

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WINERIES OF THE OLD MISSION
PENINSULA ASSOC. (WOMP), a Michigan
nonprofit corporation; BOWERS HARBOR
VINEYARD & WINERY, INC, a Michigan
corporation; BRYS WINERY, LC, a Michigan
corporation; CHATEAU GRAND TRAVERSE,
LTD, a Michigan corporation; CHATEAU
OPERATIONS, LTD, a Michigan corporation;
GRAPE HARBOR, INC, a Michigan corporation;
MONTAGUE DEVELOPMENT, LLC, a
Michigan limited liability company; OV THE
FARM, LLC, a Michigan limited liability
company; TABONE VINEYARDS, LLC, a
Michigan limited liability company; TWO LADS,
LLC, a Michigan limited liability company;
VILLA MARI, LLC, a Michigan limited liability
company; WINERY AT BLACK STAR FARMS,
LLC, a Michigan limited liability company;

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal
corporation,

Defendant,

and

PROTECT THE PENINSULA, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-01008

HON. PAUL L. MALONEY
MAG. JUDGE RAY S. KENT

**PROTECT THE PENINSULA'S
MOTION TO EXCEED
WORD COUNT AND PAGE LIMIT
FOR MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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Pursuant to Western District of Michigan Local Civil Rule 7.1(c), Intervenor Protect the Peninsula, Inc. (PTP) respectfully requests permission to exceed the word count set by Local Civil Rule 7.2(b)(i) and the number of pages of supporting documents set by Local Civil Rule 7.1(b) for its proposed *Motion for Partial Summary Judgment and Brief in Support (Exhibits A and B)*.

The Court understands the complexities of this case. Eleven unique Plaintiff-Wineries bring 10 claims; several claims advance multiple legal theories in support of each. Plaintiffs are unified in opposition to challenged zoning, but they lack uniformity when it comes to their facts, harms, and claims. Each Plaintiff is in a different factual and legal posture depending on when it was established, where it is located, what zoning approvals it received, and how it conducted business over the last two (or more) decades. No two Plaintiffs are alike. Their differences bear factually and legally on their respective claims and PTP defenses. PTP seeks summary judgment addressing all Plaintiffs’ claims asserting violations of their First Amendment rights and asserting a regulatory taking. Plaintiffs’ religion, association, and taking claims are mostly uniform but not identical, irrespective of their land use permissions. Their speech claims are tailored to specific land uses, and even to specific Plaintiffs, as are PTP defenses. PTP also seeks summary judgment on two affirmative defenses – standing and statute of limitations. Again, there are differences among the Plaintiffs that impact how these defenses apply.

The Court also understands the unusual posture of this case. Fact discovery involving PTP closed July 21. (ECF 343, PageID.12546) This is PTP’s first opportunity to present the issues in its proposed Motion for Partial Summary Judgment and Brief in Support.

To conserve judicial and party resources and avoid unnecessary additional complexity from multiple Plaintiff- or issue-specific motions, PTP prepared a consolidated omnibus summary judgment motion. This allows PTP to provide facts about each Plaintiff once and address common legal and factual issues once, with limited individualized applications as necessary. PTP believes this is the most efficient way to facilitate resolution of the many distinct but overlapping issues. Multiple briefs would undoubtedly be more complicated and inefficient, necessitating repetition of facts and/or law both in supporting and opposing the motions.

PTP has made every effort to be concise, but the brief in support of its proposed motion has a total of 18,099 words. While this exceeds the 10,800-word count limits set forth in Local Civil Rule 7.2(b)(i) by about 7,300 words, it is far less than two (or more) briefs of 10,800 words each. PTP supporting exhibits and attachments total 507 pages, also in excess of the 200-page limit set forth in Local Civil Rule 7.1(b) but averaging fewer than 50 pages per Plaintiff.

PTP requests the Court grant this motion to exceed the word count and page limit. PTP's proposed omnibus motion avoids repetition and a "morass of briefing" that would waste judicial resources and burden all parties. *See Vera v. Rodriguez*, 2017 U.S. Dist. LEXIS 214476 * 5 (D.N.M. Dec. 27, 2017) (Order Denying Plaintiff's Motion to Prohibit Piecemeal Motion Practice) (defendants "should have sought leave . . . to file an omnibus motion and to exceed the normal page limitations rather than split [their] motions into [a] morass of briefing").

Pursuant to Local Civil Rule 5.7(f), PTP's Motion for Partial Summary Judgment and Brief in Support is attached herein as **Exhibits A and B** as a proposed filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews/Holly Hillyer, hereby certify that on the 6th day of October, 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
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**INTERVENER PROTECT THE
PENINSULA'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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**INTERVENER PROTECT THE PENINSULA'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

**INTERVENER PROTECT THE PENINSULA'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Intervening Defendant Protect the Peninsula, Inc. (PTP), by undersigned counsel, pursuant to Fed. R. Civ. P. 56, respectfully moves this Court for summary judgment in its favor against Plaintiffs Bower Harbor Vineyards & Winery, Inc. (Bowers); Brys Winery, L.C. (Brys), Chateau Grand Traverse, Ltd. (Chateau Grand Traverse), Chateau Operations, Ltd (Chateau Chantal), Grape Harbor, Inc. (Peninsula Cellars), Montague Development, LLC (Hawthorne), OV the Farm, LLC (Bonobo), Tabone Vineyard, LLC (Tabone), Two Lads, LLC (Two Lads), Villa Mari, LLC (Villa Mari), and Winery at Black Star Farms, LLC (Black Star).

PTP moves under Rule 56 for summary judgment in its favor on the following claims and asks that the Court grant all just and proper relief:

- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, and Tabone for lack of standing;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by non-Chateaus Black Star, Two Lads, Tabone, and Peninsula Cellars relating to 8.7.3(10) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Bonobo, Bowers, Brys, Grand Traverse, and Hawthorne relating to 8.7.3(10)(u) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, Brys, Chateau Chantal, Grand Traverse, Mari, Peninsula Cellars, Tabone, Two Lads as barred by the statute of limitations;

- All Plaintiffs' First Amendment claims (Counts I, II, and III) relating to 6.7.2(19) or any subpart thereof; 8.7.3(10) or any subpart thereof; and 8.7.3(12)(g) and (i) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact; and
- All Plaintiffs' Taking Claims (Count VII) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact.

PTP relies on the attached Brief in Support and Exhibits to support its requested relief.

Respectfully submitted,

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I, Tracy Jane Andrews, hereby certify that on the 6th day of October, 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: _____

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**INTERVENER PROTECT THE PENINSULA'S
BRIEF IN SUPPORT OF MOTION
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5	Event Invoice (Redacted)	CGT
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7	Dec. 16, 2015, correspondence	BHV
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**INTERVENOR PROTECT THE PENINSULA'S BRIEF IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

Intervenor Protect the Peninsula (PTP) respectfully asks the Court to grant summary judgment in its favor and dismiss Plaintiffs' claims as follows:

- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, and Tabone for lack of standing;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by non-Chateaus Black Star, Two Lads, Tabone, and Peninsula Cellars relating to 8.7.3(10) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Bonobo, Bowers, Brys, Grand Traverse, and Hawthorne relating to 8.7.3(10)(u) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, Brys, Chateau Chantal, Grand Traverse, Mari, Peninsula Cellars, Tabone, Two Lads as barred by the statute of limitations;
- All Plaintiffs' First Amendment claims (Counts I, II, and III) relating to 6.7.2(19) or any subpart thereof; 8.7.3(10) or any subpart thereof; and 8.7.3(12)(g) and (i) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact¹; and

¹ PTP does not move for summary judgment on the merits of Peninsula Cellars' First Amendment claims relating to 8.7.3(12)(k) but does move for summary judgment dismissing all Peninsula Cellars' claims as time-barred. PTP waives no defenses with respect to 8.7.3(12)(k).

- All Plaintiffs’ Taking Claims (Count VII) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact.

II. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, interrogatories, admissions, and affidavits show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Tucker v. Tennessee*, 539 F.3d 526, 531 (6th Cir. 2008). The burden is on the moving party to show no genuine issue of material fact, including an absence of evidence supporting the opponent’s case. *Bennett v. City of Eastpointe*, 410 F.3d 810, 817 (6th Cir. 2005) (citation omitted). Facts and factual inferences are viewed in the light most favorable to the non-moving party. *Id.* (citation omitted).

Once the moving party carries its burden, the non-moving party must set forth specific facts supported by record evidence showing a genuine issue for trial. Fed. R. Civ. P. 56(e). The non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Tucker*, 539 F.3d at 531 (internal quotation omitted). “The mere existence of a scintilla of evidence” in support of the non-movant’s position is insufficient. *Id.* (internal quotation omitted). When opposing parties tell two different stories, and one is blatantly contradicted by the record, the court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248 (1986) (emphasis in original).

Summary judgment is appropriate because Plaintiffs failed in discovery to support essential elements of their First Amendment and takings claims, three Plaintiffs lack standing entirely and several lack standing for certain claims, and most Plaintiffs' claims are time-barred. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Holis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 543 (6th Cir. 2014).

III. FACTS

No two Plaintiffs are alike. Their authorized land uses depend on zoning at the time they established their winery operations, which winery land use they pursued, their location relative to neighbors, and how they operated their businesses. Additional distinctions include permit amendments, variances, conservation easements, and even a catastrophic fire. It is impossible to address their sweeping claims without first unpacking these briefly.

A. Peninsula zoning of winery land uses is ever evolving.

Since its 1972 adoption, the Peninsula Township Zoning Ordinance² (PTZO) became progressively more permissive towards non-agricultural commercial accessory uses co-located with primary farming and winemaking uses in the agricultural A-1 District.

i. A-1 authorizes **winery** uses with additional **accessory** and **support** uses.

Landowners with five acres may make and distribute wine from grapes grown anywhere with a special use permit (SUP) for a Food Processing Plant. PTZO 8.5.

² A version of the PTZO, excluding post-2009 amendments, is at ECF 1-1. That version plus post-2009 amendments are available online. <https://www.peninsulatownship.com/ordinance.html>

In 1989, the Township added the Winery-Chateau, a special use allowing a winery, guest rooms, and single-family residences on a 50-acre site with 75% in active wine crop production. PTZO 3.2, 8.7.3(10), 8.7.3(10)(h). The *winery* – a facility for “agricultural fruit production,” including wine processing, storage, packaging, and sale – is the principal use. PTZO 3.2. It may have a *tasting room*, a place for wine tasting and sales by the bottle or glass. *Id.* Beyond these definitions, there are virtually no zoning limits on Winery-Chateau tasting rooms. Accessory uses must be “customary and incidental” to a principal use and “no greater in extent than those reasonably necessary to serve the principal use.” PTZO 8.7.3(10)(d)(1). Accessory uses like “facilities, meeting rooms, and food and beverage services” are *only* for registered (overnight) guests. PTZO 8.7.3(10)(m); ECF 32-11, PageID.1839-1840.

In 1998, the Township added the Remote Winery Tasting Room special use “to allow wine tasting in a tasting room that is not on the same property as the winery with which is associated.” PTZO 8.7.3(12)(a).

In 1999, the Township enacted the Small Winery special use, with lower acreage and no grape source limits, but voters rejected it.

In 2002, the Township added the Farm Processing Facility as the first winery by-right use. PTZO 6.7.2(19). It allows a winery on 40 acres with “a retail sales area for direct sales to customers and a tasting room for the tasting of fresh or processed agricultural produce including wine.” PTZO 3.2. There are virtually no zoning limits on Farm Processing Facility tasting rooms.

In 2004, following litigation with Chateau Chantal over limits on food service and similar accessory uses for Winery-Chateaus, the Township amended the Winery-Chateau site development requirements to allow approval for Guest Activity Uses (GAUs) as support uses. PTZO 8.7.3(10)(u). GAUs allow food service beyond what Winery-Chateaus may otherwise offer tasting

room visitors and overnight guests and include “[w]ine and food seminars and cooking classes,” meetings of local 501(c)(3) nonprofits, and “[m]eetings of Agricultural Related Groups that have a direct relationship to agricultural production.” PTZO 8.7.3(10)(u)(2)(a)-(c). GAUs are not tastings or free promotional events in the tasting room like political rallies, winery tours, and free entertainment, which are otherwise allowed. PTZO 8.7.3(10)(u)(1)(d). GAUs are not weddings, receptions, or reunions (generally disallowed for hire but allowed under certain circumstances); or sale of wine by the glass (allowed in tasting rooms). PTZO 8.7.3(10)(u)(2)(d). To minimize impacts, GAUs must end by 9:30 p.m.; may not have outdoor food, beverages, temporary structures, or displays; may not have amplified instrumental music or generate sound “discernable at the property lines”; may have only minimal lighting; and the Board may limit their frequency and number. PTZO 8.7.3(10)(u)(5).

ii. *Landowners must obtain a **land** or **special use permit** for a new use.*

Any special use permit (SUP) requires Board approval in accordance with PTZO procedures, requirements, and standards. MCL 125.3502; PTZO 8.1.2. Those include general standards at 8.1.3(1), specific standards at 8.1.3(3), and applicable site development requirements like those for Winery-Chateaus at 8.7.3(10) and Remote Winery Tasting Rooms at 8.7.3(12). The procedures require an application and site plan, public notice, and two public hearings – first before the Planning Commission then the Board, which makes findings and may approve an application with or without conditions or deny it. PTZO 8.1.2. Board decisions may be appealed to state court.

If GAUs are approved in a Winery-Chateau SUP, no additional approvals are needed except for meetings of agricultural groups under 8.7.3(10)(u)(2)(c). The PTZO provides examples guiding

whether a proposed meeting has a direct relationship to agricultural production, and Zoning Administrator determinations may be appealed to the Board. PTZO 8.7.3(10)(u)(2)(c)(ii), (iv).

By-right approval is simpler. For a Farm Processing Facility, a site plan is submitted to the Zoning Administrator, who issues a preliminary permit allowing construction to begin if the plan meets minimum parcel, building size, acreage, setback, and parking requirements. PTZO 6.7.2(19)(b)(14). Once all other required federal, state, and local licenses and permits have been issued, the Zoning Administrator inspects the site to confirm compliance with PTZO requirements and issues a final permit allowing processing and sales to commence.

B. Each of the 11 Wineries took a different approach.

- i. Chateau Grand Traverse is a unique Winery-Chateau with allowed outdoor functions and special retail sales; it never sought Guest Activity Uses.*

Plaintiff Chateau Grand Traverse Ltd (Grand Traverse) is the oldest winery on Old Mission Peninsula. It has had six SUPs. In 1975, it obtained SUP 2 for a Food Processing Plant and winery. In 1990, within a year of the Township creating the Winery-Chateau special use, Grand Traverse sought and received SUP 24 for one. (ECF 32-8) Its sale of development rights to part of the Winery-Chateau site necessitated changes reflected in SUP 59. It then obtained SUP 64 for additional guest rooms. In 1999, it obtained SUP 66 for a Winery-Chateau and Planned Unit Development, which replaced all previous SUPs. (ECF 308-8) In 2004, soon after the Township amended the PTZO to allow GAUs to be added to a Winery-Chateau's SUP, Grand Traverse obtained SUP 94 approving a building addition but neither requested nor received GAU approval. (Ex 2 dep 18; Ex 3) SUP 94 did not replace SUP 66, which remains its operative SUP. (*Id.* 17-18) Grand Traverse has never appealed any SUP or amendment and ignores them here.

Grand Traverse holds a Wine Maker license and On-Premises Tasting Room permit from the Michigan Liquor Control Commission (Commission). (ECF 356-1, PageID.12989) It offers overnight lodging and has a commercial kitchen it uses to prepare breakfast and occasional special dinners for overnight guests. (Ex 2 dep 28-30) It has a tasting room and patio where anyone may enjoy wine tasting, nonalcoholic beverages, and small plates like charcuterie boards. Its tasting room is open until 7:00 p.m. in summer and closes earlier other times of year. Before the COVID-19 pandemic, it offered free winery tours to the public; now it offers paid private tours. (Ex 2 dep 30-31) Overnight guests may use its facilities for private events like small weddings and family reunions. (Ex 2 dep 31-32)

SUP 66 authorizes Grand Traverse to hold outdoor functions like wine tasting parties and festivals with up to 75 anticipated attendees; it may have larger functions and temporary structures with a special permit to account for concerns like sanitation and security. (ECF 308-8, PageID.11326-11327; Ex 2 dep 21-25) Outdoor functions can go as late as 10:30 p.m. in summer. (*Id.*) No amplified music is allowed outside except “low level mood music” that cannot be heard beyond the property lines. (*Id.*) Pre-pandemic, Grand Traverse had larger functions, including “Wine Down Wednesdays” with outdoor live music and food, and provided facility rentals and food service for private corporate events. (Ex 2 dep 22-25; Exs 4, 5)

ii. *Chateau Chantal has a Winery-Chateau SUP, hosts weddings, has regular live music outdoors, and has hosted hundreds of Guest Activity Uses.*

Plaintiff Chateau Chantal, through its founder Robert Begin, brought the idea of a European-style winery estate with bed-and-breakfast accommodations to the Township in the late 1980s and implored the Township to amend the PTZO to make it possible. (Ex 10 dep 47-48; Ex

11) In 1989, the Township enacted the Winery-Chateau special use. In 1990, Chateau Chantal received the first Winery-Chateau SUP. (ECF 32-11, PageID.1856-1862)

In 1998, Chateau Chantal sued the Township over zoning provisions limiting food and beverage service to registered guests only.³ The parties resolved the litigation by, among other things, agreeing that “registered guests” means overnight guests; and that the Township Board would establish guidelines for approving food and beverage service for non-registered guests at Chateau Chantal, then amend the PTZO based on those guidelines. (ECF 32-11). In 1999, the Board enacted the guidelines, creating for Chateau Chantal limited exceptions to the prohibition on food and beverage service for non-registered guests. (Ex 12)

In 2004, the Township enacted Amendment 141 giving Winery-Chateaus uniform access to exceptions to the zoning prohibition on food service and similar accessory uses for non-registered guests through GAU approval. That same year, Chateau Chantal requested and received GAU approval in SUP 95, which remains its operative SUP. (ECF 32-11). In 2010, Chateau Chantal received SUP 114, supplementing SUP 95 with approval to expand its wine processing area and tasting room. (ECF 457-14). In 2014, the Township approved an amendment to SUP 114 allowing solar panels and other site plan changes. (ECF 457-15; Ex 10 dep 22) Chateau Chantal has never appealed any SUP or amendment and ignores them in this case.

Chateau Chantal has a Small Wine Maker license and On-Premises Tasting Room Permit. (ECF 334-4) Wine consumption is permitted in its tasting room, dining room, and on its west patio. (Ex 10 dep 19-20) It offers overnight lodging and has a commercial kitchen it uses to prepare breakfast for overnight guests and food for GAUs and other events. (Ex 10 dep 14)

³ At the time, state law prohibited sale of wine by the glass.

Chateau Chantal has hosted hundreds of GAUs, mostly wine and food pairing dinners, some cooking classes, and occasional nonprofit meetings. (see *e.g.*, **Ex 10** dep 28; **Exs 13-15**) It hosts weddings and other private events for registered guests; it accommodates requests for private events by non-registered guests, including proposals and rehearsal dinners, by hosting private GAUs. (see, *e.g.*, **Ex 14**) It has regular live music, including “Jazz at Sunset” for 30 years running. (**Ex 10** dep 31-32; **Ex 16**) It also hosts promotional events like its Ice Wine Festival. (**Ex 10** dep 29-30) Chateau Chantal sees 2,000-15,000 visitors per month depending on the season. (**Ex 10** dep 33-34) It is generally open from 11:00 a.m. to 6:00 on weekdays but stays open until 8:00 p.m. on weekends and 9:30 p.m. for Jazz at Sunset and other events. (**Ex 16**) Chateau Chantal markets itself through its website, social media, print advertising, and word of mouth. (**Ex 10** dep 33) In addition to wine, it sells shirts, hats, glassware, wine accessories, and art. (**Ex 10** dep 36-37)

iii. Bowers Harbor was a one-of-a-kind winery until mid-2019, when it became a Winery-Chateau with a path towards Guest Activity Uses, still unused.

Bowers Harbor Vineyard & Winery, Inc. (Bowers) leases around 47 acres. Bowers started winery-type operations⁴ by converting an old horse farm to vineyards and a farm stand into a tasting room and shop for jams, jellies, and wine. In 1992, the Township approved SUP 32 authorizing Bowers to operate as a “Food Processing Plant/Winery,” with limited, seasonal indoor retail sales (ECF 32-7, PageID.1780-81) In 2010, the Township amended SUP 32 to become a “Special Open Space Use” that authorized Bowers to host up to 20 events per year outdoors for up to 50 guests after normal business hours, with prior notice and no amplification. (ECF 308-11,

⁴ Wine processing is offsite. (**Ex 6** dep 11-12)

PageID.11346) Under Amended SUP 32, Bowers partnered with a restaurant for “Dining in the Vines” and offered its facilities for private events. (Ex 6 dep 41-44, 59-60, 91)

In July 2019, the Township approved Bowers as a Winery-Chateau under SUP 132. ECF 32-7, PageID.1773) To qualify, Bowers was granted a variance from the 50-acre minimum requirement. (Ex 8) Until SUP 132, Bowers was “one of a kind,” a “non-conforming commercial roadside stand.” (Ex 6 dep 66; Ex 7) SUP 132 resolved “long-standing issues associated with [Bowers] that predate the establishment of local wineries and winery regulations in the zoning ordinance itself.” (ECF 32-7, PageID.1796) SUP 132 required grape and fruit tree planning and Immediate and Near-Term Action Items; it authorized Bowers to continue SUP 32 activities (*e.g.*, Dining in the Vines) until Immediate Action Items were completed, “at which time [Bowers] may conduct [GAUs] and SUP #32 is rescinded.” (ECF 32-7, PageID.1797) Bowers did not appeal SUP 32, its amendment, nor SUP 132, nor raise any challenge to it in this case.

Bowers does not know if all Immediate Action Items were completed and produced no evidence SUP 32 was rescinded so it may host GAUs. (Ex 6 dep 76) It is clear Bowers has not hosted GAUs since it got SUP 132, though it equivocated on why not. (*Id.* 77-70, 90-94, 115-116)

In 1992, the Commission issued Bowers its small winemaker license. (Ex 9) It approved liquor sales on 12 (or 20) acres. (*Id.*; Ex 6 dep 83) Bowers closes by 7:00 p.m. It has indoor and outdoor tasting areas. Average weekends in summer bring 750 to 1,100 visitors to its tasting areas. (Ex 6 dep 85-86) Bowers entices winter visitors with snowshoeing treks among Peninsula wineries. (*Id.*) Bowers offers limited food service, merchandise, and vineyard tours. (*Id.* 86-88) Bowers has allowed friends to get married onsite. (*Id.* 95-96)

- iv. *Peninsula Cellars has the unique Remote Winery Tasting Room SUP, with its tasting room on a busy road miles from its farm.*

Plaintiff Grape Harbor, Inc. (Peninsula Cellars) operates a tasting room on a five-acre parcel leased from Kroupa Enterprises, LLC. (Ex 18 dep 8; Ex 19) In the late 1990s, its founders asked the Township to amend zoning so they could renovate the historic one-room schoolhouse on Center Road for their tasting room separate from their “hard to find” farming operation. (Ex 18 dep 9, 17; Ex 20) In 1998, soon after the Township enacted the Remote Winery Tasting Room special use, Peninsula Cellars obtained SUP 62 under it. (ECF 32-9)

SUP 62 requires wine sold in the tasting room to be produced at the Peninsula Cellars winery. (ECF 32-9, PageID.1818) It allows up to 3% of the tasting room to be used for retail space displaying merchandise besides wine. (ECF 32-9, PageID.1819) It allows signage as shown on the Peninsula Cellars site plan. (*Id.*) No parking lot lighting is authorized because “operations are closing at dark.” (ECF 32-9, PageID.1824) Peninsula Cellars did not appeal its SUP conditions nor has it ever sought an SUP amendment, nor does it challenge its SUP in this case.

Peninsula Cellars offers wine and cider tasting, plus root beer on tap. (Ex 18 dep 41) To promote responsible drinking, it limits visitors to two glasses of wine. (Ex 21) It has a small prep kitchen for preparing charcuterie boards and small plates to enhance tasting. (Ex 18 dep 9, 25) It has indoor capacity for 80 people and a patio with seating for 36, plus tables on the lawn. (*Id.* 18-19) It offers guided tours on request. (*Id.* 20) Pre-pandemic, it allowed groups to rent its space for private wine tasting and related activities. (*Id.* 21)

Peninsula Cellars markets itself mainly through its website and social media, with limited print advertising. (*Id.* 22) Its prominent location helps attract visitors. (*Id.*) From July to October, it sees 800-1,200 visitors per day and brings in portable restrooms to supplement its limited indoor

facilities. (*Id.* 23) Its posted hours are 10:00 a.m. to 7:00 p.m. but it will stay open as late as 8:00 p.m. to accommodate customers. (*Id.* 24-25, 34-35) Winter is much quieter. (*Id.* 23)

Peninsula Cellars offers yard games for tasting room visitors and has had occasional live music over the years. (*Id.* at 26, 30) It tried having regular live music in 2021 but stopped after Zoning Administrator Christina Deeren sent a violation notice for having amplified music outdoors. (*Id.* 26; **Exs 22, 23**) Its president, John Kroupa, had an informal conversation about the notice with former supervisor Robert Manigold but did not discuss it with Ms. Deeren or appeal Ms. Deeren's determination. (**Ex 18** dep 29-30) It has retail displays throughout its tasting room, including t-shirts, hats, corkscrews and other wine-related items, food, and wine. (*Id.* 25)

v. Brys is a Winery-Chateau with unexercised authority to host Guest Activity Uses.

Brys Winery, LLC (Brys) is a Winery-Chateau that is part of a 155-acre farm. Brys harvested its first grapes in 2004 and has operated a winery and tasting room since 2005. Brys started as a Farm Processing Facility and converted to a Winery-Chateau in 2011 when the Township approved SUP 115. (ECF 32-5) Even before it converted, Brys understood the zoning limitations on Winery-Chateaus that it now challenges; since at least 2008, it has been advocating for changes. (**Ex 25**; **Ex 24** dep 87-89, 97)

SUP 115 authorized two guestrooms and GAUs after normal operating hours. (ECF 32-5, PageID.1683, 1685) Brys requested amendments to SUP 115 in 2012, 2014 and 2018, and the Township approved them all. (ECF 32-5) These amendments approved additional processing space, outdoor tasting areas, and five additional guestrooms. While the Township recognized the additional outdoor patio space "could increase the potential for noise generated by guests visiting the property," it approved the additions due to Brys' "positive track records," location, and

screening. (ECF 457-16, PageID.16263) Brys never converted the farmhouse into five guest rooms, so it still has just two. Brys did not appeal any Township decision related SUP 115 and does not challenge it in this case.

In April 2005, the Commission issued Brys its small winemaker license. (ECF 334-2) It approved liquor sales throughout Brys' 80-acre farm. Brys offers wine sales in its original tasting room, on its brick patio, and on its elevated deck overlooking vineyards. On a busy day, Brys may receive 40 to 50 busses and seat 500 guests for tastings. (Ex 24 dep 30-31, 40) Brys also offers charcuterie boards assembled in an on-site kitchen and boxed snacks prepared offsite. (*Id.* 35-36) Brys offers no tasting room entertainment. (*Id.* 32-34) It offers "wine wagon tours" for a fee. (*Id.* 93-94) Brys has hosted private family ceremonies onsite. (*Id.* 92-93)

Although SUP 115 authorizes GAUs, Brys has never hosted any. In discovery, Brys identified two instances when it engaged with Township staff about potential GAUs: a fundraiser for Big Brothers Big Sisters in 2019, and a political fundraiser in 2022. (Ex 26) For the Big Brothers Big Sisters event, Township staff notified Brys the proposed event "appears to be allowed under the Guest Activities section of the Winery-Chateau Ordinance section only, and not as a normal Winery-Chateau Tasting Room activity" based on articulated event characteristics (fee, tasting room closed, meeting of non-profit). (*Id.*, p. 8) Brys was asked to submit proof of Old Mission grapes grown or bought to support attendance levels. Following up by email, Brys noted the event had relocated to a local restaurant and inquired about tonnage calculations. (*Id.*, p. 7) Township staff responded with details, citing PTZO sections, noting "there is no cap on the number of events, or the total number of participants – just the maximum total number of people at any one event," and encouraging Brys to provide grape information so it may host GAUs if preferred. (*Id.*, p. 6) Three years later, Brys inquired about hosting a private political fundraiser with a tent

for 100-125 guests. (*Id.*, p. 2) Township staff responded that neither zoning nor Brys' SUP "authorize a tent and a gathering of this size," inviting Brys to identify any authority to the contrary. (*Id.*, p. 1)

vi. *Black Star Farms is a Farm Processing Facility located on preserved farmland, received a variance to use a structure twice the maximum size allowed, and has another location where it hosts all the events it pleases.*

Plaintiff Winery at Black Star Farms, LLC (Black Star) operates two wineries – one in Suttons Bay, Michigan, and one on Old Mission Peninsula. (Ex 27 dep 9) Member Robert Mampe is a Peninsula grape farmer whose trust owns the Black Star winery property and leases Black Star five acres for limited use as an "agricultural production and sales operation." (Ex 29; Ex 27 dep 9, 11, 71) In 2007, the Township issued Mr. Mampe and Black Star a Final Farm Processing Permit for agricultural processing without retail sales and tasting. (Ex 30) The Township also gave Mr. Mampe and Black Star a variance enabling full use of an existing 12,000-square-foot building despite Farm Processing Facilities then being limited to 6,000 square feet. (Ex 27 dep 26) It is unclear if or when the Township authorized retail sales and tasting, but Black Star's tasting room has been open since 2008. (*Id.* 20-22)

In 2011, Black Star sought another variance to expand both its indoor and outdoor space. (*Id.* 35; Ex 31). In January 2012, Black Star withdrew its request to "pursu[e] other options." (Ex 32) In 2015 or 2016, Black Star added 2,000 square feet of covered outdoor fruit receiving space. (Ex 27 dep 40)

In 2018, Mr. Mampe sought a variance for Black Star to expand again. Expansion could not be authorized by variance and required a zoning amendment. (Ex 33) In January 2019, the Township amended the PTZO to increase the maximum above-grade floor area for a Farm

Processing Facility to the lesser of 30,000 square feet or 250 square feet per acre of land owned or leased by the Farm Processing Facility's farm operation. PTZO 6.7.2(19)(b)(6). Black Star has not expanded since then. (**Ex 27** dep 42)

The Black Star property is protected by a conservation easement strictly prohibiting non-agricultural uses and held by the Township, which purchased the development rights from prior owner Underwood Orchards for \$435,000 in 1997. (ECF 457-10) Black Star selected the property because it was outgrowing its Suttons Bay location and had a relationship with Mr. Mampe. (**Ex 27** dep 24) Adding the Old Mission location gave Black Star a presence on both the Leelanau and Old Mission Peninsulas – a “significant [market] advantage” since people generally go to one or the other. (*Id.* 27)

At its Old Mission location, Black Star primarily offers wine tasting and sales. It also offers spirit tasting, cocktails, prepackaged snacks; and sells logo t-shirts, hats, and “wine-related things like corkscrews and glasses.” (*Id.* 60, 67-68; **Ex 34**) It has a small refrigerator but no kitchen. (**Ex 27** dep 60) Its tasting room generally closes by 6:00 p.m.

Black Star has more at its 160-acre Suttons Bay location, including a bed and breakfast, bistro, tours, weddings, corporate events, wine and food seminars, cooking classes, dining series, occasional “non-amplified music,” gazebo rental for private gatherings, horse-drawn carriage rides, and hiking trails. (**Ex 27** dep 47, 50, 53, 55-56, 58-59, 63; **Ex 28** dep 14) It has an “incubator” kitchen where other local businesses have started operations and a commercial kitchen for catering and in-house food service. (**Ex 27** dep 58-59, 61) Its tasting room generally closes by 6:00 p.m. Outdoor events end by 10:30 p.m. to comply with Bingham Township zoning; indoor events generally end by 11:00 p.m. (**Ex 27** dep 61) It sells a wider variety of retail items than on Old Mission, including local art. (*Id.* 68-69)

Black Star promotes both locations through its website, social media, and print advertising. (Ex 28 dep 12) When it receives inquiries about events and other experiences it does not offer at its Old Mission location, it responds by offering opportunities available in Suttons Bay. (*Id.* 8)

vii. Two Lads is a Farm Processor that wanted zoning simplicity more than Guest Activity Uses.

Two Lads, LLC, (Two Lads) is a Farm Processing Facility that leases about 60 acres from BOQ, Inc. It began wine processing in 2007 and retail operations in 2008. (Ex 42) Two Lads chose this use over Winery-Chateau because it is by right with a straightforward application, and GAUs and lodging were not appealing. (Ex 36 dep 46-51) Starting in 2008, Two Lads has participated in numerous unsuccessful efforts to change the zoning limitations it now challenges. (*Id.* 158-163) Concluding zoning would never change without help, Two Lads joined this lawsuit: “it seemed to me that legal help/outside help might be the only way to actually effect lasting change, you know, in a way that would get the township to listen.” (*Id.* 159-160)

In August 2007, the Commission issued Two Lads its small winemaker license. (Ex 37) The Commission approved liquor sales indoors and in two outdoor areas, where Two Lads occasionally deploys a mobile bar. (Ex 38) Two Lads generally restricts visitors from wandering in its “gnarly” vineyards but offers guided facility tours. (Ex 36 dep 37-39) Two Lads prepares the Peninsula’s best charcuterie boards in a small non-commercial kitchen. (*Id.* 32-33) It prefers smaller groups and avoids busses for more direct client engagement and because “busses don’t buy.” (*Id.* 97-99) It offers limited tasting room entertainment and closes by 6:00 p.m.

Two Lads responds to email inquiries for weddings by referring them to Chantal, Grand Traverse, and others and inviting the wedding party for a celebratory toast. (Ex 36 dep 95-96; Ex 39). It participates in Township-wide winery promotional events (*e.g.*, Winter Warm-up, Mac &

Cheese Bake-Off). In 2014, Two Lads cancelled two planned private ticketed events with outside caterers (“bubbly pig,” BBQ) because Township staff concluded they were “social events for hire” – an interpretation with which Two Lads did not necessarily agree but complied anyway. (Ex 36 dep 64-65, 70-73; Ex 40) The only subsequent enforcement involved directional signage. (Ex 36 dep 80-81) In 2022, Two Lads hosted two after-hours private corporate events involving tastings, tours, and offsite caterings. (Ex 41; Ex 36 dep 112-14, 122-24)

viii. Hawthorne received its Winery-Chateau SUP just before filing this lawsuit and has never held Guest Activity Uses despite being authorized to do so.

Plaintiff Montague Development, LLC (Hawthorne) owns the land where the Hawthorne winery sits, while Hawthorne Vineyards, LLC operates its tasting room.⁵ (Ex 43 dep 11) Hawthorne began as a Farm Processing Facility in 2013. (Ex 44). In 2020, it sought a Winery-Chateau SUP to obtain GAU privileges and avoid grape source limits. (Ex. 45; Ex 43 dep 16). The Township approved GAUs in Hawthorne’s SUP but Hawthorne has not yet hosted one. (ECF 32-10, PageID.1836; Ex 43 dep 23) Hawthorne did not appeal its SUP and ignores it in this case.

Hawthorne has a tasting room, patio, and lawn where visitors can enjoy wine. It has a prep area for assembling “nibbles” but no commercial kitchen. (Ex 43 dep 20) Pre-pandemic, it regularly had live music; it now does so infrequently. (*Id.*; Ex 46). It offers vineyard tours, mostly as a perk for wine club members. It sells logo merchandise like t-shirts and corkscrews. It is generally open until 7:00 p.m. in summer and closes earlier in winter.

⁵ Until 2020, Chateau Chantal operated the Hawthorne tasting room and held its Small Wine Maker license and On-Premises Tasting Room permit pursuant to a joint venture agreement. At some point, that license transferred to Hawthorne. (ECF 356-1, PageID.12993; Ex 43 dep 11-12, 47; ECF 334, PageID.12022; ECF 334-6)

ix. Bonobo is a Winery Chateau on preserved farmland without authorization for Guest Activity Uses but hosts commercial events for hire regardless.

OV the Farm, LLC, (Bonobo) is a Winery-Chateau that leases about 51 acres from Oosterhouse Vineyards, LLC. (ECF 457-13, PageID.16246) Since about 1997, the land has been encumbered by a pair of nearly identical conservation easements purchased by the Township for \$561,500.00, which strictly prohibit non-agricultural uses of the land. (ECF 457-11, 457-12) Before brothers Todd and Carter Oosterhouse bought the property, they visited the site with Township officials and zoning staff to discuss its limitations and the regulations for a Winery-Chateau there. (Ex 47 dep 143-147) Bonobo has been negotiating with the Township to change the PTZO ever since. (*Id.* 154-55)

The Oosterhouse brothers obtained Township approval for a Winery-Chateau in SUP 118, approved in May 2013. (ECF 32-6) SUP 118 required them to plant an additional 8 acres to meet the 75% wine crop production requirement and allowed “meetings and special dinners” for people who are “*not* registered guests,” substantially modifying 8.7.3(10)(m). (ECF 32-6, PageID.1766, 1767) (emphases added).

In November 2014, the Commission issued Bonobo its small winemaker license. (ECF 334-7) Bonobo has indoor tasting rooms, and the Commission permits outdoor tasting on its entire 50 acres. (Ex 48)

Also in November 2014, the Township approved the First Amendment to SUP 118. (ECF 457-13) Building modifications during construction necessitated Bonobo to seek the amendment. (Ex 47 dep 51-52; ECF 447-5) Amended SUP 118 added a prohibition on amplified sound outdoors (ECF 457-13, PageID.16248) It reiterated Bonobo’s obligation to plant eight additional acres and approval for “meetings and special dinners” for non-registered guests. (*Id.*, PageID.16255, PageID.16256-57) However, the Township did *not* approve GAUs as an additional support use

under 8.7.3(10)(u), specifying Bonobo had not applied for GAUs but could do so in a future application. (*Id.* PageID.16257) The next year, Bonobo applied to re-amend SUP 118 for GAUs approval, which the Township denied. (ECF 457-6, 7; ECF 308-14) Bonobo never appealed any Township decision related to SUP 118 and raises no challenge to SUP 118 in this case.

Long story short, disputes arose between Bonobo and the Township over crop planting and unauthorized GAUs. (ECF 457-6, 457-7, 457-8) In March 2017, Bonobo and the Township resolved differences with a Settlement Agreement. (ECF 457-9) It provided for Bonobo to develop a Farm Plan and specified Bonobo “shall not apply for any Guest Activity Uses, as stated in Section 8.7.3(10)(u), for the Subject Property, until such time as this Agreement is completed.” By September 2018, the settlement terms were completed. (**Ex 49**; **Ex 47** dep 67-72)

Since Bonobo became eligible to re-apply, there is no evidence Bonobo sought or received an SUP amendment including GAU authorization. Bonobo did not produce any. PTP scoured Township productions but failed to identify any application or approval to amend SUP 118 for GAUs. In response to PTP requests for communications with the Township going back to 2013, Bonobo produced a handful of documents unrelated to amending SUP 118 to add GAUs.⁶ In deposition, Mr. Oosterhouse confirmed Bonobo has not compiled and submitted an application to amend SUP 118 for GAUs. (**Ex 47** dep 80) and has not obtained an amendment to SUP 118 since the settlement resolved in 2018. (*Id.* 71-72) And he confirmed the Board has not taken action at any public meeting to grant authority under an SUP or otherwise for Bonobo to conduct GAUs since September 2018. (*Id.* 90)

Without further amendment to SUP 118 authorizing GAUs, Bonobo is a Winery-Chateau with a tasting room and curious permission for “meetings and special dinners” for *non*-registered

⁶ In 2021, Bonobo sought to re-amend SUP 118 related to an unpermitted pergola.

guests. (ECF 457-13, PageID.16256) It may host promotional events, political rallies, and groups meeting to drink wine. It hosts groups from Girl Scouts to book clubs, Gladhanders to alumni associations, who come to taste or drink wine. (Ex 47 dep 92-97, 100-101; Exs 50, 51) Bonobo also staffs a commercial kitchen. (Ex 47 dep 24-25)

While Bonobo's claims center around zoning as an "outright ban" on commercial weddings, Bonobo hosts weddings for hire and other corporate gatherings, without apparent Township recourse. (Ex 47 dep 92-103, 120-33; Exs 50, 51, 52; ECF 457-4, PageID.16158) Bonobo accepts reservations for ceremonies and events indoors and out, with or without dining catered by Bonobo, with or without live or recorded amplified or unamplified music, and with porta-potties if needed. (*Id.*) Its representative testified Bonobo was able to "open them [events] up a little bit to see what was allowable and what the customer wanted" after Judge Maloney issued an opinion on the constitutionality of GAUs. (Ex 47 dep 137-38) However, it produced records indicating it was hosting weddings for hire pre-litigation. (Exs 51, 52) The record shows Bonobo unabashedly does the things it complains the PTZO disallows.

x. Mari is a Winery Chateau that is authorized for GAUs and actually hosts them – and also commercial events for hire.

Villa Mari, LLC a/k/a Mari Vineyards (Mari) sits on about 51 acres. (ECF 63-10) The winery enterprise started with Township authorization in 2014 for a Farm Processing Facility. (Ex 54) After it built facilities, in March 2016 Mari obtained Township approval in SUP 126 to convert to a Winery-Chateau. (ECF 63-10) SUP 126 required Mari to plant an additional 4.14 acres in vineyards in 2018 to meet wine crop production requirements and "prior to commencement of Guest Activity Uses on site." (ECF 63-10, PageID.3012) To date, those vineyards still are not in

the ground. (**Ex 53** dep 24-26) SUP 126 authorized Mari to construct a guest house and five homes, it is unclear that happened. (*Id.* 82-83) SUP 126 acknowledged Mari facilities accommodate up to 312 people for GAUs but nevertheless authorized “a maximum of 50 attendees per [GAU].” (ECF 63-10, PageID.3015-3016) SUP 126 also requires all GAUs “shall occur indoors” and requires GAUs to comply with PTZO standards. Mari did not appeal SUP 126 and does not challenge it in this case. (*Id.*, 3016)

In May 2016, the Commission issued Mari its small winemaker license. (ECF 334-10) The Commission approved liquor sales throughout Mari’s indoor tasting rooms, which include designated indoor and outdoor areas plus the entire winery premises. (**Ex 55**) While Mari’s original Farm Processing Facility permit authorized a 1,500 square-foot retail space (PTZO 6.7.2(19)(b)(7)), Mari built a facility that includes, in addition to the main tasting room, the mezzanine room, the Founders Room and patio, a patio off the tasting room, and the 10,000 square-foot Cave, an underground area with storage and some dedicated seating. (**Ex 53** dep 30-34) Zoning allows use of these spaces for wine drinking, and while SUP 126 limited GAU participation for Mari, there is no wine tasting participation limit. (*Id.* 117) Mari sometimes hosts over a thousand visitors on a busy day. It promotes itself with free entertainment, happy hour and other tasting room activities, social media, retail “logo gear,” sponsoring community events, and in other ways. (**Ex 53** dep 45, 61-63). Mari also offers daily tours, wedding photography packages, wine tasting classes, educational events, sunrise yoga, yoga in the vines, and “private wine dinners.” (*Id.* 54-57, 93-98; **Ex 56**) It serves wine identifying it as appellation to satisfy the self-promotion requirement. (**Ex 53** dep 107)

Mari mostly seems to understand it may not host events for hire, including weddings. (**Ex 57** resp 2, 3; **Ex 58**) Mari openly hosted two wedding events for a friend and a family member.

(Ex 57 resp 3; Ex 53 dep 153-58) Mari asserted there was no charge for the friend's wedding, but the record is contradictory. (Ex 60; Ex 53 dep 192-93) In discovery, Mari produced documents showing, starting in at least 2019, that its facilities are available for rent for events, including weddings, for hundreds of people, indoors and outdoors, with amplified music. (*See, e.g.*, Exs 59, 61) Mari GAUs have not been the subject of Township violation notices or citations. (Ex 53 dep 120-22)

xi. Tabone is not a Farm Processing Facility, but a Food Processing Plant operating an unauthorized tasting room.

Plaintiff Tabone Vineyards, LLC (Tabone), which claims to be a Farm Processing Facility, is a Food Processing Plant under PTZO 8.5 and operates an unpermitted tasting room. Its sole member is Mario A. Tabone (Mr. Tabone). (Ex 62 dep 8) Mr. Tabone owns the winery property subject to a life estate for his mother, Mary Ann Tabone, who since June 2014 has leased the property to Tabone Vineyards, LLC. (Ex 63; Ex 62 dep 12)

The Tabone property was previously owned by Jack and Paula Seguin, who operated a winery called J. Joseph Vineyards. In 2000, the Township issued the Seguins and J. Joseph Vineyards SUP 73 for a Food Processing Plant winery, allowing retail sales of wine for off-premises consumption but no onsite tasting or non-wine retail sales. (ECF 32-2; Ex 62 dep 37) The winery structure burned down in May 2014.⁷

⁷ Mr. Tabone recalled the fire happened over Memorial Day weekend but could not recall the year, which is available in media coverage. (Ex. 62 dep 40); *see* <https://upnorthlive.com/news/local/crews-investigate-barn-fire-at-vineyard>. Last visited Oct. 6, 2023.

In January 2016, Tabone sought a Farm Processing Facility permit. (Ex 64) In April 2016, the Township informed Tabone it needed a setback variance. (*Id.* 15) Tabone applied for a variance, then withdrew its application on June 21, 2016, to “pursu[e] operations outlined by SUP 73.” (Ex 65) On June 30, 2016, the Township issued to Mr. Tabone and his mother a land use permit authorizing reconstruction of the destroyed Food Processing Plant winery. (Ex 66)

Meanwhile, in May 2016, the Board passed a resolution granting Tabone the local government approval required for its Small Wine Maker license application. (Ex 67) The Board passed a second resolution in September 2016 reflecting the new address assigned to Tabone when it created a new access driveway (Ex 62 dep 13-14, 18) The MLCC approved Tabone’s Small Wine Maker license on March 8, 2017. (Ex 68) Discovery produced no additional approvals from the Township for Tabone.

In January 2018, the Commission sent Mr. Tabone a notice of a new law allowing manufacturers, including small winemakers, to obtain a newly created on-premises tasting room permit. (Ex 69) To obtain the permit, holders of existing manufacturer licenses needed only to sign and return a certification form. (*Id.*) Mr. Tabone signed the form and returned it to the Commission, which issued Tabone an on-site tasting room permit. (*Id.*) Tabone opened in the fall of 2018 but has never obtained Township zoning approval for its tasting room. (Ex 62 dep 19)

Tabone operates out of what is essentially a large pole barn with a small indoor tasting room for up to 48 people, a larger patio, a production area, and storage. It offers tours based on staff availability. It has a “prep area for very basic charcuterie” and “sometimes . . . carr[ies] bags of chips.” (*Id.* 28) It primarily promotes itself through the Old Mission Peninsula Wine Trail. Besides wine, it sells logo glassware. It is generally open from 11:00 a.m. to 6:00 or 7:00 p.m. in peak season, with more limited winter hours.

IV. SOME PLAINTIFFS LACK STANDING

Federal jurisdiction requires a plaintiff to have a “personal stake” in the outcome. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021). Standing requires an injury in fact, causation, and likely redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). In multiparty litigation, each plaintiff must establish standing to bring each of its claims. *Fednav, Ltd. v. Chester*, 547 F.3d 607, 614 (6th Cir. 2008) (standing is plaintiff- and provision-specific). *Pagan v. Calderon*, 448 F.3d 16, 26 (1st Cir. 2006) (requiring determination of “whether each particular plaintiff is entitled to have a federal court adjudicate each particular claim that he asserts.”). At the summary judgment stage, each Plaintiff must present enough evidence to create a genuine issue of material fact over each standing element. *McKay v. Federspiel*, 823 F.3d 862, 866 (6th Cir. 2016). Conclusory allegations about a past injury or vague allegations about a future one no longer suffice. *Lujan*, 504 U.S. at 564.

A. Black Star, Bonobo, and Tabone lack standing to bring all claims.

i. Conservation easements preclude additional commercial uses at Black Star and Bonobo.

Black Star and Bonobo sit on land where additional commercial activities are prohibited in perpetuity. They cannot establish actual or imminent injury caused by the challenged zoning, and a favorable decision would not redress their alleged injuries. They therefore lack standing and this Court lacks subject matter jurisdiction over their claims. See *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6th Cir. 1992); Fed. R. Civ. P. 12(b)(1), (h)(3).

Black Star and Bonobo lack standing because the commercial uses they seek are prohibited on the land they lease by perpetual conservation easements (Easements), regardless of the litigation outcome. In 1997, the Township purchased the rights to develop the Black Star land from prior

owner Underwood Orchards. (ECF 457-10) In 1997 and 1998, the Township purchased the rights to develop the Bonobo land from prior owners, the Edmondsons and Seaberg Farms. (ECF 457-11, ECF 457-12) The Seaberg Easement protects the Bonobo winery parcel; the Edmondson Easement protects adjacent vineyards. By selling their development rights to the Township, Underwood Orchards, the Edmondsons and Seaberg Farms permanently restricted the use of the land to those “agricultural and open space uses as specifically delineated” in the Easements.⁸ (See, e.g., ECF 457-10, PageID.16204) “‘Agricultural use’ means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man” and specific related uses and activities including “[r]etail and wholesale sales of . . . agricultural products *grown on the farm*,” “[r]oadside stands selling products as allowed by Township Zoning,” “[a]gricultural buildings and structures . . . used *solely* for agricultural purposes,” and “[p]rocessing of agricultural products . . . *provided a majority of the agricultural products processed are grown by the Grantor’s farm operation*.” (Id. PageID.16205) Additional agricultural uses may be permitted only if recognized by the Board following “recommend[ation] by the Planning Commission and at least one other state or nationally recognized organization.” (Id. PageID.16206) The Easements provide that open space and agricultural uses “do not include [] construction or expansion of buildings and structures for non-agricultural uses,” except as specifically reserved. (Id.) The Easements are fully enforceable under Michigan law. See *Dep’t of Agric. & Rural Dev. V. Engle*, No. 359098, -- N.W.2d --, 2022 Mich. App. LEXIS 6801 *8 (Mich. Ct. App. Nov. 10, 2022).

⁸ The three Easements use identical language.

The Easements limit Black Star and Bonobo's land uses and activities. Irrespective of the processing and sales provisions in 6.7.2(19) and otherwise, Black Star and Bonobo may only process wine where the majority of grapes are grown on their respective farms. Even if 6.7.2(19) and 8.7.3(10) allowed bars, restaurants, and events for hire, Black Star and Bonobo buildings are for making, tasting, and selling wine from grapes grown on its farm. Winery-Chateaus have no retail limits and may offer overnight accommodations, but Bonobo buildings are solely for agricultural purposes. Even if Black Star or Bonobo historically operated in violation of Easement terms, that would not modify the Easement terms nor limit their prospective enforceability.

Black Star and Bonobo seek relief that would allow them to offer private events for hire, restaurant and catering services, and wine production without zoning limits. They have no legally protected interest in these uses; none are delineated in the Easements. If this case results in more or unlimited commercial accessory uses in A-1 at Farm Processing Facilities or Winery-Chateaus, or if the Township amends the PTZO to allow Black Star and Bonobo's desired uses in A-1, the Easements preclude them from participating. Their inability to expand commercial operations on preserved farmland is not a cognizable injury caused by Township enforcement of the challenged PTZO provisions, and a favorable order of this Court could not redress it. They therefore lack standing and the Court should dismiss all their claims.

ii. Tabone is not subject to any challenged provisions.

Tabone received zoning authorization to rebuild a destroyed Food Processing Plant structure for operations under its SUP 73, which does not allow a tasting room and retail sales. It withdrew its Farm Processing Facility application in 2017 when it became apparent it could not qualify for a setback variance. Neither 6.7.2(19) nor any other provision challenged in this case

has been applied to it. It is subject to the requirements of 8.5, which it does not challenge here. It has suffered no injury or threatened injury traceable to any challenged provision, and a decision from this Court invalidating the challenged provisions would redress nothing with respect to Tabone.

The only evidence supporting Tabone's allegation that it is a Farm Processing Facility is Mr. Tabone's self-serving and uncorroborated affidavit and evasive deposition testimony. In discovery, PTP asked Tabone to produce a copy of its Farm Processing Facility permit or any other documents supporting its allegation; it objected and produced nothing. PTP is unable to locate in the Township or Winery discovery any permit or any other document supporting Tabone's allegation.

The record shows Tabone is *not* a Farm Processing Facility. After Tabone received authorization to reconstruct a Food Processing Plant, it obtained an On-Premises Tasting Room permit from the *Commission* but never applied for or received a land use permit from the *Township* for a tasting room. Any person planning to "establish a new use for any premises in any land use district, shall file an application in writing with the Zoning Administrator for a land use permit," which will be issued if the land use complies with zoning. PTZO 4.1.3(1). Establishing a tasting room or any new use without a land use permit violates 4.1.3(1), which Tabone does not challenge, and is a municipal civil infraction. PTZO 4.2.1. Operating a tasting room without a land use permit makes Tabone a nuisance, not a Farm Processing Facility.

Tabone seeks relief that would allow it to offer private events for hire, expanded food service options, and wine production without zoning limits. It has no legally protected interest in these uses; none are included in its SUP. If this case results in more or unlimited commercial accessory uses at Farm Processing Facilities, Tabone remains a Food Processing Plant. Its inability

to expand commercial operations is not a cognizable injury caused by Township enforcement of the challenged PTZO provisions, and a favorable order of this Court could not redress it. It therefore lacks standing and the Court should dismiss all its claims.

B. Nine Plaintiffs lack standing to challenge 8.7.3(10)(u); four also lack standing to challenge 8.7.3(10)(m).

All Plaintiffs assert the GAU provisions in 8.7.3(10)(u) impair their First Amendment rights and work a regulatory taking, but most were never subject to them. Four non-Chateaus⁹ are not subject to 8.7.3(10) at all. Two Chateaus¹⁰ do not have SUP authorization to host GAUs and never lawfully hosted GAUs under 8.7.3(10)(u). Two Chateaus¹¹ have SUP authorization to host GAUs but produced no evidence they ever attempted to host GAUs due to COVID-19, staffing, and other reasons. One Chateau¹² is in GAU limbo; it may, but does not, offer “one-of-a-kind” special dinner events. None of these Plaintiffs have shown the Township applied these non-applicable GAU provisions to them. The four non-Chateaus likewise failed to show the Township applied non-applicable 8.7.3(10)(m) to them. They thus lack standing, their “as-applied” claims fail, and they are not entitled to damages. *Lujan*, 504 U.S. at 560-561. *McCullen v. Coakley*, 573 U.S. 464, 485 n. 4 (2014) (as-applied challenge requires showing law has been unconstitutionally applied to plaintiff). Moreover, the Township repealed 8.7.3(10), limiting their prospective declaratory and injunctive relief. *Brandywine, Inc. v. Richmond*, 359 F.3d 830, 836 (6th Cir. 2004) (repealed provision cannot be declared unconstitutional).

⁹ Black Star, Two Lads, Peninsula Cellars, and Tabone.

¹⁰ Bonobo and Grand Traverse

¹¹ Brys and Hawthorne

¹² Bowers.

IV. THE FIRST AMENDMENT CLAIMS FAIL.

Plaintiffs' First Amendment claims are grounded in their objection to being prevented by zoning from having desired commercial events, retail sales, food service, and facility size in A-1. They fail because none of the challenged PTZO sections regulate Plaintiffs' nor their patrons' protected speech, *expressive* conduct or association, or religious beliefs.

These claims fail also because the root cause of Plaintiffs' complaints is A-1 agricultural zoning, not the challenged provisions (6.7.2(19)(a), (b); 8.7.3(10)(m), (u); 8.7.3(12)). Even if these provisions are invalidated or repealed,¹³ Plaintiffs are still in A-1 and subject to its zoning. Commercial events for hire, retail shops, bars, and restaurants are not otherwise permissible land uses in A-1. The PTZO affirmatively states allowable land uses and prohibits non-listed land uses. PTZO 6.1.4; *Pittsfield v. Malcolm*, 375 Mich. 135, 142-43; 134 N.W.2d 166 (1965) ("Under the ordinance which specifically sets forth permissible uses under each zoning classification, therefore, absence of the specifically stated use must be regarded as excluding that use."); *Independence Twp. v. Shibowski*, 136 Mich. App. 178; 355 N.W.2d 903 (1984) ("A permissive format states the permissive uses under the classification, and necessarily implies the exclusion of any other non-listed use.").

The PTZO reasonably does not identify non-agricultural commercial uses as allowable land uses in A-1. Numerous courts have upheld similar zoning restrictions on commercial uses in agricultural districts. *Di Ponio v. Cockrun*, 373 Mich. 115; 128 N.W.2d 544 (1964); *Webster Twp. v. Waitz*, 2016 Mich. App. LEXIS 1109, (June 7, 2016); *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013); *Nixon v. Webster Twp*, No. 343505, Mich. Ct. App. (Jan. 21, 2020);

¹³ 8.7.3(10)(u) was repealed in December 2022 with PTZO Amendment 201. https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/ordinance_amendment_201_-_farm_processing.pdf Last visited Oct. 6, 2023.

Forester v. Town of Henniker, 118 A.3d 1016 (N.H. 2015); *Zarrella Trust v. Town of Exeter*, 176 A.3d 467 (R.I. 2018); *Miami Twp. v. Powlette*, 197 N.E.3d 998 (Ohio 2022).

Plaintiffs do not challenge A-1 zoning. They challenge provisions expressly allowing some limited commercial accessory uses with a sufficient nexus to agriculture as at Farm Processing Facilities, Winery-Chateaus, and Remote Winery Tasting Rooms in A-1:

- 6.7.2(19)(a) and (b)(1) allow retail and wholesale sales of agricultural produce, including wine, and limited retail merchandise sales;
- 8.7.3(10)(m) allows accessory uses for registered (overnight) guests (ECF 442-2);¹⁴
- 8.7.3(10)(u)(1) clarifies commercial-type gatherings that *are* generally permissible – political rallies, tours, free entertainment in the tasting room; and
- 8.7.3(10)(u)(2) authorizes three distinct categories of commercial-type gatherings (GAUs).

These provisions do not *restrict* commercial-type events in A-1, they *expand* them. Invalidating them would mean *fewer* lawful commercial activities in A-1. *See Superior v. Reimel Sign Co.*, 362 Mich. 481, 487; 107 N.W.2d 808 (1961) (voiding sign provision as “unconstitutional and void” would be “of little benefit to [appellant] since it leaves untouched the prohibition” against noncommercial uses in agricultural district).

The absence of these provisions is *more* restriction, not less. Wineries historically understood that, but for these challenged provisions, their location in A-1 means *fewer* commercial events, which is why they supported adoption of 6.7.2(19) and 8.7.3(10)(u). If the PTZO were stripped of these sections, virtually unlimited winemaking and wholesale distribution would remain lawful on 5-acre parcels in A-1 for Food Processing Plants (ZO 8.5). The challenged

¹⁴ The Township modified this provision as applied to Bonobo in SUP 118 to permit meetings and special dinners for *non*-registered guests.

provisions are integral parts of land uses added to the PTZO at Plaintiffs’ urging to expand commercial accessory uses in A-1. *Winchester v. WA Foote Memorial Hospital*, 153 Mich. App. 489, 501; 396 N.W.2d 456 (1986) (“Zoning ordinances must be construed as a whole, with regard to the object sought to be obtained and the general structure of the ordinance as a whole.”) (citations omitted).

The First Amendment claims are thus foundationally flawed by challenging *permissions* rather than *restrictions*. Plaintiffs cannot achieve through the First Amendment what they apparently really want – *unlimited* commercial events and retailing in A-1. Not only is that patently unreasonable, it would require rewriting the PTZO, which only the Township may do. *Schwartz v. City of Flint*, 426 Mich. 295; 395 N.W.2d 678 (1986); *Ann Arbor v. Northwest Park Const. Corp.*, 280 F.2d 212, 223-24 (6th Cir. 1960).

A. The Free Speech Claims (Counts I, II) Fail.

Counts I and II mount facial and as-applied challenges alleging some zoning provisions impair free speech rights protected by the First Amendment. (ECF 29, PageID.1116-19) In discovery, each Plaintiff identified particular provisions as content-based restrictions, commercial speech restrictions, prior restraints, and compelling speech, plus that an “outright ban on weddings” restricts commercial speech. (*See e.g.* ECF 457-4, PageID.16132-33, PageID.16136-37; PageID.16154-58)

These free speech claims never get off the ground. The threshold question is whether the challenged zoning regulates protected speech or expressive conduct intended to convey a message. *U.S. v. O’Brien*, 391 U.S. 367, 376-77 (1968); *Wine & Spirits Retails, Inc. v. Rhode Island*, 418 F.3d 36, 49 (1st Cir. 2005). The First Amendment does not prevent restrictions directed at

commerce or economic activity, and talking about non-expressive conduct does not transform it into protected “speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011); *Rumsfeld v. Forum for Academic & Inst. Rights, Inc.*, 547 U.S. 47, 66 (2006). Because the challenged zoning regulates no *speech*, Plaintiffs must show it regulates conduct with “a significant expressive element” – that the speaker intends to convey a particularized message understood by the audience. *Arcara v. Cloud Book, Inc.*, 478 U.S. 697, 706-707 (1986); *Texas v. Johnson*, 491 U.S. 397, 404 (1989); *Dallas v. Stanglin*, 490 U.S. 19, 25 (1989) (“It is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one’s friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment.”).

Plaintiffs want more business opportunities, not to convey any particular message. They want to expand their facilities and operations, sell their attractive agricultural setting to people planning weddings and other private events, sell more food and drinks to keep customers in their tasting rooms longer, and sell more retail items. Chateau Chantal wants more events so it can reach as many customers as possible; the only message it wants to convey is that it can sell the goods and services zoning currently precludes it from selling. (Ex 10 dep 70-71, 79-80, 83, 87) Peninsula Cellars wants to sell more beverages and retail items. (Ex 18 dep 18, 33-34, 40-41) Bonobo wants to reach more patrons at private events so they tell their friends to visit Bonobo. (Ex 47 dep 160-165) Mari wants to host events so it can market its logo gear and increase sales. (Ex 53 dep 143-144) Brys wants to host more events so more people can “enjoy the agricultural space while also supporting our business through the sale of wine by the glass or bottles of wine.” (Ex 24 dep 101). Hawthorne’s “goal” is to “get[] more people to the property who maybe wouldn’t have come.” (Ex 43 dep 26) Black Star is primarily interested in “expansion”; it wants more opportunities for

visitor engagement because “[t]hey’re all just opportunities for us to introduce our business to more people and help us control our financial destiny of our business.” (Ex 27 dep 46; Ex 28 dep 17)

There is no expressive conduct being restrained. Instructive is *Country Mill Farms, LLC v. East Lansing*, 2019 U.S. Dist. LEXIS 242129 (W.D. Mich. Dec. 18, 2019). Country Mill Farms operated as a commercial wedding venue, and a dispute arose related to same-sex weddings. This Court considered whether the farm’s activities and business operations constituted “expressive conduct,” finding the staging and coordinating of events “does not constitute the sort of expressive conduct protected by the First Amendment.” The farm-owner’s social media posts discussing their religious beliefs also were not expressive conduct protected by the First Amendment.

At bottom, these free speech claims fail because the conduct the challenged provisions regulates is not expressive, it is just commerce.

i. No challenged provisions are content-based restrictions.

“[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (picketing law unconstitutional where “operative distinction” is message on sign). “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citations omitted).

Contrary to the Chateaus' allegations, Sections 8.7.3(10)(u)(2)(b) and (c) are not content-based restrictions.¹⁵ (*See, e.g.*, ECF 457-4, PageID.16084-85, PageID.16090-91) ECF 162, PageID.6010) They describe two categories of allowable GAUs – meetings of local nonprofits and agriculture-related groups – without addressing the contents of anyone's message or speech. They do not regulate speech, let alone “because of the topic discussed or the idea or message expressed.” *Reed*, 576 U.S. at 163 (citation omitted). No Chateau produced evidence the Township applied these in a way that identified let alone targeted speech or content.

ii. No challenged provisions restrict commercial speech.

Commercial speech “propos[es] a commercial transaction.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. at 561–62 (citations omitted) (ban on utility advertising unconstitutional); *Wine & Spirits*, 481 F.3d at 49.

(a) Weddings

Two Chateaus – Brys and Bonobo – argue the Township’s “outright ban on weddings” violates their commercial speech rights. (ECF 457-4, PageID.16136-37, PageID.16157-58) All Plaintiffs complain that 8.7.3(10)(u)(2)(d) restricts their commercial speech, presumably based on its exclusion of weddings and similar events from the scope of allowable GAUs.¹⁶ Black Star similarly argues 6.7.2(19)(a) restricts its commercial speech. (*Id.* PageID.16145-46)) Based on similarities between 8.7.3(10)(u)(2)(d) and 6.7.2(19)(a) and Black Star’s desire for commercial

¹⁵ No non-Chateau asserted this theory in discovery. Plaintiffs abandoned in discovery a theory that 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) were content-based restrictions. (ECF 162, PageID.6008-6009; *see, e.g.*, ECF 457-4, PageID.16128-29)

¹⁶ This is inconsistent with Chateau Chantal and Mari’s assertion that their religious claims are “moot.” (ECF 457-4, PageID.16107)

events, PTP presumes its complaint is grounded in the exclusion of “weddings, receptions and other social functions for hire are not allowed” from the scope of the Farm Processing Facility by-right use.

Weddings and similar events do not propose a commercial transaction and are not commercial speech. (ECF 162, PageID.6005) Even if the Township did ban weddings (it does not; it disallows events for hire, including weddings, at most but not all wineries), that would not violate Plaintiffs’ commercial speech rights. While weddings and events might bring new visitors, that does not convert them into advertisements. *See Rumsfeld*; 564 U.S. at 66. Commercial activity’s marketing potential does not mean the First Amendment shields it from regulation.

(b) Winery-Chateau Provisions

Plaintiffs challenge various combinations of nine GAU subsections as restricting commercial speech:¹⁷

- 8.7.3(10)(u)(1)(b) describes GAUs as intended to help promote Peninsula agriculture;
- 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(d) identify activities that are *not* GAUs;¹⁸
- 8.7.3(10)(u)(2)(a) allows wine and food seminars and cooking classes as GAUs;
- 8.7.3(10)(u)(2)(b) allows local nonprofit meetings as GAUs;
- 8.7.3(10)(u)(2)(c) allows meetings of agricultural groups as GAU;
- 8.7.3(10)(u)(5)(c) limits alcoholic beverages at GAUs to those produced onsite;

¹⁷ For example, the Chateaus did not identify 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c) as restricting their commercial speech (ECF 457-4, PageID.16085), and Two Lads did not identify 8.7.3(10)(u)(5)(c) or 8.7.3(10)(u)(5)(h). (ECF 457-4, PageID.16129)

¹⁸ To the extent these subsections exclude weddings from the scope of allowable GAUs, weddings are addressed above.

- 8.7.3(10)(u)(5)(g) prohibits amplified instrumental music during GAUs; and
- 8.7.3(10)(u)(5)(h) prohibits outdoor displays during GAUs.

No Plaintiff has identified any subsection of 8.7.3(10)(u) that regulates advertising or other commercial speech. None restricts how Plaintiffs may describe goods and services they offer. None prevents Plaintiffs from promoting their wines, events, entertainment, tours, tasting rooms, happy hours, new releases, or anything else they may lawfully do. And no Plaintiff identified any facts or evidence supporting their commercial speech theory; they start from the conclusion that these sections are facially unconstitutional per former Township counsel correspondence. (*See e.g.* ECF 457-4, PageID.16164-65, PageID.16174-75)

Plaintiffs also allege 8.7.3(10)(m), allowing accessory uses for registered (overnight) guests, impairs commercial speech. They identified no speech proposing a commercial transaction that would be limited by 8.7.3(10)(m), and there is none. They also failed to identify any facts or evidence supporting their theory. Bonobo's challenge to 8.7.3(10)(m) is particularly misplaced because the Township substantially reworked it in SUP 118.

(c) Farm Processing Facility Provisions

Two Lads and Black Star (the Farm Processors) and Tabone challenge parts of 6.7.2(19) besides 6.7.2(19)(a) as commercial speech restrictions. (ECF 457-4, PageID.16122-23, PageID.16128-29, PageID.16142-46, PageID.16149-50; PageID.16181-86) All allege 6.7.2(19)(b)(1)(iii), allowing sale of fruit wine from 85% local juice, impairs commercial speech. This theory is nonsensical, and there are no facts or evidence supporting it. Two Lads pulled out cherry trees on its land when it started its winery: "I don't want to make cherry wine. ... We're grape growers, wine makers." (Ex 36 dep 51)

All also assert 6.7.2(19)(b)(1)(v), allowing logo merchandise sales, restricts commercial speech. This subsection does not regulate what, when, where, or how they may advertise or describe goods they sell. It authorizes merchandise sales beyond what is otherwise allowed in A-1. *Di Ponio*, 373 Mich. at 120. Two Lads sells winery-related items but avoids “tchotchkes and things,” noting, “I really like that we focus mostly on wine.” (Ex 36 dep 137-138) Moreover, there is no evidence the Township enforces this provision. Black Star sells logo t-shirts despite “clothing” sales being disallowed and has never experienced any enforcement.¹⁹ (Ex 27 dep 67-68) The PTZO does not prevent these Plaintiffs from selling tchotchkes in the commercial C-1 District, online, or elsewhere. They failed to support their theory with evidence and identify no cognizable injury.

Black Star alleges 6.7.2(19)(b)(6), establishing maximum above-grade floor area for Farm Processing Facilities,²⁰ restricts commercial speech. (ECF 457-4, PageID.16145-46) Two Lads testified similarly. (Ex 36 dep 145-148) (limits on building square footage are restrictions “from a raw kind of constitutional commercial speech side”) The size of a structure proposes no commercial transaction and is not “commercial speech.”. The PTZO imposes no architectural nor aesthetic standards for winery structures. The theory that zoning limiting building size restricts commercial speech is meritless and further unsubstantiated with any evidence. MCL 125.3201(4) (townships may regulate, through zoning, “the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures”

¹⁹ Mr. Lutes “believe[d] there may have been a violation or two” sometime between 2010 and 2015 but could not recall the Township ever issuing a notice of violation, citation, or fine against it, and could not say what the “violations” were about. (Ex 27 dep 44-45)

²⁰ They challenge an outdated version of 6.7.2(19)(b)(6), which was updated to significantly increase the caps nearly a year before they filed their complaint.

(d) Remote Winery Tasting Room provisions

Peninsula Cellars complains that 8.7.3(12)(g), allowing off-site tasting of a winery's wine, and 8.7.3(12)(i), allowing logo merchandise sales; restrict its commercial speech. (ECF 457-4, PageID.16117-118) Neither regulates speech proposing a commercial transaction; they outline the contours of permissible commercial accessory uses at A-1 tasting rooms that are not on the same parcel as their associated farms and wineries.

iii. No challenged provision is a prior restraint.

A prior restraint may be an order forbidding expressive activity before it occurs or when the exercise of a First Amendment right depends on prior governmental approval. *Alexander v. United States*, 509 U.S. 544, 550 (1993); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001) (licensing scheme for sexually oriented businesses is prior restraint on expressive conduct of nude dancing). Generally applicable laws do not constitute prior restraints if they govern other types of activities without singling out expressive conduct. *Bronco's Ent., Ltd. v. Chater Twp of Van Buren*, 421 F.3d 440, 444, 46 (6th Cir. 2005) (no prior restraint where ordinance required site plan approval for all commercial land uses, "not just those that involve protected speech," and gave officials no discretion "to allow or forbid expressive activity.").

(a) Winery-Chateau Provisions

Plaintiffs' prior restraint theory fails because 8.7.3(10)(u)(2)(a)-(d) do not target expressive activity. Subsections 8.7.3(10)(u)(2)(a)-(c) describe three categories of GAUs; subsection 8.7.3(10)(u)(2)(d) provides that "entertainment, weddings, wedding receptions, family reunions

[and] sale of wine by the glass” are not GAUs. SUP approval is no prior restraint – it lawfully requires all accessory and support uses to be in an approved site plan and conform to zoning and site development standards. MCL 125.3502; PTZO 8.1.2. Once GAUs are authorized in an SUP, a Winery-Chateau requires no Township approval for individual GAUs authorized by subsections 8.7.3(10)(u)(2)(a) and (b) (wine and food seminars, local non-profit meetings). Chateau Chantal, which has hosted hundreds of GAUs, admits as much. (Ex 10 dep 71) Subsection 8.7.3(10)(u)(2)(c), for meetings of agricultural groups with a direct relationship to agricultural production, says the Zoning Administrator “can give prior approval,” but pre-approval is not required. It also does not target protected speech or expressive conduct – it applies equally to an agricultural group organizing a political campaign or a book club; the Future Farmers may meet at Bonobo to discuss pigs, politics, or papacy. There is no administrative discretion to deny meetings based on message content.

No Plaintiff produced evidence it ever requested approval under 8.7.3(10)(u)(2)(c) for an ag-related meeting, so there is necessarily no evidence the Township ever denied approval nor inserted expressive content into the approval analysis. (Ex 24 dep 74 (ag meetings not “something that would help financially with the business”); Ex 10 dep 72-73)

Any suggestion that Township officials deny pre-approval for activities besides agricultural group meetings is misplaced. (ECF 162, PageID.6012-13) The Township cannot pre-approve (or deny) creative events (*e.g.*, snowshoeing or yoga in the vines²¹) that fall into no GAU category (wine and food seminars, local non-profit or ag-related group meetings). The Administrator lacks pre-approval authority over them. That a winery asks to do something the PTZO does not permit

²¹ Grand Traverse, Bonobo, Mari, and Bowers (maybe others) have hosted yoga in the vines over the years.

does not render the lack of permission a “denial” constituting a prior restraint of protected speech. If a Chateau asked if its SUP allowed it to host Woodstock in 2024, “no” would be a response, not “prior restraint.” If Plaintiffs believed Township staff interpretations or responses to their queries were arbitrary, unreasonable, or contrary to the PTZO or their SUPs, they had ample recourse, but such complaints establish no unconstitutional prior restraint. Plaintiffs produced no evidence that informal staff interpretations targeted or burdened any protected speech or expressive conduct. Brys complains it was denied pre-approval for a political fundraiser last summer, but the Township response had nothing to do with politics (and could not have been a basis for Plaintiffs’ complaint filed in October 2020). (**Ex 26**; *see also Ex 53* dep 98-104 (bicycle tour, book club requests)) At bottom, restraints on Plaintiffs’ use of winery facilities for commercial events arise not from Township review of message content but because each is a winery located in A-1.

(b) Farm Processing Facility Provisions

Black Star asserts 6.7.2(19)(b)(6), establishing floor area limits, is a prior restraint. (ECF 457-4, PageID.16145-46) This theory fails because 6.7.2(19)(b)(6) does not regulate speech or expressive conduct. It ensures that Farm Processing Facility parcels are mostly open space and that agricultural production, not retail sales, is the primary use. It involves no pre-approval to exercise First Amendment rights, let alone content-based approval, let alone administrative discretion. Black Star identified no evidence that the Township administered 6.7.2(19)(b)(6) in any way that targeted protected First Amendment activity or otherwise supporting this theory.

iv. No challenged provision unlawfully compels speech.

Courts have found unconstitutionally compelled speech in two types of cases: where “an individual is obliged personally to express a message *he disagrees with*, imposed by the government” and where “an individual is required by the government to subsidize a message *he disagrees with*, expressed by a private entity.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 557 (2005) (emphasis added). The First Amendment may prevent the government from requiring a person to “repeat an objectionable message out of their own mouth[],” “use their own property to convey an antagonistic ideological message,” “respond to a hostile message when they would prefer to remain silent,” “be publicly identified or associated with another’s message,” or “pay subsidies for speech to which they object.” *Glickman v. Wileman Bros. & Elliott*, 521 U.S. 457, 470–71 (1997) (citations and quotations omitted); *U.S. v. United Foods, Inc.*, 533 U.S. 405, 410 (2001). No such circumstances exist here.

The Chateaus challenge two GAU sections: Section 8.7.3(10)(u)(1)(b) states the Township’s *intent* in allowing GAUs to incentivize wine crop production and promote Peninsula agriculture; under 8.7.3(10)(u)(5)(a), Winery-Chateaus that choose to host GAUs must include Agricultural Production Promotion. (See, e.g., 457-4, PageID.16132-33, PageID.16136-37, PageID.16154-58, PageID.16164-65, PageID.16170-71) There is no obligation to host GAUs; most Chateaus never have. And there is no evidence self-promotion is objectionable. Winery-Chateaus are necessarily part of Peninsula agriculture and production – by definition, they grow fruit and produce wine in Peninsula Township. PTZO 3.2; MCL 436.1111(12). To comply with 8.7.3(10)(u)(5)(a), they may promote *themselves* by identifying their own wines, distributing their own promotional materials, or providing tours of their own winery. The two Chateaus lawfully authorized to host GAUs expressed no objection to serving their Old Mission Peninsula AVA wine

or otherwise promoting themselves. (Ex 53 dep 107-108; Ex 10 dep 53, 55-58; *see also, e.g., Ex 17*) The First Amendment does not prevent the Township from requiring activities it allows for a promotional purpose to include a promotional component where the promotional content is entirely up to the speaker, who need not convey or subsidize any disagreeable message.

B. The Free Exercise of Religion Claim (Count I) Fails.

Count I asserts a facial challenge to zoning that allegedly violates Plaintiffs’ First Amendment right to free exercise of religion. (ECF 29, PageID.1116-18) To maintain this claim, Plaintiffs must show zoning regulates religious beliefs. *Employment Division v. Smith*, 494 U.S. 872, 877 (1990) (overruled by statute). A neutral law of general applicability that incidentally impinges on religious *practice* (as opposed to religious *belief*) cannot be challenged under the Free Exercise Clause. *Id.* at 876-82; *Roberts v. Neace*, 958 F.3d 408, 413 (6th Cir. 2020) (per curium).

One reason to reject Plaintiffs’ free exercise claim is they wholly failed to support it in discovery. In response to an interrogatory asking when and how the PTZO first injured their First Amendment rights, each Plaintiff identified provisions allegedly impairing their freedoms of speech and association but none impairing religious freedom. (*See, e.g.,* ECF 457-4, PageID.16174-75, PageID.16181-82) They also identified no facts supporting this claim. (*Id.*) There is no evidence of what – if any – religious beliefs Plaintiffs hold, what religious practices they engage in, and whether or how zoning has ever impinged on their religious beliefs or practices.²² *See McGowan v. Maryland*, 366 U.S. 420, 429 (1961) (appellant lacked standing to pursue free exercise claim where they asserted only economic injury to themselves and “the record

²² It is unclear whether Chateaus – commercial corporate enterprises established to grow grapes and make wine – have religious beliefs and practices.

is silent as to what appellants' religious beliefs are"). There is no allegation or evidence Township officials ever inserted religion into zoning administration or enforcement. *Cf. Country Mill Farms, supra*. This claim wholly lacks supporting evidence.

The free exercise claim fails further because it appears based on zoning preventing Plaintiffs from hosting commercial weddings. (ECF 34, PageID.1872) Besides wine tasting and sales, the PTZO generally²³ prevents non-ag commercial enterprises in A-1, including (but not limited to) commercial events, including (but not limited to) weddings for hire, including (but not limited to) wedding ceremonies and receptions. Weddings for hire are one example of disallowed commercial activities. They are disallowed regardless of whether the ceremony is religious or secular. Zoning does not target religious weddings or any other type of ceremony, religious or secular. It prevents repurposing winery facilities into commercial event venues. The PTZO is facially neutral and at best only incidentally addresses potentially religious practices. *DiLaura v. Ann Arbor Charter Twp.*, 30 Fed. Appx. 501, 508 (6th Cir. 2002) ("The zoning ordinance at issue in this case is facially neutral (a bed-and-breakfast would be treated the same way), and there is no evidence offered of any animus against religion involved in either the passage or interpretation of the law. The law does not violate the Constitution."); *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. Lakewood*, 699 F.2d 303, 306 (6th Cir. 1983) ("The ordinance prohibits the purely secular act of building anything other than a home in a residential district."); *Alive Church of the Nazarene, Inc. v. Prince William Cnty*, 59 F.4th 92, 108 (4th Cir. 2023) (land use regulations neutral "if religious institutions are 'just one among many' other nonreligious regulated uses, and there is no independent evidence of religious animus.") (citation omitted). Moreover, the First Amendment does not generally protect commercial transactions, which is the core of these free exercise claims.

²³ Grand Traverse SUP permit events for hire, including weddings.

McGowan, supra; *Roberts v. Jaycees*, 468 U.S. 609, 634 (1984) (while constitution protects aspects of commercial transactions that may be expressive, “the State is free to impose any rational regulation on the commercial transaction itself.”).

Chateau Chantal and Mari argued this claim is “moot” because former zoning director Christina Deeren “admitted that Wineries [] are allowed to host weddings.”²⁴ (ECF 457-4, PageID.16107, PageID.16167) Ms. Deeren never “admitted” all Wineries are allowed to host weddings (including commercial weddings). *Some* wineries are allowed to host commercial weddings.²⁵ Several have hosted non-commercial “friends and family” weddings. Ms. Deeren accurately testified weddings are not GAUs, and therefore do not require Township “approval.” (ECF 136-6, PageID.4819) Administrator approval may be provided – not for activities for “registered guests,” nor wine tasting, nor most GAUs – but only for “meetings of agricultural related groups.” PTZO 8.7.3(10)(u)(2)(c)(i). Since weddings are not GAUs, Township officials cannot “approve” weddings.

Ms. Deeren also lacked authority to contradict, modify, or “moot” the PTZO and SUPs, through deposition or otherwise. The Administrator is authorized to receive zoning applications, inspect, determine compliance with land use permits, and enforce the PTZO. PTZO 4.1.2. Only the Zoning Board of Appeals may interpret the PTZO. PTZO 5.7.2. Interpreting the PTZO is a legal question, not a fact question for a township employee. *See Roger Miller Music, Inc. v. Sony/ATV Publ’g, LLC*, 477 F.3d 383, 394-95 (6th Cir. 2007); *Moskovic v. City of New Buffalo*, 2023 U.S. Dist. LEXIS 7052, 2023 WL 179680 (W.D. Mich. Jan. 13, 2023) (“the City’s witnesses

²⁴ This appears to contradict their claim that 8.7.3(10)(u)(2)(d), excluding weddings from the scope of allowable GAUs, restricts their commercial speech.

²⁵ Chateau Chantal, Chateau Grand Traverse, and Brys SUPs permit overnight guests, and commercial weddings are permissible for their overnight guests. PTZO 8.7.3(10)(m), (r). Chateau Grand Traverse’s SUP also expressly authorizes commercial events, including weddings.

cannot make an admission about the law. It is the Court’s province and duty to say what the law is. Statements by the parties do not control the Court’s analysis of the ZO.”) (cleaned up). Plaintiffs know commercial events, including weddings, remain prohibited in A-1, as they have been since the PTZO was adopted in 1972.

C. The Freedom of Association Claim (Count III) Fails.

Count III alleges zoning “directly and substantially burden[s]” Plaintiffs’ First Amendment associative rights. (ECF 29, PageID.1120-21) The Chateaus, Black Star, Peninsula Cellars, and Tabone assert eight Winery-Chateau provisions prevent them from “freely associating with persons or groups of [their] choosing”: seven subparts of 8.7.3(10)(u) (allowing GAUs); and 8.7.3(10)(m) (allowing accessory uses for registered (overnight) guests). (*See, e.g.*, ECF 457-4, PageID.16149-50, PageID.16117-18, PageID.16170-71; PageID.16184-85) The Farm Processors and Tabone allege Farm Processing Facility provisions 6.7.2(19)(a) (excluding social functions for hire from scope of use) and 6.7.2(19)(b)(1)(iii) (allowing retail sales of fruit wine from 85% local grapes) restrict their free association. (*Id.*, PageID.16125-26, PageID.16149-50, PageID.16184-85)

These claims fail because, as discussed above, Plaintiffs challenge the wrong parts of the PTZO – the parts that *expand* commercial gatherings rather than *restrict* them. The source of Plaintiffs’ plight is their A-1 location.

These claims fail because Plaintiffs did not support them with any facts, only (erroneous) legal conclusions.²⁶ In discovery asking for facts supporting this claim, each Plaintiff stated the PTZO “is facially unconstitutional” and “[t]herefore, it has injured [its] First Amendment rights.” (*See, e.g.*, 457-4, PageID.16154-55, PageID.16161-62) This is exactly backwards – each Plaintiff

²⁶ Brys alone identified a single interaction to support its claim, discussed below.

must first show an injury caused by the zoning before the Court can consider whether the zoning is unconstitutional. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (injury required to invoke jurisdiction). With one exception, no Plaintiff demonstrated for what protected purpose it sought to associate nor whether, when, or how the challenged provisions prevented it from doing so. Pre-litigation correspondence between Plaintiffs’ and the Township’s attorneys identify no restraints on association nor factual allegations supporting this claim – just legal opinions. (*See, e.g.*, 457-4, PageID.16164-65) (citing ECF 29-15, 29-16)) Without supporting facts, these claims fail.

This claim fails also because the challenged provisions do not limit protected associational activities. The First Amendment protects intimate and expressive association, not “social association.” *Roberts v. Jaycees*, 468 U.S. 609, 617-18 (1984); *Stanglin*, 490 U.S. at 24-25 (dance hall patrons engaged in recreational dance is non-protected “social association”).

Intimate expression means personal affiliations between humans, like marriage, childbirth, child-rearing, and co-habitation. *Roberts*, 468 U.S. at 619 (collecting cases). No Plaintiff can seriously maintain that hosting scores or hundreds of patrons with whom it has no personal relationship is intimate expression. *See Johnson v. Cincinnati*, 310 F.3d 484, 499-500 (2002); *Six v. Newsom*, 462 F.Supp.3d 1060, 1070 (C.D. Cal. May 22, 2020) (no constitutional right “to get married at a specific venue”). Chateau Chantal described its interaction with event attendees as negotiating a contract, planning the event, and being “[t]here to provide the contractually obligated operation of the[] event,” and acknowledged that unless staff encounter someone they know, they do not participate but are “working the event.” (Ex 10 dep 104-105)

Expressive association is “for the purpose of engaging in those activities protected by the First Amendment — speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Id.* at 618. The challenged provisions do not prevent any Plaintiff from engaging in

expressive association. Each may associate with whomever it likes to advocate for whatever political or cultural viewpoints they may have and practice whatever religion they may have. Plaintiffs host private “friends and family” weddings and ceremonies without reprisal. The PTZO does not limit who may patronize their tasting rooms for wine-drinking nor what staff or patrons may discuss or express. The lone instance where a Plaintiff alleged specific impairment of free association involved Brys mischaracterizing the Township as preventing its association with the Democratic Party by “prohibit[ing]” a 2022 political fundraiser. (ECF 457-4, PageID.16135-36) The Township reasonably informed Brys the event appeared impermissible due to tents and participant numbers. (**Ex 26** p 1) To the extent otherwise permitted by campaign financing or otherwise, Brys was and is free to associate with the political party of its choosing. Zoning does not prevent any Plaintiff from affiliating with, donating to, or hosting political parties. Section 8.7.3(10)(u)(1)(d) expressly allows Winery-Chateaus to host “political rallies” along with other free activities in their tasting rooms. There are no limits on who may patronize tasting rooms. As Hawthorne acknowledges, a group that was unable to have an event there could “[a]bsolutely” come in for a glass of wine. (**Ex 43** dep 42) As far as zoning is concerned, Plaintiffs may freely entice preferred groups into their ample tasting rooms and organize alongside them to recall politicians or debate abortion.

At bottom, these claims are flawed because they are grounded in objection to limits on *commercial* association – the opportunity to capitalize on other people’s gatherings, meetings, weddings, and events. Plaintiffs simply want to reach more customers. Brys itself acknowledged any group can come to the winery and have private tastings, what it wants is to host “a corporate group, a family function, a wedding, and be able to enjoy the agricultural space while also supporting our business through the sale of wine by the glass or bottles of wine.” (**Ex 24** dep 100-

102; *see also*, **Ex 36** dep 152-157; **Ex 24** dep 100-103; **Ex 47** dep 160-165; **Ex 53** dep 142-144)

The right to freely associate does not protect the pursuit of *commercial* enterprises. *In re Primus*, 436 U.S. 412, 438 n. 32 (1978) (association for advancement of one’s own commercial interests is not protected associational activity); *Roberts*, 468 U.S. at 634 (O’Connor concurrence) (in contrast to right of expressive association, “there is only minimal constitutional protection of the freedom of commercial association,” because “the State is free to impose any rational regulation on the commercial transaction itself”); *Jacoby & Meyers, LLP v. Presiding Justices*, 852 F.3d 178, 188-89 (2nd Cir. 2017) (no First Amendment interest protects for-profit lawyers engaged in business and serving clients’ interests as business, even when firm provides “vehicle” for clients’ political advocacy or expression); *IDK, Inc. v. County of Clark*, 599 F. Supp. 1402, 1406-409 (D.C. Nev. 1984) (rejecting escort service association claim because it was commercial enterprise; “[m]ere association, incidental to a commercial transaction, does not mean that the parties to the transaction are necessarily involved in a protected associational relationship.”); *Six*, 462 F. Supp. 3d at 1071-72 (distinguishing between opportunities for desired *activities* (not protected) and *associating* with peers, friends (protected)). Plaintiffs failed to identify how the PTZO impairs any particular message or viewpoint they might want to express. That commercial events or gatherings might contain a kernel of expression is insufficient. *Stanglin*, 490 U.S. at 25. Nor could a Winery maintain this claim based on some unidentified group or organization’s inability to hold events at their winery facility – those parties are not here, nor does the PTZO restrict their message or viewpoint. *See Mount Elliot Cemetery Assoc. v. City of Troy*, 171 F.3d 398, 404 (6th Cir.1999).

Plaintiffs are not associations predominantly engaged in protected expression, and their winery businesses were not “organized for specific expressive purposes.” *New York State Club Ass’n., Inc. v. New York*, 487 U.S. 1, 13 (1988); *CompassCare v. Cuomo*, 465 F.Supp.3d 122 (N.D.

NY, June 5, 2020) (“[T]he Supreme Court has never held that a commercial enterprise, open to the general public, is an ‘expressive association’ for the purposes of First Amendment protections.”) (citation omitted). They have patrons, not members, and seek to associate with more patrons for the purpose of selling more goods (wine and food) and services (facility use). *See Roberts*, 468 U.S. at 635-38 (O’Connor concurrence) (distinguishing between expressive and commercial associations). This is not the type of “association” the Constitution protects.

D. The Challenged Zoning Withstands Judicial Review.

Nothing in the challenged provisions suppresses protected First Amendment activity, so rational basis review applies. *Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 693 (6th Cir. 2014); *Lakewood*, 966 F.2d at 305, 308-309. Under rational basis review, constitutionality is strongly presumed, review is highly deferential to the government, and the government need not produce evidence to sustain rationality. *Liberty Coins*, 748 F.3d at 694 (citations omitted); *Ann Arbor*, 280 F.2d at 223-24 (zoning is “clothed with every presumption of validity.”); *Brae Burn, Inc. v. Bloomfield Hills*, 350 Mich. 425, 430-31; 86 N.W.2d 166 (1957) (courts do not approve “wisdom or desirability” of zoning).

The purposes of the PTZO include “to encourage the use of lands and resources of the Township in accordance with their character and adaptability.” PTZO 2.1. The A-1 District aims to “preserve, enhance, and stabil[ize]” areas predominately for farming purposes and allow “other limited uses which are deemed to be compatible with agricultural and open space uses.” PTZO 6.7.1. The SUP permitting process is intended to “provide a framework of regulatory standards” to address concerns about uses that are potentially “injurious to surrounding properties by depreciating the[ir] quality and value” and the Township as a whole. PTZO 8.7.1(1). The Winery-

Chateau section intends to “maintain the agricultural environment, be harmonious with the character of the surrounding land and uses, and [] not create undue traffic congestion, noise, or other conflict with the surrounding properties.” PTZO 8.7.3(10)(a). The intent of the GAU section includes assuring “additional farm land in wine fruit production.” PTZO 8.7.3(10)(u)(1). The Farm Processing Facility use is intended “to promote a thriving agricultural production industry and preserv[] [the] rural character” of the community. PTZO 6.7.2(19)(a). The PTZO aims to prevent deterioration of agricultural production and farming and maintain Township character. The PTZO advances the Township Master Plan, which envisions A-1 as predominantly agricultural with viable agricultural operations and farming practices. (ECF 142-2, PageID.5027, PageID.5038-41); MCL 125.3203(1). Peninsula Township has a distinguished history of farmland preservation, including through its historic taxpayer-funded Protection of Development Rights (PDR) program. PDR Ordinance No. 23.²⁷

A municipality’s interest in regulating land uses within its jurisdiction is significant. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 50 (1968); *Lakewood*, 699 F.2d at 308 (collecting cases). Zoning prioritizing farming serves legitimate governmental interests. *Alive Church*, 59 F.4th at 109; *Whitmore Lake 23 v. Ann Arbor Charter Twp.*, 2011 Mich. App. LEXIS 790 (April 28, 2011); *Hendee v. Putnam Twp.*, 2008 Mich. App. LEXIS 1746 (Mich. App. Aug. 26, 2008), rev’d on other grounds. So does minimizing traffic congestion and noise and maintaining zones of sanctuary for compatible land uses. *Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974); *Lakewood*, 699 F.2d at 308; *Curto v. Harper Woods*, 954 F.2d 1237, 1242-43 (6th Cir. 1992). So does preserving the character of the district. *Kyser v. Kasson Twp*, 486 Mich 514, 520; 786 NW2d 543 (2010); *Adams Outdoor*

²⁷ Available at https://peninsulatownship.com/uploads/1/0/4/3/10438394/ordinance_23_-_3rd_ammendment_purchase_of_development_rights.pdf, last accessed October 5, 2023.

Advertising v. Holland, 234 Mich. App. 681, 691-92 (1999). Authorizing commercial land uses in a noncommercial district would be *unreasonable zoning*. *Penning v. Owens*, 340 Mich. 355, 367; 65 N.W.2d 831 (1954); *Raabe v. Walker*, 383 Mich. 165, 177-79; 174 N.W.2d 789 (1970); *Superior v. Reimel Sign Co.*, 362 Mich. 481, 486; 107 N.W.2d 808 (1961) (“We know of no reason why a township ordinance may not forbid [] commercial uses in a noncommercial district.”). The Township reasonably treats commercial event venues as neither primary nor accessory uses in A-1. *See Lerner v. Bloomfield Twp.*, 106 Mich. App. 809, 812-13; 308 N.W.2d 701 (1981) (meaning of “accessory uses”). Plaintiffs cannot show the PTZO is not rationally related to legitimate governmental interests.

V. THE TAKING CLAIM FAILS.

Count VII asserts a regulatory taking claim. (ECF 29, PageID.1124-25) Plaintiffs’ original theory was that minimum acreage requirements are unconstitutional. (ECF 3, PageID.470-71; ECF 34, PageID.1874-75) They abandoned that in discovery,²⁸ instead challenging provisions they claim “operate[] as a regulatory taking of the property rights afforded by” their MLCC licenses by preventing them from staying open until 2:00 a.m., playing amplified music, catering, and operating a restaurant. (*See, e.g.*, ECF 457-4, PageID.16087-88, PageID.16101-102) The non-Chateaus assert Winery-Chateau GAU sections and the “ban[]” on restaurants operate as a takings of the same rights afforded to them by their small winemaker’s license. (*See, e.g.*, ECF 457-4, PageID.16129-30)

Plaintiffs do not and cannot allege the PTZO denies all economically beneficial use of their winemaker license, so they cannot maintain a *per se* taking claim. *Lucas v. South Carolina Coastal*

²⁸ Perhaps because some are non-landowners.

Council, 505 U.S. 1003, 1015 (1992); *D.A.B.E., Inc. v. Toledo*, 393 F.3d 692, 965-96 (6th Cir. 2005) (causing bar and restaurant owners to lose customers is insufficient for categorical takings claim).

At best, each Plaintiff alleges a partial taking subject to *Penn. Cent. Transp. Co. v. New York*, 438 U.S. 104 (1978). But this requires an interest protected by the Takings Clause, where “property” is defined “much more narrowly than in the due process clauses.” *Pittman v. Chicago Bd. Of Educ.*, 64 F.3d 1098, 1104 (7th Cir. 1995) (citation omitted); *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022) (“existence of a property interest” for takings purposes “is determined by reference to existing rules or understandings that stem from an independent source such as state law”) (quotations and citation omitted).

No Plaintiff has shown the PTZO has taken any property interest protected by the Takings Clause. They nebulously assert zoning impairs “property rights afforded” by their winemaker licenses. To be clear, the licenses themselves are not impaired. Grand Traverse holds a wine maker license entitling it to manufacture and distribute wine; the remaining 10 Plaintiffs hold small wine maker licenses entitling each to manufacture and distribute up to 50,000 gallons of wine annually. MCL 436.1111(12); 436.1113a(10). No Plaintiff alleges impairment of those operations. To maintain this claim, they must show PTZO provisions impair some *other* constitutionally protected property besides these.

For their state law preemption claims, Plaintiffs identified MLCC *permits* available to them, such as for an on-premises tasting room, entertainment, and catering. (ECF 334, PageID.12021-22) But in discovery, they failed to identify such permits, claimed no constitutionally protected property right in them, and did not allege they were impaired. They complain that zoning interferes with their ability to stay open late, amplify music, and offer food

catering and restaurant services. But the Commission does not issue permits for late hours, amplified music, food catering, or restaurant service; it issues permits to traffic liquor alongside those activities. With respect to the activities themselves, permit holders must comply with zoning. Mich. Admin. Code R. 436.1003(1) (*See e.g.* **Ex 9** p 4; **Ex 38** p 3) A permit might spur expectations but grants no property rights.

At bottom, Plaintiffs complain about zoning impacts to *business activities*, fabricate entitlement to those activities, then characterize the non-existent entitlement as a *property right*. Plaintiffs have no property right to stay open late or amplify music. They cannot transfer wine making permits because they are tied to each Plaintiff’s winemaking. PTP identified no precedent in Michigan or beyond recognizing a property interest protected by the Takings Clause in permits and rules allowing liquor licensees to extend their liquor trafficking to supplemental business activities. *See Puckett v. Lexington-Fayette*, 60 F.Supp. 3d 772, 779 (E.D. Ky. 2014) (“A wide range of statutory entitlements are not covered by the Takings Clause, even though they covered [*sic*] by procedural due process safeguards.”) (collecting cases).

Even if a Plaintiff had an MLCC permit to stay open late, amplify music, and serve food, such permit would provide no constitutionally protected property right to profitability or to obtain particular economic benefits from them. *Long v. Liquor Control Comm’n*, 322 Mich. App. 60, 70-72; 910 N.W.2d 674 (2017). Each Plaintiff’s regulatory takings claim thus fails because the challenged provisions take no stick out of their bundle of property rights. *See Lucas*, 505 U.S. at 1027 (regulation is no taking if “the proscribed use interests were not part of his title to begin with”); *Nekrilov v. City of Jersey*, 45 F.4th 662, 669-70 (3rd Cir. 2022) (“[W]e decline to recognize a general right to do business as a property interest cognizable under the Takings Clause. . . . [T]o hold otherwise would broaden the scope of the Takings Clause such that any business regulation

could constitute a taking.”); *Moskovic v. New Buffalo*, 2022 U.S. Dist. LEXIS 197730 (W.D. Mich. Oct. 31, 2022).

Even if a Plaintiff asserted some property interest to stay open later, amplify music, and provide catering and restaurant services cognizable under the Takings Clause, its claim would easily fail *Penn Central*. Under *Penn Central*, whether government regulations give rise to a taking requires a case-by-case factual inquiry considering including: (1) the economic impact of the regulation; (2) its interference with reasonable investment-backed expectations, and (3) the character of the government action.

The first *Penn Central* factor focuses on the magnitude or severity of the regulation’s economic impact. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540 (2005). Reliance on lost profits, rather than diminished market value of property, is disfavored. In *Andrus v. Allard*, the Supreme Court explained:

[L]oss of future profits — unaccompanied by any physical property restriction — provides a slender reed upon which to rest a takings claim. Prediction of profitability is essentially a matter of reasoned speculation that courts are not especially competent to perform. Further, perhaps because of its very uncertainty, the interest in anticipated gains has traditionally been viewed as less compelling than other property-related interests.

444 U.S. 51, 65-66 (1979); *see also* *Nekrilov*, 45 F. 4th at 673; *Rose Acre Farms, Inc. v. U.S.*, 559 F.3d 1260, 1268-70 (Fed. Cir. 2009) (“vast majority” of *Penn Central* takings claims examine lost value not lost profits; difficult to assess severity of economic impact of lost profits absent comparable numbers).

Plaintiffs’ takings claims are based entirely on speculative expectations of future profits from intangible business activities. (*See e.g.*, **Ex 36** dep 133-138) Because the PTZO does not limit tasting room hours and each Plaintiff voluntarily closes early in the evening, none can show

economic impact caused by PTZO limits on operating hours. Monetizing lost profits from wine tasting at midnight on a Tuesday at a rural winery is the definition of speculation. The PTZO does not limit music amplification in tasting rooms; there is no consequent economic impact. Besides, how many fewer glasses of wine did Mari sell because the guitarist was unplugged? All Plaintiffs serve food; charcuterie boards dominate. At best, zoning and other limits prevent some Plaintiffs from offering full course meals and offsite food catering, but PTP is dubious they could demonstrate severe profit losses.²⁹ Since Plaintiffs refused to share retained values and profits associated with their MLCC licenses, they have not supported a finding of severe profit loss. (ECF 339) The economic impact factor thus weighs against them.

Second, Plaintiffs cannot have any reasonable investment-backed expectations that they may engage in the desired conduct because each knew about the limitations of A-1 zoning before they sought their MLCC licenses. (*See, e.g.*, **Ex 36** dep 158-163; **Ex 27** dep 24-25; **Ex 24** dep 87-89, 97; **Ex 47** dep 143-147; **Ex 53** dep 127-131); *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (“the regulatory regime in place at the time the claimant acquires the property at issue helps to shape the reasonableness of those [investment-backed] expectations.”). This case is not one where a developer “bought their property in reliance on a state of affairs that did not include the challenged regulatory regime.” *Oberer Land Devs. v. Sugarcreek Twp*, 2022 U.S.App. LEXIS 15290 (6th Cir. 2022) (citations and quotations omitted).

Finally, the character of government action is zoning, long recognized as the traditional exercise of state police power to protect the health, safety, and general welfare of the community. *Penn Central*, 438 U.S. at 124-25 (“Zoning laws are, of course, the classic example” of

²⁹ According to Plaintiffs’ original damages calculation, the collective economic impact to the 11 wineries for 5 years of lost profits from catering business was \$1,468,500. (ECF 171-1, PageID.6371). That equates to \$26,700 per winery per year.

“permissible governmental action even when prohibiting the most beneficial use of the property.”); *Rogin v. Bensalem Twp.*, 616 F.2d 680, 690-91 (3rd Cir. 1980).

VI. THESE CLAIMS ARE TIME-BARRED.

The First Amendment and takings claims of all Plaintiffs save Hawthorne and Bowers Harbor cannot survive the 3-year statute of limitations for Section 1983 claims in Michigan because they accrued before October 21, 2017 – more than 3 years pre-suit. *Carroll v. Wilkerson*, 782 F.2d 44, 45 (6th Cir. 1986).

A Section 1983 cause of action accrues when the plaintiff has a complete and present cause of action, meaning they can file suit and obtain relief. *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (citations omitted); *Bannister v. Knox County Board of Educ.*, 49 F.4th 1000, 1008 (6th Cir. 2022) (presumptive rule is Section 1983 claim accrues on first day plaintiff may sue). Claim accrual considers the specific constitutional right invoked. *Bannister*, 49 F.4th at 1008-1009 (citations omitted). Courts look to “what event should have alerted the typical lay person to protect their rights.” *Kuhnle Bros., Inc. v. Geauga County*, 103 F.3d 516, 520 (6th Cir. 1997) (citations omitted); *Ruff v. Runyon*, 258 F.3d 498, 500 (6th Cir. 2001).

The five Chateaus challenge Winery-Chateau provisions adopted in 1989 and 2004 and applied to them before October 2017. Section 8.7.3(10) first applied to Grand Traverse and Chateau Chantal in 1990 through SUPs 21 and 24, respectively; subsequently added subsection (u) first applied to Chateau Chantal in 2004 through SUP 95 and has never applied to Grand Traverse. Section 8.7.3(10), including subsection (u), first applied to Brys through SUP 115 in 2011; and to Mari through SUP 126 in 2016. Section 8.7.3(10) first applied to Bonobo through SUP 118 in 2013; subsection (u) has been inapplicable to it since 2014. The Farm Processors

challenge Farm Processing Facility provisions adopted in 2002 and theoretically applied to them when they obtained their Farm Processing Facility permits – 2007 for both Black Star and Two Lads.

Since before 2017, each of these nine Plaintiffs knew or had reason to know their SUPs and Farm Processing Facility permits authorized explicitly limited land uses, which they now characterize as deprivations of constitutional rights. (*See e.g.* ECF 457-4, PageID.16154-55;). They testified about the lengths they went to understand the limitations, select among available land uses, and advocate for the same zoning changes they now pursue through litigation. (*See e.g.* **Ex 24** dep 87-89, 97; **Ex 36** dep 46-50, 158-63; **Ex 47** dep 143-47; **Ex 53** dep 127-31) Each of their claims was complete and present, and thus accrued, when they received their respective SUPs and land use permits.

These Plaintiffs try to avoid dismissal by arguing they are injured anew every day the “unconstitutional” zoning provisions continue to exist. (*See e.g.* ECF 457-4, PageID.16122-23) Their position seems to be that the three-year period limits damages but is no bar to suit. They thus invoke the continuing violation theory, a narrow exception to the timely filing requirement available when a defendant’s wrongful conduct is part of a continuing practice, with rare applicability to Section 1983 claims. *Sharpe v. Cureton*, 319 F.3d 259, 267-68 (6th Cir. 2003). It fails here because these Plaintiffs’ complaints are continuing *consequences* of long-ago-enacted zoning, not continuing new injurious *acts*.

Any takings claim accrued for each Plaintiff as soon as it had both its MLCC license and Township land use approval (Farm Processing Permit or SUP) applying the zoning limitations it claims took its property. *Kuhnle*, 103 F.3d at 522 (“In the takings context, the basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has

effected a transfer of a property interest. This is a single harm, measurable and compensable when the statute is passed.”) (cleaned up); *Asociación de Suscripción Conjunta del Seguro de Responsabilidad Obligatorio v. Juarbe-Jiménez*, 659 F.3d 42, 51-52 (1st Cir. 2011). Continuing violations do not save these claims. For each of these Plaintiffs, their takings claim accrued more than three years pre-litigation.

These Plaintiffs’ First Amendment claims likewise were complete and present when each was first subject to the challenged zoning; its continued passive existence is not a perpetual series of new, daily Township violations that saves these untimely claims. The Sixth Circuit has rejected applying the continuing violations theory to excuse plaintiffs like these, who waited too long after their injury was “complete and present” before filing suit. *See Tolbert v. Ohio Dep’t Transport*, 172 F.3d 934, 940 (6th Cir. 1999). To successfully invoke this doctrine, a plaintiff must show (1) the defendant’s wrongful conduct continued after the precipitating event that began a pattern, (2) plaintiff’s injury continued to accrue after that event, and (3) further injury must have been avoidable if the defendant had at any time ceased its wrongful conduct. *Id.*, (citing *Kuhnle, supra*). In *Tolbert*, the Sixth Circuit found Section 1983 challenges to Ohio Department of Transport (ODOT) decisions reflected in ODOT’s approved Environmental Impact Statement (EIS) failed each prong: (1) the EIS was a discrete event – not part of a pattern; (2) plaintiffs’ harm was completed upon EIS approval, albeit with “continuing ill effect;” and (3) adherence to the EIS was simply “passive inaction.” The Sixth Circuit requires a plaintiff to identify some affirmative act by the defendant within the limitations period. *Id.*; *Eidson v. Tenn. Dep’t Children’s Servs.*, 510 F.3d 631, 635 (6th Cir. 2007) (“passive inaction does not support a continuing violation theory”); *Howell v. Cox*, 758 Fed. Appx. 480, 484 (6th Cir. 2018) (“to qualify as a continuing violation, [plaintiff] must prove that [defendant’s] continuing unlawful *acts* caused him to suffer continuing

injuries”) (emphasis in original); *see also Gould v. Bristol Borough*, 615 Fed. Appx. 112, 116 (3rd Cir. 2015) (“A government official’s refusal to undo or correct a harm caused by the official’s unlawful conduct is not an affirmative act for purposes of establishing a continuing violation.”) (cleaned up).

These Plaintiffs understood the restrictions and tried “numerous times” to negotiate changes during the years they waited to file suit. (*See e.g. Ex_36* dep 46-50, 158-163; *Ex 24* dep 87-89, 97) Any residual injuries are continuing “ill effects” of an original injury, not “new violations” or repeated wrongful acts. Courts consistently reject “continuing violations” to save Section 1983 challenges alleging government violated First Amendment rights when the plaintiff had all necessary facts for the case but persistent injuries. *See, e.g., Beebe v. Birkett*, 749 F.Supp.2d 580, 596 (E.D. Mich. Feb. 22, 2010) (claim accrued when prison denied religious meals, though effects continued; “plaintiff cannot sit on his rights for over two years and then claim a ‘continuing’ violation in order to preserve claims that accrued more than three years before he filed his complaint.”); *Johnson v. Knox County*, 2022 U.S. Dist. LEXIS 54166 (E.D. Tenn. Mar. 25, 2022) (claim accrued when No Trespass order issued, ongoing sanction is no continuing violation); *Yetto v. City of Jackson*, 2919 U.S. Dis. LEXIS 18285 (W.D. Tenn Feb. 5, 2019) (claim accrued when plaintiffs received notice zoning prohibited pagan home-gatherings); *Pitts v. City of Kankakee*, 267 F.3d 592, 595-96 (7th Cir. 2001) (claim accrued when city posted allegedly defamatory signs on plaintiff’s property); *Harris v. O’Hara Twp.*, 282 Fed.Appx. 172 (3rd Cir. 2008) (claim accrued when plaintiffs received notice “house parties” were prohibited in residential district); *Mitchell v. Clackamas River Water*, 2016 U.S. Dist. LEXIS 151096 (D. Or. Oct. 31, 2016), *aff’d* 727 Fed.Appx. 418 (9th Cir. 2018) (claim accrued when gag order issued, despite continuing effects).

Kuhnle does not support applying the continuing violations doctrine here. That case considered the timeliness under Ohio’s two-year limitations period of three Section 1983 claims filed May 13, 1994, challenging a county resolution enacted August 20, 1991, and voided June 1, 1992. 103 F.3d at 518. The resolution barred plaintiff trucking company from using a road to haul material from a quarry after the county had specifically granted Kuhnle the right to use the road for quarry access in a 1989 settlement agreement. Takings and “property deprivation” claims filed more than two years after resolution enactment were time-barred. *Id.* at 521. A substantive due process “deprivation of liberty” claim, filed within two years after the county stopped enforcing the resolution, survived. As the Sixth Circuit subsequently emphasized in *Tolbert*, *Eidson*, and *Howell*, *supra*, the resolution “actively deprived” the trucking company of its undisputed right, vindicated by state court, to use the road for quarry access, contrary to its constitutional and contractual rights to travel freely. *Id.* at 521-22. These Plaintiffs assert no active deprivation. Moreover, since *Kuhnle*, courts recognize its limits. *See, e.g., Bird v. State*, 935 F.3d 738, 745 (9th Cir. 2019) (*Kuhnle* does not mean plaintiff may delay facial statutory challenge “ad infinitum until the statute is repealed,” nullifying any limitations for facial statutory challenges. *Yetto, supra* (*Kuhnle* inapplicable to save untimely challenge to presumptively valid zoning ordinance)).

Operation of the statute of limitations requires dismissal of these nine Plaintiffs’ claims because they accrued years ago and are now beyond stale. *See Am. Pipe & Constr. v. Utah*, 414 U.S. 538, 555 (1974) (limitations promote justice by preventing surprise revival of stale claims).

VII. CONCLUSION

For the foregoing reasons, PTP respectfully asks the Court to grant summary judgment in its favor and dismiss Plaintiffs' claims as follows and grant PTP all other just and appropriate relief:

- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, and Tabone for lack of standing;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by non-Chateaus Black Star, Two Lads, Tabone, and Peninsula Cellars relating to 8.7.3(10) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Bonobo, Bowers, Brys, Grand Traverse, and Hawthorne relating to 8.7.3(10)(u) for lack of standing because it is inapplicable to them;
- All First Amendment and Taking claims (Counts I, II, III, and VII) by Black Star, Bonobo, Brys, Chateau Chantal, Grand Traverse, Mari, Peninsula Cellars, Tabone, Two Lads as barred by the statute of limitations;
- All Plaintiffs' First Amendment claims (Counts I, II, and III) relating to 6.7.2(19) or any subpart thereof; 8.7.3(10) or any subpart thereof; and 8.7.3(12)(g) and (i) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact; and
- All Plaintiffs' Taking Claims (Count VII) because Plaintiffs failed to establish essential elements and there is no genuine issue as to any material fact.

Respectfully submitted,

Date: October 6, 2023

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews, hereby certify that on the 6th day of October 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: /s/ Tracy Jane Andrews
Tracy Jane Andrews (P67467)
Holly L. Hillyer (P85318)

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(b)(i)

This Brief complies with the word count limit of L. Ci. R. 7.2(b)(i). This brief was written using Microsoft Word version 2016 and has a word count of 18,099 words.

Respectfully submitted,

Date: October 6, 2023

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WINERY SUMMARY TABLE

Winery	Permits	Special limits	Special permissions	Guest Activity Uses
Chateau Grand Traverse (W-C)	SUP 24 - 1990 SUP 66 - 1999 SUP 94 - 2004		Outdoor functions until 10:30 p.m. with up to 75 attendees; more with special permit	No
Chateau Chantal (W-C)	SUP 21 - 1990 SUP 95 - 2004 SUP 114 - 2010 SUP 114 1st Am - 2014			Yes - hosts regularly
Bowers Harbor (W-C)	SUP 32 - 1992 SUP 32 1st Am - 2010 SUP 132 - 2019		SUP 32 1st Am - "Dining in the Vines" SUP 132 - Variance from 50-acre requirement	Maybe
Peninsula Cellars (RWTR)	SUP 62 - 1998			N/A
Brys (W-C)	FPF - 2005 SUP 115 - 2011 SUP 115 1st Am - 2012 SUP 115 2nd Am - 2014 SUP 115 3rd Am - 2018 SUP 115 4th Am - 2018			Yes - has never hosted
Black Star (FPF)	FPF permit - 2007	Conservation easement	Variance from 6,000 square foot limit allowing 12,000 square foot winery	N/A
Two Lads (FPF)	FPF permit - 2007			N/A
Hawthorne (W-C)	FPF - 2013 SUP 135 - 2020			Yes - has never hosted
Bonobo (W-C)	SUP 118 - 2013 SUP 118 1st Am - 2014	Conservation easement	SUP modifies application of 8.7.3(10)(m) to allow meetings and special dinners for non-registered guests	No
Mari (W-C)	FPF - 2014 SUP 126 - 2016	All GAUs must be indoors and are limited to 50 attendees		Yes - hosts regularly
Tabone (Food Processing Plant w/ unauthorized tasting room)	SUP 73 - predates Tabone			N/A

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF EDWARD O'KEEFE

<p>1 DEPOSITION OF EDWARD O'KEEFE</p> <p>2 Taken by the Intervener Defendant on the 11th day of July,</p> <p>3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at</p> <p>4 2:00 p.m.</p> <p>5</p> <p>6 APPEARANCES:</p> <p>7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>8 And</p> <p>9 MR. CHRISTOPHER J. GARTMAN (P83286)</p> <p>10 Miller Canfield Paddock & Stone, PLC</p> <p>11 99 Monroe Avenue, NW, Suite 1200</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 776-6333</p> <p>14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>15 McGraw Morris, PC</p> <p>16 300 Ottawa Avenue, NW, Suite 800</p> <p>17 Grand Rapids, Michigan 49503</p> <p>18 (616) 288-2700</p> <p>19 For the MS. TRACY JANE ANDREWS (P67467)</p> <p>20 Intervener-Defendant: Law Office of Tracy Jane Andrews, PLLC</p> <p>21 619 Webster Street</p> <p>22 Traverse City, Michigan 49686</p> <p>23 (231) 714-9402</p> <p>24 And</p> <p>25 MS. HOLLY LYNN HILLYER (P85318)</p> <p>Olson Bzdok & Howard, PC</p> <p>420 East Front Street</p> <p>Traverse City, Michigan 49686</p> <p>(231) 946-0044</p> <p>Also Present: Dave Sanger</p> <p>Lee Lutes</p> <p>RECORDED BY: Stacey M. Seals, CER 7908</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>Page 2</p>	<p>1 Traverse City, Michigan</p> <p>2 Tuesday, July 11, 2023 - 2:05 p.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm the</p> <p>4 testimony you're about to give will be the whole truth?</p> <p>5 MR. O'KEEFE: Yes.</p> <p>6 EDWARD O'KEEFE</p> <p>7 having been called by the Intervener Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. HILLYER:</p> <p>10 Q Could you, please, state your name for the record.</p> <p>11 A Edward Leo O'Keefe III, quite a name.</p> <p>12 Q I am Holly Hillyer, and I'm counsel for PTP. And I know --</p> <p>13 or I believe that you were not previously deposed in this</p> <p>14 litigation. Have you ever been deposed before?</p> <p>15 A Technically, yes.</p> <p>16 Q Technically, yes? What kind of case was it?</p> <p>17 A It was a building case for a roofing thing 30 years ago.</p> <p>18 Q Okay. So 30 years ago. I'll go over a couple of ground</p> <p>19 rules, and I know you've had an opportunity to observe some</p> <p>20 of these yesterday.</p> <p>21 A Yeah.</p> <p>22 Q But this will be transcribed, and so we ask that you please</p> <p>23 speak your answers, try to avoid nonverbal communication,</p> <p>24 everything that you want to communicate should be picked up</p> <p>25 by the court reporter. Try to let me finish questions</p> <p>Page 4</p>
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Hillyer 4</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 33 marked13</p> <p>9 (Special Use Permit 59)</p> <p>10 Deposition Exhibit 34 marked16</p> <p>11 (Special Use Permit 66)</p> <p>12 Deposition Exhibit 35 marked17</p> <p>13 (Excerpt of Meeting Minutes)</p> <p>14 Deposition Exhibit 36 marked41</p> <p>15 (Answers to Interrogatories)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 before you start to answer, both to give your counsel an</p> <p>2 opportunity to object if he needs to and so that we avoid</p> <p>3 speaking over one another. We'll try to make it easier for</p> <p>4 the court reporter. If you do not understand a question,</p> <p>5 please let me know, I'll try to rephrase it. If you answer</p> <p>6 I'll assume that you understood the question.</p> <p>7 A Okay.</p> <p>8 Q And if your attorney objects I'll expect you to go ahead and</p> <p>9 answer anyway unless he instructs you not to due to a claim</p> <p>10 of privilege. Estimates are okay if I ask you for a date</p> <p>11 range or something like that or the size of your facility;</p> <p>12 estimates are fine, but I'd ask you not to guess. And let</p> <p>13 me know if you need a break.</p> <p>14 A Okay.</p> <p>15 Q As long as there's no pending question on the table we can</p> <p>16 take a break when we need to. And to give you a little bit</p> <p>17 of a roadmap, I'm going to go through how you prepared for</p> <p>18 the deposition today and then some background information</p> <p>19 about Chateau Grant Traverse, some information about the</p> <p>20 permitted land uses on the property, go over a couple of</p> <p>21 your special use permits, and then talk to you about your</p> <p>22 current land use, the kinds of activities and experiences</p> <p>23 you offer for guests, tasting room experiences, capacity,</p> <p>24 that kind of thing. And then review some of your responses</p> <p>25 to the discovery that you sent to PTP. Talk to you a little</p> <p>Page 5</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF EDWARD O'KEEFE

<p>1 Q And so what is your understanding of what this permit</p> <p>2 allowed Chateau Grand Traverse to do with respect to its</p> <p>3 tasting room?</p> <p>4 MR. INFANTE: Objection; the document speaks for</p> <p>5 itself. But you can answer.</p> <p>6 A Yeah, I don't know how to answer the question in the fact</p> <p>7 that what it says is my knowledge of it.</p> <p>8 Q So if you would turn to page 4557, which is page 7 of the</p> <p>9 SUP. It says subsection (e) at the top where it says</p> <p>10 "Tasting room."</p> <p>11 A Uh-huh (affirmative).</p> <p>12 Q Is that what you're referring to when you say that this</p> <p>13 is -- that you -- you're familiar with the parts that govern</p> <p>14 your tasting room?</p> <p>15 A Yes.</p> <p>16 Q What are you allowed to do in your tasting room under this</p> <p>17 permit?</p> <p>18 MR. INFANTE: Same objection. Go ahead.</p> <p>19 A I mean, we are enabled to sell certain non-food items and</p> <p>20 food items, pretty specific there, and wine paraphernalia</p> <p>21 and associated things. Certain foods that we are enabled to</p> <p>22 do with specifications for logos and that it's not for off</p> <p>23 premise consumption. And then additional ancillary items,</p> <p>24 such as mustard, vinegars and what have you that would be</p> <p>25 associated with wine. I think the incidental</p> <p style="text-align: center;">Page 14</p>	<p>1 nod.</p> <p>2 Q I do it.</p> <p>3 MR. INFANTE: And she'll just say is that a yes,</p> <p>4 is that a no.</p> <p>5 THE WITNESS: I understand.</p> <p>6 MR. INFANTE: Same thing if I object -- which I</p> <p>7 will object, just pause and then unless I tell you not to</p> <p>8 answer just go ahead and --</p> <p>9 MS. ANDREWS: You may not object.</p> <p>10 Q So I have another exhibit for you.</p> <p>11 MR. INFANTE: I may not or I don't have to? What</p> <p>12 are you saying? Ask better questions.</p> <p>13 Q This will be Exhibit 34.</p> <p>14 (Deposition Exhibit 34 marked)</p> <p>15 Q So this is a document that says at the top special use</p> <p>16 permit number 66, replacing special use permit 2459 and 64.</p> <p>17 And this is marked WOMP000084, and this is a page range</p> <p>18 through 891. Do you recognize this document?</p> <p>19 A I believe so. I'm just reviewing it.</p> <p>20 (Witness reviews exhibit)</p> <p>21 Q I apologize I'm looking at -- okay. The seventh and eighth</p> <p>22 pages are reversed, there in the right order on the</p> <p>23 production but if you look the seventh page is the final</p> <p>24 page.</p> <p>25 A Okay.</p> <p style="text-align: center;">Page 16</p>
<p>1 non-refrigerated items are kind of the non-refrigerated</p> <p>2 cheese, or what have you, and then the intent is not to have</p> <p>3 a delicatessen sort of operation.</p> <p>4 Q Okay. And then if you turn to page 4559 it looks like</p> <p>5 there's also a subsection (e) on this page.</p> <p>6 A Uh-huh (affirmative).</p> <p>7 Q There's a chart that says "Non wine items for sale" and it</p> <p>8 has kind of a detailed breakdown.</p> <p>9 A Uh-huh (affirmative).</p> <p>10 Q Are those the types of things that you understand you're</p> <p>11 unable to sell?</p> <p>12 A Yes.</p> <p>13 Q And do you sell these things?</p> <p>14 A Some of them, yes.</p> <p>15 Q Back to the first page of this. Would you agree that it</p> <p>16 looks like this was valid --</p> <p>17 A Over here (indicating)?</p> <p>18 Q Just the last paragraph before it says general conditions,</p> <p>19 that this permit was valid for a period beginning June 26th,</p> <p>20 1998?</p> <p>21 A Uh-huh (affirmative).</p> <p>22 Q Does that sound right to you?</p> <p>23 A Yeah; yes.</p> <p>24 Q It's hard to remember to say "yes."</p> <p>25 MR. INFANTE: You will shake your head, you will</p> <p style="text-align: center;">Page 15</p>	<p>1 Q In the production it looks like the last two pages got</p> <p>2 flip-flopped when it was produced.</p> <p>3 MR. INFANTE: I see that. Our fault probably.</p> <p>4 MS. ANDREWS: Or not.</p> <p>5 MR. INFANTE: Or not, or just the way it came from</p> <p>6 the township too. Who knows; right?</p> <p>7 Q So noting that about the page order, does this look familiar</p> <p>8 to you?</p> <p>9 A Yes.</p> <p>10 Q And you mentioned SUP 66 a few minutes ago. Is this the SUP</p> <p>11 that you believe is the controlling SUP for the property?</p> <p>12 A To the best of my knowledge I believe so.</p> <p>13 Q And I'd like to come back and talk about the substance of</p> <p>14 this, but just to clarify I have one more exhibit, and this</p> <p>15 will be 35.</p> <p>16 (Deposition Exhibit 35 marked)</p> <p>17 Q And this is a document that appears to be an excerpt from</p> <p>18 town board meeting minutes from September 14, 2004, and it</p> <p>19 is marked Defendant's Response to 1st RFP 006990. If you</p> <p>20 look in the middle do you see where it says there was a</p> <p>21 public hearing about a Chateau Grand Traverse building</p> <p>22 addition request?</p> <p>23 A Pardon me. What date is this?</p> <p>24 Q If you look at the bottom by the page number it looks like</p> <p>25 2004. Do you remember a building addition in 2004?</p> <p style="text-align: center;">Page 17</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF EDWARD O'KEEFE

<p>1 A Yes, I remember this one.</p> <p>2 Q Okay. And do you see where this says, "Since there are no</p> <p>3 changes in the use, we would not need to make any changes in</p> <p>4 the findings," and that there's a new SUP number to track</p> <p>5 proper notifications?</p> <p>6 MR. INFANTE: (Indicating)</p> <p>7 THE WITNESS: Oh.</p> <p>8 A Okay.</p> <p>9 Q And then down below it says there's a motion to approve</p> <p>10 addition for Chateau Grand Traverse special use permit 94?</p> <p>11 A I see that.</p> <p>12 Q Would you agree that with the exception of the building</p> <p>13 addition request that this approved that nothing about this</p> <p>14 SUP 66 changed?</p> <p>15 A I believe that to be the case.</p> <p>16 MR. INFANTE: I assume you're going to ask about</p> <p>17 34 now?</p> <p>18 MS. HILLYER: Yes.</p> <p>19 Q So if you could take a look at Number 34 again. If you</p> <p>20 scroll down to about halfway through the page just above the</p> <p>21 general conditions it says that this permit will be valid</p> <p>22 for periods starting July 14th, 1999. Is it your</p> <p>23 understanding that this permit has been in effect since</p> <p>24 1999?</p> <p>25 A To the best of my knowledge.</p> <p style="text-align: center;">Page 18</p>	<p>1 overlook?</p> <p>2 A Yes.</p> <p>3 Q Do they usually stay and have a glass of wine or --</p> <p>4 A Yes and no. I mean, it just depends on the weather, the</p> <p>5 day, the site, the view.</p> <p>6 MR. INFANTE: The person.</p> <p>7 A The person.</p> <p>8 Q And do you have -- you mentioned a patio, is there tasting</p> <p>9 outdoors?</p> <p>10 A We offer people the ability to buy wine by the glass or we</p> <p>11 also offer a few choices of non-alcoholic beverages.</p> <p>12 Q Okay. And people are allowed to have alcohol outside?</p> <p>13 A Correct.</p> <p>14 Q How large is the outdoor area?</p> <p>15 A I could not give you an exact on square footage.</p> <p>16 Q That's fine.</p> <p>17 A But it's a -- it's a defined area that we are -- that we</p> <p>18 operate within, it's fenced in. So I would say it's</p> <p>19 suitable for the allowance of people that we're allowed to</p> <p>20 have there.</p> <p>21 Q Do you have a guess of about how many people that can</p> <p>22 accommodate if it's packed?</p> <p>23 A We -- I mean, we have it so that we can accommodate what our</p> <p>24 SUP says we can accommodate. So we have approximately -- I</p> <p>25 say this -- approximately 70 seats.</p> <p style="text-align: center;">Page 20</p>
<p>1 Q Okay. And are you aware of -- other than the SUP 94 for the</p> <p>2 building addition, are you aware of any other special use</p> <p>3 permit that you have applied for or amendments that you've</p> <p>4 applied for?</p> <p>5 A To my knowledge I'm unaware.</p> <p>6 Q Okay. All right. If you could tell me a little bit about</p> <p>7 the Chateau Grand Traverse property, and start with the</p> <p>8 tasting room. You have a tasting room; right?</p> <p>9 A Yes.</p> <p>10 Q Okay. So could you describe that to me?</p> <p>11 A Describe the physical or what we do or --</p> <p>12 Q You can start with the physical description, that would be</p> <p>13 good.</p> <p>14 A We have a winery tasting room where customers can pull in at</p> <p>15 will during business hours and enter the facilities and</p> <p>16 decide if they are going to meander or step up to the</p> <p>17 tasting bar and choose to taste wine or go out on our back</p> <p>18 patio and choose to have a glass of wine and possibly some</p> <p>19 food.</p> <p>20 Q And when you say "meander," where -- what other parts of the</p> <p>21 property might a guest be allowed to go to?</p> <p>22 A We have a -- on the opposite end of the building, and we</p> <p>23 have a sign that says 300 feet overlook view or -- I think</p> <p>24 it's scenic overlook.</p> <p>25 Q Okay. Do people sometimes come just to look at the scenic</p> <p style="text-align: center;">Page 19</p>	<p>1 Q Okay. So there's seating out there? Is it a grassy area or</p> <p>2 is it --</p> <p>3 A It is a defined patio area with a fence around it.</p> <p>4 Q And are there tables and chairs?</p> <p>5 A Yes.</p> <p>6 Q Okay. And when you say about 70 people, where does that</p> <p>7 number come from?</p> <p>8 MR. INFANTE: Object to form. I think he said 70</p> <p>9 seats.</p> <p>10 Q 70 seats. That's fair. Seats for about 70 people; would</p> <p>11 that be fair?</p> <p>12 A Again, approximately, yes.</p> <p>13 Q But could more people mill around?</p> <p>14 A Yes.</p> <p>15 Q And that 70 figure, where does that come from?</p> <p>16 A We are entitled, according to the SUP, to have -- if you</p> <p>17 want to say "functions" up to 75 people, and we keep it at</p> <p>18 that level on a daily basis.</p> <p>19 Q So if I look at that Exhibit 34, page 5 of that SUP, and</p> <p>20 it's page WOMPO000888. Are you referring to this section D,</p> <p>21 outdoor functions?</p> <p>22 A Yes.</p> <p>23 Q Okay. And where it says, "Holding outdoor functions such as</p> <p>24 wine tasting parties, festivals, et cetera, shall require a</p> <p>25 special permit if such function is likely to involve more</p> <p style="text-align: center;">Page 21</p>

6 (Pages 18 to 21)

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<p>1 than 75 guests?"</p> <p>2 A Correct.</p> <p>3 Q Can you tell me about the special permits that are required</p> <p>4 if you have more than 75 guests?</p> <p>5 A It is my understanding that I need to seek township approval</p> <p>6 if I plan to have an event that exceeds that amount of</p> <p>7 people in one group.</p> <p>8 Q Okay. Do you do that often?</p> <p>9 A Currently we do not.</p> <p>10 Q Have you ever done that?</p> <p>11 A Yes, we have.</p> <p>12 Q Do you know how long ago that was?</p> <p>13 A Most of the activities that we conducted like that were pre</p> <p>14 COVID.</p> <p>15 Q Okay. What kinds of activities were those?</p> <p>16 A We had a regular summer function that was known as wine down</p> <p>17 Wednesdays.</p> <p>18 Q What was involved with those?</p> <p>19 A We offered food, we offered music, we offered seating and we</p> <p>20 promoted it as a summer event on Wednesday.</p> <p>21 Q And what time were those, were those in the evening?</p> <p>22 A Yes.</p> <p>23 Q Like an after work kind of thing?</p> <p>24 A Yes.</p> <p>25 Q How late did those go?</p> <p style="text-align: center;">Page 22</p>	<p>1 groups or individuals or whatever that would show up and</p> <p>2 enjoy the facilities. For what we have to offer as far as</p> <p>3 group offerings we -- we take those as we get the calls.</p> <p>4 Q Okay. When you say groups that show up, are these</p> <p>5 reservations that you take or just large groups that come in</p> <p>6 unexpectedly?</p> <p>7 A The latter.</p> <p>8 Q Okay. So could you give me an example of when that has</p> <p>9 happened? How does that work?</p> <p>10 A I mean, it's across the board of who arrives lets say on one</p> <p>11 of those smaller busses; it could be individual groups, it</p> <p>12 could be a motorcycle gang or -- not a gang, but -- you know</p> <p>13 what I mean -- like an upscale motorcycle group.</p> <p>14 MR. INFANTE: Club is a better term for it.</p> <p>15 A Club. We had a car club pull in the other day. It just</p> <p>16 could be -- we had a guy arrive in a helicopter once.</p> <p>17 Q So do you typically get notice when a large group is coming</p> <p>18 or -- does it happen a lot that a large group shows up</p> <p>19 without notice?</p> <p>20 A It can happen. I mean, it just --</p> <p>21 Q Yeah. So this section talks about wine tasting parties,</p> <p>22 festivals. Do you ever have event that Chateau Grand</p> <p>23 Traverse plans as promotional events or --</p> <p>24 A We have.</p> <p>25 Q Other than wine down Wednesdays?</p> <p style="text-align: center;">Page 24</p>
<p>1 A They only went 'til 7:30 p.m.</p> <p>2 MR. INFANTE: Good clarification.</p> <p>3 Q So on the subject of hours --</p> <p>4 MR. INFANTE: That's a whole different happy hour</p> <p>5 if you went 'til 7:30 in the morning.</p> <p>6 MS. HILLYER: It would be a long night.</p> <p>7 Q So in general your outdoor activities are to terminate by</p> <p>8 10:00 p.m., but there's an exception until 10:30 during</p> <p>9 June, July and August. Is that your understanding?</p> <p>10 A Yes.</p> <p>11 Q Do you often have outdoor activities that run that late?</p> <p>12 A At this time, no.</p> <p>13 Q Have you in the past?</p> <p>14 A No.</p> <p>15 Q So besides wine down Wednesdays, what other types of</p> <p>16 activities have you had under this provision?</p> <p>17 A Again, can you clarify activities.</p> <p>18 Q I'm referring to whatever you understand yourself to be</p> <p>19 permitted to do under this outdoor functions section.</p> <p>20 A So I -- my -- it's private groups you mean, or -- or -- not</p> <p>21 trying to make it complicated.</p> <p>22 Q No, honestly, I'm trying to understand what you as a winery</p> <p>23 do under this provision, the outdoor functions that you</p> <p>24 have.</p> <p>25 A Yeah. Primarily allowing people to enjoy -- you know,</p> <p style="text-align: center;">Page 23</p>	<p>1 A Correct.</p> <p>2 Q What would those be?</p> <p>3 A We have -- to my recent knowledge we did a corporate get</p> <p>4 together for Plante Moran where they would have -- I don't</p> <p>5 recall the exact amount of people, but within the range of</p> <p>6 what we are and associated wine and food and ambiance.</p> <p>7 Q Okay. Do you have -- so I guess that would be -- would it</p> <p>8 be fair to say that that's an event where a group contacted</p> <p>9 you to come in and have their group be there --</p> <p>10 A That's correct.</p> <p>11 Q Is that like a facility rental or --</p> <p>12 A Yes; yes; basically, yeah.</p> <p>13 Q People pay a fee to use the space and they dictate the terms</p> <p>14 of what's provided during that time?</p> <p>15 A Yeah, depending on what they request.</p> <p>16 Q So for the Plante Moran event, what kinds of things did they</p> <p>17 ask for?</p> <p>18 A I was not personally involved with the details or the</p> <p>19 organization of it, but in general they have a facility</p> <p>20 rental for the space. They would choose their food</p> <p>21 appropriately and our chef would then provide it once they</p> <p>22 approve the cost of that food.</p> <p>23 Q Do you have an events coordinator or a person whose job it</p> <p>24 is to be primarily responsible for organizing these kinds of</p> <p>25 things?</p> <p style="text-align: center;">Page 25</p>

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<p>1 A We did.</p> <p>2 Q You did?</p> <p>3 A Up until COVID, and hence -- yeah.</p> <p>4 Q Who was that?</p> <p>5 A Her name was Ann Ritzel (phonetic).</p> <p>6 Q Is that something that you plan to have again?</p> <p>7 A In some form or another.</p> <p>8 Q Under section D, number 6, this is on page 889, it talks</p> <p>9 about the hours. It also says, "No amplified outside music</p> <p>10 shall be allowed except low level mood music shall be</p> <p>11 allowed that does not exceed the level of a whisper at the</p> <p>12 property boundaries." Do you have amplified outdoor music?</p> <p>13 A Yes, we do.</p> <p>14 Q How far is the area where you're having these activities</p> <p>15 from the property boundaries?</p> <p>16 A Well, I would say we're probably -- I'm totally</p> <p>17 guesstimating -- 400 feet from Center Road maybe, 1,000 feet</p> <p>18 from Nelson Road. And then from the property line to the</p> <p>19 north as you would go through our building 100 feet -- well,</p> <p>20 yeah, I guess 100 feet or so.</p> <p>21 Q Okay. And when you have amplified music outside, I mean, is</p> <p>22 it your understanding that it can't be heard at those</p> <p>23 property boundaries?</p> <p>24 A Correct.</p> <p>25 Q Okay. Do people ever complain that the music is too loud?</p> <p style="text-align: center;">Page 26</p>	<p>1 Q Please.</p> <p>2 A But that seating that I mentioned before interchanges, it</p> <p>3 goes in and out of the building depending on weather. So</p> <p>4 it's generally a 70 or so person seating but some might be</p> <p>5 outside, some might be inside.</p> <p>6 Q So if it's a gorgeous day you might have all of the seating</p> <p>7 out on the patio?</p> <p>8 A In general.</p> <p>9 Q And if it's pouring down rain you've got -- you can get 40</p> <p>10 people in the covered area?</p> <p>11 A Correct.</p> <p>12 Q Thank you for the clarification. Chateau Grand Traverse has</p> <p>13 lodgings for overnight guests; right?</p> <p>14 A Correct.</p> <p>15 Q And how many rooms do you have?</p> <p>16 A We have six rental rooms.</p> <p>17 Q And how many people can those accommodate?</p> <p>18 A They can accommodate according to our SUP up to three people</p> <p>19 per room, but we -- it's generally two people per room.</p> <p>20 Q And what kinds of amenities are available to overnight</p> <p>21 guests?</p> <p>22 A I mean, amenities that you would expect; a bed, an outdoor</p> <p>23 porch to view over the vineyard, a refrigerator, a homemade</p> <p>24 continental breakfast in the morning and a bottle of wine.</p> <p>25 Q The breakfast, is that something you prepare in house?</p> <p style="text-align: center;">Page 28</p>
<p>1 A To my knowledge we've never had a complaint.</p> <p>2 Q And what kinds of music do you have?</p> <p>3 A Whatever Pandora wants to play.</p> <p>4 MR. INFANTE: I'd had a really good joke, I held</p> <p>5 it back. If we go off the record -- it's pretty funny I</p> <p>6 think.</p> <p>7 Q So back to the tasting room, back indoors. How large is</p> <p>8 your tasting room?</p> <p>9 A I should know that. I believe -- I don't think I can answer</p> <p>10 that intelligently. I can estimate. I mean, I can tell you</p> <p>11 the dimensions of the building, but --</p> <p>12 Q An estimate is fine.</p> <p>13 A It's 60 feet and approximately -- excuse me. 60 feet</p> <p>14 building wide and 30 feet or so deep.</p> <p>15 Q About how many people can you have in there?</p> <p>16 A Approximately 60.</p> <p>17 Q Are there any other indoor areas where people can drink</p> <p>18 wine?</p> <p>19 A We have a semi enclosed outdoor area.</p> <p>20 Q Okay.</p> <p>21 A Which will seat an additional 40 people.</p> <p>22 Q And that's different from the patio that you described?</p> <p>23 A Correct.</p> <p>24 Q And Chateau Grand Traverse --</p> <p>25 A Can I clarify?</p> <p style="text-align: center;">Page 27</p>	<p>1 A Correct.</p> <p>2 Q And the kitchen that you use for that, where is the kitchen</p> <p>3 located?</p> <p>4 A It's in the winery end.</p> <p>5 Q Is that separate from the tasting room?</p> <p>6 A That is correct.</p> <p>7 Q Is there a kitchen associated with the tasting room also?</p> <p>8 A There is a -- what is it? -- Michigan Department of</p> <p>9 Agriculture approved preparation area for food.</p> <p>10 Q Okay. Do you offer food in the tasting room?</p> <p>11 A We do.</p> <p>12 Q And what kind of food is that?</p> <p>13 A Currently we are offering a cheese and cracker plate, we</p> <p>14 offer a charcuterie board, we offer a mezze board, which is</p> <p>15 slightly different, and we offer a chef made trail mix.</p> <p>16 Q And for food, can people who are not staying as guests have</p> <p>17 breakfast alongside the bed and breakfast guests --</p> <p>18 A No.</p> <p>19 Q -- or are their options limited to what's available in the</p> <p>20 tasting room?</p> <p>21 A State that again, please.</p> <p>22 Q Is the breakfast that's available for overnight guests</p> <p>23 available for people who are not spending the night?</p> <p>24 A No.</p> <p>25 Q So for people that are not spending the night is their only</p> <p style="text-align: center;">Page 29</p>

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1 food option what's available in the tasting room?

2 **A Correct.**

3 **Q Does Chateau Grand Traverse ever have wine and food pairing**

4 **dinners or special food experiences other than regular**

5 **tasting room food and the breakfast that it offers overnight**

6 **guests?**

7 **A Yes, we do.**

8 **Q Can you tell me about those?**

9 **A We do a fairly -- I don't know if it's monthly now because**

10 **of the seasonality of it. But generally we do a dinner**

11 **package, people that are registered guests at the house only**

12 **are entitled to buy a package where they have lodging and a**

13 **chef provided dinner along with our wines.**

14 **Q So is that only for people that are spending the night at**

15 **the chateau?**

16 **A Yes.**

17 **Q And does the chef prepare those in the kitchen that's used**

18 **for the breakfasts for the overnight guests?**

19 **A Yes.**

20 **Q And is that -- those breakfasts, are those served in the**

21 **separate dining area or are those in the tasting room?**

22 **A In a provided dining area at the winery guest house.**

23 **Q Okay. So other than these food and wine pairings, do you**

24 **offer other kinds of wine themed programming for people;**

25 **like winery tours or cooking classes?**

Page 30

1 **A We typically offered complimentary winery tours prior to**

2 **COVID. And then we ceased that, so we stopped doing that**

3 **for whatever that period of time is, two or three years.**

4 **And since then we have started a private tour where you can**

5 **make a reservation for a fee.**

6 **Q Okay. What's included with those?**

7 **A It's a personally escorted tour from a qualified person that**

8 **takes people through the facilities and educates them on our**

9 **production and methodology and products.**

10 **Q And who usually does those?**

11 **A Well, currently we're doing them on a small scale so we have**

12 **one gentleman, he's our tasting room manager, his name is**

13 **Hiro Miura.**

14 **Q Could you spell that, please?**

15 **A H-i-r-o M-i-u-r-a.**

16 **MR. INFANTE: Great name.**

17 **A He's not German. Sorry.**

18 **Q Your overnight guests, if they are spending the night at the**

19 **chateau, are they able to use the chateau facilities to have**

20 **private events of their own, like a small wedding or a**

21 **family reunion or any other kind of private gathering?**

22 **A They could.**

23 **Q Does that happen often?**

24 **A Not that often.**

25 **Q Has it happened in the past?**

Page 31

1 **A Yes.**

2 **Q Could you describe an example for me?**

3 **A Almost exactly as I described, like a chef made dinner**

4 **function but it would be on a private level. We get groups**

5 **that request -- you know, they inquire about a dinner and**

6 **wine and renting the facility.**

7 **Q Is that available just to people that are spending the**

8 **night, or could any member of the public do that?**

9 **A We limit it to paying guests; the guests that have paid to**

10 **stay in those rooms only. And, you know, we try to limit to**

11 **the best of our ability anybody that would come in**

12 **otherwise.**

13 **Q What about any other kinds of activities, like photo**

14 **packages in the vineyards, experiences in the vineyards? Do**

15 **people ever use the vineyards for anything?**

16 **A Well, certainly for walking. But we -- we're careful to**

17 **keep things confined because some days the tractor may have**

18 **sprayed, so out of safety of people we try to limit**

19 **accessability to the perimeter of the vineyards.**

20 **Q Does Chateau Grand Traverse advertise all of the things that**

21 **it has available to people?**

22 **A Not in minute detail. The wine tasting patio, basic food**

23 **and potential tours.**

24 **Q How does it advertise? Does it post on social media or run**

25 **a website or pay for traditional advertising?**

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1 **A Social media, print advertising, brochures. I mean, what**

2 **else is there? Maybe a little bit on radio, but that's more**

3 **educational than advertising.**

4 **Q What do you mean by more educational than advertising?**

5 **A It's a program put together by I believe it's WTCM Radio**

6 **that tries to educate people on wine. So they'll do a story**

7 **on -- a clip on what is Riesling or what it Gamay Noir, and**

8 **you can get it at -- try your Northern Michigan winery type**

9 **thing.**

10 **Q Is that something that other wineries participate in, or is**

11 **that --**

12 **A They can, yeah.**

13 **Q And do you do those programs?**

14 **A Yes, I do.**

15 **Q Does anybody else affiliated with the winery do them, or is**

16 **that role?**

17 **A Affiliated with our winery?**

18 **Q Yeah.**

19 **A No.**

20 **Q How often do those run?**

21 **A They run in cycles because I know that there's other**

22 **wineries that -- and it's through the key summer months.**

23 **Q And the brochures that you mentioned, are those things that**

24 **you pass out at the winery or that you distribute around**

25 **town at other venues and locations?**

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9 (Pages 30 to 33)

CORRESPONDENCE

MANIGOLD reviewed the correspondence in this months' packet.

BRIEF AUDIENCE COMMENTS

Marty Lagina, 232 W. McKinley. Regarding comments made by HAYWARD on August 11, 2004 where he said "uses not specifically listed in the ordinance are not allowed". HAYWARD said he was referring to the authority of the Zoning Ordinance. FORD said prior to the enactment of certain statutes that gave authority to Townships to establish a Zoning Ordinance, you would have unlimited rights. But once the Township enacts a zoning ordinance, then all land use decisions must be in accordance with that ordinance. If not specifically permitted in the Zoning Ordinance, you would go to the ZBA to see if your request was permitted. Lagina disagrees. He would like the board to ask for a formal opinion from FORD regarding same. FORD said the right to use property depends on the ordinance. If it says there are limitations, then you are bound by them. If not, then it is allowed. Marty said if it's true he will take it to court. Regarding weekly rentals, he disagrees with process. Feels the Board should adopt an Ordinance to address it. As a citizen he thinks it is wrong for the ZBA to determine what's allowed. Thinks it should go through the Planning Commission. HEMMING commented and agreed with most of Lagina's comments. HEMMING said the history of the rental issue was the ZBA recommended that the Township create clarifying language. HOFFMAN said the Board at that time asked some of the people at the time who were renting weekly to come forward to work on the language, but none of them did. HAYWARD stated that he did present an Ordinance Amendment to the Planning Commission, but it was rejected.

BUSINESS**1. Public Hearing – Chateau Grand Traverse Building Addition Request**

MANIGOLD opened the public hearing at 8:23 p.m. and explained that because Chateau GT is under a special use permit, any changes require Board approval and an amendment to the SUP. HAYWARD explained that the recommendation from the Planning Commission to amend the site plan. Since there are no changes in the use, we would not need make any changes in the findings. It does have a new SUP number so we can track that all proper notifications have gone out. HOFFMAN asked HAYWARD to indicate on the map where the addition will be. HAYWARD pointed to an existing vestibule and a new spiral staircase to the 2nd floor, adding a conference room and two offices along with a walkway, totaling 16 ½ feet wide by approximately 40 feet long. Audience comments. None. MANIGOLD closed the ph at 8:26 p.m.

Board discussion: HOFFMAN said she doesn't see any problems with this request.

MOTION: HOFFMAN/HEMMING to approve addition for Chateau Grand Traverse SUP 94.

CARRIED UNAN

2. Public Hearing – Resolution 2 Cherrywood Commons Sewer

MANIGOLD explained that everyone was notified by mail and in the Record-Eagle. There is 93 percent approval for the project. This public hearing will authorize the Assessor to establish the roll. MANIGOLD explained that we've never had a project quite this. Originally this project was planned to go down Center Road but they couldn't get 51 percent approval. Since then, Marty Lagina, Kendall Smith and Cherrywood are doing the district together. Referred to letter from Robert Witkop, attorney representing Cherrywood on this matter. Normally, the line is run only to the property line, but in this project the hookups will be added

CHATEAU GRAND TRAVERSE WINE DOWN WEDNESDAYS

5:00 TO 7:00

EVERY WEEK • RAIN OR SHINE
ALL SUMMER LONG

GOOD
TUNES.
GOOD
POURS.
GOOD
TIMES.



WINE AND CIDER
BY THE GLASS
PLUS SMALL BITES

== ON THE PATIO ==

OLD MISSION PENINSULA

MAY 30 Jeff Brown

JUNE 06 Olivia Millerschin

JUNE 13 Brett Mitchell

JUNE 20 Lighting Matches

JUNE 27 Escaping Pavement

JULY 04 Jeff Brown

JULY 11 Dede Adler & E Minor

JULY 18 Abigail Stauffer

JULY 25 Matt Gabriel

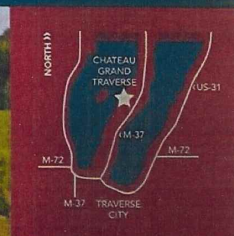
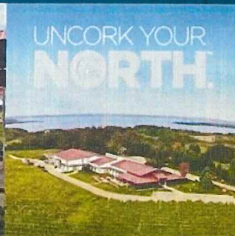
AUG 01 Chris Smith

AUG 08 Olivia Mainville

AUG 15 Plain Jane Glory

AUG 22 Loren Johnson

AUG 29 Cousin Curtiss



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WOMP012914



CUSTOM PRIVATE ARRANGEMENT - Invoice

██████████ Summer Office Party
Thursday, July 26, 2018: 3:00pm-5:00pm

A portion of our patio and covered patio will be dedicated to your group on the afternoon of Thursday, July 26th for a two hour time period. A selection of four to five wines will be available to your guests during this time frame while you relax and overlook the beautiful grounds of Chateau Grand Traverse. Our knowledgeable staff will assist your party with selecting the perfect glass of wine for their palate.

Patio Rental & Winery Tour Fee waived per Eddie O'Keefe
includes: reserved space for two hours & dedicated staff member & tour guide

Wine by the Glass 48 glasses at ██████████
two tickets provided for each guest which can be turned in for a glass of wine from the selection provided (ex. dry white, sweet white, rosé, red). Cost determined by number of tickets turned in to service staff.

Event Food ██████████
custom menu provided by Chef Perry Harmon with considerations to gluten free and vegetarian guests.

TOTAL DUE: ██████████

Contact Name: ██████████
Phone: ██████████
Email: ██████████

EXHIBIT 5

PTP Motion for Summary Judgment

October 6, 2023

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CONFIDENTIAL

Vendor No.

Vendor Name

Date

Check No.

297567

Net Amount

Chateau Grand Traverse
12239 Center Road
Traverse City, MI 49686
(231) 223-7355
(231) 223-4105

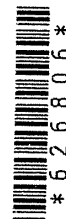
Sales Receipt

Transaction #: 626806
Date: 8/24/2018 Time: 11:48:16 AM
Cashier: amr Register #: 1

Item	Description	Amount
1313	BANQUET MISC	
	Event Food	
1313	BANQUET MISC	
	Wine by the Glass	

Sub Total
MISALESTAX
Total

CHECK Tendered
Change Due



* 6 2 6 8 0 6 *

Thank you for shopping
Chateau Grand Traverse
We hope you'll come back soon!

WOMP012934

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Office Party Menu Suggestions

Prepared by Chef Perry Harmon

07/10/2018

- large charcuterie platter with the addition of fresh seasonal fruits and olives
- vegetable spring rolls with peanut dipping sauce
- heirloom tomato bruschetta
- grilled teriyaki & soy sauce pork loin bites
- mini panini with brie, fig spread and prosciutto
- roasted corn and tomato salsa with chips to dip

WOMP012935

EXHIBIT 6**PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 17****SPENCER STEGENGA 30(b)(6)
WOMP v PENINSULA TOWNSHIP****July 17, 2023****1-4**

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<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 WINERIES OF THE OLD MISSION 5 PENINSULA ASSOC. (WOMP), a Michigan 6 nonprofit corporation; BOWERS HARBOR 7 VINEYARD & WINERY, INC., a Michigan 8 corporation; BRY'S WINERY, LC, a 9 Michigan corporation; CHATEAU GRAND 10 TRAVERSE, LTD, a Michigan corporation; 11 CHATEAU OPERATIONS, LTD, a Michigan 12 corporation; GRAPE HARBOR, INC, a Michigan 13 corporation; MONTAGUE DEVELOPMENT, LLC, a 14 Michigan limited liability company; OV 15 THE FARM, LLC, a Michigan limited liability 16 company; TABONE VINEYARDS, LLC, a 17 Michigan limited liability company; TWO 18 LADS, LLC, a Michigan limited liability 19 company; VILLA MARI, LLC, a Michigan limited 20 liability company; WINERY AT BLACK STAR FARMS, 21 LLC, a Michigan limited liability company, 22 23 Plaintiffs, 24 25 v File No. 1:20-cv-01008 HON. PAUL L. MALONEY MAG. JUDGE RAY S. KENT PENINSULA TOWNSHIP, a Michigan municipal corporation, Defendant, and PROTECT THE PENINSULA, INC., Intervenor-Defendant. /</p>	<p>1 APPEARANCES: 2 For the Plaintiffs: JOSEPH MIKHAIL INFANTE, ESQ. (P68719) Miller Canfield Paddock & Stone, PLC 3 99 Monroe Avenue, NW, Suite 1200 Grand Rapids, Michigan 49503 4 (616) 776-6333 infante@millercanfield.com 5 For the Defendant: BOGOMIR RAJSIC, III, ESQ. (79191) McGraw Morris, PC 6 300 Ottawa Avenue, NW, Suite 800 Grand Rapids, Michigan 49503 7 (616) 288-2700 brajsic@mcgrawmorris.com 8 For the 9 Intervenor-Defendant: TRACY JANE ANDREWS (P67467) Law Office of Tracy Jane Andrews, PLLC 10 420 East Front Street Traverse City, Michigan 49686 11 (231) 714-9402 tandrews@envlaw.com 12 13 And 14 MS. HOLLY LYNN HILLIER (P85318) Olson Bzdok & Howard, PC 15 420 East Front Street Traverse City, Michigan 49686 (231) 946-0044 16 holly@envlaw.com 17 Also Present: Dave Sanger, Peninsula Township 18 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 RULE 30(b)(6) DEPOSITION OF BOWERS HARBOR VINEYARD & WINERY, INC, 2 and SPENCER STEGENGA 3 4 Taken by the Intervenor-Defendant on the 17th day of July, 5 6 2023, at 420 East Front Street, Traverse City, Michigan, at 7 8 1:00 p.m. 9 10 RECORDED BY: Heidi Peckens, CER 9634 11 Certified Electronic Recorder 12 Esquire Deposition Solutions 13 Firm Registration Number 8035 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 TABLE OF CONTENTS 2 3 PAGE 4 Examination by Ms. Andrews 7 5 6 7 EXHIBIT INDEX 8 9 Deposition Exhibit 88 marked 19 10 (findings of fact for SUP 32) 11 Deposition Exhibit 89 marked 30 12 (Defendant's Response to First RFP) 13 Deposition Exhibit 90 marked 36 14 (amendment to SUP 32) 15 Deposition Exhibit 91 marked 38 16 (Peninsula Township's version of amendment) 17 Deposition Exhibit 92 marked 47 18 (aerial property photo) 19 Deposition Exhibit 93 marked 53 20 (email from Northview22) 21 Deposition Exhibit 94 marked 58 22 (2018 Dining in the Vines list) 23 Deposition Exhibit 95 marked 61 24 (Bowers Harbor Vineyard letter) 25 Deposition Exhibit 96 marked 66 Deposition Exhibit 97 marked 71 (L. Stegenga letter to township) Deposition Exhibit 98 marked 71 (Defendant's response to First RFP) Deposition Exhibit 99 marked 98 (Event advertisements) Deposition Exhibit 100 marked 117 (Plaintiff's Answers to 2nd Interrogatory)</p>



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<p style="text-align: right;">Page 9</p> <p>1 Q Okay. And you agree to speak for Bowers Harbor through your 2 deposition? 3 A I do, yeah. 4 Q All right So let's start with land ownership. I understand 5 Bowers Harbor Vineyards and -- is a corporate entity; -- 6 A Correct. 7 Q -- Bowers Harbor Vineyards, LLC; is that correct? 8 A Inc. 9 Q Inc. Sorry. 10 A S-corp; Inc., yeah. 11 Q Tell me about the land upon which the Bowers Harbor 12 Vineyards, Inc.'s winery sits. Who owns it? 13 A It's a combination of three LLC's, which two of -- of which 14 belong in a Trust, the Schoenherr Trust, which is my wife's 15 maiden name. And so two of these -- like a 5-acre parcel 16 and then a 37.5-acre parcel, or something along those lines, 17 are both in the Schoenherr, LLC, which -- 18 Q Can you spell Schoenherr for the record? 19 A S-c-h-o-e-n-h-e-r-r. So those are in my wife's Trust and 20 then the other one is the Langley Vineyards, LLC, which 21 belongs -- and I think that's 9 acres, maybe 12 -- and that 22 belongs to Linda Stegenga, my mother. That's where I grew 23 up. 24 Q Does Bowers Harbor Vineyards lease those parcels? 25 A We pay rent to the -- Linda and her 9 acres, because it</p>	<p style="text-align: right;">Page 11</p> <p>1 THE WITNESS: Okay. You can touch me any other 2 time. 3 MR. INFANTE: Otherwise I'm going to get yelled at 4 because it's improper. 5 Q Does Bowers Harbor Winery own any property associated with 6 the winery operations -- land property? 7 A No, Bowers Harbor Vineyards does not. 8 Q What about equipment? Does Bowers Harbor Vineyards own any 9 equipment associated with making wine? 10 A Yes, we do. 11 Q What equipment? 12 A Tanks, barrels, a portion of a labeling machine, you know, 13 different various -- we also make wine in a co-op, so, -- a 14 cooperative custom crush facility set up, so a lot of our 15 equipment is commingled and co-invested and -- but we do own 16 several of our own tanks, barrels and -- yes. 17 Q So tell me about the processing. Is that onsite? 18 A The majority of it, no. We do all of sparkling wine 19 production onsite, as it ages for 36 months en tirage, which 20 is the secondary fermentation part of the sparkling wines, 21 champagnes (inaudible), and then the rest is -- all of our 22 functions are performed at Left Foot Charley and French Road 23 Cellars out on the Leelanau peninsula. 24 MR. INFANTE: Tirage, t-i-r-a-g-e? 25 THE WITNESS: Nice one; yeah.</p>
<p style="text-align: right;">Page 10</p> <p>1 includes one of our tasting rooms -- or actually a couple of 2 them. So there's rent for that and then the Schoenherr, 3 LLC, I think formality-wise, it's a -- it's a dollar a year 4 lease. 5 Q Speaking of formalities, is there an actual lease for either 6 of those arrangements -- 7 A Yes. 8 Q -- with Schoenherr or Langley? 9 A Yes. 10 Q For both? 11 A I believe -- 12 MS. ANDREWS: No, he's -- 13 THE WITNESS: Oh, sorry. 14 MS. ANDREWS: He's not concerned about your 15 answer, he's concerned about us overlapping, interrupting 16 each other. 17 MR. INFANTE: You just jumped in a little too 18 early. 19 THE WITNESS: Okay. 20 MR. INFANTE: Slow down. 21 Q Is there a lease for both the Langley and the Schoenherr 22 parcels? 23 A Yes. Sorry. 24 Q That's okay. 25 MR. INFANTE: That's the only time I'll like --</p>	<p style="text-align: right;">Page 12</p> <p>1 Q So the sparkling wine, is it -- is it crushed and processed 2 on site or does it -- does it go offsite and then come back? 3 A Offsite and comes back. 4 Q Okay. 5 A Most of the grapes are estate grown, so, yeah, we just take 6 them to get processed and then their quickly fermented, 7 bottled and moved back to Bowers Harbor. 8 Q All right. And then for estate grown, is there land beyond 9 the three parcels we talked about earlier, the two 10 Schoenherr and the one Langley parcel, where grapes grow 11 that supports the Bowers Harbor Vineyard winemaking? 12 A Yes. 13 Q Where else? 14 A All of them. 15 Q Sure. How many are there? 16 A It just depends on each year, but we have -- we have a few 17 contracts, a lot of handshakes, but majority of them are on 18 Old Mission. 19 Q Okay. 20 A Rob Manigold on -- whatever -- Old Mission Road, Wells on 21 Smokey Hollow, Rob and Michael on Smokey Hollow, -- 22 MR. INFANTE: I think she was asking you 23 already -- 24 Q Yeah. Do you have -- 25 A Oh.</p>

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<p style="text-align: right;">Page 25</p> <p>1 part B, paragraph three?</p> <p>2 MR. INFANTE: Hold on. What page are you on?</p> <p>3 MS. ANDREWS: I'm sorry. 353; WOMP --</p> <p>4 A "Wine tasting and retail sales" --</p> <p>5 MR. INFANTE: Don't read out loud; it gets</p> <p>6 transcribed, if you read out loud.</p> <p>7 Q The original SUP allowed sale of wine by the bottle;</p> <p>8 correct?</p> <p>9 A That's what I see here.</p> <p>10 Q Okay. Is it your understanding that somewhere along the</p> <p>11 lines the Liquor Control -- rules changed to allow --</p> <p>12 A That's what I understand. I didn't -- yeah.</p> <p>13 Q And it was probably sometime after 1992 that the rules</p> <p>14 changed?</p> <p>15 A I think it was relatively recently, --</p> <p>16 Q Okay.</p> <p>17 A -- but, yes, it was after that, but --</p> <p>18 Q And then the other sales that were allowed at the Bowers</p> <p>19 Harbor Vineyard retail area was regionally grown fresh or</p> <p>20 processed farm produce and a -- and a variety of items</p> <p>21 there. Do you see that?</p> <p>22 A Uh-huh (affirmative).</p> <p>23 Q Did Bowers Harbor sell wine by the bottle in that retail</p> <p>24 space?</p> <p>25 A For retail sales?</p>	<p style="text-align: right;">Page 27</p> <p>1 Traverse, where they'd sold some there too, then we just put</p> <p>2 our -- they owned it together, we put our own label on it.</p> <p>3 And then we probably had some other incidentals, maybe some</p> <p>4 hats. I don't even remember.</p> <p>5 Q Was there a tasting room from the start?</p> <p>6 A Yes.</p> <p>7 Q Was it inside that original building?</p> <p>8 A Yes.</p> <p>9 Q How big is that building --</p> <p>10 A Rough; 30-by-75, 80, something like that. I'm not exactly</p> <p>11 sure, but the occupancy is 58 in one part and 32 in the</p> <p>12 other.</p> <p>13 Q It's a pretty big space. Depends on what the question is?</p> <p>14 A Not if you ask me, but --</p> <p>15 Q And the retail area, was it a room, was it an area within</p> <p>16 the -- the barn?</p> <p>17 A It was kind of delineated by a wall with some windows and a</p> <p>18 door, because that was where our winery was, and once we</p> <p>19 moved that out we didn't need the bonded section anymore.</p> <p>20 Q Okay.</p> <p>21 A So it's still somewhat delineated by a walkthrough.</p> <p>22 Q Okay. SUP number 32 in that same page we're looking at,</p> <p>23 WOMP 353, indicates that, "retail sales and wine tasting</p> <p>24 shall take place in 150 square foot area." Do you know what</p> <p>25 that is -- what part of the building that is referring to?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q Yes.</p> <p>2 A Yes.</p> <p>3 Q Was it retail sales that you could -- that people could</p> <p>4 drink onsite or is it just wine by the bottle and then they</p> <p>5 could -- then they could take it home and drink it?</p> <p>6 A Well, that was the intention. I think the law changed.</p> <p>7 There was bottle service and now I -- I'm fairly certain</p> <p>8 there's no bottle service. Not at BHV, just in general.</p> <p>9 Q Okay. So originally you could only buy by the bottle and</p> <p>10 then maybe have bottle service onsite?</p> <p>11 A That is what I --</p> <p>12 MR. INFANTE: Objection; calls for a legal</p> <p>13 conclusion.</p> <p>14 Q I'm just trying to understand the operations in the early</p> <p>15 days.</p> <p>16 A Yeah, and that is vague to me because of -- I was in college</p> <p>17 then so I don't really remember all the details, but --</p> <p>18 Q Okay. And you came back in 1997?</p> <p>19 A Correct.</p> <p>20 Q Okay. What about the store besides the wine sales, the</p> <p>21 retail area, the -- at the winery? What kind of items were</p> <p>22 for sale in there?</p> <p>23 A Jams, jellies. My dad owned a company called Bowers Harbor</p> <p>24 Food -- Bowers Harbor Foods or something like that with Ed</p> <p>25 O'Keefe the owner, who's deceased now, of Chateau Grand</p>	<p style="text-align: right;">Page 28</p> <p>1 A I think it's referring to where the original -- and the</p> <p>2 tasting bar hasn't moved, it's just gotten bigger -- where</p> <p>3 the original designated tasting bar was, which is still</p> <p>4 there.</p> <p>5 Q Okay.</p> <p>6 A I don't know about the -- yeah.</p> <p>7 Q All right. Back in -- to the best of your recollection, in</p> <p>8 those what I would call the early days, the period following</p> <p>9 SUP 32 and then the early '90's, was there food sales</p> <p>10 besides the, like, jams and jellies and things that were</p> <p>11 packaged foods? Was it food for -- to eat onsite?</p> <p>12 A The packaged; the jams and jellies, that's what we had.</p> <p>13 Q Not like crackers and cheese or any sort of --</p> <p>14 A No. We had saltines and probably pretzels or something, but</p> <p>15 that's just to taste the jams and jellies.</p> <p>16 Q Okay.</p> <p>17 A People do snack on them, though.</p> <p>18 Q I'm sure they do. We'll just leave it at that. Parking,</p> <p>19 WOMP page 354, top of the page, almost to the back, almost</p> <p>20 to the end it appears that the original permit provides that</p> <p>21 "There shall be 11 -- 11 parking spaces."</p> <p>22 A Uh-huh (affirmative).</p> <p>23 Q Do you have a sense of where those 11 parking spaces were?</p> <p>24 A I do, yeah. We call it "block one," which is our -- like,</p> <p>25 one of the first original vineyards one, two and three.</p>

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<p style="text-align: right;">Page 41</p> <p>1 "The applicant wishes to allow the ability to</p> <p>2 expand the existing tasting area to include an outdoor</p> <p>3 portion as described in the permit issued by the Liquor</p> <p>4 Control Commission."</p> <p>5 Is that consistent, generally, with your</p> <p>6 understanding?</p> <p>7 A Yes.</p> <p>8 Q So the MLCC loosened the requirements to allow outdoor</p> <p>9 tasting and Bowers Harbor asked the township for permission</p> <p>10 to have outside seating area?</p> <p>11 A Yes.</p> <p>12 Q And that was granted, to the best of your recollection?</p> <p>13 A Yes.</p> <p>14 Q Yeah. And then it appears that the township authorized at</p> <p>15 the same time "special open space use events." I'm looking</p> <p>16 at paragraph 2.14.</p> <p>17 A Uh-huh (affirmative).</p> <p>18 MR. INFANTE: Objection; the document speaks for</p> <p>19 itself.</p> <p>20 Q Do you have a recollection of Bowers Harbor offering special</p> <p>21 open space events, according to the document, in the</p> <p>22 evenings or after closing hours of the tasting room?</p> <p>23 A Yes. I don't recall exactly what date, but it probably was</p> <p>24 around -- starting around then.</p> <p>25 Q So tell me what that -- tell me about those -- those events,</p>	<p style="text-align: right;">Page 43</p> <p>1 A I don't think we ever did, that was what we were approved</p> <p>2 for when we got the 132, while we became our chateau. And</p> <p>3 that was part of the requirements, to add more parking</p> <p>4 spaces and provide proof that we actually are sourcing that</p> <p>5 tonnage of fruit on Old Mission, which we met the</p> <p>6 requirements.</p> <p>7 Q So SUP number 132, I think you mentioned, was about two and</p> <p>8 a half years ago, sometime in 2019?</p> <p>9 A Yeah, I think so.</p> <p>10 MR. STEGENGA: Right, Joe?</p> <p>11 MR. INFANTE: I can't answer.</p> <p>12 Q So between the period of 2010 when the document labeled as</p> <p>13 PTP 90 was issued by the Board, --</p> <p>14 A Uh-huh (affirmative).</p> <p>15 Q -- and sometime in 2019, Bowers Harbor was offering events</p> <p>16 called "Dining in the Vines"?</p> <p>17 A Correct.</p> <p>18 Q And Dining in the Vines was a catered event onsite?</p> <p>19 A Yes.</p> <p>20 Q And it's your understanding that there were -- that Bowers</p> <p>21 Harbor was limited to no more than 20 events over a calendar</p> <p>22 year; is that --</p> <p>23 A That is right.</p> <p>24 Q Yeah. And no more than two per week?</p> <p>25 A I don't remember that, but if it's in there it's probably</p>
<p style="text-align: right;">Page 42</p> <p>1 your recollection of them.</p> <p>2 A Well, I think every day's an event, but, I -- these were</p> <p>3 called "Dining in the vines," so they were dining</p> <p>4 experiences with The Boathouse, where we talked about wine</p> <p>5 that -- you know, wine education, wines that came from the</p> <p>6 peninsula, mostly our property, and then they were</p> <p>7 accompanied with food.</p> <p>8 Q And the food was catered by Bowers Harbor -- by The</p> <p>9 Boathouse?</p> <p>10 A Correct.</p> <p>11 Q And these took place -- you said dining in the vines. Is it</p> <p>12 physically outside?</p> <p>13 A Yes.</p> <p>14 Q And it appears that the township provided some limitations</p> <p>15 as to how many people could participate, up to 50 people.</p> <p>16 Is that your recollection that that was the approximate</p> <p>17 number of people who would participate?</p> <p>18 A Well, it depends on who was in -- in the peninsula at the</p> <p>19 time. It ranged, but I don't know if it was just 50. I</p> <p>20 know Mr. Sanger used to come out and count chairs, so I'm</p> <p>21 guessing that number's probably accurate, although the last</p> <p>22 one I had was 111 guests, based upon tonnage requirements</p> <p>23 and parking spaces.</p> <p>24 Q When was that one that you had 100 -- 111, you said? How</p> <p>25 many did you say? I'm sorry. I didn't --</p>	<p style="text-align: right;">Page 44</p> <p>1 right.</p> <p>2 Q I don't want to trick you. Look at paragraph 2.15.</p> <p>3 A Yes, I see that.</p> <p>4 Q And is it your understanding that the township required</p> <p>5 Bowers Harbor to provide a monthly notification indicating</p> <p>6 the schedule for -- for future events --</p> <p>7 MR. INFANTE: Objection; the document speaks for</p> <p>8 itself.</p> <p>9 Q -- as indicated in 2.16?</p> <p>10 A Yeah, I remember that.</p> <p>11 Q Do you remember sending in notices to the township?</p> <p>12 A I never did, but that was either Linda or previously it was</p> <p>13 Christy McClellan.</p> <p>14 Q And would that be by email, dropping off a letter or just</p> <p>15 picking up the phone?</p> <p>16 A I don't remember how they did it. I think it had to be in</p> <p>17 writing, although, actually I think we listed out when we</p> <p>18 were going to have the dates and then it was just kind of a</p> <p>19 blanket approval, for September 10th and September 18th and</p> <p>20 whatever that was, but they were pretty much scheduled out</p> <p>21 because we were, you know, working with The Boathouse</p> <p>22 restaurant and we had to coordinate with all that stuff.</p> <p>23 Q So you'd make a schedule for the next few months or the next</p> <p>24 year --</p> <p>25 A Or maybe the year, the season.</p>

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<p style="text-align: right;">Page 53</p> <p>1 and a lot of vineyards and parking areas. Schoenherr number</p> <p>2 one is your house with the vineyards and the outdoor event</p> <p>3 space?</p> <p>4 A Correct.</p> <p>5 Q Schoenherr number two, would that be the land that sort of</p> <p>6 surrounds Schoenherr number one?</p> <p>7 A That would be my -- I don't know how they delineate it, but</p> <p>8 I -- I know that the map that was created when this</p> <p>9 is delineating where we would have activities, I think</p> <p>10 related to our MLCC outdoor tasting use. But like I said,</p> <p>11 this doesn't show the entirety of the property.</p> <p>12 Q So it continues beyond the edge of the picture?</p> <p>13 A Correct.</p> <p>14 Q Okay. But it starts on the page with the -- where the</p> <p>15 vineyards are --</p> <p>16 A Yeah.</p> <p>17 Q Okay. Sorry. I was just trying to understand. Thank you.</p> <p>18 So one more piece before we move on to SUP 32, --</p> <p>19 MS. ANDREWS: And we'll call this one 93.</p> <p>20 (Deposition Exhibit 93 marked)</p> <p>21 Q So PTP 93, who is Sarah at Northview22.com?</p> <p>22 A I've never seen her email, but that would be -- Sarah was</p> <p>23 our planner for the project for us to get our chateau,</p> <p>24 because we were required to do all the planning stuff, like</p> <p>25 the parking and the -- all the event space. She probably</p>	<p style="text-align: right;">Page 55</p> <p>1 A Uh-huh (affirmative).</p> <p>2 Q And then I'm looking at WOMP 248, which appears to be a</p> <p>3 timeline of events, do you see that?</p> <p>4 A Yeah.</p> <p>5 Q It looks like somebody compiled a very meticulous timeline,</p> <p>6 starting with the exact time on April 14th, 1992.</p> <p>7 Apparently, that SUP number 32 was approved by the "TB," do</p> <p>8 you see that?</p> <p style="text-align: center;">July 17, 2023</p> <p>9 A Yeah; town board.</p> <p>10 MR. INFANTE: Object to form.</p> <p>11 Q And have you seen this document before? It looks like she</p> <p>12 emailed it to you on -- and you produced it in discovery, I</p> <p>13 just want to make sure you're familiar with it.</p> <p>14 A I haven't looked at this in forever, no. But, I mean, the</p> <p>15 timeline so far looks --</p> <p>16 Q Consistent with your recollection?</p> <p>17 A Yes.</p> <p>18 Q So it looks like the same night that the township approved</p> <p>19 SUP number 32, there's a reference about halfway down the</p> <p>20 page, it says, "April 14th, 1992, at approximately 9:29 p.m.</p> <p>21 Zoning Amendment 95 was adopted. This amendment removed</p> <p>22 alcoholic beverages from roadside stand sales." Is that</p> <p>23 familiar to you?</p> <p>24 MR. INFANTE: Object to form and foundation.</p> <p>25 A Yes. I actually know the story.</p>
<p style="text-align: right;">Page 54</p> <p>1 was the one that did that.</p> <p>2 Q She was working for Bowers Harbor, she was not working for</p> <p>3 the township; correct?</p> <p>4 A She was working for us, correct.</p> <p>5 Q Okay. And who is Christy McClellan? I think you referenced</p> <p>6 her earlier.</p> <p>7 A She was our past tasting room manager.</p> <p>8 Q Okay. And it appears that Sarah was retained to do some</p> <p>9 historical -- touching up on history for Bowers Harbor,</p> <p>10 related to land use, is that consistent with your</p> <p>11 understanding of what she was retained to do?</p> <p>12 A My understanding was that she was there to give us the plan</p> <p>13 that met the requirements by the Peninsula Township, so if</p> <p>14 that's what you're asking.</p> <p>15 Q The email in WOMP -- so PTP 93 is WOMP 245 through WOMP 249,</p> <p>16 produced by the plaintiffs. It appears that Sarah is</p> <p>17 referring to -- indicates she's creating -- "I'm drafting a</p> <p>18 quick timeline of events over the past 30 years," do you see</p> <p>19 that?</p> <p>20 A Yup.</p> <p>21 Q And then she also makes reference to "This attached staff</p> <p>22 review from October of 2015," do you see that reference?</p> <p>23 A Where is that? Yes, I see it.</p> <p>24 Q And then there's a couple of pages from Staff Report for SUP</p> <p>25 125, do you see that, pages 1 and 2?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q What's the story?</p> <p>2 A So because we were the -- were one of one roadside stand --</p> <p>3 the roadside stands were nearly -- I would think as like,</p> <p>4 charities and (inaudible) and stuff like that. So they gave</p> <p>5 us a roadside stand and then said that we could have</p> <p>6 alcohol -- or approved alcohol, and then -- I think this is</p> <p>7 why there's a timeline, because this is how good at -- a job</p> <p>8 my mom was at -- or did -- is at 8:47, this is when they</p> <p>9 approved it, and --</p> <p>10 Q They approved your SUP?</p> <p>11 A Correct. Of course, I wasn't at this meeting, but --</p> <p>12 Q Right; right; right.</p> <p>13 A -- to be the roadside stand with wine tasting, and then at</p> <p>14 9:29 they said, "Okay. Now," -- and I don't know what their</p> <p>15 language was, but that we were approved for -- for wine</p> <p>16 tasting, but no one else could come in the next day and try</p> <p>17 and do the same thing. I think that's what that means.</p> <p>18 That's how I --</p> <p>19 Q That's the story in the family?</p> <p>20 A Family story.</p> <p>21 Q So your mom helped facilitate that?</p> <p>22 A I imagine she did.</p> <p>23 MR. INFANTE: Object to form and foundation.</p> <p>24 Q You said that's how I was trying to</p> <p>25 understand --</p>

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<p style="text-align: right;">Page 57</p> <p>1 A Oh, I meant by "approximately 8:47," and then she's --</p> <p>2 Q Oh.</p> <p>3 A -- yes, about the timing.</p> <p>4 Q She was keeping track of the timing.</p> <p>5 A It was probably in the minutes.</p> <p>6 Q Okay.</p> <p>7 A I'm guessing; she's not that good, but yes.</p> <p>8 Q So is it your understanding that the Bowers came in 9 as a roadside stand with wine tasting?</p> <p>10 A None.</p> <p>11 Q Okay. Does this timeline look like what your mom compiled?</p> <p>12 MR. INFANTE: Foundation; form.</p> <p>13 A Probably, with the help -- it was probably required, I'm 14 guessing, if we hired Sarah to do that. So I'm sure Linda 15 was putting together the information that Sarah was in need 16 of for the township.</p> <p>17 Q It looks like in 2006, use by Right Winery farm processing 18 facility, 139 winery, application begun but not completed," 19 do you see that?</p> <p>20 A Uh-huh (affirmative).</p> <p>21 Q What is that talking about, to your understanding?</p> <p>22 A I'm not sure.</p> <p>23 Q Do you know what a "farm processing facility 139 winery" is?</p> <p>24 A That's the township language for a farm processing facility 25 139 winery.</p>	<p style="text-align: right;">Page 59</p> <p>1 events, who planned them?</p> <p>2 MR. INFANTE: Objection; relevance.</p> <p>3 A Those were done between Christy, Chef, and -- and I don't 4 even remember who the chef was then -- we started out 5 with -- whatever -- and probably Doug Kosch, the owner.</p> <p>6 Q The owner of Bowers Harbor -- I mean The --</p> <p>7 A No, The Boathouse.</p> <p>8 Q -- Boathouse?</p> <p style="text-align: right;">July 17, 2023</p> <p>9 A Yeah. I didn't participate a lot in the setup, I was just 10 kind of the speaker.</p> <p>11 Q The Boathouse, for the -- just to be clear on the record, is 12 a restaurant on Old Mission Peninsula.</p> <p>13 A Correct.</p> <p>14 Q And The Boathouse would come -- was this a partnership 15 arrangement? Who paid who? The guests paid tickets to 16 come?</p> <p>17 A They paid Boathouse, yes.</p> <p>18 Q They paid Boathouse. So you provided the venue and the 19 wine?</p> <p>20 A Correct.</p> <p>21 Q And what about entertainment? You said you --</p> <p>22 A It was me. Yeah, I was the educator; yes.</p> <p>23 Q Okay. Educate about what?</p> <p>24 A About the wines and the property and talk about agro-tourism 25 and how fortunate we were to have them here and just</p>
<p style="text-align: right;">Page 58</p> <p>1 Q That's a different kind of winery than a winery chateau?</p> <p>2 A I have no idea.</p> <p>3 Q Okay. And then it references the August 10th, 2010, SUP 32, 4 that's the one we looked at earlier that allowed -- well, it 5 says on there, "uses allowed to the addition of the tasting 6 room, outdoor seating, host Dining in the Vine, 20 max -- 20 7 per year max."</p> <p>8 A Uh-huh (affirmative).</p> <p>9 MR. INFANTE: Objection; calls for --</p> <p>10 Q Is that consistent with your -- well, is this timeline 11 appear consistent with your understanding of the events that 12 happened?</p> <p>13 MR. INFANTE: Objection; document speaks for 14 itself. You can answer.</p> <p>15 A Yes, it appears that way.</p> <p>16 Q Yeah. So then lets look at what Dining in the Vines --</p> <p>17 MS. ANDREWS: I've got here 94.</p> <p>18 (Deposition Exhibit 94 marked)</p> <p>19 Q PTP 94 --</p> <p>20 (Off the record interruption)</p> <p>21 Q So let's look at PTP 94, Bowers Harbor Vineyards Dining in 22 the Vines 2018 Township list. Tell me about -- I'm sorry -- 23 WOMP 0000244. Do you recognize this document?</p> <p>24 A Yeah, I think it's something we generated.</p> <p>25 Q Tell me about Dining in the Vines 2018. What were the</p>	<p style="text-align: right;">Page 60</p> <p>1 discussing different, you know, techniques and styles and 2 barrels and all that geeky wine stuff.</p> <p>3 Q Would you like, introduce bottles of wine, like this is a, 4 whatever vintage of something or like -- of the wine that 5 Bowers Harbor was making?</p> <p>6 A So I would discuss each course. They're a course meals, 7 educational thing. We would -- between the courses, yeah, 8 we would -- the servers would pour the next course of wine 9 and then I would talk about what those were.</p> <p>10 Q Okay. And it looks like in 2018, at least according to the 11 list, 14 dining in the vines events in the, mostly spring 12 and summer.</p> <p>13 A Looks that way.</p> <p>14 Q Is that consistent with your understanding of when the, sort 15 of height of -- when most of them were conducted?</p> <p>16 A Yeah, it seems that way.</p> <p>17 Q Was 2018 notably different than 2017 and 2016, prior years, 18 or is this generally how things operated for the dining in 19 the vines series?</p> <p>20 MR. INFANTE: Objection; form, foundation, 21 relevance.</p> <p>22 A Well, I don't -- nothing's typical in farming, so I would 23 say that the -- it was not typical, we were 24 scheduled and conducted as we like we only 25 have 14.</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q Is it possible you added some?</p> <p>2 A It's possible, but if this list was required then I think</p> <p>3 that's probably the only -- the ones that we had that</p> <p>4 particular year, for 2018.</p> <p>5 Q All right. So you indicated that you -- Bowers Harbor hired</p> <p>6 Sarah to help -- what was the purpose of hiring Sarah?</p> <p>7 A Her role? We needed a professional planner, is what we were</p> <p>8 told, so that she could help us with the zoning ordinance, you</p> <p>9 property, and guestimating. She has all the tools to, you</p> <p>10 know, do her job professionally and we don't, so I -- I</p> <p>11 believe we were required to, otherwise it would have -- just</p> <p>12 would have taken too long because we didn't know all the</p> <p>13 steps.</p> <p>14 Q And what were you looking to do? What was Sarah hired to</p> <p>15 help you with?</p> <p>16 A At that point we were going through the chateau process.</p> <p>17 Q And by "chateau," you mean the winery chateau section of the</p> <p>18 zoning ordinance?</p> <p>19 A That is my understanding, yes.</p> <p>20 Q Do you recall if --</p> <p>21 MS. ANDREWS: PTP 95.</p> <p>22 (Deposition Exhibit 95 marked)</p> <p>23 Q Do you recognize that letterhead?</p> <p>24 A I do. It's our old letterhead.</p> <p>25 Q Do you recognize -- is that an electronic signature or is</p>	<p style="text-align: right;">Page 63</p> <p>1 established." What is your understanding of what Linda was</p> <p>2 asking the township to do?</p> <p>3 MR. INFANTE: Objection; foundation, relevance.</p> <p>4 Go ahead.</p> <p>5 A My understanding would be -- and of course this was a number</p> <p>6 of years ago, but my understanding would be that that was</p> <p>7 probably somebody in the township said that this would be</p> <p>8 the process to go, and that you had to get it out</p> <p>9 and -- you need to spell it out for us, why you want to be</p> <p>10 something different.</p> <p>11 Q What was Bowers Harbor looking -- what things did Bowers</p> <p>12 Harbor want to do that it couldn't do or what --</p> <p>13 A More outdoor events, more agro-tourism, more education,</p> <p>14 possibly the addition, getting out of our 150 square foot</p> <p>15 requirement, being a roadside stand. Mostly just trying to</p> <p>16 get more people into our property.</p> <p>17 Q And this was after the first amendment that allowed the</p> <p>18 outdoor seating for the tasting room in 2010?</p> <p>19 A Yeah. That document that we referred to earlier?</p> <p>20 Q Yes.</p> <p>21 A Uh-huh (affirmative).</p> <p>22 Q And it appears that Dining in the Vines was already</p> <p>23 authorized, looking at paragraph two.</p> <p>24 MR. INFANTE: Objection; the documents speak for</p> <p>25 themselves.</p>
<p style="text-align: right;">Page 62</p> <p>1 that your mom's signature?</p> <p>2 A That's hers.</p> <p>3 Q Wow. Is she a librarian?</p> <p>4 A Dental Hygienist.</p> <p>5 Q Very impressive.</p> <p>6 MR. INFANTE: I'm curious about the capital E's,</p> <p>7 though.</p> <p>8 THE WITNESS: Everybody's got their own uniqueness</p> <p>9 now.</p> <p>10 Q So my question for you is -- so this is dated December 16th,</p> <p>11 2015, and you recognize your mother's signature. Did you</p> <p>12 ever try to -- how familiar are you with your mother's</p> <p>13 signature?</p> <p>14 A Oh, never. Couldn't even possibly come close to that one.</p> <p>15 Q What was the township -- I mean, I'm sorry -- what was</p> <p>16 Bowers Harbor looking for in 2000 -- well, who's Michelle?</p> <p>17 A Oh, Michelle Reardon, I think. Isn't she the old planner --</p> <p>18 Q At Peninsula Township?</p> <p>19 A I think so.</p> <p>20 Q It seems this is relating to -- I'm looking at paragraph</p> <p>21 three, bullet point three, "In 1992 we were a new winery,</p> <p>22 they didn't have a winery ordinance so we became a one of a</p> <p>23 kind," and then halfway through the paragraph it says, "I'm</p> <p>24 asking you to create an ordinance that would accommodate</p> <p>25 Bowers Harbor Vineyard and the operation that we have</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Would you agree --</p> <p>2 A Yes.</p> <p>3 Q -- Dining in the Vines started sometime after 2010 but</p> <p>4 before 2015?</p> <p>5 A Yes.</p> <p>6 Q And so Bowers Harbor was looking to expand beyond what</p> <p>7 Dining in the Vines was allowed to do, or what was allowed</p> <p>8 to do under it's existing permits?</p> <p>9 MR. INFANTE: Objection; foundation, relevance.</p> <p>10 A Yeah, and I think the "one of a kind" speaks for itself,</p> <p>11 because we were one of a kind, we wanted to be more of</p> <p>12 what -- you know, have a similar set of rules as everybody</p> <p>13 else, I guess.</p> <p>14 Q So going back to the email -- the PTP 93, Sarah at</p> <p>15 Northview's -- the timeline attached to Sarah at Northview's</p> <p>16 email, in the cover letter or the email itself, Sarah</p> <p>17 highlights that in 1996, "BHV requested winery chateau via</p> <p>18 variance, staff determining is not allowed." Do you see</p> <p>19 that?</p> <p>20 A Yeah.</p> <p>21 Q Is it your understanding that -- do you have a recollection</p> <p>22 that Bowers Harbor sought a variance for a winery chateau in</p> <p>23 '96?</p> <p>24 A I believe it started with the request to request to</p> <p>25 get out of our roadside stand and all those letters were --</p>

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<p style="text-align: right;">Page 65</p> <p>1 ended up. S, from what I understand -- and I think I've</p> <p>2 seen them before, but I know Linda started in 1992, shortly</p> <p>3 after, probably the spring -- or maybe it was in '93 after</p> <p>4 we opened, tp immediately start looking at how the township</p> <p>5 looks at us.</p> <p>6 Q In terms of activities that --</p> <p>7 A Well, no, being that we were one of a kind, I guess.</p> <p>8 Q Okay. So starting as soon as the first permit was issued</p> <p>9 Bowers Harbor Vineyard was looking to -- for permission from</p> <p>10 the township to do something different. Is that a fair</p> <p>11 summary?</p> <p>12 A Well, to not be categorized as a roadside stand.</p> <p>13 Q Okay.</p> <p>14 A And whatever non-conforming, commercial -- however else they</p> <p>15 worded it. I don't know. I wasn't there.</p> <p>16 Q And that included applying at some point for a variance for</p> <p>17 a winery chateau?</p> <p>18 A I'm sure it did. I don't know.</p> <p>19 Q Do you --</p> <p>20 A It looks like it.</p> <p>21 Q -- do you know what the variance was for?</p> <p>22 A No. I wasn't there.</p> <p>23 Q You haven't seen documents that explain what the variance</p> <p>24 was for?</p> <p>25 A I probably have, but I don't recollect what they were. I</p>	<p style="text-align: right;">Page 67</p> <p>1 by "a committee"?</p> <p>2 A Well, there's a lot of committees at the township and this</p> <p>3 one happened to be formed for, I guess, our behalf, to vet</p> <p>4 the situation or whatever the correct word is, but to</p> <p>5 explore options, possibilities, ways to categorize us as a</p> <p>6 chateau. And I think that was the desire -- it wasn't</p> <p>7 really my desire, necessarily, but I think it was the desire</p> <p>8 of the township at the particular time to take care of this</p> <p>9 after, you know, the 27 years of being a roadside stand --</p> <p>10 or whatever number of years ago it was.</p> <p>11 Q More or less do you remember when the committee formed?</p> <p>12 A More or less.</p> <p>13 Q When was that?</p> <p>14 A I'm guessing somewhere around this timeline.</p> <p>15 Q About 2019?</p> <p>16 A I believe so.</p> <p>17 Q And was somebody from Bowers Harbor a participant on that</p> <p>18 committee?</p> <p>19 A I think Linda and Christy were both -- participated in that.</p> <p>20 Q Was it like a sub-committee, like a few people from the --</p> <p>21 who from the township was participating?</p> <p>22 A It was Isaiah and I don't -- Marge? Is there a Marge?</p> <p>23 Q Yup.</p> <p>24 A Marge --</p> <p>25 Q Marge Achorn?</p>
<p style="text-align: right;">Page 66</p> <p>1 don't remember. It was 1996, I was still in college.</p> <p>2 Q So then let's look at 95.</p> <p>3 MR. INFANTE: 96?</p> <p>4 MS. ANDREWS: 96.</p> <p>5 (Deposition Exhibit 96 marked)</p> <p>6 Q PTP 96. April 2019, were you around Bowers Harbor?</p> <p>7 A Yes.</p> <p>8 Q Do you recall Bowers Harbor applying for a variance from the</p> <p>9 township for the -- for a winery chateau?</p> <p>10 A I don't recall this document, but I'm sure that's the</p> <p>11 process that we were going through.</p> <p>12 Q Do you recall that -- that Bowers Harbor had decided to try</p> <p>13 to get a winery chateau permit?</p> <p>14 A That was what the township suggested we do. So it wasn't</p> <p>15 our request to become a chateau, we just needed to be</p> <p>16 something besides "non-conforming commercial roadside</p> <p>17 stand." So, I believe it was -- Isaiah was one of the</p> <p>18 first -- and whoever the other people were there, that</p> <p>19 suggested it. If not Isaiah, he was definitely on the</p> <p>20 committee to get us into that category. However, due to our</p> <p>21 land, it was a little challenging.</p> <p>22 Q So "get into that category," do you mean the winery chateau</p> <p>23 category?</p> <p>24 A Yes.</p> <p>25 Q Okay. And you said there was a committee. What do you mean</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yeah, that one.</p> <p>2 (Off the record interruption)</p> <p>3 A I think Dave Sanger was on there and then -- I don't know</p> <p>4 how many people were on that committee, but there was --</p> <p>5 there was at least three from the township.</p> <p>6 Q Was there a planner after Michelle Reardon?</p> <p>7 A She might have been part of that.</p> <p>8 Q Maybe Christina Deeren?</p> <p>9 A Definitely Christina at one point, but we dealt -- certainly</p> <p>10 dealt with Michelle as well, for sure. And Leonard was the</p> <p>11 first one, but then the guy after Leonard, which was Brian,</p> <p>12 I think.</p> <p>13 Q A short time for Brian; right?</p> <p>14 A It wasn't very long.</p> <p>15 Q And then Randy?</p> <p>16 A Then Randy.</p> <p>17 Q You dealt with all of these?</p> <p>18 A Uh-huh; yes. Again, Linda and Christy were kind of doing a</p> <p>19 lot of that, because I was still trying to run a business.</p> <p>20 Q So the committee considered the situation and came up with</p> <p>21 the idea of a winery chateau, is that generally a summary of</p> <p>22 what happened?</p> <p>23 MR. INFANTE: Objection; foundation, relevance.</p> <p>24 A That is my general understanding of what happened, yes.</p> <p>25 Q So then it looks like in early -- in the spring of 2019</p>

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<p style="text-align: right;">Page 69</p> <p>1 Bowers Harbor, through the applicant Northview 22, Sara</p> <p>2 Keever, applied for a variance -- a variance for a winery</p> <p>3 chateau, do you see that on PTP 96?</p> <p>4 A I do see that.</p> <p>5 Q Is that Sarah Keever the Sarah we were referring to whose</p> <p>6 email had the timeline in PTP 93 that we talked about</p> <p>7 earlier?</p> <p>8 A Yeah, she was our gal that we hired at the winery.</p> <p>9 Q And it appears that the -- the applicant or the owners of</p> <p>10 the property for whom the variance was sought were Langley</p> <p>11 Vineyards and Schoenherr Vineyards?</p> <p>12 A Uh-huh (affirmative).</p> <p>13 Q Right?</p> <p>14 A Yes.</p> <p>15 Q And it appears that the zoning board of appeals approved the</p> <p>16 variance that night.</p> <p>17 MR. INFANTE: Objection; the document speaks for</p> <p>18 itself.</p> <p>19 Q Is that your recollection of what happened?</p> <p>20 A It looks like, yeah.</p> <p>21 Q Do you remember Bowers Harbor, Peninsula Township?</p> <p>22 A Vaguely. We were applying for a lot of things, so --</p> <p>23 anyways.</p> <p>24 Q So looking at item one under -- there's only one one</p> <p>25 "requesting a variance from the 50 acre required minimum for</p>	<p style="text-align: right;">Page 71</p> <p>1 your recollection.</p> <p>2 (Deposition Exhibit 97 marked)</p> <p>3 Q Is it your understanding that Linda asked the township to</p> <p>4 withdraw the variance from the 75 percent growing coverage</p> <p>5 requirement?</p> <p>6 A I see that.</p> <p>7 Q Do you recall that -- does this appear to be an email from</p> <p>8 your mother?</p> <p>9 A It sure does.</p> <p>10 Q Okay. You don't dispute that that's -- that that happened?</p> <p>11 A I don't dispute it, no.</p> <p>12 Q Okay. And so these appear to be the same day as the Board</p> <p>13 of Zoning Appeals meeting?</p> <p>14 A Yeah.</p> <p>15 Q Okay. And then it's your understanding that Bowers Harbor</p> <p>16 did apply for an SUP for a winery chateau permit; correct?</p> <p>17 A I believe so, yes.</p> <p>18 MS. ANDREWS: 98.</p> <p>19 (Deposition Exhibit 98 marked)</p> <p>20 Q I'm sorry. PTP Exhibit 98 is Defendant's Response to First</p> <p>21 RFP 008577 through 8593, labeled SUP Number 132, Bowers</p> <p>22 Harbor Vineyard winery chateau, do you see that?</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q Does this look familiar to you?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 70</p> <p>1 a winery chateau for 45.77 acres," do you see that?</p> <p>2 A Yes.</p> <p>3 Q Do you agree that those three parcels that we talked about</p> <p>4 earlier that are referenced as "owner," the sum of them is</p> <p>5 45.77 acres, subject to check?</p> <p>6 A Yeah. I thought it was a tick more than that, but yeah, it</p> <p>7 seems close.</p> <p>8 Q Something less than 50?</p> <p>9 A Correct.</p> <p>10 Q And the township minimum for a winery chateau is 50 acres?</p> <p>11 A Was at the time, yes.</p> <p>12 Q Was at the time. And so Bowers Harbor went in in 2019 and</p> <p>13 obtained a variance from that?</p> <p>14 A Due to a hardship, yes.</p> <p>15 Q Due to a hardship. And it looks like in the same request,</p> <p>16 that Bowers Harbor also requested a variance from the 75</p> <p>17 percent active production down to 26.8 percent, do you see</p> <p>18 that?</p> <p>19 A Uh-huh (affirmative).</p> <p>20 Q And then the note indicates that that was removed by the</p> <p>21 applicant?</p> <p>22 A I see that that says "request removed."</p> <p>23 Q Do you have a recollection of it being removed?</p> <p>24 A No, I don't.</p> <p>25 Q Okay. Well, I'll show you PTP 97, maybe it'll help refresh</p>	<p style="text-align: right;">Page 72</p> <p>1 Q On the last page do you see the signatures of Linda and then</p> <p>2 Joan --</p> <p>3 A Schoenherr.</p> <p>4 Q -- Schoenherr?</p> <p>5 A Yup.</p> <p>6 Q Is Joan Schoenherr your mother-in-law?</p> <p>7 A Yes.</p> <p>8 Q And it appears this permit was issued October 28th, 2019.</p> <p>9 MR. INFANTE: What was the date you said?</p> <p>10 MS. ANDREWS: Well, it depends on which page of</p> <p>11 the document you look at now, doesn't it? I'm looking at</p> <p>12 the -- I'm looking at the front of the document, but if you</p> <p>13 look at the back of the document it's July 23rd. October</p> <p>14 28th, 2019 or July 23rd, 2019.</p> <p>15 MR. INFANTE: We'll state for the record that it</p> <p>16 has a couple different dates.</p> <p>17 Q Do you have any general recollection as to what time of year</p> <p>18 it was when the township board approved --</p> <p>19 A I thought the document that I recently saw -- because we</p> <p>20 were doing some things at our house, was July 20th or July</p> <p>21 19th or something.</p> <p>22 Q Okay.</p> <p>23 A But, you know, roughly in that -- it was June or July and it</p> <p>24 was definitely '19.</p> <p>25 Q Okay. So probably there's a typo on the front of the</p>

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<p style="text-align: right;">Page 73</p> <p>1 document where it says "October 28th, 2019?"</p> <p>2 A I don't know.</p> <p>3 Q I'm sure the minutes could help clarify. SUP Number 132 is</p> <p>4 a winery chateau permit; is that correct?</p> <p>5 A Yeah.</p> <p>6 Q Is it your understanding that the SUP 132 required or</p> <p>7 approved Bowers Harbor to increase its parking -- I'm</p> <p>8 looking at page 8 of the document, Bates number 85 -- 84 --</p> <p>9 up to 153 parking spaces?</p> <p>10 A That's what we have, yes.</p> <p>11 Q And that has since been put in place?</p> <p>12 A Correct.</p> <p>13 Q Is that the paved parking area or does that include the</p> <p>14 overflow?</p> <p>15 A It's all of the above.</p> <p>16 Q It includes the overflow?</p> <p>17 A Yes, ma'am.</p> <p>18 Q And along with eight bus parking spaces, has that been</p> <p>19 provided?</p> <p>20 A Yes.</p> <p>21 Q All right. I'm looking at the <small>SPENCER STEGENGA 30(b)(6)</small> <small>WOMP v PENINSULA TOWNSHIP</small> <small>Page 11.</small></p> <p>22 Does Bowers Harbor use Maple trees for syrup wine?</p> <p>23 A No. We're just using it to make maple syrup, but we're</p> <p>24 working on a project right now that we will be using that</p> <p>25 in -- in some wine, yeah, but not currently -- it's just for</p>	<p style="text-align: right;">Page 75</p> <p>1 same, but the overall number of acres has been planted?</p> <p>2 A Correct. And I see "or fruit trees; or" so I would say</p> <p>3 yeah. And it was 1.5 acres now.</p> <p>4 Q Okay. When was that planted?</p> <p>5 A Well, we ordered the trees in '19, they were planted in '20,</p> <p>6 so as soon as we could. You know, there was delay,</p> <p>7 obviously, because you don't plan in the fall you plant in</p> <p>8 the spring, so we planted that that next spring.</p> <p>9 Q And where on the property -- whose property are the trees</p> <p>10 planted on?</p> <p>11 A Those -- sorry for the interruption -- those are on</p> <p>12 Schoenherr, LLC.</p> <p>13 Q And what kind of trees?</p> <p>14 A We have a number of different kinds of obscure apple, like</p> <p>15 Heirloom apple stuff, and then there's Silver Maples. I</p> <p>16 think they're Silver Maples.</p> <p>17 Q Okay. It appears that the township board was concerned</p> <p>18 about certain actions taking -- actually taking place. I'm</p> <p>19 looking at the box on page 14 -- on page 16, do you see</p> <p>20 that?</p> <p>21 A Uh-huh (affirmative).</p> <p>22 MR. INFANTE: Object to form.</p> <p>23 Q "Modify the circle drive to allow for emergency vehicle</p> <p>24 access," did that take place?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 sale -- or it's not for sale because it's gone, but for just</p> <p>2 pancakes and --</p> <p>3 Q So it's available for sale in the retail area?</p> <p>4 A No, because it's gone. I mean --</p> <p>5 Q Was it available when you -- when you had it?</p> <p>6 A For a very short period of time.</p> <p>7 Q It appears that there's a requirement for Bowers Harbor to</p> <p>8 plant .8 acres in estate grapes and .4 acres in fruit trees,</p> <p>9 do you see that?</p> <p>10 A Yes, ma'am.</p> <p>11 Q Have those grapes been planted?</p> <p>12 A No.</p> <p>13 Q How about the fruit trees?</p> <p>14 A Yeah, one and a half acres of fruit trees. There was some</p> <p>15 mis-communication. The writing says "grapes," Christina</p> <p>16 said "trees," and Isaiah, so that's what we did. But I see</p> <p>17 here it says, "estate grapes." But we had to get that re-</p> <p>18 surveyed this spring and so we found out it's 1.5 acres.</p> <p>19 Q Okay. And so when you look at page 16 at the very top,</p> <p>20 where it says, "Bowers Harbor Vineyard will plant no less</p> <p>21 than 1.2 acres of grapes or fruit trees to meet the winery</p> <p>22 chateau requirements." It's your understanding that that</p> <p>23 has been complied with?</p> <p>24 A 100 percent.</p> <p>25 Q Yeah. The ratio of grapes to trees is not necessarily the</p>	<p style="text-align: right;">Page 76</p> <p>1 Q And the "consult to address issues pertaining to grade, with</p> <p>2 respect to the parking area," did that take place?</p> <p>3 A Yes.</p> <p>4 Q How about the "all 153 parking spaces," take --</p> <p>5 A Yes.</p> <p>6 Q And then lighting, did that condition get satisfied to your</p> <p>7 knowledge?</p> <p>8 A I don't know.</p> <p>9 Q How about the 1.2 acres of grape or fruit trees, that's</p> <p>10 been --</p> <p>11 A 1.5 acres.</p> <p>12 Q 1.5 was planted.</p> <p>13 A Yeah.</p> <p>14 Q And "apply for land use permit to construct deck, tasting</p> <p>15 room addition, pavilion addition, housing -- house addition</p> <p>16 and garage," did those take place?</p> <p>17 A No, because COVID hit and that's -- kind of dealing with</p> <p>18 that <small>800.211.DEPO (3376)</small> <small>EsquireSolutions.com</small></p> <p>19 Q Okay. So my question for you is in the paragraph below. It</p> <p>20 says,</p> <p>21 "Bowers Harbor vineyard may continue wine tasting</p> <p>22 and related activities allowed under SUP132 and the</p> <p>23 township board action allowing Dining in the Vines</p> <p>24 until items above are completed, in which time they may</p> <p>25 conduct guest activities."</p>

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<p style="text-align: right;">Page 77</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And is that consistent with your understanding of what the</p> <p>4 intent was with SUP 132?</p> <p>5 MR. INFANTE: Objection; calls for legal</p> <p>6 conclusion.</p> <p>7 A I don't know what the intent was.</p> <p>8 Q Did Bowers Harbor continue about dining in the vines in</p> <p>9 2019?</p> <p>10 A I'm assuming we did, but I -- I don't know 100 percent.</p> <p>11 Q Okay.</p> <p>12 A I know we didn't have them in '20, because it's COVID.</p> <p>13 Q Okay. So Dining in the Vines -- is it your understanding</p> <p>14 that Bowers Harbor was permitted to continue Dining in the</p> <p>15 Vines until the requirements were met?</p> <p>16 MR. INFANTE: Objection; calls for legal</p> <p>17 conclusion.</p> <p>18 A Yes, that was my understanding.</p> <p>19 Q To continue Dining in the Vines under 32, under the old</p> <p>20 permit?</p> <p>21 A Just to continue doing Dining WOMP, PENINSULA TOWNSHIP</p> <p>22 remember hearing anything otherwise.</p> <p>23 Q Okay. And then once the conditions were satisfied, then</p> <p>24 Bowers Harbor would have the opportunity to conduct guest</p> <p>25 activities uses under 132?</p>	<p style="text-align: right;">Page 79</p> <p>1 MR. INFANTE: Objection; vague.</p> <p>2 A I don't know.</p> <p>3 Q Did you take the township to court, in your recollection, as</p> <p>4 a result of receiving SUP 132?</p> <p>5 MR. INFANTE: Besides this lawsuit?</p> <p>6 MS. ANDREWS: Besides this lawsuit.</p> <p>7 A No.</p> <p>8 Q Did you ask the Board of Zoning Appeals to review the</p> <p>9 township board's decision to issue SUP 132?</p> <p>10 A I did not.</p> <p>11 Q Did Bowers Harbor?</p> <p>12 A I'm not sure.</p> <p>13 Q Who would know?</p> <p>14 A Linda.</p> <p>15 Q Linda?</p> <p>16 A Stegenga; my mom.</p> <p>17 Q So you have no idea whether Bowers Harbor brought a -- an</p> <p>18 appeal of SUP Number 132 to the Board of Zoning Appeals?</p> <p>19 A An appeal for the 132? I imagine not after we got the 132.</p> <p>20 Not that I recall.</p> <p>21 Q Do you have any document that suggest Bowers Harbor appealed</p> <p>22 132 to the Board of Zoning Appeals?</p> <p>23 A I personally don't have one, but I'm -- if a document exists</p> <p>24 then it would -- we'd certainly have it.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 78</p> <p>1 MR. INFANTE: Objection; document speaks for</p> <p>2 itself, calls for legal conclusion.</p> <p>3 A I don't know.</p> <p>4 Q Do you know what "guest activity uses" are?</p> <p>5 MR. INFANTE: Objection; vague.</p> <p>6 A I've heard ten different versions of what a activity or a</p> <p>7 event or anything else is, so I don't -- I don't really know</p> <p>8 what the definition of an activity or an event or a --</p> <p>9 Q How about "a guest activity use"?</p> <p>10 MR. INFANTE: Same objection; vague.</p> <p>11 A Sounds like a guest and there's an activity.</p> <p>12 Q Do you know what -- has Bowers Harbor sought permission to</p> <p>13 conduct guest activity uses under its SUP 132?</p> <p>14 MR. INFANTE: Objection; vague.</p> <p>15 A Under 132? I'm not sure. I don't know.</p> <p>16 Q Who would know?</p> <p>17 A Probably Bill or Beth, but because of COVID I don't think we</p> <p>18 would have asked for --</p> <p>19 Q You don't think you've asked for guest activity uses?</p> <p>20 A I'm not sure that we have since COVID.</p> <p>21 Q Before Bowers Harbor sued the township in October of 2020 in</p> <p>22 this lawsuit, did Bowers Harbor bring an appeal of the</p> <p>23 decision to issue SUP Number 132?</p> <p>24 A Did we do an appeal?</p> <p>25 Q Yeah.</p>	<p style="text-align: right;">Page 80</p> <p>1 MS. ANDREWS: What's our time?</p> <p>2 MR. INFANTE: 1:52; I'm guessing.</p> <p>3 REPORTER: Just about, about 1:50.</p> <p>4 MS. ANDREWS: We've been going for about --</p> <p>5 almost two hours.</p> <p>6 MR. INFANTE: Time on the record.</p> <p>7 MS. ANDREWS: Why don't we take a break -- a short</p> <p>8 break.</p> <p>9 (Off the record)</p> <p>10 Q All right. So let's switch gears. Tell me about vineyards.</p> <p>11 Bowers Harbor has about -- we looked at this in SUP 132, 14</p> <p>12 acres, almost 15 acres of grapes growing on -- across the</p> <p>13 three parcels, does that sound --</p> <p>14 A Yeah, that's about right.</p> <p>15 Q Where else does Bowers acquire grapes from?</p> <p>16 A I mentioned earlier Smokey Hollow Road, we have a couple</p> <p>17 vineyards.</p> <p>18 Q 800.211.DEPO (3376) Okta Esquire Solutions.com</p> <p>19 A Rob Manigold on Old Mission Road and then we have a bunch of</p> <p>20 handshakes and year-to-year stuff. I buy -- Chris Fifarek</p> <p>21 has 50-some acres that we buy from.</p> <p>22 Q And where's the processing area?</p> <p>23 A We have two, and one is at Left Foot Charley and then the</p> <p>24 other one is French Road Cellars.</p> <p>25 Q And the one at Left Foot Charley, is that at The Commons?</p>

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<p style="text-align: right;">Page 81</p> <p>1 A Yes.</p> <p>2 Q And then the French Road --</p> <p>3 A Is on French Valley Road.</p> <p>4 Q French Valley Road. On the peninsula?</p> <p>5 A Leelanau.</p> <p>6 Q Leelanau; sorry. That processing is on their -- you share</p> <p>7 space with their processing?</p> <p>8 A Correct.</p> <p>9 Q Okay. Does Bowers Harbor buy juice or shiners?</p> <p>10 A Not generally.</p> <p>11 Q Okay. Does Bowers Harbor use grapes from Leelanau</p> <p>12 peninsula?</p> <p>13 A Yes.</p> <p>14 Q Anywhere else?</p> <p>15 A We used to use them from downstate, but not anymore.</p> <p>16 Currently no, just Leelanau and Old Mission.</p> <p>17 Q Tasting room, how big is the present tasting room we talked</p> <p>18 about?</p> <p>19 A That's a good question. I'm not really sure. The building</p> <p>20 hasn't changed.</p> <p>21 Q Okay. What's the occupancy <small>SPENCER STEGENGA 30(b)(6)</small></p> <p>22 I think one side's 58 and the other side's like 29 or 32.</p> <p>23 Q And the 58 is the sort of large area that was the bonded</p> <p>24 area in that first map that we looked at?</p> <p>25 A It's actually the original tasting --</p>	<p style="text-align: right;">Page 83</p> <p>1 now through November 1st.</p> <p>2 Q When does it start?</p> <p>3 A When does it start?</p> <p>4 Q School gets out?</p> <p>5 A Generally we start seeing more kids, you know, and I would</p> <p>6 say kind of when college gets out but, you know, once the</p> <p>7 graduations over, a little bit more. However, our weekends</p> <p>8 year-round are really busy.</p> <p>9 Q Okay. So off season is the winter months until grad season;</p> <p>10 until the kids --</p> <p>11 A I would say, yeah, January and February, March, April.</p> <p>12 Q Okay. Outdoor tasting area, what is your capacity?</p> <p>13 A 153 cars. I really don't know. I mean, it's outdoors --</p> <p>14 Q So does MLCC allow -- is the entire property --</p> <p>15 A No, it's delineated. It's about 12, maybe 14 acres. Maybe</p> <p>16 not quite that. Maybe 12.</p> <p>17 Q Around the tasting room and in the vineyards --</p> <p>18 A Correct.</p> <p>19 Q -- towards the -- that would be towards the --</p> <p>20 A Both sides, north and south.</p> <p>21 Q And are there seating areas outdoors?</p> <p>22 A Yeah.</p> <p>23 Q There's a cement patio?</p> <p>24 A No, just the walkway that was original from '91. No, it's</p> <p>25 stone, --</p>
<p style="text-align: right;">Page 82</p> <p>1 Q Oh, okay.</p> <p>2 A -- the south portion of the building.</p> <p>3 Q And then the 29 to 32 is in the north side, closer to the</p> <p>4 front --</p> <p>5 A Where the bonded used to be, correct; yeah.</p> <p>6 Q How about entertainment inside the tasting room. Does</p> <p>7 Bowers Harbor offer live music, activities, happy hours,</p> <p>8 things like that?</p> <p>9 A We only had outdoor live music, and that was on Saturdays.</p> <p>10 It was Ben Ritchie, and that's been a few years.</p> <p>11 Q So no indoor live music?</p> <p>12 A No, not currently.</p> <p>13 Q The tasting room hours of operation, in season, out of</p> <p>14 season?</p> <p>15 A Currently we are 11:00 to 7:00 and the off season is 11:00</p> <p>16 to 6:00.</p> <p>17 Q So you close a little bit earlier in the -- in the off</p> <p>18 season?</p> <p>19 A Yes. Yes, but if there's people there on Friday or</p> <p>20 Saturday, we don't kick anybody out at 6:01.</p> <p>21 Q What is the season?</p> <p>22 A 365.</p> <p>23 Q No; no; no. I mean like what -- define "in season" and "off</p> <p>24 season" or "high season" or "low season." Like, --</p> <p>25 A I would say it's fair to say that high season would be right</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Okay. Like gravel?</p> <p>2 A -- picnic tables and -- huh?</p> <p>3 Q Is there a pavilion?</p> <p>4 A That was an existing building that we took the sides off of</p> <p>5 and it has heat and sides and --</p> <p>6 Q And can people taste -- get a glass of wine and go sit there</p> <p>7 and --</p> <p>8 A Absolutely. They can reserve a spot, yeah.</p> <p>9 Q Oh, it's reserved?</p> <p>10 A No, it can be both, by appointment or reserved or first come</p> <p>11 first serve.</p> <p>12 Q How many people can fit in the pavilion?</p> <p>13 A I think that's 69.</p> <p>14 Q Oh, it's big.</p> <p>15 A It's 20-by-50.</p> <p>16 Q Are there chairs -- tables, chairs?</p> <p>17 A Yes.</p> <p>18 Q <small>800.211.DEPO (3376)</small> Umbrellas are covered?</p> <p>19 A It's covered, so there's no umbrellas.</p> <p>20 Q Okay. You indicated live music outdoors, how about happy</p> <p>21 hour events, other sorts of tasting room-type events, like</p> <p>22 special -- drink specials or anything like that?</p> <p>23 A (No verbal response)</p> <p>24 Q Not really?</p> <p>25 A It's what we offer.</p>

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<p style="text-align: right;">Page 85</p> <p>1 Q Like, what kinds of things do you offer?</p> <p>2 A Pinot Grigio, Chardonnay, Riesling --</p> <p>3 Q I mean, do you offer things that try to promote people to</p> <p>4 come in with specials or unique activities or is it "The</p> <p>5 tasting room's open, come for tasting"?</p> <p>6 A Yeah, every day's an event, so, yeah, not really, we don't</p> <p>7 advertise like that necessarily.</p> <p>8 Q Okay. Some do and some don't, I'm just trying to get a lay</p> <p>9 of the land.</p> <p>10 A Yeah.</p> <p>11 Q Busy Saturday or Sunday in October or August, about how many</p> <p>12 people would you expect to walk on this -- on the facility,</p> <p>13 come in and have a tasting or come in to --</p> <p>14 A I think we had one of our records last October and it was</p> <p>15 well over 1000 on a Saturday.</p> <p>16 Q And average, typical July Saturday, Sunday?</p> <p>17 A 750 to 1100.</p> <p>18 Q Okay. And then winter, what are the Saturdays in November</p> <p>19 or December look like?</p> <p>20 A Those two months seem to be a little bit slower, so I would</p> <p>21 say somewhere between 200 and 300. <small>SPENCER STEGENGA 30(b)(6)</small></p> <p>22 the first of the year we do snowshoe stuff and the</p> <p>23 weekend -- Saturdays would be maybe slightly higher than</p> <p>24 that.</p> <p>25 Q Tell me about snowshoe stuff.</p>	<p style="text-align: right;">Page 87</p> <p>1 there's more on demand.</p> <p>2 Q What do you mean by that?</p> <p>3 A Just if somebody wants to take a tour and walk around,</p> <p>4 accompanied --</p> <p>5 Q So you used to have organized --</p> <p>6 A Yeah.</p> <p>7 Q Okay.</p> <p>8 A Like, 25, \$50 tours, --</p> <p>9 Q Okay.</p> <p>10 A -- that kind of a thing.</p> <p>11 Q Do you do less of that now?</p> <p>12 A Just a different focus.</p> <p>13 Q Okay. When did that change?</p> <p>14 A COVID.</p> <p>15 Q And if you were doing tours, would that be grounds and</p> <p>16 building or would -- what would be included in a typical</p> <p>17 tour?</p> <p>18 A Vineyards, library, taste. My motto's "Taste, learn and</p> <p>19 enjoy," so however that comes together.</p> <p>20 Q The library, it's a wine library, --</p> <p>21 A Uh-huh (affirmative). <small>July 17, 2023</small></p> <p>22 Q -- of all the vintages that have been made over the years?</p> <p>23 MR. INFANTE: You got to say, "yes." You said,</p> <p>24 "uh-huh" a few times.</p> <p>25 A Sorry, yes. That is from -- yes, from the get-go we've</p>
<p style="text-align: right;">Page 86</p> <p>1 A We allow our property to be used to check out the naked</p> <p>2 vines and walk around and we have some outdoor fire pits</p> <p>3 that -- we have ample amount of firewood and have nice fires</p> <p>4 going and, yeah, people enjoy the property.</p> <p>5 Q Is that new since COVID or is that something that's been</p> <p>6 offered --</p> <p>7 A No. We have an interpretive trail and we have been doing</p> <p>8 that for a long time, but we work with the TC Brew Bus or</p> <p>9 whatever name, and they line up the snowshoers and they</p> <p>10 just -- we're one of the stops.</p> <p>11 Q I see. So it's like a stop on a tour?</p> <p>12 A It goes from Jolly Pumpkin, they get a ride up to 2</p> <p>13 Lads -- I'm sorry -- not 2 Lads -- Brys, and then they</p> <p>14 snowshoe from Brys to Bowers Harbor and have their glass of</p> <p>15 wine, whatever they paid for, and then they snowshoe from</p> <p>16 Bowers to Jolly, and then they're done.</p> <p>17 Q Do you offer live music events like Jazz at Sunset?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A Well, we used to do the live music and then COVID hit</p> <p>21 and -- I guess because someone else is already doing Jazz at</p> <p>22 Sunset. I'm not a "me too" guy.</p> <p>23 Q How about tours of the -- the grounds or the facilities? Is</p> <p>24 that something that Bowers Harbor offers?</p> <p>25 A Yeah, we used to have -- like, do it quite a bit more. Now</p>	<p style="text-align: right;">Page 88</p> <p>1 saved wines from every vintage to current, so it's kind of</p> <p>2 cool.</p> <p>3 Q Where do you keep that?</p> <p>4 A The show part of the library is in my mom's lower level and</p> <p>5 the -- the bulk -- I mean, we have tens of thousands of</p> <p>6 bottles in our library, so that bulk is down in one of our</p> <p>7 warehouses.</p> <p>8 Q Not onsite?</p> <p>9 A Onsite.</p> <p>10 Q Oh; on site?</p> <p>11 A Uh-huh (affirmative); bonded.</p> <p>12 Q How about retail area, is there a dedicated space for things</p> <p>13 for sale or is it sort of on the walls and sort of</p> <p>14 integrated into the room? How does that work?</p> <p>15 A More or less dedicated, but there's a lot of spillover and</p> <p>16 there's definitely stuff on shelves and barrels, wine</p> <p>17 barrels, displayed.</p> <p>18 Q Besides Bowers of wine, Bowers Harbor wine, what other</p> <p>19 things do you offer for retail sales?</p> <p>20 A Again, more of the fruit products; jams, jellies. We do</p> <p>21 some T-shirts, some hats, coffee cup.</p> <p>22 Q How about food service, what kind of food -- do you have a</p> <p>23 prep kitchen or a commercial kitchen?</p> <p>24 A We have like a prep kitchen.</p> <p>25 Q And what kind of -- do you have a menu that people can order</p>

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<p>Page 89</p> <p>1 things off of or are there sort of one or two things?</p> <p>2 A No, it's Boar's Head pre-packaged.</p> <p>3 Q Okay. Do you have staff that manage the prep kitchen or is</p> <p>4 that whoever's in the tasting room, they're all sort of</p> <p>5 trained to do everything?</p> <p>6 A Pre-COVID we did, but now we don't have anybody that is</p> <p>7 specifically designated to that and it -- like I said,</p> <p>8 they're pre-packaged, so it's not anybody -- we don't touch</p> <p>9 the food itself.</p> <p>10 Q Is it in like a refrigerated container that you can just buy</p> <p>11 it and check out?</p> <p>12 A Uh-huh; yeah.</p> <p>13 Q Okay. Bowers Harbor does not have overnight guests;</p> <p>14 correct?</p> <p>15 A Yeah, that's true.</p> <p>16 Q How about your advertising and marketing communications,</p> <p>17 who's in charge of that?</p> <p>18 A Lindsey Phlatz.</p> <p>19 Q You said that earlier. Phlatz with a P-h.</p> <p>20 A P-h-l-a-t-z.</p> <p>21 Q Is she on staff or is she someb SPENCER STEGENGA 30(b)(6) WOMP v PENINSULA TOWNSHIP</p> <p>22 A She's on staff.</p> <p>23 Q What are your typical types of advertising that Bowers</p> <p>24 Harbor uses?</p> <p>25 A Social media, not tons of print; mostly social media, word</p>	<p>Page 91</p> <p>1 mean, we were run like -- or policed -- what's the right</p> <p>2 word? Whatever. We were being, you know, basically</p> <p>3 overseen as a chateau with some interesting uses such as the</p> <p>4 Dine in the Vines.</p> <p>5 Q You said you would and you did pre-COVID. Tell me how that</p> <p>6 worked pre-COVID.</p> <p>7 A Well, if somebody wanted to come and do an event we would be</p> <p>8 in one of those 20's -- one of the 20 events, Dine in the</p> <p>9 Vines, whatever you call it, per year, and it would fit</p> <p>10 under that.</p> <p>11 Q Okay. So you could have a -- some of the dining in the</p> <p>12 vines were organized by Bowers Harbor but you also were</p> <p>13 permitted to have somebody else come in and use one of those</p> <p>14 20 slots, so to speak?</p> <p>15 A If we approved it, yeah.</p> <p>16 Q If you wanted --</p> <p>17 A Sure.</p> <p>18 Q -- if you wanted to use it that way. And would that include</p> <p>19 like, rehearsal dinners, if that was the purpose?</p> <p>20 A If that's what it's called, yeah. Yeah, I mean I -- no, we</p> <p>21 do dinners and I don't --</p> <p>22 Q Or whatever the person's interest was that --</p> <p>23 A Sure.</p> <p>24 Q Yeah. Did those Dining in the Vines take place in -- on the</p> <p>25 pavilion?</p>
<p>Page 90</p> <p>1 of mouth. I mean, we have our, you know, WOMP brochures and</p> <p>2 our wine club brochures, but it's not -- we don't do the old</p> <p>3 school mailers and that kind of stuff anymore.</p> <p>4 Q You have a wine club?</p> <p>5 A We do.</p> <p>6 Q What does wine club get you?</p> <p>7 A What does it get me?</p> <p>8 Q Yeah, what does it get the --</p> <p>9 A Oh.</p> <p>10 Q -- person who joins it?</p> <p>11 A It's three bottles, six bottles or 12 bottles each quarter,</p> <p>12 of our selection, or you can customize your order to get</p> <p>13 whatever 12 bottles of the same wine, whatever your</p> <p>14 favorites are, but we generally pick them -- some out for</p> <p>15 our wine clubbers and then that's what they want. It's</p> <p>16 shipped and then -- or they can pick it up.</p> <p>17 Q Does it ship out of Left Foot Charley or French Valley Road</p> <p>18 or does it ship out of Bowers Harbor? How does that work?</p> <p>19 A It's shipped out of Bowers Harbor.</p> <p>20 Q Okay. How about, do you offer facility rentals for private</p> <p>21 events, like your tasting room or your pavilion or other</p> <p>22 aspects of the property?</p> <p>23 MR. INFANTE: Objection; form.</p> <p>24 A We would and did prior to becoming a chateau, and then six</p> <p>25 months later COVID hit. So, I mean, at this point -- I</p>	<p>Page 92</p> <p>1 A Most of them were outside, but when the township didn't</p> <p>2 allow us permitted tents -- we had a short window we were</p> <p>3 able to use tents and then, via Michelle Reardon, and then</p> <p>4 we were not able to use tents, and so because of the safety</p> <p>5 of our guests being sunburnt or potential rains, we moved</p> <p>6 them under the pavilion, which at that time, then we were</p> <p>7 limited to the number of guests that we could have based</p> <p>8 upon the occupancy of that, and that's when Mr. Sanger would</p> <p>9 come in and count chairs to make sure that we weren't going</p> <p>10 over the number of guests, and that was his job as the</p> <p>11 enforcement officer.</p> <p>12 Q And that was the -- the 50 guest under the old SUP?</p> <p>13 A 55 or 50, whatever that number was, --</p> <p>14 Q Okay.</p> <p>15 A -- something like that.</p> <p>16 Q And I think you indicated that the pavilions could hold more</p> <p>17 than that, but is that -- does it depend on how you arrange</p> <p>18 the 800.211.DEPO (3376) the 800.211.DEPO (3376) the 800.211.DEPO (3376)</p> <p>19 A No, it's just I think that was our -- the number that we</p> <p>20 were assigned.</p> <p>21 Q Okay. COVID changed everything, but what changed at the --</p> <p>22 excuse me -- have those things not resumed yet?</p> <p>23 A No, primarily because I've got a little gun shy from past</p> <p>24 experiences with township and their enforcement threats and</p> <p>25 I -- so we have not resumed, because under -- I'm afraid,</p>

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<p style="text-align: right;">Page 93</p> <p>1 you know, we basically walk on egg shells and the -- the</p> <p>2 goal posts keep moving and, you know, last time we had</p> <p>3 something like this prior to becoming 132 the gentleman told</p> <p>4 me he was going to put padlocks and locks on our doors if we</p> <p>5 have an event.</p> <p>6 Q Who said that?</p> <p>7 A He was the guy who was juicing on the job. I don't --</p> <p>8 Q I'm not going to answer that. There was --</p> <p>9 A There was Brian, I think his name was. That was the guy who</p> <p>10 said, "I'll put padlocks on your door." And I'm not sure if</p> <p>11 Mr. Sanger was there or not, but --</p> <p>12 Q That was under SUP 32, the old SUP?</p> <p>13 A That was right before we were -- yeah.</p> <p>14 Q Before you were a winery chateau?</p> <p>15 A Correct.</p> <p>16 Q Okay. Education events, do you offer cooking classes?</p> <p>17 A We haven't for awhile.</p> <p>18 Q Have you ever?</p> <p>19 A Yeah.</p> <p>20 Q When did you offer cooking classes?</p> <p>21 A We used to do them, called a Winery and Peninsula Township</p> <p>22 of times we'd have local chefs -- even I did a couple --</p> <p>23 just cooking demos and then, you know, some sort of wine</p> <p>24 pairing, but, generally it was a restaurant that would come</p> <p>25 in and chef.</p>	<p style="text-align: right;">Page 95</p> <p>1 the federal government, which is --</p> <p>2 Q What do you mean by that?</p> <p>3 A Well, it's outdoor tasting, it's wine education.</p> <p>4 Q Maybe I misunderstood. I thought you had outdoor tasting at</p> <p>5 this point.</p> <p>6 A I do.</p> <p>7 Q So would that be different? What would be different?</p> <p>8 A I thought you were talking about lectures and what we --</p> <p>9 Q Oh, no. I'm sorry. If Bowers Harbor is successful in</p> <p>10 invalidating the zoning sections, what would you do</p> <p>11 differently?</p> <p>12 A I would be able to follow the State laws.</p> <p>13 Q And do what that you don't presently do?</p> <p>14 A Dinners, more dinners, not be -- having multiple different</p> <p>15 groups there besides just farmers, 501(3)(c)'s from Traverse</p> <p>16 City. I can have groups from Cadillac and other entities</p> <p>17 around, colleges, retreats, that kind of stuff.</p> <p>18 Q Other than meetings of groups and wine dinner -- or dinners,</p> <p>19 anything else?</p> <p>20 MR. INFANTE: Object to form.</p> <p>21 A Yeah, weddings, Bar Mitzvahs, anything along those lines.</p> <p>22 Q Has anybody ever gotten married at Bowers Harbor?</p> <p>23 A Yes.</p> <p>24 Q Who?</p> <p>25 A I don't remember.</p>
<p style="text-align: right;">Page 94</p> <p>1 Q And was that under -- was that within the -- the 20 dining</p> <p>2 in the vine events a year? Would that come in under that?</p> <p>3 A No. I think we just -- I think we were doing them. I</p> <p>4 didn't really look at it as an extension of our tasting</p> <p>5 room.</p> <p>6 Q Okay. Did they take place inside or --</p> <p>7 A Generally they were in the pavilion.</p> <p>8 Q How about wind and -- food and wine pairing dinners post-</p> <p>9 COVID?</p> <p>10 A We haven't had -- not that I remember.</p> <p>11 Q How about meetings? Can people rent your space to have</p> <p>12 meetings?</p> <p>13 A I hope so, but we haven't had any.</p> <p>14 Q How about corporate events?</p> <p>15 A Not since before COVID.</p> <p>16 Q What'd you have before COVID?</p> <p>17 A Just Dining in the Vines, whether it was a company or it was</p> <p>18 a, you know, 20 randoms or whatever, 50 randoms. I don't</p> <p>19 know.</p> <p>20 Q So Bowers Harbor is -- has obviously sued Peninsula Township</p> <p>21 and is hoping for an outcome in this case in its favor.</p> <p>22 What is it that Bowers Harbor is seeking to do in terms of</p> <p>23 expanded operations or changed operations if successful in</p> <p>24 this case?</p> <p>25 A We would like to follow what the State allows us to do and</p>	<p style="text-align: right;">Page 96</p> <p>1 Q No, I mean, was -- I mean, was it family, was it private --</p> <p>2 A My sister did in 1994, --</p> <p>3 Q Okay.</p> <p>4 A -- and I think we've had a couple since then.</p> <p>5 Q Like people that have rented the facility for a wedding?</p> <p>6 A No. The one did it literally out by our pond and then the</p> <p>7 other -- no dinners associated with the weddings that we've</p> <p>8 had. They're mostly ceremonial.</p> <p>9 Q When's the last one?</p> <p>10 A The one and only we've had in the last multiple years was my</p> <p>11 insurance agent's sister got married with 18 people last</p> <p>12 year in the Erica Vineyard, which is part of our property.</p> <p>13 Q Can you remember the one before that?</p> <p>14 A I think it was Dean Rose, our marketing guy, one of them.</p> <p>15 And that was a long time ago and I do not know what the date</p> <p>16 is.</p> <p>17 Q Okay. You indicated that your mother started seeking</p> <p>18 change to the zoning ordinance or to your special use</p> <p>19 permit since 1992. Can you tell me more about activities</p> <p>20 your -- Bowers Harbor's efforts before you filed this</p> <p>21 litigation to amend or change the zoning ordinance?</p> <p>22 A Other than the going from 32 to 132, which we were, again,</p> <p>23 as I said, we were pushed into that container. No, other</p> <p>24 than when we were going through this whole process I -- and</p> <p>25 all this research that we're doing, my mom produced all</p>

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<p style="text-align: right;">Page 105</p> <p>1 Q Oh, 14288.</p> <p>2 A Yup.</p> <p>3 Q Tell me about Yoga in the Pavilions.</p> <p>4 A That's Christy's writing. Well, we worked with -- I've</p> <p>5 never done it, but I probably should have -- with one of the</p> <p>6 local gals, whatever, and I believe they were Sunday</p> <p>7 mornings. And although I live there, I never really saw</p> <p>8 them. I didn't want to be that guy, creeping down there,</p> <p>9 but, yeah, that -- explaining itself, it's yoga and it's in</p> <p>10 the vine.</p> <p>11 Q And then is there a tasting afterwards?</p> <p>12 A I do believe they get a -- a taste, yes, whether it's cider</p> <p>13 or grigio or sparkling wine I'm not sure.</p> <p>14 Q What time period did -- has Bowers Harbor offered Yoga in</p> <p>15 the Pavilions?</p> <p>16 A Well, I think it -- it kind of came and went with what I</p> <p>17 mentioned before, with the selective enforcement and random</p> <p>18 acts of enforcement on Old Mission. So, I believe we did a</p> <p>19 few last summer. We are not doing any this summer and was</p> <p>20 this -- so '22, well that was last -- yeah, I know we did</p> <p>21 them last year. I don't know about -- I don't think we did</p> <p>22 them during, like, '20, the heat of -- the first year of</p> <p>23 COVID, I guess.</p> <p>24 Q So then -- who's Parker Schmidt?</p> <p>25 A Oh, Mike Schmidt's son.</p>	<p style="text-align: right;">Page 107</p> <p>1 think so.</p> <p>2 Q Why not?</p> <p>3 A Why do I not think so?</p> <p>4 Q No, why do you think you would not --</p> <p>5 A As I previously mentioned, we were kind of walking around on</p> <p>6 eggshells not knowing what's enforced, what's not, and are</p> <p>7 we chateau, or are we under fire, or are we whatever. So,</p> <p>8 we were walking around with our tails between our legs a</p> <p>9 little bit with relation to the township and don't want to</p> <p>10 do anything that would jeopardize my State or federal</p> <p>11 position.</p> <p>12 Q What do you mean by "your State or federal position"?</p> <p>13 A Well, my licensing that I have had for 32 years with the</p> <p>14 States and the feds.</p> <p>15 Q Your MLCC license?</p> <p>16 A That's one of them.</p> <p>17 Q And what other licenses?</p> <p>18 A I guess that's it.</p> <p>19 Q Tell me how having an event in Peninsula Township would</p> <p>20 jeopardize your MLCC license.</p> <p>21 A It's a great question. I don't know the answer to that,</p> <p>22 because I'm not risking it and I -- once I got that threat</p> <p>23 about the padlocks and chains on my doors, I think anybody</p> <p>24 would probably hesitate to -- or think multiple times about</p> <p>25 what he would -- what we were doing.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q Is he a musician?</p> <p>2 A No. He's got a board where he makes music.</p> <p>3 Q He offers that for folks who are tasting?</p> <p>4 A He did, yeah. We did it for a few Sundays, kind of like a</p> <p>5 little brunch-type thing, and he lives right in Bowers</p> <p>6 Harbor so he would come over. He also worked too, as a</p> <p>7 pourer for us.</p> <p>8 Q Would brunch involve food?</p> <p>9 A I say "brunch," I meant during that timeline. No, nothing</p> <p>10 other than what we -- other than the cheese and crackers at</p> <p>11 that point last year.</p> <p>12 Q How about Joey Voss? Who's Joey Voss?</p> <p>13 A Oh, yeah, he's a one-man guy. I think he played a few</p> <p>14 Saturdays last year. He's from Leelanau. I don't really --</p> <p>15 I don't know a whole lot about him, but --</p> <p>16 Q Is that an event that you charge people to attend?</p> <p>17 A No, it's just a background.</p> <p>18 Q So, Dining in the Vines in 2021, 2022, 2023, is it</p> <p>19 happening?</p> <p>20 A We don't have any scheduled currently.</p> <p>21 Q Did you have any in 2021?</p> <p>22 A I don't think so.</p> <p>23 Q Did you have any in 2022?</p> <p>24 A Not like Dining in the Vines, as far as I know. I'm not</p> <p>25 sure if we had any food -- dinners or anything. I don't</p>	<p style="text-align: right;">Page 108</p> <p>1 Q And you said that's when Brian Vandenbran was around?</p> <p>2 A I don't remember his last name.</p> <p>3 Q Brian, the township planner?</p> <p>4 A Yes.</p> <p>5 Q And Brian came after Michelle and before Randy, is that your</p> <p>6 recollection?</p> <p>7 A It's been a lot of them, but, yeah, I think so.</p> <p>8 Q Randy came on in -- what? -- 2018?</p> <p>9 A Sure.</p> <p>10 Q Subject to check?</p> <p>11 A Yeah.</p> <p>12 Q So the threat from -- about padlocks and chains, what form</p> <p>13 was that threat in?</p> <p>14 A Verbal.</p> <p>15 Q And what was the thing, the event that triggered the -- the</p> <p>16 threat? What had Bowers Harbor been doing or not done?</p> <p>17 A One of our Dining in the Vines, and at that time they</p> <p>18 were -- I think they were 80 based on the parking spaces</p> <p>19 that we had, and this in particular one I remember, because</p> <p>20 we had one day to cancel it, and we had people with VRBO's,</p> <p>21 people that rented boats with slips, people that came from</p> <p>22 across the country, and we had to call 80 people, and it was</p> <p>23 not pretty to tell them, "By the way, you're not coming to</p> <p>24 dinner at our place tomorrow," that made plans well in</p> <p>25 advance.</p>

EXHIBIT 6

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<p style="text-align: right;">Page 113</p> <p>1 A I've heard too many different definitions, and one of them</p> <p>2 came from (inaudible).</p> <p>3 Q Have you read the zoning ordinance?</p> <p>4 A Not lately.</p> <p>5 Q Ever?</p> <p>6 A Yes.</p> <p>7 Q The winery chateau provisions?</p> <p>8 A Yeah.</p> <p>9 Q All right. Well, so, --</p> <p>10 (Off the record interruption)</p> <p>11 Q -- ECF number 1-1, excerpt from Peninsula Township Zoning</p> <p>12 Ordinance 8.7.3-10, winery chateau, starting at the bottom</p> <p>13 of page 129, little "u," "guest activity uses." Do you see</p> <p>14 that?</p> <p>15 A Uh-huh (affirmative).</p> <p>16 Q "Yes"</p> <p>17 A Yes.</p> <p>18 Q Actually, let's look back at your SUP, page 14, guest</p> <p>19 activity -- under "U," guest activity uses. Do you see</p> <p>20 under little "i" where it says,</p> <p>21 "The Board finds that the applicant intends to</p> <p>22 continue promoting peninsula-based agriculture through its</p> <p>23 operations and that the applicant will be limited to</p> <p>24 conducting those uses allowed under section 8.7.3-</p> <p>25 10(u)(2) such as wine and food seminars, meeting of</p>	<p style="text-align: right;">Page 115</p> <p>1 A It seems like it.</p> <p>2 Q Is it your understanding that Bowers Harbor must provide</p> <p>3 notice of wine and food seminars and cooking classes to the</p> <p>4 township zoning administrator?</p> <p>5 MR. INFANTE: Objection; vague, calls for a legal</p> <p>6 conclusion.</p> <p>7 A That was the rule -- or the understanding in the past, but I</p> <p>8 don't know about now with the 132. I didn't know that we</p> <p>9 were required to do that.</p> <p>10 Q So on page 130 of the zoning ordinance, under 2(a) --</p> <p>11 A Uh-huh (affirmative).</p> <p>12 Q -- would you agree that that requirement continues under SUP</p> <p>13 132?</p> <p>14 MR. INFANTE: Objection; vague, calls for legal</p> <p>15 conclusion.</p> <p>16 A I see it says, "30 days" in here.</p> <p>17 Q Do you know if Bowers Harbor Vineyard has sent notice to the</p> <p>18 township requesting -- sending notice of wine and food</p> <p>19 seminars since it received guest -- SUP 132?</p> <p>20 A Not that I'm aware of, because COVID hit six months later or</p> <p>21 less, so -- or eight months, so I don't know.</p> <p>22 Q You don't know or not that you're aware of?</p> <p>23 A Not that I'm aware of.</p> <p>24 Q How about meetings of 501(c)(3) groups? Have you hosted</p> <p>25 those -- I'm sorry. I'm looking at little "b."</p>
<p style="text-align: right;">Page 114</p> <p>1 non-profit groups and meeting of agricultural-related</p> <p>2 groups."</p> <p>3 Q Do you see that?</p> <p>4 A Yeah.</p> <p>5 Q What is Dining in the Vines? Is Dining in the Vines one of</p> <p>6 those three types of events?</p> <p>7 MR. INFANTE: Objection; vague, calls for legal</p> <p>8 conclusion.</p> <p>9 Q What is Bowers Harbor Vineyard's position?</p> <p>10 MR. INFANTE: Same objection.</p> <p>11 A It says, "wine and food seminars," so I would throw Dining</p> <p>12 in the Vines in that.</p> <p>13 Q So it's your understanding that Dining in the Vines would be</p> <p>14 considered a guest activity use?</p> <p>15 MR. INFANTE: Objection; calls for legal</p> <p>16 conclusion; vague.</p> <p>17 A By this definition.</p> <p>18 Q It would be a wine and food seminar?</p> <p>19 MR. INFANTE: Same objection.</p> <p>20 A It seems like it.</p> <p>21 Q So it's your understanding that Bowers Harbor could offer</p> <p>22 wine and food seminars -- Dining in the Vines as a wine and</p> <p>23 food seminar under the guest activity provisions under SUP</p> <p>24 132?</p> <p>25 MR. INFANTE: Same objection.</p>	<p style="text-align: right;">Page 116</p> <p>1 A Yeah.</p> <p>2 Q Have you hosted those?</p> <p>3 A Only the ones that are -- that we have the list for, the</p> <p>4 group with Jim Maitland and that farmer group, but not that</p> <p>5 I'm aware of, that we've hosted anything since we became a</p> <p>6 132.</p> <p>7 Q And then how about meeting of ag-related groups?</p> <p>8 A Not that I'm aware of. I mean, by "farmer," that's true</p> <p>9 every day out there, but that's probably not what you're</p> <p>10 talking about though.</p> <p>11 MS. ANDREWS: Can we take a five minute break,</p> <p>12 short break? What are we at?</p> <p>13 MR. INFANTE: Let me guess; two hours and 42</p> <p>14 minutes?</p> <p>15 THE REPORTER: Two hours 35 minutes.</p> <p>16 (Off the record interruption)</p> <p>17 MS. ANDREWS: I know it's a little early, but if</p> <p>18 you guys don't mind I'll take a break and see -- check my</p> <p>19 notes for anything. I might be done.</p> <p>20 (Off the record)</p> <p>21 MS. ANDREWS: I'm not doing this on principle,</p> <p>22 we're going to label PTP 100.</p> <p>23 MR. INFANTE: You were supposed to say you were</p> <p>24 done.</p> <p>25 MS. ANDREWS: I just went over my notes and I had</p>

Bowers Harbor Vineyards

2896 Bowers Harbor Road, Traverse City, Michigan 49686

December 16, 2015

Michelle,

Please accept the following as my reply from December 7, 2015

1. Site plan for addition; please see attached
2. BHV would like to add another "Dining In the Vines" for the October activity that took place on premise. As our tasting room is often very busy and filled with guests, it could look like an "activity" almost any day of the week. When several shuttle buses arrive at the same time, there is a big influx of wine tasters. The group of people gathered around watching the game on TV was never meant to be an activity. We will not hold any functions that are not in compliance with the governing documents.
3. In 1992 we were a new winery and the township didn't have a winery ordinance, so BHV became a "one of a kind" roadside stand allowed to sell wine. At their April 14, 1992 meeting, the Town Board approved an amendment removing alcoholic beverage restrictions from road side stand sales. An hour later in the meeting, they put that restriction back in the ordinance. I am asking you to create an ordinance that would accommodate Bowers Harbor Vineyards and the operation that we have established. We are still a "one of a kind" unique winery and we want to be in complete compliance with all regulations. We appreciate your understanding of the current business climate on the peninsula and we need to be open year round to be a viable business and maintain our full time employees.
4. When there is a new ordinance for us, we would like to be allowed to sell merchandise that is wine related. In the meantime, we will refrain from on-site sales of merchandise that is disallowed.

Linda Stegenga

Linda Stegenga



winery | 800-616-7615
fax | 231-223-7625
web | www.bowersharbor.com



**Peninsula Township
Zoning Board of Appeals**

ZBA Case No. 873

Peninsula Township
13235 Center Road
Traverse City, MI 49686

Date of Meeting: April 11, 2019Request: Variance for Winery Chateau

Applicant: Northview 22, Sarah Keever, P.O. Box 3342, Traverse City, MI 49686

Owner: Langley Vineyards LLC (Bower's Harbor Vineyards) – Linda Stegenga
Schoenherr Vineyards LLC, 13975 Seven Hills and
Schoenherr Vineyards LLC, 13971 Seven Hills – Spencer Stegenga

Site: 2896 Bowers Harbor Rd., Traverse City, MI 49686
13975 Seven Hills Rd., Traverse City, MI 49686
13971 Seven Hills Rd., Traverse City, MI 49686

Parcel No.'s: 28-11-121-077-10, 28-11-128-001-11 and 28-11-128-001-12

1. Requesting a variance from the required 50 acre minimum for a Winery Chateau to 45.77 acres
2. Requesting a variance from the required 75% active production to 26.8% of active production for a Winery Chateau. — *Request removed by applicant/owner on April 11, 2019 (email)*

Parcel Code: #28-11-121-077-10, 28-11-128-001-11 and 28-11-128-001-12

Action by the Zoning Board of Appeals:

[Signature]
(Chair)

☒ Yes☐ No

[Signature]
(Vice Chair)

☒ Yes☐ No

[Signature]
(Member)

☒ Yes☐ No

[Signature]
(Member)

☒ Yes☐ No

[Signature]
(Member)

☒ Yes☐ No

Board Action: _____

ZBA Request #873 – p. 6
Staff Report




EXHIBIT 9

PTP Motion for Summary Judgment

October 6, 2023

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DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BASIC PERMIT (Under Federal Alcohol Administration Act)		1. PERMIT NUMBER MI-W-84
NAME AND ADDRESS OF PERMITTEE (Number and street, city or town, State and ZIP Code) Bowers Harbor Vineyard and Winery, Inc. 2896 Bowers Harbor Road Traverse City, MI 49684		2. DATE OF PERMIT March 23, 1992
TRADE NAMES AUTHORIZED BY THIS PERMIT (Trade name approval does not constitute approval as a brand name for labeling purposes. If needed, list on reverse or use continuation sheet.) Bowers Harbor Vineyards Forty Fifth Parallel		3. REGISTRY NO. (If applicable) BW-MI-80
PERMIT GRANTED FOR (ONE TYPE OF OPERATION ONLY) Pursuant to the application of the date indicated in Item 4, you are authorized and permitted to engage, at the above address, in the business of: <input type="checkbox"/> Distilled Spirits – <input type="checkbox"/> distiller <input type="checkbox"/> rectifier (processor) <input type="checkbox"/> warehouseman and/or <input type="checkbox"/> warehouseman and bottler and while so engaged, to sell, offer or deliver for sale, contract to sell or ship, in interstate or foreign commerce, the distilled spirits so distilled or rectified, or warehoused and bottled, or the wines so rectified, <input checked="" type="checkbox"/> Wine – <input checked="" type="checkbox"/> producer and blender <input type="checkbox"/> blender and while so engaged, to sell, offer or deliver for sale, contract to sell or ship, in interstate or foreign commerce, the wine so produced or blended, <input type="checkbox"/> Importer – Importing into the United States the following alcoholic beverages: _____ and while so engaged, to sell, offer to deliver for sale, contract to sell or ship, in interstate or foreign commerce, the alcoholic beverages so imported, <input type="checkbox"/> Wholesaler – Purchasing for resale at wholesale the following alcoholic beverages: _____ and while so engaged, to receive or to sell, offer or deliver for sale, contract to sell or ship, in interstate or foreign commerce, the alcoholic beverages so purchased.		4. DATE OF APPLICATION for amendment July 6, 1992 

This permit is conditioned upon your compliance with the Federal Alcohol Administration Act; the Twenty-first Amendment and laws relating to its enforcement; all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect to them; the Federal Water Pollution Control Act; and, all applicable regulations made pursuant to law which are now, or may hereafter be, in force.

This basic permit is effective from the date shown above and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated.

THIS PERMIT WILL AUTOMATICALLY TERMINATE THIRTY DAYS AFTER ANY CHANGE IN PROPRIETORSHIP OR CONTROL OF THE BUSINESS, unless an application for a new basic permit is made by the transferee or permittee within the thirty day period. If an application for a new basic permit is timely filed, the outstanding basic permit will continue in effect until the application is acted on by the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms.

THIS PERMIT IS NOT TRANSFERABLE. ANY CHANGE IN THE TRADE NAME, CORPORATE NAME, MANAGEMENT OR ADDRESS OF THE BUSINESS COVERED BY THIS PERMIT, OR ANY CHANGE IN STOCK OWNERSHIP (MORE THAN 10%) MUST BE REPORTED TO THE REGIONAL DIRECTOR (COMPLIANCE) WITHOUT DELAY.

THIS IS AN	<input type="checkbox"/> ORIGINAL PERMIT	<input checked="" type="checkbox"/> AMENDED PERMIT
REASON FOR AMENDMENT		DATE OF AMENDMENT
To add a trade name		July 13, 1992

NATURE OF REGIONAL DIRECTOR (COMPLIANCE), BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

BY AUTHORITY OF THE RD(C) *Ann M. Dykes*

PTP0004600



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

* * * * *

In the matter of the request of)
BOWERS HARBOR VINEYARD & WINERY)
2896 Bowers Harbor)
Traverse City, MI 49684)
Peninsula Twp. Grand Traverse County)

Request ID No. 676241

At the March 27, 2013 meeting of the Michigan Liquor Control Commission in
Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman
Teri L. Quimby, Commissioner
Dennis Olshove, Commissioner

**ENLARGE OUTDOOR SERVICE PERMISSION AND ADD SPACE APPROVAL
ORDER**

Bowers Harbor Vineyard & Winery, Inc. ("licensee") at the above-noted location has filed a request to add space to the physical structure of the licensed premises in two areas both measuring 5'x10' under administrative rule R 436.1023; and request to enlarge the existing area authorized for the outdoor sale, service and consumption of alcoholic liquor to now measure up to 470'x846'x660'x870'x565'x425'188'x382'x100'x100'x260'x423'x330', consisting of approximately 20 acres of the winery vineyard, which will be well-defined and clearly marked and is located directly adjacent to the licensed Small Maker premises.

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission

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shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof under MCL 436.1201(2).

The requirements for an outdoor service area are that the licensee shall not have outdoor service without the prior written approval of the Commission; that the on-premises licensee shall ensure that the area is well-defined and clearly marked; and that alcoholic liquor shall not be sold or consumed outdoors, except in the defined area under the provisions of administrative rule R 436.1419(1).

After reviewing the file and discussion of the issue at the meeting, the Commission finds that all of the requirements have been met and this request should be approved.

THEREFORE, IT IS ORDERED that:

A. The request to enlarge the existing Outdoor Service Area is hereby APPROVED, subject to the following:

1. **A final inspection by MLCC Enforcement to determine that the Outdoor Service Area is well-defined and clearly marked and measures up to to 470'x846'x660'x870'x565'x425'188'x382'x100'x100'x260'x423'x330'.**

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- B. The licensee will not permit the sale, service or consumption of alcoholic liquor outdoors, except in the well-defined and clearly marked area, under the provisions of administrative rule R 436.1419(1).
- C. Alcoholic beverages purchased for consumption in this proposed outdoor service area may not be removed and taken to any adjacent unlicensed area(s).
- D. The request to add space to the physical structure is hereby APPROVED.
- E. Under the requirements of administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcement officials who have jurisdiction over the licensee. Approval by the Michigan Liquor Control Commission does not waive this requirement.
- F. Failure to comply with all laws and rules may result in the revocation of the approval contained in this order.
- G. The licensee must obtain all other required state and local licenses, permits, and approvals before utilizing the outdoor service area.

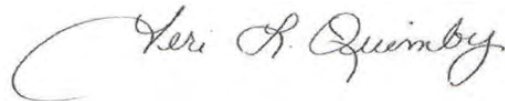
MICHIGAN LIQUOR CONTROL COMMISSION



Andrew J. Deloney, Chairman

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Page 4



Teri L. Quimby, Commissioner



Dennis Olshove, Commissioner

tw

Date Mailed: April 2, 2013

PTP0004624

EXHIBIT 10**PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 17**

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF MARIE-CHANTAL DALESE

<p>1 DEPOSITION OF MARIE-CHANTAL DALESE</p> <p>2 Taken by the Intervener Defendant on the 10th day of July,</p> <p>3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at</p> <p>4 2:00 p.m.</p> <p>5</p> <p>6 APPEARANCES:</p> <p>7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>8 And</p> <p>9 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>10 Miller Canfield Paddock & Stone, PLC</p> <p>11 99 Monroe Avenue, NW, Suite 1200</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 776-6333</p> <p>14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>15 McGraw Morris, PC</p> <p>16 300 Ottawa Avenue, NW, Suite 800</p> <p>17 Grand Rapids, Michigan 49503</p> <p>18 (616) 288-2700</p> <p>19 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>20 Law Office of Tracy Jane Andrews, PLLC</p> <p>21 619 Webster Street</p> <p>22 Traverse City, Michigan 49686</p> <p>23 (231) 714-9402</p> <p>24 And</p> <p>25 MS. HOLLY LYNN HILLYER (P85318)</p> <p>Olson Bzdok & Howard, PC</p> <p>420 East Front Street</p> <p>Traverse City, Michigan 49686</p> <p>(231) 946-0044</p> <p>Also Present: Dave Sanger</p> <p>Karla Gerds</p> <p>Bill Maier</p> <p>Chris Baldyga</p> <p>Alex Lagina</p> <p>Spenser Stegenga</p> <p>Sherri Fenton</p> <p>Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Andrews 5</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 14 marked 21</p> <p>9 (Special Use Permit)</p> <p>10 Deposition Exhibit 15 marked 21</p> <p>11 (12/08/2004 Gordon Hayward Document)</p> <p>12 Deposition Exhibit 16 marked 39</p> <p>13 (Answers to Interrogatories)</p> <p>14 Deposition Exhibit 17 marked 46</p> <p>15 (Defendant's Response to First RFP)</p> <p>16 Deposition Exhibit 18 marked 52</p> <p>17 (Response to Interrogatory 1)</p> <p>18 Deposition Exhibit 19 marked 54</p> <p>19 (Food and Wine Education Seminar List)</p> <p>20 Deposition Exhibit 20 marked 62</p> <p>21 (Consent Judgment)</p> <p>22 Deposition Exhibit 21 marked 72</p> <p>23 (Guest Use Activity Notification)</p> <p>24</p> <p>25</p> <p>Page 4</p>
<p>1 RECORDED BY: Stacey M. Seals, CER 7908</p> <p>2 Certified Electronic Recorder</p> <p>3 Network Reporting Corporation</p> <p>4 Firm Registration Number 8151</p> <p>5 1-800-632-2720</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 Traverse City, Michigan</p> <p>2 Monday, July 10, 2023 - 1:57 p.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm the</p> <p>4 testimony you're about to give will be the whole truth?</p> <p>5 MS. DALESE: Yes.</p> <p>6 MARIE-CHANTAL DALESE</p> <p>7 having been called by the Intervener Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. HILLYER:</p> <p>10 Q We've met, but could you, please, officially state your name</p> <p>11 for the record?</p> <p>12 A Marie-Chantal Dalese.</p> <p>13 Q And I'm Hilly Hillyer. I'm counsel for PTP. And I</p> <p>14 understand that you've been deposed before but I'm going to</p> <p>15 go through some ground rules. This is being transcribed so</p> <p>16 please try to remember to speak your answers and avoid</p> <p>17 nonverbal communication like nodding and gesturing. Try to</p> <p>18 let me finish my questions before you start to answer, and</p> <p>19 try not to speak over one another. And if you don't</p> <p>20 understand a question, please let me know, I will try to</p> <p>21 rephrase it. If you answer I will assume that you have</p> <p>22 understood. And if your attorney objects, I will expect you</p> <p>23 to answer unless he instructs you not to answer. So that's</p> <p>24 another good reason to take a pause before I finish asking a</p> <p>25 question, to give him a chance to object if he needs to.</p> <p>Page 5</p>

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PTP Motion for Summary Judgment

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF MARIE-CHANTAL DALESE

<p>1 Q Uh-huh; yes.</p> <p>2 A We sell prepackaged snacks.</p> <p>3 Q So is there a kitchen manager or anything for the tasting</p> <p>4 room, or is that ordered from outside Chateau Chantal?</p> <p>5 A So food as a whole is overseen by Ann Pettyjohn who works</p> <p>6 with the chef for this year on ordering food for breakfasts,</p> <p>7 wine and food education seminars, and the tasting room.</p> <p>8 Q And the dining area that we've seen here down at the end of</p> <p>9 the hall on the next floor, is that -- is that where the bed</p> <p>10 and breakfast dining is offered?</p> <p>11 A Yes.</p> <p>12 Q And how about lunches, dinners, those kinds of things?</p> <p>13 A Those are also held in that room.</p> <p>14 Q Okay. And that's all under Ann Pettyjohn or the chef?</p> <p>15 A Yes.</p> <p>16 Q What about non-culinary types of events? Does Chateau</p> <p>17 Chantal do weddings?</p> <p>18 A We do when everyone spends the night in the bed and</p> <p>19 breakfast.</p> <p>20 Q Okay. Who would plan something like that?</p> <p>21 A Currently Ann.</p> <p>22 Q Would Ann be the person who's primarily responsible for</p> <p>23 responding to requests from the public for different</p> <p>24 activities or events for hire or rentals?</p> <p>25 A At this point in time she is.</p> <p style="text-align: center;">Page 14</p>	<p>1 the meetings.</p> <p>2 Q Before you were in a role where you had to make those calls,</p> <p>3 who was responsible for deciding what could be done?</p> <p>4 A The previous CEO, Jim.</p> <p>5 Q And who is ultimately responsible for ensuring compliance</p> <p>6 with your Michigan Liquor Control Code licenses?</p> <p>7 A I am.</p> <p>8 Q You are. Okay. Who is primarily responsible for</p> <p>9 advertising, marketing and communications?</p> <p>10 A Ultimately myself, but we do have a director of marketing.</p> <p>11 Q And who is that?</p> <p>12 A Kyle Brownley.</p> <p>13 Q Is it Kyle that decides what to promote? Who decides what</p> <p>14 to promote?</p> <p>15 A There's a typical annual calendar based on the seasons, so</p> <p>16 we'll promote things that match with the holidays or the</p> <p>17 time of the year. We'll promote wines based on release</p> <p>18 dates. We'll promote our dinner series when it's time to</p> <p>19 promote the dinner series. So there's a few things that are</p> <p>20 set by the pace of the year and then if there's something</p> <p>21 new or different we work together on how to promote that.</p> <p>22 Q And is that the same group of people that would decide how</p> <p>23 to promote things, whether to use social media or paid</p> <p>24 advertising or those kinds of things?</p> <p>25 A Kyle primarily makes a proposal and we review that.</p> <p style="text-align: center;">Page 16</p>
<p>1 Q Was someone previously responsible for that?</p> <p>2 A Yes.</p> <p>3 Q Who was that?</p> <p>4 A Prior to her Samantha Olsen.</p> <p>5 Q Okay. And who is primarily responsible for determining</p> <p>6 whether an activity or an event that Chateau Chantal holds</p> <p>7 is compliant with the zoning ordinance?</p> <p>8 A Ultimately that's myself, but I -- each of the people I've</p> <p>9 identified is familiar with the ordinance as well.</p> <p>10 Q Do you issue written guidance or do you talk about things</p> <p>11 among your staff if a new request comes in to figure out</p> <p>12 what's allowed?</p> <p>13 A We have discussions.</p> <p>14 Q Okay. And what -- you mentioned -- I think you mentioned</p> <p>15 reviewing documents. What does the person that makes that</p> <p>16 decision do in order to make that determination?</p> <p>17 A If it is questionable outside what is written in the</p> <p>18 ordinance they'll bring it to me about a discussion about</p> <p>19 whether or not it's something we can do.</p> <p>20 Q Do you ever call the township or consult written documents</p> <p>21 that you have?</p> <p>22 A Not lately.</p> <p>23 Q Is that more off the top of your head experience, historical</p> <p>24 knowledge?</p> <p>25 A Historical knowledge, conversations had with people at all</p> <p style="text-align: center;">Page 15</p>	<p>1 Q Does Chateau Chantal offer facility rentals?</p> <p>2 MR. INFANTE: Objection; vague. If you understand</p> <p>3 go ahead.</p> <p>4 Q I can clarify it.</p> <p>5 A Certainly. Please feel free to clarify.</p> <p>6 Q I mean, I guess for something that Chateau Chantal is not --</p> <p>7 for something that Chateau Chantal is not hosting here, does</p> <p>8 Chateau Chantal rent its facilities to people?</p> <p>9 A We provide the opportunity for people to have food and wine</p> <p>10 education seminars here, and whether or not they're paying</p> <p>11 just for the food and wine versus the event venue itself</p> <p>12 isn't the same all the time. It depends on the customer</p> <p>13 themselves and what it is that they're planning and how long</p> <p>14 and who's involved and a number of factors.</p> <p>15 Q So if you were going to have a food and wine dinner, would</p> <p>16 you rent the space for someone else to come in and prepare</p> <p>17 the food and plan the menu and have the space, or would</p> <p>18 Chateau Chantal put that event on?</p> <p>19 A Chateau Chantal would be the provider of the food and wine</p> <p>20 for that event.</p> <p>21 Q Okay. So would it be fair to say that people coming to</p> <p>22 those events would be paying to attend the event but not</p> <p>23 renting the space?</p> <p>24 A It depends.</p> <p>25 Q It depends. Could you give me an example of when they would</p> <p style="text-align: center;">Page 17</p>

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<p>1 be renting the space?</p> <p>2 A Well, when we have the B&B full of overnight guests that</p> <p>3 have a wedding, there is also a charge for them to use the</p> <p>4 dining space for that event.</p> <p>5 Q Are there other spaces that they might use throughout the</p> <p>6 property where there would be a fee charged for using the</p> <p>7 space?</p> <p>8 A It's all inclusive basically, indoor/outdoor.</p> <p>9 Q Okay. Except for the dining --</p> <p>10 A Only the diningroom would be involved in that fee.</p> <p>11 Q Okay. Thank you. What about meeting facilities, are those</p> <p>12 available for rent?</p> <p>13 A They are within the limitations of the ordinance.</p> <p>14 Q Okay. I guess what do you understand those limitations to</p> <p>15 be?</p> <p>16 A Local 501(c)(3) groups, agricultural related groups; people</p> <p>17 like 4H and all the farmers.</p> <p>18 Q So if a local nonprofit wanted to rent a meeting room here,</p> <p>19 would they be able to do that?</p> <p>20 A It's my understanding that that's allowed, yes.</p> <p>21 Q Who handles those types of rentals?</p> <p>22 A Ann.</p> <p>23 Q Ann does. Okay. So the wine education events you</p> <p>24 mentioned, you have food and wine pairing dinners; right?</p> <p>25 A Uh-huh; yes.</p> <p style="text-align: center;">Page 18</p>	<p>1 tasting room, that's one location, and also the diningroom</p> <p>2 is a second location.</p> <p>3 Q Is there any outdoor component to that?</p> <p>4 A Yes.</p> <p>5 Q And where is that located?</p> <p>6 A On the west patio.</p> <p>7 Q So could you offer live music in any of those locations?</p> <p>8 A That's my understanding.</p> <p>9 Q And who is generally in charge of coordinating live music</p> <p>10 events?</p> <p>11 A Well, the primary one we've had has been in practice for 30</p> <p>12 years so it's kind of on autopilot that this point.</p> <p>13 Q Are you referring to Jazz at Sunset?</p> <p>14 A I am. We don't offer other live music outside of that</p> <p>15 program, so it could be myself in charge of that.</p> <p>16 Q So of the people that you just told me about, did you</p> <p>17 discuss preparing for your deposition today with any of</p> <p>18 them?</p> <p>19 A No.</p> <p>20 Q We'll move on to talk about the permitted land uses here.</p> <p>21 And I know there's a lot of history to this property, but</p> <p>22 what is the -- what is the current document that you</p> <p>23 understand to be the controlling special use permit or other</p> <p>24 document that says what you can do here?</p> <p>25 MR. INFANTE: Objection calls for a legal concl</p> <p style="text-align: center;">Page 20</p>
<p>1 Q Do you offer cooking classes?</p> <p>2 A Yes.</p> <p>3 Q And are those offered to both overnight guests and to the</p> <p>4 public?</p> <p>5 A They are.</p> <p>6 Q And is Ann also primarily responsible for those, the cooking</p> <p>7 classes?</p> <p>8 A In conjunction with chefs.</p> <p>9 Q And winery tours, do you offer tours?</p> <p>10 A We have in the past.</p> <p>11 Q How along ago?</p> <p>12 A COVID changed many things so my best guess would be pre</p> <p>13 COVID, although tours are required of us at food and wine</p> <p>14 education seminars so they do take place during those</p> <p>15 sessions.</p> <p>16 Q Okay. Who is primarily responsible for putting the tours</p> <p>17 together?</p> <p>18 A A combination of tasting room management and cellar staff.</p> <p>19 Q And does Chateau Chantal offer live music?</p> <p>20 A Yes.</p> <p>21 Q Inside the tasting room?</p> <p>22 A What's defined as the tasting room? It's held within the</p> <p>23 area the MLCC has permitted us for alcohol consumption.</p> <p>24 Q So could you describe for me what that area is here?</p> <p>25 A It's been many things. It's been the front entryway to the</p> <p style="text-align: center;">Page 19</p>	<p>1 usion</p> <p>2 ,</p> <p>3 but -</p> <p>4 -</p> <p>5 A I don't know the number, but whatever the most recent SUP</p> <p>6 number is as well as the zoning ordinance.</p> <p>7 Q Do you ever consult more than one SUP?</p> <p>8 A No.</p> <p>9 Q Okay. You don't know the number of the one that you look</p> <p>10 at?</p> <p>11 A No, I don't.</p> <p>12 Q Do you ever talk to anyone at the township about what you</p> <p>13 can do on the property right now?</p> <p>14 A Not right now.</p> <p>15 Q I think I'm going to hand you a document.</p> <p>16 MS. HILLYER: We'll mark this 14.</p> <p>17 MR. INFANTE: Are you going to mark consecutively,</p> <p>18 is that your plan?</p> <p>19 MS. HILLYER: Yeah, this will be 14.</p> <p>20 (Deposition Exhibit 14 marked)</p> <p>21 Q So after you've had a chance to look at this can you tell me</p> <p>22 if it looks familiar?</p> <p>23 (Witness reviews exhibit)</p> <p>24 A Yes, it looks familiar.</p> <p>25 Q Do you recognize it to be one of the SUP's that Chateau</p> <p style="text-align: center;">Page 21</p>

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<p>1 Chantal has received?</p> <p>2 A One of.</p> <p>3 Q Are you aware of a more recent one?</p> <p>4 A I believe there is a more recent one.</p> <p>5 Q Would that be an amendment to this one for solar panels?</p> <p>6 A Solar panels and outdoor service area I believe were the</p> <p>7 last cause for us to do something to our SUP around 2014.</p> <p>8 Q And do you see under -- on this first page -- this is marked</p> <p>9 WOMP0000786 through 791. On this first page, 786, under A,</p> <p>10 General Conditions, do you see where it says, "All of the</p> <p>11 provisions of special use permit number 95 shall remain,</p> <p>12 except as modified by the building addition," and then some</p> <p>13 other parts?</p> <p>14 A I see that.</p> <p>15 Q Okay. Are you aware of any changes that have been made to</p> <p>16 special use permit 95 since this was issued in 2010?</p> <p>17 A I'm unfamiliar with what's in SUP 95 without looking at it.</p> <p>18 Q Okay. Are you aware if the amendment that we just talked</p> <p>19 about in 2014 had anything in it about changing a previous</p> <p>20 SUP?</p> <p>21 A Whether it changed it or amended, the point was to add the</p> <p>22 solar panels and outdoor service area.</p> <p>23 Q One more document for you.</p> <p>24 MS. HILLER: This will be Exhibit 15. And this</p> <p>25 is Defendants' Response to First RFP, 01681 through 01693.</p> <p style="text-align: center;">Page 22</p>	<p>1 A Only as amended in --</p> <p>2 Q This (indicating) one?</p> <p>3 A -- the later SUP's.</p> <p>4 Q Exhibit 14?</p> <p>5 A Yes.</p> <p>6 Q So if we go to section C, number 5, which is on page number</p> <p>7 ending in 001687. Under number 5 it says "Outdoor</p> <p>8 functions"; right?</p> <p>9 A Uh-huh; yes.</p> <p>10 Q And that refers to holding outdoor functions like wine</p> <p>11 tasting parties, festivals, et cetera, shall require a</p> <p>12 special permit if such function is likely to involve more</p> <p>13 than 75 guests; right?</p> <p>14 A Yes.</p> <p>15 Q Is it Chateau Chantal's understanding that it may have</p> <p>16 outdoor functions with up to 75 guests without requesting a</p> <p>17 special permit from the township?</p> <p>18 A Yes.</p> <p>19 Q Okay. And has Chateau Chantal ever had a function with more</p> <p>20 than 75 guests?</p> <p>21 A There may be on a busy October Saturday be more than 75</p> <p>22 people standing outside, but that is not a special event as</p> <p>23 such. They're simply visitors.</p> <p>24 Q Would Chateau Chantal have ever requested a permit for</p> <p>25 the -- a special permit?</p> <p style="text-align: center;">Page 24</p>
<p>1 (Deposition Exhibit 15 marked)</p> <p>2 Q So have you seen this document before?</p> <p>3 (Witness reviews exhibit)</p> <p>4 MR. INFANTE: Is this a complete document? It</p> <p>5 seems to end at one point.</p> <p>6 MS. HILLER: Let me see.</p> <p>7 MR. INFANTE: I just note there's no signature</p> <p>8 page on it.</p> <p>9 MS. HILLER: Yes, this is the most complete</p> <p>10 document that I have.</p> <p>11 MR. INFANTE: It doesn't appear -- because F just</p> <p>12 sort of ends. I don't know.</p> <p>13 MS. HILLER: I believe the township in discovery</p> <p>14 asked Chateau Chantal for all of its permits and I believe</p> <p>15 Chateau Chantal declined to produce any documents because</p> <p>16 the township -- on the basis that the township would have</p> <p>17 them. And this is the document that the township has</p> <p>18 produced regarding SUP 95.</p> <p>19 A Yes, I've seen this before.</p> <p>20 Q Have you seen any more recent version of this? Have you</p> <p>21 seen one with a signature?</p> <p>22 A Not that I recall.</p> <p>23 Q Are you aware of any changes to the contents? Is there a</p> <p>24 later version of this that has something different in it as</p> <p>25 far as what you can do?</p> <p style="text-align: center;">Page 23</p>	<p>1 A I don't ever remember us requesting such a permit.</p> <p>2 Q And section F here where it says "Guest activities," it</p> <p>3 says, "Guest activities as allowed by section 8.7.3(10)(u)</p> <p>4 guest activity uses as adopted by the Peninsula Township</p> <p>5 board." Do you see that section?</p> <p>6 A I do.</p> <p>7 Q And that is unfortunately where this documents ends. But if</p> <p>8 you turn to the front again, the page ending 1682, the</p> <p>9 letter from Mr. Krupka, it looks like it's dated August</p> <p>10 23rd, 2004. Do you see where it says, "This SUP amendment</p> <p>11 is intended to incorporate privileges and regulations for</p> <p>12 guest activities as specified in the newly adopted township</p> <p>13 amendment 141"?</p> <p>14 A Yes.</p> <p>15 Q Is it your understanding that this SUP amendment</p> <p>16 incorporates the new, at the time, guest use activity</p> <p>17 provision?</p> <p>18 A Yes.</p> <p>19 Q I would like to also look at -- so we'll take a look at that</p> <p>20 section of the zoning ordinance.</p> <p>21 MS. HILLER: We will not mark this as an exhibit,</p> <p>22 but I will pass out copies.</p> <p>23 Q Okay. So this is an excerpt from the Peninsula Township</p> <p>24 zoning ordinance, this is section 8.7.3(10), and this is ECF</p> <p>25 number 1-1, it starts with page ID 169 and goes through 176.</p> <p style="text-align: center;">Page 25</p>

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<p>1 MR. INFANTE: That means nothing to you.</p> <p>2 Q This is how we will find this later. So if you turn to the</p> <p>3 third page of that document where it says "u" at the bottom,</p> <p>4 "Guest activity uses." And then go to the next page. Do</p> <p>5 you see in the intent provision 1 down at "d" where it says,</p> <p>6 "Guest activity uses do not include wine tasting and such</p> <p>7 related promotional activities as political rallies, winery</p> <p>8 tours and free entertainment; example Jazz at Sunset"?</p> <p>9 A I see that.</p> <p>10 Q Is it your understanding that that refers to the Jazz at</p> <p>11 Sunset event that is held at Chateau Chantal?</p> <p>12 A Yes.</p> <p>13 Q Okay. Hang on to this. And I'd like to talk a little bit</p> <p>14 now about the current land uses here.</p> <p>15 MS. HILLYER: Let me see, how are we doing on</p> <p>16 time?</p> <p>17 MR. INFANTE: Your four hours is done, it went</p> <p>18 fast. It's a joke, for the record.</p> <p>19 MS. HILLYER: I'm smiling, for the record.</p> <p>20 Q Chateau Chantal has a tasting room that's open to the</p> <p>21 public; right? We've talked about this.</p> <p>22 A Yes.</p> <p>23 Q We've talked about Chateau Chantal has outdoor tasting;</p> <p>24 right?</p> <p>25 A People can sit outside with their tasting, yes.</p> <p style="text-align: center;">Page 26</p>	<p>1 A A common area, yes.</p> <p>2 Q What about other dining options? Is lunch and dinner</p> <p>3 available to people who stay here?</p> <p>4 A When we are offering food and wine educational seminars such</p> <p>5 as our wine dinners they are able to purchase a ticket to</p> <p>6 those.</p> <p>7 Q And when do you offer those?</p> <p>8 A Three to four nights a week June through October.</p> <p>9 Q Is it fair to say June to October is your peak season?</p> <p>10 A Yes.</p> <p>11 Q Do you offer them throughout the year?</p> <p>12 A We do other types of food and wine education seminars</p> <p>13 throughout the year, yes.</p> <p>14 Q Less frequency?</p> <p>15 A Less frequency.</p> <p>16 Q Okay. How many would you say you do in December?</p> <p>17 A Maybe four.</p> <p>18 Q On a monthly basis; for the month?</p> <p>19 A Uh-huh; yes.</p> <p>20 Q And the cooking classes that you mentioned earlier, how</p> <p>21 often do you do those?</p> <p>22 A Approximately twice a month January through May.</p> <p>23 Q About how many people can attend a cooking class?</p> <p>24 A 24 max.</p> <p>25 Q And how about the wine and food dinners?</p> <p style="text-align: center;">Page 28</p>
<p>1 Q With their glass of wine. It offers lodging to overnight</p> <p>2 guests; right?</p> <p>3 A Yes.</p> <p>4 Q How many rooms do you have?</p> <p>5 A 12.</p> <p>6 Q 12. Has it always had 12 rooms?</p> <p>7 A No.</p> <p>8 Q It's been added onto over the years?</p> <p>9 A It has.</p> <p>10 Q And how large are the rooms, how many people can they</p> <p>11 accommodate?</p> <p>12 A I think legally give, but normally two reside within each</p> <p>13 room.</p> <p>14 Q So if I were to do the math, you might have anywhere from 24</p> <p>15 to a maximum of 60 people staying in the rooms?</p> <p>16 A The amount of head spaces, so two people in every bed and</p> <p>17 pullout is 42.</p> <p>18 Q And when someone stays here what amenities are available to</p> <p>19 them in terms of food, facilities, gym equipment, that kind</p> <p>20 of thing?</p> <p>21 A They receive a breakfast every morning, they receive a</p> <p>22 complimentary wine tasting, there's usually a tour provided</p> <p>23 after breakfast special for guests. And use of the</p> <p>24 fireplace area in the diningroom.</p> <p>25 Q Is that like a common area?</p> <p style="text-align: center;">Page 27</p>	<p>1 A Currently most sessions are 36 people.</p> <p>2 Q So for tasting room visitors, does Chateau Chantal offer</p> <p>3 activities in the tasting room for people, like trivia night</p> <p>4 or game night, theme nights, anything extra besides wine</p> <p>5 tasting?</p> <p>6 A Depending on the season we might have a variety of different</p> <p>7 activities; like our ice wine festival, which is simply a</p> <p>8 showcase of the ice wine that we make with a few activities</p> <p>9 available free to the public. Same four our harvest day</p> <p>10 celebration, there's simply some additional activities</p> <p>11 available that day for people to come celebrate.</p> <p>12 Q What kind of things do you do at the harvest day festival?</p> <p>13 A We offer a free tour, we offer a distillation seminar and we</p> <p>14 offer a grape stomp activity.</p> <p>15 Q That sounds fun. Tell me about the grape stomp.</p> <p>16 A Well, in traditional form we allow people the chance to</p> <p>17 stomp on some grapes in a half barrel and provide them with,</p> <p>18 you know, feet washing and towels afterwards. It's just a</p> <p>19 fun showcase of the way wine used to be made. And then we</p> <p>20 discard the smooshed grapes.</p> <p>21 MR. RAJSIC: So not drinking then?</p> <p>22 THE WITNESS: We're not turning it into wine.</p> <p>23 Q That's good to hear.</p> <p>24 MR. INFANTE: You used to, depending on how old</p> <p>25 the bottle you buy here.</p> <p style="text-align: center;">Page 29</p>

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<p>1 Q So where do you do the grape stomp?</p> <p>2 A Usually on the west lawn or underneath the cellar door if</p> <p>3 it's raining.</p> <p>4 Q And what are some things that you do at the ice wine</p> <p>5 festival?</p> <p>6 A We offer some seminars, some educational seminars about ice</p> <p>7 wine; what it is, why we're growing it here, what makes it</p> <p>8 special. We'll offer a special food and wine education</p> <p>9 seminar, ice wine pairing dinner during the festival as</p> <p>10 well, and a tour. We take a vineyard tour out to see the</p> <p>11 ice wine vineyards.</p> <p>12 Q About how many people usually are on a tour?</p> <p>13 A For the ice wine festival?</p> <p>14 Q I'm sure it probably is different.</p> <p>15 A It's dramatically different.</p> <p>16 Q Okay. So a festival tour like that, how many people would</p> <p>17 you have?</p> <p>18 A Anywhere from 10 to 35-ish, probably.</p> <p>19 Q Okay. How about just regular average day of the week tours?</p> <p>20 A We're not offering average --</p> <p>21 Q You're not going those right now?</p> <p>22 A -- tours during the week at this point in time. They would</p> <p>23 need to be made by special arrangement.</p> <p>24 Q If you do those in connection with say a wine and food</p> <p>25 dinner --</p> <p style="text-align: center;">Page 30</p>	<p>1 A Again probably COVID did some damage to that, yes.</p> <p>2 Q So overnight guests, they are allowed to have weddings;</p> <p>3 right?</p> <p>4 A If all of their guests sleep in the bed and breakfast.</p> <p>5 Q How often would you say that happens?</p> <p>6 A Three to four times a year.</p> <p>7 Q Do overnight guests ever have other types of events, like</p> <p>8 family reunions or other private parties but not weddings?</p> <p>9 A Yes.</p> <p>10 Q What kinds of things do they do?</p> <p>11 A A you mentioned, a family reunion or an anniversary party</p> <p>12 for the grandparents.</p> <p>13 Q And the meetings that Chateau Chantal has, we talked about</p> <p>14 the local nonprofit meetings. What would be a typical</p> <p>15 number of attendees for one of those?</p> <p>16 A They're fairly small, up to 20.</p> <p>17 Q And are those typically during regular tasting room</p> <p>18 operating hours/during regular business hours, or are</p> <p>19 they --</p> <p>20 A Yes, they would be.</p> <p>21 Q And what are the usual tasting room hours like right now?</p> <p>22 A 11:00 to 8:00 on Friday and Saturday, 11:00 to 6:00 every</p> <p>23 other day.</p> <p>24 Q If someone wanted to have a meeting outside regular tasting</p> <p>25 room hours, would that be available to them?</p> <p style="text-align: center;">Page 32</p>
<p>1 A Yes.</p> <p>2 Q -- would you take the whole wine and food group at once or</p> <p>3 do they go in small groups?</p> <p>4 A It would be everyone together.</p> <p>5 Q So if you have 32 people attending the dinner the 32 people</p> <p>6 would go?</p> <p>7 A Correct.</p> <p>8 Q So tell me little more about Jazz at Sunset. I understand</p> <p>9 this has been going on a long time; right?</p> <p>10 A Yes.</p> <p>11 Q Is that -- is that outdoors? Indoors?</p> <p>12 A It's been held in a combination of both, during COVID and</p> <p>13 after it is outdoors.</p> <p>14 Q Was it previously inside?</p> <p>15 A Yes.</p> <p>16 Q And is that an event that you charge for or is that free to</p> <p>17 the public?</p> <p>18 A The music is free and they can purchase a glass or flight of</p> <p>19 wine.</p> <p>20 Q Are they required to purchase wine?</p> <p>21 A No.</p> <p>22 Q Do you ever have live music like in the tasting room that's</p> <p>23 not a Jazz at Sunset event?</p> <p>24 A Not lately.</p> <p>25 Q Like the last three to five years?</p> <p style="text-align: center;">Page 31</p>	<p>1 A It would be if they met the requirements.</p> <p>2 Q How about other types of events; special promotional events</p> <p>3 that you might have? Is there anything that I have missed</p> <p>4 that you might offer as an event?</p> <p>5 MR. INFANTE: Objection; vague.</p> <p>6 A Primarily most of what we do falls underneath the food and</p> <p>7 wine education seminar.</p> <p>8 Q Okay. And how -- we talked a little bit about you have a</p> <p>9 marketing and communications person. How does Chateau</p> <p>10 Chantal typically advertise or promote the kinds of things</p> <p>11 it does?</p> <p>12 A We use a lot of media channels; everything from social media</p> <p>13 to paid advertising in print and digital. The biggest thing</p> <p>14 which we've relied upon all of our years is word of mouth,</p> <p>15 and the relationship between having your guest spend the</p> <p>16 night provides more opportunity for them to spread positive</p> <p>17 feedback about their experience with us.</p> <p>18 Q And you maintain a website too; right?</p> <p>19 A We do.</p> <p>20 Q Okay. Would you consider that part of your promotional</p> <p>21 efforts?</p> <p>22 A Yes.</p> <p>23 Q How many tasting room visitors, if you know, do you receive</p> <p>24 on a typical day during peak season?</p> <p>25 A I know in January it's about 2,000 a month and October is</p> <p style="text-align: center;">Page 33</p>

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<p>1 about 15,000 a month.</p> <p>2 Q That's quite a range. I'm assuming that there's variation</p> <p>3 during the week, what would be a typical weekday in the</p> <p>4 summer?</p> <p>5 A Maybe 200.</p> <p>6 Q And a weekend of -- a Saturday?</p> <p>7 A I would estimate 800.</p> <p>8 Q And the tasting room capacity that's spread over the whole</p> <p>9 day, so how many people that typically in the tasting room</p> <p>10 at any given time?</p> <p>11 A Far from max capacities. I would estimate 30 at a time.</p> <p>12 Q And where do those people park that are just coming to</p> <p>13 taste?</p> <p>14 A In the main front entry tasting room parking lot.</p> <p>15 Q Do you ever need overflow parking for tasting room visitors?</p> <p>16 A We do.</p> <p>17 Q And where do those people park?</p> <p>18 A We have a couple different grassy areas that are available</p> <p>19 for overflow.</p> <p>20 Q Okay. How about tour busses, do you get those coming</p> <p>21 through?</p> <p>22 A We do.</p> <p>23 Q Do you typically know when they're coming or do you -- do</p> <p>24 they arrive unexpectedly?</p> <p>25 A It can go both ways.</p> <p style="text-align: center;">Page 34</p>	<p>1 for guests?</p> <p>2 A Well, our east patio fire marshal capacity code is 492, but</p> <p>3 the ordinance limits us to 111 for a food and wine education</p> <p>4 seminar.</p> <p>5 Q Okay. And the west patio that you mentioned earlier?</p> <p>6 A There's no defined capacity on the west side.</p> <p>7 Q Are there other areas on the property where you'd like to</p> <p>8 have events that you have an estimate of how much capacity</p> <p>9 those would have?</p> <p>10 A Outdoors?</p> <p>11 Q Uh-huh (affirmative).</p> <p>12 A No.</p> <p>13 Q And indoors are there other spaces within the buildings that</p> <p>14 are here that you might have events outside of the tasting</p> <p>15 room?</p> <p>16 A The diningroom.</p> <p>17 Q Okay. And what's the diningroom capacity, if you know?</p> <p>18 A 111.</p> <p>19 Q That's right. You have that one memorized.</p> <p>20 A It's in the ordinance.</p> <p>21 Q How about retail, do you have a retail space inside the</p> <p>22 tasting room or inside the bed and breakfast?</p> <p>23 MR. INFANTE: Objection; vague. Go ahead.</p> <p>24 A I take it by "retail" you mean the wine that we make and</p> <p>25 other merchandise?</p> <p style="text-align: center;">Page 36</p>
<p>1 Q Do you plan parking around when you know that they're</p> <p>2 coming?</p> <p>3 A We do have reserved bus spots.</p> <p>4 Q Okay. Have you noticed -- I'm sure COVID has messed</p> <p>5 everything up, but have you noticed any overall trends in</p> <p>6 tasting room attendance over, say, the past five years?</p> <p>7 A What do you mean by "trends"?</p> <p>8 MR. INFANTE: Objection; vague.</p> <p>9 Q Trends like changes over time. Are you noticing more</p> <p>10 visitors, are you noticing fewer visitors, more visitors at</p> <p>11 different times of the year?</p> <p>12 A I'd say over time the shoulder seasons have slightly</p> <p>13 expanded, meaning into April may be a little busier than in</p> <p>14 years past, and certainly if the weather holds November can</p> <p>15 still maintain some modicum of business. Certainly COVID</p> <p>16 has -- you know, did change demand somewhat in terms of</p> <p>17 having pent up demand, which I believe has started to slow.</p> <p>18 But nevertheless, our occupancy is the same as it has been</p> <p>19 before.</p> <p>20 Q And would you say most people come in a personal vehicle or</p> <p>21 do they mostly come on busses? How do people typically</p> <p>22 arrive?</p> <p>23 A A combination of both.</p> <p>24 Q And for events outside the tasting room, if you're going to</p> <p>25 have an outdoor event what would be your maximum capacity</p> <p style="text-align: center;">Page 35</p>	<p>1 Q Yes.</p> <p>2 A We have a small area in the bed and breakfast reception</p> <p>3 area, and throughout the tasting room we have retail on</p> <p>4 display.</p> <p>5 Q Okay. And what kinds of things do you sell besides wine?</p> <p>6 A Tee shirts, sweatshirts, hats, glassware, wine accessories,</p> <p>7 art.</p> <p>8 Q What -- this is too broad a question.</p> <p>9 MR. INFANTE: Objection; over-broad.</p> <p>10 Q So do people who buy things other than wine typically make</p> <p>11 those purchases in connection with having stayed at the bed</p> <p>12 and breakfast or come to taste wine?</p> <p>13 MR. INFANTE: Objection; over-broad. Go ahead.</p> <p>14 A Not necessarily. I think you see people that are</p> <p>15 accompanying wine tasters that like to shop.</p> <p>16 Q That may not taste wine or come for the wine?</p> <p>17 A Correct.</p> <p>18 Q And are you able to promote that you have those other items</p> <p>19 other than wine for sale?</p> <p>20 A We typically don't.</p> <p>21 Q Is that because you can't or is it -- It's not a priority?</p> <p>22 A It's not our main business.</p> <p>23 Q Okay. And does Chateau Chantal conduct wholesale</p> <p>24 distribution from this property?</p> <p>25 A Yes, we sell wine to a distributor who picks up from this</p> <p style="text-align: center;">Page 37</p>

10 (Pages 34 to 37)

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<p>1 A In reflecting upon the whole history, there were a lot of</p> <p>2 different things that happened when we first opened in the</p> <p>3 early 90's that we came to be restricted on at some point, I</p> <p>4 don't remember the date or the year. So it's very early</p> <p>5 from the passage of this ordinance the restriction was</p> <p>6 occurring.</p> <p>7 Q Do you -- does Chateau Chantal as a corporate entity have a</p> <p>8 position on when its First Amendment rights were first</p> <p>9 injured?</p> <p>10 MR. INFANTE: Objection; calls for a legal</p> <p>11 conclusion.</p> <p>12 A I don't have a date if that's what it is that you're looking</p> <p>13 for.</p> <p>14 Q Are you looking for the date -- the date the ordinance was</p> <p>15 passed or --</p> <p>16 MR. INFANTE: Same objection.</p> <p>17 A I would say since it's passage, so since the winery chateau</p> <p>18 ordinance was passed.</p> <p>19 Q So if I were to tell you -- I don't think this -- so this</p> <p>20 ordinance would have been passed in 1989. Chateau Chantal,</p> <p>21 do you know when it received its first SUP?</p> <p>22 A I don't know the year.</p> <p>23 Q So this would be Exhibit 17.</p> <p>24 (Deposition Exhibit 17 marked)</p> <p>25 Q So after you've had a chance to look at this, can you tell</p> <p style="text-align: center;">Page 46</p>	<p>1 A Sure. It's been clear my whole life that his vision was for</p> <p>2 agritourism. He used the word back then in the -- must be</p> <p>3 Italian version, agriturismo, as a way to symbolize what it</p> <p>4 is that he was really trying to do, which is agritourism;</p> <p>5 growing the grapes, providing an opportunity for people to</p> <p>6 enjoy a beautiful area, drinking the wine made from those</p> <p>7 grapes. And also the symbiotic relationship with the bed</p> <p>8 and breakfast and being able to spend the night in that</p> <p>9 location, similar to that that they do in Europe at a French</p> <p>10 Chateau.</p> <p>11 Q And so to your knowledge this is the first winery chateau in</p> <p>12 Peninsula Township?</p> <p>13 A To my knowledge.</p> <p>14 Q So if we return to -- if we return to Exhibit 16, this</p> <p>15 Interrogatory response where it says that, "Chateau</p> <p>16 Chantal's First Amendment rights were harmed or injured</p> <p>17 since the passage of the winery chateau ordinance," is it</p> <p>18 Chateau Chantal's position that either when the ordinance</p> <p>19 was passed or some time shortly thereafter that is when its</p> <p>20 First Amendment rights were first injured?</p> <p>21 MR. INFANTE: Objection; calls for a legal</p> <p>22 conclusion.</p> <p>23 A It's my understanding that this was a negotiation whereby no</p> <p>24 one really got what they wanted and it was settled upon as a</p> <p>25 way to move forward with a business plan that kept land in</p> <p style="text-align: center;">Page 48</p>
<p>1 me if it looks familiar?</p> <p>2 (Witness reviews exhibit)</p> <p>3 A Yes, this is familiar.</p> <p>4 Q Okay. Thank you. So we are looking at SUP 21. And this is</p> <p>5 Defendant's Response to first RFP 1698 through 1704. And</p> <p>6 can you tell me the date at the top of this?</p> <p>7 A Revised 7/10/90.</p> <p>8 Q And on the next page do you recognize the signature of the</p> <p>9 applicant?</p> <p>10 A I do.</p> <p>11 Q And whose signature is that?</p> <p>12 A Robert Begin.</p> <p>13 Q And is it your understanding that this is Chateau Chantal's</p> <p>14 first SUP?</p> <p>15 A That is my understanding.</p> <p>16 Q So before this was issued was it possible to have a winery</p> <p>17 chateau in the agricultural district of Peninsula Township?</p> <p>18 MR. INFANTE: Objection; foundation, calls for a</p> <p>19 legal conclusion. If you know you can answer.</p> <p>20 A It's my understanding that this was the first of the winery</p> <p>21 chateaus. It was possible to grow grapes and be a</p> <p>22 commercial winery, because that already existed.</p> <p>23 Q So tell me a little bit about the concept of the winery</p> <p>24 chateau as you know from your history here and from what you</p> <p>25 understand of your father's vision.</p> <p style="text-align: center;">Page 47</p>	<p>1 agriculture on Old Mission.</p> <p>2 Q Would it be Chateau Chantal's position that the ordinance</p> <p>3 applied to it before it received its first SUP or at the</p> <p>4 time it received its first SUP?</p> <p>5 A I can't say. I don't know.</p> <p>6 Q So the second part of this sentence where it says, "Every</p> <p>7 day that it is enforced constitutes a new violation," and I</p> <p>8 understand "it" is referring again to the winery chateau</p> <p>9 ordinance. Is that your understanding?</p> <p>10 A Yes.</p> <p>11 Q "Every day that it is enforced constitutes a new violation,"</p> <p>12 what does enforced mean to Chateau Chantal?</p> <p>13 A We have always practiced rule following and have had</p> <p>14 enforcement violations over the years, but have also worked</p> <p>15 with what is in this document for the winery chateau</p> <p>16 ordinance while trying to change what's in the winery</p> <p>17 chateau ordinance since 2008.</p> <p>18 Q The enforcement actions you mentioned, do you recall how</p> <p>19 many of those there have been?</p> <p>20 A Probably -- the one I can -- well, you know, there are some</p> <p>21 that I probably just don't have information about from prior</p> <p>22 to my time here. I left in 1996 and did not return until</p> <p>23 2009. The one I'm aware of relates to the placement of</p> <p>24 igloos on the property.</p> <p>25 Q Would that have been in connection with COVID?</p> <p style="text-align: center;">Page 49</p>

EXHIBIT 10

PTP Motion for Summary Judgment

October 6, 2023

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<p>1 A It was a customer demand item that was very popular in the</p> <p>2 wintertime to expand experiences for wine tasting at a</p> <p>3 winery. COVID then came into play and we were able to use</p> <p>4 them for a period of time to assist with the indoor capacity</p> <p>5 restrictions dictated by the state from COVID. And after</p> <p>6 the fact we received conflicting information on how to</p> <p>7 proceed with the usage of the igloos post COVID resulting in</p> <p>8 us not being able to use them at all.</p> <p>9 Q Do you know of any enforcement actions prior to that?</p> <p>10 A Like I said, there may have been and I am not --</p> <p>11 Q That's fair.</p> <p>12 A -- privy to what they are.</p> <p>13 Q So the way we've both been using enforcement I think means</p> <p>14 that the township has issued a citation or a fine or</p> <p>15 something. Would you agree with that?</p> <p>16 A Yes.</p> <p>17 Q Okay. So when this sentence says, "Every day that it is</p> <p>18 enforced constitutes a new violation," is it Chateau</p> <p>19 Chantal's position that only those instances where the</p> <p>20 township issues some sort of citation or fine or enforcement</p> <p>21 action is a day that it is enforced, or is it Chateau</p> <p>22 Chantal's position that every day that the zoning ordinance</p> <p>23 is on the books that it's a violation?</p> <p>24 MR. INFANTE: Objection; calls for a legal</p> <p>25 conclusion.</p> <p style="text-align: center;">Page 50</p>	<p>1 MR. INFANTE: Objection; calls for legal</p> <p>2 conclusions.</p> <p>3 A I would presume that's how it operated.</p> <p>4 Q So I'd like to go through the provisions that are listed</p> <p>5 here. I'm going to give you an exhibit.</p> <p>6 (Deposition Exhibit 18 marked)</p> <p>7 Q This is a chart for ease of following, you are free to cross</p> <p>8 reference this with the actual subsections in your copy of</p> <p>9 this section of the ordinance, which is at ECF 1-1. But you</p> <p>10 may find it easier to follow this chart. So on page 1 of</p> <p>11 this document -- I apologize for the staple location, that</p> <p>12 is my fault and not Karla's. Page 1 of this document has</p> <p>13 two provisions on it that Chateau Chantal stated in its</p> <p>14 Interrogatory response that compelled Chateau Chantal to</p> <p>15 advertise Peninsula Township agriculture. And page 2 has</p> <p>16 three provisions that Chateau Chantal stated restrict its</p> <p>17 ability to host certain types of events. And page 3 has</p> <p>18 several provisions, I will not count, that Chateau Chantal</p> <p>19 has alleged infringe on its right to engage in commercial</p> <p>20 speech. And the last page is regarding free association.</p> <p>21 So I will tell you what section we're talking about as we go</p> <p>22 through --</p> <p>23 MR. INFANTE: Just for the record, Exhibit 18 is</p> <p>24 something that you created; correct, Holly?</p> <p>25 Q Yes, this is something that I created, so you're welcome to</p> <p style="text-align: center;">Page 52</p>
<p>1 A That every day -- every day that it is enforced constitutes</p> <p>2 a new violation; not a violation for Chateau Chantal but a</p> <p>3 violation to our business. Am I making sense there?</p> <p>4 Q Yes, you are. And I guess I'm trying to understand when do</p> <p>5 you think that these violations are happening against</p> <p>6 Chateau Chantal.</p> <p>7 A Uh-huh (affirmative). Well --</p> <p>8 MR. INFANTE: Same objection. Go ahead.</p> <p>9 A This is outlining -- this SUP is dated 1990, you explained</p> <p>10 that the winery chateau ordinance predates that to --</p> <p>11 what? -- 1989. And then of course the subsequent amendment</p> <p>12 of 141 adding the guest use activities piece that is not</p> <p>13 part of the original SUP but subsequent SUP's after that</p> <p>14 amendment was made to the zoning ordinance. So there's two</p> <p>15 levels, two different dates.</p> <p>16 Q So that amendment 141, that added those guest activity uses?</p> <p>17 A Uh-huh (affirmative).</p> <p>18 Q Does Chateau Chantal believe that those provisions were</p> <p>19 applied to it when they were enacted or when it got its</p> <p>20 first SUP that included those?</p> <p>21 A I would presume that upon adding it to the SUP is when those</p> <p>22 activities were added to our business.</p> <p>23 Q Would you agree that Chateau Chantal didn't have to follow</p> <p>24 the provisions in that -- those guest activity use</p> <p>25 provisions in (10)(u) until it had them approved in its SUP?</p> <p style="text-align: center;">Page 51</p>	<p>1 just also look at the zoning ordinance if you find that</p> <p>2 easier. So the Interrogatory response lists sections</p> <p>3 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a), and says that</p> <p>4 they unconstitutionally compel Chateau Chantal to advertise</p> <p>5 Peninsula Township agriculture. So tell me first what does</p> <p>6 Chateau Chantal do to advertise Peninsula Township</p> <p>7 agriculture?</p> <p>8 A By following what was here in the ordinance. We include</p> <p>9 knowledge of local produce on our food and wine education</p> <p>10 seminary menus. It is discussed verbally by the wine</p> <p>11 educator at those sessions. Of course the wine is promoted</p> <p>12 as being grown on OMP. And the tours are required as part</p> <p>13 of any of those guest activity uses.</p> <p>14 Q And when you say "the wine," so you mean Chateau Chantal's</p> <p>15 wine?</p> <p>16 A Yes.</p> <p>17 Q So would it be fair to say that promoting Chateau Chantal's</p> <p>18 wine is part of promoting Peninsula agriculture?</p> <p>19 A Yes.</p> <p>20 Q And it is Chateau Chantal's understanding that tours are</p> <p>21 required with all guest activity uses?</p> <p>22 A I'm uncertain if it's all, but as applied to food and wine</p> <p>23 education seminars in particular.</p> <p>24 Q Okay. I am going to get another document out. And I</p> <p>25 apologize because this is going to be very small type. This</p> <p style="text-align: center;">Page 53</p>

14 (Pages 50 to 53)

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DEPOSITION OF MARIE-CHANTAL DALESE

1 is a document that you produced at WOMPO13785.
2 (Deposition Exhibit 19 marked)
3 Q So if you can read it, can you tell me what this document
4 is?
5 **A This is a listing of our food and wine education seminars by**
6 **year from October 2017 through some that we have on the**
7 **books in 2023.**
8 Q Okay. Is it your understanding that these are events that
9 occurred or that were planned?
10 **A These are events that occurred; guest activity uses that**
11 **occurred.**
12 Q And can you tell me what a couple of these column headers
13 mean. So where it says "Docs Wedding/Event"?
14 **A That was a listing of my providing documents in discovery if**
15 **I had a document that promoted Peninsula agriculture for**
16 **that item number 1, October 17th, an "X" is there because I**
17 **sent the menu to accompany it to show that we were promoting**
18 **Peninsula agriculture.**
19 Q Sent to?
20 **A PTP. I don't know, wherever all the discovery papers went.**
21 Q Okay. So this was a kind of tracking sheet showing which
22 events corresponded to which materials you produced to PTP?
23 **A Yes.**
24 Q And so "Docs Promote," those checkmarks, would that be
25 documents that went with events that were not weddings or --

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1 I'm sorry, I'm having trouble understanding the distinction
2 between the two columns.
3 **A Oh, okay. The Docs Wedding/Event column would mean --**
4 **okay -- the first "X" there talks about a dinner for**
5 **customer, and I had the -- either event contract or the**
6 **menu, something associated with that event that accompanied**
7 **this list.**
8 Q Okay. And the Tour column where that says "yes's" all the
9 way down, what does that mean?
10 **A We gave all those people a tour whether they wanted it or**
11 **not.**
12 Q Okay. So is it fair to say that from 2017 through 2023,
13 with the exception of it looks like some of the events where
14 it was all registered B&B guests, there was a tour?
15 **A Yes.**
16 Q And I remember you said earlier that everyone who stays at
17 the B&B gets a tour, so presumably they would have already
18 had a tour?
19 **A They probably would have, yes.**
20 Q Thank you. I apologize, there is one more tiny sentence on
21 there that I need to read.
22 **A Uh-huh (affirmative).**
23 Q So over off to the side, it's not under a column, it says,
24 "B&B Favorites Recipe Book an example of cooking class promo
25 materials," can you tell me about that book?

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1 **A I am thinking it could be two different things. One are the**
2 **materials that are provided with a cooking class; there's a**
3 **folder of materials that includes the recipes for the items**
4 **they're cooking at the class, how they pair with wine and**
5 **how any local produce was used for them. We might have**
6 **included a B&B favorite recipe sampler in that packet. Or**
7 **there's a book that my mom wrote that is a cookbook memoir,**
8 **but that's not typically included with a cooking class in**
9 **the promo materials so I'm thinking this is the supplemental**
10 **packet of sample B&B recipes that we toss in with the**
11 **cooking class materials.**
12 Q Okay. Are there any other documents or materials that
13 Chateau Chantal distributes at those guest activity uses
14 that were not provided to PTP?
15 **A Our standard wine list would probably be one of them.**
16 Q Okay.
17 MR. INFANTE: I think that was probably produced
18 to the township at some point; I think.
19 Q And if you remember off the top of your head, what would be
20 on that list?
21 **A All the wines that we have that are for sale, descriptions**
22 **of them.**
23 Q Okay. And who decides what documents to distribute?
24 **A Primarily Ann, and if there's a chef involved they will also**
25 **be compiling documents and recipes for the packets.**

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1 Q Why does Chateau Chantal distribute those particular
2 documents with those particular activities?
3 **A Which particular activities?**
4 Q So why would you distribute, say, a menu or a recipe sample
5 with a cooking class, or the menu with the wine pairing with
6 dinner, or the recipes from your mom's book?
7 **A They are required as part of the guest activity use to**
8 **promote Peninsula agriculture, and we're also fond of**
9 **promoting Peninsula agriculture and using produce from our**
10 **neighbors and other farmers.**
11 Q So would you say that it -- would it be fair to say that
12 you -- when you have a guest use -- or a guest activity use
13 that the materials promote Peninsula agriculture but Chateau
14 Chantal gets to decide what it distributes?
15 **A We do decide what we distribute and have intended to meet**
16 **this requirement every time we do so.**
17 Q Do you know if Chateau Chantal has ever had a guest activity
18 use without distributing materials?
19 **A It's possible that that occurred at some point in time, yes.**
20 Q We've talked about tours. When you give the tours, who
21 decides that locations the attendees will visit on the tour?
22 **A It's a fairly standardized tour script that our director of**
23 **operations, our seller team are involved in creating.**
24 Q And does the tour guide -- I guess who are the tour guides?
25 I'll ask that. Who gives the tours when they happen?

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15 (Pages 54 to 57)

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DEPOSITION OF MARIE-CHANTAL DALESE

<p>1 A A variety of people, usually long-term well educated tasting</p> <p>2 room staff.</p> <p>3 Q Do they have freedom to talk about -- I guess I'll rephrase</p> <p>4 that. Within the parameters that are set with the tour</p> <p>5 script, are they generally able to deliver whatever message</p> <p>6 they want when they're giving their tour?</p> <p>7 A They are allowed and encouraged to offer personal</p> <p>8 experiences about our wines, but also asked to comply with</p> <p>9 various pieces of information we want conveyed to people.</p> <p>10 Q Is there anything that Chateau Chantal finds objectionable</p> <p>11 about the content of the materials that it distributes?</p> <p>12 A The materials themselves are not objectionable, but we do have</p> <p>13 guests that do not wish to go on a tour and we are hereby</p> <p>14 being forced to provide them with that.</p> <p>15 Q Is there anything that Chateau Chantal finds objectionable</p> <p>16 about the contents of the tours it gives?</p> <p>17 A Nothing objectionable about the content of the tours, but</p> <p>18 objectionable guests that we have to corral through the</p> <p>19 process.</p> <p>20 Q Let's take a look -- has Chateau Chantal ever obtained an</p> <p>21 interpretation of the tour requirement from the zoning board</p> <p>22 of appeals?</p> <p>23 A I don't recall doing so myself, but that doesn't mean</p> <p>24 someone other than me has asked that.</p> <p>25 Q Has Chateau Chantal to your knowledge asked anyone from the</p> <p style="text-align: center;">Page 58</p>	<p>1 A It is.</p> <p>2 MR. INFANTE: Objection; calls for a legal</p> <p>3 conclusion.</p> <p>4 A It is where we followed what's in here, yes, by reading</p> <p>5 this.</p> <p>6 Q So moving on to 8.7.3(10)(u)(2), we'll start with (a).</p> <p>7 We're going to talk about (a) through ©. And this is the</p> <p>8 second page of the chart, which is Exhibit 18 if that's</p> <p>9 easier to look at. So if we go back to your Interrogatory,</p> <p>10 which is Exhibit 16, the second page at the top it says</p> <p>11 that, "Sections 8.7.3(10)(u)(2)(a)-© operate as an</p> <p>12 unconstitutional prior restraint on Chateau Chantal's</p> <p>13 ability to host certain types of events without approval</p> <p>14 from Peninsula Township"; right?</p> <p>15 A Yes.</p> <p>16 Q So the first part of that provision says uses allowed;</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q "Not withstanding section 8.7.3(10)(m), the following guest</p> <p>20 activity uses may be approved with a special use permit by</p> <p>21 the township board"; is that right?</p> <p>22 A That's what it says.</p> <p>23 Q Okay. Are you familiar with section 8.7.3(10)(m)?</p> <p>24 A Probably.</p> <p>25 Q Probably. We'll take a look --</p> <p style="text-align: center;">Page 60</p>
<p>1 township if it has to conduct a tour with every guest</p> <p>2 activity use?</p> <p>3 A I'd reply the same, I have not personally asked such a</p> <p>4 question and take what we read on face value. It's possible</p> <p>5 people prior to me have had discussions about that topic.</p> <p>6 Q So if we go to this ECF 1-1 and we look at the intent</p> <p>7 provision in page -- this is going to be page ID 172 if</p> <p>8 you're looking at the top, and page 130 if you're looking at</p> <p>9 the bottom right corner. So do you see where it says</p> <p>10 "intent" and then section 1(b), and it says, "Guest activity</p> <p>11 uses are intended to help in the promotion of Peninsula</p> <p>12 agriculture"?</p> <p>13 A Yes, I see that.</p> <p>14 Q Okay. Do you see where before subsection (c) it says,</p> <p>15 "and/or including tours through the winery and/or other</p> <p>16 Peninsula agriculture locations"?</p> <p>17 A Yes, I see it.</p> <p>18 Q Okay. And then if you turn to two pages later, subsection</p> <p>19 (5), this section says "Requirements for guest activity</p> <p>20 uses," and it says, "All guest activity uses shall include</p> <p>21 agricultural production/promotion as part of the activity as</p> <p>22 follows," and then there's just a list of three things.</p> <p>23 A Yes.</p> <p>24 Q Okay. Is this subsection (5) where your understanding comes</p> <p>25 from that tours are required for all guest activity uses?</p> <p style="text-align: center;">Page 59</p>	<p>1 A Which one is it again?</p> <p>2 Q This is -- let me get you a page. If you go back to the</p> <p>3 zoning ordinance you see number 1-1, and this is on page</p> <p>4 8171 if you're looking at the top, page 129 if you're</p> <p>5 looking at the bottom right. (10)(m) says,</p> <p>6 "Accessory uses such as facilities, meeting rooms</p> <p>7 and food and beverage services shall be for registered</p> <p>8 guests only, these uses shall be located on the same</p> <p>9 site as the principal use to which they are accessory</p> <p>10 and included on the approved site plan. Facilities for</p> <p>11 accessory uses shall not be greater in size or number</p> <p>12 than those reasonably required for the use of</p> <p>13 registered guests."</p> <p>14 Is that familiar to you?</p> <p>15 A I've read it before.</p> <p>16 Q Okay. So if we return to 8.7.3(10)(u)(2)(a) where it says</p> <p>17 uses allowed not withstanding that section, would it be fair</p> <p>18 to characterize these as either exceptions to (10)(m) or</p> <p>19 times when people who are not registered guests can have</p> <p>20 accessory uses like facilities, meeting rooms and food and</p> <p>21 beverage service?</p> <p>22 MR. INFANTE: Objection; calls for a legal</p> <p>23 conclusion.</p> <p>24 A It is my understanding that we have two buckets of people,</p> <p>25 those that are overnight registered guests, they have</p> <p style="text-align: center;">Page 61</p>

16 (Pages 58 to 61)

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1 three sections, (u)(2)(a) through © operate as an
2 unconstitutional prior restraint on Chateau Chantal's
3 ability to host certain types of events without approval,
4 I'm trying to understand what those types of events are that
5 are in (u)(2)(a) through (c). And I see three categories of
6 events in those sections; and those are wine and food
7 seminars, cooking classes, that's one; 501(c)(3) nonprofit
8 groups within Grand Traverse County, that's two; and then
9 the third is meetings of agricultural related groups. So is
10 Chateau Chantal saying that these sections restrict its
11 ability to have those types of events without prior approval
12 from the township?
13 MR. INFANTE: Objection; calls for a legal
14 conclusion.
15 **A I'm saying that there are a myriad -- additional types of**
16 **groups that are not specifically listed here that we are**
17 **precluded from hosting with or without prior approval.**
18 **They're not on the list so they can't come.**
19 **Q Okay. So is it Chateau Chantal's position that provisions**
20 **that allow certain types of events but don't allow others --**
21 **don't expressly allow others in them are restricting Chateau**
22 **Chantal?**
23 MR. INFANTE: Objection; calls for a legal
24 conclusion.
25 **A It is my understanding by reading what has always been**

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1 **listed here in this ordinance that we are restricted on who**
2 **we can and cannot provide event business to, thereby**
3 **restricting the sale of additional wine made and grown on**
4 **Old Mission Peninsula.**
5 **Q Are you allowed to have wine and food seminars and cooking**
6 **classes?**
7 **A As long as we provide 30 days advance notice, as long as**
8 **it's under 111 people, as long as we provide them with**
9 **Peninsula promotion, as long as we give them a tour.**
10 **Q Do you consider providing advanced notice and promoting**
11 **Peninsula agriculture and needing an attendee threshold and**
12 **giving people a tour to be a requirement for prior approval?**
13 MR. INFANTE: Objection; calls for a legal
14 conclusion.
15 **A As I read this ordinance it is clear to me that if any of**
16 **those things were broken approval may be denied.**
17 **Q So you ask for approval each time you have a cooking class**
18 **or a wine and food seminar?**
19 **A As I understand it it's not defined as approval, it's simply**
20 **defined as provide notice 30 days prior to the activity.**
21 MR. INFANTE: Holly, when you have a minute -- or
22 can we have a break? We've gone just over an hour. If we
23 can take a couple minute break?
24 MS. HILLYER: Let me get through this section. I
25 think we can do it pretty quickly and then we'll take a

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1 break.
2 MR. INFANTE: Okay.
3 **Q I'm going to pass out one more set of documents, this will**
4 **be Exhibit 21.**
5 (Deposition Exhibit 21 marked)
6 **Q Okay. And this is a document -- this is a selection of**
7 **guest use activity notifications from Chateau Chantal, and**
8 **the page numbers are WOMP013784, WOMP012350, and**
9 **WOMP0000696. And do you recognize what these are?**
10 **A I do.**
11 **Q Okay. And at the bottom of each of these do you see where**
12 **it says wine and food seminar and then 501(c)(3) nonprofit**
13 **and agricultural related group?**
14 **A Yes.**
15 **Q What does it say in parentheses after wine and food seminar?**
16 **A "Only requires notification to zoning administrator."**
17 **Q That's what ZA stands for?**
18 **A Yes.**
19 **Q Okay. And 501(c)(3)'s?**
20 **A Same; "Only requires notification to the ZA."**
21 **Q Okay. And agricultural related groups?**
22 **A "Requires prior approval from the ZA."**
23 **Q So would you agree that the only one of these types of**
24 **events in (u)(2)(a) through (u)(2)(3) -- or (u)(2)©, the**
25 **only one of these that requires prior approval is the**

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1 agricultural related group?
2 MR. INFANTE: Objection; calls for a legal
3 conclusion.
4 **A That has been our understanding of how this ordinance works.**
5 **Q Okay. One second. Have you ever requested approval for a**
6 **meeting of an agricultural group under this section?**
7 **A I can't recall ever doing that.**
8 **Q And when you say that it infringes your ability -- let's**
9 **see. I don't want to misquote you. Strike that. When**
10 **Chateau Chantal says that these provisions operate as an**
11 **unconstitutional prior restraint on its ability to host**
12 **certain types of events without approval from Peninsula**
13 **Township, what right or rights does Chateau Chantal believe**
14 **are infringed by needing to obtain approval for hosting**
15 **certain types of events?**
16 MR. INFANTE: Objection; calls for a legal
17 conclusion.
18 **A Can you repeat that?**
19 **Q Yes. Sorry. What right or rights does Chateau Chantal**
20 **believe are infringed by needing to obtain approval to host**
21 **certain types of events?**
22 MR. INFANTE: Same objection.
23 **A I don't have an answer on the tip of my tongue, but I think**
24 **part of it stems from the time notice that has to come into**
25 **play. I have 30 days, someone wants to do something sooner**

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<p>1 A Being required to only serve Old Mission Peninsula fruit at 2 a guest wine -- from Old Mission Peninsula fruit at a guest 3 activity is a piece of that, not being able to play 4 amplified music. 5 Q Those things are commercial speech or those things infringe 6 or your right to engage in commercial speech? 7 A They are commercial speech and are being infringed upon by 8 the regulations in the ordinance. 9 Q So let's take an example. In fact, let's do -- let's go 10 back to (10)(m), which we've talked about: 8.7.3(10)(m), 11 which says, "Accessory uses such as facilities, meeting 12 rooms and food and beverage services shall be for registered 13 guests only." And that was the provision that was the 14 subject of a 1998 lawsuit that we talked about. Was it 15 Chateau Chantal's position in that lawsuit that that 16 provision restricted its commercial speech? 17 MR. INFANTE: Objection; calls for a legal 18 conclusion. 19 A I am unaware of what the 1998 lawsuit -- what caused it or 20 what provisions were being offended. 21 Q So what part of this provision restricts Chateau Chantal's 22 commercial speech? If you were to look at the whole thing, 23 and maybe it's easier to reference the zoning ordinance. 24 A What number are we talking -- are we still on (m)? 25 MR. INFANTE: Yes, so read (m).</p> <p style="text-align: center;">Page 78</p>	<p>1 facilities, meeting rooms and food and beverage services for 2 registered guests? 3 MR. INFANTE: Objection; calls for a legal 4 conclusion. 5 A That's what it says and that's, again, my understanding. 6 That has always been -- we've got the bucket of registered 7 guests only that this applies to and then the later guest 8 activity uses piece that applies to non-registered guests 9 and registered guests. But frankly we're at this table 10 because this whole thing is confusing. 11 Q The things that your registered guests are allowed to do, 12 the food and beverage service they can enjoy, the use of the 13 facilities that they can enjoy, are you allowed to promote 14 that? 15 A As far as I know we are, but we're also missing the ability 16 to promote it to non-registered guests, or perform those 17 things for non-registered guests. 18 Q Okay. And I apologize for jumping around, but I'd like to 19 go back to something you said before the break when you were 20 talking about remembering that Chateau Chantal had large 21 weddings and events back in the 90's -- 22 A Yes. 23 Q -- and now it can no longer do them. Have you ever asked 24 the township why that is? 25 A Not personally.</p> <p style="text-align: center;">Page 80</p>
<p>1 Q If you look at ECF number 1-1 page ID 171. 2 A Yes. (m) again? 3 Q If you look at (m) again. 4 A Okay. 5 Q Can you tell me what part of that restricts your commercial 6 speech? 7 MR. INFANTE: Objection; calls for a legal 8 conclusion. 9 A It states here that these accessory uses are for registered 10 guests only, thereby precluding me from having 11 non-registered guests participating in our business. 12 Q Okay. So what -- what does Chateau Chantal want to say that 13 it cannot say because of this provision? 14 A We can't have people that are not registered guests be 15 married here at our property. We can't express our word of 16 mouth marketing to the people that are not here for these 17 events. Typically when people come onsite here they also 18 discover other aspects of our business they didn't know 19 about, such as the bed and breakfast or the wine dinners, 20 food and wine education seminars. And without the ability 21 to have those people here we are limited in being able to 22 discuss the other pieces of our business using word of mouth 23 advertising. 24 Q So if you look at what you can do under this provision, 25 would you agree that this provision allows you to use your</p> <p style="text-align: center;">Page 79</p>	<p>1 Q Do you know if anyone at Chateau Chantal has? 2 A I would presume someone in the 90's someone was involved in 3 understanding how we could no longer do them. 4 Q Do you know if anyone ever asked for a zoning board of 5 appeals interpretation or an interpretation of your special 6 use permit or the zoning ordinance that would address that 7 issue? 8 A I'm not aware of what they might have done at that time. 9 Q And you wouldn't have any documents that would reflect any 10 correspondence where anyone would have asked that? 11 A It's unlikely. 12 Q So returning to commercial speech. If you look at 13 8.7.3.(10)(u)(1)(b), this says that, "Guest activity uses 14 are intended to help in the promotion of peninsula 15 agriculture," by doing three things; right? There's A, 16 which is identifying Peninsula produced food or beverage for 17 consumption by the attendees; B, is providing Peninsula 18 agriculture promotional brochures maps and awards; and/or, 19 C, including tours through the winery and/or other Peninsula 20 agriculture locations. Would you agree that this provision 21 describes the intent of the guest activity uses provision? 22 MR. INFANTE: Objection; calls for a legal 23 conclusion. 24 A I don't know what the intent of the guest activity uses 25 provision is. It's always been difficult to understand and</p> <p style="text-align: center;">Page 81</p>

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<p>1 unclear what a guest activity use is, let alone its intent.</p> <p>2 Q Would you read the first sentence of that provision for me?</p> <p>3 MR. INFANTE: I'm sorry, which provision?</p> <p>4 MS. HILLYER: This is 8.7.3(10)(u)(1)(b).</p> <p>5 MR. INFANTE: It might be easier to look at the</p> <p>6 actual ordinance. I don't know it's in there, or maybe it</p> <p>7 is.</p> <p>8 A (1)(b),</p> <p>9 "Guest activity uses are intended to help in the</p> <p>10 promotion of Peninsula agriculture by, A, identifying</p> <p>11 Peninsula produced food or beverage for consumption by</p> <p>12 the attendees. B, providing Peninsula agriculture</p> <p>13 promotional brochures, maps and awards. And/or C,</p> <p>14 including tours through the winery and/or other</p> <p>15 Peninsula agriculture locations."</p> <p>16 Q Does that help you understand what guest activity uses are</p> <p>17 intended to do?</p> <p>18 MR. INFANTE: Objection; calls for a legal</p> <p>19 conclusion.</p> <p>20 A It lists some things that it is intended to help promote,</p> <p>21 but it does not say what a guest activity use is.</p> <p>22 Q I would agree that this section does not way what a guest</p> <p>23 activity use is, but would you agree that it says what guest</p> <p>24 activity uses are intended to do, and that is that they are</p> <p>25 intended to help in the promotion of Peninsula agriculture?</p> <p style="text-align: center;">Page 82</p>	<p>1 A I mean, I -- personally, yeah. But I --</p> <p>2 Q Chateau --</p> <p>3 A -- taking what's listed on this document is what we're</p> <p>4 talking about.</p> <p>5 Q Chateau Chantal's position in this litigation?</p> <p>6 A Yes.</p> <p>7 Q And so Chateau Chantal has certain claims against Peninsula</p> <p>8 Township, would you agree?</p> <p>9 A Define a claim.</p> <p>10 MR. INFANTE: I was going to say, do you know what</p> <p>11 a claim is?</p> <p>12 Q So Chateau Chantal has sued Peninsula Township and filed a</p> <p>13 Complaint; right?</p> <p>14 A Yes.</p> <p>15 Q And that Complaint lists ten counts that say that Chateau</p> <p>16 Chantal is bringing a First Amendment challenge or that</p> <p>17 Chateau Chantal is bringing a takings claim or a preemption</p> <p>18 claim. Are you familiar with the Complaint?</p> <p>19 A And some point in time I've read it, yeah.</p> <p>20 Q Okay. Does that -- does that track with your understanding</p> <p>21 of what's in the Complaint?</p> <p>22 A I haven't seen it in some time. It was prepared with legal</p> <p>23 advice and that's why we hired attorneys, to have a legal</p> <p>24 approach to this.</p> <p>25 Q Okay. So three of the counts in the Complaint are First</p> <p style="text-align: center;">Page 84</p>
<p>1 MR. INFANTE: Objection; asked and answered, calls</p> <p>2 for a legal conclusion, the document speaks for itself.</p> <p>3 A It says, "It is intended to help in the promotion of</p> <p>4 Peninsula agriculture."</p> <p>5 Q And I believe you stated earlier that you understood Chateau</p> <p>6 Chantal's wine making and production to be part of Peninsula</p> <p>7 agriculture; is that accurate?</p> <p>8 A It is.</p> <p>9 Q Okay. So what does Chateau Chantal want to say that this</p> <p>10 provision keeps it from saying?</p> <p>11 MR. INFANTE: Objection; calls for a legal</p> <p>12 conclusion.</p> <p>13 A What we would like to say is that we can host a group here</p> <p>14 that is not dictated by this ordinance as to who can come,</p> <p>15 but to offer things that help promote Peninsula agriculture</p> <p>16 to a wider array of people that will then help us conduct</p> <p>17 our word of mouth advertising, which is a strong piece of</p> <p>18 our communications program from the start.</p> <p>19 Q Okay. Let me back up a little bit. Do you understand that</p> <p>20 Chateau Chantal is challenging certain provisions of the</p> <p>21 zoning ordinance; individual subsections, like</p> <p>22 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)?</p> <p>23 A Yes.</p> <p>24 Q Chateau Chantal is not challenging every subsection of the</p> <p>25 entire winery chateau ordinance; correct?</p> <p style="text-align: center;">Page 83</p>	<p>1 Amendment challenges, and they challenge several provisions</p> <p>2 of the zoning ordinance under the First Amendment. And</p> <p>3 those are the subsections that we're talking about here.</p> <p>4 And so when you have stated in this Interrogatory</p> <p>5 response -- Chateau Chantal has stated that these sections</p> <p>6 operate as an unconstitutional restriction on Chateau</p> <p>7 Chantal's right to engage in commercial speech, this is</p> <p>8 telling me that Chateau Chantal is challenging these</p> <p>9 subsections. And so I'm reading to you what these</p> <p>10 subsections say and I'm trying to understand how they</p> <p>11 infringe on your commercial speech. I'm not asking about</p> <p>12 other parts of the zoning ordinance and I'm not asking about</p> <p>13 other restrictions. And I understand that there are a lot</p> <p>14 of parts of the zoning ordinance that are frustrating to</p> <p>15 Chateau Chantal, but I want to focus on this privigen</p> <p>16 (phonetic) that says that guest activity uses are intended</p> <p>17 to help in the promotion of Peninsula agriculture. I'm</p> <p>18 trying to understand how this subsection, and only this</p> <p>19 subsection, prevents Chateau Chantal from saying something</p> <p>20 that it wants to say. Do you understand that?</p> <p>21 A Okay.</p> <p>22 MR. INFANTE: Is there a question?</p> <p>23 MS. HILLYER: Does she understand what I'm asking</p> <p>24 for.</p> <p>25 MR. INFANTE: Objection; form, vague, calls for a</p> <p style="text-align: center;">Page 85</p>

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<p>1 legal conclusion.</p> <p>2 A I would say, again, our understanding of this in that we are</p> <p>3 required to provide tours to people that don't want to go on</p> <p>4 them.</p> <p>5 Q Okay. So this does not say that you are required to do</p> <p>6 anything. This section says that guest activity uses are</p> <p>7 intended to help in the promotion of Peninsula agriculture</p> <p>8 through certain things. How does that stop Chateau Chantal</p> <p>9 from saying what it wants to say?</p> <p>10 MR. INFANTE: Same objection.</p> <p>11 A Well, if we have a wine that is not from Old Mission</p> <p>12 Peninsula we're not allowed that talk about it because it's</p> <p>13 not Peninsula agriculture.</p> <p>14 Q Does this provision say that you cannot have wine from</p> <p>15 anywhere outside of Old Mission Peninsula?</p> <p>16 A Are the provisions independently exclusive? I've always</p> <p>17 taken them to be together as a package. We'll get to it in</p> <p>18 (5)©, "No alcoholic beverage except those produced on the</p> <p>19 site are allowed with guest activity uses."</p> <p>20 Q Sure. So I'm asking about 1(b) not 5©.</p> <p>21 MR. INFANTE: Counsel, you're parsing them out and</p> <p>22 what the witness is saying is that she reads them as a whole</p> <p>23 and they work together, but I know you're trying to parse</p> <p>24 them out into a gotcha and trick her but she's answered your</p> <p>25 question.</p> <p style="text-align: center;">Page 86</p>	<p>1 cannot do something?</p> <p>2 A It's inferred by my reading this that I am to identify</p> <p>3 Peninsula produced food or beverage for consumption, thereby</p> <p>4 not talking about non-Peninsula produced food or beverage.</p> <p>5 Q So is it Chateau Chantal's position that this provision</p> <p>6 which states the intent of the guest activity uses means</p> <p>7 that Chateau Chantal cannot talk about anything else?</p> <p>8 MR. INFANTE: Objection; calls for a legal</p> <p>9 conclusion.</p> <p>10 A As I've already stated, individual pieces of this don't work</p> <p>11 on their own basis. The entire grouping comes together to</p> <p>12 create an understanding of what's going on here. We could</p> <p>13 have an event that has nothing to do with Peninsula</p> <p>14 agriculture yet we're going to provide them with Peninsula</p> <p>15 agricultural promotional brochures, maps and awards when</p> <p>16 we're not talking anything about Peninsula agriculture.</p> <p>17 Q Let's look at 8.7.3.(10)(u)(1)(d). So this provision says</p> <p>18 that,</p> <p>19 "Guest activity uses do not include wine tasting</p> <p>20 and such related promotional activities as political</p> <p>21 rallies, winery tours and free entertainment (example,</p> <p>22 Jazz at Sunset) which are limited to the tasting room</p> <p>23 and for which no fee or donation of any kind is</p> <p>24 received."</p> <p>25 Would you agree that this provision says that wine tasting</p> <p style="text-align: center;">Page 88</p>
<p>1 MS. HILLIER: I need to ask you to stop making</p> <p>2 speaking objections. Are you instructing her not to answer?</p> <p>3 MR. INFANTE: I'm not instructing her not to</p> <p>4 answer.</p> <p>5 Q Okay. So this provision says that guest activity uses are</p> <p>6 intended to help in the promotion of Peninsula agriculture.</p> <p>7 What does Chateau Chantal want to say that it cannot say</p> <p>8 because of this provision and this provision only?</p> <p>9 MR. INFANTE: Objection; asked and answered, calls</p> <p>10 for a legal conclusion.</p> <p>11 A It is saying we have to identify Peninsula produced food or</p> <p>12 beverage for consumption by the attendees --</p> <p>13 Q I'm sorry, that is not my question. I am not asking what</p> <p>14 this says, I am asking what Chateau Chantal wants to say.</p> <p>15 What is Chateau Chantal's message to anyone; to its</p> <p>16 customers? What is the message that it is trying to</p> <p>17 communicate that this provision prevents it from</p> <p>18 communicating?</p> <p>19 MR. INFANTE: Same objection.</p> <p>20 A That we source Malbec from Argentina and would like you to</p> <p>21 try it because it's a really great deep red wine that does</p> <p>22 not grow in our climate here. I can educate you about the</p> <p>23 cold climate that Old Mission Peninsula does reside in.</p> <p>24 Q Does this provision say that you cannot do anything? Is</p> <p>25 there anything in here that you see that says that you</p> <p style="text-align: center;">Page 87</p>	<p>1 and promotional activities; like rallies, winery tours and</p> <p>2 free entertainment in the tasting room; are not guest</p> <p>3 activity uses?</p> <p>4 MR. INFANTE: Objection; calls for a legal</p> <p>5 conclusion.</p> <p>6 A As I'm not 100 percent clear on what a guest activity use</p> <p>7 is, I will accept that verbatim this says they do not</p> <p>8 include wine tasting, et cetera.</p> <p>9 Q Okay. And would you agree that one of those listed</p> <p>10 promotional activities is Jazz at Sunset?</p> <p>11 A I would agree that they listed Jazz at Sunset as an example.</p> <p>12 Q Okay. And that is a longstanding event at Chateau Chantal;</p> <p>13 right?</p> <p>14 A It is.</p> <p>15 Q And so would you agree that Jazz at Sunset is not a guest</p> <p>16 activity use?</p> <p>17 MR. INFANTE: Objection; calls for a legal</p> <p>18 conclusion.</p> <p>19 A We have always understood it per this provision that it is</p> <p>20 not a guest activity use.</p> <p>21 Q And does Chateau Chantal promote Jazz at Sunset?</p> <p>22 A It does.</p> <p>23 Q How does it do that?</p> <p>24 A Social media, posters around town, an add in the Northern</p> <p>25 Express.</p> <p style="text-align: center;">Page 89</p>

23 (Pages 86 to 89)

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DEPOSITION OF MARIE-CHANTAL DALESE

<p>1 MR. INFANTE: Objection; calls for a legal 2 conclusion. 3 A We may have to refuse their business if this provision does 4 not meet the customer's needs. 5 Q Does Chateau Chantal have a message that it's trying to 6 convey by having amplified instrumental music at those types 7 of events? 8 MR. INFANTE: Same objection. 9 A That we are a business that is looking to meet customer 10 demand by offering amplified instrumental music as part of 11 their event here at Chateau Chantal. 12 Q Okay. So 8.7.3(10)(u)(5)(h), and this is another provision 13 that is under subsection (5), which lists requirements for 14 guest activity uses. 15 A Yes. 16 Q And it says, "No outdoor displays of merchandise, equipment 17 or signs are allowed"; right? 18 A That's what it says. 19 Q So would you agree that because of its location under 20 subsection (5), requirements for guest activity uses, that 21 this provision only applies during guest activity uses? 22 MR. INFANTE: Objection; calls for a legal 23 conclusion. 24 A That would be what one would imply by reading this on its 25 face.</p> <p style="text-align: center;">Page 102</p>	<p>1 paragraph. This is the last paragraph of your 2 Interrogatory -- last bullet pointed paragraph of your 3 Interrogatory. In these sections Chateau Chantal says, 4 "Operate as an unconstitutional restriction on its ability 5 to freely associate." What does it mean to Chateau Chantal 6 to freely associate? 7 MR. INFANTE: Objection; calls for a legal 8 conclusion. 9 A Without being a legal expert and knowing the full definition 10 of freely associate I would understand this to mean our 11 ability to host people from anywhere subject to the state 12 and federal laws regarding discrimination that we must be 13 able to provide services to everybody regardless of 14 protected classes, et cetera, and being prohibited from not 15 being able to have a certain university or the potato 16 farmers instead of the cherry farmers precludes us from 17 meeting those requirements. 18 Q So when Chateau Chantal has events, how does it interact 19 with people that attend those events? 20 A We're involved in communicating the regulations for the 21 event, if they find those acceptable they will sign a 22 contract with us outlining the event details such as timing, 23 food involved, cost, et cetera. We will work with them on 24 planning the event as needed on behalf of aspects that range 25 from food, seating, decor. And the day of the event we are</p> <p style="text-align: center;">Page 104</p>
<p>1 Q Okay. So how does this restrict Chateau Chantal's speech? 2 MR. INFANTE: Same objection. 3 A Well, again, during a guest activity use such as a food and 4 wine seminar or -- food and wine seminars are a very broad 5 basis that someone wishing to have a private dinner here 6 falls into that category, a private dinner may be for their 7 business, as part of their business dinner that they're 8 hosting for clients they may wish to have some outdoor 9 displays of merchandise, equipment or signs. And since we 10 cannot allow it we are not able to promote the fact that we 11 can have an event for something like a business or even a 12 personal anniversary party that has signs. 13 Q So these would be signs that the guests would provide, or 14 ask for? 15 A They could, or we would make them for them as part of an 16 event package. 17 Q Are these signs that Chateau Chantal would normally want to 18 use? 19 A We would obviously review them for content, but want to 20 answer customer demand for having certain types of events 21 that may come with displays. 22 Q The demand would come from the customer; right? 23 A Yes. 24 Q Okay. So section 8.7.3(10)(u)(1)(d) and section 25 8.7.3(10)(u)(2)(b) through (d) are included in the next</p> <p style="text-align: center;">Page 103</p>	<p>1 here to provide the contractually obligated operation of 2 their event. 3 Q So do you join in the events, does your staff participate in 4 the events as a participant? 5 MR. INFANTE: Objection; vague. 6 A They may if it's someone they know, but primarily they are 7 working the event. 8 Q So guest activity uses, we've discussed this provision -- 9 right? -- this is the one that says that they don't include 10 wine tasting, promotional activities like political rallies, 11 winery tours and free entertainment; correct? 12 A Yes. 13 Q And we've talked about that Chateau Chantal is able to do 14 all of those things; right? 15 A Yes. 16 Q So how does that provision restrict Chateau Chantal's 17 ability to freely associate? 18 MR. INFANTE: Objection; calls for a legal 19 conclusion. 20 A I think the fact that this dictates being limited to the 21 tasting room; so for instance, a political rally is limited 22 to the tasting room means we're limited to the capacity of 23 the tasting room, which is smaller than our event area so 24 we're precluded then from hosting someone that wants to do a 25 political rally for 111 people, which we would be permitted</p> <p style="text-align: center;">Page 105</p>

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<p>1 like to be able to provide that to them on a restaurantesqe 2 type basis depending. We would increase our catering 3 abilities. Able to host a 30 person wine and cheese tasting 4 in someone's house using our commercial kitchen as the basis 5 for that. Increasing our ability to host different types of 6 meetings and events, not based on the restrictions here. We 7 would likely serve our Malbec, which is a non Old Mission 8 Peninsula grape at dinners, which is currently not allowed. 9 Q Where do the grapes for that come from? 10 A Argentina. 11 Q And that's produced here? 12 A It is. The wine actually comes in bulk here to our seller 13 from Argentina and it's further refined and bottled. We 14 would look at additional types of events beyond weddings; 15 such as the family reunions or anniversary parties or 16 wedding showers, there's a long list. We would do all of 17 these things as we have for the past 30 years of keeping in 18 mind where we are, who are neighbors are, and with the 19 ultimate goal of supporting agriculture through 20 agritourismo. 21 Q And what -- are there any limits on your capacity like due 22 to the nature of the buildings that you have that exist, the 23 land? Like what is your ultimate capacity to make these 24 changes? 25 MR. INFANTE: Objection; vague. Are you talking</p> <p>Page 114</p>	<p>1 sure what you mean by retail, but -- 2 MS. HILLYER: Let me take five minutes to look at 3 my notes and then we'll see if we need anything else. 4 (Off the record) 5 MS. HILLYER: I have no further questions for you. 6 Thank you so much for your time. 7 THE WITNESS: Thank you. 8 (Deposition concluded at 6:07 p.m.) 9 10 -0-0-0- 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 116</p>
<p>1 about people? 2 Q You can answer if you understood. 3 A From the aspect of our current structure, you know, we have 4 the parking capacity for 68 plus another 20 or so at this 5 lot, plus our ability to have an overflow of up to 200 cars. 6 Our septic is broken into two systems; one is for winery 7 waste water, one is for gray waste; and the capacity there 8 is not challenged by any of our current indoor and outdoor 9 capacity uses. I would anticipate us being able to do these 10 things readily based on our current capacities. 11 Q Do you have a sense of how many events you might like to 12 have per week? 13 A I think it would all depend on the customer demand, which I 14 have a record of via the event inquiries that are here. 15 Most of those events are turned away because of the size 16 restrictions, particularly on weddings. I would estimate 17 having two to three events per week in season, probably one 18 per week in the off. 19 Q And would you -- do you anticipate increasing retail? 20 A I think it would occur naturally by the fact that we would 21 have these additional event uses at our facility. 22 Q So you mean more events would bring more people which would 23 increase the volume of the retail sales? 24 A Yes. 25 MR. INFANTE: I'll just object to vague. I'm not</p> <p>Page 115</p>	<p>1 CERTIFICATE 2 3 4 I, Stacey M. Seals, a Certified Electronic Recorder and 5 Notary Public within and for the State of Michigan, do 6 hereby certify: 7 That this transcript, consisting of 116 pages, is a 8 complete, true, and correct record of the testimony of 9 Marie-Chantal Dalese, given in this case on July 10th, 2023, 10 and that the deponent was duly sworn to tell the truth. 11 12 I further certify that I am not related to any of the 13 parties to this action by blood or marriage; and that I am 14 not interested in the outcome of this matter, financial or 15 otherwise. 16 IN WITNESS THEREOF, I have hereunto set my hand this 17 24th day of July, 2023. 18 19  20 Stacey M. Seals, Notary Public, State of Michigan 21 County of Charlevoix 22 My commission expires: 10/31/2024 23 24 25</p> <p>Page 117</p>

30 (Pages 114 to 117)

PENINSULA TOWNSHIP PLANNING COMMISSION**REGULAR MEETING****MARCH 20, 1989**

Present: Chr. Houlihan, Coulter, Johnson, Lewis, Hyde, Manigold, Teahen-excused.
Z.A. Hayward, Planner Harsch, and Attorney Wise

Chr. Houlihan called the meeting to order at 7:30p.m. at the Town Hall. Lewis/Hyde motion to approve the minutes of 2/20/89. Carried, unan. Chr. Houlihan announced MSPO workshop, to be held 4/24/89, reminding all that Mary Belding needs to make reservations by 4/10/89. The question of lot widths/frontage/easements has been referred to the Planner for review. The Attorney reported that no decision has been reached in the Hayes Township Supreme Court Case, which questions whether a township may regulate use of the waterfront. Chr. referred to Hyde's Site Plan List, asking P/C to review for the next meeting. There being no additions to the agenda or Public Input, the chairman moved to the next order of business.

DRAINAGE DISTRICT

Maureen Kennedy, Grand Traverse County Drain Commissioner, is asking whether Peninsula Township wants to continue to be involved in the Drainage District? Terry Nab, an engineer, explained the project would include a series of pipes, storm sewers, 1 or 2 retention areas, culvert diversion under Center Rd., culminating into the bays. The drainage basin is located at the southern end of the Peninsula & consists of 450 acres (130 of which lie within the city limits). The problem is that this area drains to a low spot west of Huron Hills. Cost is estimated at $\frac{1}{2}$ to $\frac{3}{4}$ million dollars. Supervisor Manigold expressed concern with draining this water directly into the bays. P/C wants to gather more information and will provide input to the Supervisor prior to the next Townboard Meeting.

AIRPORT OVERLAY ZONING

Chr. referred to a letter, from Dr. John Spencer re: Airport Overlay Zoning. Bob Bach reported that Elmwood Tnsh. has approved this amendment and that East Bay, Traverse City, Acme, Blair, Garfield, are still pending.

Public Hearing opened at 8:10p.m.

Nancy Heller, 3091 Blue Water Rd.- What is an Airport Zoning District? Mr. Bach explained that this district would involve a 6.3 mi. radius surrounding an airport & sets height restrictions for structures within this area.

Public Hearing closed at 8:14p.m. Discussion was held. Planner Harsch stated that he has a problem with this Overlay in that the imaginary surface created is below our areas natural terrain. Mr. Bach responded that this amendment would create a uniform standard, which is required by the State of Michigan in order for airports to qualify for federal funds. Coulter/Hyde motion to deny recommending approval of Airport Overlay Zoning Amendment to the Townboard. Discussion held. Coulter withdrew her motion. Coulter/Hyde motion to table Airport Overlay Zoning Amendment until additional information is presented. Carried, unan.

A short recess was taken at 8:25p.m., the meeting resumed at 8:30p.m.

OLD MISSION ESTATES

Sid Cohoon and Dick Rademaker were present. A draft for a Special Use Permit was presented. Hyde/Manigold motion to waive a second public hearing re; SUP on Old Mission Estates. Carried, unan. Text of SUP was examined, Corrections were: pg.1, Paragraph 4, Peninsula Telephone Co. S/B Mikan Development Co.; Pg2, Paragraph 4, Should read "before the construction of any residence." Lewis/Coulter motion to recommend approval of SUP for Old Mission Estates to the Townboard. Carried, unan.

PENINSULA TELEPHONE COMPANY

Jack Solomonson & Bob Holdeman were present. A public hearing on the SUP has been held. A draft of the SUP was presented. Text corrections were: Pg.1, Para.1 Site Plan 1"=100'S/B50'.; Pg.2, Para.1 Special Use Permit; Pg.2, Para.4, Delete line-delete & replace with (suggested). Pg.5 Rob McManus S/B Rob Manigold. Hyde/Johnson motion to accept SUP text with changes noted, and to recommend adoption to the Townboard. Carried, unan.

SEWER & WATER STUDY

The request for a proposal from the Planner is to be considered next month.

AGRICULTURAL SETBACKS

Planner Harsch has met with Mr. Burton and this subject is still being reviewed.

CHATEAU PROPOSAL

Mr. Begin is requesting a SUP for a 6 unit PUD, a SUP for a winery in an Ag. District, and a text amendment to the ordinance to allow Winery-Chateau sleeping rooms. Discussion was held. Hyde/Manigold motion to hold public hearings on both SUP's at the next regular meeting.(4/17/89). carried, unan. Chr. designated a committee of Hyde, Johnson, & himself to meet with the developer to explore concepts & develop more information. Property inspection set for 4p.m. on 4/17/89.

PLAGENS

No one was present for the developer. Hyde/Coulter motion to table this application to rezone approximately 1 acre from A-1 to R-1A(to add to lot 34 in Quaker Valley). Carried, unan.

REPORTS

Planner Harsch reported that amendments to the Subdivision Control ordinance are drafted and hopes to be on line by next meeting.

ZA Hayward reported Re: Mission Hills-questions concerning a)Construction & design of a sign b)proposed street lighting. He will confer with Mr. Harsch to discuss standards. ZA Hayward also reported on a proposed groin construction in Lake Michigan at Shorewood Estates. P/C asked to be advised of future information concerning this subject.

Atty. Wise reported on Protect the Peninsula vs. Peninsula Township litigation. A pretrial has been held & we have obtained a court ruling that in the event the SUP is found to be invalid-the relief that may be given would not be in the form of a referendum.

Chr. Houlihan encouraged progress developing an amendment to the Ordinance Re: Signs. ZA Hayward announced the MSPO workshop 4/24/89 is about signs.

Coulter suggested adding the P/C Budget to the Preview of Coming Attractions. She also stated that at the present time the cost of the Planner is not to be included in the P/C's budget.

Supervisor Manigold announced the Joint Meeting has been rescheduled for 4/22/89.(same agenda)

There being no further business, Hyde/Manigold motion to adjourn at 9:16p.m. Carried, unan.

Respectfully submitted,
Bev Gore, Recording Secretary

STANDARDS FOR CHATEAU CHANTAL

ADOPTED BY THE PENINSULA TOWNSHIP BOARD FEBRUARY 9, 1999

Pursuant to the consent judgement between Chateau Operations, LTD vs Peninsula Township signed November 5, 1998 by Judge Philip E. Rogers, Jr., Circuit Court Judge.

I. INTENT OF STANDARDS

- A. The uses are not to be construed as a restaurant or bar operation.
- B. Food is not to be served to persons who are not registered guests of the Chateau Chantal.
- C. No alcoholic beverages are allowed on the premises except for free wine tasting and sale of wine by the bottle that is produced on the premises for off premises consumption. Exceptions are for registered guests and resident manager.
- D. Promote agricultural production on Old Mission Peninsula through the retail sale of wine by the bottle for off-premises consumption.
- E. To carry out the provisions of the consent judgement between Chateau Operations, LTD vs Peninsula Township signed November 5, 1998 by Judge Philip E. Rogers, Jr., Circuit Court Judge.

II. ALLOWED USES WITHOUT ADDITIONAL APPLICATIONS

- A. Inside wine tasting.
 - 1. Wine tasting shall only take place within the wine tasting room as designated by the Township Board.
 - 2. Wine for tasting shall be limited to the minimum amount necessary for tasting, and repeated tasting of the same wine by the same person is not allowed.
 - 3. Cheese, fruit, bread, and crackers are the only food items that may be provided to persons tasting wine and shall be at no cost to persons tasting wine.
 - 4. There shall be no charges to persons for wine tasting.
- B. Educational Tours of the winery and vineyard, provided no food or beverages are served.
- C. One private annual shareholder's meeting provided it takes place inside the Winery/Chateau structure.
- D. One private annual Employee's party provided it takes place inside the Winery/Chateau structure.
- E. Food and Beverages including wine produced on the premises may be served to registered guests within an area approved by the Township Board, but not within the Tasting Room during regular tasting hours.

III. OUTSIDE WINE TASTING USES

Wine tasting may take place outdoors for up to two days during Blossoms Days, provided:

- A. No food or beverages shall be provided except for those allowed for inside wine tasting.
- B. All outside activities shall terminate by 9:00 p.m.
- C. There shall be no amplified outside music.
- D. No temporary structures including tents or canopies are allowed unless specifically approved by the Township Board.
- E. Special advertising signs may be approved by the Township Board.
- F. The Township Board may require special sanitary facilities and security personnel if the Board determines that the number of expected persons at the event warrants them.

- G. An application for Outside Wine Tasting shall be submitted to the Township Board not less than one month before the scheduled Outside Wine Tasting but not less than one week before a scheduled Township Board meeting. The application shall include at a minimum the following information:
1. Date(s) of the proposed activity;
 2. Expected number of persons participating in the activity;
 3. A site plan showing the location and size of any temporary outdoor structures such as tents, canopies, floors etc. that are proposed;
 4. Proposed special sanitary facilities and/or security personnel, if any;
 5. Special advertising signs, if any.

IV. OUTSIDE ACTIVITIES FOR REGISTERED GUESTS ONLY

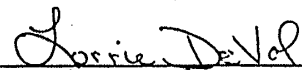
Activities for registered guests only are allowed outside the structure provided:

- A. All outside activities shall terminate by 9:00 p.m.;
- B. There shall be no amplified outside music;
- C. No temporary structures including tents or canopies are allowed unless specifically approved by the Township Board for each outdoor function;
- D. An application for Outside Activity for Registered Guests shall be submitted to the Township Board not less than one month before the scheduled Outside Wine Tasting but not less than one week before a scheduled Township Board meeting. The application shall include, at a minimum, the following information:
 1. Date(s) of the proposed activity.
 2. A Site plan showing the location and size of any temporary outdoor structures such as tents, canopies, floors etc. that are proposed.
 3. Special advertising signs, if any.

VI. ADDITIONAL USES

Zoning Ordinance Amendments and Special Use Permit revisions shall be necessary in order to approve any activity involving food service to persons who are not registered guests of the Chateau.

MOTION TO APPROVE THE STANDARDS BY GRAY, SECOND BY BREADON - APPROVED BY UNANIMOUS VOTE OF THE PENINSULA TOWNSHIP BOARD, FEBRUARY 9, 1999.



Lorrie DeVol
Peninsula Township Clerk

								Docs (Wedding/Ev ent)	Docs (promote)		
Type	Dates	End Time	Tour	Max attendees	GT 501c3						
2017	17-Oct Wine & Fo Dinners	Wed, Thur: 9:30pm	yes	36					x		
	Wine & Fo Pairing Tour	Daily 1:30pm	yes	24					x		
	Wine & Fo Educational Tour	Daily 5pm	yes	24							
	Wine & Fo Enhanced Tasting with Daily	5:30pm	yes	24							
2018	June 7 2018 Wine & Fo Dinner	7-Jun 9:30pm	yes	36							
	June 15-Oct 3 Wine & Fo Quaff & Nosh	Daily 2:30pm	yes	24							
	Wine & Fo Educational Tour	Daily 5pm	yes	50							
	Wine & Fo Dinner	Wed/Thur: 9:30pm	yes	36					x		
	Wine & Fo Tauck Tours	Sun 9:00pm	yes	44							
	Wine & Fo Cook Class/boot camp	various 4:30pm	yes	14							
	Wine & Fo Dinner	Jan 13, Jan 9:30pm	yes	50					x		
	Wine & Fo Claus Dinner	20-Oct 9:30pm	yes	20			x				
	Wine & Fo Dinner	9-Oct 9:30pm	yes	50			x				
	Wedding All registered B&B guests	29-Sep 10:30		44			x				
2019	Jan-May Wine & Fo cook class/tours/boot camp	various 9:30pm	yes	50					x	B&B Favorites Recipe Book - example of cooking class promo materials	
	22-Jul Wine & Fo Dinner	22-Jul 9:30pm	yes	30							
	June-Oct Wine & Fo Quaff & Nosh	daily 2:30pm	yes	24							
	Wine & Fo Educational tours	daily 5:30pm	yes	50							
	Wine & Fo Dinner	various 9:30pm	yes	30					x		
	Wine & Fo Tauck	sun 9:00pm	yes	44			x		x		
	6-Jun Wine & Fo Dinner	6-Jun 9:30pm	yes	36			x				
	Dec dates Wine & Fo Dinner	various 9:30pm	yes	36					x		
	8-Sep Wine & Fo Quaff & Nosh	8-Sep 9:30pm	yes	36			x				
	13-Sep Wine & Fo Dinner	13-Sep 9:30pm	yes	36			x				
	28-Aug Wine & Fo Seminar	28-Aug 9:30pm	yes	44			x		x		
	Aug 23_24 Wine & Fo Owners event	Aug 23_24 9:30pm	yes	100							
	April 26-28 Wine & Fo Pinot Dinner	April 26-28 9:30pm	yes	36							
	16-Aug Wine & Fo Dinner	16-Aug 9:30pm	yes	44							
	24-Jul Wine & Fo Dinner	24-Jul 9:30pm	yes	44			x				
	20-May Wine & Fo Wine Education lunch	20-May 9:30pm	yes	50							
	22-May Wine & Fo Dinner	22-May 9:30pm	yes	54 x			x				
	Wedding All registered B&B guests	1-Feb 9:30pm		44			x				
2020	June-Oct Wine & Fo Dinners	Various 9:30pm	yes	30					x		
	Tour Edu tour	daily 5:30pm	yes	50							
	Wine & Fo Lunch pairing	daily 2:30pm	yes	24							
	Wine & Fo Dinners	Sun 9:00pm	yes	44							
	7-Aug Wine & Fo Tour	7-Aug 9:30pm	yes	11			x				
	18-Sep Wine & Fo dinner	18-Sep 9:30pm	yes	40			x				
	4-Sep Wine & Fo Pairing	4-Sep 9:30pm	yes	10			x				
	Feb-April Wine & Fo Cook class	various 9:30pm	yes	12			x				
	11-Mar Wine & Fo Lunch pairing	11-Mar 9:30pm	yes	12							
	22-Apr Wine & Fo Dinner	22-Apr 9:30pm	yes	44 MI Agritou			x				
	26-Jun Wine & Fo Dinner	26-Jun 9:30pm	yes	37							
	2-Feb Wine & Fo cook class	2-Feb 4:30pm	yes	10							
	17-Jul Wine & Fo Dinner	17-Jul 9:30pm	yes	25			x				
	28-Aug Wine & Fo Dinner	28-Aug 9:30pm	yes	30			x				
	15-Feb Wine & Fo Dinner	15-Feb 9:30pm	yes	36							
	Jan 18 & Jan 2 Wine & Fo Ice Dinners	Jan 18 & Jan 2 9:30pm	yes	36					x		
2021	June-Oct Wine & Fo Dinners	Various 9:30pm	yes	36					x		
	Wine & Fo Tauck	Suns 9:00pm	yes	44					x		
	21-May Wine & Fo Dinner	21-May 9:30pm	yes	36							
	5-Jul Wine & Fo Dinner	5-Jul 9:30pm	yes	50			x				
	June 15, July 2 Wine & Fo Dinner	June 15, July 2 9:00pm	yes	30			x				
	5-Aug Wine & Fo Education	5-Aug 2:30pm	yes	20			x				
	25-Aug Wine & Fo Dinner	25-Aug 9:00pm	yes	25			x				
	Sept/Oct (7) Wine & Fo Dinners	Sept/Oct 9:30pm	yes	25					x		
2022	June-Oct Wine & Fo Lunch Pairings	Thursdays 2:00pm	yes	24							
	Wine & Fo Dinners	Various 9:30pm	yes	36					x		
	Jan-May Wine & Fo Cook class	Various 4:30pm	yes	12							
	Wine & Fo Dinners	Various 9:30pm	yes	36					x		
	Wedding All registered B&B guests	25-Jan N/A		42			x				
	Event All registered B&B guests	7-Sep 11pm		44			x				
2023	Feb-Oct Wine & Fo Tasting Blindly Lunch	Various (not 4:00pm)	yes	111							
	Wine & Fo Dinners	Various 9:30pm	yes	111					x		

October 30, 2018

Chateau Chantal 2019 Off-Season (January- May) Guest Use Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLES: Cooking Classes, Wine Boot Camps, Quaff and Nosh, and Wine Education Dinners- food and wine education related events.

EVENT TIMES & DESCRIPTIONS:

Cooking Classes: Classes will be on several Saturdays between 12:30p and 4:30p and host between 2 and 14 attendees. These are hands-on educational experiences that demonstrate the synergy between wine and food. **Dates listed at chateauchantal.com.**

Wine and food education tours: Titled as our "Quaff and Nosh" these are tours of the cellar providing an education on the wine making process and then the guests enjoy bites of food specifically paired with Chateau Chantal wine. Offered Wednesdays and Fridays or by appointment. **Dates listed at chateauchantal.com**

Wine Boot Camp: Wine Boot camps are total immersion for the hobby wine maker. This year is offered on March 30th 3pm and 9pm and host between 2 and 30 attendees. Attendees will tour our facility and grounds learning proper practice and science of cultivating grapes and crafting wine from the yield. They will finish with a multi-course wine and food educational dinner. **Dates listed at chateauchantal.com**

Wine education dinners: will be held on specific Saturday evenings. These will start at 6pm with a tour, host between 2 and 50 attendees, and finish no later than 9:30pm. A tour of the cellar is provided showing the wine making process and then the guests enjoy a multi course dinner paired with Chateau Chantal wine. **Dates listed at chateauchantal.com.**

Ice Wine Celebration Weekend: January 25-27, 2019 Chateau Chantal will host a special celebration featuring the education and enjoyment of Ice Wine. There will be a Fire and Ice Wine Education dinner Saturday evening January 26th. See above wine education dinners for format.

Pinot Fete: April 27th Chateau Chantal will host our first annual Pinot Fete. This is a day completely devoted to educating the public on all wine that starts with Pinot. There will be a multicourse dinner offered to close the day. See above for format of dinner.

GROUP CLASSIFICATIONS AS DEFINED IN AMENDMENT: **Wine & Food Seminar** (Only Requires Notification to the ZA)

Any questions or comments can be directed to Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

May 8, 2019

Chateau Chantal 2018 Peak Season Guest Use Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Educational Tours, Wine and Food pairing tours and Wine Education Dinners- food and wine education related events. Tours and Dinners will start on or after June 19th and span until October 30st.

EVENT DATE(S) & TIME:

Wine and Food Pairing Tours titled “Quaff and Nosh”: offered at 1pm daily for 90 minutes. We will host up to 24 attendees each tour.

Daily Educational Tour: Hosted Twice Daily at 1pm and at 4pm. No more than 50 per tour.

Wine education dinners: will be held on specific evenings depending on the month. These will start at 6pm with a tour, have approximately 30 attendees, and finish no later than 9:30pm.

June: Every Wednesday and Saturday after June 19th

July and August: Every Tuesday Wednesday, Friday, and Saturday

September and October: Every Wednesday, Thursday, Friday

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- () 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- () Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

May 8, 2019

Chateau Chantal 2018 Guest Use Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Tauck Tours Wine Education Dinners- food and wine education related events.

EVENT DATE(S) & TIME:

Wine education dinners: Tauck Tours will be held every Sunday evening between June 9, 2019 and October 27, 2019 and on three specific additional dates: September 3, and September 10 and October 17. These are 4 course (prix fixe) wine and food pairing educational dinners that will start at 5:15pm with a tour, have approximately 44 attendees or less each, and finish no later than 9:00pm.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- () 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- () Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

July 12, 2019

Chateau Chantal 2019 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Wine education including food and wine pairing.

EVENT DATE(S) & TIME:

A wine education event will be held on August 28, 2019 for MSU Alumni Meeting. A wine and food education tour is tentatively scheduled for August 28, 2019.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- ☒ (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- ☐ (___) 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- ☐ (___) Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

*Finalities have not been confirmed. This is an attempt to give advance notice.

May 15, 2020

Chateau Chantal 2020 Guest Use Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Tauck Tours Wine Education Dinners- food and wine education related events. Implementing necessary COVID-19 restrictions.

EVENT DATE(S) & TIME:

Wine education dinners: Tauck Tours will be held every Sunday evening between July 26, 2020 and October 4, 2020 and on three specific additional dates: September 1, September 8 and September 15. These are 4 course (prix fixe) wine and food pairing educational dinners that will start at 5:15pm with a tour, have approximately 44 attendees or less each, and finish no later than 9:00pm.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- () 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- () Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

May 15, 2020

Chateau Chantal 2020 Peak Season Guest Use Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Educational Tours, Wine and Food pairing tours and Wine Education Dinners- food and wine education related events. Tours and Dinners will start on or after June 17th and span until October 30st. Implementing necessary COVID-19 restrictions.

EVENT DATE(S) & TIME:

Wine and Food Pairing: offered at 1pm daily for 90 minutes. We will host up to 24 attendees each tour.

Daily Educational Tour: Hosted Twice Daily at 1pm and at 4pm. No more than 50 per tour.

Wine education dinners: will be held on specific evenings depending on the month. These will start at 6pm with a tour, have approximately 30 attendees, and finish no later than 9:30pm.

June: Every Wednesday and Saturday after June 17th

July and August: Every Tuesday Wednesday, Friday, and Saturday

September and October: Every Wednesday, Thursday, Friday

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- () 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- () Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

July 6, 2020

Chateau Chantal 2020 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Ryan Sikorski Proposal

EVENT DATE(S) & TIME:

A surprise wedding proposal will be held on August 7, 2020 followed by a wine and food education tour for 11 individuals is scheduled for August 7, 2020.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- ☒ (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- ☐ (___) 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- ☐ (___) Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

*Finalities have not been confirmed. This is an attempt to give advance notice.

July 10, 2020

Chateau Chantal 2020 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Private Wine Education Dinner

EVENT DATE(S) & TIME:

September 18, 2020 from 6:00 pm until 9:30 pm

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- ☒ (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- ☐ (___) 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- ☐ (___) Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

*Finalities have not been confirmed. This is an attempt to give advance notice.

September 4, 2020

Chateau Chantal 2020 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Private Wine Reception

EVENT DATE(S) & TIME:

A wedding proposal followed by a private wine reception for 10.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- ☒ Wine & Food Seminar (Only Requires Notification to the ZA)
- ☐ 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- ☐ Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

This is an attempt to give advance notice.

November 26, 2019

Chateau Chantal 2020 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Cooking Classes at Chateau Chantal

EVENT DATE(S) & TIME:

Chateau Chantal will be hosting cooking classes on the following dates:

Cooking Classes 2/1

Cooking Classes 2/8

Cooking Classes 2/22

Cooking Classes 2/28

Cooking Classes 3/7

Cooking Classes 3/14

Cooking Classes 3/21

Cooking Classes 3/28

Cooking Classes 4/4

Cooking Classes 4/11

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

☒ (x) Wine & Food Seminar (Only Requires Notification to the ZA)

☐ (___) 501 - (C) (3) non-profit (Only Requires Notification to the ZA)

☐ (___) Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

*Finalities have not been confirmed. This is an attempt to give advance notice.

July 2, 2020

Chateau Chantal 2020 Guest Activities Notification

This is advance notification for the following activities required under the Township Amendment 141.

EVENT TITLE & DESCRIPTION: Private Wine Dinner for Wedding Rehearsal

EVENT DATE(S) & TIME:

A private wine dinner held for 30 individuals on Friday, August 28th, 2020 with wine and food education provided.

GROUP CLASSIFICATION AS DEFINED IN AMENDMENT:

- ☒ (x) Wine & Food Seminar (Only Requires Notification to the ZA)
- ☐ (___) 501 - (C) (3) non-profit (Only Requires Notification to the ZA)
- ☐ (___) Agricultural Related Group (Requires Prior Approval from the ZA)

Any questions or comments can be directed to Samantha Olsen, Experience Coordinator, Brian Lillie, Director of Hospitality, or Marie-Chantal Dalese, CEO, at 231-223-4110.

*Finalities have not been confirmed. This is an attempt to give advance notice.

~~CONFIDENTIAL~~

Chateau Chantal
 15900 Rue de Vin
 Old Mission Peninsula
 Traverse City, MI 49686
 Phone/ Fax (231) 223-4110

INVOICE

Date: 25-May-18

Terms: due on receipt

TO: [REDACTED]
 wine and staffing for event 5/23/18

Item	Quantity	Price	Total
Staffing of 5/23 event	3.00	[REDACTED]	[REDACTED]
Chardonnay	3.00	[REDACTED]	[REDACTED]
Malbec	6.00	[REDACTED]	[REDACTED]
LH Riesling	4.00	[REDACTED]	[REDACTED]
Naughty Red	2.00	[REDACTED]	[REDACTED]
Total			[REDACTED]

~~CONFIDENTIAL~~

Chateau Chantal
 15900 Rue de Vin
 Old Mission Peninsula
 Traverse City, MI 49686
 Phone/ Fax (231) 223-4110

INVOICE

22-May-
 Date: 19

Terms: on receipt

TO:

From:

Item#	Item	Quantity	Price	Total
612837	Special Events - Coordination Fee	1		
5				

Total 0

~~CONFIDENTIAL~~

Chateau Chantal
 15900 Rue de Vin
 Old Mission Peninsula
 Traverse City, Michigan 49686
 231-223-4110

INVOICE

Date:	07-May-22
Invoice:	44688
Terms:	Upon Receipt

TO:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Item	Quantity	Price	Total
Wine			[REDACTED]
Disposable, Compostable Utensils			[REDACTED]

All items tax-exempt.

Amount due

[REDACTED]

You may call with a credit card number or mail a check. Thank you.

WOMP012133

~~CONFIDENTIAL~~

[REDACTED]

Thursday, May 26

Setup at 5 p.m.

Using room or east patio from 6 to 9:30 p.m.

MC's Notes from 5/11: "He's thinking it will most likely be indoors...but, we'll make the call that day.

So, if outside, we use the gazebo. Inside, use the kitchen counter. I figured 2 staff to serve and sell wine/pre-packed snacks to people that will start arriving at 6pm for a 7pm sharp start time for the podcast."

Podcast from 7 to 8:30 p.m., then autographs

Notes from MC and [REDACTED] 5/11 Mtg: 6pm open doors for guests and CC to have bars ready

Get coupons to [REDACTED] for general sponsor area prior to event.

Need electrical outdoors with speaker system

Live podcast, "[REDACTED]"

Sponsor: [REDACTED]

KTE: MC says to treat as a sponsor. Room provided free.

KTE and MC Meeting [REDACTED] on March 2, 2022

Possibly 80 in rows of chairs to witness podcast

Podcasters in taller chairs across from one another

There will be an auction (for people to buy a glass of wine?)

Bar in Island Room?

[REDACTED] is local sponsor who will pay for some food options. KTE sent menu following meeting with DT.

Send information to [REDACTED] to help promote.

Original Plan

100 people for podcast, chairs for everyone

Casual setting – two big chairs rather than podium style

7pm start 1 to 1.5 hr interview 9pm end time

Can set up bar/food – probably won't drink much

Can put something in welcome bags as sponsor

Recorded and broadcast a week or so later

5pm set up

[REDACTED]

WOMP012135

~~CONFIDENTIAL~~

[REDACTED]

Thursday, March 3, 2022

Logistics

Free use of hospitality room

Print and post menu in holder (2 vegetarians)

Set up iced tea, coffee, and water station

Wine reception and tour after

They pay for four wines (1/2 off; to be tracked and counted at end) and our staff (pourers, dishwasher, chef? at hourly rate)

Salads set out with silver for them to pick up from bar

We pick up salad plates and silver

We serve main entrée

We pick up plates and silver

Desserts put up on bar with more silver

We pick up rest of plates, silver, napkins, so meeting can continue

~~CONFIDENTIAL~~

[REDACTED]

Thursday, March 3, 2022

Logistics

Free use of hospitality room

Print and post menu in holder (2 vegetarians)

Set up iced tea, coffee, and water station

Wine reception and tour after

They pay for four wines (1/2 off; to be tracked and counted at end) and our staff (pourers, dishwasher, chef? at hourly rate)

Salads set out with silver for them to pick up from bar

We pick up salad plates and silver

We serve main entrée

We pick up plates and silver

Desserts put up on bar with more silver

We pick up rest of plates, silver, napkins, so meeting can continue



Enjoy live music every Thursday, 7-9:30pm
Jazz at Sunset
 Featuring the Jeff Haas Trio

Soulful Jazz, Great Wine & Breathtaking Views.

June 15th	Don Julin & Nancy Stagnitta
June 22nd	Anthony Stanco, Laurie Sears & Rob Mulligan
June 29th	Claudia Schmidt & Laurie Sears
July 6th	Bill Sears & Dave Onderdonk
July 13th	Jim Cooper & Nancy Stagnitta
July 20th	TC Saxophone Quartet Laurie Sears, Myles Boothroyd Adam Olson & Eric Olson
July 27th	Janice Keegan & Chris Bickley

Located on beautiful Old Mission Peninsula
 ChateauChantal.com

Watch watercolorist Lisa Flahive work her magic!



Jazz at Sunset
 LIVE AT CHATEAU CHANTAL!
 Celebrating 25 years with the Jeff Haas Trio!

Thursday Evenings
7 - 9:30pm

The Jeff Haas Trio
 featuring special guests:

June 20
 Laurie & Bill Sears

June 27
 Nancy Stagnitta & Don Julin

July 4
 Anthony Stanco & Laurie Sears

July 11
 Jim Cooper & Bill Sears

July 18
 Claudia Schmidt & Laurie Sears

July 25
 Janice Keegan & Chris Bickley

Music & Art for the Whole Family!

Watch watercolorist Lisa Flahive work her magic!



Last Sunday Jazz
 Featuring the Jeff Haas Trio & special guest Laurie Sears

Sunday Oct. 28th, 3 - 5:30PM

The perfect Sunday afternoon - jazz classics by the Jeff Haas Trio & Laurie Sears, your favorite Chateau Chantal wine and breathtaking autumn scenery!

Open daily for wine sales, tastings, tours, seasonal entertainment & B&B year-round.

f i t y

Watch watercolorist Lisa Flahive work her magic!



Happy Hour 5 - 7 pm

Every Thursday on the Terrace

Happy Hour Specials 5 – 7 pm only

All glasses of wine \$5/glass

All flights \$7

Sangria - \$7/glass

Charcuterie for 2 - \$12

Fruit, Nut, Olives and Cracker snack tray - \$5

Available here for Jazz at Sunset

Wine by The Glass \$7 – \$9/glass

Charcuterie for 2 - \$14

Fruit, Nut, Olives and Cracker snack tray - \$6



Jazz at Sunset
 LIVE AT CHATEAU CHANTAL!
 Celebrating 29 years with the Jeff Haas Trio!

Thursday evenings, 7 - 9:30 pm
June 30 - September 1
The Jeff Haas Trio & Laurie Sears

Music & Art to Soothe the Soul!

Stick around after the music for our first Jazz at Sunset 'After Glow'.

June 30
 9:30 PM - 11 PM

Watch watercolorist Lisa Flahive work her magic!
 Reservations required at shop.chateauchantal.com
 Watch online via Chateau Chantal's Facebook Live.

EXHIBIT 18

PTP Motion for Summary Judgment

October 6, 2023

Page 1 of 10

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF JOHN KROUPA

<p>1 DEPOSITION OF JOHN KROUPA</p> <p>2 Taken by the Intervener-Defendant on the 14th day of July,</p> <p>3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at 2:00</p> <p>4 p.m.</p> <p>5</p> <p>6 APPEARANCES:</p> <p>7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>8 And</p> <p>9 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>10 Miller Canfield Paddock & Stone, PLC</p> <p>11 99 Monroe Avenue, NW, Suite 1200</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 776-6333</p> <p>14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>15 McGraw Morris, PC</p> <p>16 300 Ottawa Avenue, NW, Suite 800</p> <p>17 Grand Rapids, Michigan 49503</p> <p>18 (616) 288-2700</p> <p>19 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>20 Law Office of Tracy Jane Andrews, PLLC</p> <p>21 619 Webster Street</p> <p>22 Traverse City, Michigan 49686</p> <p>23 (231) 714-9402</p> <p>24 And</p> <p>25 MS. HOLLY LYNN HILLYER (P85318)</p> <p>Olson Bzdok & Howard, PC</p> <p>420 East Front Street</p> <p>Traverse City, Michigan 49686</p> <p>(231) 946-0044</p> <p>Also Present: Colin Miller</p> <p>RECORDED BY: Stacey M. Seals, CER 7908</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>Page 2</p>	<p>1 Traverse City, Michigan</p> <p>2 Friday, July 14, 2023 - 8:13 a.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm the</p> <p>4 testimony you're about to give will be the whole truth?</p> <p>5 MR. KROUPA: Yes.</p> <p>6 JOHN KROUPA</p> <p>7 having been called by the Intervener Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. HILLYER:</p> <p>10 Q Could you, please, state your name for the record?</p> <p>11 A John Kroupa.</p> <p>12 Q I'm Holly Hillyer. It's nice to meet you.</p> <p>13 A Nice to meet you, Holly.</p> <p>14 Q I represent PTP. Have you been deposed before?</p> <p>15 A Yes.</p> <p>16 Q Was it in this litigation?</p> <p>17 A Yes.</p> <p>18 Q I'm just going to run through a couple of ground rules for</p> <p>19 the deposition. The first one being that this is</p> <p>20 transcribed so please try to speak your answers and avoid</p> <p>21 nonverbal responses like "uh-huh" and shaking your head.</p> <p>22 A Nodding your head?</p> <p>23 Q Yes; exactly. And along those same lines, try to let me</p> <p>24 finish questions before you start to answer, both so that</p> <p>25 your attorney has an opportunity to object if he needs to</p> <p>Page 4</p>
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Hillyer 4</p> <p>5</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 PAGE</p> <p>9</p> <p>10 Deposition Exhibit 60 marked14</p> <p>11 (Special Use Permit)</p> <p>12 Deposition Exhibit 61 marked27</p> <p>13 (Township Letter Regarding Amplified Music)</p> <p>14 Deposition Exhibit 62 marked45</p> <p>15 (Answers to Interrogatories)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 and so that it's easier for transcribing and understanding</p> <p>2 who said what. Although I think we'll probably talk over</p> <p>3 each other inadvertently several times, and that's okay,</p> <p>4 it's natural. If you don't understand the question just let</p> <p>5 me know and I'll try to rephrase it. If you answer the</p> <p>6 question I'll assume that you understood. Does that sound</p> <p>7 okay?</p> <p>8 A Sure.</p> <p>9 Q And if your attorney does object I'll still expect you to</p> <p>10 answer the question unless he's instructed you not to answer</p> <p>11 due to privilege. If I ask you for a date range or the size</p> <p>12 of something, it's fine if you don't know exactly and you</p> <p>13 provide an estimate, but I'd ask that you don't guess. If</p> <p>14 there's something that you truly don't know please just let</p> <p>15 me know.</p> <p>16 A Okay.</p> <p>17 Q If you need a break, let me know. I think this will be</p> <p>18 fairly brief. I'll try to take a break after about an hour,</p> <p>19 but if you need one before that let me know and we'll do</p> <p>20 that as long as there's not a question pending.</p> <p>21 A Okay.</p> <p>22 Q Okay. So just to give you a quick roadmap, I'm going to run</p> <p>23 through how you prepared for the deposition today, some</p> <p>24 background information about Peninsula Cellars and Grape</p> <p>25 Harbor. I'll go through some of the permitted land uses.</p> <p>Page 5</p>

2 (Pages 2 to 5)

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF JOHN KROUPA

<p>1 We'll look at your special use permit or SUP I'll call it.</p> <p>2 We'll talk about the activities that take place on the</p> <p>3 property right now, the things that you would like to do in</p> <p>4 the future, attempts that Peninsula Cellars has made to</p> <p>5 address the issues of the zoning ordinance that are at issue</p> <p>6 in this litigation. And then review and clarify some of</p> <p>7 Peninsula Cellars responses to discovery that PTP sent.</p> <p>8 A Okay.</p> <p>9 Q So starting with how you prepared for this deposition. What</p> <p>10 is your role at Peninsula Cellars, or I should probably say</p> <p>11 Grape Harbor, Inc.?</p> <p>12 A Technically I'm the president.</p> <p>13 Q President. Okay. And Grape Harbor, Inc., is the</p> <p>14 corporation that has sued Peninsula Township in this</p> <p>15 litigation; correct?</p> <p>16 A Correct.</p> <p>17 Q And will you understand what I mean if I refer to it as</p> <p>18 Peninsula Cellars?</p> <p>19 A I will.</p> <p>20 Q And do you understand that you're testifying today as the</p> <p>21 corporate representative of Grape Harbor, Inc.?</p> <p>22 A I do.</p> <p>23 Q And did you receive a copy of the topic list in schedule A</p> <p>24 to your Deposition Notice?</p> <p>25 A I believe so. I received a topic list, I don't know if it's</p> <p style="text-align: center;">Page 6</p>	<p>1 A No.</p> <p>2 Q Is there anything else that you did to prepare for today?</p> <p>3 A No.</p> <p>4 Q And do you agree to speak for Peninsula Cellars with your</p> <p>5 testimony today?</p> <p>6 A Yes.</p> <p>7 Q Okay. So Peninsula Cellars -- am I correct in understanding</p> <p>8 that Peninsula Cellars or Grape Harbor, Inc., owns the land</p> <p>9 where the winery is located?</p> <p>10 A No, that's incorrect.</p> <p>11 Q So who owns that land?</p> <p>12 A An LLC called Kroupa Enterprises.</p> <p>13 Q Okay. And just to clarify, I'm talking about where the</p> <p>14 tasting room is located.</p> <p>15 A Correct.</p> <p>16 Q Is that Kroupa Enterprises, LLC?</p> <p>17 A Yes.</p> <p>18 Q So what is the relationship between Grape Harbor, Inc., and</p> <p>19 Kroupa Enterprises, LLC?</p> <p>20 A We lease -- Grape Harbor leases the property and building</p> <p>21 from Kroupa Enterprises.</p> <p>22 Q Is there wine making equipment on the site of the tasting</p> <p>23 room?</p> <p>24 A No.</p> <p>25 Q How about kitchen equipment or any other kind of --</p> <p style="text-align: center;">Page 8</p>
<p>1 the one you're referring to unless you show me it.</p> <p>2 MS. HILLYER: We won't mark this as an exhibit.</p> <p>3 A That looks familiar.</p> <p>4 Q And what did Peninsula Cellars do to prepare you for your</p> <p>5 deposition today?</p> <p>6 A Just reviewed the SUP, reviewed documents, spoke to the</p> <p>7 lawyers.</p> <p>8 Q What other documents did you review besides the SUP?</p> <p>9 A The judge's existing opinion and the Interrogatories I think</p> <p>10 it was called that PTP requested and admissions I think it</p> <p>11 was called, another request for some information.</p> <p>12 Q Okay. The judge's existing opinion that you referred to,</p> <p>13 can you --</p> <p>14 A Judge Maloney.</p> <p>15 Q -- describe that a little more fully? Judge Maloney?</p> <p>16 A Yeah, the opinion that he issued however many months ago or</p> <p>17 a year ago or whenever that was, I'm not sure exactly.</p> <p>18 Q Does June of 2022 sound right?</p> <p>19 A That sounds fairly accurate, yeah.</p> <p>20 Q And was that his opinion -- let me try to rephrase this.</p> <p>21 Did he make some decisions about the constitutionality of</p> <p>22 the ordinance in that decision?</p> <p>23 A Yes.</p> <p>24 Q Besides your attorney, did you talk to anyone else with</p> <p>25 Peninsula Cellars?</p> <p style="text-align: center;">Page 7</p>	<p>1 A Yes, we have a prep kitchen.</p> <p>2 Q Does Grape Harbor, Inc., own that or does Kroupa</p> <p>3 Enterprises, LLC, own that?</p> <p>4 A Grape Harbor owns the equipment in the kitchen.</p> <p>5 Q Is there any other equipment that would belong to Grape</p> <p>6 Harbor but not to Kroupa Enterprises on the site of the</p> <p>7 tasting room?</p> <p>8 A Not by -- not what I would consider equipment. I mean,</p> <p>9 there's, you know, a radio and glasses, stuff like that.</p> <p>10 Q So tell me a little bit about the land where the tasting</p> <p>11 room is located. Is that on the site of the farming</p> <p>12 operation?</p> <p>13 A It is not.</p> <p>14 Q And where is the farming operation located?</p> <p>15 A It's located on Kroupa Road.</p> <p>16 Q And where is that in relation to the tasting room?</p> <p>17 A That is about seven miles north of the tasting room.</p> <p>18 Q Is all of the -- I guess is the whole farming operation in</p> <p>19 that location or does Kroupa Enterprises or Grape Harbor</p> <p>20 have other parcels that it farms throughout the township?</p> <p>21 A We farm some grapes on the tasting room parcel, and we have</p> <p>22 another small parcel on Center Road that we take care of.</p> <p>23 But we don't own that, we lease that.</p> <p>24 Q And the tasting room is on Center Road; right?</p> <p>25 A Correct.</p> <p style="text-align: center;">Page 9</p>

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<p>1 A Yes.</p> <p>2 Q Would that be U-I-b-r-i-c-h?</p> <p>3 A -c-h.</p> <p>4 Q Okay. And how long has Mr. Alteslaban been with you?</p> <p>5 A Since 2021.</p> <p>6 Q Was there anyone in between him and Mr. Ulbrich?</p> <p>7 A Yes.</p> <p>8 Q And who was that?</p> <p>9 A Joe Ohanison</p> <p>10 Q Okay. Could you please spell that?</p> <p>11 A J-o-e O-h-a-n-i-s-o-n.</p> <p>12 Q Okay. Thank you.</p> <p>13 A You're welcome.</p> <p>14 Q So I'd like to talk a little bit about the special use</p> <p>15 permit that you mentioned. I'm going to hand you a</p> <p>16 document, this will be Exhibit 60.</p> <p>17 (Deposition Exhibit 60 marked)</p> <p>18 Q So I'll give you a minute to take a look at this, but I've</p> <p>19 handed you a document that says at the top "Special Use</p> <p>20 Permit, Permit Number 62, Remote Wine Tasting Room," and at</p> <p>21 the bottom it's marked WOMP0008161 and it runs through 8170.</p> <p>22 (Witness reviews exhibit)</p> <p>23 A Okay.</p> <p>24 Q Do you recognize this document?</p> <p>25 A I do.</p> <p style="text-align: center;">Page 14</p>	<p>1 Q And we talked about how large the property is, it's five</p> <p>2 acres. So is all of that property behind the school house</p> <p>3 away from -- like moving away from the road?</p> <p>4 A Behind and to the south.</p> <p>5 Q And is there parking at that location?</p> <p>6 A There is.</p> <p>7 Q Where is the parking?</p> <p>8 A It is to the east of the building.</p> <p>9 Q And approximately how many parking spaces are there?</p> <p>10 A 20, depending on the size of the vehicles.</p> <p>11 Q So do you get tour busses?</p> <p>12 A We get some busses, yup, and RV people.</p> <p>13 Q Do you have special spaces for those or do they just take up</p> <p>14 multiple --</p> <p>15 A We do, yeah. I mean, we try and put them in special spots</p> <p>16 but usually they go where they like.</p> <p>17 Q And is that parking usually adequate for the number of</p> <p>18 visitors that you see or do you have overflow parking that</p> <p>19 you need to use?</p> <p>20 A It is usually adequate, but we do have overflow when we need</p> <p>21 to use it.</p> <p>22 Q And where is the overflow parking located?</p> <p>23 A Further to the east.</p> <p>24 Q Is that a separate lot or is that just a grassy area?</p> <p>25 A A grassy area.</p> <p style="text-align: center;">Page 16</p>
<p>1 Q And if you turn to the bottom of page 4, which is the</p> <p>2 WOMP8164, do you recognize the second signature on that</p> <p>3 page?</p> <p>4 A Yes.</p> <p>5 Q Is that your mother's signature, Joan Kroupa?</p> <p>6 A It is.</p> <p>7 Q And are you aware of any additional special use permits or</p> <p>8 amendments to this permit or other permits, land use</p> <p>9 permits, that Peninsula Cellars has for this tasting room?</p> <p>10 A No.</p> <p>11 Q And I think we can put that aside. So could you just in</p> <p>12 broad strokes describe the remote winery tasting room that</p> <p>13 you operate on Center Road?</p> <p>14 A I'm not exactly sure what you mean. How broad of strokes?</p> <p>15 I mean, we sell wine out of that building to guests.</p> <p>16 Q What is that building?</p> <p>17 A It was a one-room school house originally and we've</p> <p>18 converted it into a wine tasting room.</p> <p>19 Q How long ago was that?</p> <p>20 A 1999.</p> <p>21 Q And is -- I understand it's on Center Road, how far back</p> <p>22 from the road is it? Is it close to the road, is it on a</p> <p>23 more remote piece of property?</p> <p>24 A It's close enough to the road that it's very visible to the</p> <p>25 road, you can see the road, you can see the traffic.</p> <p style="text-align: center;">Page 15</p>	<p>1 Q And can you talk to me a little bit about how it -- I guess</p> <p>2 how it came to be that your tasting room is not located on</p> <p>3 the same site as the farming operation?</p> <p>4 A The farming operation was hard to find and we decided that</p> <p>5 we needed better road exposure, because when we started the</p> <p>6 wine trail wasn't really established yet so there wasn't an</p> <p>7 attraction as a wine trail yet, there were too few of us.</p> <p>8 So people wouldn't make the effort to look, if you were in</p> <p>9 an obvious place they would find you, so we moved there.</p> <p>10 Q What wineries were on the Peninsula then, if you remember?</p> <p>11 A Chateau Grand Traverse, Chateau Chantal and Bowers Harbor</p> <p>12 Vineyards.</p> <p>13 Q Okay. And to your knowledge are there any other wineries on</p> <p>14 the Peninsula that have a tasting room separate from their</p> <p>15 farming site?</p> <p>16 A Not to my knowledge.</p> <p>17 Q Does Peninsula Cellars operate any other tasting rooms in</p> <p>18 any other locations?</p> <p>19 A Yes.</p> <p>20 Q Where are those?</p> <p>21 A Shelby, Michigan and Royal Oak, Michigan.</p> <p>22 Q Do they have the same name, are you Peninsula Cellars or do</p> <p>23 they have different names to them?</p> <p>24 A They're not actually -- they're sort of a conglomerate of</p> <p>25 several wineries in one location. So it's technically our</p> <p style="text-align: center;">Page 17</p>

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<p>1 license there along with some other wineries, and it's</p> <p>2 managed Downstate.</p> <p>3 Q Okay. So the tasting room on Old Mission Peninsula, you</p> <p>4 mentioned that it's an old schoolhouse, is it one room?</p> <p>5 A It's called a one room schoolhouse, but technically, no;</p> <p>6 there's a back room and there's actually another small room</p> <p>7 that's the prep kitchen and there's a basement that has two</p> <p>8 sections, one for utilities and the furnace and things like</p> <p>9 that and one for -- we have a wine library in there.</p> <p>10 Q A wine library did you say?</p> <p>11 A Yes; yup.</p> <p>12 Q Interesting. Can you tell me about that?</p> <p>13 A It's just a collection of bottles from when we started, all</p> <p>14 vintages we've ever made.</p> <p>15 Q Neat. Do you take people through the wine library space</p> <p>16 when they visit the tasting room?</p> <p>17 A Sometimes, but not very often.</p> <p>18 Q Is it more of a private collection?</p> <p>19 A Yeah; yup.</p> <p>20 Q So the tasting room where people come and drink wine,</p> <p>21 roughly what's the capacity of that?</p> <p>22 A 80.</p> <p>23 Q And are there other areas on the property where people are</p> <p>24 able to take a glass of wine?</p> <p>25 A Yes.</p> <p style="text-align: center;">Page 18</p>	<p>1 Q And does Peninsula Cellars currently offer any kind of</p> <p>2 educational programming, tours around the property, guided</p> <p>3 tastings, anything else?</p> <p>4 A Guided tastings, yes; tours around the property on request</p> <p>5 only and if we can manage it with our staff.</p> <p>6 Q Who would do those tours I guess if someone were available?</p> <p>7 A Whoever is available.</p> <p>8 Q Whoever is working?</p> <p>9 A Yeah.</p> <p>10 Q About how many people are working at that location on a</p> <p>11 given day?</p> <p>12 A Typically three to four, on the busy days it would escalate</p> <p>13 from there.</p> <p>14 Q And is there a manager for the tasting room?</p> <p>15 A There is.</p> <p>16 Q Who is that?</p> <p>17 A His name is David Wheelock.</p> <p>18 Q And then what are the other staff roles that are filled on a</p> <p>19 typical day of the tasting room?</p> <p>20 A Just wine server generally, but within that role there's,</p> <p>21 you know, non-customer facing tasks like cleaning and</p> <p>22 inventory and all the stuff that goes along with keeping up</p> <p>23 an old building.</p> <p>24 Q How old is the building?</p> <p>25 A I mean, it was 1896 was the build year supposedly, but I</p> <p style="text-align: center;">Page 20</p>
<p>1 Q Where are those?</p> <p>2 A The entirety of the outdoor space.</p> <p>3 Q The whole five acres?</p> <p>4 A Yes.</p> <p>5 Q Do people typically move throughout that whole space or do</p> <p>6 you have a patio or a --</p> <p>7 A We have a patio and we generally have tables set up in the</p> <p>8 front yard under trees for shade and in the vineyard, places</p> <p>9 where there's a desirable ambiance. But when the people</p> <p>10 bring their dogs we let them go into some of the tall grass</p> <p>11 and they can run around and play or whatever.</p> <p>12 Q Okay. Do people ever wander through the vines?</p> <p>13 A They do, yup.</p> <p>14 Q And about how many -- about how many patio tables and</p> <p>15 seating areas do you have set up throughout the areas</p> <p>16 throughout the winery for people?</p> <p>17 A I guess you could say there's three different sections of</p> <p>18 tables. So we have some picnic tables, we have a table,</p> <p>19 like wrought iron tables, and then we have some more of</p> <p>20 those wrought iron tables that are set up along the patio</p> <p>21 but on the other side of it.</p> <p>22 Q Okay. About how many people can fit on the patio</p> <p>23 comfortably?</p> <p>24 A I would say 36 based on how many tables we have and each</p> <p>25 table has four chairs.</p> <p style="text-align: center;">Page 19</p>	<p>1 can't even get that nailed down 100 percent with the</p> <p>2 historians, but that's what we go with.</p> <p>3 Q So does Peninsula Cellars ever rent the facility, rent out</p> <p>4 the tasting room or space within there for -- you know, for</p> <p>5 people to have their own events or meetings there?</p> <p>6 A We have in the past had people come in as a group for a fee,</p> <p>7 but we haven't rented out the building, you know, without</p> <p>8 our oversight, if that's what you mean.</p> <p>9 Q Okay.</p> <p>10 A Like we're always there, we're always present, yeah.</p> <p>11 Q Okay. Was that -- when you rented it to groups, was that</p> <p>12 for people that just wanted to reserve it for a group</p> <p>13 tasting or was that for something unrelated to wine?</p> <p>14 A There's always wine involved, yeah; there's always a tasting</p> <p>15 involved, whether it be the main focus. We've had, you</p> <p>16 know, people come in and paint pictures while they're having</p> <p>17 a glass of wine, things like that. Pretty low key.</p> <p>18 Q And about how long ago was that?</p> <p>19 A Pre COVID, yeah.</p> <p>20 Q I understand COVID had quite an impact on the hospitality</p> <p>21 industry.</p> <p>22 A It did for sure.</p> <p>23 Q Have you -- have you been able to restart anything like that</p> <p>24 since COVID?</p> <p>25 A We haven't.</p> <p style="text-align: center;">Page 21</p>

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<p>1 Q And how does Peninsula Cellars market and advertise the</p> <p>2 tasting room? Do you have a marketing or communications</p> <p>3 person?</p> <p>4 A No. We sort of do a group -- a group marketing effort.</p> <p>5 Everybody sort of contributes ideas and then, you know, we</p> <p>6 have social media, we have a website, we take out an ad here</p> <p>7 and there in print, but fewer and fewer as the years go on.</p> <p>8 The print seems to be falling away to nothing. But like</p> <p>9 Traverse the magazine and local stuff mostly, and then Wine</p> <p>10 Country magazine for more statewide coverage.</p> <p>11 Q Okay. Are you able to track when -- you know, when visitors</p> <p>12 come how they found out about the winery?</p> <p>13 A Not effectively. It's pretty hard.</p> <p>14 Q You had mentioned earlier that the farming operation site</p> <p>15 would be hard for people to find back then --</p> <p>16 A Correct.</p> <p>17 Q -- and that you had put the wine tasting room on Center Road</p> <p>18 for visibility. Do you think that there are a lot of people</p> <p>19 that find you just because they're driving by?</p> <p>20 A Yes; yup. If they don't mistake us for a church, that's</p> <p>21 typically a comment we get.</p> <p>22 Q That's funny. Very different.</p> <p>23 MR. INFANTE: You have a lovely church.</p> <p>24 THE WITNESS: I think a church would be a lovely</p> <p>25 tasting room.</p> <p style="text-align: center;">Page 22</p>	<p>1 when visitors are coming, the number of visitors that you're</p> <p>2 getting? I understand COVID probably caused a lot of things</p> <p>3 to be unusual, but generally over the last five years?</p> <p>4 A No, the seasons are the seasons. The weather is a big part</p> <p>5 of it so -- in the summer July is a great time of year to</p> <p>6 come to Traverse City for all the different reasons, so we</p> <p>7 benefit from that. And then in October the leaves are</p> <p>8 changing color so the color tours go hand in hand with the</p> <p>9 wine tasting.</p> <p>10 Q What would you say is your busiest time of day?</p> <p>11 A It depends. Which month do you mean?</p> <p>12 Q Let's take October since that's generally the busiest.</p> <p>13 A I would say from noon to close.</p> <p>14 Q People don't start drinking too early?</p> <p>15 A You'd be surprised, they get after it sometimes. We open at</p> <p>16 10:00.</p> <p>17 Q You open at 10:00?</p> <p>18 A We do.</p> <p>19 Q And what time do you close usually in peak season?</p> <p>20 A 7:00 or 8:00 depending on -- we do a soft close we call it</p> <p>21 where if there's guest that remain -- or if there's guests</p> <p>22 at 7:00 we continue to serve until they're done and on their</p> <p>23 way.</p> <p>24 Q Okay. So posted hours are 7:00 but your staff is prepared</p> <p>25 to stay later?</p> <p style="text-align: center;">Page 24</p>
<p>1 MR. INFANTE: I've seen it.</p> <p>2 Q So what is peak season for Peninsula Cellars?</p> <p>3 A In the summer it's July and in the fall it's October, but of</p> <p>4 the two it's October.</p> <p>5 Q Okay. And on a, you know, busy weekend day in July about</p> <p>6 how many visitors do you think you'd receive?</p> <p>7 A I would estimate 800 to 1,000 probably go through the door</p> <p>8 in a day.</p> <p>9 Q And how about October?</p> <p>10 A Probably 1,000 to 1200.</p> <p>11 Q Are you open in the winter?</p> <p>12 A We are.</p> <p>13 Q Roughly how many visitors would you say you get on like a</p> <p>14 weekend in the winter?</p> <p>15 A 25. It's pretty quiet.</p> <p>16 Q I bet.</p> <p>17 A There's some zero days that hurt the average.</p> <p>18 Q So do you maintain limited hours through the winter?</p> <p>19 A We do.</p> <p>20 Q And staffing I'm assuming?</p> <p>21 A Yup. One person.</p> <p>22 Q One person. Is that usually your tasting room manager,</p> <p>23 or --</p> <p>24 A Yup.</p> <p>25 Q So we talked about parking. Have you noticed any trends in</p> <p style="text-align: center;">Page 23</p>	<p>1 A Correct.</p> <p>2 Q So what is the property's capacity to have events and things</p> <p>3 outside the tasting room? Would those be outdoors, or you</p> <p>4 mentioned a backroom in the tasting room area?</p> <p>5 A Yes, if we had events it would be the most successful if it</p> <p>6 was outdoors. We have a couple of grassy fields in the</p> <p>7 vineyard area nearby so that would be the most conducive to</p> <p>8 an event.</p> <p>9 Q And what about retail? I understand that you sell wine, are</p> <p>10 there other items that are for sale besides wine?</p> <p>11 A Yes.</p> <p>12 Q And what are those?</p> <p>13 A Tee shirts, hats, corkscrews, wine related stuff, food.</p> <p>14 Q What kind of food if available?</p> <p>15 A Charcuterie boards mostly, you know, crackers, cheese dip,</p> <p>16 things like that that would go with a wine experience.</p> <p>17 Q And do you prepare those in house then in the prep kitchen</p> <p>18 you mentioned?</p> <p>19 A Yes.</p> <p>20 Q And is there a separate space in the tasting room for the</p> <p>21 retail or is behind the bar, or where is that set up?</p> <p>22 A It's all over, since it's just one main room the retail</p> <p>23 stuff is sort of along the walls and the bar is in the</p> <p>24 middle.</p> <p>25 Q Okay. Are there tables around the bar or --</p> <p style="text-align: center;">Page 25</p>

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<p>1 A Only in the off season, we only do standing this time of</p> <p>2 year when it's busy, the chairs and stuff get in the way.</p> <p>3 Q And does Peninsula Cellars do any kind of free entertainment</p> <p>4 or activities for customers in the tasting room like music</p> <p>5 or theme nights or trivia, those kinds of things?</p> <p>6 A We've had musicians in the past and we've done -- you know,</p> <p>7 there's games and stuff, some of the yard game stuff we have</p> <p>8 available for people to play if they'd like to.</p> <p>9 Q Okay. And is that inside or out on the patio? You</p> <p>10 mentioned the games.</p> <p>11 A On the patio mostly, but we've done it indoors as well</p> <p>12 depending on the weather.</p> <p>13 Q And was that just free for anybody that stopped in or was</p> <p>14 there a cover charge?</p> <p>15 A It was free.</p> <p>16 Q So when was the last time that you had live music there?</p> <p>17 A I don't know the exact date. I think we provided actually</p> <p>18 to you guys a citation we got for the live music, because it</p> <p>19 was amplified at the time. So the township told us not to</p> <p>20 do that anymore so we didn't, so that was the last one.</p> <p>21 Q So tell me about that. Where was the musician set up?</p> <p>22 A On the patio.</p> <p>23 Q Okay. And was it a singer songwriter kind of thing, a DJ,</p> <p>24 or what --</p> <p>25 A It was just a fellow with a guitar singing, but he had a</p> <p style="text-align: center;">Page 26</p>	<p>1 Manigold prior, his -- his feeling was if we don't get a</p> <p>2 complaint about it it's all right.</p> <p>3 Q Okay.</p> <p>4 A If you're disturbing other people don't do it.</p> <p>5 Q And you mentioned you have five acres. How close is</p> <p>6 Peninsula Cellars to residential areas?</p> <p>7 A There's a couple of houses to the east of us, I would be</p> <p>8 guessing as to how many feet away they are but it's a ways.</p> <p>9 Q And what was your understanding of the township's reasoning</p> <p>10 for why you weren't able to have the live musician play?</p> <p>11 MR. INFANTE: Objection; foundation. You can</p> <p>12 answer.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. INFANTE: Unless I tell you to not answer, you</p> <p>15 go ahead and answer.</p> <p>16 A What was the question again?</p> <p>17 MR. INFANTE: It happens every time on the first</p> <p>18 object. And I'm going to object again.</p> <p>19 MS. ANDREWS: You should use it carefully, like</p> <p>20 save it.</p> <p>21 MR. INFANTE: I wasn't trying to break anything up</p> <p>22 at that point, but go ahead. Sorry.</p> <p>23 MS. HILLYER: That's okay.</p> <p>24 Q What was your understanding of the township's reasoning for</p> <p>25 why you couldn't have live music?</p> <p style="text-align: center;">Page 28</p>
<p>1 bluetooth speaker.</p> <p>2 Q Was he playing along with music that was playing through the</p> <p>3 bluetooth speaker or was that his amplifier for his guitar?</p> <p>4 A That was his amplifier for the guitar.</p> <p>5 Q And that was on the patio?</p> <p>6 A Yes.</p> <p>7 Q And do you remember roughly what time of day that was?</p> <p>8 A It was in the afternoon, it probably was 2:00 to 4:00-ish,</p> <p>9 but that's an estimate.</p> <p>10 Q Okay. And what happened with that? I have that letter, I</p> <p>11 think I'm going to mark it as an exhibit so that we can talk</p> <p>12 about that for a minute.</p> <p>13 MS. HILLYER: This will be 61.</p> <p>14 (Deposition Exhibit 61 marked)</p> <p>15 Q Do you recognize this letter?</p> <p>16 A I do.</p> <p>17 Q So before you received this letter --</p> <p>18 MS. HILLYER: And I'll note this letter is dated</p> <p>19 September 9, 2021, and it's from zoning administrator</p> <p>20 Christina Deeren, D-e-e-r-e-n, to Kroupa Enterprises, LLC,</p> <p>21 and this is WOMP013774.</p> <p>22 Q Before you received this letter what was your understanding</p> <p>23 of your ability to have live music at Peninsula Cellars?</p> <p>24 A I thought we could have live music as long as it wasn't</p> <p>25 disruptive to the neighbors. When I had spoken to Rob</p> <p style="text-align: center;">Page 27</p>	<p>1 MR. INFANTE: Objection; foundation.</p> <p>2 A My understanding is only based on this letter; this letter</p> <p>3 is what gave me my understanding. I didn't have any</p> <p>4 understanding before we got this.</p> <p>5 Q Did you talk to Ms. Deeren after you got this letter?</p> <p>6 A No.</p> <p>7 Q What did you do, then, after you received this letter?</p> <p>8 A Stopped having live music.</p> <p>9 Q Did you talk to anybody at the township?</p> <p>10 A I talked to Rob Manigold in passing about many things and</p> <p>11 I'm sure this was one of them.</p> <p>12 Q Do you recall if he had any reaction to the situation?</p> <p>13 A He said they got a complaint so they had to do something</p> <p>14 about it.</p> <p>15 Q And do you know anything about the complaint or where it</p> <p>16 came from or --</p> <p>17 A I do not.</p> <p>18 Q And you said that you had previously had live music, this</p> <p>19 was not the first time you had had a musician there;</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. How many other times do you think you'd had live</p> <p>23 music?</p> <p>24 A We provided a document that showed the payments to those</p> <p>25 musicians, that would be the number -- that would be the</p> <p style="text-align: center;">Page 29</p>

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<p>1 appropriate number. I don't know it off the top of my head</p> <p>2 but I would guess 10.</p> <p>3 Q And so I recall that was the summer of 2021, the same time</p> <p>4 period as this letter, leading up to it?</p> <p>5 A Correct; yup.</p> <p>6 Q Had you ever had live music at the tasting room in previous</p> <p>7 years?</p> <p>8 A Yes.</p> <p>9 Q Do you remember how far back that was?</p> <p>10 A I don't. It was few and far between.</p> <p>11 Q Were those in connection with special events that were held</p> <p>12 at the winery or just --</p> <p>13 A Typically it was just like staff. I had a friend that was a</p> <p>14 musician and needed a place to play.</p> <p>15 Q I understand.</p> <p>16 A Yup.</p> <p>17 Q So would I be correct in understanding then that they didn't</p> <p>18 file any kind of appeal in response to Ms. Deeren's</p> <p>19 decision?</p> <p>20 A Correct.</p> <p>21 Q And did you ask the zoning board of appeals for any kind of</p> <p>22 interpretation of your special use permit or the zoning</p> <p>23 ordinance with respect to your ability to have live music?</p> <p>24 A No.</p> <p>25 Q So what does Peninsula Cellars, I guess, most want to do</p> <p style="text-align: center;">Page 30</p>	<p>1 Cellars to be able to offer?</p> <p>2 A Just something a little more hearty than, you know, a cheese</p> <p>3 and meat board. Something that people can sit down and</p> <p>4 enjoy with a glass of wine or two and not feel like they've</p> <p>5 overindulged.</p> <p>6 Q Is your current kitchen sufficient to prepare that kind of</p> <p>7 food, or would you have to upgrade your kitchen or bring</p> <p>8 food in from another kitchen?</p> <p>9 A I'm not sure exactly what the demand would be, so I'm not</p> <p>10 sure if our kitchen could support it, but our kitchen does</p> <p>11 pretty well for that.</p> <p>12 Q The other tasting rooms that you have, do they have events</p> <p>13 and food and things that you would consider looking to as a</p> <p>14 model?</p> <p>15 A Yes.</p> <p>16 Q Can you tell me what that's like?</p> <p>17 A They have wine dinners, full on seated five course dinners</p> <p>18 where the wines are paired with each course and someone</p> <p>19 speaks on their behalf, whether it's a person from our</p> <p>20 winery or a person from that particular location. And we'll</p> <p>21 basically lead the guest through an experience with food and</p> <p>22 wine.</p> <p>23 Q Is that something that Peninsula Cellars would like to do in</p> <p>24 the Peninsula?</p> <p>25 A Yeah.</p> <p style="text-align: center;">Page 32</p>
<p>1 then that it can't do under the current zoning ordinance?</p> <p>2 A We would like all the different rights that all the other</p> <p>3 wineries have under the law, be it food or entertainment</p> <p>4 events.</p> <p>5 Q What is your understanding of what those rights are that</p> <p>6 other wineries have that Peninsula Cellars does not?</p> <p>7 A Well, I'm not a -- I don't know exactly the chateau</p> <p>8 ordinance language and things of that nature, but events of</p> <p>9 different sizes and being to have more robust food offerings</p> <p>10 would be the couple things that come to mind, being able to</p> <p>11 stay open however late we'd like.</p> <p>12 Q How late would you like to stay open?</p> <p>13 A We would probably react to the business demand, so I'm not</p> <p>14 sure at this point how late it would be, and it would be</p> <p>15 seasonal of course.</p> <p>16 Q As everything is here; right?</p> <p>17 A Yup.</p> <p>18 Q Do you have any particular kinds of events in mind that</p> <p>19 you'd like to have?</p> <p>20 A No. We've had requests from different groups for different</p> <p>21 things, whether it's reunions or wedding receptions or, you</p> <p>22 know, things of that sort. There's really no limit to what</p> <p>23 people ask you for.</p> <p>24 Q That's probably true. You mentioned more robust food</p> <p>25 offerings, what kind of food would you like Peninsula</p> <p style="text-align: center;">Page 31</p>	<p>1 Q And what other kind of things do they offer?</p> <p>2 A They do a lot of like game night stuff with wine where it's</p> <p>3 the trivia or euchre or any of those kind of things where</p> <p>4 people will come and gather and have a glass of wine and</p> <p>5 just have a good time.</p> <p>6 Q And do groups ever rent those out for private events?</p> <p>7 A At the remote tasting rooms Downstate?</p> <p>8 Q Uh-huh (affirmative).</p> <p>9 A I would presume so but I don't know. I'd be guessing.</p> <p>10 Q And do you know if those locations have retail? Do they</p> <p>11 sell items other than wine at those locations?</p> <p>12 A They do.</p> <p>13 Q What kinds of things do they sell?</p> <p>14 A Glasses, tee shirts, hats, art. I know they sell paintings</p> <p>15 off the wall, things like that.</p> <p>16 Q What kind of art? Local?</p> <p>17 A I don't know. I mean, it looks like of trippy to me, but I</p> <p>18 don't know if that's a good description.</p> <p>19 Q That is a good description.</p> <p>20 MR. INFANTE: I had a feeling you were going to</p> <p>21 say something like that.</p> <p>22 Q I don't know if it's accurate, but I'm getting a mental</p> <p>23 picture.</p> <p>24 MR. INFANTE: Not your cup of tea it sounds like.</p> <p>25 A It's very colorful and it's unique, it's good stuff.</p> <p style="text-align: center;">Page 33</p>

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<p>1 Q So is that something you might like to do at Peninsula 2 Cellars here, have art on the wall that people can purchase? 3 A Yes. 4 Q Are there other kinds of items that you'd like to sell that 5 you're not able to right now? 6 A I'm not sure what that would be, I'd have to dig into that 7 in a little more depth. 8 Q For the events that you're envisioning having, are you -- do 9 you have a number of people in mind that would be a sweet 10 spot that you're looking to hit? Like for within the 11 tasting room, how many people would you have for a wine 12 dinner maybe? 13 A I think within the tasting room seated a good number would 14 be 40 people. 15 Q And then how about for an outdoor event if you were able to 16 set up on one of those grassy areas? 17 A Outdoor we have enough space we could easily have 150 18 people. 19 Q And would I be correct in assuming that that would involve 20 making use of the overflow parking? 21 A It would. 22 Q Okay. How about bathrooms on the site? 23 A There's one in the building and we've brought in portable 24 toilets for the busy season in the fall and in July when 25 needed; yup.</p> <p style="text-align: center;">Page 34</p>	<p>1 for a break or -- 2 MS. HILLYER: I think so. I think actually -- 3 yes, now is a very good time for a break. Good timing. 4 (Off the record) 5 Q So I'd like to switch gears a little bit and talk about the 6 things that Peninsula Cellars has done to try to get the 7 challenged provisions changed before it filed this 8 litigation. What has Peninsula Cellars done to try to 9 change the ordinance? 10 A I've participated for years in the working committees and 11 the planning sessions, talking with the planners and the 12 supervisor and the town board members. 13 Q Do you remember how far back that goes? Roughly the first 14 time maybe you worked on one of those committees? 15 A No, not the first time, that's -- it's gone years and years. 16 I mean, it's measured more in tenure of planners than 17 anything. 18 Q Okay. 19 A I mean, I worked with Michelle Reardon, Gordon Hayward, Dan 20 Leonard, Randy Mielnik. 21 Q You mentioned Rod earlier, was he a planner? 22 A He was a treasurer; yeah, he was involved but the planners 23 are the ones that always start the ball rolling. 24 Q Okay. And you mentioned committees, were those WOMP 25 committees or community committees, or what were those?</p> <p style="text-align: center;">Page 36</p>
<p>1 Q Is that something you have to do regularly? 2 A We typically bring one in the in fall to make sure everybody 3 is comfortable, but in July it's more rare, yeah. 4 Q And do you have a sense of how frequently you might like to 5 have, say, wine dinners in the tasting room? 6 A I'm not sure what the demand would be so I can't -- it would 7 be a guess to say how frequently it would be. But, you 8 know, once a week seems like a reasonable number during the 9 busy season. 10 Q And how about outdoor events, like larger 150 people events? 11 A Again, I'm not sure what the demand would sort of -- the 12 demand would lead the way, so if the demand was there I 13 think we could accommodate, we could staff up and handle it. 14 Q And when you say "staff up," you'd probably have to hire 15 additional staff beyond your current staff? 16 A Yeah. 17 Q Do you have an events person or anybody that handles that 18 kind of thing right now? 19 A No, not a specifically dedicated events person. 20 Q Okay. And I apologize if I've already asked you this: You 21 do not have a special marketing person? 22 A We do not. 23 Q Now I remember, you do it as a group; right? 24 A We do, yes. 25 MR. RAJIC: Holly, would there be an opportunity</p> <p style="text-align: center;">Page 35</p>	<p>1 A They were committees that were set up, anyone could be a 2 part of them. They were just -- I don't know what the 3 precise name of them were, but like listening sessions or 4 just where you kick around ideas and voice concerns and then 5 the township would take it in and sort of go from there. 6 Q Did the township organize those or did WOMP organize those? 7 A Both; it was a joint effort. 8 Q When is the first committee you remember being on? 9 A I don't know, it would be a guess. It would be well over 10 ten years ago. 11 Q And do you remember what the issues were at the time that 12 you were trying to address? 13 A All the same things we're trying to address now. 14 Q And do you remember who else was involved with you at that 15 time? 16 A Marie-Chantal was often there, Lee Lutes would be there, 17 Chris Baldyga. Different members from different wineries 18 would come and go. It wasn't a set -- like you could come 19 and go as you liked, it wasn't a set group based on the fact 20 people that were assigned to do it. 21 Q Do you remember the planner that was associated with that 22 first effort? 23 A I think it was Michelle Reardon actually. 24 Q And do you remember what happened, like was anything 25 resolved or changed?</p> <p style="text-align: center;">Page 37</p>

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<p>1 A No.</p> <p>2 Q And how did that group come to stop working together?</p> <p>3 A I mean, it fizzled out when the township didn't take any of</p> <p>4 our concerns further than listening to them. There was no</p> <p>5 action, it fizzled out. Michelle resigned or quit or was</p> <p>6 fired, I don't know exactly how she left, and then once</p> <p>7 another planner came in you started over.</p> <p>8 Q So do you remember another committee that you were a part of</p> <p>9 after that?</p> <p>10 A No, not specifically, but it would be the same thing. I</p> <p>11 don't remember the --</p> <p>12 Q More informal groups than committees?</p> <p>13 A Yeah, I don't remember the order of the planners. I don't</p> <p>14 remember if Dan Leonard was before Michelle or Michelle was</p> <p>15 before Dan, so that would have -- I'm sure that's in the</p> <p>16 township records.</p> <p>17 Q So what about some of the more recent efforts, like in the</p> <p>18 months leading up to before the Complaint was filed in this</p> <p>19 litigation, were you involved in those?</p> <p>20 A Yes; yes.</p> <p>21 Q And what kinds of things were you doing on behalf of</p> <p>22 Peninsula Cellars as part of those efforts?</p> <p>23 A Just participating; going, listening, contributing ideas.</p> <p>24 Q Were there meetings or was this all through correspondence?</p> <p>25 A There were meetings.</p> <p style="text-align: center;">Page 38</p>	<p>1 operation, ability to have events, you know, First Amendment</p> <p>2 infringements, the food aspect, having a restaurant.</p> <p>3 Q And what is your understanding of the First Amendment</p> <p>4 infringements?</p> <p>5 MR. INFANTE: Objection; calls for a legal</p> <p>6 conclusion.</p> <p>7 A Basically as I understand it the requirement to have my logo</p> <p>8 on things is one piece of the First Amendment violation</p> <p>9 against me personally, and I can't speak for the other</p> <p>10 wineries. Another piece is the prohibition of being able to</p> <p>11 advertise. So one requiring me to speak, so to say, with my</p> <p>12 logo and one prohibiting me from speaking by not allowing me</p> <p>13 to advertise my product.</p> <p>14 Q Let's talk about those one at a time. So what kinds of</p> <p>15 things would you like to sell that wouldn't have your logo</p> <p>16 on them?</p> <p>17 A Like a bottle of water or a can of pop, you know, simple</p> <p>18 things like that. There's all sorts of wine related</p> <p>19 tchotchkes that would make sense for me to put my logo on.</p> <p>20 Q What kinds of things are you thinking about?</p> <p>21 A Simple things like wine stopper or the things that you put</p> <p>22 in the wine bottle to pump the air out after you're done</p> <p>23 with a couple of glasses, you know, and you've got a half a</p> <p>24 bottle left.</p> <p>25 Q And like bottled water and pop, would that be for people to</p> <p style="text-align: center;">Page 40</p>
<p>1 Q Do you remember when those meetings were held?</p> <p>2 A No, not specifically.</p> <p>3 Q But it was sometime before October of 2020?</p> <p>4 A Yes.</p> <p>5 Q And do you remember who was involved in those meetings?</p> <p>6 A The same people from the winery side of things, and Brad was</p> <p>7 there and -- I don't remember the -- I think Randy was</p> <p>8 involved at that time, Randy hadn't left yet and the new</p> <p>9 person hadn't gotten there yet.</p> <p>10 Q Do you remember when Randy left?</p> <p>11 A During the COVID -- I think COVID had just started,</p> <p>12 somewhere in the 2020 range. That's a guess.</p> <p>13 Q And is Peninsula Cellars a member of WOMP?</p> <p>14 A We are.</p> <p>15 Q Okay. And what kinds of things was WOMP and the group of</p> <p>16 winery representatives asking for at this point?</p> <p>17 A All of -- you know, consideration and conversation about all</p> <p>18 of the things that we have in the Complaint.</p> <p>19 Q And what is your understanding of what those things are in</p> <p>20 the Complaint? Could you summarize for me what those things</p> <p>21 are that you were asking for?</p> <p>22 MR. INFANTE: Objection; calls for a legal</p> <p>23 conclusion. You can answer.</p> <p>24 A I think all the points in the Complaint seem obvious to me,</p> <p>25 but the ones that come to top of mind would be hours of</p> <p style="text-align: center;">Page 39</p>	<p>1 drink at the tasting room or take to go?</p> <p>2 A Either way, it would be their choice.</p> <p>3 Q Are you able to serve like water and soda from the bar, do</p> <p>4 you have a -- you know, do you have any soft drinks or</p> <p>5 non-wine options for people to drink while they're at the</p> <p>6 tasting room?</p> <p>7 A We serve root beer, yup.</p> <p>8 Q On tap?</p> <p>9 A Yup. We have one option.</p> <p>10 Q And the prohibition on advertising that you mentioned, what</p> <p>11 are you referring to with that?</p> <p>12 A It's best verbalize in my special use permit, the findings</p> <p>13 of fact, so if I had that I could tell you exactly what it</p> <p>14 is. But in a nutshell it's I'm not allowed to advertise</p> <p>15 food or non-food items. So technically by the letter of the</p> <p>16 law as I read it you can't advertise anything because that</p> <p>17 is everything, it's either food or it's not food and that's</p> <p>18 everything.</p> <p>19 Q Okay. Let's take a look at this. I think I know the</p> <p>20 section you're referring to but it will be better if we have</p> <p>21 it in front of us. So this is Exhibit 60. Do you still</p> <p>22 have your copy?</p> <p>23 A I do not. I gave it back.</p> <p>24 (Court reporter hands exhibit to witness)</p> <p>25 Q I like to jump around. So are you referring to subsection</p> <p style="text-align: center;">Page 41</p>

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<p>1 (k) on the page that's marked at the bottom 8166? It's 2 about halfway through. 3 A Yes, that's the one I'm referring to. 4 Q So what is your understanding of what this provision 5 involves? 6 MR. INFANTE: Objection; calls for a legal 7 conclusion. 8 A I mean, it says signs and other advertising may not promote, 9 list or in any way identify any of the food or non-food 10 items allowed for sale in the tasting room. So as I said, 11 to my understanding that would be you can't list or in any 12 way identify anything because it's either food or it's not 13 food and there's nothing in between. 14 Q So do you list your wines for sale? 15 A I do. 16 Q Okay. And do you see this section -- so right below this 17 it's kind of bold type below subsection (k) where it refers 18 to signs to be placed on the property. 19 A Yes. 20 Q And it says that the only signs to be placed on the property 21 are those approved and shown on the site plan. Are you 22 familiar with that site plan? 23 A Yes. 24 Q Do you know what signs this was referring to, what signs are 25 included in your site plan?</p> <p style="text-align: center;">Page 42</p>	<p>1 corner? 2 A It is, yeah. 3 Q Are there any other signs that you know of that are in the 4 site plan? 5 A There is a sign that directed busses and RV's. 6 Q Okay. And are there any other signs that Peninsula Cellars 7 has wanted to put up over the years? 8 A Yes, we've wanted to put better signage out by Center Road 9 to make it easier for cars driving by to see us in a timely 10 manner to be able to turn. 11 Q What have you had in mind for that when you say "better 12 signage"? 13 A Well, just more visible and larger. 14 Q Okay. 15 A The sign ordinance is a different animal, yeah. 16 Q Okay. How large were you envisioning? 17 A I don't know sizewise from, you know, a matter of feet, but 18 Chateau Grand Traverse has a beautiful sign, I emulate 19 theirs if I could. 20 Q And have you requested an amendment to this SUP or asked for 21 any kind of variance to the zoning requirements that you're 22 currently governed by? 23 A Not in a formal document, just through conversation. 24 Q Conversation with who, if you remember? 25 A Rob Manigold.</p> <p style="text-align: center;">Page 44</p>
<p>1 A I think it's the sign out front that this is referring to, 2 but I need to have the site plan in front of me to confirm 3 that for sure. 4 Q Okay. Is that -- where is that sign located when you say 5 "out front"? 6 A So it would be to the west of the building, between the 7 building and Center Road. 8 Q Okay. Is that the sign that directs people to your winery? 9 A Yeah, it identifies that that's us. 10 Q Can you describe that for me? 11 A It's a white and black sign that says Peninsula Cellars and 12 then there's an open sign, like a flag, temporary flag, that 13 we put in and out -- or I guess it's a dangly thing that 14 says open or closed underneath it, if that makes sense. 15 Q Not fabric but -- 16 A It's like a placard. 17 Q Yup. I understand. Are there any other signs that you know 18 of on the site plan, like signs for parking or -- 19 A Yes, off Carroll Road there's a stop sign so people don't 20 pull out of our tasting room onto Carroll Road without 21 stopping first. Yeah. 22 Q Okay. And is that the road that intersects with Center 23 Road? 24 A It is. 25 Q And am I correct in remembering the tasting room on the</p> <p style="text-align: center;">Page 43</p>	<p>1 Q And about how long ago did you last talk to him about the 2 sign issue? 3 A That's a long time ago. The sign issues there's really no 4 compromise to that one. 5 Q What did Mr. Manigold tell you about the signs? 6 A He said it has to be exactly as it's stated in the sign 7 ordinance and there's no exception. 8 Q And when you say "sign ordinance," are you referring to 9 something other than the remote winery tasting room -- 10 A Yes. 11 Q -- ordinance sections that we're talking about? 12 A I am. 13 Q Are there any other signs that you have wanted to put up on 14 the property? 15 A No. 16 Q Okay. Let me get one more document for you to review. 17 MS. HILLYER: This would be Exhibit 62. 18 (Deposition Exhibit 62 marked) 19 Q So I've just handed you a document marked as Exhibit 62, 20 which is Plaintiff Grape Harbor, Inc.'s, Answers to PTP's 21 first set of Interrogatories. I'll give you a second to 22 look that over. 23 (Witness reviews exhibit) 24 Q Do you recognize this document? 25 A I do.</p> <p style="text-align: center;">Page 45</p>

12 (Pages 42 to 45)

Grape Harbor, Inc.

LEASE

IT IS HEREBY AGREED, between David D. Kroupa and Joan M. Kroupa, husband and wife (hereinafter called "Lessor"), and Grape Harbor, Inc. a Michigan corporation (hereinafter called "Lessee"), as follows: Lessor, in consideration of the rents and covenants herein specified, leases to Lessee the following described premises known as the "School House" situated in the Township of Peninsula, County of Grand Traverse and State of Michigan, to-wit:

described in Exhibit A attached to this lease,

for the term of Ten (10) years from and after the date of execution of this lease, on the terms and conditions hereinafter mentioned, to be occupied for a wine tasting and sale office and related uses, and in no case to be used for any business deemed extra hazardous on account of fire. This lease shall commence and the rent obligation shall begin at such time as Lessor acquires title to the real estate described above, but in no event later than May 1, 1999.

Provided, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the Lessor, Lessor's attorney, heirs, representatives and assigns, to re-enter into and re-possess the said premises, and the Lessee, and each and every other occupant, to remove and put out;

The Lessee hereby hires, the said premises for the term above mentioned, and covenants and promises to pay to Lessor, Lessor's representatives and assigns, for rent of said premises for said term the sum of Thirty Thousand Dollars (\$30,000.00) per year to be paid in monthly installments of Two Thousand Five Hundred Dollars (\$2,500.00) commencing on the date of this lease and on the same day of each month thereafter. Commencing January 1, 2000 and annually thereafter, the Lessor shall have the right to adjust the rent applying the change in the Consumer Price Index CPI-U Detroit All Urban Consumers All Items 1982-1984 base as the adjusting factor. As of the date of the execution of this lease, the CPI factor stands at 166.2. The adjustment shall be applied to the rent established for the initial year of the lease, as follows:

If, on January 1, 2000, the relevant index stands at 170, rent would be calculated as follows: $170 \div 166.2 = 1.0228$, \$2,500.00 multiplied by 1.0228 = \$2,557.00 per month 2000 rent.

Lessee agrees to purchase at Lessee's expense for Lessee's benefit and for the benefit of Lessor a policy insuring the premises against loss by fire including extended coverage in an amount of not less than insurable value thereof. Lessee agrees to purchase at Lessee's expense third party liability coverage naming Lessor as additional insured in an amount and with such companies as Lessor and Lessee shall agree upon from time to time but in no event less than One Million Dollars. Lessee agrees to purchase at Lessee's expense such insurance as Lessor and Lessee deem necessary to protect them against

Exhibit A

Parcel 5: part of the North half of the Southwest quarter, Section 4, Township 28 North, Range 10 West, more fully described as: Commencing at the West 1/4 corner of said Section 4; thence North $89^{\circ} 45' 50''$ East, 2107.37 feet, along the East & West quarter line of said Section 4 to the Point of Beginning, thence continuing North $89^{\circ} 45' 50''$ East, 493.10 feet; thence South $23^{\circ} 41' 26''$ West, 476.62 feet; thence South $89^{\circ} 45' 50''$ West, 666.73 feet, parallel with said East-West quarter line of Section 4; thence North $39^{\circ} 52' 10''$ East, 569.60 feet along the centerline of M-37 to the Point of Beginning.

liability arising out of wine manufacture and operation of a tasting room. In the event of a dispute between the parties as to what coverage is necessary, Lessor's view shall prevail.

Lessee agrees, to bear all real property and personal property taxes imposed with respect to the leased premises and contents.

Lessee further covenants that Lessee will not assign nor transfer this Lease, or sub-let said premises, or any part thereof, without the written assent of Lessor;

Lessee shall, at Lessee's own expense, during the continuance of this Lease, keep the said premises and every part thereof in as good repair, and at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted; Lessor may, upon notice to Lessee enter the premises to inspect them for purposes of determining compliance with the provisions of this Lease.

Lessor covenants that Lessee, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid.

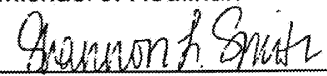
The covenants, conditions and agreements, made and entered into the several parties hereto, are declared binding on their respective heirs, representatives and assigns.

Witness our hands and seals, this 24th day of June 1999

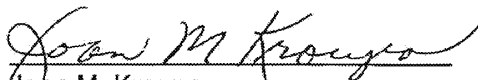
Signed and sealed in
the presence of:

Parties:

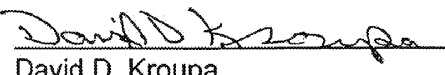

Michael J. Houlihan


Shannon L. Smith


David D. Kroupa


Joan M. Kroupa

Grape Harbor, Inc.

By: 
David D. Kroupa
Its President

Alexander / Teahen
approved
as
amended

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
JANUARY 19, 1998**

PRESENT: Chair Coulter; Cronander; Johnson; Teahen; Fiebing; McManus; Z/A Planner Hayward.

ABSENT: Sturmer; Attorney Ford excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None

ADDITION TO AGENDA Coulter said that the nominating committees report needed to be added to the agenda. Teahen made the following motion.

MOTION: Teahen/Fiebing that the committee recommends the following for officers; Virginia Coulter as Chair; Betty Cronander as Vice Chair and Jim Sturmer as Secretary. **Passed Unan**

PUBLIC INPUT Nancy Heller, 3091 Blue Water Rd., T.C. would like the Township to move forward with building new offices. She has passed this same message on to the Town Board and would like the PC to look at this also.

MOTION: Cronander/Teahen approve minutes 12/15/97. **Passed Unan**

1. **Reschedule February meeting - Conflicts with Presidents Day**
The consensus of the PC is to change the meeting to Tuesday, February 17th.

2. **O'Keefe - Special Use Permit Revision - Winery/Chateau**
Consider setting Public Hearing

Fiebing reviewed the committee report. The committee had suggested that acreage that was not contiguous be used towards the density on the parcel. Hayward said that he would check with Dick Ford prior to the public hearing. Hayward did not see a problem as long as it is deed restricted.

Coulter asked if they will have outdoor activities? O'Keefe not there, but at the winery. Johnson mentioned that setback was a concern with the committee, and also said that they would like a list of products produced and sold.

MOTION: Fiebing/McManus to set a public hearing for February 17th and prior to the meeting the committee will meet and also Hayward will review the density question with Dick Ford. **Passed Unan**

The entire PC will also meet at the site (Chateau Grand Traverse) on February ^{at} 4:00 pm.

PC reg 1/19/98

3. Winery/Wine Tasting - Proposed Ordinance Amendment.

The PC received a proposed ordinance amendment for wine tasting. After some brief discussion this was sent to the Ag/Commercial committee (Teahen, Fiebing, Johnson).

4. Peninsula Cellars - Wine Tasting Request.

This request is submitted by Dave and Joan Kroupa, and Lee Lutes. They are proposing to move their current wine tasting from the store in Old Mission to the old school house on the corner of Center and Carroll Roads. Hayward said that currently the ordinance does not provide for wine tasting so the ordinance would have to be amended or they would have to apply for a rezoning on the parcel. After some brief discussion this was sent to the Ag/Commercial committee (Teahen, Fiebing, Johnson).

5. County Septage Plan - Committee Report.

Hayward reviewed the committees report for the septage plan.

Fiebing asked if Harbor Springs ^{was} given a special permit to use a snow gun to spread the septage. Hayward they are treating the sewage and storing the effluent in tanks so it is essentially water they are making snow out of. Fiebing does the current state law allow land treatment in the winter time? Hayward it allows land treatment but it has to be plowed or disc in within 24 hours from application. Hayward also felt that this land could be used for crop rotation.

Fiebing are all of the townships in the county ~~are~~ participating and what is the county plan? Hayward recalled that the county said that they would take care of the townships that did participate. Fiebing so if Peninsula township opted out and the county did their own then the township would have to provide for their own disposal. Hayward that was the assumption that I had. Hayward also mentioned that the city would not be participating because it is all sewers, and a large portion of some of the other townships are all sewers. Fiebing also mentioned that the township is already taxing themselves to avoid such costs. The board also discussed using property that the development rights have been purchased on ~~be~~ used. as disposal sites.

Fiebing felt that if we did participate that holding tanks be assessed an additional amount. Cronander said that the committee also felt that the people with septic tanks are subsidizing those with holding tanks - almost unrealistically. The committee felt that a middle ground be looked at.

Mark Nadolski asked if all of the townships were going to have a meeting to listen to other options and ideas? Coulter said she would bring that up at the Planning Commissions chair meeting.

The PC decide to forward a copy of their committee report and the above comments to the township board for the February meeting.

BUSES AND GROUP RESERVATIONS

BOOK HERE



ORDER WINE

FIND-A-STORE

BOOK A RESERVATION

HOURS OF OPERATION:

OPEN DAILY 10AM-5PM

PLEASE **CLICK HERE** TO PLACE AN ONLINE ORDER FOR SHIPPING.**Closed:**

Thanksgiving Day, Christmas Day, New Years Day, and Easter Sunday.

GROUPS OF 12 OR MORE ARE REQUIRED TO MAKE A RESERVATION.
WALK INS FOR GROUPS ARE ADRESSED ON A CASE BY CASE BASIS.[CLICK HERE FOR BUS/GROUP RESERVATIONS.](#)

Tasting Room

Indoor seating is available on a first come, first served basis.

If you are travelling with a group of 12 or more people or with a bus/tour/shuttle company, we ask that you make arrangements by calling our tasting room at 231-933-9787.

Outdoor seating will be available on a first come, first served basis as long as weather permits.

If you are travelling with a licensed transportation company, please refer to our bus/tour group policies.

Wine flights are available for \$15, which includes four 2 ounce pours of any wine or hard cider of your choosing. Wine and hard cider are also available by the glass.

We ask our guests to adhere to the following guidelines when they visit our tasting room:

- If you are visiting with a bus/tour/shuttle company reservations are limited to 45 minutes, and begin upon arrival time-not reservation time.
- Group reservations will be surrendered when you're **10** minutes late.
- Outside food or beverages are not permitted due to licensing restrictions.
- Due to licensing restrictions, pets are not permitted on the patio or inside the building. Pets on a leash are welcome in the vineyard seating area. Please clean up after your pets should they make a mess.
- Our outdoor patio has been arranged to allow for the permitted occupancy allowed by law and spaced appropriately. We ask that you do not rearrange the tables or chairs. Guests are not permitted to drink in undesignated areas.
- Guests will check in with a host upon arrival and be directed accordingly.
- All guests are asked to respect the personal space of other visitors.
- We are only accepting credit cards or contactless payments. Cash payments are not accepted.
- We reserve the right to ask any guest to leave immediately if our safety guidelines are not followed.
- Peninsula Cellars promotes responsible drinking. Guests will be limited to 2 glasses per guest.

We appreciate your patience and understanding as we continue to focus on the safety of our staff and guests to remain open. We look forward to serving you soon.

[Peninsula Cellars Tasting Room \(archive.org\)](https://www.peninsula-cellars.com/tasting-room) June 26, 2023

WOMP013780

3:21 PM

06/23/23

Accrual Basis

Peninsula Cellars
Transaction Detail By Account
 January 2021 through December 2022

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
Cost of Sales								
Event & Festival Costs								
Pen.Cellars Events								
Check	08/12/2021	8654		live music, Th...		Huntington GH ...		
Check	08/26/2021	8683		live music 2-6 ...		Huntington GH ...		
Check	09/02/2021	8697		live music 3-6 ...		Huntington GH ...		
Check	09/09/2021	8719		live music 3 -...		Huntington GH ...		
Check	09/16/2021	8726		live music Sep...		Huntington GH ...		
Bill	09/24/2021			live music , 3 -...		2000 - Account...		
Check	10/02/2021	8754		live music We...		Huntington GH ...		
Check	10/07/2021	8788		live music @ T...		Huntington GH ...		
Check	10/14/2021	8790		live music at T...		Huntington GH ...		
Check	10/21/2021	815		live music 3-6 ...		Huntington GH ...		
Check	10/28/2021	8820		live music, Th...		Huntington GH ...		
Total Pen.Cellars Events								
Total Event & Festival Costs								
Total Cost of Sales								
TOTAL								

CONFIDENTIAL

WOMP013775

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

ROBERT K. MANIGOLD
SUPERVISOR

BECKY CHOWN
CLERK

BRAD BICKLE
TREASURER

MARGARET ACHORN
TRUSTEE

DAVID SANGER
TRUSTEE

WARREN WAHL
TRUSTEE

ISAIAH WUNSCH
TRUSTEE

September 9, 2021

Kroupa Enterprises LLC
c/o: Joan & John Kroupa
2324 Kroupa Rd.,
Traverse City, MI 49686

Re: Amplified music

Parcel No. 28-11-004-015-00 – 11480 Center Rd., Traverse City, MI 49686

Dear Mr. Kroupa,

This letter is in regard to a complaint that I received on September 2, 2021, regarding amplified music at the afore mentioned location. Since your property is surrounded by residentially established parcels the amplified music is impactful and disruptive to the surrounding residences.

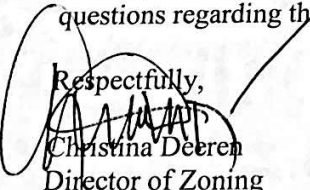
Please be advised that per your Special Use Permit No. 62 amplified music is not an allowable use per this special use permit. Therefore, any continuation of amplified music will be a violation of this special use permit.

Failure to comply will result in a civil infraction citation being issued for each day the violation continues and could also include your special use permit being revoked by the Peninsula Township Board of Trustees.

I would appreciate your prompt action in complying with these regulations.

I appreciate your time in this matter. Please feel free to contact me if you have any further questions regarding this information.

Respectfully,


Christina Deeren
Director of Zoning
Zoning Administrator

WOMP013774

EXHIBIT 24**PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 11**

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF PATRICK BRY'S

<p>1 DEPOSITION OF PATRICK BRY'S</p> <p>2 Taken by the Intervener-Defendant on the 14th day of July,</p> <p>3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at 8:00</p> <p>4 a.m.</p> <p>5</p> <p>6 APPEARANCES:</p> <p>7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>8 And</p> <p>9 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>10 Miller Canfield Paddock & Stone, PLC</p> <p>11 99 Monroe Avenue, NW, Suite 1200</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 776-6333</p> <p>14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>15 McGraw Morris, PC</p> <p>16 300 Ottawa Avenue, NW, Suite 800</p> <p>17 Grand Rapids, Michigan 49503</p> <p>18 (616) 288-2700</p> <p>19 For the MS. TRACY JANE ANDREWS (P67467)</p> <p>20 Intervener-Defendant: Law Office of Tracy Jane Andrews, PLLC</p> <p>21 619 Webster Street</p> <p>22 Traverse City, Michigan 49686</p> <p>23 (231) 714-9402</p> <p>24 And</p> <p>25 MS. HOLLY LYNN HILLIER (P85318)</p> <p>Olson Bzdok & Howard, PC</p> <p>420 East Front Street</p> <p>Traverse City, Michigan 49686</p> <p>(231) 946-0044</p> <p>Also Present: Colin Miller</p> <p>Dave Sanger</p> <p>RECORDED BY: Stacey M. Seals, CER 7908</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>Page 2</p>	<p>1 Traverse City, Michigan</p> <p>2 Friday, July 14, 2023 - 11:25 a.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm the</p> <p>4 testimony you're about to give will be the whole truth?</p> <p>5 MR. BRY'S: Yes.</p> <p>6 PATRICK BRY'S</p> <p>7 having been called by the Intervener Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. ANDREWS:</p> <p>10 Q Good morning, could you please state your name for the</p> <p>11 record.</p> <p>12 A It's Patrick James Brys.</p> <p>13 Q Mr. Brys, I have a long history over the last five days of</p> <p>14 desecrating people's names, so I apologize in advance if I</p> <p>15 do the same to you. My name is TJ Andrews, I am here on</p> <p>16 behalf of Protect the Peninsula.</p> <p>17 A Uh-huh (affirmative).</p> <p>18 Q Have you been deposed before?</p> <p>19 A No.</p> <p>20 Q Never?</p> <p>21 A Never.</p> <p>22 Q Have you observed any of the depositions over the course of</p> <p>23 this week?</p> <p>24 A No.</p> <p>25 Q All right. Well, then this will not be a repeat for you.</p> <p>Page 4</p>
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Andrews 4</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 63 marked 40</p> <p>9 (Special Use Permit 115)</p> <p>10 Deposition Exhibit 64 marked 45</p> <p>11 (Special Use Permit 115 First Amendment)</p> <p>12 Deposition Exhibit 65 marked 47</p> <p>13 (Special Use Permit 115 Second Amendment)</p> <p>14 Deposition Exhibit 66 marked 50</p> <p>15 (Special Use Permit 115 Third Amendment)</p> <p>16 Deposition Exhibit 67 marked 53</p> <p>17 (Special Use Permit 115 Fourth Amendment)</p> <p>18 Deposition Exhibit 68 marked 61</p> <p>19 (Request to First Production of Documents)</p> <p>20 Deposition Exhibit 69 marked 77</p> <p>21 (Email dated March 20, 2019)</p> <p>22 Deposition Exhibit 70 marked 85</p> <p>23 (Answers to Interrogatories)</p> <p>24 Deposition Exhibit 71 marked 88</p> <p>25 (Meeting Minutes July 7, 2008)</p> <p>Deposition Exhibit 72 marked 95</p> <p>(Email dated May 8, 2012)</p> <p>Deposition Exhibit 73 marked 99</p> <p>(Email dated August 31, 2011)</p> <p>Page 3</p>	<p>1 This deposition is obviously being transcribed.</p> <p>2 A Uh-huh (affirmative).</p> <p>3 Q As a result we will need all communication to be verbal.</p> <p>4 A Uh-huh (affirmative).</p> <p>5 Q So your responses to me should be verbal so that the court</p> <p>6 reporter can capture them in the record. Is that clear to</p> <p>7 you?</p> <p>8 A Sure.</p> <p>9 Q Okay. If you do not understand a question, please ask for</p> <p>10 clarification. If you answer I will assume you understand</p> <p>11 the question. Is that okay?</p> <p>12 A Yes.</p> <p>13 Q All right.</p> <p>14 MR. INFANTE: And constantly saying "uh-huh,"</p> <p>15 she's going to write every one of those down.</p> <p>16 Q If your attorney interrupts you, please -- I'm joking.</p> <p>17 MS. ANDREWS: I appreciate the helpful coaching,</p> <p>18 and I'll be the judge of when it's helpful.</p> <p>19 Q Please do let me finish questions, let's try not to</p> <p>20 interrupt each other or speak over each other because that's</p> <p>21 confusing to read and I'm sure to transcribe as well. If</p> <p>22 you don't -- let's see. If your attorney objects to any of</p> <p>23 my questions, I will expect you to answer anyway unless he</p> <p>24 instructs you not to answer due to a claim of privilege. I</p> <p>25 generally -- sometimes ask for open-ended questions that</p> <p>Page 5</p>

2 (Pages 2 to 5)

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL V. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF PATRICK BRY

<p>1 and their wine and not need to go into the original tasting</p> <p>2 room?</p> <p>3 A So typically in the summer because our guests are wanting to</p> <p>4 be outside and connecting with the land and the agriculture,</p> <p>5 they typically do not want to sit inside. They want that</p> <p>6 experience, they want those photos to share with their</p> <p>7 family and friends. And so when -- while we do have our</p> <p>8 inside seating available in the summer months it typically</p> <p>9 is the last place that anyone will sit and they want to sit</p> <p>10 up on the decks and they want to connect with that</p> <p>11 agriculture.</p> <p>12 Q Okay. On a busy Saturday afternoon in the summer during</p> <p>13 peak, generally peak season, approximately how many tasting</p> <p>14 room visitors would Brys receive?</p> <p>15 A So we have the tasting room, we have the deck and then we</p> <p>16 also have an area of sort of overflow where -- which we call</p> <p>17 our lawn bar, where we serve glasses of wine as well. So</p> <p>18 all of those areas if you -- I mean, I can tell you for our</p> <p>19 tasting room and upper deck our current service model is</p> <p>20 that we accept reservations and we do table service in those</p> <p>21 areas and we allow people to order wine flights, wine by the</p> <p>22 glass. We offer a small cheese and charcuterie board --</p> <p>23 MR. INFANTE: Her question was how many guests do</p> <p>24 you get on a busy Saturday.</p> <p>25 THE WITNESS: Okay.</p> <p style="text-align: center;">Page 30</p>	<p>1 the reservation -- the system you're talking about where you</p> <p>2 do table service, that applies in both the old tasting room</p> <p>3 I'll call it and the upper deck?</p> <p>4 A Yes.</p> <p>5 Q How long -- for how many years has Brys been following the</p> <p>6 current model where its -- uses a reservation combined with</p> <p>7 availability table service approach?</p> <p>8 A Since the COVID 19 pandemic.</p> <p>9 Q This was a response to COVID?</p> <p>10 A Yes. We -- prior to COVID on our elevated deck we had -- it</p> <p>11 was first come/first serve seating, and we also -- people</p> <p>12 would just grab a glass and just grab any seat that they</p> <p>13 could. But with COVID we had to regulate spacing and</p> <p>14 distance and other things and so we found it easier to</p> <p>15 dedicate tables and keep people separate. And we then found</p> <p>16 that our guests enjoyed the opportunity to reserve a space</p> <p>17 to that they knew when touring that they wouldn't have to</p> <p>18 have long waits or anything like that.</p> <p>19 Q I think you explained that there is service that comes to</p> <p>20 the table, can guests also just order at the bar or is that</p> <p>21 not -- it's sort of anomalous?</p> <p>22 A They can order at a bar, yes.</p> <p>23 Q Does Brys offer tasting room entertainment?</p> <p>24 A No.</p> <p>25 Q Why not? And by tasting room I'm including the deck.</p> <p style="text-align: center;">Page 32</p>
<p>1 MS. ANDREWS: I was looking at you, Mr. Infante,</p> <p>2 just because charcuterie board have come up in every</p> <p>3 deposition today and now it's lunch and my stomach is</p> <p>4 growing.</p> <p>5 MR. INFANTE: Just so you know, I am sick of</p> <p>6 hearing about charcuterie board, and I've made that known.</p> <p>7 A So on a busy day we will seat in our deck or tasting room --</p> <p>8 we have six seatings a day, so we will seat approximately</p> <p>9 500 guests.</p> <p>10 Q Okay. It sounds to me like you have a different model than</p> <p>11 other wineries in terms of -- I didn't understand but now</p> <p>12 you've made it clear, you only take reservations?</p> <p>13 A We have walk-in availability, but we do allow people to book</p> <p>14 a table, and they can do that through our website.</p> <p>15 Q So when you say six seatings a day, can you just fill me in</p> <p>16 on how that works practically? Are there set times that --</p> <p>17 A So we have -- our current model is we essentially reserve a</p> <p>18 table for 75 minutes, so then -- we start at 11:00 and do</p> <p>19 the math you get with six seatings a day closing at 6:30.</p> <p>20 Q So if I just walked in at 2:15 I might have to wait for the</p> <p>21 next seating, or it just depends, if someone leaves early</p> <p>22 then a table comes up?</p> <p>23 A We don't book all tables via reservation so there are some</p> <p>24 available at all times.</p> <p>25 Q I have a better picture of it now. Thank you. So that's --</p> <p style="text-align: center;">Page 31</p>	<p>1 A Well, first, there are restrictions on amplified music.</p> <p>2 Q In the tasting room?</p> <p>3 A In the tasting room or on the deck, as part of our SUP. In</p> <p>4 the past we have done, but not -- I wouldn't say regularly,</p> <p>5 some acoustic sort of things like that, acoustic music, but</p> <p>6 it has not been a regular thing for us.</p> <p>7 Q If Brys was permitted amplified music in the tasting room,</p> <p>8 would Brys offer amplified music in the tasting room?</p> <p>9 A Yes.</p> <p>10 Q Has Brys requested permission to offer amplified music in</p> <p>11 the tasting room?</p> <p>12 A Of the township?</p> <p>13 Q From the township.</p> <p>14 A No.</p> <p>15 Q Anything like themed happy hours, entertainment, trivia,</p> <p>16 activities, those sorts of Brys provided entertainment</p> <p>17 experiences for your guests?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A Our current limitations on space and size force us as a</p> <p>21 business to choose what activity we're going to offer and</p> <p>22 what can potentially bring in as a business the most</p> <p>23 revenue. And so we have decided that those types of</p> <p>24 activities are difficult for us to maintain while also</p> <p>25 maintaining the same -- while maintaining our normal</p> <p style="text-align: center;">Page 33</p>

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF PATRICK BRY

<p>1 operations.</p> <p>2 Q What do you call normal operations?</p> <p>3 A Wine tastings, wine by the glass.</p> <p>4 Q Okay.</p> <p>5 A That being said, we have a lot of outdoor space where we</p> <p>6 could host these types of concerts or musical performances.</p> <p>7 I don't know what other examples you gave. But we have</p> <p>8 plenty of room, we have 155 acres. So it's not a question</p> <p>9 of would we, it's just a question of being allowed to.</p> <p>10 Q So I'd like to distinguish between the idea of concerts and</p> <p>11 musical performances versus entertainment for people who are</p> <p>12 tasting wine in the tasting room. Do you see a distinction</p> <p>13 between those sorts of activities?</p> <p>14 A Yes, I guess.</p> <p>15 Q Speaking specifically to entertainment for guests in the</p> <p>16 tasting room, would you agree that having a concert or a</p> <p>17 musical performance on the lawn is different than providing</p> <p>18 instrumental music in the tasting room area for guests?</p> <p>19 A Sure, I can agree with that.</p> <p>20 Q And just in terms of activity -- are you familiar with Jazz</p> <p>21 at Sunset at Chateau Chantal?</p> <p>22 A I'm familiar they offer it, I've never attended it.</p> <p>23 Q So it doesn't sound like Brys offers anything like a tasting</p> <p>24 room entertainment series for its guests?</p> <p>25 A No.</p> <p style="text-align: center;">Page 34</p>	<p>1 kind of food? Cheese and crackers, charcuterie board,</p> <p>2 anything else?</p> <p>3 A We offer a -- what we call Mezza box, which is a</p> <p>4 Mediterranean sort of mezza box that has some food options</p> <p>5 in it that are just refrigerated and the boxes are brought</p> <p>6 out to guests. And then Brys winery does not produce those</p> <p>7 boxes, we -- those are produced by my brother-in-law who has</p> <p>8 a company who does that and then are sold at the tasting</p> <p>9 room.</p> <p>10 Q I think there's another winery that does that.</p> <p>11 A And then in addition -- in some of our areas where we just</p> <p>12 have more grab-and-go type of not seated experience, or just</p> <p>13 grabbing a glass of wine and sitting and enjoying the view</p> <p>14 we have cheese and charcuterie snack packs, which are</p> <p>15 prepackaged.</p> <p>16 Q And is that also purchased from an outside entity?</p> <p>17 A Yes.</p> <p>18 MR. INFANTE: TJ, when you find a good spot we're</p> <p>19 at about an hour.</p> <p>20 MS. ANDREWS: Okay.</p> <p>21 Q So the retail area -- let me rephrase that. Does Brys offer</p> <p>22 items for retail sales besides your wine?</p> <p>23 A Yes.</p> <p>24 Q Tell me about what you sell.</p> <p>25 A We sell small wine related nicknacks; openers, different</p> <p style="text-align: center;">Page 36</p>
<p>1 Q Does -- you indicated that Brys offers charcuterie boards in</p> <p>2 the tasting room area. What kind of a kitchen do you have?</p> <p>3 A We have a small kitchen that is not licensed for -- like as</p> <p>4 a commercial kitchen. It is licensed for sort of prepared</p> <p>5 foods, so we can serve things like cheese, crackers,</p> <p>6 charcuterie. But the kitchen would not sustain -- I mean,</p> <p>7 it does have a stove but it's not licensed as a commercial</p> <p>8 space to prepare hot foods.</p> <p>9 Q And is that located near the deck area room or on the --</p> <p>10 where is that located?</p> <p>11 A That area is located in the building where the main tasting</p> <p>12 room is and barrel room/cask room.</p> <p>13 Q Who is -- is it the tasting room manager or is there someone</p> <p>14 whose responsibility is to manage the prep kitchen?</p> <p>15 A So one of our assistant managers, that is her area to focus</p> <p>16 on and maintain glassware, dishware and also food supplies.</p> <p>17 Q And are the -- are there choices -- is there a menu of</p> <p>18 different styles of charcuteries and cheeses and crackers</p> <p>19 and options or is it like there's three choices, which one</p> <p>20 do you want?</p> <p>21 A We have one set board that people can purchase currently for</p> <p>22 \$19. And then we have options to add onto it; olives, nuts,</p> <p>23 chocolate, and so that can do some ala carte options to add</p> <p>24 on.</p> <p>25 Q Besides the charcuterie board, does Brys offer any other</p> <p style="text-align: center;">Page 35</p>	<p>1 glassware that wine goes in, some cork products.</p> <p>2 Q Tee shirts?</p> <p>3 A No.</p> <p>4 Q Why not?</p> <p>5 A We don't have the space to offer -- in our current setup we</p> <p>6 don't have space to offer tee shirt sales with the amount of</p> <p>7 space it would take up?</p> <p>8 Q How about logo glassware?</p> <p>9 A We offer logo'd sunglasses, we offer logo'd hats in the</p> <p>10 past, we don't always have them. We've offered logo'd polo</p> <p>11 shirts.</p> <p>12 Q Okay. It depends on who's in charge?</p> <p>13 A Some things sell better than others.</p> <p>14 Q Those are trial by fire/trial by learning decisions?</p> <p>15 A Like any business, you don't know what is going to be a</p> <p>16 successful offering and so it helps to be able to offer --</p> <p>17 not be limited on what you can and cannot offer.</p> <p>18 MS. ANDREWS: Let's take a break at this point,</p> <p>19 because we're going to switch into some other things.</p> <p>20 (Off the record)</p> <p>21 Q One other area I wanted to ask you about is parking at the</p> <p>22 Brys Winery. Can you tell me what facilities you have for</p> <p>23 parking?</p> <p>24 A We have a limited number of paved parking spaces, and we</p> <p>25 also have gravel areas that people park in, we have grass</p> <p style="text-align: center;">Page 37</p>

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<p>1 areas that people park in, and then we also have staff areas</p> <p>2 for our staff to park in.</p> <p>3 Q Does Bryn accept tour busses?</p> <p>4 A Yes.</p> <p>5 Q So is there a separate parking area for tour busses?</p> <p>6 A We've designated an area for tour bus parking.</p> <p>7 Q How many paved -- how many cars can fit in the paved parking</p> <p>8 area?</p> <p>9 A Our paved area we have maybe just a dozen in the front of</p> <p>10 the building and then there's paved parking in the back for</p> <p>11 staff, which could probably accommodate another dozen or so.</p> <p>12 Q And the gravel area, how many cars would that accommodate?</p> <p>13 A So like currently the way we have our -- so it's a busy time</p> <p>14 right now of the year so we actually do paint some stripes</p> <p>15 in the grass and other areas just to help people orient</p> <p>16 their cars. And currently if I added them all up we're</p> <p>17 parking, you know, well over 120 cars.</p> <p>18 Q And how about the bus area, how many busses?</p> <p>19 A We can fit probably about -- I would say ten busses if they</p> <p>20 park in kind of a diagonal parking area.</p> <p>21 Q And how often this time of year would the paved parking area</p> <p>22 be sufficient? What portion of the time?</p> <p>23 A How -- just the paved areas?</p> <p>24 Q Yeah.</p> <p>25 A It's not sufficient.</p> <p style="text-align: center;">Page 38</p>	<p>1 garden. And then there are fields down in that area of the</p> <p>2 property where we could park additional cars and shuttle</p> <p>3 people. We have two shuttles on the property that we</p> <p>4 maintain. So we could accommodate many, many more cars than</p> <p>5 120. And none, by the way, would be on any public roadway.</p> <p>6 Q Do you require busses to make reservations or do you accept</p> <p>7 them on a walk-in basis?</p> <p>8 A We -- if bus groups want to reserve a table on our upper</p> <p>9 decks then we accommodate bus groups up there of up to 12</p> <p>10 people, but if it's larger than that then we don't -- we</p> <p>11 don't have tables that can seat that many people so then we</p> <p>12 direct them to sort of our self serve areas like our lawn</p> <p>13 bar or our tasting bar where they can just grab a glass and</p> <p>14 not have to have a seated reservation.</p> <p>15 Q And about how many busses a day do you receive?</p> <p>16 A On a summer Saturday I would say anywhere from 40 to 50.</p> <p>17 And by "busses," again, I'm defining that any -- anything</p> <p>18 that could be from a ten passenger van up to maybe a</p> <p>19 20-passenger shuttle. We don't typically have long like</p> <p>20 50-plus passenger busses, that's not as common for us.</p> <p>21 Q So let's use at your special use permits. I think we made</p> <p>22 reference -- you made reference to the fact that you became</p> <p>23 a winery chateau along the way, so let's just unpack that a</p> <p>24 little bit.</p> <p>25 (Deposition Exhibit 63 marked)</p> <p style="text-align: center;">Page 40</p>
<p>1 Q So how often is the gravel area full? Is it full, does it</p> <p>2 get full?</p> <p>3 A The gravel parking areas are full typically Fridays,</p> <p>4 Saturdays and a portion of most weekdays.</p> <p>5 Q I think you indicated -- so the grass and gravel areas park</p> <p>6 greater than 120 cars?</p> <p>7 A Uh-huh (affirmative).</p> <p>8 Q The grass and the gravel are distinct areas?</p> <p>9 MR. INFANTE: You've got to say "yes." You said,</p> <p>10 "uh-huh."</p> <p>11 THE WITNESS: "Yes."</p> <p>12 Q Are those distinct areas? I mean, to me gravel and grass</p> <p>13 are different. Is it -- or do they sort of blend together,</p> <p>14 is it a grassy-gravel or gravelly-grass area?</p> <p>15 A They blend together. Sort of the -- we put gravel down</p> <p>16 because the grass was getting -- on rainy days was turning</p> <p>17 into a mud pit so we created some -- we added some gravel</p> <p>18 just to stabilize that soil. And then the parking itself is</p> <p>19 in the grass.</p> <p>20 Q And that total area is about 120 parking spots?</p> <p>21 A Currently that's what we have -- we manually kind of stripe</p> <p>22 them on busy days, but we could add well more than 120</p> <p>23 parking -- that's only just the areas near and around the</p> <p>24 winery. If we continued down the hill we could park, you</p> <p>25 know, dozens and dozens of more cars toward the secret</p> <p style="text-align: center;">Page 39</p>	<p>1 Q So PTP 63 is February 8, 2011 -- a document with the</p> <p>2 February 8, 2011 date on it, it's Defendant's Response to</p> <p>3 1st RFP, 8613 through 8623. Do you recognize this document?</p> <p>4 A Yes.</p> <p>5 Q How would you describe it?</p> <p>6 A This document is the document provided by the township after</p> <p>7 a successful passage of our special use permit request.</p> <p>8 Q And that was the original special use permit for the winery?</p> <p>9 A Prior to this we operated as a farm processing facility, so</p> <p>10 this was our first special use permit.</p> <p>11 Q Like almost every other document in this case there's some</p> <p>12 funny little typos, I can't explain those. But in general</p> <p>13 do you recognize this to be the special use permit?</p> <p>14 A Yes.</p> <p>15 Q And then on page 7 of something, 8619 of the bates numbers,</p> <p>16 it indicates that the applicants site encompasses a total of</p> <p>17 75 acres. Does that include more than the property that the</p> <p>18 winery is sitting on?</p> <p>19 A Can you point the section again?</p> <p>20 Q I'm sorry, it's under little "c" in bold, it was a minimum</p> <p>21 site of 50 and it appears that the township counted 75</p> <p>22 acres. Is that your understanding that that is the parcel</p> <p>23 that the winery sits on or does that include more than the</p> <p>24 parcel that the winery sits on?</p> <p>25 Q I believe that the parcel that the winery sits on is more</p> <p style="text-align: center;">Page 41</p>

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<p>1 Q Yes.</p> <p>2 A As I recall, yes; last year, yes.</p> <p>3 Q So that would explain -- I mean, to the extent that</p> <p>4 influence is why you don't have guest activity uses, it's</p> <p>5 only as of that time period; correct?</p> <p>6 MR. INFANTE: Objection; form, foundation.</p> <p>7 Q You couldn't have known that you were denied the Whitmer</p> <p>8 event until June of -- sometime in 2022; correct?</p> <p>9 A We previously had been denied the Big Brothers/Big Sisters.</p> <p>10 Q Okay. So the Big Brothers/Big Sisters you were denied</p> <p>11 sometime in the last eight years and since then you have</p> <p>12 never held a meeting of a 501(c)(3); correct?</p> <p>13 A No.</p> <p>14 Q On the basis of that denial?</p> <p>15 A On the basis that we as a business don't want to be shut</p> <p>16 down. We are afraid of, you know, having our livelihoods</p> <p>17 pulled out from under us and so we don't -- at Brys Estate</p> <p>18 we pretty much play by the rule book that we understand and</p> <p>19 I -- we -- in our various reaches out to the township in</p> <p>20 relation to these types of activities we were told "no" --</p> <p>21 Q And by "various" we're now talking about Big Brothers/Big</p> <p>22 Sisters, the Whitmer event?</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q Anything else?</p> <p>25 A Not that I recall.</p> <p style="text-align: center;">Page 70</p>	<p>1 and the second one was the Whitmer?</p> <p>2 A Yes.</p> <p>3 Q I'm asking are there any other instances where Brys was told</p> <p>4 by the township it could not have guest activity uses?</p> <p>5 A Not that I can provide in writing, no.</p> <p>6 Q So the sole basis of Brys's assertion that it cannot -- the</p> <p>7 township has informed that it can't have guest activity use</p> <p>8 is those two correspondences?</p> <p>9 A But it's also our --</p> <p>10 MR. INFANTE: Hold on.</p> <p>11 Q Is that right?</p> <p>12 MR. INFANTE: I want to make an objection to form,</p> <p>13 foundation, calls for a legal conclusion, not his testimony.</p> <p>14 Go ahead.</p> <p>15 A It's our understanding based on reading the SUP that that's</p> <p>16 what we were limited to do and so we -- we attempted to at</p> <p>17 least I know on two occasions in written correspondence with</p> <p>18 the township and both times were denied.</p> <p>19 Q And both times the written correspondence, to be clear, is</p> <p>20 the Big Brother/Big Sisters correspondence and the Whitmer</p> <p>21 correspondence; correct?</p> <p>22 A Yes; uh-huh.</p> <p>23 Q So my question for you is have you reviewed your SUP?</p> <p>24 A Yes.</p> <p>25 Q Show me where in the SUP it says you cannot have guest</p> <p style="text-align: center;">Page 72</p>
<p>1 Q So you were told by the township "no."</p> <p>2 A And so we're just trying to be -- we don't want to have our</p> <p>3 business or our livelihoods affected.</p> <p>4 Q So -- and let me ask the same question with respect to the</p> <p>5 wine and food seminars. Is the reason you -- what is the</p> <p>6 reason you said you don't host those -- haven't hosted</p> <p>7 those?</p> <p>8 A Because we don't have -- we don't have any permitted guests</p> <p>9 because of the tonnage requirements that have --</p> <p>10 Q And that's based on that email exchange from Mr. Sanger on</p> <p>11 the Big Brothers/Big Sisters?</p> <p>12 A Yes, and prior conversations that I was not a part of with</p> <p>13 the township.</p> <p>14 Q Who was part of them?</p> <p>15 A Walter and Eileen Brys.</p> <p>16 Q Okay. So Walter and Eileen Brys were told that they cannot</p> <p>17 have guest activity uses?</p> <p>18 A You would have to ask them.</p> <p>19 Q I'm sorry. The corporation was told it could not have guest</p> <p>20 activity uses?</p> <p>21 A Again, I don't know.</p> <p>22 Q So it's your understanding that Brys was told it could not</p> <p>23 have guest activity uses?</p> <p>24 A On two separate written exchanges, yes.</p> <p>25 Q And the one we talked about was the Big Brothers/Big Sisters</p> <p style="text-align: center;">Page 71</p>	<p>1 activity uses.</p> <p>2 A We can have guest activity uses but we do not qualify</p> <p>3 because we do not have the tonnage requirements.</p> <p>4 Q And by that you mean what?</p> <p>5 A The 1.25 tons per person that has to be filed on an annual</p> <p>6 basis with the township.</p> <p>7 Q You mean your grapes that you grow don't qualify?</p> <p>8 A If our grapes qualified we were never informed of that.</p> <p>9 Q Did you ask?</p> <p>10 A I don't -- no, we do not have any record of that.</p> <p>11 Q That you ever asked?</p> <p>12 A Right.</p> <p>13 Q Did you want to know the answer to that?</p> <p>14 A I think that, sure, you would want to know. But at the same</p> <p>15 time you also -- you read what is written and the law and</p> <p>16 you interpret it to the best of your ability and then you go</p> <p>17 by the reactions and decisions that are being sent in</p> <p>18 writing to you and then you move on.</p> <p>19 Q And by reading the law do you mean reading the zoning</p> <p>20 ordinance?</p> <p>21 A Yes.</p> <p>22 Q Did you read section three that says, "Grow in Peninsula</p> <p>23 Township or purchase grapes in Peninsula Township"?</p> <p>24 A Yes.</p> <p>25 Q Did you have a question whether that meant that Brys's</p> <p style="text-align: center;">Page 73</p>

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<p>1 grapes that it grows in Peninsula Township count/quantify?</p> <p>2 MR. INFANTE: Objection. Counsel, you're</p> <p>3 mischaracterizing what the ordinance says by not reading the</p> <p>4 entire section of the ordinance.</p> <p>5 MS. ANDREWS: I would like the record to reflect</p> <p>6 that the attorney is coaching the witness.</p> <p>7 MR. INFANTE: I take offense to that. I'm merely</p> <p>8 asking counsel to read the whole thing.</p> <p>9 MS. ANDREWS: The fact that the witness is now</p> <p>10 reading the zoning ordinance to look for what counsel just</p> <p>11 coached him to look for should be reflected in the record.</p> <p>12 A As I said, this is the best of my understanding.</p> <p>13 Q Based on your reading of the zoning ordinance?</p> <p>14 A Exactly.</p> <p>15 Q Your reading of your SUP?</p> <p>16 A Yes.</p> <p>17 Q The email correspondence from Big Brothers/Big Sisters?</p> <p>18 A Correct.</p> <p>19 Q And the email correspondence regarding the Whitmer event?</p> <p>20 A Correct.</p> <p>21 MR. INFANTE: Counsel, we've been going about an</p> <p>22 hour. Is this a good time to take a break?</p> <p>23 MS. ANDREWS: Not quite.</p> <p>24 Q Has Brys sought to have meetings of agricultural related</p> <p>25 groups?</p> <p style="text-align: center;">Page 74</p>	<p>1 A We have not put those into operation and never did, so since</p> <p>2 they are not in operation I don't believe that we would</p> <p>3 qualify for those to be counted.</p> <p>4 Q Is it your understanding that the zoning ordinance would</p> <p>5 prohibit Brys from using the guest activity rooms it has,</p> <p>6 whether it was two, five or seven, for weddings?</p> <p>7 MR. INFANTE: Objection; calls for a legal</p> <p>8 conclusion.</p> <p>9 A We never went down that road because of the small number, so</p> <p>10 we never looked into it.</p> <p>11 Q So you don't know one way or another whether you could host</p> <p>12 your -- if you had the seven rooms that those occupants</p> <p>13 could have a wedding?</p> <p>14 MR. INFANTE: Objection; calls for a legal</p> <p>15 conclusion.</p> <p>16 A I'm not quite sure. I do know that -- actually I don't</p> <p>17 know. We've never looked into it due to the low number of</p> <p>18 people that would be permitted.</p> <p>19 Q You don't know if weddings would be prohibited for those?</p> <p>20 A I don't.</p> <p>21 MS. ANDREWS: All right. Let's take a break;</p> <p>22 let's take a break.</p> <p>23 (Off the record)</p> <p>24 Q Mr. Brys, before the break we were talking about Brys's</p> <p>25 request to the township to -- for permission to host a guest</p> <p style="text-align: center;">Page 76</p>
<p>1 A No.</p> <p>2 Q And what is the reason for that?</p> <p>3 A We don't -- well, let me take that back. We did have a</p> <p>4 meeting of the Michigan Environmental Agricultural Insurance</p> <p>5 at one point. We don't find meetings of agricultural</p> <p>6 related groups to be something that is a -- something that</p> <p>7 would help financially with the business.</p> <p>8 Q Is it your understanding that Brys is permitted to use its</p> <p>9 facilities for its overnight guests?</p> <p>10 MR. INFANTE: Objection; calls for a legal</p> <p>11 conclusion.</p> <p>12 A Yes, it is my understanding that we can for the four people</p> <p>13 that we can accommodate as an overnight guest.</p> <p>14 Q And is it your understanding that Brys is permitted to allow</p> <p>15 those guests to hold weddings on Brys's property?</p> <p>16 MR. INFANTE: Objection; calls for a legal</p> <p>17 conclusion.</p> <p>18 A That is not my understanding.</p> <p>19 Q What is your understanding as to what limits there are on</p> <p>20 registered guests?</p> <p>21 A Well, I think in practical terms four people is not really a</p> <p>22 wedding. So you can't have a -- most people who are looking</p> <p>23 to host a wedding are not going to be interested in a</p> <p>24 four-person limit.</p> <p>25 Q How about seven rooms, seven guest activity rooms?</p> <p style="text-align: center;">Page 75</p>	<p>1 activity event for the Big Brothers/Big Sisters.</p> <p>2 A Yes.</p> <p>3 Q And that was an email communication with Mr. Sanger?</p> <p>4 A Yes.</p> <p>5 Q And as you recall it Brys was trying to inquire if it could</p> <p>6 have an event with Big Brothers/Big Sisters?</p> <p>7 A Correct.</p> <p>8 Q And your recollection is that you were told you could not?</p> <p>9 A We could not.</p> <p>10 Q Okay. So I'm going to hand you what we'll go ahead and</p> <p>11 label as PTP Exhibit 69.</p> <p>12 (Deposition Exhibit 69 marked)</p> <p>13 Q Can you review this document?</p> <p>14 (Witness reviews exhibit)</p> <p>15 A Got it.</p> <p>16 Q So does reviewing PTP -- PTP Exhibit 69 is labeled</p> <p>17 WOMP0000506 to 507, this appears to be an email</p> <p>18 correspondence from Dave Sanger to Walter Brys, is that your</p> <p>19 understanding?</p> <p>20 A Yup.</p> <p>21 Q And it appears that in this email Mr. Sanger is emailing Mr.</p> <p>22 Brys about the wine makers VIP reception event on Friday,</p> <p>23 April 12th as a benefit event for Big Brothers/Big Sisters.</p> <p>24 Do you see that?</p> <p>25 A Yup.</p> <p style="text-align: center;">Page 77</p>

20 (Pages 74 to 77)

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1 MR. INFANTE: We've been down this road a few
2 times, I know where to point you.
3 **A Got it.**
4 Q The sentence says, "Brys has attempted numerous times to
5 negotiate changes to these ordinances with Peninsula
6 Township and fix these unconstitutional provisions." Do you
7 see that sentence?
8 **A Yes.**
9 Q And is it your understanding having skimmed through this
10 response and I'm sure read it before that these provisions
11 refers to the listed provisions in the four bullet points
12 above?
13 **A Yes.**
14 Q And generally, let's just clarify for the record that third
15 bullet point, section 8.7.3, there's a "10" missing right
16 before the "M."
17 MS. ANDREWS: One of them was correct.
18 MR. INFANTE: Really?
19 MS. ANDREWS: Yes, one of them was correct, so
20 somewhere along the way --
21 MR. INFANTE: There has been a typo in every
22 single --
23 THE WITNESS: Oh, got it.
24 MR. INFANTE: Apparently except for one of them.
25 THE WITNESS: Okay.

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1 MS. ANDREWS: I looked around and nobody caught it
2 and I chuckled to myself when the one didn't have it.
3 MR. INFANTE: But the problem is we've got to
4 correct it just to make sure -- we don't have to, but we've
5 been trying to.
6 Q In general, the listed provisions in the four bullet points
7 are sections out of the winery chateau zoning ordinance?
8 **A Correct.**
9 Q So Brys has attempted to negotiate changes to these
10 ordinances and fix these unconstitutional provisions. I'd
11 like to understand a little more about Brys's efforts,
12 historic efforts, to change the zoning ordinance that it
13 challenges in this case.
14 **A So know that my parents, Walt and Eileen Brys, had attended**
15 **meetings going back as far as -- that I'm aware of I know**
16 **for a fact in 2008, and then separately there were meetings**
17 **I believe throughout those years, I believe maybe even '11**
18 **and possibly '16, but I'd have to reference some more email**
19 **communications about that. And then I do know that in 2019**
20 **there were efforts to again sit down with the township on**
21 **many, many different meetings, and going into 2020, so --**
22 Q You've been involved in some of meetings too; correct?
23 **A The meetings -- I was in several of the meetings that were**
24 **in 2019.**
25 Q Okay. And in general these meetings -- describe who is

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1 convening these meetings.
2 **A From my understanding the township and the wineries came**
3 **together to try to work through the issues that were found**
4 **in the variance ordinances that the wineries operate under,**
5 **and that it was in some situations just sort of a roundtable**
6 **sort of meeting to discuss needs, wants and things like**
7 **that. And then there were efforts to try to work through a**
8 **proposed -- you know, proposed changes and things, but**
9 **nothing was ever achieved.**
10 Q And you typed -- describe what you mean by needs and wants.
11 **A Well, areas that were identified in the ordinance that were**
12 **either vague or not friendly to agricultural businesses such**
13 **as wineries. Not friendly to the ability to host visitors**
14 **and provide an agritourism experience, issues related to the**
15 **sale of -- I mean, we're talking -- we have our own**
16 **ordinance, the chateau, but I know there was many issues**
17 **with some of the other ordinances that people were having to**
18 **comply with. So it was an effort to clean up all of it.**
19 Q So let's start with the 2008 meetings.
20 (Deposition Exhibit 71 marked)
21 Q This is 71. The document labeled PTP 71, Defendant's
22 Response to 1st RFP 000339 appears to be the minutes from a
23 July 7th, 2008 meeting. Do you see that?
24 **A Correct.**
25 Q And it appears that Eileen Brys and Walter Brys were part of

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1 a committee. Do you see that?
2 **A Correct.**
3 Q Do you understand -- what is your understanding of the
4 impetus for the 2008 committee?
5 **A As I discussed, that these meetings were to try to clarify**
6 **and improve the zoning language, and also there were issues**
7 **related to the way the zoning language was written that**
8 **prevented our winery or any winery from being able to host**
9 **or provide certain services to our guests that we wanted to**
10 **correct.**
11 Q In 2008 Brys was a farm processing facility?
12 **A Correct.**
13 Q Do you have any understanding whether the -- item 8 under
14 section C says history of amendment 128. Do you know what
15 amendment 128 did?
16 **A I do not.**
17 Q In 2008 -- is Brys a member of Wineries of Old Mission
18 Peninsula?
19 **A Yes.**
20 Q Was Wineries of Old Mission Peninsula organized to -- what
21 was the purpose of Wineries of Old Mission Peninsula?
22 **A I was not a part of that organization when it was founded,**
23 **but I do know that it was founded -- at least some of the**
24 **roles that it continues to do is to be a -- offer**
25 **information about visiting our wine region to people who**

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DEPOSITION OF PATRICK BRY

<p>1 want to visit, to market the wine region as a place to</p> <p>2 visit, and also to provide a unified voice on behalf of the</p> <p>3 wineries in relation to the township and any other purpose</p> <p>4 that that might fit.</p> <p>5 Q Has Brys been a member of WOMP -- when did Brys first become</p> <p>6 a member of WOMP?</p> <p>7 A I don't know the year, but I know as far back as I've</p> <p>8 joined the business it has been a member.</p> <p>9 Q The section underneath the issues that were discussed says,</p> <p>10 quote, unquote, "WOMP will present the committee with the</p> <p>11 description of how charging by the glass or charging for</p> <p>12 wine tasting would be allowed under state and federal</p> <p>13 requirements." Do you see that?</p> <p>14 A Uh-huh; yes.</p> <p>15 Q Is it your understanding that there was a time when Wineries</p> <p>16 on Old Mission Peninsula were not allowed to sell wine by</p> <p>17 the glass?</p> <p>18 A That is my understanding, that Michigan Liquor Control did</p> <p>19 have some issues where we could not provide a tasting or</p> <p>20 charge for a tasting, and then there was also a language</p> <p>21 that would say that sale of wine by the glass was not</p> <p>22 permitted.</p> <p>23 Q And is it your understanding that the township did amend the</p> <p>24 zoning ordinance to permit -- somewhere along the way to</p> <p>25 permit the sale of wine by the glass?</p> <p style="text-align: center;">Page 90</p>	<p>1 settings, beautiful locations. And so they're drawn to it,</p> <p>2 but also because they can exhibit the agriculture not only</p> <p>3 as -- in being immersed in it but also being able to drink</p> <p>4 the wine and make that part of their celebration.</p> <p>5 Q And is it your understanding that people would like to rent</p> <p>6 the winery facility for their wedding?</p> <p>7 A Yes.</p> <p>8 Q Do you know what the range of revenue opportunity is from</p> <p>9 renting winery facilities for weddings?</p> <p>10 MR. INFANTE: Objection; form, calls for</p> <p>11 speculation, foundation.</p> <p>12 A I would have to speculate because we don't --</p> <p>13 MR. INFANTE: I would also object beyond the scope</p> <p>14 of PTP's involvement in this case as it goes to damages, and</p> <p>15 beyond the scope of this deposition and the Rule 30(b)(6)</p> <p>16 Notice.</p> <p>17 A So I'm not -- I do know that weddings can occur at wineries</p> <p>18 on the Leelanau Peninsula, and I do know that they charge</p> <p>19 varying amounts depending on the location to host weddings.</p> <p>20 Q And as I understand it, Brys has not hosted weddings on its</p> <p>21 property?</p> <p>22 A The winery has not hosted a -- the winery chateau has not</p> <p>23 hosted a wedding on the property, no.</p> <p>24 Q Has anybody -- have the individuals associated with Brys</p> <p>25 hosted weddings?</p> <p style="text-align: center;">Page 92</p>
<p>1 A Yes.</p> <p>2 Q Do you remember if WOMP was an advocate for that change to</p> <p>3 the zoning ordinance?</p> <p>4 A I don't know.</p> <p>5 Q One of the issues on the list is weddings?</p> <p>6 A Yes.</p> <p>7 Q What is your understanding of that issue?</p> <p>8 MR. INFANTE: Objection; vague, form. Go ahead.</p> <p>9 A I mean, weddings are something that I know winery businesses</p> <p>10 are requested to host repeatedly. So I know that my parents</p> <p>11 for the first few years -- my mom had just an ongoing log</p> <p>12 of -- and it was at least 100 requests a year were coming</p> <p>13 through, even when we first opened. And so I would assume</p> <p>14 that by 2008, three years after, we would have collected</p> <p>15 several hundred requests and it was probably a topic of</p> <p>16 discussion at these meetings.</p> <p>17 Q Is it your understanding that people who want to get married</p> <p>18 or who are organizing weddings would like a venue for their</p> <p>19 wedding?</p> <p>20 MR. INFANTE: Object to form.</p> <p>21 Q What is the nature of their requests?</p> <p>22 A I think that -- what is the nature of requesting a winery to</p> <p>23 have a wedding at your location is that they -- I think that</p> <p>24 people find the beauty of the agriculture, the connection</p> <p>25 with the land, people often try to get married in beautiful</p> <p style="text-align: center;">Page 91</p>	<p>1 A I know that my sister I believe as a private family function</p> <p>2 had her wedding reception on the property. And I believe</p> <p>3 that my uncle I think and aunt had a vow renewal on our</p> <p>4 family farmhouse front porch.</p> <p>5 Q Any others?</p> <p>6 A I do believe that -- not anything at the winery that I know</p> <p>7 of, no.</p> <p>8 Q Vineyard tours, what's the concern there? What's the issue</p> <p>9 there to your understanding?</p> <p>10 A I'm not really quite sure at the time, this is going back</p> <p>11 many, many years and there were different laws and different</p> <p>12 things we had to comply with on the table. I know that it</p> <p>13 may have something to do with the fact that originally --</p> <p>14 for example, our property the liquor control had approved a</p> <p>15 certain section of our tasting room for alcohol service.</p> <p>16 Later they came back and approved all our entire 80 acres,</p> <p>17 original 80 acres for consumption of wine. So it may have</p> <p>18 something to do with the fact of -- but I'm just purely</p> <p>19 speculating.</p> <p>20 Q I didn't ask you earlier, does Brys offer tours of the</p> <p>21 property?</p> <p>22 A We do, yes.</p> <p>23 Q Tell me about your tours?</p> <p>24 A We have -- something that we -- is offered is called our</p> <p>25 wine wagon tour, and that is like a stretch golf cart that</p> <p style="text-align: center;">Page 93</p>

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<p>1 takes guests out into the vineyard, it takes them down to 2 the family farmhouse and they learn about the architecture 3 and the history of the farmhouse. It takes them into our 4 secret garden where they can view the different agricultural 5 things that we grow there. It takes them into the vineyard 6 where they can learn about the different grapes. And then 7 it brings them back to the winery and they kind of finish on 8 the upper deck looking out at the acreage. 9 Q Do they get to see the processing area? 10 A Yes; yes. 11 Q And are those pay events, pay tours? 12 A Paid tours. 13 Q How about walking tours? 14 A We don't offer any walking tours. 15 Q Wine wagon tours, are those popular? 16 A We host them on Saturdays, we do three runs a day so there's 17 seven guest that can come on the wine wagon and we do three 18 different tour times. 19 Q And those tours are -- somebody from the winery obviously is 20 doing the driving and narrating? 21 A Exactly. 22 Q Can the guests consume along the way. 23 A We serve tastings at different points during the tour. 24 Q So we were talking about events over the years. You 25 mentioned that your parents were involved in committee</p> <p style="text-align: center;">Page 94</p>	<p>1 or at least a report, of how the -- interactions between the 2 wineries and the township regarding how the township 3 addresses -- 4 A Without reviewing it in full detail it would be hard for me 5 to 100 percent answer your question. 6 Q Who is Jim Krupka? 7 A I believe he's related to Chateau Chantal Winery. 8 Q Do you know if Chateau Chantal was seeking an application 9 for a seasonal tasting outdoors in an approved area? 10 A I have no idea. 11 MR. INFANTE: Objection; foundation. 12 Q I'm looking at the last full sentence on the page that's 13 13695. I'm just trying to orient as to what was happening 14 at the time. 15 MR. INFANTE: I'm sorry, where are you looking? 16 MS. ANDREWS: I'm sorry, the second to last page 17 where the substance of the correspondence begins, "The 18 detail of our application that brought this to the front was 19 our request for seasonal tasting outdoors in an approved 20 area." Do you have any recollection of a request from 21 Chateau Chantal for seasonal tasting outdoors? 22 MR. INFANTE: Object; foundation. 23 A I don't. 24 Q There appears to be correspondence sort of coming forward in 25 the packet, 13692 to -693, discussion directly between -- or</p> <p style="text-align: center;">Page 96</p>
<p>1 meetings back in -- I think you said 2011. I was impressed 2 with your recollection, maybe we're reading from the same 3 notes, but we'll look at PTP 72. 4 (Deposition Exhibit 72 marked) 5 Q PTP 72 is a collection of documents, WOMP013687 through 6 WOMP13696. Starting backwards and moving forwards it 7 appears to be a series of emails starting in 2010 through 8 2012 related -- involving -- I see the signature page on the 9 very last page says "Eileen Bryn," but I don't see her name 10 on the recipient list. Yeah, perhaps it's under the 11 attorney-client privilege section. 12 MR. INFANTE: Yeah, it's probably there, sometimes 13 the way they print they just get dropped down. 14 Q Generally speaking does this appear to be an email that your 15 mother on behalf of Bryn received somewhere along the way 16 from Mr. Krupka and/or one of the -- 17 A Yes, it does. 18 Q And generally this is -- oh, it's right there, 19 bryswine@pentel.net. 20 A Yes. 21 Q Sorry, I missed that. The email seems to be describing a 22 correspondence relating to a township approach to permitting 23 and other things. Does this look familiar to you? 24 A Vaguely. 25 Q Would you agree that the email appears to be a discussion,</p> <p style="text-align: center;">Page 95</p>	<p>1 from Mr. Krupka to you, your mother and your father -- 2 A Uh-huh (affirmative). 3 Q -- regarding a proposal by Dan Leonard. Who is Dan Leonard? 4 A He was the township planner for awhile, but there's been a 5 lot. 6 Q Do you know what the discussion around 2011 with Mr. Leonard 7 was about, what was the subject matter? 8 A I believe that this was again communication with the 9 wineries and the township trying to work on updating the 10 zoning language and clarifying. 11 Q Updating in what way, to your understanding? 12 A Just any of the issues that were found in the current 13 ordinances that had been addressed before, such as the 14 inability to host weddings or other things that potentially 15 the wineries had issue with. 16 Q Was Bryn seeking to host weddings, was that in its business 17 planning? 18 A It was not, nor ever has been a part of our business 19 planning because it's not permitted. 20 Q And was that something that Bryn was seeking to change so 21 that it was permitted? 22 A Yes. 23 Q And participating in the meetings with Mr. Leonard in the 24 prior meetings, was that part of Bryn's attempt to change 25 the zoning ordinance to seek permission to host weddings?</p> <p style="text-align: center;">Page 97</p>

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1 A Yes.
2 Q What are other things that Bryn is seeking to change in the
3 zoning ordinance in particular besides the ability to host
4 weddings?
5 MR. INFANTE: Objection; vague, form.
6 A I think, you know, we -- whether it's a wedding or an event
7 of any sort I think having the ability to host corporate
8 vents, not just events related to agricultural groups or
9 nonprofit groups. We're also looking to offer more food
10 experiences for people and offering the ability for people
11 to do ceremonies or other things not related to necessarily
12 having a wedding reception. Yeah. Among others.
13 Q Among others. And in particular what others?
14 A I don't -- I'm not -- I'm kind of drawing a blank at this
15 moment, but, yeah.
16 Q What became of the -- well, next email in the packet is
17 Chris Balydga, WOMPO13690 to -91, seems to be related to the
18 same interaction with Dan, the planner. What is your
19 understanding of what happened to the interaction -- the
20 committee or the discussions with Dan related to the zoning
21 ordinance changes?
22 A I think that the general takeaway from any of these
23 conversations has been that there seems to be a lot of
24 issues that never seem to get resolved and we would
25 potentially try to make some progress but then it never

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1 amounted to anything so we continued for many, many years to
2 continue to try and meet with the township to see if we
3 could resolve some of these differences, but it did not work
4 out.
5 Q And by these -- I think you said these conversations, or
6 maybe you said these committees, I don't mean to
7 mischaracterize. The 2008, 2011, you were referring to the
8 township board never approved the changes requested?
9 A Nothing was ever approved.
10 Q Wine by the glass was approved; right?
11 A I don't know when that was approved, but, yes, it was.
12 Q But the changes regarding weddings, food, corporate events,
13 those sorts of changes have not been made yet?
14 A No.
15 (Deposition Exhibit 73 marked)
16 Q PTP 73 I will shortcut and tell you it appears to be another
17 copy of the same email we just looked at a moment ago,
18 "Folks, since I have not heard." So if you look at
19 WOMP13692 in the last exhibit, 72, and you compare it to
20 WOMP Exhibit 73, which is -- I mean, PTP Exhibit 73, which
21 is WOMP000672, same -- at least part of the same email from
22 Jim Krupka.
23 A Uh-huh (affirmative).
24 Q Whose handwriting is that at the top?
25 A That's my mother's.

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1 Q That's your mother's. When do you think she wrote that?
2 MR. INFANTE: Objection; foundation.
3 Q To the best of your knowledge.
4 A I have no idea.
5 Q What does it mean?
6 MR. INFANTE: Objection; foundation.
7 A I think what it means is that -- I have no idea what she
8 means by it other than going back to -- I'm interpretation
9 is that she's saying that going back to 2011 we've been
10 still -- for now they were still working on it after 2008,
11 which would have been three years after they started working
12 on it.
13 Q By which she means -- your interpretation is changes to the
14 zoning ordinance?
15 A Correct.
16 Q So if Bryn were successful in amending the zoning ordinance
17 through this litigation, tell me -- describe me what sort of
18 things Bryn is seeking to do.
19 A We would like to host events for people to come to the
20 winery and our property and be able to -- whether it's a
21 corporate group, a family function, a wedding, and be able
22 to enjoy the agricultural space while also supporting our
23 business through the sale of wine by the glass or bottles of
24 wine. And we would also like to host musical performances
25 where people could enjoy our products and also enjoy the

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1 beauty of the agriculture and 155 acre site that we sit on.
2 Q So first item there, you'd like to host events for people to
3 come to the winery and support the business with wine by the
4 glass and bottle. It's my understanding that any group may
5 come to Bryn Estates and have wine by the glass; is that
6 true?
7 A Yes.
8 Q And buy bottles of wine; correct?
9 A Yes.
10 Q So are you referring here to private events?
11 A Private events.
12 Q And at this point is it your understanding that Bryn can
13 make reservations for private groups to come to the winery
14 and do private tastings for free?
15 MR. INFANTE: Objection; calls for a legal
16 conclusion.
17 A At this point we can have people come to the winery and do
18 tastings, we don't offer them for free.
19 Q I mean, any group can come and have private tastings?
20 A Can have tastings, can have glasses of wine, whether it's a
21 group of two people or a group of however many.
22 Q And how many could make a reservation and come and have
23 tastings?
24 A We don't typically take reservations for more than ten or 12
25 people.

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<p>1 Q And you could take ten reservations for ten people or one 2 reservation for 100? 3 A Yeah, so you -- that would be difficult with our current 4 setup, but theoretically, yeah. 5 Q So is Bryn seeking the ability to charge for the use of the 6 venue? 7 A Yes. 8 Q And then with respect to hosting musical performances, you 9 indicated that Bryn can have live music in the -- 10 MR. INFANTE: Objection; form. 11 A No, we are seeking to have musical performances. 12 Q So let me clarify. In the tasting room Bryn may have music 13 like jazz -- right? -- Jazz at Sunset is permitted under the 14 zoning ordinance; correct? 15 MR. INFANTE: Objection; calls for a legal 16 conclusion. 17 A So what I understand is that amplified music is not 18 permitted under the ordinance and that that restriction 19 limits the types of music that we are allowed to offer. 20 Q So let's look at the source of that. Let's look now -- 21 we've got the winery chateau ordinance in front of us. If 22 you want to review that for where amplified music is not 23 permitted. 24 MR. INFANTE: Are you directing him to a section 25 or do you want him to read it?</p> <p>Page 102</p>	<p>1 for wine tasting? 2 MR. INFANTE: Objection; vague, calls for a legal 3 conclusion. 4 A It's under the section guest activity uses, so I would 5 assume that this -- what we're referring to here relates to 6 guest activity uses. 7 Q And so I'd like to understand the basis of your statement 8 that the amplified music is not permitted to the extent 9 you're saying that that applies to the tasting room; tasting 10 room activities, tastings, wine by the glass in the tasting 11 room. 12 A Right. Yeah, I don't -- my understanding is that amplified 13 music is not permitted at the winery. 14 Q And I want to make sure I understand the complete basis of 15 your understanding that amplified music is not permitted at 16 the winery. Is there something else in the zoning ordinance 17 that prevents -- or in the SUP that prevents Bryn from 18 amplifying its music in the tasting room independent of 19 guest activity uses? 20 A I would have to review, but I believe there might be some 21 language in the noise ordinance for the township. 22 Q In the noise ordinance? 23 A Yeah. 24 Q Not in the Peninsula Township zoning ordinance? 25 A Isn't that part of the zoning ordinance?</p> <p>Page 104</p>
<p>1 MS. ANDREWS: Well, I could direct him to the 2 guest activity use section but that's -- I want to 3 understand if there's something other than amplified music 4 for guest activity uses that's the basis of that 5 understanding, so I don't want to limit him to that section. 6 A It says that no amplified instrumental music is allowed, so 7 that's what we understand it to be. 8 Q Amplified voice and recorded background music is allowed. 9 Do you see that? 10 A No amplified instrumental music is allowed, however, 11 amplified voice and recorded background music is allowed 12 provided that the amplification is no greater than a normal 13 conversation at the edge of the designated area within the 14 building for guest purposes, yes. 15 Q So it's your understanding that it is only the amplification 16 of instrumental music that is limited? 17 MR. INFANTE: Objection; calls for a legal 18 conclusion. 19 A I understand it that background music like a radio is 20 permitted because that comes through a speaker. Voice, 21 which we be somebody maybe if they wanted to give a talk or 22 they're discussing wine in front of a group. But no 23 amplified instrumental music is allowed. 24 Q And is it your understanding that this applies to guest 25 activity uses or does this apply also in the tasting room</p> <p>Page 103</p>	<p>1 MR. INFANTE: Sorry, I didn't hear the -- I 2 actually didn't hear the question. 3 Q To the extent the noise ordinance is somewhere other than 4 the zoning ordinance, is there something in the zoning 5 ordinance to your knowledge? 6 A I don't know if there's a different section that talks 7 about -- in the zoning ordinance that's not specific to the 8 winery chateau that talks about noise requirements on the 9 Peninsula for anyone. 10 Q Okay. And to the extent you're referring to the noise 11 ordinance, you don't know whether that's the zoning 12 ordinance or some other kind of ordinance? 13 A Isn't it part of the zoning ordinance? 14 Q That's a question for your attorney. 15 A I have no idea; I'm not sure. 16 MR. INFANTE: I'm going to object to your question 17 as calls for a legal conclusion. 18 Q So hosting musical performances by seeking the permission or 19 authority or right to host musical performance, are you 20 talking about like ticketed musical performances? 21 A Sure. 22 Q Give me an example -- or describe what you mean by "hosting 23 musical performances." 24 A You're saying as a wish list? 25 Q Yeah.</p> <p>Page 105</p>

27 (Pages 102 to 105)

Ordinance Committee Meeting minutes July 7, 2008

Present Leak, Rosi, Fiebing

- A. The committee recommended the Escrow Policy be approved by the Planning Commission and send the same to the Township Board for approval.
- B. The Committee recommended approval of AMD 180 Lighthouse Gift Shop.
- C. The Committee met with Jim Kroupka, Joan Kroupa, Eileen Brys and Walter Brys to discuss winery concerns of "Wineries of Old Mission Peninsula".

Issues discussed were:

- 1. Sale of wine related objects - "Logo Merchandise"
- 2. Advantages of Wine sales by the glass rather than free wine tasting
 - a. Less traffic
 - b. Tasting of higher quality (price) wines promotes the Peninsula.
- 3. Competition by other wineries in northwest lower Michigan.
- 4. Weddings
- 5. Vineyard tours
- 6. Equitable enforcement
- 7. Standards for impacts of groups rather than "Who can attend".
- 8. History of amendment 128
- 9. Keep the existing winery ordinances but add language that would allow for the above.

"WOMP" will present the committee with a description of how charging by the glass or charging for wine tasting would be allowed under state and federal requirements.

Minutes approved 7/16/2008

Gordon L. Hayward
Peninsula Township Planner

1/19/2021

Gmail - Meeting with Twp Planning Com postponed--we're not ready



Eileen Brys <eileenbrys@gmail.com>

Meeting with Twp Planning Com postponed--we're not ready

3 messages

Jim Krupka <jim@chateauchantal.com>

Sat, Jun 14, 2008 at 2:44 PM

Reply-To: jim@chateauchantal.com

To: Chris Baldyga <baldywing@yahoo.com>, Bob Begin <bob@chateauchantal.com>, Eileen & Walt Brys <bryswine@pentel.net>, Joan Kroupa <joan@peninsulacellars.com>, John Kroupa <john@peninsulacellars.com>, Jim Krupka <jim@chateauchantal.com>, Lee Lutes <llutes@blackstarfarms.com>, Eddie O'Keefe <edokeefe@cgtwines.com>, "Edward O'Keefe, Sr." <eok@cgtwines.com>, Sean O'Keefe <seanok@pentel.net>, Linda Stegenga <lindastegs@charter.net>, Spencer Stegenga <spencer@bowersharbor.com>

Folks: We had planned to present a draft of our desired wine regulation changes to Kieth (lannie) Leak this next week. So far I have not received any rewrites of sections per your wishes to compile into a draft.

Let me know if you want to do a rewrite on your section (139 and remote tasting room as well as any expansion of roadside stand). I remain glad to put into document we can present. I beleive you saw my ideas on winery chateau. Ed O'Keefe Sr is also proposing a more radical change by replacing all wine sections with a new simpler section that presents only large and small winery definitions. Things like chateau would come under "hotel" provisions rather than winery.

Let me know hat you want, I am expecting to work on this next week.

jim

Chateau Chantal Winery~Inn~Vineyard

(800) 969-4009 (231) 223-4110 fax (231) 223-4130

www.chateauchantal.com

15900 Rue de Vin, Old Mission Peninsula Traverse City MI 49686

Joan Kroupa <jkroupa68@charter.net>

Mon, Jun 16, 2008 at 4:07 PM

To: jim@chateauchantal.com, Chris Baldyga <baldywing@yahoo.com>, Bob Begin <bob@chateauchantal.com>, Eileen & Walt Brys <bryswine@pentel.net>, Joan Kroupa <joan@peninsulacellars.com>, John Kroupa <john@peninsulacellars.com>, Lee Lutes <llutes@blackstarfarms.com>, Eddie O'Keefe <edokeefe@cgtwines.com>, "Edward O'Keefe, Sr." <eok@cgtwines.com>, Sean O'Keefe <seanok@pentel.net>, Linda Stegenga <lindastegs@charter.net>, Spencer Stegenga <spencer@bowersharbor.com>

WOMP Owners,

Jim just called me and he has spoken with Keith Leak about a meeting next week. Mr. Leak will check his calendar and let Jim know what day will work for him. You all will know as soon as Jim knows.

Joan

[Quoted text hidden]

Brys Estate Vineyard & Winery <bryswine@pentel.net>
To: jim@chateauchantal.com

Wed, Jun 18, 2008 at 12:08 PM

Hello Jim,

We've been working on our "wish list" regarding changes to 139. Here are our thoughts thus far:

After having "tried" to live by the intensely restrictive 139 Farm Processing Ordinance, we feel it necessary for the township to take another look at the rationale and the necessity for these intensely restrictive rules. In these trying economic times in Michigan, where it is growing ever harder for businesses to succeed, we believe it is the duty of local and state government to do everything possible to help small businesses to succeed. Michigan has recently passed a new business tax, which will nearly cripple many small businesses. The tax will be assessed on each businesses' gross sales, with no deductions and no concern as to whether that business' bottom line reflects a loss. Most businesses' taxes will triple in 2008 and as seen on the news, many businesses will be forced to lay off and even shut their doors. It seems so unreal that Michigan is in essence crippling their own businesses when it should be doing everything possible to support the businesses.

Wineries will need additional sources of revenue, i.e. hosting weddings, selling various other items in their tasting rooms, being able to charge for a glass of wine, with food as allowed in the MLCC laws. Local government should not override what the MLCC has allowed wineries to do. The restrictions on building size under 139, also limits the winery to be successful. With a 6,000 sq. ft. building maximum, a winery can only produce no more than about 5,000 cases thus limiting a winery's revenue.

When a winery is built, the county requires all commercial codes in the building, a huge expense. Wineries are taxed as a commercial entity. Then the township says even though you had to meet commercial criteria and are taxed as a commercial entity - you can't be commercial in your business and restrict to the point of the business failing.

1/19/2021

Gmail - Meeting with Twp Planning Com postponed--we're not ready

ARTICLE VI 46 "Activites such as weddings, receptions and other social fuctions for hire are not allowed."

We consider this restriction unnecessary, and a hardship to being a successful business. We have numerous requests every week by e-mail by people seeking a place to host their wedding ceremony and/or reception. We want the ability to host a wedding on our property. Hosting a wedding ceremony on our property in no way harms anyone, neither neighbors or the township. There is no rational reason to disallow these. Wineries on Leelanau Peninsula are allowed to host weddings thus giving them an unfair advantage over our wineries on Old Mission. They will then receive more business than OMP wineries as the people will buy and support the Leelanau Peninsula economy instead of OMP's economy. This would be one way for a winery to offset the huge business tax that Michigan will be assessing.

1. Retail and Wholesale Sales

iv. Bread, crackers, fruit and cheese may be served at no charge as part of the tasting of processed products.

Again, this is a hardship for wineries. Not only are we forced by Peninsula Twp. to give away \$45,000+K of wine every year through free tastings, but we're also expected to "give away" crackers, cheese and fruit as well. The township does not have good knowledge of what actually is happening to the wineries. By promoting giving everything away for free, wine tasting has become a "sport" among many people who are into a day of "free entertainment." It has become something for people to do who don't have any money to spend. They knowingly go tasting all day with no intention of buying anything. Wedding parties, bridesmaids parties, bachelor parties have become a constant scene at the wineries and they do not support the wineries by buying any wine. The wineries are pouring wine all day, paying their staff and people aren't even buying as much as a corkscrew to acknowledge that the wineries are in the business to sell wine and not in the business to provide them with free entertainment. Charging for wine tasting pursuant to the MLCC would keep unnecessary traffic off the Peninsula and limit it to those who are really interested in wine tasting and weed-out the freeloaders and those just taking up space on the Peninsula. Those who have no intention of paying or buying wine will not come.

This policy needs to change and the Old Mission Peninsula wineries need to have the same rights and privileges as the other wineries in Michigan pursuant to the MLCC. Peninsula Twp. should not interfere and take these rights away from the wineries.

1. Retail and Wholesale Sales

v. Logo merchandise may be sold provided:

The restrictions of what can and can't be sold in the tasting room is a hardship to wineries success. The added revenue to the winery for selling various items is necessary to offset the new Michigan business tax.

Hardships to selling only logo merchandise:

- 1) There is about an \$80 cost per item to set up a logo item
- 2) There is a minimum of 144+ items to be ordered in order to even have a logo - thus the one item order can be very costly
- 3) There is an additional cost per item to put a logo on
- 4) It takes over a year, sometimes two years to sell that number of items - out of pocket cost for quite sometime before it is recouped

We want the ability to sell items that relate to wine consumption/food/entertainment that are represented in wholesale catalogs for winery use. Items that have grapes on them are just an example.

People who are tourists to the winery may not always be wine drinkers.

They are not only visiting the winery to taste wine, but are there for the experience and want to take something home from their vacation as a souvenir. They may not want to take home a logo corkscrew, glass because they may not be a wine drinker. They may instead want to take home a souvenir that is a hat or shirt or a serving dish, mug, candle, etc with grapes on it to remind them of their visit to a grape growing region and something they can use in their home. This small sale will help the wineries to recoup the wine they are pouring for free. What other business do you know of that is expected to "give" their product away for nothing with the guest feeling no obligation whatsoever to purchase anything. Wineries have to pay staff, buy supplies, wash glasses, provide power, phone, maintain grapes, make wine. All these costs need to be recouped by the sale of "something."

We believe the township has no idea how many people do not purchase anything, which is a real hardship for the wineries.

As also stated above, we don't believe the township has any idea how many people are going up and down the peninsula to the wineries for a free day of entertainment, which is becoming a real burden for the wineries.

Jim, this is how we feel and what we'd like to convey at this time.

Thanks,

Eileen

[Quoted text hidden]

June 14, 2008

BRYE ESTATE VINEYARD & WINERY REQUEST FOR AMENDMENTS TO 139 ORDINANCE RESTRICTIONS

Brye Estate Vineyard & Winery has been operating under the 139 Farm Processing Ordinance since 2005. We believe the “creators” of the ordinance had very good intentions, but none of them were in the winery business and although a winemaker was consulted, he also did not have enough experience to understand the intensely restrictive ramifications of the 139 ordinance.

Therefore, Brye Estate respectfully requests that portions of the 139 Ordinance be amended to allow all 139 wineries to conduct business in order to be successful on the peninsula so as to continue to keep some very large parcels of acreage in farming and out of development. Everyone is aware of Michigan’s economy woes and that it is in the bottom two of the United States. We believe state and local governments need to be sensitive to this and do everything they can to help existing and new businesses succeed. One way to help the wineries on this peninsula to succeed is to take another look at the rationale and the necessity for these intensely restrictive rules and to loosen some of these hindrances to the success of business within the 139 ordinance. The season for wineries is short – usually May through October. Winter months do not pay any bills. During this short season, wineries need to be able to have additional sources of revenue, other than the sale of wine. This would include:

- 1) Allowing wineries on the Old Mission Peninsula to do what the MLCC allows all other Michigan wineries to do, i.e. sell a glass of wine with a food accompaniment, so that we can be competitive with our Leelanau Peninsula winery neighbors. It isn’t fair for the township to take away something that the state law allows.

We’re sure that the township is probably very unaware that each winery because of the restrictions placed on them of not charging for anything, is forced to give away approximately \$45,000K+ of wine every year through free tastings, and according to the 139 ordinance, we’re also expected to “give away” crackers, cheese and fruit as well. The fact of the matter is that by promoting giving everything away for free, wine tasting has become a “sport” among many people who are into a day of “free entertainment,” especially in today’s economy. People are looking for things to do that don’t cost them anything. They come to the wineries specifically for a free day without any intention of purchasing wines. Not only is this a hardship financially to the wineries, but also it promotes irresponsible alcohol consumption, because now these individuals can go to seven wineries and have 5-6 free samples at each winery and never spend a dime. People will limit their consumption when they have to pay for it.

- 2) The restrictions on building size under 139, also limits the wineries’ ability to be successful. With a 6,000 sq. ft. building maximum, a winery can produce no more than about 5,000 cases, thus limiting wineries’ revenues.

- 3) When a winery is built, the county requires all commercial codes in the building to be met, which is a huge expense. Wineries are then taxed as a commercial entity by the township, the state and the federal government. Then the township turns around and says that even though you had to meet all these commercial requirements, and are taxed as a commercial entity, you can't be commercial in your business and restrict to the point of the business failing.
- 4) The restrictions of what can and can't be sold in the tasting room are a hardship to wineries' success. The added revenue to the winery for selling various items is necessary to the wineries' ability to stay afloat. The requirement that the items be logoed is a hardship and is not conducive to a successful winery business.
 - a) There is about an \$80 cost per logoed item to set up the logo to be printed
 - b) There is a minimum of 144+ items to be ordered in order to have an item logoed – thus the one item order can be very costly.
 - c) There is an additional cost then for each item if it has a logo
 - d) It can take over a year, sometimes two years to sell that number of one particular item – out of pocket cost for quite sometime before it can be recouped by the winery.

We at Brys Estate would like the ability, in our small available space, to be able to sell items that relate to wine consumption/food/entertainment that are represented in wholesale catalogs for winery use. Items that have grapes on them are just an example. Hats and shirts that have a logo are also requested as visitors to all areas of the country have traditionally liked to take a hat or shirt home as a souvenir of their visit.

People who are tourists to the winery may not always be wine drinkers. They are not only visiting the winery to taste wine, but are there for the experience of what 80 acres unspoiled by development can offer them and to reconnect with nature and the land. They would like to take something home from their vacation as a souvenir. They may not want to take home a logo corkscrew or glass ("related to the consumption of wine" as stated in the 139 ordinance) because they may not be a wine drinker. They may instead want to take home a souvenir that is a hat or shirt or a serving dish, mug with grapes on it, a candle, etc. with grapes on it to remind them of their visit to a grape growing region and something they can use in their home. This small sale will help the wineries to recoup the wine they are pouring for free. What other business do you know of that is expected to "give" their product away for nothing with the guest feeling no obligation whatsoever to purchase anything. Wineries have to pay staff, buy supplies, wash glasses, provide power, phone, maintain grapes, make wine. All these costs need to be recouped by the sale of "something." We believe the township has no idea how many people do not purchase anything, which is a real hardship for the wineries.

- 5) "Activities such as weddings, receptions and other social functions for hire are not allowed."

We consider this restriction under 139 to be unnecessary and a hardship to being a successful business. We have numerous requests every week by e-mail from people seeking a place to host their wedding ceremony and/or reception. We want the ability to host a wedding on our property. Wineries on Leelanau Peninsula are allowed to host weddings, thus giving them an unfair advantage over our wineries on Old Mission. The wineries on Leelanau will benefit from any weddings, as the groups will end up visiting Leelanau's wineries instead of those on Old Mission and will support the Leelanau Peninsula's economy instead of Old Mission's economy.

Our rationale for requesting these changes is done so because:

- 1) We, as well as other wineries under 139 have made a huge investment to the Old Mission Peninsula community. We personally have preserved 80 acres of open space and view shed, which is exactly what the PDR is trying to accomplish and is paying people to do it. We have put out all the investment and taken the risk and would like to be able to be successful so that the 80 acres can stay an open space and a view shed and not a development.
- 2) The items for change – Being able to sell additional items in the tasting room, hosting weddings, not being limited to 6,000 sq. ft. for the building, and being able to do whatever the MLCC allows wineries in Michigan to do is not a harm to anyone on the Peninsula. The only reason to limit any of these items would be if they hurt or harmed anyone.
 - a) Selling additional items in the tasting room – does not hurt anyone.
 - b) Hosting weddings – does not hurt anyone
 - c) Being able to do what Michigan law (MLCC) allows – does not hurt anyone
 - d) Having a larger building than 6,000 sq. ft. (other farm buildings are not size restricted) – does not hurt anyone

EXHIBIT 25

PTP Motion for Summary Judgment

October 6, 2023

Eileen Brys <eileenbrys@gmail.com> Page 9 of 9



Fwd: Opportunity for Dan Leonard to show us his ideas on PenTwp Wine Reg rewrite

2 messages

Patrick Brys <patrickbrys@gmail.com>

To: Walter & Eileen Brys <eileenbrys@gmail.com>, Walter Brys <walterbrys@hotmail.com>

Wed, Aug 31, 2011 at 4:31 PM

We're still working on it !

----- Forwarded message -----

From: **Jim Krupka** <JKrupka@chateauchantal.com>

Date: Wed, Aug 31, 2011 at 3:41 PM

Subject: Opportunity for Dan Leonard to show us his ideas on PenTwp Wine Reg rewrite

To: bob@chateauchantal.com, bryswine@pentel.net, chris@2lwinery.com, eokeefe@cgtwines.com, Jim Krupka <JKrupka@chateauchantal.com>, joan@peninsulacellars.com, john@peninsulacellars.com, Linda Stenenga <linda@bowersharbor.com>, llutes@blackstarfarms.com, Marie-Chantal Dalese <MCDalese@chateauchantal.com>, seanok@pentel.net, spencer@bowersharbor.com

Folks:

Since I had not heard from Dan Leonard lately about his progress on the promised draft update of Pen Twp wine regs, I called him for a status report. Result:

He says he is about there with his proposals

He would like to prepare a PowerPoint show for us to reveal what he has in mind and get our initial feedback.

He proposed Thursday morning Sept 15. I offered Chantal as venue at 9am. Does this work for you?

Dan's intent still seems to be total zoning code update pushed through TWP in one package.

His desire is to have that package ready this winter for community exposure in the spring.

He expects the wine piece to be one that draws much comment.

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

www.peninsulatownship.com

ISAIAH S. WUNSCH
SUPERVISOR

REBECCA CHOWN
CLERK

MARGARET ACHORN
TREASURER

W. WILLIAM RUDOLPH
TRUSTEE

DAVID K. SANGER
TRUSTEE

ARMEN SHANAFELT
TRUSTEE

WARREN WAHL
TRUSTEE

July 12, 2022

Brys Realty LLC
C/O: Patrick Brys
3309 Blue Water Rd.,
Traverse City, MI 49686

Re: Request for Private Fundraiser on August 15, 2022.

Dear Mr. Brys,

This letter is in response to your request to hold a gathering including the use of a tent for an event for approximately 100-125 attendees who are not registered guests using your lodging facilities on your property.

Your property holds a Special Use Permit to operate a Winery-Chateau under Section 8.7.3(10) of the Peninsula Township Zoning Ordinance. The use you have proposed is not permitted by your Special Use Permit nor by any section(s) of the zoning ordinance for a Winery-Chateau in the A-1, Agricultural Zoning District.

Although the federal court recently enjoined some portions of the zoning ordinance, the Township is not aware of any ruling that would authorize a tent and a gathering of this size as a permitted use under a Winery-Chateau Special Use Permit. Therefore, please be advised that you are not authorized to install a tent or conduct a gathering of approximately 100-125 attendees who are not registered guests on your property. If you are aware of a court ruling, ordinance provision, or special use permit provision that you believe authorizes this use, please identify it with specificity.

Please contact me at (231) 223-7318 if you have any additional questions regarding this information.

EXHIBIT 26

PTP Motion for Summary Judgment

October 6, 2023

Page 2 of 10

Sincerely,



Christina Deeren
Director of Zoning
Zoning Administrator
(231) 223-7318

Attorney-Client Privilege

----- Forwarded message -----

From: **Zoning** <Zoning@peninsulatownship.com>

Date: Tue, Jul 12, 2022 at 3:51 PM

Subject: RE: Private Fundraiser - August 15th

To: Patrick Brys <patrickbrys@gmail.com>

Cc: William Fahey <wfahey@fsbirlaw.com>, Dave Sanger <enforcement.peninsulazoning@gmail.com>, Becky Chown <clerk@peninsulatownship.com>, Isaiah Wunsch <supervisor@peninsulatownship.com>, Warren L. Wahl <warren.peninsulatrustee@gmail.com>, Brad Bickle <treasurer@peninsulatownship.com>, Armen Shanafelt <abshanafelt@gmail.com>

7/12/2022

Patrick,

Attached please find my letter in response to your request to hold a Private Fundraiser on 8-15-2022.

Please feel free to contact me if you have any additional questions.

Respectfully,

Christina Deeren

(231) 223-7318

From: Patrick Brys <patrickbrys@gmail.com>
Sent: Wednesday, July 6, 2022 5:05 PM
To: Christina Deeren <zoning@peninsulatownship.com>
Cc: Rob Manigold <supervisor@peninsulatownship.com>
Subject: Re: Private Fundraiser - August 15th

Christina,

I am following up regarding my email from 2 weeks ago - and have not received a response. See below. Or do you simply need notice that we will be putting up a temporary tent for the 1.5 hour event - similar to when we had a private birthday party for my Dad several years back?

Thanks,

Patrick Brys

On Wed, Jun 22, 2022 at 4:55 PM Patrick Brys <patrickbrys@gmail.com> wrote:

Christina,

We have been asked to host a private fundraiser for Governor Gretchen Whitmer on August 15th with the Governor in attendance. We will require a tent for approximately 100-125 guests. Please advise on next steps.

Many thanks,

Patrick Brys

231-883-2020

----- Forwarded message -----

From: **David Sanger** <enforcement.peninsulazoning@gmail.com>

Date: Tue, Mar 26, 2019 at 2:03 PM

Subject: Re: Winemakers Reception Event - April 12

To: Patrick Brys <patrick@brysestate.com>

Thanks, I will check there.

Dave

On Tue, Mar 26, 2019 at 1:39 PM Patrick Brys <patrick@brysestate.com> wrote:

I am only aware of what is published on their website - which details the locations of each event: <https://www.tcbigswineauction.org/events>

Thanks,
Patrick

On Tue, Mar 26, 2019 at 9:33 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Thanks, Patrick. Do you know if the other wineries will have guests at their winery, or at the partner restaurant?

I am trying to be fair to all involved in the event.

Thanks,

Dave

On Tue, Mar 26, 2019 at 11:16 AM Patrick Brys <patrick@brysestate.com> wrote:

Brys Estate is participating in the Bigs event which is now being held at the Boathouse Restaurant. The event is not being held at the winery.

Thanks,
Patrick

On Tue, Mar 26, 2019 at 7:20 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Patrick,

Please confirm that Brys is not participating in the Bigs wine event on Friday, April 12. I have received mixed info on the radio this morning and on the Bigs website regarding Brys participation.

Thanks,

Dave

On Sun, Mar 24, 2019 at 12:20 PM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Patrick,

The Winery-Chateau section provides for the Township Board to adjust the requirement following a year when the harvest is adversely affected by weather (u (6)) page 133 in the Ordinance.

Thanks,

Dave

On Sat, Mar 23, 2019 at 10:25 AM Patrick Brys <patrick@brysestate.com> wrote:

Thanks Dave for the information. We will look this over and get our calculations to Christina sometime this spring. As it is a yearly report and guest count allowed is based solely on tonnages (not acres in the ground or land set aside for ag), if the crop is light due to mother nature - how have you handled this in the past? Is an average yield considered? Over the past 10 years (off essentially the same acreage) we have seen yields of anywhere from 30 tons to over 200 tons.

Thanks,
Patrick

On Fri, Mar 22, 2019 at 6:01 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Patrick,

Thank you for your response. Yes, I became aware that Eileen had surgery again, and after I sent the note to your Dad realized that he may not be receiving his emails.

Thank you for taking action that will avoid an issue with this event.

The "Guest Activities" use in the Winery Chateau section of the Zoning Ordinance, was added in 2004 (Amendment 141) to enable holders of a Winery Chateau (W-C) Special Use Permit (SUP) to hold activities and events for non-registered guests (not staying at the overnight rooms). These uses were allowed in addition to the normal wine tasting, provided that the W-C grows or purchases OMP grows additional grapes (over and above the minimum 37.5 acres for the SUP) in the ratio of 1.25 additional tons for each participant at the Guest Activity event.

This is a simplification; I am attaching the W-C Section 8.7.3 (10) pertaining to the W-C use. Please refer to subsection (u) for details.

The qualification is annually, based on the previous year's crop production. A report must be submitted annually to the Zoning Administrator; there is no set format at this time. Some Guest Activities require 30- days prior notice to the Zoning Administrator (see the Ordinance),.

Here's what you need to furnish to the Zoning Administrator for the 2018 crop year, to qualify for participants in Guest Activities in 2019:

1. Determine your total harvest for 2018 in tons. As a W-C you must have a minimum of 50A and 75% of that minimum in grape cultivation. Thus, the minimum is $50 \times 0.75 = 37.4$ A. I know that Brys has over 50 A, and I recall that a map on your most recent amendment stated that you have 44.1 A in vines. Thus, you have an "excess" of 6.6 A that counts toward your Guest Activities. Next, determine your yield per acre for 2018. If it was 2.5 T per acre, then you can report "excess" yield of 6.6 times 2.5 = 16.5 T. With the formula of person = 1.25 T, then you have a right to have $16.5 / 1.25 = 13.2$ or 13 people at each Guest Event. If you purchased OMP grapes from other growers, then add that tonnage to your own.

2. The result is the number of people allowed, per event in 2019, at each event that is allowed in the W-C Guest Activities section of the Ordinance, limited to 111 people per event during the calendar year. There is no cap on the number of events, or the total number of participants -- just the maximum total number of people at any one event.

Please review the Ordinance, and feel free to contact me. Christina and I are available to meet with you if it would be helpful.

I am working closely with the wineries that are allowed under the W-C SUP; only these wineries can qualify for Guest Activities. Other wineries, who operated under the "Use by Right" section (Farm Processing) cannot qualify for Guest Activities. This Guest Activities section is being used by Chateau Chantal to qualify for agricultural-related food events during 2019, including nighttime dinners and daytime lunches in the summer.

I encourage you to provide the grape growing information to Christina, so you will be able to hold Guest Activities if you prefer.

Please extend my wishes to your Mom for a speedy recovery and safe return trip home.

Dave

On Thu, Mar 21, 2019 at 8:27 PM Patrick Brys <patrick@brysestate.com> wrote:
Dave,

Received your email from yesterday and today. My Dad is currently in California and was at the hospital all day with my Mom who was having cancer surgery - this is why he did not get back to you same day.

I have been in touch with the event organizers and have confirmed that the fundraiser has been relocated and will no longer be held at Brys Estate.

We do grow several acres of grapes outside of the 75% acreage set aside for the SUP. For future reference, could you provide details on what information is needed so we can supply this report to the township? We would like to understand the number of allowed guests we can currently accommodate for our guest activity uses. Who is the best person to discuss questions with so we fully understand the allowed guest activity uses under our SUP?

Thanks,
Patrick Brys

On Thu, Mar 21, 2019 at 4:29 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Patrick,

I sent this to your Dad yesterday, with no response. Assuming that he might be travelling, I am sending to you and request that you take action.

Please reply so we can move this forward.

Thanks,

Dave

----- Forwarded message -----

From: **David Sanger** <enforcement.peninsulazoning@gmail.com>

Date: Wed, Mar 20, 2019 at 9:14 AM

Subject: Winemakers Reception Event - April 12

To: Walter Brys <walterbrys@hotmail.com>

Cc: Christina Deeren <zoning@peninsulatownship.com>

Walter,

I am investigating the advertised Winemakers VIP Reception Event on Friday, April 12 from 6:00PM to 8:00PM. This is advertised as a benefit event for Big Brothers and Big Sisters.

Based on my preliminary investigation, this event appears to be allowed under the Guest Activities section of the Winery-Chateau Ordinance section only, and not as a normal Winery-Chateau Tasting Room activity.

Factors to be considered include:

1. fixed price for entry, rather than sale of wine by the glass (Guest Activity)
2. tasting room will not be open to the public (Guest Activity)
3. meeting of a non-profit group wherein a full course meal is not being served (Guest Activity)
4. Grape production/purchase report must be submitted to Zoning Administrator to determine the maximum number of people allowed per event. (Guest Activity)

It appears that this event would be allowed as a Guest Activity use, requiring that you can furnish proof that Brys Estate grew or purchased Old Mission Appellation grapes last year, in excess of the grapes grown on the minimum 75% acreage for the SUP. The requirement is to grow or buy 1.25 tons additional tons for each person allowed to attend the Guest Activity event.

Christina and I have reviewed this advertised event and request that you work with us to ensure that the event is in compliance with the Ordinance and your SUP.

I suggest that we meet as soon as possible to discuss this advertised event.

Thank you in advance for your cooperation.

Dave

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

--

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EXHIBIT 27**PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 19**

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF LEE LUTES

<p>1 RULE 30(b)(6) DEPOSITION OF WINERY AT BLACK STAR FARMS and LEE LUTES</p> <p>2</p> <p>3 Taken by the Intervenor-Defendant on the 12th day of July,</p> <p>4 2023, at 15900 Rue de Vin, Traverse City, Michigan, at</p> <p>5 8:00 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Hillyer 5</p> <p>5</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 PAGE</p> <p>9 Deposition Exhibit 37 marked 13</p> <p>10 (Commercial lease agreement)</p> <p>11 Deposition Exhibit 38 marked 19</p> <p>12 (Final farm processing permit)</p> <p>13 Deposition Exhibit 39 marked 28</p> <p>14 (Deed of conservation easement)</p> <p>15 Deposition Exhibit 40 marked 31</p> <p>16 (Grand Traverse County 2023 property information)</p> <p>17 Deposition Exhibit 41 marked 34</p> <p>18 (Lutes letter 12-16-2011)</p> <p>19 Deposition Exhibit 42 marked 40</p> <p>20 (Derren letter 6-12-2018)</p> <p>21 Deposition Exhibit 43 marked 42</p> <p>22 (Plaintiff's answers to first Interrogatories)</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 4</p>
<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>3 And</p> <p>4 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>5 Miller Canfield Paddock & Stone, PLC</p> <p>6 99 Monroe Avenue, NW, Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 (616) 776-6333</p> <p>9 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>10 McGraw Morris, PC</p> <p>11 300 Ottawa Avenue, NW, Suite 800</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 288-2700</p> <p>14 For the Intervenor-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>15 Law Office of Tracy Jane Andrews, PLLC</p> <p>16 619 Webster Street</p> <p>17 Traverse City, Michigan 49686</p> <p>18 (231) 714-9402</p> <p>19 And</p> <p>20 MS. HOLLY LYNN HILLYER (P85318)</p> <p>21 Olson Bzdok & Howard, PC</p> <p>22 420 East Front Street</p> <p>23 Traverse City, Michigan 49686</p> <p>24 (231) 946-0044</p> <p>25 Also Present: Becky Chown, Peninsula Township</p> <p>Sherri Fenton, Black Star Farms</p> <p>RECORDED BY: Heidi Peckens, CER 9634</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>Page 3</p>	<p>1 Traverse City, Michigan</p> <p>2 Wednesday, July 12, 2023 - 8:15 a.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm that</p> <p>4 the testimony you're about to give will be the whole truth?</p> <p>5 MR. LUTES: Yes.</p> <p>6 LEE LUTES</p> <p>7 having been called by the Intervenor-Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. HILLYARD:</p> <p>10 Q Good morning. Could you please state name for the record?</p> <p>11 A Lee Lutes.</p> <p>12 Q And I'm Holly Hillyer, I'm counsel for PTP. And have you</p> <p>13 been deposed before?</p> <p>14 A No.</p> <p>15 Q Okay. I will run through a couple ground rules. You may</p> <p>16 have heard them. I know you observed a little bit earlier</p> <p>17 this week, but first this is going to be transcribed, so if</p> <p>18 you could please speak your answers and try to avoid non-</p> <p>19 verbal communication, shaking your head, gesturing with your</p> <p>20 hands. I will assume if you answer a question that you</p> <p>21 understood the question, so if you don't understand</p> <p>22 something please let me know and I'll be happy to try to</p> <p>23 rephrase it. And let me finish questions before you answer</p> <p>24 or start to answer, partly to give your attorney an</p> <p>25 opportunity to object if he needs to and partly to avoid</p> <p>Page 5</p>

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<p>1 speaking over one another so that it's easier for Heidi to 2 transcribe.</p> <p>3 If your attorney objects I will expect you to 4 answer anyway, unless he instructs you not to, object 5 because of the claim of privilege. And if I ask for a date 6 range or the size of something on your property, when 7 something happened in the past, estimates are fine but 8 please try to avoid guessing. You know, an informed 9 estimate is good but an uneducated guess is not what I would 10 be looking for, so let me know if -- if you would have to 11 guess to answer a question. And finally, just let me know 12 if you need a break. As long as there's not a question 13 pending that hasn't been answered yet, I'm happy to take a 14 break whenever and I will try to take a break about every 15 hour or so.</p> <p>16 A Okay.</p> <p>17 Q So I want to run through with you how you prepared for 18 today's deposition and then talk to you a little bit about 19 the background of the business, the land use permits for 20 Black Star Farms, the permitted land uses at Black Star 21 Farms at its Old Mission Peninsula location and some of the 22 discovery responses provided to PTP.</p> <p>23 And I understand Black Star Farms has another 24 witness who has been designated as possibly more 25 knowledgeable on certain topics, so if there's a question</p> <p style="text-align: center;">Page 6</p>	<p>1 appreciate being able to see that before I --</p> <p>2 MS. HILLYER: We don't need to mark this.</p> <p>3 A -- thank you -- confirm. Yes, I did get a copy of this.</p> <p>4 Q Okay. And what did Black Star do to prepare you for today's 5 deposition?</p> <p>6 A I don't know that I would say that Black Star did anything, 7 but I met with our attorneys, I reviewed some of our 8 internal documentation, in terms of just the time line, when 9 we first set up at our Old Mission location. It was quite 10 some time ago. There was an awful lot going on at the time. 11 We were running another winery operation.</p> <p>12 I'm involved with day-to-day operation so I'm 13 involved on many levels at the winery, but setting up a 14 brand new winery at a completely separate location was a big 15 project, so I just looked at some of those things and kind 16 of confirmed some time line things more or less.</p> <p>17 Q Okay. Besides your attorney did you talk to anyone else?</p> <p>18 A No.</p> <p>19 Q And other than records to kind of refresh your memory about 20 the time line, were there any other documents you remember 21 looking at?</p> <p>22 A No.</p> <p>23 Q Did you look at any land use permits or anything related to 24 correspondence from the township?</p> <p>25 A I did look at some things in terms of correspondence with</p> <p style="text-align: center;">Page 8</p>
<p>1 that you think that witness would be better equipped to 2 answer, please just let me know and we'll ask those in that 3 deposition.</p> <p>4 A Okay.</p> <p>5 Q So with that, what is your role at Black Star?</p> <p>6 A I'm the managing member for the winery at Black Star Farms.</p> <p>7 Q And I understand Black Star Farms is an LLC; right?</p> <p>8 A That's correct.</p> <p>9 Q Okay. So are there -- I guess, how many members are there?</p> <p>10 A There are five members, currently.</p> <p>11 Q Five members. Are there other types of members besides 12 managing members?</p> <p>13 A There are just partners that are -- are growers for us, so 14 all of our members, other than myself now, provide us with 15 90 percent of the fruit that we process.</p> <p>16 Q Okay. So do you understand today that you are testifying as 17 the corporate representative for the winery at Black Star 18 Farms, LLC?</p> <p>19 A I do.</p> <p>20 Q Okay. And that we're here today because Black Star have 21 filed a lawsuit against Peninsula Township?</p> <p>22 A Yes.</p> <p>23 Q And did you receive a copy of Schedule A to your deposition 24 notice? It had a list of topics.</p> <p>25 A I believe so, but if you have a copy of it I would</p> <p style="text-align: center;">Page 7</p>	<p>1 the township having to do with a request that we had made in 2 2011 to expand our production facility.</p> <p>3 Q Okay. And did you bring any documents with you today?</p> <p>4 A I did not.</p> <p>5 Q Okay. Do you agree to speak for Black Star with your 6 testimony today?</p> <p>7 A I do.</p> <p>8 Q Okay. So we talked a little bit about some of the members 9 in Black Star. Who are the members -- the five members 10 besides yourself?</p> <p>11 A Mr. Kerm Campbell; he's our primary majority owner in the 12 winery operation. He also is the sole owner of the property 13 on Leelanau.</p> <p>14 Q Okay. And when you say "on Leelanau," is that your Suttons 15 Bay location?</p> <p>16 A That's our Suttons Bay location, yes. He's our largest 17 grower, provides us with the majority of our fruit. Robert 18 Mampe is our partner at the Old Mission facility. He owns 19 the property there and farms roughly 50 acres or so there. 20 Walter J. Hooper has a vineyard operation on 21 Montague Road, and he's farming roughly 18 acres there. All 22 of his fruit comes to us. David Stanton is a partner that 23 we have that is -- has a vineyard operation out in Leelanau, 24 just north of Cedar, and he's farming about 25 acres there.</p> <p>25 Q Okay. And with you that makes five; right?</p> <p style="text-align: center;">Page 9</p>

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<p>1 A With me it makes five.</p> <p>2 Q Okay. Who has primary responsibility for ensuring</p> <p>3 compliance with the Peninsula Township zoning requirements?</p> <p>4 A I would say I have primary responsibility.</p> <p>5 Q Do the other members have involvement in that?</p> <p>6 A The other members do not have day-to-day involvement. As</p> <p>7 the managing member I'm more involved with compliance issues</p> <p>8 of all types. We have an administrator for the winery, her</p> <p>9 name is Barbara Guest.</p> <p>10 Q Okay.</p> <p>11 A Barb helps keep track of some of the filings. She does an</p> <p>12 awful lot of our tax filings, things of that nature. She</p> <p>13 may get involved if something needs to be filed, just in</p> <p>14 terms of putting it together, but generally it's me, within</p> <p>15 the partnership, that ensures --</p> <p>16 Q Do you also -- sorry; go ahead.</p> <p>17 A Just ensures that we are in compliance.</p> <p>18 Q Do you also do that for compliance with whatever zoning</p> <p>19 requirements your Suttons Bay location --</p> <p>20 A Yes.</p> <p>21 Q -- follows?</p> <p>22 A Yes. As long as it has to do with the winery.</p> <p>23 Q Okay. And could you spell Barbara Guest's last name?</p> <p>24 A G-u-e-s-t.</p> <p>25 Q Okay. So are you also the person who would be primarily</p> <p style="text-align: center;">Page 10</p>	<p>1 Q Okay. Who owns the buildings and equipment on the property?</p> <p>2 A Mr. Mampe owns the buildings, the winery owns all of the</p> <p>3 equipment, all of the processing equipment, the inventory.</p> <p>4 MR. INFANTE: Holly, can I help one second?</p> <p>5 MS. HILLYER: Sure.</p> <p>6 MR. INFANTE: I think you said earlier that Robert</p> <p>7 Mampe owns the land and then you said that the Trust owns</p> <p>8 the land. Are you referring to them interchangeably? It</p> <p>9 just might affect the record a little bit.</p> <p>10 Q Yes, to clarify, The Robert N. Mampe Trust is the</p> <p>11 landowner; correct?</p> <p>12 A Correct.</p> <p>13 Q Okay.</p> <p>14 A For the record also, I have a personal relationship as a</p> <p>15 partner with Mr. Mampe. So I often refer to Mr. Mampe</p> <p>16 simply as Bob, as I'm dealing with him.</p> <p>17 Q Okay.</p> <p>18 A And if you knew Bob you'd understand why. He's a bit of a</p> <p>19 character.</p> <p>20 Q Do you know of anyone else who holds an interest in the</p> <p>21 land?</p> <p>22 A No.</p> <p>23 Q Okay.</p> <p>24 A Pardon me; may I rephrase?</p> <p>25 Q Please.</p> <p style="text-align: center;">Page 12</p>
<p>1 responsible for applying for any land use permits or</p> <p>2 amending -- amendments to existing permits?</p> <p>3 A Yes.</p> <p>4 Q Okay. Who's primarily responsible for speaking to Peninsula</p> <p>5 Township on Black Star's behalf?</p> <p>6 A I would say that I am primarily responsible, however, in the</p> <p>7 past, because we have multiple partners that are residents</p> <p>8 out here, there have been times when Bob Mampe -- Robert</p> <p>9 Mampe has gone to the township as the landowner at the --</p> <p>10 the Old Mission Location.</p> <p>11 Mr. Kerm Campbell also has, at times, come to the</p> <p>12 township and worked with the township to try to accomplish</p> <p>13 something if -- if in fact I was otherwise occupied with</p> <p>14 fruit processing or dealing with something maybe more</p> <p>15 significant, you know, for day-to-day operation.</p> <p>16 Q And what is the relationship between Black Star and the</p> <p>17 Robert N. Mampe Trust?</p> <p>18 A The winery has a lease from Robert Mampe's Trust that was</p> <p>19 established when we first took occupancy of that building in</p> <p>20 2007.</p> <p>21 Q So is it the Trust that owns the land that the winery is</p> <p>22 located on?</p> <p>23 A Yes; correct.</p> <p>24 Q Okay. And that's the same Robert N. Mampe who's the member?</p> <p>25 A Correct.</p> <p style="text-align: center;">Page 11</p>	<p>1 A I do know that there is an easement on the land that I</p> <p>2 believe would be held, more than likely, by the State of</p> <p>3 Michigan, so -- it's a conservation easement.</p> <p>4 Q Okay.</p> <p>5 A So if that may be what you're insinuating then yes, I would</p> <p>6 assume that -- actually it may be The Grand Traverse</p> <p>7 Regional Land Conservancy that oversees the easement, so</p> <p>8 they may also have an interest in the land.</p> <p>9 Q Okay. I would agree with that. And I think I might have</p> <p>10 some questions for you about the easement in a little while,</p> <p>11 but I want to go back to the lease first.</p> <p>12 MS. HILLYER: I'm going to bring in an exhibit.</p> <p>13 This will be 37.</p> <p>14 (Deposition Exhibit 37 marked)</p> <p>15 Q So, I've just handed you Exhibit 37, which is a copy of the</p> <p>16 commercial lease agreement, and it's identified by the Bates</p> <p>17 numbers WOMP 0000192 through -208. I'll give you a minute</p> <p>18 to take a look at it or -- does that look familiar to you?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A It does appear that there's a page missing, page 18, which I</p> <p>22 think would be the renewal page. Because I believe now</p> <p>23 there is a more current version of this, but it's generally</p> <p>24 the same lease.</p> <p>25 Q Yes, this goes through -- I apologize. To correct the</p> <p style="text-align: center;">Page 13</p>

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<p>1 record here, this goes through WOMP -209 and Mr. Lutes is 2 correct that page 18 is missing. It goes from page 17 of 19 3 at WOMP -208 to page 19 of 19 of WOMP -209. 4 MR. INFANTE: I'm going to look for that. I'd say 5 it was produced this way. Let me look for it. 6 MS. HILLYER: It does. 7 Q And I had a question for you about that, because I 8 understand this is -- this lease expired on the last day of 9 December 2022. So to your knowledge was this renewed? 10 A Yes. 11 Q Do you know the terms of the renewal? 12 A The terms are the same. 13 Q Do you know how long the renewal period was for? 14 A It's, again, a two-year -- 15 Q Two years. 16 A -- renewal. 17 Q Okay. Do you know if Black Star has provided the township 18 with an updated copy of the lease? 19 A I do not believe we have. 20 Q So on the last page of this document, which is Exhibit A, 21 the legal description, is there a version of this document 22 that you've seen that has the legal description of the 23 parcel, the composite parcel and the CE-15-A? 24 A Not to my knowledge recently. 25 Q There might be an old version?</p> <p style="text-align: center;">Page 14</p>	<p>1 Township, specifically zoning ordinance section 6.7.2-19-B- 2 4"? Do you know what that means? 3 A Without referencing additional material, what I would 4 postulate is that this is in reference to the fact that when 5 we first, again, established this, it was a new partnership 6 with Mr. Mampe, and his interest was in making sure that the 7 winery did not have rights to any other part in his farm. 8 Q Okay. 9 A And that he was very interested in maintaining control and 10 practices to farm his vineyards and fruit trees and wanted 11 to ensure that there were no other influences from the 12 winery or other partners to challenge that. So my guess is 13 that he -- he had that put in there just to ensure that it 14 was very specific in terms of what the winery was leasing. 15 Q Do you know were there buildings existing on the property 16 when Black Star began leasing it? 17 A Will you rephrase, -- 18 Q Sure. 19 A -- please? 20 Q When Black Star began leasing the property, were there 21 already buildings on it? 22 A There were. 23 Q Could you describe those for me? 24 A The building that the winery leases was generally known to 25 those of us that have been around long enough, as the</p> <p style="text-align: center;">Page 16</p>
<p>1 A Perhaps as an older version. There wasn't a version of the 2 lease that we had signed initially when we first got 3 started. There may have been a description of the land at 4 that point, -- 5 Q Okay. 6 A -- the parcel, but I -- I've not seen one in the last two or 7 three versions of this lease. 8 Q Do you know what this composite parcel is referring to? 9 A It's referring to roughly a five acre parcel that the winery 10 building itself sits on, as a component of the larger 11 parcel, that makes up all of Mr. Mampe's -- or the Mampe 12 Trust holdings there. 13 Q Do you know how many parcels there are total? 14 A I do not know how many parcels there are total. Mr. Mampe 15 has changed some of those parcels in terms of size, in terms 16 of structure, access, things of that nature, just to suit 17 his own interests over time. 18 Q Okay. So in this last paragraph where it talks about "land 19 described in the above-titled composite parcel outside the 20 land described in CE-13-A, directly above but within the 21 composite parcel," do you recognize what that's describing? 22 A I do not. 23 Q Okay. And do you know what this reference to "the property 24 shall be leased only as to the specific limited encumbrance 25 necessary to satisfy the zoning ordinance of Peninsula</p> <p style="text-align: center;">Page 15</p>	<p>1 Underwood Farm Processing Facility. 2 Q Okay. 3 A Mr. Underwood ran a fruit processing plant there for apples 4 and cherries, for decades and he's the one that established 5 the Underwood Development. He's the one that put the land 6 originally in a conservation easement, to the best of my 7 knowledge. 8 To the best of my knowledge, Mr. Mampe purchased 9 his parcels on McKinley Road from Mr. Underwood, and so the 10 building that the winery leases is roughly a 12,000 square 11 foot former fruit processing facility that Mr. Mampe was 12 using basically as a big garage because he had farming 13 equipment and -- I also -- outside of the leased parcel for 14 the winery, I do know that he had a private home on the 15 site. I know that there was also -- he refers to it as 16 "Studio G." It's kind of a very casual apartment where he 17 will allow people to stay at times. 18 He's had farm laborers stay in Studio G at times. 19 He also has a larger barn that he put up prior to us leasing 20 the winery building, because that became his garage, storage 21 facility. He does maintain horses on the property, so 22 there's also some -- his daughter had horses so there's some 23 ancillary equipment and whatnot in the barn that's for the 24 horses. 25 Q Does Black Star lease any other buildings besides the --</p> <p style="text-align: center;">Page 17</p>

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<p>1 A Black Star only leases the main winery building that we now 2 utilize for processing. 3 Q Okay. 4 MR. INFANTE: Wait for her to finish asking the 5 question. You jumped in a little quick there. 6 THE WITNESS: Okay. 7 MR. INFANTE: You'll do it again. Don't worry. 8 MS. HILLYER: It's natural. It's how people have 9 conversations. 10 THE WITNESS: Sure. 11 Q If you turn in this document to page 6 of 19, this is WOMP - 12 197, where it says "Use of property by tenant." Do you know 13 what this section means, where it says "The leased premises 14 may be occupied and used by tenant exclusively as an 15 agricultural production and sales operation and to be known 16 as an agricultural production and sales operation?" 17 MR. INFANTE: Objection; calls for a legal 18 conclusion. You can answer. 19 A I was reading the paragraph. Will you rephrase your 20 question, please, or re-state your question? 21 Q Sure. Do you know what is meant by the reference in this 22 paragraph in Article 10, Section 1 about the use? Do you 23 know what is meant by "to be known as an agricultural 24 production and sales operation?" 25 MR. INFANTE: Same objection.</p> <p style="text-align: center;">Page 18</p>	<p>1 Q So I've just handed you a document that is labeled 2 "Defendant's response to first RFP's 006380." And at the 3 top it says, "Final Farm Processing Permit Number 2." Do 4 you recognize this? 5 A I do. 6 Q Do you recognize this to be Black Star's Farm processing 7 permit for the property that we've been discussing? 8 A I do. 9 Q Do you see at the top it's issued to Robert Mampe as the 10 landlord and the Winery at Black Star Farms as the tenant? 11 A I do. 12 Q Okay. Do you know of any later versions of this document? 13 A I do not know of any later versions. 14 Q Do you know why at the bottom where it says "Retail sales 15 and tasting" it says "None"? 16 A I do not. 17 Q Do you recall when -- when Black Star obtained permission 18 from the township to proceed with the retail sales and 19 tasting part of the operation? 20 A When we received permission from the -- when we were issued 21 this permit and when we were issued our license from the 22 State of Michigan, -- 23 Q Okay. 24 A -- which also grants us the right to operate a tasting room. 25 And that would have been at some point during this period</p> <p style="text-align: center;">Page 20</p>
<p>1 A I do. 2 Q Could you tell me about your understanding of that? 3 A It was Mr. Mampe's intention that the winery building being 4 leased to the winery only be used for wine processing, 5 tasting room operation, things that were in support of a 6 wine-making facility and operation and that we did not start 7 selling used cars there or perhaps bring in animals or 8 something of that nature. 9 But, again, what I would state is that when this 10 was first put together Mr. Mampe was a new partner with us. 11 We didn't know each other well, so I think he was just 12 trying to ensure that -- because at Black Star Farms in 13 Suttons Bay we do a wide variety of things. I think he 14 wanted to be sure that he had some input in terms of what 15 would be acceptable to him because he lives on that site. 16 Q Okay. I am finished with this document. 17 (Off the record interruption) 18 Q So I want to switch gears a little bit and talk about the 19 land use permissions from the township for the winery. And 20 are you familiar with a farm processing permit that's been 21 issued to the winery for that location? 22 A I am. 23 Q I'm going to get that. 24 MS. HILLYER: That'll be Exhibit 38. 25 (Deposition Exhibit 38 marked)</p> <p style="text-align: center;">Page 19</p>	<p>1 of -- I'm just making an educated guess here -- but in the 2 latter six months of 2007. 3 Q Okay. 4 A Without looking at that permit specifically. 5 Q Did Black Star receive preliminary farm processing permits 6 throughout the process of starting its winery operations in 7 that location before this permit was issued? 8 A Will you restate that question for me, please? 9 Q Sure. Before this permit was issued in -- and I'll note the 10 date, this is September 27th, 2007, were there any 11 preliminary farm processing permits that Black Star received 12 from the township? 13 A Not to the best of my knowledge. 14 Q Do you remember when -- when Black Star first acquired that 15 property, began leasing it? 16 A Do I remember that? 17 Q Sure. Could you tell me when that was, if you remember? 18 A I'd have to look at the specific document as to when we 19 signed the lease formally, but it was -- we started putting 20 equipment in the building rather early in the year, with Mr. 21 Mampe's permission. He started working on the building, 22 because again, it was a garage. 23 It sat empty for probably 15 years. It was 24 grungy, it needed an awful lot of interior work. So he 25 started doing that early in '07, painting and whatnot. I</p> <p style="text-align: center;">Page 21</p>

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<p>1 believe we started putting equipment in April or May of that</p> <p>2 year, with the intention of being ready to receive fruit for</p> <p>3 the '07 grape harvest.</p> <p>4 Q And were there grapes growing on the property when you</p> <p>5 started leasing it?</p> <p>6 A There were.</p> <p>7 Q Okay. And did you plant more grapes after that?</p> <p>8 A We did not plant more grapes, no. Mr. Mampe did plant more</p> <p>9 grapes.</p> <p>10 Q Okay.</p> <p>11 A And when I say "we," I mean we as the winery.</p> <p>12 Q "We as the winery." Okay. So, I understand. So Mr. Mampe</p> <p>13 was growing the grapes there and he has maintained that part</p> <p>14 of the operation.</p> <p>15 A Yes.</p> <p>16 Q So does the winery purchase the grapes from Mr. Mampe?</p> <p>17 A Yes.</p> <p>18 Q Okay. So do you remember roughly when Black Star opened for</p> <p>19 business after it received this permit?</p> <p>20 A Again, I would have to look at documentation to be certain.</p> <p>21 I don't recall whether we were able to open in the fall of</p> <p>22 '07 or whether our tasting room opened for retail sales</p> <p>23 didn't happen until '08. I do not recall that --</p> <p>24 Q Okay.</p> <p>25 A -- without looking at further documentation. There was a</p> <p style="text-align: center;">Page 22</p>	<p>1 We are right on M-22. We far exceeded</p> <p>2 expectations, of all of us, in terms of what -- how we would</p> <p>3 be received as a new winery operation at that location. So</p> <p>4 as we started to bust at the seams in terms of production --</p> <p>5 and the problem with a winery operation is that you -- it</p> <p>6 requires a great deal of ancillary storage.</p> <p>7 Q Okay.</p> <p>8 A Storage of empty bottles, storage of bottles that have been</p> <p>9 filled but are not yet ready for sale, storage of barrels,</p> <p>10 storage of processing equipment that's not in use other than</p> <p>11 during harvest. And for those reasons we were looking for</p> <p>12 additional space.</p> <p>13 Mr. Mampe came forward to us, and I had known Bob</p> <p>14 for quite some time. Again, if you've ever met Mr. Mampe,</p> <p>15 he's a character. And as a grape grower, we all thought</p> <p>16 fondly of him and knew his site and knew that it was a</p> <p>17 quality piece of property for growing grapes. And probably</p> <p>18 as early as 2005 he and I started talking about the</p> <p>19 possibility, because again we were an LLC that was welcoming</p> <p>20 grape growers into our operations to help us both grow, but</p> <p>21 to help a grape grower benefit by being part of a winery.</p> <p>22 It is also widely known within the industry,</p> <p>23 especially in a region like this, that if a grape grower is</p> <p>24 not directly tied to a winery it is very very difficult to</p> <p>25 make money growing grapes; --</p> <p style="text-align: center;">Page 24</p>
<p>1 lawsuit, as you may be aware, that looked like it was going</p> <p>2 to hold some things up for some time. We were able to work</p> <p>3 through that, but that certainly put a wrinkle in things for</p> <p>4 a little while.</p> <p>5 Q I understand. And I think I would like to talk to you about</p> <p>6 that soon. Let me ask a few other questions and then maybe</p> <p>7 we can take a break and then talk about that lawsuit. What</p> <p>8 is your understanding of why Black Star chose this</p> <p>9 particular property?</p> <p>10 A It is widely known that the Leelanau peninsula and the Old</p> <p>11 Mission peninsula represent the two most prized parcels at</p> <p>12 that time -- not parcels, but broader property</p> <p>13 representations in the state of Michigan, both for growing</p> <p>14 grapes and for selling wine. As Traverse City has grown,</p> <p>15 most of our visitors either go to one peninsula or the</p> <p>16 other.</p> <p>17 We, at our Suttons Bay location -- the winery at</p> <p>18 our Suttons Bay location were confined in the way that we</p> <p>19 could expand our winery operation there. So we were looking</p> <p>20 for broader opportunities to both increase our operations,</p> <p>21 because we -- when we set up we were nothing more than about</p> <p>22 a 10,000 case production facility in Suttons Bay. And keep</p> <p>23 in mind, that was in 1998. And Traverse City growth,</p> <p>24 tourism, everything was really starting to ramp up at that</p> <p>25 time.</p> <p style="text-align: center;">Page 23</p>	<p>1 Q Okay.</p> <p>2 A -- very difficult. So grape growers that have invested a</p> <p>3 great deal of money in land, in operations are always</p> <p>4 looking in one way or another, to either have long-term</p> <p>5 contracts, to have solid relationships with wineries to help</p> <p>6 support their own operations. Did I answer your question?</p> <p>7 Q You did. You did.</p> <p>8 MR. INFANTE: You answered somebody's question.</p> <p>9 Q I appreciate -- I appreciate the context for what was</p> <p>10 happening then.</p> <p>11 A Okay.</p> <p>12 Q So when Black Star started seriously exploring the</p> <p>13 possibility of leasing Mr. Mampe's property, were there</p> <p>14 discussions with Mr. Mampe about the types of zoning</p> <p>15 requirements that Peninsula Township had?</p> <p>16 A At the time, to the best of my knowledge sitting here today,</p> <p>17 I helped start Peninsula Cellars, in 1994, with the Kroupa</p> <p>18 family then. So I was familiar -- I had been on the</p> <p>19 peninsula for quite some time, prior to starting Black Star</p> <p>20 in 1998. Chateau Chantal was here on the peninsula, Chateau</p> <p>21 Grand Traverse was here on the peninsula.</p> <p>22 I do not believe at that time there were any other</p> <p>23 winery operations here. It's possible that I'm forgetting</p> <p>24 somebody. Brys may have been getting started at -- at or</p> <p>25 about that time, I just don't recall specifically.</p> <p style="text-align: center;">Page 25</p>

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<p>1 Q Okay.</p> <p>2 A It seems to me that the farm processing facility designation</p> <p>3 within the ordinance was actually partly established because</p> <p>4 of what it was we wanted to do there. Being the type of</p> <p>5 land that it was, easement protected land, an existing</p> <p>6 building that was essentially set up for fruit processing</p> <p>7 and that required a variance to be established.</p> <p>8 In other words, the township setting up the</p> <p>9 processing -- or the fruit processing facility segment of</p> <p>10 the ordinance wanted to keep anybody who was strictly doing</p> <p>11 farm processing on the smaller side. The existing building</p> <p>12 was already about 12,000 square feet, so we had to get a</p> <p>13 variance, which they granted, to allow us to operate and</p> <p>14 take advantage of the full size of the building.</p> <p>15 Q Okay. Was that around 2007, when this was starting?</p> <p>16 A That was also a that the same time; correct.</p> <p>17 MR. INFANTE: Wait for her to ask the question.</p> <p>18 THE WITNESS: Yeah.</p> <p>19 MR. INFANTE: It's normal.</p> <p>20 MS. HILLYER: I'm bad at it, too.</p> <p>21 Q Did Black Star consider the possibility of applying for the</p> <p>22 kind of permit that Chateau Grand Traverse or Chateau</p> <p>23 Chantal had as a winery chateau?</p> <p>24 A At the time we did not consider that.</p> <p>25 Q Do you remember why that wasn't a consideration?</p> <p style="text-align: center;">Page 26</p>	<p>1 to take a look at though.</p> <p>2 (Off the record interruption)</p> <p>3 MS. HILLYER: If you could mark that one and</p> <p>4 here's this one.</p> <p>5 MR. INFANTE: 39?</p> <p>6 MS. ANDREWS: Yes.</p> <p>7 MS. HILLYER: This'll be 39.</p> <p>8 (Deposition Exhibit 39 marked)</p> <p>9 Q And so you can take a minute to look at that. I've just</p> <p>10 marked as Exhibit 39 a document that says at the top, "Deed</p> <p>11 of Conservation Easement," and it's marked at the bottom,</p> <p>12 "Defendant's Responses to First RFP 006847" and it goes</p> <p>13 through -6861.</p> <p>14 (Witness reviews exhibit)</p> <p>15 Q Have you seen this one before?</p> <p>16 A I have.</p> <p>17 Q Okay. Could you turn to, I think it's the second to last</p> <p>18 page and it looks like a map. This is page -6860. And so</p> <p>19 this page has a pretty simple map. It shows Center Road and</p> <p>20 then it shows McKinley Road and what looked like some</p> <p>21 parcels with different kinds of hash marks on them to</p> <p>22 indicate what types of uses are allowed on them. Do you</p> <p>23 recognize if any of these look like the parcel where the</p> <p>24 winery building is located?</p> <p>25 MR. INFANTE: I guess I'd just object, it doesn't</p> <p style="text-align: center;">Page 28</p>
<p>1 A At the time the only consideration was wanting to expand our</p> <p>2 wine production operations, have a tasting room location on</p> <p>3 the Old Mission Peninsula and do the things that would</p> <p>4 support both the winery operation and -- and the tasting</p> <p>5 room operations. What I didn't state earlier to one of your</p> <p>6 questions was, by having two tasting room locations on each</p> <p>7 of the two peninsulas, gave us a significant advantage in</p> <p>8 the market.</p> <p>9 Because as I said, people either go to one</p> <p>10 peninsula or the other. We were hitting them on both sides,</p> <p>11 so people had a choice, even if they were just going to come</p> <p>12 to old mission they could still see us, but if they were</p> <p>13 going to take the day and go to Leelanau they'd also see us.</p> <p>14 That made us unique.</p> <p>15 Q So, we've talked a little bit about the conservation</p> <p>16 easement. You mentioned that there -- your understanding</p> <p>17 was that there's a conservation easement on a property, --</p> <p>18 MR. INFANTE: Holly, are you switching subjects?</p> <p>19 If you are can we take a break?</p> <p>20 MS. HILLYER: I think I can fit this in in a</p> <p>21 reasonable time and we can take a break in about five</p> <p>22 minutes. Does that work?</p> <p>23 MR. INFANTE: Yup.</p> <p>24 MS. HILLYER: Okay.</p> <p>25 Q I am going to introduce one more exhibit real quick for you</p> <p style="text-align: center;">Page 27</p>	<p>1 have feet or distances or any indication, but if you can</p> <p>2 figure it out.</p> <p>3 A It's difficult to state specifically. As I'm looking at</p> <p>4 this I would make the educated guess that MF-9, MF-10 and</p> <p>5 maybe part of what is shown here as MF-13 are the locations</p> <p>6 of the agricultural building, the farm processing facility</p> <p>7 that we're operating.</p> <p>8 Q Okay.</p> <p>9 A It's also possible without seeing measurements or specifics</p> <p>10 that it is only MF-9 and it may include a little bit of</p> <p>11 MF-10.</p> <p>12 Q Okay. That's fair. The little square in the middle of</p> <p>13 MF-10 that has the diagonal lines, it looks like from the</p> <p>14 key that would be number two, where it says "Reserved</p> <p>15 residential dwelling unit." Is that where Mr. Mampe lives?</p> <p>16 A I do not believe based on what I'm seeing on this map that</p> <p>17 that -- there are no homes -- there is not a home in close</p> <p>18 proximity to the winery building. I believe Mr. Mampe's</p> <p>19 home is located more in what is -- it's not shown with any</p> <p>20 kind of a number.</p> <p>21 Q Okay.</p> <p>22 A It's larger.</p> <p>23 Q Assuming this follows a north-south standard map</p> <p>24 orientation, this would be sort of to the south.</p> <p>25 A Assuming -- I beg your pardon. I beg your pardon. I'm now</p> <p style="text-align: center;">Page 29</p>

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<p>1 seeing this as Center Road. My mistake. I was looking at 2 that as McKinley Road.</p> <p>3 MR. INFANTE: This is Center --</p> <p>4 Q Oh, okay.</p> <p>5 A Yes; yes; yes; yes. That's McKinley. Okay. Actually, I 6 don't believe that this map shows where the -- where the 7 winery farm processing facility is or where Mr. Mampe's home 8 is. It's further down McKinley Road.</p> <p>9 Q Okay. Which direction further down McKinley Road?</p> <p>10 A So if you orient the page to the -- to the right, turning 11 clockwise, --</p> <p>12 Q Okay.</p> <p>13 A -- quarter turn, --</p> <p>14 Q Good description.</p> <p>15 A -- McKinley Road down, it's further.</p> <p>16 Q Okay.</p> <p>17 A Because we are roughly one quarter-mile off of Center 18 Highway or M-37.</p> <p>19 Q That makes sense.</p> <p>20 MR. INFANTE: You're pointing down here?</p> <p>21 THE WITNESS: This way, yes.</p> <p>22 MR. INFANTE: Yeah. Okay. Yup.</p> <p>23 Q Yeah. So if we were to orient the page normally --</p> <p>24 MR. INFANTE: I want to know how you're going to 25 put this --</p> <p style="text-align: center;">Page 30</p>	<p>1 Grand Traverse County website. And you'll see, just to 2 orient you, there's parcel 1103000620 and then -00625, 3 -00630, -00635, -00640, and the last page is an aerial view 4 of those parcels. I apologize for the print quality on 5 that. And also if you look you'll see that the owner name 6 for each of those parcels is the Robert N. Mampe Trust.</p> <p>7 And we were talking a minute ago that this map at 8 the last page of Exhibit 39 -- or page 6860 of Exhibit 39, 9 the conservation easement is not really to scale and it's 10 kind of hard to see, so I wanted to take a look at this 11 aerial view from the Grand Traverse County website, the 12 parcel viewer on the last page. Do you see McKinley Road 13 running from left to right on the page? Turn it so it's 14 landscape view.</p> <p>15 A Yes, I do.</p> <p>16 Q And then if you look up toward the right side of the page 17 about -- in the middle of the page there's a white area, 18 it's got the number 360 on it, and if you look up above that 19 and can read it you'll see a parcel number that's 00635.</p> <p>20 A I do see that.</p> <p>21 Q Okay. Do you recognize what that is?</p> <p>22 A That is the winery processing building.</p> <p>23 Q Okay. And then would -- all the way to the right side of 24 the page, where it says, "363," on what looks like a little 25 cluster of building, would that be Mr. Mampe's residence, to</p> <p style="text-align: center;">Page 32</p>
<p>1 Q -- with the page number at the bottom; right? You would be 2 saying he's -- the winery and his residence are further to 3 the left?</p> <p>4 A Further to the right.</p> <p>5 Q Further to the right. Okay. You're right. I turned that 6 counter-clockwise. So further to the right. And if north 7 is at the top of the page that would be further to the east.</p> <p>8 A Further to the east.</p> <p>9 MR. INFANTE: Assuming north is to the top, but --</p> <p>10 Q Okay. Do you know about how much further?</p> <p>11 A As I said, we're roughly one quarter mile from the corner of 12 McKinley and Center Road.</p> <p>13 Q Okay.</p> <p>14 A East.</p> <p>15 Q Thank you.</p> <p>16 MS. HILLIER: And I think with that we can take a 17 break. Would that work for you?</p> <p>18 MR. INFANTE: That's fine, yeah. Thank you. 19 (A recess was taken)</p> <p>20 Q So I'm going to hand you what will be marked as --</p> <p>21 MS. ANDREWS: 40.</p> <p>22 Q -- 40.</p> <p>23 (Deposition Exhibit 40 marked)</p> <p>24 Q Okay. So Mr. Lutes, I'll give you a minute to look at this. 25 This is a series of printouts of parcel information from the</p> <p style="text-align: center;">Page 31</p>	<p>1 your knowledge?</p> <p>2 A Mr. Mampe's residence, correct.</p> <p>3 Q Okay. Thank you. You mentioned a couple of times that 4 there was a variance requested in 2007; correct?</p> <p>5 A We requested -- the winery requested a variance, I believe 6 it was in 2007.</p> <p>7 Q Do you remember what that was for?</p> <p>8 A The winery had to get a variance in order to operate within 9 the building, because the existing building as it was, was 10 larger then what the township was intending to put together 11 or had put together. I can't remember for sure which 12 happened first, the farm processing facility segment of the 13 ordinance, and was intending to keep it smaller than what 14 the building was at that time. So the variance is probably 15 for that, but the variance also addressed, to the best of my 16 recollection, the fact that the building, one corner of the 17 building sat closer to the road than the setbacks had been 18 established.</p> <p>19 Q Okay. Were there any issues at that time related to the 20 winery's ability to sell wine that was produced at its 21 Suttons Bay location?</p> <p>22 A I'm sorry. Will you re-state that for me, please?</p> <p>23 Q Sure. We're talking about 2007. Do you recall any kind of 24 variance related to the ability to sell wine on Old Mission 25 Peninsula that was produced at the Suttons Bay location?</p> <p style="text-align: center;">Page 33</p>

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<p>1 A Yes. That was, to the best of my recollection, something 2 that our major partner at the time, Mr. Kerm Campbell 3 helped work through with the township, because we were only 4 producing wine at our Suttons Bay location, much of it being 5 from Old Mission, but that we wanted to sell at the Old 6 Mission tasting room just to help us get established there. 7 Q Okay. Was the request for that combined with the request 8 for the setback variance and the building size variance, to 9 your knowledge? 10 A To the best of my recollection I believe they were 11 separate -- separate variances. 12 Q Would it be possible that the variance that you're thinking 13 of to exceed the -- the square footage limit for the 14 building might have been later than 2007? 15 MR. INFANTE: Do you have documents to show him? 16 A If you've got a document I'd be happy to see it, but to the 17 best of my recollection it was part of our -- part of our 18 occupancy, I believe. 19 Q Okay. 20 MS. HILLYER: This will be Exhibit 41. 21 (Deposition Exhibit 41 marked) 22 Q So I just handed you Exhibit 41, which is identified as 23 Defendant's Response to First RFP 006891 through -- through 24 -6901, and then also there is an additional page that is 25 just Defendant's Response to First RFP 006934. So there's a</p> <p style="text-align: center;">Page 34</p>	<p>1 the 2007 request. Okay. For an additional expansion? 2 A Yes. 3 Q Okay. What size were you seeking to expand to in 2011? 4 A I believe it states here that we were looking to increase 5 the space by roughly 7000 square feet, -- 6 Q Okay. 7 A -- along with some additional under roof, covered outdoor 8 processing space. 9 Q Okay. And do you remember what happened with the 2011 10 variance request? 11 A It was denied. 12 Q Do you remember why it was denied? 13 A I believe the township asked legal counsel or someone else 14 to review some issue within the request, and basically put 15 together some explanation that had to do with the fact that 16 the need for us to expand and to be asking for more space 17 didn't necessitate actually granting the space, something 18 along that line. 19 This was after multiple conversations in person 20 with Gordy Uecker at the time, trying to work through, you 21 know, what it was we'd be able to do to increase our space. 22 Gordy encouraged us to submit this application. 23 Q Okay. 24 A This was kind of the formalization of that on our part 25 and, you know, is -- is sort of evidence of how long it is</p> <p style="text-align: center;">Page 36</p>
<p>1 range from the defendant's production of about 33 pages that 2 I did not print for this. 3 (Witness reviews exhibit) 4 Q So do you recognize this document? 5 A I do recognize this document. 6 Q Okay. How would you describe what this is to me? 7 A This is a document that was submitted to try to work with 8 the township back in 2011 to actually increase our 9 production facility space. 10 Q Do you remember what your production facility space was at 11 that time? 12 A It was what it had been since we'd gotten started, it was at 13 roughly 12,000 square feet. 14 Q Okay. So there had been a -- a variance request that was 15 granted in 2007 that -- that permitted the production 16 facility to be 12,000 feet; is that right? 17 A To the best of my recollection, yes, -- 18 Q Okay. 19 A -- in '07. 20 Q Okay. Thank you. That makes sense. And then also in 2007 21 was the request for a variance or a special exception for 22 the setback and then for the -- the wine sales from 23 Leelanau County; is that right? 24 A Correct. 25 Q So this 2011 -- this 2011 variance request was separate from</p> <p style="text-align: center;">Page 35</p>	<p>1 we've been trying to work with the township to simply expand 2 our production facilities there. 3 Q Okay. So the last page of this document, that's marked 4 6934, can you describe what that is to me? 5 A Without looking at documentation further to this I don't 6 remember this, what appears to be an email, but it seems to 7 me, to the best of my recollection, it was suggested that we 8 remove the request to ZBA because the township at that time 9 said they were going to help us work through some other 10 means of accomplishing what it was we wanted to accomplish. 11 Q Okay. This email is dated January 26, 2012, and it was 12 between you and -- it says, "Zoning@peninsulatownship.com," 13 but it's addressed to Gordy. Would that be Gordy -- 14 A Gordy Uecker, I believe, -- 15 Q Okay. 16 A -- still at that time. 17 Q Do you remember what the other -- sorry, let me back up. So 18 this says, "We will be pursuing other options as they relate 19 to our production facility." And this says, "Please remove 20 our request to the ZBA from the roster." Do you remember 21 what the other options were that you were going to pursue in 22 2012? 23 A Without reviewing other documentation specific to this, I 24 can't give you detail. Again, I believe it had to do with 25 the fact that we were having ongoing conversations with the</p> <p style="text-align: center;">Page 37</p>

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<p>1 township. These were informal conversations, casual</p> <p>2 conversations, with Gordy Uecker, Rob Manigold, other people</p> <p>3 there that were basically saying we're going to help you get</p> <p>4 what it is you want to try to accomplish, but there -- there</p> <p>5 was a reason why they didn't want to issue it as a variance.</p> <p>6 Again, to the best of my recollection.</p> <p>7 Q So were you --</p> <p>8 A But separate from that, I don't recall that there was</p> <p>9 anything that we were looking to do specific, other than</p> <p>10 continue to work with the township.</p> <p>11 Q Okay. And you mentioned earlier that running a winery takes</p> <p>12 a lot of storage. Would I be correct in understanding that</p> <p>13 that's why you wanted to increase the facility size?</p> <p>14 A It was partly why we wanted to increase. The fact that we</p> <p>15 were growing more fruit on Old Mission, that we were trying</p> <p>16 to -- our operation is roughly two-thirds white wine and</p> <p>17 one-third red wine.</p> <p>18 Q Okay.</p> <p>19 A This region is more prominently a white-wine producing</p> <p>20 region, and we make a significant amount of our -- our white</p> <p>21 wine on the Old Mission Peninsula at our Old Mission</p> <p>22 location.</p> <p>23 Q Okay.</p> <p>24 A So storage was part of it, but white wine production is kind</p> <p>25 of a specialized production, so we were looking to just</p> <p style="text-align: center;">Page 38</p>	<p>1 don't recall the exact date, again, without looking at</p> <p>2 further documentation, but we were able to add a roughly 40-</p> <p>3 by-50 covered -- outdoor covered space that is part of our</p> <p>4 fruit receiving area.</p> <p>5 Q And I apologize if you've already said this, but do you</p> <p>6 remember when the additional 40-by-50 covered area was</p> <p>7 added?</p> <p>8 A To the best of my recollection, somewhere around 2015, 2016,</p> <p>9 perhaps, somewhere in there.</p> <p>10 Q Okay. There's one more variance I want to talk about.</p> <p>11 MS. HILLYER: This will be Exhibit --</p> <p>12 MS. ANDREWS: 42.</p> <p>13 MS. HILLYER: -- 42.</p> <p>14 (Deposition Exhibit 42 marked)</p> <p>15 Q And I just handed you documents that are identified as</p> <p>16 Defendant's Response to First RFP, 006882 through -6890.</p> <p>17 And once you've had a chance to take a look at that, could</p> <p>18 you describe what this is for me?</p> <p>19 A I have not seen this document prior, but what it appears to</p> <p>20 be, as I recall, Mr. Mampe was trying to work with Christine</p> <p>21 Deeren at the time, to work through, again, our ability or</p> <p>22 interest in having the increase to our production</p> <p>23 operations. I think you'll note that these are the same</p> <p>24 drawings as in the 2011 variance application packet.</p> <p>25 Q And what's the date on this first letter on this first page?</p> <p style="text-align: center;">Page 40</p>
<p>1 incorporate more specialized equipment.</p> <p>2 Q So the white wine that would be stored on Old Mission</p> <p>3 Peninsula, does that get shipped off the peninsula?</p> <p>4 A There is very little white wine -- there is very little wine</p> <p>5 at all that's stored at our Old Mission location, simply</p> <p>6 because we don't have the room.</p> <p>7 Q Okay.</p> <p>8 A Typically what happens is it is bottled at our Old Mission</p> <p>9 location and removed to another storage facility elsewhere.</p> <p>10 Q Okay. And then was there anything else at that time that</p> <p>11 you planned to do with the increased space?</p> <p>12 A Well, again, based on the diagrams you see earlier in this</p> <p>13 document, much of what we wanted to do is increase our</p> <p>14 general production space, but also the -- essentially the</p> <p>15 fruit receiving part of it.</p> <p>16 Again, because we're in a region where we often</p> <p>17 see an awful lot of inclement weather during the harvest, we</p> <p>18 often look to have fruit under storage. We try to get</p> <p>19 things picked before the rains set in. So they have an</p> <p>20 awful lot of just covered storage space. It can be</p> <p>21 outdoor -- preferably it's outdoor, but have it be under</p> <p>22 cover, protected from rain is desirable. So we were trying</p> <p>23 to increase that significantly.</p> <p>24 Q So were you able to increase the facility in 2012?</p> <p>25 A We were not able to increase our production facility. I</p> <p style="text-align: center;">Page 39</p>	<p>1 A 2018.</p> <p>2 Q Okay. And this is from Mr. Mampe?</p> <p>3 A That is correct.</p> <p>4 Q Or to Mr. Mampe -- I apologize -- from the township. This</p> <p>5 is a letter from Ms. Deeren to Mr. Mampe?</p> <p>6 A That is correct.</p> <p>7 Q Okay. So middle of the page, the last sentence of that</p> <p>8 paragraph, you see where it says, "I have been advised by</p> <p>9 Mr. Mean that this issue should not be addressed before the</p> <p>10 Zoning Board of Appeals. Rather an amendment to the current</p> <p>11 zoning ordinance should be sought."</p> <p>12 A I do see that.</p> <p>13 Q Okay. Are you aware of any amendment to the zoning</p> <p>14 ordinance that addressed this issue after 2018?</p> <p>15 A I'd have to see documentation to be sure of the dates, but I</p> <p>16 do know that the township was trying to address our</p> <p>17 interest, as well as the interest of a couple other smaller</p> <p>18 farm operations, to tie acreage to the size of facilities.</p> <p>19 And I'm taking an educated guess that it was about that</p> <p>20 time, 2018.</p> <p>21 Q And to your knowledge, did that amendment address Black</p> <p>22 Star's concerns in this variance request?</p> <p>23 A It did not.</p> <p>24 Q How did it not?</p> <p>25 A It was established in such a way that the acreage that was</p> <p style="text-align: center;">Page 41</p>

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<p>1 used for calculating didn't allow us to expand our building. 2 We were already at the maximum capacity, according to the 3 formula, to the best of my recollection. 4 Q Okay. So since that amendment, has Black Star been able to 5 expand it's facility any further? 6 A No. 7 Q Okay. I think I have one more topic that I can cover with 8 you, Mr. Lutes. 9 MS. HILLYER: So this will be Exhibit 43. You can 10 mark that. 11 (Deposition Exhibit 43 marked) 12 Q So this is Exhibit 42 that I've handed you -- no, 43. I 13 apologize. 43. And this is Plaintiff Winery at Black Star 14 Farms, LLC's Answers to PTP's First Interrogatories, and do 15 you recognize the signature on the last page of that 16 document? 17 A I do. 18 Q Is that your signature? 19 A That is my signature. 20 Q Okay. I had a question for you about the answer on the 21 first page. So there's a paragraph towards the bottom of 22 the page where it says, "Answer." It says, 23 "Black Star objects to this Interrogatory as it 24 is (inaudible) unduly burdensome, subject to, without 25 waiving an objection. The Peninsula Township Zoning</p> <p style="text-align: center;">Page 42</p>	<p>1 when it started leasing property, -- 2 A That is correct. When we started our operations on the Old 3 Mission peninsula. 4 Q And the last part of this sentence, it says, "Every day that 5 it is enforced constitutes an new violation." What is Black 6 Star's position on what "enforcement" means? What does 7 Black Star consider enforcement? 8 MR. INFANTE: Objection; calls for legal 9 conclusion. 10 A It was made very clear, again, from the onset, that if we 11 strayed outside of this narrow band of operational 12 allowances our permits would be pulled from the township and 13 they would shut us down. 14 Q Has that ever happened? 15 A It has never happened. 16 Q Has Peninsula Township ever issued a notice of violation, a 17 citation, a fine? 18 A I would have to go back and review documentation going back 19 now 17 years, to verify that. I do seem to remember a 20 violation or two early, early on for some benign issue that 21 was quickly resolved, but -- so I believe there may have 22 been a violation or two somewhere in there. 23 Q Okay. Can you estimate a -- a date range? Doesn't have to 24 be exact. 25 A Not without looking at documentation further. It would have</p> <p style="text-align: center;">Page 44</p>
<p>1 Ordinance that is challenged in this lawsuit is 2 facially unconstitutional, therefore it has injured 3 Black Star's First Amendment rights since its passage 4 and every day that it is enforced constitutes a new 5 violation." 6 I'd like to understand what Black Star means by 7 "the ordinance injuring it's First Amendment rights since 8 it's passage." Is it referring to the Farm Processing 9 Facility Ordinance or some other provision? 10 MR. INFANTE: Objection; calls for a legal 11 conclusion. You can answer. 12 A It refers to the way in which we were, specifically within 13 the ordinance, told that we could operate our -- our 14 business and our tasting room operations. 15 Q What part of the ordinance tells you that? 16 A The township made it clear -- again, these were in 17 conversations more than anything else, that we were, 18 especially at the onset, very limited in what we could and 19 could not do as a farm processing facility. 20 Q So when you say "at the onset," meaning -- 21 A What we could and could not sell. 22 Q Okay. 23 A And what our hours of operation needed to be. 24 Q And when you said "at the onset," were you meaning when 25 Black Star started it's Old Mission Peninsula operations,</p> <p style="text-align: center;">Page 43</p>	<p>1 been -- it would have been early on. Prior to 2015, maybe 2 somewhere in the 2010 to 2015 range. 3 Q Okay. So while we're looking at this Exhibit 43, on the 4 second page is says, "Black Star has attempted numerous 5 times to negotiate changes to these ordinances with 6 Peninsula Township and perceives these unconstitutional 7 provisions," the first sentence below the bullet point. 8 Other than the amendment to increase the square footage that 9 we just talked about, were there other times that Black Star 10 has tried to negotiate changes to the zoning ordinances with 11 Peninsula Township? 12 A We are a member of WOMP. It was made clear to us years ago 13 that the township only wanted to really have conversations 14 with one entity, and that if the winery operations here on 15 the peninsula wanted to work with the township we needed to 16 do it behind essentially a single entity, which is why WOMP 17 was formed, to address that, as trade association. As a 18 member of that trade association WOMP has made several 19 attempts to work with the township over the last ten-plus 20 years on various issues. 21 Q Have you been a member of WOMP since Black Star came onto 22 the peninsula in 2007? 23 A We have been. 24 Q Do you remember what some of those efforts were? 25 A Without reviewing further documentation, not having to do</p> <p style="text-align: center;">Page 45</p>

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<p>1 with other winery operations, no. Our primary interest has 2 been the expansion, our primary interest has been in having 3 the ability to keep up with the changing economic and demand 4 issues of the wine-consuming and tourism public. There was 5 a time when we could not sell wines by the glass, so WOMP 6 was part of some efforts, also with the State of Michigan to 7 help get some changes made there.</p> <p>8 Generally, the U.S. Constitution and the State Of 9 Michigan grants the wineries certain rights. And a big part 10 of WOMP's interest has been to try and align those rights 11 with our interest with the township.</p> <p>12 Q Did WOMP participate in Black Star's efforts to have the 13 zoning ordinance amended in 2018, 2019, to address the 14 square footage issue?</p> <p>15 A To the best of my recollection WOMP was a part of those 16 conversations. I don't recall specifically whether WOMP was 17 as involved in those conversations, because there were only 18 two of us at the time that were operating as farm-processing 19 facilities.</p> <p>20 Q Do you know the other winery?</p> <p>21 A 2 Lads.</p> <p>22 Q Was 2 Lads involved in those conversations to your 23 recollection?</p> <p>24 A Yes, they were.</p> <p>25 Q Mr. Lutes would you be the best person to ask about the</p> <p style="text-align: center;">Page 46</p>	<p>1 We wanted to -- and part of this comes from the 2 fact that our partners coming together to purchase that 3 property and start the winery operation, had traveled all 4 over the world, had experienced wine regions elsewhere, and 5 felt that what we were doing up here was something unique 6 and special, and that we wanted to have the opportunity to 7 be able showcase that to the public.</p> <p>8 Being in the Midwest, this is not Napa Valley, 9 obviously, this is not Sonoma. The wines that we make here 10 are still being discovered. Every day in our tasting rooms 11 we get people saying, "I had no idea. I had no idea that 12 this was going on in a state like this." We're in a very 13 unique part of the country. We are the most northern grape- 14 growing region between about Albany, New York and Spokane, 15 Washington.</p> <p>16 The travesty of what's going on right now in a 17 region like this is that there is so little land remaining 18 that is so beautifully situated for growing high-quality, 19 unique wine grapes, especially in the northwest, in this 20 region, primarily because of development pressure. And it 21 was our belief -- in fact, some of our very early marketing 22 and the very name of our primary wine Arcturos.</p> <p>23 Arcturos, in terms of Greek mythology means 24 guardian of the bear, because it's the brightest northern 25 star in our summer sky. It's associated with their Ursa</p> <p style="text-align: center;">Page 48</p>
<p>1 kinds of activities and events and experiences that Black 2 Star offers visitors to the Old Mission Peninsula location? 3 Would you be the best person to talk to about those?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 MR. INFANTE: And we've also designated Ms. Fenton 7 on those topics as well.</p> <p>8 MS. HILLYER: I understand that.</p> <p>9 Q I will ask you a few questions and if you find that Ms. 10 Fenton would be better to answer those I can save these.</p> <p>11 MS. HILLYER: Since we're switching gears, does 12 anyone need a break?</p> <p>13 MR. INFANTE: How long do you have, do you think?</p> <p>14 MS. HILLYER: Not too long. I don't think we --</p> <p>15 Q Could you describe for me how the two winery locations are 16 different in terms of the experiences that they offer 17 visitors, just generally?</p> <p>18 A The property in Suttons Bay was a property that we took on 19 back in 1998 because it offered the opportunity to showcase 20 really what we felt was the breadth of northern Michigan 21 agriculture. There was a horse operation in existence 22 there, there is a large -- there was a large private home 23 that was ideally set up to be a bed and breakfast. There 24 were large enough buildings at the time for us to establish 25 a small winery operation and distillery operation.</p> <p style="text-align: center;">Page 47</p>	<p>1 Major, Ursa Minors. It was our belief that agriculture was 2 going to help protect the things like Sleeping Bear Dunes 3 and the land in general up here. So the Suttons Bay 4 property was about being able to bring people together to be 5 able to experience that and appreciate what it meant to see 6 a working vineyard, to be able to taste the wines, to be 7 able to have an experience.</p> <p>8 All we've ever wanted to do was enhance that 9 experience further and continue it through changing demands 10 and interest of the -- of the tourism consumer and the 11 general consumer, our local consumer, by enhancing those 12 experiences, and to be able to do that at our Old Mission 13 Location as well.</p> <p>14 Q What are some examples how that demand has changed over 15 time?</p> <p>16 A Especially since COVID -- COVID obviously dropped a bomb in 17 the middle of all kinds of things, but the consumer now has 18 an interest to sit, rather than just belly up to a bar, 19 taste some wines, make some purchases and run.</p> <p>20 They want to linger. Obviously table space, 21 chairs, requires more square footage. They are interested 22 in table service. They're interested in having a person 23 coming and speak to them at length about the detail of the 24 wines, about what's going on in the area, about where to eat 25 dinner. They would like very much at the facility here on</p> <p style="text-align: center;">Page 49</p>

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1 Old Mission to be able to actually have some food.
2 We sell some pre-prepared, snacking kinds of
3 things there, but with the ability to, in Suttons Bay, do a
4 little bit more. People like to take advantage of something
5 that's warm and -- and it's socially responsible. You
6 know, to be able to grant people the opportunity to have
7 food while their consuming -- consuming alcohol. So it's
8 become a more experience driven opportunity for the
9 consumer. They have an interest in a broader breadth of --
10 of what is being made.
11 Often times we have our education specialist talk
12 about our wine clubs, talk about different ways that, you
13 know, the consumers can either find these wines at home,
14 takes these wines with them, have them shipped to them once
15 they're home. It can be a number of things, but, typically
16 tying in food, maybe tying in some entertainment.
17 We do, you know, casual music, non-amplified
18 music, on occasion, at our Suttons Bay location. Tomorrow
19 night our small Interlochen group's going to be playing out
20 there. Those are the kinds of things that bring people to
21 the farm that, again, enhance the experience for the guest,
22 help them appreciate the beauty, the natural surroundings,
23 everything that's going on.
24 We do tours of the vineyards, of the farm, of the
25 property, talk to them about our agricultural processes and

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1 procedures for growing grapes. "Why are there so many weeds
2 growing in the vineyards?", things like that.
3 Q Why are there so many weeds?
4 A Because it's good for the beneficial insects. We are trying
5 to foster beneficial bugs and things that are good for just
6 the grapes' general health. We're all trying to do things
7 more sustainably, and the consumer is interested, you know.
8 More and more people are interested in knowing where their
9 food comes from. We still get people on a regular basis
10 saying, "Wait. This wine is actually grown right here?
11 This comes from this place?" They want to see the acreage,
12 they want to -- they want to, you know.
13 So in part, we -- we are the stepping stone as a
14 region, the Midwest is, for the wine consumer that really
15 doesn't know anything about wine to begin with. They
16 wouldn't even consider going to Napa or Sonoma or one of
17 the, you know, bigger west coast regions because they
18 don't -- they don't know what they like, you know. We get
19 people coming in every day that say, "I don't really know
20 what I like. Let's" -- you know, it's a big educational
21 experience for them, and then they move on, you know. And
22 then they do maybe take on other experiences if that's their
23 thing, but -- I'm probably going way beyond "yes" to the
24 question, but it's something I'm passionate about, so ...
25 Q It is, and I -- I appreciate it.

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1 MR. INFANTE: Holly, you asked if anybody needed a
2 break and I said, "no." I didn't realize he was going to be
3 this verbose.
4 MS. HILLYER: We can take a quick break. I think
5 this is a topic that we can return to.
6 (A recess was taken)
7 Q So before we took a break we were talking about the
8 difference between what's offered at the Black Star location
9 and the Old Mission Peninsula location; right?
10 A (no verbal response)
11 Q Sorry. And try to remember to speak your answers.
12 A Yes. Sorry.
13 Q Thank you. And I think we also had started to talk about
14 how demand has changed over the years and the types of
15 customer experiences that people are interested in today.
16 A That is correct.
17 Q How about events? Are people interested in having private
18 events at wineries?
19 A Absolutely.
20 Q Yeah? What kinds of events do people want to have?
21 A We, int Suttons Bay, we're doing weddings. And it's really
22 unfortunate that weddings have kind of taken on a negative
23 connotation, but they're not always -- in fact, most of our
24 weddings now are probably on average 75 people. COVID
25 certainly has changed some of that. There's not the

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1 interest anymore in doing big, grand events, but it -- they
2 can be corporate gatherings, corporate events, corporate
3 dinners. We used to host Automotive News. We did that for
4 like ten years running, just because they wanted to bring
5 their association to a facility that was set in that
6 setting, a vineyard setting, have good food, have some nice
7 wines.
8 They can be educational events. We've hosted
9 Sutton Bay Schools, we've hosted NMC students, culinary
10 program students. I mean, there's all kinds of things
11 that -- what it does is it gives people an opportunity that
12 may not come otherwise, to see what it is that we do,
13 actually be up close and personal with it, and perhaps form
14 a connection that wouldn't have been made otherwise.
15 I've been doing this long enough and I hear it on
16 a regular basis from our staff, but the number of people
17 that step into our facilities and just say, "I came with a
18 friend" or "I was brought here for this purpose and I had no
19 idea this was going on and I'm thrilled. I joined the wine
20 club." or "I'm, you know, now a big fan of such and such
21 wine."
22 These events are opportunities just to enhance
23 everything else we do, and what that does is allow us to
24 keep supporting our growers and allows us to -- to buy more
25 fruit, plant more vineyards. You know, the costs of

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<p>1 everything, as you know, are going through the roof.</p> <p>2 Farming is no different and, you know, growers are being met</p> <p>3 with some of the largest increases, you know, across the</p> <p>4 board.</p> <p>5 And so for us to find ways to continue to sell</p> <p>6 wine, to then be able to support those growers is -- it's</p> <p>7 essential. You know, it's a big part of why the cherry</p> <p>8 industry is going out, is that it was only ever a commodity</p> <p>9 crop, and they were only ever selling it at wholesale.</p> <p>10 They weren't able to reap the benefits of the margins that</p> <p>11 came later. So, we're trying not to become another cherry</p> <p>12 industry.</p> <p>13 Q The educational events that you mentioned, what kind of</p> <p>14 programming is that? Like, what is the educational</p> <p>15 component of that? What do you teach people about?</p> <p>16 A It can be any number of things. It can be something that</p> <p>17 the group itself is -- is maybe there for.</p> <p>18 So, you know, let's say this Automotive News</p> <p>19 group, they would often come in with a -- with some kind of</p> <p>20 meeting agenda or some kind of a theme in mind. But they</p> <p>21 would say, "We'd like to have somebody from the winery come</p> <p>22 in and talk to us about, you know, what you're doing." And</p> <p>23 so it would be kind of an add-in. It'd be one of those --</p> <p>24 one of those, let's say, breaks in our program, that would</p> <p>25 allow their -- their guests, their base to take on maybe</p> <p style="text-align: center;">Page 54</p>	<p>1 little bit of a larger group." You have to keep in mind,</p> <p>2 too, this was kind of while COVID was still around. "We'd</p> <p>3 like to have a private -- a little bit of a private space,"</p> <p>4 so at our -- at our Suttons Bay tasting room we actually</p> <p>5 have a wine club room. So if you're a member of the wine</p> <p>6 club you get to remove yourself from the masses or from the</p> <p>7 main tasting area and --</p> <p>8 Q Okay.</p> <p>9 A But it's in a room, you know, an indoor room. It's very</p> <p>10 comfortable. We have couches in there and chairs in there,</p> <p>11 you know, it's a very comfortable space, but in the</p> <p>12 summertime everybody wants to be outside. And so he said,</p> <p>13 "I'm getting these requests for people to have a private</p> <p>14 space, but they want to do it outside." He said, "I have an</p> <p>15 idea." He said, "I'm proposing that we more or less build</p> <p>16 an outdoor gazebo, and then rent that space." And I looked</p> <p>17 at him and thought, Chris, you know, we're going to create a</p> <p>18 separate space that we can rent to people and how we going</p> <p>19 to, you know, staff that and control that.</p> <p>20 We poured the concrete earlier this year, we put</p> <p>21 up a gazebo and we've already got interest in people wanting</p> <p>22 to -- so because they're coming in, perhaps with let's say</p> <p>23 15 or 16 or 20 people, but they're all part of a bigger</p> <p>24 family. You know, they're here for a family reunion,</p> <p>25 something like that. They want to be by themselves, not be</p> <p style="text-align: center;">Page 56</p>
<p>1 some new knowledge or something, you know, something</p> <p>2 different other than just listening to the same old thing</p> <p>3 all day.</p> <p>4 But they can be -- it's evolved over time. It</p> <p>5 used to be more specific to how do you grow grapes? How do</p> <p>6 you make wine? We've got a wonderful culinary team at our</p> <p>7 Suttons Bay facility. We do these little seminars, pairing</p> <p>8 wine with food, but also then teach people to make certain</p> <p>9 dishes from local ingredients, because we source an awful</p> <p>10 lot of what we produce from a culinary standpoint from local</p> <p>11 farms, so we're doing those kinds of things.</p> <p>12 As you can imagine, the demand for various things</p> <p>13 changes over time and we try to -- we try to stay ahead of</p> <p>14 it. But, you know, every once in awhile we'll get -- people</p> <p>15 come forward with some wacky idea and we'll look at each</p> <p>16 other and think, that's crazy, and then a year later we're</p> <p>17 doing it because, you know there's been so much demand for</p> <p>18 it that it just is -- is part of what people want to</p> <p>19 experience.</p> <p>20 Q Can I have an example of one of these wacky ideas?</p> <p>21 A I'm trying to think of -- our tasting room manager brought</p> <p>22 something to my attention a year or two ago. I think what</p> <p>23 it was we -- it's not really an experience but it's kind of</p> <p>24 a -- it's kind of an opportunity. He was getting people</p> <p>25 that were saying, "Look, we'd like to come in, we've got a</p> <p style="text-align: center;">Page 55</p>	<p>1 part of the main tasting room area, but they want to have</p> <p>2 somebody from our tasting room staff come out and provide</p> <p>3 them with some wine, talk about a couple things and then</p> <p>4 step away and not be, you know, in the midst of everything</p> <p>5 else that's going on.</p> <p>6 Q How big is the tasting room, the indoor part that has the</p> <p>7 separate wine club space? How big is just the tasting room</p> <p>8 for the masses?</p> <p>9 A In Suttons Bay?</p> <p>10 Q Yeah. I</p> <p>11 A Our space there is about 2500 square feet.</p> <p>12 Q Okay. And about how many people does it have the capacity</p> <p>13 to hold?</p> <p>14 A I think our capacity there is about 70 people.</p> <p>15 Q Okay. And then the wine club room is separate?</p> <p>16 A The wine club room is separate.</p> <p>17 Q How large is that?</p> <p>18 A It's maybe 5-, 600 square feet, something like that.</p> <p>19 Q Okay. So, maybe --</p> <p>20 A A dozen, 15 --</p> <p>21 Q 15 people?</p> <p>22 A -- people, yeah.</p> <p>23 Q And then the outdoor area that you were describing in</p> <p>24 Suttons Bay, what -- are you able to have wine tasting</p> <p>25 outdoors?</p> <p style="text-align: center;">Page 57</p>

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1 A We are.
2 Q Okay. And how large an area is that?
3 A We have a terraced area that is roughly 30-by-50.
4 Q And then the new gazebo?
5 A We poured a 20-by-20 slab, but the gazebo itself, I think,
6 is 20-by-16.
7 Q Okay. And you mentioned the food offerings and the --
8 sounds like cooking classes and wine and food pairings.
9 What kind of kitchen facilities do you have on Suttons Bay?
10 A Well, in Suttons Bay we put together early on an incubator
11 kitchen. We helped Leelanau Cheese kind of start their
12 operations there. We helped 9 Bean Rows start their
13 operations there. We gave The Cook's House a home before
14 they had a restaurant to -- to start to build some kind of a
15 following in the area. They've just moved here from Las
16 Vegas and were trying to get themselves established.
17 So we have a commercial kitchen there that does an
18 awful lot of the -- because we also have a catering license
19 at that location. But we do all of our own internal
20 catering, so -- for the events that we have. And these can
21 be -- we do a dinner series during the summer months, the
22 Arcturos dinner series. So once a month, once every couple
23 months we're doing a wine-themed dinner. We often do it
24 outside. We often do it in the vineyards. We do all the
25 food for that.

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1 We do the food for all the weddings, we do food
2 for corporate events, things of that nature, all out of that
3 one kitchen, but we run what we refer to as Bistro Polaris
4 out of there as well. So it's open to the public. This
5 time of year it's mostly outdoor patio seating. We have
6 indoor seating of 35 to 40 people at the bistro.
7 It has been in the past, a food service operation
8 that we shut down in the winter months, but we're actually,
9 because of demand, looking at trying to keep it open, at
10 least partly open through the winter. Because again, it's
11 something that local -- local people have an interest in.
12 Q When is it open during the summer, the bistro?
13 A Right now we're open Thursday, Friday, Saturday, lunch,
14 early dinner. We're closed by 8:00 and we do a Sunday
15 brunch.
16 Q Okay. And do those hours generally match the tasting room
17 hours or are those different?
18 A They often match the tasting room hours. Often what we're
19 seeing is a play off of the bistro and the tasting room.
20 People will be up at the tasting room and then say, "Hey,
21 we're sitting here with an empty stomach and had a little
22 wine, let's go grab something to eat." We do serve wine at
23 the bistro, so often times people will have something to eat
24 with a glass of wine and then come up to the tasting room
25 and purchase or maybe taste a couple of other things and

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1 then be on their way.
2 There's not the demand now for us to be open at
3 that location much later, labor being what it is, is causing
4 us to tighten, you know, our constraints a little bit and
5 just to not be -- having staff when there aren't people
6 around. It's again, one of those things that evolves with
7 demand. You know, we try to see changes coming and address
8 those as -- as they're apparent, but --
9 Q The kitchen that you mentioned, is that where the food is
10 produced that is sold at the Old Mission Peninsula location?
11 A No.
12 Q Does Old Mission Peninsula have --
13 A It's all --
14 Q -- it's own --
15 A -- it's all pre-packaged.
16 Q Okay.
17 A That's all purchased though a -- a food supplier. So it's
18 things like, you know, meat and cheese, small cracker, sort
19 of snack pack kind of things.
20 Q Okay.
21 A It's just kept in a small open-face refrigerator. You know,
22 we're not serving sandwiches, we're not serving anything
23 above and beyond that. We would have the interest in doing
24 that, most definitely, in having a small -- unfortunately,
25 commercial kitchen is -- it's not a great term, because

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1 commercial implies that it's going to be big and expansive
2 and -- we would like to have, you know, a kitchen that just
3 allows us to prepare some -- you know, some snack kinds of
4 things that we can -- we can create a charcuterie board, you
5 know, or something along that line, that provides an
6 enhanced food presentation, can enhance profitability,
7 certainly, but also enhance the experience for the guest.
8 Q For the special dinners, the Arcturos dinners you mentioned
9 or some of the events that you have at the Suttons Bay
10 location, how late do those typically go into the evening?
11 A Bingham Township has established 10:30 as being a cut-off
12 time for events that are outdoors, that are -- where there
13 may be any music or may be any, you know, sound that might
14 reach the property perimeter. You know, generally when we
15 see larger events, people rent our entire indoor space and,
16 you know, we encourage them to -- if they're going to
17 continue -- let's say if it's a wedding party or something
18 like that, to keep it indoors and take advantage of the
19 spaces inside. But generally they are -- you know they're
20 winding down certainly by 10:30 and usually are -- things
21 are pretty well finished by 11:00 o'clock.
22 Q How does Black Star promote the activities that it offers at
23 its winery locations? Are there separate websites for those
24 or is it one unified website for Black Star?
25 A If you go on our website you can see an events section.

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1 Q Okay.
2 A What that allows you to do, if nothing else, is just reach
3 out to our event coordinator and make contact with that
4 person and inquire about the potential for events at that
5 location. We do regularly get inquiries about --
6 MR. INFANTE: Her question was, "Do you have a
7 website?"
8 A Yes.
9 MR. INFANTE: One or two was the -- sorry.
10 THE WITNESS: No.
11 MR. INFANTE: We might be here all day.
12 A It's on the website.
13 Q Who's your event coordinator?
14 A His name is Dustin Schaub.
15 REPORTER: I'm sorry. Could you repeat the name?
16 THE WITNESS: Dustin Schaub.
17 MR. INFANTE: Spell it.
18 MS. HILLYER: Could you spell that for us?
19 THE WITNESS: S-c-h-a-u-b.
20 REPORTER: Thank you.
21 Q And I would appreciate it if you could explain how -- when
22 those event inquiries come in, how does that process work?
23 A That could be a better question for Sherri Fenton.
24 Q Sherri? Okay.
25 A Yeah.

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1 form or another, as long as you count forested lands being
2 agriculture and indoor natural.
3 Q You mentioned the wine finder. So would I be correct in
4 understanding that you do wholesale distribution?
5 A We do.
6 Q Do you do that out of the Suttons Bay location or Old
7 Mission or both?
8 A We do that out of both locations.
9 Q I would guess that involves trucks coming and going; is that
10 right?
11 A That's correct.
12 Q Do you know on average how frequently those trucks come and
13 go from each of those locations?
14 A Depending on the time of the year, rarely is it more than
15 once a week. In the winter months it can be once every
16 couple of weeks. We certainly see UPS much -- far more
17 frequently than we see trucks hauling wine out to our
18 distributor.
19 Q Okay. What kinds of things does UPS come and go for?
20 A Oh, everything. Just delivery of, you know, whatever it is
21 that we might be ordering that's being shipped to us.
22 Q So just to focus on the Old Mission Peninsula location for a
23 few minutes, how many tasting room visitors does the Old
24 Mission Peninsula location get in a typical peak season day?
25 A Right now typical is kind of out of whack. You would think

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1 Q What kinds of things are promoted on the website, generally?
2 A That also would be a better question for Sherri, when it
3 comes to events.
4 Q What about non-events?
5 A The website has a winery segment, it has a segment for the
6 inn, it has a segment now for Bistro Polaris. It has an
7 activities segment where it talks about our hiking trails
8 and other things you can do when you're on the property.
9 It showcases our tasting room hours of operation, it would
10 talk about our wine club, where wines are available
11 elsewhere. We have a wine finder on the site, so if people
12 are living in Kalamazoo they can find out where the wines
13 are being sold to Kalamazoo. There's an awful lot of
14 information on that website.
15 A Okay. The hiking trails you mentioned, how large is the
16 Suttons Bay property?
17 A It's 160 acres.
18 Q And about how much of that is vineyards compared to other
19 things like the hiking trails there?
20 A We have about a five acre vineyard parcel that's there right
21 at our entrance, but we have about 40 acres in orchard.
22 Q Okay.
23 A An awful lot of the property is woodland and then also horse
24 pastures. So at one point I think we calculated that it's
25 something like 95 percent of the property is in ag, in one

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1 Cherry Festival would be a peak season time. It's not. It
2 used to be, more so, but it's really not for us, unless it
3 rains. If the weather's off then we tend to see more
4 people.
5 Q Okay.
6 A Peak season is really more the -- the fall season, when the
7 colors -- you know the trees are coloring up and people are
8 up here to see that. Those are the times, on those
9 weekends, typically in October, when, you know, we will see
10 500-plus people over the course of the day. Right now -- I
11 was in our tasting room at the end of the day yesterday and
12 my staff guessed that we maybe saw 80 -- 75 or 80 people all
13 day. They were bored.
14 MR. INFANTE: Just for the record, yesterday was a
15 Tuesday.
16 A Yesterday was a Tuesday. This weekend, we may have a day,
17 Saturday -- we may have a day that -- a lot of it is weather
18 dependant, though. You know, if the weather's nice, we'll
19 definitely be slower, where we might see 150 people come
20 through in the course of a day.
21 Q Okay. How about winter? Is the tasting room on Old Mission
22 open during the winter?
23 A It is. We actually close one day, at both location, during
24 the winter months, because it's so slow, just to help us
25 with labor and offset costs a little bit there, but those

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17 (Pages 62 to 65)

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1 days can be absolutely void of visitors. Saturdays through
2 the winter we might see 20 to 40 people. More and more we
3 are seeing more people starting to visit in the shoulder
4 seasons, because they know how busy it is up here. You
5 know, hotel rooms are \$500 a night. It's much less
6 expensive to come in April, in November, early December.
7 Q How is the parking capacity for the Old Mission location?
8 Does the parking lot ever fill up?
9 A We have 15 paved, lined parking spots there. But we have an
10 overflow gravel area that will park another 30 plus cars.
11 There is usually a weekend day or two in the fall where
12 we'll have to start granting people overflow parking in
13 areas that we, kind of have designated in -- near the
14 vineyards, just to keep people safe and get them off the
15 roads and -- but, you know, that's maybe a couple weekends
16 during that time.
17 Q And what's the tasting room capacity at the Old Mission
18 location?
19 A Indoor capacity, if memory serves me is 45, I believe.
20 Q And outdoor?
21 A We have seating for another 30, 35 people outdoors, again,
22 just depending on configurations. That's a patio space,
23 it's not all under cover. We have umbrellas for some of
24 that. This time of year it's not uncommon to have everybody
25 sitting on the patio and nobody in the tasting room.

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1 Q Are there other spaces besides the patio and the indoor
2 tasting room at the Old Mission Peninsula where people can
3 drink wine?
4 A We have a lawn area in the front that is sectioned off,
5 where there are a couple picnic tables, and we will often
6 get families with young children that would say, "We don't
7 want to burden you with these kids, but mom and dad need a
8 break. Is it okay if we have a little snack out here that
9 we brought and mom and dad have a glass of wine?" So often
10 that's the group this time of year that's taking advantage
11 of those spaces, but often those spaces go unused, just
12 because it is a little bit separate from the main tasting
13 room area and --
14 Q Okay. And do you have a retail space at the Old Mission
15 Location?
16 A We do.
17 Q How is that space set up? How large is that space?
18 A 1500 square feet. It's part of the old office area of the
19 Underwood facility that our owner and landlord converted --
20 space and we have kind of a central circular bar area, with
21 seating around that, and then wines on racks on the four
22 walls around it.
23 Q And what kinds of items do you sell at the Old Mission
24 location?
25 A Most all of it is wine. We've had some ancillary, wine-

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1 related things like corkscrews and glasses and things of
2 that nature. We do have some logo T-shirts and hats that
3 are there as well, a little bit of other snack, food-type
4 things.
5 Q Does Black Star have retail at the Suttons Bay Location?
6 A Absolutely.
7 Q And what kinds of things do you sell there?
8 A We sell a broader range of things there. More clothing,
9 more ancillary, more food. Our -- our retail staff there
10 likes to experiment with different things in terms of -- of,
11 you know, specialty things. We'll bring in cutting boards
12 that somebody local is producing that, you know, wants to
13 have a -- a showcase of.
14 We have art on the wall there, local art that we
15 will sell. But most of it either carries a food or a wine
16 or some kind of a -- a theme related to what it is we are
17 doing. You know, here's a little bit of a change more --
18 more recently. As you're probably aware, the Pride movement
19 has become much more significant than it ever was, five
20 years ago, ten years ago, at least to my knowledge.
21 I now have a 21-year-old daughter that has made me
22 very aware of the importance of that to her. One of our
23 marketing people brought forward a concept of having a Pride
24 T-shirt. At the time it was one of those things that made
25 me pause for a moment and think, "Okay. Is this something

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1 that we feel is important enough to -- to get behind?" And
2 it has been a massive success for us. It's relatively
3 simple, it's not ostentatious, but it carries a message with
4 it. It's important to a certain segment of our consuming
5 public. I would have never dreamt of something like that
6 five or ten years ago as being something we would offer for
7 sale, but, again, as the segment changes, as the consumer
8 evolves, different things shift.
9 Q Does the T-shirt have, like, the Black Star logo on it or is
10 there art on it or --
11 A It's in rainbow colors, and it has the Black Star logo. But
12 there are others that just carry our -- our star icon in
13 just the colors. There were some -- there are some
14 proposals to maybe expand on that a little bit, and we'll
15 kind of see where that goes, but this was -- this was a
16 casual entry, at this point, into that.
17 Q Sure.
18 MS. HILLYER: Let me look in my notes real quick
19 and see if I have any other questions here.
20 Q Oh, one other question related to parking. Do people
21 typically arrive by personal vehicle or -- or by tour bus or
22 some other form of transportation?
23 A More and more it's a mix. It's not uncommon now for us to
24 see a private vehicle, but with three, four, six people in
25 it. One who's a designated driver and others that are there

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1 to taste and enjoy themselves maybe a little bit more when
2 it comes to the wine experience. But we do see shuttles or
3 private -- for lack of a better way to describe it, kind of
4 a limousine service. There's a small business that was
5 stated in Traverse City, I think she calls herself
6 "Michigan Wine" -- "Michigan Wine Girl," "Michigan Wine
7 Woman," something like that. And she brings people around,
8 kind of on private -- private tour. So we're seeing more of
9 that in the way of private tours, smaller groups.
10 We don't encourage at our -- at our Old Mission
11 location the big busses. We don't encourage it the way we
12 are set up now, because we really don't have the
13 accommodation to do that. If we were able to do that and
14 have the space, where we could handle the influx of 50
15 people all at once, it would be something we would consider
16 doing. But the way we are set up right now, we're not set
17 up that way, so -- we tend to cater to smaller shuttle
18 busses and private --
19 Q Private tours.
20 A -- private tours.
21 Q What would it take for the Old Mission location to have the
22 capacity to have those busses (inaudible)?
23 A We'd have to have a -- more of a committed space to be able
24 to accommodate, perhaps separate from our retail location.
25 We've talked about something along the lines of what we did

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1 at -- in our Suttons Bay location with the gazeboed area,
2 something outdoor, something more -- the demand is there
3 really more in the -- the warm months, the summer seasons,
4 again in the fall as well, but maybe someplace where we
5 could welcome a larger group like that, kind of address them
6 as a group, take care of them as a group, and not have them
7 impact the retail space all at once the way they would.
8 So it might require, you know, an outdoor area,
9 separate area. You know, the Old Mission location is --
10 we've always thought of it as being a 50-acre parcel. Mr.
11 Mampe's taken on some adjacent land. It's now made it, I
12 think, a total of something closer to 70 acres.
13 Q Okay.
14 A And we've talked about different ways -- he's got a couple
15 of building lots yet on that space that he has toyed with
16 the idea of perhaps building something that might allow
17 that, if we could work through that with the township. And
18 we'd have kind of an enhanced event area.
19 Q And the parcel that Black Star currently leases is about
20 five acres; is that right?
21 A As I mentioned earlier, he's changed some of those things
22 around a little bit. Without reviewing those documents
23 specifically, I believe the parcel the building sits on that
24 we formally lease is about a 5-acre parcel.
25 Q Okay. And do you have copies of previous versions of that

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1 lease that are different that go back to 2007?
2 A I don't have them with me.
3 Q But Black Star would have those records?
4 A Yes.
5 Q Do you remember if any of the language in that has changed
6 significantly to the lease?
7 A What I was going to add is, it's very similar to the lease
8 that you currently have a copy of. The only difference is
9 Mr. Mampe wanted to shorten the term, because -- we've been
10 doing this now 17 years with him, 16 years with him. He
11 wanted to have flexibility, both for us and for himself and
12 felt that was important. He's toyed with different ideas.
13 Again, Mr. Mampe being a bit of a character, you'd
14 have to know his mind set, but he -- that was really the
15 only difference, that the term was shortened.
16 Q What was the original term; do you remember?
17 A I think it was originally a five-year term.
18 Q Okay. And it's currently two?
19 A It's currently two. In it's current form it's been
20 renewed -- I think this is the fourth time.
21 Q Okay. So a few more questions about the Old Mission
22 Peninsula location. We talked about some of the things that
23 you want to do there, if you were to be able to have, like
24 wine and food pairing dinners or educational events or
25 things like that at the Old Mission peninsula location,


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1 how -- how often would you -- would you foresee doing that?
2 MR. INFANTE: I think this could be better --
3 A This could be an issue that --
4 Q (inaudible)
5 A Sure, if you're going to continue to go down that line of
6 questioning. What I was going to say is, it's set by
7 demand. I mean, if we had demand and we had the facilities
8 and we had the staff, I would say we could do it every night
9 of the week, if the demand was there, every day of the week
10 if the demand is there. You know, my sense is, the demand
11 might be there for three to five days of the week, in
12 season. Off season it may be -- it may be less. It would
13 likely be less.
14 Q How about, if you know, demand for things like weddings and
15 sort of events for hire that wouldn't be educational events
16 that the winery would put on?
17 A Let me leave that up to Sherri Fenton please.
18 Q Okay.
19 MS. HILLER: Let me check my notes real quick.
20 (A recess was taken)
21 MS. HILLER: I think the questions I have for Ms.
22 Fenton will be pretty brief, but would you be able to stay
23 in case we find that --
24 MR. INFANTE: That's fine.
25 THE WITNESS: Yes.

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<p>1 MS. HILLYER: -- some of the things I ask her 2 would actually be better suited to ask you? 3 THE WITNESS: Yes. 4 MS. HILLYER: Thank you. I appreciate it. 5 (Deposition concluded at 11:21 a.m.) 6 7 -0-0-0- 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 74</p>	
<p>1 2 CERTIFICATE 3 4 5 I, Heidi Peckens, a Certified Electronic Recorder and 6 Notary Public within and for the State of Michigan, do 7 hereby certify: 8 That this transcript, consisting of 74 pages, is a 9 complete, true, and correct record of the testimony of Lee 10 Lutes, given in this case on July 12th, 2023, and that the 11 deponent was duly sworn to tell the truth. 12 13 I further certify that I am not related to any of the 14 parties to this action by blood or marriage; and that I am 15 not interested in the outcome of this matter, financial or 16 otherwise. 17 18 IN WITNESS THEREOF, I have hereunto set my hand this 19 26th day of July, 2023. 20 21 22 23 Heidi Peckens, Notary Public 24 Notary Public, State of Michigan 25 County of Grand Traverse My commission expires: August 3, 2027</p> <p style="text-align: center;">Page 75</p>	

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EXHIBIT 28**PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 5**

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF SHERRI FENTON

<p>1 RULE 30(b)(6) DEPOSITION OF WINERY AT BLACK STAR FARMS and SHERRI FENTON</p> <p>2</p> <p>3 Taken by the Intervenor-Defendant on the 12th day of July,</p> <p>4 2023, at 15900 Rue de Vin, Traverse City, Michigan, at</p> <p>5 8:00 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Hillyer 5</p> <p>5</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 PAGE</p> <p>9 (No exhibits marked)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 4</p>
<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>3 And</p> <p>4 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>5 Miller Canfield Paddock & Stone, PLC</p> <p>6 99 Monroe Avenue, NW, Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 (616) 776-6333</p> <p>9 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>10 McGraw Morris, PC</p> <p>11 300 Ottawa Avenue, NW, Suite 800</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 288-2700</p> <p>14 For the Intervenor-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>15 Law Office of Tracy Jane Andrews, PLLC</p> <p>16 619 Webster Street</p> <p>17 Traverse City, Michigan 49686</p> <p>18 (231) 714-9402</p> <p>19 And</p> <p>20 MS. HOLLY LYNN HILLYER (P85318)</p> <p>21 Olson Bzdok & Howard, PC</p> <p>22 420 East Front Street</p> <p>23 Traverse City, Michigan 49686</p> <p>24 (231) 946-0044</p> <p>25 Also Present: Becky Chown, Peninsula Township</p> <p>Lee Lutes, Black Star Farms</p> <p>RECORDED BY: Heidi Peckens, CER 9634</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>Page 3</p>	<p>1 Traverse City, Michigan</p> <p>2 Wednesday, July 12, 2023 - 11:36 a.m.</p> <p>3 REPORTER: Do you solemnly swear or affirm that</p> <p>4 the testimony you're about to give will be the whole truth?</p> <p>5 MS. FENTON: I do.</p> <p>6 SHERRI FENTON</p> <p>7 having been called by the Intervenor-Defendant and sworn:</p> <p>8 EXAMINATION</p> <p>9 BY MS. HILLYER:</p> <p>10 Q Okay. Could you please state your name for the record?</p> <p>11 A Sherri Fenton.</p> <p>12 Q Thank you. I'm Holly Hillyer, I represent PTP, and I</p> <p>13 understand that you have been deposed before; correct?</p> <p>14 A Correct.</p> <p>15 Q Is that in this litigation?</p> <p>16 A Correct.</p> <p>17 Q Okay. I apologize, I'm still going to run through a few</p> <p>18 ground rules, even though I understand you've heard them</p> <p>19 before. This will be transcribed, so please try to remember</p> <p>20 to speak your answers and not use non-verbal communications</p> <p>21 so that the -- the court reporter can transcribe our</p> <p>22 conversation. Please let me finish questions before you</p> <p>23 start to answer so that we don't speak over one another and</p> <p>24 so that your attorney can make objections if he needs to.</p> <p>25 If you don't understand a question, please let me know and I</p> <p>Page 5</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF SHERRI FENTON

<p>1 will try to rephrase it. If you answer I'll assume that you</p> <p>2 understood. And if your attorney objects I will expect you</p> <p>3 to answer anyway, unless he instructs you not answer due to</p> <p>4 a claim of privilege.</p> <p>5 And, if I ask for a date range or a size or a time</p> <p>6 in the past, estimates are fine, but please don't guess, and</p> <p>7 let me know if you need a break.</p> <p>8 A Okay.</p> <p>9 Q I have just a handful of questions for you about events and</p> <p>10 the way inquiries for events are handled, and then, you</p> <p>11 know, Black Star's capacity for future events and other</p> <p>12 types of things it might like to offer on Old Mission</p> <p>13 Peninsula.</p> <p>14 So I understand that event inquiries come in</p> <p>15 through the Black Star website; is that right?</p> <p>16 A In large part, but they also come in verbally from partners,</p> <p>17 friends, businesses in the community.</p> <p>18 Q So by verbally you mean phone calls or personal emails to</p> <p>19 you or conversations with people?</p> <p>20 A Personal conversations, absolutely.</p> <p>21 Q Okay. For the website inquiries, what kinds of inquiries do</p> <p>22 you typically receive through the website?</p> <p>23 A The number one amount of inquiries is for weddings, for us</p> <p>24 to host weddings. We receive a large number of corporate</p> <p>25 events requests to host small private meetings; a board</p> <p style="text-align: center;">Page 6</p>	<p>1 A I'm blanking on her name right now. Sorry.</p> <p>2 Q That's okay.</p> <p>3 A She's brand new.</p> <p>4 Q So would it be fair to say that he coordinates the sales and</p> <p>5 scheduling and she plans the actual experiences or how do</p> <p>6 they --</p> <p>7 A Somewhat. So he is responsible for negotiating the schedule</p> <p>8 of where we can host an event, where on our property we have</p> <p>9 availability. He knows that we are not able to host events</p> <p>10 at Old Mission, so if requests come in for Old Mission he</p> <p>11 just lets people know that we are not able to host events on</p> <p>12 our Old Mission property, so would you be, you know, willing</p> <p>13 to come out. And then he presents, like, the different</p> <p>14 opportunities out on our Suttons Bay location.</p> <p>15 Q Okay. And when he schedules those, about -- I mean, how</p> <p>16 many -- I'm going to scratch that. So for what I would</p> <p>17 consider larger events, like weddings and maybe a large</p> <p>18 corporate event, how many times a day can you have those,</p> <p>19 how many times a week? Can I get some sense of the</p> <p>20 frequency that those happen?</p> <p>21 A Over a period of two or three days he will receive about 75</p> <p>22 inquiries, and those will be for anywhere from private</p> <p>23 events for two people up to events for 150 people. They</p> <p>24 might request more than that, but that's our maximum that we</p> <p>25 will take because that's our maximum indoor capacity at our</p> <p style="text-align: center;">Page 8</p>
<p>1 meeting, a wine pair dinner experience, a tour and tasting</p> <p>2 for corporate groups. We've received birthday and</p> <p>3 anniversary requests where there might be five to 20 people</p> <p>4 who want to gather together over -- over a wine pair dinner</p> <p>5 on and agricultural estate, in a unique situation.</p> <p>6 We've received -- we are now getting into baby</p> <p>7 showers and bridal showers. A lot more requests coming in,</p> <p>8 even from like, the local community with those.</p> <p>9 Q Okay.</p> <p>10 A We have requests for educational experiences and -- and</p> <p>11 tours and explanations through the vineyards, those kinds of</p> <p>12 things.</p> <p>13 Q How does Black Star typically respond to those requests? Is</p> <p>14 somebody assigned to responding to those, do you have a</p> <p>15 department of people?</p> <p>16 A If they come in through the website, they go to Dustin</p> <p>17 Schaub who was previously mentioned, --</p> <p>18 Q Yeah.</p> <p>19 A -- who is -- I will correct that. He is our event, sales</p> <p>20 and catering manager, not an event coordinator.</p> <p>21 Q Okay. And do you also have an event coordinator or planner?</p> <p>22 A We do.</p> <p>23 Q Okay. And who's that?</p> <p>24 A Sorry. She just got hired.</p> <p>25 Q That's okay.</p> <p style="text-align: center;">Page 7</p>	<p>1 Suttons Bay location.</p> <p>2 Q Okay.</p> <p>3 A What was the rest of the question, then? How many can we</p> <p>4 host?</p> <p>5 Q Frequency of the events you can actually host.</p> <p>6 A At our Suttons Bay location we will only host one wedding a</p> <p>7 day, because only one bride in a dress will be seen walking</p> <p>8 around. We figure that is what's appropriate. But we can</p> <p>9 host other events at the same time. We could host an event</p> <p>10 on the tasting room terrace at the same time that there's a</p> <p>11 wedding reception going on up at the Inn or in the</p> <p>12 Centennial Barn.</p> <p>13 So we can sell different parts of the property,</p> <p>14 and often do, because demand is so high. We are actually</p> <p>15 having to turn away a lot of business right now, just</p> <p>16 because there are so many requests and we cannot manage them</p> <p>17 all within that -- the confines of the Suttons Bay location.</p> <p>18 Had we had the opportunity to have more space and</p> <p>19 opportunity to do events outside, especially on Old Mission,</p> <p>20 near the vineyard, we would be able to accommodate a lot</p> <p>21 more requests.</p> <p>22 Q Okay. So the Old Mission property, what kinds of events do</p> <p>23 you think that Black Star would like to have at that</p> <p>24 location?</p> <p>25 A So I personally receive a lot of requests from local</p> <p style="text-align: center;">Page 9</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF SHERRI FENTON

<p>1 business that want to -- or non-profits that want to host a 2 small event at Old Mission. They want to host it after -- 3 after business hours, something that's a short drive from 4 their office, like a nice quiet little retirement party with 5 some wine and some food. And I get a lot of those. We get 6 some of those in through our website as well.</p> <p>7 Q Uh-huh (affirmative).</p> <p>8 A We had one from the -- I believe there was a conservancy and 9 a Michigan State group that wanted to come and do a tasting, 10 and Rob Manigold's name was a part of that. They wanted to 11 come do a tasting at Old Mission and they wanted us to serve 12 them food. And so I called Rob and I said -- I said, "Let 13 me be clear, we are not allowed to serve food at our Old 14 Mission location, but you want to bring a group here and you 15 want me to serve you food along with your wine tasting."</p> <p>16 Q Uh-huh (affirmative).</p> <p>17 A And I said, "And what would you do if we did that?" He 18 said, "I would fine you." And I said, "Okay. Yeah, I think 19 you know that. So you're not coming."</p> <p>20 Q Okay.</p> <p>21 A So, we get all kinds of requests. People want to have 22 book -- book club meetings. You know, they want these 23 quiet little places to gather in a nice farm environment, a 24 nice, beautiful, you know, agricultural area. People don't 25 want to meet -- people don't want to meet, you know, like</p> <p style="text-align: center;">Page 10</p>	<p>1 we do any kind of event we have to say that it's Suttons 2 Bay. We divide our tasting rooms on the website, promote 3 them differently, because they offer different things.</p> <p>4 Q Okay.</p> <p>5 A We have to do print material sometimes, we have to do two 6 different things. Digital media, everything has to be 7 completely, like, separate messages.</p> <p>8 Q And just to clarify, a few minutes ago you mentioned 9 requests for like, small, after-business hours kind of 10 gatherings. What is your understanding of a small event?</p> <p>11 A Anywhere between ten to 25 people.</p> <p>12 Q Okay. And for weddings and events that might be larger than 13 that, what would be largest event that you can imagine 14 having at the Old Mission location?</p> <p>15 A It would depend upon time of year and what the occupancy and 16 capacity is. So with a indoor occupancy, if you ask me 17 right now, in the tasting room, of like 40 or 45 people, 18 there's not space to put tables and chairs and hold a 19 reception there, so we'd have to do it outdoors in a bonded 20 space that would be, obviously, -- off in some manner. But 21 we could do -- we could do really whatever the guests 22 wanted.</p> <p>23 I would love to be able to control the destiny of 24 my business, and -- and answer to guests' request and be 25 able to say, "yes." I'd love to be able to -- to have the</p> <p style="text-align: center;">Page 12</p>
<p>1 inside a ballroom in town or something. They want to be in 2 a beautiful environment. They want to see horses.</p> <p>3 There are horses, actually, at the Old Mission 4 location that are not ours, but wouldn't it be fun to be 5 able to do some of the things -- to do everything that we do 6 at the Suttons Bay location. There are the possibilities at 7 our Old Mission location. There's the farm, that's a -- 8 you know, there's a horse barn and -- and stables area. 9 We'd love to be able to provide those experiences everywhere 10 because it makes it really difficult to communicate.</p> <p>11 We have to have two different marketing messages 12 right now. We can't say, "We are Black Star Farms. Come 13 experience Black Star Farms," and have -- and showcase 14 photos and everything of everything that we do. We always 15 have to say Black Star Farms Suttons Bay, to make sure that 16 there's not confusion.</p> <p>17 There still is confusion, just because people just 18 think -- they might think about it, you know, something they 19 heard about or attended in Suttons Bay and assume that they 20 can do it at Old Mission too.</p> <p>21 Q Do you market Old Mission separately? Do you have a 22 branded --</p> <p>23 A We do, somewhat, yes. We have to. So we have -- on our 24 website we have things divided. On the event page we 25 specifically say that things are in Suttons Bay. Every time</p> <p style="text-align: center;">Page 11</p>	<p>1 additional funds so that we can reinvest in the business.</p> <p>2 Q What kind of changes would you make to the Old Mission 3 property to accommodate those larger events?</p> <p>4 A You don't have to make a change to the property. People 5 want to be outside. They want to be in the vineyard. They 6 want to be right next to the vineyard. You could have a 7 dining in the vines, you could have a wedding reception with 8 rows of tables, right along next to the vineyard. So there 9 doesn't have to be a parking lot, there doesn't have to be 10 more cement. I don't like cement. I wouldn't want that 11 anyway.</p> <p>12 Q Okay.</p> <p>13 A People want to be out there in nature. They want to 14 experience the beauty of the agriculture around us, you 15 know. I was just saying that we had a -- a Sunday brunch 16 and somebody was just commenting how beautiful it was and 17 how amazing the food was at the Suttons Bay location and, 18 "Oh, there goes a horse." They thought, like, that was the 19 coolest thing, because --</p> <p>20 Q Yeah.</p> <p>21 A -- they were probably from Grand Rapids, or Detroit or 22 something. You don't see horses go walking by.</p> <p>23 MR. INFANTE: I see horses.</p> <p>24 A That's part of what's, like, really cool about what we do up 25 here. We'd love to share that at both locations.</p> <p style="text-align: center;">Page 13</p>

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF SHERRI FENTON

<p>1 Q Yeah. You mentioned horses and the horses that are on the</p> <p>2 Old Mission Peninsula property. What do you do that</p> <p>3 involves the horses at Suttons Bay? Are there visitor</p> <p>4 experiences involving the horses or just that they're --</p> <p>5 they're there?</p> <p>6 A There are some visitor experiences. They are privately</p> <p>7 boarded horses, so currently none of those individuals are</p> <p>8 offering things, like, riding lessons. So what we do is we</p> <p>9 supplement. Because we do have the horses there and -- and</p> <p>10 then we're known for that, we have a beautiful carriage, and</p> <p>11 we bring somebody in with a -- another horse who is -- the</p> <p>12 horse is trained to pull and the driver is trained to drive.</p> <p>13 And we offer carriage rides up to top of vineyard, for a</p> <p>14 wedding experience.</p> <p>15 Or we will offer little private carriage rides,</p> <p>16 occasionally, around the property and through the woods. We</p> <p>17 will have that same person bring in a couple draft horses</p> <p>18 and we have a -- a wagon and -- and we'll offer sleigh rides</p> <p>19 or wagon rides in the fall. So things like that, that's</p> <p>20 just agroturism, you know. There's, like, this little</p> <p>21 magazine called Michigan Farm Fun. So we're in that just</p> <p>22 promoting the different ways that people can get out, on a</p> <p>23 working farm, and feel like they're a part of it.</p> <p>24 Q Is that something that you think you might be able to do</p> <p>25 with the horses on Old Mission?</p> <p style="text-align: center;">Page 14</p>	<p>1 peek inside the Inn, which is private for Inn guests only.</p> <p>2 So that gives them a little opportunity to get a glimpse of</p> <p>3 something that they might not be aware of. For us that's a</p> <p>4 marketing opportunity. They might think, "Oh, I'd like to</p> <p>5 come stay here," and it will bring them back another time.</p> <p>6 She takes them up into the vineyard and talks</p> <p>7 about what's going on at that point in time. So if there's</p> <p>8 flood break or harvest time or whatever, she's talking about</p> <p>9 what's specifically going on. She talks about why grapes</p> <p>10 grow here. There's a huge education there, because people</p> <p>11 think, "Oh, it's so cold here. How can you grow grapes?"</p> <p>12 So she'll go through, you know, just a nice little wine</p> <p>13 education, walk back through the property, talk about the</p> <p>14 horses, come around, past the farm animals, talk about how</p> <p>15 we raise our own proteins, and that we are a true farm to</p> <p>16 table property, past our organic vegetable garden and then</p> <p>17 up to the bistro and talk about how, you know, what you're</p> <p>18 seeing you can eat right here and enjoy with a glass of</p> <p>19 wine.</p> <p>20 And, yeah, you might see that occasional horse</p> <p>21 stop by, too. And then she takes them up to the crush pad</p> <p>22 and she talks to them -- before that she takes them down and</p> <p>23 gives them a peek in the -- the cob, which is where our red</p> <p>24 wines are aging. So you've got the barrels along the --</p> <p>25 stacked along the walls. That's also private, off limits,</p> <p style="text-align: center;">Page 16</p>
<p>1 A The horses on Old Mission are private, so that would have to</p> <p>2 just be acquiring other horses or, you know, navigating</p> <p>3 around that.</p> <p>4 MS. HILLER: Okay. I'm going to take a second</p> <p>5 and look through my notes.</p> <p>6 MS. ANDREWS: Can we go off the record for a</p> <p>7 second?</p> <p>8 MS. HILLER: Yeah.</p> <p>9 (A recess was taken)</p> <p>10 Q I have just a few more questions about Black Star's Old</p> <p>11 Mission Peninsula location and your -- your plans for the</p> <p>12 future there.</p> <p>13 The kinds of things that we talked about, like the</p> <p>14 wine and food pairing dinners and the educational events,</p> <p>15 the weddings and the events and possibly carriage rides and</p> <p>16 the kinds of things you do on Suttons Bay -- or at the</p> <p>17 Suttons Bay location. One of the things I didn't ask you</p> <p>18 about were winery tours. Do you offer winery tours at the</p> <p>19 Old Mission Peninsula location?</p> <p>20 A We do not.</p> <p>21 Q You do not. Would you like to?</p> <p>22 A Why not? People love it.</p> <p>23 Q Okay. What are the winery tours like at the Suttons Bay</p> <p>24 location?</p> <p>25 A So our wine education specialist takes people, gives them a</p> <p style="text-align: center;">Page 15</p>	<p>1 so, it's these nice VIP experiences that everybody is really</p> <p>2 looking for those, especially these days. And then up to</p> <p>3 the crush pad to talk about the processing and how it --</p> <p>4 what goes on there.</p> <p>5 So it's a really in depth, just, explanation.</p> <p>6 People want to walk away with a little nugget of information</p> <p>7 and feel more -- like they know more than they did when they</p> <p>8 came in. And we are situated, both of these properties, so</p> <p>9 beautifully, that we can share a lot of that experience and</p> <p>10 make people really feel like they're a part of that. And</p> <p>11 it's good for us, it's good for our business, because that</p> <p>12 means that they're going to come back in some way, more than</p> <p>13 likely. Because they might come back if a family member's</p> <p>14 getting married or they might have a business who, "Gosh,</p> <p>15 I'd love to host a small little, quick board meeting here"</p> <p>16 and then, you know, be able to go off and do other things in</p> <p>17 the area. They're all just opportunities for us to</p> <p>18 introduce our business to more people and help us control</p> <p>19 our financial destiny of our business.</p> <p>20 Q You mentioned a wine education specialist. Do you have a</p> <p>21 wine education specialist --</p> <p>22 A We do.</p> <p>23 Q -- at the Old Mission Peninsula location?</p> <p>24 A We do.</p> <p>25 MR. INFANTE: You were really quick on that one.</p> <p style="text-align: center;">Page 17</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF SHERRI FENTON

<p>1 THE WITNESS: Yes.</p> <p>2 MR. INFANTE: You might want to ask that question</p> <p>3 again.</p> <p>4 Q Sorry. Do you have a wine education specialist at the Old</p> <p>5 Mission Peninsula location?</p> <p>6 A We have a wine education specialist employed by The Winery</p> <p>7 at Black Star Farms. She works primarily at the Suttons Bay</p> <p>8 location, because that's where we're hosting events.</p> <p>9 Q Okay.</p> <p>10 A And she is certified by something that I don't recall. I</p> <p>11 think that's a question for Mr. Lutes.</p> <p>12 Q How is the Old Mission Peninsula location staffed, if you</p> <p>13 know?</p> <p>14 A So we have a -- a production facility, so it's staffed with</p> <p>15 winemakers, and the team who works on wine production. It's</p> <p>16 staffed in the tasting room by two tasting room managers who</p> <p>17 co-manage and sort of staff who's -- who serve at the</p> <p>18 tasting room.</p> <p>19 Q Okay. The service staff, do they have any special wine</p> <p>20 education or ability to discuss the wines with guests?</p> <p>21 A They do; they do. They have knowledge of our wines and of</p> <p>22 our region, but this individual that I was referring to, our</p> <p>23 specialist, has been educated on wines around the world and</p> <p>24 she has a much greater in-depth knowledge. She's also been</p> <p>25 an employee for about 16 years, so she truly knows our wines</p> <p style="text-align: center;">Page 18</p>	<p>1 A Because we do our business very well, of hosting events in</p> <p>2 Suttons Bay. We are one of best -- one of the best in the</p> <p>3 business and we know how to run events. We know how to run</p> <p>4 them very well, with elegance and taste and we would do the</p> <p>5 same thing at the other location.</p> <p>6 MS. HILLYER: I have no further questions. And I</p> <p>7 have no further questions for Mr. Lutes.</p> <p>8 (Deposition concluded at 12:03 p.m.)</p> <p>9</p> <p>10 -0-0-0-</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 20</p>
<p>1 inside and out.</p> <p>2 Many of our servers at Old Mission or even Suttons</p> <p>3 Bay, but, -- their summer only, so their knowledge is</p> <p>4 somewhat more limited, so they don't have the opportunity to</p> <p>5 provide the experience that somebody with a lot more</p> <p>6 experience would be able to provide.</p> <p>7 Q Has Black Star started to prioritize what it would do at the</p> <p>8 Old Mission Peninsula if it were able to start doing more of</p> <p>9 these things in the future? Is there a type of event that</p> <p>10 it would -- that it would like to do the most?</p> <p>11 A Black Star Farms has not started to prioritize that, because</p> <p>12 at this point in time there is no ability to do that, so</p> <p>13 we'd rather focus our efforts on things that we are able to</p> <p>14 do right now.</p> <p>15 When it gets down that road, then we absolutely</p> <p>16 will -- will focus efforts on that. But at this point in</p> <p>17 time we don't spend our efforts on things that are a no-go.</p> <p>18 Q Okay. So would it be fair to say that these are things that</p> <p>19 Black Star is considering doing but hasn't started to plan</p> <p>20 yet?</p> <p>21 A That would be fair to say, that we have not started any</p> <p>22 formal kind of planning for those, but we certainly -- it</p> <p>23 would be very -- very easy for us to start with that</p> <p>24 planning if we were given the opportunity.</p> <p>25 Q Why would that be easy?</p> <p style="text-align: center;">Page 19</p>	<p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4</p> <p>5 I, Heidi Peckens, a Certified Electronic Recorder and</p> <p>6 Notary Public within and for the State of Michigan, do</p> <p>7 hereby certify:</p> <p>8 That this transcript, consisting of 20 pages, is a</p> <p>9 complete, true, and correct record of the testimony of</p> <p>10 Sherri Fenton, given in this case on July 12th, 2023 and</p> <p>11 that the deponent was duly sworn to tell the truth.</p> <p>12</p> <p>13 I further certify that I am not related to any of the</p> <p>14 parties to this action by blood or marriage; and that I am</p> <p>15 not interested in the outcome of this matter, financial or</p> <p>16 otherwise.</p> <p>17 IN WITNESS THEREOF, I have hereunto set my hand this</p> <p>18 26th day of July, 2023.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Heidi Peckens, Notary Public, State of Michigan</p> <p>24 County of Grand Traverse</p> <p>25 My commission expires: August 3, 2027</p> <p style="text-align: center;">Page 21</p>

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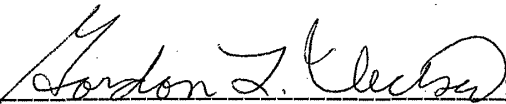
Peninsula Township
FINAL FARM PROCESSING PERMIT
NO. 2

This permit is issued to:

Robert Mampe, Landlord, Winery at Black Star
Farms, LLC, Tenant at 360 McKinley Rd.

In accordance with Section 6.7.2 (19) of the
Peninsula Township Zoning Ordinance, the
following use is permitted:

The processing of agricultural produce


Gordon L. Uecker Date 9-27-07
Peninsula Township Zoning Administrator

Retail sales / Tasting

NONE 

Gordon L. Uecker Date
Peninsula Township Zoning Administrator

December 16, 2011

To: Peninsula Township Zoning Board of Appeals

From : Lee Lutes, Manager, Black Star Farms, Old Mission & Robert Mampe, property owner.

Re: Zoning Variance for the McKinley Road location, Black Star Farms, Old Mission.

To whom it may concern;

This letter is written as an application for a variance from the Peninsula Township winery ordinance, as it applies to wineries recognized as Farm Processing Facilities. This is the current classification for our winery, Black Star Farms, Old Mission (BSFOM), located at 360 McKinley Rd. East. The property is owned by Robert Mampe, is leased to BSFOM, and Mr. Mampe is a partner in the winery ownership.

BSFOM has been in operation at this location since 2007 and is a current member of WOMP – wineries of the Old Mission Peninsula. The Winery at Black Star Farms was very happy to have formed this partnership with Mr. Mampe in 2007, as we now purchase or own (collectively), more than 100 acres of fruit on the Old Mission Peninsula. It was originally our interest to get our white wine processing much closer to the vineyard sources, as this is critical in the production of high quality white wine, and this facility and partnership have allowed us to do just that. In addition, we have revitalized an existing structure on Mr. Mampe's property, have utilized a former office space as our winery tasting room (at the currently allowed 1500 square feet), and have contributed positively to the WOMP wine trail. We are very pleased to be on the Old Mission Peninsula, and plan to remain into the foreseeable future.

With this appeal for a variance, we are making a request to increase the current size of our winery processing facility, primarily for storage, as our needs are expanding with the growing demand for our products. As you likely know, the current size allowed for a winery processing facility, recognized as a Farm Processing Facility, is a mere 6000 sq. ft. As you may also know, we are currently utilizing close to 10,000 square feet for processing and storage, based on an earlier variance allowed for this prior existing building, and we are close to pushing beyond its four walls! The variance we request would allow us to expand by approx. 7000 sq. ft, most of which would be enclosed, and approx. 1700 sq. ft. open but under an extended roof area. This covered, outdoor area would become our crush pad, and would be the primary space for fresh fruit processing in the fall. Most of the area this addition would occupy would be constructed on an existing foundation, as this facility was originally built with expansion in mind. Anyone who visits the site can plainly see this foundation, as the east side includes a 4 – 5 foot cinder block wall. Here again, we hope to make use of the original envelope for this building, to improve our capacity and volume, and the over-all character of the entire site.

We recognize the fact that the wineries on the Old Mission Peninsula are currently working with the township planner to aid in the development of a winery ordinance that will meet the needs of this expanding industry. Black Star Farms, Old Mission is not considered a large winery within the state, but would fit the definition for a medium sized winery. In the years prior to 2011, we were producing approximately 12-15,000 cases. Due to a significant crop of grapes in 2011, we will produce approx. 25,000 cases. We are proud, however, of the fact that 95% of what we produce is grown on the Old Mission Peninsula, including products from cherries, apples, and grapes. The only fruit that does not meet the Old Mission appellation is that which we process from Leelanau or in small quantities from southwest Michigan. Other than that, everything in our tanks and bottles comes from the peninsula where we are based. How many wineries on this peninsula, regardless of classification, can make that claim? Not as many as we would all like! The primary reason for this, however, is the shortage of fruit. There is such a demand for our regional wines that our growers have not yet caught up with the necessary supply of grapes. Fortunately, we have growers that are working to correct this problem and I can predict a day when the wineries on this peninsula will have all the fruit they can process, regardless of the growing season.

The most significant issue for any of the wineries, regardless of size, is storage space. We only get one time of the year to make enough wine to last the entire year, and storing all of that volume requires a great deal of space. There is space required when it is in bulk form, and there is space required when it is in bottled form. Both of these spaces require climate control, as too much heat or cold can be damaging to the product. In addition, there is space required for all of the dry goods that go into making wine, as well as those raw materials necessary for packaging the wine – bottles, caps, labels, etc. Once the product is bottled, and everything we produce requires bottling by the following spring or summer, the storage required increases by 100%. In other words, bulk wine requires less than half the storage space of bottled wine, but bottling is the best way to preserve our delicate white wines. In addition to all of this storage required, we have equipment that must also be stored for 9-10 months of the year, fruit harvest bins that also require long-term storage, and equipment necessary for the production process that also requires covered storage. (See photos of these spaces as examples...). It is this storage space requirement that is forcing us to ask for this variance.

We understand that the Farm Processing Facility category was intended to maintain wineries of a certain size, but it is simply too restrictive for growth. I believe we would all agree that wineries on this peninsula, selling wine made from fruit recognized as coming from this peninsula, is good for maintaining the farm community of this peninsula. I would also propose that the winery demand for an increasing supply of fruit is driving an additional segment of agriculture on this peninsula that may not be here otherwise. We would hope that our industry is one more reason for the agricultural community to keep its land in agriculture, and not development. For these reasons, we would continue to ask the township, and will continue our work with your planner, to find a way to meet the issues of this expanding and dynamic industry. Please keep in mind as well, that with the current acreage requirement for this winery size, WITH our variance increase included, we are occupying little more than 1% of the land at this site with above ground buildings. This would seem to be a reasonable use of space.

In response to the conditions stated as a component of Section 5.7.3:

1) Basic Conditions;

- a. This variance will in no way be contrary to any public interest that we are aware of or can foresee at this time, nor does it conflict with the intent and purpose of this ordinance in any way. There is an obvious conflict with the current winery ordinance, as it relates to square feet allowed for “Farm Processing Facilities”, but it is our understanding that the township is currently working on revisions to address these and other issues of the industry.
- b. This variance, if granted, would not change the “intent” of the current winery ordinance, and it’s grant for Farm Processing Facilities by right, as all other aspects of the use will be intact. This addition would not change any use for the tasting room (the retail space), nor would it change the current interest in keeping the majority of the fruit processed at this location as being local. We believe, that in keeping with the general interest of the current ordinance for wineries, there is no need for special or conditional use permits for this application.
- c. This variance, if granted, will not adversely affect property values in the immediate vicinity, or in the district, and we believe will actually have a positive effect on these values. It is partly our intent in making this application that we would create an environment around the processing facility that would be more appealing to neighbors and the visiting guest, and that the “negative visual element” of the winery would be reduced. We have had no complaints on this issue to date, or that we are aware of, however we continually strive to improve the conditions of our environment and the areas around us.
- d. It is our belief that it *would* be reasonably practical to make this variance a component of the revised winery ordinance, as this is a need that the township has heard and addressed with other wineries in the past. We have heard from the township that they are currently working toward this. The only way to get around the space requirement at this time is to apply for, and work toward the requirements of a “Winery Chateau”, however this section of the ordinance incorporates many uses which are beyond our business model – for example, the creation of rooms for hire, or the ability to support major functions, such as weddings. Our only intention is to continue making wine, predominately if not entirely from local fruit, and to have a small tasting room operation. We have no desire for a B & B, nor do we wish to cater to large events.
- e. This variance will relate only to property that is under the control of Black Star Farms, Old Mission, and its ownership.

(2)Special conditions;

- a. In making this request for a variance, we are making the case for practical difficulties with the existing ordinance for Farm Processing Facilities, as it relates to square footage allowances. Again, it is our belief that with the current acreage requirements for this type of use, and the fact that a 7,067 sq.ft addition, in addition to the current 10,000 sq. ft., will only occupy approximately 1% of the acreage required for this use.

28-11-030-006-35 Black Star Farm SUP Mampe
20-25-30-35-40-50

Page 1 of 1

Gordy Uecker

From: Lee Lutes [LLutes@blackstarfarms.com]

Sent: Thursday, January 26, 2012 5:05 PM

To: zoning@peninsulatownship.com

Subject: ZBA request

Gourdie – as per our conversation earlier today, please remove our request to the ZBA from their roster, as we will be pursuing other options as they relate to our production facility on the peninsula. It is NOT our intent to continue with our ZBA request to expand production space for our farm processing facility with Bob Mampe.

Thank You very much,

Lee Lutes
Winemaker - General Manager
Wineries of Black Star Farms
Northwest Michigan
231-944-1281

4/5/2012

Def Resp to 1st RFP 006934

PENINSULA TOWNSHIP

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DAVID SANGER
TRUSTEE

WARREN WAHL
TRUSTEE

ISAIAH WUNSCH
TRUSTEE

June 12, 2018

Mr. Robert Mampe
363 E. McKinley Rd.,
Traverse City, MI 49686

Re: Zoning Board of Appeals request for Variance

Parcel No. 11-030-006-35

Dear Mr. Mampe,

On May 14, 2018 you filed a request for variance under the Farm Processing Ordinance Section 6.7.19 (b) for your structure located at 360 E. McKiley Road.

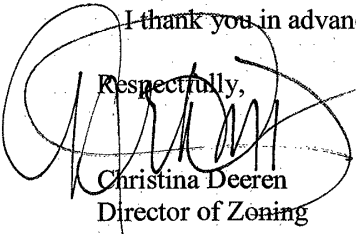
I have reviewed this information with the Township Supervisor, Rob Manigold and the Township Attorney, Gregory Meihn. I have been advised by Mr. Meihn that this issue should not be addressed before the Zoning Board of Appeals rather an amendment to the current zoning ordinance should be sought.

Therefore, I am returning your application fee for the variance request in check no. 9275 of \$375.00. I apologize in advance for not being able to address this issue at the Zoning Board of Appeals.

Please feel free to contact me if you have any questions regarding this information as I would be happy to assist you.

I thank you in advance for your time in this matter.

Respectfully,


Christina Deeren
Director of Zoning