fee waiver.

**Cram:** that allows them to move forward with planning.

**Wunsch:** the problem with the large event ordinance is it appears it was designed for events like this. Those types of events were undersubscribed, so it was tweaked to cover the large public races, and our fee schedule anticipates the larger public races. This year we may be in a bind, where the applicant would have to pay the \$1,000 fee. We could do some policy work during the off season, and the planning commission could recommend that we look at a two-tiered system for approval of large events. One would be largely self-contained on private property, and a second would be public. Then we could more reasonably split up the fee schedule. The problem is that we've approved the fee schedule. We don't have certainty that the existing ordinance will be amended.

**Sanger:** we've approved a special use permit for a building that seats 300. The parking has capacity to meet the needs of this particular building and its uses. We are trying to put an event under the umbrella of the special event ordinance, which really was more aimed at large events like the Bayshore [Marathon] that don't have a physical property. We probably shouldn't be applying the large event ordinance to an SUP that allows for a funeral of 500 people and anything else that might go on in that facility.

**Wunsch:** the guidance [Cram] received is that we should apply the large event ordinance because there are enough differences between this event and normal religious activity.

**Cram:** or we should be considering these in the special use permit to note that in addition to the use of the property for religious activities, they may also have up to three events, for example, per year, as part of their special use permit. That is how I've handled these types of situations in the past. Or I like the tiered approach for the different types of events. There are many things we can consider moving forward.

**Wunsch:** it sounds like we don't need formal approval at this evening's meeting. You both are going to keep working on planning the event and putting together the permit application, and then we're going to get with legal on what we can do about a fee waiver.

**Rexroat:** would the event be cancelable? The fee is a different issue. We're not promoting

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this right now because we don't know if we can have it.

**Wunsch:** does anyone have objections to the event as presented?

**No objections**

**Kuschel:** you can approve the application on the condition of submission of an application fee as determined by the township, and it sounds like the insurance certificate is still outstanding.

**Cram:** the board has the authority to set the permit fees. It could be a decision of the board after we talk to legal counsel that we could look at again if needed.

**Sanger:** I suggest that the legal review include a review of the applicability of that large event ordinance to an SUP.

**Cram:** I already had that discussion with legal counsel. That's why this is before you.

**Sanger:** where do we draw the line between a church event, be it any denomination, that is going to bring in more than 250 people, and a large funeral or wedding?

**Shanafelt:** what differentiates this is the activities. They are different than any of those ceremonies you identified.

**Sanger:** if it's only going to attract members and immediate family members, how is that different than the use of the soccer field on Sunday morning by more than 250 people?

**Wunsch:** Jenn has talked about these issues with legal counsel. It's why she thought it advisable to bring this project through the large event process.

**Shanafelt:** I would vote to approve the pending application.

**Sanger:** I'm afraid that puts the applicant out on a limb.

**Rexroat:** we will have the event either way.

**Shanafelt moved to approve the large event with a pending review of the fee waiver with a second by Rudolph.**

**Motion passed by consensus, Sanger abstained**

7. Resolution to suspend end enforcement of sign ordinance for u-pick operations for the remainder of the 2023 growing season (Cram)

**Shanafelt moved to recuse Wunsch from the board with a second by Chown. Motion passed by consensus.**

**Cram:** as discussed at our July meeting, I requested the board's permission to suspend the enforcement of temporary signage for u-pick operations and off-premise signage for u-pick and farm stands to give us the opportunity to see how creative our farmers get and to see about making changes to our sign ordinance to support farmers with regard to seasonal operations. The board was comfortable doing that. This is the resolution to formalize that recommendation.

**Chown:** I'm happy to see vintage trucks and tractors are included.

**Cram:** I have received a couple of emails from farmers who are appreciative of allowing this flexibility. I'll be working through this topic winter to bring some amendments to the sign ordinance prior to next season.

**Sanger moved to approve the resolution with a second by Rudolph.**

**Roll call vote:** yes – Shanafelt, Chown, Achorn, Sanger

**Passed unan**

**Shanafelt moved to bring Wunsch back to the board with a second by Sanger. Motion passed by consensus**

8. Litigation update (Chris Patterson from Fahey Schultz Burzych Rhodes) [Litigation

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update provided by Matt Kuschel instead of Patterson]

**Kuschel:** regarding the SUP lawsuit that is in discovery now, the insurance company Tokio Marine was contacted to provide insurance defense. The written discovery is ongoing. Depositions will likely start to be scheduled in the second half of September and October. Family Orchards litigation: motions have been filed and are pending before the court. Wineries case: depositions are closed. We are finished with the additional discovery. There is a pending motion regarding the insurance policy. The insurance defense is taking the lead on that.

There is a settlement conference scheduled for the end of the month. Insurance counsel will again coordinate with the township and our office in terms of staffing and updates. There is some tax tribunal litigation going on regarding personal property tax exemptions. The initial paperwork has been filed and is moving forward.

**9. Citizen Comments**

**John Kendra, 17630 Smokey Hollow:** with regard to the boat launch, you said the Michigan DNR gave the township [almost] \$600,000 to do some design work and then after that go out for some bids for building?

**Wunsch:** the [almost] \$600,000 covers approximately 50 percent of the design and build costs of the entire project. We are looking to find a \$600,000 match to the grant.

**Kendro:** you expect the budget to be 1.2 [million]? You said you are going to go ahead and get the design work, then go out with an RFQ for the quote, then construction. So we'll probably see this constructed in 2025?

**Chown:** if we can find the match, in 2024.

**Kendra:** it won't come from township revenue funds from taxpayers?

**Chown:** we don't have that kind of money in our revenue fund.

**Kendra:** have you actually received the [nearly] \$600,000?

**Wunsch:** no, it's a match. We need to [come up with] the other 50 percent.

**Kendra:** with regard to the church, with all the litigation going on, it's very simple. You have to charge them. No waivers until you change the ordinance.

**Maura Sanders, 20202 Center Road:** I want to give a shout out to the parks committee on an outstanding job. It's been a couple of years since I was on the park commission; I miss it dearly. Everything that's been going on up and down the peninsula is outstanding. I am sad to see Warren go, but you will receive my resume to fill the town board position, and I hope you take a good look at it.

**Louis Santucci, 12602 Center Road:** as you struggle through this church thing, I don't understand why you couldn't do a moratorium on enforcement like you did with the sign ordinance. You put a moratorium on the winery situation two times last year. There aren't any more events that I know of for the rest of the year. If you put a moratorium on enforcement of the ordinance with regard to large events, then you don't have to deal with a constitutional issue, favoring a religious order over something else. I live across the street from the church, and I attend a lot of their events. From a noise point of view, I never hear anything over there. That's a lot of people. Good food too.

**Molly Stretten, 2822 Devils Dive Road:** circling back to the conversation about waiving fees or charging non-profits fees, since 2001, I have either worked for, volunteered for, or

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served as a board member for various non-profit organizations. I have an affinity for them, many of which provide valuable services. I'm not a churchgoer. I don't have any skin in the game with what's happening, although they have an amazing Mexican food vendor there that I love so I will be going. I would encourage some sort of carve out for non-profit organizations. I don't think we should be charging them for large-scale events. I have in the past rounded up veterinarians with the city of Burbank to hold large-scale pet vaccination clinics. These were not large moneymakers. They were in compliance with public health ordinances, and we helped folks get in compliance with licensing. I think you would have community support if we took a look at that zoning ordinance where non-profits were concerned and considered not charging large fees. Thank you.

**Steve Kroupa, 12724 Center Road:** the church is a fantastic neighbor. I live straight across the road from them. I look out the window and see their beautiful lights at night on the stained glass. My other issue is not very pleasant. I have talked to the police several times. I've tailed these people right down to where they live. They seem to like drag racing their motorcycles. I'm getting tired of it. They've got three or four crotch rockets, and they go 80 to 90 miles an hour past my house. I talked to the cop several times and heard, "We have to catch them in the act." I wanted to see if there's anything you guys can do. They drive like fools. There's no excuse for that. One weekend, we had a crew of Corvettes go by at about 90 miles an hour. I don't know what their problem is. I guess they just like to hot rod and show off their fancy cars. This isn't the Indy 500. This issue of motorcycles is getting old; it's been going on for two years. Thank you.

**Nancy R. Heller, 3091 Blue Water Road:** this board needs to review the community police officer scheduling. We don't have enough night or weekend coverage. We've got two officers. When it was put up for approval on the ballot, my interpretation was that we would get better coverage. I think we have two great officers; I have nothing negative to say about that. I don't know who does the scheduling, but I suggest this whole board look at the scheduling. They are sometimes double scheduled. I don't know why. We're paying a lot of money. Fair money; they're worth it. But we're not getting the coverage. I keep hearing, I've seen no statistics, that Peninsula Township is a low crime area. We don't get any coverage from the county. We pay for coverage. I know everybody is spread thin. But it would be good to possibly research some of this.

#### 10. Board Comments

**Chown:** about the occasional double booking of our two CPOs [community police officers]: when they are double booked, one will park somewhere and then people will pass that officer and think they're home free and step on the gas. The other officer's waiting a mile or two up ahead. They've been very effective at surprising some fast drivers. I do think an occasional usage of double booking is a good idea.

**Sanger:** I read in a legislative update today there is a deadline on the designation of ARPA funds. I understand we have till December 31 to benefit from a 1 percent additional transfer of funds to the township if we show we have designated those ARPA funds by the end of this year.

**Chown:** there's a group of us working to determine how to best leverage those remaining ARPA dollars for park infrastructure needs. We are looking at some significant grant

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deadlines. We don't have all the information we need to proceed regarding which grants to apply for, but I'm thinking specifically Trust Fund grants. If we're going to do that, we wouldn't make this deadline.

**Sanger:** it seemed it was an enticement to allocate the funds. I'll send it to you.

**Rudolph:** with the boat ramp, does it help with going out for grant applications if you have monetary pledges of support from individuals in the community?

**Chown:** yes. We need people to pledge money for this boat launch. [To the community] Let us know if you can make a contribution.

**Wunsch:** the boat launch fits within the DNR's framework as a community boat launch. In the scope of our parks budget, we will be fully leveraging years' worth of current park funding to do the [nearly] \$600,000 match. We're essentially relying on charitable contributions, or other grant dollars, to make up the other half of that match. We've had a number of conversations about significant philanthropic gifts. That's basically what we're looking for in order to make the boat launch happen.

#### **11. Adjournment**

**Chown moved to adjourn with a second by Sanger.**

**Motion approved by consensus.**

**Adjourned at 9:10 p.m.**

# **Exhibit 8**



# Opinion: OMP Group Seeks to Resolve Winery Lawsuit, Bring Harmony to Community

By **David Taft** - July 24, 2023



Feel free to share this post...

(. *David Taft is part of a group of Old Mission Peninsula residents working to bring the various parties together to find a resolution to the ongoing [winery lawsuit](#). Read his note below, addressed to the [Peninsula Township Board](#), [Protect the Peninsula](#), and the [Wineries of Old Mission Peninsula \(WOMP\)](#). -jb*

We the People – a citizens’ group of many OMP residents — not representing the parties to the ongoing federal litigation, Peninsula Township, Protect the Peninsula or Wineries of Old Mission Peninsula — are trying to bring the parties together to reach some form of compromise to “the lawsuit.”

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We have made contact with the parties involved and have received disturbing answers. For example, the Township cannot respond, as it would potentially lead to an inadvertent violation of the confidentiality requirement of the earlier mediation between WOMP/Wineries and the Township.

The WOMP leadership indicated little interest, instead awaiting the outcome of the court trial. Yet, the U.S. District Court has issued a second Amended Case Management Order noting an Early Settlement Conference in late August 2023, and a second Settlement Conference in March 2024.

We the People, many residents of this township, are exasperated with the excessive legal costs of this lawsuit, money that could be better spent on Parks and Recreation, a third boat launch, more police coverage, and other causes that benefit the future of OMP.

The wineries, in receiving Special Use Permits over the years from this Township, have established successful commercial wineries, including tasting and retail facilities on agriculturally-zoned land. The wineries want to expand their operation, which has led to the lawsuit.

This lawsuit could potentially force our community into bankruptcy and create a high level of animosity toward the Township and toward WOMP and the wineries.

After our contacts with the Township and WOMP, we feel extreme frustration, as we do not see any willingness for discussion and compromise among the parties involved in this lawsuit, thereby pushing any settlement aside and leading to a Court resolution sometime in the future — already delayed twice.

We want the parties to come together and consider compromise on this lawsuit. We are available to act as facilitators to bring the parties together for discussion.

We have some innovative and fresh ideas on many areas of interest to all involved parties, including...

- Hours of operation
- Amplified music
- Food service
- Expanded events

Also, we have many ideas to help the wineries in other areas of this dispute. If we can catalyze a start towards compromise, we will also commit, as residents working with the Township, to help resolve these issues with amendments to the 201 Zoning Ordinance Amendment — once compromise is reached.

We reach out to you to try and bring the Trustees of Peninsula Township and the WOMP/Wineries together for serious discussions on compromise and ultimate resolution of this lawsuit.

How can we help make this happen?

We need to bring peace and harmony back to this community.

We ask for your responses to this request by August 2, 2023.

– David D. Taft



**David Taft**

<https://www.oldmission.net>

*Brys Estate Vineyard and Winery | Jane Boursaw Photo*

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