



WINERY SHOP INN DINING MEETINGS WEDDINGS



## OLD MISSION TASTING ROOM

Black Star Farms Old Mission sits just off scenic M-37, only minutes from downtown Traverse City among the vineyards, orchards, and panoramic views of Old Mission Peninsula. The state-of-the-art wine processing facility focuses on our white wine production. The tasting room boasts a round bar constructed from wine barrels and a cozy fireplace in a farmstead setting. Our friendly and knowledgeable staff will guide you through our 50+ award-winning wines, cider, and brandies, all of which express the regional nature of northwest Michigan.

### HOURS

Daily, 11 am-6 pm

- Offering wine flights, spirit flights, wines by the glass, featured cocktails, and retail sales. Learn more about our new Top-Tier Wine Tasting option [here](#).
- Operating on a first-come, first-served basis and **not accepting reservations**
- Seated service only
- Accepting parties of 8 or fewer people (larger groups cannot be split)

<https://www.blackstarfarms.com/tasting/> - June 22, 2023

WOMP013657

# **Exhibit 35**

**\*\* NOT USED\*\***



## EXHIBIT 36

## PTP Motion for Summary Judgment

October 6, 2023

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

DEPOSITION OF CHRISTOPHER BALDYGA

1 DEPOSITION OF CHRISTOPHER BALDYGA  
 2 Taken by the Intervener-Defendant on the 11th day of July,  
 3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at  
 4 8:00 a.m.  
 5  
 6 APPEARANCES:  
 7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)  
 8 And  
 9 MR. CHRISTOPHER J. GARTMAN (P83286)  
 10 Miller Canfield Paddock & Stone, PLC  
 11 99 Monroe Avenue, NW, Suite 1200  
 12 Grand Rapids, Michigan 49503  
 13 (616) 776-6333  
 14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)  
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 17 Grand Rapids, Michigan 49503  
 18 (616) 288-2700  
 19 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467)  
 20 Law Office of Tracy Jane Andrews, PLLC  
 21 619 Webster Street  
 22 Traverse City, Michigan 49686  
 23 (231) 714-9402  
 24 And  
 25 MS. HOLLY LYNN HILLIER (P85318)  
 Olson Bzdok & Howard, PC  
 420 East Front Street  
 Traverse City, Michigan 49686  
 (231) 946-0044  
 Also Present: Rebecca Chown  
 RECORDED BY: Stacey M. Seals, CER 7908  
 Certified Electronic Recorder  
 Network Reporting Corporation  
 Firm Registration Number 8151  
 1-800-632-2720

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1 Traverse City, Michigan  
 2 Tuesday, July 11, 2023 - 8:07 a.m.  
 3 MS. ANDREWS: Good morning, Mr. Baldyga.  
 4 MR. BALDYGA: Morning.  
 5 MS. ANDREWS: Am I saying your name correctly?  
 6 MR. BALDYGA: Perfect. It's also a good Polish  
 7 name, so --  
 8 MS. ANDREWS: My name is TJ Andrews, I represent  
 9 the Intervener Protect the Peninsula. You have been deposed  
 10 before; correct?  
 11 MR. BALDYGA: Once, yes.  
 12 MS. ANDREWS: Was that in this proceeding?  
 13 MR. BALDYGA: Yes.  
 14 MS. ANDREWS: So as you know, our deposition is  
 15 be being transcribed today. I would ask you please give  
 16 verbal responses so that the court reporter can capture your  
 17 response and thus avoid nonverbal communication.  
 18 MR. BALDYGA: I understand.  
 19 MS. ANDREWS: If you do understand a -- if you do  
 20 not understand a question, please ask for clarification.  
 21 MR. BALDYGA: Okay.  
 22 MS. ANDREWS: Please let me finish a question so  
 23 we don't speak over each other, because that's challenging  
 24 for the transcript. If you don't understand -- sorry. If  
 25 your attorney objects I will expect you to answer anyway,

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1 unless he instructs you not to answer in order to claim a  
 2 privilege. Estimates are okay, but please don't guess at  
 3 answers if you have no basis for that. And if you need a  
 4 break at any point, please let me know.  
 5 MR. BALDYGA: Okay. Thank you.  
 6 MS. ANDREWS: As long as we don't have a question  
 7 pending we can take a break at any point.  
 8 REPORTER: Do you solemnly swear or affirm the  
 9 testimony you're about to give will be the whole truth?  
 10 MR. BALDYGA: I do.  
 11 CHRISTOPHER BALDYGA  
 12 having been called by the Intervener-Defendant and sworn:  
 13 EXAMINATION  
 14 BY MS. ANDREWS:  
 15 Q Mr. Baldyga, what is your role at Two Lads?  
 16 A I'm the co-owner and operator in charge of day to day.  
 17 Q Do you understand that you're testifying today as the  
 18 corporate representative of Two Lads, LLC?  
 19 A I do.  
 20 Q And we're here today because Two Lads, LLC, has filed a  
 21 lawsuit against Peninsula Township?  
 22 A That's correct.  
 23 Q Were you provided a copy of your Notice of your Deposition  
 24 before coming here today?  
 25 (Witness reviews document)

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2 (Pages 2 to 5)

## EXHIBIT 36

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DEPOSITION OF CHRISTOPHER BALDYGA

<p>1 11:00 to 6:00 every day now. Better business on Sunday</p> <p>2 afternoons apparently.</p> <p>3 Q Tasting room events, and by which I mean activities that are</p> <p>4 in or around tasting or wine by the glass, theme nights,</p> <p>5 open to the public, no charge. Does Two Lads undertake</p> <p>6 activities like that?</p> <p>7 A We do things like -- we do do product releases, happy hours.</p> <p>8 We do some of those on, you know, Fridays, that's one of the</p> <p>9 things that Karl -- the gentleman I mentioned earlier, our</p> <p>10 club director -- he runs those. And, yes, we have limited</p> <p>11 kind of fun things we do in the evenings that are apart from</p> <p>12 those 11:00 to 6:00 hours, but -- yeah.</p> <p>13 Q So Karl is responsible for planning to do those activities?</p> <p>14 A Yeah. He's more fun than I am.</p> <p>15 Q What other kinds of activities does Two Lads post or do in</p> <p>16 the tasting room?</p> <p>17 A Well, it's everything I think that would be -- everything</p> <p>18 we've talked about. We do -- are you asking what the day to</p> <p>19 day is of the tasting room?</p> <p>20 Q Do you host any kinds of other activities in the tasting</p> <p>21 room? Do you have trivia night, do you have book clubs? Do</p> <p>22 you have anything other than themed happy hours and themed</p> <p>23 events? Do you host communities -- do you invite subsets of</p> <p>24 the community for particular activities?</p> <p>25 A No, generally not.</p> <p style="text-align: center;">Page 30</p>	<p>1 be probably more like five people, six people I believe</p> <p>2 seems about right.</p> <p>3 Q Do you offer live music in the tasting room?</p> <p>4 A No, we do not.</p> <p>5 Q Have you ever, to your memory?</p> <p>6 A No. We have had people I'm sure for some things. I know</p> <p>7 that there have been people who play guitar once or twice.</p> <p>8 But, no, it's not a regular, you know, Tuesday nights with a</p> <p>9 guitar and that jazz, no.</p> <p>10 Q Food service, do you offer food service in the tasting room?</p> <p>11 A We do.</p> <p>12 Q Can you tell me about your kitchen?</p> <p>13 A We have a small prep kitchen where we have a -- so that's in</p> <p>14 the back, which is kind of inaccessible and it doubles as</p> <p>15 our break room/kitchen for our team as well, it's very</p> <p>16 small. And then we have a prep kitchen out in the tasting</p> <p>17 room itself also where we have cold storage of cheese and</p> <p>18 meats and sauces and olives and all that jazz. And that is</p> <p>19 where the prep occurs behind a nice glass -- there's a place</p> <p>20 that people can see you making charcuterie boards and</p> <p>21 burrata and all that jazz. So then they fully see the</p> <p>22 preparation and go, oh, that looks delicious, stuff like</p> <p>23 that.</p> <p>24 MR. INFANTE: It's a nice board.</p> <p>25 THE WITNESS: I dare say -- and I know that this</p> <p style="text-align: center;">Page 32</p>
<p>1 Q How many people work in the tasting room?</p> <p>2 A Boy, in terms of on a daily basis -- do you mean total</p> <p>3 employees throughout the year? Can you be more specific?</p> <p>4 Q I'm sorry, like on a Tuesday afternoon in July how many</p> <p>5 people might be working? I'll break it down. At peak</p> <p>6 season.</p> <p>7 A Sure. Peak season midweek I think -- I think seven sounds</p> <p>8 like a normal; seven plus a tasting room director.</p> <p>9 Q Serving tastings and such?</p> <p>10 A And host and, you know, greeter and, yes, they would be --</p> <p>11 they would be the front of house for that day, that's</p> <p>12 correct.</p> <p>13 Q And would it increase as the afternoon goes on into the</p> <p>14 evening? Is seven people sort of the max number of</p> <p>15 employees you might have in the tasting room at a time?</p> <p>16 A On a Tuesday, yes, in the summer that sounds about right.</p> <p>17 Q How about on a Saturday?</p> <p>18 A On a Saturday we're more like ten or eleven people</p> <p>19 throughout the day I believe is what John staffs.</p> <p>20 Q And then during the off season do you have a reduced</p> <p>21 staffing?</p> <p>22 A Yeah, in the off season it might be -- n a Tuesday let's say</p> <p>23 in February there may be two people there; the tasting room</p> <p>24 director plus one of our supervisors. You know, so very</p> <p>25 much the core team. And then on a Saturday that's going to</p> <p style="text-align: center;">Page 31</p>	<p>1 is -- you know, I'll go on oath and say that it's the best</p> <p>2 charcuterie board on Old Mission. I'm going to put that out</p> <p>3 there.</p> <p>4 MR. INFANTE: It's a good board.</p> <p>5 Q Noted; noted. Other than -- so it sounds like -- I just</p> <p>6 want to close the loop. You don't have meals, you don't</p> <p>7 serve meals?</p> <p>8 A We don't have the license that allows us to prepare things</p> <p>9 from raw, that commercial kitchen license. Which again,</p> <p>10 I've never had one so I'm not sure what's required. But I</p> <p>11 know that we can warm up things and hold them at</p> <p>12 temperature, we can serve foods that someone else prepared</p> <p>13 in a commercial kitchen, but we cannot ourselves -- we don't</p> <p>14 have all of the -- you know, we can't do that stuff. We can</p> <p>15 have it brought in but we can't do it ourselves.</p> <p>16 Q Who is -- so marketing/promotions, who is primarily</p> <p>17 responsible for the promotion of the Two Lads brand and</p> <p>18 events and activities and wines?</p> <p>19 A Well, when it relates to specifically our wine club</p> <p>20 membership that's Karl, and then almost everything else is</p> <p>21 our general manager Michael Hunter. And myself to a lesser</p> <p>22 extent. I mean, we discuss and talk about any initiatives</p> <p>23 what we want to do but the general day to day for social</p> <p>24 media and emails and upkeep of the website that's Michael.</p> <p>25 Q Does Two Lads take out ads in local media like Ticker or</p> <p style="text-align: center;">Page 33</p>

9 (Pages 30 to 33)

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<p>1 Northern Express?</p> <p>2 <b>A</b> We used to, but to a much lesser extent now.</p> <p>3 <b>Q</b> What's changed?</p> <p>4 <b>A</b> This gets into the larger conversation about what marketing</p> <p>5 is as a whole, and I know we don't want to go down this</p> <p>6 rabbit hole because marketing to me is such a -- it's such a</p> <p>7 challenge. We probably do the worst marketing of any of the</p> <p>8 wineries. We let what we do onsite, the guest experience is</p> <p>9 very much what I believe we invest in for word of mouth and</p> <p>10 the experience we offer onsite as our main driver and</p> <p>11 takeaway. But you're not going to -- we don't have an</p> <p>12 interesting, fun social dynamic feed, we don't -- you know,</p> <p>13 we don't keep up with those, we don't blog. Not that anyone</p> <p>14 blogs anymore I suppose, but --</p> <p>15 MR. INFANTE: Podcasts now.</p> <p>16 THE WITNESS: You know, and Karl keeps trying to</p> <p>17 talk me into that.</p> <p>18 <b>A</b> So, no, we do so little of that. And I used to see the</p> <p>19 amount of money that we would spend on ads and those things</p> <p>20 place in the Wine Country magazine or the Ticker, our local,</p> <p>21 and then go, you know -- you would try to canvas people in</p> <p>22 the tasting room and say how did you hear about us, or you'd</p> <p>23 look at license plates in the parking lot and see where</p> <p>24 they're from and g, out of state plates. So I just look at</p> <p>25 marketing expense in general and I see it as dollars thrown</p> <p style="text-align: center;">Page 34</p>	<p>1 side and production side of what we do for the TTB, we try</p> <p>2 to make sure that those are sort of kept off so they can't</p> <p>3 rent any of those.</p> <p>4 <b>Q</b> What is TTB?</p> <p>5 <b>A</b> Tax and trade bureau, it's the former -- it's the alcohol</p> <p>6 regulation arm of the BATF -- the former BATF.</p> <p>7 <b>Q</b> So your tasting room would be available for a catered dinner</p> <p>8 or would not be available for a catered dinner?</p> <p>9 <b>A</b> Well, I think this gets into part of the -- part of the</p> <p>10 ordinance I think that I struggle with is I think it says</p> <p>11 that no social functions for hire are allowed in the 139</p> <p>12 language.</p> <p>13 <b>Q</b> Let's circle back to that. I'm still trying to get lay of</p> <p>14 the land. Retail, like items for sale, inventory of winery</p> <p>15 related products or anything. Do you -- other things for</p> <p>16 sale. Do you have a retail area?</p> <p>17 <b>A</b> We do.</p> <p>18 <b>Q</b> And how big is that area?</p> <p>19 <b>A</b> Well, it's part of that tasting room space that we talked</p> <p>20 about earlier.</p> <p>21 <b>Q</b> Is it in a separate room or is it sort of an area of the</p> <p>22 tasting room?</p> <p>23 <b>A</b> We've had it both. We have some things for purchase out in</p> <p>24 the main tasting room space and we have things, you know,</p> <p>25 displayed throughout the tasting room itself. Would do have</p> <p style="text-align: center;">Page 36</p>
<p>1 out into the ether that you're hoping have somehow built the</p> <p>2 brand and driven people to you but with no way to capture</p> <p>3 that or measure it I just can't spend money on it. I'm just</p> <p>4 too -- anyways, so I don't see the value in it is the honest</p> <p>5 answer so we don't do as many of those. I think we did it</p> <p>6 because we thought we had to because that's what you do when</p> <p>7 you start a business, you market it and you pay for all</p> <p>8 these things and now I go, ah, who cares. We're trying to</p> <p>9 focus on the farming and the agritourism side of onsite</p> <p>10 experience, so -- sorry. That was the long winded --</p> <p>11 <b>Q</b> I gave you the opening.</p> <p>12 <b>A</b> Sorry.</p> <p>13 <b>Q</b> Do you offer facility rentals? Do you rent out your</p> <p>14 facility or your lawns or parts of or subparts of your</p> <p>15 facilities?</p> <p>16 <b>A</b> No, you cannot rent the -- you cannot rent the full</p> <p>17 facility. You can -- in the tasting room, you know, you</p> <p>18 could do -- I'm sure you could potentially do -- I mean, if</p> <p>19 you wanted to have a meal or something specific we could I'm</p> <p>20 sure try to accommodate within our tasting room certain, you</p> <p>21 know, activities outside of our general things we offer</p> <p>22 onsite. We're always willing to try to be creative and</p> <p>23 flexible. But, no, you can't rent like the wine making or</p> <p>24 any of the production spaces or we don't let people traipse</p> <p>25 around in the vineyard if that's what you mean. The farming</p> <p style="text-align: center;">Page 35</p>	<p>1 a small corner of the tasting room where those things mostly</p> <p>2 live as a -- as a single unit though, that way they're a</p> <p>3 little more condensed.</p> <p>4 <b>Q</b> Do you offer tours of the vineyards and the processing area</p> <p>5 or of your facilities?</p> <p>6 <b>A</b> Again, we don't let people into the vineyards, but we</p> <p>7 overlook the vineyards and talk about the farming aspect of</p> <p>8 what we do, I think that's probably the most critical part</p> <p>9 of a tour. People can do a guided tour, a private tour and</p> <p>10 tasting through the facility. If they're wine club members</p> <p>11 they can do that annually. If you're not a wine club member</p> <p>12 we don't do them much in terms of it's not a popular thing</p> <p>13 that we do. But we do offer the ability to pay for a guided</p> <p>14 tour and tasting throughout the building and a tasting goes</p> <p>15 along with that, yes.</p> <p>16 <b>Q</b> I want to circle back to the statement you made that your --</p> <p>17 that the federal regulators do not allow you to go in the</p> <p>18 vineyards, is that what I understood?</p> <p>19 <b>A</b> No, it's that --</p> <p>20 <b>Q</b> I mean, you obviously can, but your guests.</p> <p>21 <b>A</b> When you said do we let people rent the facility, that's</p> <p>22 what -- we don't let them go into -- we don't let them rent</p> <p>23 the full property or the facility. You know, the tasting</p> <p>24 room is separate from all of those things, so --</p> <p>25 <b>Q</b> Is there any regulation that prevents you from taking guests</p> <p style="text-align: center;">Page 37</p>

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DEPOSITION OF CHRISTOPHER BALDYGA

<p>1 on a tour through your vineyards?</p> <p>2 <b>A</b> No. It's just a -- I don't know, this gets into extraneous</p> <p>3 stuff. We --</p> <p>4 <b>Q</b> I'm just curious about your comment that we don't let people</p> <p>5 in the -- no people in the vineyards.</p> <p>6 <b>A</b> So we have a really -- all right. This gets into a whole</p> <p>7 conversation of viticultural stuff. So we don't have a golf</p> <p>8 course perfect mowed vineyard; it is gnarly and wild and it</p> <p>9 is kind of as native of a -- the wild species and things</p> <p>10 that are there and we don't want people to turn an ankle. I</p> <p>11 mean, rarely do people show up for a vineyard tour in a pair</p> <p>12 of work boots. So we try to keep people out of any of the</p> <p>13 spaces that are specifically -- would be troubling for them</p> <p>14 to walk through, so --</p> <p>15 <b>Q</b> So it's not like a park environment?</p> <p>16 <b>A</b> Correct. It's an active farm so you try to keep people out.</p> <p>17 You can look at it.</p> <p>18 MR. INFANTE: It looks like a park.</p> <p>19 <b>A</b> Everybody has got prettier vineyards than we do, but it's</p> <p>20 because a living natural native environment like a vineyard</p> <p>21 should be a little gnarly, it should be a little wild. If</p> <p>22 it's a perfectly mowed vineyard they usually achieve that</p> <p>23 with chemicals or the monoculture of replacing all the</p> <p>24 native species with orchard grass and mowing it flat and</p> <p>25 that is just -- that's against our style. I mean, you've</p> <p style="text-align: center;">Page 38</p>	<p>1 an empty truck Downstate. So they'll come pick up from us</p> <p>2 in one of those Ford transit vans, the bigger -- so most of</p> <p>3 the time when they take, you know, 15 or 20 cases they take</p> <p>4 it in that, but -- they're not exactly taking pallets.</p> <p>5 <b>Q</b> It's not a -- it's a case-by-case so to speak? That was not</p> <p>6 intentional.</p> <p>7 <b>A</b> I love it.</p> <p>8 <b>Q</b> Basis, it's not a regularly scheduled pickup?</p> <p>9 <b>A</b> That's correct.</p> <p>10 MS. ANDREWS: What's our time?</p> <p>11 REPORTER: 53 minutes.</p> <p>12 MS. ANDREWS: Break? I'm going to switch gears.</p> <p>13 MR. INFANTE: Sure.</p> <p>14 (Off the record)</p> <p>15 <b>Q</b> Mr. Baldyga, before we move onto a different topic I</p> <p>16 realized I did not cover the topic of parking lots. Tell me</p> <p>17 about the parking lot size/capacity at the Two Lads</p> <p>18 facilities.</p> <p>19 <b>A</b> I think for marked spaces we have 14 spaces and one ADA</p> <p>20 accessible space in our main lot.</p> <p>21 <b>Q</b> Do you have a bus parking area, tour bus parking area?</p> <p>22 <b>A</b> No. We generally -- we don't see a lot of tour busses at</p> <p>23 our place. There is a spot where they can pull off as</p> <p>24 additional parking that is big enough for them to do that.</p> <p>25 I mean, we get people in motor homes more often than tour</p> <p style="text-align: center;">Page 40</p>
<p>1 imprinted yourself on a vineyard and said everything that</p> <p>2 was here get out of the way, I want to farm this, and so we</p> <p>3 leave a lot of the native species that are there and it</p> <p>4 actually has a sense of place and tastes like Northern</p> <p>5 Michigan and not like grass that didn't grow here and</p> <p>6 chemicals -- and vines that didn't come from here, so -- and</p> <p>7 it's just not as pleasant to look at, it looks gnarly and</p> <p>8 unkept, but that's what a living environment should like</p> <p>9 so --</p> <p>10 <b>Q</b> That's the price you pay.</p> <p>11 <b>A</b> Yeah.</p> <p>12 <b>Q</b> Wholesale distribution of wine is from your -- that same</p> <p>13 building?</p> <p>14 <b>A</b> Yes.</p> <p>15 <b>Q</b> How often does a truck take --</p> <p>16 <b>A</b> Not as often as I'd like. I'm sorry, in interrupted.</p> <p>17 <b>Q</b> How often does a truck take wine away from -- do you have a</p> <p>18 weekly delivery, or more or less frequent than that?</p> <p>19 <b>A</b> Far less frequent than that. I would imagine -- let me</p> <p>20 think. We probably have -- in terms of a large truck like a</p> <p>21 semi tractor and trailer, we maybe have two pickups a year</p> <p>22 that are on a truck that big. But our distributor will send</p> <p>23 their same delivery truck that they're running from Ann</p> <p>24 Arbor for deliveries in Northern Michigan, they'll pick up</p> <p>25 from us on their way so they're not dead heading and driving</p> <p style="text-align: center;">Page 39</p>	<p>1 buses that pull up and go, oh, my god, what have I done when</p> <p>2 they see that they're in a tiny parking lot with a big</p> <p>3 vehicle and like, you know, a smaller vehicle in the back</p> <p>4 and I think they all -- so we do have -- we have over the</p> <p>5 years created a kind of pull off to the side that is also</p> <p>6 overflow and additional parking, it's a large grass space</p> <p>7 and, but --</p> <p>8 <b>Q</b> How many vehicles, your guess, on average do you use it at a</p> <p>9 time?</p> <p>10 <b>A</b> Boy -- use the overflow?</p> <p>11 <b>Q</b> The overflow grass area.</p> <p>12 <b>A</b> Well, I mean, it's obviously -- it's creative in that they</p> <p>13 can park up and down the driveway as they will. So there is</p> <p>14 a lot of grassy area that we have got that's across from the</p> <p>15 winery as well and a nice big flat space. But in that -- in</p> <p>16 that specific overflow area, oh, I'd say maybe 20 cars would</p> <p>17 be my guess if they all parked responsibly.</p> <p>18 <b>Q</b> In orderly rows?</p> <p>19 <b>A</b> Yeah.</p> <p>20 <b>Q</b> Do you think there -- what is the maximum number of cars --</p> <p>21 is there a maximum number of cars within reason that you</p> <p>22 could park on the property?</p> <p>23 <b>A</b> I would just be guessing at that point.</p> <p>24 <b>Q</b> A lot?</p> <p>25 <b>A</b> A lot. We've got a lot of space, yeah.</p> <p style="text-align: center;">Page 41</p>

11 (Pages 38 to 41)

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<p>1 9 acres on the southern end of the farm, the Cab Franc and</p> <p>2 the Pinot Gris. And it was bought by John Dretman, the</p> <p>3 person from whom we bought the farm, and he planted -- in</p> <p>4 '01 planted an additional -- it would have been four acres,</p> <p>5 four-and-a-half acres of vines. The cherries -- you know,</p> <p>6 he knocked out cherries to do that. And then the chestnuts</p> <p>7 and the cherries that were on the site have been in place</p> <p>8 since the early 80's planted by the Weatherholts (phonetic),</p> <p>9 the family to the north of us that's still a great cherry</p> <p>10 farm today.</p> <p>11 Q Are those vineyards vineyards that you still use or have you</p> <p>12 replaced vineyards?</p> <p>13 A No, they're all still in production, we've just knocked out</p> <p>14 the cherries and added an additional ten acres, that's what</p> <p>15 gets us up to that 23-and-a-half acres of vines in</p> <p>16 production today on that site.</p> <p>17 Q Were you aware of other types of winery permits that were</p> <p>18 allowed by the Peninsula Township zoning ordinance at the</p> <p>19 time you sought your wine processing facility permit, land</p> <p>20 use permit?</p> <p>21 A Yes, I was aware.</p> <p>22 Q What other winery permit facilities are you aware of -- or</p> <p>23 were you aware of at the time?</p> <p>24 A I knew that there was a winery chateau permit and a remote</p> <p>25 tasting room permit as well.</p> <p style="text-align: center;">Page 46</p>	<p>1 requirements and the cost of land nowadays. You know, and</p> <p>2 then it gained you the ability to have a tasting room that</p> <p>3 was separate from your production facility is I think what I</p> <p>4 understand about that one.</p> <p>5 Q What -- as I understand it Two Lads has 58 acres. I think</p> <p>6 you said 60, I assume that's sort of a rounding --</p> <p>7 A So this is -- on our deed, and if you look it all up, it</p> <p>8 says like 59.8, but as that parcel was looked at by Gordie</p> <p>9 and Gordon at the time, they helped fill all this out and</p> <p>10 they said, well, if you take out the road right-of-ways and</p> <p>11 the setback and the easement it's more like -- so they were</p> <p>12 the ones I think that helped me go through this process.</p> <p>13 And they said like 58, and I said, "Oh, okay. Well, if</p> <p>14 that's what you think then okay." But as far as I look at</p> <p>15 total deeded it's like 59.8, but that includes -- anyway.</p> <p>16 So, yes, but --</p> <p>17 Q You had sufficient acreage for winery chateau permit;</p> <p>18 correct?</p> <p>19 A It sounds like it, yes; yeah.</p> <p>20 Q Why did you not pursue a winery chateau permit?</p> <p>21 A Well, that 75 percent of active ag onsite requirement on</p> <p>22 that land means we would have had to knock in hardwoods and</p> <p>23 disturb a lot of kind of native land that was already there;</p> <p>24 there's wetlands a little bit swampy area in the back and</p> <p>25 disturbed land, that's -- I mean, I know it's one of those</p> <p style="text-align: center;">Page 48</p>
<p>1 Q And what was your understanding at the time -- or what is</p> <p>2 your understanding of what a winery chateau permit -- the</p> <p>3 difference is between -- what is basically a winery permit,</p> <p>4 a winery chateau permit?</p> <p>5 MR. INFANTE: Objection; calls for a legal</p> <p>6 conclusion.</p> <p>7 A The winery chateau permit as I know it required at least 50</p> <p>8 acres with 75 percent of it being in active agricultural</p> <p>9 production for wine making. They had different requirements</p> <p>10 as far as what they could and couldn't do onsite for</p> <p>11 building. They had different products they were allowed to</p> <p>12 sell in the tasting room, different sourcing requirements --</p> <p>13 or I should say wider, less restrictions on what they could</p> <p>14 and couldn't buy for fruit. They had the option to do guest</p> <p>15 rooms, they were also an SUP, a use by right. Gosh. You</p> <p>16 know, I don't know the winery chateau license as well. But</p> <p>17 I knew that it was different in that all the winery chateaus</p> <p>18 seemed to be the bigger -- more complex operations I guess.</p> <p>19 Q And what about the remote tasting room?</p> <p>20 A The remote tasting room -- the little that I know about the</p> <p>21 remote tasting room is that you need a huge amount of</p> <p>22 agricultural commitment to do that. That -- I don't even</p> <p>23 remember the number, I feel like it's 110 or 150 acres of</p> <p>24 farming and -- I mean, it was huge requirements that I knew</p> <p>25 we wouldn't be able to attain with just the minimum land</p> <p style="text-align: center;">Page 47</p>	<p>1 things that seems like baloney that you can just knock land</p> <p>2 flat and then it's going to be great farmland, but disturbed</p> <p>3 topsoil does not have the same life and vibrancy as land</p> <p>4 that is relatively flat that you can plant on that's had,</p> <p>5 you know, years and years and years of lying flat to</p> <p>6 establish all the -- the biome underground and the ribosome</p> <p>7 and all those connections of microflora and microfauna. So</p> <p>8 having not flat a bunch of native hardwoods in order to make</p> <p>9 more farming and to hit that 75 percent requirement just</p> <p>10 seemed like, I mean, a bad idea. In the SUP process I say</p> <p>11 it sounds daunting. Again, I don't know as much about it as</p> <p>12 I do about the use by right stuff, but everybody that had an</p> <p>13 SUP seemed to be -- they didn't seem to like it I guess when</p> <p>14 we did a little bit of research so I thought, well, the use</p> <p>15 by right sounds a little more straightforward, I think I'll</p> <p>16 do that instead, so --</p> <p>17 Q So who did you talk to that had gone through the SUP</p> <p>18 process, or which wineries did you research when you were</p> <p>19 determining whether to -- which path to pursue?</p> <p>20 A Well, boy, I've known Chateau Chantal, Jim Krupka, I know</p> <p>21 I've talked to Jim and Bob Begin at the time, he was the</p> <p>22 former CEO. And then Eddie at Chateau Grand Traverse, I</p> <p>23 know him and I knew Ed O'Keefe, Sr., and my mother of course</p> <p>24 has been there, I don't think she was involved in as many of</p> <p>25 those things, she was more day to day and production, she</p> <p style="text-align: center;">Page 49</p>

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<p>1 kept the trains running on time. But I also talked to the 2 Brys. I worked for the Brys for a little while and in 3 talking to Walter and Eileen I know that they were trying to 4 get to a winery chateau because they didn't think they could 5 be successful under the use by right because they had more 6 things they wanted to do and bigger aspirations. And so I 7 can see the similar process from their point of view of -- 8 but again, all the larger -- the guest activities and the 9 lodging and all those things, they were all things that I 10 don't think appealed to me at the time so I didn't want to 11 pursue that. You know, and talking to Gordie and Gordon as 12 well, they were good resources for what was required and 13 what the process was like and -- so --</p> <p>14 Q Are there sugar maples in your hardwood forest?</p> <p>15 A I think there are white maples. I don't know if there 16 are -- sugar bushes are a little -- you probably know that, 17 sorry.</p> <p>18 Q No, please. Don't assume I know anything.</p> <p>19 A Well, with sugar maples versus white maples are just a 20 little different and, you know, they usually are more -- 21 well, round and on the edge of a field. In the middle of a 22 forest you see a little bit less sugar maples, but a white 23 maple you can get -- we do a little bit of maple sugaring 24 and syrup at home and so I know you can get syrup from a 25 white maple, it's just not as sweet as a sugar maple; it's</p> <p style="text-align: center;">Page 50</p>	<p>1 that we've tried to work more in the process that we had of 2 use by right. I think to me that seems more attractive. So 3 many of the things that seem problematic for SUP's and 4 winery chateaus just seem so burdensome. And I don't know 5 if this is true or not, but they often make the joke that 6 even to change a road sign that says please slow down, 15 7 miles per hour speed limit, that they have to ask for an 8 amendment or a change to change like a safety sign onsite. 9 And if it's not in the plan they can't do it. Those things 10 to me seem -- I struggle with those things. It's my farm, I 11 should be able to do, you know, most of the things that -- 12 especially for guest safety that make sense or are common 13 sensicle and -- so those things always seemed to me just -- 14 I don't know -- such a more challenging hurdle to climb of 15 asking for permission for every, you know, changing of 16 things that just make sense and you should be able to do. 17 Those things are pretty daunting to me of having to go 18 through that process.</p> <p>19 Q So the difference between the level of oversight by the 20 planning or zoning department at the township board is a 21 factor that you take into consideration in whether to pursue 22 one permit versus another?</p> <p>23 A Can you rephrase that? I think I know what you're asking 24 but I want to be specific.</p> <p>25 Q I want to understand the attempt to avoid regulatory</p> <p style="text-align: center;">Page 52</p>
<p>1 about half as sweet, maybe two bricks instead of the 2 three-and-a-half to four brix you might get out of a sugar 3 maple, so -- but I know that there are some maples and 4 sandier soil there so you'd see a little bit higher 5 percentage of conifers and junipers and elm, birch. But 6 there are definitely maples as well, yeah. I wouldn't be 7 able to approximate percentages, but --</p> <p>8 MR. INFANTE: Brix is b-r-i-x.</p> <p>9 REPORTER: Thank you.</p> <p>10 MR. INFANTE: I figured you'd get that one wrong.</p> <p>11 Q Did you consider seeking approval to harvest sugar syrup 12 from the hardwoods that are on the site?</p> <p>13 A Seek an approval?</p> <p>14 Q As part of the 75 percent to avoid having to cut down the 15 hardwood forest?</p> <p>16 A I'm not in the maple syrup business so I don't think at that 17 time that occurred to us, no. Heck, we knocked out the 18 cherries right away. I love cherries but I don't want to 19 make cherry wine. So even those to us were -- we had to get 20 those out of there. We're grape growers, wine makers.</p> <p>21 Q Since becoming a farm processing facility, fully operational 22 or fully permitted in 2008, has Two Lads considered seeking 23 authorization to become a winery chateau?</p> <p>24 A I think we always kick around what could we do to improve 25 onsite or change or be, you know, more successful. I think</p> <p style="text-align: center;">Page 51</p>	<p>1 oversight by the township zoning -- zoning process was a 2 factor that Two Lads considered in determining to go with a 3 use by right versus an SUP.</p> <p>4 A I guess the way that that's worded I would struggle to say 5 "yes" or "no" to it.</p> <p>6 Q What part of it do you -- gives you the pause?</p> <p>7 A Well, I guess it's the way that you phrased it it sounds 8 more -- I don't know if it's that it's the attempting -- or 9 the attempted oversight. I mean, if you even repeat the 10 question I can --</p> <p>11 Q I'm trying to understand that you said you have to go in and 12 get an amendment to your SUP -- you understand that you have 13 to get an amendment to your SUP, and I'm rephrasing that as 14 regulatory oversight --</p> <p>15 A Okay. Thank you.</p> <p>16 Q -- meaning maybe process, steps --</p> <p>17 A Okay. Thank you.</p> <p>18 Q -- hurdles, paperwork, red tape.</p> <p>19 A Well, it's not even that it's -- that there's red tape 20 involved, it's that if I had to put up a sign that says 21 please be careful where you park or please be mindful of 22 erosion on this site, if I had to go ask for permission to 23 put up a sign and it's just common sense and/or for like I 24 said guest safety or directional onsite of please go left or 25 don't park in the fire lane, just simple things that make</p> <p style="text-align: center;">Page 53</p>



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1 perfect sense to add a sign, if I had to go and ask for  
 2 approval there's a part of me that says that doesn't make  
 3 sense that you would have to put up a -- ask for permission  
 4 to put up a safety sign or a directional sign on my farm. I  
 5 should be able to put up that sign. So that just, I guess,  
 6 draws some ire with me that I should have to ask permission  
 7 for that. It makes perfect sense to anybody that you ask.  
 8 Anybody would look at it and go, well, sure, if you need a  
 9 safety sign put it up, help guests.

10 Q And it's your understanding that if you're under a special  
 11 use permit in the township you would have to ask for  
 12 permission to get a sign, even a safety sign?

13 A I think, yeah. Like if you have to change -- that is my  
 14 understanding I think for (inaudible) or changes in shape of  
 15 the parking lot or number of parking spots or location of  
 16 ADA, even though those are construction I think related. It  
 17 seems like so many of those things I hear them say, well, I  
 18 need to seek an amendment for this or -- so that to me  
 19 always seemed to be challenging in the process where just  
 20 the use by right allows for a little bit more of a common  
 21 sense approach to operating a farm and having guests onsite  
 22 I guess, yeah.

23 Q And by "use by right," just to close the loop, you referred  
 24 earlier to amendment 139 and then I referred to the section  
 25 6.7.2 subject to check, (19), subpart (19), of the zoning

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1 ordinance, that's what we -- that's what you mean by the use  
 2 by right? You didn't say use by right winery ordinance but  
 3 I want to make sure that's what you understand. You come in  
 4 under the use by right ordinance, which is 6.7.2(19);  
 5 correct?

6 A Correct; yes. And I understand that to mean that it's not  
 7 SUP, it's the kind of thing that it was a simple  
 8 administrative procedure that if you could check all the  
 9 boxes that you got to have your farm processing facility,  
 10 so -- that to me seems more logical, meet these guidelines  
 11 and you get to have a farm processing facility.

12 Q And what was that your experience, it was a simple  
 13 procedure, check the boxes and you got your permit?

14 A You know, versus so many of the other things I've seen, yes.  
 15 I look back and I go it was relatively easy, yeah. Heck, I  
 16 think it fits on one page. I mean, it is literally a  
 17 one-page document that says did you do this, this and this,  
 18 and it's like voila, yeah. Is that the -- I mean, it's  
 19 like -- like this is -- and granted you had to supply more  
 20 documents than just this, like it says --

21 MR. INFANTE: When you say "this" you're looking  
 22 at Exhibit 23, page 2.

23 THE WITNESS: Oh, I'm sorry. Page 2 of the  
 24 exhibit.

25 MR. RAJSIC: What's the number at the bottom of

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1 that?

2 MR. INFANTE: 11897.

3 MR. RAJSIC: Perfect.

4 A Yeah, I mean, this is the application start to bottom. This  
 5 is great, it's very approachable for me, it's digestible,  
 6 it's got a \$75 fee. And granted they need more documents  
 7 than are here, but like the whole thing is 14 points and a  
 8 lot of them are fill in the data and voila, what you see is  
 9 what you get, you know. I like that about that application  
 10 process. I was just going to say, and the SUP process  
 11 having the public input -- and I've sat in some of those  
 12 meetings and you can see people ask for amendments or  
 13 changes where they're trying to get their SUP's and that --  
 14 that seems a heck of a lot more challenging.

15 Q Let me make sure in case the record is not clear. It sounds  
 16 like you've never actually submitted an application for a  
 17 winery chateau; right?

18 A I have not.

19 Q You presently have no intention of doing so under the  
 20 present process, existing process?

21 A Again, I can't predict the future. I mean, there are  
 22 attractive things that the SUP -- or I should say that the  
 23 winery chateau license does have. But currently, no, I  
 24 don't know that I can predict the future and say I won't ever  
 25 go for it, but --

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1 Q Sure; sure.

2 A -- I don't have paperwork filed right now if that's what you  
 3 mean, no.

4 Q You don't have a half filled out SUP application in your --

5 A No, I do not, that's correct.

6 Q So let's talk a little bit about enforcement, communications  
 7 related to enforcement.

8 (Deposition Exhibit 24 marked)

9 Q So the document that has been labeled as PTP Exhibit 24 is a  
 10 letter dated January 11th, 2008, WOMP -- bates numbered  
 11 WOMP011893. Mr. Baldyga, do you recognize this document?

12 A I do, yes.

13 Q Can you describe this document? This is a communication  
 14 from township zoning admin Gordie Uecker where he sent us a  
 15 letter -- sent the winery a letter that said it has come to  
 16 his attention the Peninsula-wide event known as winter  
 17 warmup has been scheduled for January 18 and February 15th  
 18 and please be advised that if we are going to be involved  
 19 with this function it should be noted it's a violation of  
 20 the PTZO. And it says, "To begin with, functions of this  
 21 type require approval by the board. And no approval has  
 22 been granted for this. In addition there are fees," et  
 23 cetera, "also in violation." And it says also -- I think  
 24 that -- therefore, if you have not received written  
 25 notification that sponsors and participants have been served

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15 (Pages 54 to 57)

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<p>1 website link at the bottom. Do you recognize this as a page</p> <p>2 from a Two Lads blog?</p> <p>3 <b>A That's what it looks like, yeah; yeah.</b></p> <p>4 Q So let's back up to the letter that the blog page is</p> <p>5 attached to.</p> <p>6 <b>A Okay.</b></p> <p>7 Q Why don't you describe what this letter is.</p> <p>8 <b>A So this appears to be a letter from Michelle Reardon that</b></p> <p>9 <b>says that they were made aware that we had scheduled a</b></p> <p>10 <b>couple of events for the summer and that these events may be</b></p> <p>11 <b>in violation of the land use permit and they wanted me to</b></p> <p>12 <b>reach out to them directly.</b></p> <p>13 Q And they learned about these events because the events were</p> <p>14 on the blog, or at least there's a suggestion that that's</p> <p>15 what happened?</p> <p>16 <b>A Yes, it looks like that. And I think that's in talking with</b></p> <p>17 <b>Michelle. If I remember correctly that's what she said as</b></p> <p>18 <b>well, that, you know, these were on your blog or your</b></p> <p>19 <b>website or whatever that is, yeah.</b></p> <p>20 Q Do you remember if she sent the attachment as an attachment</p> <p>21 to -- you said you talked to her, did you understand what</p> <p>22 she was referencing?</p> <p>23 <b>A Yeah; yes, I did.</b></p> <p>24 Q And then Exhibit PTP 25 is your notes of this interaction,</p> <p>25 so to speak?</p> <p style="text-align: center;">Page 62</p>	<p>1 <b>who is, you know, the enforcer.</b></p> <p>2 MR. INFANTE: Who are Gordie and Gordon? You're</p> <p>3 going to need their last names for the -- we all know who</p> <p>4 they are, the record won't.</p> <p>5 <b>A So Gordon Hayward was the planner at the time when we start,</b></p> <p>6 <b>and replaced by Michelle Reardon, and then Gordie Uecker was</b></p> <p>7 <b>the zoning enforcement officer at that time -- or I guess he</b></p> <p>8 <b>had a different title. I don't recall his title at the</b></p> <p>9 <b>time. Zoning administrator perhaps, as opposed to planner I</b></p> <p>10 <b>think.</b></p> <p>11 Q So your letter indicates that you now have a better</p> <p>12 understanding of the 139 ordinance as it pertains to social</p> <p>13 events for hire at the farm processing facilities.</p> <p>14 <b>A Yeah.</b></p> <p>15 Q Let's break that down. The 139 ordinance is section 6.7.2</p> <p>16 part 19 of the Peninsula Township zoning ordinance; correct?</p> <p>17 <b>A Yes; yes.</b></p> <p>18 Q And social events for hire is a restriction on the types of</p> <p>19 events that are not permitted at farm processing facilities?</p> <p>20 <b>A That's correct.</b></p> <p>21 Q <b>And what was your understanding following the conversation</b></p> <p>22 <b>as to why -- following the conversation with Ms. Reardon in</b></p> <p>23 <b>June of 2014 as to what social events for hire are such that</b></p> <p>24 <b>the events were no longer permissible?</b></p> <p>25 <b>A She explained it if you were selling tickets to an event</b></p> <p style="text-align: center;">Page 64</p>
<p>1 <b>A Yeah; yeah.</b></p> <p>2 Q Is that your handwriting at the bottom of page 1?</p> <p>3 <b>A It's terrible. It is, yes; yes.</b></p> <p>4 Q I've seen much worse.</p> <p>5 MR. INFANTE: You should see mine. You couldn't</p> <p>6 read mine. I can't read mine.</p> <p>7 <b>A Yes, that's my writing.</b></p> <p>8 Q So are these your questions, are these your responses? What</p> <p>9 is --</p> <p>10 <b>A So Michelle asked that I come in and talk to her in her</b></p> <p>11 <b>office, and that's what I did.</b></p> <p>12 Q And what -- and then you responded to her in writing?</p> <p>13 <b>A Yes; yes, after that; yeah, after that meeting.</b></p> <p>14 Q What did you talk about --</p> <p>15 <b>A Yeah. And like it says, "After our discussion on the 24th</b></p> <p>16 <b>in the office." And now the better understanding it says of</b></p> <p>17 <b>the social events for hire at an FPF, farm processing, and</b></p> <p>18 <b>we canceled them, yeah.</b></p> <p>19 Q "And we've canceled both events to the public." And what</p> <p>20 was your understanding of what's a social function for hire</p> <p>21 event?</p> <p>22 <b>A So that is a muddy and gray topic and it depends on with</b></p> <p>23 <b>whom you're speaking, because Gordon had a definition, and</b></p> <p>24 <b>if you go ask Gordie, Gordon would invariably walk over in</b></p> <p>25 <b>the office and give his definition of it instead of Gordie,</b></p> <p style="text-align: center;">Page 63</p>	<p>1 <b>that she said are not basically your -- you know, are</b></p> <p>2 <b>outside of what you would normally do she said these are</b></p> <p>3 <b>social events. I said, "Well, I don't necessarily agree</b></p> <p>4 <b>with that. If we're on a daily basis serving wine and</b></p> <p>5 <b>serving food, you know, how are these different?" And she</b></p> <p>6 <b>said because you are selling specific events to these and</b></p> <p>7 <b>they are not open to everyone, you can't have everyone walk</b></p> <p>8 <b>up. It's this private thing that you've created. And I</b></p> <p>9 <b>said, "Well, that seems like what we do every day." She</b></p> <p>10 <b>said, "Look, anything that you're doing that you're</b></p> <p>11 <b>advertising that is not a come to the winery and taste</b></p> <p>12 <b>wine," she said, "I think that we would view these as social</b></p> <p>13 <b>events." And I can remember going, you know, "Can you write</b></p> <p>14 <b>that down?" And she said, "I won't write that down." So it</b></p> <p>15 <b>was kind of a muddy again, it's a -- I don't know, it's</b></p> <p>16 <b>challenging to figure out again.</b></p> <p>17 Q You documented that conversation in your letter?</p> <p>18 <b>A She asked that I write this letter to her to say that we</b></p> <p>19 <b>would do it.</b></p> <p>20 Q And you did?</p> <p>21 <b>A I did.</b></p> <p>22 Q And you indicated that you do have an under -- a better</p> <p>23 understanding of what social events for hire means?</p> <p>24 <b>A In that the events that she said we -- I should say the</b></p> <p>25 <b>event that we had planned to do that she said they would</b></p> <p style="text-align: center;">Page 65</p>

17 (Pages 62 to 65)



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<p>1 is.</p> <p>2 MR. INFANTE: I'm going to have a party at my</p> <p>3 house, a bubbly pig party.</p> <p>4 A And that's not -- the July 5th one isn't on this other</p> <p>5 schedule, so I don't know what the July 5th thing was</p> <p>6 referring to. But I'm fairly -- I remember the BBQ and then</p> <p>7 the other one, the bubbly pig roast. I think those are the</p> <p>8 events that I'm referring to, but, again, I don't recall. I</p> <p>9 know that we didn't do them, as she said these seem to be</p> <p>10 no-no's, no fly zones for you and you shouldn't be trying to</p> <p>11 do these.</p> <p>12 Q And it's your understanding that those events were something</p> <p>13 different than what Two Lads had traditionally did in the</p> <p>14 tasting room in terms of they were ticketed events?</p> <p>15 A Yeah; yeah. She seemed to say that -- what her definition</p> <p>16 of a social event was something that is you're selling a</p> <p>17 ticket to and that everyone that attends the tasting room</p> <p>18 can't come up to, that this is a separate thing that may</p> <p>19 occur in a separate space. Again, I'm trying to recall what</p> <p>20 her wording was, but it was at the end of the day that these</p> <p>21 are social events for hire and not permitted.</p> <p>22 Q And where physically was the BBQ going to take place? Was</p> <p>23 it going to be in the tasting room?</p> <p>24 A I don't recall. Again, I don't run the events. I mean,</p> <p>25 obviously I don't think they would have cooked the food in</p> <p style="text-align: center;">Page 70</p>	<p>1 Ms. Reardon explained to you, during your meeting that</p> <p>2 Exhibit PTP 25 suggests took place on the 24th of June?</p> <p>3 A Well, I believe that that's how she defined them and said we</p> <p>4 were going to be in violation if we went forward. So I</p> <p>5 agreed, yeah, not to do them.</p> <p>6 Q Did you agree that they were, that they -- did you agree</p> <p>7 with her interpretation of what the term "social functions</p> <p>8 for hire/social events for hire" mean?</p> <p>9 A I don't know that I agreed with it. I think I understood</p> <p>10 how she was defining it and that if we did the things we'd</p> <p>11 like to do that she was going to find us in violation.</p> <p>12 Q Did you understand the foundation of her interpretation of</p> <p>13 that phrase?</p> <p>14 MR. INFANTE: Objection; foundation.</p> <p>15 A So when you say the --</p> <p>16 Q Where the restriction was coming from.</p> <p>17 A I think she was going from her finding that language in the</p> <p>18 139 ordinance and that this to her seemed like a social</p> <p>19 event for hire and that it said that that was a no-no in the</p> <p>20 farm processing language, so --</p> <p>21 Q Did you have a different interpretation of what a social</p> <p>22 function for hire means?</p> <p>23 A Well, I mean -- I mean, that's just such a broad thing,</p> <p>24 anything where someone is coming and -- you know, if for</p> <p>25 hire meaning they've paid for some ability to use the space</p> <p style="text-align: center;">Page 72</p>
<p>1 there. I think we would have had a -- either -- Cordwood I</p> <p>2 want to say was one of the --</p> <p>3 Q That's a local catering company?</p> <p>4 A Yes; yes, they're a BBQ, they've got the whole mobile smoker</p> <p>5 and all those things. Or Sparks I think was starting up at</p> <p>6 that point in that tiny (phonetic) location. Sparks BBQ,</p> <p>7 they were going to come up and we were going to serve that</p> <p>8 and, you know, pair it with bubbles I think.</p> <p>9 Q And then something that happened on July 5th that we don't</p> <p>10 quite know what it was, or was scheduled for July 5th?</p> <p>11 MR. INFANTE: Or there might be a typo, I don't --</p> <p>12 Q Or there might be a typo.</p> <p>13 A I'm trying to recall -- yeah.</p> <p>14 Q The cover letter suggests the second annual BBQ, does that</p> <p>15 refresh your recollection of --</p> <p>16 A Well, that's the one that says it's on the 19th on that</p> <p>17 schedule page, I don't know if that's a typo from them or if</p> <p>18 my putting it down on the 5th -- I don't honestly know. I</p> <p>19 don't recall. I'm sorry.</p> <p>20 Q That's acceptable. Did you receive a fine or penalty from</p> <p>21 the township for anything related to these events we've been</p> <p>22 discussing in PTP 25 and 26?</p> <p>23 A I don't believe so, no.</p> <p>24 Q Did you -- did you agree with the interpretation of social</p> <p>25 events for hire as was explained to you, or as you indicate</p> <p style="text-align: center;">Page 71</p>	<p>1 for something specific that is I would say not on the normal</p> <p>2 course of what we would do. Like we don't regularly plan to</p> <p>3 have, you know, a birthday party on the side with someone --</p> <p>4 you know what I mean? It's not the normal. If someone says</p> <p>5 I'd like to specifically do this at your space and hire it</p> <p>6 out to do this, can we pay you to make sure that we can do</p> <p>7 this in your space, that seems like a social event for hire</p> <p>8 separate from what we would normally do.</p> <p>9 Q And would you agree that the BBQ, the bubbly pig BBQ, was</p> <p>10 something like a specifically -- something that you would</p> <p>11 not normally do in the normal course of your operations?</p> <p>12 A I think it was the having a caterer bring in food that was</p> <p>13 going to be a relatively limited amount, you know, that</p> <p>14 someone would have to -- you know, we give away food with</p> <p>15 tastings -- we used to give away a lot of food at tastings,</p> <p>16 now we sell food. But I think giving away -- or I should</p> <p>17 say selling, you know, BBQ from a caterer that came in with</p> <p>18 a mobile kitchen is -- I mean, it's not something we did</p> <p>19 regularly, it's something that I would like to do. But that</p> <p>20 to me was something that she said, hey, this is different</p> <p>21 than you normally do, I consider this a -- tickets for this</p> <p>22 event to be a social function for hire, therefore it's a</p> <p>23 no-fly zone.</p> <p>24 Q And I just want to understand Two Lads' interpretation of</p> <p>25 what a social function for hire is and whether that differed</p> <p style="text-align: center;">Page 73</p>

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<p>1 under which we operate. If I have a definition I would say</p> <p>2 that social functions are just a huge wide range of things</p> <p>3 that are, you know, onsite where it is a -- what would you</p> <p>4 say? -- it is potentially an activity other than coming to</p> <p>5 taste wine and do the normal -- I guess, yeah, it is very</p> <p>6 similar to how I understand theirs to be, it's the normal</p> <p>7 activities. But everyone isn't just showing up for wine,</p> <p>8 they're showing up for their friends, their family and all</p> <p>9 the other reasons you're out and about on vacation I guess.</p> <p>10 But, no.</p> <p>11 Q And what is the for hire aspect of it in your understanding,</p> <p>12 assuming it's different than the township's understanding?</p> <p>13 MR. INFANTE: Objection; calls for a legal</p> <p>14 conclusion.</p> <p>15 A I don't know that it's different. I think for hire means if</p> <p>16 they're paying you to -- whether it's use the space or carve</p> <p>17 out some spot in the tasting room or to do something or you</p> <p>18 to offer them some service that -- I don't know -- that you</p> <p>19 don't normally offer that would require a fee I guess for</p> <p>20 hire.</p> <p>21 Q The -- did you -- have you or did you in response to the --</p> <p>22 have I already asked, did you get any penalty or citation</p> <p>23 for the advertising or promoting the events that were</p> <p>24 discussed in PTP 25 and 26?</p> <p>25 MR. INFANTE: Objection; asked and answered.</p> <p style="text-align: center;">Page 78</p>	<p>1 A Oh, I didn't even know that was a thing. No, I didn't.</p> <p>2 Q So if you didn't know it was a thing I assume that means you</p> <p>3 didn't ask for it?</p> <p>4 A No. Is that a thing?</p> <p>5 Q It is a thing.</p> <p>6 MS. ANDREWS: I'm not testifying, the zoning</p> <p>7 ordinance speaks for itself.</p> <p>8 MR. INFANTE: It sounds like you are.</p> <p>9 Q My question is did you apply for it, it sounds like from</p> <p>10 your answer you did not?</p> <p>11 A No; no.</p> <p>12 MR. INFANTE: You also shouldn't be asking</p> <p>13 questions.</p> <p>14 THE WITNESS: I'm sorry.</p> <p>15 MR. INFANTE: This deposition is going off the</p> <p>16 rails.</p> <p>17 MR. RAJSIC: TJ, are you changing gears at all?</p> <p>18 Would it be a good time for a break?</p> <p>19 MS. ANDREWS: Where are we at on our time?</p> <p>20 REPORTER: 1:55.</p> <p>21 MS. ANDREWS: It's time for a break.</p> <p>22 (Off the record)</p> <p>23 Q Mr. Baldyga, before the break we were talking about the 2014</p> <p>24 correspondence between you and the township. Since then has</p> <p>25 Two Lads -- would you call that an enforcement effort?</p> <p style="text-align: center;">Page 80</p>
<p>1 A You did ask and the answer was, no, we did not.</p> <p>2 Q We talked about that with the Winter Warmup and I just</p> <p>3 wanted to clarify.</p> <p>4 A I think you're right, I don't think you did actually ask on</p> <p>5 the second one. It was on the first, you're right.</p> <p>6 MR. INFANTE: No, she did.</p> <p>7 THE WITNESS: She did? All right.</p> <p>8 Q Did you seek an appeal or clarification or any -- take any</p> <p>9 action in response to your understanding of what the</p> <p>10 township's interpretation of the social events for hire was</p> <p>11 following the 2014 events that are in PTP 25 and 26?</p> <p>12 A I don't think there was any specific reaction just to that</p> <p>13 one event, but like I said before, since 2008 I know that</p> <p>14 we've been working with all the different planners and town</p> <p>15 boards and winery language rewrites, committees to change</p> <p>16 all of this, you know, wholesale. So I don't think I did</p> <p>17 anything specifically after that one event, no, in response</p> <p>18 to that.</p> <p>19 Q And to clarify, I'm asking specifically about the</p> <p>20 township's -- your understanding of the township's</p> <p>21 interpretation of what social events for hire means, not</p> <p>22 necessarily the attempt to change the language, but rather</p> <p>23 the interpretation of that as it was being applied or as you</p> <p>24 understood it. For example, a request for interpretation</p> <p>25 from the board of zoning appeals, ZBA.</p> <p style="text-align: center;">Page 79</p>	<p>1 Would you describe the -- how would you describe that</p> <p>2 correspondence?</p> <p>3 A I have no idea. A warning letter maybe.</p> <p>4 Q Since the letter from the township, have you received any</p> <p>5 other letters from the township related to events -- social</p> <p>6 events for hire or otherwise related to compliance with</p> <p>7 township zoning at Two Lads? The only one that I'm aware</p> <p>8 of -- let me think if we've received any more. We received</p> <p>9 one because we had a sign near the end of our property</p> <p>10 attached to our MAEAP sign, which is the Michigan</p> <p>11 Agricultural Environmental Assessment Program, we have an</p> <p>12 award for our farming. And there was a sign on the bottom</p> <p>13 of that that said -- we were having people turn into our</p> <p>14 neighbor's cul-de-sac looking for the winery, because it was</p> <p>15 a big orange thing by a vineyard and they said, oh, that</p> <p>16 must be a winery. So we had a directional sign that said</p> <p>17 the winery entrance quarter of a mile -- it was a little 4</p> <p>18 inch by -- I don't know -- must be 24 inch sign at the</p> <p>19 bottom of this MAEAP sign, and we got a letter that said,</p> <p>20 hey, that's considered signage, you need to remove this, so</p> <p>21 we did. So that's the only other -- as I sit here today</p> <p>22 that's the only other one I can recall. So I don't know if</p> <p>23 that's a complete list, but --</p> <p>24 Q Do you recall ever paying a penalty or a fine to the</p> <p>25 township for violations of zoning requirements?</p> <p style="text-align: center;">Page 81</p>

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1 A Private events is -- I mean, in terms of the hours we've  
2 always been willing to do what we normally do during -- you  
3 know, if it's tasting and doing wine and food and it's after  
4 that if we're able to do it we have tried to accommodate  
5 people for hours other than our, you know, tasting room  
6 hours. But again, if it's a -- if it's something like a  
7 wedding ceremony, even rehearsal dinners we let them know,  
8 well, we have charcuterie and wine and that's what we do  
9 here, so -- but if like we were talking about for our policy  
10 with groups, it's a group and they want to come during the  
11 day and it's a busy day we usually decline, but if they say  
12 what if we show up at 10:00 instead of 11:00, could you  
13 accommodate our group then, and we usually go, sure, then we  
14 have enough for your group to be guaranteed a seat all at  
15 once, or if its -- so --  
16 Q Sure.  
17 A We do a little bit to accommodate groups on each side.  
18 Q So Mr. Hunter's response to the maid of honor/sister of the  
19 bride was that the -- he suggests checking with either  
20 Chateau Grand Traverse or Chateau Chantal, who are both  
21 permitted to do events to the best of his knowledge. What  
22 is your understanding of what Chateau Grand Traverse or  
23 Chateau Chantal are permitted to do?  
24 MR. INFANTE: Objection; foundation.  
25 A Well, I mean, this is Mike talking to them. I don't know

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1 what his understanding is in 2014 about that. Again, I  
2 think he had been with us for a couple years at that  
3 point -- he was probably the tasting room direction at this  
4 point I believe as well; not our GM. So I don't know what  
5 his understanding is, but my understanding is that, you  
6 know, Chateau Chantal -- especially as I heard -- does what  
7 I heard yesterday count? Can I talk about that? I was  
8 going to say it was interesting to hear Marie talk about  
9 what they could and couldn't do for people onsite for -- was  
10 it 42 people could stay overnight for a wedding or --  
11 MR. INFANTE: You're getting into her  
12 understanding, so --  
13 THE WITNESS: Okay. Sorry.  
14 Q Yeah, I'm trying to get -- I don't want you to be influenced  
15 by what you heard yesterday.  
16 A Okay.  
17 Q To the extent you -- I don't want you to testify today about  
18 what you just learned yesterday or heard yesterday.  
19 A Okay. Go ahead.  
20 Q To the extent you have an understanding as to whether  
21 Chateau Grand Traverse or Chateau Chantal were or are  
22 permitted to do events, what is your understanding?  
23 A Well, I think that -- I believe that winery chateaus as I  
24 understand it can do things like weddings on the facilities  
25 given they have the winery chateau and the SUP license, that

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1 they have other things they're allowed to do. I don't know  
2 how often Chateau Grand Traverse does weddings, they're very  
3 much a -- it seems like they don't focus on events as much  
4 as Chateau Chantal does if I'm recalling off the top of my  
5 head. But, yeah, you know, I know that Chateau Chantal is  
6 an option for people for trying to plan a wedding out here.  
7 Q Do you -- does Two Lads have any relationship, a business  
8 relationship, with Chateau Grand Traverse or Chateau  
9 Chantal?  
10 A Let me think. We don't have any business relationship with  
11 Chateau Grand Traverse, any ongoing one. We've bought  
12 equipment from them, used equipment, in the past. And from  
13 Chateau Chantal we have -- they've got -- I don't know how  
14 else to put this, they've got great toys in the cellar that  
15 are wonderfully expensive and very unique and specialized to  
16 what they do so they can perform certain wine making  
17 adjustments; fining/filtrations; that are pretty  
18 spectacular, very technologically advanced, even for our  
19 area. Just it's -- some of their machines are the only  
20 ones -- one of two in the country sort of thing so they have  
21 some really cool toys that nobody else has. So we've had  
22 certain wine making amendments and changes made to wines for  
23 us from them. But that's a project basis and no ongoing  
24 relationship though.  
25 Q No referral fees for sending weddings to each other?

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1 A No. High fives; I work on high fives. Yeah, there's no  
2 money coming from that.  
3 Q The last piece of Mr. Hunter's email to Erica is that, "We  
4 could easily accommodate a group of up to 20 for tastings."  
5 Where does the 20 come from? I understand you can host up  
6 to 48.  
7 A Well, like we talked about before we don't like to have tour  
8 busses. And kind of 25, as I understand it, most of those  
9 kind of medium to smaller tour busses that are in our area  
10 have a capacity of 20 or 25. So I don't like to see those  
11 monster motorcoaches pulling up in the parking lot. Now  
12 we've done those before for friends that come and do those.  
13 You know, if I have a friend from Downstate who runs a  
14 restaurant group who brings people up on a Northern Michigan  
15 wine tour, we'll do them earlier in the day. But it's just  
16 so challenging for us to host a single group at one time in  
17 the tasting room for tastings and -- and at the time 20 was  
18 the largest that we were allowing -- I think, if I'm  
19 remembering correctly back in 2014. Now that number is 12 I  
20 believe. And that's -- our tables generally seat six. The  
21 thing with larger groups is since they have a rapport -- I'm  
22 sorry, I don't know if this is --  
23 Q I'm trying to understand the --  
24 A Okay.  
25 Q So, no; no, I would like to understand this continuum of

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25 (Pages 94 to 97)

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1 sizes of reservation groups.  
2 **A Yes. So single groups have a tendency to be a little --**  
3 **because they know each other and they are typically arriving**  
4 **in mass on a single vehicle they have a rapport with each**  
5 **other that's different than if a group of six and a group of**  
6 **four were sitting at two tables side by side, you know, or**  
7 **two groups of six for instance. They talk back and forth**  
8 **between the tables, they're a little louder typically,**  
9 **they're a little more boisterous because they're there with**  
10 **each other and as a group. So generally anything beyond two**  
11 **tables we try to discourage. So we try to do groups of**  
12 **12 -- if it's a tasting reservation that we're allowing them**  
13 **to make we try to do groups of 12 or less. You know,**  
14 **because we also guarantee people have been angry in the past**  
15 **if they show up with a group unannounced and then they can't**  
16 **all get seated together, and what do you mean, there's only**  
17 **8 of us, and you go, "I'm sorry, we can't let you scrape a**  
18 **bunch of chairs together." "Sure we can." And we go, "No."**  
19 **You know, it literally becomes a point of, you know,**  
20 **distress or they get ticked off that you're not able to**  
21 **handle them, they think it's just going to be show up and we**  
22 **can all do what we want to do when we want to do it and you**  
23 **say, "I'm sorry, that's not how it works here. We do more**  
24 **of an elevated experience, it's a little more one on one,**  
25 **it's a little slower." And they'll go, "Oh." So our**  
  
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1 **tasting room just, I think, operates a little more -- just**  
2 **differently. We don't let people get quite as -- quite as**  
3 **loud and quite as -- we just handle groups differently.**  
4 **The other thing, there's an old phrase in the**  
5 **industry, "Busses don't buy." And I very much try to have**  
6 **great relationships with smaller groups rather than larger**  
7 **groups because they typically have already bought their**  
8 **experience for the day on whatever tour bus they're on and**  
9 **they're not there for collecting and the same purpose that**  
10 **other people are. So we try to focus a little bit more on**  
11 **tasting room operations for, you know, smaller groups if we**  
12 **can. We can't always make that choice, people still show up**  
13 **unannounced, but we try.**  
14 Q Thank you. I appreciate the clarification. Let's see.  
15 There's a series that are pretty similar. I was going to  
16 ask you on the next page, 11930, which is a couple of months  
17 after the one we were just discussing on 11925. Here Mr.  
18 Hunter says, "We can accommodate groups of up to 25." Is  
19 that just his interpretation at the time? Is there  
20 something significant about the difference between 20 and 25  
21 in your understanding, or is Mr. Hunter going rogue?  
22 **A Sounds like he's getting crazy. No, I don't know why he**  
23 **would have said 25 instead of 20, no.**  
24 Q It's nothing significant, nothing changed in the tasting  
25 room?  
  
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1 **A No; no. Not that I'm aware of, no.**  
2 Q Let's flip back -- keep going a couple pages to 11969.  
3 This is correspondence between Andy and Mr. Hunter. Here he  
4 indicates suggesting calling Chateau Chantal with the  
5 understanding that they can host parties of up to 100  
6 people. Again, your understanding of the basis of that --  
7 of his understanding or his email?  
8 **A I'd be presuming to know --**  
9 MR. INFANTE: Objection; foundation.  
10 THE WITNESS: Oh, I'm sorry.  
11 **A I'd be presuming to know Mike's mind, why he said that.**  
12 **Again, I don't know why he would have said that number.**  
13 Q Leelanau Peninsula Brengman Brothers, are you familiar  
14 that's their winery?  
15 **A I am.**  
16 Q Tell me about any relationship between Two Lads and Brengman  
17 Brothers.  
18 **A None.**  
19 Q Is it your understanding that Brengman Brothers can host  
20 events?  
21 **A Yes, it is. I'm sorry, I'm nodding "yes"; eyebrows raised**  
22 **nodding.**  
23 Q Mr. Hunter's email says they specialize in weddings and  
24 events, is that consistent with your understanding?  
25 **A I don't know about that, no. I mean, I've only -- I've**  
  
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1 **never actually been to Brengman Brothers for an event, I've**  
2 **only been there for wine tasting. And I've met Robert I**  
3 **think is his name while they were bottling and we talk wine**  
4 **whenever I go there, so -- but I do know that they seem to**  
5 **do a lot of events. I've seen a lot of pictures and I know**  
6 **that they have a space on the side now specifically for**  
7 **events. I have friends that have been to a lot of events**  
8 **there and say it's great. But I personally have not been.**  
9 **I'm such a homebody, like literally even if somebody -- it**  
10 **would have to be somebody important like they're were**  
11 **getting married and it's just next door at Brengman, I'd be**  
12 **like "Eh, really, it's Saturday, you know, come on."**  
13 MR. INFANTE: You're an old man.  
14 Q Let's keep going a few pages to 12051. Here Mr. Hunter  
15 references Aurora Cellars. Same question, what is Aurora  
16 Cellars, have you been there, any relationship with them?  
17 **A No, relationship with them, no.**  
18 Q You understand that they host events, or do you have no  
19 understanding as to --  
20 **A No, I think that we've spoken with -- I think when they were**  
21 **purchased they were acquired by -- it used to be called**  
22 **Circa Winery, and I think the Bells who started their -- I**  
23 **think they started on '07 just like we were, so I think we**  
24 **both were buying equipment and going through some of those**  
25 **things together and I think I met David Bell at that time.**  
  
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26 (Pages 98 to 101)

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<p>1 and tell everybody -- give them updates. So I don't know if 2 he knew or if he was just optimistic like I was that we were 3 making headway. So I don't know what he was referring to as 4 state; I don't know.</p> <p>5 Q Okay. The next page, February 21, so this is about a year 6 later. "As it currently stands we're unable to host" -- I'm 7 sorry, I'm reading from Mr. Hunter's response to Ms. Reed. 8 "Unable to host hot private events" -- I think that's a 9 typo. "Host private events" --</p> <p>10 A Hot private events -- I'm sorry, I interrupted you.</p> <p>11 Q That's different -- "like weddings or rehearsal dinners" -- 12 MR. INFANTE: Hot yoga. 13 THE WITNESS: There you go. That's a much 14 better --</p> <p>15 Q -- and then he says, "But there's a chance that may change 16 within the next few months." What do you think he's 17 referring to there?</p> <p>18 A Well, so I'm trying to recall -- again, I'm not -- well, I 19 shouldn't say "again," I don't think I've said it yet. I'm 20 not great with remembering exactly what was happening 21 between COVID and -- and I -- running the company through 22 that it was kind of a tumultuous time for all things as we 23 were trying to get back going. I think that we were -- I 24 don't remember where we were with conversations with the 25 township at that point, but I think it was the same that it</p> <p style="text-align: center;">Page 106</p>	<p>1 change within the next few months." Again, any difference 2 in understanding as to the foundation or the basis for that 3 expectation or --</p> <p>4 A No; no. I think he's trying to keep that line of 5 communication open with the guest so that they don't just 6 immediately say it's a no to Two Lads. I think he's hopeful 7 for change. I think I was hopeful for change still, so -- 8 yeah, I think he's doing the same --</p> <p>9 Q And the next page -- these are -- I didn't put these -- I 10 put these in the order that they were produced, not 11 necessarily the order that -- so now we're back in time, 12 just clarifying. So this precedes the litigation; April is 13 before October.</p> <p>14 A Yes; yes.</p> <p>15 Q Again, this is a request for a wedding and generally that 16 zoning doesn't permit it; right? That's consistent with 17 your understanding and your testimony today, that that's Two 18 Lads' interpretation of the zoning ordinance?</p> <p>19 A That's right.</p> <p>20 Q All right. Let's look at -- 21 MS. ANDREWS: What's our time? 22 REPORTER: 2:37.</p> <p>23 Q Let's look at -- I'm going to show -- let me show you a 24 confidential document first. 25 MS. ANDREWS: Is that okay to discuss? I mean,</p> <p style="text-align: center;">Page 108</p>
<p>1 was hopeful that there was going to be change or that there 2 may be a settlement agreement, I don't know if that was at 3 that point or if that's later in March or June of '21. I'm 4 trying to think of when we actually were doing that. But it 5 was like the same thing, I'm a glass half full kind of guy 6 so I think I was hopeful. And/or maybe he's just doing the 7 same thing of trying to keep the door open and if there's a 8 potential to do an event and we may be able to do it so he's 9 keeping the door open with a contact. Again, I --</p> <p>10 Q Is it your understanding that the wineries have sued the 11 township at this point? If I suggested that the lawsuit was 12 filed October 21st -- 13 MR. INFANTE: It's right there (indicating), this 14 is from the Complaint.</p> <p>15 Q -- October 21st, 2020, that the correspondence with Mr. 16 Hunter was after the litigation had been filed?</p> <p>17 A It sounds like it clearly was, yeah. But I think we were 18 still doing settlement -- we had the settlement agreement 19 and the court ordered mediation or arbitration, whatever 20 that was called. And so, you know, I'm -- maybe we had more 21 of those on the horizon, we're always hopeful, so --</p> <p>22 MR. INFANTE: This is not a memory test for dates, 23 no one ever has them perfect.</p> <p>24 THE WITNESS: And I am not great, so --</p> <p>25 Q The next page is 12100, a month later. Again, "That may</p> <p style="text-align: center;">Page 107</p>	<p>1 there's no other -- no non-party -- 2 MR. INFANTE: You don't care if we discuss this, 3 do you, with Becky in the room? I'm sure she's seen it 4 because it --</p> <p>5 MS. ANDREWS: Why don't we go off the record for a 6 moment. 7 (Off the record) 8 (Deposition Exhibits 29 and 30 marked)</p> <p>9 Q All right. So we'll start with what we labeled as PTP 10 Exhibit 30, and this is an email correspondence between -- 11 MR. INFANTE: A customer.</p> <p>12 Q -- a customer and -- 13 MR. INFANTE: Maybe we're being overly cautious, 14 but let's just do it. I don't think it matters.</p> <p>15 Q -- Mr. Hunter, and this is a request for -- looking at the 16 bottom of WOMP13706 a meeting with 11 people at Two Lads.</p> <p>17 A Yes, that's what it appears to be.</p> <p>18 Q And it was a meeting over the course of two days?</p> <p>19 A Yes; sounds right.</p> <p>20 Q And is it your understanding that Two Lads ultimately ended 21 up accommodating and providing the client/the customer the 22 opportunity to have that meeting at Two Lads?</p> <p>23 A We did, yes.</p> <p>24 Q Would you consider this a private event?</p> <p>25 A Well, in terms of opening up a little early, yeah. Like I</p> <p style="text-align: center;">Page 109</p>



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1 said before -- I don't know that I would call it a private  
2 event, at the end of the day he did educational tastings for  
3 about half the time that involved a tour and whatever he  
4 calls it -- does he call it team building? -- which I think  
5 is great because a winery tour and tasting sounds like a  
6 great way to do team building. But I know they sat and  
7 talked about things that were for their own work group in  
8 our tasting room space, so -- you know, I think the fact  
9 that we opened up a little bit earlier for them and allowed  
10 them to be in the space, but then it was an educational  
11 session throughout the second half of each of those days for  
12 them. I mean, what we do is pour wine, take people on tours  
13 and allow them to have food onsite. So I think it was the  
14 opening up ahead of time, providing them a space to sit,  
15 that was different than what we normally do and that's why  
16 we -- I think it's a higher private tour and tasting  
17 experience than we normally do.  
18 Q Was lunch catered?  
19 A Boy. I believe -- so I wasn't in charge of this event. I  
20 think that this was between Michael and Emily Helke, our  
21 tasting room director at the time. I think that she brought  
22 in food that she had bought -- I think it was GT Pie Company  
23 boxed lunches if I'm remembering correctly. I think that he  
24 had said boxed lunches, something from Traverse and I think  
25 that's what we provided; I want to say.

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1 Q So just -- I don't know if you have some other information.  
2 It looks like -- there was an email that said something to  
3 the effect of even if you could help getting takeout from  
4 the Bad Dog Deli that would be fine, very casual in terms of  
5 lunch is a bullet point. Is that --  
6 A They might have had Bad Dog.  
7 Q Something take out, is that your understanding?  
8 A Yeah; yeah. I mean, I know that we did a pairing with them  
9 ahead of that and I feel like there was a lot of food left  
10 because they had already done a wine tasting and a tour and  
11 had, you know, our usual charcuterie pairing, so -- that  
12 sounds correct.  
13 Q This event -- the event we're discussing took place -- or  
14 the correspondence we're looking at is from April of 2022;  
15 correct?  
16 A Uh-huh; that's correct.  
17 Q And then we looked at Exhibit 29 and we see -- it looks like  
18 the -- what is the event date, to your knowledge?  
19 A Well, the invoice date on there is April 18 of 2022. Order  
20 date --  
21 MR. INFANTE: Sorry, what is your question? When  
22 did it happen?  
23 MS. ANDREWS: I'm asking when did the event take  
24 place.  
25 A It looks like in here it's June 14th and 15th is what the

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1 customer was asking for on those days.  
2 Q And is it your understanding that this event did take place?  
3 A Yes, I do remember that this event did take place.  
4 Q And does mid June 2022 sound about right when it took place?  
5 A Yeah, I think that's when they were here.  
6 Q And would you agree that this is not the type of event that  
7 Two Lads was typically doing in terms of tastings and  
8 charcuteries within your tasting room during regular tasting  
9 room hours?  
10 A Well, like I said before, we accommodate groups, you know,  
11 even outside of our normal hours if it's a larger group and  
12 we want to make space for someone, whether it's a friend or  
13 a specific tour group or educational session. Normally we  
14 wouldn't be there at 9:00 a.m. and allow guests inside,  
15 that's correct, so it's outside of that normal -- the normal  
16 business hours. But I think that I thought it was nice that  
17 he wanted to do both conversations with them so they could  
18 connect as a group ahead of time about -- about their  
19 company. Like I said, I don't know what he does necessarily  
20 but I know that they discussed business topics ahead of time  
21 And in the second half of those morning sessions the -- like  
22 I said, I think it was from 11:00 to 1:00 they did a tour,  
23 tasting, education session, top to bottom throughout the  
24 winery and had some food. So, yes -- so that's -- I mean,  
25 we normally wouldn't have people in there at 9:00 to -- I

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1 guess to discuss their own -- I'm sure people discuss their  
2 own business all the time, but it was specifically -- this  
3 was not a normal thing for us in terms of what we would  
4 typically do throughout the week, yeah.  
5 Q And I think you referenced earlier and indicated that there  
6 was a markup in the price, and that appears to be reflected  
7 in Exhibit 29. Can you explain that?  
8 A Well, I'm -- usually the private tour and tasting I want to  
9 say is that 47.17, which I think rounds up to 50 bucks on  
10 the nose with tax. And I think that because we were letting  
11 them in early, providing space to sit down, having an  
12 employee come in earlier than we normally would, that we  
13 increased the price to accommodate the different ask, so,  
14 yes. Like I said, I think that fee is different -- I mean,  
15 I know we normally don't charge \$100 for a tour and tasting  
16 so, yes.  
17 Q Would you consider this a private event for hire?  
18 MR. INFANTE: Objection; asked and answered.  
19 A I mean, outside of our -- again, we're willing to  
20 accommodate groups for tastings and -- you know, like I  
21 said, we do the occasional happy hour product releases. But  
22 early morning is pretty rare, it's different than our  
23 normal. I mean, most of that -- you know, half of it was  
24 the normal thing we do throughout the day of tasting,  
25 touring, providing food. But letting someone in early and

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29 (Pages 110 to 113)

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<p>1 allowing them to have the space for their specific thing,  2 that's -- that's different than our usually daily, so I  3 think that's why there's the additional charge. Whether you  4 want to term it an event or a different tasting option. I  5 think you could probably call it a lot of things, yeah;  6 different than normal I guess.</p> <p>7 Q So I'm trying to understand what was different with the  8 response to Mr. -- to the person -- the correspondence,  9 Exhibit 30, versus the people looking for use of the  10 facilities in the preceding Exhibit 28 and other  11 correspondence in terms of we are unable to do private  12 events, private dinners, private interactions. What was  13 different about this event? What changed?</p> <p>14 A Well, I think Michael -- if I'm remembering right, I want to  15 say the gentleman -- the customer is a club member and he  16 had been to our place many times and he loved the  17 educational side of what we do and I think that he wanted to  18 explore that with his guests. And I think that that to me  19 was part of -- in hearing Michael talk about it, our  20 Michael, I think that that's attractive to me to be able to  21 do a tour and tasting for an engaged group. You know,  22 letting him in earlier in the morning, again, I don't see  23 that as kind of the same nature of the social. I mean, I  24 don't know if that's a corporate event for hire or if that's  25 different. Clearly it doesn't seem to be a social group but</p> <p style="text-align: center;">Page 114</p>	<p>1 they're like, whoa, whoa, whoa, you know you can't do  2 weddings, we don't want more weddings. So anything related  3 to that even -- the rehearsal dinners I feel like we should  4 be able to do, that seems like a no brainer. But anything  5 related to that topic gets into a social event for hire and  6 it seems to be a no go. So this one I think to me seemed  7 far enough away from those that it was like -- there was a  8 large educational component. Like I said more than -- I  9 think half of it, like I said the second half of it, was on  10 education and wine touring and tasting, what we do, that it  11 seemed like something we should do, so -- does that answer  12 your question? I'm sorry.</p> <p>13 MR. INFANTE: You answer it how you want to answer  14 it.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q Let's talk about the timing of this event in June of 2022.  17 Had anything changed with respect to your understanding of  18 what Two Lads was allowed to do since -- since, gosh, some  19 of Mr. Hunter's emails that we've talked about where he was  20 clear private events were not available and now in 2022  21 corporate event for hire --</p> <p>22 MR. INFANTE: Objection; foundation, form.</p> <p>23 Q -- at Two Lads. What had changed, if anything?</p> <p>24 A I don't know that anything had changed at that point.  25 Again, I don't remember the dates of when the -- there's the</p> <p style="text-align: center;">Page 116</p>
<p>1 a corporate group. So I don't know, I think that -- I  2 believed it was still in the realm of what we were able to  3 do.</p> <p>4 Q Did Two Lads consider this a corporate event for hire?</p> <p>5 A I don't know that I would use those words, no.</p> <p>6 Q How would you describe this?</p> <p>7 A I think I did a couple times -- I know that this is what  8 you're supposed to do, this is the part I'm kind of  9 struggling with. We opened up earlier than we normally  10 would, we allowed them space to sit and have a discussion  11 about whatever their company does, and afterwards we did all  12 the things we normally do; tour, tasting. So the things of  13 allowing someone to have the space to have a -- you know, a  14 meeting and to sit and talk and to have a cup of coffee  15 ahead of touring and tasting and doing wine and food, that  16 definitely is out of the realm of our normal day to day.</p> <p>17 Q And I'm trying to understand how this is different than when  18 a bride would like to come in and have her rehearsal dinner  19 catered early or -- before hours or after hours.</p> <p>20 A Yeah, that sounds like a rehearsal dinner, a social function  21 for hire. Well, I feel like these are some of the things  22 that have been discussed verbally so many times, both by  23 township officials hearing them define this and -- you know,  24 this is an area -- it seems like the wedding area in general  25 is like a swear word in their -- if they hear weddings</p> <p style="text-align: center;">Page 115</p>	<p>1 partial summary judgment and the appeal, I know a lot of  2 those things of how -- what's his name? -- Judge Maloney had  3 looked at guest activity uses and gotten into all those  4 things. But I don't think that -- those things impacted me  5 in a way that said this is specifically now allowed versus  6 not. Again, I think it was the nature of the customer  7 itself, of the event, of the small early morning ask and  8 everything about that to me says that it is a -- I mean, it  9 just seemed like the kind of thing that was an easy  10 opportunity for someone to again do a team building thing to  11 interact with our wines and our winery and -- yeah. I don't  12 know if that answers the question.</p> <p>13 Q Thank you; thank you for your response. Now we'll look at  14 another confidential document.</p> <p>15 MS. ANDREWS: Same question for you to discuss  16 with your client before I -- we can go ahead and mark it.</p> <p>17 MR. INFANTE: Same issue.</p> <p>18 MS. ANDREWS: This will be PTP --</p> <p>19 THE WITNESS: No, I think this is okay.</p> <p>20 MR. INFANTE: Are these all the same --</p> <p>21 MS. ANDREWS: It's a related -- there's no  22 communicate, there's no email on this one.  23 (Deposition Exhibit 31 marked)</p> <p>24 Q So we've marked PTP Exhibit 31. Before we talk about this,  25 regarding the event we were just discussing, Exhibits 29 and</p> <p style="text-align: center;">Page 117</p>

30 (Pages 114 to 117)

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1 A I mean, I know that we're getting into splitting hairs, but  
2 at the end of the day we make food, serve small plates and  
3 charcuterie and this being a multi-course thing I know that  
4 it the discussion of why each wine -- how each wine was  
5 created, you know, why it mattered and was paired with the  
6 food in the right way. Kiel talked about the food that was  
7 there. I know we tried to reference as much local, you  
8 know, food as we can for the area, that it was kind of a  
9 celebration of all those things of Northern Michigan wine,  
10 Northern Michigan food. I know that it was structured in  
11 that way so it was a little bit more of a educational  
12 multi-course thing. But normally, yes, we would not have  
13 Chef Kiel there. I would like that but I don't think we  
14 can -- currently we can't do that, afford to do that. But,  
15 no, you know, having him prepare food in the back was  
16 definitely different than our normal food prep for sure.  
17 Q Apart from the September 2022 event, can you identify prior  
18 events where Two Lads used its dining room to host private  
19 dinner events, catered private dinner events?  
20 A Again, I know you're calling it a catered private dinner  
21 event, but --  
22 Q Let me break that down. Would you agree that this was not  
23 open to the public?  
24 A Yeah, I mean, I think if someone would have walked in we  
25 probably would have said I'm sorry it's for this, that's

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1 true.  
2 Q Might you have said it's private?  
3 A I guess that probably would be a better word to use, yeah.  
4 Q Would you agree it's catered?  
5 A Well, if Kiel made food in a commercial kitchen and brought  
6 it in that does sound -- yeah; yeah.  
7 Q It was a dinner?  
8 A Yeah. I mean, a tasting, there were small plates, it  
9 definitely is at the dinner hour. But, I mean, whether  
10 that's dinner or not I think you could say -- you know, it's  
11 not lunch that they eat throughout the day even though it's  
12 noon and food and -- that's what we do at the winery all the  
13 time, so -- I think you could define it that way, but, yeah.  
14 Q And the contract was for an event; is that right? I'm  
15 looking at the document.  
16 A Yeah. Well, I mean, that's what that is. I don't know that  
17 we would, again, define it necessarily as such. The fact  
18 that it says that on there and also says an agreement, so  
19 I -- I don't know that it would be -- you know, I don't know  
20 if this matters or not that it's a corporate entity versus  
21 private, but -- I mean, she's with Stantec, so is it a  
22 corporate event for hire? But does that matter? I don't  
23 know if that's worth differentiating.  
24 Q So just to go back. A private catered dinner event, which  
25 part of that is not right?

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1 A Okay. I think you're right, Tracy. I think that you could  
2 definitely call it those things, just --  
3 Q Thank you. Any other event similar to this? I won't  
4 characterize it. Similar to this one.  
5 A I mean, other than wine release and things we normally do  
6 that go a little bit later in the evenings or our happy  
7 hours that occur later in the evenings until -- you know, I  
8 think we go until 8:30 is our happy hours and things that we  
9 do at certain times. So, no, I can't think of any other --  
10 I can't think of any other ones that we've done off the top  
11 of my head, no.  
12 MR. INFANTE: TJ, when you switch gears can we  
13 take a --  
14 MS. ANDREWS: Yeah, I was just going to ask.  
15 What's our time?  
16 REPORTER: 3:01.  
17 MS. ANDREWS: Yeah, let's stop -- or let's take a  
18 break.  
19 (Off the record)  
20 Q Mr. Baldyga, I'd like to understand what Two Lads would plan  
21 to do if successful in invalidating the zoning and bringing  
22 the changes you're seeking in this case. Can you tell me  
23 what Two Lads would do differently than what it does --  
24 presently does?  
25 A Well, I can't crystal ball everything that we would do, know

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1 the future. But I know we want to explore, you know,  
2 everything from additional hour of operation to selling and  
3 sourcing wines from other than exclusively Old Mission  
4 Peninsula. We'd also like to look at doing events onsite,  
5 being able to host the weddings and social functions.  
6 Again, I think that list is pretty long, so not excluding  
7 those things. But I think the other thing is we want to  
8 have a really defined legal framework without the gray area  
9 that we have now and similar lack of definitions and  
10 certainty. You know, it's tough to run a business and have  
11 some things left up in the air on some of the definitions.  
12 I think it should also -- you know, I think the whole thing  
13 that I've started to learn -- or at least I assume because  
14 I've heard it so far, is that invalidating sections of the  
15 ordinance they don't craft a new one. It doesn't make a  
16 plan going forward, it just strikes out sections of the  
17 current one, which I assume means that there should be a  
18 plan in place that, you know, crafted a new one that is  
19 function, is attractive to agricultural growers that aren't  
20 here yet, so creative, you know, agricultural entrepreneurs  
21 to continue farming out here and increase the farming  
22 diversity on the Peninsula, I think that's important. But,  
23 no, for everything that Two Lads would do I -- I can't put  
24 them all in place I guess right in front of you. But I know  
25 a couple of the things that we would do offhand, yeah.

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<p>1 that's my biggest goal is I would love to have more Old 2 Mission Fruit. But as it's not available I think that -- 3 they also do grape growing in Antrim, in Benzie, in Leelanau 4 and I think it's very representative of cold climate 5 Northern Michigan wines, so I think that to me to have that 6 option is really exciting. I think that should be something 7 that I personally would like to explore. And, yeah, if we 8 wanted to I think we should have the right to be able to -- 9 I think the feds and the state say if you want to buy juice 10 or bulk wine or -- a pail of shiners is what they're called 11 when you get a wine that's already premade and in a bottle 12 and you put a label on. We have not done that and I don't 13 think that's in our future, but I mean, all those things 14 seem to be things that I think should be allowed for most 15 wineries personally.</p> <p>16 Q Are there geographic restraints on juice? I mean, you said 17 grapes themselves and then you said if you're coming from 18 the West Coast you've got to have some level of -- or young 19 I think you said?</p> <p>20 A Yeah.</p> <p>21 Q Which made me think that juice is somewhere in between, 22 so --</p> <p>23 MR. INFANTE: Objection; beyond the scope. 24 MS. ANDREWS: Noted. 25 MR. INFANTE: You can answer.</p> <p>Page 130</p>	<p>1 A Yeah.</p> <p>2 Q Can you tell me -- can you give me some parameters what your 3 envision or plan or think about or expect that you might 4 want to do in the event of success in invalidating zoning?</p> <p>5 A Well, again, sitting here I can't predict the future. And I 6 think I'm looking forward to being able to at least develop 7 and increase that market over time. But I think that doing 8 all the things -- you know, like I said, the things that 9 kill me that we can't do now which seem so great or that -- 10 referencing that email that we saw, it was 15 people that 11 was -- you know, maybe four kids that can run around in the 12 grass while we have a rehearsal dinner and a celebration and 13 some pictures on the top of the hill after hours, to me 14 those things are -- I don't know, it gets back to what we 15 wanted to do about show our farm off, let people come visit 16 a winery, fall in love with what it is that I think is so 17 attractive about it, which is you're growing grapes, making 18 this beautiful thing that's reflective of a place and the 19 fact that someone else thinks it's attractive to do a 20 small -- you know, a wedding that means something to them, 21 important there to me is -- you know, they get to see that 22 ag like I see that ag. So those things to me seem like the 23 easy and I would love to do so. But I know that we also 24 have all that space and having the creativity to be able to 25 do larger events for -- again, whether it's weddings,</p> <p>Page 132</p>
<p>1 A So if you're buying juice from the West Coast -- and I'm 2 sorry, I refer to wine in general as good -- like if we 3 tasted a great wine I'd say, "Man, you're making great juice 4 here. Good work." So I refer to them almost 5 interchangeably. But I am being specific about this. If 6 you're going to get grapes from the West Coast they have to 7 come in refrigerated trucks and they've got to get here 8 quick, we're talking 48 hours, personal belief/opinion for 9 making quality wines. You can also have somebody out West, 10 the thing about transporting that fruit and having it get 11 beat up and oxidized and torn up, you can have somebody 12 press it cold into a large bulk tote, they can add sulfur to 13 it and you can get juice as fresh pressed grape juice and 14 you can do your fermentations in-house and work with it on 15 its own. You can buy young wines so that you can do all the 16 aging onsite. You can buy fully made wines that have been a 17 year in the cellar, or you can buy prebottled wines that are 18 done and you're slapping -- hell, you can have them label it 19 for you if you send them labels. So you can buy everything 20 from grapes to finished product, and I think that those 21 things are all appropriate for a winery to be able to do, 22 you know, on Old Mission. I think that's appropriate for a 23 winery.</p> <p>24 Q So the third thing you said in the list that we started with 25 is events onsite; weddings and social functions.</p> <p>Page 131</p>	<p>1 whether it's dinners, whether it's mass tastings, whether 2 it's -- you know, hell, if they wanted to rent the full 3 tasting room for the day and have it just be for a specific 4 thing -- like I'd like the creativity to explore all those 5 ideas that we currently -- like weddings and -- that we 6 currently can't do. And I think -- or, you know, maybe -- 7 was it bubbly pig roast? -- was that what it was? -- maybe 8 that, you know, exploring more things with food brought in, 9 catered events. You know, even the food trucks are a really 10 exciting concept to me. Putting more food in people's 11 bellies while they're out tasting wine on a peninsula that 12 only has two or three restaurants or lunch spots, it's 13 always a struggle to find good food out here on a really 14 busy day. So anyway, I think there's a lot of things that 15 to me are attractive about doing more events and food 16 options and things onsite, so --</p> <p>17 Q What level of -- what capacity do you anticipate Two Lads 18 could accommodate without changing --</p> <p>19 A Infrastructure onsite?</p> <p>20 Q -- infrastructure onsite?</p> <p>21 A Boy, I would just be guessing. I'll try to make an 22 estimation; all right? That's the difference that -- well, 23 we know the occupancy of the inside tasting room. The 24 outside given we have three lavatories upstairs and I think 25 we could host onsite at any one time 150/175 people for a</p> <p>Page 133</p>

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<p>1 single event. You know, and in exploring all the great</p> <p>2 options now between having people brought in on busses so</p> <p>3 there aren't parking impacts or even at two or three people</p> <p>4 a car 150 people is not that many cars and we've got enough</p> <p>5 space for it. So I don't really know. Given we have not</p> <p>6 done -- the only that's that close to that -- and actually,</p> <p>7 Tracy, you said you've been to -- mac and cheese, throughout</p> <p>8 that day we see, you know, 1200 people or 1400 people I</p> <p>9 think are how many tickets they sell. And while I don't</p> <p>10 presume to know if every ticketed guest makes it to every</p> <p>11 winery throughout the day, to have six or seven hours where</p> <p>12 that many people came through the winery just blows my mind,</p> <p>13 because it's not our focus at the winery but I've seen it</p> <p>14 happen and it makes me go, well, I don't really know what</p> <p>15 we're capable of onsite until we start to explore and try.</p> <p>16 But, you know, other than a place potentially for outside</p> <p>17 events would be the only thing that I don't think we have in</p> <p>18 place now. But whether a gazebo or a structure of some kind</p> <p>19 that would be -- I know tents are always kind of a tenuous</p> <p>20 on temporary or permanent gazebos of what you should and</p> <p>21 shouldn't do, but I think we can do a lot more on the</p> <p>22 current site without too much infrastructural development.</p> <p>23 But again that's just my taking a stab at it.</p> <p>24 Q In order to have outside events besides the gazebo, any</p> <p>25 other infrastructure that would be required; restrooms,</p> <p style="text-align: center;">Page 134</p>	<p>1 Q Yeah, the range.</p> <p>2 A I don't know offhand. You know, again that's the crystal</p> <p>3 ball side of given we have not tried to advertise for these</p> <p>4 in any big, you know, let's go, let's do this way of a big</p> <p>5 rollout and marketing material and social media and pictures</p> <p>6 and we haven't had any campaigns to do that kind of thing.</p> <p>7 I don't know what we would be able to do. I know that</p> <p>8 there's a lot of pent up demand as I see it for that. But</p> <p>9 in terms of frequency I'm sure it would be -- well, heck, I</p> <p>10 see Jolly Pumpkin do five between a Friday and a Saturday,</p> <p>11 and it makes me -- again, I don't want to be Jolly Pumpkin,</p> <p>12 that's for sure, but -- All right. Maybe they do a bang up</p> <p>13 business, I just don't want to necessarily -- like I said, I</p> <p>14 don't even go to weddings for friends across the Peninsula</p> <p>15 so I'm like -- it seems very busy, but there are people I'm</p> <p>16 sure that would be on team who maybe would love to host</p> <p>17 people and be able to be great at that for us, so -- but,</p> <p>18 no. I don't know. I mean, we could do anywhere from three</p> <p>19 to five a week. You know, I think you could do, hell,</p> <p>20 seven; you could do one every day if it was Monday, Tuesday</p> <p>21 off and two on Friday and Saturday each. I wouldn't presume</p> <p>22 to know what we can do offhand, but, you know, I think</p> <p>23 whether they're small or grand in scale I think that we</p> <p>24 would have a lot of options. I would like the options to</p> <p>25 explore doing those events and see if we could make it into</p> <p style="text-align: center;">Page 136</p>
<p>1 facilities, parking?</p> <p>2 A Well, I think on any of the days -- I think that our current</p> <p>3 inside restrooms, having three of them like I said, I know</p> <p>4 that they can handle probably as many people as we would</p> <p>5 want. I don't remember what the occupancy and construction</p> <p>6 code rates a bathroom for, I think it's 50 people or 40, so</p> <p>7 it would be at least 120 or 150 having three restrooms,</p> <p>8 three unisex restrooms. But again, I don't remember -- I</p> <p>9 don't know construction code as well as I should, but I do</p> <p>10 know that they make some really attractive -- I think we've</p> <p>11 probably all been in them, I don't want to assume, but</p> <p>12 they've got those mobile beautiful bros that are -- I mean,</p> <p>13 they're not like porta potties of old, they're amazing; they</p> <p>14 have AC in them and they roll those things and rent for the</p> <p>15 day if you had an event. So if we had the need I'm sure we</p> <p>16 could increase our onsite capacity for the day in that</p> <p>17 respect specifically. But, no, I -- I don't know of other</p> <p>18 things that we would do necessarily offhand, no.</p> <p>19 Q Do you have a sense of how frequently you would like to have</p> <p>20 events, private events, wedding events, other type of</p> <p>21 events?</p> <p>22 MR. INFANTE: I'll object beyond the scope. But</p> <p>23 go ahead.</p> <p>24 A Was the question do I know how many offhand I would like to</p> <p>25 do, how frequent?</p> <p style="text-align: center;">Page 135</p>	<p>1 something. Again, the bigger goal here too is if we can</p> <p>2 make more revenue off thing than just the sale of -- you</p> <p>3 know, like I talked about, we've got things we'd like to</p> <p>4 invest in, a lot of them being farming and, you know,</p> <p>5 additional acreage so it's like -- those things are kind of</p> <p>6 tougher to do within the current model and additional</p> <p>7 revenue sources I think would help kind of drive the main</p> <p>8 goal of the farm, so -- that's the goal anyway. That's what</p> <p>9 I hope would happen from doing more events.</p> <p>10 Q How about retail, what are your -- what plans or desires,</p> <p>11 shall we say, would you like for your retail space?</p> <p>12 A Well, I mean, I know that the current amendment 139(b) has</p> <p>13 limits on some of the things that -- you know, coffee cups</p> <p>14 and there are some things they say you can't sell, just</p> <p>15 ancillary related products. So I'd like to be able to do a</p> <p>16 wider range of, you know, potential retail things onsite,</p> <p>17 whether it's -- well, heck, I don't even know. We've always</p> <p>18 kind of stuck pretty close to home on what those things are.</p> <p>19 I see the other people's tasting rooms and again, we're</p> <p>20 getting into the personal viewpoint where I think they've</p> <p>21 got a lot of tchotchkes and things I kind of laugh at. I</p> <p>22 don't want to have high heeled shoe wine holders with</p> <p>23 leopard and that's the thing I just -- I'm like, my God, who</p> <p>24 is buying those. But I know that they have more creativity</p> <p>25 at some operations. And again, maybe we have a retail</p> <p style="text-align: center;">Page 137</p>

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<p>1 director who wants to take that baton and run with it and be 2 great. So I think those kind of things for expanded retail. 3 I can see exploring a lot of those things. I really like 4 that we focus mostly on wine though. I mean, again, our 5 primary driver for retail things onsite are wine and -- and 6 we do have a lot of delicious charcuterie to go, things that 7 we make onsite, trail mixes, that kind of thing, food that I 8 think are really wonderful. That's something else I'd like 9 to do a little bit better at.</p> <p>10 Q Those are things you presently sell in your retail space?</p> <p>11 A Yeah -- well, onsite, yes; yeah.</p> <p>12 Q Charcuterie to go and snacks like to go, take out from --</p> <p>13 A Yeah, like little premade to go bento boxes sort of thing.</p> <p>14 Q Has Two Lads made any changes in furtherance of any of these 15 preference or ideas that you'd like to see take place in the 16 future? Have you mapped out or business planned or done any 17 sort of planning pencil to paper?</p> <p>18 A No; no, not yet.</p> <p>19 Q I'd like to look --</p> <p>20 MS. ANDREWS: What's my time?</p> <p>21 REPORTER: 3:22.</p> <p>22 Q I'd like to look at your Interrogatory response. So I'll 23 mark it as PTP Exhibit 32.</p> <p>24 (Deposition Exhibit 32 marked)</p> <p>25 Q This is Two Lads' response to PTP's first set of</p> <p style="text-align: center;">Page 138</p>	<p>1 A I do.</p> <p>2 Q So what I am seeking to understand is does Two Lads know of 3 a decision or court finding that the zoning ordinance is 4 facially unconstitutional before it filed its Complaint in 5 October of 2020?</p> <p>6 A So facially unconstitutional, meaning as it's written on its 7 face it's unconstitutional? Is that what that means? Can I 8 ask for your definition, or are you asking me?</p> <p>9 Q I'm asking you.</p> <p>10 A Okay.</p> <p>11 MR. INFANTE: I'll object; calls for a legal 12 conclusion.</p> <p>13 Q Let's just be clear, this is your verified response to this 14 Interrogatory; correct?</p> <p>15 A It is, and I think we can tell, Tracy, my legalese is not 16 that great. Okay. So on our ability to freely associate -- 17 I mean, even when we started the winery --</p> <p>18 MR. INFANTE: Not what --</p> <p>19 THE WITNESS: Oh, I'm sorry.</p> <p>20 MR. INFANTE: She's got a different question. 21 She'll get to that one, don't worry.</p> <p>22 THE WITNESS: Got it; got it. Okay.</p> <p>23 Q My question is do you know whether a court declared the 24 zoning ordinance or deemed the zoning ordinance invalid or 25 facially unconstitutional before you filed this lawsuit?</p> <p style="text-align: center;">Page 140</p>
<p>1 Interrogatories. Have you seen this document before?</p> <p>2 A I have.</p> <p>3 Q If you look at the last page of the document you can see 4 your verification.</p> <p>5 A I have; yeah, I can see that.</p> <p>6 Q So it appears you reviewed this before you executed the 7 signature; correct?</p> <p>8 A Yes.</p> <p>9 Q So this Interrogatory asks Two Lads to describe the first 10 instance where the Peninsula Township zoning ordinance 11 allegedly harmed or injured your First Amendment rights. 12 And then it asks without limiting the nature of the harm or 13 injury, what rights were harmed or injured, the date of the 14 injury and the specific action or ordinance that caused the 15 harm. I'm just summarizing, obviously the document speaks 16 for itself. And then you provided a response to that. Do 17 you see that?</p> <p>18 A I do.</p> <p>19 Q And in the response you say, "Subject to and without waiving 20 these objections, the zoning ordinance as challenged in this 21 lawsuit is facially unconstitutional." Do you see that?</p> <p>22 A I do see that, yes.</p> <p>23 Q And then it says, "Therefore, it has injured Two Lads' First 24 Amendment rights since its passage and every day that it is 25 enforced constitutes a new violation." Do you see that?</p> <p style="text-align: center;">Page 139</p>	<p>1 A I don't know of that happening; no, I have no knowledge of 2 that.</p> <p>3 Q So then the second sentence says, "It has injured" -- the 4 zoning ordinance has "injured Two Lads' First Amendment 5 rights since its passage, and every day that it is 6 enforced." And I'd like to understand since its passage. 7 Does it mean like the day it was passed or does it mean 8 sometime after its passage?</p> <p>9 MR. INFANTE: Objection; calls for a legal 10 conclusion.</p> <p>11 A Well, I think even in trying to set up the winery from the 12 beginning and all the decisions we made about which license 13 type to use -- sorry. If this was passed -- I don't know -- 14 whenever the PTZO was passed in that current form, that 139, 15 if it was '99 or '01 --</p> <p>16 Q Or 2004 subject to check?</p> <p>17 A Is that when the current, the 139 amendment?</p> <p>18 Q The 139.</p> <p>19 A Was it '04? Well done.</p> <p>20 Q I mean, subject to check.</p> <p>21 A Is that on here somewhere? So, you know, before we were 22 thinking about doing a winery I don't know that -- you know, 23 before I was even aware of any of it I don't know if it 24 would have impacted me, but I know that from the time that 25 we started to look at a winery and this became the best</p> <p style="text-align: center;">Page 141</p>

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<p>1 option, having to specifically abide by the rules of it for</p> <p>2 the layout of the building, the required square footages, a</p> <p>3 lot of things that were on there are all things that I most</p> <p>4 likely wouldn't have chosen to do but was forced to do by</p> <p>5 the way that it's written, by the way that the PTZO affected</p> <p>6 Two Lads in decision-making about layout of the building,</p> <p>7 how much the square footage can be, those kinds of things.</p> <p>8 So I believe that that's what I mean by that.</p> <p>9 MR. INFANTE: I'm going to place an objection on</p> <p>10 the record that this line of questioning goes beyond the</p> <p>11 scope of the 30(b)(6) Notice. You agreed that you would</p> <p>12 withdraw -- this relates to request I think 16 --</p> <p>13 MS. ANDREWS: This relates to topic number 1.</p> <p>14 MR. INFANTE: Just let me finish my objection,</p> <p>15 please. This relates to request -- topic 16, which is</p> <p>16 knowledge of Two Lads understanding of how and when it has</p> <p>17 been injured by each specific section of the PTZO that it</p> <p>18 challenges in this lawsuit and we agreed to the same, that</p> <p>19 this would be done by Interrogatory and you've served your</p> <p>20 Interrogatory on the parties on this line of questioning.</p> <p>21 So I'll put my objection on the record that this is beyond</p> <p>22 the scope.</p> <p>23 MS. ANDREWS: So I'll just respond for the record</p> <p>24 that topic number 2 is knowledge of Two Lads' responses to</p> <p>25 all Interrogatories, Request for Admission and Request for</p> <p style="text-align: center;">Page 142</p>	<p>1 A Okay.</p> <p>2 Q I'm trying to understand when your First Amendment rights</p> <p>3 were -- I'm trying to understand your response to the</p> <p>4 Interrogatory where you said your First Amendment rights</p> <p>5 have been injured since the zoning ordinances passage and</p> <p>6 every day that it's been enforced constitutes a new</p> <p>7 violation.</p> <p>8 MR. INFANTE: Objection; beyond the scope, calls</p> <p>9 for a legal conclusion.</p> <p>10 A So again, since we started the winery that first day when we</p> <p>11 were trying to make decisions about what the building is</p> <p>12 going to lay out as and how big it can be and what you can</p> <p>13 and can't do and how you need to modify the site or what</p> <p>14 you're going to grow, all those things are driven by looking</p> <p>15 at that 139 ordinance and trying to figure out how we plug</p> <p>16 ourselves into that and try to be successful within that</p> <p>17 framework, and that framework is the one that I believe is</p> <p>18 unconstitutional.</p> <p>19 Q All right. And so specifically it's your testimony that</p> <p>20 since you first applied or decided to apply for a land use</p> <p>21 permit?</p> <p>22 A I guess you could say as soon as we started to look at</p> <p>23 parcels. You know, whatever conversations would have</p> <p>24 occurred to try to figure out which of these licenses;</p> <p>25 whether winery chateau or remote or farm processing; we'd</p> <p style="text-align: center;">Page 144</p>
<p>1 Production served upon Two Lads by PTP in this lawsuit.</p> <p>2 Q And also, your counsel's interpretation of the scope of this</p> <p>3 deposition is inaccurate under case law. But moving on.</p> <p>4 MR. INFANTE: Got a case for me?</p> <p>5 MS. ANDREWS: US v Taylor.</p> <p>6 MR. INFANTE: US v Taylor? Is there a number for</p> <p>7 that.</p> <p>8 MS. ANDREWS: All right. I'm going to do this so</p> <p>9 we can just do it once. I'll give you King v Pratt and</p> <p>10 Whitney 161 F.R.D. 475, Southern District of Florida 1995.</p> <p>11 I'd also reference American General Life Insurance Company</p> <p>12 versus Billard 210 West Law 4367052 Northern District of</p> <p>13 Iowa.</p> <p>14 MR. INFANTE: Can you give -- sorry. 210 West</p> <p>15 Law?</p> <p>16 MS. ANDREWS: 4367052.</p> <p>17 MR. INFANTE: Where was that case?</p> <p>18 MS. ANDREWS: Northern District of Iowa 2010. And</p> <p>19 US v Taylor is 166 F.R.D. 356 Middle District of North</p> <p>20 Carolina 1996.</p> <p>21 MR. INFANTE: Okay. And these cases say what?</p> <p>22 MS. ANDREWS: You can read them. I'm not going to</p> <p>23 waste time in my limited deposition time left.</p> <p>24 Q So, Mr. Baldyga, I'm trying to understand your response to</p> <p>25 the discovery request.</p> <p style="text-align: center;">Page 143</p>	<p>1 like to go under and what parcels were available on the</p> <p>2 Peninsula that would potentially be able to be used for us.</p> <p>3 And then, you know, once we found some how do you lay out</p> <p>4 the building, how do you try to accommodate the minimum</p> <p>5 acreages, all those square footage requirements and all</p> <p>6 that.</p> <p>7 Q And those are restrictions on the site plans and the layouts</p> <p>8 and the square footage of buildings?</p> <p>9 A Right; all the restrictions that are in there, right.</p> <p>10 Q And is it your understanding that those violate your First</p> <p>11 Amendment rights?</p> <p>12 A Yeah. Commercial speech; right? How I choose to lay out my</p> <p>13 building and operate my business, the things I sell, the way</p> <p>14 I that I choose to have a tasting room, the expression of</p> <p>15 architectural. I mean, a lot of those things while public</p> <p>16 health, safety and welfare are definitely things that I</p> <p>17 happily comply with and am courteous to the township. Some</p> <p>18 of those other things I don't think should be under their</p> <p>19 purview, and in fact are out of their purview.</p> <p>20 Q How big your building is?</p> <p>21 A No, like having to layout requiring minimum square footages</p> <p>22 for the tasting room and a maximum of, you know, the layout</p> <p>23 itself. They define how I have to operate within my space</p> <p>24 and the choices that I have to make are examples of</p> <p>25 commercial speech that I wanted more freedom with and wasn't</p> <p style="text-align: center;">Page 145</p>

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1 allowed.  
2 Q So the square footage of your tasting room, is that one of  
3 your concerns?  
4 A Yeah.  
5 Q What message are you trying to convey with the square  
6 footage of your tasting room?  
7 MR. INFANTE: Objection; calls for a legal  
8 conclusion.  
9 A It's everything; right? It's the face of the company. When  
10 they visit they don't see me, I'm in an office dying behind  
11 piles of emails. They come in and they see the wow of the  
12 tasting room that expresses who we are. It is literally the  
13 physical and architectural embodiment of a message and a  
14 feel and with the square footage I guess you could try to  
15 shoehorn something into that space as we have to do the best  
16 with it as we can, but more freedom and more space to be  
17 able to have events, to plan for different retail things,  
18 all things that are examples of commercial speech that are  
19 changed or modified by those restrictions is how I think I  
20 understand that unconstitutional thing.  
21 Q So the township doesn't tell you what you can put up on the  
22 walls or color of paint or anything like that; is that  
23 right?  
24 A Well, they do restrict the things I can sell, so if I wanted  
25 to have other things -- but, no, if I wanted to have

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1 different paint choices, you're right, they don't specify  
2 that.  
3 Q Okay. So retail sales is in the zoning ordinance, and we'll  
4 get to that in a second.  
5 A Okay.  
6 Q I want to understand what other things in terms of how you  
7 lay out your tasting room the township restricts.  
8 A Well, the signs itself is the biggest one right.  
9 Q The signs itself.  
10 A The maximum of it being a --  
11 Q So is there --  
12 MR. INFANTE: Hang on, let him answer the  
13 question.  
14 Q I'm sorry, I thought you were done.  
15 A That it has a maximum quarter of the building size and then  
16 at the time -- I know it's been amended since, but even  
17 requiring the 6,000 square feet for the size of a farm that  
18 we have is a -- I mean, that's a big challenge. I don't  
19 know that that necessarily gets into commercial speech, but  
20 the wines that we're able to do onsite are definitely -- the  
21 things we sell are definitely a function of space  
22 requirements and that having a maximum square footage also  
23 has impacted us, but --  
24 Q So the square footage of the tasting room, the speech  
25 involved in the square footage of the tasting room. Is

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1 there any maximum that the township could set that your  
2 speech rights would be preserved?  
3 MR. INFANTE: Objection; calls for a legal  
4 conclusion, beyond the scope.  
5 A Well, I think it should be the right. I don't know that  
6 there is a maximum, I guess, that -- I wouldn't presume to  
7 know every winery that would follow us or want to do it, so,  
8 no, I don't know of offhand -- I haven't thought of a  
9 maximum number that would be --  
10 Q I guess my question is any limit, is any cap on the size of  
11 the tasting room an injury to your speech right?  
12 MR. INFANTE: Objection; calls for a legal  
13 conclusion.  
14 A Is any cap? I think that any restriction placed on them --  
15 I should say place on us by them within the space of the 139  
16 ordinance under which we exist, I think that was is. In  
17 terms of if you're asking me to presume what is and is not  
18 good language for the township for like what --  
19 Q No.  
20 A Okay. Please.  
21 Q Sorry. I'm just trying to understand if it's -- is it that  
22 it's 1500 square feet that's the limit or 1200 square feet  
23 or is any type of a maximum --  
24 MR. INFANTE: Objection; calls for a legal  
25 conclusion.

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1 Q -- any cap would be an injury to your ability to speak  
2 freely?  
3 A Well, I think -- I mean, from a raw kind of unconstitutional  
4 commercial speech side I think that them dictating the  
5 layout of a building on a cap or a capacity requirement --  
6 Q And by dictating a layout you mean establishing the square  
7 footage cap?  
8 A That's right, yeah. I mean, because, you're right, they  
9 didn't say specifically say here's where you have to put  
10 tables and here's where the restrooms -- they didn't  
11 necessarily do that, we were allowed the --  
12 Q So they didn't necessarily do that or they didn't do that?  
13 A No, I don't think they have input on those things, they just  
14 have the capacity -- or I should say the square footage  
15 requirements as it relates to the upper level of your  
16 building, your above ground square footage, yeah.  
17 Q So then I'd like to understand what you mean by "every day  
18 that it is enforced." What does the term "enforced" mean?  
19 MR. INFANTE: Objection; calls for a legal  
20 conclusion, beyond the scope.  
21 Q In your response to the Interrogatory.  
22 A Well, I mean, from that first go -- right? -- it is the fact  
23 that we weren't able to be creative or change that above  
24 ground square footage from the get-go has always held us  
25 back from having a different or larger or increases space

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1 or -- we built a building to a size that is undersized for  
2 what I think we should do or want to be able to do and we've  
3 been restricted by it every day since, but -- hopefully we  
4 can change that.  
5 Q The Interrogatory response includes two bullet points, do  
6 you see those two?  
7 A Yes.  
8 Q The first says, "Section 6.7.2(19)(a) operates as an  
9 unconstitutional restriction on Two Lads ability to free  
10 associate." Do you see that?  
11 A Uh-huh; I do.  
12 Q So let's look at the zoning ordinance.  
13 A Yes.  
14 Q 7.2(19)(a) there are -- I believe I counted seven sentences  
15 in that provision. Is there something in particular --  
16 should we go through them each individually or do you want  
17 to tell me what in particular within this section, the  
18 statement of intent section, is -- operates as an  
19 unconstitutional restriction on Two Lads ability to freely  
20 associate?  
21 A Sure.  
22 MR. INFANTE: Objection; calls for a legal  
23 conclusion, beyond the scope.  
24 A I'm not sure, but I'm going to give it a go then -- sorry.  
25 Q Are you changing your answer in light of counsel's

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1 objection?  
2 A No; no, I just was -- I'm sorry. I understand now that  
3 there are times that humor is not appreciated. I'll try to  
4 be serious about that, that's my fault. Yeah, so the second  
5 sentence where it says that,  
6 "A farm processing facility includes -- use  
7 includes retail and wholesale sales of fresh and  
8 processed agricultural produce but is not attended to  
9 allow a bar or restaurant on agricultural properties  
10 and the township shall not approve such a license."  
11 A restaurant I think would be a fantastic ancillary use to a  
12 farm process facility to be able to offer a little bit more  
13 food if they want to prepare from raw, and I think that's  
14 something that we'd like to explore over time is offer any  
15 greater kind of expanded food use. I know the restaurant  
16 side of it is sort of a challenging -- I've heard the words  
17 small plates thrown around for years, that those are  
18 acceptable, and seeing cheese and meats, that those are  
19 okay, but that preparing full meals is not. While I don't  
20 know that we would cook monster meals to have, you know, top  
21 to bottom in a rotating thing we would like to have expanded  
22 food operations and if that's a restaurant it would be  
23 defined by like a township official or perhaps by someone  
24 else. I guess I find -- I have a problem with that  
25 section -- that sentence.

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1 Q And what I'm trying to understand is the allegations that  
2 this section operates as a unconstitutional restriction on  
3 the ability to freely associate.  
4 A Sure.  
5 Q So what I'm trying to understand is the free association,  
6 the -- you know, what do you understand free association to  
7 mean?  
8 MR. INFANTE: Objection; calls for a legal  
9 conclusion.  
10 A We can choose to interact with any group or person as we  
11 would see fit on our site of our choosing.  
12 Q So which people are you not able to interact with on your  
13 property due to that section?  
14 MR. INFANTE: Same objection.  
15 A I was going to say hungry people, but, again, I know that  
16 the -- see, I got smiles that -- I'm sorry. Well,  
17 specifically for food association I would go down to the  
18 activities sentence -- and I don't know which number that  
19 is -- it's activities such as weddings, receptions and other  
20 social functions for hire are not allowed. However,  
21 participation in approved township-wide events is allowed.  
22 So that to me denies my ability to freely associate with  
23 groups and people, you know, the social function for --  
24 weddings, again -- well, we talked about it. I think  
25 weddings could be a beautiful addition to what we do, so --

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1 Q So are the groups that Two Lads would like to associate with  
2 basically clients?  
3 MR. INFANTE: Objection; calls for a legal  
4 conclusion.  
5 A What's your definition of a client?  
6 Q People who come to the facility as customers.  
7 A Well, then every person at the winery we see is a client or  
8 potential client I guess, yes.  
9 Q And I'd like to distinguish that from people who Two Lads  
10 associates with social or economic or political purposes.  
11 Tell me about your interactions -- tell me about Two Lads'  
12 interactions with its clients in terms of how it interacts  
13 with its clients.  
14 MR. INFANTE: Objection; vague.  
15 Q How do Two Lads employees interact with Two Lads guests?  
16 MR. INFANTE: Same objection.  
17 A Well, they're greeted onsite, hopefully in a friendly and  
18 welcoming manner. We talk about our farming that we do  
19 onsite. We offer them, you know, sitting inside our  
20 outside, glasses, flights, we talk about those wines with  
21 them. We offer them tours. We offer them private tastings  
22 if they would like to have a one-on-one with a team member  
23 who, you know, conducts top to bottom their tasting directly  
24 with them as opposed to, you know, flights dropped off and  
25 then the guests get to sit and talk with each other in that

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1 time. We offer retails sales of those things and engagement  
2 in that area. Yeah. Does that answer your question?  
3 Q It sort of does.  
4 A I mean, not limited to that, but I'm sure we interact a lot  
5 of ways with people that just come and say, "My God do you  
6 ever get tired of the view?" And then we talk about the  
7 farming. And some of them just want to come and see the  
8 space or see the view and they drive off and don't try  
9 anything, so we see everything I think.  
10 Q So I'm trying to understand who -- who the zoning ordinance  
11 doesn't presently let Two Lads associate with or interact  
12 with or engage with.  
13 MR. INFANTE: Objection; calls for a legal  
14 conclusion.  
15 A It doesn't let us perform those social functions with those  
16 members that we'd like to do, so we're not able to host them  
17 specifically for those events. They cannot -- with their  
18 group of 20, if what they'd like to do with their group of  
19 20 is come and have the space to do this and set aside and  
20 be there from 7:00 to 9:00 p.m. for a wedding ceremony of  
21 some kind we have to say, "I'm sorry, you can't come here,  
22 we're not allowed to do that."  
23 Q So would you agree with me that Two Lads is allowed to  
24 invite those 20 people in to -- in fact does invite those 20  
25 people into the winery for bubbly and tastings? It's the

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1 dinner that you can't -- right? I mean, we looked at Mr.  
2 Hunter's emails where he said come in after the wedding and  
3 have a glass, a tasting.  
4 A So it's the event itself --  
5 Q I'm trying to understand is it the we are not allowed to  
6 have those 20 people or is it we're not allowed to have  
7 those 20 people for a paid dinner event?  
8 A Well, for the 20 people that we talked about we don't even  
9 do that anymore so it's down to 12.  
10 Q Right.  
11 A So if a large group wanted to come in they would have to  
12 make a reservation of some kind and, you know, again, either  
13 earlier in the day or at the end of the day outside of the  
14 normal hours if we agreed and wanted to host a group for  
15 that glass, you know, for the things that we do. But if  
16 they wanted to specifically have space carved out for a  
17 social event for hire, like a wedding specifically, you  
18 know, given that's kind of the -- you know, the no-no word,  
19 if they wanted to do a wedding we are not able to associate  
20 with those people as we'd like.  
21 Q And is it your understanding that it's the wedding for hire  
22 part that is limited by the zoning ordinance?  
23 MR. INFANTE: Objection; calls for a legal  
24 conclusion.  
25 A Yeah, I mean, I assume that when it says weddings are not

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1 allowed -- can I read it; is that okay?  
2 Q Yeah.  
3 A "Activities such as weddings and other social functions,  
4 receptions, are not allowed."  
5 Q So it's your understanding that -- you know what, I don't  
6 need to understand your -- is it your understanding that if  
7 a -- that the zoning ordinance restricts people from  
8 attending the room for free versus being paid to come in the  
9 room?  
10 MR. INFANTE: Objection; calls for a legal  
11 conclusion.  
12 A I see it's the for hire thing. I don't think -- I mean,  
13 social functions for hire, I believe that is talking to all  
14 those things; activities such as. But I can't think of any  
15 time -- well, I shouldn't say that. My understanding is  
16 that all of these events; weddings, receptions, the social  
17 functions for hire; are not allowed. I'm sorry, so -- I  
18 don't want to suppose.  
19 Q And I guess I'm trying to understand if that prevents the  
20 people who are attending the wedding from coming into your  
21 winery.  
22 A What wedding?  
23 Q Let's say --  
24 A Are you saying if we had a free -- we could offer a  
25 wedding --

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1 Q No; no; no.  
2 A Okay. Please.  
3 Q Let's say my friend Mary is getting married on the Peninsula  
4 at Chateau Chantal, does anything stop any or all of her  
5 attendees from also coming to Two Lads?  
6 A They could visit as tasting room guests and we would try to  
7 accommodate them as any guest, yes.  
8 Q The zoning ordinance does not prevent that?  
9 A Not that I'm aware of, no.  
10 Q Is there any other part of section 7.2(19) that Two Lads --  
11 that injures Two Lads' ability to associate freely?  
12 MR. INFANTE: Objection; calls for a legal  
13 conclusion.  
14 A I don't think so. I think that's kind of the thrust of it.  
15 Q All right. So then the next page of your Interrogatory the  
16 first bullet, section --  
17 MS. ANDREWS: What is our time?  
18 REPORTER: 3:47.  
19 Q I'm going to switch gears. I might come back to a topic. I  
20 just want to -- I'm not going to ask you about that bullet  
21 point just yet.  
22 A Okay.  
23 Q I'm going to ask you about the next sentence that is  
24 underneath it that starts with "Two Lads has attempted."  
25 A Yes.

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40 (Pages 154 to 157)

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

DEPOSITION OF CHRISTOPHER BALDYGA

1 MR. INFANTE: I assume you don't mind if I point?  
 2 Just trying to be helpful.  
 3 Q "Two Lads has attempted numerous times to negotiate changes  
 4 to these ordinances with Peninsula Township and fix these  
 5 unconstitutional provisions." Do you see that?  
 6 A I do.  
 7 Q All right. So tell me about the first time you remember Two  
 8 Lads attempting to negotiate changes to the ordinances.  
 9 A The first time I can recall would have been helping Jim  
 10 Krupka write the Winery Bill of Rights documents that was  
 11 given to the township I want to say back in May of '08. So  
 12 I think he was writing that over the winter and asking for  
 13 input from winery and stakeholders on the Peninsula and what  
 14 things we all thought could be part of a kind of unified  
 15 document or unified winery ordinance. So -- and beyond -- I  
 16 don't know how deep you want to go, but I'd say it's -- I've  
 17 been personally involved just at every chance I can get on  
 18 winery rewrite subcommittees and attended meetings and have  
 19 spoken with every planner throughout the years and offered a  
 20 lot of input with Leonard and Reardon and Brian and Randy  
 21 and -- it has been a driving -- a driving force for me to  
 22 try to make sure that we can get change.  
 23 Q Leonard and Randy -- I'm sorry, can you --  
 24 A Michelle and Brian. Brian was I think the briefest of the  
 25 planners that we had. He was here for I want to say it was

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1 like 14 months or something. But the problem that we've  
 2 seen -- and this is probably one of the most frustrating  
 3 things -- I'm pretty calm as a person, but every time we  
 4 would get pretty developed and down a road with those  
 5 rewrite subcommittees and then with those planners they  
 6 would develop a -- you know, tiers one through four from a  
 7 ten acre winery that could exist and be just a beautiful  
 8 little facility; no guests, no public, but a person could do  
 9 on their farm that which they wanted to do and they had a  
 10 right to do. And then two, three, four that all escalated  
 11 with size, you know, of acreage for the parcel and setbacks  
 12 and all that jazz. You know, they would leave for whatever  
 13 reason and that conversation got reset to zero. It was like  
 14 every new planner that came in wanted to start the  
 15 conversation fresh and they'd say, "Sit down. What is  
 16 it" -- "I know you were talking with the previous, tell me  
 17 what" -- and it was like we restarted from zero four times  
 18 since I've been here. And we were talking with Gordie, I  
 19 guess you could put him on that list too, the fifth planner.  
 20 And it was like to have to reset from zero and to have them  
 21 think they all had to rebuild the wheel and go ahead and get  
 22 a new subcommittee together and start these new things and  
 23 different opinions counsel as that changed it was just  
 24 amazingly frustrating over those years. And like I said,  
 25 I'm pretty chill but that was the kind of thing where

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1 eventually I thought, my God, this is never going to change,  
 2 this is unbelievable, we need help. Sorry, I ranted.  
 3 Q What kind of help?  
 4 A Well, help from -- I mean, so that's -- that's why we  
 5 actually went for -- that was one of the things for me I  
 6 should say. I shouldn't say "we," I don't speak for anybody  
 7 other than me. That's why I decided to join the lawsuit, is  
 8 it seemed to me that legal help/outside help might be the  
 9 only way to actually effect lasting change, you know, in a  
 10 way that would get the township to listen. It's like your  
 11 conversations and -- I believe very much in Jim Krupka's  
 12 advice of -- he was the CEO here for years but he was a big  
 13 member of the church before that too and he used to speak  
 14 and give the Latin mass and all that stuff. He was nicer to  
 15 everybody, smiles all the way around, he didn't get mad --  
 16 you know, because we also had O'Keefe who would thump the  
 17 table and just yell and get kicked out of meetings because  
 18 he would cite sections of the CFR and it was like I saw that  
 19 there were two ways to approach this. There's Ed's fiery  
 20 way, which doesn't change anything and galvanized people  
 21 against him. And then there was Jim, and Jim was always  
 22 honey, always a smile, always nice. So that's what I wanted  
 23 to do is not get up there and yell and scream. I wanted to  
 24 work with all these people and try to make change, but every  
 25 time it restarted it was a bit frustrating, but --

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1 Q The sections that you were seeking to change through the  
 2 committee rewrites, when was the first committee to your --  
 3 you said 2008, that was the Winery Bill of Rights. When was  
 4 the first committee, to your recollection?  
 5 A Boy, it seems like almost -- I can only remember three  
 6 subcommittees that were actually made. I can remember one  
 7 with Dan, one with Michelle and one with Randy. I don't  
 8 know that they actually conveyed a subcommittee with Gordon  
 9 back in the day in '08. I know that we sat in meetings in  
 10 one of those small -- the rooms that -- the first one to the  
 11 left when you go into the township hall and that we --  
 12 people were spilling out the doorway. I sat in the hallway  
 13 and they were, "I'm so sorry." I said, "No, as long as I  
 14 can hear the conversation," because you weren't allowed to  
 15 interject or offer input, you just had to listen to them  
 16 talk about what they may or may not change.  
 17 Q Who is "them"?  
 18 A I mean, again, there were so many people in there a lot of  
 19 them couldn't fit.  
 20 Q So let's back up. Which planner are you talking about?  
 21 A That was Gordon I believe at that time.  
 22 MR. INFANTE: Gordon --  
 23 A Gordon Hayward.  
 24 Q Gordon Hayward.  
 25 A Not playing Uecker.

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1 MR. INFANTE: It's confusing.  
2 Q And are you talking about approximately in response to the  
3 2008 Bill of Rights, is that the time line you were talking  
4 about?  
5 A Yes; that would have been probably spring of '08, yes.  
6 Q And what were the changes that you were interested in  
7 pursuing or seeking or obtaining at that point?  
8 A Basically everything that we -- I mean, at that point we'd  
9 already invested in the building so it was a little  
10 challenging to say now that we've put all the money into  
11 this building I want to change the building, because you  
12 were now, you know, too keep in the building. I should say  
13 we could add on the future -- right? -- but -- so that part  
14 was a little out the window. But it was everything from the  
15 restrictions on retail, the things that we, you know,  
16 couldn't offer for sale versus the other wineries around us  
17 that had expanded offerings. To the fact that we could only  
18 sell Old Mission Peninsula wine. I mean, it was basically  
19 everything in the Complaint.  
20 Q Was it events, social events?  
21 A Yeah, social events, functions, the weddings, the things  
22 that we've discussed. Yeah, I think -- I mean, it's  
23 basically the whole farm processing facility and how do  
24 we -- even then we were talking about a single winery  
25 ordinance but realized it was probably impractical and if


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1 or re-adoption of the master plan he was I'm sure going, oh,  
2 my gosh, we can't -- this ag section, if we try to tackle  
3 this now in the middle of this thing it's never going to get  
4 anywhere so I think that was put on pause because it was a  
5 whole different animal and it was a little more contentious  
6 as far as it had gone through in '04 and then '99 and '01.  
7 So I think it was something that was daunting to them too.  
8 MS. ANDREWS: What's my time?  
9 REPORTER: 3:55.  
10 MS. ANDREWS: Okay. If you will give me about 30  
11 seconds to spin through my notes and talk with my  
12 co-counsel. You are welcome to stick around and try to read  
13 our lips, but --  
14 (Off the record)  
15 MS. ANDREWS: Thank you. I don't have any further  
16 questions. Thank you very much for your time today and your  
17 candor, Mr. Baldyga, and nice to meet you.  
18 (Deposition concluded at 12:58 p.m.)  
19  
20 -0-0-0-  
21  
22  
23  
24  
25

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1 there could be a way to structure it to still meet the  
2 demands of a growing wine industry out in Old Mission.  
3 Q In the subsequent committees or efforts --  
4 A Yes.  
5 Q -- under Dan, Michelle or Randy, would you say that the same  
6 provisions were being discussed, the retail, the social  
7 events, the Old Mission Peninsula wine?  
8 A Yeah. I mean, with every one we talked about -- now, it  
9 wasn't -- it was everything from how do we mix the winery  
10 chateau provisions with, you know, farm processing and  
11 remote tasting room and how do we scale them appropriate so  
12 that we can make new ordinances that would encompass what  
13 wineries can currently do and what they might want to do in  
14 the future as again they grow. So I think they were  
15 mindful -- you know, each planner I thought had -- some were  
16 doing, you know, good work, some were -- I don't know --  
17 more proactive in looking at growth and others were just  
18 trying to address the current needs of that group of people.  
19 So, you know, everybody had a different take on it, a  
20 different opinion. Like I said, Dan had the four tier  
21 approach. Michelle Reardon had the same thing, I think it  
22 was, you know, three different winery types; small, medium,  
23 large. Randy had the same of how do we amend the current  
24 language, because I think that was very close to a time  
25 of -- I'm remembering it was close to a massive like rewrite

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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 164 pages, is a  
8 complete, true, and correct record of the testimony of  
9 Christopher Baldyga, given in this case on July 11th, 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

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EXHIBIT 37

PTP Motion for Summary Judgment

October 6, 2023

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From 3842228 Page: 1/1 Date: 8/8/2007 3:20 PM

DEPARTMENT OF THE TREASURY - ALCOHOL AND TOBACCO TAX AND TRADE BUREAU		1. PERMIT NUMBER MI-W-15058
<b>BASIC PERMIT</b> (Under Federal Alcohol Administration Act)		2. DATE OF PERMIT AUG 08 2007.
5. NAME AND ADDRESS OF PERMITTEE (Number and street, city or town, State and Zip Code)		3. REGISTRY NUMBER (if applicable) BWN-MI-15053
Two Lads, LLC dba Two Lads 16985 Smokey Hollow Road Traverse City, MI 49686		4. DATE OF APPLICATION APRIL 9, 2007
6. 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.) 2 Lads Winery Two Lads Winery		
7. 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:		
a. <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,		
b. <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,		
c. <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,		
d. <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.		
<p>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.</p> <p>This basic permit is effective from the date shown above and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated.</p> <p>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 District Director, Alcohol and Tobacco Tax and Trade Bureau.</p> <p>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 NATIONAL REVENUE CENTER OR PUERTO RICO FIELD OFFICE WITHOUT DELAY.</p>		
THIS IS AN		<input checked="" type="checkbox"/> ORIGINAL PERMIT
REASON FOR AMENDMENT		<input type="checkbox"/> AMENDED PERMIT
SIGNATURE AND TITLE OF AUTHORIZED TTB OFFICIAL <i>John J. Manfreda</i> FOR JOHN J. MANFREDA, ADMINISTRATOR		DATE OF AMENDMENT
TTB F 5170.2 (1/2005)		

Fax Sent via TTB Faxserver

PTP0003824

EXHIBIT 37

PTP Motion for Summary Judgment

October 6, 2023

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# STATE OF MICHIGAN LIQUOR CONTROL COMMISSION

EFFECTIVE MAY 1, 2008 -- EXPIRES APRIL 30, 2009, UNLESS SPECIFIED OTHERWISE HEREON 04-16-2008

THIS IS TO CERTIFY THAT A LICENSE IS HEREBY GRANTED TO THE PERSON(S) NAMED, TO SELL ALCOHOLIC LIQUOR IN ACCORDANCE WITH THE MICHIGAN LIQUOR CONTROL CODE AND ADMINISTRATIVE RULES GOVERNING THE TYPE OF LICENSE SHOWN HEREON.

THIS LICENSE is granted in accordance with the provisions of Act 58, of Public Acts of 1998, and shall continue in force FOR THE PERIOD DESIGNATED unless suspended, revoked or declared null and void by the Liquor Control Commission. IN WITNESS WHEREOF the LIQUOR CONTROL COMMISSION has caused these presents to be duly signed and sealed, and the said Licensee has caused these presents to be duly signed



## 2008 - 2009 LICENSE

DEPARTMENT OF LABOR &  
ECONOMIC GROWTH

Liquor Control Commission

LICENSEE(S) SIGN BELOW

(L.S.)

(L.S.)

BUSINESS ID:

200216

LICENSE NUMBER:

SW/M 167223-2008

TWO LADS

TWO LADS, LLC

LLC - ACT

16985 SMOKEY HOLLOW

TRAVERSE CITY, MI 49686

PO:

PERMITS:

G - 200216  
GR TRAVERSE  
G - 139.0  
PENINSULA TWP

PTP0003825



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

\* \* \* \* \*

In the matter of the request of )

**TWO LADS, LLC** )

16985 Smokey Hollow Rd. )

Traverse City, MI 49686 )

Peninsula Township )

Grand Traverse County )

Request ID No. 2006-07460

At the August 13, 2020 meeting of the Michigan Liquor Control Commission in  
Lansing, Michigan.

PRESENT: Pat Gagliardi, Chair  
Dennis Olshove, Commissioner  
Geraldyn A. Lasher, Commissioner

**OUTDOOR SERVICE PERMISSION APPROVAL ORDER**

Two Lads, LLC ("licensee") has filed an application for authorization for the outdoor sale, service, and consumption of alcoholic beverages in two (2) areas with area #1 measuring up to 260' x 145', irregular in shape, located directly adjacent to the licensed premises and which will be well-defined and clearly marked and area #2 measuring up to 130' x 85', irregular in shape, located 125' from the licensed premises and which will be well-defined and clearly marked.

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor



Request ID No. 2006-07460  
Page 2

within this state, including the manufacture, importation, possession, transportation and sale thereof.

Commission records reflect the licensee is the holder of 2020 Small Wine Maker and Direct Shipper licenses with On-Premises Tasting Room Permit, Sunday Sales Permit (A.M.) and Entertainment Permit located at the above noted address.

The requirements for outdoor service pursuant to rule R 436.1419(1) are that the licensee shall not have outdoor service without the prior written approval of the Commission, and that the on-premises licensee shall ensure that the area is well-defined and clearly marked and they shall not sell or allow the consumption of alcoholic liquor outdoors, except in the defined area.

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

THEREFORE, IT IS ORDERED that:

A. Approval and completion of this request is subject to receipt of the following:

**1. Final inspection by Enforcement to determine the Outdoor Service area has been constructed as proposed and is well-defined and clearly marked.**

B. The licensee's request for authorization for the outdoor sale, service, and consumption of alcoholic beverages two (2) areas with area #1 measuring up to 260' x 145', irregular in shape, located directly adjacent to the licensed premises and which will be well-defined and clearly marked and area #2 measuring up to 130' x 85', irregular in shape, located 125' from the licensed premises and which will be well-defined and clearly marked is APPROVED subject to the following:

**1. The outdoor service area approved by the Commission is part of the licensed premises and the licensee must comply with all requirements of the Michigan Liquor Control Code and administrative rules in relation to the approved outdoor service area.**

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2. The licensee will not permit the sale, service, or consumption of alcoholic liquor outdoors, except in the well-defined and clearly marked area pursuant to the provisions of administrative rule R 436.1419(1) and (2).
  3. The licensee shall not allow alcoholic beverages purchased for consumption in this proposed Outdoor Service area to be removed from and taken to any adjacent unlicensed area(s).
  4. The licensee shall take all necessary actions to ensure the health, safety and welfare of all members and guests.
  5. The licensee shall not permit patrons to transport alcoholic beverages to and/or from the current interior licensed premises to the outdoor service area.
  6. The licensee is prohibited from allowing the sale, service, possession or consumption of alcoholic beverages in any portion of the approved outdoor service area designated for the playing of sporting activities or for sporting events, including any break or intermission.
- C. Pursuant to administrative rule R 436.1050, this approval is valid for two (2) years from the date of this approval order unless the Commission has been provided with a notice of pending litigation involving the application.
- D. The licensee has a continuing duty to provide the commission with up-to-date contact information and must notify the Commission in writing of any changes to its mailing address, phone numbers, electronic mail address, and other contact information it provides the Commission, pursuant to administrative rule R 436.1048(2).
- E. Under administrative rule R 436.1003(1), 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. Under administrative rule R 436.1003(2), a licensee shall not use a license at the licensed premises unless a temporary or permanent certificate of occupancy has been issued by the local unit of government having jurisdiction over the location of the licensed premises or the licensed premises complies with administrative rule R 436.1003(1). Approval by

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the Michigan Liquor Control Commission does not waive these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals before opening the business for operation.

- F. Failure to comply with all laws and rules may result in the revocation of the approval contained in this order.

MICHIGAN LIQUOR CONTROL COMMISSION



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Pat Gagliardi, Chair



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Dennis Olshove, Commissioner



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GERALYN A. LASHER, Commissioner

J2

Date Mailed:

## Michael Hunter

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**From:** Michael Hunter  
**Sent:** Monday, June 30, 2014 2:34 PM  
**To:** eczaja1 .  
**Subject:** RE: Rehearsal Dinner?

Erica,

Thanks so much for thinking of us! Unfortunately, our local township zoning doesn't permit us to host private events such as weddings or rehearsal dinners. I might suggest checking with either Chateau Grand Traverse or Chateau Chantal, who both are permitted to do events (to the best of my knowledge, anyway!). Best of luck, and we'd still love for you to stop by – we could easily accommodate a group of up to 20 for a tasting (or a glass of bubbly!).

### Michael Hunter

Tasting Room Manager/Retail Director  
2 Lads Winery  
[mike@2lwinery.com](mailto:mike@2lwinery.com)  
2LWinery.com  
231.223.7722

**From:** eczaja1 . [mailto:eczaja@gmail.com]  
**Sent:** Sunday, June 29, 2014 10:03 PM  
**To:** info  
**Subject:** Rehearsal Dinner?

Hello,

I am wondering if you make your facility available for private events after hours - if yes, is 2 Lads available for a rehearsal dinner at 6pm on Friday, August 1, 2014? If so, could you please tell me about your policies and pricing?

Thank you!

Erica (Maid of Honor, Sister of the Bride)



**Michael Hunter**

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**From:** Michael Hunter  
**Sent:** Monday, July 21, 2014 11:31 AM  
**To:** Samantha Pavlick  
**Subject:** RE: Wedding info

Samantha,

Thanks for thinking of us! Unfortunately, we're one of the wineries that are unable to host weddings on our site. I might suggest calling either Chateau Grand Traverse or Chateau Chantal on the Old Mission peninsula, or Brengman Brothers on Leelanau. Best of luck, and congratulations!

Michael Hunter  
Tasting Room Manager/Retail Director  
2 Lads Winery  
mike@2lwinery.com  
2LWinery.com  
231.223.7722

-----Original Message-----

From: Samantha Pavlick [mailto:samanthapavlick@aol.com]  
Sent: Monday, July 21, 2014 11:28 AM  
To: info  
Subject: Wedding info

Hello,

Do you ever host weddings? I know certain wineries/vineyards are not allowed, so I wasn't sure what your restrictions/policies are.

If so, I would like to inquire about booking options, cost, policies you may have, etc.

Thank you,  
Samantha Pavlick

## Michael Hunter

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**From:** Kate &Kevin <kmsquared2015@gmail.com>  
**Sent:** Tuesday, August 12, 2014 4:04 PM  
**To:** info  
**Subject:** Re: Information Needed

Michael,

Just to be clear, we were inquiring about a rehearsal dinner not a wedding.

Do you have pricing information regarding the wine tasting if a rehearsal dinner is not something you can accommodate?

Also, we are looking for places to take photos the day of the wedding. Is this something we can do at your location?

Thanks.

Kate

On Tue, Aug 12, 2014 at 11:44 AM, info <[info@2lwinery.com](mailto:info@2lwinery.com)> wrote:

Kate,

Congratulations, and thanks so much for thinking of us! Unfortunately, we are unable to private events like weddings on the property due to local township restrictions. There are a few other wineries on the peninsula that might be able to accommodate your request; I'd suggest checking with Chateau Chantal ([231.223.4110](tel:231.223.4110)) or Chateau Grand Traverse ([231.223.7355](tel:231.223.7355)). That said, we can accommodate groups of up to 25 for a tasting or glasses of wine in the tasting room. We'd love to schedule you for a wedding tasting or toast!

**Michael Hunter**

Tasting Room Manager/Retail Director

2 Lads Winery

[mike@2lwinery.com](mailto:mike@2lwinery.com)

2LWinery.com

[231.223.7722](tel:231.223.7722)

**Michael Hunter**

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**From:** Michael Hunter  
**Sent:** Wednesday, January 28, 2015 11:36 AM  
**To:** Meg Rozema  
**Subject:** RE: Character Occasions Event

Meg,

Congratulations, and thanks so much for thinking of us! While we don't host weddings or receptions on site, we'd be happy to host a group of 20-30 for a tasting or a sparkling wine toast. We've often done this for wedding parties either before or after the actual ceremony/reception. Please let me know if this is something you might like to schedule. Best of luck with your planning!

**Michael Hunter**

Tasting Room Manager/Retail Director

2 Lads Winery

[mike@2lwinery.com](mailto:mike@2lwinery.com)

2LWinery.com

231.223.7722

**From:** Meg Rozema [mailto:info@characteroccasions.com]  
**Sent:** Wednesday, January 28, 2015 10:52 AM  
**To:** info  
**Subject:** Character Occasions Event

Hello!

I am curious if you do wedding ceremonies at your location at all? We visited your location in October and thought the views were stunning. We have 20-30 people and are simply looking for a ceremony location only.

Please let me know if this is something that you do and if so, what costs are involved and what's included.

Thank you!

--

Meg Rozema

616-528-0782

Characteroccasions.com

Facebook.com/characteroccasions

**Michael Hunter**

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**From:** Michael Hunter  
**Sent:** Tuesday, September 29, 2015 11:17 AM  
**To:** andyhowell7@gmail.com  
**Subject:** Re: Wedding inquiry

Andy,

Congratulations on the engagement! We're so glad to hear that you enjoyed your experience here.

Unfortunately, we aren't able to host weddings or private events on site. If you're looking for somewhere on Old Mission peninsula, I'd suggest giving Chateau Chantal a call - I believe they're able to host parties of up to 100 people. On Leelanau peninsula, Brengman Brothers winery specializes in weddings and events. Best of luck to you both!

Michael Hunter  
Retail Director  
2 Lads Winery  
231.223.7722

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**From:** Andy Howell <andyhowell7@gmail.com>  
**Sent:** Monday, September 28, 2015 1:48 PM  
**To:** info  
**Subject:** Wedding inquiry

Hi!

I'm just recently engaged, and my fiancée and I are looking to have our wedding up in Traverse City. We stopped by your winery when we were there on vacation, and loved it! Was just curious if you guys happened to host weddings as a venue or not?

Thanks!

Andy Howell

**Michael Hunter**

---

**From:** Michael Hunter  
**Sent:** Saturday, November 28, 2015 10:24 AM  
**To:** meghan.e.lindsay@gmail.com  
**Subject:** Re: Wedding venue availability

Meghan,

Thanks so much for thinking of us! Unfortunately, we do not rent out the winery as an event venue. We can host groups of up to 20 for a tasting or a celebratory glass of wine, however! (It's a popular option for wedding parties.) If you're looking for a winery venue for a wedding, I'd recommend giving the folks at Bregman Brothers a call - I know they have a venue space that's just beautiful. Best of luck in your search!

Michael Hunter  
Retail Director  
2 Lads Winery  
231.223.7722

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From: Meghan Lindsay <meghan.e.lindsay@gmail.com>  
Sent: Friday, November 27, 2015 11:06 AM  
To: info  
Subject: Wedding venue availability

Good morning!

I am recently engaged and wondering if you have information and/or details for 2 Lads as a wedding venue. We would also be interested in viewing it this Sunday if you have availability.

Thank you!  
Meghan

Sent from my iPhone

## Michael Hunter

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**From:** Michael Hunter  
**Sent:** Friday, March 11, 2016 11:42 AM  
**To:** Aftyn Johnson  
**Subject:** RE: Wedding!

Aftyn,

Thanks for getting in touch! Unfortunately, we aren't able to accommodate weddings or receptions on the winery property. We can, however, have groups of up to 20 in for a tasting or glasses of wine – it's a popular option for bachelorette or wedding parties. Please let me know if you'd be interested in scheduling one of those experiences, and I'd be happy to give you more details!

Cheers,

**Michael Hunter**  
Tasting Room Manager/Retail Director  
2 Lads Winery  
[mike@2lwinery.com](mailto:mike@2lwinery.com)  
2LWinery.com  
231.223.7722

**From:** Aftyn Johnson [mailto:[ajohnson@brps.org](mailto:ajohnson@brps.org)]  
**Sent:** Friday, March 11, 2016 10:41 AM  
**To:** info  
**Subject:** Wedding!

Hello!

My best friend is interested in using your venue for her upcoming wedding. Do you have any weekends available in September or October? If so please let me know ASAP because she will be in MI next weekend and we would love to come look!  
Thank you so much!

Aftyn Johnson



## Michael Hunter

---

**From:** Cara Chrisman <cjchrisman@gmail.com>  
**Sent:** Tuesday, August 23, 2016 3:57 PM  
**To:** Michael Hunter  
**Subject:** Re: Bridal Brunch?

Hi Michael,

Thanks for letting me know! We're finalizing details and will definitely let you know if that works out as it would be great!

Best,  
Cara

On Tue, Aug 23, 2016 at 1:47 PM, Michael Hunter <[mike@2lwinery.com](mailto:mike@2lwinery.com)> wrote:

Cara,

Thanks for getting in touch! We'd love to reserve a time for your group to do tasting, but unfortunately we're unable to accommodate a brunch like you're proposing. Some of the larger wineries on Old Mission peninsula (Chateau Grand Traverse and Chateau Chantal, for instance) may be able to schedule an event of this type – I'd suggest giving them a call. If doing a tasting here would still be on your agenda, just let me know!

**Michael Hunter**

Tasting Room Manager/Retail Director

**2** Lads Winery

[mike@2lwinery.com](mailto:mike@2lwinery.com)

2LWinery.com

[231.223.7722](tel:231.223.7722)

**From:** Cara Chrisman [mailto:[cjchrisman@gmail.com](mailto:cjchrisman@gmail.com)]  
**Sent:** Tuesday, August 23, 2016 11:20 AM  
**To:** info  
**Subject:** Bridal Brunch?

Hello,

I was hoping to find out if there would be any way to host a bridal brunch at Two Lads? I am hoping to host one on Friday, Sept 9th. While I'm not sure if it would be possible, I was hoping for a start time of around 9:30 or 10am and to either purchase food at the vineyard or to have breakfast food catered and then do a tasting (post-food!). It would likely be around 11-13 women.

Is that something which could be arranged in one of the areas at the winery? I realize that it's a bit earlier than the typical opening time and that it is a different type of menu, but wanted to check! If speaking by phone would be better, please let me know and happy to arrange a call at your convenience!

Best,  
Cara Chrisman

## PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

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

June 19, 2014

BOQ LLC & Two Lads Winery  
18000 Smokey Hollow Rd.  
Traverse City, MI 49686

RE: Scheduled Events at Two Lads Winery  
16895 Smokey Hollow Road Traverse City, MI 49686  
Parcel ID #28-11-110-001-10

To Whom It May Concern,

Please be advised that on Thursday, June 19, 2014 Peninsula Township Planning & Zoning Staff was made aware of several events scheduled at the Two Lads Winery during the summer of 2014; Summer Solstice Party, 2<sup>nd</sup> Annual BBQ, and Bubbly BBQ/Pig Roast.

Please be advised that these events may be in violation of the Land Use Permit issued May 11, 2007. Please contact us immediately to discuss the scheduled events so that staff can make a determination as to whether or not these uses are permitted by Section 6.7.2 (19) of the Zoning Ordinance.

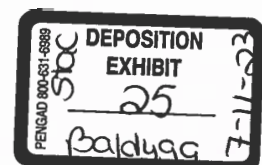
We urge you to cease reservations for these events until this matter is resolved. Thank you for your cooperation in this matter.

Sincerely,



Michelle Reardon  
Director of Planning & Zoning

*social function for hire.*  
- what's an *event*?  
- can we put in a schedule



Response (copy) emailed to Michelle on 6/25/14

2Lads Winery -- 16985 Smokey Hollow Rd -- TC, MI 49686  
831.223.7722ph -- 2LWinery.com



June 25, 2014

Peninsula Township  
Attn: Planning and Zoning  
13235 Center Rd  
Traverse City, MI 49686

Re: Scheduled events at 2Lads Winery  
16985 Smokey Hollow Rd, TC, MI 49686  
Parcel # 28-11-110-001-10

To Michelle Reardon, Dir. Of Planning and Zoning-

We received your letter regarding upcoming outdoor events at our facility for summer 2014. After our discussion in your office on the 24<sup>th</sup> of June I now have a better understanding of the 139 ordinance as it pertains to 'social events for hire' at a farm processing facility. We have indeed cancelled both of the open to the public events we had planned for July 5<sup>th</sup> and the 'BBQ and Bubbly' event we had planned in late August.

Sincerely,

Chris Baldyga  
Owner and General Manager

## PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

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

June 19, 2014

BOQ LLC & Two Lads Winery  
18000 Smokey Hollow Rd.  
Traverse City, MI 49686

RE: Scheduled Events at Two Lads Winery  
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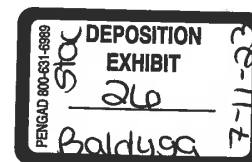
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Sincerely,



Michelle Reardon  
Director of Planning & Zoning



6/9/2014

2 Lads - Blog

[HOME](#) [WINE/GEAR](#) [THE EXPERIENCE](#) [WINE CLUB](#) [ABOUT](#) [EVENTS](#) [CONTACT](#)  
[Find Our Wines](#)

## News & Events

**Find 2 Lads wine at these fine  
retailers**

**ABC News Spotlights 2 Lads**

**2 Lads vintage charts**

**Tour 2 Lads**

### Upcoming Events - Summer 2014

June 12, 2014

#### Summer of 2014 Events:

June 21st: Summer Solstice Party

June 21st: Traverse City Wine & Art Festival

July 19th: 2nd Annual BBQ

August 16th: Red Blending Class

August 23rd: Bubbly Pig Roast.

Event deal on hotel rooms at Cambria Suites

[Read More](#)

### Find 2 Lads wines near you:

June 10, 2013

[Read More](#)

### 2 Lads Vintage Chart

April 3, 2012



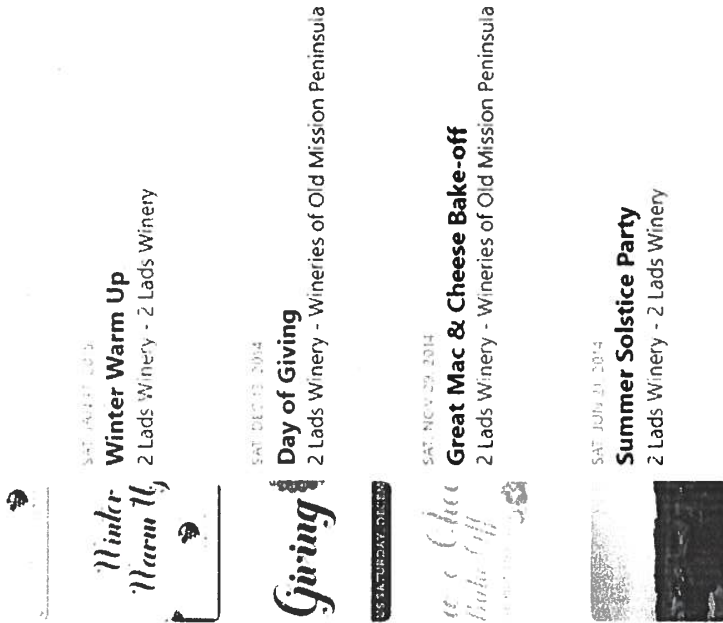
EXHIBIT 40

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WOMP012376



See more v

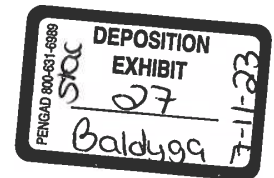


EXHIBIT 41

PTP Motion for Summary Judgment

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~~CONFIDENTIAL~~

2 LADS

## INVOICE

Order Number:375556

Order Date:Apr 18, 2022

Sales Associate:Mike

## Billing Address:

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

## Shipping Address:

Pickup At: 2 Lads Winery, DSL 171157

[REDACTED]

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

## Payment:

Payment By: CreditCard

[REDACTED]

\*\*\*\*\*4005

Order Type: POS 1

Item Description	SKU	Qty	Price	Total
Private Tasting and Tour	PvtTour	22	[REDACTED]	[REDACTED]

Subtotal: [REDACTED]

Shipping \$0.00

Tax: [REDACTED]

TOTAL: [REDACTED]

\*Total includes GST

2 LADS WINERY

CALL US: 231.223.7722 INFO@2LWINERY.COM 16985 SMOKEY HOLLOW ROAD, TRAVERSE CITY, MI, 49686

WOMP013698

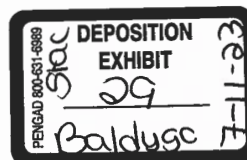


EXHIBIT 41

PTP Motion for Summary Judgment

October 6, 2023

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~~CONFIDENTIAL~~**2**LADS

INVOICE

Order Number:386530

Order Date:Jul 20, 2022

Sales Associate:Mike

**Billing Address:**

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

**Shipping Address:**

Pickup At: 2 Lads Winery, DSL 171157

16985 Smokey Hollow Rd.  
Traverse City, MI 49686

Phone: [REDACTED]

Email: [REDACTED]

**Payment:**

Payment By: CreditCard

\*\*\*\*\* [REDACTED]

Order Type: POS 1

Item Description	SKU	Qty	Price	Total
Wine Dinner Deposit	2Lwinedinnerde	16	[REDACTED] 0	[REDACTED]
Credit Card Processing Fee	ccfee	1	\$0.00	[REDACTED]

Subtotal: [REDACTED]

Shipping \$0.00

Tax: [REDACTED]

TOTAL: [REDACTED]

\*Total includes GST

2 LADS WINERY

CALL US: 231.223.7722 INFO@2LWINERY.COM 16985 SMOKEY HOLLOW ROAD, TRAVERSE CITY, MI, 49686

WOMP013699

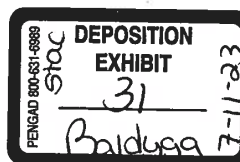


EXHIBIT 41

PTP Motion for Summary Judgment

October 6, 2023

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~~CONFIDENTIAL~~

## INVOICE

Order Number:394577

Order Date:Sep 21, 2022

Sales Associate:Mike

## Billing Address:

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

## Shipping Address:

Pickup At: 2 Lads Winery, DSL 171157

16985 Smokey Hollow Rd.  
Traverse City, MI 49686

Phone: [REDACTED]

Email: [REDACTED]

## Payment:

Payment By: CreditCard

\*\*\*\*\*5598

Order Type: POS 3

Item Description	SKU	Qty	Price	Total
Wine Dinner Guest Credit	2ldinnercredit	7	[REDACTED]	[REDACTED]
Wine Dinner Balance	2Lwinedinnerba	16	[REDACTED]	[REDACTED]
2020 Cabernet Franc	857895004435	1	[REDACTED]	[REDACTED]

Subtotal: [REDACTED]

Shipping \$0.00

Tax: [REDACTED]

Page 1

TOTAL: [REDACTED]

Tip: \*Total Incl [REDACTED]

TOTAL: 2 LADS [REDACTED]

CALL US: 231.223.7722 INFO@2LWINERY.COM 16985 SMOKEY HOLLOW ROAD, TRAVERSE CITY, MI, 49686

WOMP013700



16985 Smokey Hollow Road, Traverse City, MI 49686

Phone: 231.223.7722

Email: [info@2lwinery.com](mailto:info@2lwinery.com)

### **2 Lads Winery Event Agreement**

This Event Agreement (the "Agreement") is made on the date last executed by the parties below between the Client (as defined below) and Two Lads, LLC, d/b/a 2 Lads Winery, a Michigan limited liability company (hereafter the "Winery") for the purposes of hosting an event described below at the Winery located at 16985 Smokey Hollow Road, Traverse City, MI 49686 (the "Site").

#### **Client**

Name: [REDACTED]

Contact: [REDACTED]

Address: [REDACTED]

Telephone Number: [REDACTED]

Email: [REDACTED]

#### **Event Description**

A four course dinner prepared by chef Keil Moshier. Dinner will consist of the following courses: amuse bouche/hors d'oeuvre, salad, entrée, and dessert. Each course will be paired with a complimentary 2 Lads wine to be selected from currently available offerings.

#### **Date/Time**

September 21, 2022. Event will begin at 7:00pm and conclude by 9:30pm.

#### **Number of Guests:**

Anticipated to be 16. Final guest count must be submitted to the Winery by the Client no later than August 22, 2022.

#### **Menu**

To be determined by the chef/winery and communicated to the client by August 24, 2022. Any requests for menu alterations must be submitted to the winery no later than August 31, 2022. Alternatives to any menu course (for dietary/health/religious/etc. reasons) may be requested by the client and will incur an additional fee of \$25 per course per guest.

**CONFIDENTIAL****Fees**

\$ [REDACTED] + 6% MI sales tax) per guest x the finalized number of guests.

A deposit of 50% of the anticipated final cost is due upon the signing of this Agreement. This deposit is fully refundable until August 7, 2022 (45 days prior to the event date) and is non-refundable thereafter.

The balance of the fees plus a gratuity of 20% on the combined total cost for the event will be due no later than September 6, 2022 (15 days prior to the event date). If fewer than the finalized number of guests attend the event, the balance due will be amended to reflect a credit of \$20 per absent guest.

Payment of both the deposit and the balance due may be remitted via cash, check, or money order. Credit cards are also accepted and will incur a 3% processing fee.

**Additional Terms and Conditions**

The Additional Terms and Conditions below are hereby incorporated herein and made a part of this Agreement.

**Deposit amount due:** [REDACTED]

By signing below, Client acknowledges and agrees to this Agreement, including the Terms and Conditions, and agrees to pay the deposit amount set forth above upon the execution of this Agreement.

**Client**

[REDACTED] (Print Name)

\_\_\_\_ (Signature) July 18, 2022 (Date)

**Winery**

Two Lads, LLC, d/b/a 2 Lads Winery

\_\_\_\_ (Print Name)

Michael Hunter

Digitally signed by Michael Hunter  
DN: cn=Michael Hunter, o=2 Lads Winery, ou, email=mlh@2lwinery.com, c=US  
Date: 2022.07.18 17:19:18 -0400

\_\_\_\_ (Signature) \_\_\_\_ (Date)



Peninsula Township Land Use Permit / Preliminary Farm Processing Permit

Parcel ID: 28-11-111-001-00, Permit # 4661 Zoned: A-1  
 110-001-10, 103-016-20,  
 110-004-30

Owner: BOQ, LLC & Two Lads, LLC

Address: 18000 Smokey Hollow Road, Traverse City MI 49686

Property: Section: 3,10,11 Town: T29N Range: R10W  
 Address: 16995 Smokey Hollow Road

Use 1: Farm Processing Facility

Proof of Ownership: Y Site: Y HD Permit: 33600 Survey: Y  
 Driveway: 07-000072 DNR: N Soil Eros: 19791 adj. to AG? Y

<u>Parcel</u>		<u>Required</u>	
Width:	1372	330	
Depth:	905	***	
Area:	58 A	40 Acres	Total Site
	30 A	20 Acres	Facility Site
<u>Setbacks</u>			
Front:	300	50	
OHWL:	N/A	60	
Rear:	500 +	100	
Side 1:	425	100	
Side 2:	800 +	100	
<u>Structure</u>			
Height:	20	35	
Stories:	1	2.5	
Existing Area:	3200		Total Site Coverage
	0		Facility Site Coverage
Proposed Area:	5644		Facility Site Coverage
Total Area:	8844		Total Site Coverage
Parking :	10	9	
Retail Tasting Area:	1256	1256	
1st Floor:	5023	6000	Maximum Total

Percent of Lot Coverage: N/A Maximum: none

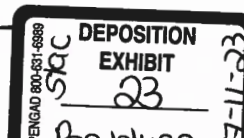
Comments: Farm Processing Facility. Check # 1042 Two Lads LLC.

Date Approved: 5/11/2007 Expires: 5/11/2008

Zoning Administrator:

Gordon L. Uecker

Owner/Agent Signature: \_\_\_\_\_



WOMP011896

**Peninsula Township application for Land Use Permit and required materials**

\* All structures need to meet setbacks & all structures of 25 square feet or greater require a Land Use Permit

1. Parcel Tax # 28-11- \_\_\_\_\_ Parcel Zoning \_\_\_\_\_
2. Property Address 16995 Swobey Hollow Rd  
(If an address has not been assigned it must be requested from the Grand Traverse County Equalization Dept.)
3. Proposed use of structure Farm Processing Facility
4. Property Owner's Name and Address Dick Quantel, 18000 Swobey Hollow  
Traverse City, MI, 49686
5. Fees - \$100.00 for a new dwelling, \$75.00 for additions or other construction, Commercial based on Size
6. Evidence of Ownership if not in Township Files. (Recorded Deed or Land Contract)
7. Calculated percent of Lot Covered by all Structures.
  - a. 58 acres Area of the parcel excluding road rights-of-way. Measured to the Ordinary High Water Mark for shoreline properties.
  - b. 3200 Calculated total square footage of existing building footprint/s. (Include roof overhangs, garage and porches - also include, and show separately, square footage of decks or patios not flush with the ground).
  - c. 5275 Calculated square footage of proposed building/structure footprint.(see instructions on line b)
  - d. 0.0034 % of lot coverage (Line b & c divided by line a)
8. Full set of construction plans for all proposed structures including all elevations - (will be returned)
9. Site Plan drawn to scale showing the following:
  - a. property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any.
  - b. all existing and proposed structures including decks and roof overhangs;
  - c. Setbacks for existing and proposed structures; (Varies by Zoning District)
10. Reduced Copy of the site plan & front elevation not greater than 11" BY 17"(will be kept)
11. Health Department Permit for well and septic system (unless connected to a central sewer/water).
12. Soil & Erosion Permit from G.T. County Drain Commissioners Office.
13. Drive way Permit from County Road Commission or M.D.O.T.
14. Written approval for construction from the Association's Architectural Committee (if applicable).

**The following may be required to receive a permit.**

- \_\_\_\_\_ Property boundaries to be located and marked by a registered land surveyor (if property corners are not marked).  
(Include Ordinary High Water Mark and Flood Plane Elevation)
- \_\_\_\_\_ DNR permit for wetlands or critical erosion areas.
- \_\_\_\_\_ Zoning Board of Appeals approval for filling within the Flood Plain, Extension of a non-conforming structure or Dimensional Variance. (See reverse side for application requirements)

C. Baldyga  
Signature  
Chris BALDYGA  
Printed name

4/23/07  
Date  
(231) 735-1595  
Contact phone

EXHIBIT 42

PTP Motion for Summary Judgment

October 6, 2023

Page 3 of 5

2L file! (TWP)

Request ID # 428065

## RESOLUTION

At a Regular meeting of the Township Board  
(Regular or Special) (Township Board, City or Village Council)called to order by M. Vanigeld on September 11, 2023 at 7<sup>00</sup> P.M.

The following resolution was offered:

Moved by Byron and supported by HortonThat the request made by TWO LADS, LLC for a new Small Wine Maker License to be located at 16985 Smokey Hollow, Traverse City, MI 49686, Grand Traverse County, Peninsula Twp.be considered for Approval  
(Approval or Disapproval)

## APPROVAL

## DISAPPROVAL

Yeas: Horton, Byron, Henry, Leanne Holt, Hoffman, Bygon, Vanigeld Yeas: \_\_\_\_\_  
Nays: None Nays: \_\_\_\_\_  
Absent: None Absent: \_\_\_\_\_

It is the consensus of this legislative body that the application be:

Recommended for issuance  
(Recommended or Not Recommended)

State of Michigan \_\_\_\_\_

County of Grand Traverse

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the Peninsula Township Board at a Regular  
(Township Board, City or Village Council) (Regular or Special)meeting held on Sept 11, 2023  
(Date)

SEAL

(Signed) [Signature]  
(Township, City or Village Clerk)  
13235 Center Rd  
Traverse City MI 49686  
(Mailing address of Township, City or Village)

Peninsula Township  
FINAL FARM PROCESSING PERMIT  
NO. 3

This permit is issued to:

BOQ LLC, LandLord, and Two Lads LLC,

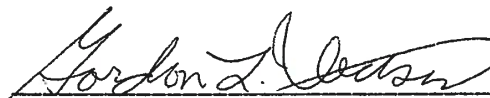
Tenant at 16985 Smokey Hollow Road.

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                      10-18-07  
Peninsula Township Zoning Administrator                      Date

Retail sales / Tasting

None  
Gordon L. Uecker                      Date  
Peninsula Township Zoning Administrator

Peninsula Township  
FINAL FARM PROCESSING PERMIT  
NO. 3

This permit is issued to:

BOQ LLC, LandLord, and Two Lads LLC,

Tenant at 16985 Smokey Hollow Road.

In accordance with Section 6.7.2 (19) of the

Peninsula Township Zoning Ordinance, the

following use is permitted:

The processing of agricultural produce

Approved on 10-18-07

Retail sales / Tasting

 4-17-08

Gordon L. Uecker Date  
Peninsula Township Zoning Administrator

**EXHIBIT 43****PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 9**

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

DEPOSITION OF BILL MAIER

<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: MR. JOSEPH M. INFANTE (P68719)</p> <p>3 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>4 Miller, Canfield, Paddock</p> <p>5 99 Monroe Avenue, NW, Suite 1200</p> <p>6 Grand Rapids, Michigan 49503</p> <p>7 (616) 776-6333</p> <p>8 For the Defendant: MR. BOGOMIR RAJSIC, III (P79191)</p> <p>9 McGraw Morris, P.C.</p> <p>10 2075 West Big Beaver Road, Suite 750</p> <p>11 Troy, Michigan 48084</p> <p>12 (248) 502-4000</p> <p>13 For the Intervenor-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>14 Law Office of Tracy Jane Andrews, PLLC</p> <p>15 420 East Front Street</p> <p>16 Traverse City, Michigan 49686</p> <p>17 (231) 946-0044</p> <p>18 Co-Counsel For the Intervenor-Defendant: MS. HOLLY L. HILLYER (P85318)</p> <p>19 Olson, Bzdok &amp; Howard, P.C.</p> <p>20 420 East Front Street</p> <p>21 Traverse City, Michigan 49686</p> <p>22 (231) 946-0044</p> <p>23 Also Present: Dave Sanger for Peninsula Township</p> <p>24 RECORDED BY: Heidi Peckens, CER 9634</p> <p>25 Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>TRANSCRIBED BY: Karen Robinson, CER 5579</p> <p>Letters &amp; Bytes, Firm #8379</p> <p>15585 Pomona</p> <p>Redford, Michigan 48239</p> <p>(313) 910-9857</p>	<p>1 Traverse City, Michigan</p> <p>2 Thursday, July 13, 2023 - 2:26 p.m.</p> <p>3 THE REPORTER: Mr. Maier, my name is Heidi. I'm</p> <p>4 the court reporter. I'm the person who is going to be</p> <p>5 recording your testimony this afternoon. The only thing I</p> <p>6 get to do with you today is place you under oath, so I'm</p> <p>7 going to ask you to please raise your right hand. Thank</p> <p>8 you. Do you solemnly swear or affirm that the testimony you</p> <p>9 are about to give will be the whole truth?</p> <p>10 MR. MAIER: Yes.</p> <p>11 THE REPORTER: Thank you.</p> <p>12 REPRESENTATIVE FOR HAWTHORNE/MONTAGUE DEVELOPMENT AND BILL MAIER</p> <p>13 having been called by the Intervenor-Defendant and sworn:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MS. HILLYER:</p> <p>16 Q Okay. Could you please state your name, for the record?</p> <p>17 A Bill Maier.</p> <p>18 Q And is that -- could you spell that, please?</p> <p>19 A M-a-i-e-r.</p> <p>20 Q And I'm Holly Hillyer. I'm counsel for PTP. Have you been</p> <p>21 deposed before?</p> <p>22 A I have not.</p> <p>23 Q Okay. I will run over a couple of ground rules which you</p> <p>24 may have heard before here, but the first one is that this</p> <p>25 will be transcribed so please try to speak your answers and</p>
Page 2	Page 4
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Direct Examination by Ms. Hillyer . . . . . 4</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 57 marked . . . . . 15</p> <p>9 (SUP Permit Findings)</p> <p>10 Deposition Exhibit 58 marked . . . . . 30</p> <p>11 (Plaintiff's Answers to Interrogatories)</p> <p>12 Deposition Exhibit 46 marked . . . . . 45</p> <p>13 (Pettyjohn E-mail 3/4/2020)</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>1 avoid non-verbal communication like nodding and saying "uh-</p> <p>2 huh" and gesturing with your hands like I am doing right</p> <p>3 now. And along those lines, please let me finish my</p> <p>4 questions, both so that your attorney can object if he needs</p> <p>5 to and so that we're not talking over each other and our</p> <p>6 court reporter can transcribe our conversation more easily.</p> <p>7 If you don't understand a question that I've asked, please</p> <p>8 let me know, and I'll try to rephrase it. If you do answer,</p> <p>9 I'll assume that you have understood. And if your attorney</p> <p>10 objects, I will expect you to answer anyway unless he's</p> <p>11 instructed you not to -- not to answer due to a claim of</p> <p>12 privilege. Estimates are fine. If I ask you for a date</p> <p>13 range or size of a -- part of the winery facility or</p> <p>14 something like that, an estimate is fine, but I'd ask that</p> <p>15 you at least don't just give me a blind guess. And so if</p> <p>16 you don't know something, feel free to just tell me that.</p> <p>17 And please let me know if you need a break, breaks are fine</p> <p>18 as long as there's not a pending question on the table. I</p> <p>19 will endeavor to take breaks about every hour once we get</p> <p>20 going, so there will be one coming at some point, but let me</p> <p>21 know if you need one. And does that sound okay?</p> <p>22 A Yes.</p> <p>23 Q All right. I'm going to talk just a little bit first about</p> <p>24 how you prepared for your deposition and then I would like</p> <p>25 to go over some background information about Hawthorne, how</p>
Page 3	Page 5

2 (Pages 2 to 5)



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

DEPOSITION OF BILL MAIER

<p>1 Montague Development?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And the equipment, the wine making equipment?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Okay. And Hawthorne is a Michigan LLC, correct?</p> <p>6 <b>A Correct.</b></p> <p>7 Q Does it have members then?</p> <p>8 <b>A It does.</b></p> <p>9 Q Who are the members?</p> <p>10 <b>A It has a single member which is HV Holdings, LLC.</b></p> <p>11 Q And do you know the members of that company?</p> <p>12 <b>A The members of HV Holding, LLC, are Bruce and Kathleen Hawthorne.</b></p> <p>13</p> <p>14 Q Okay. Do you know of any other LLC's that are associated</p> <p>15 with HV Holdings or with Bruce and Kathleen Hawthorne that</p> <p>16 are connected to the -- to the winery property that we're</p> <p>17 talking about today?</p> <p>18 <b>A Well, the Montague Development, LLC.</b></p> <p>19 Q Are you familiar with a Hawthorne Vineyards, LLC?</p> <p>20 <b>A Yes. And -- and --</b></p> <p>21 MR. INFANTE: You're getting confused. But --</p> <p>22 your question confused him, and I know why.</p> <p>23 MS. HILLYER: I apologize.</p> <p>24 MR. INFANTE: He's going to clean it up.</p> <p>25 MS. HILLYER: Okay.</p> <p style="text-align: center;">Page 10</p>	<p>1 <b>to-day basis.</b></p> <p>2 Q Okay. Do you know how far back that agreement goes,</p> <p>3 roughly?</p> <p>4 <b>A I believe 2012.</b></p> <p>5 Q And is that still in place today?</p> <p>6 <b>A It is not.</b></p> <p>7 Q Okay. Who -- well -- sorry. When -- when did that change?</p> <p>8 <b>A That would've changed right around the end of 2020.</b></p> <p>9 Q Okay. And so who now operates the Tasting Room?</p> <p>10 <b>A Hawthorne Vineyards, LLC.</b></p> <p>11 Q Okay. So who is primarily responsible for ensuring</p> <p>12 compliance with township zoning requirements?</p> <p>13 <b>A That would be myself.</b></p> <p>14 Q Okay. And I probably should have clarified this earlier,</p> <p>15 but are you employed by Montague Development or Hawthorne</p> <p>16 Vineyards, LLC?</p> <p>17 <b>A By Hawthorne Vineyards, LLC.</b></p> <p>18 Q Okay. Thank you.</p> <p>19 <b>A And as a point of clarification on that even, so I am chief</b></p> <p>20 <b>operating officer but I am a 1099 employee.</b></p> <p>21 Q Okay. Thanks. And who is primarily responsible for</p> <p>22 speaking to the township on behalf of Hawthorne?</p> <p>23 <b>A That would be myself.</b></p> <p>24 Q Do you know who was responsible for -- for both of those</p> <p>25 things before you started your role as the COO?</p> <p style="text-align: center;">Page 12</p>
<p>1 BY MS. HILLYER:</p> <p>2 Q Please do.</p> <p>3 <b>A So Hawthorne Vineyards, LLC, is the entity that operates the</b></p> <p>4 <b>Tasting Room.</b></p> <p>5 Q Okay.</p> <p>6 <b>A It has a single member which is HV Holdings.</b></p> <p>7 Q Okay.</p> <p>8 <b>A And then HV Holdings has two -- has two members, Bruce and</b></p> <p>9 <b>Kathleen Hawthorne.</b></p> <p>10 Q Okay.</p> <p>11 <b>A And that rolls up under Montague Development.</b></p> <p>12 Q I think I understand. Thank you.</p> <p>13 MR. INFANTE: HV, Montague, Bruce and Kathy.</p> <p>14 BY MS. HILLYER:</p> <p>15 Q And do you know of a joint venture agreement with another</p> <p>16 winery?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Is that Chateau Chantal?</p> <p>19 <b>A Correct.</b></p> <p>20 Q Can you tell me just a little bit about how that joint</p> <p>21 venture agreement works, like, the big picture?</p> <p>22 <b>A The 10,000-foot picture is that that joint venture was in</b></p> <p>23 <b>place so that Chateau Chantal -- Chateau Operations, LTD --</b></p> <p>24 Q Uh-huh (affirmative).</p> <p>25 <b>A -- could manage the Tasting Room and the vineyard on a day-</b></p> <p style="text-align: center;">Page 11</p>	<p>1 <b>A Previously, that would've been -- either been Ann Pettyjohn</b></p> <p>2 <b>as the general manager.</b></p> <p>3 Q Okay.</p> <p>4 <b>A Or Marie Chantal.</b></p> <p>5 Q Okay. And both of them were primarily employed with Chateau</p> <p>6 Chantal; is that correct?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Okay. And so who is now primarily responsible for the</p> <p>9 operation of the Tasting Room?</p> <p>10 <b>A I have a Tasting Room manager who manages the Tasting Room</b></p> <p>11 <b>on a day-to-day basis.</b></p> <p>12 Q Okay. And who's that?</p> <p>13 <b>A Chris Watkins, W-a-t-k-i-n-s.</b></p> <p>14 Q Thanks. And is it C-h-r-i-s?</p> <p>15 <b>A Yes, it is.</b></p> <p>16 Q Okay. I would've guessed but I've learned not to assume.</p> <p>17 Is anyone else -- does anyone else have other</p> <p>18 responsibilities related to operating the Tasting Room,</p> <p>19 making decisions about what goes on there?</p> <p>20 <b>A No.</b></p> <p>21 Q Okay. How about activities and special events and -- and</p> <p>22 things for customers that might take place outside the</p> <p>23 Tasting Room? Do you have an events coordinator or anything</p> <p>24 like that?</p> <p>25 <b>A No.</b></p> <p style="text-align: center;">Page 13</p>

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

DEPOSITION OF BILL MAIER

<p>1 Q And, let's see, so with respect to the land uses that take</p> <p>2 place on the property, how does Hawthorne go about</p> <p>3 determining what its allowed to do on the property?</p> <p>4 <b>A By -- typically by review- (phonetic) -- reviewing the</b></p> <p>5 <b>zoning ordinance.</b></p> <p>6 Q Any other documents?</p> <p>7 <b>A Our SUP.</b></p> <p>8 Q Any other -- have there been any other decisions or</p> <p>9 interpretations received maybe from the zoning board of</p> <p>10 appeals or correspondence from the township that would</p> <p>11 document past decisions that you would refer to?</p> <p>12 <b>A Not that I'm aware of.</b></p> <p>13 Q And would you ever talk to anyone at the township, pick up</p> <p>14 the phone and call or e-mail?</p> <p>15 <b>A If a situation arose, yes.</b></p> <p>16 Q And am I correct in understanding that Hawthorne has not</p> <p>17 always had a special use permit?</p> <p>18 <b>A Correct.</b></p> <p>19 Q What -- how did Hawthorne operate previously?</p> <p>20 <b>A As a 139.</b></p> <p>21 Q And you're referring to --</p> <p>22 <b>A Farm process.</b></p> <p>23 Q -- Amendment -- Amendment 139, the farm processing</p> <p>24 ordinance?</p> <p>25 <b>A Yes.</b></p> <p style="text-align: center;">Page 14</p>	<p>1 <b>A I believe that is Ann Pettyjohn.</b></p> <p>2 Q Okay. Are you aware of any other versions of this document,</p> <p>3 like more recent versions, amended versions, anything</p> <p>4 different?</p> <p>5 <b>A I am not.</b></p> <p>6 Q All right. And I think we can set this aside for now.</p> <p>7 MR. INFANTE: Set this over there.</p> <p>8 BY MS. HILLYER:</p> <p>9 Q Do you know why Hawthorne applied to become a winery-</p> <p>10 chateau?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And what is your understanding of that?</p> <p>13 <b>A Two reasons: less restrictive rules with regards to</b></p> <p>14 <b>sourcing the fruit.</b></p> <p>15 Q Okay.</p> <p>16 <b>A And the ability to do more things that would support</b></p> <p>17 <b>agricultural and agritourism as it relates to Hawthorne</b></p> <p>18 <b>Vineyards.</b></p> <p>19 Q Okay. Does Hawthorne have any plans to start accommodating</p> <p>20 overnight guests?</p> <p>21 <b>A We do not.</b></p> <p>22 Q Okay. And when you mentioned the less restrictive sourcing</p> <p>23 requirements, what do you mean by that?</p> <p>24 <b>A The 139 structure is much more specific as far as the fruit</b></p> <p>25 <b>that is processed and ultimately sold at the location versus</b></p> <p style="text-align: center;">Page 16</p>
<p>1 Q Okay. Do you remember when Hawthorne became a farm</p> <p>2 processing facility?</p> <p>3 <b>A I believe that was 2012.</b></p> <p>4 Q Okay. And do you know when Hawthorne became a -- well, when</p> <p>5 it got its special use permit?</p> <p>6 <b>A July of 2020.</b></p> <p>7 Q Okay. And I'm going to just review a document real quick.</p> <p>8 MS. HILLYER: This will be Exhibit 57.</p> <p>9 (At 2:41 p.m., Deposition Exhibit 57 marked)</p> <p>10 BY MS. HILLYER:</p> <p>11 Q So I've just handed you a document that starts with the</p> <p>12 designation WOMP 0000902 and it is titled Special Use Permit</p> <p>13 Findings of Fact and Conclusion SUP 135 Hawthorne Vineyards</p> <p>14 dated July 14, 2020. Do you recognize this?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And is this what you would understand to be the special use</p> <p>17 permit that Hawthorne operates under?</p> <p>18 <b>A Correct.</b></p> <p>19 Q If you could turn to the last page. It appears that a</p> <p>20 watermark may have been left on this page by mistake.</p> <p>21 <b>A Oh.</b></p> <p>22 Q Do you recognize the signatures that are this page?</p> <p>23 <b>A Yes.</b></p> <p>24 Q And do you recognize who signed for Montague Development,</p> <p>25 LLC, at the bottom?</p> <p style="text-align: center;">Page 15</p>	<p>1 <b>the parameters that are outlined in the winery-chateau</b></p> <p>2 <b>ordinance.</b></p> <p>3 Q Okay. So less restrictive compared to the farm processing?</p> <p>4 <b>A Less restrictive compared to -- yes. I'm sorry.</b></p> <p>5 Q 139?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Sorry. Yes. I have -- I have noticed it seems that people</p> <p>8 use that 139 designation in the winery world and -- let's</p> <p>9 see. So can you tell me a little bit about Hawthorne's</p> <p>10 Tasting Room? Just describe it in broad strokes.</p> <p>11 <b>A Broad strokes? It is a little bit less than 2,000 square</b></p> <p>12 <b>feet and it's fairly unique in that it has a large U-shaped</b></p> <p>13 <b>custom built bar in the center.</b></p> <p>14 Q Do you have any sense of how many people it can accommodate?</p> <p>15 <b>A Yes. Capacity is in the neighborhood of 50.</b></p> <p>16 Q Okay. Are there other areas on the property where customers</p> <p>17 can taste wine, drink wine?</p> <p>18 <b>A Yes. There is a space on the lower level that is used as</b></p> <p>19 <b>well.</b></p> <p>20 Q Okay.</p> <p>21 <b>A And in addition to that our outside service area includes</b></p> <p>22 <b>our patio, lawn, a portion of the vineyard space and in</b></p> <p>23 <b>total roughly 17 acres.</b></p> <p>24 Q Is -- under your MLCC license, is this tasting permitted?</p> <p>25 Are people allowed to take wine anywhere throughout the</p> <p style="text-align: center;">Page 17</p>

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<p>1 property or --</p> <p>2 <b>A Within the -- within the 17 acres designated by the MLCC,</b></p> <p>3 <b>but not the remainder of the property.</b></p> <p>4 Q Okay. How large overall is the property?</p> <p>5 <b>A In total, it's roughly 90 acres.</b></p> <p>6 Q Okay. And you mentioned a lower level space. Is the</p> <p>7 Tasting Room elevated or is it sort of a Michigan basement</p> <p>8 walkout-style?</p> <p>9 <b>A Michigan basement walkout-style.</b></p> <p>10 Q Okay.</p> <p>11 <b>A The Tasting Room is on the ground level.</b></p> <p>12 Q Okay.</p> <p>13 MR. INFANTE: Aren't those two different things?</p> <p>14 BY MS. HILLYER:</p> <p>15 Q So that -- so the lower level is like the sort of walkout</p> <p>16 and the Tasting Room is on the --</p> <p>17 <b>A Is on the ground level.</b></p> <p>18 Q On the ground level? Okay. And then there's a lower level</p> <p>19 that -- is that also something you can walk out from?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Okay.</p> <p>22 MR. INFANTE: I sorry. I was thinking about a</p> <p>23 Michigan basement as a completely different thing.</p> <p>24 MS. ANDREWS: She's from Ohio.</p> <p>25 MR. INFANTE: Oh.</p> <p style="text-align: center;">Page 18</p>	<p>1 and patio area.</p> <p>2 Q Okay. What kinds of -- what kinds of experiences and</p> <p>3 activities are available for Tasting Room visitors besides</p> <p>4 tasting wine? Is there food service?</p> <p>5 <b>A Yes.</b></p> <p>6 Q What kind of food is available?</p> <p>7 <b>A I would describe it just as nibbles, if you will.</b></p> <p>8 Q Okay.</p> <p>9 <b>A You know, chips, chocolates, charcuterie boards.</b></p> <p>10 Q Do you prepare those in-house?</p> <p>11 <b>A Yes.</b></p> <p>12 Q So do you have a kitchen facility at the Tasting Room?</p> <p>13 <b>A We have a prep room, if you will, but we do not have a full</b></p> <p>14 <b>commercial kitchen currently.</b></p> <p>15 Q Okay. And how about live music? Is there ever live music</p> <p>16 at the Tasting Room, those kinds of -- like, free</p> <p>17 entertainment for people?</p> <p>18 <b>A Currently, on very rare occasion, and by "very rare</b></p> <p>19 <b>occasion" that means twice in the last 18 months.</b></p> <p>20 Q Okay. Are there times when there has been live music more</p> <p>21 frequently?</p> <p>22 <b>A Yes. Prior -- prior to -- prior to last year there was</b></p> <p>23 <b>oftentimes music on Wednesday afternoon/evenings, Sundays --</b></p> <p>24 <b>Sunday afternoons and occasionally on other days.</b></p> <p>25 Q And does the winery do any other kind of promotional Tasting</p> <p style="text-align: center;">Page 20</p>
<p>1 BY MS. HILLYER:</p> <p>2 Q So the lower level, what is the -- what is the capacity of</p> <p>3 that?</p> <p>4 <b>A I believe a little bit less than 30.</b></p> <p>5 Q Okay. So the -- is the patio -- is the patio, like, in</p> <p>6 front of the tasting room or is the patio off that lower</p> <p>7 level?</p> <p>8 <b>A You would walk through the patio -- I'm sorry -- walk</b></p> <p>9 <b>through the Tasting Room to get to the patio. So the patio</b></p> <p>10 <b>is off of the Tasting Room level.</b></p> <p>11 Q Okay. And about what capacity does the patio have?</p> <p>12 <b>A As -- are you asking practical capacity since -- I mean,</b></p> <p>13 <b>it's not enclosed, so it's not a -- you know, it's not a</b></p> <p>14 <b>fire department, here's the number of occupants, it's open-</b></p> <p>15 <b>air patio.</b></p> <p>16 Q Okay. Yeah. Just generally about how many people could you</p> <p>17 comfortably accommodate out there?</p> <p>18 <b>A Well, in the neighborhood of 30.</b></p> <p>19 Q Okay. And I'm assuming that depends on if they're seated or</p> <p>20 if they're standing and --</p> <p>21 <b>A Yes.</b></p> <p>22 Q -- milling around? Is there seating on the patio?</p> <p>23 <b>A Yes.</b></p> <p>24 Q And then you mentioned a lawn, a grassy area. Where's that?</p> <p>25 <b>A That would be to the west and southwest of the Tasting Room</b></p> <p style="text-align: center;">Page 19</p>	<p>1 Room activities like theme days or showcasing of a</p> <p>2 particular type of wine or anything to kind of put a spin on</p> <p>3 the regular standard Tasting Room --</p> <p>4 <b>A Currently, we really do not.</b></p> <p>5 Q Okay. And does Hawthorne offer winery tours?</p> <p>6 <b>A On a very limited basis we do. Yes.</b></p> <p>7 Q Okay. What is that? Is it limited in terms of space or</p> <p>8 demand or what limits that, I guess?</p> <p>9 <b>A It is primarily offered to wine club members --</b></p> <p>10 Q Okay.</p> <p>11 <b>A -- as one of the components of being a member. And then on</b></p> <p>12 <b>a very limited basis we also offer those same tours for</b></p> <p>13 <b>typically as a donation to a charity event.</b></p> <p>14 Q Okay. And when you have those tours, who conducts those?</p> <p>15 <b>A Primarily, Chris Watkins.</b></p> <p>16 Q Okay. And do those include, you know, the production</p> <p>17 facility, the vineyards, that kind of thing? Are there any</p> <p>18 areas that are off limits?</p> <p>19 <b>A It is in reality a vineyard tour so --</b></p> <p>20 Q Okay.</p> <p>21 <b>A -- an opportunity to promote agriculture, what we do at</b></p> <p>22 <b>Hawthorne Vineyards, you know, how we view our role as</b></p> <p>23 <b>stewards of the land. So it is -- it is not a -- there's</b></p> <p>24 <b>not a production -- production component to the tour.</b></p> <p>25 Q Okay. And can you tell me a little bit about how Hawthorne</p> <p style="text-align: center;">Page 21</p>

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<p>1 markets and promotes the winery generally? Does it have a</p> <p>2 website? Does it use traditional print media? Social</p> <p>3 media?</p> <p>4 <b>A We have a website. We rely heavily on social media and use</b></p> <p>5 <b>print media on a extremely limited basis currently.</b></p> <p>6 Q Okay. And about how many Tasting Room visitors does</p> <p>7 Hawthorne receive on a typical day during peak season? And</p> <p>8 I guess, what -- what would you consider peak season? Maybe</p> <p>9 I should ask that first.</p> <p>10 <b>A Peak season would be September/October.</b></p> <p>11 Q Okay. So a typical September or October day, about how many</p> <p>12 visitors would you receive?</p> <p>13 <b>A It would depend on the day of the week.</b></p> <p>14 Q Okay. So let's say the busiest day may be Saturday?</p> <p>15 <b>A Yes.</b></p> <p>16 Q About how many visitors?</p> <p>17 <b>A I would say in September or October we could -- we could see</b></p> <p>18 <b>between 4- and 500 people on a Saturday.</b></p> <p>19 Q Okay. And what might be an average, you know, Thursday, in</p> <p>20 the summertime, not peak season, but not -- not three feet</p> <p>21 of snow on the ground?</p> <p>22 <b>A Say, today, they'll probably see a hundred folks.</b></p> <p>23 Q Okay. Do people typically come, you know, a personal</p> <p>24 vehicle? Do you accommodate the tour busses?</p> <p>25 <b>A We very much rely on our strong relationship with the tour</b></p> <p style="text-align: center;">Page 22</p>	<p>1 <b>A Absolutely.</b></p> <p>2 Q Okay. We'll come back to that. Retail? Do you sell any</p> <p>3 items for sale besides wine?</p> <p>4 <b>A We have a very limited selection of merchandise items. Yes.</b></p> <p>5 Q And are those for sale in your Tasting Room?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Where are -- is there like a special space dedicated to</p> <p>8 those or are they, you know, behind the bar or --</p> <p>9 <b>A There's a special space dedicated.</b></p> <p>10 Q Okay. And what kind of things do you sell?</p> <p>11 <b>A Primarily t-shirts, logo t-shirts, logo corkscrews, things</b></p> <p>12 <b>like that.</b></p> <p>13 Q And do you conduct any wholesale distribution from this</p> <p>14 property?</p> <p>15 <b>A We have a distributor relationship in place, but I have not</b></p> <p>16 <b>sold product to the distributor since the beginning of last</b></p> <p>17 <b>year.</b></p> <p>18 Q Okay. And why is that? Is that related to supply or?</p> <p>19 <b>A No. That is because we are building the business, selling</b></p> <p>20 <b>more wine through the Tasting Room --</b></p> <p>21 Q Okay.</p> <p>22 <b>A -- and, you know, it's purely a financial decision.</b></p> <p>23 Q Okay. Is that something you might want to return to in the</p> <p>24 future?</p> <p>25 <b>A Ideally, I would like to avoid it in perpetuity.</b></p> <p style="text-align: center;">Page 24</p>
<p>1 companies.</p> <p>2 Q Okay.</p> <p>3 <b>A And while I don't have a hard and fast number, I would say</b></p> <p>4 <b>that approximately 40 percent of our guests come via tour</b></p> <p>5 <b>busses.</b></p> <p>6 Q Okay. And so how does parking work for those? Do they have</p> <p>7 special designated spaces?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And overall, roughly, what's your parking capacity?</p> <p>10 <b>A We have plus or minus a hundred spaces.</b></p> <p>11 Q Okay. Is there overflow parking for things if you need it?</p> <p>12 <b>A Yes.</b></p> <p>13 Q And approximately what's the capacity for that?</p> <p>14 <b>A To be honest, it's largely unlimited. I mean, because it's,</b></p> <p>15 <b>you know, grassy areas next to our vineyard.</b></p> <p>16 Q Okay.</p> <p>17 <b>A So the capacity is -- it would be literally hundreds of</b></p> <p>18 <b>vehicles.</b></p> <p>19 Q Okay. Yes. You said you have 90 acres, right?</p> <p>20 <b>A (No verbal response)</b></p> <p>21 <b>Q Okay. Do you have events outside the -- the Tasting Room</b></p> <p>22 <b>area, like, you know, wine-themed dinners or things that are</b></p> <p>23 <b>not regular Tasting Room activities?</b></p> <p>24 <b>A Currently, we do not.</b></p> <p>25 Q Okay. Is that something that you'd like to do?</p> <p style="text-align: center;">Page 23</p>	<p>1 MR. INFANTE: You sound like a great alcohol</p> <p>2 manufacturer. Sorry. If you work in the industry you know</p> <p>3 a lot.</p> <p>4 BY MS. HILLYER:</p> <p>5 Q So you talked about wanting to possibly offer, you know,</p> <p>6 wine dinners and things like that. Can you tell me a little</p> <p>7 bit about the things that -- that you'd like to see</p> <p>8 Hawthorne do in the future?</p> <p>9 <b>A Ideally, we would like to be able to fully promote the area,</b></p> <p>10 <b>local agricultural in -- through all the various possible</b></p> <p>11 <b>channels. So small events, large events, weddings, wine</b></p> <p>12 <b>dinners, any opportunity to bring more people in the door,</b></p> <p>13 <b>be able to sell more value added product. Ultimately, that</b></p> <p>14 <b>all contributes to keeping Hawthorne as a -- as a viable</b></p> <p>15 <b>entity, if you will.</b></p> <p>16 Q Uh-huh (affirmative). What -- what would be an example of a</p> <p>17 small event that you might envision?</p> <p>18 <b>A Being able to rent out, for example, that lower space --</b></p> <p>19 Q Okay.</p> <p>20 <b>A -- to, you know, a local business that wants to do an</b></p> <p>21 <b>offsite retreat for the day.</b></p> <p>22 Q Okay.</p> <p>23 <b>A And, at the same time, part of that package being, you know,</b></p> <p>24 <b>the purchase of our wine for the post-event activities and</b></p> <p>25 <b>the like.</b></p> <p style="text-align: center;">Page 25</p>

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<p>1 Q Okay. What about large events?</p> <p>2 <b>A Things such as wedding receptions, retirement parties,</b></p> <p>3 <b>family reunions. Again, the goal with any of those events</b></p> <p>4 <b>is, for lack of a better term, the snowball opportunity.</b></p> <p>5 <b>Any of those types of events gets more people to the</b></p> <p>6 <b>property who maybe wouldn't have come to Hawthorne</b></p> <p>7 <b>initially.</b></p> <p>8 Q Right.</p> <p>9 <b>A And then ideally they leave and go home and each one of</b></p> <p>10 <b>those people tells ten folks they know. And they, you know,</b></p> <p>11 <b>potentially some of those folks, maybe somebody's there for</b></p> <p>12 <b>a retirement party and they end up wanting to book their</b></p> <p>13 <b>daughter's wedding there because, you know, once they see</b></p> <p>14 <b>the build- -- building.</b></p> <p>15 Q Uh-huh (affirmative). Are there promotional events or</p> <p>16 events that rather than other people wanting to come in and</p> <p>17 use the facilities and enjoy Hawthorne's wine at their</p> <p>18 events, is there events that Hawthorne is interested putting</p> <p>19 on? Promotional events and celebrations and things that you</p> <p>20 would initiate?</p> <p>21 <b>A Yes, I would -- I would say wine dinners would be first and</b></p> <p>22 <b>foremost. Or dinners in the vineyards, if you will.</b></p> <p>23 Q Okay. It sounds like you have a space for that?</p> <p>24 <b>A Absolutely.</b></p> <p>25 Q How about kitchen facilities, though, you mentioned that you</p> <p style="text-align: center;">Page 26</p>	<p>1 Q Okay. And do you know if Hawthorne would be interested in</p> <p>2 having later hours?</p> <p>3 <b>A Most definitely.</b></p> <p>4 Q Would that be for regular Tasting Room operations or for the</p> <p>5 types of events that it would like to do?</p> <p>6 <b>A Both actually.</b></p> <p>7 MS. HILLYER: I think before I switch topics this</p> <p>8 might be a good time to take a break.</p> <p>9 (At 3:07 p.m., off the record)</p> <p>10 (At 3:26 p.m., back on the record)</p> <p>11 BY MS. HILLYER:</p> <p>12 Q I'd like to return for a minute to Exhibit 57 which is the</p> <p>13 special use permit that we were looking at.</p> <p>14 MR. INFANTE: You can use mine, go ahead.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. INFANTE: If you want.</p> <p>17 BY MS. HILLYER:</p> <p>18 Q So just on this first page here, it's Introduction and</p> <p>19 Background. Do you see where it says "Hawthorne seeks to</p> <p>20 upgrade to a winery-chateau to take advantage of event</p> <p>21 privileges and less restrictive sourcing requirements?"</p> <p>22 <b>A Yes.</b></p> <p>23 Q What is -- what is your understanding of what those event</p> <p>24 privileges are?</p> <p>25 <b>A Well, the ability to do such things as weddings, other</b></p> <p style="text-align: center;">Page 28</p>
<p>1 don't have a full commercial kitchen. Is that something you</p> <p>2 need to add or do you envision having food catered from</p> <p>3 another location?</p> <p>4 <b>A We don't currently have the commercial kitchen, but we have</b></p> <p>5 <b>already mapped out space within the basement that is</b></p> <p>6 <b>separate from that lower level room that we -- that we use</b></p> <p>7 <b>that would be ideal for a commercial kitchen arrangement.</b></p> <p>8 Q Okay. Are there other additions or changes to the building</p> <p>9 that you might envision making in order to accommodate these</p> <p>10 activities in the future?</p> <p>11 <b>A To the -- to the building itself, not anything that's</b></p> <p>12 <b>currently planned.</b></p> <p>13 Q Oh. And what are -- what are Hawthorne's hours generally</p> <p>14 during -- say, now, during the summer?</p> <p>15 <b>A On Sunday 11 until 6, the remainder of the week 11 until 7.</b></p> <p>16 Q Are you open on Mondays?</p> <p>17 <b>A We are. We are now. Yes.</b></p> <p>18 Q Okay. And how about peak, like September/October?</p> <p>19 <b>A Those would be the hours at --</b></p> <p>20 Q The same?</p> <p>21 <b>A -- that time as well. Yes.</b></p> <p>22 Q Is Hawthorne open through the winter?</p> <p>23 <b>A Last winter was the first winter that Hawthorne was open.</b></p> <p>24 Q Was it open seven days a week or were they limited hours?</p> <p>25 <b>A It was open Wednesday through Sunday.</b></p> <p style="text-align: center;">Page 27</p>	<p>1 <b>events, the family reunions, basically just that all</b></p> <p>2 <b>encompassing category.</b></p> <p>3 Q Would it -- let's see what I have -- if you turn to page 9</p> <p>4 of this document. Under subsection "u" where it just says</p> <p>5 that "the township board may approve guest activity uses,</p> <p>6 activities by persons who may or may not be registered</p> <p>7 guests, initial support use." If you look underneath that</p> <p>8 where it says that "Hawthorne Vineyards provided</p> <p>9 documentation that it's purchased 141 tons" of purchase</p> <p>10 (sic) from -- "of purchase from other OMP farms." I'm</p> <p>11 thinking there's a typo in this sentence. Where it says</p> <p>12 "this standard will be met with approval conditions and</p> <p>13 safeguards on page 15." Are you aware of additional pages</p> <p>14 that go with this document that are not in this document?</p> <p>15 <b>A I am not.</b></p> <p>16 Q Okay. Are you aware of any conditions or safeguards that</p> <p>17 the township board has put in place related to subsection</p> <p>18 "u" here?</p> <p>19 <b>A I am not.</b></p> <p>20 Q And I believe you testified earlier that you're not</p> <p>21 currently having things like wine dinners. What is -- what</p> <p>22 is the reason for that?</p> <p>23 <b>A Gun shy.</b></p> <p>24 Q Gun shy. Okay. Tell me more.</p> <p>25 <b>A There's a huge amount of reputation of risk as things sit</b></p> <p style="text-align: center;">Page 29</p>

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<p>1 9:30 closing time with respect to Hawthorne? Have you 2 received any communications from the township, notices of 3 violations, citations, anything like that? 4 <b>A Not that I'm aware of.</b> 5 Q And so related to that and back to this interrogatory on 6 Exhibit 58 on this first page where it says "since its 7 passage and every day that it is enforced constitutes a new 8 violation." What does enforcement mean to Hawthorne? 9 MR. INFANTE: Objection, it calls for a legal 10 conclusion. 11 THE WITNESS: I would define it, enforcement, as 12 having to operate under the parameters as outlined within 13 the winery-chateau ordinance. 14 BY MS. HILLYER: 15 Q So would it be fair to say that voluntarily complying is -- 16 is the same as operating within the -- the contours of the 17 winery-chateau ordinance? 18 MR. INFANTE: Objection, it calls for a legal 19 conclusion. 20 THE WITNESS: Could you restate that? 21 BY MS. HILLYER: 22 Q Sorry. Yes. So is the township doing anything to make 23 Hawthorne comply with the zoning ordinance? 24 MR. INFANTE: Objection, it calls for a legal 25 conclusion.</p> <p style="text-align: center;">Page 38</p>	<p>1 there's been verbal and nonverbal speech as far as how we 2 present our brand to the community. 3 BY MS. HILLYER: 4 Q And -- and what is Hawthorne's brand? What -- what are you 5 trying to communicate to the community? 6 <b>A That we're a agritourism destination that produces and sells 7 a (sic) state-grown wines in arguably one of the most 8 secluded locations on Old Mission Peninsula with panoramic 9 views of both bays.</b> 10 Q And what is Hawthorne's understanding of what it means to 11 freely associate? What -- what does Hawthorne mean by that? 12 MR. INFANTE: Objection, it calls for a legal 13 conclusion, compound. 14 THE WITNESS: Again, the restrictive nature as far 15 as what groups could potentially use our space. 16 BY MS. HILLYER: 17 Q When you say "use your space," what do you mean by use your 18 space? Is there -- are there restrictions on who can visit 19 your Tasting Room or? 20 <b>A There -- well, there are very specific guidelines with 21 regards to -- within the Uses Allowed section, you know, 22 maybe a 501(C)(3)'s from the Grand Traverse County area, so 23 an agricultural related groups. I'm not -- I'm not free to 24 allow other groups other than the specified groups that are 25 outlined here to make use of that space.</b></p> <p style="text-align: center;">Page 40</p>
<p>1 THE WITNESS: Again, I would -- I would say -- I 2 would say yes just based on how the township has interacted 3 with all the members of WOMP over the last several years. 4 BY MS. HILLYER: 5 Q And what do you know about how the township has interacted 6 with WOMP over the last several years? 7 <b>A Very heavy handed. If -- if it's not spelled out we can't 8 do it. Things are subject to interpretation and it depends 9 on who you talk to the answer that you get. You'll get two 10 different answers on two different days or by talking to do 11 two different people. And, historically, trying to get 12 feedback from the township in writing was almost impossible.</b> 13 Q Has this been Hawthorne's experience? 14 <b>A I -- now I'm speaking more broadly to my knowledge of the 15 relationship in terms of my employment with Bowers Harbor 16 Vineyards.</b> 17 Q So on the second page of the interrogatory response, again, 18 looking at Exhibit 58. What is Hawthorne's understanding of 19 what commercial speech is? 20 MR. INFANTE: Objection, it calls for a legal 21 conclusion. 22 THE WITNESS: Commercial speech is every facet of 23 our business. It is everything from any marketing that we 24 do to our protocol when guests enter the Tasting Room, you 25 know, how our lawn is manicured, you know, it's -- it --</p> <p style="text-align: center;">Page 39</p>	<p>1 Q And how would they make use of that space? 2 <b>A For -- for meeting purposes, for example, you know. We 3 couldn't have a political type event or a social 4 organization event there unless it fits within the 5 parameters of what's outlined within the ordinance.</b> 6 Q And how would Hawthorne interact with a group that was using 7 its space to hold a meeting? 8 <b>A What do you mean by "interact?"</b> 9 Q I guess, would -- would your staff -- how would your staff 10 interact with them? Like, when -- when a group would come 11 to have a meeting at Hawthorne, what's their interaction 12 with Hawthorne, between Hawthorne and the group? 13 <b>A Well, there is typically going to be a component related to 14 what -- how we are, what we do, our wines. That's going -- 15 that would be part of the use of that space.</b> 16 Q So it would be fair to characterize that as promoting 17 Hawthorne and its wines to the groups that come? 18 <b>A Absolutely.</b> 19 Q What else? Would there be a service component to that? 20 <b>A It would depend on the particular situation.</b> 21 Q And have you hosted any -- any meetings so far to date at 22 Hawthorne of any group? 23 <b>A Not since I have been in my role, but that's primarily 24 because we can't advertise because there's only a certain 25 subset of groups that we can accommodate. And I gotta tell</b></p> <p style="text-align: center;">Page 41</p>

11 (Pages 38 to 41)



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<p>1 ya (sic) it scares me that some protected class or group 2 would then say, hey, we'd love to use your space. I can't 3 offer it to them because of my understanding of the 4 ordinance and then I have a legal liability there because 5 what stops them from suing us. 6 Q Is there any group or protected class that you know of that 7 can't come and enjoy wine in your Tasting Room? 8 A Let's say, just as an example, let's say it was some group 9 out of Grand Rapids that were going to be in the Traverse 10 City area and they were looking for, you know, a meeting 11 space for a retreat or the like. 12 Q Uh-huh (affirmative). 13 A Again, if they were a protected class or a group, I would -- 14 I would not be able to offer them the use of the space. 15 Q If they met somewhere down the road, could they come in and 16 have a glass of wine at Hawthorne when they were finished? 17 A Absolutely. 18 Q And could Hawthorne or, you know, can Hawthorne join any 19 groups that it wants? I understand it's a number of trade 20 association like WOMP. 21 A That's the only association that we are a member of, to the 22 best of my knowledge. 23 Q I'd like to talk a little bit about -- I'll come back to 24 this -- some of the things that you would like to changed in 25 the ordinance and how Hawthorne has worked to try to change</p> <p style="text-align: center;">Page 42</p>	<p>1 hours, things like that. Basically, allowing us to promote 2 -- giving us a broader brush as far as how we promote local 3 agriculture. 4 Q Let me ask you about the application process for your 5 special use permit. Returning to that for a moment, I'm not 6 sure I referred to it, but I'm referring to the special use 7 permit 135, again, which the township issued in July 2020. 8 Does Hawthorne -- is Hawthorne aware of any -- well, let me 9 -- let me go back a little further. Can you just tell me 10 about the application process that Hawthorne went through to 11 -- to obtain that special use permit? 12 A Specifically, what -- I guess I'm not clear what you're 13 looking for there. 14 Q So Hawthorne had a farm processing permit and decided that 15 it wanted to become a chateau, correct? 16 A Correct. 17 Q So what steps did it take to do that? 18 A It would've gone through the process of outlined by the 19 township of pulling together, putting together the required 20 information, and submitting it to the township for the 21 appropriate approval process. 22 Q Do you know about -- is what -- what do you know about what 23 the approval process is like compared to, say, the farm 24 processing permit process? 25 A I'm -- basically, lack of information has to be produced</p> <p style="text-align: center;">Page 44</p>
<p>1 those things. What has Hawthorne done to try to change the 2 provisions that it's challenging in this litigation? 3 A Collectively, as part of WOMP, my understanding is that, you 4 know, there had been numerous meetings and dialogue with the 5 township with regards to issues related to the ordinance. 6 Q Has Hawthorne participated in those meetings? 7 A At that -- at that point in time, prior -- you know, prior 8 to the lawsuit -- 9 Q Uh-huh (affirmative). 10 A -- If you'll recall, at that point in time, the Tasting Room 11 was managed day-to-day by Chateau Operations Limited. 12 Q Right. 13 A So they, in fact, would've been speaking on behalf of 14 Hawthorne. 15 Q And is it your understanding that someone from Chateau 16 Operations Limited or Chateau Chantal was attending those 17 meetings? 18 A Yes. 19 Q Do you know anything about who else participated in those 20 meetings? 21 A Other members of WOMP and members of the township. 22 Q And do you know what types of changes WOMP and its members 23 were advocating for in those meetings, particularly on 24 behalf of Hawthorne? 25 A Well, the ability to -- less restrictions as far as events,</p> <p style="text-align: center;">Page 43</p>	<p>1 that covers all the various bullet points within the 2 ordinance and other general items and then ultimately is 3 served up to the township for review and discussion. 4 Q Are you aware of a public hearing being held on Hawthorne's 5 special use permit application? 6 A I believe that is correct. Yes. 7 Q And is it your understanding that that's part of that 8 application process? 9 A Yes. 10 Q Do you know if neighbors around Hawthorne received notice of 11 Hawthorne's application that there would be a public 12 hearing? 13 A To the best of my knowledge, yes, they -- they did receive 14 notice. 15 Q And do you know of any concerns that neighbors expressed 16 when Hawthorne applied for its special use permit? 17 A I am not aware of any concerns, no. 18 MS. HILLYER: I'm going to mark this as Exhibit 19 59. 20 MR. INFANTE: 59. 21 (At 4:00 p.m., Deposition Exhibit 59 marked) 22 BY MS. HILLYER: 23 Q So I just handed you -- or the court reporter has handed you 24 Exhibit 59 which is marked WOMP 0000942 through 946. If you 25 look at the -- let's see -- so at the very top of 946, the</p> <p style="text-align: center;">Page 45</p>

12 (Pages 42 to 45)

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

DEPOSITION OF BILL MAIER

<p>1 last page, it looks like this is part of an e-mail. You can 2 see the top of the e-mail from Ann Pettyjohn who I 3 understand was the previous Tasting Room manager. 4 MR. INFANTE: I think it says general manager. 5 MS. HILLYER: Is that not what I said? 6 MR. INFANTE: You said Tasting Room manager. 7 MS. HILLYER: Oh. 8 MR. INFANTE: Not that I actually know what her 9 title was. 10 MS. HILLYER: Right. 11 MR. INFANTE: But I'm just looking at her 12 signature. 13 MS. HILLYER: Thank you. 14 BY MS. HILLYER: 15 Q So do you see at the top where she says she tried to correct 16 misinformation about what we actually can and can't do under 17 the new zoning -- 18 <b>A Yes, I do see that.</b> 19 Q Do you know what she's referring to there about 20 misinformation? 21 <b>A I do not.</b> 22 Q Okay. And where she says that she will follow up with 23 someone just named here who sent the letter as I have with 24 the others. Do you know who those others would be? 25 <b>A I do not.</b></p> <p style="text-align: center;">Page 46</p>	<p>1 clarification. 2 MS. HILLYER: And I do -- I have no further 3 questions, so thank you for your time -- 4 THE WITNESS: All right. 5 MS. HILLYER: -- today, Mr. Maier. 6 THE WITNESS: All right. Thank you. 7 MR. INFANTE: Thank you. 8 (At 4:11 p.m., deposition concluded) 9 -0-0-0- 10 11 12 13 14 15 16 17 18 19 20 21 22 CERTIFICATE 23 24 25 I, Heidi Peckens, a Certified Electronic Recorder and</p> <p style="text-align: center;">Page 48</p>
<p>1 MS. HILLYER: I'm going to take a look at my notes 2 and let's take five minutes and see if I have any further 3 questions. 4 MR. INFANTE: Just five? Okay. 5 MS. HILLYER: Five. 6 (At 4:02 p.m., off the record) 7 (At 4:10 p.m., back on the record) 8 MS. HILLYER: Okay. I have no further -- 9 MR. INFANTE: Before you say that, though, he has 10 to clarify an answer. 11 MS. HILLYER: Yes. 12 THE WITNESS: As a point of clarification. Early 13 on, when you were asking about when operating responsibility 14 transferred from the chateau -- from Chateau Operations 15 Limited to Hawthorne. 16 MS. HILLYER: Yes. 17 THE WITNESS: I'm not sure what date I gave you, 18 but I would like to revise my answer to be the date that the 19 liquor license was officially transferred by the MLCC would 20 be the fact- (phonetic) -- would be the correct date. 21 BY MS. HILLYER: 22 Q Okay. Do you know what that date is off the top of your 23 head? 24 <b>A I do not.</b> 25 Q Okay. All right. I will note that. Thank you for the</p> <p style="text-align: center;">Page 47</p>	<p>1 Notary Public within and for the State of Michigan, do 2 hereby certify: 3 That this transcript, consisting of forty-eight (48) 4 pages, is a complete, true, and correct record of the 5 testimony of Bill Maier, given in this case on July 13th, 6 2023 and that the deponent was duly sworn to tell the truth. 7 I further certify that I am not related to any of the 8 parties to this action by blood or marriage; and that I am 9 not interested in the outcome of this matter, financial or 10 otherwise. 11 12 IN WITNESS THEREOF, I have hereunto set my hand this 13 26th day of July, 2023. 14 15 16 Heidi Peckens, CER 9634 17 Notary Public, State of Michigan 18 County of Grand Traverse 19 My commission expires: August 3, 2027 20 21 22 CERTIFICATION 23 STATE OF MICHIGAN) 24 )SS 25 COUNTY OF WAYNE )</p> <p style="text-align: center;">Page 49</p>

13 (Pages 46 to 49)

Peninsula Township  
FINAL FARM PROCESSING PERMIT  
No. 3

**Hawthorne Vineyards  
1000 Camino Maria  
Traverse City, MI 49686**

To: Marie-Chantal Dalese  
Manager, Hawthorne Vineyards  
Chateau Chantal  
15900 Rue de Vin  
Traverse City, MI 49686

Re: Hawthorne Vineyards  
1000 Camino Maria  
Traverse City, MI 49686  
Parcel ID: 28-11-018-006-01

The above referenced property is permitted to be used in accordance with the standards set forth in Section 6.7.2 (19) Farm Processing Facility of the Peninsula Township Zoning Ordinance.



Elise Crafts  
Peninsula Township Zoning Administrator

10/30/2013

Date

Winery-Chateau Special User Permit Application  
Peninsula Township

**Owners/Applicant:**

Montague Development, LLC  
1000 Camino Maria Dr.  
Traverse City, MI 49686

231-929-4206

ann@hawthornevineyards.com

**Planning Consultant:**

Sarah Keever  
Northview 22, LLC  
PO Box 3342  
Traverse City, MI 49685

sarah@northview22.com

Winery-Chateau Special User Permit Application  
Peninsula Township

**Introduction:**

Hawthorne Vineyards is currently approved as a 139 winery on Old Mission. We are seeking approval as a winery-chateau given the fact we meet the current regulations for this upgrade. There is no planned guest house or single-family residences as part of this application. Hawthorne seeks upgrading from a 139 winery to take advantage of event privileges and less restrictive sourcing requirements. The only item of possible construction is a 40x60 outdoor pavilion for guest use activities. There is no schedule for construction at this time. The Fire Chief has been at the property to meet with us and review these plans. He awaits your input before writing a letter of recommendation, but sees no issues with the current plans.

**Proposed Land Use:**

*Winery-Chateau: Hawthorne Vineyards*

**Parcel Acreages: 100% owned by Montague Development, LLC**

Parcel Acreages in Ag. District:

28-11-018-006-01	43.00 acres
28-11-018-008-00	9.67 acres
28-11-017-036-00	2.81 acres

Total	55.48 acres
-------	-------------

**Zoning:**

*A-1, Agricultural*

**Parking:**

Tasting Room (1 per 150 sf)	1840	square feet	12.3	spaces
Guests / Pavilion (max) (multiply by .4)	111	people	44.4	spaces
Staff (max)	8	people	8.0	spaces

64.7	spaces	Total Required
111	spaces	Provided

**Use Area Equivalents:**

	<b>Required</b>	<b>Provided</b>
<b>Winery</b>	<b>5 acres</b>	<b>50.48 acres</b>
<b>Manager's Residence</b>	<b>5 acres</b>	<b>5 acres</b>
<b>Single Family Residence (1)</b>	<b>n/a</b>	
<b>Guest Rooms</b>	<b>n/a</b>	
<b>Total</b>		<b>55.48</b>

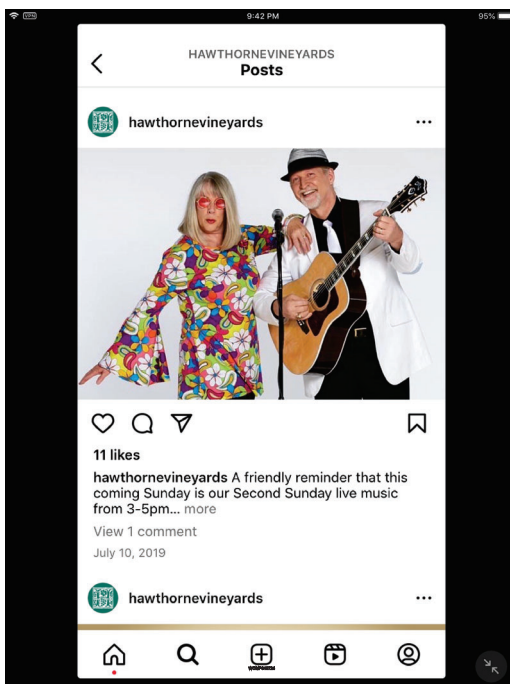
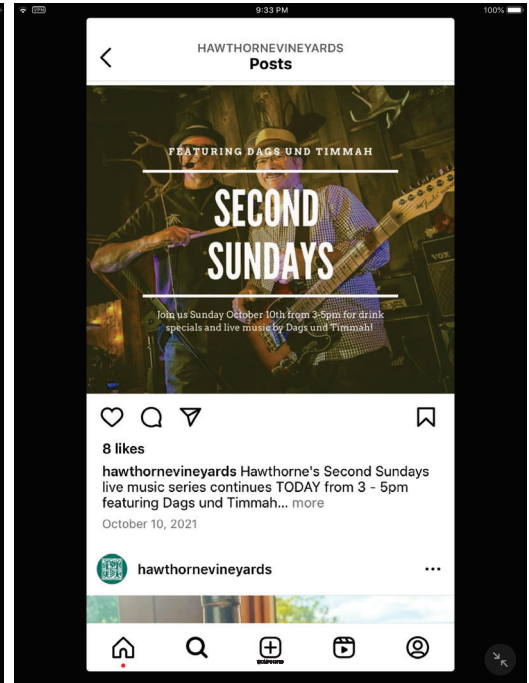
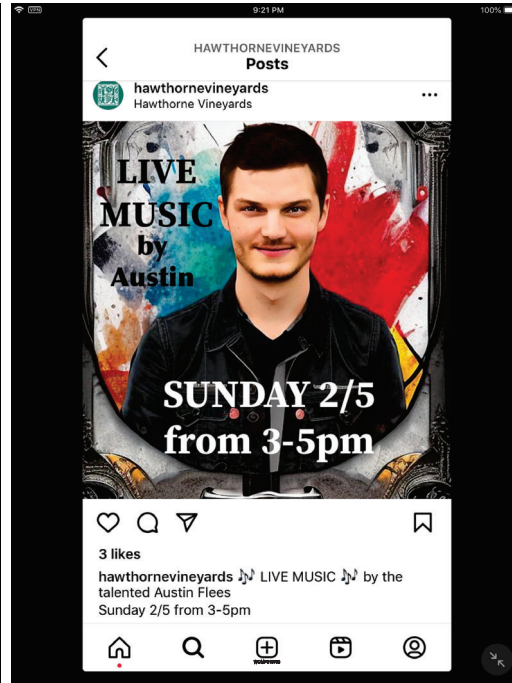


EXHIBIT 46

PTP Motion for Summary Judgment

October 6, 2023

Page 1 of 1



**EXHIBIT 47****PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 26**

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

DEPOSITION OF TODD OOSTERHOUSE

1 DEPOSITION OF TODD OOSTERHOUSE  
 2 Taken by the Intervener-Defendant on the 10th day of July,  
 3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at 8:00  
 4 a.m.  
 5 APPEARANCES:  
 6 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)  
 7 And  
 8 MR. CHRISTOPHER J. GARTMAN (P83286)  
 9 Miller Canfield Paddock & Stone, PLC  
 10 99 Monroe Avenue, NW, Suite 1200  
 11 Grand Rapids, Michigan 49503  
 12 (616) 776-6333  
 13 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)  
 14 McGraw Morris, PC  
 15 300 Ottawa Avenue, NW, Suite 800  
 16 Grand Rapids, Michigan 49503  
 17 (616) 288-2700  
 18 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467)  
 19 Law Office of Tracy Jane Andrews, PLLC  
 20 619 Webster Street  
 21 Traverse City, Michigan 49686  
 22 (231) 714-9402  
 23 And  
 24 MS. HOLLY LYNN HILLYER (P85318)  
 25 Olson Bzdok & Howard, PC  
 420 East Front Street  
 Traverse City, Michigan 49686  
 (231) 946-0044  
 Also Present: Karla Gerds  
 Jenn Cram  
 Edward O'Keefe  
 Marie-Chantal Dalese  
 RECORDED BY: Stacey M. Seals, CER 7908  
 Certified Electronic Recorder  
 Network Reporting Corporation  
 Firm Registration Number 8151  
 1-800-632-2720

Page 2

1 Traverse City, Michigan  
 2 Monday, July 10, 2023 - 8:06 a.m.  
 3 MS. ANDREWS: Good morning, Mr. Oosterhouse. My  
 4 name is TJ Andrews, I'm representing the Intervener Protect  
 5 the Peninsula. I understand you've been deposed before; is  
 6 that right?  
 7 MR. OOSTERHOUSE: Correct. And it's Osterhouse  
 8 (pronouncing).  
 9 MS. ANDREWS: Oosterhouse, I'm sorry. Thank you  
 10 for the clarification. The second "O" is silent?  
 11 MR. OOSTERHOUSE: Yes.  
 12 MS. ANDREWS: Thank you. This deposition is being  
 13 transcribed, as you realize, so let's please both of us be  
 14 sure to use verbal answers at all times.  
 15 MR. OOSTERHOUSE: Sure.  
 16 MS. ANDREWS: Thank you. If you would, please,  
 17 let me finish my questions. Let's try not to speak over one  
 18 another. And if you don't understand a question will you  
 19 let me know so that I can rephrase it?  
 20 MR. OOSTERHOUSE: Yes.  
 21 MS. ANDREWS: Okay. If you do understand a  
 22 question -- I mean, if you answer a question I will assume  
 23 that you understand the question. Is that fair?  
 24 MR. OOSTERHOUSE: Yes.  
 25 MS. ANDREWS: And if your attorney objects, I

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Page 3

1 expect you will answer the question anyway, unless he  
 2 instructs you not to answer it due to privilege. Is that  
 3 your understanding?  
 4 MR. OOSTERHOUSE: Yes.  
 5 MS. ANDREWS: While your estimates are okay, I  
 6 would ask you please not to guess at answers, if that's all  
 7 right?  
 8 MR. OOSTERHOUSE: Yes.  
 9 MS. ANDREWS: And let me know if you need a break.  
 10 Breaks are okay as long as we don't have a question pending  
 11 on the table.  
 12 MR. OOSTERHOUSE: Okay.  
 13 MS. ANDREWS: All right. Thank you.  
 14 REPORTER: Do you solemnly swear or affirm the  
 15 testimony you're about to give will be the whole truth?  
 16 MR. OOSTERHOUSE: I do.  
 17 TODD OOSTERHOUSE  
 18 having been called by the Intervener Defendant and sworn:  
 19 EXAMINATION  
 20 BY MS. ANDREWS:  
 21 Q So you understand that you are testifying today as the  
 22 corporate representative of OV The Farm, LLC?  
 23 A Yes.  
 24 Q Okay. And you understand we're here today because OV The  
 25 Farm has filed a lawsuit against Peninsula Township?

Page 5

2 (Pages 2 to 5)



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

DEPOSITION OF TODD OOSTERHOUSE

<p>1 <b>A I may have glanced over them, yes.</b></p> <p>2 Q Did you look at any documents that Bonobo or OV The Farm</p> <p>3 provided in response to those requests for documents from</p> <p>4 PTP?</p> <p>5 <b>A Not recently, but I put those together.</b></p> <p>6 Q You collected the documents that Bonobo provided in response</p> <p>7 to discovery requests?</p> <p>8 <b>A Yes, that is correct.</b></p> <p>9 Q But you didn't review them in preparation for your</p> <p>10 deposition today?</p> <p>11 <b>A I glanced over them.</b></p> <p>12 Q Did you have a copy in your possession?</p> <p>13 <b>A Hard copy, or what kind of copy?</b></p> <p>14 Q A copy that you were able to review, a bates numbered copy,</p> <p>15 a copy of the production that was made on your behalf in</p> <p>16 this case.</p> <p>17 <b>A I had a copy that I produced, yes.</b></p> <p>18 Q Okay. Did you inspect any other documents besides your</p> <p>19 responses to the requests for information from PTP and the</p> <p>20 documents Bonobo provided in this case in response to</p> <p>21 discovery requests?</p> <p>22 <b>A Such as?</b></p> <p>23 Q You tell me.</p> <p>24 <b>A No.</b></p> <p>25 Q Did you look at special use permit applications?</p> <p style="text-align: center;">Page 10</p>	<p>1 <b>A Yes.</b></p> <p>2 Q Okay. So I'd like to understand a little bit about the land</p> <p>3 ownership, the winery -- first I should clarify. Do you</p> <p>4 consider Bonobo and OV The Farm to be interchangeable terms?</p> <p>5 <b>A Yes.</b></p> <p>6 Q So if I say "Bonobo" you're not going to -- you understand</p> <p>7 that that means OV The Farm, LLC?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Does Bonobo include any other entity other than OV The Farm,</p> <p>10 LLC?</p> <p>11 <b>A No.</b></p> <p>12 Q So OV The Farm, LLC, and Bonobo are one and the same</p> <p>13 interchangeable titles?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Okay. So the Bonobo Winery sits on about 51 acres in</p> <p>16 Peninsula Township; right?</p> <p>17 <b>A Correct.</b></p> <p>18 Q And I'd like to -- is it your understanding that Bonobo is</p> <p>19 an assumed name of OV The Farm, LLC?</p> <p>20 <b>A It's a d/b/a.</b></p> <p>21 Q And that means it's a name but it's not a corporate entity;</p> <p>22 right?</p> <p>23 <b>A Correct.</b></p> <p>24 Q Does OV The Farm own the property where the Bonobo Vineyards</p> <p>25 and winery sit?</p> <p style="text-align: center;">Page 12</p>
<p>1 <b>A Recently?</b></p> <p>2 Q In preparation for your deposition.</p> <p>3 <b>A Not in preparation, no.</b></p> <p>4 Q Do you think you have a familiarity with your special use</p> <p>5 permits or applications for OV The Farm or Bonobo?</p> <p>6 <b>A I believe, yes.</b></p> <p>7 Q You are the person primarily responsible for making the</p> <p>8 applications for OV The Farm to the township or to the</p> <p>9 liquor control commission?</p> <p>10 <b>A Correct.</b></p> <p>11 Q So at least at some point you have had familiarity with the</p> <p>12 contents of those documents?</p> <p>13 <b>A Yes.</b></p> <p>14 Q You may not have a recent familiarity with them, is that</p> <p>15 fair?</p> <p>16 <b>A Fair.</b></p> <p>17 Q What else did you do -- what else did OV The Farm do to</p> <p>18 prepare you for today's deposition?</p> <p>19 MR. INFANTE: Besides meeting with counsel.</p> <p>20 <b>A Nothing.</b></p> <p>21 Q Nothing else?</p> <p>22 <b>A Besides meeting with counsel and looking at documents that</b></p> <p>23 <b>you sent, yeah.</b></p> <p>24 Q That's it. Okay. And do you agree to speak for OV The Farm</p> <p>25 with your deposition today?</p> <p style="text-align: center;">Page 11</p>	<p>1 <b>A Yes.</b></p> <p>2 Q Is OV The Farm titled on the property that the winery sits</p> <p>3 on?</p> <p>4 <b>A By the deed or by the bank?</b></p> <p>5 Q By the deed.</p> <p>6 <b>A I don't believe it's by the deed.</b></p> <p>7 Q What is the bank's interest -- what is the OV The Farm's</p> <p>8 bank interest you referenced by the bank? What do you --</p> <p>9 what does that refer to?</p> <p>10 <b>A They have the mortgage.</b></p> <p>11 Q Who has the mortgage?</p> <p>12 <b>A The bank.</b></p> <p>13 Q And who is responsible for making the mortgage payment, is</p> <p>14 it OV The Farm or is it the property owner whose name is on</p> <p>15 the deed?</p> <p>16 <b>A The property owner.</b></p> <p>17 Q And who is the property owner?</p> <p>18 <b>A My brother and I.</b></p> <p>19 Q And who is your brother?</p> <p>20 <b>A Carter.</b></p> <p>21 Q Carter Oosterhouse and Todd Oosterhouse?</p> <p>22 <b>A Correct.</b></p> <p>23 Q Those are the owners of the property?</p> <p>24 <b>A Correct.</b></p> <p>25 Q And who is Oosterhouse Vineyards, LLC?</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 TODD OOSTERHOUSE

<p>1 <b>A My brother and I's company.</b></p> <p>2 <b>Q Okay. So Oosterhouse -- is it your understanding that</b></p> <p>3 <b>Oosterhouse, LLC -- Oosterhouse Vineyards, LLC, is actually</b></p> <p>4 <b>the name of the -- whose name the property is titled under?</b></p> <p>5 <b>A On the deed, yes.</b></p> <p>6 <b>Q On the deed it's Oosterhouse Vineyards, LLC?</b></p> <p>7 <b>A Correct.</b></p> <p>8 <b>Q And who are the members of Oosterhouse Vineyards, LLC?</b></p> <p>9 <b>A My brother and I.</b></p> <p>10 <b>Q Todd and Carter Oosterhouse?</b></p> <p>11 <b>A Oosterhouse.</b></p> <p>12 <b>Q Thank you. So if Oosterhouse Vineyards, LLC, is the name of</b></p> <p>13 <b>the property owner, what is the relationship between OV The</b></p> <p>14 <b>Farm, LLC, and Oosterhouse Vineyards, LLC?</b></p> <p>15 <b>A One's an operating unit.</b></p> <p>16 <b>Q Which one in an operating unit?</b></p> <p>17 <b>A OV The Farm.</b></p> <p>18 <b>Q And what's the other?</b></p> <p>19 <b>A It's the -- I guess it's the first company we started with.</b></p> <p>20 <b>Q What does -- Oosterhouse Vineyards, LLC, what does it do?</b></p> <p>21 <b>A It's there in title to -- just for liability purposes.</b></p> <p>22 <b>Q Is insurance on the property held by or in the name of</b></p> <p>23 <b>Oosterhouse Vineyards, LLC?</b></p> <p>24 <b>A Both.</b></p> <p>25 <b>Q Both Oosterhouse Vineyards, LLC, and OV The Farm, LLC?</b></p> <p style="text-align: center;">Page 14</p>	<p>1 <b>Q Is it annual, monthly?</b></p> <p>2 <b>MR. INFANTE:</b> Objection; beyond the scope.</p> <p>3 <b>MS. ANDREWS:</b> We're understanding the owner of the</p> <p>4 <b>land.</b></p> <p>5 <b>MR. INFANTE:</b> You know the owner of the land, your</p> <p>6 <b>30(b)(6) Notice doesn't get into the financials. You have</b></p> <p>7 <b>no interest in financials, damages, payments, any of that;</b></p> <p>8 <b>it's beyond the scope. It's beyond the scope of your</b></p> <p>9 <b>participation in this case as well.</b></p> <p>10 <b>Q Mr. Oosterhouse, you're entitled to -- you must answer the</b></p> <p>11 <b>question regardless.</b></p> <p>12 <b>MR. INFANTE:</b> Not if it's beyond the scope, TJ.</p> <p>13 <b>We can all the judge if you want.</b></p> <p>14 <b>MS. ANDREWS:</b> That's not an objection. Yes, let's</p> <p>15 <b>call the judge.</b></p> <p>16 <b>MR. INFANTE:</b> That's fine.</p> <p>17 <b>MS. ANDREWS:</b> The only reason you may tell the --</p> <p>18 <b>MR. INFANTE:</b> Do you want to answer this question?</p> <p>19 <b>Do you know the answer, because if you don't have the lease</b></p> <p>20 <b>in front of you --</b></p> <p>21 <b>MS. ANDREWS:</b> We're not going to coach the</p> <p>22 <b>witness.</b></p> <p>23 <b>Q You may answer the question.</b></p> <p>24 <b>MS. ANDREWS:</b> The only reason you may instruct him</p> <p>25 <b>not to answer the question is if it's to maintain a</b></p> <p style="text-align: center;">Page 16</p>
<p>1 <b>A Correct.</b></p> <p>2 <b>Q And who are the members of Oosterhouse Vineyards, LLC?</b></p> <p>3 <b>You've told me that already.</b></p> <p>4 <b>MR. INFANTE:</b> Objection; asked and answered.</p> <p>5 <b>Q So the members are the same in both Oosterhouse Vineyards,</b></p> <p>6 <b>LLC, OV The Farm, LLC, and there are no other members in</b></p> <p>7 <b>either corporate entity besides the two brothers?</b></p> <p>8 <b>MR. INFANTE:</b> Objection; beyond the scope. You're</p> <p>9 <b>a little far afield of the 30(b)(6).</b></p> <p>10 <b>MS. ANDREWS:</b> We're talking about the land</p> <p>11 <b>ownership.</b></p> <p>12 <b>Q Is the tasting room part of the same property by Oosterhouse</b></p> <p>13 <b>Vineyards, LLC?</b></p> <p>14 <b>A Yes.</b></p> <p>15 <b>Q Is there a lease between Oosterhouse Vineyards, LLC, and OV</b></p> <p>16 <b>The Farm, LLC?</b></p> <p>17 <b>A Yes.</b></p> <p>18 <b>Q When was that lease executed?</b></p> <p>19 <b>A I believe that when we -- somewhere around 2013.</b></p> <p>20 <b>Q And what is the length or the term of the lease?</b></p> <p>21 <b>A Well, actually maybe 2015. 99 years with consecutive terms.</b></p> <p>22 <b>Q So it hasn't been renewed?</b></p> <p>23 <b>A Correct.</b></p> <p>24 <b>Q Is there a rental payment under the lease?</b></p> <p>25 <b>A Yes.</b></p> <p style="text-align: center;">Page 15</p>	<p>1 <b>privilege.</b></p> <p>2 <b>MR. INFANTE:</b> Or if I want to call the judge.</p> <p>3 <b>MS. ANDREWS:</b> And if you'd like to call the judge</p> <p>4 <b>let's do it.</b></p> <p>5 <b>MR. INFANTE:</b> Go ahead and answer, if you can.</p> <p>6 <b>A What is the question again?</b></p> <p>7 <b>Q What is the rental payment -- that's not the question. The</b></p> <p>8 <b>question is it an annual, monthly or other kind of rental</b></p> <p>9 <b>payment?</b></p> <p>10 <b>A It varies.</b></p> <p>11 <b>Q Based on what?</b></p> <p>12 <b>A Based on how the business does.</b></p> <p>13 <b>Q Okay. Is the equipment for making wine also owned by</b></p> <p>14 <b>Oosterhouse Vineyards, LLC?</b></p> <p>15 <b>A Yes.</b></p> <p>16 <b>Q Would you agree that OV The Farm holds the Michigan Liquor</b></p> <p>17 <b>Control Commission license to make and distribute wine at</b></p> <p>18 <b>the Bonobo Winery?</b></p> <p>19 <b>A I believe that goes under my name.</b></p> <p>20 <b>Q Under your name personally?</b></p> <p>21 <b>A Yes.</b></p> <p>22 <b>Q Not under OV The Farm, LLC?</b></p> <p>23 <b>A OV The Farm as the operating entity, but it's still tied to</b></p> <p>24 <b>me.</b></p> <p>25 <b>Q Do you know to whom the Michigan Liquor Control Commission</b></p> <p style="text-align: center;">Page 17</p>

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<p>1 <b>A Jill.</b></p> <p>2 Q Who is Jill?</p> <p>3 <b>A The winery director.</b></p> <p>4 Q Who else?</p> <p>5 <b>A I believe Megan handles music.</b></p> <p>6 Q Does Megan handle anything besides music?</p> <p>7 <b>A She's tasting room manager.</b></p> <p>8 Q Anyone else?</p> <p>9 <b>A Just a general staff consensus on things.</b></p> <p>10 Q And who comes up with the schedule? Once the ideas have</p> <p>11 been established for events within the tasting room who does</p> <p>12 the scheduling?</p> <p>13 <b>A Everybody.</b></p> <p>14 Q Everybody meaning Jill, Megan, yourself and other staff?</p> <p>15 <b>A Yes.</b></p> <p>16 Q Is there a central calendar that Bonobo uses to manage the</p> <p>17 activities in the tasting room?</p> <p>18 <b>A Yes.</b></p> <p>19 Q Would it reflect tours?</p> <p>20 <b>A I believe we produced that.</b></p> <p>21 MR. INFANTE: That wasn't -- the question was</p> <p>22 would it reflect tours.</p> <p>23 Q Would Bonobo's calendaring or scheduling system reflect</p> <p>24 tours?</p> <p>25 <b>A It may.</b></p> <p style="text-align: center;">Page 22</p>	<p>1 <b>A It just depends.</b></p> <p>2 Q What does it depend on?</p> <p>3 <b>A Activity.</b></p> <p>4 Q Activity that is taking place at Bonobo?</p> <p>5 <b>A If we're busy, if we're not busy, if people have called on</b></p> <p>6 <b>the phone, if they haven't called on the phone, if it's</b></p> <p>7 <b>raining, if it's snowing, it just determines on all those</b></p> <p>8 <b>different things who is in for that day, who is not in for</b></p> <p>9 <b>that day. It just depends.</b></p> <p>10 Q What food service do you offer at Bonobo?</p> <p>11 <b>A It varies.</b></p> <p>12 Q Can you give me a range of descriptions? And let's start</p> <p>13 with the tasting room.</p> <p>14 <b>A Okay.</b></p> <p>15 Q Average tasting room food service, typical.</p> <p>16 <b>A Some plates that we put out.</b></p> <p>17 Q Describe a plate?</p> <p>18 <b>A Cheese and charcuterie board.</b></p> <p>19 Q Okay. And outside of the tasting room what sort of food</p> <p>20 service?</p> <p>21 <b>A Outside of the tasting room outside or -- how do you mean?</b></p> <p>22 Q Dinners besides the tasting room. Does Bonobo have a full</p> <p>23 catering kitchen I guess. I'm trying to get, or a full</p> <p>24 commercial kitchen?</p> <p>25 <b>A Yes.</b></p> <p style="text-align: center;">Page 24</p>
<p>1 Q It would reflect live music events and themed evenings or</p> <p>2 afternoons in the tasting room?</p> <p>3 <b>A It may.</b></p> <p>4 Q And can you describe the scheduling system? Is it online,</p> <p>5 is it an Excel spreadsheet, is it a Google calendar?</p> <p>6 <b>A A combination.</b></p> <p>7 Q A combination of all those things?</p> <p>8 <b>A Among others.</b></p> <p>9 Q Like what?</p> <p>10 <b>A If someone calls in that day, it just may be word of mouth.</b></p> <p>11 Q So that might not be reflected on a schedule or calendar?</p> <p>12 <b>A If someone wanted a tour and they called an hour before --</b></p> <p>13 <b>Q That may not be reflected on a calendar?</b></p> <p>14 <b>A Correct.</b></p> <p>15 Q I guess I'm just trying to understand how do you avoid</p> <p>16 conflict? How do you avoid two different things in the</p> <p>17 tasting room at the same time?</p> <p>18 <b>A Conversation.</b></p> <p>19 Q Verbal discussions -- are there staff meetings?</p> <p>20 <b>A Yes.</b></p> <p>21 Q How often does the staff meet?</p> <p>22 <b>A It varies depending on the schedule.</b></p> <p>23 Q Daily?</p> <p>24 <b>A Could be.</b></p> <p>25 Q Sometimes? Times of the year, times -- it depends?</p> <p style="text-align: center;">Page 23</p>	<p>1 Q So you can make big meals, you can make charcuterie plates</p> <p>2 and pretty much anything in between?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And who's primarily responsible for setting the menu in the</p> <p>5 tasting room?</p> <p>6 <b>A Well, the chef will come up with some stuff.</b></p> <p>7 Q Who is your chef?</p> <p>8 <b>A Scott.</b></p> <p>9 Q Scott -- what's Scott's last name?</p> <p>10 <b>A Stanger.</b></p> <p>11 Q Is he the manager of the kitchen as well?</p> <p>12 <b>A That's debatable.</b></p> <p>13 Q Depends on who you ask?</p> <p>14 <b>A Yes.</b></p> <p>15 Q All right. How many people work in the kitchen? It depends</p> <p>16 on the day?</p> <p>17 <b>A Yeah; sure, it depends on the day.</b></p> <p>18 Q I'm just -- tasting room average Wednesday afternoon in</p> <p>19 June.</p> <p>20 <b>A Okay. End of June or beginning of June?</b></p> <p>21 Q Fair -- I just don't -- I just want to get like are we</p> <p>22 talking three to five or are we talking 15 to 25.</p> <p>23 <b>A At the end of June would be different than at the beginning</b></p> <p>24 <b>of June.</b></p> <p>25 Q Beginning of June how many?</p> <p style="text-align: center;">Page 25</p>

7 (Pages 22 to 25)

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<p>1 an amendment of an existing special use permit from Bonobo 2 Winery, Oosterhouse Vineyards and Winery; would you agree? 3 <b>A Looks that way, yes.</b> 4 Q Is Mansfield Land Use Consultants a consultant that Bonobo 5 or OV The Farm has used to assist with land use 6 applications? 7 <b>A Yes.</b> 8 Q And does this document look familiar to you as an 9 application on behalf of the Bonobo Winery? 10 <b>A Bonobo Winery is on it, yes.</b> 11 Q Would you have contracted with Mansfield Land Use 12 Consultants to compile this application on behalf of Bonobo 13 Winery? 14 <b>A Yes.</b> 15 Q And according to the document, at the bottom of the cover 16 page it says October 2014; do you see that? 17 <b>A I do.</b> 18 Q And on the first page it says October 6th, 2014? 19 <b>A Yes.</b> 20 Q And are you -- have you seen this document before? 21 <b>A I believe I have.</b> 22 Q And if you would just review page 3, the project summary, it 23 appears -- and correct me if I'm wrong -- that this 24 application is proposing to amend parking and structure 25 areas for the Bonobo Winery; is that consistent with what</p> <p style="text-align: center;">Page 50</p>	<p>1 <b>building -- I don't know a better way to say that --</b> 2 <b>constructing the building, there were changes that had to be</b> 3 <b>done to make it legal.</b> 4 Q Something to do with the stairway? 5 <b>A Correct.</b> 6 Q And then the winery came in afterwards and asked for an 7 amendment to SUP 118 to reflect the as-built shall we say? 8 <b>A Correct.</b> 9 Q And the township -- so this application is dated October 10 6th, 2014, is it your understanding that the winery had 11 already been built at that point, the structure was built? 12 <b>A 90 percent.</b> 13 Q Okay. Did it have an occupancy permit to your recollection? 14 <b>A No.</b> 15 MR. INFANTE: I just want to -- just for the 16 record, when you say like, "eh, 90 percent," that doesn't 17 come through on the record. If that's an estimate say it's 18 roughly. 19 <b>A Roughly 90 percent.</b> 20 MR. INFANTE: Because I know Ms. Andrews hears 21 your, "eh," and she understands you're estimating but the 22 transcript doesn't. 23 <b>A That's an estimate. I didn't take exact measurements and</b> 24 <b>say it's done to this percentage point.</b> 25 Q It was close to habitable for occupancy but not quite?</p> <p style="text-align: center;">Page 52</p>
<p>1 you understand Exhibit 1 to provide? 2 <b>A Yes.</b> 3 Q And in particular the proposal in terms of parking appears 4 to be reducing the number of parking spaces from 48 to 45; 5 is that correct? Is that what the document reflects? 6 (Witness reviews exhibit) 7 <b>A Yes.</b> 8 Q And that document reflects an amendment that would increase 9 the main level of the proposed winery and very slightly the 10 lower level of the winery; is that correct? 11 <b>A Yes.</b> 12 Q And is it your understanding that this application for 13 amendment of existing special use permit was necessitated 14 by construction related challenges that arose while the 15 winery was being built? 16 <b>A Yes.</b> 17 Q What do you -- what is your recollection of what 18 necessitated the application for an amendment? 19 <b>A Grand Traverse County, which is the building code office,</b> 20 <b>their -- I don't know what their term -- permits office</b> 21 <b>maybe?</b> 22 Q Like the building permits office? 23 <b>A Yes. So maybe construction code, reviewed the plans that</b> 24 <b>were originally submitted in 2013 to the township, and as we</b> 25 <b>were working through the building of -- I guess building the</b></p> <p style="text-align: center;">Page 51</p>	<p>1 <b>A It was close but not quite.</b> 2 MR. INFANTE: Sorry. 3 MS. ANDREWS: That's fine. Thank you. 4 Q On page 2 you indicate that there was also a new crush pad 5 area, a covered crush pad area. What is a crush pad area? 6 A summary of modifications first bullet on the second page. 7 <b>A What is a crush pad area?</b> 8 Q Yeah, what is a crush pad? Is that a term for -- is that a 9 winery thing? 10 <b>A Yes.</b> 11 Q What happens at a crush pad? 12 <b>A Multiple things. I mean, first and foremost it becomes a</b> 13 <b>staging area; so before you go pick something, before you go</b> 14 <b>harvest anything, before you go put workers out there to do</b> 15 <b>something in the field it's a staging area. So you have to</b> 16 <b>line up your tractors, you have to line up your harvesting</b> 17 <b>equipment, trucks, anything that may be needed to start your</b> 18 <b>harvest.</b> 19 Q And this is that staging area? 20 <b>A Correct.</b> 21 Q All right. That's sufficient. Thank you. 22 <b>A Okay.</b> 23 MR. INFANTE: Well, there's more to it. 24 Q There's more to a crush pad than that? 25 <b>A From that then you go and harvest, and then -- but you still</b></p> <p style="text-align: center;">Page 53</p>

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<p>1 was an ongoing dispute between Bonobo and the township about</p> <p>2 the crop planting requirements in the first amendment to SUP</p> <p>3 118?</p> <p>4 <b>A I believe it was a conversation.</b></p> <p>5 Q Would you agree that there were allegations that Bonobo</p> <p>6 violated a township zoning ordinance by hosting guest</p> <p>7 activity uses in early 2016?</p> <p>8 (Counsel hands document to counsel and witness)</p> <p>9 MR. INFANTE: Are you marking this?</p> <p>10 MS. ANDREWS: Yeah, this is Exhibit 5; PTP Dep</p> <p>11 Exhibit 5.</p> <p>12 (Deposition Exhibit 5 marked)</p> <p>13 MR. INFANTE: Do you have a better copy of this?</p> <p>14 MS. ANDREWS: So here's the deal: So the first</p> <p>15 three pages are the documents that were produced by the</p> <p>16 wineries in discovery, and then the second three pages are</p> <p>17 cleaner copies of the documents that we have provided for</p> <p>18 you; we've cleaned them up. But I wanted you to see that --</p> <p>19 to be able to compare the two versions so that you're better</p> <p>20 able to read them.</p> <p>21 MR. INFANTE: How did you clean that up?</p> <p>22 MS. ANDREWS: That would be work product that --</p> <p>23 MR. INFANTE: Copier settings?</p> <p>24 MS. ANDREWS: I have a magic legal assistant.</p> <p>25 MR. INFANTE: Okay. The one right behind you, is</p> <p style="text-align: center;">Page 66</p>	<p>1 Q There was a conversation. What do you mean by "a</p> <p>2 conversation"? Were lawyers involved in this conversation?</p> <p>3 <b>A Not that I'm aware of.</b></p> <p>4 Q Bonobo didn't retain counsel to assist in the resolution of</p> <p>5 these issues, to your recollection?</p> <p>6 <b>A I mean, it may have, but I always have a lawyer present.</b></p> <p>7 Q All right. So there was a conversation, your term, between</p> <p>8 the township and Bonobo as to crop planting and guest</p> <p>9 activity uses; is that correct?</p> <p>10 <b>A I believe so.</b></p> <p>11 Q Would you agree that that dispute or that -- sorry -- that</p> <p>12 conversation let to a settlement agreement between Bonobo --</p> <p>13 MS. ANDREWS: We're going to label the settlement</p> <p>14 agreement as PTP Dep Exhibit 6.</p> <p>15 (Deposition Exhibit 6 marked)</p> <p>16 Q PTP Dep Exhibit 6 is titled "Settlement Agreement," it is</p> <p>17 Def Response to 1st RFP 6404 through 6406.</p> <p>18 (Witness reviews exhibit)</p> <p>19 Q I don't have a question on the table. Mr. Oosterhouse,</p> <p>20 would you agree that that's your signature on page 3 of the</p> <p>21 document?</p> <p>22 <b>A Yes, that is my signature.</b></p> <p>23 Q And according to the document, on page 3 of 3 there is --</p> <p>24 this document was entered on the 23rd day of March 2017 by</p> <p>25 you on behalf of Oosterhouse Vineyards and Peninsula</p> <p style="text-align: center;">Page 68</p>
<p>1 that --</p> <p>2 MS. ANDREWS: Yes. Maybe highly skilled is the</p> <p>3 better term.</p> <p>4 MR. INFANTE: But the second three pages are</p> <p>5 identical to the first three?</p> <p>6 MS. ANDREWS: Yup. Subject to your review that's</p> <p>7 1008, 1008 --</p> <p>8 MR. INFANTE: I might go blind if I --</p> <p>9 MS. ANDREWS: What's that?</p> <p>10 MR. INFANTE: I said I might go blind.</p> <p>11 MS. ANDREWS: Don't worry, there's more coming,</p> <p>12 Joe.</p> <p>13 MR. INFANTE: I have really good eyesight. I</p> <p>14 don't know.</p> <p>15 Q And my question is simply that there were citations issued</p> <p>16 by the township to Oosterhouse Vineyards say on behalf of</p> <p>17 Bonobo for violations of guest activity use provisions in</p> <p>18 the zoning ordinance?</p> <p>19 <b>A I believe so, yes. That's what it says.</b></p> <p>20 Q That's reflected in Exhibit 5. Would you agree that the</p> <p>21 dispute -- let me -- you don't disagree with me that there</p> <p>22 was a dispute between the township and Bonobo over the crop</p> <p>23 planting and the guest activity uses -- or it stemmed from</p> <p>24 the crop planting; is that correct?</p> <p>25 <b>A There was a conversation.</b></p> <p style="text-align: center;">Page 67</p>	<p>1 Township?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And I'd like to direct you -- paragraph three requires the</p> <p>4 chateau, which is Bonobo Chateau, to develop a farm plan, to</p> <p>5 administer and carry out a farm plan. This is with respect</p> <p>6 to crop planting, is that your understanding? The document</p> <p>7 speaks for itself, subject to --</p> <p>8 MR. INFANTE: The document speaks for itself.</p> <p>9 Q -- what the document says, but it's in summary Bonobo was to</p> <p>10 administer and carry out the farm plan?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And then in paragraph 4 -- and the settlement agreement</p> <p>13 specified what that meant, is that a fair summary in terms</p> <p>14 of little "l" through little "v" when certain things were to</p> <p>15 take place?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And then in paragraph 4, which is the consideration for</p> <p>18 these agreements, the township agreed to execute the</p> <p>19 dismissal of pending administrative complaint. Do you see</p> <p>20 that?</p> <p>21 <b>A Yes.</b></p> <p>22 Q And then it continues a couple lines down and it says, "Also</p> <p>23 the chateau shall not apply for guest activity uses, as</p> <p>24 stated in section 8.7.3(10)(u), for the subject property</p> <p>25 until such a time as the agreement is completed?</p> <p style="text-align: center;">Page 69</p>

## EXHIBIT 47

## PTP Motion for Summary Judgment

October 6, 2023

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1 **A** Yes.

2 **Q** Is that your understanding of what the agreement was, was

3 that the chateau would not apply for guest activity uses

4 under section (10)(u) of the winery chateau provision

5 ordinance until the agreement is completed?

6 **MR. INFANTE:** Objection; the document speaks for

7 itself. Go ahead.

8 **A** Yes.

9 **MR. INFANTE:** TJ, I just want to point out this

10 has exhibits to it. Are there exhibits?

11 **MS. ANDREWS:** There may be in the discovery

12 response.

13 **MR. INFANTE:** Okay. Then I'll just object that

14 this document is incomplete.

15 **Q** And then would you agree, Mr. Oosterhouse, that the Bonobo

16 Winery did undertake that farm plan and comply with that

17 term in the settlement agreement to develop and submit a

18 farm plan to the township?

19 **A** Yes.

20 **(Deposition Exhibit 7 marked)**

21 **Q** So PTP Dep Exhibit is -- I would describe as Defendant's

22 Response to 1st RFP 6737 to -- I'm sorry -- 6373 to 6374,

23 and it is identified as a September 6th, 2018 memo from

24 township board -- I mean, from Randy Mielnik to the township

25 board regarding Bonobo Winery special use permit number 118;

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1 Are you familiar with this document?

2 **A** Yes, somewhat. It was five years ago.

3 **Q** And the bottom line -- is the bottom line on page 1 of the

4 document, it says, "Based on the above documentation, it

5 appears that the terms of the settlement agreement have been

6 met." Do you see that?

7 **A** Yes.

8 **Q** And is that consistent with your understanding, that between

9 the settlement agreement being signed in March of 2017 and

10 September of 2018 Bonobo satisfied the terms of the farm

11 plan requirement on that settlement agreement?

12 **A** Yes.

13 **Q** And so the township board at that point considered the

14 settlement agreement complied with; is that your

15 understanding?

16 **MR. INFANTE:** Object; form, speculation, the

17 document speaks --

18 **Q** The memo suggests that the township representative

19 considered the terms satisfied?

20 **A** Yes.

21 **Q** Did Bonobo consider the terms satisfied?

22 **A** Yes.

23 **MR. INFANTE:** Just another -- this has exhibits to

24 it -- it references to exhibits that are not attached, I'd

25 just object to it being incomplete.

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1 **Q** And since the terms of the -- since the September 18th memo

2 from Mr. Mielnik to the township board, Bonobo or OV Farms

3 or Oosterhouse Farms or you and your brother have not

4 obtained an amendment to SUP number 118; is that correct?

5 **MR. INFANTE:** Object to the form.

6 **A** I don't believe so.

7 **Q** Okay. And you have a -- so --

8 **MS. ANDREWS:** Let's call this Exhibit 8.

9 **(Deposition Exhibit 8 marked)**

10 **Q** Exhibit 8 is PTP Dep Exhibit 8, it is a document identified

11 as WOMP013866, it appears to be an email from you to Greg

12 Meihn, the -- who is Greg Meihn?

13 **A** Who is Greg Meihn? During this conversation he was the

14 township attorney.

15 **Q** And the email -- Did you send this email? Is this your -- a

16 copy of your email?

17 **A** Yes, it is.

18 **Q** And this appears to confirm a conversation between you and

19 Mr. Meihn; is that correct?

20 **A** Correct.

21 **Q** And it says, "Bonobo is allowed to do wine club and wine

22 related dinners and lunches anytime during the year";

23 correct?

24 **A** Correct.

25 **Q** And is that correct with that SUP number 118 first amendment

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1 that provided that Bonobo -- under subpart (m) that Bonobo

2 may have special dinners for non-registered guests?

3 **MR. INFANTE:** Objection; calls for a legal

4 conclusion.

5 **A** I'm trying to follow your path here.

6 **Q** The wine club and wine related dinners --

7 **A** Uh-huh (affirmative).

8 **Q** -- is that the -- the permission that the township board

9 granted to Bonobo in the special use permit 118 first

10 amendment November 20th, 2014, PTP Exhibit 2, page 10,

11 subparagraph (h) -- sorry -- page 11, subparagraph (m), that

12 the winery chateau may have special dinners wherein the

13 participants are not registered guests of the chateau?

14 **MR. INFANTE:** Objection; form, document speaks for

15 itself, calls for a legal conclusion.

16 **A** Yes, it does say that in my SUP under (m).

17 **Q** And is it your understanding that the wine club and wine

18 related dinners and lunches is -- is -- are special

19 dinners -- this is executing -- the email is confirming that

20 Bonobo may do the things that SUP 118 amendment one

21 authorized Bonobo to do?

22 **MR. INFANTE:** Same objection.

23 **A** So if we take a step back --

24 **Q** So my question is is the email confirming the right to do

25 special dinners -- wine club and wine related dinners and

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19 (Pages 70 to 73)

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<p>1 lunches, special dinners that were permitted under SUP 118</p> <p>2 first amendment?</p> <p>3 MR. INFANTE: Same objection. You can give the</p> <p>4 answer.</p> <p>5 <b>A These are -- I was confirming a conversation with Greg.</b></p> <p>6 Q All right. And the conversation is that Bonobo is allowed</p> <p>7 to do wine club and wine related dinners; correct?</p> <p>8 <b>A correct.</b></p> <p>9 Q And is it your understanding that the permission from the</p> <p>10 township to do wine club and wine related dinners stems from</p> <p>11 SUP 118 first amendment page 11 of 14?</p> <p>12 MR. INFANTE: Objection -- same objection; form,</p> <p>13 foundation, calls for a legal conclusion, document speaks</p> <p>14 for itself.</p> <p>15 MS. ANDREWS: No speaking objections.</p> <p>16 MR. INFANTE: That wasn't a speaking objection.</p> <p>17 <b>A I'm saying that this confirmation is based off a</b></p> <p>18 <b>conversation with Greg, who was the township attorney, who</b></p> <p>19 <b>was letting me know -- or giving me a reference as to what I</b></p> <p>20 <b>could do.</b></p> <p>21 Q And you are allowed to do wine club and wine related dinners</p> <p>22 and lunches; is that correct?</p> <p>23 <b>A That is what it says.</b></p> <p>24 Q And during your conversation did you ask if that was granted</p> <p>25 in a special use permit?</p> <p style="text-align: center;">Page 74</p>	<p>1 <b>A I believe so.</b></p> <p>2 Q So you mentioned a few moments ago that you have not</p> <p>3 received an amendment to SUP 118 since November -- since the</p> <p>4 memorandum from Mr. Mielnik dated September 6th, 2018, PTP</p> <p>5 Dep Exhibit 7 to the present; correct?</p> <p>6 MR. INFANTE: Objection; that was not his</p> <p>7 testimony. His testimony was it's debatable.</p> <p>8 Q No, I asked if Bonobo has obtained a permit amendment, a SUP</p> <p>9 amendment since permit 118 -- sorry -- since the memorandum</p> <p>10 reflected in PTP Dep Exhibit 7.</p> <p>11 <b>A Is it a permit?</b></p> <p>12 Q My question is has Bonobo received an amendment to SUP 118</p> <p>13 since September of 2018?</p> <p>14 MR. INFANTE: Object to form.</p> <p>15 <b>A Have I received an amendment? I think we were just allowed</b></p> <p>16 <b>to do things.</b></p> <p>17 Q But you have not -- so I'm sorry. My question is have you</p> <p>18 received an amendment from the township board to SUP 118</p> <p>19 since September 6th, 2018?</p> <p>20 MR. INFANTE: Same objection.</p> <p>21 <b>A I was granted to do that.</b></p> <p>22 Q So have you received an amendment to SUP 118?</p> <p>23 <b>A I was granted to do that.</b></p> <p>24 Q But that's not my question. Were you granted an amendment</p> <p>25 to your special use permit?</p> <p style="text-align: center;">Page 76</p>
<p>1 <b>A I did not.</b></p> <p>2 Q Did he suggest that it was granted in a special use permit?</p> <p>3 <b>A He just said I could do it.</b></p> <p>4 Q So you don't understand the source of the permission to do</p> <p>5 wine club and wine related dinners and lunches any time?</p> <p>6 <b>A I was asking him what I could do and couldn't do.</b></p> <p>7 Q But you don't understand the source of the permission that</p> <p>8 the township -- that Bonobo is allowed to do wine club and</p> <p>9 wine related dinners and lunches anytime during the year?</p> <p>10 <b>A That's what the township's attorney told me.</b></p> <p>11 Q And that's your understanding of what Bonobo is allowed to</p> <p>12 do?</p> <p>13 MR. INFANTE: Object to form.</p> <p>14 <b>A Part of it.</b></p> <p>15 Q Would you agree that the township has not issued a special</p> <p>16 use permit or amendment to a special use permit to Bonobo</p> <p>17 that authorizes Bonobo to conduct guest activity uses under</p> <p>18 (10)(u) of the winery chateau permit?</p> <p>19 MR. INFANTE: Object to form.</p> <p>20 <b>A That's debatable.</b></p> <p>21 Q Since November 20th, 2014 when the township board adopted</p> <p>22 the first amendment to SUP 118, has Bonobo obtained</p> <p>23 permission from the township in a special use permit to host</p> <p>24 guest activities under section 8.7.3(10)(u)?</p> <p>25 MR. INFANTE: Object to form.</p> <p style="text-align: center;">Page 75</p>	<p>1 <b>A An amendment how? Can you clarify an amendment, please?</b></p> <p>2 Q And amendment is a decision by the township board, would you</p> <p>3 agree with that?</p> <p>4 <b>A Township official or township board?</b></p> <p>5 Q Township board.</p> <p>6 MR. INFANTE: Objection vague.</p> <p>7 Q Has the township board acted on an application from Bonobo</p> <p>8 for a special use permit amendment to special use permit 118</p> <p>9 since September of 2018?</p> <p>10 MR. INFANTE: Same objection.</p> <p>11 <b>A I don't know what they did behind closed doors.</b></p> <p>12 Q Has the township board approved an amendment to special use</p> <p>13 permit number 118 since September of 2018?</p> <p>14 MR. INFANTE: Same objection.</p> <p>15 <b>A I don't know what they did behind closed doors.</b></p> <p>16 Q Mr. Oosterhouse, you're being evasive. Have --</p> <p>17 MR. INFANTE: Just say you don't know.</p> <p>18 <b>A I don't know.</b></p> <p>19 <b>Q Have you applied for a special use permit to the township</b></p> <p>20 <b>board for guest activity uses since September 6th, 2018?</b></p> <p>21 <b>A They've allowed me to do that --</b></p> <p>22 <b>Q I did not ask if they allowed you. I asked if Bonobo has</b></p> <p>23 <b>applied for an amendment to special use permit 118 for guest</b></p> <p>24 <b>activity uses since September 6th, 2018.</b></p> <p>25 <b>A They asked me for tonnage --</b></p> <p style="text-align: center;">Page 77</p>



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<p>1 Q Mr. Oosterhouse, --</p> <p>2 A -- they've accepted --</p> <p>3 MR. INFANTE: He's answering your question.</p> <p>4 A They've accepted that tonnage, they've asked me to provide</p> <p>5 that and where I got it from, and they said I -- and said</p> <p>6 tell them when I was doing things. So they granted me that</p> <p>7 ability without me going through the board.</p> <p>8 Q So let me break that down. I asked you if Bonobo has</p> <p>9 applied to the township for an amendment to special use</p> <p>10 permit number 118 for permission to conduct guest activity</p> <p>11 uses, and your response is that the township has asked for</p> <p>12 tonnage, they accepted the tonnage, you provided where you</p> <p>13 got it and you tell them when you're doing these things and</p> <p>14 they granted you that ability?</p> <p>15 A They said -- well, sometimes they would respond and</p> <p>16 sometimes they wouldn't.</p> <p>17 Q So first of all, let me confirm. You did not -- in your</p> <p>18 response you have told me that they asked for tonnage you</p> <p>19 provided tonnage, you provided where you got it and you told</p> <p>20 them when you're doing them. You did not indicate that</p> <p>21 Bonobo has applied for an amendment to SUP 118 since</p> <p>22 September 2018 for guest activity uses; is that correct?</p> <p>23 MR. INFANTE: Objection; vague. Go ahead and</p> <p>24 answer.</p> <p>25 A No.</p> <p style="text-align: center;">Page 78</p>	<p>1 A Yes.</p> <p>2 Q And would you agree that since September 18th -- September</p> <p>3 6th, 2018, Bonobo has not compiled an application, submitted</p> <p>4 it to the township board for an amendment to SUP 118 for</p> <p>5 guest activity uses?</p> <p>6 A Correct.</p> <p>7 Q Thank you.</p> <p>8 MR. INFANTE: TJ, this a good time for a break?</p> <p>9 MS. ANDREWS: No. Unless the witness needs a</p> <p>10 break.</p> <p>11 THE WITNESS: I'll take a break.</p> <p>12 (Off the record)</p> <p>13 Q Mr. Oosterhouse, before the break you indicated that</p> <p>14 Bonobo -- you indicated that four things make you -- you</p> <p>15 identified four things that the township had done or you had</p> <p>16 done that I believe you indicated granted you that ability,</p> <p>17 and I believe you were referring to guest activity uses. Do</p> <p>18 you recall your testimony?</p> <p>19 A I do, and not necessarily guest activities but general</p> <p>20 activities.</p> <p>21 Q Okay. So let's -- so what is the difference between general</p> <p>22 activities and guest activity uses?</p> <p>23 MR. INFANTE: Objection; vague.</p> <p>24 A Great question. I would love to know that answer.</p> <p>25 Q Okay. So I'm specifically talking about guest activity uses</p> <p style="text-align: center;">Page 80</p>
<p>1 Q So is asking for tonnage an application for an amendment to</p> <p>2 SUP 118?</p> <p>3 MR. INFANTE: Objection; vague, form.</p> <p>4 A It could be.</p> <p>5 Q Did Bonobo apply -- who asked for tonnage?</p> <p>6 A The township.</p> <p>7 Q So that was not an application by Bonobo for an amendment to</p> <p>8 SUP 118 for guest activity uses; correct?</p> <p>9 A I don't know, maybe they changed the rules on how you apply.</p> <p>10 Q But was that an application by Bonobo?</p> <p>11 MR. INFANTE: Form, vague -- sorry. Objection:</p> <p>12 form, vague.</p> <p>13 Q Was that an application by Bonobo to amend its SUP when the</p> <p>14 township board asked for tonnage?</p> <p>15 A If that was a new way of doing it, yes.</p> <p>16 Q So your position, the position of Bonobo, is that the</p> <p>17 township's request for tonnage is the same thing as an</p> <p>18 application by Bonobo to amend SUP 118 to allow guest</p> <p>19 activity uses? Is that your testimony?</p> <p>20 MR. INFANTE: Same objection.</p> <p>21 A I'm saying that I don't know how they were doing it, but if</p> <p>22 that's how they were doing it then it could have been.</p> <p>23 Q Would you agree that in 2014 Bonobo submitted an application</p> <p>24 for an amendment to SUP 118 that included a packet in the</p> <p>25 application?</p> <p style="text-align: center;">Page 79</p>	<p>1 under subsection (u) of the zoning ordinance and of the</p> <p>2 special use permit section 8.7.3(10)(u).</p> <p>3 A Okay.</p> <p>4 Q Guest activity uses, and you understood that you -- they've</p> <p>5 asked for tonnage, they've accepted tonnage, you've provided</p> <p>6 where you got it and you tell them when you're doing those</p> <p>7 things.</p> <p>8 A Okay.</p> <p>9 Q And it's my understanding that those are the things that</p> <p>10 make you believe that the township has granted you the</p> <p>11 ability to do guest activity uses?</p> <p>12 A Yes.</p> <p>13 Q Okay. So asking for tonnage, you said that was from the</p> <p>14 township staff?</p> <p>15 A Correct.</p> <p>16 Q Who at the township staff?</p> <p>17 A I think Randy, Christina Deeren, maybe -- what's his</p> <p>18 name? -- old guy --</p> <p>19 Q Gordon Hayward?</p> <p>20 A Yes.</p> <p>21 Q Anyone else?</p> <p>22 A Maybe Dave Sanger.</p> <p>23 Q Would those requests for tonnage have been in writing?</p> <p>24 A I think more verbal, just, hey, send this over.</p> <p>25 Q And then you would have responded, you have sent tonnage in</p> <p style="text-align: center;">Page 81</p>

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1 writing?  
2 A Correct.  
3 Q And that would have been how, by email?  
4 A Yes.  
5 Q So you would have sent the township an email that provides  
6 tonnage?  
7 A Yes.  
8 Q What do you mean by tonnage?  
9 A Weight.  
10 Q Weight of?  
11 A Fruit.  
12 Q Fruit you used for?  
13 A Wine making.  
14 Q Wine making. So you would have sent an email to Randy,  
15 Christine Deeren, Gordon Hayward or maybe Dave Sanger that  
16 provided tonnage?  
17 A And/or the attorney.  
18 Q And who is the attorney?  
19 A I believe Greg was at the time.  
20 Q Okay. So there would be email from you to Randy, Christine  
21 Gorgon, Dave and/or Greg with tonnage information; correct?  
22 A Correct.  
23 Q And you haven't provided that -- have you provided that in  
24 discovery?  
25 A Whatever I could find, yes.

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1 Q Okay. And then you provided where you got it? You said  
2 provided where we got it -- I think that's what you said,  
3 what do you mean by that?  
4 A Which farms on Old Mission Peninsula.  
5 Q And who are the farms that Bonobo gets tonnage from?  
6 A Well, ourselves -- and it varies depending on what's  
7 available.  
8 Q So then the tonnage is correlated to what? What does the  
9 tonnage get you by providing tonnage?  
10 A They asked for it.  
11 Q They asked for it and you provided it, and then what does  
12 that mean?  
13 A I don't know.  
14 Q You don't know what that means?  
15 A It has to do with guest activity.  
16 Q What does it have to do with guest activity?  
17 A Presumably -- I'm not for certain -- but how many people can  
18 attend the winery.  
19 Q How many people can attend the winery or guest activity use?  
20 A Guest activity use.  
21 Q Guest activity under the winery chateau ordinance?  
22 A Correct.  
23 Q So the tonnage -- when you provide tonnage you are  
24 identifying the number of people that can attend guest  
25 activity uses?

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1 A Correct.  
2 Q And then you tell them when you're doing those things. Who  
3 are you telling when you're doing what things?  
4 A The township.  
5 Q And again, who at the township?  
6 A The planner, enforcement, zoning, attorney.  
7 Q So again, is that Randy, Christine, Gordon, Dave, Greg?  
8 A Could be.  
9 Q Anyone else?  
10 A I don't know. I mean, it depends on who's working at the  
11 time in those positions.  
12 Q So you -- so you at Bonobo tell one of those township  
13 people, staff people, when you're doing those things, what  
14 things?  
15 A Whatever they deem as events.  
16 Q So you have provided --  
17 A I provided tonnage.  
18 Q You provided tonnage. And you provided tonnage and you tell  
19 them when you're doing those things?  
20 A Yes.  
21 Q Okay. So if you refer back to PTP Dep Exhibit 8. Do you  
22 have that copy? That's the email from you to Mr. Meihn.  
23 A Yes.  
24 Q The second -- the third sentence of your email says, "You  
25 just want me to give the township a heads up when they are

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1 occurring?" Do you see that?  
2 A I do.  
3 Q And here you're referring to wine club and wine related  
4 dinners and lunches; correct?  
5 A And/or -- the conversation with Greg was about anything that  
6 I'm doing, and this was just a couple things that were  
7 happening at the time in the near future, but it didn't mean  
8 anything that we were going to be doing in the near --  
9 meaning this email was based on these things that were  
10 coming up in the next week or two, not anything that we  
11 would be doing in the future; meaning that he just said let  
12 him know when I'm doing anything.  
13 Q And specifically this email is referring to -- it says,  
14 "Bonobo is allowed to do wine club and wine related dinners  
15 and lunches any time during the year, you just have to give  
16 the township the heads up." And the document speaks for  
17 itself, but basically he wants the township to get a heads  
18 up when Bonobo is doing in particular wine club, wine  
19 related dinner and lunches; correct?  
20 MR. INFANTE: Objection; foundation.  
21 A He wants me -- I never got a response from this by the way,  
22 it was just a conversation on the phone. He just said let  
23 them know whenever you're doing something that may look  
24 differential than a normal parking lot.  
25 Q And so among the things you must give the township notice

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22 (Pages 82 to 85)

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<p>1 of, you must give them notice of wine club, wine related 2 dinners and lunches anytime during the year; correct? 3 <b>A Yeah, anytime people are drinking wine at dinner.</b> 4 Q So is wine club drinking wine at dinner? 5 <b>A Uh-huh (affirmative).</b> 6 Q "Yes"? 7 <b>A Sometimes.</b> 8 MR. INFANTE: You didn't give a verbal answer, you 9 did a "uh-huh." 10 THE WITNESS: Oh, sorry. 11 Q Wine club is drinking wine at dinner? Let me back up. Are 12 you saying that your understanding of the conversation with 13 Mr. Meihn is that you must give him notice every time the 14 township is drinking wine -- is hosting something that's 15 drinking wine with dinner? 16 <b>A He wanted me to give the township notice as a courtesy, not 17 as a rule, because he felt what we were doing at the winery 18 fell within guidelines of the township ordinance.</b> 19 Q All right. So I want to understand what Bonobo understood 20 it was doing and what fell within the township ordinance. 21 Is it your understanding that wine club, wine related 22 dinners and lunches require notice to the township? 23 <b>A Not require; courtesy.</b> 24 Q Not required; courtesy. And I'm going to go back, tell you 25 went you're doing those things. What things have you told</p> <p style="text-align: center;">Page 86</p>	<p>1 guests of the winery chateau and such meetings and 2 special dinners are for agricultural purposes/education 3 only as permitted under the zoning ordinance." 4 That's one section that talks about dinners, is there 5 another? 6 <b>A I'm looking.</b> 7 (Witness reviews exhibit) 8 <b>A Can I check in the other document?</b> 9 Q Sure. 10 <b>A Did you give me the 2013, or did we just talk about --</b> 11 Q We did give it to you but we didn't mark it as an exhibit 12 because it's an ECF in this case, it was ECF 32-6. You're 13 referring to the original May 14th, 2023 decision of the 14 township board; correct? 15 <b>A Correct.</b> 16 (Witness reviews document) 17 Q Mr. Oosterhouse, you're referring to a document that 18 predates the 2018 -- 2017 settlement agreement; correct? 19 <b>A Yeah.</b> 20 Q So would you agree that since 2018 the township board has -- 21 you signed a settlement agreement that you would not seek 22 permission for guest activity uses until such time as those 23 conditions in the settlement agreement were completed; 24 correct? 25 MR. INFANTE: Objection; calls for a legal</p> <p style="text-align: center;">Page 88</p>
<p>1 the township that you're doing that is -- that relates to or 2 that supports your position that they granted you that 3 ability? And I believe you meant that ability to have guest 4 activity uses? 5 <b>A When we're having wine and food.</b> 6 Q So your understanding is that the township has granted you 7 the ability to have guest activity uses based on the fact 8 that you tell them when you're doing those things in part; 9 correct? 10 <b>A Courtesy.</b> 11 Q You courtesy tell them when you're doing those things. So 12 by courtesy telling the township when you're hosting guest 13 activity uses they have granted you the ability to host 14 guest activity uses? 15 <b>A Well, if you look through my permit -- or my SUP, whatever 16 you want to call it, there's a couple of different sections 17 about dinners and doing things.</b> 18 Q So let's look at Exhibit 2. So I see on page 11, it's under 19 subparagraph (m), which is on -- actually on page 10, the 20 (m) is, where the township -- we've referred to this a 21 couple of times, 22 "The board finds that all permitted onsite" -- 23 "all uses permitted onsite shall take place within the 24 principal structure meetings and special dinners shall 25 be allowed wherein the participates are not registered</p> <p style="text-align: center;">Page 87</p>	<p>1 conclusion. 2 <b>A As determining what are guest activities.</b> 3 Q So that's not the question. The question is what is the 4 source of the approval that granted you the ability to do 5 guest activity uses. And I'm looking -- I should clarify, 6 I'm looking post 2018, the September 6th, 2018, memo from 7 Mr. Meilink confirming that the terms of the settlement 8 agreement were complied with. 9 <b>A Okay.</b> 10 Q so I'm looking for what permission or what authority -- or 11 you said they granted me that ability, when did they grant 12 you -- you've cited four; asked for tonnage, accepted 13 tonnage, provided where you got the tonnage and then you 14 tell them when you're doing those things. Where else would 15 the -- how else has the township board given you the ability 16 to conduct guest activity uses since September of 2018? 17 <b>A By not saying I couldn't.</b> 18 Q So they haven't said you couldn't but they haven't -- have 19 they said you may? Have they -- has the township board 20 provided authority for Bonobo to conduct guest activity 21 uses? 22 <b>A Staff has.</b> 23 Q And by "staff," again you're talking about Randy, Christine, 24 Gordon, Dave and Greg; correct? 25 <b>A Correct.</b></p> <p style="text-align: center;">Page 89</p>

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<p>1 Q And you're talking about those four things; asking for 2 tonnage, accepting tonnage, providing where you got it and 3 telling them when you're doing those things; correct? 4 A Correct. 5 Q But the township board has not taken action to grant Bonobo 6 authority under a special use permit or otherwise to conduct 7 guest activity uses since September of 2018? 8 MR. INFANTE: Objection; calls for a legal 9 conclusion. 10 A Unless they did it behind closed doors. 11 Q They haven't done it at a public meeting? 12 A Correct. 13 Q So I'd like to look at some documents that Bonobo has 14 provided in discovery related to the activities and events 15 at Bonobo Winery. Let's start with a calendar labeled as -- 16 I think we're on PTP Dep Exhibit 9. 17 (Deposition Exhibit 9 marked) 18 Q And Dep Exhibit 9 is -- the first line is 4-2021/6-2022, and 19 it's bates numbered WOMP014203 through WOMP014226. Do you 20 have that document in front of you? 21 A It seems so. 22 Q Well, yours is a lot shorter than mine. 23 MR. INFANTE: Mine is double sided. 24 MS. ANDREWS: Is yours double sided? 25 MR. INFANTE: Yes.</p> <p style="text-align: center;">Page 90</p>	<p>1 A Yes. 2 Q And this documents that there are tours scheduled -- tours 3 if they're scheduled in advance may be captured on this 4 calendar? 5 A Correct. 6 Q And then what is -- I'm looking on 14205, November 4th -- 7 Thursday, November 4th, is that 2021 since it's still in 8 virtual happy hour context? 9 A What is that? 10 Q No, I'm just wondering year November 4th of -- 11 A I mean, some of this stuff may have just been held over on 12 the calendar and it's never been erased. 13 Q Yeah, this is a recent -- well, what is Girl Scout meeting? 14 What would be involved in a Girl Scout meeting at Bonobo? 15 A As far as I know they could have come in for a wine tasting. 16 Q The Girl Scouts? 17 A Yeah. 18 MR. INFANTE: Not the actual girls I hope. The 19 leaders? 20 Q I mean, they have to be 21; right? 21 A Yes, they do. 22 Q So it would be the leaders of the Girl Scouts? 23 A I assume so, yes. Or it's a bunch of girls that call them 24 the Girls Scouts and say we're coming in on a bus, call us 25 the Girl Scouts.</p> <p style="text-align: center;">Page 92</p>
<p>1 MS. ANDREWS: It goes to 227? 2 MR. INFANTE: 226. 3 MS. ANDREWS: 226. My apologies. Thank you. 4 Mine is just larger and it made me concerned that I had a 5 different version than you did. 6 Q This was provided by Bonobo in discovery, are you familiar 7 with this document? 8 A Yes. 9 Q It appears to be a printout of an event calendar; is that 10 right? 11 A Correct. 12 Q Is this -- who maintained this document? 13 A Most people at Bonobo. 14 Q In what format is document -- what is -- what is this a 15 printout from? 16 A A Google calender. 17 Q A Google calendar. Thank you. That's helpful. Who decides 18 what goes on this calendar? 19 A Myself, Lucy, Jill, maybe Graham, maybe Megan. 20 Q Okay. These are activities that may be happening in the 21 tasting room during tasting room hours; is that -- 22 A Some may be, yes. 23 Q And then it also includes -- what is a virtual happy hour? 24 A A Zoom happy hour. 25 Q Wine involved?</p> <p style="text-align: center;">Page 91</p>	<p>1 Q Okay. If you know of a party bus or a tour bus coming, 2 would that -- do you sometimes get advanced notice of tour 3 busses? 4 A Sometimes, yes. 5 Q But not always? 6 A Not always. 7 Q And those would be mostly for tastings? 8 A No. 9 Q We else? 10 A They may come in for a glass of wine. 11 Q Tastings or a glass of wine, not a scheduled event? 12 A They may. 13 Q So would you know about a scheduled event -- a tour bus 14 coming for a scheduled event in advance? 15 A Most likely, yeah. If they were coming in for maybe a tour, 16 if they're coming in for -- just to hang out. 17 Q If it's scheduled it's probably on the schedule? 18 A Most likely. But, I mean, some things may not be as they 19 call the day before or the day of, an hour before they show 20 up. 21 Q Book club, is Mary your sister? 22 A My mother. 23 Q Your mother. And she hosts the book club at the library? 24 A At times. 25 Q That's very appropriate, isn't it?</p> <p style="text-align: center;">Page 93</p>

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1 A If you feel that way.  
2 Q At the library. And then I believe I saw -- are these  
3 events that actually took place that's on the schedule?  
4 A Some may be. Some may be just, hey, block me out a time  
5 period and they never got removed, much like virtual happy  
6 hour.  
7 Q Yoga on Saturday mornings, did that take place?  
8 A Some days, yes.  
9 Q Does that involve tasting?  
10 A Yes.  
11 Q Where does the yoga take place?  
12 A On the patio if weather -- if weather is permitting,  
13 otherwise inside.  
14 Q Inside in the --  
15 A The lounge.  
16 Q In the lounge. And then the tasting would take place in the  
17 lounge as well?  
18 A Correct.  
19 Q And is yoga a -- what do you consider yoga? Is that a  
20 special use -- a special dinner?  
21 A No, just people coming in doing yoga.  
22 Q And is yoga on your Facebook page? Would you announce  
23 that -- is it open to the public?  
24 A Yeah.  
25 Q Who is leading the yoga class?

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1 MR. INFANTE: It's Threads now apparently.  
2 A Maybe on You Tube or I don't know what else is out there.  
3 Q All right. Are there events that would not be captured on  
4 this calendar that Bonobo may host?  
5 A There could be. Like I said if people, hey, I'm bringing a  
6 group in and we want some food, can we sit in the gallery.  
7 Q Okay. There --  
8 A On a short notice or something.  
9 Q On short notice. For the most -- so how does Bonobo use  
10 this calendar internally?  
11 A General knowledge.  
12 Q So that the staff knows what's happening that day or coming  
13 up?  
14 A We try to, yes. Staff doesn't always listen.  
15 Q On 14215, page 14215, it appears to be 2023 events, do you  
16 see on February 11th it appears that from 5:00 to 8:00 p.m.  
17 there was a ceremony/celebration?  
18 A Uh-huh (affirmative).  
19 Q Is that a wedding ceremony/celebration? What kind of  
20 ceremony/celebration would that be?  
21 A I would not know, it could be an anniversary, it could be a  
22 wedding.  
23 Q It could be a wedding?  
24 A Yeah.  
25 Q If a ceremony or celebration is scheduled in advanced would

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1 A I don't even know her name, to tell you the truth.  
2 Q So this is an arrangement with a teacher?  
3 A Or something, or wine club member or a friend or something  
4 of somebody.  
5 MR. INFANTE: It's not you?  
6 THE WITNESS: It's not me. I'm not doing the  
7 yoga.  
8 Q You're not leading the yoga class?  
9 A Nor participating.  
10 Q Your staff is not leading?  
11 A No.  
12 Q Are events like yoga promoted to the -- is the person who is  
13 leading it entitled to promote that yoga class to their  
14 resources, their sources, their networks?  
15 A Yeah.  
16 Q Does Bonobo promote events like yoga and virtual happy hours  
17 to the public?  
18 A We may.  
19 Q How would you promote activities?  
20 A Usually social media.  
21 Q Facebook and Instagram?  
22 Q Uh-huh (affirmative).  
23 Q Anything else?  
24 A I don't know what all the new ones are, but maybe Twitter,  
25 maybe a --

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1 it generally go on this calendar?  
2 A Once again, it may. I'm just -- I'm not trying to be glib  
3 here or anything, but I'm just saying --  
4 Q Are you saying the system is failable?  
5 A Someone may forget to enter something, someone may forget to  
6 let everyone know, you know.  
7 Q For the most part this is meant to be a centralized source  
8 for tracking events?  
9 A Tries to be, yes.  
10 Q Then let's now turn to the reservation --  
11 MS. ANDREWS: So this document is labeled as  
12 confidential, Reservations/Parties. Is this okay to  
13 distribute?  
14 MR. INFANTE: Yeah. They're subject to the  
15 confidentiality. As long as you're not going to talk about  
16 pricing. And then I would just ask that -- you know, Ms.  
17 Cram you're subject to the confidentiality, don't take a  
18 copy with her.  
19 MR. RAJSIC: We've already discussed it and, yeah.  
20 MS. ANDREWS: So I'm going to mark --  
21 MR. INFANTE: Just so we have an agreement, you're  
22 not going to talk about the price? That's really the  
23 biggest concern is sort of the price than what's in there.  
24 MS. ANDREWS: And we can label that Exhibit 10.  
25 (Deposition Exhibit 10 marked)

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25 (Pages 94 to 97)

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<p>1 Q So PTP Deposition Exhibit 10 is labeled Confidential</p> <p>2 Reservations/Parties, it is bates numbered WOMP014249</p> <p>3 through WOMP014254. Can you describe what this document is?</p> <p>4 <b>A One, it's calendar off of someone's Google Drive.</b></p> <p>5 Q And what year, to the best of your ability --</p> <p>6 <b>A I'm trying to narrow that down. Probably 2018, 2019.</b></p> <p>7 MR. INFANTE: Is that an estimate/guess?</p> <p>8 THE WITNESS: That is an estimate without having</p> <p>9 the exact date on here.</p> <p>10 Q So let's see if we can identify -- I mean, any -- the</p> <p>11 Detroit Zoo wine and food festival, it's been awhile since</p> <p>12 that happened; is that fair? I'm looking on 14252, there's</p> <p>13 a reference to August 7 to 9 Detroit Zoo wine and food</p> <p>14 festival. Just as a way -- I'm just trying to refresh your</p> <p>15 recollection.</p> <p>16 <b>A I know what's happening here. But I would say 2019.</b></p> <p>17 Q Pre COVID?</p> <p>18 <b>A Yes; yeah. I think we stopped doing festivals.</b></p> <p>19 Q And whose calendar might this be?</p> <p>20 <b>A Abby Clear.</b></p> <p>21 Q And who is Abby Clear?</p> <p>22 <b>A She was an old employee that was handling this department.</b></p> <p>23 Q What department is this?</p> <p>24 <b>A General calendar.</b></p> <p>25 Q Is that events management?</p> <p style="text-align: center;">Page 98</p>	<p>1 Q So this calendar, PTP Dep Exhibit 10, would reflect things</p> <p>2 that may influence Bonobo's schedule or traffic, so to</p> <p>3 speak, of people coming into Bonobo as well as events --</p> <p>4 scheduled events or entertainment or things that were</p> <p>5 planned ahead?</p> <p>6 <b>A Or could be. I mean, or suggestions or, you know, this may</b></p> <p>7 <b>have been, hey, give me your best idea of what's happening</b></p> <p>8 <b>over the next six months.</b></p> <p>9 Q What is the Gladhander tasting on Saturday, May 12th?</p> <p>10 Second page, WOMP14250.</p> <p>11 <b>A Tour, tasting and apps.</b></p> <p>12 Q I mean, what is Gladhander; do you know?</p> <p>13 <b>A Yes.</b></p> <p>14 Q What is it?</p> <p>15 <b>A Catholic schools Gladhander.</b></p> <p>16 Q Okay. Catholic schools?</p> <p>17 <b>A Yes.</b></p> <p>18 Q So this -- was this local, Gladhander?</p> <p>19 <b>A Yes.</b></p> <p>20 Q How about the CMU alumni, was that a local CMU alumni?</p> <p>21 <b>A Some of them may be.</b></p> <p>22 Q Some may not be local?</p> <p>23 <b>A Yeah, I'm not sure.</b></p> <p>24 Q So Bonobo is able to host groups like Gladhander and CMU</p> <p>25 alumni whether there are in the tasting room for scheduled</p> <p style="text-align: center;">Page 100</p>
<p>1 <b>A Yeah. I mean, just different parts of the winery just</b></p> <p>2 <b>keeping things somewhat in order.</b></p> <p>3 Q Is that the role that Lucy would now hold?</p> <p>4 <b>A She's more for doing events.</b></p> <p>5 Q She, Lucy, is more for doing events, is that what you said?</p> <p>6 <b>A Yes.</b></p> <p>7 Q And Abby was not as exclusively focused on events, is</p> <p>8 that --</p> <p>9 <b>A Correct.</b></p> <p>10 Q So --</p> <p>11 <b>A Events, get together, what have you.</b></p> <p>12 Q Events, get together, whatever, is that what you said? I'm</p> <p>13 sorry, I just didn't hear you.</p> <p>14 MR. INFANTE: I think he said "what have you."</p> <p>15 <b>A What have you.</b></p> <p>16 Q What have you. In general are these -- to your</p> <p>17 understanding these -- PTP Dep Exhibit 10 reflects events</p> <p>18 that took place at the Bonobo Winery during the period of</p> <p>19 probably 2019, subject to clarification? I'm not trying to</p> <p>20 catch you up.</p> <p>21 <b>A Not all. I mean, as we sit here and say -- MyNorth's wine</b></p> <p>22 <b>and wedding event Saturday, April 21st on the very first</b></p> <p>23 <b>page at 10:00 a.m. to 6:00 p.m., that was just something</b></p> <p>24 <b>that was happening in the community. Also June 30th to July</b></p> <p>25 <b>7th, National Cherry Festival.</b></p> <p style="text-align: center;">Page 99</p>	<p>1 tastings?</p> <p>2 <b>A Yes. I may mis- -- so -- I'm trying to get where you're</b></p> <p>3 <b>going. Do you mean local as in we were at Mt. Pleasant</b></p> <p>4 <b>or -- is that what you're asking?</b></p> <p>5 Q No.</p> <p>6 <b>A I'm sorry, because when you say are they local --</b></p> <p>7 <b>Q Are these organizations that are local organizations, or may</b></p> <p>8 <b>they be the Mt. Pleasant CMU alumni?</b></p> <p>9 <b>A I think that's broad way for CMU, if that's fair to say</b></p> <p>10 <b>that. That could be anyone; they could be coming from</b></p> <p>11 <b>Florida for all I care.</b></p> <p>12 Q You don't limit tastings to local organizations?</p> <p>13 <b>A No.</b></p> <p>14 Q There are -- let's see -- wedding party, tasting and food</p> <p>15 May 27th. Is that a private -- what would that be, a</p> <p>16 private event?</p> <p>17 <b>A It could have been. That could have been something that</b></p> <p>18 <b>never happened. Obviously I see as much detail as you do</b></p> <p>19 <b>here.</b></p> <p>20 Q Okay.</p> <p>21 <b>A It could have been a party tasting/food, they could have</b></p> <p>22 <b>come in and had a tasting at the winery and then ordered</b></p> <p>23 <b>some food with it, or they could have had an actual</b></p> <p>24 <b>organized meal.</b></p> <p>25 Q And so would Bonobo take a reservation for a wedding party</p> <p style="text-align: center;">Page 101</p>

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1 scheduled ahead where it was a private event, where it was a  
2 section of the winery was closed off to the public for a  
3 wedding party?  
4 A Well, I think if it's much -- If a bus calls ahead and says  
5 I'm bringing five people or if I'm bringing 50, if I'm  
6 bringing 50 we would like to know where we could put them,  
7 first of all. And if there was 50 people we'd say, you  
8 know, yes, we can do that and we may do a tasting in a  
9 certain area of the building to accommodate them so they're  
10 together.  
11 Q Okay. So then that would sort of be blocked off from the  
12 public to be able to go there?  
13 A It could be or it could be a flow through. It just depends  
14 on how that group is -- I mean, every customer is different.  
15 Q Sure. So a rehearsal dinner, tell me about a rehearsal  
16 dinner. I'm looking at page 14251 about halfway, Friday,  
17 June 15th Lauren Katsman rehearsal dinner.  
18 A Uh-huh (affirmative).  
19 Q Describe that one or a general/typical rehearsal dinner at  
20 Bonobo.  
21 A For that one 30 adults plus a few kids, buffet style.  
22 Q Would Bonobo serve Bonobo wine/Bonobo produced alcohol at  
23 the event?  
24 A Yes.  
25 Q Anything besides Bonobo produced alcohol -- any alcohol

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1 besides Bonobo produced alcohol served at these events?  
2 A No.  
3 Q Would a rehearsal dinner -- would you include a charge for  
4 the venue/for the facility?  
5 A It depends.  
6 Q What does it depend on?  
7 A The customer.  
8 Q What -- what other factors go into whether you charge for  
9 the venue or don't charge for a venue?  
10 A It depends on if they want -- say I don't want to see  
11 anybody -- okay? -- we may say, hey, that's going to be an  
12 extra charge because of breakdown and setup of tables.  
13 Q So then you might charge a venue rental fee so that they  
14 have private access to that particular part of the facility?  
15 A A reservation fee, yes.  
16 Q Reservation fee. And then Friday, June 8th tentative  
17 rehearsal dinner for 50 people. What would that involve?  
18 A Wine and food.  
19 Q And it may or may not be subject to a venue charge, it may  
20 or may not be private or open/non-private?  
21 A Correct.  
22 Q It may or may not be a separate venue charge?  
23 A Correct.  
24 Q All right. So let's look at -- would you -- apart from  
25 prices, if we wanted to use a public version -- nothing

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1 we've talked about is confidential on this record; is that  
2 right? We haven't talked about --  
3 MR. INFANTE: We're not marking it as  
4 confidential, but if you want to in the future use this  
5 document let's discuss it.  
6 MS. ANDREWS: Okay.  
7 MR. INFANTE: If you want to file it publicly  
8 let's discuss it.  
9 MS. ANDREWS: Okay. I just want to make sure that  
10 this transcript at least so far does not reveal any  
11 confidential information from this document.  
12 MR. INFANTE: Yes, I would agree but it doesn't  
13 mean that you can file the document with the court.  
14 MS. ANDREWS: That's fair. I also want to  
15 understand that it's principally the prices that I  
16 understand are the sensitive material?  
17 MR. INFANTE: Yeah, and probably the names of  
18 certain guests, they probably don't want that publicly  
19 filed. So if we were going to file it you probably want to  
20 redacts parts of it, if that's agreeable to you. But we can  
21 work that out when we get to that point.  
22 Q Is that consistent with your understanding?  
23 A Sure.  
24 Q All right. Next up, this is PTP Exhibit 11, again this is a  
25 confidential document I gave you.

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1 (Deposition Exhibit 11 marked)  
2 MR. INFANTE: Are you doing the short or the long  
3 one?  
4 MS. ANDREWS: I'm doing the short, I want you to  
5 see the long.  
6 MR. INFANTE: Okay. And then just put on the  
7 record what you did to create the short one and then I'll  
8 reserve any objection to a discrepancy, how about that?  
9 MS. ANDREWS: That's fine. So PTP Dep Exhibit 11  
10 is the short version. PTP Dep Exhibit 11 confidential  
11 contains documents titled WOMP14227, WOMP14228, WOMP14229,  
12 WOMP14232 and WOMP14247. And the document -- the pages in  
13 that sequence that are missing -- that are not included in  
14 PTP Dep Exhibit 11 contain either blank information or  
15 information that is -- does not contain what I would call  
16 substance. And then also the -- that is one alteration to  
17 the originally produced document. And the other alteration  
18 is that we attempted to enlarge the information. So if you  
19 compare 14227 as in Exhibit -- PTP Exhibit 11 to the  
20 original version of WOMP014227, which you should have  
21 following -- keep going -- yeah, that one -- you can see  
22 that it's much smaller print.  
23 MR. INFANTE: The larger -- the full packet you  
24 gave me, is this the same document twice?  
25 MS. ANDREWS: Yes. So --

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27 (Pages 102 to 105)



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<p>1 participants in the ceremony confidential. Before we move 2 on from Deposition Exhibit 11, let's also confirm for the 3 record what part of that document is confidential. And, Mr. 4 Infante, I'll take your direction here. I don't think we 5 talked about this. 6 MR. INFANTE: I mean, we marked it confidential 7 because it's a contract between Bonobo and -- 8 MS. ANDREWS: No; no. I'm sorry. We're back up 9 to -- 10 MR. INFANTE: Oh, I'm sorry. 11 MS. ANDREWS: I'm closing the loop on the last 12 one. Sorry. I didn't run through this with you. 13 MR. INFANTE: Sorry. Looking at Exhibit -- what 14 is this? -- 10? 15 MS. ANDREWS: 11. 16 MR. INFANTE: 11, I apologize. I mismarked this 17 one then. I'm sorry. All right. The contracts are 12; 18 correct? 19 MS. ANDREWS: Yes; correct. 20 MR. INFANTE: Okay. Yeah, on this one here same 21 issue, if you're going to use it in the future lets discuss 22 a redaction of information on here. Off the top of my head 23 I'm not going to -- you know, I'm not going to -- 24 THE WITNESS: Or names. 25 MR. INFANTE: Names for sure, but --</p> <p style="text-align: center;">Page 118</p>	<p>1 <b>their files went I do not know.</b> 2 Q Okay. But for the most part is it your understanding that 3 contracts that -- and let's just back up a second. These -- 4 PTP Dep Exhibit 12 is a series of documents, they are not 5 sequential, they range between WOMP014062, the last one in 6 the exhibit is WOMP014055, but they are not all of those 7 documents and not necessarily in order. Generally speaking, 8 do these appear to be contracts for various events hosted at 9 Bonobo between the time period of about 2019 and I think 10 2022, subject to the documents speaking for themselves as to 11 what they are? 12 <b>A Yes.</b> 13 Q Okay. And the fact that they were not executed does not 14 mean the event did not take place; is that correct? 15 <b>A Correct.</b> 16 Q And what is -- let's see. What is -- I'm looking at the 17 document that's WOMP013923, it's -- gosh, it might be -- 18 it's -- let's see, (stricken testimony). 19 MR. INFANTE: Can we strike that? 20 MS. ANDREWS: Can we strike that please? 21 REPORTER: Sure. 22 MS. ANDREWS: Thank you. 23 Q It is a wedding -- 24 MS. ANDREWS: Sorry, that's -- 25 MR. INFANTE: It's fine. I'm sorry, what number</p> <p style="text-align: center;">Page 120</p>
<p>1 THE WITNESS: I don't know if there's any pricing 2 in there. 3 MR. INFANTE: I'm sure you don't me to just sit 4 and look through this, but -- 5 MS. ANDREWS: Let's just generally identify. The 6 names, email information -- 7 MR. INFANTE: Certainly contact information. 8 MS. ANDREWS: -- identifying the people or -- but 9 information such as the date, the event type and the guests 10 and time -- 11 MR. INFANTE: I guess count -- yeah, I agree on -- 12 MS. ANDREWS: Is public? 13 MR. INFANTE: That's fine. But we would just need 14 to redact and agree on a redaction before anything is filed. 15 MS. ANDREWS: Fair enough. 16 Q Mr. Oosterhouse, is that consistent with your understanding? 17 <b>A Right; right.</b> 18 Q All right. So let's just talk about what's been labeled PTP 19 Dep Exhibit 12. I just have a handful of questions about 20 12. These contracts are all unexecuted/unsigned, does that 21 mean they didn't happen or that we just didn't -- you didn't 22 provide an executed copy? 23 <b>A I don't think we kept an executed copy, to be honest. I</b> 24 <b>don't know because this is 2019, that's four years ago. And</b> 25 <b>the person that did this is no longer with us. So where</b></p> <p style="text-align: center;">Page 119</p>	<p>1 are you looking at? 2 MS. ANDREWS: It is 13923. My magical legal 3 assistant did not put them in order, I'll beat her later. 4 I'll beat her later. Sorry, probably not -- 5 MR. INFANTE: Give me just a minute to find that. 6 MS. ANDREWS: She's worked miracles. 7 Q So this is titled an event contract; is that right? 8 <b>A Uh-huh (affirmative).</b> 9 Q Is that a "yes"? 10 <b>A Yes. Sorry.</b> 11 Q And this is, "Thank you for selecting Bonobo as your venue 12 for your event." Bonobo is providing a facility, is that a 13 fair summary? A venue or hosting the site? 14 <b>A I think a Bonobo experience.</b> 15 Q A Bonobo experience. Would you agree that -- the first 16 document on the front of the page describes the venue as for 17 a large group tasting experience. What's the difference 18 between a large group tasting experience and a venue for an 19 event? So I'm comparing the very front page -- 20 <b>A Okay.</b> 21 Q -- to the page you were just on. So hold your page -- 22 <b>A The only thing I can think of -- and this is 2020 -- is</b> 23 <b>different people had their hands in how the wording may have</b> 24 <b>been put together.</b> 25 Q Is it your position that they were functionally equivalent?</p> <p style="text-align: center;">Page 121</p>

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1 A I would say they tried to hold the same patterns I suppose.  
2 I think maybe people tried to be -- you know, someone called  
3 it an event and someone called it a large group tasting  
4 experience. Maybe the customer wanted it different -- to  
5 say something different, I don't know. Maybe they  
6 changed -- I don't know.  
7 Q And on the wedding event contract that we just looked at on  
8 13923, this involves a ceremony at the pergola. What is the  
9 pergola?  
10 A It's a --  
11 THE WITNESS: How do you describe a pergola?  
12 MR. INFANTE: A pergola is a pergola.  
13 A A structure -- so as we described the winery before, you  
14 walk into the winery you're in the winery lounge. If you  
15 keep walking out you go onto a deck, keep walking out you go  
16 down into the grass and there is a pergola. And that  
17 pergola is a structure and/or a -- I mean, it was supposed  
18 to be used at one time to have vines grow over it and be  
19 kind of cool, the vines didn't take. But it's trellis work  
20 basically that has 2-by-4's going across the top that things  
21 were supposed to climb on.  
22 Q It's a covered structure outdoors?  
23 A Not necessarily covered, but I guess half covered maybe. I  
24 mean, just 2-by-4's, there's no like, hey, there's a roof on  
25 it or anything like that.

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1 Q Okay. And so what kind of floor does it have?  
2 A Grass.  
3 Q Grass. Okay. Are there -- how big is it? More or less,  
4 I'm not trying to hold you to something. I'm just trying to  
5 get a sense --  
6 A I would say 12-by-20 maybe.  
7 Q And about how many people can --  
8 A I mean, it's not like an enclosed area.  
9 Q Okay.  
10 A There's nothing -- I mean, there's posts that hold that up,  
11 so it's not like there's walls. And when Bonobo hosts a  
12 ceremony at the pergola, are there chairs set up or what is  
13 the arrangement?  
14 A There's picnic tables down there. I don't really know all  
15 the details. I guess maybe it says it in here.  
16 Q Does it depend on what the client is asking for?  
17 A Yes.  
18 Q All right. So 40 to 50 guests it appears at this wedding,  
19 this unnamed wedding that we're looking at. That would  
20 be -- those guests would be participating or attending the  
21 ceremony and then coming up -- where would the cocktail  
22 hour -- well, it says right on there cocktail hour on the  
23 patio.  
24 A Yes.  
25 Q And then where would the dinner take place?

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1 A Up there as well or in one of the rooms.  
2 Q Okay. And Bonobo would provide the food service?  
3 A Correct.  
4 Q And Bonobo would provide -- it says there's a small band for  
5 reception. Bonobo would provide a band?  
6 A Or give a place for them to do their thing.  
7 Q Help them organize the band?  
8 A Yes.  
9 Q Music for the ceremony same thing, either Bonobo would  
10 arrange it or they would arrange it?  
11 MR. INFANTE: TJ, I just want to point out it says  
12 cocktail hour in the gallery and cocktail hour on the patio,  
13 two different places.  
14 Q So your -- I don't want to change what the -- try to get  
15 your testimony to change or what the document says. And  
16 would you say that the event we're looking at or the wedding  
17 we're looking at on page 13923 is atypical/unusual or  
18 consistent with other events that have happened at Bonobo  
19 before -- after 2020?  
20 A I would say -- I mean, it's half a dozen one way and six the  
21 other because you don't know what the client wants. You  
22 know, these people could have said, hey, I want -- going  
23 back to earlier, I want the wedding on the crush pad because  
24 they like the smell of grapes as they're standing there.  
25 Q Have you had weddings on the crush pad?

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1 A Not that I'm aware of, but you never know what someone wants  
2 nowadays.  
3 Q So maybe the pergola, maybe the patio, maybe the gallery,  
4 maybe the library, maybe the lounge?  
5 A Correct.  
6 Q Maybe the deck? Did you talk about the deck?  
7 A I think you said patio.  
8 Q Patio -- is there a deck and a patio? What is the lower  
9 level of the grassy area? Just lower level grassy area?  
10 A Lower level.  
11 Q Gotcha. And then it says that the end time for the event is  
12 10:00 p.m. Who sets the end time?  
13 A It varies with the guest as well. I mean, if they're  
14 starting at -- I think this said --  
15 Q 5:00?  
16 A -- 5:00 o'clock, I think sometimes five hours is plenty for  
17 people to be together for something.  
18 Q Would this -- so this is on October -- we don't know what  
19 day of the week this is. Would Bonobo close down the  
20 tasting room during an event like this --  
21 A No.  
22 Q -- to the public? No?  
23 A No.  
24 Q This would be happening at the same time the public may be  
25 drinking wine or tasting wine in the tasting room?

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32 (Pages 122 to 125)

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<p>1 A Oh, yeah; yes.</p> <p>2 Q Yes. Thank you.</p> <p>3 A Is that a better answer?</p> <p>4 Q Yes. And then looking at the next page of this contract,</p> <p>5 page 2, WOMP013924, outside -- so wine and food is all</p> <p>6 provided by Bonobo; correct?</p> <p>7 A Correct.</p> <p>8 Q And that would come from your kitchen and your wine</p> <p>9 collection or your distillery; correct?</p> <p>10 A Correct.</p> <p>11 Q Parking, it says parking is encouraged that guests car pool,</p> <p>12 Bonobo Winery has approximately 70 parking spaces, where are</p> <p>13 those parking spaces? Are they -- that's more than what</p> <p>14 that original permit talked about so I'm just trying to</p> <p>15 understand like where would we -- is the parking lot bigger</p> <p>16 than was originally constructed?</p> <p>17 A Yes. On the site plan it dictates the actual size.</p> <p>18 Q Yup. But not the number of parking spots?</p> <p>19 A Correct.</p> <p>20 Q Okay.</p> <p>21 A So it's more or less what was designated when we first went</p> <p>22 through everything. And I know it doesn't say that in the</p> <p>23 SUP, but it's overflow parking with not necessarily -- I</p> <p>24 guess the best way is you need a certain amount, but beyond</p> <p>25 that no one says how many do you have.</p> <p>Page 126</p>	<p>1 A Yeah, there's a number of fields on the property.</p> <p>2 Q And so that is -- and the 70 parking spaces, is that</p> <p>3 including the overflow parking, or is there more than 70</p> <p>4 parking spaces?</p> <p>5 A There's more; there's acres.</p> <p>6 Q What do you think the capacity of the parking lot is? 200?</p> <p>7 A The whole parking lot -- or the whole property?</p> <p>8 Q Yeah.</p> <p>9 A Not being a parking lot person that knows how to calculate</p> <p>10 it properly I would say 2,000 if you look at all the acres</p> <p>11 that are open and where you can put a car.</p> <p>12 Q And do you know what those acres that are used -- sometimes</p> <p>13 used for overflow parking, do you know what they were</p> <p>14 labeled as originally or what they were considered?</p> <p>15 A They would have been as air drainage.</p> <p>16 Q And then did -- the capacity of the gallery, library and</p> <p>17 lounge, is there a capacity?</p> <p>18 A There is. I believe in the whole building 200; 150-200.</p> <p>19 Q Who set that?</p> <p>20 A Building codes I believe.</p> <p>21 Q Not the SUP?</p> <p>22 A Correct.</p> <p>23 Q And what about in the individual rooms? In the library?</p> <p>24 A I would have to look at the document because it doesn't go</p> <p>25 on individual room, it goes on building components and how</p> <p>Page 128</p>
<p>1 Q So I'm sorry, so you -- so the original site plan designated</p> <p>2 certain areas to be parking areas?</p> <p>3 A Correct.</p> <p>4 Q And then Bonobo built those parking areas?</p> <p>5 A The --</p> <p>6 Q The asphalt parking areas?</p> <p>7 A The labeled ones I guess, if you want -- because they needed</p> <p>8 to be labeled.</p> <p>9 Q And then there are additional areas at the facility or at --</p> <p>10 on the property that might be a field?</p> <p>11 A Overflow, correct.</p> <p>12 Q Overflow. It's on the property?</p> <p>13 A Yes.</p> <p>14 Q It's not on the road?</p> <p>15 A Correct.</p> <p>16 Q And how big is the overflow area?</p> <p>17 A Acres.</p> <p>18 Q Several acres?</p> <p>19 A Yeah.</p> <p>20 Q Where -- let's go back to that -- Exhibit 2 -- you know</p> <p>21 what, that's not going to help us.</p> <p>22 MR. INFANTE: Just the building.</p> <p>23 MS. ANDREWS: What's that?</p> <p>24 MR. INFANTE: That's just the building.</p> <p>25 Q All right. So there's overflow parking. It's a field?</p> <p>Page 127</p>	<p>1 they're put together. So I would have to look at the plans</p> <p>2 to get the exact number for you.</p> <p>3 Q So 150 to 200 people overall in the whole building set by</p> <p>4 the building code. What about when you're using outside?</p> <p>5 Is there a capacity limit on the outside area?</p> <p>6 A No.</p> <p>7 Q Infinite?</p> <p>8 A There's acres.</p> <p>9 MR. INFANTE: I mean, not infinite. There's a</p> <p>10 number there somewhere.</p> <p>11 A Yeah, somewhere.</p> <p>12 Q More than double the capacity of the tasting room?</p> <p>13 A Sure.</p> <p>14 Q All right. Let's look at the document -- it's a few pages</p> <p>15 later in the same document from the wedding contract that we</p> <p>16 just looked at, it's bates numbered WOMP014022. It says,</p> <p>17 "Tasting Experience Agreement," and it's another wedding,</p> <p>18 and it's in 2021.</p> <p>19 A Okay.</p> <p>20 Q Is it your understanding that the contract reflects a</p> <p>21 wedding that actually took place?</p> <p>22 A I believe so. I'm not -- don't know for sure. But, yes, I</p> <p>23 believe so.</p> <p>24 Q You don't have a recollection that the guests, who I'm not</p> <p>25 going to say their name, canceled this wedding in</p> <p>Page 129</p>

33 (Pages 126 to 129)

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1 particular? You don't have a particular memory?  
2 A I mean, I don't know. I don't believe so, but I don't know  
3 for sure.  
4 Q All right. And again this one is labeled as a tasting  
5 experience again. Your testimony from earlier was that it  
6 just depends on who wrote the contract or what the customers  
7 wanted as to what you called it?  
8 A Right.  
9 Q But the event itself was the wedding event; correct?  
10 A It does say "wedding," I'm reading that as you are, that  
11 they could have come in for just a tasting experience. You  
12 know, a group of people comes in just like Jim Smith's  
13 busload of friends come in and we call it Jim Smith's  
14 tasting experience group.  
15 Q This one included cocktail hour in the gallery with a  
16 portion of the patio reserved followed by a reception  
17 dinner. Do you know if there was a ceremony at this one?  
18 A I do not.  
19 Q Might it have had a ceremony?  
20 A It may have, or it could have happened offsite.  
21 Q This one included 60 guests, that was what was reserved?  
22 A Correct.  
23 Q And this one included a venue rental fee, and I won't say  
24 the amount, it's on the next page; correct?  
25 A Yes.

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1 Q And flipping back to the prior page, the first page of this  
2 contract, it appears that Bonobo outlined the terms of the  
3 arrangement with these customers to include Bonobo  
4 providing -- renting and providing tables, chairs and a  
5 speaker system?  
6 A Correct.  
7 Q What would the speaker system be used for?  
8 A Maybe music or speeches or jokes. I don't know for sure.  
9 Q The reception dinner in the Bonobo winery vines, where is  
10 dinner in the vines set up? Can you explain what that would  
11 look like?  
12 A Not to be smart, but somewhere in the vines.  
13 Q Would it be walkable?  
14 A Yes. I mean, all the property is pretty walkable, but, yes.  
15 Q You don't need an off road vehicle to get people out there?  
16 A No.  
17 Q So people would arrive and then they would walk out to the  
18 vines?  
19 A Yes.  
20 Q Not far?  
21 A No.  
22 Q Are there bathroom set up out there?  
23 A There could be; we have done that. Last time we had a  
24 couple porta potties set up.  
25 Q And are the tables literally in like between the rows?

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1 A They wouldn't be between the rows, that's too small.  
2 Q Where would they be? What does it mean to be in the vines?  
3 Physically walk me through it.  
4 A So you have different blocks of vines that end in different  
5 areas. Like say you have Pinot Gris and then you have  
6 Riesling, they're not going to run in together because, for  
7 one, you need spaces for tractors to turn around and to do  
8 your farm operations. There is different areas where you  
9 can't plant just because of cold air (phonetic), drainage,  
10 and best farming practices that need to be done. So in some  
11 of those areas, you know, there's enough space that you  
12 could set something up.  
13 Q Set up tables and chairs and a speaker. Would you set up a  
14 dance floor?  
15 A I suppose you could, yeah.  
16 Q Do you ever recall doing that?  
17 A No. It's a good idea though; right?  
18 Q I'm not here to give you ideas.  
19 A Oh, okay.  
20 Q So please don't take that --  
21 A Well, that's a good idea, let me write that one down.  
22 MR. INFANTE: TJ says make a dance floor. What  
23 kind of a --  
24 Q Let's see. And again, would the -- the cocktails hours in  
25 the gallery, would you have shut the gallery down for guests

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1 for a tasting room to the public? This one in particular in  
2 general in this sort of an arrangement.  
3 A We may have. I'm not -- it depends on the setup I guess and  
4 how they're doing it.  
5 Q Okay. Then I would -- let me just quickly check my notes  
6 here. Does Bonobo consider these -- well, we've already  
7 covered that. Let's not track around again.  
8 MS. ANDREWS: The part of these that we would  
9 consider confidential, again we've already covered that?  
10 MR. INFANTE: Yeah.  
11 MS. ANDREWS: On Exhibit 12; correct?  
12 MR. INFANTE: Yeah. And then if you're going to  
13 file it let's just --  
14 MS. ANDREWS: We'll work out redactions.  
15 MR. INFANTE: We'll work on redactions, correct.  
16 MS. ANDREWS: At this point let's take a break.  
17 What's our time?  
18 REPORTER: Three hours and 13 minutes.  
19 MS. ANDREWS: So we have 47 minutes, but who's  
20 counting.  
21 (Off the record)  
22 MS. ANDREWS: On the record.  
23 Q Mr. Oosterhouse, we were talking earlier, I believe it was  
24 in the context of Deposition Exhibit 11, the Excel  
25 spreadsheet with events and activities between 2021 and

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34 (Pages 130 to 133)

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<p>1 2023, and you mentioned that the ordinance was deemed 2 illegal so that you could do these things, or something to 3 that effect. Do you recall saying something to that effect? 4 <b>A Yes.</b> 5 Q Okay. It was deemed the ordinance was illegal, so I want to 6 unpack that a little bit. When do you think the 7 ordinance -- which ordinance? Where to begin; where to 8 begin? Which ordinance do you believe was -- or does 9 Bonobo -- is Bonobo's position that it was deemed illegal? 10 MR. INFANTE: Objection; calls for a legal 11 conclusion. 12 <b>A I believe that Judge Loy? Is that it?</b> 13 Q The Judge in the case that we're -- 14 <b>A We're doing, yeah. Had written a -- what you call a brief,</b> 15 <b>I believe, or --</b> 16 Q Judges write orders, but -- 17 <b>A -- opinion --</b> 18 Q Opinion, sure. 19 <b>A -- brief, I don't know the legal term, but -- stating that</b> 20 <b>some things, like the guest activity, was unconstitutional.</b> 21 Q Like guest activity uses? 22 <b>A Guest activity part of the ordinance.</b> 23 Q And do you know when the order you're referring to was 24 issued? 25 <b>A I think there were a couple so I don't know the exact date</b></p> <p style="text-align: center;">Page 134</p>	<p>1 June of 2022. Does that refresh your recollection? 2 MR. INFANTE: TJ, I'm going to object to this line 3 of questioning, it's beyond the scope of your 30(b)(6). I 4 mean, which paragraph does this apply to in your 30(b)(6) 5 Notice? 6 MS. ANDREWS: So I'm not going to be answering 7 questions. If you're instructing the witness not to answer 8 it then we'll take that up. 9 MR. INFANTE: Is this within the scope of your 10 30(b)(6) Notice? 11 MS. ANDREWS: It is within the scope of the 12 Deposition Notice. 13 MR. INFANTE: Where? 14 MS. ANDREWS: I don't have to have a section in 15 order to ask this witness a follow-up question about his 16 testimony. 17 MR. INFANTE: Okay. This is beyond the scope. 18 This is not one of the enumerated -- 19 MS. ANDREWS: So then can we strike his testimony 20 where he said that the ordinance was deemed illegal and 21 therefore he did not have to -- so he could do these things? 22 MR. INFANTE: If you want to. 23 MS. ANDREWS: So I would like to inquire into the 24 basis of that testimony. If you're instructing the witness 25 not to answer that let's make a record of that, otherwise</p> <p style="text-align: center;">Page 136</p>
<p>1 <b>on that.</b> 2 Q So it's your understanding that in this case Judge Maloney 3 issued a written opinion/order/brief/document that declared 4 some things, like guest activity use, part of the ordinance 5 is illegal and therefore you did not have to comply with it? 6 MR. INFANTE: Objection; calls for a legal 7 conclusion. 8 <b>A Correct.</b> 9 Q And is that -- do you recall if that was the order that was 10 issued by the judge -- the order that you're referring to, 11 was it part of a larger order that dealt with other aspects 12 of this case? 13 <b>A I think so. I mean, I believe it may be his most recent. I</b> 14 <b>know there's been a lot of different things for this, so</b> 15 <b>excuse me for saying just that blanket statement.</b> 16 Q There's been a few. Do you -- 17 <b>A One of the more recent I suppose.</b> 18 Q So it's your recollection in particular that there was an 19 order that said guest activity uses part was 20 unconstitutional. Do you remember what the basis of them 21 being unconstitutional was, the guest activity use as part 22 of the ordinance? 23 <b>A I don't recall. I believe is (inaudible).</b> 24 Q Okay. So I'm trying to understand if that was perhaps the 25 order where Judge Maloney invalidated part of the order in</p> <p style="text-align: center;">Page 135</p>	<p>1 I'm going to ask him about the basis of that testimony. 2 MR. INFANTE: I'm not going to instruct him not to 3 answer, but I will reserve my objection that this is beyond 4 the scope of your 30(b)(6) Notice. Is that fair? 5 MS. ANDREWS: We have a difference of opinion as 6 to whether a 30(b)(6) witness is limited by the terms of it 7 or if it's limited by Rule 30 generally and Rule 26 8 generally. The case law predominates that you're not 9 limited by the terms of the topics in the Deposition Notice 10 and I'm entitled to ask him questions. 11 MR. INFANTE: You asked us to name our witness on 12 certain topics and we did, this may not be the -- you know, 13 we may name a different witness. 14 MS. ANDREWS: All right. Unless you're 15 instructing the witness not to answer the questions we'll go 16 on and you may preserve all your arguments and I will be 17 preserving all of mine. 18 MR. INFANTE: Fantastic. 19 MS. ANDREWS: All right. 20 Q Mr. Oosterhouse, I'd like to understand the basis of the 21 order where Judge Maloney issued -- your testimony where you 22 said Judge Maloney issue an opinion or order or brief that 23 said guest activity uses are not lawful or not 24 constitutional; correct? 25 <b>A Correct.</b></p> <p style="text-align: center;">Page 137</p>

35 (Pages 134 to 137)

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<p>1 Q And it's your understanding that you therefore didn't have</p> <p>2 that comply with the guest activity uses provision in the</p> <p>3 zoning ordinance; is that correct?</p> <p>4 A Correct.</p> <p>5 Q And based on that Bonobo changed its activities?</p> <p>6 A We were able to, I guess, open them up a little bit to see</p> <p>7 what was allowable and what the customer wanted.</p> <p>8 Q And to the extent Bonobo was undertaking weddings and</p> <p>9 private events before the order was issued what was --</p> <p>10 before Judge Maloney issued an order deeming that the guest</p> <p>11 activity use as part of the ordinance was unconstitutional,</p> <p>12 what was the basis of your authority to undertake these</p> <p>13 activities?</p> <p>14 A Because those weren't -- you know, we have to look at it to</p> <p>15 sit there and say are you being specific -- more specific I</p> <p>16 guess than what you're talking to or allowing the customer</p> <p>17 to want to do.</p> <p>18 Q Is who being specific?</p> <p>19 A The Bonobo Winery.</p> <p>20 Q Is Bonobo being specific in what it -- you know, so if</p> <p>21 someone inquires, you know, if they can have a horse race;</p> <p>22 right? We would say, no, because that's really not what</p> <p>23 we're doing. But if someone says I would like a dinner for</p> <p>24 my father who is retiring, you know, wine paired with food,</p> <p>25 then that's something that goes with the agritourism and</p> <p style="text-align: center;">Page 138</p>	<p>1 A Christine Deeren. Do you want me to go down the list or --</p> <p>2 Q So we're talking about staff, not the township board;</p> <p>3 correct?</p> <p>4 A Well, Dave Sanger is on the board.</p> <p>5 Q But a decision of Dave Sanger as the enforcement officer</p> <p>6 or -- I'm talking about a decision of the board -- the board</p> <p>7 acts by motions, so are you talking about individual staff</p> <p>8 or are you talking about the board?</p> <p>9 A Well, board members in different conversations may have</p> <p>10 given me different interpretations about what is allowed and</p> <p>11 not allowed.</p> <p>12 Q Did you serve on the planning commission?</p> <p>13 A I did.</p> <p>14 Q Do you know what the zoning board of appeals is?</p> <p>15 A I do.</p> <p>16 Q Did you go to the zoning board of appeals and ask for an</p> <p>17 interpretation of SUP 118?</p> <p>18 A I requested the planner to find out what was an event and</p> <p>19 nonevent.</p> <p>20 Q That's not quite the question I asked you. Did you ask --</p> <p>21 did you go to the zoning board of appeals and ask for an</p> <p>22 interpretation of SUP 118?</p> <p>23 A I did not go to the board myself.</p> <p>24 Q The zoning board of appeals?</p> <p>25 A I did not go to the zoning board of appeals myself.</p> <p style="text-align: center;">Page 140</p>
<p>1 agricultural aspect.</p> <p>2 Q And so with regard to the specific provisions or permissions</p> <p>3 that the township gave you, that is separate and apart from</p> <p>4 considering your analysis whether this goes with wine and</p> <p>5 food pairing consistent with agritourism, that is not the</p> <p>6 standard in the SUP 118 that was issued to Bonobo; is that</p> <p>7 correct?</p> <p>8 MR. INFANTE: Objection; calls for a legal</p> <p>9 conclusion.</p> <p>10 A An order from a lot of different -- dit, dit, dit, but --</p> <p>11 and what I mean by "dit, dit, dit" is SUP 118 and different</p> <p>12 parts of SUP 118. But I think it all relates to the</p> <p>13 different aspects of what the township deemed from</p> <p>14 individuals that was appropriate at one time, may have not</p> <p>15 been appropriate and then it's appropriate again.</p> <p>16 Q Okay. And so you're not -- Bonobo does not consider itself</p> <p>17 restrained by the limits of whatever is in SUP 118?</p> <p>18 A In the sense that the way the township may enforce it or</p> <p>19 interpret their understanding of what it means is different</p> <p>20 in relaying that message to me, and therefore what I would</p> <p>21 relay it to is what we can and cannot do.</p> <p>22 Q And so by the township -- township enforcement, who do you</p> <p>23 mean?</p> <p>24 A Dave Sanger.</p> <p>25 Q So if Dave Sanger has a different --</p> <p style="text-align: center;">Page 139</p>	<p>1 Q And by yourself do you mean Bonobo and OV The Farm, Todd</p> <p>2 Oosterhouse? What do you mean by yourself?</p> <p>3 A All of the above; Todd Oosterhouse or me representing Bonobo</p> <p>4 Winery or OV The Farm.</p> <p>5 Q So you did not go to zoning board of appeals to ask for an</p> <p>6 interpretation, you relied on statements from staff people?</p> <p>7 A My elected officials and/or --</p> <p>8 Q Which elected official?</p> <p>9 A Township board.</p> <p>10 Q Which -- the board as a whole or individual members of the</p> <p>11 township board?</p> <p>12 A I never did it in a public meeting.</p> <p>13 Q Did you do it at a closed session?</p> <p>14 A I did it when we were working with the township on talking</p> <p>15 about the ordinance and having changes.</p> <p>16 Q So you asked -- so Bonobo asked the township board as a</p> <p>17 whole --</p> <p>18 A No.</p> <p>19 Q Who?</p> <p>20 A Because the township board can't come to a closed meeting</p> <p>21 unless they close it for a public meeting to go to a other</p> <p>22 meeting and have a conference if it's not been labeled. So</p> <p>23 it has to be -- you probably know this, but it has to be --</p> <p>24 what is it? -- three members and no more at a closed</p> <p>25 function or a group meeting, something like that.</p> <p style="text-align: center;">Page 141</p>

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1 Q Okay. So let's make sure we understand each other. Are you  
2 talking about a closed meeting -- a closed meeting or a  
3 private conference or discussion? What do you mean by  
4 closed? Is this under the Open Meetings Act are you use the  
5 term "closed"?

6 A Well, that's why I'm saying if four members, I guess, get  
7 together then it would have had to go through a public  
8 meeting to sit there and say we're going through a closed  
9 meeting and all these members are getting together to have a  
10 discussion.

11 Q Okay. So let me --

12 A That's what I believe that it says under Public Meetings  
13 Act.

14 Q So you were meeting with a subset of who? Township board  
15 members?

16 A Township board members, planners and --

17 Q When are we talking about? What time frame are we talking  
18 about?

19 A Well, if we received our -- our first SUP in 2013 --

20 Q 2014.

21 A Well, our first SUP.

22 Q 2014, May 2014; right?

23 A Our first SUP.

24 Q May 2014; right?

25 MR. INFANTE: 2013; May 14, 2013.

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1 Q I'm sorry. The 14th is the date, I'm sorry. You're right.  
2 You win.

3 A I'm not trying to win, I'm just trying to be clear.

4 Q Sorry. May 14, 2013. I had one right and one wrong. So  
5 since you got your SUP in May 2013?

6 A Correct. So with that, and I believe the planner's name  
7 was --

8 Q Brian VanDenBrand?

9 A No.

10 Q Michelle Reardon?

11 A No.

12 Q Gordon Hayward?

13 A No.

14 MR. INFANTE: There's another Gordon I think.

15 Q Gordon Uecker?

16 A No.

17 Q I'm running out.

18 MR. INFANTE: There's a lot of planners.

19 A Dan Leonard.

20 Q Dan Leonard. Thank you. So Dan Leonard was the planner  
21 when you got your first SUP in 2013?

22 A Correct. And I inquired because obviously we've got to this  
23 position of the interpretations of an SUP of what a winery  
24 chateau could do, what a farm processing facility could do,  
25 what a -- what an offsite tasting room could do. So talking

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1 with him -- because, you know, we weren't --

2 Q This is in 2013 you were talking to Mr. Leonard?

3 A Yes; after we had been approved, and/or I think probably the  
4 lead up before we were approved about what was happening.

5 And, you know, as we know the ordinance is maybe 20 years  
6 old now or something like that I guess, 30 years old,  
7 something like that. So trying to figure out where we could  
8 sit there and -- what was allowed -- and, you know, and  
9 putting the starting -- I guess that probably started before  
10 we even got our SUP because we looked at different sites.  
11 We at one point had the whole township board and planning  
12 commission come out and look at different sites.

13 Q Sites within Peninsula Township?

14 A Yes.

15 Q So before you even bought your property?

16 A Correct. To see what was allowed, what could be done.

17 Q I'm sorry, you said you brought members of the township  
18 board and planning commission?

19 A Correct.

20 Q Individual members or was this official meetings?

21 A They must have called it an official meeting, because there  
22 was definitely more than --

23 Q More than a quorum?

24 A Yes.

25 Q So there was a township board meeting at which property? At

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1 the property you ended up buying or a different property?

2 A At the property we ended up buying, yes. And/or talking  
3 about it, because in that property there was a couple ideas  
4 to do some different things.

5 Q So before Bonobo and its affiliates bought the property, you  
6 invited the township board to the property to determine what  
7 was allowed -- or to figure out what would be allowed at  
8 that site?

9 A Yes, to look for different options, because I don't know --  
10 I know you said you'd been to the property, but behind our  
11 acreage goes up a hill as well. And so we inquired as to  
12 can anything be done there, what's allowed there, what's not  
13 allowed there. And we still had different interpretations  
14 about that as well.

15 Q And what do you mean by "allowed"? Do you mean allowed by  
16 the local authority, by the township board?

17 A Well, one, the building code, of course. You know, because  
18 there wasn't power running generally back there, or gas.  
19 You know, so how do I go about getting electricity, and so  
20 we would have to talk to the -- Consumers? -- yeah,  
21 Consumers -- because DTE does -- Consumers to see what --  
22 could we do something back there, what would it entail to  
23 get something back there.

24 Q And with respect to the township board that was at the  
25 meeting was the township planner there, was Dan Leonard

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1 there?  
2 A Yes, he would have been there.  
3 Q And so he would be looking at it from what was allowed under  
4 zoning authority?  
5 MR. INFANTE: Objection; foundation.  
6 A I believe so. As to what the site could allow, would allow,  
7 what we could do on it -- I guess what we could do on it,  
8 what we couldn't do on it.  
9 Q And you consider that you were engaged in discussions -- so  
10 we're referring back to 2013 or even before you got the SUP  
11 when you've been talking about the interpretation of the  
12 zoning ordinance; right? This is what --  
13 A Yeah, so back in -- I mean, I guess --  
14 Q I asked if you inquired into the township board and you  
15 said -- and this is how we got onto the discussion about you  
16 inquired with Mr. Leonard, the planner.  
17 A Yes. So, I mean, that's -- so, yes. So essentially -- and  
18 I don't know if some members of the ZBA were out there or  
19 not. I'd -- you know, so, yes, the board was there.  
20 Q Do you remember if Mr. Manigold was present, was he the  
21 supervisor at the time?  
22 A I think he was.  
23 MR. INFANTE: I'm sorry, you think he was the  
24 supervisor or you think he was there?  
25 THE WITNESS: Sorry.

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1 A I think he was the supervisor and I'm pretty sure he was  
2 there.  
3 MR. INFANTE: Sorry. Don't mean to --  
4 Q Were there grapes growing at the time?  
5 A No, it was cherry trees.  
6 Q And you had -- this was before you even purchased the  
7 property?  
8 A Correct.  
9 Q All right. So is there any -- other than the order by Judge  
10 Maloney, was there any other order that deemed the zoning  
11 ordinances -- the guest activity use part of the ordinance  
12 unconstitutional that you were referring to?  
13 A Any other order?  
14 MR. INFANTE: Objection; calls for a legal  
15 conclusion.  
16 Q I'm understanding the basis of your testimony that it was  
17 deemed illegal.  
18 A I mean, from a -- I guess a legal -- what did we call it, a  
19 legal opinion? I guess that would be the only one. Because  
20 I know before it ever got to the judge that there were rules  
21 that were changed.  
22 Q And "rules" do you mean zoning ordinance provisions?  
23 A I mean, Michigan Liquor Control.  
24 Q Okay.  
25 A And I believe -- I don't think Peter Wallen (phonetic) was

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1 the attorney, I think it was Greg. And then -- and I think,  
2 you know, Greg as the township attorney referenced that, you  
3 know, some of the ordinances were -- didn't fit in line with  
4 Michigan Liquor Control -- or Commission, whatever you call  
5 them.  
6 Q And did Mr. Meihn's indication that some of the ordinances  
7 didn't fit in line with the MLCC, did that cause Bonobo to  
8 change its perspective on complying with the zoning  
9 ordinance?  
10 A It forced me to question. I think -- I don't know if it --  
11 you know, if it was a direct or if it was hey what can we do  
12 and can't we do. And I think that questioned it more with  
13 the township planner at the time and/or township officials  
14 to what can we do and can't we do and further muddled the  
15 waters for what's allowable and not allowable, and further  
16 gave members of staff at the township -- they gave different  
17 interpretations.  
18 Q And was Bonobo confused as to what it could and could not  
19 do?  
20 A Yeah.  
21 Q And so how did Bonobo -- so Bonobo was planning events based  
22 on what it understood it could or could not do?  
23 A At times -- and, you know, as we stated before a lot of this  
24 stuff may have been inquiries. We don't know what actually  
25 went on, but -- meaning I don't have a, hey, this happened

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1 on this day, but I do have inquiries of things that people  
2 wanted to do.  
3 Q So it's your understanding that at all times Bonobo has been  
4 acting consistent with its SUP's and the zoning ordinance?  
5 MR. INFANTE: Objection; calls for a legal  
6 conclusion.  
7 A It's my understanding that Bonobo has been acting by  
8 different interpretations that people have given me.  
9 Q Is Bonobo acting consistent with SUP 118 and the zoning  
10 ordinance?  
11 MR. INFANTE: Objection; asked and answered.  
12 MS. ANDREWS: He didn't answer the question.  
13 MR. INFANTE: He did answer it, just not the way  
14 you wanted him to.  
15 A As interpreted by the township officials and/or staff as to  
16 what was able to be done.  
17 Q So if there's an interpretation that says one thing and the  
18 SUP says the other you go with the interpretation?  
19 A Yeah, because someone gives me their opinion and/or enforces  
20 in certain ways.  
21 Q So let's talk about enforce. Bonobo paid -- or  
22 organizations associated with Bonobo were the subject of a  
23 citation in 2016, we talked about that earlier.  
24 A Uh-huh (affirmative).  
25 Q Three citations from January of 2016 --

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1 and the township board and potentially planning  
2 commissioners at the site before you bought the property  
3 would fit within that paragraph, within that sentence?  
4 Would you consider -- well, let me ask you: What do you  
5 consider the attempted numerous times to negotiate changes  
6 to these ordinances?  
7 **A You know, I think it started then and it's probably**  
8 **continued every year since.**  
9 **Q And by "then" you mean back in 2013 or even leading into**  
10 **2013?**  
11 **A I mean, when you look at the site and you look at how it's**  
12 **laid out, so we talk about a couple things in the ordinance,**  
13 **for instance. We talk about where you can be in good**  
14 **harmony with -- as you can read in the SUP being in good**  
15 **harmony with the area. Okay? And on that site in the back**  
16 **there were discussions of how does that lead to what. So**  
17 **that may be one part of the ordinance that we're talking**  
18 **about when we talk about winery chateaus where that goes,**  
19 **so --**  
20 **Q So negotiations -- negotiating changes to the ordinance, is**  
21 **it your position that even before Bonobo applied for the**  
22 **winery chateau permit it was negotiating changes to the**  
23 **ordinances?**  
24 **A We had maybe been discussing just to maybe get**  
25 **clarification, or attempt to.**

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1 **Q Okay.**  
2 **A But there was no -- you know, there's always speculative**  
3 **things that people say or don't say, and they may change**  
4 **those when you talk to them at a later date because someone**  
5 **may not really know. I mean, hey, it may be a good idea to**  
6 **put four lanes on Center Road. I don't know, but someone**  
7 **said maybe that's a good idea, but that doesn't mean that**  
8 **that's -- we're ever going to get there.**  
9 **Q So backing up to page 1 of the Interrogatories, you indicate**  
10 **that Bonobo's First Amendment rights have been -- First**  
11 **Amendment rights -- the zoning ordinance has injured the**  
12 **First Amendment rights since it's passage, since the passage**  
13 **of the zoning ordinance, and every day that it is enforced**  
14 **constitutes a new violation. Do you see that?**  
15 **A Yes, I do.**  
16 **Q So I'd like to understand specifically -- and there's**  
17 **specifically four bullet points underneath that.**  
18 **A Okay.**  
19 **Q And I'd like to look at the third bullet point, which starts**  
20 **with section 8.7.3(m). That bullet point lists a series of**  
21 **provisions in the zoning ordinance that Bonobo states**  
22 **operate as unconstitutional restrictions on Bonobo's right**  
23 **to engage in commercial speech. Do you see that?**  
24 **A Yes.**  
25 **Q What does commercial speech mean to Bonobo?**

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1 MR. INFANTE: Objection; calls for a legal  
2 conclusion.  
3 **A I mean the ability to advertise, the ability to, you know,**  
4 **deal with your own property, the ability to --**  
5 **Q What do you mean "deal with your own property" in the**  
6 **context of speech?**  
7 **A Well, in the sense that I am in agriculture and I want to**  
8 **promote agriculture and I want to promote agritourism, I**  
9 **should be able to do that.**  
10 **Q And any attempt to promote agriculture and agritourism is**  
11 **speech, commercial speech?**  
12 **A I mean -- I mean, in a formal way, sure, I guess.**  
13 **Q And so I'd like to look at the first section, 8.7.3(m) --**  
14 **subject to your counsel's objection or clarification -- I**  
15 **believe that's got a typo in it and I think that's meant to**  
16 **be (10)(m).**  
17 MS. ANDREWS: Is that correct?  
18 MR. INFANTE: Yeah, I think -- I don't think there  
19 is an 8.7.3(3)(m), but --  
20 MS. ANDREWS: I think you can blame somebody else.  
21 MR. INFANTE: Yeah, I know who to blame for this.  
22 It's not him, but --  
23 **Q So, Mr. Oosterhouse, we talked about section 8.7.3(10)(m)**  
24 **earlier and in the context of your SUP.**  
25 **A Uh-huh (affirmative).**

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1 **Q This is the accessory uses such as facilities, meeting rooms**  
2 **and food and beverage services for registered guests?**  
3 **A Yes.**  
4 **Q So you agree we talked about this that the SUP 118 for**  
5 **Bonobo provides that those facilities, meeting rooms and**  
6 **food and beverage services may be for non-registered guests;**  
7 **correct?**  
8 **A Correct.**  
9 **Q And the zoning ordinance provision says they are only for**  
10 **registered guests; correct? Is that correct?**  
11 **A Yes.**  
12 **Q Okay. So my question for you is is it the section of the**  
13 **zoning ordinance that is a restriction on the right to**  
14 **engage in speech or is it the section as in the SUP, or is**  
15 **it both?**  
16 **A I think both plus the interpretation by township officials**  
17 **and/or staff as to what -- if you read it at face value uses**  
18 **such as facilities, meeting rooms and food and beverage and**  
19 **it's saying are for non-guests. If --**  
20 **Q Wait, is saying for guests or non-guests?**  
21 **A Well, I'm saying mine says "non-guests," the ordinance says**  
22 **"guests."**  
23 **Q Okay.**  
24 **A Okay? So they said in my SUP non-guests, or non-registered**  
25 **guests. However, we haven't determined I guess really what**

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40 (Pages 154 to 157)

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<p>1 a registered and non-registered guest is, that hasn't been 2 determined yet. 3 Q So would you like to invite somebody other than non-guests? 4 Who are you not speaking to? 5 MR. INFANTE: Objection; vague. 6 A I mean, I don't -- I don't really know what you're asking me 7 because -- 8 Q I'm trying to understand how -- which -- is it section (m) 9 for registered guests, section (m) for non-registered 10 guests? How is Bonobo's commercial speech impaired or 11 restricted by section (m)? 12 MR. INFANTE: Renew my objection, calls for a 13 legal conclusion. You can answer. 14 A Because the actual use of this part (m) is interpreted 15 different ways by the township board and/or staff as to what 16 it means. 17 Q So the board -- 18 A Therefore I am hindered and not able to do my commercial 19 speech because I don't have a clear definition either on 20 face value of what it says, either in the ordinance or in my 21 SUP, or by representation by the township board or staff. 22 Q So your position is that any or all -- the zoning ordinance, 23 the SUP, interpretations by staff, interpretations by the 24 township impair your commercial speech with respect to your 25 accessory uses of facilities?</p> <p style="text-align: center;">Page 158</p>	<p>1 is. Yes. 2 Q We have registered or non-registered, but either way Bonobo 3 invites the public onto its property? 4 A There's not an open invitation, it's just I open my doors 5 and I hope people come. Which is a very scary feeling when 6 you wake up in the morning not knowing if anyone is going to 7 show up at your place. 8 Q So there are guests that come to tasting room and there are 9 guests that come to events; correct? 10 A There's people. 11 Q There are people. And so Bonobo does invite and engage, 12 like you just described, with guests on it's property; 13 correct? It has people come and have nice experiences? 14 A At times. 15 Q At times. And then people do come and have a bottle of wine 16 or a glass of -- buy a bottle or have a glass of wine; 17 correct? 18 A They do at times, yes. 19 Q So all of the things you just described are things that 20 Bonobo does do, does provide? 21 A We do provide those. 22 Q Yes. So where is the speech that you're being restricted 23 from making? You can have guests; you can have registered 24 guests, you can have non-registered guests, you can have the 25 public, you can have private guests, you can have people buy</p> <p style="text-align: center;">Page 160</p>
<p>1 A Those things contributed to it, yes. 2 Q And I'm just trying to -- just try to understand what the 3 speech part is. What is the message you're trying to convey 4 and to whom? 5 MR. INFANTE: Objection; calls for a legal 6 conclusion. 7 A The whole thing -- I mean, if you look at it this way, if 8 you come to a wedding with a bunch of friends, you're a 9 guest/you're not even the bride or groom, and you had some 10 great wine and you had some food to go with that and you had 11 a very nice experience, you leave there remembering that. 12 But if I'm -- and then you tell people and they may come up 13 just to get a bottle, they may come up to have a glass of 14 wine, people that may live in Texas that I may never talk 15 to. It's a form of advertisement that has taken place. 16 And -- 17 Q And you -- 18 MR. INFANTE: Let him answer. 19 A And if that happens then that is allowing me to -- that's 20 some form of commercial speech. But I don't have these 21 things, or interpreted that they couldn't be done, then that 22 doesn't happen. 23 Q So let's be clear. You have guests -- correct? -- come to 24 your facility? 25 A Guests or non-guests. We haven't determined what a guest</p> <p style="text-align: center;">Page 159</p>	<p>1 bottles, drink glasses and taste. What are you not -- we 2 speech are you not being able to provide? 3 A The reach. 4 MR. INFANTE: Objection; calls for a legal 5 conclusion, asked and answered. 6 A The reach. 7 Q The reach? 8 A Yeah. 9 Q What do you mean by that? 10 A I mean, if I -- if ten people come through my door -- 11 okay? -- and those ten people don't -- I mean, we've all 12 seen the old commercial tells two people and they tell two 13 people and they tell two people and they tell two people and 14 so on and so on. But by restricting me to do different 15 things I don't have the ability to reach everybody. 16 Q So the restriction to do different things, what different 17 things? Other than inviting guests to private events or 18 tasting room and to buy and drink wine, what different 19 things are you not? 20 A I'm not in my ability to stretch those out further. 21 Q So more guests? 22 A More guests and/or if I have a wine and food pairing and 23 people just want to come for that. 24 Q And you do have wine and food pairings; right? 25 A Right.</p> <p style="text-align: center;">Page 161</p>

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<p>1 Q And so more wine and food pairing?</p> <p>2 A More wine and food pairings -- or more people to attend. If</p> <p>3 I have ten people come I miss the opportunity to have ten</p> <p>4 more.</p> <p>5 Q So is it the capacity of the tasting room that is</p> <p>6 restricting your ability to get your message out?</p> <p>7 A No, it's the being restricted as to people that can come.</p> <p>8 Q Which people can't come?</p> <p>9 A People that don't hear the message.</p> <p>10 Q Which people are you not -- what message are you not --</p> <p>11 which people?</p> <p>12 A Friends that you're not able to tell because you didn't come</p> <p>13 to an event that I was going to have so you couldn't go tell</p> <p>14 your friends to come visit. So as a blanket form of</p> <p>15 advertising I'm not allowed to do it.</p> <p>16 Q So having more guests come is a form of advertising: is that</p> <p>17 your -- is that what you're saying?</p> <p>18 A Yeah, that's one way.</p> <p>19 Q Having more guests is advertising and because you can't have</p> <p>20 more guests you're being restricted?</p> <p>21 A Yeah, my message is being restricted.</p> <p>22 Q And you can't have more guests because you can't have more</p> <p>23 events? Why can't you have more guests? What is keeping</p> <p>24 you from having more guests?</p> <p>25 A Because I'm not allowed to do certain things under the rules</p> <p>Page 162</p>	<p>1 A Yes. Sorry.</p> <p>2 Q And when you have a virtual happy hour do you share it with</p> <p>3 the people in the virtual happy hour?</p> <p>4 A It's a little tougher.</p> <p>5 Q When you do a tour are you sharing this message at the tour?</p> <p>6 A Yes, I am.</p> <p>7 Q So you are sharing your message, your concern is that you're</p> <p>8 not being able to reach as many people?</p> <p>9 A Correct. So I'm limited in my reach.</p> <p>10 Q And you're limited in your reach, again, by the events you</p> <p>11 don't know if you can have or not?</p> <p>12 A Yes, I'm limited in my reach because if I can't -- say, for</p> <p>13 instance, we want to do a walk through the vineyard and I</p> <p>14 don't know if that's allowable or not allowable, then people</p> <p>15 that like to do walking through vineyards, because maybe</p> <p>16 that's a thing somewhere, I may never be able to talk to</p> <p>17 them and/or they may never be able to come up and so I don't</p> <p>18 know if there is a want to do that.</p> <p>19 Q You mean like a 5k through the vineyards? What do you mean</p> <p>20 by a walk --</p> <p>21 A Not even a 5k. I'm talking just walking through the</p> <p>22 vineyard, I've been told that that's not allowed at times,</p> <p>23 and I've been told it is allowed at times. So I'm never</p> <p>24 going to reach that segment of people that may want to take</p> <p>25 a walk through the vineyard and talk about things and so I'm</p> <p>Page 164</p>
<p>1 as they're interpreted by the township to let me do things,</p> <p>2 but I don't know what can be done and what can't be done and</p> <p>3 I can't sit here and put those together. So then my message</p> <p>4 isn't carried out further to other people. Why would you</p> <p>5 come to a facility and/or buy online if you've never heard</p> <p>6 about it?</p> <p>7 Q And your message is what?</p> <p>8 A My message?</p> <p>9 Q Yeah.</p> <p>10 A Well, it varies to the audience, it varies -- obviously we</p> <p>11 have great wine, we have -- we're offering a great</p> <p>12 experience.</p> <p>13 Q Okay.</p> <p>14 A A place where someone can enjoy themselves.</p> <p>15 Q That's your message, a great place?</p> <p>16 A Yes.</p> <p>17 Q Anything else?</p> <p>18 A We talk about the food.</p> <p>19 Q Okay. And when you have a wedding do you share this message</p> <p>20 with people at the wedding?</p> <p>21 A Oh, yeah.</p> <p>22 Q And when you -- in your tasting room, do you share this</p> <p>23 message in your tasting room?</p> <p>24 A Uh-huh (affirmative).</p> <p>25 Q "Yes"?</p> <p>Page 163</p>	<p>1 limited in what I can do.</p> <p>2 Q You can engage -- and again, your message is we have great</p> <p>3 wine, a great experience, great place for people to enjoy</p> <p>4 and great food?</p> <p>5 A Uh-huh (affirmative).</p> <p>6 Q You are able to provide that message to people through</p> <p>7 advertising?</p> <p>8 A Like I said, we do our advertising mainly social media and</p> <p>9 word of mouth.</p> <p>10 Q And you are able to advertise through social media about the</p> <p>11 wine, the experience, the food at Bonobo; correct?</p> <p>12 A Somewhat because I believe everyone has a different</p> <p>13 interpretation of experience. And so it's not easy when we</p> <p>14 sit there and go come do an experience. A customer says,</p> <p>15 hey, this is what I'd like to do and we may not be able to</p> <p>16 do that, or let me go check if that's something allowed to</p> <p>17 do. And it depends on who I'm talking to down at the</p> <p>18 township that says, hey, it's okay to do and then that</p> <p>19 person says, hey, I'm going someplace else and so now we</p> <p>20 lost out on that revenue.</p> <p>21 Q So when you -- you're uncertain as to whether you're</p> <p>22 entitled to have an experience or offer an experience to a</p> <p>23 person and you call the township and then you have -- what</p> <p>24 do you do afterwards to check if you agree or disagree</p> <p>25 with -- what does Bonobo do to check if you agree or</p> <p>Page 165</p>

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STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

\*\*\*\*\*

In the matter of the request of  
**OV THE FARM, LLC**  
12011 Center Rd.  
Traverse City, MI 49686  
Grand Traverse County

)  
)  
) Request ID No. 753004  
)  
)  
)

At the May 7, 2014 meeting of the Michigan Liquor Control Commission in Lansing,  
Michigan.

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

**LICENSE APPROVAL ORDER**

OV The Farm, LLC ("applicant") at the above-noted location has requested the Commission to review its application under MCL 436.1537(1)(o) for a new Small Wine Maker license; and authorization for the outdoor sale, service and consumption of alcoholic liquor in two areas, Area #1: measuring up to 64'x88'x64' with a 19'x26' extension, which will be well-defined and clearly marked and is located directly adjacent to the licensed Small Wine Maker premises; Area #2: consisting of the entire winery vineyard, which will be well-defined and clearly marked and is located directly adjacent to the licensed Small Wine 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 this license are the filing of a complete application, payment of \$25.00 license fee under MCL 436.1525 (d), proof that the Federal Basic Permit issued by the Alcohol, Tobacco, Tax & Trade Bureau (TTB) has been obtained as required under administrative rule R 436.1708(1), receipt of a Surety Bond as required under MCL 436.1801(a), and review and consideration by the Commission.

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 Small Wine Maker license for OV The Farm, LLC is hereby APPROVED, subject to:

1. **A final inspection by MLCC Enforcement Division to determine that the establishment has been constructed as proposed, that all fixtures and equipment have been installed, that the licensed premises meets all MLCC requirements and to determine the true cost and method of financing.**
2. The licensee shall pay all license fees by April 30<sup>th</sup> each year.

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3. The licensee is prohibited from producing more than 50,000 gallons of wine in one calendar year.
  4. The licensee may provide samples to consumers at the licensed premises of the wine they manufacture; and also sell that wine for consumption off the licensed premises as defined under MCL 436.1113 (9) and MCL 436.1537 (1)(o).
  5. The licensee shall file a report of operations with the Commission no later than the fifteenth day of each month reporting the preceding month's activity. A copy of each invoice shall accompany the report along with payment of the wine excise tax as required under MCL 436.1301 and administrative rule R 436.1725 (1).
  6. The licensee shall label all wine products in accordance with the federal wine regulations published in 27 C.F.R. prior to the sale in Michigan under administrative rule R 436.1719.
  7. The licensee shall not sell wine products until a registration number of approval has been received from the Commission under administrative rule R 436.1719.
  8. The licensee shall file a schedule of the net cash prices to retail licensees for all sales of wine before January 1, April 1, July 1, and October 1 of each year under administrative rule R 436.1726 (1).
- B. The Outdoor Service Areas (2) for OV The Farm, LLC is hereby APPROVED, subject to:



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1. **A final inspection by MLCC Enforcement Division to determine that Area #1: has been completed as proposed and Area #2: the 50 acre plot has been completed as proposed.**
  2. 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).
  3. Alcoholic beverages purchased for consumption in this proposed outdoor service area may not be removed and taken to any adjacent unlicensed area(s).
- C. The licensee shall provide documentary proof to the Commission to demonstrate that, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served have successfully completed a server training program approved by the Commission as required under MCL 436.1501(1), within 180 days from the issuance of the license, as provided in administrative rule R 436.1060.
1. The licensee shall maintain active certification of completion for server training on the licensed premises at all times as provided in administrative rule R 436.1060.
  2. Failure to provide this documentary proof to the Commission within 180 days of the issuance of the license shall result in the licensee being charged with failure to comply with this order, under administrative rule R 436.1029, which may result in fines, suspension and/or revocation of the

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license.

- D. Under 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 any of these requirements.
- E. Failure to comply with all laws and rules may result in the revocation of the approval of this order.
- F. The licensee must obtain all other required state and local licenses, permits, and approvals before opening the business for operation.

MICHIGAN LIQUOR CONTROL COMMISSION



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Andrew J. Deloney, Chairman



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Teri L. Quimby, Commissioner

EXHIBIT 48

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Page 6



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Dennis Olshove, Commissioner

tw

Date mailed:

PTP0003022

## PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

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

*Bonobo*

To: Peninsula Township Board

From: Randy Mielnik, AICP

Date: September 6, 2018

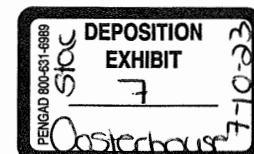
Re: Bonobo Winery Special Use Permit 118

Peninsula Township reached an agreement with Oosterhouse Vineyards, LLC to resolve a dispute related to compliance with special use permit provisions contained in Peninsula Township's Zoning Ordinance and Bonobo Winery. This agreement was approved by the Township Board on April 11, 2018 and it required additional plantings of fruit trees or grape vines. Since then, a number of steps have been taken and are documented below:

- On June 21, 2018 Christina Deeren and Gordon Hayward met with Dr. Nikkie Rothwell and Todd Oosterhouse on site to observe the plantings of vines and cider trees planted as proposed in the Settlement Agreement.
- Following the site visit Gordon Hayward asked Mr. Oosterhouse to provide a site plan prepared by a surveyor showing the actual location and acreage of the new planting areas.
- A letter dated June 22, 2018 was received from Dr. Rothwell regarding the site visit and confirming the plantings.
- A site plan dated August 9, 2018 has been provided from Michigan Geomatics showing the areas and acreage planted. This site plan showed a total of 7.95 acres of new plantings.
- The percentage of the area planted with crops that can be made into wine within the boundaries of Special Use Permit 118 are calculated as follows:

Winery-Chateau Use Boundary Area	50.00 acres	(Mansfield Site Plan 10-04-16)
Existing Planted Areas	31.56 acres	(Mansfield Site Plan 10-04-16)
New Planted Areas	7.95 acres	(Michigan Geomatics 8-9-18)
Total Acres Planted	39.50 acres	
Percentage of Use Boundary Area Planted	79%	

Based on the above documentation, it appears that the terms of the settlement agreement have been met. Please see attached copies of documentation.



**Exhibits**

- A. Order for 600 cider trees from Summit Tree Sales – October 6, 2016
  - B. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Todd Oosterhouse and attached Proposed Farm Management Plan for Bonobo Winery – December 28, 2016
  - C. Email from Nicole Essad to Steve Fox regarding proposed settlement agreement containing the necessary planting acreage (5.95) – March 20, 2017
  - D. Township Board Meeting Agenda and Minutes Approving Settlement Agreement.— April 11, 2017
  - E. Signed Settlement Agreement
  - F. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Rob Manigold providing an update on the Farm Plan – January 24, 2018
  - G. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Gordon Hayward confirming site visit and plantings - June 22, 2018
  - H. Letter from Michigan Geomatics regarding area calculations for planting - August 9, 2018
-

**EXHIBIT 50**  
**PTP Motion for Summary Judgment**  
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4-2021/6-2022

**1**  
APR, THU  
**7**  
APR, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**21**  
APR, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**5**  
MAY, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**13**  
MAY, THU  
5 – 7pm  
Law Association  
Calendar: Events at Bonobo, Accepted  
**19**  
MAY, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**27**  
MAY, THU  
4:30 – 6:30pm  
All Them Smiles  
Calendar: Events at Bonobo, Accepted  
**2**  
JUN, WED  
6:30 – 7pm

WOMP014203

Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**16**  
JUN, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**30**  
JUN, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**14**  
JUL, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**28**  
JUL, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**11**  
AUG, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**24**  
AUG, TUE  
4 – 5pm  
TC Dental tasting - guests  
Calendar: Events at Bonobo, Accepted  
**Tuesday, August 24, 2021**  
5 – 6pm  
Rehmann - 6 guests tour  
Calendar: Events at Bonobo, Accepted  
**Tuesday, August 24, 2021**

WOMP014204

5 – 6pm  
TC Eye Consultants - 60 / Gallery  
Calendar: Events at Bonobo, Accepted  
**25**  
AUG, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**8**  
SEP, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**22**  
SEP, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**6**  
OCT, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**20**  
OCT, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**3**  
NOV, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**4**  
NOV, THU  
12:45 – 1:45pm  
Girl Scout Meeting - 10 guests

WOMP014205

Calendar: Events at Bonobo, Accepted  
**17**  
NOV, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**1**  
DEC, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**12**  
DEC, SUN  
2 – 4pm  
Founders & Wine Club holiday party with Santa  
Calendar: Events at Bonobo, Accepted  
**15**  
DEC, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**29**  
DEC, WED  
6:30 – 7pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**25**  
MAY, WED  
3 – 4pm  
Mary Oosterhouse - Book Club (Library)  
Calendar: Events at Bonobo, Accepted  
**31**  
MAY, TUE  
All day  
Karla (artist) removing artwork  
Calendar: Events at Bonobo, Accepted  
**1**

WOMP014206

JUN, WED  
9 – 10am  
Sean (artist) moving art in  
Calendar: Events at Bonobo, Accepted  
**4**  
JUN, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**11**  
JUN, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**Saturday, June 11, 2022**  
12 – 1:30pm  
Alabama Bankers (Gallery and Portion of Patio)  
Calendar: Events at Bonobo, Accepted  
**12**  
JUN, SUN  
11:30am – 2:30pm  
Marty Oleson - Bridal Shower (Lib, Nook, PFP)  
Calendar: Events at Bonobo, Accepted  
**14**  
JUN, TUE  
3:30 – 5:30pm  
Teachers - Old Mission Peninsula School  
Calendar: Events at Bonobo, Accepted  
**17**  
JUN, FRI  
3 – 9pm  
Ward (Gallery and Half Patio)  
Calendar: Events at Bonobo, Accepted  
**18**  
JUN, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted

WOMP014207

**25**  
JUN, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**Saturday, June 25, 2022**  
1:30 – 4:30pm  
Justin - Engagement Celebration (Library)  
Calendar: Events at Bonobo, Accepted  
**2**  
JUL, SAT  
10 – 11am  
Yoga

WOMP014208

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**PTP Motion for Summary Judgment**  
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Jan 18-April 2021

**1**  
JAN, MON  
**4**  
NOV, WED  
7:30 – 7:45pm  
FB Live Mac and Cheese ROS  
Calendar: Events at Bonobo, Accepted  
**Wednesday, November 4, 2020**  
8 – 10pm  
4 Course Mac and Cheese Dinner!  
Calendar: Events at Bonobo, Accepted  
**6**  
NOV, FRI  
1 – 10pm  
Mac and Cheese SPAIN \$22 with Riesling Glass  
Calendar: Events at Bonobo, Accepted  
**7**  
NOV, SAT  
1 – 10pm  
Mac and Cheese SPAIN \$22 with Riesling Glass  
Calendar: Events at Bonobo, Accepted  
**12**  
NOV, THU  
7:30 – 8:30pm  
CMU Virtual Zoom Tasting  
Calendar: Events at Bonobo, Accepted  
**13**  
NOV, FRI  
1 – 10pm  
Mac and Cheese ITALY \$22 with Pinot Gris Glass  
Calendar: Events at Bonobo, Accepted  
**14**  
NOV, SAT  
1 – 10pm  
Mac and Cheese ITALY \$22 with Pinot Gris Glass

WOMP014209

Calendar: Events at Bonobo, Accepted  
**15**  
NOV, SUN  
1 – 7pm  
Mac and Cheese AMERICAN \$22 with Chard Select Glass  
Calendar: Events at Bonobo, Accepted  
**21**  
NOV, SAT  
1 – 10pm  
Mac and Cheese AMERICAN \$22 with Chard Select Glass  
Calendar: Events at Bonobo, Accepted  
**22**  
NOV, SUN  
1 – 7pm  
Mac and Cheese FRENCH \$22 with Rose Glass  
Calendar: Events at Bonobo, Accepted  
**25**  
NOV, WED  
6 – 10pm  
DRINKSgiving  
Calendar: Events at Bonobo, Accepted  
**27**  
NOV, FRI  
1 – 10pm  
Mac and Cheese FRENCH \$22 with Rose Glass  
Calendar: Events at Bonobo, Accepted  
**28**  
NOV, SAT  
1 – 10pm  
Mac and Cheese FRENCH \$22 with Rose Glass  
Calendar: Events at Bonobo, Accepted  
**29**  
NOV, SUN  
1 – 7pm  
Mac and Cheese FRENCH \$22 with Rose Glass  
Calendar: Events at Bonobo, Accepted  
**2**

WOMP014210

DEC, WED  
8 – 10pm  
Wreath Making with Floral Underground  
Calendar: Events at Bonobo, Accepted  
**10**  
DEC, THU  
4:30 – 5:30pm  
Hagerty Virtual Tasting  
Calendar: Events at Bonobo, Accepted  
**16**  
DEC, WED  
7:30 – 7:45pm  
FB Live Cookie Decorating  
Calendar: Events at Bonobo, Accepted  
**Wednesday, December 16, 2020**  
8 – 10pm  
FB Live To-Go Meals OR Three-Course Meal  
Calendar: Events at Bonobo, Accepted  
**17**  
DEC, THU  
8 – 10pm  
3-Course Wine Dinner \$68/55 ++  
Calendar: Events at Bonobo, Accepted  
**18**  
DEC, FRI  
8 – 10pm  
3-Course Wine Dinner \$68/55 ++  
Calendar: Events at Bonobo, Accepted  
**19**  
DEC, SAT  
8 – 10pm  
3-Course Wine Dinner \$68/55 ++  
Calendar: Events at Bonobo, Accepted  
**30**  
DEC, WED  
7:30 – 8:30pm  
? FB Live? Eve of the Eve  
Calendar: Events at Bonobo, Accepted

WOMP014211

**31**  
DEC, THU  
6:30 – 10pm  
? \$150 pp Wine Dinner?  
Calendar: Events at Bonobo, Accepted  
**1**  
JAN, FRI  
1 – 10pm  
? P.J Party, Bubbles and Bubbies and Bloodies  
Calendar: Events at Bonobo, Accepted  
**4**  
FEB, THU  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**5**  
FEB, FRI  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**6**  
FEB, SAT  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**10**  
FEB, WED  
7:30 – 8pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**11**  
FEB, THU  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**12**  
FEB, FRI

WOMP014212

8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**13**  
FEB, SAT  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**18**  
FEB, THU  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**19**  
FEB, FRI  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**20**  
FEB, SAT  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**24**  
FEB, WED  
7:30 – 8pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**25**  
FEB, THU  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**26**  
FEB, FRI  
8 – 10pm  
February Dinner Series

WOMP014213

Calendar: Events at Bonobo, Accepted  
**27**  
FEB, SAT  
8 – 10pm  
February Dinner Series  
Calendar: Events at Bonobo, Accepted  
**10**  
MAR, WED  
7:30 – 8pm  
Virtual Happy Hour  
Calendar: Events at Bonobo, Accepted  
**7**  
APR, WED  
6:30 – 7pm  
Virtual Happy Hour

WOMP014214



**EXHIBIT 50**  
**PTP Motion for Summary Judgment**  
**October 6, 2023**  
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2-2023/6-2023

**1**  
FEB, WED  
**3**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**4**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**10**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**11**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**Saturday, February 11**  
5 – 8pm  
Austin and Erin Ceremony/Celebration  
Calendar: Events at Bonobo, Accepted  
**17**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**18**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted

WOMP014215

**25**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**4**  
MAR, SAT  
All day  
Suds N Snow  
Calendar: Events at Bonobo, Accepted  
**Saturday, March 4**  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**11**  
MAR, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**18**  
MAR, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**25**  
MAR, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**1**  
APR, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**9**  
APR, SUN  
All day

WOMP014216

Easter Brunch  
Calendar: Events at Bonobo, Accepted  
**12**  
APR, WED  
6 – 9pm  
SET SEG Dinner (10)  
Calendar: Events at Bonobo, Accepted  
**14**  
APR, FRI  
6 – 8pm  
Pick Up Party  
Calendar: Events at Bonobo, Accepted  
**15**  
APR, SAT  
6:30 – 9:30pm  
Wine Club Dinner  
Calendar: Events at Bonobo, Accepted  
**20**  
APR, THU  
4 – 6pm  
TC Newcomers Club - Large Tasting  
Calendar: Events at Bonobo, Accepted  
**21**  
APR, FRI  
6 – 8pm  
Pick Up Party  
Calendar: Events at Bonobo, Accepted  
**22**  
APR, SAT  
6:30 – 9:30pm  
Wine Club Dinner  
Calendar: Events at Bonobo, Accepted  
**3**  
MAY, WED  
6 – 9pm  
Rural Innovation Network Summit  
Calendar: Events at Bonobo, Accepted

WOMP014217

**10**  
MAY, WED  
5:30 – 8pm  
Northern Michigan Startup Week  
Calendar: Events at Bonobo, Accepted  
**12**  
MAY, FRI  
6 – 7:30pm  
Chocolate and Wine Pairing  
Calendar: Events at Bonobo, Accepted  
**14**  
MAY, SUN  
All day  
Mother's Day - Brunch  
Calendar: Events at Bonobo, Accepted  
**16**  
MAY, TUE  
12:30 – 2:30pm  
Comcast  
Calendar: Events at Bonobo, Accepted  
**17**  
MAY, WED  
1 – 3pm  
Chase Bank - F+W (14)  
Calendar: Events at Bonobo, Accepted  
**18**  
MAY, THU  
6 – 8pm  
Tandem Wealth Management Client Event  
Calendar: Events at Bonobo, Accepted  
**19**  
MAY, FRI  
4 – 6pm  
CMU Social  
Calendar: Events at Bonobo, Accepted  
**24**  
MAY, WED

WOMP014218

5 – 9pm  
Brick Foundation  
Calendar: Events at Bonobo, Accepted  
**29**  
MAY, MON  
11am – 1pm  
After Wedding Brunch  
Calendar: Events at Bonobo, Accepted  
**9**  
JUN, FRI  
5:30 – 7:30pm  
Eric & Julie (30 pp Tasting)  
Calendar: Events at Bonobo, Accepted  
**10**  
JUN, SAT  
1 – 3pm  
T&T Tools, Inc. I Wine Tour/W+F Pairing for 15 guests  
Calendar: Events at Bonobo, Accepted  
**14**  
JUN, WED  
6 – 9pm  
Corporate Dinner (Dorothy)  
Calendar: Events at Bonobo, Accepted  
**15**  
JUN, THU  
6:45 – 7:45pm  
Kirsten (40 pp Tasting)  
Calendar: Events at Bonobo, Accepted  
**17**  
JUN, SAT  
9 – 11am  
Yoga Gives Back I Summer Solstice Celebration  
Calendar: Events at Bonobo, Accepted  
**20**  
JUN, TUE  
7:30 – 10pm  
Live Unreal

WOMP014219

Calendar: Events at Bonobo, Accepted  
**22**  
JUN, THU  
12 – 2pm  
Pre-Wedding Reception  
Calendar: Events at Bonobo, Accepted  
**23**  
JUN, FRI  
4 – 6pm  
Rehearsal Dinner and Welcome Reception  
Calendar: Events at Bonobo, Accepted  
**24**  
JUN, SAT  
4 – 6pm  
50th Anniversary (Dave and Sue)

WOMP014220

**EXHIBIT 50**  
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6-2022/2-2023

**1**  
JUL, FRI  
**2**  
JUL, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**7**  
JUL, THU  
6 – 9pm  
Cherry Fest VIP Dinner + Tour  
Calendar: Events at Bonobo, Accepted  
**9**  
JUL, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**16**  
JUL, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**23**  
JUL, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**30**  
JUL, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**6**  
AUG, SAT  
10 – 11am

WOMP014221

Yoga  
Calendar: Events at Bonobo, Accepted  
**Saturday, August 6, 2022**  
8:30 – 9:30pm  
Rachael's Birthday Virtual Tasting w/ Cornel  
Calendar: Events at Bonobo, Accepted  
**13**  
AUG, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**20**  
AUG, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**27**  
AUG, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**3**  
SEP, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**10**  
SEP, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**17**  
SEP, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**24**

WOMP014222

SEP, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**1**  
OCT, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**8**  
OCT, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**15**  
OCT, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**29**  
OCT, SAT  
10 – 11am  
Yoga  
Calendar: Events at Bonobo, Accepted  
**29**  
NOV, TUE  
6 – 7:30pm  
20 Fathoms Donor Event  
Calendar: Events at Bonobo, Accepted  
**2**  
DEC, FRI  
6 – 9pm  
Friendsgiving  
Bonobo Winery 12011 Center Rd, Traverse City, MI 49686, United States  
Calendar: Events at Bonobo, Accepted  
**4**  
DEC, SUN

WOMP014223

4 – 6pm  
Peace Ranch  
Calendar: Events at Bonobo, Accepted  
**15**  
DEC, THU  
5 – 7pm  
Book Club  
Calendar: Events at Bonobo, Accepted  
**18**  
DEC, SUN  
1 – 5pm  
Founders Party  
Calendar: Events at Bonobo, Accepted  
**24**  
DEC, SAT  
All day  
Bonobo CLOSED  
Calendar: Events at Bonobo, Accepted  
**25**  
DEC, SUN  
All day  
Bonobo CLOSED  
Calendar: Events at Bonobo, Accepted  
**28**  
DEC, WED  
3 – 4pm  
The Haunting of Ebenezer - Concert  
Calendar: Events at Bonobo, Accepted  
**29**  
DEC, THU  
5 – 8pm  
Julia and Tristan Celebration  
Calendar: Events at Bonobo, Accepted  
**31**  
DEC, SAT  
5 – 8pm  
NYE Bonobo Party!

WOMP014224

Calendar: Events at Bonobo, Accepted  
**1**  
JAN, SUN  
All day  
Bonobo CLOSED  
Calendar: Events at Bonobo, Accepted  
**8**  
JAN, SUN  
All day  
Employee Party  
Calendar: Events at Bonobo, Accepted  
**26**  
JAN, THU  
All day  
Book Club  
Calendar: Events at Bonobo, Accepted  
**28**  
JAN, SAT  
12 – 1:30pm  
Ducks Unlimited I 14 guests  
Calendar: Events at Bonobo, Accepted  
**3**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**4**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**10**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**11**

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FEB, SAT  
3 – 5:30pm  
Wine Club Saturday  
Calendar: Events at Bonobo, Accepted  
**Saturday, February 11**  
5 – 8pm  
Austin and Erin Ceremony/Celebration  
Calendar: Events at Bonobo, Accepted  
**17**  
FEB, FRI  
7 – 9pm  
Winter Dinner Series  
Calendar: Events at Bonobo, Accepted  
**18**  
FEB, SAT  
3 – 5:30pm  
Wine Club Saturday

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Inquiry Date	Contact/Company	Event Date	Time	Event Type	Guests
Tue, August 2,		Fri, August 11, 2023	630-10pm	Rehearsal Dinner	45
Tue, August 2,		Sat, September 9, 2023	5pm-12am	Wedding	150
Tue, August 2, Thu, August 4,		Sun, September 3, 2023	5-11pm	Wedding Wedding	150
Thu, August 4,		Thu, September 7, 2023	3:00 PM	Wedding	150
Fri, August 5,				Wedding	
Sun, August 7, Tue, August 9,		Fri, September 8, 2023 Sat, September 17, 2022	4:00 PM 12-2pm	Wedding Alumni event	110 15
Tue, August 9,		Sat, July 1, 2023	4-11pm	Wedding	70
Tue, August 9,		Mon, June 5, 2023	5-10pm	Wedding	16
Tue, August 9, Tue, August 9,		Fri, September 1, 2023 April - Aug 2023	4-10pm	Wedding Wedding	30 100
Tue, August 9,		Fri, December 9, 2022	5-7pm	Company Holiday party	20
Tue, August 9,		Sat, June 3, 2023	5-10pm	Wedding	20
Tue, August 9, Sat, August 13,		Thu, August 24, 2023 Sun, September 4, 2022	All day	Wedding Engagement Party	50
Tue, August 23,		Sat, September 16, 2023	4-11pm	Wedding	175
Thu, September 1,					
Sun, September 4, Sun, September 4,		Mon, August 15, 2022 Sat, September 2, 2023	5-11pm 6-10pm	Wedding Wedding	149 100
Fri, September 9,		Thu, June 1, 2023	530-9pm	Wedding	25
Mon, September 12,		Thu, August 10, 2023			
Wed, September 14, Wed, September 14,		Sat, December 10, 2022 Thu, October 20, 2022	630-830pm	Company Holiday Party Corporate	150 25
Sat, September 17,		Sat, June 10, 2023	3-11pm	Wedding	100
Sat, September 17,		Sat, September 23, 2023	5-11pm	Wedding	120
Sat, September 17, Mon, September 19,		Sat, June 24, 2023 Sat, September 23, 2023	4-11pm	Wedding Wedding	75 100
Tue, September 20,		Sat, August 19, 2023	6-11	Wedding	75
Thu, September 22,		Wed, October 12, 2022		Business Dinner	10-12
Fri, September 23, Mon, September 26,		Sat, September 23, 2023	4	Wedding Wedding	50
Tue, September 27,		Sun, December 4, 2022	4 -7pm	Volunteer Appreciation/repea	40
Tue, September 27,		Sat, September 9, 2023	5-10pm	Wedding	75
Wed, September 28,		Fri, September 1, 2023	2-6pm	Wedding	25

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Contact/Company	Event Type	Rental	Guest #	Date	Time	Status	Contact	Deposit	Comments
January									
September									
October									
	Ceremony and Reception	Library	18	Saturday, October 1, 2022	2:00p-6:00p	Contract Sent	Lucy		
	Wedding	Gallery+Portion of Patio	60	Saturday, October 8, 2022	3:30p-8:00p	Contracted	Lucy	Card Info Received	
	Team building	Library	10-12	Wednesday, October 12, 2022	6p	Pending	Lucy		Tour   Food and Wine Pairing
	Wedding Celebration	Gallery	22	Saturday, October 15, 2022	6p-8p	Contracted	Lucy	Received/Check	
	Wine bt glass & small plates	Library	14	Saturday, October 15, 2022	6:45 PM	NA	Jill	NA	
	Reception	Gallery	30	Friday, October 21, 2022	4:00p-6:00p	Need Contract	Lucy		
Fall Dinner Series	Winery Event			Thursday, October 27, 2022					
November									
Fall Dinner Series	Winery Event			Thursday, November 3, 2022					
	Sip and See	TBD	22	Saturday, November 5, 2022	3p-5p	Contracted	Lucy		
Fall Dinner Series Wine Club Dinner	Winery Event			Thursday, November 10, 2022	7:00p-9:00p				
Fall Dinner Series	Winery Event			Saturday, November 12, 2022					
	Winery Event			Thursday, November 17, 2022					
Wine Club Dinner	Winery Event			Saturday, November 19, 2022	7:00p-9:00p				
December									
	Work Christmas Party	TBD	20	Sunday, December 4, 2022	TBD	Pending	Lucy		
	Work Christmas Party			Friday, December 9, 2022	TBD	Pending	Lucy		
	wedding Celebration		11	Saturday, December 10, 2022					
	Wedding Celebration		65	Friday, December 23, 2022					
		Gallery + Fireplaces		Thursday, December 29, 2022					
					TBD	Pending	Lucy		
Contracted									
Pending									
Cancelled									
Winery Events									
Large Party Pergola Rental									
Large Party Other									

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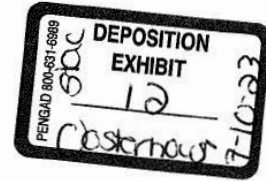
Contact	Event	Bonobo Contact	Start Date	Time	Guest Count	Status	Comments/Contact Info
July							
	Tasting W&F	Lucy	Saturday, July 2, 2022	2:05p	18 (13 Drinking)	Confirmed   TOCK	
		Megan	Saturday, July 9, 2022	12:30p	3	Confirmed   TOCK	
	Tasting	Lucy	Wednesday, July 20, 2022	2:30p	24	Confirmed   TOCK	
	Tasting	Megan	Tuesday, July 26, 2022	5:30p	18-21	Confirmed	
August							
	Tasting	Lucy	Wednesday, August 3, 2022	TBD	26	Confirmed	Pre-ordered food
	Tasting	Megan	Friday, August 5, 2022	1:15p	21	Confirmed	
	Tasting	Lucy	Sunday, August 28, 2022	11:00am   2:30pm	60	Confirmed	One group of 25 at 11am and 25 at 2:30p
	Tasting	Megan	Tuesday, August 30, 2022	1:00p	14	Confirmed   TOCK	
September							
	Tasting	Megan	Thursday, September 22, 2022	5:30p	26	Confirmed   Tock	
	Tasting	Lucy	Thursday, September 29, 2022	1:45 pm   3:15 pm	50	Pending	Two groups of 25
October							
	wine by the glass	Megan	Friday, October 7, 2022	3:45p - 5:00p	28	N/A	will be paying the tab
	Tasting	n/a	Saturday, October 15, 2022	12:30p	24	Booked by guest on tock	
	Tasting	Megan	Saturday, October 15, 2022	1:00p	28	Confirmed   Tock	6 people - Gift Certificate
	Tasting	Jill	Monday, October 17, 2022	1230-145	50	Confirmed / Blocked on Tock	TV Show shoot - comp tasting and discount on bottles/small plates
	Tasting	Megan	Saturday, October 22, 2022	3:30	14	Confirmed   Tock	
November							
December							

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# BONOBO WINERY

## SPECIAL EVENT CONTRACT



Thank you for selecting Bonobo Winery as the venue for your Large Group Tasting Experience! We know that you will be delighted by Bonobo wine and food in our unique venue with breathtaking views and service second to none. We truly appreciate your business and look forward to exceeding your expectations. Please initial each section to indicate you have read and understand our terms. Your signature at the bottom and a deposit will confirm the day and time for your Large Group Tasting.

This contract is made effective as of **07/14/2019** between **Bonobo Winery** and  
(Today's Date)

██████ for a Large Group Tasting Experience on **08/22/2019** at **6:30pm**.  
(Client) (Date) (Time)

### LARGE GROUP TASTING DETAILS

NAME OF EVENT/OCCASION: ██████ Social Event

DATE: 08/22/2019

DEPOSIT (07/14/2019, ██████):

START TIME (guests may enter reserved space at this time): 6:30pm

FOOD TIMING (time(s) for food to be brought out): 6:30pm

END TIME (guests must leave the reserved space at this time): 9:00pm

- **RESERVED SPACE:** Space will be reserved upon signature of this contract and receipt of first deposit. Space will be provided and set up as discussed between Bonobo's Events Coordinator and the Client. *Bonobo Winery is unable to accommodate large group special events on Fridays or Saturdays during the months of July through mid November.* The rest of the winery will still be open to the regular public. It is important that the Client's guests do not make a disruptive experience for the other guests of the winery.
- **TIMING:** Reserving a space is for a period of three hours. To reserve a space for longer than the allotted three hours, it must be approved by Bonobo's Events Coordinator. For every additional hour required there is \$██████ fee. On the day of, the Client and his/her guests may enter the reserved space at the contracted start time and all must leave the space at the contracted end time. If the Client wishes to stay past their contracted end time, they may inquire as to whether the space is available. If the space is available, the Client may continue to use the space for an additional \$██████ for last-minute changes. Bonobo Winery is not permitted to have any customers on premise after 9:30pm due to Old Mission Peninsula restrictions. If any fine should be given to Bonobo Winery for guests being in the winery after that time, the Client will be held responsible for that fine. Last call for wine is at 8:45 pm.

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- **WINE AND FOOD:** Any wine or food pre-ordered by the **Client** for the event will be provided by Bonobo Winery. If the **Client** wants to order more wine or food, it must be approved by Bonobo's Events Coordinator. Extra wine or food may not be available as it was not pre-ordered. All food is made-to-order for food timing schedule so **Bonobo Winery** cannot guarantee food temperature or quality if the **Client** is late or delays the timing in any other way.
- **OUTSIDE FOOD OR BEVERAGES:** If the **Client** wishes to bring in a personal cake, it must be brought in at the time of the event, be store-bought or bakery-made, and pre-approved by the Events Coordinator. If the **Client** wants the cake to be cut by Bonobo's chef, there is a \$ [REDACTED] cutting and plating fee. If the **Client** wishes to bring in a non-alcoholic beverage, it must be store-bought and pre-approved by the Events Coordinator. **Bonobo Winery** does not allow any other alcoholic beverage in the winery. Anyone with alcohol besides what is offered at **Bonobo Winery** will be asked to leave immediately and the alcohol will be removed from the premises.
- **PARKING:** It is encouraged that guests carpool, especially with larger parties. **Bonobo Winery** has approximately 70 parking spaces. **Bonobo Winery** is not liable for any damage caused to the **Client's** or his/her guests' vehicles while parked in the winery's parking lot.
- **RIGHT TO SERVICE:** Bonobo Winery has the right to stop serving anyone who is intoxicated and the **Client** and his/her guests must respect and obey the decision or they will be asked to leave the premises.
- **DECORATIONS:** If the **Client** wishes to bring decorations for their event such as signs, centerpieces, or flowers, it must be arranged and approved by Bonobo's Events Coordinator beforehand. The **Client** must use painters tape if hanging any decorations and must take particular care near artwork. The **Client** could be charged \$ [REDACTED] for any damage to **Bonobo Winery's** walls and the cost of the artwork if damaged. If the **Client** wishes to decorate early, this time must be arranged and approved by Bonobo's Events Coordinator.
- **DAMAGE:** Any damage to the winery caused by the **Client** or the **Client's** guest will be held financially responsible.
- **LOST, STOLEN:** **Bonobo Winery** is not responsible for any lost or stolen items. If something goes missing, the **Client** or his/her guests may leave a detailed description of the item along with contact information at **Bonobo Winery**. If the item is found, **Bonobo Winery** will call the contact to report it found and arrange a time for contact to pick up the item.



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PAYMENT DETAILS:

- **DEPOSIT:** An initial deposit of 25% is required upon booking. This amount is based determined by wine and food selections made by the **Client**. These menu selections must be finalized no later than three weeks prior to the event. The deposit will be deducted from the bill before the **Client** pays the remaining balance on the day of the event.
- **OPERATIONS FEE:** The Operations Fee is 25% of the total bill, excluding gratuity and taxes. It covers reserving the space, set up and tear down, proper staffing, and ordering and preparing for the **Client's** Large Group Tasting Experience. *The Operations Fee does not include gratuity.*
- **GRATUITY:** There is an automatic 20% gratuity added to any large group tasting experience over eight people for the service of those who assisted during your experience, including chefs, wine servers, and Events Coordinator. This is 20% of the total bill excluding Operations fee and taxes.
- **CANCELLATION/REFUND POLICY:** In the event that Bonobo Winery is unable to accommodate the **Client's** Tasting Experience due to matters out of the winery's control (inclement weather, power outages, etc.) the **Client** will receive a full refund of any payments made. However, if the **Client** cancels within 72 hours before the scheduled event, **Bonobo Winery** has the right to keep the initial deposit of 25%.

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● **QUESTIONS/CONCERNS:**

Bonobo Winery Tasting Room Manager & Events Coordinator - Amy Wilde

-Phone: 231-882-6062

-Email: amyw@bonobowinery.com

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I, the Client, understand that by signing this contract I have read, initialed, and understand all the information above and will be making my first deposit today to confirm time and date of the Large Group Tasting Experience.

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**Client Signature**

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**Date**

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**Events & Reservations Coordinator's Signature**

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**Date**



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## BONOBO WINERY

### SPECIAL EVENT CONTRACT

Thank you for selecting Bonobo Winery as the venue for your Large Group Tasting Experience! We know that you will be delighted by Bonobo wine and food in our unique venue with breathtaking views and service second to none. We truly appreciate your business and look forward to exceeding your expectations. Please initial each section to indicate you have read and understand our terms. Your signature at the bottom and a deposit will confirm the date and time for your Large Group Tasting.

This contract is made effective as of /2019 between Bonobo Winery and  
(Today's Date)

\_\_\_\_\_ for a Large Group Tasting Experience on 06/29/2019 at 2:00pm.  
(Client) (Date) (Time)

#### LARGE GROUP TASTING DETAILS

NAME OF EVENT/OCCASION: \_\_\_\_\_ Bridal Shower

DATE: 06/29/2019

DEPOSIT (05/08/2019, \_\_\_\_\_):

START TIME (guests may enter reserved space at this time): 2:00pm

FOOD TIMING (time(s) for food to be brought out): 2:30pm

END TIME (guests must leave the reserved space at this time): 5:00pm

- **RESERVED SPACE:** Space will be reserved upon signature of this contract and receipt of first deposit. Space will be provided and set up as discussed between Bonobo's Events Coordinator and the Client. *Bonobo Winery is unable to accommodate large group special events on Fridays or Saturdays during the months of July through mid November.* The rest of the winery will still be open to the regular public. It is important that the Client's guests do not make a disruptive experience for the other guests of the winery.
- **TIMING:** Reserving a space is for a period of three hours. To reserve a space for longer than the allotted three hours, it must be approved by Bonobo's Events Coordinator. For every additional hour required there is \$\_\_\_\_\_ fee. On the day of, the Client and his/her guests may enter the reserved space at the contracted start time and all must leave the space at the contracted end time. If the Client wishes to stay past their contracted end time, they may inquire as to whether the space is available. If the space is available, the Client may continue to use the space for an additional \$\_\_\_\_\_ for last-minute changes. Bonobo Winery is not permitted to have any customers on premise after 9:30pm due to Old Mission Peninsula restrictions. If any fine should be given to Bonobo Winery for guests being in the winery after that time, the Client will be held responsible for that fine. Last call for wine is at 8:45 pm.

WOMP014117

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## BONOBO WINERY

### SPECIAL EVENT CONTRACT

Thank you for selecting Bonobo Winery as the venue for your Large Group Tasting Experience! We know that you will be delighted by Bonobo wine and food in our unique venue with breathtaking views and service second to none. We truly appreciate your business and look forward to exceeding your expectations. Please initial each section to indicate you have read and understand our terms. Your signature at the bottom and a deposit will confirm the day and time for your Large Group Tasting.

This contract is made effective as of **07/11/2019** between **Bonobo Winery** and  
 (Today's Date)

\_\_\_\_\_ for a Large Group Tasting Experience on **09/30/2019** at **6:00pm**.  
 (Client) (Date) (Time)

#### LARGE GROUP TASTING DETAILS

NAME OF EVENT/OCCASION: \_\_\_\_\_ Elopement

DATE: 09/30/2019

DEPOSIT (07/11/2019, \_\_\_\_\_):

START TIME (guests may enter reserved space at this time): 6:00pm

FOOD TIMING (time(s) for food to be brought out): 6:00pm, 7:00pm, & 7:20pm

END TIME (guests must leave the reserved space at this time): 9:00pm

- **RESERVED SPACE:** Space will be reserved upon signature of this contract and receipt of deposit. Space will be provided and set up as discussed between Bonobo's Events Coordinator and the Client. *Bonobo Winery is unable to accommodate large group special events on Fridays or Saturdays during the months of July through mid November.* The rest of the winery will still be open to the regular public. It is important that the Client's guests do not make a disruptive experience for the other guests of the winery.
- **TIMING:** Reserving a space is for a period of three hours. To reserve a space for longer than the allotted three hours, it must be approved by Bonobo's Events Coordinator. For every additional hour required there is \$\_\_\_\_\_ fee. On the day of, the Client and his/her guests may enter the reserved space at the contracted start time and all must leave the space at the contracted end time. If the Client wishes to stay past their contracted end time, they may inquire as to whether the space is available. If the space is available, the Client may continue to use the space for an additional \_\_\_\_\_ for last-minute changes. **Bonobo Winery** is not permitted to have any customers on premise after 9:30pm due to Old Mission Peninsula restrictions. If any fine should be given to Bonobo Winery for guests being in the winery after that time, the Client will be held responsible for that fine. Last call for wine is at 8:45 pm.

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## BONOBO WINERY

### EVENT CONTRACT

Thank you for selecting **Bonobo Winery** as the venue for your event. We know that you will be delighted with the Bonobo experience--exceptional wine, food and service in our unique venue with breathtaking views.

This contract outlines the details of your event along with the terms & conditions and payment requirements. Please review and initial each section to indicate you understand the terms and the event details are correct. Your signature and the deposit reserves the date and space for your event.

This contract is made effective as of May 12, 2020 between Bonobo Winery, located at 12011 Center Rd. Traverse City 49685 ("Bonobo") & [REDACTED] ("Client").

#### EVENT DETAILS

**NAME OF EVENT:** [REDACTED] Wedding

**EVENT DATE:** October 18, 2020

**EVENT LOCATION:** Ceremony at the pergola, Cocktail Hour on the patio and Dinner (Family Style) in the Gallery

**SET UP REQUIRED/TIME:**

**START TIME** (*guests may enter reserved space*): 5-5:30 ceremony, cocktail hour in the gallery 5:30-7; dinner from 7-10pm

**END TIME** (*guests must leave the reserved space*): 10pm

40-50 guests, music for ceremony and cocktail and small band for reception

**WINE & FOOD:**

**WINE SERVICE TIME:**

**FOOD SERVICE TIME**

**VENUE RENTAL FEE:**

**FOOD & BEVERAGE FEE/MINIMUM:**

**DEPOSIT REQUIRED:**

**DISCOUNT:** (WINE CLUB, FOUNDER, OTHER, ETC. DELETE IF N/A)

#### TERMS & CONDITIONS

WOMP013923 1

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# BONOBO WINERY

## SPECIAL EVENT CONTRACT

Thank you for selecting Bonobo Winery as the venue for your Large Group Tasting Experience! We know that you will be delighted by Bonobo wine and food in our unique venue with breathtaking views and service second to none. We truly appreciate your business and look forward to exceeding your expectations. Please initial each section to indicate you have read and understand our terms. Your signature at the bottom and a deposit will confirm the date and time for your Large Group Experience.

This contract is made effective as of **02/26/2020** between **Bonobo Winery** and  
*(Today's Date)*

██████ for a Large Group Tasting Experience on **05/16/2020** at **5:00pm**.

*(Client)*

*(Date)*

*(Time)*

### ————— LARGE GROUP TASTING DETAILS —————

**NAME OF EVENT/OCCASION:** Baby Shower – name? – Gallery

**DATE:** 06/26/2020

**DEPOSIT :** Will require a █████ deposit. No deposit at time of contract.

**START TIME** (guests may enter reserved space at this time): 5:00pm - Actual time 4:30pm for decorations

**FOOD TIMING** (time(s) for food to be brought out): 5:30pm (Food to Determined Later)

**END TIME** (guests must leave the reserved space at this time): 8:00pm

**PER HOUR RATE:** \$████ per hour - Total venue cost \$████

**If paying by credit card, an additional 3% will be added to the total bill.**

- **RESERVED SPACE:** Space will be reserved upon signature of this contract and receipt of first deposit. Space will be provided and set up as discussed between Bonobo's Events Coordinator and the **Client**. The rest of the winery will still be open to the regular public. It is important that the **Client's** guests do not make a disruptive experience for the other guests of the winery.
- **TIMING:** Reserving a space is for the period of time indicated above, and it must be approved by Bonobo's Events Coordinator. For every additional hour required there is a fee. On the day of, the **Client** and his/her guests may enter the reserved space at the contracted start time and all must leave the space at the contracted end time. If the **Client** wishes to stay past their contracted end time, they may inquire as to whether the space is available. If the space is available, the **Client** may continue to use the space for an additional 1.5 times the Hourly Venue Rate or \$████ per hour for Premium Venue Rentals; for last-minute changes. **Bonobo Winery** is not permitted to have any customers on premise after

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## BONOBO WINERY

### TASTING EXPERIENCE AGREEMENT

Thank you for selecting **Bonobo Winery** as the venue for your tasting experience. We know that you will be delighted with the Bonobo experience--exceptional wine, food and service in our unique venue with breathtaking views.

This agreement outlines the details of your event along with the terms & conditions and payment requirements. Please review and initial each section to indicate you have read and understand the terms and the details are correct. Your signature and the agreed upon deposit reserves the date, time and space for your tasting experience.

This agreement is made effective as of September 13, 2020 between Bonobo Winery, located at 12011 Center Rd. Traverse City 49685 ("Bonobo") & [REDACTED] ("Client").

#### EVENT DETAILS

NAME OF EVENT: [REDACTED] Wedding

EVENT DATE: Friday, June 4, 2021

ESTIMATED NUMBER OF GUESTS: 60 guests

#### LOCATION & TIMES:

3:30PM - 5:30PM - Cocktail Hour in the Gallery w/ portion of patio reserved

5:30PM - 7:30PM - Reception Dinner in the Bonobo Winery Vines

SET UP REQUIRED/TIME: 3:00pm

START TIME (guests may enter reserved space): 4:00PM

END TIME (guests must leave the reserved space): 8:00pm

#### WINE & FOOD SERVICE:

Cocktail Hour: open bar & select small plates

Reception: \$ [REDACTED] dinner menu with poured wine

(Wine/beverage selection and small plates & dinner menu to be discussed after January 1, 2021 and agreed upon between Bonobo Winery & Client no later than April 15, 2021)

#### ADDITIONAL:

Furniture/Equipment - Bonobo Winery to rent and set up on the behalf of Client of the following:  
Rustic Farm Table (8); Mahogany Chivari Chairs (60); Speaker System

Signage - Bonobo Winery to provide basic directional event signage and bar & food menus

Floral & Decor - Client will provide Floral & Decor for centerpieces and coordinate set up with their selected vendor. Bonobo Winery to provide basic white linens, white & silver dinnerware, classic glass barware and small candle votives.

#### PRICING DETAILS

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## BONOBO WINERY

### TASTING EXPERIENCE AGREEMENT

Thank you for selecting **Bonobo Winery** as the venue for your tasting experience. We know that you will be delighted with the Bonobo experience--exceptional wine, food and service in our unique venue with breathtaking views.

This agreement outlines the details of your event along with the terms & conditions and payment requirements. Please review and initial each section to indicate you have read and understand the terms and the details are correct. Your signature and the agreed upon deposit reserves the date, time and space for your tasting experience.

This agreement is made effective as of June 25, 2020 between Bonobo Winery, located at 12011 Center Rd. Traverse City 49685 ("Bonobo") & [REDACTED] ("Client").

#### EVENT DETAILS

**NAME OF EVENT:** [REDACTED] Wedding

**EVENT DATE:** May 20, 2021

**ESTIMATED NUMBER OF GUESTS:** 25 guests

**EVENT LOCATION:** Entire Winery

**SET UP REQUIRED/TIME:** 3:00pm

**START TIME** (*guests may enter reserved space*):

Ceremony: 4:00pm - 5:00pm; Reception: 5:00pm - 7:30pm

**END TIME** (*guests must leave the reserved space*): 7:30pm

**WINE & FOOD:** Wine & Small plates for reception

**WINE SERVICE TIME:** Open bar 5pm - 7:30pm

**FOOD SERVICE TIME:** Small plates 5pm - 7:30pm

**VENUE RENTAL FEE:** \$[REDACTED] includes chairs for ceremony, Bonobo Winery seating & tables for reception, basic white table linens. Upgraded table/chair and linens available at an additional charge

**FOOD & BEVERAGE MINIMUM:** [REDACTED] (25 guests at \$[REDACTED] per hour for 2.5 hours)

**DEPOSIT REQUIRED:** \$[REDACTED] to be paid by check or credit card (25% of venue rental fee and F&B min.

#### TERMS & CONDITIONS

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## BONOBO WINERY

### WINERY EXPERIENCE AGREEMENT

Thank you for selecting **Bonobo Winery** as the venue for your wine experience. We know that you will be delighted with the Bonobo treatment--exceptional wine, food and service in our unique venue with breathtaking views.

This agreement outlines the details of your experience along with the terms & conditions and payment requirements. Please review and initial each section to indicate you have read and understand the terms and the details are correct. Your signature and the agreed upon deposit reserves the date, time and space.

This agreement is made effective as of May 13, 2021 between Bonobo Winery, located at 12011 Center Rd, Traverse City 49685 ("**Bonobo**") & [REDACTED] ("**Client**").

#### EVENT DETAILS

**NAME OF EVENT:** [REDACTED] Reception

**EVENT DATE:** Friday June 11, 2021

**ESTIMATED NUMBER OF GUESTS:** 80 guests

**LOCATION & TIMES:** 7:30PM - 10:30PM; Bonobo Winery Patio

**SET UP REQUIRED/TIME:** The patio will close to winery guests at 7pm

**START TIME** (*guests may enter reserved space*): 7:30PM

**END TIME** (*guests must leave the reserved space*): 10:30PM (Due to noise ordinances, guests will need to move inside to the tasting room at 10PM and last call will be at 10:15pm)

#### FOOD SERVICE:

Four hors d'oeuvres options to be selected from printed event guide no later than COB Wednesday, May 26, 2021

\$ [REDACTED] per person / 1-2 bites per option (total of 4-8 bites per person)

#### WINE SERVICE:

Open Bar with unlimited wine, Bonobo whiskey, gin & vodka and basic mixers

[REDACTED] per person / per hour (3 hours)

#### PRICING DETAILS

**VENUE RENTAL FEE:** [REDACTED] (based on 3 hours)

**FOOD ESTIMATE:** [REDACTED] (based on 80 guests and 4 selections)

**WINE ESTIMATE:** \$ [REDACTED] (based on 80 guests for 3 hours)

**TOTAL ESTIMATE :** [REDACTED]

**DEPOSIT REQUIRED** (25% of venue rental fee and F&B min): [REDACTED]

#### TERMS & CONDITIONS

~~CONFIDENTIAL~~

## BONOBO WINERY

### WINERY EXPERIENCE AGREEMENT

Thank you for selecting **Bonobo Winery** as the venue for your wine experience. We know that you will be delighted with the Bonobo treatment--exceptional wine, food and service in our unique venue with breathtaking views.

This agreement outlines the details of your experience along with the terms & conditions and payment requirements. Please review and initial each section to indicate you have read and understand the terms and the details are correct. Your signature and the agreed upon deposit reserves the date, time and space.

This agreement is made effective as of June 24, 2022 between Bonobo Winery, located at 12011 Center Rd, Traverse City 49685 ("**Bonobo**") & [REDACTED] ("**Client**")

#### EVENT DETAILS

**NAME OF EVENT:** Rehearsal Dinner & Welcome Reception

**EVENT DATE:** Friday, Jul 8, 2022

**ESTIMATED NUMBER OF GUESTS:** 39 / 115

**LOCATION:** Gallery & Half Patio

**SET UP TIME** (*time areas need to be closed for set up*): 430p

**START TIME** (*guests may enter reserved space*): 530p

**END TIME** (*guests must leave the reserved space*): 1030p

#### FOOD SERVICE:

530-730pm / Rehearsal Dinner - Two Course Plated /39 guests

First Course - La Scala Chopped Salad (GF / Veg) / 37 total (35 reg/2 veg)

Second Course

- Chicken Breast with Caper/Brie Cream, Scalloped potatoes, seasonal vegetable different than asparagus (GF) (Potatoes & Chicken from Carter/Amy's wedding dinner) / 35 guests
- Macaroni & Three Cheese Bake, scalloped potatoes, seasonal vegetable (Veg) / 2 guests
- Macaroni & Three Cheese Bake (kids) / 2 kids

730-1030pm / Welcome Reception - Cheese + Charcuterie / 115 guests

- Cheese Board - 3 cheeses w/ seasonal jam, fresh fruit (strawberries, grapes, etc.) and milk & dark chocolate pieces
- Charcuterie Board - 2 meats served w/ dijon mustard, housemade pickles
- Served with toasted baguette and GF crackers

**WINE SERVICE:** Essentials Bar - Bonobo Wine, Bonobo Liquor, N/A beverages/mixers

WOMP014051

**EXHIBIT 53****PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 26**

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

DEPOSITION OF ALEXANDER LAGINA

<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: MR. JOSEPH M. INFANTE (P68719)</p> <p>3 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>4 Miller, Canfield, Paddock</p> <p>5 99 Monroe Avenue, NW, Suite 1200</p> <p>6 Grand Rapids, Michigan 49503</p> <p>7 (616) 776-6333</p> <p>8 For the Defendant: MR. BOGOMIR RAJSIC, III (P79191)</p> <p>9 McGraw Morris, P.C.</p> <p>10 2075 West Big Beaver Road, Suite 750</p> <p>11 Troy, Michigan 48084</p> <p>12 (248) 502-4000</p> <p>13 For the Intervenor-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>14 Law Office of Tracy Jane Andrews, PLLC</p> <p>15 420 East Front Street</p> <p>16 Traverse City, Michigan 49686</p> <p>17 (231) 946-0044</p> <p>18 Co-Counsel For the Intervenor-Defendant: MS. HOLLY L. HILLYER (P85318)</p> <p>19 Olson, Bzdok &amp; Howard, P.C.</p> <p>20 420 East Front Street</p> <p>21 Traverse City, Michigan 49686</p> <p>22 (231) 946-0044</p> <p>23 Also Present: Martin Lagina</p> <p>24 RECORDED BY: Heidi Peckens, CER 9634</p> <p>25 Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>TRANSCRIBED BY: Karen Robinson, CER 5579</p> <p>Letters &amp; Bytes, Firm #8379</p> <p>15585 Pomona</p> <p>Redford, Michigan 48239</p> <p>(313) 910-9857</p>	<p>1 Traverse City, Michigan</p> <p>2 Thursday, July 13, 2023 - at 8:15 a.m.</p> <p>3 REPORTER: Mr. Lagina, my name is Heidi. I'm the</p> <p>4 court reporter. I'm the person --</p> <p>5 MR. LAGINA: Hi, Heidi.</p> <p>6 REPORTER: -- who is going to be recording your</p> <p>7 testimony this morning. So the only thing I get to do with</p> <p>8 you is to place you under oath, so I'm going to go ahead and</p> <p>9 ask you to, please, raise your right hand. Thank you. Do</p> <p>10 you solemnly swear or affirm that the testimony you are</p> <p>11 about to give will be the whole truth?</p> <p>12 MR. LAGINA: Yes.</p> <p>13 REPORTER: Thank you.</p> <p>14 MS. ANDREWS: Good morning. My name is T.J.</p> <p>15 Andrews. I hear -- I'm here representing Intervenor Protect</p> <p>16 the Peninsula. Could you state your name for the record?</p> <p>17 THE WITNESS: My name is Alexander Lagina.</p> <p>18 REPRESENTATIVE FOR VILLA MARI AND ALEXANDER LAGINA</p> <p>19 having been called by the Intervenor-Defendant and sworn:</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MS. ANDREWS:</p> <p>22 Q Good morning, Mr. Lagina. You've been deposed before; is</p> <p>23 that right?</p> <p>24 A One time, yes.</p> <p>25 Q And was that in this case?</p>
Page 2	Page 4
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Direct Examination by Ms. Andrews . . . . . 4</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 44 marked . . . . . 13</p> <p>9 (SUP #126)</p> <p>10 Deposition Exhibit 45 marked . . . . . 63</p> <p>11 (Preliminary Farm Processing Permit)</p> <p>12 Deposition Exhibit 46 marked . . . . . 105</p> <p>13 (Plaintiff's Response to RFP's)</p> <p>14 Deposition Exhibit 47 marked . . . . . 123</p> <p>15 (Plaintiff's Answers to Interrogatories)</p> <p>16 Deposition Exhibit 48 marked . . . . . 145</p> <p>17 (Plaintiff's Answers to RTA's)</p> <p>18 Deposition Exhibit 49 marked . . . . . 158</p> <p>19 (Veiga E-mail 1/18/18)</p> <p>20 Deposition Exhibit 50 marked . . . . . 171</p> <p>21 (Veiga E-mail 4/29/20)</p> <p>22 Deposition Exhibit 51 marked . . . . . 179</p> <p>23 (Aquino E-mail 9/28/20)</p> <p>24 Deposition Exhibit 52 marked . . . . . 185</p> <p>25 (Grzesiak E-mail 3/7/19)</p> <p>Deposition Exhibit 53 marked . . . . . 187</p> <p>(Invoice 6/1/21)</p> <p>Deposition Exhibit 54 marked . . . . . 190</p> <p>(Invoice 8/1/21)</p> <p>Deposition Exhibit 55 marked . . . . . 190</p> <p>(Event Announcement)</p> <p>Deposition Exhibit 56 marked . . . . . 192</p> <p>(Invoice 6/1/21)</p>	<p>1 A Yes.</p> <p>2 Q All right.</p> <p>3 MS. ANDREWS: So this deposition -- so just to</p> <p>4 cover the ground rules so that we have a clear record, the</p> <p>5 deposition is being transcribed. Obviously, that requires</p> <p>6 that we give verbal responses so that the court reporter can</p> <p>7 capture your response and avoid non-verbal communication so</p> <p>8 that we can capture that in -- in the record. Is that --</p> <p>9 does that make sense to you?</p> <p>10 THE WITNESS: Yes.</p> <p>11 MS. ANDREWS: If you don't understand a question,</p> <p>12 please ask for clarification. Please let me finish my</p> <p>13 questions. It's very difficult to not speak over each</p> <p>14 other; it's a natural tendency. We both -- I will</p> <p>15 definitely do it and I'll be surprised if -- if you don't as</p> <p>16 well. But -- but just to keep a clear record let's do our</p> <p>17 best to avoid that.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MS. ANDREWS: If your attorney objects, I will</p> <p>20 expect you to answer the question anyway unless he instructs</p> <p>21 you not to answer the question.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MS. ANDREWS: If you don't understand a question</p> <p>24 and you need me to rephrase it, please ask me to do so.</p> <p>25 THE WITNESS: Okay.</p>
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2 (Pages 2 to 5)



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

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<p>1 MR. INFANTE: You can -- you can confirm.</p> <p>2 THE WITNESS: Well, it -- go ahead.</p> <p>3 BY MS. ANDREWS:</p> <p>4 Q How many acres is the parcel the winery sits on?</p> <p>5 <b>A Well, it's a site, not really a parcel.</b></p> <p>6 Q Okay.</p> <p>7 <b>A But the board found that it's 50.16 acres.</b></p> <p>8 Q And is that generally consistent with your understanding?</p> <p>9 <b>A Yes.</b></p> <p>10 Q Okay. Are there vineyards on the -- on the site?</p> <p>11 <b>A Yes.</b></p> <p>12 Q How many acres?</p> <p>13 <b>A That's also in this document.</b></p> <p>14 Q And what's your understanding of how many acres of vineyards</p> <p>15 there are? Can -- can you show me -- can you identify what</p> <p>16 page you're referring to? Either the SUP page number or the</p> <p>17 WOMP Bates number page.</p> <p>18 <b>A Yeah. It's on SUP, page 15.</b></p> <p>19 Q Okay.</p> <p>20 <b>A WOMP 0001736.</b></p> <p>21 Q Thank you. And looking at page 15 of the SUP, what is the</p> <p>22 acreage of vineyards on -- on the site?</p> <p>23 <b>A Let's see. I mean, I -- I'll just read it to you.</b></p> <p>24 Q Well, so -- so let's back up a second. This SUP 126 was</p> <p>25 issued in 2016; is that correct?</p> <p style="text-align: center;">Page 22</p>	<p>1 <b>A And we have drainage which is, you know, typically</b></p> <p>2 <b>consistently applied to, you know, total acreage.</b></p> <p>3 Q Yeah. And I'm just -- just to be clear, I'm just trying to</p> <p>4 understand the number of acres of -- of vineyards. I</p> <p>5 understand that there are additional crops and uses on the</p> <p>6 property, but if we -- if I had -- if my brain were sharper</p> <p>7 and I added 8.22 plus 8.13 plus 4.14, that would be the</p> <p>8 minimum amount of vineyard -- vineyards planted on the site;</p> <p>9 is that right?</p> <p>10 <b>A Again, understanding that the 4.14 acres is in the process</b></p> <p>11 <b>of being planted. Yes.</b></p> <p>12 Q So -- so let me clarify. Is -- has 4.14 acres of vineyard</p> <p>13 been planted since 2016?</p> <p>14 <b>A On the site?</b></p> <p>15 Q Yes.</p> <p>16 <b>A Again, it's in process of, you know, preparing the ground to</b></p> <p>17 <b>accept the vines and allow them to live. Are the vines in</b></p> <p>18 <b>the ground yet for those 4.14 acres? No, they're not.</b></p> <p>19 Q And maybe I don't under- (phonetic) -- I definitely don't</p> <p>20 understand vineyard planting. Can you -- can you just walk</p> <p>21 me through the steps to planting a vineyard? I -- I</p> <p>22 understand it's sandy, that there needs to be remediation.</p> <p>23 What does that involve and what sort of timelines are we</p> <p>24 talking about?</p> <p>25 <b>A This -- this is a better question for our vineyard -- our</b></p> <p style="text-align: center;">Page 24</p>
<p>1 <b>A Yes.</b></p> <p>2 Q And at the time there were acres in -- that had been planted</p> <p>3 and there were plans to plant additional acreage?</p> <p>4 <b>A Yep.</b></p> <p>5 Q Is it your understanding that Villa Mari has both the</p> <p>6 original acreage of -- I think it's 8.22 -- plus 4.14 acres</p> <p>7 that were planted in -- sometime subsequently --</p> <p>8 <b>A We have 8.22 --</b></p> <p>9 Q Yep. Oh. I'm sorry.</p> <p>10 <b>A -- existing --</b></p> <p>11 Q And I skipped 8.13.</p> <p>12 <b>A Yep. We have 8.13. We planted the berries. We planted the</b></p> <p>13 <b>crab apple trees. We are preparing more vineyard to be</b></p> <p>14 <b>planted. We have -- it's essentially all sand, and so our</b></p> <p>15 <b>winemaker says we need to do a significant amount of soil</b></p> <p>16 <b>remediation. That's in process.</b></p> <p>17 Q So, the 4.14 acres, is that -- is that what you're referring</p> <p>18 to as being in process or is that already -- is that in</p> <p>19 addition to 4.14 acres of vineyard?</p> <p>20 <b>A I don't know that we'd limit it to 4.14.</b></p> <p>21 Q Okay. At least 4.14?</p> <p>22 <b>A Yeah.</b></p> <p>23 Q And maybe more than that are either in or have been --</p> <p>24 <b>A And we have --</b></p> <p>25 Q -- planted?</p> <p style="text-align: center;">Page 23</p>	<p>1 <b>winemaker really and our vineyard manager, but what --</b></p> <p>2 Q I don't need -- I'm not going to hold you to it, I'm just</p> <p>3 trying to get a sense of what's involved. Like --</p> <p>4 <b>A When --</b></p> <p>5 MR. INFANTE: Any disclosures as our witness on</p> <p>6 this issue --</p> <p>7 MS. ANDREWS: That's --</p> <p>8 MR. INFANTE: -- so you can go ahead.</p> <p>9 BY MS. ANDREWS:</p> <p>10 Q To the extent you understand or can --</p> <p>11 <b>A Okay.</b></p> <p>12 Q -- explain.</p> <p>13 <b>A According to our winemaker, when soils have been moved</b></p> <p>14 <b>around, which they have been consistently -- significantly</b></p> <p>15 <b>on the site, it takes time for kind of the natural</b></p> <p>16 <b>ingredients, shall we say, of the soil to kind of reach</b></p> <p>17 <b>homeostasis in -- in a level that -- that's hospitable to</b></p> <p>18 <b>vines. Sometimes that involves top soil. Sometimes that</b></p> <p>19 <b>involves compost. Sometimes that would involve growing a</b></p> <p>20 <b>cover crop and then tilling it under. You know, the -- the</b></p> <p>21 <b>process of actually planting, you would kind of prepare the</b></p> <p>22 <b>site, you would go through, you'd put the vines in the</b></p> <p>23 <b>ground. Sometimes you would need to install irrigation</b></p> <p>24 <b>ahead of time. You'd need maybe to install a well. You put</b></p> <p>25 <b>the vines in the ground, you'd put up trellis, you would</b></p> <p style="text-align: center;">Page 25</p>

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<p>1 nurture them. Whether you're irrigating or whether, you</p> <p>2 know, not, you might need to grow through and water them</p> <p>3 until they're established.</p> <p>4 Q And as I understand the -- the acreage that's at least 4.14</p> <p>5 acres is in the process of being -- the ground is being</p> <p>6 prepared through -- is it through composting?</p> <p>7 A It's -- it's cover-cropped right now. Yeah.</p> <p>8 Q Cover-cropped, with what?</p> <p>9 A Just wild --</p> <p>10 Q Okay.</p> <p>11 A Yeah.</p> <p>12 Q All right.</p> <p>13 A I mean, that's -- our winemaker's big on kind of what he</p> <p>14 calls "biopragmatic." So he doesn't like -- he likes it to</p> <p>15 be as natural as possible.</p> <p>16 Q Who is your winemaker?</p> <p>17 A Sean O'Keefe.</p> <p>18 Q Do you have plans for the types of grapes that will be</p> <p>19 planted there to -- to your knowledge?</p> <p>20 A It's influx, it's always influx. I mean, it depends on</p> <p>21 what's selling well. It depends on what we're short on.</p> <p>22 We've talked about -- we've talked about just about</p> <p>23 everything. We'd probably do -- I mean, it -- look, it</p> <p>24 depends on -- it depends on how the site shapes up and</p> <p>25 depends on, you know, when we do soil samples, what --</p> <p style="text-align: center;">Page 26</p>	<p>1 but, you know, if I see something I don't like I would be</p> <p>2 allowed to tell him, hey, we need to change that.</p> <p>3 Q Understood. As between you and Andy and anybody else, who</p> <p>4 would be setting the operating hours for the Tasting Room?</p> <p>5 A Ultimately, that would be my decision.</p> <p>6 Q And what -- what is Andy's decision on a sort of day-to-day</p> <p>7 basis? Are there reasons he might shut it down early or?</p> <p>8 A Again, safety, like, weather conditions, snow. If it's</p> <p>9 looking like, you know, it's increasingly unsafe for our</p> <p>10 staff to drive home, he would probably send them home</p> <p>11 especially because nobody else is on the roads at that time.</p> <p>12 I mean --</p> <p>13 Q And he has discretion to make those decisions?</p> <p>14 A He -- he does have discretion to make that decision.</p> <p>15 Q And so the indoor part of the Tasting Room, can you tell me,</p> <p>16 how big is that? What is the floor area?</p> <p>17 A We --</p> <p>18 Q Give or take.</p> <p>19 A Yeah. This -- these are going to be estimates. We</p> <p>20 initially -- when we applied for our SUP, we first got a</p> <p>21 farm processing facility use by right which we then</p> <p>22 continued the process to -- to get this SUP. And so the</p> <p>23 Tasting Room, as per the farm processing facility, was 1500</p> <p>24 square feet. When we got the SUP or shortly thereafter or</p> <p>25 maybe in the process -- I don't recall exactly the time --</p> <p style="text-align: center;">Page 28</p>
<p>1 what's going to support what. I mean, I can't really answer</p> <p>2 what's going to go there.</p> <p>3 Q Okay. So, the -- the tasting -- another question. Do you</p> <p>4 -- does -- does Villa Mari allow guests to walk around in</p> <p>5 the -- in the vineyard area with tours or a guide?</p> <p>6 A If they're accompanied.</p> <p>7 Q Okay.</p> <p>8 A If they're accompanied. Sometimes there are times when it's</p> <p>9 not safe to go walk through the vineyard on your own, so.</p> <p>10 Q And what would the conditions be that would make it unsafe?</p> <p>11 A If we're actively doing something in the vineyard would be</p> <p>12 an example.</p> <p>13 Q Okay. I have learned that there are differences of</p> <p>14 perspective on that question so I just asked. There's a</p> <p>15 tasting room at Villa Mari, right?</p> <p>16 A Yes.</p> <p>17 Q Tell me, is there an indoor area and an outdoor area?</p> <p>18 A Yes.</p> <p>19 Q Both?</p> <p>20 A Both.</p> <p>21 Q And who is -- you might have already said it. Who's</p> <p>22 primarily responsible for managing the operation of the</p> <p>23 Tasting Room?</p> <p>24 A We have a taste room manager. His name is Andy Jacobson.</p> <p>25 Again, I don't look in and micro manage any of these people,</p> <p style="text-align: center;">Page 27</p>	<p>1 Michelle Reardon at Peninsula Township told me that the</p> <p>2 township's view was that once you are a winery-chateau, the</p> <p>3 whole facility, and really the whole property, becomes the</p> <p>4 Tasting Room. So, you know, at one time it was 1500 square</p> <p>5 feet, now it would be the whole property, the whole</p> <p>6 building.</p> <p>7 Q Is that a conversation you had with Ms. Reardon?</p> <p>8 A It is.</p> <p>9 Q Do you remember if that was -- I think you said you couldn't</p> <p>10 remember if it was before, during, or after the appli-</p> <p>11 (phonetic) -- the issuance of the SUP --</p> <p>12 A It wouldn't --</p> <p>13 Q -- especially --</p> <p>14 A It wouldn't be before. It would either be during or after</p> <p>15 the issue.</p> <p>16 Q Okay. And just to be clear, I just want to understand the</p> <p>17 physical, inside the building, covered by a roof with the --</p> <p>18 prop- (phonetic) -- you know, the square footage is 1500 --</p> <p>19 A Yeah. Again, though, you're getting into Peninsula</p> <p>20 Township's interpretation and discretion because there are</p> <p>21 certain parts of the building that they didn't count for</p> <p>22 square footage. So, yeah, we were told that it was 1500</p> <p>23 square feet by Michelle Reardon when we did the use by right</p> <p>24 application.</p> <p>25 Q What do you thing the square footage of the area you</p> <p style="text-align: center;">Page 29</p>



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<p>1 consider -- Villa Mari considers to be the Tasting Room?</p> <p>2 <b>A 1500 square feet.</b></p> <p>3 Q Okay.</p> <p>4 <b>A Again, what I consider to be the answer to your question. I</b></p> <p>5 <b>-- I do not consider -- I'm not limiting the Tasting Room to</b></p> <p>6 <b>1500 square feet because I was told by an agent of Peninsula</b></p> <p>7 <b>Township that that was not how they view it.</b></p> <p>8 Q Okay. So I guess I don't -- I don't want to know what you</p> <p>9 were told your square footage of your tasting room is, I</p> <p>10 want to know what Mari would consider, you know, if you were</p> <p>11 like -- let's say you put the property up for sale and you</p> <p>12 were like tasting room, X square feet. Like what -- like,</p> <p>13 physically, <b>how big is it?</b></p> <p>14 <b>A We have a room where tasting's are primarily conducted that</b></p> <p>15 <b>is 1500 square feet.</b></p> <p>16 Q Okay. What other rooms are there?</p> <p>17 MR. INFANTE: Thank you. That's going to help.</p> <p>18 MS. ANDREWS: I -- I --</p> <p>19 MR. INFANTE: Yeah.</p> <p>20 MS. ANDREWS: I don't understand so I'm not --</p> <p>21 MR. INFANTE: You too are talking past each other</p> <p>22 and I know what you're asking and I know what he is</p> <p>23 thinking. I think you -- you -- to help you out as much as</p> <p>24 where do people taste wine in his building.</p> <p>25 THE WITNESS: Okay.</p> <p style="text-align: center;">Page 30</p>	<p>1 THE WITNESS: Okay.</p> <p>2 BY MS. ANDREWS:</p> <p>3 Q -- and names for that space.</p> <p>4 <b>A I understand.</b></p> <p>5 MR. INFANTE: I apologize for talking. I know</p> <p>6 where you both want to go, I'm just trying to help.</p> <p>7 BY MS. ANDREWS:</p> <p>8 Q Mr. Infante's been here through everyone of the depositions</p> <p>9 where we have tried to --</p> <p>10 <b>A I understand. I'm just -- I'm just trying to be very</b></p> <p>11 <b>specific and --</b></p> <p>12 MR. INFANTE: How about you tell her the other</p> <p>13 rooms where --</p> <p>14 THE WITNESS: Yeah.</p> <p>15 MR. INFANTE: -- wine is tasted.</p> <p>16 THE WITNESS: You got it.</p> <p>17 MR. INFANTE: That's what she wants to know.</p> <p>18 THE WITNESS: You got it.</p> <p>19 MR. INFANTE: Yeah.</p> <p>20 BY MS. ANDREWS:</p> <p>21 Q So we've got the primary room or the main room --</p> <p>22 <b>A You have --</b></p> <p>23 Q -- or the tasting --</p> <p>24 <b>A -- the primary room --</b></p> <p>25 Q Yep.</p> <p style="text-align: center;">Page 32</p>
<p>1 BY MS. ANDREWS:</p> <p>2 Q What other space --</p> <p>3 MR. INFANTE: He will tell you there --</p> <p>4 THE WITNESS: Yeah.</p> <p>5 BY MS. ANDREWS:</p> <p>6 Q Do you --</p> <p>7 <b>A Yeah.</b></p> <p>8 Q Is there -- is there a place called the "Tasting Room?"</p> <p>9 <b>A Yeah. Again, it's fluid, but -- but the primary room where</b></p> <p>10 <b>tastings are held, which has the bar, which has our -- our</b></p> <p>11 <b>cash registers and things like that, is 1500 square feet.</b></p> <p>12 Q And what do you call that room? The primary room?</p> <p>13 <b>A It would be part of the Tasting Room --</b></p> <p>14 Q Okay.</p> <p>15 <b>A -- if that makes sense.</b></p> <p>16 Q I -- you don't --</p> <p>17 MR. INFANTE: How about main room, Tasting Room?</p> <p>18 THE WITNESS: Yeah. The main tasting room.</p> <p>19 BY MS. ANDREWS:</p> <p>20 Q Everybody -- we've got 11 wineries --</p> <p>21 MR. INFANTE: Yeah.</p> <p>22 BY MS. ANDREWS:</p> <p>23 Q -- and 11 different interpretations of what --</p> <p>24 <b>A Uh-huh (affirmative).</b></p> <p>25 MR. INFANTE: Yeah.</p> <p style="text-align: center;">Page 31</p>	<p>1 <b>A -- which you've been calling the Tasting Room. We can -- we</b></p> <p>2 <b>can settle on that name for that, if you'd like.</b></p> <p>3 Q Okay.</p> <p>4 <b>A That's 1500 square feet. We will also do tours and tastings</b></p> <p>5 <b>throughout the building. So, you know, we will -- we will</b></p> <p>6 <b>-- if -- if we're busy, we have a room on the mezzanine, I</b></p> <p>7 <b>can only estimate the square footage of that. It's</b></p> <p>8 <b>probably a little smaller than the tasting -- probably a</b></p> <p>9 <b>thousand square feet maybe. That's kind of overflow tasting</b></p> <p>10 <b>space. It's got a view over the processing level so people</b></p> <p>11 <b>can see the wine being made. We have what we call the</b></p> <p>12 <b>"Founders Room" which is a room upstairs that we will do</b></p> <p>13 <b>tastings in. It has a patio outside. Collectively, those</b></p> <p>14 <b>two are probably, you know, in the neighborhood of a</b></p> <p>15 <b>thousand square feet total combined.</b></p> <p>16 Q Wait. Those two are --</p> <p>17 <b>A The patio -- the patio and the Founders Room.</b></p> <p>18 Q Thank you. The patio together with the Founder Room --</p> <p>19 <b>A Yeah.</b></p> <p>20 Q Okay. Thank you.</p> <p>21 <b>A Again, these are estimates. We'll also do tastings</b></p> <p>22 <b>throughout the cave. You know, the cave itself, I think, is</b></p> <p>23 <b>10,000 square feet. And then we have outdoor -- in addition</b></p> <p>24 <b>to the patio, we -- the elevated patio, off of the Founders</b></p> <p>25 <b>Room, we also have kind of a patio outside of what you call</b></p> <p style="text-align: center;">Page 33</p>

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<p>1 the Tasting Room. I don't have an estimate for you on the  2 size of that, but -- and we'll also do tastings throughout  3 the property. I mean, the whole -- the MLCC has given us  4 permission basically from the road to the woods with a  5 delineated boundary on the north side right at the edge of  6 the property. And -- and, you know, it's -- it's -- we'll  7 do tastings throughout the whole region -- the whole area.</p> <p>8 Q So let's talk capacity, the number of people that on --  9 typical, on average, you would -- you would expect to -- to  10 comfortably utilize the -- the main tasting room. The --</p> <p>11 A I can estimate occupancy for ya (sic). The -- what you've  12 called the Tasting Room is about 150, I think the Founders  13 Room is about 50, the patio -- you know, I don't -- because  14 it's outside, I don't remember how it was treated, but --  15 but that would be about the same: 50.</p> <p>16 Q And are you talking about the lower, the main --</p> <p>17 A The upper.</p> <p>18 Q -- patio? Oh, the upper?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A I'm sorry. I --</p> <p>22 MR. INFANTE: You're talking over her.</p> <p>23 THE WITNESS: I know. I'm sorry.</p> <p>24 MS. ANDREWS: We're both guilty of it.</p> <p>25 BY MS. ANDREWS:</p> <p style="text-align: center;">Page 34</p>	<p>1 THE WITNESS: There's only one. That is kind of  2 more of a -- it's really a show piece to show how far  3 underground the wine caves are. There's an opening in the  4 top that goes to the -- to ground level that you can see,  5 that's a little bigger.</p> <p>6 BY MS. ANDREWS:</p> <p>7 Q Is that a -- a space that is -- that you would use for  8 meetings or engagements or tastings or --</p> <p>9 A Well, we certainly could. We -- the -- do you want me to  10 describe in general the layout? Would that be helpful?</p> <p>11 Q The layout of the cave or --</p> <p>12 A Yeah.</p> <p>13 Q That's what I thought we were walking through.</p> <p>14 A Yeah. Okay.</p> <p>15 Q But go --</p> <p>16 A I was just --</p> <p>17 Q Go -- keep going.</p> <p>18 A -- wondered --</p> <p>19 Q Keep going.</p> <p>20 A I just wondered if you want more detail. So we have a cave  21 that leads from basically the basement of the winery to this  22 oculus and from there it branches into two more caves, one  23 of which leads towards the road, one of which goes to the  24 northeast, and that's actually aligned to the sunrise on  25 summer solstice. So we will have -- like, for our wine club</p> <p style="text-align: center;">Page 36</p>
<p>1 Q So the Founders Room is about 50 and then the outside  2 elevated patio is also about another 50?</p> <p>3 A That'd be my estimate. Yeah.</p> <p>4 Q Yeah. The tasting -- I mean, the cave?</p> <p>5 A The cave -- the cave is tough because groups move through  6 it. If I gave you the occupancy for all 10,000 square feet,  7 I don't think that's what you're after.</p> <p>8 Q Can you describe the cave, for the record?</p> <p>9 A Yeah. The cave is the lowest level of the building. It has  10 sort of a dedicated sort of seating area. I think the  11 occupancy of that area is like -- you know, I would be -- I  12 would be making this up. I don't recall off the top of my  13 head --</p> <p>14 Q Okay.</p> <p>15 A -- so I'm not going to. But it's -- it's of similar scope  16 and size to -- to the Founders and patio combined probably.  17 And the rest -- the rest of what we call the cave is, it's  18 basically -- the things that we brought in to make it are  19 actually things they use for in -- in construction of road  20 tunnels, and so they're 15 feet wide. And I -- I can't give  21 you the length off the top of my head, but it's -- you know,  22 it's for wine storage on the sides and then for tours and,  23 you know, we can do tastings down the center. We have a  24 room we call the "oculus" halfway through the caves.</p> <p>25 MR. INFANTE: The right oculus.</p> <p style="text-align: center;">Page 35</p>	<p>1 sometimes we kind of gather in that room and then watch the  2 sunrise and then go back up to the Tasting Room.</p> <p>3 Q So help me understand how you can see the sunrise from the  4 cave?</p> <p>5 A There are doors at the end that open --</p> <p>6 Q Okay.</p> <p>7 A -- out the side of the hill that the winery sits on.</p> <p>8 Q To sort of ground level?</p> <p>9 A Yeah.</p> <p>10 Q Okay. All right. Thank you. I don't think you told me the  11 capacity of the room on the mezzanine, at least that's what  12 my notes say. There's a room on the mezzanine about a  13 thousand square feet that is separate from the main Tasting  14 Room.</p> <p>15 MR. INFANTE: I think he answered a hundred.</p> <p>16 BY MS. ANDREWS:</p> <p>17 Q Did you?</p> <p>18 MR. INFANTE: I think you asked that question.</p> <p>19 BY MS. ANDREWS:</p> <p>20 Q I have the Tasting Room was about 150, the Founders Room was  21 about 50, the Founders Room, patio was about 50, the cave we  22 just talked about. But I -- is it about a hundred?</p> <p>23 A It's around a hundred. Yeah.</p> <p>24 Q Okay. Sorry.</p> <p>25 A It may be -- it may be 80 to a hundred.</p> <p style="text-align: center;">Page 37</p>

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<p>1 limits. What other things would limit your capacity in the</p> <p>2 Tasting Room?</p> <p>3 <b>A Well, I guess fire code kind of covers it. Safety. We have</b></p> <p>4 <b>plenty of bathrooms in the building. We joke, but it's --</b></p> <p>5 <b>it's got way too many bathrooms, so.</b></p> <p>6 Q The township doesn't set a limit on the -- on the number of</p> <p>7 people in the Tasting Room?</p> <p>8 <b>A Not that I'm aware of. Not that I'm aware of.</b></p> <p>9 Q Okay. And then, so -- so we talked about busy, high volume</p> <p>10 days. How about average afternoons in the -- in the middle,</p> <p>11 like, the June-ish to October-ish, like not the very busy</p> <p>12 days but the average weekends?</p> <p>13 <b>A I would be guessing.</b></p> <p>14 Q Okay.</p> <p>15 <b>A I --</b></p> <p>16 Q Would you say it's the -- do -- would all of the rooms, the</p> <p>17 Tasting Room, the room in the mezzanine in the front-</p> <p>18 (phonetic) -- are they all open at all times for people to</p> <p>19 get a glass of wine and then go to the place to -- how does</p> <p>20 that work?</p> <p>21 <b>A No, they're not.</b></p> <p>22 Q Okay.</p> <p>23 <b>A So, in an effort to answer your previous questions, the time</b></p> <p>24 <b>that all the spaces in the building are most likely to all</b></p> <p>25 <b>be in use is peak season so that would be, again,</b></p> <p style="text-align: center;">Page 42</p>	<p>1 Q Okay.</p> <p>2 <b>A If somebody wanted to do, say, a one-on-one tasting with</b></p> <p>3 <b>their group, we could take them to any of the rooms, even in</b></p> <p>4 <b>the winter, and do that there.</b></p> <p>5 Q Okay. Have you noticed any trends or trend-like changes in</p> <p>6 terms of people coming for -- in -- into Mari for tasting</p> <p>7 and wine by the glass in terms of times of year, days, time</p> <p>8 of day?</p> <p>9 <b>A It's --</b></p> <p>10 Q Have you seen changes -- I mean, we've all seen changes with</p> <p>11 COVID, but, you know, we're sort of on the other side of</p> <p>12 that, but -- I think we are.</p> <p>13 <b>A I was just going to say -- yeah.</b></p> <p>14 Q I think -- are you getting busier? Are you getting less</p> <p>15 busy? Are different times getting busier?</p> <p>16 <b>A This is difficult to answer because of COVID. It's been</b></p> <p>17 <b>three years in a row with kind of weird patterns. We are</b></p> <p>18 <b>ostensibly on the other side of -- hopefully on the other</b></p> <p>19 <b>side of the worst of it, but we're still returning to -- you</b></p> <p>20 <b>know, normal is different now. We don't know what --</b></p> <p>21 <b>because, yes, there are kind of long-term trends for the</b></p> <p>22 <b>region where there's more people here every year. We just</b></p> <p>23 <b>got through Cherry Festival and the roads, it seemed, were</b></p> <p>24 <b>busier than ever. So I don't know how to answer the</b></p> <p>25 <b>question --</b></p> <p style="text-align: center;">Page 44</p>
<p>1 <b>estimating, May through probably October.</b></p> <p>2 Q Okay. Do you close down -- like, do you keep rooms closed?</p> <p>3 Like, during winter would the Founders Room not be open as</p> <p>4 much? Do you sort of just --</p> <p>5 <b>A No.</b></p> <p>6 Q Or they're available if people want to wander over there?</p> <p>7 <b>A They're generally -- if people -- I'm sorry. I keep trying</b></p> <p>8 <b>to --</b></p> <p>9 Q No, no, no. I -- it's a natural -- we talked about it in</p> <p>10 the beginning and everyone agrees, and then we get into it</p> <p>11 and it -- it always -- it's a natural thing.</p> <p>12 MR. INFANTE: It's the only time I'll kick you and</p> <p>13 hit you is for that.</p> <p>14 BY MS. ANDREWS:</p> <p>15 Q And often then we'll be both stop and then we'll both start</p> <p>16 at the same time, so.</p> <p>17 MR. INFANTE: Then she's got to ask her question</p> <p>18 again.</p> <p>19 MS. ANDREWS: And now I've forgotten what the</p> <p>20 question is. Oh.</p> <p>21 BY MS. ANDREWS:</p> <p>22 Q Rooms won't necessarily be closed off, they'll be open, even</p> <p>23 in the middle of winter one could wan- (phonetic) -- a guest</p> <p>24 could wander through the whole facility within reason?</p> <p>25 <b>A "Wander" is the wrong word.</b></p> <p style="text-align: center;">Page 43</p>	<p>1 Q That --</p> <p>2 <b>A -- because I don't really have a baseline to compare to</b></p> <p>3 <b>right now.</b></p> <p>4 Q I -- I -- I understand your answer and I -- it makes sense.</p> <p>5 Tasting Room entertainment. Do you offer entertainment for</p> <p>6 folks who come in for tasting or wine by the glass?</p> <p>7 <b>A We do.</b></p> <p>8 Q Just, in general, summary of the types of things you offer.</p> <p>9 <b>A We -- lately it's -- it's musicians.</b></p> <p>10 Q What kind of -- acoustic, a guy with a guitar, a band?</p> <p>11 Describe -- give me some examples.</p> <p>12 <b>A Usually it would be a guy with a guitar or something like</b></p> <p>13 <b>that.</b></p> <p>14 Q This is entertainment in the Tasting Room for people who are</p> <p>15 coming in for --</p> <p>16 <b>A This is free entertainment in the Tasting Room. Yes.</b></p> <p>17 Q How about, like, themed events or trivia events or other</p> <p>18 sort of more Mari-planned, Tasting Room, bringing people in</p> <p>19 kind of entertainment?</p> <p>20 <b>A I don't know -- look, it depends on how you define "event."</b></p> <p>21 <b>We -- we tried a book club for awhile.</b></p> <p>22 Q You tried a what?</p> <p>23 <b>A A book club.</b></p> <p>24 Q Oh, gotcha.</p> <p>25 <b>A Where, you know, we said, hey, come talk about a book --</b></p> <p style="text-align: center;">Page 45</p>

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1 A Exactly.

2 Q Tours? Does Mari offer tours?

3 A We do.

4 Q How often do they take place?

5 A Daily.

6 Q Daily. Are they -- are they, like, set at a particular

7 time? Do you have to reserve them? Are they free? Are

8 they charged? Tell me about your tours.

9 A We've gone through several iterations of how best to do

10 this. We get a lot of interest. I think the latest

11 incarnation is that they need to be reserved, but if there's

12 availability, if there's staff available and if there's

13 interest, of course, we'll do it. We prefer that they be

14 reserved.

15 Q And is there a charge?

16 A There's -- the way it's structured is we will sell the glass

17 of wine that you take with you on your tour. If you have

18 kids that can't buy wine or anything like that, there's no

19 charge for that. They come too.

20 Q And where -- what parts of the -- the site would you tour

21 people?

22 A We've had tours throughout the whole site, including the

23 vineyards. I don't think -- there's not an area that we've

24 discussed that -- that the tour doesn't go through.

25 Q Processing area? We said you can see it, but is that within

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1 MR. INFANTE: It's somebody in the hallway.

2 THE WITNESS: Okay.

3 BY MS. ANDREWS:

4 Q Wine tasting education. I'm sorry. I was momentarily

5 distracted.

6 A Me too. Most of our recent educational events have been,

7 you know, basically pairing, food and wine pairing.

8 Q For a pairing, would you use your -- your kitchen or would

9 you bring in catered food to make -- I don't know --

10 A It --

11 Q -- to make a point or to make -- to demonstrate the pair --

12 the food aspect of that?

13 A It could be both.

14 Q Would you -- if a caterer wanted to use -- a caterer could

15 use your kitchen for warming and prep and then -- and then,

16 but cooking offsite and then bringing it sort of semi-

17 prepared?

18 A I --

19 Q It depends?

20 A It depends.

21 Q Okay. It's possi- (phonetic) -- it could happen?

22 A It could happen.

23 Q Yeah. Any other kinds of experiences or events that Mari

24 would organize? Mari offered experiences? Like, we've

25 heard about carriage rides at wineries. We've heard -- so

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1 the tour scope?

2 A That -- that would also be within the tour scope. Yes.

3 Q Okay.

4 A They would actually go through processing.

5 Q How -- what sort of size would you say an average tour is?

6 I'm sure there's variation.

7 A There's a huge variation there. We've taken groups through

8 that are pretty big, meaning 20 plus people, and we've taken

9 just two people through.

10 Q What do you consider the sort of ideal?

11 A I like -- because we have an elevator to get to all the

12 levels, I like to be able to put everybody in the elevator.

13 Q And what's that capacity?

14 A Well --

15 Q A dozen?

16 A Comfortable capacity is different from rated capacity. But,

17 you know, I would prefer really, like, just from ease, you

18 know, say six people, something like that. But -- but that

19 doesn't really matter. I mean, it's -- we -- we do what

20 people want us to do and we'll figure out a way to do it.

21 Q Okay. How about educational events, like cooking classes or

22 teaching about wine or wine production?

23 A We've done some kind of tasting -- wine tasting classes.

24 Most of our education focuses on --

25 THE WITNESS: Is this okay?

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1 anything else that Mari offers as part of your experience to

2 get people to come -- yeah?

3 A We've talked about a lot of different things. I would like

4 to kind of basically expand on a lot of what we've already

5 been doing. But, again, subject to the parameters of

6 Peninsula Township's interpretation of what we can and can't

7 do. We maximize that, but we don't do anything that we

8 can't do.

9 Q Okay. And so, parking, how big is -- how big is your park-

10 (phonetic) -- your, like, official, marked-off, paved

11 parking lot?

12 A I don't remember the number of spaces. It was reviewed by

13 the township with, you know, full knowledge. It might be in

14 this document here. We have an overflow parking spot.

15 Q I don't want to trick you, but I don't know that I was able

16 to -- to find the parking, and I --

17 A I --

18 Q It may be on --

19 MR. INFANTE: I think it's on page 10.

20 MS. ANDREWS: Oh. Maybe I overshoot it.

21 MR. INFANTE: I think it's in subpart -- I

22 apologize for talking. I think it's in subpart --

23 MS. ANDREWS: Yeah.

24 MR. INFANTE: -- D on page -- I think D rolls over

25 to 10 -- on 10.

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1 MS. ANDREWS: Okay.  
 2 THE WITNESS: There you go. Yep. Fifty-six  
 3 vehicle and three bus parking spaces. We have overflow and  
 4 we have plenty of room for overflow beyond that.  
 5 BY MS. ANDREWS:  
 6 Q Okay. And is 56 vehicles, does that sound about what --  
 7 what is actually there in terms of the paved parking and --  
 8 I'm --  
 9 A Yeah.  
 10 Q And then bus parking? Is there bus parking?  
 11 A There -- yeah -- there's --  
 12 Q Or do busses just use as many parking spots as they need?  
 13 A There's -- there's --  
 14 MR. INFANTE: Just we're making -- I'm making a  
 15 joke. She's making a joke.  
 16 THE WITNESS: Okay.  
 17 There's three bus parking spaces designated as  
 18 part of our application. There are overflow spots. Getting  
 19 them to adhere to that is a trick sometimes and we ask that  
 20 they schedule their visits. They don't always do that.  
 21 BY MS. ANDREWS:  
 22 Q The overflow, where is the overflow in relation to the  
 23 parking? Is it a lawn? Describe it and how do you get to  
 24 it.  
 25 A It -- it's gravel and it would actually be the first parking

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1 lot that you would pass on your way up towards the Tasting  
 2 Room. So there's a -- the paved area is just outside the  
 3 entrance to the winery. The -- there's a turnaround and you  
 4 would go back down the outside of the driveway and then  
 5 you'd pass it again on your way out of the property. It --  
 6 it's near where we put -- where we store the -- it's in  
 7 here, what do they call it? -- "outdoor storage of garbage  
 8 refuse."  
 9 Q How big -- how many vehicles more or less fit in the gravel  
 10 overflow parking area?  
 11 A That's a difficult one to answer. It's -- it could scale  
 12 quite a bit.  
 13 Q Based on how cars park? Based on what?  
 14 A Well, just based on the amount of -- well, it's a 50-acre  
 15 site.  
 16 Q Oh, it's -- well --  
 17 A Like --  
 18 Q -- I mean, the gravel area, how big is the gravel area?  
 19 A I don't know off the top of my head, but you could -- it's  
 20 probably double our -- you could probably get another 56 in  
 21 there easily.  
 22 Q Okay. All right. It's at least as big as that --  
 23 A Yeah.  
 24 Q -- the other parking lot? Do you ever -- on peak days, in  
 25 the last three to five years, have there been times where

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1 the parking lot combined with the overflow parking lot were  
 2 insufficient?  
 3 A I haven't seen that.  
 4 Q Okay. And then the -- you raise the ques- (phonetic) -- the  
 5 bus parking came up and you said you tried to get them to  
 6 schedule ahead. Do you accept -- I know some winners don't  
 7 accept -- they don't want the bus at all. Do you -- what's  
 8 your -- what's Mari's policy on bus tour arrivals?  
 9 A We do you accept them because if we turn them away -- if we  
 10 have a policy of not accepting them at all, they show up  
 11 anyway, and then it -- the people are mad at us, not the bus  
 12 for showing up. So we -- we do accept them, but -- but we  
 13 work hard to -- to ask the tour bus companies to schedule in  
 14 advance. We say that it's better for their customers, it's  
 15 a better experience if they schedule it in advance.  
 16 Q What are the challenges associated with bus -- tour busses  
 17 from an operational side, not from, like, the busing side?  
 18 A Just ability to -- ability to see the guests is the number  
 19 one. That's the only real special concern that's unique to  
 20 busses. Other than that, it's just working with customers  
 21 and -- but the real -- the problem specifically with busses  
 22 is if they're not scheduled and they show up with a lot of  
 23 people, then a lot of people have to wait in line or for a  
 24 space to taste all together. It can be difficult.  
 25 Q I forgot to ask you about retail. Do you have a -- do you

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1 have a -- I assume you sell bottles of wine at the -- in the  
 2 bar --  
 3 A We do.  
 4 Q -- area? Do you have a separate retail area for products?  
 5 A There is a small space behind the -- behind's not the right  
 6 -- to the side of the bar there's a smaller room where we  
 7 have wine, things like t-shirts and wine-related products.  
 8 Q What kind of -- what kind of things, like logo -- logo wear?  
 9 A Logo stuff, yeah.  
 10 Q Do you -- who's in charge of stocking and design -- like,  
 11 picking items to sell?  
 12 A Andy.  
 13 Q That's Andy?  
 14 A Subject to my approval.  
 15 Q Do you try different products? Do you -- how -- what's --  
 16 what emphasis or what priority do you place on -- on the  
 17 retail side? Like, how does it fit into the business plan  
 18 or the sort of overall operations?  
 19 A It's -- it's promotional stuff. It's marketing. It's, you  
 20 know, "rep (phonetic) the brand."  
 21 Q Is it popular?  
 22 A I think so.  
 23 Q Yeah. Yeah. No. I'm just -- do people who come in for  
 24 tasting would often go and buy gear as well?  
 25 A Yes.

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## EXHIBIT 53

## PTP Motion for Summary Judgment

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<p>1 Q Okay. We talked a little bit about marketing in the</p> <p>2 context of Tasting Room entertainment. Does Mari do any</p> <p>3 other kind of marketing in terms of its wine or in terms of</p> <p>4 other things that are offered?</p> <p>5 A Well, I mean, really how we present ourselves is marketing,</p> <p>6 so everything that we do is a marketing effort. If we do a</p> <p>7 wine tasting educational event, I kind of view that as</p> <p>8 marketing. I -- I -- our name gets out there and our winery</p> <p>9 is visible from the road, so our marketing focus is more on</p> <p>10 experience, hospitality, things like that right -- right</p> <p>11 now. I'm not -- we're not committing to that all the time,</p> <p>12 but that's what we do most of right now.</p> <p>13 Q Does Mari sponsor corporate -- like Cherry Fest or, you</p> <p>14 know, Pit Spitters, or anything like that? Do you -- is --</p> <p>15 A Yeah.</p> <p>16 Q Has -- have you experimented with or do you sponsor events</p> <p>17 --</p> <p>18 A We --</p> <p>19 Q -- to get your name out there?</p> <p>20 A We have experimented with that. We've -- I think we did a</p> <p>21 Film Fest sponsorship one year. There's probably other</p> <p>22 things I'm forgetting.</p> <p>23 Q Would you say social media is your main way that you</p> <p>24 communicate about Mari to the general public?</p> <p>25 A I don't know about main way, but it's -- it's an activity --</p> <p style="text-align: center;">Page 62</p>	<p>1 BY MS. ANDREWS:</p> <p>2 Q Now I know. Thank you -- thank you, Alex.</p> <p>3 A Yeah.</p> <p>4 Q So I have handed you -- well, I've handed your attorney and</p> <p>5 the court reporter has marked Exhibit PTP 45. My first</p> <p>6 question, I do not need to ask. My second question is do</p> <p>7 you recognize this document?</p> <p>8 A Let me look at it (reviewing document). Yeah.</p> <p>9 Q What do you -- describe this document.</p> <p>10 A This is -- I think I described it a little bit earlier. We</p> <p>11 -- the process of designing the building and building it,</p> <p>12 the first step was to get this farm processing facility land</p> <p>13 use permit and then turn around and apply for the winery-</p> <p>14 chateau.</p> <p>15 Q Is Croft, LLC, the -- the -- was it the holding company at</p> <p>16 the time or had Villa Mari had not been created? Just</p> <p>17 putting it back in context. I understand it's a middle --</p> <p>18 A This is probably a better question for my dad. I -- I don't</p> <p>19 know.</p> <p>20 Q Okay. It appears that the -- whose signature is it on</p> <p>21 behalf of the agent, to your know- (phonetic) -- to the best</p> <p>22 of your ability?</p> <p>23 THE WITNESS: It's this one, isn't it?</p> <p>24 MR. INFANTE: I think it's this one.</p> <p>25 THE WITNESS: Yeah.</p> <p style="text-align: center;">Page 64</p>
<p>1 it's something that we do routinely.</p> <p>2 Q Okay. What would you -- is there a main way?</p> <p>3 A I wouldn't --</p> <p>4 Q Okay.</p> <p>5 A I wouldn't identify a main way.</p> <p>6 MS. ANDREWS: At this point, I think we can take a</p> <p>7 break.</p> <p>8 MR. INFANTE: Okay.</p> <p>9 (At 9:32 a.m., off the record)</p> <p>10 (At 9:57 a.m., back on the record)</p> <p>11 (At 9:57 a.m., Deposition Exhibit 45 marked)</p> <p>12 THE WITNESS: Yeah. Before we start. I think I</p> <p>13 misinterpreted one of your previous questions. You asked</p> <p>14 about ownership of Villa Mari, LLC. I went right to the</p> <p>15 top. There's an intermediary LLC, Croft, LLC, hundred</p> <p>16 percent owned by Martin Lagina. It's just kind of one thing</p> <p>17 in the middle. It doesn't change the answer, it -- I just</p> <p>18 went right to the ultimate owner instead of tracing out the</p> <p>19 ownership structure.</p> <p>20 BY MS. ANDREWS:</p> <p>21 Q Did you glance at my notes that asked who is Croft, LLC?</p> <p>22 A I didn't, but --</p> <p>23 Q That's my next question.</p> <p>24 A -- now you know.</p> <p>25 MR. INFANTE: Well --</p> <p style="text-align: center;">Page 63</p>	<p>1 MR. INFANTE: I think, yeah.</p> <p>2 THE WITNESS: I could see that maybe being my</p> <p>3 dad's. I --</p> <p>4 BY MS. ANDREWS:</p> <p>5 Q Do you --</p> <p>6 A I'm not sure.</p> <p>7 Q Do you know if --</p> <p>8 A Is this -- it is --</p> <p>9 Q Do you recognize Petra as the name of a Mans- (phonetic) --</p> <p>10 Mansfield Consulting --</p> <p>11 A Yes.</p> <p>12 Q -- Landscape -- a staff person from Mansfield's?</p> <p>13 A Yes. Are these two separate signatures, though?</p> <p>14 Q They -- so let's unpack this a little bit. If -- what is</p> <p>15 your interpretation of what's going on in the signature</p> <p>16 block of what's shown on Exhibit PTP 45 instead of me</p> <p>17 telling you what my interpretation is?</p> <p>18 MR. INFANTE: I have an objection there, probably,</p> <p>19 but I don't know.</p> <p>20 THE WITNESS: It wasn't an interpretation. I'm --</p> <p>21 I guess -- I guess I'm asking if there's like -- to be</p> <p>22 honest I can't read any of these.</p> <p>23 BY MS. ANDREWS:</p> <p>24 Q So let's -- so let's unpack the dates. Is it your</p> <p>25 understanding that Mari applied in 2014 for its original</p> <p style="text-align: center;">Page 65</p>

17 (Pages 62 to 65)



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1 whether guests uses -- a guest house was built?  
2 MR. INFANTE: As the factual question of what is  
3 "built" --  
4 MS. ANDREWS: Uh-huh (affirmative).  
5 MR. INFANTE: -- that is a question for Marty  
6 Lagina. We would designate him --  
7 MS. ANDREWS: Does -- does this --  
8 MR. INFANTE: If you want to --  
9 MS. ANDREWS: -- witness -- are you --  
10 MR. INFANTE: If you want --  
11 MS. ANDREWS: -- instructing this witness not to  
12 answer that?  
13 MR. INFANTE: You can ask that question to Marty  
14 Lagina. Yes. I don't want him answering that question.  
15 MS. ANDREWS: All right. So the record --  
16 MR. INFANTE: I don't know that he is  
17 knowledgeable on that issue.  
18 MS. ANDREWS: So -- and you're not claiming a  
19 privilege on that issue?  
20 MR. INFANTE: I'm not claiming a privilege, I'm  
21 just -- I want to designate a knowledgeable person on the  
22 issue who would be Marty Lagina if you insist on asking that  
23 question.  
24 BY MS. ANDREWS:  
25 Q So, Alex, do you have an understanding of what construction

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1 ordinance, 8.7.3(10), includes a section that authorizes  
2 guest activity uses. Is that your understanding?  
3 A Can you ask that again?  
4 Q Is it your understanding that the zoning ordinance that  
5 authorizes winery-chateaus also authorizes or as part of  
6 that authorization includes guest activity uses --  
7 authorization for guest activity uses?  
8 MR. INFANTE: Object, vague.  
9 THE WITNESS: I think the answer is yes.  
10 BY MS. ANDREWS:  
11 Q Do you see on page 21 where there's a section -- subsection  
12 B that says "guest activity uses are intended to help in the  
13 promotion of peninsula agriculture?"  
14 MR. INFANTE: Objection, vague.  
15 THE WITNESS: Can you remind me which document  
16 we're looking at here?  
17 BY MS. ANDREWS:  
18 Q I'm sorry. SUP 126.  
19 A Okay. And you said page 21?  
20 Q Yep.  
21 A And you said -- where from there?  
22 Q The subtop- (phonetic) -- item B, just the first --  
23 A Oh, at the top. I'm sorry. I was looking at meetings of --  
24 yeah. Okay. What was the question?  
25 Q The question is: Are you familiar with the concept of guest

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1 happens on the facility? On the site? Are you aware when  
2 vehicles come on and people -- construction activity's on  
3 the Villa Mari site?  
4 A Not always.  
5 Q Do you have -- you don't have to answer what your knowledge  
6 is -- but do you have knowledge of whether guest houses were  
7 constructed on the Villa Mari site?  
8 MR. INFANTE: The same objection: a separate  
9 witness who can answer that question.  
10 THE WITNESS: I don't have knowledge of -- I don't  
11 have knowledge of the legal definition of "constructed" and  
12 how it pertains to this question. So I can't answer that  
13 question.  
14 BY MS. ANDREWS:  
15 Q So let me ask you a different question. Do you have  
16 knowledge of whether there was a physical construction of  
17 guest houses at the Villa Mari site?  
18 MR. INFANTE: The same object: we have another  
19 witness for that question if you want to ask it.  
20 THE WITNESS: Without a definition for "physical  
21 construction," I can't answer that question.  
22 BY MS. ANDREWS:  
23 Q All right. Moving on to the part of your special use  
24 permit, on page 21, it's your understanding that Section 8.-  
25 -- the -- sorry -- the winery-chateau section of the zoning

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1 activity uses under the wine- (phonetic) -- within the  
2 winery-chateau provision?  
3 A That --  
4 MR. INFANTE: Objection, vague.  
5 THE WITNESS: That was a different question.  
6 BY MS. ANDREWS:  
7 Q Are you aware whether Section 8.7.3(10), Winery-Chateau  
8 provision, includes a section that relates to guest activity  
9 uses?  
10 MR. INFANTE: Objection, vague.  
11 THE WITNESS: Okay. Am I aware that 8.7. --  
12 BY MS. ANDREWS:  
13 Q -- 310. Which is the -- the zoning ordinance, and you have  
14 a copy of that.  
15 A Yeah. Well --  
16 Q Which you have reviewed before, right?  
17 A Yeah. But that's -- okay. Yes. That's not the document  
18 you told me you were on.  
19 Q So you might use both if it helps you.  
20 A I'm going to use -- no, I'll use this. Okay. 8.7.3 --  
21 Q -- 10, U -- so maybe look at page 19 at the bottom --  
22 A Thank you.  
23 Q -- where it says U.  
24 A Thank you. Guest acti- (phonetic) -- okay. No wonder I  
25 didn't see it. Okay. Now -- now you can ask the question.

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22 (Pages 82 to 85)

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<p>1 applied for the winery-chateau permit that these were --</p> <p>2 that the Peninsula Township's understanding was that these</p> <p>3 three, on page 21, were the only guest activity uses</p> <p>4 allowed?</p> <p>5 MR. INFANTE: Objection, form.</p> <p>6 THE WITNESS: We relied on the verbiage of the</p> <p>7 ordinance to determine what we could and couldn't do. We --</p> <p>8 without -- we -- this is what -- we relied on what's written</p> <p>9 for our understanding of what we could and couldn't do under</p> <p>10 the ordinance.</p> <p>11 BY MS. ANDREWS:</p> <p>12 Q So you've reviewed the ordinance -- you -- someone on behalf</p> <p>13 of Villa Mari reviewed the ordinance at the time you applied</p> <p>14 for a winery-chateau permit?</p> <p>15 A Yes.</p> <p>16 Q And is it your understanding that the board approved Villa</p> <p>17 Mari's abili- (phonetic) -- you know, right as part of SUP</p> <p>18 number 136 -- 126, found that this section has been meet,</p> <p>19 guest activity uses are authorized at Villa Mari?</p> <p>20 A I -- without reading the document, and to the best of my</p> <p>21 recollection, I don't think we -- I don't think there's a</p> <p>22 standard we didn't meet. So I think we -- yes, the answer</p> <p>23 is yes.</p> <p>24 Q Is it your understanding that the special use permit 126,</p> <p>25 that Villa Mari received in 2016 authorized Villa Mari to</p> <p style="text-align: center;">Page 90</p>	<p>1 Go ahead.</p> <p>2 THE WITNESS: The language is in there.</p> <p>3 BY MS. ANDREWS:</p> <p>4 Q Is that -- and that's consistent with what your -- Villa</p> <p>5 Mari's understanding of its permit at the time it got it?</p> <p>6 A When you get into understanding, half of this sentence is</p> <p>7 things that we can do -- or a portion of this sentence is</p> <p>8 things that we can do and a portion are things that</p> <p>9 Peninsula Township says we can't do.</p> <p>10 Q Which is which?</p> <p>11 A Peninsula Township, for example, says we can do</p> <p>12 entertainment and we are allowed to do sale of wine by the</p> <p>13 glass.</p> <p>14 Q And which are -- which is not -- which does Peninsula</p> <p>15 Township say you cannot do?</p> <p>16 A Peninsula Township says we cannot do as -- as part of this,</p> <p>17 weddings, wedding receptions, family reunions.</p> <p>18 Q And has Villa Mari attempted to comply with the township's</p> <p>19 understanding of this provision?</p> <p>20 A We don't want to break the rules, we don't want to thumb our</p> <p>21 nose at the township and do things that they say we can't</p> <p>22 do, but we do want the ability to do the things we have a</p> <p>23 right to do.</p> <p>24 Q Does Mari offer wine and food seminars and/or cooking</p> <p>25 classes?</p> <p style="text-align: center;">Page 92</p>
<p>1 host guest activity uses as defined and described in the</p> <p>2 zoning ordinance?</p> <p>3 A Yes.</p> <p>4 MR. INFANTE: Objection, vague.</p> <p>5 THE WITNESS: Sorry. Sorry, Joe.</p> <p>6 MR. INFANTE: It's all right.</p> <p>7 BY MS. ANDREWS:</p> <p>8 Q You may answer.</p> <p>9 A Yes.</p> <p>10 Q Is it your understanding that the zoning ordinance and the</p> <p>11 SUP on page 22 provided that guest activity uses do not</p> <p>12 include entertainment, wedding, wedding receptions, family</p> <p>13 reunions, or sale of wine by the glass?</p> <p>14 MR. INFANTE: Objection, it calls for a legal</p> <p>15 conclusion, vague.</p> <p>16 THE WITNESS: I'm not a lawyer. Your question was</p> <p>17 do I agree with this sentence? What was your question?</p> <p>18 BY MS. ANDREWS:</p> <p>19 Q Is it your understanding that the special use permit that</p> <p>20 Villa Mari received included the provision that guest</p> <p>21 activity uses do not include entertainment, weddings,</p> <p>22 wedding receptions, family reunions, or sale of wine by the</p> <p>23 glass?</p> <p>24 A The --</p> <p>25 MR. INFANTE: The document speaks for itself.</p> <p style="text-align: center;">Page 91</p>	<p>1 MR. INFANTE: Objection, asked and answered.</p> <p>2 MS. ANDREWS: Yeah. We talked about educational,</p> <p>3 but I don't think we talked specifically about wine and food</p> <p>4 seminars.</p> <p>5 THE WITNESS: Let me read the definition that --</p> <p>6 MR. INFANTE: No. Let her ask her question.</p> <p>7 BY MS. ANDREWS:</p> <p>8 Q In your -- is it Mari's understanding that Mari offers wine</p> <p>9 and food seminars as Mari understands those terms?</p> <p>10 A Yes.</p> <p>11 Q What do you think wine and food seminars means?</p> <p>12 A A seminar on wine and/or food.</p> <p>13 Q And or. So it could be a seminar on food?</p> <p>14 A I -- I don't see why it couldn't be.</p> <p>15 Q Okay. And cooking classes? Does Mari offer cooking</p> <p>16 classes?</p> <p>17 A It's vague what a cooking class is. Even -- even a wine</p> <p>18 tasting course, I think, could satisfy the term -- the terms</p> <p>19 of being a cooking class.</p> <p>20 Q How does a wine tasting -- how is a wine tasting a cooking</p> <p>21 class in your understanding?</p> <p>22 A Because wine and food are paired often, and so cooking is</p> <p>23 creating a meal, so you would pair the wine with the meal as</p> <p>24 part of your cooking.</p> <p>25 Q So, in a cooking class that's a wine -- a wine pairing,</p> <p style="text-align: center;">Page 93</p>

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1 would that be instructing the participants in how to cook  
2 or?  
3 **A Well, we could, but, you know, it's -- it's hard to do a**  
4 **cooking class without a full kitchen permit, so, you know.**  
5 **Q** Has Mari invited people -- in the wine pairings, is there a  
6 component of those offerings at Mari that includes talking  
7 about how the food was cooked?  
8 **A We've done -- we've done wine dinners, so, yes.**  
9 **Q** And how -- at a wine dinner, how is information about -- how  
10 does Mari -- what -- explain to me how wine dinners are  
11 considered cooking classes or could be considered cooking  
12 classes --  
13 **MR. INFANTE:** Object to form.  
14 **BY MS. ANDREWS:**  
15 **Q** -- at Mari in your understanding?  
16 **A Well --**  
17 **Q** What kind of information do you convey to the participants  
18 that could be arguably within the definition of a cooking  
19 class?  
20 **A Cooking is combining ingredients. It doesn't -- I don't --**  
21 **I don't think it's -- look, this is kind of legal**  
22 **speculation here. I don't think --**  
23 **Q** What is -- what cooking classes do you offer? It's a simple  
24 question.  
25 **A It's not a simple question.**

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1 agricultural related groups that have a direct relationship  
2 to agricultural production?  
3 **A We have. We have.**  
4 **Q** You -- is it your understanding that Villa Mari notifies the  
5 township at least 30 days in advance or at least notifies  
6 the zoning administrator 30 days in advance of its wine and  
7 food seminars and cooking classes?  
8 **A Our policy is to notice, to give notice if we are required**  
9 **to give notice. We've had a few people in the role. There**  
10 **have been times when they weren't aware of that, but I**  
11 **corrected it. So, you know, our policy is that they have to**  
12 **do that.**  
13 **Q** And does the policy instruct that wine and food pairings  
14 must be -- the town- (phonetic) -- must be noticed -- notice  
15 of wine and food pairings must be provided to the township.  
16 Is that within the policy?  
17 **A If it says we have to do it in the ordinance, our policy is**  
18 **that we do it.**  
19 **Q** So -- and what would that notice -- what -- how would you  
20 satisfy that notice? Is it a phone call? Is it an e-mail?  
21 What kind of notice does Villa Mari provide to the township?  
22 **A It's not defined. It could be all of the above.**  
23 **Q** I'm not asking what the zoning ordinance requires, I'm  
24 asking what Villa Mari's practice is.  
25 **A It could be all of the above, any of the above.**

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1 **Q** I'm not asking for your legal opinion, I'm just asking does  
2 Mari offer cooking classes?  
3 **A It depends on how you define a cooking class. I believe**  
4 **that we have the ability to, I believe that when we offer a**  
5 **wine dinner, for example, that it -- that has the elements**  
6 **of a cooking class inasmuch as it pertains to pairing wine**  
7 **with food, describing what food is made. I don't think you**  
8 **need anything more than that.**  
9 **Q** Are you -- at cooking classes that are wine pairings, are  
10 you educating your participants about cooking?  
11 **A You --**  
12 **MR. INFANTE:** Object to form.  
13 **THE WITNESS:** You're asking me to define cooking,  
14 so.  
15 **BY MS. ANDREWS:**  
16 **Q** I'm asking what you mean by the cooking elements of a wine  
17 pairing.  
18 **A Based on what I said earlier, yes.**  
19 **Q** Okay. And then meetings of 501(C)(3) non-profit groups  
20 within Grand Traverse County. Does Villa Mari host meetings  
21 of 501(C)(3) non-profit groups within Grand Traverse County?  
22 **A We have.**  
23 **Q** And meetings of agricultural related groups that have a  
24 direct relationship to agricultural production. Does Villa  
25 Mari offer meetings -- offer its facilities for meetings of

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1 **Q** And how is -- and what has --  
2 **A In the past we've sent e-mails.**  
3 **Q** Sent e-mails. Has the town- (phonetic) -- and then meetings  
4 of 501(C)(3) does not require notice to the township. Is  
5 that consistent with your understanding?  
6 **A That's what it says in here. Yes.**  
7 **Q** And then meetings of agricultural related groups require  
8 prior approval by the township. Is that consistent with  
9 your understanding?  
10 **A No, it's not. The ordinance requires us to give notice so**  
11 **that the zoning administrator can give prior approval. It**  
12 **doesn't say it's required.**  
13 **Q** Okay. So if you provide notice, that's all that is required  
14 of Villa Mari --  
15 **MR. INFANTE:** Objection, it calls for a legal  
16 conclusion.  
17 **BY MS. ANDREWS:**  
18 **Q** -- is that your understanding?  
19 **A If we are --**  
20 **MR. INFANTE:** Objection, it calls for a legal  
21 conclusion. The documents speak for themselves.  
22 Go ahead.  
23 **THE WITNESS:** We are required to provide notice.  
24 If we are told we can't do something, we can't do it.  
25 **BY MS. ANDREWS:**

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25 (Pages 94 to 97)

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<p>1 Q Okay. And Villa Mari does provide notice?</p> <p>2 A Yes.</p> <p>3 Q And has Villa Mari received a denial in response?</p> <p>4 A Yes.</p> <p>5 Q And is -- are those in writing?</p> <p>6 A Some are.</p> <p>7 Q That -- would that be by e-mail? Would the notice go from</p> <p>8 Villa Mari to the zoning administrator by e-mail?</p> <p>9 A The examples that -- at least one of the examples that I'm</p> <p>10 thinking of is by e-mail.</p> <p>11 Q So can you give me details of the example you're thinking</p> <p>12 of?</p> <p>13 A What I'm thinking of we did something called -- oh, geez, I</p> <p>14 can't remember the name. It was a bike group that was kind</p> <p>15 of cycling from winery to winery. They wanted to sample</p> <p>16 wines from different regions, compare to our wine or</p> <p>17 something like that. They wanted to bring their own food.</p> <p>18 We gave the township notice. Dave Sanger e-mailed and said</p> <p>19 you can't do this.</p> <p>20 Q Approximately, what year was that? Range. How long ago?</p> <p>21 A It -- it's in the documents that I provided. I don't know.</p> <p>22 Q And it -- it was Villa Mari's contention that this was an</p> <p>23 agricultural related group?</p> <p>24 A I can't remember what we defined it as. It -- it's</p> <p>25 difficult to parse the zoning ordinance, so we provided</p> <p>Page 98</p>	<p>1 MR. INFANTE: Objection, vague.</p> <p>2 BY MS. ANDREWS:</p> <p>3 Q That's your understanding?</p> <p>4 A Well --</p> <p>5 Q That was your interpretation or your position?</p> <p>6 A It was my interpretation.</p> <p>7 Q Okay. And when the township -- when Villa Mari was told</p> <p>8 that a book club -- when -- if the town -- the township</p> <p>9 apparently disagreed with your interpretation or Villa</p> <p>10 Mari's interpretation?</p> <p>11 A Yes.</p> <p>12 Q Okay. And then when the township disagreed and you modified</p> <p>13 the book club to meet the requirement or the township's</p> <p>14 instructions?</p> <p>15 A Yes, we did. One of those requirements was the -- the 1.25</p> <p>16 tons of grapes for each person allowed to participate</p> <p>17 requirement. So it -- as a free entertainment event</p> <p>18 designed to get people to the Tasting Room, immediately</p> <p>19 imposed a limit on that.</p> <p>20 Q What do you -- unpack that for me. What do you mean by the</p> <p>21 1.25 tons per guest?</p> <p>22 A There's a stipulation in the ordinance that requires us to</p> <p>23 grow -- I can read it to you.</p> <p>24 MR. INFANTE: Are you reading the ordinance or the</p> <p>25 SUP?</p> <p>Page 100</p>
<p>1 notice and we were told we couldn't do it.</p> <p>2 Q Okay. Can you think of any other examples?</p> <p>3 A There have been other times where we've had to change events</p> <p>4 because the township has reached out to us and said, hey,</p> <p>5 the way you're -- you know, what you've sent to us you can't</p> <p>6 do. I had a -- I -- oh, go ahead.</p> <p>7 Q Can you give me another example?</p> <p>8 A Even -- even our book club. I had an e-mail and then a</p> <p>9 phone exchange with Dave Sanger, Dave telling me that --</p> <p>10 that we can't do our book club because it's a guest activity</p> <p>11 use. My -- my position was that it's free entertainment.</p> <p>12 So we had to change -- we couldn't do exactly what we wanted</p> <p>13 to do, we had to do -- there was more burden imposed on us</p> <p>14 to -- to craft that in the way that the township liked.</p> <p>15 Q And which of the categories, to your understanding, was the</p> <p>16 book club? Was it wine and food seminar, a meeting of</p> <p>17 501(C)(3) or meeting of agricultural related group?</p> <p>18 A My understanding?</p> <p>19 Q Yes.</p> <p>20 A Free entertainment.</p> <p>21 Q So free entertainment is a different category?</p> <p>22 A Yeah.</p> <p>23 Q Free entertainment in the Tasting Room?</p> <p>24 A Yeah.</p> <p>25 Q Okay. It's not a guest activity use?</p> <p>Page 99</p>	<p>1 THE WITNESS: I'm reading the SUP, but --</p> <p>2 BY MS. ANDREWS:</p> <p>3 Q What page are you on?</p> <p>4 A On page 22.</p> <p>5 Q Okay. Thank you.</p> <p>6 A Three on page 22.</p> <p>7 Q Yep.</p> <p>8 A It says:</p> <p>9 "In order to offer guest activity uses the</p> <p>10 owner of the winery-chateau shall in addition to</p> <p>11 the agriculture production on the minimum acreage</p> <p>12 required for the winery-chateau grow in Peninsula</p> <p>13 Township for the previous growing season equal to</p> <p>14 1.25 tons of grapes for each person allowed to</p> <p>15 participate in guest activity uses."</p> <p>16 Q And so help me connect the book club and the 1.25-ton</p> <p>17 requirement.</p> <p>18 A The township's interpretation of the book club was that it</p> <p>19 was a guest activity use which means that it's -- which</p> <p>20 means that it's subject to the requirement I just described.</p> <p>21 Q And what is -- what is -- how many people were going to go</p> <p>22 to the book club meeting?</p> <p>23 A I -- I don't know how many people were going to go to the</p> <p>24 book club meeting.</p> <p>25 Q Okay. What -- did you have -- what is the -- what -- is it</p> <p>Page 101</p>

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1 14, "Produce all documents identifying all meetings of Grand  
2 Traverse County 501(C)(3) non-profits." And again, a number  
3 of documents that Villa Mari produced. Is that consistent  
4 with the fact that Villa Mari does, in fact, host non-  
5 profits -- Grand Traverse non-profits?  
6 **A Yes.**  
7 Q Like the Opera House and groups like that?  
8 **A Yes.**  
9 Q Yeah. And then looking at number 16, "Produce all  
10 communications regarding requests to host meetings of  
11 agricultural related groups, including the notice, the  
12 request for approval and in each appeal." Do you see that  
13 -- the question?  
14 MR. INFANTE: I'm sorry --  
15 THE WITNESS: Yep, I see the question.  
16 BY MS. ANDREWS:  
17 Q And then it looks like "Mari looked but was unable to locate  
18 responsive documents after performing a reasonable search."  
19 Is that what the response says?  
20 That's what the --  
21 MR. INFANTE: Yeah.  
22 THE WITNESS: That's what the response says.  
23 Yeah. I was reading the question.  
24 BY MS. ANDREWS:  
25 Q And would you agree that that's consistent with -- that the

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1 bike club -- bike group probably was requested under a  
2 different category?  
3 MR. INFANTE: Objection, it calls for a legal  
4 conclusion and foundation.  
5 Go ahead.  
6 THE WITNESS: Yes. I would agree that, you know,  
7 I would agree that something like that must have been under  
8 a different group.  
9 BY MS. ANDREWS:  
10 Q Okay.  
11 **A A different category.**  
12 Q And under Request for Production 18, with respect to  
13 documents provided to guest activity use attendees, Mari has  
14 not identified responsive documents. Would you agree that  
15 Mari hasn't created special materials to distribute to guest  
16 activity uses to satisfy the require- (phonetic) -- this  
17 requirement of this provision?  
18 **A I would agree with that.**  
19 Q Okay. What would you -- would you consider your wine to be  
20 peninsula agriculture?  
21 **A I would.**  
22 Q And do you label and identify your wine when you provide it  
23 to guest activity use attendees?  
24 **A The wine is labeled with the Old Mission Peninsula AVA.**  
25 Q Okay. Do you offer tours?

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1 **A We do.**  
2 Q And you wouldn't create special material for the tours?  
3 **A No.**  
4 Q And the township didn't -- doesn't oversee those tours, does  
5 it?  
6 **A I don't --**  
7 Q The content of the tours? I mean, like, where you take  
8 guests within the facility?  
9 **A Not -- not in matters of discretion. I mean, obviously**  
10 **there's oversight, you know, fire department, things like**  
11 **that.**  
12 Q And is it your understanding -- let's look at --  
13 **A And, actually, you know what, I want to -- I want to qualify**  
14 **that answer because, you know, there -- it's not fair to say**  
15 **that there's -- I couldn't do a tour and say nothing. I**  
16 **would have to promote -- I have to say something.**  
17 Q Would you promote your -- your winery?  
18 **A I would have to. Yeah.**  
19 Q Would you promote your vineyards?  
20 **A I would have to do one of -- one of those things. Yeah.**  
21 Q So let's look at the --  
22 **A I know it's -- I realize it's a technical answer, but --**  
23 MR. INFANTE: Wait for a question.  
24 THE WITNESS: Sorry.  
25 MR. INFANTE: Otherwise we'll be here all day.

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1 MS. ANDREWS: Where's the requirement?  
2 MR. INFANTE: I know she has four hours, but let's  
3 just hope she doesn't use all four hours. Unless you keep  
4 talking.  
5 BY MS. ANDREWS:  
6 Q So let's look at the zoning ordinance, the winery-chateau  
7 zoning ordinance.  
8 **A Okay.**  
9 Q I'm looking for this. Actually, you know what, we can look  
10 at your SUP instead.  
11 **A Okay.**  
12 Q It might be more clear and more familiar. Page 24 of the  
13 SUP.  
14 **A Okay.**  
15 Q Under subparagraph 5, it says, "All requirements for guest  
16 activity uses, all guest activity uses shall include  
17 agricultural production promotion as part of the activity."  
18 **A Yes.**  
19 Q Do you see that? And then it offers three different --  
20 three different little opportunities, it says:  
21 "Identify Peninsula produced food or beverage  
22 that is consumed by the attendees, provide  
23 Peninsula agricultural commercial promotional  
24 materials, and include tours through the winery  
25 and other Peninsula agricultural locations."

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<p>1 THE WITNESS: Yeah. I keep hitting the 2 microphone. I'm sorry. 3 MR. INFANTE: He keeps hitting it. 4 REPORTER: It's actually fine. 5 MR. INFANTE: Okay. 6 REPORTER: It's -- okay. 7 MR. INFANTE: I saw you look up. I think he hit 8 it with the page. 9 THE WITNESS: I should be better at that to be 10 honest. 11 MR. INFANTE: You should be better at that. 12 BY MS. ANDREWS: 13 Q So is your SU- (phonetic) -- the Villa Mari SUP provides up 14 to 111 subject to the tonnage requirement. Is that 15 generally consistent with your understanding of how those 16 provisions interact with each other? 17 MR. INFANTE: Objection, the document speaks for 18 itself. 19 You -- 20 THE WITNESS: Yeah. I'm sorry. 21 MR. INFANTE: You can go. 22 THE WITNESS: My understanding is that there was a 23 -- kind of an arbitrary cap of 111 imposed that would -- if 24 we were able to surpass that with the documentation, it 25 would still apply. Yeah.</p> <p style="text-align: center;">Page 114</p>	<p>1 "The board finds there is sufficient 2 buffering from adjacent neighbors to allow the 3 maximum of 50 attendees per guest activity use. 4 Further, all guest activity uses shall occur 5 indoors." 6 Is that -- did I read that correctly? 7 <b>A It's there. Yeah.</b> 8 MR. INFANTE: Objection, the document speaks for 9 itself. Go ahead. 10 BY MS. ANDREWS: 11 Q What is your understanding of the 50 -- what is Mari Vil- 12 (phonetic) -- Villa Mari's -- I'm sorry -- understanding of 13 what is the maximum of 50 attendees per guest activity use 14 mean? 15 MR. INFANTE: Objection, it calls for legal 16 conclusion. The document speaks for itself. 17 THE WITNESS: It -- it means that per guest 18 activity use, the maximum number of attendees is 50. 19 BY MS. ANDREWS: 20 Q And -- and what is the second sentence in that paragraph 21 mean? 22 MR. INFANTE: The same objection. 23 THE WITNESS: It says, further, all guest activity 24 uses shall occur indoors. 25 BY MS. ANDREWS:</p> <p style="text-align: center;">Page 116</p>
<p>1 BY MS. ANDREWS: 2 Q Okay. Right. So if you -- if you had enough tons that 3 equated to 180 people, you would still be capped at 111 4 under that paragraph in the SUP? 5 <b>A Per guest activity use. Yeah.</b> 6 Q Per guest -- 7 <b>A Yeah.</b> 8 Q Yep. And if you only had -- and so, which -- it's the 9 whichever is lower, the tonnage or 111? 10 <b>A Yes.</b> 11 Q Okay. And then the next paragraph, little ii, on page 24 of 12 the SUP indicates that: 13 "The maximum number of attendees may be less 14 but" no -- "not more than the maximum number 15 described in i above at the discretion of the 16 township board based on possible adverse impacts 17 on adjacent property, lack of parking spaces or 18 other site specific conditions." 19 Do you see that? 20 <b>A Yes.</b> 21 Q And in this provision, the board found that there was 22 parking was sufficient. Do you see that, the first bullet 23 point one -- 24 <b>A Yes.</b> 25 Q -- in the first paragraph? And then it says,</p> <p style="text-align: center;">Page 115</p>	<p>1 Q And is it your understanding that the 50 attendees per guest 2 activity use is an additional -- is a cap above and beyond 3 the 111 or the tonnage requirements? The tonnage -- 4 whatever the annual tonnage turns out to be? 5 MR. INFANTE: The same objection. 6 THE WITNESS: I don't know to be honest with you. 7 It says there is sufficient to allow the maximum of 50 8 attendees. So I guess it's worded poorly, but I think 9 that's a -- as I read it now, I think that's a fair 10 characterization of it. 11 BY MS. ANDREWS: 12 Q Okay. And would you agree that the provision -- the 50 13 attendees is specific to guest activity uses, it's not the 14 Tasting Room? 15 <b>A Yes.</b> 16 Q And the same with guest activity uses -- the indoor -- the 17 indoor distinction, that's applicable to guest activity 18 uses, correct? 19 MR. INFANTE: The same objection, it calls for a 20 legal conclusion, the document speaks for itself. 21 THE WITNESS: Yes. 22 BY MS. ANDREWS: 23 Q Okay. When Mari received the special use permit 126, did 24 Mari appeal, take an appeal of the -- the special use permit 25 to the board of zoning appeals?</p> <p style="text-align: center;">Page 117</p>

30 (Pages 114 to 117)



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1 **A When we received it?**  
2 Q After -- after the board -- after it was approved by the  
3 township board, was it appealed? Did Mari appeal it?  
4 MR. INFANTE: Objection, it calls for a legal  
5 conclusion. And he may not be the best -- he may not be the  
6 best witness to --  
7 MS. ANDREWS: Okay.  
8 MR. INFANTE: -- to answer that question.  
9 BY MS. ANDREWS:  
10 Q All right. Well, to the --  
11 **A I don't think I am.**  
12 Q Well, this is -- we're going to look at the notice. I'm  
13 looking at topic seven, Knowledge of All Permits Applied  
14 For, Including Application, Site Amendments, Amendment  
15 Request, Terms and Conditions. I guess I would ask: This  
16 -- is it both?  
17 MR. INFANTE: That's --  
18 THE WITNESS: Yeah.  
19 MR. INFANTE: That's a both.  
20 BY MS. ANDREWS:  
21 Q Is that both?  
22 **A Yeah.**  
23 Q Is that -- so your -- you don't know -- is it your testimony  
24 that you don't know whether Villa Mari appealed SUP number  
25 126 to the board of zoning appeals?

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1 **A I am not aware -- I don't know enough to say that we did**  
2 **not.**  
3 Q Okay. Do you have any recollection of Villa Mari taking  
4 legal -- going to court over SUP 126 but prior to this  
5 litigation?  
6 MR. INFANTE: I was just going to say an  
7 objection, but.  
8 THE WITNESS: No.  
9 BY MS. ANDREWS:  
10 Q Okay.  
11 MR. INFANTE: I should say, and besides the other  
12 current pending lawsuit.  
13 MS. ANDREWS: I don't -- I don't want to get into  
14 things I'm not a part of, so I'm not sure what you're  
15 referring to, but let's stick to --  
16 THE WITNESS: I think the question was prior to  
17 this, right?  
18 BY MS. ANDREWS:  
19 Q Prior to this litigation --  
20 **A Yeah.**  
21 Q -- yes. The --  
22 MR. INFANTE: Fair point.  
23 MS. ANDREWS: What's that?  
24 MR. INFANTE: I said "fair point" because the  
25 other lawsuit was filed after this lawsuit.

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1 MS. ANDREWS: Okay.  
2 BY MS. ANDREWS:  
3 Q Circle back to the book club, we were talking about the book  
4 club.  
5 **A Uh-huh (affirmative).**  
6 Q Villa Mari disagreed with the township staff's  
7 interpretation. Who, at the township, provided that  
8 interpretation to the best of your recollection? Or at  
9 least their position?  
10 **A Dave Sanger was the person that I communicated with the**  
11 **most. Beyond that I -- I don't know if he got his**  
12 **information from Christina or if it was his conclusion.**  
13 Q And who is -- who's Christina just for the record?  
14 **A I believe she was the zoning administrator at the time.**  
15 Q And what was Dave Sanger's position?  
16 **A I don't know his title off the top of my head. Enforcement.**  
17 Q Enforcement. And is it -- was your -- Villa Mari's  
18 interpretation was different than whatever was conveyed to  
19 you through Dave Sanger. Is that a fair summary?  
20 **A That is fair. Yeah.**  
21 Q Did Villa Mari seek a interpretation from the board of  
22 zoning appeals over -- over that dispute, over that issue of  
23 whether a book club is or is not a guest activity use?  
24 **A I don't believe we did.**  
25 Q Okay. And then similar question, how about taking an appeal

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1 to the township board?  
2 MR. INFANTE: On that issue?  
3 THE WITNESS: On that -- yeah.  
4 BY MS. ANDREWS:  
5 Q On that issue? On the book club issue?  
6 **A I don't believe we did that either. I -- I took him at his**  
7 **word that that was their determination. I -- I think it**  
8 **also says that Christina's allowed to make that**  
9 **determination --**  
10 Q Okay.  
11 **A -- you know, in this -- in the language of this SUP, I think**  
12 **it says the zoning administrator makes that determination.**  
13 Q And then for the bike club, again, in summary, Villa Mari  
14 had an interpretation that the bike club was acceptable  
15 guest activity use and the township -- it was conveyed to  
16 you that that was in- (phonetic) -- that was not a  
17 permissible guest activity use, fair?  
18 **A They -- we were told we needed to change elements of that.**  
19 **Yeah.**  
20 Q And, again, who told you that?  
21 **A That's Dave Sanger.**  
22 Q And he got that information from Christian? Do you have  
23 knowledge who he got that from?  
24 **A He may have said -- again, this is in the documents -- he**  
25 **may have said that -- that he got his information from**

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31 (Pages 118 to 121)

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1 Christina. I -- I would presume that he did.  
2 Q And the same question: Did Villa Mari take an appeal or --  
3 of that decision to the township board?  
4 A No. It was easier to just make the changes as we were told.  
5 Q And the same question, just to round out the record, did  
6 Villa Mari take it -- seek an interpretation from the board  
7 of zoning appeals on that decision?  
8 A Also no.  
9 Q The same -- same answer? Okay. Has Peninsula Township  
10 issued any violation notices against Villa Marie under SUP  
11 126 related to guest activity uses?  
12 A Under SUP 126?  
13 Q Yes.  
14 A I don't think so. There may have been one, but I don't  
15 think so.  
16 Q How about any -- just so that we're not using -- getting  
17 caught up on terminology. Has Peninsula Township any --  
18 issued any citations against Villa Mari under SUP number 126  
19 related to guest activity uses?  
20 A Again, I don't think so. I'm -- I'm not certain, but I  
21 don't think so.  
22 Q You don't have any recollection of it?  
23 A Correct.  
24 Q So, let's look at -- I want to get a sense of -- sorry --  
25 MR. INFANTE: You've got a new document?

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1 MS. ANDREWS: This is a new document. Are we  
2 hitting a record here?  
3 MR. INFANTE: No, no.  
4 MS. ANDREWS: Oh.  
5 MR. INFANTE: I just want to clean up the messes  
6 in front of us --  
7 MS. ANDREWS: We're moving onto --  
8 MR. INFANTE: -- if that's okay.  
9 MS. ANDREWS: -- a new document.  
10 What are --  
11 REPORTER: 47.  
12 MS. ANDREWS: 47; let's mark --  
13 (At 11:31 a.m., Deposition Exhibit 47 marked)  
14 BY MS. ANDREWS:  
15 Q PTP 47 is a Villa Mari's Answers to PTP's First Set of  
16 Interrogatories.  
17 A All right. Okay.  
18 MR. INFANTE: If you want the ordinance, I'll just  
19 put that up here.  
20 THE WITNESS: Okay.  
21 MR. INFANTE: I'll give you that back.  
22 THE WITNESS: Thank you.  
23 MS. ANDREWS: So -- yeah, we'll do a clean up.  
24 MR. INFANTE: You said 47, correct?  
25 MS. ANDREWS: Yep.

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1 MR. INFANTE: I'm sorry. Did you -- did you mark  
2 the document request as 46? I may not have --  
3 MS. ANDREWS: You know, did I not?  
4 MR. INFANTE: Yeah.  
5 MS. HILLYER: RFT responses.  
6 MS. ANDREWS: I thought I did. Yep, that's 46.  
7 MR. INFANTE: I just didn't write it on -- I think  
8 this is my copy.  
9 MS. ANDREWS: Joe, you are --  
10 MR. INFANTE: I didn't write it down.  
11 MS. ANDREWS: You're skills are -- you must be  
12 hungry.  
13 UNIDENTIFIED SPEAKER: I'm hungry.  
14 MR. INFANTE: No, I'm good. I had a muffin.  
15 THE WITNESS: You had a muffin.  
16 MR. INFANTE: I had a muffin this morning.  
17 THE WITNESS: Oh, okay.  
18 MR. INFANTE: This morning. Starbucks.  
19 THE WITNESS: I was going to say where did you  
20 find a muffin.  
21 MR. INFANTE: Delicious, frozen for however long  
22 that muffin was.  
23 MS. ANDREWS: Weeks. Months.  
24 BY MS. ANDREWS:  
25 Q So I just want to, first, orient, the document is labeled

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1 PTP Exhibit 47, Plaintiff Villa Mari's Answers to PTP's  
2 First Set of Interrogatories. Do you recognize this  
3 document?  
4 A Yes.  
5 Q Do you see your signature on page three of this document?  
6 A Yes.  
7 Q All right. And so the question I want to ask you -- and  
8 this is an answer to a request from PTP.  
9 A Uh-huh (affirmative).  
10 Q So the ans- (phonetic) -- the question I want to ask you  
11 about is under the bullet points, the first sentence under  
12 the bullet points on page 2.  
13 A On page 2.  
14 MR. INFANTE: I know where she's going. I've been  
15 through this. She's going to ask you that sentence right  
16 there.  
17 THE WITNESS: Okay. Oh, under the bullet points.  
18 BY MS. ANDREWS:  
19 Q Under the bullet points.  
20 A Okay. Yep.  
21 Q Mar- (phonetic) -- can you read it?  
22 A Uh-huh (affirmative).  
23 Q The one your attorney just pointed to.  
24 A Read it aloud?  
25 MR. INFANTE: See how good I am to know where

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<p>1 you're going?</p> <p>2 THE WITNESS: Yes. Let's see. Let's see.</p> <p>3 "Mari has attempted numerous times to</p> <p>4 negotiate changes to these ordinances with</p> <p>5 Peninsula Township and fix these unconstitutional</p> <p>6 provisions."</p> <p>7 BY MS. ANDREWS:</p> <p>8 Q Thank you. And just to summarize, the -- "these ordinances"</p> <p>9 is referring to the ordinances listed in the four bullet</p> <p>10 points above?</p> <p>11 A Yes. But without limiting to that, I mean, we've made</p> <p>12 efforts to negotiate changes in addition to those, but, yes.</p> <p>13 Q Fair -- fair clarification. Thank you. So let's talk about</p> <p>14 -- what I'd like to do is understand what kinds of changes</p> <p>15 -- and let's be clear (phonetic) -- so the provisions in the</p> <p>16 bullet points relate primarily to guest activity uses. Is</p> <p>17 that your understanding under -- under U, 10 U?</p> <p>18 A I don't know about "primarily," but there's a substantial</p> <p>19 portion of them relate to guest activity use.</p> <p>20 Q Okay. So I don't want to understand (phonetic) -- I, at</p> <p>21 this point, don't need to know if you've been trying to get</p> <p>22 shorter setbacks or bigger square foot areas for --</p> <p>23 A Okay.</p> <p>24 Q -- I want to focus on the activity side of things that --</p> <p>25 A It's difficult to separate it from the whole, but, okay.</p> <p style="text-align: center;">Page 126</p>	<p>1 the community, and we will figure out a way to do it so that</p> <p>2 we minimize our impact to the community. I said, if you --</p> <p>3 if you really want -- if you really want to preserve</p> <p>4 agriculture and keep land in farming, why don't you tie</p> <p>5 expansion of those limits to the amount of land that you</p> <p>6 have in agriculture. Why don't you do it -- why don't you</p> <p>7 -- why don't you incentivize us to put more land into ag</p> <p>8 (sic) in exchange for doing a little bit more on our</p> <p>9 property. And again, subject to only the impacts to the</p> <p>10 neighbors and the surrounding community such that we can</p> <p>11 figure out a way to do it without being a problem. And</p> <p>12 that, you know, it would go okay in the meeting and then</p> <p>13 we'd leave the meeting and they'd send around their draft</p> <p>14 document and it would be more restrictive. And we'd go to</p> <p>15 another meeting and we'd say that again, I would say that</p> <p>16 again, and -- and then they'd circulate the -- the new draft</p> <p>17 and then things -- things would've been deleted from that</p> <p>18 and it would be more restrictive still. And really it -- it</p> <p>19 became apparent to me anyway that it -- it felt like the</p> <p>20 only reason we were in that room was so that a rubber stamp</p> <p>21 could be put on the new ordinance saying that we were part</p> <p>22 of the drafting of it even though our feedback wasn't being</p> <p>23 incorporated.</p> <p>24 Q Who else -- who else was at those meetings besides yourself?</p> <p>25 A I know for certain Chris Baldyga was there at least one.</p> <p style="text-align: center;">Page 128</p>
<p>1 Q Okay. Tell me -- well, then, let's -- let's just talk about</p> <p>2 the scope. Types of things -- when did -- types of things</p> <p>3 Villa Mari has tried to work with the township to change?</p> <p>4 A Well, this is -- this is one of the questions that's maybe</p> <p>5 better asked to my dad because he's had a lot of</p> <p>6 interactions with them. I will answer the best that I can.</p> <p>7 And the question was types of things we've tried to change?</p> <p>8 Q Yes. The categories of things in the zoning ordinance.</p> <p>9 A We sat in -- and I'm going to estimate dates here, you know,</p> <p>10 2017, '18, something like that, maybe even '19 -- we sat in</p> <p>11 with meetings about the ordinance rewrite that the Peninsula</p> <p>12 Township was talking about doing. And they invited us</p> <p>13 winery owners, I was part of this -- these meetings, went to</p> <p>14 several, discussing potential changes to the ordinance that</p> <p>15 Randy, who was the planner at the time, was evaluating,</p> <p>16 trying to incorporate in the ordinance. So, I mean, I -- I</p> <p>17 went up there and I said, you know, guys, this -- regulating</p> <p>18 the why of us doing these events; in other words, saying</p> <p>19 that we can do events but only for certain reasons is not</p> <p>20 good. Like, that's -- I don't know that I used the word</p> <p>21 "unconstitutional" at the time, but it -- it didn't make</p> <p>22 sense to me why they were regulating specifically what we</p> <p>23 can and can't do instead of just the impact of such an</p> <p>24 event. So I went up there and I said why don't you just</p> <p>25 tell us an acceptable noise level, all the other impacts to</p> <p style="text-align: center;">Page 127</p>	<p>1 I think Eddie O'Keefe was there at one. I think we had</p> <p>2 really good attendance from all the wineries on the Old</p> <p>3 Mission Peninsula.</p> <p>4 Q And tell me who -- you said Randy. Is that Randy Mielnik</p> <p>5 (phonetic)?</p> <p>6 A Miel --</p> <p>7 Q Mielnik.</p> <p>8 A I don't know how to pronounce his last name. But, yeah,</p> <p>9 Miel --</p> <p>10 MR. INFANTE: I don't know if it's Mielnik or</p> <p>11 Mealnik (phonetic). I have no idea.</p> <p>12 THE WITNESS: Yeah.</p> <p>13 BY MS. ANDREWS:</p> <p>14 Q You have a -- you -- I think you -- you gave me a three-year</p> <p>15 range: 2017, 2018, maybe 2019.</p> <p>16 A That's just a guess. I'm not sure --</p> <p>17 Q Has --</p> <p>18 A -- exactly.</p> <p>19 Q Was it pretty shortly after Villa Mari got a -- got its SUP?</p> <p>20 How long had you been operating under these rules --</p> <p>21 A Well --</p> <p>22 Q -- to your recollection?</p> <p>23 A -- I mean, we got our SUP thinking that, you know, it's the</p> <p>24 most -- it represents what the township told us they</p> <p>25 encouraged. And -- and when we applied, they said we did a</p> <p style="text-align: center;">Page 129</p>

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<p>1 really good job on the application, they were very  2 appreciative for the amount of work we put in to it is my  3 memory. And so we -- we thought that's what the township  4 wanted. We thought they wanted more wineries as winery-  5 chateau, you know, the whole thing's constructed to give  6 your more ability to do stuff in exchange for following this  7 procedure. So our hope was that that would also come with,  8 you know, a good working relationship in -- in interpreting  9 some of these things and allowing us to do things that we  10 feel promotes the Peninsula, keeps the Peninsula in  11 agriculture like everybody wants, and -- and give us the  12 tools to do that while minimizing our impact to our  13 neighbors and to everybody. So that's what we hoped for.  14 We had hoped for that all along, that -- that was our  15 thought process going in and then we -- I think we received  16 it sometime in 2016. And I don't know exactly when these  17 discussions began, but they had been talking about rewriting  18 the ordinance for years, we just became a player in that  19 process.  20 Q Were you aware that those discussions were underway as you  21 were going through the process? Were you talking to other  22 wineries while you were going through the process? Or to  23 one?  24 A A little bit. Not so much -- I don't know that we ever  25 discussed how to interact with the township.</p> <p style="text-align: center;">Page 130</p>	<p>1 A Outside of what I already told you --  2 Q So I think you said putting more land in -- in agriculture.  3 What do you -- like, expound on that. What -- what do you  4 mean by that?  5 A Well, it was pretty obvious that, to me anyway, that --  6 well, I shouldn't say obvious. To me, some of the  7 restrictions that the ordinance imposed, it would say that  8 it was trying to foster agriculture, but then the  9 restrictions didn't do any such thing. And so I said -- my  10 thought process was why not incentivize farming. We know  11 that -- I mean, a winery needs to do things to be  12 successful. We -- we can't just make the grapes and give  13 the wine away. So why not encourage more of that by helping  14 us be successful and incentivizing us to farm Old Mission  15 Peninsula which is the stated goal of the ordinance.  16 Q What are some -- what -- give me an example of -- of how you  17 would incentivize farming and what -- what the reward would  18 be? Like, what's -- what's the carrot on the stick or how  19 would that work?  20 MR. INFANTE: Objection, speculation.  21 Go ahead.  22 THE WITNESS: Yeah. I -- I -- this is just  23 speculation as I --  24 BY MS. ANDREWS:  25 Q No. But I --</p> <p style="text-align: center;">Page 132</p>
<p>1 Q Okay.  2 A I think --  3 Q So -- let me ask, are you -- is Villa Mari a member of WOMP?  4 A We are.  5 Q Is -- was WOMP hosting meetings to your recollection?  6 A We would have owners meetings or the standard scheduled  7 meetings that WOMP had. It's not WOMP anymore, it's -- has  8 a different name. But --  9 Q WOMP is not WOMP anymore?  10 A It's still -- it's still an entity, it just we refer to it  11 as Old Mission Peninsula Wine Trail.  12 Q Oh, okay. Sorry. So I guess my question is were -- was the  13 process of seeking changes under the WOMP umbrella or was it  14 just the individual wineries trying to do that on their own  15 -- on their own to -- from your perspective?  16 A I think it was a little of both.  17 Q Okay. What -- were there -- do you recall if -- if Villa  18 Marie or Mari -- sorry.  19 A It's okay.  20 Q I -- I have been pretty good. I must be getting hungry. --  21 made specific proposals for -- for an alternative balance  22 that would, you know, in Villa Mari's position, meet that  23 balance you were talking about between keeping land in  24 agriculture and addressing concerns of impacts -- minimizing  25 impacts to neighbors?</p> <p style="text-align: center;">Page 131</p>	<p>1 A Yeah.  2 Q -- I'm trying to understand what Villa Mari would -- would  3 -- was advocating for through that process to the extent it  4 was developed?  5 A We have -- we have a lot of agricultural land on Old Mission  6 Peninsula. Not all of it is in vineyards right now, but we  7 have the capacity to expand that. Some of these  8 restrictions, like, for example, the -- the tons per guest  9 puts us in a position where if we want to get up to our  10 total per guest activity use, you know, we're making the  11 call of, okay, do we just harvest as many grapes as we can  12 or do we -- do we employ best practice to reduce the size of  13 our harvest but at a higher quality. So we're making the  14 trade off between quality of wine and quantity of wine. And  15 that, to me, is a -- a bit of -- it doesn't incentivize us  16 to -- it's just not best practice.  17 Q So -- and I guess I'm trying to -- that's -- that's a good  18 illustration. It -- it seems that tonnage is a incentive  19 tied to agriculture. And, right, like the amount of  20 agriculture equals more guests or more -- more tons equals  21 more guests. Is that your understanding how the tonnage  22 works?  23 MR. INFANTE: Objection, it calls for a legal  24 conclusion.  25 Go ahead.</p> <p style="text-align: center;">Page 133</p>

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<p>1 talking about, what -- what does Villa Mari want to do</p> <p>2 differently or -- whether it's in scope or whether it's in</p> <p>3 kind, right, like, the types of -- yeah.</p> <p>4 <b>A We want the ability to fully explore what we can do legally</b></p> <p>5 <b>-- our legal rights cognizant of the fact that we have</b></p> <p>6 <b>neighbors, that we live on Old Mission Peninsula, we love</b></p> <p>7 <b>Old Mission Peninsula, we -- we are proud of Old Mission</b></p> <p>8 <b>Peninsula. We don't like being told that we have to say</b></p> <p>9 <b>things or that we can and can't have certain kinds of events</b></p> <p>10 <b>depending on what the content of that event is, you know. I</b></p> <p>11 <b>don't like that, so we don't want to do that anymore. But</b></p> <p>12 <b>-- but we are conscious of the fact that we have neighbors,</b></p> <p>13 <b>and we are proud of Old Mission Peninsula, we want to be</b></p> <p>14 <b>good neighbors, but we want to -- the ability to be</b></p> <p>15 <b>successful as a business and explore our legal rights.</b></p> <p>16 <b>Q And -- and just conceptually does that mean different types</b></p> <p>17 <b>of events?</b></p> <p>18 <b>A That would be one example. I mean, we get requests every</b></p> <p>19 <b>day from people who want to have weddings at the winery.</b></p> <p>20 <b>Q And is that something that Villa Mari would like that the --</b></p> <p>21 <b>the ability to -- to respond to?</b></p> <p>22 <b>A Not just respond to. It -- it engenders some discontent</b></p> <p>23 <b>from our customers to say, no, we can't do that. They don't</b></p> <p>24 <b>care why we can't do that, they -- it's -- yes, we would</b></p> <p>25 <b>love to have weddings.</b></p> <p style="text-align: center;">Page 138</p>	<p>1 <b>because -- because you can convert that to a noise impact or</b></p> <p>2 <b>anything else and say these are the things you can't do.</b></p> <p>3 <b>Other than that, we don't care why your peop- (phonetic) --</b></p> <p>4 <b>why people are gathering.</b></p> <p>5 <b>Q And then in terms of scope, like the frequency or the -- the</b></p> <p>6 <b>size, what sorts -- does Villa Mari want to do additional, I</b></p> <p>7 <b>mean, would you want to close the Tasting Room? Would you</b></p> <p>8 <b>want have this be incremental to the Tasting Room? How --</b></p> <p>9 <b>A Not necessarily close the Tasting Room. We would be willing</b></p> <p>10 <b>to entertain that for, you know, if that's what people</b></p> <p>11 <b>wanted to do, but it's not a necessity. The building is big</b></p> <p>12 <b>enough that we can have several things happening</b></p> <p>13 <b>simultaneously.</b></p> <p>14 <b>Q And then we talked earlier about restaurants. How did -- is</b></p> <p>15 <b>that within the scope of things Mari has thought about</b></p> <p>16 <b>providing?</b></p> <p>17 <b>A That's another thing people ask: "Why can't I get food?"</b></p> <p>18 <b>Q And --</b></p> <p>19 <b>A "Why can't I get more substantial food?"</b></p> <p>20 <b>Q More substantial food. So offering a -- more of a meal</b></p> <p>21 <b>environment?</b></p> <p>22 <b>A Absolutely. You know, it -- all the pieces with the</b></p> <p>23 <b>ordinance work together to suppress certain things, so if I</b></p> <p>24 <b>want -- like, to do events, you need to provide food, and if</b></p> <p>25 <b>you're providing food for events, you're -- you have a chef</b></p> <p style="text-align: center;">Page 140</p>
<p>1 <b>Q So Villa Mari would like to start saying yes to weddings?</b></p> <p>2 <b>A Yes.</b></p> <p>3 <b>MR. INFANTE: Or yes to the dress, right? Isn't</b></p> <p>4 <b>that the phrase?</b></p> <p>5 <b>THE WITNESS: That's copyrighted.</b></p> <p>6 <b>MR. INFANTE: Is it?</b></p> <p>7 <b>THE WITNESS: I don't know.</b></p> <p>8 <b>MR. INFANTE: Oh. Probably.</b></p> <p>9 <b>BY MS. ANDREWS:</b></p> <p>10 <b>Q So Villa Mari would like to start hosting weddings. And</b></p> <p>11 <b>this is weddings for hire, right? Like, where the -- where</b></p> <p>12 <b>the facilities -- some level of compensation to bill for the</b></p> <p>13 <b>use of the space?</b></p> <p>14 <b>A Yes. Go ahead.</b></p> <p>15 <b>Q Villa Mari -- other than weddings, what about wedding</b></p> <p>16 <b>receptions, would that be in the same category?</b></p> <p>17 <b>A Absolutely.</b></p> <p>18 <b>Q What do you think -- so -- and I -- and I think weddings and</b></p> <p>19 <b>wedding receptions probably have some kind of terminology --</b></p> <p>20 <b>you mean social events, like, it could be a -- any family</b></p> <p>21 <b>reunion, corporate event, whatever the guest wants?</b></p> <p>22 <b>A I don't see why it matters the reason for having an event.</b></p> <p>23 <b>I don't -- I've never understood why the ordinance limits</b></p> <p>24 <b>specifically the motivation for an event or the things that</b></p> <p>25 <b>are being said in that event. I don't understand that</b></p> <p style="text-align: center;">Page 139</p>	<p>1 <b>and you have a crew, a team, that does that. But you -- we</b></p> <p>2 <b>need to be able to maximize that, we can't hire them for a</b></p> <p>3 <b>part-time gig doing events and not be able to do other stuff</b></p> <p>4 <b>with their time.</b></p> <p>5 <b>Q So, if you had the kitchen and the kitchen staff for events,</b></p> <p>6 <b>you would like -- it would follow to then be able to offer</b></p> <p>7 <b>the courses to the public who come in for tastings?</b></p> <p>8 <b>A Yes. And, again, we need to be cognizant of the fact that</b></p> <p>9 <b>we're serving alcohol and, you know, I -- I think it</b></p> <p>10 <b>benefits the whole township not to have people leaving the</b></p> <p>11 <b>winery to go search -- in the search of the food that they</b></p> <p>12 <b>want when -- when we have -- should have the ability to</b></p> <p>13 <b>serve it to them before they go -- go anywhere. I --</b></p> <p>14 <b>Q How about ex- (phonetic) -- like experiences, other -- you</b></p> <p>15 <b>know, so I have distinguished between where somebody comes</b></p> <p>16 <b>to you with their plan, their event, their activity that</b></p> <p>17 <b>they want to use your facility. What about activities that</b></p> <p>18 <b>Villa Mari would like to itself host?</b></p> <p>19 <b>A It follows from what I was saying earlier. If we're going</b></p> <p>20 <b>to hire -- if we were able to hire people to -- to do this</b></p> <p>21 <b>-- the things that we currently can't do, we need to</b></p> <p>22 <b>maximize their time. That's good practice. And so, I</b></p> <p>23 <b>think, offsite catering has been one example. That's a --</b></p> <p>24 <b>that's a marketing activity. We would love to -- to do</b></p> <p>25 <b>something like that, keep our staff busy, promote our wine</b></p> <p style="text-align: center;">Page 141</p>

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1 in a different location.  
2 Q And by "offsite catering," you mean catering -- distributing  
3 your wine and food with it?  
4 A Yeah. Anything and everything. I mean, this is -- it's not  
5 an exhaustive list. These are examples of things we'd like  
6 to do because we -- ultimately we want to be able to run a  
7 business. We want to be able to explore these things and --  
8 and do what is successful.  
9 Q Other -- how about activities onsite that Mari would host,  
10 like parties, ticketed events --  
11 A You know --  
12 Q -- have you thought about things like that or is that not  
13 necessarily the kind of set up that Mari offers?  
14 A I don't think we can do fundraisers right now. It doesn't  
15 seem fair that we can't do a fundraiser for a cause that we  
16 support.  
17 Q Is that -- are fundraisers --  
18 A That would be a ticketed event.  
19 Q Oh. Where -- where somebody would have to pay to come?  
20 A Yeah.  
21 Q Okay. All right. Any other kind of ticketed events that  
22 Mari would like to host that they can't?  
23 A I'm sure there are. Yes. Again, I -- I don't know why  
24 we're getting into the content of an event when -- instead  
25 of talking about -- I'm not saying you should. I'm saying

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1 the township shouldn't get into the content of an event.  
2 Q Does Mari -- is -- are Mari's facilities adequate in your --  
3 from your perspective to accommodate the types of activities  
4 that we're talking about?  
5 A Yes. And -- and in case where they're not, we can -- we can  
6 solve pro- (phonetic) -- what we do is we solve the problems  
7 that we have. There's a lot of options available to us.  
8 But, in general, the answer is yes.  
9 Q Parking, bathrooms, space for kitchen?  
10 A Yes.  
11 Q Okay. Retail? Would Mari expand retail offerings or where  
12 does that fit in to the -- the things that Mari would like  
13 to do more of?  
14 A We'd love -- we would love to -- to sell more, but, yeah --  
15 Q More types of things or just more -- have more people come  
16 in and -- and move more inventory or all of the above?  
17 MR. INFANTE: Objection, vague.  
18 THE WITNESS: Yeah. It -- it's kind of -- it's  
19 just --  
20 BY MS. ANDREWS:  
21 Q Are there things you -- you can't sell now that you would  
22 like to sell? Types of things?  
23 A I would need to refer to the ordinance. I think as a  
24 winery-chateau generally the restrictions on merchandise are  
25 -- are a lot lower. You know, it probably would be more a

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1 question of we would like to be able to advertise our  
2 merchandise a little bit better at any events that we do or  
3 things like that and -- and increase the volume of sales  
4 that way. But the first and foremost we're a winery, we  
5 want to make quality wine and sell quality wine, and -- and  
6 all the experiences that come with it. So, including things  
7 like weddings which are great marketing -- wedding  
8 photography is really good marketing.  
9 Q What is that? What do you mean by "wedding photography?"  
10 A People come to -- even the presence of somebody at a wedding  
11 gets our name out there. They might not have come to the  
12 winery before, they might be coming from out of town to  
13 visit a wedding, photographs are taken, they show their  
14 friends photos at Mari of, you know, what a beautiful  
15 facility, where was that, I'd like to go there. All of that  
16 serves to get our name and -- and I think cast Old Mission  
17 Peninsula in a good light.  
18 MS. ANDREWS: What's our time?  
19 REPORTER: Two hours and 49 minutes.  
20 MS. ANDREWS: I would like to take a break and  
21 review my notes.  
22 MR. INFANTE: Okay. Ten minutes?  
23 MS. ANDREWS: Yes, that'd be good.  
24 (At 11:58 a.m., off the record)  
25 (At 12:20 p.m., back on the record)

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1 REPORTER: Yep, we're good.  
2 MS. ANDREWS: All right. So we'll mark PTP  
3 Exhibit 48.  
4 THE WITNESS: Okay. Thank you.  
5 (At 12:20 p.m., Deposition Exhibit 48 marked)  
6 BY MS. ANDREWS:  
7 Q Alex, if you can just take a quick moment to orient yourself  
8 to this document labeled Plaintiff Villa Mari's Answers to  
9 PTP's First Set of Request to Admit.  
10 A Uh-huh (affirmative).  
11 Q Was this -- is this something you reviewed as part of your  
12 preparation for today's deposition?  
13 A I think so. Yeah.  
14 Q This is -- this was provided to PTP relatively recently.  
15 A Yeah.  
16 Q Okay.  
17 A Yes, yes. If it was -- if I was a little -- not emphatic  
18 enough, yes, I did review this.  
19 Q Okay. All right. So I'd like to draw your attention to  
20 Request to Admit number 2.  
21 A Okay.  
22 Q The -- the request is,  
23 "Admit that since approximately January 2022  
24 you had responded to inquiries about potential  
25 customers by represented, that Mari can host

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<p>1 weddings and/or wedding receptions for" 80 -- "up 2 to 80 to 120 guests." 3 <b>A Uh-huh (affirmative).</b> 4 <b>Q</b> Do you see that? 5 <b>A Yep.</b> 6 <b>Q</b> And the response is, "Mari admits that it's been tracking 7 wedding inquiries for future use should the court allow the 8 wineries to host weddings." 9 <b>A Yep.</b> 10 <b>Q</b> So, my question for you is, what do you understand wedding 11 inquires to mean in this -- what is your interpretation? 12 <b>A Anybody asking if they can have a wedding at the winery.</b> 13 <b>Q</b> And how would wedding inquiries come in to Mari? 14 <b>A We have a -- like a Contact Us form. We get a lot by e- 15 mail. We get a lot from the guests just talking to the 16 management. I mean, the ones I'm aware of come in through 17 the e-mail and I don't even see all of those because there's 18 so many. And I'm sure there's a lot that I don't even -- 19 they don't even make it to me, just somebody asking one of 20 the servers or, you know, anybody they can flag down, you 21 know what I mean. One of the -- I don't know.</b> 22 <b>Q</b> Right. And so by the "Contact Us," is that through a 23 website? 24 <b>A Yes.</b> 25 <b>Q</b> And is there -- does Facebook have a way to reach a Contact</p> <p style="text-align: center;">Page 146</p>	<p>1 part of it is just, you know, let's make sure that this is 2 real. And it is. We -- we booked a few. Then that ability 3 went away, and I had to call those people and say, bad news 4 about your future wedding, you don't have a venue anymore. 5 They were not happy about that at all. 6 <b>Q</b> So things have changed in terms of ability to do this. What 7 do you mean that? 8 <b>A There was a time when the township was enjoined from 9 enforcing some of this ordinance. Our interpretation was 10 that that means we can do weddings and, you know, that 11 changed, and so that injunction is not in force and so 12 that's back to the status quo of Peninsula Township's 13 interpretation that -- that weddings are not allowed.</b> 14 <b>Q</b> And by "enjoined," do you mean in the course of the 15 litigation that we're in here? 16 <b>A Yes.</b> 17 <b>Q</b> And are you referring to an order that was issued by the 18 Judge enjoining the township from preventing weddings? 19 <b>A That's my understanding. Yeah.</b> 20 <b>Q</b> And did you review that order in preparation for your 21 deposition today? 22 <b>A I -- I read an opinion of his. I don't know if it was the 23 one that enjoined that.</b> 24 <b>Q</b> He's issued a lot of opinions. You read an opinion that 25 addressed weddings, to your recollection?</p> <p style="text-align: center;">Page 148</p>
<p>1 Us by e-mail kind of connection? 2 <b>A Thank you for bringing that up. We also get Facebook and 3 social media requests.</b> 4 <b>Q</b> Okay. And you said they come in all the -- you did -- I 5 don't remember how you characterized it. What's the 6 frequency of requests? 7 <b>A We get a lot. I -- I don't know. I would estimate it as 8 probably every day, every couple days, something like that. 9 It's really frequent.</b> 10 <b>Q</b> If I said that a substantial portion of Villa Mari's 8,000 11 -- 7,000 documents were wedding inquiries, would that be 12 inconsistent with your recollection? 13 <b>A It wouldn't surprise me at all.</b> 14 <b>Q</b> What do you mean by tracking wedding inquiries? 15 <b>A We -- we keep -- we log them. Obviously, we -- we keep the 16 inquiries, that's -- that's why you were able to say what 17 you just said about the percentage of things we -- we sent 18 over that were wedding inquiries, but we also need to make 19 sure that people are serious. So -- so, in addition, we -- 20 things have changed over time given the landscape of our 21 attempts to be able to do this. There was a time when -- 22 when the restrictions that prevented -- the restrictions 23 that Peninsula Township believed prevented us from doing 24 weddings were not in force during which time we told people 25 that, hey, good news, we can do weddings. Again, because</b></p> <p style="text-align: center;">Page 147</p>	<p>1 <b>A The ordinance is so vague that when we get into the weeds of 2 -- of the specific parts of -- I mean, the ordinance really 3 is very unclear in the way that it defines what you can and 4 can't do. And so, you know, what -- I don't know if there 5 is a document out there that says, hey, you can do weddings. 6 It would just be the interpretation, and my interpretation 7 was that we can do weddings --</b> 8 <b>Q</b> Okay. 9 <b>A -- for a time.</b> 10 <b>Q</b> And your interpretation of the -- of an order from Judge 11 Maloney in this case? 12 <b>A Yeah.</b> 13 <b>Q</b> Okay. And then you said that the injunction -- I think you 14 said the injunction was -- was not in force, like it was 15 reversed. It was undone? 16 <b>MR. INFANTE: I think he said it went away.</b> 17 <b>BY MS. ANDREWS:</b> 18 <b>Q</b> It went away. 19 <b>A Yeah.</b> 20 <b>Q</b> Sorry. Thank you. 21 <b>A Yeah.</b> 22 <b>Q</b> It went away. And what's your understanding of what made it 23 -- what -- why it went away? 24 <b>A To me, it seemed like a procedural thing. And I'm not a 25 lawyer, I don't know. All I really know is that for awhile</b></p> <p style="text-align: center;">Page 149</p>

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1 I felt I could rely on that, and then the situation changed  
2 where I couldn't rely on that anymore. I -- I don't know  
3 the intricacies.  
4 Q And does PTP's intervention, is that your understanding that  
5 that aligns with the procedural thing that happened that  
6 made the order -- the injunction went away?  
7 MR. INFANTE: Objection, it calls for a legal  
8 conclusion.  
9 BY MS. ANDREWS:  
10 Q I'm just trying to understand the basis for your  
11 understanding here.  
12 A Yeah. I -- again, I don't understand the nuances of a legal  
13 proceedings, but --  
14 Q I'm -- I'm not asking you for the nuances, I'm just trying  
15 to understand the events.  
16 A It seems like that to me, yeah, that I -- I think so.  
17 Q Okay. And so in that period it seems Mari -- Villa Mari was  
18 able to book a few weddings but then had to cancel them?  
19 A We had to cancel several. One we were able to host on lands  
20 not subject to this SUP at no charge -- (phonetic) -- we still  
21 sold them the wine, but at no charge for the land, because,  
22 again, that was so -- it was so near in the future that I  
23 thought it was wrong to just say you're out on the street,  
24 you don't have anywhere you can get married. So we -- we  
25 just made a different piece of property available to them.

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1 Again, not subject to this SUP, at no cost. My  
2 understanding is that any resident of Peninsula Township can  
3 do that.  
4 Q And it was property that Villa Mari owned or had an interest  
5 in?  
6 A Controlled. Yeah.  
7 Q And do you remember the time frame? Was it last summer?  
8 A I don't remember the time frame. It was -- I don't remember  
9 the time frame, but I -- I would -- I would estimate that it  
10 was either last summer or the summer before.  
11 Q The years kind of run together, don't they?  
12 A They sure do.  
13 Q And do you remember about how many people that would've  
14 inconvenienced if the -- if Mari had just flat out cancelled  
15 that event?  
16 A Do you mean how many people attended?  
17 Q Yeah. Other -- obviously the bride and groom, but.  
18 A Yeah. I -- I don't know. It's --  
19 MR. INFANTE: You hope they showed up.  
20 THE WITNESS: Yeah.  
21 MR. INFANTE: Sorry. I couldn't help it.  
22 BY MS. ANDREWS:  
23 Q Including the bride and groom, including, but not limited  
24 to.  
25 A I don't -- I don't have a -- I don't know. It's -- it's

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1 probably right in that number though because it wouldn't  
2 have been more people than we felt we had the capacity and  
3 chairs and infrastructure and staff and everything to host.  
4 Q Right. And by "should the Court allow the wineries to host  
5 weddings" in response to admit number 2, do you mean in this  
6 case should the court issue something that would permit the  
7 wineries to host weddings? We're talking about this  
8 litigation. The --  
9 A To my knowledge, not a lawyer, to my knowledge what the  
10 township relies on that prevents us from doing weddings is  
11 the language that says guest activities uses do not include  
12 weddings.  
13 MR. INFANTE: That was not her question, but.  
14 THE WITNESS: I know.  
15 MR. INFANTE: Okay.  
16 THE WITNESS: But -- so -- but she's asking what  
17 could the Court do to allow us to have us to have -- to have  
18 weddings. The ordinance is so vague that, in my mind,  
19 throwing out the guest activity uses is the same as  
20 permitting us to have weddings.  
21 BY MS. ANDREWS:  
22 Q And by "to have weddings," you mean, host weddings at the  
23 Villa Mari?  
24 A Yes.  
25 Q And we're -- and we're talking specifically about for

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1 charges -- for a fee?  
2 A We're talking about -- we're talking about for a fee as part  
3 of -- as part of business.  
4 Q Yeah. A business endeavor?  
5 A Yeah.  
6 Q As opposed to a -- my backyard, my sister's?  
7 A As opposed to something like that. My sis- (phonetic) -- my  
8 sister's weddings was at the winery.  
9 Q Who's your sister?  
10 A Her name's Madeline Lagina.  
11 Q So -- and that's -- I can have it in my backyard for my  
12 sister, you could have it your much nicer backyard?  
13 A That's my understanding.  
14 Q The difference being the charge?  
15 MR. INFANTE: Objection, it calls for a legal  
16 conclusion.  
17 THE WITNESS: I -- I guess. Yeah.  
18 BY MS. ANDREWS:  
19 Q So -- so speaking of your sister, let's look at Request to  
20 Admit number 3.  
21 A Okay.  
22 Q "Admit that since approximately January 2020 you've hosted  
23 weddings and/or wedding receptions." And the answer is  
24 "Mari admits that on one occasion it hosted a wedding for a  
25 friend." I think there's supposed to be "of" there --

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1 "friend of Mari's" --  
2 A Yes.  
3 Q -- "owner, but there was no charge for that wedding. And on  
4 another occasion the daughter of Mari's owner had her  
5 wedding at the winery." Would you agree with me that the  
6 daughter of Mari's owner is your sister?  
7 A Yes.  
8 Q Okay. And that's Madeline Lagina?  
9 A Finally, an easy one.  
10 Q I think they've all be easy.  
11 A I know, I know --  
12 Q I mean --  
13 A -- it.  
14 MR. INFANTE: You know what, that depends on the  
15 famine, though.  
16 THE WITNESS: It's an attempt at humor.  
17 MS. ANDREWS: That's true. No -- no comment.  
18 BY MS. ANDREWS:  
19 Q So your daugh- (phonetic) -- your sister -- I'm sorry -- had  
20 her wedding at the winery?  
21 A Yes.  
22 Q And then the wedding of a friend of Mari's owner. Who was  
23 that?  
24 A You know, this is a better question for my dad because there  
25 are two daughters in that family. I think it was Callie

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1 idea.  
2 BY MS. ANDREWS:  
3 Q So these two events, tell me when -- to your recollection,  
4 when was Callie Kostrzewa's wedding?  
5 A Callie -- I think it was 2021. And I -- did you want me to  
6 do my sister's too?  
7 Q Yes.  
8 A That was 2022.  
9 Q Okay. And summer? Fall? Time frame?  
10 A Summer.  
11 Q For both?  
12 A Yeah. Maddie's might have been just after, you know, in  
13 September sometime.  
14 Q Late summer?  
15 A Yeah.  
16 Q And who did Callie marry, to your recollection?  
17 A Oh, I don't know.  
18 Q Okay. You weren't there?  
19 A No, I wasn't there.  
20 Q Oh, you weren't there. I had just assumed you were there.  
21 How about Maddie? Do --  
22 A Erik, E-r-i-k.  
23 Q Okay.  
24 A Winnega, W-i-n-n-e-g-a.  
25 Q How -- were you at your sister's wedding?

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1 Kostrzewa. And good luck with this, K-o-s-t-r-z-e-w-a.  
2 Q Say -- I'm sorry -- say that again.  
3 A K-o-s-t-r-z-e-w-a.  
4 Q Callie?  
5 MR. INFANTE: I never would've got there.  
6 BY MS. ANDREWS:  
7 Q And who could the other -- if it wasn't Callie, who might it  
8 have been? A friend -- the friend of Mari's owner.  
9 A Can I ask my dad what her name is?  
10 Q I'd go off the record to refresh to if it's more efficient.  
11 MR. INFANTE: Let's -- we can.  
12 THE WITNESS: So, off the record?  
13 (At 12:33 p.m., off the record)  
14 (At 12:33 p.m., back on the record)  
15 BY MS. ANDREWS:  
16 Q Kostrzewa?  
17 A Kostrzewa.  
18 Q There's like a silent --  
19 A Yeah.  
20 Q -- V or a silent Z that's a V.  
21 A Yeah.  
22 MR. INFANTE: There's several silent vowels in  
23 that name.  
24 THE WITNESS: I don't think I can -- I don't think  
25 I can do this one under oath. I don't know. I have no

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1 A Yes.  
2 Q Yeah. Indoors or outdoors? Each.  
3 A Outdoors.  
4 Q For both?  
5 A No. I think Callie's was inside.  
6 Q Okay. Where inside to your --  
7 A In the caves.  
8 Q -- knowledge? In the -- in the caves?  
9 A Yeah.  
10 Q And Callie's was outside? On the --  
11 A Maddie's was outside.  
12 Q Maddie's was outside. On the patio?  
13 A Yeah.  
14 Q The number of guests? Range; best of your recollection.  
15 A A hundred and -- I think she said she ended up with about  
16 160.  
17 Q "She," being Maddie?  
18 A Yeah.  
19 Q How about Callie?  
20 A I don't know.  
21 Q Okay. Caterers? Was food pro- (phonetic) -- was there a  
22 reception?  
23 A There was a reception at Maddie's. I can't remember about  
24 Callie's. Maddie's was catered.  
25 Q Music?

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40 (Pages 154 to 157)

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1 A There was music.  
2 Q A band or DJ?  
3 A DJ.  
4 Q The same question for Callie to the extent you recall.  
5 A There was music. I don't know what kind it was.  
6 Q Okay. What time did everybody clear out, to the best of  
7 your -- and obviously not the family, but, like, the guests?  
8 No recollection?  
9 A I don't know. I -- I left before everybody else did at my  
10 sister's. And then at Callie's, I don't know.  
11 Q Okay. Did you notify the township ahead of time for those  
12 two weddings to -- did Villa Mari, to your knowledge?  
13 A I believe we did everything we had to do. In the case of my  
14 sister's, I know we had to go -- my dad -- this is a better  
15 question for my dad really. But I know he had to go  
16 specifically in front of the town board for permission for  
17 that one.  
18 Q And he received the permission?  
19 A Yes. I -- I -- yeah. Go ahead.  
20 Q No, that -- that's my question. All right. So let's look  
21 at some e-mails.  
22 A Okay.  
23 MS. ANDREWS: What number are we on? 49.  
24 (At 12:36 p.m., Deposition Exhibit 49 marked)  
25 BY MS. ANDREWS:

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1 Q PTP Exhibit 49 is -- two, three -- nine pages of documents.  
2 They're WOMP labeled there.  
3 A Uh-huh (affirmative).  
4 Q They're not necess- (phonetic) -- I think they are in time  
5 order, not Bates number order. So -- but they are a series  
6 of WOMP numbers starting with WOMP 0002258.  
7 A Uh-huh (affirmative).  
8 Q Do these look like the types of e-mail wedding inquiries  
9 that Mari receives?  
10 A Yes.  
11 Q And who is Jenna Veiga?  
12 A Jenna Veiga was our former events person.  
13 Q Is Jenna no longer with Mari Vineyards?  
14 A Correct.  
15 Q She was there for a while. Is that a fair summary?  
16 A Yes.  
17 Q She received a lot of e-mails.  
18 A A lot.  
19 Q Her -- her signature block is familiar to me having --  
20 A I can't imagine why.  
21 Q -- reviewed those e-mails.  
22 A I can't imagine why, because I know sarcasm is not clear,  
23 but.  
24 Q So, starting on the front of the page, this is a response  
25 from -- how did -- how did you or how did Villa Mari collect

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1 Ms. Veiga's e-mails for the discovery response to your  
2 recollect- (phonetic) -- I mean, I don't need to know, like,  
3 did somebody go in and capture them? Did she forward them?  
4 How did you --  
5 A I -- I think, in this case, it depends on when it happened.  
6 Because I think in this case she was still with us --  
7 Q Okay.  
8 A -- and was able to collect them.  
9 Q Okay.  
10 A But we still have access.  
11 Q When did she stop working for Villa Mari?  
12 A I think that was -- well, sometime in 2021, I think.  
13 Q Okay. Post-COVID -- COVID era?  
14 A Yeah. Post -- post-COVID.  
15 Q Okay. And Andy is now her -- the recipient of -- who --  
16 A Well, yeah, they handle it kind of as a team. Nicole --  
17 Q Okay.  
18 A -- nominally would be her official.  
19 Q Okay. All right. So Ms. Veiga received an inquiry, it  
20 appears, in January of 2018 --  
21 A Uh-huh (affirmative).  
22 Q -- and she responds that due to township regulations she  
23 cannot host weddings. Do you see that?  
24 A Yes.  
25 Q But she offers other opportunities: private tastings,

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1 bridal shower, et cetera. Is that consistent with your  
2 understanding of how she was generally responding to e-  
3 mails?  
4 A Yep.  
5 Q Did people -- did requesters take Mari up on the photography  
6 packages opportunity?  
7 A Sometimes.  
8 Q And tell me about photography packages.  
9 A The policy was if you bring a crew in to have like a  
10 photography session that kind of interrupts other guests, we  
11 had to have a policy on that. If you're just there visiting  
12 and you want to take some photos, that's totally different.  
13 Q And -- so what was the policy?  
14 A We would basically charge them a nominal fee and make them  
15 sign, you know, an agreement that --  
16 Q And then they would have access to wander around the  
17 property or were there specific places that they could have  
18 their wedding pictures taken?  
19 A You could view it as basically license to -- to represent  
20 the winery in images.  
21 Q Okay. And were the caves available for these pictures?  
22 A The caves were available.  
23 Q They were?  
24 A Yep. We've done some wedding photography -- like -- not  
25 wedding photography, but engagement shoots in the Oculus

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<p>1 (At 1:18 p.m., Deposition Exhibit 54 marked)</p> <p>2 BY MS. ANDREWS:</p> <p>3 Q August 2021. The space rental at Mari, the same as -- the</p> <p>4 same responses, an event happened?</p> <p>5 <b>A This is -- this is likely to be the exact same thing. It</b></p> <p>6 <b>may be as part of their weekend, they're doing something. I</b></p> <p>7 <b>don't care. I don't care what the motivation is. They did</b></p> <p>8 <b>a private wine tasting with a charcuterie board.</b></p> <p>9 MS. ANDREWS: PTP 55.</p> <p>10 (At 1:19 p.m., Deposition Exhibit 55 marked)</p> <p>11 BY MS. ANDREWS:</p> <p>12 Q All right. Would you agree that on August 21st, 2021, at</p> <p>13 least according to the website, there was a ceremony</p> <p>14 advertised as taking place at Mari Vineyards at 5 p.m.?</p> <p>15 MR. INFANTE: I'm sorry. What website?</p> <p>16 MS. ANDREWS: I'm sorry. It's</p> <p>17 zola.com/wedding/michael --</p> <p>18 UNIDENTIFIED SPEAKER: No names.</p> <p>19 MS. ANDREWS: -- skiwinemixer/event.</p> <p>20 MR. INFANTE: Okay. And was this document</p> <p>21 produced in discovery?</p> <p>22 MS. ANDREWS: No. This was off the Internet.</p> <p>23 MR. INFANTE: Who produced it off the Internet?</p> <p>24 MS. ANDREWS: I did.</p> <p>25 MR. INFANTE: Then I would object to foundation</p> <p style="text-align: center;">Page 190</p>	<p>1 MS. ANDREWS: Uh-huh (affirmative).</p> <p>2 BY MS. ANDREWS:</p> <p>3 Q As I understand -- stood our conversation earlier when we</p> <p>4 were talking about the response to the request for</p> <p>5 admissions that there was a -- on one occasion Mari hosted a</p> <p>6 wedding for a friend of Mari's owner that was Callie.</p> <p>7 <b>A Yes.</b></p> <p>8 Q Is that Callie? And I'd like to look at -- and you</p> <p>9 indicated that there was no charge for that wedding. So I</p> <p>10 just want to understand --</p> <p>11 <b>A Yeah.</b></p> <p>12 MS. ANDREWS: What number are we on?</p> <p>13 REPORTER: 56.</p> <p>14 MS. ANDREWS: 56.</p> <p>15 (At 1:22 p.m., Deposition Exhibit 56 marked)</p> <p>16 BY MS. ANDREWS:</p> <p>17 Q PTP 56 appears to be an invoice -- remind me of the</p> <p>18 pronunciation of the last --</p> <p>19 <b>A Kostrzewa.</b></p> <p>20 Q Kostrzewa. Thank you. Do you know if there's a</p> <p>21 relationship between Alan Kostrzewa and Callie Kostrzewa?</p> <p>22 <b>A Yeah. That's his daughter.</b></p> <p>23 Q It's his daughter. <b>So it's my understanding that the</b></p> <p>24 <b>ceremony was at no charge according to the invoice?</b></p> <p>25 <b>A The ceremony was at no charge, yes.</b></p> <p style="text-align: center;">Page 192</p>
<p>1 and to form.</p> <p>2 Go right ahead.</p> <p>3 THE WITNESS: I have no knowledge of a ceremony</p> <p>4 being performed at the winery as part of this event.</p> <p>5 BY MS. ANDREWS:</p> <p>6 Q Your understanding is that there was an event on August 21</p> <p>7 with space rental at -- at Mari with people with the same</p> <p>8 name as -- apparently the same name as --</p> <p>9 <b>A They --</b></p> <p>10 Q -- Exhibit 55?</p> <p>11 <b>A It says on their website if that's what you're relying on</b></p> <p>12 <b>wine tasting to follow.</b></p> <p>13 Q Okay.</p> <p>14 <b>A So I -- but, again, my instructions to Jenna were -- I was</b></p> <p>15 <b>not at this -- we can't do weddings at the winery.</b></p> <p>16 Q And I want to -- the last one.</p> <p>17 MS. ANDREWS: Sorry. My documents have gotten --</p> <p>18 What's our time?</p> <p>19 REPORTER: Three hours and 50 minutes.</p> <p>20 MS. ANDREWS: It's always me, Joe.</p> <p>21 MR. INFANTE: I know.</p> <p>22 MS. ANDREWS: It's always me pushing it. I just</p> <p>23 need to find a copy of -- can you hand me a copy of -- oh,</p> <p>24 never mind.</p> <p>25 MS. HILLIER: Got it?</p> <p style="text-align: center;">Page 191</p>	<p>1 Q The space -- the space rental was as reflected?</p> <p>2 <b>A The space rental was as reflected. Yeah.</b></p> <p>3 Q So there was a -- a charge for the use of the Mari space for</p> <p>4 that event?</p> <p>5 <b>A For the -- for the wedding component. For the ceremony,</b></p> <p>6 <b>yes. Sorry. For the wedding component there was no charge.</b></p> <p>7 <b>And then for the tasting, the space rental, there was a</b></p> <p>8 <b>charge. Yes.</b></p> <p>9 Q For the reception?</p> <p>10 <b>A Whatever you -- whatever it was. I don't know if that was</b></p> <p>11 <b>the reception or if that was just a wine tasting. I don't</b></p> <p>12 <b>know.</b></p> <p>13 Q Okay.</p> <p>14 MR. INFANTE: Just this is confidential, the same</p> <p>15 agreement.</p> <p>16 MS. ANDREWS: The same agreement. Confidential,</p> <p>17 if it's filed, we'll redact --</p> <p>18 MR. INFANTE: Although we've --</p> <p>19 MS. ANDREWS: We'll talk about --</p> <p>20 MR. INFANTE: -- consistently said the person's</p> <p>21 name.</p> <p>22 THE WITNESS: And, again --</p> <p>23 MS. ANDREWS: Well, we've already talked about --</p> <p>24 MR. INFANTE: I know.</p> <p>25 THE WITNESS: So just --</p> <p style="text-align: center;">Page 193</p>

Preliminary Farm Processing Facility Land Use Permit Peninsula Township


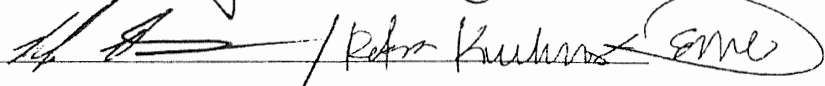
## Comments:

**Preliminary Farm Processing Permit**

1. No processing or sales of product shall take place until final farm processing permit is issued.
2. Said final permit will not be issued until such time as the Zoning Administrator verifies that all of the requirements of the Zoning Ordinance have been met and all required permits have been submitted.
3. All exterior lighting must comply with Peninsula Township lighting standards.
4. All signage must comply with Peninsula Township signage standards.
5. All parking must comply with Peninsula Township parking standards.
6. The cupola shall be constructed for storage purposes only.

Check #5208, Villa Mari LLC, \$75.00

Construction of new Farm-Processing Facility at 8175 Center Road.

Date Approved: 02/24/2014 10/22/2016	Expires: 02/24/2015 10/22/2016
Zoning Administrator:	 Elise Crafts
Owner/Agent Signature:	 Peter Kuhn

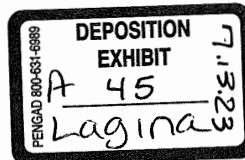




EXHIBIT 54

PTP Motion for Summary Judgment

October 6, 2023

Page 2 of 2

Preliminary Farm Processing Facility Land Use Permit Peninsula Township

Parcel IDs: A) 28-11-019-011-00 B) 28-11-019-007-10 C) 28-11-227-020-00  
 Permit # 5221 Zoned: A-1  
 Owner: Croft LLC  
 Address: 121 E Front Street, Suite 200, Traverse City, MI 49685

Parcel A Section: 19 Town: 28N Range: 10W  
 Address: 8175 Center Road  
 Use 1: Farm-Processing Facility

Parcel B Section: 19 Town: 28N Range: 10W  
 Address: 8383 Eastbeach Trail  
 Use 1: Support acreage

Parcel C Section: 27 Town: 30N Range: 10W  
 Address: Center Road  
 Use 1: Support acreage

Proof of Ownership: Y Site: Y HD Permit: 36221 Survey: Y  
 Driveway: Y DNR: Y Soil Erosion: 22684 Stormwater: Y  
 Conforming: Y

Parcel	Parcel A	Parcel B	Parcel C	Boiler Room	Required
Width:	668	424	517	n/a	330
Depth:					***
Square feet:	26.61 ac.	10.3 ac.	19 ac.		40 ac.

Setbacks

	Parcel A	Parcel B	Parcel C		Required
Front:	210	n/a	n/a	823	35
OHWL:	n/a			n/a	60
Rear:	370+			390	50
Side 1:	240			343	50
Side 2:	120			300	50

Structure

	Parcel A	Parcel B	Parcel C		Required
Height:	30	n/a	n/a	13	35
Stories:	2.5			1	2.5
Existing Area:	0			n/a	***
Proposed Area:				n/a	

Floor Area: 5864  
 Retail Space: 235  
 Total Area: 7505

6000 sf or 0.5% of parcel size, lesser  
 500 sf or 25% of floor area, greater  
 Section 6.7.2(19)(6)

Percent of lot coverage: 0.65% Max: N/A



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

\*\*\*\*\*

In the matter of the request of	)	
VILLA MARI LLC	)	
8175 Center	)	Request ID No. 803941
Traverse City, MI 49686	)	
Peninsula Twp. Grand Traverse County	)	

At the October 27, 2015 meeting of the Michigan Liquor Control Commission in  
Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman  
Dennis Olshove, Commissioner

**LICENSE APPROVAL ORDER**

Villa Mari LLC ("applicant") at the above-noted location has requested the Commission to review its application for a new Small Wine Maker license under the provisions of MCL 436.1537(1)(o); new warehouse location under MCL 436.1525(q), with authorization to sell alcoholic liquor for consumption on the premises between 7 A.M. and Noon on Sundays; and authorization for the outdoor sale, service and consumption of alcoholic liquor (7 areas) as follows: Area #1: measuring up to 33'x11' patio area located on Level 1 of the licensed premises; Area #2: measuring up to 49'x28' patio area located on Level 1 of the licensed premises; Area #3: measuring up to 10'x200' patio area located

Request ID No. 803941

Page 2

on Level 1 of the licensed premises; Area #4: measuring up to 50'x50' x 40'x60' courtyard area located on Level 3 of the licensed premises; Area #5: measuring up to 15'x6' balcony area located on Level 4 of the licensed premises; Area #6: measuring up to 20'x31' balcony area located on Level 4 of the licensed premises; and Area #7: measuring up to 1321'x98'x746'x772'x1554' and 272'x675', consisting of the entire winery premises, all areas will be well-defined and clearly marked.

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with 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.

The requirements for these licenses are the filing of a complete application, payment of license fees under MCL 436.1525(d), proof that the Federal Basic Permit issued by the Alcohol, Tobacco, Tax & Trade Bureau (TTB) has been obtained as required under administrative rule R 436.1708(1), receipt of a Surety Bond as required under MCL 436.1801(a), and review and consideration by the Commission.

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

Request ID No. 803941

Page 3

THEREFORE, IT IS ORDERED that:

- A. The Small Wine Maker license for Villa Mari LLC is hereby APPROVED, subject to:

~~1.~~ A final inspection by MLCC Enforcement Division to determine that the establishment has been constructed as proposed, that all fixtures and equipment have been installed, to determine the total cost and method of financing, and that the licensed premises meets all MLCC requirements.

~~2.~~ Receipt by the Commission of the Federal Basic Permit issued by the Alcohol, Tobacco, Tax and Trade Bureau (TTB) under administrative rule R 436.1708(1).

3. Receipt by the Commission of a "Report of Stockholders/ Members/ Partners", form LCC-3010, completed by Villa Mari LLC.

4. Receipt by the Commission of a "Report of Stockholders/Members/ Partners", form LCC-3010, completed by Croft, L.L.C.

~~5.~~ The licensee shall provide and maintain proof of financial responsibility, under MCL 436.1803.

6. The licensee shall provide and maintain a surety bond, under MCL 436.1801(4).

7. The licensee shall pay all license fees by April 30<sup>th</sup> each year.



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Page 4

8. The licensee is allowed to produce not more than 50,000 gallons of wine in one calendar year; may provide samples to consumers at the licensed premises of the wine they manufacture; and also sell that wine for consumption off the licensed premises as defined under MCL 436.1113 (9) and MCL 436.1537.
  9. The licensee shall comply with the tax collection and reporting system under the provisions of MCL 436.1301 and MCL 436.1409.
  10. The licensee shall label all wine products in accordance with the federal wine regulations published in 27 C.F.R. prior to the sale in Michigan under administrative rule R 436.1719.
  11. The licensee shall receive a registration number of approval for all wine products from the Commission prior to the sale in Michigan under administrative rule R 436.1719.
  12. The licensee shall file a schedule of the net cash prices to retail licensees for all sales of wine before January 1, April 1, July 1, and October 1 of each year under administrative rule R 436.1726 (1).
- B. The Warehouse location for Villa Mari, LLC is hereby APPROVED, subject to the following:
- X A final inspection by MLCC Enforcement Division to determine that the wine cave storage buildings have been constructed as proposed, and that all fixtures and equipment have been installed.

Request ID No. 803941

Page 5

2. The licensee shall pay all license fees by April 30<sup>th</sup> each year.

C. The Sunday Sales Permit (A.M.) for the authorization for the sale of alcoholic liquor for consumption on the premises between 7:00 A.M. and 12:00 Noon on Sundays is APPROVED:

1. A reference to the time of day includes daylight savings time, when observed.

2. This permit is subject to revocation by operation of law or otherwise if the Commission receives notice from a county, city, village, or township that it prohibits the sale of spirits, mixed spirit drink, or beer and wine during the time authorized by this permit.

D. The Outdoor Service Area (7 areas) for Villa Mari LLC is hereby APPROVED, subject to:

~~X~~ **A final inspection by MLCC Enforcement to determine that the Outdoor Service Areas are as proposed, located directly adjacent to the licensed premises, well-defined and clearly marked and measuring up to the above-noted dimensions.**

2. 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) and (2).

3. The licensee shall prohibit the removal of alcoholic beverages from this proposed outdoor service area to any adjacent unlicensed area(s).



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4. The licensee is prohibited from allowing the sale, service, possession or consumption of alcoholic beverages in any portion of the approved outdoor service area designated for the playing of sporting activities or for sporting events, including any break or intermission.
  5. The licensee shall not allow individuals to sit on or near the barrier for the balcony Outdoor Service areas.
  6. The licensee shall not allow individuals to stand on any part of the barrier for the balcony Outdoor Service areas.
- E. The licensee shall provide documentary proof to the Commission to demonstrate that, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served have successfully completed a server training program approved by the Commission as required under MCL 436.1501(1), within 180 days from the issuance of the license, as provided in administrative rule R 436.1060.
1. The licensee shall maintain active certification of completion for server training on the licensed premises at all times as provided in administrative rule R 436.1060.
  2. Failure to provide this documentary proof to the Commission within 180 days of the issuance of the license shall result in the licensee being charged with failure to comply with this order, under administrative rule R

Request ID No. 803941

Page 7

436.1029, which may result in fines, suspension and/or revocation of the license.

- F. Under 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 any of these requirements.
- G. Failure to comply with all laws and rules may result in the revocation of the approval of this order.
- H. The licensee must obtain all other required state and local licenses, permits, and approvals before opening the business for operation.

MICHIGAN LIQUOR CONTROL COMMISSION



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Andrew J. Deloney, Chairman



---

Dennis Olshove, Commissioner

tw

Date mailed: **NOV 03 2015**

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 7/10/2019 12:41:53 PM  
**To:** Carly Hurwitz [carlymh27@gmail.com]  
**CC:** Nicholas Caputo [nicholasacaputoii@gmail.com]  
**Subject:** Re: Potential Wedding/Rehearsal Dinner  
**Attachments:** Mari Vineyards 2019 Peak Season Event Pricing.pdf

Hi Nick & Carly,

Apologies, I have been out of the office.

At this time we are unable to host weddings due to township restrictions. We could possibly host a rehearsal, but it would have to be a private wine dinner rather than named a wedding rehearsal. I'm venue rental attaching a pricing sheet to this email. My only concern is that a guest count of over 200 would be a tight squeeze, and the only space that would be able to accommodate that number would be the tasting room. If you're in town, you're welcome to stop by and check it out.

We also offer photography on our premises: <https://www.marivineyards.com/Winery/Weddings> If any of these options sound like something you would like to explore further, I will gladly assist you with that.

Let me know your thoughts!

Best,

On Mon, Jul 8, 2019 at 10:33 PM Carly Hurwitz <[carlymh27@gmail.com](mailto:carlymh27@gmail.com)> wrote:

Hi Jenna -

Any updates here, we are very excited to learn more about Mari!

Thanks,

Nick and Carly

On Fri, Jul 5, 2019 at 3:54 PM Nicholas Caputo <[nicholasacaputoii@gmail.com](mailto:nicholasacaputoii@gmail.com)> wrote:

Hi Jenna,

We just stopped in at Mari and are curious what possibilities and rates are for a wedding and/or rehearsal dinner. We'll have between 200-250 guests, and are in love with the view. We heard there are a couple spaces. A rehearsal would only be about 75-100. Any information you could provide would be great! We're considering July-September 2020.

Thank you!

Nick & Carly  
908-752-1232

Sent from my iPhone

--

Best,  
Carly

Carly Hurwitz  
m: 847.722.0081

--

Jenna Veiga  
Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
Office: (231) 938-6116 x 106  
Cell: (231) 944-5337  
[marivineyards.com](http://marivineyards.com)



\*Please note that my office hours are from 9am-5pm, Tuesday-Saturday. I am not always in my office but respond to emails as quickly as I can during those hours. The best way to reach me is always by email. If you need immediate assistance, please call 231.938.6116 to speak with a member of the Tasting Room management team.



Mari Vineyards 2019 Guest Activities Notification

4/10/2019

This is advance notification for the following activities required under the Old Mission Peninsula Township Ordinance.

Event Title: GE Lunch & Learn Event & GE Food, Wine, & Design

Date(s) & Time(s):

5/8/2019

Lunch & Learn: 12-2pm

Food, Wine, & Design: 5-8pm

Classification: Food & Wine Seminar; Section 8.7.3 (10) (u) 2 (a)

For any additional questions, please email Marketing & Events Manager Jenna Veiga at [Jenna@Marivineyards.com](mailto:Jenna@Marivineyards.com)

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 5/3/2019 1:45:47 PM  
**To:** Alex Lagina [alex@marivineyards.com]; Claire Herman [zoning@peninsulatownship.com]  
**Subject:** Event Notice  
**Attachments:** OMP Township Event Notification - MOGA.pdf

Good afternoon,

I am submitting a notification of event for May 16th. I apologize for the tardiness on this submission; we had originally thought that the group was a 501 (c)3, requiring no notice under our SUP, but while the group is non-profit, it is actually listed as a 501 (c)6.

Again, apologies for this mistake.

Kindly,

--

Jenna Veiga  
Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
Office: (231) 938-6116 x 106  
Cell: (231) 944-5337  
[marivineyards.com](http://marivineyards.com)



\*Please note that my office hours are from 9am-5pm, Tuesday-Saturday. I am not always in my office but respond to emails as quickly as I can during those hours. If you need immediate assistance, please call 231.938.6116 to speak with a member of the Tasting Room management team.





Mari Vineyards 2019 Guest Activities Notification

5/16/2019

This is advance notification for the following activities required under the Old Mission Peninsula Township Ordinance.

Event Title: Michigan Oil & Gas Association Wine Dinner & Reception

Date(s) & Time(s): 5/16/219

6pm-9pm

Classification:

Meeting of agricultural related group

Meeting of 501-(C) (3) nonprofit group

Food & Wine Seminar; Section 8.7.3 (10) (u) 2 (a)

Free & Public; Non-Guest Activity Usage as outlined in Mari Vineyards SUP section 8.7.3 (10) (u) 1. (d)

For any additional questions, please email Marketing & Events Manager Jenna Veiga at [Jenna@Marivineyards.com](mailto:Jenna@Marivineyards.com)

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 5/29/2019 4:14:01 PM  
**To:** Claire Herman [zoning@peninsulatownship.com]; Alex Lagina [alex@marivineyards.com]  
**Subject:** Event notice submission  
**Attachments:** OMP Township Event Notification - Sunrise Yoga.pdf; OMP Township Even Notification - Yoga in the Vines 5.28.2019.pdf

Good afternoon,  
I'm attaching 2 event submissions for July & August events. Please let me know if you have any questions!

Best,

--

Jenna Veiga  
Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
Office: (231) 938-6116 x 106  
Cell: (231) 944-5337  
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Mari Vineyards 2019 Guest Activities Notification

5/28/2019

This is advance notification for the following activities required under the Old Mission Peninsula Township Ordinance.

Event Title: Sunrise Yoga

Date(s) & Time(s):

7:30AM-9AM; 7/5, 7/12, 7/19, 7/29, 8/2, 8/9, 8/16, 8/23, 8/30

Classification:

Meeting of agricultural related group

Meeting of 501-(C) (3) nonprofit group

Food & Wine Seminar; Section 8.7.3 (10) (u) 2 (a)

Free & Public; Non-Guest Activity Usage as outlined in Mari Vineyards SUP section 8.7.3 (10) (u) 1. (d)

Our belief is that this is a non-guest use activity, as the activity includes vineyard tour & wine tasting following yoga practice (and the primary reason for visiting is the wine and the vineyard - otherwise our guests would go to a yoga studio). However, if determined to be a Guest Activity use by Peninsula Township officials, we believe it would fall under the category of "Food/wine educational demonstrations" as per 8.7.3 (10) (u) 2. (c) ii due to the



Mari Vineyards 2019 Guest Activities Notification

promotion of peninsula agriculture and local wine. In that case, please accept this notice in fulfillment of the one month notice requirement for such Guest Activity Uses.

For any additional questions, please email Marketing & Events Manager Jenna Veiga at [Jenna@Marivineyards.com](mailto:Jenna@Marivineyards.com)



Mari Vineyards 2019 Guest Activities Notification

5/28/2019

This is advance notification for the following activities required under the Old Mission Peninsula Township Ordinance.

Event Title: Yoga in the Vines

Date(s) & Time(s):

9:30am-12pm; 8/4, 8/11, 8/18, 8/25

Classification:

Meeting of agricultural related group

Meeting of 501-(C) (3) nonprofit group

Food & Wine Seminar; Section 8.7.3 (10) (u) 2 (a)

Free & Public; Non-Guest Activity Usage as outlined in Mari Vineyards SUP section 8.7.3 (10) (u) 1. (d)

Our belief is that this is a non-guest use activity, as the activity includes vineyard tour & wine tasting following yoga practice (and the primary reason for visiting is the wine and the vineyard - otherwise our guests would go to a yoga studio). However, if determined to be a Guest Activity use by Peninsula Township officials, we believe it would fall under the category of "Food/wine educational demonstrations" as per 8.7.3 (10) (u) 2. (c) ii due to the



Mari Vineyards 2019 Guest Activities Notification

promotion of peninsula agriculture and local wine. In that case, please accept this notice in fulfillment of the one month notice requirement for such Guest Activity Uses.

For any additional questions, please email Marketing & Events Manager Jenna Veiga at [Jenna@Marivineyards.com](mailto:Jenna@Marivineyards.com)



Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 6/27/2019 12:47:09 PM  
**To:** Claire Herman [zoning@peninsulatownship.com]  
**CC:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Event notice submission  
**Attachments:** OMP Township Event Notification - Telegration Dinner.pdf

Good afternoon,

I am attaching an event submission for the end of July. Please let me know if you have any questions!

Best,

--

Jenna Veiga  
Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
Office: (231) 938-6116 x 106  
Cell: (231) 944-5337  
[marivineyards.com](http://marivineyards.com)



\*Please note that my office hours are from 9am-5pm, Tuesday-Saturday. I am not always in my office but respond to emails as quickly as I can during those hours. The best way to reach me is always by email. If you need immediate assistance, please call 231.938.6116 to speak with a member of the Tasting Room management team.



Mari Vineyards 2019 Guest Activities Notification

6/27/2019

This is advance notification for the following activities required under the Old Mission Peninsula Township Ordinance.

Event Title: Private Wine & Food Pairing Dinner

Date(s) & Time(s):

7/31/2019, 6:30pm

Classification:

Meeting of agricultural related group

Meeting of 501-(C) (3) nonprofit group

Food & Wine Seminar; Section 8.7.3 (10) (u) 2 (a)

Free & Public; Non-Guest Activity Usage as outlined in Mari Vineyards SUP section 8.7.3 (10) (u) 1. (d)

For any additional questions, please email Marketing & Events Manager Jenna Veiga at [Jenna@Marivineyards.com](mailto:Jenna@Marivineyards.com)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal  
Corporation,

Honorable Paul L. Maloney  
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

---

**PLAINTIFF VILLA MARI, LLC'S ANSWERS TO PTP'S FIRST SET OF REQUESTS  
TO ADMIT**

Plaintiff, Villa Mari, LLC, ("Mari") by and through its attorneys, Miller, Canfield, Paddock  
and Stone, PLC in answering PTP's First Set of Requests to Admit states as follows:

**REQUESTS FOR ADMISSION**

**REQUEST TO ADMIT #1:** Admit you have not appealed Peninsula Township's March 15, 2016  
decision approving Special Use Permit #126.

**ANSWER:** Denied.

**REQUEST TO ADMIT #2:** Admit that, since approximately January 2020, you have responded  
to inquiries from potential customers by representing that Mari can host weddings and/or wedding  
receptions for up to 80-120 guests.

**ANSWER:** Mari admits that it has begun tracking wedding inquiries for future use should the  
Court allow the Wineries to host weddings.

**REQUEST TO ADMIT #3:** Admit that, since approximately January 2020, you have hosted  
weddings and/or wedding receptions.

**ANSWER:** Mari admits that on one occasion it hosted a wedding for a friend Mari's owner but there was no charge for that wedding and on another occasion the daughter of Mari's owner had her wedding at the winery.

**REQUEST TO ADMIT #4:** Admit that no part of Section 6.7.2(19) of the Peninsula Township Zoning Ordinance has been applied to you.

**ANSWER:** Admitted.

**REQUEST TO ADMIT #5:** Admit that no part of Section 8.7.3(12) of the Peninsula Township Zoning Ordinance has been applied to you.

**ANSWER:** Admitted.

**REQUEST TO ADMIT #6:** Admit you have never maintained regular tasting room hours as late as 9:30 p.m.

**ANSWER:** Mari admits that because of the winery ordinances it has been precluded from operating at all times allowed by its state license.

**REQUEST TO ADMIT #7:** Admit that your allegation that you have been "forced to ask [] customers to leave" at 9:30 p.m. (ECF 29, PageID.1107) is untrue.

**ANSWER:** Mari admits that because of the winery ordinances and the limitations it places on staffing, it has been unable to fully utilize its state licenses and has asked guest to leave.

**REQUEST TO ADMIT #8:** Admit you have not appealed any Peninsula Township decision or action regarding your land use permit(s).

**ANSWER:** Denied.

**REQUEST TO ADMIT #9:** Admit you have not appealed any Peninsula Township decision or action regarding your requests for approval of activities or events.

**ANSWER:** Denied.

**REQUEST TO ADMIT #10:** Admit you have not appealed any Peninsula Township decision to adopt or amend the Winery Ordinances.

**ANSWER:** Denied.

**REQUEST TO ADMIT #11:** Admit you did not apply for Special Use Permit #126.

**ANSWER:** Denied.

**REQUEST TO ADMIT #12:** Admit you do not hold Special Use Permit #126.

**ANSWER:** Denied.

Respectfully submitted,

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

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 1/18/2018 3:43:15 PM  
**To:** lneumann77@gmail.com  
**Subject:** Re: Contact Us 01/12/2018 11:22:57 AM

Hi Laura,

Unfortunately due to township regulations we cannot host weddings at this time. We would love to still be a part of your special day in some way if possible! If you had any other events in regards to your special day you would like to have, perhaps a private tasting, bridal shower, etc., we would love to be considered. Additionally, we have photography packages that are available if you'd like to come take your wedding photos on site: <https://www.marivineyards.com/Winery/Weddings>

Please let me know if we can accommodate you in any other way.

Best of luck!

On Thu, Jan 18, 2018 at 10:05 AM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

On Friday, January 12, 2018 at 2:23:14 PM UTC-5, [notifications@winedirect.com](mailto:notifications@winedirect.com) wrote:

Contact Us

**\*First Name**

Laura

**\*Last Name**

Schlieder

**Phone**

[7732039123](tel:7732039123)

**\*Email**

[lneumann77@gmail.com](mailto:lneumann77@gmail.com)

**Comments/Questions**

Do you host events? Interested in seeing pricing for a very small, adult only wedding (18-20pp) 10/6, 11/3, 11/10, 11/17 or 11/18.

--

Jenna Veiga

Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
(231) 938-6116 x 106  
[marivineyards.com](http://marivineyards.com)





## Message

**From:** Amy Crockett [19michelle65@gmail.com]  
**Sent:** 7/25/2018 11:13:22 PM  
**To:** jenna@marivineyards.com  
**Subject:** Re: Contact Us 01/15/2018 7:11:55 AM

Hello Jenna,

I know it has been a while since we last communicated. I hope you are enjoying your summer. It's my first summer in Michigan. I love it!

My fiance and I have a beautiful wedding planned for Sept 1 in Hartland, MI. I would like to give my fiance an amazing wedding gift hence the reason for my email. Is Marty Lagina available to attend our wedding or at least make a short stop in during the reception? My fiance/husband would be thrilled to meet Marty. He too is from Italy (100% Sicilian), a Michigander, and has a love for wine.

Let me know if we can arrange this meeting.

Thanks.

Amy Crockett (D'Aprile)

On Thu, Jan 18, 2018 at 3:40 PM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Amy,

Unfortunately due to township regulations we cannot host weddings at this time. We would love to still be a part of your special day in some way if possible! If you had any other events in regards to your special day you would like to have, perhaps a private tasting, bridal shower, etc., we would love to be considered. Additionally, we have photography packages that are available if you'd like to come take your wedding photos on site: <https://www.marivineyards.com/Winery/Weddings>

Please let me know if we can accommodate you in any other way.

Best of luck!

On Thu, Jan 18, 2018 at 10:04 AM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

On Monday, January 15, 2018 at 10:12:01 AM UTC-5, [notifications@winedirect.com](mailto:notifications@winedirect.com) wrote:

Contact Us

**\*First Name**

Amy

**\*Last Name**

Crockett

**Phone**

[2102134506](tel:2102134506)

**\*Email**

[19michelle65@gmail.com](mailto:19michelle65@gmail.com)

## Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 12/23/2020 9:41:13 AM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: Contact Us 10/18/2017 6:51:40 PM

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

**From:** Jenna Veiga <jenna@marivineyards.com>  
**Date:** Fri, Oct 20, 2017 at 12:43 PM  
**Subject:** Re: Contact Us 10/18/2017 6:51:40 PM  
**To:** <ellenfbbc@gmail.com>

Hi Ellen!

Thank you so much for your kind words about our space! We are glad you've enjoyed your visits! At this time, I am unsure as to when we will be able to host events. We must have our guest house built to host events and we aren't sure when we're breaking ground on it.

I apologize for not being able to accommodate you for your wedding! If you'd like to still come visit us, we can always arrange to have professional photography done on site so that you still have Mari Vineyards in your wedding memories! <https://www.marivineyards.com/Winery/Weddings>

The best of luck to you & your fiance!

On Thu, Oct 19, 2017 at 3:59 PM, Jenna Veiga <jenna@marivineyards.com> wrote:

On Wednesday, October 18, 2017 at 9:51:44 PM UTC-4, [notifications@vin65.com](mailto:notifications@vin65.com) wrote:

Contact Us

**\*First Name**

Ellen

**\*Last Name**

Day

**Phone**

[7349723238](tel:7349723238)

**\*Email**

[ellenfbbc@gmail.com](mailto:ellenfbbc@gmail.com)

**Comments/Questions**

Hello Mari Vineyards! My name is Ellen, I am contacting you about what you offer for wedding services. I have read through all you offer on your website, and have a question for you. I notice that it currently says you are unable to host weddings at this time. My future wedding will be held in early spring of 2019. I am wondering if you have any idea if you would be able to host weddings at this time? I am flexible on dates, time, budget, and all the above. The truth is I have never been to a place more beautiful than this magical place you have built. This would be my dream destination. I visit you every summer and fall and am absolutely blown away every time. Thank you for any information you can offer me at this time. I appreciate your time. -Ellen <3

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 12/23/2020 9:41:28 AM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: Contact Us 11/25/2017 8:30:59 PM

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

From: **Jenna Veiga** <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)>  
Date: Tue, Nov 28, 2017 at 1:32 PM  
Subject: Re: Contact Us 11/25/2017 8:30:59 PM  
To: <[julia.rennick@gmail.com](mailto:julia.rennick@gmail.com)>

Hi Julia!

Thank you for your interest in Mari Vineyards! Unfortunately at this time we are not permitted to host weddings as per our township regulations. If you have any other events you'd like to consider us for (cocktail party, bridal shower, etc.) I'd be more than happy to assist you with that.

Apologies for any inconveniences. Best of luck to you with your search!

Kindly,

On Tue, Nov 28, 2017 at 1:04 PM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

On Saturday, November 25, 2017 at 11:31:16 PM UTC-5, [notifications@winedirect.com](mailto:notifications@winedirect.com) wrote:

Contact Us

**\*First Name**

Julia

**\*Last Name**

Rennick

**Phone**

**\*Email**

[julia.rennick@gmail.com](mailto:julia.rennick@gmail.com)

**Comments/Questions**

Hello, My name is Julia, my fiancé and I are looking for somewhere beautiful to get married this summer/early fall and your lovely vineyard popped in my mind. We stopped by your winery for a tasting visit two summers ago. Do you host weddings at your vineyard? Thank you, Julia Rennick

--

Jenna Veiga

## Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 12/23/2020 9:42:33 AM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: Contact Us 08/02/2019 5:34:26 AM

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

**From:** Jenna Veiga <jenna@marivineyards.com>  
**Date:** Fri, Aug 2, 2019 at 11:05 AM  
**Subject:** Re: Contact Us 08/02/2019 5:34:26 AM  
**To:** Web Inquiries <web-inquiries@marivineyards.com>  
**Cc:** <wine@marivineyards.com>, <elmassad06@gmail.com>, <notifications@winedirect.com>

Hi Erica,

At this time we are unable to host weddings due to township restrictions. We would love to be a part of your special event in another way if possible! We are able to host wedding showers, parties, group tastings, etc. We also offer photography on our premises: <https://www.marivineyards.com/Winery/Weddings> If any of these options sound like something you would like to explore further, I will gladly assist you with that.

Best of luck in your search.

On Friday, August 2, 2019 at 8:34:38 AM UTC-4, [notifications@winedirect.com](mailto:notifications@winedirect.com) wrote:

Contact Us

**\*First Name**

erica

**\*Last Name**

smith

**Phone**

8104791960

**\*Email**

[elmassad06@gmail.com](mailto:elmassad06@gmail.com)

**Comments/Questions**

Do you host weddings at this location?

--

You received this message because you are subscribed to a topic in the Google Groups "Web Inquiries" group.

To unsubscribe from this topic, visit [https://groups.google.com/a/marivineyards.com/d/topic/web-inquiries/R9k9HS\\_3q4/unsubscribe](https://groups.google.com/a/marivineyards.com/d/topic/web-inquiries/R9k9HS_3q4/unsubscribe).

To unsubscribe from this group and all its topics, send an email to [web-inquiries+unsubscribe@marivineyards.com](mailto:web-inquiries+unsubscribe@marivineyards.com).

To view this discussion on the web visit <https://groups.google.com/a/marivineyards.com/d/msgid/web-inquiries/41bcb642-f886-4170-9f45-1702f77139ef%40marivineyards.com>.

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 2/8/2019 12:30:20 PM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: TC Destination Wedding Guide  
**Attachments:** Outlook-nnr4x1dk.png; 2019 Destination Wedding Guide Advertising Contract.pdf; Digital Destination Wedding Guide Media Kit.pdf

I think it would be a good idea to jump in on this. Good opportunity for us to really put the photography aspect of our winery out there, as well as opportunity to say 'we DON'T do weddings, but look at all this other cool stuff we can do!'

I'd vote for the half page, non bleed.

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

**From:** **Katy McCain** <[katy@traversecity.com](mailto:katy@traversecity.com)>  
**Date:** Wed, Feb 6, 2019 at 12:01 PM  
**Subject:** TC Destination Wedding Guide  
**To:** [Jenna@marivineyards.com](mailto:jenna@marivineyards.com) <[Jenna@marivineyards.com](mailto:jenna@marivineyards.com)>

Hey girl, hey!

Happy Wednesday!

Traverse City Tourism is excited to announce that we will be producing a Destination Wedding Guide this spring. It will cater to brides from outside the area looking to get married in beautiful northern Michigan.

We will be printing 20,000 copies that will be distributed at our Visitor Center, Michigan Welcome Centers throughout the state, trade shows and mailed by request. We will also have a full version of it on our website, [traversecity.com](http://traversecity.com).

I have attached our media kit incase you are interested in learning more about the advertising opportunities. Thought it could be good for the wedding photo packages, as well as to advertise tours to wedding groups as a pre/post wedding activity. Please let me know if you have any questions. We are offering a 10% discount to Wine Coast members. 😊

Thanks!

Katy



Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 12/23/2020 9:41:00 AM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: Wedding Inquiry

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

From: **Jenna Veiga** <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)>  
Date: Sun, Sep 18, 2016 at 5:51 PM  
Subject: Re: Wedding Inquiry  
To: Monica Bromber <[bromber.m@gmail.com](mailto:bromber.m@gmail.com)>

Hi Monica,

I will keep your email in my inbox as a wedding inquiry. I am having a meeting within the next month to see where we're at in terms of starting construction on the inn, so at that point, I can give you an update on how soon we would be able to start booking weddings.

Thanks for visiting the winery, I hope we see you again soon!

Cheers,

On Tuesday, September 6, 2016, Monica Bromber <[bromber.m@gmail.com](mailto:bromber.m@gmail.com)> wrote:

Hi Jenna,

Per our discussion I am very interested in having my wedding at your winery for summer 2018. Please, keep me updated on the possibility?

Kindest Regards,  
Monica

Monica Bromber  
Director of Dining Services  
Noble Network of Charter Schools  
(m) 847-302-0188  
(w) 312-505-2113

--

Jenna Veiga

Assistant Tasting Room Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
(231) 938-6116 x 106  
[marivineyards.com](http://marivineyards.com)



Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 1/18/2018 3:40:34 PM  
**To:** 19michelle65@gmail.com  
**Subject:** Re: Contact Us 01/15/2018 7:11:55 AM

Hi Amy,

Unfortunately due to township regulations we cannot host weddings at this time. We would love to still be a part of your special day in some way if possible! If you had any other events in regards to your special day you would like to have, perhaps a private tasting, bridal shower, etc., we would love to be considered. Additionally, we have photography packages that are available if you'd like to come take your wedding photos on site: <https://www.marivineyards.com/Winery/Weddings>

Please let me know if we can accommodate you in any other way.

Best of luck!

On Thu, Jan 18, 2018 at 10:04 AM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

On Monday, January 15, 2018 at 10:12:01 AM UTC-5, [notifications@winedirect.com](mailto:notifications@winedirect.com) wrote:

Contact Us

**\*First Name**

Amy

**\*Last Name**

Crockett

**Phone**

[2102134506](tel:2102134506)

**\*Email**

[19michelle65@gmail.com](mailto:19michelle65@gmail.com)

**Comments/Questions**

I know you are currently not having weddings at your vineyard HOWEVER my fiance is a HUGE fan of the Mystery of Oak Island show and a Michigander. We visited your vineyard in May 2017 (my first vineyard trip, my first Michigan trip). We fell in love almost immediately. Our amazing love story comes after the tragic and unexpected deaths of our long time spouses. A small intimate wedding (about 50 guests) in mid-May (or June) 2018 at your vineyard would make our wedding day an unforgettable experience with priceless memories. I am inquiring if it is possible to have our wedding at your winery. We would provide our own caterer. Thank you for the consideration. I look forward to your response.

--

Jenna Veiga

Marketing & Events Manager

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 7/17/2016 3:58:58 PM  
**To:** Amanda [amandajeanross@gmail.com]  
**Subject:** Re: Event Space

I can do a dinner if it is a wine paring dinner. I.e., the entire menu is designed to pair with our wines, and a staff member is guiding the paired dinner.

On Sunday, July 17, 2016, Amanda <[amandajeanross@gmail.com](mailto:amandajeanross@gmail.com)> wrote:  
What about rehearsal dinners?

Thank you

On Jul 17, 2016, at 3:28 PM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Amanda,  
Unfortunately we cannot do weddings. Sorry about that. Let us know if we can help you in the future.

On Sunday, July 17, 2016, Amanda Ross <[amandajeanross@gmail.com](mailto:amandajeanross@gmail.com)> wrote:

Jenna,  
We are looking for a venue for a wedding. We have not finalized the guest list yet but are looking at around 200 for our max. I would appreciate any information you have available.

thank you,

Amanda

On Tue, Jul 12, 2016 at 10:38 AM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Amanda,  
We're very excited that you are interested in our space. Could you tell me a little more about your event?

Thanks!

On Tuesday, July 12, 2016, Amanda <[amandajeanross@gmail.com](mailto:amandajeanross@gmail.com)> wrote:

Thank you! I look forward to hearing from her!

Amanda

On Jul 12, 2016, at 10:09 AM, Andrew Jacobson <[andy@marivineyards.com](mailto:andy@marivineyards.com)> wrote:

Amanda,

Jenna has been out point person to talk to I. Regards to using space for events. I have attached her in this email.

--

Andy Jacobson  
Tasting Room Manager

Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 7/10/2019 12:41:53 PM  
**To:** Carly Hurwitz [carlymh27@gmail.com]  
**CC:** Nicholas Caputo [nicholasacaputoii@gmail.com]  
**Subject:** Re: Potential Wedding/Rehearsal Dinner  
**Attachments:** Mari Vineyards 2019 Peak Season Event Pricing.pdf

Hi Nick & Carly,

Apologies, I have been out of the office.

At this time we are unable to host weddings due to township restrictions. We could possibly host a rehearsal, but it would have to be a private wine dinner rather than named a wedding rehearsal. I'm venue rental attaching a pricing sheet to this email. My only concern is that a guest count of over 200 would be a tight squeeze, and the only space that would be able to accommodate that number would be the tasting room. If you're in town, you're welcome to stop by and check it out.

We also offer photography on our premises: <https://www.marivineyards.com/Winery/Weddings> If any of these options sound like something you would like to explore further, I will gladly assist you with that.

Let me know your thoughts!

Best,

On Mon, Jul 8, 2019 at 10:33 PM Carly Hurwitz <[carlymh27@gmail.com](mailto:carlymh27@gmail.com)> wrote:

Hi Jenna -

Any updates here, we are very excited to learn more about Mari!

Thanks,

Nick and Carly

On Fri, Jul 5, 2019 at 3:54 PM Nicholas Caputo <[nicholasacaputoii@gmail.com](mailto:nicholasacaputoii@gmail.com)> wrote:

Hi Jenna,

We just stopped in at Mari and are curious what possibilities and rates are for a wedding and/or rehearsal dinner. We'll have between 200-250 guests, and are in love with the view. We heard there are a couple spaces. A rehearsal would only be about 75-100. Any information you could provide would be great! We're considering July-September 2020.

Thank you!

Nick & Carly  
908-752-1232

Sent from my iPhone

--

Best,  
Carly

Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 12/23/2020 9:42:09 AM  
**To:** Alex Lagina [alex@marivineyards.com]  
**Subject:** Fwd: Potential Wedding/Rehearsal Dinner  
**Attachments:** Mari Vineyards 2019 Peak Season Event Pricing.pdf

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

**From:** Jenna Veiga <jenna@marivineyards.com>  
**Date:** Wed, Jul 10, 2019 at 12:41 PM  
**Subject:** Re: Potential Wedding/Rehearsal Dinner  
**To:** Carly Hurwitz <carlymh27@gmail.com>  
**Cc:** Nicholas Caputo <nicholasacaputoii@gmail.com>

Hi Nick & Carly,

Apologies, I have been out of the office.

At this time we are unable to host weddings due to township restrictions. We could possibly host a rehearsal, but it would have to be a private wine dinner rather than named a wedding rehearsal. I'm venue rental attaching a pricing sheet to this email. My only concern is that a guest count of over 200 would be a tight squeeze, and the only space that would be able to accommodate that number would be the tasting room. If you're in town, you're welcome to stop by and check it out.

We also offer photography on our premises: <https://www.marivineyards.com/Winery/Weddings> If any of these options sound like something you would like to explore further, I will gladly assist you with that.

Let me know your thoughts!

Best,

On Mon, Jul 8, 2019 at 10:33 PM Carly Hurwitz <carlymh27@gmail.com> wrote:

Hi Jenna -

Any updates here, we are very excited to learn more about Mari!

Thanks,

Nick and Carly

On Fri, Jul 5, 2019 at 3:54 PM Nicholas Caputo <nicholasacaputoii@gmail.com> wrote:

Hi Jenna,

We just stopped in at Mari and are curious what possibilities and rates are for a wedding and/or rehearsal dinner. We'll have between 200-250 guests, and are in love with the view. We heard there are a couple spaces. A rehearsal would only be about 75-100. Any information you could provide would be great! We're considering July-September 2020.

Thank you!

Nick & Carly  
908-752-1232

Sent from my iPhone



Message

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**From:** Rosina Lindsey [l34ever@icloud.com]  
**Sent:** 9/14/2020 8:25:59 AM  
**To:** Jenna Veiga [jenna@marivineyards.com]  
**Subject:** Fwd: Rental for Wedding

Good morning Jenna

I do have several questions first is the ceremony outside second do you have pictures of that area. Also do you have pictures of the rental spaces area for reception. And lastly do you have a set menu and a price list I appreciate your time look forward to hear back from you.

Rosina Lindsey

Live Love Laugh

Begin forwarded message:

**From:** Rosina Lindsey <l34ever@icloud.com>  
**Date:** September 10, 2020 at 3:48:09 PM EDT  
**To:** rosina.lindsey@mesgroup.com  
**Subject:** Fwd: Rental for Wedding

Live Love Laugh

Begin forwarded message:

**From:** Jenna Veiga <jenna@marivineyards.com>  
**Date:** September 10, 2020 at 11:25:52 AM EDT  
**To:** Rosina Lindsey <l34ever@icloud.com>  
**Subject:** Re: Rental for Wedding

Hi Rosina,

Excellent! I can definitely assist you with that.

I'm attaching a couple things to this email: our 'ceremony only' pricing as well as our contract & rental fees. If you choose to host both your ceremony and reception with us, it would be the ceremony fee + rental fee of the space of our choice. The rental fees for the tasting room reflect your options for early closure, otherwise our tasting room closes at 7pm.

Take a look at these and let me know if this seems like something you'd be interested in. As you probably already know, please note that all private reservations & events are subject to change due to COVID-19 guidelines as outlined by the state. If you do book with us, and your event must be cancelled for any reason related to the government's restrictions due to COVID-19, you will be refunded for all deposits & payments.

Let me know what questions you have.

On Wed, Sep 9, 2020 at 11:23 AM Rosina Lindsey <l34ever@icloud.com> wrote:

Good morning

Yes, I would like to speak with you about wedding rentals

Rosina Lindsey

Live Love Laugh

On Sep 9, 2020, at 9:13 AM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Good morning,

Thank you for reaching out! I am back to work after my time away from the office. Due to the volume of emails I received, I am circulating a preliminary response to all emails.

If you were able to get assistance with your inquiry from one of my coworkers, please disregard this email. If not, or if you have further questions, please respond to this email and I will assist you.

Thank you!

On Wed, Sep 2, 2020 at 9:13 AM Rosina Lindsey <[l34ever@icloud.com](mailto:l34ever@icloud.com)> wrote:

Jenna

I spoke briefly with a very nice gentleman in your absence. He provided your email for communication.

I am looking for a nice venue for a July 10, 2021 Wedding. Approximately 50 people total.

I am hoping I can secure Mari Vineyards.

Please contact me 734-582-3033

Rosina Lindsey

Live Love Laugh

--



## Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 1/8/2021 10:50:53 AM  
**To:** Kristen Michels [kristenmichels@gmail.com]  
**Subject:** Re: 2021 Event at Mari  
**Attachments:** Mari Vineyards 2020 Peak Season Event Pricing.pdf; Mari Vineyards Ceremony Pricing.pdf; Mari Vineyards Event Contract.pdf

Hi Kristen,

Absolutely! Please note that the space you mentioned (Founders) would be a bit too small for that guest count. I would recommend the tasting room or cave space.

I'm attaching a couple things to this email: our 'ceremony only' pricing as well as our contract & rental fees. If you choose to host both your ceremony and reception with us, it would be the ceremony fee + rental fee of the space of our choice. The rental fees for the tasting room reflect your options for early closure, otherwise our tasting room closes at 7pm.

Take a look at these and let me know if this seems like something you'd be interested in. As you probably already know, please note that all private reservations & events are subject to change due to COVID-19 guidelines as outlined by the state. If you do book with us, and your event must be cancelled for any reason related to the government's restrictions due to COVID-19, you will be refunded for all deposits & payments.

On Fri, Jan 8, 2021 at 10:32 AM Kristen Michels <kristenmichels@gmail.com> wrote:

Hi Jenna,

We have selected a venue but haven't put our deposit down yet. I'm really interested in Mari, can you send me pricing information today? Our deposit for the other venue is due soon.

On Fri, Jan 8, 2021 at 10:02 AM Kristen Michels <kristenmichels@gmail.com> wrote:

Hi Jenna,

We are planning on 50 guests.

On Fri, Jan 8, 2021 at 10:02 AM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Kristen,

It is! Can I ask though; how many guests are you planning to have?

On Tue, Dec 29, 2020 at 4:05 PM Kristen Michels <kristenmichels@gmail.com> wrote:

Hi Jenna,

Thank you for getting back to me! I am planning a wedding. Last summer I visited Mari and was seated on the second floor deck. Is the room and deck on the second floor available to rent for a wedding?

On Tue, Dec 29, 2020 at 3:47 PM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Kristen,

I am currently working from home and unable to connect via phone, but I'd be happy to help you out via email! What kind of event are you planning?

On Mon, Dec 28, 2020 at 4:07 PM Kristen Michels <kristenmichels@gmail.com> wrote:

Hi Jenna,

I visited Muri vineyards last summer and really loved the beautiful location. I would like to discuss hosting an event at your location in Sept 2021, please give me a call at 313-550-4028.

--



## Mari Vineyards 2020 Peak Season Event Pricing

### Cave Lounge

3-hour rental.

1-15 people \$950

16-40 people \$1900

41-75 people \$2700

Capacity for this space is 75 people standing. Seated capacity is event dependent.

### Conference Room

Rented by the hour.

8am - 4pm \$250/hour

5pm - 9pm \$500/hour

Capacity for this space is 50 people standing. Seated capacity is 36.

### Tasting Room

Tasting room may be rented in either a 3-hour or 5-hour block.

3-hour rental (7-10 pm) \$2500

4-hour rental (6-10 pm) \$5000

Capacity for this space is seasonally dependent, but year-round at least 120 standing. Please inquire for details.

### Founders Room

Rented by the hour.

\$500/hour.

Rental includes the outdoor terrace, weather providing.

A non-refundable deposit is required for all rentals. Deposit will be applied to your rental fee. This pricing schedule is for rental space only. Additional fees apply for tours, tastings, wine and food sales as well as an 20% gratuity.



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## Mari Vineyards Ceremony Pricing

This pricing includes use of folding chairs, chair set up, break down, entrance to the ceremony space for one hour before ceremony time, and one hour for the ceremony.

15 or fewer guests: \$800

30 or fewer guests: \$1200

45 or fewer guests: \$1500

60 or fewer guests: \$1750

80 or fewer guests: \$1900

Please note that fees do not include wedding coordinator, wine, food, service fee, or private usage of any space that is not the designated ceremony space.

For questions, please contact Marketing and Events Manager Jenna Veiga //

[Jenna@marivineyards.com](mailto:Jenna@marivineyards.com) // 231.938.6116 ext 106





## EVENT POLICIES AND COMMITMENT CONTRACT

Client Name: \_\_\_\_\_  
 Signatory Name: \_\_\_\_\_  
 Event Date: \_\_\_\_\_  
 Event Rental Time: \_\_\_\_\_  
 Event Space Rental: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_

Please read this contract carefully and initial after each policy to designate that you understand and agree to said policy. Please note that it is the responsibility of the signatory to ensure all guests know and understand the rules and policies in place. Failure to comply and follow the policies set forth can result in the event being cancelled or shut down with a forfeiture of fees and deposits. If you have any questions, please contact us.

Alcohol Policies

*Wines:* Only Mari Vineyards wines may be served. The wines available during your event must be pre-selected prior to the event. Cases of wine for the event must be pre-purchased at a 10% discount to be held. If serving wine by the glass during the event via an open bar, the charges will be addressed at the end of the event and the open tab will be settled with a 10% discount on glasses sold. All wine that has been pre-purchased for your event from Mari Vineyards is non-refundable. \_\_\_\_\_

You are permitted to bring non-alcoholic beverages in to Mari Vineyards to be served by Mari Vineyards staff. All non-alcoholic beverages brought to be served during your event must arrive with a sealed top (bottle or can). \_\_\_\_\_

*Serving Alcohol:* Permitted alcohol can be opened and served only by Mari Vineyards service staff. Our servers abide by State Laws, including but not limited to the following: no open bottles or containers will be given to guests for their consumption, no guests will serve themselves, no alcohol except for that purchased



from Mari Vineyards will be consumed on property by guests, no open containers may leave Mari Vineyards property, and all alcohol will only be served to adults 21 and over who present a valid ID, with no exceptions. Please note that our staff reserves the right to request valid ID from any person consuming alcohol at any point during the event. \_\_\_\_\_

*Smoking:* Our entire property is under liquor license, therefore absolutely no smoking is allowed on Mari Vineyards property at any time. In addition, no electronic cigarettes may be used on our property at any time. \_\_\_\_\_

*Warning:* Mari Vineyards reserves the right to ask any guest to leave because of (but not limited to) the following issues: any guest drinking outside alcohol, any underage guest consuming alcohol, any guest who has become unruly or is deemed overly intoxicated by our staff, any guest who is abusing Mari Vineyards property, any guest who is verbally or physically harassing Mari Vineyards staff, or any guest not following set rules or laws. If the problem is not corrected after the first warning, that guest will be asked to leave the property. Mari Vineyards reserves the right to request a guest leave without giving prior warning. \_\_\_\_\_

#### Caterers

Mari Vineyards offers on-site catering services. If you choose to use Mari Vineyards as your caterer, please review section A. If you are using an outside catering service, please skip section A and review section B.

A. If you choose to use Mari Vineyards to cater your event, please review the following:

Mari Vineyards requires a meeting with our catering and event staff to plan a menu at minimum 30 days prior to your event. \_\_\_\_\_

You will need to present our caterer with any food allergies or dietary restrictions at the time of menu planning. \_\_\_\_\_

Mari Vineyards staff of trained and experienced wine and food personnel will work with you to create the best wine and food pairing for your event based off our menu of available items. If it is found any changes need to be made, they must be made at latest 2 weeks prior to your event. \_\_\_\_\_

Mari Vineyards will cater your event in accordance to your expected number of guests. A final guest count is required no fewer than 10 business days before your event. \_\_\_\_\_





Any food catered by Mari Vineyards that is not consumed during the event may be taken home by you or your guests. Mari Vineyards will collect payment on catered food prepared for the agreed upon guest count. \_\_\_\_\_

B. If you choose to select a caterer that is not Mari Vineyards, please review the following:

We must receive a copy of the contract between you and the caterer at least 3 weeks before the event. The caterer and contract are subject to our approval of allowable on-site activity (i.e., food prep methods). \_\_\_\_\_

Once approved, your caterer must sign our catering agreement, which details the rules of this venue site. \_\_\_\_\_

Your caterer may be asked to pay a rental fee for use of our kitchen, the amount of which will be deemed by event and kitchen staff after discussion of the kitchen usage with your caterer. \_\_\_\_\_

Caterers must have a valid Michigan license for catering and carry liability insurance, which Mari Vineyards must have a copy of no less than 3 weeks prior to event date. If they do not possess these, they may not be used as caterers for a event hosted at Mari Vineyards. \_\_\_\_\_

Caterers or the client will hold the responsibility for all aspects of food service, including trash disposal. \_\_\_\_\_

Caterers or the client must provide linens, place settings, and water glasses. \_\_\_\_\_

Mari Vineyards does not allow home-made food on property. All food served at Mari Vineyards must be prepared by licensed caterers. \_\_\_\_\_

#### Liability

Any and all damages (to include but not limited to: glass breakage, indoor and outdoor property, damage to grapevines, building, and other property damages) caused by you, parties acting on your behalf (i.e. caterers) and/or guests of your event, is your responsibility. Mari Vineyards requires that a one-day liability rider naming Mari Vineyards as an additional insured be secured and provided to Mari Vineyards. Most home owner's policies can provide this rider for little or no cost. You must provide a copy of this rider prior to your event. Mari Vineyards is not responsible for any personal belongings stolen or left behind on the property.



#### Setup/Decorations

We recommend that event rental fees and time periods be selected to allow for one hour of decorating time prior to the event and at least 30 minutes of break down time prior to the event shut down time. Spaces will still be open to the public as per usual traffic and only closed to the public starting at the agreed upon start time for the event rental. Any additional time necessary for set up or break down must be pre-approved, and additional fees will apply. \_\_\_\_\_

All decorations and set ups must be pre-approved. Candles must be enclosed in a glass container to avoid possibility of fire. No fireworks, sparklers, or Chinese lanterns are allowed on the grounds. \_\_\_\_\_

No nails, screws, stakes, tape, rope, or tie downs may be affixed to any part of Mari Vineyards property. \_\_\_\_\_

All trash accumulated during the event as well as items brought in by the client or caterer must be removed from Mari Vineyards property immediately following the event by the client or caterer responsible. For any item left on Mari Vineyards property after the event that was brought by the client or caterer, Mari Vineyards will charge a flat \$150 removal fee to be processed by the credit card on file. \_\_\_\_\_

#### Tours

For an additional fee, you may include a tour (or tours) into your event. Tours will be priced out based on the number of guests in the tour as well as the extensiveness of the requested tour. Fees will reflect the number of anticipated guests. Fees incurred for the addition of staff members for your event for tours are non-refundable, even if the expected number of guests do not attend your event, or decide not to utilize the tour option provided. \_\_\_\_\_

#### Vendors

It is required that any vendors to be hired for your event that are not on Mari Vineyards' approved vendor list visit the winery prior to the date of your event. This allows vendors not familiar with Mari Vineyards the opportunity to inspect our facility and eliminate any potential problems ahead of time. \_\_\_\_\_

#### Weather

If inclement weather prohibits partial or full use of Mari Vineyards' outdoor patio included in the rental of the Tasting Room, the event must utilize only the indoor





portion of the tasting room. It is your responsibility to rent the necessary items to incorporate any alternate plan in case of inclement weather disrupting necessary outside spaces. Your alternate plan must be pre-approved with Mari Vineyards. Applicable fees will be charged to use any extra spaces as part of your alternate plan. \_\_\_\_\_

#### Planning/Site Visits

Clients are offered the services of a qualified coordinator. Appointments to view the space, discuss the event, or meet with vendors at Mari Vineyards must be booked in advance with the coordinator. Please note that the Mari Vineyards event coordinator is not your event coordinator, and will not assist with any planning items that do not directly relate to the venue or wine. \_\_\_\_\_

#### Parking

Parking is available on Mari Vineyards property. If your event overlaps with Tasting Room hours of operation, parking may be scarce. Overflow parking is available just down the driveway by the biofuel house. \_\_\_\_\_

#### Fireplace

Mari Vineyards has an indoor/outdoor fireplace located on the patio. When seasonally appropriate, Mari Vineyards staff will light the fire. Under no circumstances should guests attempt to tend to the fire. Mari Vineyards staff will tend to the fire during your event if it is in use. Mari Vineyards is not responsible for guests who may harm themselves tending to the fire. \_\_\_\_\_

#### Firearms

Mari Vineyards reserves the right to not allow firearms on property. At this time, Mari Vineyards does not allow firearms on property. Please make your guests aware of this rule. \_\_\_\_\_

#### Hours

Mari Vineyards requires that all event end no later than 10 pm. A 30-minute period reserved only for clean-up is permitted from 10pm-10:30pm. At 10:30pm, all guests must leave the premises. \_\_\_\_\_

Your event is limited to the time period which was discussed with the Mari Vineyards Event Manager. You are allotted 30 minutes after your event to clean up. If guests



are still on property after this allotted time, additional fees will be incurred and charged to the credit card on file.

Mari Vineyards staff will give a last call for drinks 15 minutes before the end time of your event. Drink service will stop completely 10 minutes before the end time of your event. Mari Vineyards staff will alert the host to the time of last call, and it is the responsibility of the host to inform their guests of last call. \_\_\_\_\_

#### Guest Limit

Maximum guest limit is placed prior to the event and limited to the capacity based on the quoted price. The limit for this event is \_\_\_\_\_

#### Children

Children and minors are welcome at Mari Vineyards, but must be under adult supervision at all times. Underage drinking will not be tolerated at Mari Vineyards and will result in the removal of the offending guests. \_\_\_\_\_

#### Staffing

The Mari Vineyards Event Manager will staff your event in accordance to the expected number of guests as well as any station set up that has been requested by you. Additional fees may incur for the necessity for additional staff members due to set up, execution, or specific requests and/or requirements of your event. Additional staffing requirements will be determined by you and the Mari Vineyards Event Manager and based on your event requests and requirements. Fees incurred for the addition of staff members for your event are non-refundable, even if the expected number of guests do not attend your event. The following parameters are utilized by Mari Vineyards for event staffing based on the event having a single wine station and taking place in one venue space:

<30 guests: 2 staff members

31-50 guests: 3 staff members

51-75 guests: 4 staff members

76-100 guests: 5 staff members

101+ guests: To be determined by Mari Vineyards Event Manager based on the nature of the event.

\_\_\_\_\_

#### Pricing





The pricing structure reflects venue fees as well as fees for the Mari Vineyards established staffing parameters. Your invoice will reflect the pricing in accordance to your chosen space and time frame for your event, as well as an 18% gratuity applied to the final bill. Gratuity may increase due to requested or required additional staff differing from the Mari Vineyards established staffing parameters. Initial estimate will reflect the aforementioned prices as well as any pre-bought wine, merchandise, food, and requested tour(s). Any changes made to your event including but not limited to the addition of tours and/or additional Mari Vineyards staff may result in additional charges after the signing of this contract. \_\_\_\_

Rental Deposit

We require a deposit of 50% of your rental fee at the time of booking to reserve the date of your event. The deposit is non-refundable, and will go towards the final rental fee. \_\_\_\_\_

Security Deposit

Mari Vineyards requires a security deposit due 2 weeks prior to the event. For the Tasting Room space and the Cave Space, the security deposit is \$1000. For the Conference Room, the security deposit is \$500. This deposit is 100% refundable depending on any damage to Mari Vineyards property that's may occur during your event. \_\_\_\_\_

Gratuity

A 20% gratuity will be applied to the final bill at time of check out. Any fee associated with tours requested and/or additional staff members required and/or requested during your event will be added to your invoice. Increased gratuity may incur if you request more staff members than is deemed necessary by Mari Vineyards Event Management. The 20% gratuity will be applied to your invoice with total increased charges for staffing requirements and/or requests. \_\_\_\_\_

Final Payment

Final payment for the rental space to is due two weeks prior to your event. Final wine balances and any necessary taxes will be invoiced to the client after the event. All payments may be made by cash, check, or credit card. Mari Vineyards will retain a credit card on file which will be received once this contract is signed. \_\_\_\_\_



Cancellations

In the event of a cancellation the rental deposit is non-refundable. In the event that you wish to change your date, Mari Vineyards will attempt to accommodate your request if the desired date is available. \_\_\_\_\_

By signing below, you are committing to hosting your event at Mari Vineyards and agree to the policies listed above. You acknowledge that you have inspected the premises themselves and accepts it as-is, and will indemnify and hold harmless Mari Vineyards from any incident arising from the use of the premises. Failure to comply with these policies may result in the cancellation of your event.

Clients Name

\_\_\_\_\_

Signatory's Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_



Message

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**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 8/18/2020 3:37:56 PM  
**To:** Rachel Deradoorian [rachel.deradoorian@gmail.com]  
**Subject:** Re: 2021 Fall Private Event

Hi Rachel,  
Thank you for the information.  
Unfortunately your guest count does exceed our current capacity limits. We are capping out at 80 guests for a ceremony, and 120 for a reception.  
If you find that you are able to fit those requirements, or would like to host another event or reservation with us, please don't hesitate to reach out!

Best,

On Tue, Aug 18, 2020 at 2:41 PM Rachel Deradoorian <[rachel.deradoorian@gmail.com](mailto:rachel.deradoorian@gmail.com)> wrote:

Hi Jenna!

We are aiming for any Saturday in October 2021 or June 2022.

We would ideally do reception and ceremony both on site, but could certainly explore doing the ceremony elsewhere.

We are expecting ~200 guests!

Rachel Deradoorian || LEED AP BD+C

On Aug 18, 2020, at 12:57 PM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Rachel,  
Thanks for reaching out! Could you tell me a little more about your wedding?  
Date:  
Guest Count:  
Reception/Ceremony/Both?:

On Sat, Aug 15, 2020 at 10:29 AM Rachel Deradoorian <[rachel.deradoorian@gmail.com](mailto:rachel.deradoorian@gmail.com)> wrote:

Hi Jenna!

My name is Rachel Deradoorian and I was referred to you to inquire about the potential for hosting a wedding at your venue in October 2021. Please let me know if that is a possibility, I absolutely adore your vineyard and it would be a privilege to get married there!

Please let me know if you have any further questions, you can email me at this address or call or text me at 248-210-5379.

Thank you!

Message

**From:** Karen Stemberger [karenkstemberger@gmail.com]  
**Sent:** 7/29/2020 10:12:00 AM  
**To:** Jenna Veiga [jenna@marivineyards.com]  
**Subject:** Re: Available Date?

Will do, thank you!

On Wed, Jul 29, 2020 at 9:30 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Karen,

I totally understand. Please let me know when you'd like to come visit us, I'd be happy to make a reservation for you on our patio to enjoy some wine!

Best,

On Tue, Jul 28, 2020 at 9:22 AM Karen Stemberger <[karenkstemberger@gmail.com](mailto:karenkstemberger@gmail.com)> wrote:

Good Morning Jenna,

Thank you very much for all of the information about Mari. Unfortunately our group is about 175 people, so we will have to look elsewhere.

We LOVE Mari and always look forward to coming there to relax with a glass of wine.

Thank you again for your time.

Best Regards,  
Karen Stemberger

On Fri, Jul 24, 2020 at 3:41 PM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Karen,

See the red for answers:

We are planning to have about 150ish guests for our daughter's wedding. Does Mari have the ability/capacity to provide an outdoor tent, with dance floor, tables, and electricity for DJ? Also, does Mari allow an outdoor bar? **Unfortunately 150 is too high a count for us. The absolute maximum we can accommodate for a reception is 120, including the couple. We do not have the availability to have a DJ outdoors; amplified sound is very tricky on the peninsula with our neighbors. We can do a small band or acoustic music. We are definitely able to do an outdoor bar. Tents are subject to consideration, but we are able to put one up at this time. Tables are able to be brought in by a rental service as well.**

If so, would you be able to send me some pricing? We already have a caterer, florist, and chairs we've rented. We are attempting to get a venue in place before wedding invites go out this Saturday. **Pricing is attached to this email, as well as our event rental contract for you to read. These would be the same items I attached to the previous email, for reference.**

**Let me know what additional questions you have!**

On Thu, Jul 23, 2020 at 12:38 PM Karen Stemberger <[karenkstemberger@gmail.com](mailto:karenkstemberger@gmail.com)> wrote:

Jenna,

I understand, no worries. If it's ok by you, I'll ask a few questions now. I apologize for the urgency, but our previous venue can no longer provide our number of guests.

We are planning to have about 150ish guests for our daughter's wedding. Does Mari have the ability/capacity to provide an outdoor tent, with dance floor, tables, and electricity for DJ? Also, does Mari allow an outdoor bar?

If so, would you be able to send me some pricing? We already have a caterer, florist, and chairs we've rented. We are attempting to get a venue in place before wedding invites go out this Saturday. I

Thank you.

Karen

On Thu, Jul 23, 2020 at 12:06 PM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Karen,

Apologies, I do not have access to a work phone. The earliest I can chat by phone is Saturday. I'd be happy to set up a time to speak at 10am this Saturday.

On Thu, Jul 23, 2020 at 12:01 PM Karen Stemberger <[karenkstemberger@gmail.com](mailto:karenkstemberger@gmail.com)> wrote:

Jenna,

Thanks for your reply. We are on a very tight schedule (I'm hosting a wedding shower this weekend) ...is it possible to chat over the phone? Just a few questions I need to ask today.

Thank you.

Karen

734-674-8765

On Thu, Jul 23, 2020 at 10:00 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Karen,

Yes, we are currently available at that time.

On Wed, Jul 22, 2020 at 1:27 PM Karen Stemberger <[karenkstemberger@gmail.com](mailto:karenkstemberger@gmail.com)> wrote:

Hello Jenna,

In my previous email, I forgot to ask about a possible date.

We are looking to host a wedding on September 26th. Is this date available?

Thanks

Karen



Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 8/18/2020 4:29:51 PM  
**To:** Louann Hamilton [louannhamilton@yahoo.com]  
**Subject:** Re: A question about small wedding on the property? PLEASE HELP! LOL  
**Attachments:** Mari Vineyards Event Contract.pdf; Mari Vineyards Ceremony Pricing.pdf; Mari Vineyards 2020 Peak Season Event Pricing.pdf

Hi Louann,

Great! I'm attaching a couple things to this email: our 'ceremony only' pricing as well as our contract & rental fees. If you choose to host both your ceremony and reception with us, it would be the ceremony fee + rental fee of the space of our choice. The rental fees for the tasting room reflect your options for early closure, otherwise our tasting room usually closes at 7pm.

At this time, our cap for ceremonies is 80 guests, and our cap for receptions is 120 guests (requiring the use of the outdoor patio).

Take a look at these and let me know if this seems like something you'd be interested in. As you probably already know, please note that all private reservations & events are subject to change due to COVID-19 guidelines as outlined by the state. If you do book with us, and your event must be cancelled for any reason related to the government's restrictions due to COVID-19, you will be refunded for all deposits & payments.

On Tue, Aug 18, 2020 at 3:47 PM Louann Hamilton <[louannhamilton@yahoo.com](mailto:louannhamilton@yahoo.com)> wrote:

This would be for 50 people or less and it would be both if possible . Thank you

Sent from my iPhone

On Aug 18, 2020, at 2:02 PM, Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Louann,

Thank you for reaching out! Could you tell me a little more about your wedding?

Date:

Guest count:

Ceremony/Reception/Both?:

On Tue, Aug 18, 2020 at 1:33 PM louann hamilton <[louannhamilton@yahoo.com](mailto:louannhamilton@yahoo.com)> wrote:

Hello,

I am writing this for my daughter, who has had to cancel several times her wedding plans, along with many many others. Trying to still have it beautiful as a outdoor setting, do you guys allow small weddings?

Thanks Lou Ann Hamilton



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## Mari Vineyards Ceremony Pricing

This pricing includes use of folding chairs, chair set up, break down, entrance to the ceremony space for one hour before ceremony time, and one hour for the ceremony.

15 or fewer guests: \$800

30 or fewer guests: \$1200

45 or fewer guests: \$1500

60 or fewer guests: \$1750

80 or fewer guests: \$1900

Please note that fees do not include wedding coordinator, wine, food, service fee, or private usage of any space that is not the designated ceremony space.

For questions, please contact Marketing and Events Manager Jenna Veiga //

[Jenna@marivineyards.com](mailto:Jenna@marivineyards.com) // 231.938.6116 ext 106



## Mari Vineyards 2020 Peak Season Event Pricing

### Cave Lounge

3-hour rental.

1-15 people \$950

16-40 people \$1900

41-75 people \$2700

Capacity for this space is 75 people standing. Seated capacity is event dependent.

### Conference Room

Rented by the hour.

8am - 4pm \$250/hour

5pm - 9pm \$500/hour

Capacity for this space is 50 people standing. Seated capacity is 36.

### Tasting Room

Tasting room may be rented in either a 3-hour or 5-hour block.

3-hour rental (7-10 pm) \$2500

4-hour rental (6-10 pm) \$5000

Capacity for this space is seasonally dependent, but year-round at least 120 standing. Please inquire for details.

### Founders Room

Rented by the hour.

\$500/hour.

Rental includes the outdoor terrace, weather providing.

A non-refundable deposit is required for all rentals. Deposit will be applied to your rental fee. This pricing schedule is for rental space only. Additional fees apply for tours, tastings, wine and food sales as well as an 20% gratuity.



Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 7/24/2020 3:41:16 PM  
**To:** Karen Stemberger [karenkstemberger@gmail.com]  
**Subject:** Re: Available Date?  
**Attachments:** Mari Vineyards Event Contract.pdf; Mari Vineyards Ceremony Pricing.pdf; Mari Vineyards 2020 Peak Season Event Pricing.pdf

Hi Karen,

See the red for answers:

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If so, would you be able to send me some pricing? We already have a caterer, florist, and chairs we've rented. We are attempting to get a venue in place before wedding invites go out this Saturday. Pricing is attached to this email, as well as our event rental contract for you to read. These would be the same items I attached to the previous email, for reference.

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Thank you.

Karen

734-674-8765

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Hello Jenna,

In my previous email, I forgot to ask about a possible date.

We are looking to host a wedding on September 26th. Is this date available?

Thanks.

Karen

Message

**From:** Amanda Xydis [amxydis@gmail.com]  
**Sent:** 1/26/2021 1:00:08 PM  
**To:** Jenna Veiga [jenna@marivineyards.com]; Bonnie Hardin [bonnie@marivineyards.com]  
**Subject:** Re: Contact Us 01/03/2021 10:05:26 PM

Hey Jenna,

Thanks for sending this information over. Mark and I really like the space at Mari, we just have a few concerns about the price. The price to rent the space seems very high compared to other vineyards we've been talking to. Like Chateau Chantal for example, is around the price estimate Bonnie listed, but includes the food, wine, decorations, and rental of the space for the whole day. I could understand the price if you're closing down the winery to the public, but we would have to wait until close is my understanding.

As far as our price point for the reception, the price given isn't over our budget, it's just the concern that it's over market value that is a bit concerning to us. If you're open to negotiating, then we would be interested in looking into hosting our wedding there.

If not, I understand. I hope you're feeling better!

Thanks,

Amanda

On Tue, Jan 26, 2021 at 12:46 PM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi all!

Musician info is as follows:

Luke Alan (Luke Krolikowski) is a classical guitarist who plays at Mari during our Music at Mari season. He also works with a cellist and additional guitarist (or banjo player.... banjo-ist? depending on what they're playing) and they are really excellent. In fact, they did the music for my wedding ceremony! Luke can be reached here: 309-531-4355

Plumville Project is a jazz duo who also graces our patio during the summer, and I think they're just spectacular. Jerry Byville is one of the members and can be reached here: [byville@gmail.com](mailto:byville@gmail.com)

Chris Smith is also a really excellent guitarist. He is a member of a band as well, and might be able to offer the full band, or partial; I'm not totally certain, but he's for sure worth chatting with: 231.620.1098

Let me know if you need any more recommendations, or have any other questions!

On Fri, Jan 22, 2021 at 4:49 PM Bonnie Hardin <bonnie@marivineyards.com> wrote:

Amanda and Mark,

Here is a google drive link with space photos:

[https://drive.google.com/drive/folders/1ULjm\\_oo5COqqecQ8YSiBVKvr0hjDeWEV?usp=sharing](https://drive.google.com/drive/folders/1ULjm_oo5COqqecQ8YSiBVKvr0hjDeWEV?usp=sharing)

Attached are some photos of the patio space in the summer and the cave area for a ceremony.

**1. Does the 10% discount off of wine ever alter?**

Yes! If you join any of our wine clubs, you'll receive your club discount off of the **event total in addition to your wine**. Club discounts range from 10%-20%. The one condition is that you must remain in our club for at



least two shipments--this is a condition for all club members. We offer several clubs, which you can learn more about here:

<https://www.marivineyards.com/wine-club>

**2. What on site catering do we have available as of now, what types of foods does that include, and price?**

As of right now, we are offering large seasonal charcuterie boards for events. These boards generally serve 15 people in a snacking capacity. They feature three meats, three cheeses, house made mustard, wine jelly, and balsamic, crackers, shortbread, and garnishes (these are usually berries, other fruit, herbs, or veggies). They cost \$60 each. It's very possible we'll have more options as we get closer, so we will update you on available items as we go. All charcuterie aspects are subject to change.

**3. Can we incorporate the inside of the caves with the ceremony?**

Yes! The cave doors may be open for one hour tops for your ceremony. Should you decide to have guests enter the ceremony space through the building and out the cave doors, we would need to include one extra staff member stationed in the caves, as they cannot be left unattended. Info on staffing costs should be included in your contract. Otherwise, we will not charge extra for use of the caves in this way curing your ceremony outside of the cave doors.

**4. How do we handle rehearsal ceremonies?**

No extra charge. Access to the ceremony site is subject to possible Friday reservations, so note that rehearsal timing will depend on existing reservations.

**6. What services does Jenna offer as a site coordinator, and is there a possibility to hire Jenna for more in depth wedding coordination?**

As a site coordinator, Jenna will handle set up and tear down of the ceremony site, all wine service, vendor coordination on site (point people in the right direction and answer questions as able to), and light decoration assistance. For any extra wedding assistance Jenna is available for \$40/hour during her normal 9am-5pm Tuesday-Saturday hours. Beyond that, she'll be chatting with our GM about the process of extra coordinating communication during our on-business hours. Definitely let her know if you're interested in this and she can get you more detail!

**7. Ballpark wine cost?**

On average, we advise budgeting \$12.50 per glass and 2.5 drinks per person. With this in mind, I would ballpark \$2,000-2,100 for wine. Note that this will change depending on the discount applied, specifically if you join a higher wine club tier. Jenna wanted to add that the bar tab is often lower than one expects, so keep that in mind as you budget this out.

**8. Pricing based on caterers around 65 people?**

Based on our experience with local caterers, we advise budgeting for at least \$30/person. Jenna wanted to add that contacting each caterer will be your best bet for getting an exact answer, so definitely reach out for more exacting info. Below is a list of several caterers we've worked with to start. We are happy to provide more options if you would like.

Catering By Kelly's - fyi they tend to book very fast, so Jenna advises contacting early.

<http://www.cateringbykellys.com/>

S2S (Sugar 2 Salt) - A local restaurant that's catered our events before, inquire about their service capabilities as they've only done buffet style for us at this time.

<https://www.sugar2salt.com/>

Robby's Taqueria - If you're feeling like doing any Mexican or Spanish food, Robby's is a great option. Ask about service capabilities in regards to non-buffet style service.

<https://robbystaqueriatc.com/mexican-spanish-cuisine/>

Stella - This will be a little pricier, but they come with high recommendations from us. Local Italian restaurant we have worked with in a variety of ways. Excellent food and service.

<https://stellate.com/>

Cooks House - Another local restaurant we love. They catered our Christmas Party two years ago and did a family style food service at the table.

<https://www.cookshouseetc.com/>

**9. Do we charge anything extra for caterers to set up in the kitchen?**

No, but we do require they come on site prior to the event to chat with Jenna and do a kitchen walk through. If they are someone we've worked with before we are happy to wave this walk through, and Jenna will coordinate with them before the day of. The only thing they must understand is that they will be working alongside our kitchen staff while we remain open.

**10. Do we offer any type of decor like string lights or candles?**

Not at this time. We'll let you know if this changes.

**11. Musicians, list of local options?**

Jenna said she would forward a list, so watch for that.

**12. Off season pricing?**

November-April is our off season, so May pricing is considered "on season".

**Total Price estimate based on a 65 guest count for ceremony, reception, and wine:**

- cave site ceremony: \$1900
- 4 hour tasting room rental: \$5000
- founder room 1 hour rental: \$500
- est. wine cost: \$2100
- 20% gratuity for total: \$1,900

**11,400 Total**

Note that the wine cost is very flexible still depending on what wines you choose, your final guest count, and if a club discount is applied.

Jenna wanted me to mention that you are welcome to give her email to your vendors as we go so that they can ask her questions directly to help alleviate you needing to bounce back and forth with questions.

I hope this helps! Feel free to ping us back with any additional questions.

On Thu, Jan 21, 2021 at 10:39 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:

No problem. With the shut downs, I forget what day it is constantly--since every day feels the same.

Thanks again!

Amanda

On Thu, Jan 21, 2021 at 10:37 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Sorry y'all, being stuck at home in my time free vortex has made me forget when I am.

On Thu, Jan 21, 2021 at 10:33 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:

Awesome! And yes, I'm coming tomorrow at 1:00-1:30ish time (depending on how long the other meeting goes with a neighboring winery).



On Thu, Jan 21, 2021 at 10:32 AM Bonnie Hardin <[bonnie@marivineyards.com](mailto:bonnie@marivineyards.com)> wrote:  
Happy to! Just to note, Amanda is coming by tomorrow on the 22nd if I have it correct.

On Thu, Jan 21, 2021 at 10:24 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:  
Nope, I don't have a printer either. And my parents are always amazed at that!

Bonnie, would you mind printing the 3 attachments for Amanda to take with her when she visits today?

On Wed, Jan 20, 2021 at 12:09 PM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:  
Hey Jenna,

Happy to hear you're getting better!

My parents would like hard copies of the literature you sent and I'm a strange human in that, I don't have a printer. LOL. Or maybe I'm in the norm...?

Thanks again!

Amanda

On Tue, Jan 19, 2021 at 5:30 PM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:  
Hi Amanda,  
No worries, I'm on the mend, just must remain in my little bubble!  
Please let me know if you have any questions that pop up before or after your appointment with Bonnie.  
As for literature for your parents; the PDFs I sent you earlier in our email chain would be the best information to forward to them. If those don't answer the questions they're asking, I can!

Best,

On Tue, Jan 19, 2021 at 11:20 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:  
Sounds good! Have a great rest of your week and I'll see you on the 22nd.

-Amanda

On Tue, Jan 19, 2021 at 11:18 AM Bonnie Hardin <[bonnie@marivineyards.com](mailto:bonnie@marivineyards.com)> wrote:  
Either way is fine! I'll find something so keep me busy if you run behind. There's always something to do!

On Tue, Jan 19, 2021 at 11:16 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:  
Hi Bonnie,

I will let you know! We can plan for 1:30 PM, to be safe. I don't want you to wait around.

Thanks!

Amanda

On Tue, Jan 19, 2021 at 11:12 AM Bonnie Hardin <[bonnie@marivineyards.com](mailto:bonnie@marivineyards.com)> wrote:  
Amanda,



Most wineries on OMP are within fifteen minutes of us, so just let me know via email that day if you think you'll be a bit late. I'll plan on being at Mari just before 1pm and I'll have things printed.

The 939-6116 number is the tasting room number. If you would like, you can feel free to call that number if email doesn't work for you. One of the tasting room managers will be able to pass along a message to me if required!

Thanks!

On Tue, Jan 19, 2021 at 11:10 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:  
Hi Bonnie,

That would be great if you can print the information out.

Let's plan for 1:00 PM on the 22nd. We are meeting with another winery at Mission Point at 11:00 AM, but I don't foresee that there will be a problem in getting to Mari by 1. Is the (231) 938-6116 your cell number?

I'm looking forward to meeting with you.

Thanks,

Amanda

On Tue, Jan 19, 2021 at 11:04 AM Bonnie Hardin <[bonnie@marivineyards.com](mailto:bonnie@marivineyards.com)> wrote:  
Amanda,

Following up on Jenna's email, I'm available anytime the afternoon of the 22nd. Just let me know when you'll be able to come by and I'll plan on being there. I'm working from home primarily so email is the best way to reach me.

Just let me know what works best for you!

On Tue, Jan 19, 2021 at 10:55 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:  
Hi Amanda,

I apologize for the delay in email; unfortunately medical issues have kept me from my work. I will not be able to be on site this week as planned, but my associate Bonnie has availability to meet with you to do a site visit! She may not be able to answer every question you have, but she will be able to give you a good idea of the space and refer any unanswered questions to me. Bonnie is cc'd on this email and can work to organize a time with you.

As far as caterers; we actually do not have an on site caterer at this time, but have worked with quite a few different caterers in this area and can help with recommendations based on what kind of cuisine and serving style you're looking for.

Please let me know what other questions you have!

On Fri, Jan 8, 2021 at 11:34 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:  
Hi Jenna,

Thanks for sending this information over. What times do you have available on the 22nd? We are meeting with another winery in the mission point area at 11:00 AM. Do you have any late afternoon times available?

We will for sure be interested in a ceremony and reception on site. We also are interested in using your caterer.

Would it be possible for you to put together a packet for when we meet on the 22nd? My finance (Mark) and I will be sharing all the information with our family after our trip, as they will be involved in picking out a venue as well.

Thanks again and I look forward to chatting with you in a couple weeks!

Best,

Amanda

On Fri, Jan 8, 2021 at 10:31 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Amanda,

Excellent to hear! I could be available on the 22nd to meet with you both.

I'm going to give you my boiler plate for events right now, plus the attachments with information you need;

I'm attaching a couple things to this email: our 'ceremony only' pricing as well as our contract & rental fees. If you choose to host both your ceremony and reception with us, it would be the ceremony fee + rental fee of the space of our choice. The rental fees for the tasting room reflect your options for early closure, otherwise our tasting room closes at 7pm.

Take a look at these and let me know if this seems like something you'd be interested in. As you probably already know, please note that all private reservations & events are subject to change due to COVID-19 guidelines as outlined by the state. If you do book with us, and your event must be cancelled for any reason related to the government's restrictions due to COVID-19, you will be refunded for all deposits & payments.

Let me know if a certain time on the 22nd works best for you!

On Thu, Jan 7, 2021 at 11:58 AM Amanda Xydis <[amxydis@gmail.com](mailto:amxydis@gmail.com)> wrote:

Hi Jenna,

Thanks for reaching out. Right now we are focused on finding a venue we love and building the guest count/date around that venues itself. Ideally, I would like Spring 2022. My fiancé and I will be in the TC area from 1/22-1/24. We have decided we do want a vineyard in the TC area. So we have a few appointments set up already this month. We'd love to meet with you as well. What is your availability from the 22nd-24th, so we can tour the space?

Looking forward to learning more!

Thanks,

Amanda Xydis

On Thu, Jan 7, 2021 at 10:31 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:

Hi Amanda,  
Thank you for reaching out! We do host weddings and would love to possibly be your venue.

Do you have a date & guest count in mind?

On Tue, Jan 5, 2021 at 10:53 AM Andrew Jacobson <[andy@marivineyards.com](mailto:andy@marivineyards.com)> wrote:  
Jenna,

Wedding Inquiry. Also: I think you have to keep your last name in this case...or do you change it after a partial lifetime of people mispronouncing it? Could go either way.

Her email is: [amxydis@gmail.com](mailto:amxydis@gmail.com)

Andy

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

From: [notifications@winedirect.com](mailto:notifications@winedirect.com) <[notifications@winedirect.com](mailto:notifications@winedirect.com)>

Date: Monday, January 4, 2021 at 1:05:45 AM UTC-5

Subject: Contact Us 01/03/2021 10:05:26 PM

To: [wine@marivineyards.com](mailto:wine@marivineyards.com) <[wine@marivineyards.com](mailto:wine@marivineyards.com)>

Contact Us

**\*First Name**

Amanda

**\*Last Name**

Xydis

**Phone**

[5172858751](tel:5172858751)

**\*Email**

[amx...@gmail.com](mailto:amx...@gmail.com)

**Comments/Questions**

Do you host weddings? If so, do you have information for 2022?

--





## Mari Vineyards 2020 Peak Season Event Pricing

### Cave Lounge

3-hour rental.

1-15 people \$950

16-40 people \$1900

41-75 people \$2700

Capacity for this space is 75 people standing. Seated capacity is event dependent.

### Conference Room

Rented by the hour.

8am - 4pm \$250/hour

5pm - 9pm \$500/hour

Capacity for this space is 50 people standing. Seated capacity is 36.

### Tasting Room

Tasting room may be rented in either a 3-hour or 5-hour block.

3-hour rental (7-10 pm) \$2500

4-hour rental (6-10 pm) \$5000

Capacity for this space is seasonally dependent, but year-round at least 120 standing. Please inquire for details.

### Founders Room

Rented by the hour.

\$500/hour.

Rental includes the outdoor terrace, weather providing.

A non-refundable deposit is required for all rentals. Deposit will be applied to your rental fee. This pricing schedule is for rental space only. Additional fees apply for tours, tastings, wine and food sales as well as an 20% gratuity.



## Mari Vineyards Ceremony Pricing

This pricing includes use of folding chairs, chair set up, break down, entrance to the ceremony space for one hour before ceremony time, and one hour for the ceremony.

15 or fewer guests: \$800

30 or fewer guests: \$1200

45 or fewer guests: \$1500

60 or fewer guests: \$1750

80 or fewer guests: \$1900

Please note that fees do not include wedding coordinator, wine, food, service fee, or private usage of any space that is not the designated ceremony space.

For questions, please contact Marketing and Events Manager Jenna Veiga //

[Jenna@marivineyards.com](mailto:Jenna@marivineyards.com) // 231.938.6116 ext 106



Message

**From:** Jenna Veiga [jenna@marivineyards.com]  
**Sent:** 4/29/2020 10:48:10 AM  
**To:** krolikowskim [krolikowskim@att.net]  
**Subject:** Re: Wedding  
**Attachments:** Mari Vineyards 2020 Peak Season Event Pricing.pdf; Mari Vineyards Ceremony Pricing.pdf; Mari Vineyards Event Contract.pdf

Hi Michelle,

Thank you for reaching out!

I'm going to attach a few things to this email: our venue rental fees, our ceremony fees, and our event contract. Please note if you plan on having your ceremony & reception with us, you'd be utilizing the venue & ceremony fee pages.

Let me know if you have any questions!

Best,

On Tue, Apr 28, 2020 at 4:21 PM krolikowskim <krolikowskim@att.net> wrote:

Hello,

I tried calling but maybe due to the Michigan shut down all your offices, like most others, are closed.

My daughter was originally planning a beautiful summer wedding with about 180 guests at local golf club in Macomb County. At this point in time we realize her wedding is in complete jeopardy. Sycamore Hill's could not be nicer in dealing with us and we may decide to move the entire reception to next year. (Sorry I am being long winded.) I firmly believe that we will probably be in A posture of Phase II of the social distancing guidelines and not be able to have the wedding of her dreams. With that being said we are looking at an alternative for a Very Small Scale wedding venue. They would still like to get married this year - on Friday July 17, 2020.

I see online that you have wedding photography sessions. Do you also allow wedding ceremonies? Or if not, can a wedding ceremony take place (literally like 15-20 minute) ceremony during a photography session. At this point, we would love to see if you have a time available anytime during that day for an hour or possibly two if needed?

Mari is our favorite with the fantastic view and my daughter said if money were not an option "she would love to get married on a vineyard". Maybe we can do this social distancing wedding and see if her dream of getting married there can come true - even if we can only have 10 people she could still have her summer wedding at a place of her dreams.

Please let me know if this is a possibility. You can email back or call me at (586) 909-0501 .

Thank you so much - stay healthy and safe,

Michelle Krolikowski

Sent from my iPad





## Mari Vineyards 2020 Peak Season Event Pricing

### Cave Lounge

3-hour rental.

1-15 people \$950

16-40 people \$1900

41-75 people \$2700

Capacity for this space is 75 people standing. Seated capacity is event dependent.

### Conference Room

Rented by the hour.

8am - 4pm \$250/hour

5pm - 9pm \$500/hour

Capacity for this space is 50 people standing. Seated capacity is 36.

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Tasting room may be rented in either a 3-hour or 5-hour block.

3-hour rental (7-10 pm) \$2500

4-hour rental (6-10 pm) \$5000

Capacity for this space is seasonally dependent, but year-round at least 120 standing. Please inquire for details.

### Founders Room

Rented by the hour.

\$500/hour.

Rental includes the outdoor terrace, weather providing.

A non-refundable deposit is required for all rentals. Deposit will be applied to your rental fee. This pricing schedule is for rental space only. Additional fees apply for tours, tastings, wine and food sales as well as an 20% gratuity.



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## Mari Vineyards Ceremony Pricing

This pricing includes use of folding chairs, chair set up, break down, entrance to the ceremony space for one hour before ceremony time, and one hour for the ceremony.

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45 or fewer guests: \$1500

60 or fewer guests: \$1750

80 or fewer guests: \$1900

Please note that fees do not include wedding coordinator, wine, food, service fee, or private usage of any space that is not the designated ceremony space.

For questions, please contact Marketing and Events Manager Jenna Veiga //

[Jenna@marivineyards.com](mailto:Jenna@marivineyards.com) // 231.938.6116 ext 106



## EVENT POLICIES AND COMMITMENT CONTRACT

Client Name: \_\_\_\_\_  
Signatory Name: \_\_\_\_\_  
Event Date: \_\_\_\_\_  
Event Rental Time: \_\_\_\_\_  
Event Space Rental: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

Please read this contract carefully and initial after each policy to designate that you understand and agree to said policy. Please note that it is the responsibility of the signatory to ensure all guests know and understand the rules and policies in place. Failure to comply and follow the policies set forth can result in the event being cancelled or shut down with a forfeiture of fees and deposits. If you have any questions, please contact us.

### Alcohol Policies

*Wines:* Only Mari Vineyards wines may be served. The wines available during your event must be pre-selected prior to the event. Cases of wine for the event must be pre-purchased at a 10% discount to be held. If serving wine by the glass during the event via an open bar, the charges will be addressed at the end of the event and the open tab will be settled with a 10% discount on glasses sold. All wine that has been pre-purchased for your event from Mari Vineyards is non-refundable. \_\_\_\_\_

You are permitted to bring non-alcoholic beverages in to Mari Vineyards to be served by Mari Vineyards staff. All non-alcoholic beverages brought to be served during your event must arrive with a sealed top (bottle or can). \_\_\_\_\_

*Serving Alcohol:* Permitted alcohol can be opened and served only by Mari Vineyards service staff. Our servers abide by State Laws, including but not limited to the following: no open bottles or containers will be given to guests for their consumption, no guests will serve themselves, no alcohol except for that purchased



from Mari Vineyards will be consumed on property by guests, no open containers may leave Mari Vineyards property, and all alcohol will only be served to adults 21 and over who present a valid ID, with no exceptions. Please note that our staff reserves the right to request valid ID from any person consuming alcohol at any point during the event. \_\_\_\_\_

*Smoking:* Our entire property is under liquor license, therefore absolutely no smoking is allowed on Mari Vineyards property at any time. In addition, no electronic cigarettes may be used on our property at any time. \_\_\_\_\_

*Warning:* Mari Vineyards reserves the right to ask any guest to leave because of (but not limited to) the following issues: any guest drinking outside alcohol, any underage guest consuming alcohol, any guest who has become unruly or is deemed overly intoxicated by our staff, any guest who is abusing Mari Vineyards property, any guest who is verbally or physically harassing Mari Vineyards staff, or any guest not following set rules or laws. If the problem is not corrected after the first warning, that guest will be asked to leave the property. Mari Vineyards reserves the right to request a guest leave without giving prior warning. \_\_\_\_\_

#### Caterers

Mari Vineyards offers on-site catering services. If you choose to use Mari Vineyards as your caterer, please review section A. If you are using an outside catering service, please skip section A and review section B.

A. If you choose to use Mari Vineyards to cater your event, please review the following:

Mari Vineyards requires a meeting with our catering and event staff to plan a menu at minimum 30 days prior to your event. \_\_\_\_\_

You will need to present our caterer with any food allergies or dietary restrictions at the time of menu planning. \_\_\_\_\_

Mari Vineyards staff of trained and experienced wine and food personnel will work with you to create the best wine and food pairing for your event based off our menu of available items. If it is found any changes need to be made, they must be made at latest 2 weeks prior to your event. \_\_\_\_\_

Mari Vineyards will cater your event in accordance to your expected number of guests. A final guest count is required no fewer than 10 business days before your event. \_\_\_\_\_





Any food catered by Mari Vineyards that is not consumed during the event may be taken home by you or your guests. Mari Vineyards will collect payment on catered food prepared for the agreed upon guest count. \_\_\_\_\_

B. If you choose to select a caterer that is not Mari Vineyards, please review the following:

We must receive a copy of the contract between you and the caterer at least 3 weeks before the event. The caterer and contract are subject to our approval of allowable on-site activity (i.e., food prep methods). \_\_\_\_\_

Once approved, your caterer must sign our catering agreement, which details the rules of this venue site. \_\_\_\_\_

Your caterer may be asked to pay a rental fee for use of our kitchen, the amount of which will be deemed by event and kitchen staff after discussion of the kitchen usage with your caterer. \_\_\_\_\_

Caterers must have a valid Michigan license for catering and carry liability insurance, which Mari Vineyards must have a copy of no less than 3 weeks prior to event date. If they do not possess these, they may not be used as caterers for a event hosted at Mari Vineyards. \_\_\_\_\_

Caterers or the client will hold the responsibility for all aspects of food service, including trash disposal. \_\_\_\_\_

Caterers or the client must provide linens, place settings, and water glasses. \_\_\_\_\_

Mari Vineyards does not allow home-made food on property. All food served at Mari Vineyards must be prepared by licensed caterers. \_\_\_\_\_

#### Liability

Any and all damages (to include but not limited to: glass breakage, indoor and outdoor property, damage to grapevines, building, and other property damages) caused by you, parties acting on your behalf (i.e. caterers) and/or guests of your event, is your responsibility. Mari Vineyards requires that a one-day liability rider naming Mari Vineyards as an additional insured be secured and provided to Mari Vineyards. Most home owner's policies can provide this rider for little or no cost. You must provide a copy of this rider prior to your event. Mari Vineyards is not responsible for any personal belongings stolen or left behind on the property.



#### Setup/Decorations

We recommend that event rental fees and time periods be selected to allow for one hour of decorating time prior to the event and at least 30 minutes of break down time prior to the event shut down time. Spaces will still be open to the public as per usual traffic and only closed to the public starting at the agreed upon start time for the event rental. Any additional time necessary for set up or break down must be pre-approved, and additional fees will apply. \_\_\_\_\_

All decorations and set ups must be pre-approved. Candles must be enclosed in a glass container to avoid possibility of fire. No fireworks, sparklers, or Chinese lanterns are allowed on the grounds. \_\_\_\_\_

No nails, screws, stakes, tape, rope, or tie downs may be affixed to any part of Mari Vineyards property. \_\_\_\_\_

All trash accumulated during the event as well as items brought in by the client or caterer must be removed from Mari Vineyards property immediately following the event by the client or caterer responsible. For any item left on Mari Vineyards property after the event that was brought by the client or caterer, Mari Vineyards will charge a flat \$150 removal fee to be processed by the credit card on file. \_\_\_\_\_

#### Tours

For an additional fee, you may include a tour (or tours) into your event. Tours will be priced out based on the number of guests in the tour as well as the extensiveness of the requested tour. Fees will reflect the number of anticipated guests. Fees incurred for the addition of staff members for your event for tours are non-refundable, even if the expected number of guests do not attend your event, or decide not to utilize the tour option provided. \_\_\_\_\_

#### Vendors

It is required that any vendors to be hired for your event that are not on Mari Vineyards' approved vendor list visit the winery prior to the date of your event. This allows vendors not familiar with Mari Vineyards the opportunity to inspect our facility and eliminate any potential problems ahead of time. \_\_\_\_\_

#### Weather

If inclement weather prohibits partial or full use of Mari Vineyards' outdoor patio included in the rental of the Tasting Room, the event must utilize only the indoor



portion of the tasting room. It is your responsibility to rent the necessary items to incorporate any alternate plan in case of inclement weather disrupting necessary outside spaces. Your alternate plan must be pre-approved with Mari Vineyards. Applicable fees will be charged to use any extra spaces as part of your alternate plan. \_\_\_\_\_

#### Planning/Site Visits

Clients are offered the services of a qualified coordinator. Appointments to view the space, discuss the event, or meet with vendors at Mari Vineyards must be booked in advance with the coordinator. Please note that the Mari Vineyards event coordinator is not your event coordinator, and will not assist with any planning items that do not directly relate to the venue or wine. \_\_\_\_\_

#### Parking

Parking is available on Mari Vineyards property. If your event overlaps with Tasting Room hours of operation, parking may be scarce. Overflow parking is available just down the driveway by the biofuel house. \_\_\_\_\_

#### Fireplace

Mari Vineyards has an indoor/outdoor fireplace located on the patio. When seasonally appropriate, Mari Vineyards staff will light the fire. Under no circumstances should guests attempt to tend to the fire. Mari Vineyards staff will tend to the fire during your event if it is in use. Mari Vineyards is not responsible for guests who may harm themselves tending to the fire. \_\_\_\_\_

#### Firearms

Mari Vineyards reserves the right to not allow firearms on property. At this time, Mari Vineyards does not allow firearms on property. Please make your guests aware of this rule. \_\_\_\_\_

#### Hours

Mari Vineyards requires that all event end no later than 10 pm. A 30-minute period reserved only for clean-up is permitted from 10pm-10:30pm. At 10:30pm, all guests must leave the premises. \_\_\_\_\_

Your event is limited to the time period which was discussed with the Mari Vineyards Event Manager. You are allotted 30 minutes after your event to clean up. If guests



are still on property after this allotted time, additional fees will be incurred and charged to the credit card on file.

Mari Vineyards staff will give a last call for drinks 15 minutes before the end time of your event. Drink service will stop completely 10 minutes before the end time of your event. Mari Vineyards staff will alert the host to the time of last call, and it is the responsibility of the host to inform their guests of last call. \_\_\_\_\_

#### Guest Limit

Maximum guest limit is placed prior to the event and limited to the capacity based on the quoted price. The limit for this event is \_\_\_\_\_

#### Children

Children and minors are welcome at Mari Vineyards, but must be under adult supervision at all times. Underage drinking will not be tolerated at Mari Vineyards and will result in the removal of the offending guests. \_\_\_\_\_

#### Staffing

The Mari Vineyards Event Manager will staff your event in accordance to the expected number of guests as well as any station set up that has been requested by you. Additional fees may incur for the necessity for additional staff members due to set up, execution, or specific requests and/or requirements of your event. Additional staffing requirements will be determined by you and the Mari Vineyards Event Manager and based on your event requests and requirements. Fees incurred for the addition of staff members for your event are non-refundable, even if the expected number of guests do not attend your event. The following parameters are utilized by Mari Vineyards for event staffing based on the event having a single wine station and taking place in one venue space:

<30 guests: 2 staff members

31-50 guests: 3 staff members

51-75 guests: 4 staff members

76-100 guests: 5 staff members

101+ guests: To be determined by Mari Vineyards Event Manager based on the nature of the event.

\_\_\_\_\_

#### Pricing



The pricing structure reflects venue fees as well as fees for the Mari Vineyards established staffing parameters. Your invoice will reflect the pricing in accordance to your chosen space and time frame for your event, as well as an 18% gratuity applied to the final bill. Gratuity may increase due to requested or required additional staff differing from the Mari Vineyards established staffing parameters. Initial estimate will reflect the aforementioned prices as well as any pre-bought wine, merchandise, food, and requested tour(s). Any changes made to your event including but not limited to the addition of tours and/or additional Mari Vineyards staff may result in additional charges after the signing of this contract. \_\_\_\_

#### Rental Deposit

We require a deposit of 50% of your rental fee at the time of booking to reserve the date of your event. The deposit is non-refundable, and will go towards the final rental fee. \_\_\_\_\_

#### Security Deposit

Mari Vineyards requires a security deposit due 2 weeks prior to the event. For the Tasting Room space and the Cave Space, the security deposit is \$1000. For the Conference Room, the security deposit is \$500. This deposit is 100% refundable depending on any damage to Mari Vineyards property that's may occur during your event. \_\_\_\_\_

#### Gratuity

A 20% gratuity will be applied to the final bill at time of check out. Any fee associated with tours requested and/or additional staff members required and/or requested during your event will be added to your invoice. Increased gratuity may incur if you request more staff members than is deemed necessary by Mari Vineyards Event Management. The 20% gratuity will be applied to your invoice with total increased charges for staffing requirements and/or requests. \_\_\_\_\_

#### Final Payment

Final payment for the rental space to is due two weeks prior to your event. Final wine balances and any necessary taxes will be invoiced to the client after the event. All payments may be made by cash, check, or credit card. Mari Vineyards will retain a credit card on file which will be received once this contract is signed. \_\_\_\_\_





Cancellations

In the event of a cancellation the rental deposit is non-refundable. In the event that you wish to change your date, Mari Vineyards will attempt to accommodate your request if the desired date is available. \_\_\_\_\_

By signing below, you are committing to hosting your event at Mari Vineyards and agree to the policies listed above. You acknowledge that you have inspected the premises themselves and accepts it as-is, and will indemnify and hold harmless Mari Vineyards from any incident arising from the use of the premises. Failure to comply with these policies may result in the cancellation of your event.

Clients Name

\_\_\_\_\_

Signatory's Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Message

**From:** Nathaniel E. Aquino [naquino@gmail.com]  
**Sent:** 9/28/2020 10:45:41 AM  
**To:** Callie MacLean [callie@marivineyards.com]  
**CC:** Jenna Veiga [jenna@marivineyards.com]; Karri Ridgeway [ridgeway.karri@gmail.com]  
**Subject:** Re: Inquiry - Small Wedding Event 2021

Hi Callie,

I am working from home these days so feel free to call me on my cell at 616-292-3134 whenever you're free.

Thanks!

Nate

On Sun, Sep 27, 2020 at 7:25 AM Callie MacLean <callie@marivineyards.com> wrote:  
Hello Karri and Nathaniel!

Congratulations on your engagement! That is very exciting! I'm thrilled to hear that you're interested in joining our wine club too. We do have to get a bit of personal information in order to be able to ship wine to you legally (birthdates, credit card numbers, billing and shipping addresses, etc.) that may not best be communicated over email. If you would like, we can set up a time for me to call one of you tomorrow or Tuesday and I can get that all set up for you!  
Let me know which day works best for you!

Cheers!

On Sat, Sep 26, 2020 at 11:32 AM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Callie,

I'm cc'ing Karri & Nate on this email, they are planning a wedding with us next year! They would like to sign up for the Riserva wine club. Would you mind assisting them with this when you get some time next week?

Thank you!

On Sat, Sep 26, 2020 at 11:26 AM Jenna Veiga <jenna@marivineyards.com> wrote:

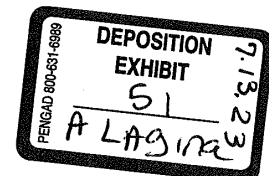
On Wed, Sep 23, 2020 at 2:44 PM Jenna Veiga <jenna@marivineyards.com> wrote:  
Okay great! I'll call you at 11am on Saturday.

On Wed, Sep 23, 2020 at 2:00 PM Karri Ridgeway <ridgeway.karri@gmail.com> wrote:  
Yep, that works! You can call my cell - 206-300-5812

On Wed, Sep 23, 2020 at 9:33 AM Jenna Veiga <jenna@marivineyards.com> wrote:  
Could you do 11am?

On Wed, Sep 23, 2020 at 12:21 PM Karri Ridgeway <ridgeway.karri@gmail.com> wrote:  
No worries! Saturday works for us, just let us know what time works best for you.

Thanks so much!



On Wed, Sep 23, 2020 at 9:16 AM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Karri,

Apologies for the late response! Would you be able to chat on Saturday? That's the only day I'm guaranteed at the winery.

On Tue, Sep 22, 2020 at 3:16 PM Karri Ridgeway <ridgeway.karri@gmail.com> wrote:

Hey Jenna,

Following up to see if it's possible to set up a time to chat this week. We're hoping to move forward with confirming a few essential vendors and looking into home rentals in the near future. We hadn't anticipated things booking up so quickly, but it looks like some options are already limited so we'd love to get the initial contract and date confirmed soon if possible.

We're pretty flexible with our schedules, so just let us know what works best for you and we'll make it happen!

Thanks again,

Karri

On Thu, Sep 17, 2020 at 7:57 AM Karri Ridgeway <ridgeway.karri@gmail.com> wrote:

Thanks so much for looking into all of this!

We'd like to go ahead with July 17th then, and agree that the earlier closure seems like it might be the safest best for the reception space. We've read through the sample contract that you sent over, so perhaps we can set up a time to chat and go over some of the details and get our date officially reserved! Some of the things we'd like to know are the pricing for wines/staff, and the details about chair/table/glassware availability, so that we're able to better estimate total costs.

Very excited to work with you on this, appreciate all of your help so far!

Karri & Nate

On Tue, Sep 15, 2020 at 11:12 AM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Karri,

It was so nice getting to meet you, even for a few moments!

Both those dates are still available. \*IF\* things progress as normal, the June date would fall probably in the midst of Cherry Fest, while the July date may fall in the midst of Film Fest, though sometimes Film Fest happens the week after that date. I don't believe people have released 2021 dates yet for festivals...

June, for us, definitely had some remaining breezy days. Nothing that I would classify as cold, but July absolutely has more of the 80+ days.

Just based on being safe, I would say that the 7-10 closure would not cover your group, and would recommend the 5-10 closure, so that we have ample time to set up everything for you as well.

Once you're comfortable with everything, we can discuss the contract, and move forward with securing a date for you!

So excited for you two! I hope the road trip went well!

On Fri, Sep 11, 2020 at 8:42 AM Karri Ridgeway <[ridgeway.karri@gmail.com](mailto:ridgeway.karri@gmail.com)> wrote:  
Hey Jenna!

Thank you again for meeting with us briefly on your first day back to work. We really appreciated how accommodating the whole team was in making sure we could make it in to see the space. Nate and I would like to move forward with booking Mari for our wedding next summer! I just have a couple of questions before we get moving on putting down our deposit. We are looking at either June 26th or July 17th. Assuming those dates are still available, do you happen to know of any festivals that would be planned on either of those weekends in Traverse City? I couldn't find anything online as of now, but figured you would have a much better idea of any annual events that might make the city more crowded (we would prefer a quieter weekend). The other question is whether you think the difference of three weeks would make a big difference weather-wise? The average temps seem pretty similar, but figured you might have an idea if June vs. July would matter.

The last question is following up on our conversation about whether to reserve the tasting room early. Ideally, I think we'd like to do a 5pm ceremony, allowing us a full 4-hours for reception/dinner. Do you think reserving the tasting room early would be best for that, or would the early closure cover us starting around 5:45-6?

Thanks again for all of your help. I can't tell you how excited we are to be moving forward with you all for our big day. This process can be so overwhelming, but even from our short conversation I can tell that you and your team are going to make it much easier!

Talk soon,

Karri

On Thu, Jul 30, 2020 at 10:53 AM Jenna Veiga <[jenna@marivineyards.com](mailto:jenna@marivineyards.com)> wrote:  
Hi Karri,

Thank you for reaching out! I'd love for Mari to be a part of your wonderful day. I'm attaching a couple things to this email: our 'ceremony only' pricing as well as our contract & rental fees. If you choose to host both your ceremony and reception with us, it would be the ceremony fee + rental fee of the space of our choice. The rental fees for the tasting room reflect your options for early closure, otherwise our tasting room closes at 7pm (usually, things are obviously a little wonky right now though).

Take a look at these and let me know if this seems like something you'd be interested in. As you probably already know, please note that all private reservations & events are subject to change due to COVID-19 guidelines as outlined by the state. If you do book with us, and your event must be cancelled for any reason related to the government's restrictions due to COVID-19, you will be refunded for all deposits & payments.

Please let me know what questions you have!

On Wed, Jul 29, 2020 at 12:39 PM Karri Ridgeway <[ridgeway.karri@gmail.com](mailto:ridgeway.karri@gmail.com)> wrote:  
Hi Jenna!

I was given your contact information to get in touch with you to see what possibilities might be available to coordinate a small wedding at your beautiful vineyard and tasting room for summer of 2021. My fiancé and I visited the tasting room this past Christmas and absolutely fell in love with your space. He is originally from Michigan, we were engaged in Italy, and we instantly felt

like your space was a perfect embodiment of these two places we love so much. While at the tasting room we had inquired about event planning and understand that currently you all don't formally do wedding events. The employee we chatted with did mention that it was something you all were interested in perhaps starting and depending on the date we're looking at it might be something we could coordinate.

To give you an idea of what we're looking for, we would ideally have a wedding date in summer of 2021. It would be a small wedding, ideally about 50 total guests. We'd love to incorporate a relaxed dinner after a short ceremony. Nate (my fiancé) and I are very laid back and truly just are hoping for a beautiful evening where we can gather with those closest to use to celebrate our marriage.

We very much understand that the Covid pandemic is drastically changing how things operate, and particularly how any gatherings are planned. We have already discussed the possibility of needing to cut our guest list down to 20-30 to make sure we keep everyone as safe as possible. We also understand that as you don't currently host weddings, this would be a bit of a learning experience for us all. As I said, we're pretty easy-going and are happy to help coordinate logistics as needed.

I'm hoping we can explore our options and see if this is something we could work with you all to make happen. Nate and I will be visiting Michigan in early September, and if this is something you think might be possible, we would love to visit to discuss further in person.

Thanks so much and I look forward to hearing from you and hopefully working together!

Karri Ridgeway  
206.300.5812



Message

**From:** Adam Grzesiak [agrzesia@gmail.com]  
**Sent:** 3/7/2019 2:48:10 PM  
**To:** Jenna Veiga [jenna@marivineyards.com]; Kathryn Whitaker [whitaker.kathryn@gmail.com]  
**Subject:** Re: Wedding reception request

Jenna,

Per our conversation, we'd like to lock in October 19, 2019 for our wedding reception at Mari.

The current thought is to have the reception in the tasting room starting at 5p for drinks & appetizers followed by a seated dinner. I suspect we will end around 10p.

Please let us know what forms we need to sign to lock in the date and times above.

We look forward to working with you as we figure out more details.

Regards,  
Adam

On Fri, Feb 15, 2019 at 10:20 AM Jenna Veiga <jenna@marivineyards.com> wrote:

Hi Kathy & Adam,

Apologies on the late response!

Right now we do have those dates available.

Yes, we are required to have everyone off the premises by 10:30 pm, so a firm stop time on the event at 10pm.

I'm attaching our pricing options. As we had discussed when you visited, the tasting room would probably be the best option for your reception. It includes the inside as well as the full patio for rental.

Take a look at the pricing and we can continue from there!

Have a great weekend,

On Fri, Feb 15, 2019 at 9:30 AM Kathryn Whitaker <whitaker.kathryn@gmail.com> wrote:

Hi Jenna,

We were able to get a little bit more information about dates since we last spoke to you. Do you have availability on the following?

- August 3, 10, or 17
- October 5, 12, or 19

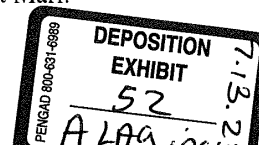
There is a chance that we may still be interested in September, but I think that would probably be plan B.

Look forward to hearing from you,  
Kathy

On Tue, Feb 12, 2019 at 4:09 PM Kathryn Whitaker <whitaker.kathryn@gmail.com> wrote:

Hi Jenna,

Adam just spoke to you on the phone about having a wedding reception at Mari.



We are expecting 70-80 people.

We are interested in dates in August through October. You mentioned a few other inquiries during that time, could you let us know what those dates are so that we know where there may be conflicts?

For timing, we were thinking of wanting to start around 5:00 or 6:00 pm.

We know that on Leelanau, there is a local ordinance that requires events to end by 10:00 pm. Is there anything similar on Old Mission?

Thank you,  
Kathy Whitaker

--  
Jenna Veiga

Marketing & Events Manager

**MARI VINEYARDS**  
8175 Center Rd.  
Traverse City, MI 49686  
Office: (231) 938-6116 x 106  
Cell: (231) 944-5337  
[marivineyards.com](http://marivineyards.com)





## Mari Vineyards 2019 Peak Season Event Pricing

### Cave Lounge

3 hour rental.

1-15 people \$950

16-40 people \$1900

41-75 people \$2700

Capacity for this space is 75 people standing. Seated capacity is event dependent.

### Conference Room

Rented by the hour.

8am - 4pm \$250/hour

5pm - 9pm \$500/hour

Capacity for this space is 50 people standing. Seated capacity is 36.

### Tasting Room

Tasting room may be rented in either a 3 hour or 5 hour block.

3 hour rental (7-10 pm) \$2500

5 hour rental (5-10 pm) \$5000

Capacity for this space is seasonally dependent, but year-round at least 120 standing. Please inquire for details.



Founders Room

Rented by the hour.

\$1000/hour.

Rental includes the outdoor terrace, weather providing.

Capacity for this space is 41 indoors, with additional capacity when the outdoor terrace is utilized.

A non-refundable deposit is required for all rentals. Deposit will be applied to your rental fee. This pricing schedule is for rental space only. Additional fees apply for tours, tastings, wine and food sales as well as an 18% gratuity.

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PTP Motion for Summary Judgment

October 6, 2023

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

## Invoice

Invoice Date	Invoice #	Terms
6/1/21	14458	Due Upon Receipt

Bill To
[REDACTED]

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
	JMV	3/25/21	6/11/21	

Quantity	Item Code	Description	Price Each	Amount
		EVENT JUNE 11, 2021		
		Ceremony at No Charge		
	Space Rental	Space Rental - Reception 7-10pm (reflects a 10% discount)		
		WINES - AT A 10% DISCOUNT		
81	BTG Wine	By the Glass Wine Sales - 2019 Sauvignon Blanc		
107	BTG Wine	By the Glass Wine Sales - 2018 Chardonnay		
32	BTG Wine	By the Glass Wine Sales - 2016 Scriptorium		
120	BTG Wine	By the Glass Wine Sales - 2019 Troglodyte Rosso		
1	BTG Wine	By the Glass Wine Sales - 2017 Gruner Veltliner		
2	BTG Wine	By the Glass Wine Sales - 2017 Row 7		
27	BTG Wine	By the Glass Wine Sales - 2017 Simplicissimus		
1	Chardonnay 2018	750 ml Bottle - Chardonnay 2018		
9	Simplicissimus 2017	750 ml Bottle Simplicissimus 2017		
	Tips Payable	Gratuity at 20%		

Please Remit Payments to:

Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

Subtotal	
Sales Tax (6.0%)	
Total	
Payments/Credits	
Balance Due	\$0.00

WOMP012688

Phone # 231-938-6116

Fax #

E-mail [accounting@marivineyards.com](mailto:accounting@marivineyards.com)

Web Site

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

EXHIBIT 61

PTP Motion for Summary Judgment

October 6, 2023

Page 1 of 17

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

## Invoice

Invoice Date	Invoice #	Terms
9/10/19	13926	

Bill To
[REDACTED]

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		9/10/19	9/10/19	

Quantity	Item Code	Description	Price Each	Amount
2	Space Rental	For Event held on August 31 in Founders Room (rehearsal dinner) Space Rental in Founders Room @ [REDACTED] per hour for 2 hours	[REDACTED]	[REDACTED]
25	Tasting Fees	Tasting Fees - 3 tastes for [REDACTED]	[REDACTED]	[REDACTED]
4	Simplicissimus 2016	750 ml Bottle - Simplicissimus 2016 - at 10% discount	[REDACTED]	[REDACTED]
6	BTG Wine	2017 dry riesling glasses at 10% discount	[REDACTED]	[REDACTED]
26	BTG Wine	2017 troglodyte rosso at 10% discount	[REDACTED]	[REDACTED]
	Tips Payable	18% gratuity on space rental and tastings	[REDACTED]	[REDACTED]

Please Remit Payments to:

**Mari Vineyards**  
**8175 Center Road**  
**Traverse City, MI 49686**

Subtotal	[REDACTED]
Sales Tax (6.0%)	[REDACTED]
Total	[REDACTED]
Payments/Credits	[REDACTED]
Balance Due	[REDACTED]

Phone # 231-938-6116

Fax #

E-mail [accounting@marivineyards.com](mailto:accounting@marivineyards.com)

Web Site

WOMP012655

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



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October 6, 2023

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

## Invoice

Invoice Date	Invoice #	Terms
6/1/21	14456	

Bill To
[REDACTED]

**PAID**  
07/23/21

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		3/25/21	6/26/21	

Quantity	Item Code	Description	Price Each	Amount
		EVENT JUNE 26, 2021		
12	Space Rental	Tasting room rental, 7-10 pm	[REDACTED]	[REDACTED]
	Riesling Dry 2017	750 ml Bottle - 2017 Dry Riesling (10% discount)	[REDACTED]	[REDACTED]
		DEPOSIT OF 50% OF RENTAL FEE DUE AT SIGNING (paid)		
32	BTG Wine	WINE PURCHASED AT EVENT - AT 10% DISCOUNT		
4	BTG Wine	By the Glass Wine Sales - sauvignon blanc	[REDACTED]	[REDACTED]
20	BTG Wine	By the Glass Wine Sales - scriptorium riesling	[REDACTED]	[REDACTED]
32	BTG Wine	By the Glass Wine Sales - gamay noir	[REDACTED]	[REDACTED]
7	BTG Wine	By the Glass Wine Sales - troglodyte rosso	[REDACTED]	[REDACTED]
19	BTG Wine	By the Glass Wine Sales - totus porcus	[REDACTED]	[REDACTED]
9	BTG Wine	By the Glass Wine Sales - troglodyte rosato	[REDACTED]	[REDACTED]
6	BTG Wine	By the Glass Wine Sales - troglodyte bianco	[REDACTED]	[REDACTED]
		By the Glass Wine Sales - simplicissimus sparkling riesling	[REDACTED]	[REDACTED]
38	Misc. Income	Spritzer ingredients	[REDACTED]	[REDACTED]
	Misc. Income	Coffee service at [REDACTED] per person	[REDACTED]	[REDACTED]
	Tips Payable	Gratuity at 20%	[REDACTED]	[REDACTED]

Please Remit Payments to:

**Mari Vineyards**  
8175 Center Road  
Traverse City, MI 49686

Subtotal	[REDACTED]
Sales Tax (6.0%)	[REDACTED]
Total	[REDACTED]
Payments/Credits	[REDACTED]
Balance Due	\$0.00

Phone # 231-938-6116

Fax #

E-mail [accounting@marivineyards.com](mailto:accounting@marivineyards.com)

Web Site

WOMP012716

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

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PTP Motion for Summary Judgment

October 6, 2023

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

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## Invoice

Invoice Date	Invoice #	Terms
7/21/20	14207	

Bill To
[REDACTED]

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		7/21/20	7/21/20	

Quantity	Item Code	Description	Price Each	Amount
		EVENT JULY 17, 2020		
		Ceremony 7/17 at 12 pm, followed by Terrace reservation with tab of food and drinks		
1	Ceremony Fee	Ceremony fee		
3	Kitchen Food	Cheese board		
4	Kitchen Food	Meat & cheese board		
2	Kitchen Food	Mari food special		
2	Kitchen Food	Dill dip & Dots pretzels		
3	BTG Wine	By the Glass Wine Sales - cabernet franc		
1	BTG Wine	By the Glass Wine Sales - troglodyte bianco		
3	Simplicissimus 2017	750 ml bottle Simplicissimus sparkling riesling 2017		
5	BTG Wine	By the Glass Wine Sales - scriptorium		
4	BTG Wine	By the Glass Wine Sales - late harvest riesling		
3	BTG Wine	By the Glass Wine Sales - simplicissimus		
2	BTG Wine	By the Glass Wine Sales - merlot		
3	BTG Wine	By the Glass Wine Sales - sauvignon blanc		
	Tips Payable	Gratuuity at 20%		

Please Remit Payments to:

Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

Subtotal	
Sales Tax (6.0%)	
Total	
Payments/Credits	
Balance Due	\$0.00

Phone # 231-938-6116

Fax #

E-mail accounting@marivineyards.c...

Web Site

WOMP012676  
www.marivineyards.com

**m**  
mari

EVENT POLICIES AND COMMITMENT CONTRACT

Client Name: [REDACTED]  
 Signatory Name: [REDACTED]  
 Event Date: 7/17/2020  
 Event Rental Time: 10:00 (noon)  
 Event Space Rental: Ceremony Site / Terrace  
 Contact Name: [REDACTED]  
 Email: [REDACTED]  
 Phone: [REDACTED]

Please read this contract carefully and initial after each policy to designate that you understand and agree to said policy. Please note that it is the responsibility of the signatory to ensure all guests know and understand the rules and policies in place. Failure to comply and follow the policies set forth can result in the event being cancelled or shut down with a forfeiture of fees and deposits. If you have any questions, please contact us.

**Alcohol Policies**  
**Wines:** Only Mari Vineyards wines may be served. The wines available during your event must be pre-selected prior to the event. Cases of wine for the event must be pre-purchased at a 10% discount to be held. If serving wine by the glass during the event via an open bar, the charges will be addressed at the end of the event and the open tab will be settled with a 10% discount on glasses sold. All wine that has been pre-purchased for your event from Mari Vineyards is non-refundable. [REDACTED]  
 You are permitted to bring non-alcoholic beverages in to Mari Vineyards to be served by Mari Vineyards staff. All non-alcoholic beverages brought to be served during your event must arrive with a sealed top (bottle or can). [REDACTED]

**Serving Alcohol:** Permitted alcohol can be opened and served only by Mari Vineyards service staff. Our servers abide by State Laws, including but not limited to the following: no open bottles or containers will be given to guests for their consumption, no guests will serve themselves, no alcohol except for that purchased

1

WOMP012674

12 pm: Ceremony

12:30- : Reception on Terrace

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Ceremony deposit paid 5/17/2020 [REDACTED]



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PTP Motion for Summary Judgment

October 6, 2023

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

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## Invoice

Invoice Date	Invoice #	Terms
7/13/21	14531	

Bill To

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		7/13/21	7/13/21	

Quantity	Item Code	Description	Price Each	Amount
5	Space Rental	JULY 17, 2021 EVENT Tasting Room Rental - 5 hours Discounted at 20% as Wine Club members (and a further 50% discount)		
10	Troglodyte Bianco ...	WINE AT EVENT - AT 20% WINE CLUB DISCOUNT 750 ml Bottle - Troglodyte Bianco 2017		
14	Sauvignon Blanc 20...	750 ml Bottle - Sauvignon Blanc 2019		
20	Cider	Hard cider by the glass		
38	BTG Wine	By the Glass Wine Sales - wine cocktail		
19	Simplicissimus 2017	750 ml Bottle Simplicissimus 2017		
5	Gamay Noir 2020	750 ml Bottle - 2020 Gamay Noir		
11	Cabernet Franc 2018	750 ml Bottle - Cabernet Franc 2018		
	Tips Payable	Gratuity at 20%		

Please Remit Payments to:

**Mari Vineyards**  
**8175 Center Road**  
**Traverse City, MI 49686**

Subtotal	
Sales Tax (6.0%)	
Total	
Payments/Credits	
Balance Due	\$0.00

Phone # 231-938-6116

Fax #

E-mail [accounting@marivineyards.com](mailto:accounting@marivineyards.com)

Web Site

WOMP012718  
[www.marivineyards.com](http://www.marivineyards.com)

EXHIBIT 61

PTP Motion for Summary Judgment

October 6, 2023

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

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## Invoice

Invoice Date	Invoice #	Terms
10/31/19	14003	

Bill To
[REDACTED]

Ship To

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		10/31/19	10/31/19	

Quantity	Item Code	Description	Price Each	Amount
5	Space Rental Misc. Income	EVENT ON OCTOBER 19, 2019 Tasting Room Rental Outside Bar at [REDACTED] per hour	[REDACTED]	[REDACTED]
6	Troglodyte Bianco ...	WINES BY THE BOTTLE AT 10% DISCOUNT: 750 ml Bottle - Troglodyte Bianco 2016	[REDACTED]	[REDACTED]
6	Riesling Dry 2017	750 ml Bottle - 2017 Dry Riesling	[REDACTED]	[REDACTED]
12	Late Harvest Riesli...	750 ml Bottle - 2018 Late Harvest Riesling	[REDACTED]	[REDACTED]
18	Troglodyte Rosso 2...	750 ml Bottle - Troglodyte Rosso 2018	[REDACTED]	[REDACTED]
18	Nero 2017	750 ml Bottle - Nero 2017	[REDACTED]	[REDACTED]
	Tips Payable	Gratuuity at 18%	[REDACTED]	[REDACTED]

Please Remit Payments to:

**Mari Vineyards**  
8175 Center Road  
Traverse City, MI 49686

Subtotal	[REDACTED]
Sales Tax (6.0%)	[REDACTED]
Total	[REDACTED]
Payments/Credits	[REDACTED]
Balance Due	\$0.00

Phone # 231-938-6116

Fax #

E-mail accounting@marivineyards.c...

Web Site

WOMP012672  
www.marivineyards.com

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PTP Motion for Summary Judgment

October 6, 2023

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**mv** Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

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Invoice

Invoice Date	Invoice #	Terms
6/1/21	14456	

Bill To

[REDACTED]

Ship To

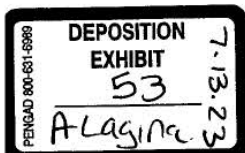
[REDACTED]

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		3/25/21	6/26/21	

Quantity	Item Code	Description	Price Each	Amount
		EVENT JUNE 26, 2021		
12	Space Rental	Tasting room rental, 7-10 pm		
	Riesling Dry 2017	750 ml Bottle - 2017 Dry Riesling (10% discount)		
		DEPOSIT OF 50% OF RENTAL FEE DUE AT SIGNING (paid)		
		WINE PURCHASED AT EVENT - AT 10% DISCOUNT		
32	BTG Wine	By the Glass Wine Sales - sauvignon blanc		
4	BTG Wine	By the Glass Wine Sales - scriptorium riesling		
20	BTG Wine	By the Glass Wine Sales - gamay noir		
32	BTG Wine	By the Glass Wine Sales - troglodyte rosso		
7	BTG Wine	By the Glass Wine Sales - totus porcus		
19	BTG Wine	By the Glass Wine Sales - troglodyte rosato		
9	BTG Wine	By the Glass Wine Sales - troglodyte bianco		
6	BTG Wine	By the Glass Wine Sales - simplicissimus sparkling riesling		
	Misc. Income	Spritzer ingredients		
38	Misc. Income	Coffee service at [REDACTED] per person		
	Tips Payable	Gratuity at 20%		

Please Remit Payments to:

Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686



Subtotal	[REDACTED]
Sales Tax (6.0%)	[REDACTED]
Total	[REDACTED]
Payments/Credits	[REDACTED]
Balance Due	\$0.00

WOMP012716

Phone # 231-938-6116

Fax #

E-mail accounting@marivineyards.c...

Web Site

www.marivineyards.com



EXHIBIT 61

PTP Motion for Summary Judgment

October 6, 2023

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**CONFIDENTIAL**

**mv** Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

**Invoice**

Invoice Date	Invoice #	Terms
8/1/21	14428	

**Bill To**

[REDACTED]

**Ship To**

[REDACTED]

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
		8/1/21	8/1/21	

Quantity	Item Code	Description	Price Each	Amount
	Space Rental	EVENT - AUGUST 21, 2021		
	Space Rental	Space Rental - Tasting Room		
		Less Wine Club discount at 20%		
7	Kitchen Food	Large Charcuterie boards (discounted 20%)		
20	Event Labor - Income	Linens		
	Event Labor - Income	Glassware purchase and set up		
9	Simplicissimus 2016	WINE AT THE EVENT, DISCOUNTED 20% for Wine Club		
38	BTG Wine	750 ml Bottle - Simplicissimus 2016		
14	BTG Wine	By the Glass Wine Sales - Sauvignon Blanc		
27	BTG Wine	By the Glass Wine Sales - Scriptorium Riesling		
10	BTG Wine	By the Glass Wine Sales - Cabernet Franc		
30	BTG Wine	By the Glass Wine Sales - Late Harvest Riesling		
10	Cider	Hard Cider by the glass		
28	BTG Wine	By the Glass Wine Sales - Simplicissimus Sparkling Riesling		
12	BTG Wine	By the Glass Wine Sales - Troglodyte Rosso		
22	BTG Wine	By the Glass Wine Sales - Dry Riesling		
10	BTG Wine	By the Glass Wine Sales - Troglodyte Rosato		
12	BTG Wine	By the Glass Wine Sales - Pinot Bianco		
	BTG Wine	By the Glass Wine Sales - Stuckfuss Riesling		
	Tips Payable	Gratuuity at 20%		

Please Remit Payments to:

**Mari Vineyards**  
8175 Center Road  
Traverse City, MI 49686

Subtotal	
Sales Tax (6.0%)	
Total	
Payments/Credits	
Balance Due	\$0.00

WOMP012733

Phone # 231-938-6116

Fax #

E-mail accounting@marivineyards.c...

Web Site

www.marivineyards.com

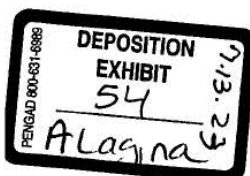


EXHIBIT 61

PTP Motion for Summary Judgment

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Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

Invoice

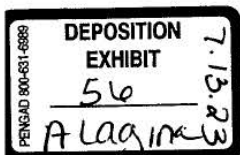
Invoice Date	Invoice #	Terms
6/1/21	14458	Due Upon Receipt

Bill To
[REDACTED]

Ship To
[REDACTED]

Sales Order Number	Rep	Order Date	Delivery Date	Ship Via
	JMV	3/25/21	6/11/21	

Quantity	Item Code	Description	Price Each	Amount
		EVENT JUNE 11, 2021		
		Ceremony at No Charge		
	Space Rental	Space Rental - Reception 7-10pm (reflects a 10% discount)		
		WINES - AT A 10% DISCOUNT		
81	BTG Wine	By the Glass Wine Sales - 2019 Sauvignon Blanc		
107	BTG Wine	By the Glass Wine Sales - 2018 Chardonnay		
32	BTG Wine	By the Glass Wine Sales - 2016 Scriptorium		
120	BTG Wine	By the Glass Wine Sales - 2019 Troglodyte Rosso		
1	BTG Wine	By the Glass Wine Sales - 2017 Gruner Veltliner		
2	BTG Wine	By the Glass Wine Sales - 2017 Row 7		
27	BTG Wine	By the Glass Wine Sales - 2017 Simplicissimus		
1	Chardonnay 2018	750 ml Bottle - Chardonnay 2018		
9	Simplicissimus 2017	750 ml Bottle Simplicissimus 2017		
	Tips Payable	Gratuity at 20%		



Please Remit Payments to:

Mari Vineyards  
8175 Center Road  
Traverse City, MI 49686

Subtotal	
Sales Tax (6.0%)	
Total	
Payments/Credits	
Balance Due	\$0.00

WOMP012688

Phone # 231-938-6116

Fax #

E-mail accounting@marivineyards.c...

Web Site

www.marivineyards.com

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EVENT POLICIES AND COMMITMENT CONTRACT

Client Name: [REDACTED]  
Signatory Name: [REDACTED]  
Event Date: October 19, 2019  
Event Rental Time: 5:00 - 10:00 pm  
Event Space Rental: Tasting Room  
Contact Name: [REDACTED]  
Email: [REDACTED]  
Phone: [REDACTED]

Please read this contract carefully and initial after each policy to designate that you understand and agree to said policy. Please note that it is the responsibility of the signatory to ensure all guests know and understand the rules and policies in place. Failure to comply and follow the policies set forth can result in the event being cancelled or shut down with a forfeiture of fees and deposits. If you have any questions, please contact us.

Alcohol Policies

**Wines:** Only Mari Vineyards wines may be served. The wines available during your event must be pre-selected prior to the event. Cases of wine for the event must be pre-purchased at a 10% discount to be held. If serving wine by the glass during the event via an open bar, the charges will be addressed at the end of the event and the open tab will be settled with a 10% discount on glasses sold. All wine that has been pre-purchased for your event from Mari Vineyards is non-refundable. [REDACTED]  
You are permitted to bring non-alcoholic beverages in to Mari Vineyards to be served by Mari Vineyards staff. All non-alcoholic beverages brought to be served during your event must arrive with a sealed top (bottle or can). [REDACTED]

**Serving Alcohol:** Alcohol can be opened and served only by Mari Vineyards service staff. Our servers abide by State Laws, including but not limited to the following: no open bottles or containers will be given to guests for their consumption, no guests will serve themselves, no alcohol except for that purchased from Mari Vineyards will



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be consumed on property by guests, no open containers may leave Mari Vineyards property, and all alcohol will only be served to adults 21 and over who present a valid ID, with no exceptions. Please note that our staff reserves the right to request valid ID from any person consuming alcohol at any point during the event. [REDACTED]

*Smoking:* Our entire property is under liquor license, therefore absolutely no smoking is allowed on Mari Vineyards property at any time. In addition, no electronic cigarettes may be used on our property at any time. [REDACTED]

*Warning:* Mari Vineyards reserves the right to ask any guest to leave because of (but not limited to) the following issues: any guest drinking outside alcohol, any underage guest consuming alcohol, any guest who has become unruly or is deemed overly intoxicated by our staff, any guest who is abusing Mari Vineyards property, any guest who is verbally or physically harassing Mari Vineyards staff, or any guest not following set rules or laws. If the problem is not corrected after the first warning, that guest will be asked to leave the property. Mari Vineyards reserves the right to request a guest leave without giving prior warning. [REDACTED]

#### Caterers

Mari Vineyards offers on-site catering services. If you choose to use Mari Vineyards as your caterer, please review section A. If you are using an outside catering service, please skip section A and review section B.

A. If you choose to use Mari Vineyards to cater your event, please review the following:

Mari Vineyards requires a meeting with our catering and event staff to plan a menu at minimum 30 days prior to your event. [REDACTED]

You will need to present our caterer with any food allergies or dietary restrictions at the time of menu planning. [REDACTED]

Mari Vineyards staff of trained and experienced wine and food personnel will work with you to create the best wine and food pairing for your event based off our menu of available items. If it is found any changes need to be made, they must be made at latest 2 weeks prior to your event. [REDACTED]

Mari Vineyards will cater your event in accordance to your expected number of guests. A final guest count is required no fewer than 10 business days before your event. [REDACTED]

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Any food catered by Mari Vineyards that is not consumed during the event may be taken home by you or your guests. Mari Vineyards will collect payment on catered food prepared for the agreed upon guest count. [REDACTED]

B. If you choose to select a caterer that is not Mari Vineyards, please review the following:

We must receive a copy of the contract between you and the caterer at least 3 weeks before the event. The caterer and contract are subject to our approval of allowable on-site activity (i.e., food prep methods). [REDACTED]

Once approved, your caterer must sign our catering agreement, which details the rules of this venue site. [REDACTED]

Your caterer may be asked to pay a rental fee for use of our kitchen, the amount of which will be deemed by event and kitchen staff after discussion of the kitchen usage with your caterer. [REDACTED]

Caterers must have a valid Michigan license for catering and carry liability insurance, which Mari Vineyards must have a copy of no less than 3 weeks prior to event date. If they do not possess these, they may not be used as caterers for a event hosted at Mari Vineyards. [REDACTED]

Caterers or the client will hold the responsibility for all aspects of food service, including trash disposal. [REDACTED]

Caterers or the client must provide linens, place settings, and water glasses. \_

Mari Vineyards does not allow home-made food on property. All food served at Mari Vineyards must be prepared by licensed caterers. [REDACTED]

#### Liability

Any and all damages (to include but not limited to: glass breakage, indoor and outdoor property, damage to grapevines, building, and other property damages) caused by you, parties acting on your behalf (i.e. caterers) and/or guests of your event, is your responsibility. Mari Vineyards requires that a one-day liability rider naming Mari Vineyards as an additional insured be secured and provided to Mari Vineyards. Most home owner's policies can provide this rider for little or no cost. You must provide a copy of this rider prior to your event. Mari Vineyards is not responsible for any personal belongings stolen or left behind on the property. [REDACTED]



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#### Setup/Decorations

We recommend that event rental fees and time periods be selected to allow for one hour of decorating time prior to the event and at least 30 minutes of break down time prior to the event shut down time. Spaces will still be open to the public as per usual traffic and only closed to the public starting at the agreed upon start time for the event rental. Any additional time necessary for set up or break down must be pre-approved, and additional fees will apply. [REDACTED]

All decorations and set ups must be pre-approved. Candles must be enclosed in a glass container to avoid possibility of fire. No fireworks, sparklers, or Chinese lanterns are allowed on the grounds. [REDACTED]

No nails, screws, stakes, tape, rope, or tie downs may be affixed to any part of Mari Vineyards property. [REDACTED]

All trash accumulated during the event as well as items brought in by the client or caterer must be removed from Mari Vineyards property immediately following the event by the client or caterer responsible. For any item left on Mari Vineyards property after the event that was brought by the client or caterer, Mari Vineyards will charge a flat \$150 removal fee to be processed by the credit card on file. [REDACTED]

#### Tours

For an additional fee, you may include a tour (or tours) into your event. Tours will be priced out based on the number of guests in the tour as well as the extensiveness of the requested tour. Fees will reflect the number of anticipated guests. Fees incurred for the addition of staff members for your event for tours are non-refundable, even if the expected number of guests do not attend your event, or decide not to utilize the tour option provided. [REDACTED]

#### Vendors

It is required that any vendors to be hired for your event that are not on Mari Vineyards' approved vendor list visit the winery prior to the date of your event. This allows vendors not familiar with Mari Vineyards the opportunity to inspect our facility and eliminate any potential problems ahead of time. [REDACTED]

#### Weather

If inclement weather prohibits partial or full use of Mari Vineyards' outdoor patio included in the rental of the Tasting Room, the event must utilize only the indoor

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portion of the tasting room. It is your responsibility to rent the necessary items to incorporate any alternate plan in case of inclement weather disrupting necessary outside spaces. Your alternate plan must be pre-approved with Mari Vineyards. Applicable fees will be charged to use any extra spaces as part of your alternate plan. \_\_\_\_\_

#### Planning/Site Visits

Clients are offered the services of a qualified coordinator. Appointments to view the space, discuss the event, or meet with vendors at Mari Vineyards must be booked in advance with the coordinator. \_\_\_\_\_

#### Parking

Parking is available on Mari Vineyards property. If your event overlaps with Tasting Room hours of operation, parking may be scarce. Overflow parking is available just down the driveway by the biofuel house. \_\_\_\_\_

#### Fireplace

Mari Vineyards has an indoor/outdoor fireplace located on the patio. When seasonally appropriate, Mari Vineyards staff will light the fire. Under no circumstances should guests attempt to tend to the fire. Mari Vineyards staff will tend to the fire during your event if it is in use. Mari Vineyards is not responsible for guests who may harm themselves tending to the fire. \_\_\_\_\_

#### Firearms

Mari Vineyards reserves the right to not allow firearms on property. At this time, Mari Vineyards does not allow firearms on property. Please make your guests aware of this rule. \_\_\_\_\_

#### Hours

Mari Vineyards requires that all tastings end no later than 9:30 pm. A 30-minute period reserved only for clean-up is permitted from 9:30pm-10pm. At 10pm, all guests must leave the premises. \_\_\_\_\_

Your event is limited to the time period which was discussed with the Mari Vineyards Event Manager. You are allotted 30 minutes after your event to clean up. If guests are still on property after this allotted time, additional fees will be incurred and charged to the credit card on file.

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Mari Vineyards staff will give a last call for drinks 15 minutes before the end time of your event. Drink service will stop completely 10 minutes before the end time of your event. Mari Vineyards staff will alert the host to the time of last call, and it is the responsibility of the host to inform their guests of last call. [REDACTED]

Guest Limit

Maximum guest limit is placed prior to the event and limited to the capacity based on the quoted price. The limit for this event is [REDACTED]

Children

Children and minors are welcome at Mari Vineyards, but must be under adult supervision at all times. Underage drinking will not be tolerated at Mari Vineyards and will result in the removal of the offending guests. [REDACTED]

Staffing

The Mari Vineyards Event Manager will staff your event in accordance to the expected number of guests as well as any station set up that has been requested by you. Additional fees may incur for the necessity for additional staff members due to set up, execution, or specific requests and/or requirements of your event. Additional staffing requirements will be determined by you and the Mari Vineyards Event Manager and based on your event requests and requirements. Fees incurred for the addition of staff members for your event are non-refundable, even if the expected number of guests do not attend your event. The following parameters are utilized by Mari Vineyards for event staffing based on the event having a single wine station and taking place in one venue space:

<30 guests: 2 staff members

31-50 guests: 3 staff members

51-75 guests: 4 staff members

76-100 guests: 5 staff members

101+ guests: To be determined by Mari Vineyards Event Manager based on the nature of the event.

[REDACTED]

Pricing

The pricing structure reflects venue fees as well as fees for the Mari Vineyards established staffing parameters. Your invoice will reflect the pricing in accordance to



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your chosen space and time frame for your event, as well as an 18% gratuity applied to the final bill. Gratuity may increase due to requested or required additional staff differing from the Mari Vineyards established staffing parameters. Initial estimate will reflect the aforementioned prices as well as any pre-bought wine, merchandise, food, and requested tour(s). Any changes made to your event including but not limited to the addition of tours and/or additional Mari Vineyards staff may result in additional charges after the signing of this contract. [REDACTED]

#### Rental Deposit

We require a deposit of 50% of your rental fee at the time of booking to reserve the date of your event. The deposit is non-refundable, and will go towards the final rental fee. [REDACTED]

#### Security Deposit

Mari Vineyards requires a security deposit due 2 weeks prior to the event. For the Tasting Room space and the Cave Space, the security deposit is \$1000. For the Conference Room, the security deposit is \$500. This deposit is 100% refundable depending on any damage to Mari Vineyards property that's may occur during your event. [REDACTED]

#### Gratuity

An 18% gratuity will be applied to the final bill at time of check out. Any fee associated with tours requested and/or additional staff members required and/or requested during your event will be added to your invoice. Increased gratuity may incur if you request more staff members than is deemed necessary by Mari Vineyards Event Management. The 18% gratuity will be applied to your invoice with total increased charges for staffing requirements and/or requests. [REDACTED]

#### Final Payment

Final payment for the rental space to include tax is due two weeks prior to your event. Final wine balances and any necessary taxes will be due at the closing of your event. All payments may be made by cash, check, or credit card. Mari Vineyards will retain a credit card on file which will be received once this contract is signed. [REDACTED]

#### Cancellations

**October 6, 2023**

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mari VINEYARDS



Clients Name

Client Name: [REDACTED]

\_\_\_\_\_

Date 3/9/19

Signature 

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**EXHIBIT 62****PTP Motion for Summary Judgment****October 6, 2023****Page 1 of 8****TABONE VINEYARDS 30(b)(6)  
WOMP v PENINSULA TOWNSHIP****July 17, 2023****1-4**

Page 1	Page 3
<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 &amp; 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 26 27 <b>TABONE VINEYARDS 30(b)(6)</b> 28 <b>WOMP v PENINSULA TOWNSHIP</b> 29 HON. PAUL L. MALONEY 30 PENINSULA TOWNSHIP, a Michigan MAG. JUDGE RAY S. KENT 31 municipal corporation, 32 33 Defendant, 34 35 and 36 37 PROTECT THE PENINSULA, INC., 38 39 Intervenor-Defendant. 40 41 / 42 43 44 45</p>	<p>1 APPEARANCES: 2 For the Plaintiffs: STEPHEN MICHAEL RAGATSKI, ESQ. (P81952) 3 (via Zoom) 4 Miller Canfield Paddock &amp; Stone, PLC 5 99 Monroe Avenue, NW, Suite 1200 6 Grand Rapids, Michigan 49503 7 (616) 776-6333 8 ragatski@millercanfield.com 9 For the Defendant: TRACEY ROYCE DEVRIES, ESQ. (P84246) 10 (via Zoom) 11 McGraw Morris, PC 12 300 Ottawa Avenue, NW, Suite 800 13 Grand Rapids, Michigan 49503 14 (616) 288-2700 15 tdevries@mcgrawmorris.com 16 For the Intervenor-Defendant: TRACY JANE ANDREWS, ESQ. (P67467) 17 Law Office of Tracy Jane Andrews, PLLC 18 420 East Front Street 19 Traverse City, Michigan 49686 20 (231) 714-9402 21 tandrews@envlaw.com 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45</p>
Page 2	Page 4
<p>1 RULE 30(b)(6) DEPOSITION OF TABONE VINEYARDS, LLC and MARIO A. 2 TABONE 3 4 Taken by the Intervenor-Defendant on the 17th day of July, 5 6 2023, via Zoom, at 8:00 a.m. 7 8 9 RECORDED BY: Heidi Peckens, CER 9634 10 Certified Electronic Recorder 11 Esquire Deposition Solutions 12 Firm Registration Number 8035 13 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. Hillyer 6 5 6 7 EXHIBIT INDEX 8 9 PAGE 10 Deposition Exhibit 74 marked 12 11 (commercial lease agreement) 12 Deposition Exhibit 75 marked 14 13 (October 13th, 2016 letter to MLCC) 14 Deposition Exhibit 76 marked 15 15 (October 13th, 2016 letter from MLCC) 16 Deposition Exhibit 77 marked 16 17 (MLCC approval) 18 Deposition Exhibit 79 marked 19 19 (MLCC corrected order) 20 Deposition Exhibit 80 marked 21 21 (MLCC compliance certification) 22 Deposition Exhibit 81 marked 39 23 (6.30.16 land use permit) 24 Deposition Exhibit 82 marked 43 25 (5.17.17 land use permit) 26 Deposition Exhibit 83 marked 47 27 (1.29.16 application for land use permit) 28 Deposition Exhibit 84 marked 49 29 (Tabone email to Schoolmaster) 30 Deposition Exhibit 87 marked 54 31 (Plaintiff's answers to first Interrogatories) 32 33 34 35 36 37 38 39 40 41 42 43 44 45</p>



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TABONE VINEYARDS 30(b)(6)  
WOMP v PENINSULA TOWNSHIP

July 17, 2023

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<p>Page 5</p> <p>1 Via Zoom Video Conference</p> <p>2 Monday, July 17, 2023 - 8:14 a.m.</p> <p>3 REPORTER: We are now on the record at 8:14 a.m.</p> <p>4 on July 17th, 2023 to take the deposition of Mario A.</p> <p>5 Tabone. My name is Heidi Peckens, Notary Public and Digital</p> <p>6 Reporter for Esquire Deposition Solutions in the state of</p> <p>7 Michigan. The witness is located in Plymouth, Michigan and</p> <p>8 has confirmed his identity with his driver's license. Will</p> <p>9 everyone in attendance please identify yourselves for the</p> <p>10 record and state who you represent?</p> <p>11 MR. RAGATZKI: Steve Ragatzki on behalf of the</p> <p>12 plaintiffs in this case.</p> <p>13 MS. DEVRIES: Tracey DeVries on behalf of the</p> <p>14 defendants in this case -- well, the Peninsula Township.</p> <p>15 MS. ANDREWS: T.J. Andrews on behalf of</p> <p>16 TABONE VINEYARDS 30(b)(6)</p> <p>17 plaintiffs -- I mean, on behalf of PENINSULA TOWNSHIP</p> <p>18 intervening defendant.</p> <p>19 MS. HILLYER: And Holly Hillyer on behalf of</p> <p>20 Protect the Peninsula.</p> <p>21 (Off the record interruption)</p> <p>22 REPORTER: Thank you, Counsel. Mr. Tabone, could</p> <p>23 you please raise your right hand to be sworn? Do you</p> <p>24 solemnly swear or affirm that the testimony you shall give</p> <p>25 will be the truth, the whole truth, and nothing but the</p>	<p>Page 7</p> <p>1 before?</p> <p>2 A Yes.</p> <p>3 Q That was in this litigation; correct?</p> <p>4 A That's correct.</p> <p>5 Q Have you ever been deposed in any other litigation?</p> <p>6 A Not that I recall.</p> <p>7 Q Okay. Just a few ground rules. This will be transcribed,</p> <p>8 so please try to remember to speak your answers and avoid</p> <p>9 non-verbal communication like nodding and saying "mm-hmm."</p> <p>10 Let me finish questions. We'll try not to speak over one</p> <p>11 another, both so that your attorney has an opportunity to</p> <p>12 object and so that it's easier for the court reporter to</p> <p>13 transcribe. It also is definitely helpful in this virtual</p> <p>14 format where, you know, if we start talking over each other</p> <p>15 nobody can hear very well.</p> <p>16 If you don't understand a question, please let me</p> <p>17 know, I will try to rephrase it. If you answer I will</p> <p>18 assume that you've understood the question; is that fair?</p> <p>19 A Yes.</p> <p>20 Q And if your attorney objects I will still expect you to</p> <p>21 answer, unless he's instructed you not to answer because of</p> <p>22 a privilege. If I ask you for a time period or a date range</p> <p>23 or something like that, estimates are fine if you don't have</p> <p>24 an exact -- an exact response, but please try not to guess.</p> <p>25 Let me know if there's something that you don't know. And</p>
<p>Page 6</p> <p>1 MR. TABONE: I do.</p> <p>2 MARIO A. TABONE</p> <p>3 having been called by the Defendant and sworn:</p> <p>4 EXAMINATION</p> <p>5 BY MS. HILLYER:</p> <p>6 Q All right. So one more time for the record if you could,</p> <p>7 please, state your name.</p> <p>8 A Mario A. Tabone.</p> <p>9 Q All right. Mr. Tabone, I'm Holly Hillyer, I'm counsel for</p> <p>10 PTPx. And I'm going to go over a couple of ground rules,</p> <p>11 but first can I confirm that you have access to the folder</p> <p>12 of exhibits that was circulated this morning?</p> <p>13 A Yes. I downloaded that just before hopping on.</p> <p>14 Q Okay. Please let me know if you have any trouble opening</p> <p>15 any of the documents or anything as we refer to them. I am</p> <p>16 likely not going to share my screen unless that would be</p> <p>17 helpful to someone.</p> <p>18 A Okay.</p> <p>19 MR. RAGATZKI: Holly, I think if we're going to be</p> <p>20 talking about exhibits, to the extent you can, either share</p> <p>21 it on your screen or make sure we got talking page ID's or</p> <p>22 Bates labels so we're all -- we know we're talking about the</p> <p>23 same thing.</p> <p>24 MS. HILLYER: I can do that.</p> <p>25 Q And, Mr. Tabone, I understand that you've been deposed</p>	<p>Page 8</p> <p>1 also let me know if you need a break. I will try to take a</p> <p>2 break roughly every hour or so, but if you need one before</p> <p>3 that I'm happy to take breaks as long as there's no pending</p> <p>4 question on the table. Does that sound okay?</p> <p>5 A Yup; sounds fine.</p> <p>6 Q Okay. So first I want to just talk a little bit about how</p> <p>7 you prepared for the deposition today. What is your role</p> <p>8 with Tabone?</p> <p>9 A I'm the full owner of Tabone Vineyards, LLC.</p> <p>10 Q Okay. And that's an LLC, so it has members?</p> <p>11 A I'm the sole member.</p> <p>12 Q Sole member. Okay. And do you understand that you're</p> <p>13 testifying today as the corporate representative for Tabone?</p> <p>14 A Yes.</p> <p>15 Q And you understand that we are here today because Tabone has</p> <p>16 filed a lawsuit against Peninsula Township; correct?</p> <p>17 A Amongst others, but yes.</p> <p>18 Q "Amongst others" meaning there are additional plaintiffs?</p> <p>19 A Correct.</p> <p>20 Q Okay. Not to be DEPOSED (3376) at Tabone is involved in;</p> <p>21 right? EsquireSolutions.com</p> <p>22 A Right.</p> <p>23 Q And did you receive a copy of the schedule -- Schedule "A,"</p> <p>24 the topic list to your deposition notice?</p> <p>25 A The 30(b)(6) topic list?</p>

**TABONE VINEYARDS 30(b)(6)**  
**WOMP v PENINSULA TOWNSHIP**

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<p style="text-align: right;">Page 9</p> <p>1 Q Yes.</p> <p>2 A Yes.</p> <p>3 Q Okay. And what did you do to prepare for the deposition</p> <p>4 today? What kinds of documents did you review and who did</p> <p>5 you speak with besides your attorney?</p> <p>6 A So, I guess on a macro level just operating my business for</p> <p>7 about five years now (inaudible) creation of being the</p> <p>8 corporate representative, so that would be one thing. I</p> <p>9 also had a meeting with my attorneys on Friday.</p> <p>10 Q Okay. Did you review any documents?</p> <p>11 A Yes.</p> <p>12 Q Do you remember which documents you reviewed?</p> <p>13 A Not all of them off the top of my head.</p> <p>14 Q Okay. Any that stand out in your memory that you do</p> <p>15 remember viewing?</p> <p>16 A The topic list was one. <b>TABONE VINEYARDS 30(b)(6)</b></p> <p>17 Q Okay. Anything else?</p> <p>18 A I recall my broad response.</p> <p>19 Q And do you have any documents with you today for your</p> <p>20 deposition?</p> <p>21 A No.</p> <p>22 Q Okay. And do you agree to speak for Tabone today with your</p> <p>23 testimony?</p> <p>24 A Yes. When I hear you say, "Tabone," I'm going to assume you</p> <p>25 mean Tabone Vineyards, LLC.</p>	<p style="text-align: right;">Page 11</p> <p>1 A Tree fruit.</p> <p>2 Q Like apples, cherries?</p> <p>3 A Correct; peaches, --</p> <p>4 Q Okay.</p> <p>5 A -- plums; yeah.</p> <p>6 Q And do either of your parents have any involvement in the</p> <p>7 winery?</p> <p>8 A No.</p> <p>9 Q Okay. So who is primarily responsible for ensuring Tabone,</p> <p>10 and by that I mean Tabone Vineyard, LLC's compliance with</p> <p>11 the township zoning requirements?</p> <p>12 A I'm the only officer of the company, so that -- that would</p> <p>13 be me.</p> <p>14 Q That falls to you?</p> <p>15 A Yes. <span style="float: right;">July 17, 2023</span></p> <p>16 Q Okay. And would I be correct in understanding that you're</p> <p>17 also primarily responsible for applying for land use permits</p> <p>18 or amendments to land use permits for the property?</p> <p>19 A That would be the case.</p> <p>20 Q Okay. And you would also be the person who would speak to</p> <p>21 the township on behalf of Tabone; is that correct?</p> <p>22 A No, I would probably designate an agent.</p> <p>23 Q Okay. Have you done that in the past?</p> <p>24 A Yes.</p> <p>25 Q Can you tell me who your agent has been?</p>
<p style="text-align: right;">Page 10</p> <p>1 Q I do. Thank you for the clarification because that is a</p> <p>2 good segue into my next topic. I'd like to understand,</p> <p>3 actually, a little bit how the LLC is organized and it's</p> <p>4 business relationships with some other entities and it's</p> <p>5 interest in the property where the winery is located. So,</p> <p>6 you are correct, when I'm referring to Tabone, I'm talking</p> <p>7 about Tabone Vineyards, LLC, which is the plaintiff in this</p> <p>8 case. Are there any other LLC's or business entities that</p> <p>9 are associated with the winery property?</p> <p>10 A No.</p> <p>11 Q And is there a Tabone Orchards, to your knowledge, that's</p> <p>12 associated with the property?</p> <p>13 A I don't have any affiliation with Tabone Vineyards -- with</p> <p>14 Tabone Orchards. Sorry. Yeah, that's not anything that</p> <p>15 Tabone Vineyards, LLC or Mario A. Tabone has any dealings</p> <p>16 with.</p> <p>17 Q Okay. Is there a Tabone Orchards that's associated with the</p> <p>18 property that Tabone Vineyards, LLC operates the winery on?</p> <p>19 A I believe it's the trade name my parents use for their fruit</p> <p>20 sales.</p> <p>21 Q Okay. And your parents names are?</p> <p>22 A Mario and Marianne.</p> <p>23 Q And you mentioned that they had a fruit business?</p> <p>24 A Yes.</p> <p>25 Q What kind of fruit do they grow?</p>	<p style="text-align: right;">Page 12</p> <p>1 A Joe Infante, leading up to this lawsuit.</p> <p>2 Q Okay. So you had an attorney speak on your behalf to the</p> <p>3 township?</p> <p>4 A That's correct.</p> <p>5 Q Have you ever used an agent in connection with, like, a</p> <p>6 permit application or anything like that?</p> <p>7 A Yes.</p> <p>8 Q And who was that; do you remember?</p> <p>9 A My construction company or companies. I don't recall</p> <p>10 exactly.</p> <p>11 Q Okay. Do you remember the name of the company?</p> <p>12 A I think Burkholder.</p> <p>13 Q Okay. And am I correct in understanding that Tabone leases</p> <p>14 the land where the winery is located?</p> <p>15 A Yes.</p> <p>16 Q Okay. Does anyone else have an interest in the land?</p> <p>17 A So I in my individual capacity, am the sole owner as a -- a</p> <p>18 remainderman, and it's subject to a life estate of my</p> <p>19 mother.</p> <p>20 Q Okay. I <b>800.211.DEPO (3376)</b></p> <p>21 <b>EsquireSolutions.com</b></p> <p>22 MS. HILLYER: This will be Deposition Exhibit PTP</p> <p>23 74.</p> <p>24 (Deposition Exhibit 74 marked)</p> <p>24 Q Let me know when you've had a chance to pull that up.</p> <p>25 A Okay.</p>



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<p style="text-align: right;">Page 13</p> <p>1 Q Okay. And so this document is Bates numbered PTP 0003396,</p> <p>2 and I think the page range runs through -3407. So there are</p> <p>3 a couple of documents here. The first one is marked -- or</p> <p>4 labeled "Standard Form Commercial Lease" on the first page.</p> <p>5 A Yup.</p> <p>6 Q And if you turn or scroll to about halfway through, there's</p> <p>7 a page marked 3401 that says, "First Amendment to Standard</p> <p>8 Form Commercial Lease."</p> <p>9 A I see that.</p> <p>10 Q And then there's another copy of the standard form</p> <p>11 commercial lease as appendix "A" at the back.</p> <p>12 A Uh-huh (affirmative).</p> <p>13 Q It appears that there may have been a -- a change related to</p> <p>14 the property address. Can you explain what that was about?</p> <p>15 A Looking at 3401, the first amendment --</p> <p>16 Q Yes.</p> <p>17 A -- I believe this would be in relation to the address being</p> <p>18 updated by the county for the winery building.</p> <p>19 Q Okay. So that original address on the lease that referred</p> <p>20 to 15000 Peninsula Drive has been updated to 14916 Peninsula</p> <p>21 Drive?</p> <p>22 A Correct.</p> <p>23 Q Okay. And do you know why the address changed?</p> <p>24 A I believe it was upon the creation of a driveway for the</p> <p>25 winery property. And with the creation of the driveway the</p>	<p style="text-align: right;">Page 15</p> <p>1 Q And then that refers to a letter from Peninsula Township</p> <p>2 confirming an updated address?</p> <p>3 A Yes.</p> <p>4 Q Okay. And then below it confirms that the updated small</p> <p>5 winery premises address is the 14916 Peninsula Drive?</p> <p>6 A Uh-huh (affirmative).</p> <p>7 Q So would this letter be --</p> <p>8 MR. RAGATZKI: Is that a "yes," Mario?</p> <p>9 THE WITNESS: I'm sorry. Yes.</p> <p>10 MS. HILLYER: Thank you, Steve. I don't catch it</p> <p>11 either.</p> <p>12 A Would it be your understanding that this letter was in</p> <p>13 connection with notifying the MLCC about the -- the change</p> <p>14 in the address for the property?</p> <p>15 A That looks to be accurate, yes.</p> <p>16 Q Okay. And so would you agree that your -- your small</p> <p>17 winemaker license application was submitted sometime before</p> <p>18 October 13, 2016?</p> <p>19 A Yes.</p> <p>20 Q Okay. We can put that aside.</p> <p>21 MS. HILLYER: And the next exhibit should be PTP</p> <p>22 76 -- Deposition Exhibit 76.</p> <p>23 (Deposition Exhibit 76 marked)</p> <p>24 Q And this is marked Bates stamp PTP 0003358 at the bottom.</p> <p>25 And this is another letter, and it has the same date,</p>
<p style="text-align: right;">Page 14</p> <p>1 county needed an updated address.</p> <p>2 Q Okay. So when did you first apply for your small winemaker</p> <p>3 license?</p> <p>4 A That I do not recall.</p> <p>5 Q Do you recall approximately when? Was it before this lease</p> <p>6 was executed, around the same time?</p> <p>7 A The lease would have been in connection with the</p> <p>8 application, but I don't know what came first, the</p> <p>9 application being filed or the lease.</p> <p>10 Q Okay. Let's look at another exhibit.</p> <p>11 MS. HILLYER: This will be marked as Deposition</p> <p>12 Exhibit PTP 75.</p> <p>13 (Deposition Exhibit 75 marked)</p> <p>14 Q And this is Bates stamped PTP 0003408 at the bottom.</p> <p>15 A Okay.</p> <p>16 Q It's just one page. Do you recognize this document?</p> <p>17 A I can see it's an email. It shows my signature on it, but I</p> <p>18 do not recall it specifically.</p> <p>19 Q Okay. Are you looking at a letter dated October 13, 2016?</p> <p>20 A Oh, yes. I'm sorry. A letter. It has October 13, 2016 to</p> <p>21 Michigan Liquor Control Commission.</p> <p>22 Q Yes. And so it says, "Please find enclosed a set of</p> <p>23 documents that should complete Tabone Vineyard, LLC's</p> <p>24 application for a small winemaker license."</p> <p>25 A I see that, yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 October 13, 2016. Do you have that open?</p> <p>2 A I do.</p> <p>3 Q Okay. And can you describe what this document appears to</p> <p>4 be?</p> <p>5 A A Peninsula Township letterhead dated October 13, 2016. I</p> <p>6 don't recall it, but it seems to be from the township</p> <p>7 confirming the updated business address as 14916 Peninsula</p> <p>8 Drive.</p> <p>9 Q Okay. We can set that aside. The next document I'd like</p> <p>10 you to take a look at is Deposition Exhibit PTP 77.</p> <p>11 (Deposition Exhibit 77 marked)</p> <p>12 A Okay.</p> <p>13 Q And these are marked -- these are Bates stamped -- I don't</p> <p>14 believe they are in order. The first page is PTP 0003418</p> <p>15 and then the next page is 3417 and the last page is 3606. I</p> <p>16 tried to put them in chronological order and not production</p> <p>17 order.</p> <p>18 A Okay.</p> <p>19 Q So do you recognize these documents?</p> <p>20 MR. RAGATZKI: (376) to foundation.</p> <p>21 A I'm not sure which one of them, since there's -- it seems to</p> <p>22 be like three separate versions, but I recall at least one</p> <p>23 of these approval forms, yes.</p> <p>24 Q Okay. So this first page, the one that's marked PTP</p> <p>25 0003418, do you see about the middle of the page where it</p>

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<p style="text-align: right;">Page 17</p> <p>1 says, "For the following license, a small winemaker, to be 2 located at 14998 Peninsula Drive, Traverse City, Michigan?" 3 A I see that. 4 Q And then above that, a little bit to the right of it there's 5 a -- there's a line where there's a date that says, "May 6 23rd, 2016." 7 A Yeah, I see that. 8 Q Was the 14998 address the address that was associated with 9 the original small winemaker license application? 10 A That I don't recall. 11 Q Okay. And do you see down at the bottom of this document 12 where it says, "I hereby certify" -- there's a sentence that 13 says, "The foregoing is a true and complete copy of the 14 resolution offered and adopted by the township council/board 15 at a second regular meeting held on May 23rd, 2016," and 16 then there's the signature of WOMP v PENINSULA TOWNSHIP 17 A I see that. 18 Q Okay. Would it be your understanding that this was a 19 resolution that the township board passed to approve the 20 small winemaker license that you had applied for sometime 21 before May 23rd, 2016? 22 MR. RAGATZKI: Object to foundation. 23 A That would be my understanding. 24 Q Okay. So the next page is the one marked PTP 0003417, and 25 this, as you've already noted, looks pretty similar. The</p>	<p style="text-align: right;">Page 19</p> <p>1 from the one before it? 2 MR. RAGATZKI: Object to foundation. 3 A I'm not sure if it is different, other than the handwriting. 4 Q Okay. And are you aware of any local government approvals 5 for any other MLCC licenses that Tabone has received since 6 this September 2016 approval? 7 A "Local government approval." Not that I can recall sitting 8 here. 9 Q Okay. We can put that aside. And do you recall when you 10 obtained your small -- your small winemaker license? 11 A I do not. I know it was before I opened my doors in 2018. 12 Q Okay. When did you open in 2018? 13 A The fall of 2018. 14 Q Fall. Okay. We'll skip over one of these exhibits and take 15 a look at PTP 79. July 17, 2023 16 (Deposition Exhibit 79 marked) 17 Q And this is Bates stamped PTP 0003447 through 3452. Let me 18 know when you have that up. 19 A Okay. I have that open. 20 Q And do you recognize this document? 21 A Not offhand, but I'm going through it right now. 22 Q Okay. Let me know when you've had a chance to look through 23 it. 24 A Okay. 25 (Witness reviews document)</p>
<p style="text-align: right;">Page 18</p> <p>1 date on this appears to be --- let's see -- the resolution 2 date is September 13, 2016, if you look at the second line 3 right after where it says, "Called to order by Robert 4 Manigold, supervisor." 5 A Yeah, I see that. 6 Q And then if you look down a couple more lines, it says that 7 the license will be located at 14916 Peninsula Drive. 8 A I see that. 9 Q And then down below it indicates that the resolution was 10 signed, it looks like by a clerk named Joanne Westfall on 11 September 15, 2016. 12 A I see that as well. 13 Q Is it your understanding that this would be the local 14 government approval that the township provided with the 15 updated address -- 16 MR. RAGATZKI: Object to foundation. 17 Q -- over the winery? 18 A That's what this appears to be. 19 Q Okay. And then the last page appears to be a handwritten -- 20 a handwritten version of that document, just similar, also 21 signed by Joanne Westfall on September 15th and also 22 referring to a resolution on September 13th. Do you 23 recognize this document? 24 A I do not. 25 Q And do you know why this one might be a little bit different</p>	<p style="text-align: right;">Page 20</p> <p>1 A Okay. 2 Q Could you describe this document for me? 3 A I don't recall this specific document, but it appears to be 4 the conditional approval of my small winemaker license from 5 the MLCC. 6 Q Okay. Would you agree that it appears to be dated March 8, 7 2017 or refers to a March 8, 2017 meeting of the MLCC? 8 A I see that 9 Q Okay. And so does that align with your memory that you got 10 your small winemaker license sometime before you opened in 11 the fall of 2018? 12 MR. RAGATZKI: Object to foundation. 13 A It aligns with the timing that would be before I opened. I 14 don't recall this specific letter. I believe I recall more 15 the follow-ups that -- some of which are mentioned in this 16 letter. 17 Q And what do you mean by "the follow-ups"? 18 A Any of the items that I would have to do or deliver to the 19 MLCC to finalize the licensing process. 20 Q Okay. 300.211 DEPO (3376) EsquireSolutions.com 21 A I do. 22 Q Would it be fair to say that it -- it took some time between 23 when this order was issued and when you actually were able 24 to open your doors, to complete all of those steps? 25 A Yes, but not solely for the licensing side.</p>



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<p style="text-align: right;">Page 25</p> <p>1 open? Do you have tables, chairs, umbrellas?</p> <p>2 A Currently configured with tables, chairs, umbrellas.</p> <p>3 Q Okay. Do you have any other areas on the property where</p> <p>4 people are able to taste wine, you know, order a glass in</p> <p>5 the tasting room and bring a glass of wine with them</p> <p>6 elsewhere on the property besides the tasting room and the</p> <p>7 patio?</p> <p>8 A Yes.</p> <p>9 Q And where is that?</p> <p>10 A Yeah, so my understanding is the entire parcel is licensed</p> <p>11 to be the outdoor tasting area.</p> <p>12 Q Okay.</p> <p>13 A And it's just within the bounds that we place, depending on</p> <p>14 the day and how many people we may have for controlling</p> <p>15 that.</p> <p>16 Q Okay. And how large is the parcel?</p> <p>17 A So I own multiple parcels. I just want to make sure, like,</p> <p>18 which parcel or parcels we're talking about.</p> <p>19 Q I guess what is included in the outdoor tasting area that</p> <p>20 the MLCC allows?</p> <p>21 A So the property or the parcel that the winery building is</p> <p>22 located on is an 18 acre parcel.</p> <p>23 Q Okay.</p> <p>24 A And contiguous to that is a 12 acre parcel. So the winery</p> <p>25 contiguous property is about -- is 30 acres.</p>	<p style="text-align: right;">Page 27</p> <p>1 A Cindy Bizon, B-i-z-o-n.</p> <p>2 Q Okay. Has she been with Tabone long?</p> <p>3 A Over a year.</p> <p>4 Q Okay. Did you have a tasting room manager before that or</p> <p>5 were you in charge of everything then?</p> <p>6 A No, I've had a tasting room manager.</p> <p>7 Q Okay.</p> <p>8 A Yeah. I don't recall who the last one was, though, just off</p> <p>9 the top of my head.</p> <p>10 Q Okay.</p> <p>11 A I've had a few.</p> <p>12 Q So the tasting room, what kinds of -- what kinds of things</p> <p>13 can people do in the tasting room besides order a glass of</p> <p>14 wine? Is there food available, do you ever have live music</p> <p>15 or activities, like themed, you know, themed tastings or</p> <p>16 trivia night, things like that? What kinds of things can</p> <p>17 visitors do when they're at the tasting room?</p> <p>18 A Well, we offer wine flights currently, --</p> <p>19 Q Okay.</p> <p>20 A -- so those have been popular.</p> <p>21 Q Anything else like Wednesday night trivia or, you know,</p> <p>22 singer/songwriter guy in the corner with, like, you know --</p> <p>23 A No. My understanding is we're not able to do that per</p> <p>24 township regulations.</p> <p>25 Q Okay. Has anyone from the township told you that?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q Got it.</p> <p>2 A And then separately I also own a 21 and some change acre</p> <p>3 cherry farm.</p> <p>4 Q Okay. So are there vineyards on the winery parcel or are</p> <p>5 those on the contiguous 12 acres?</p> <p>6 A The vines are on the 18 and the 12 acre parcels.</p> <p>7 Q Okay. Do you know approximately how much you have planted</p> <p>8 in vines?</p> <p>9 A It's over 20 acres. I don't have the exact amount.</p> <p>10 Q Do visitors to the tasting room have the opportunity to walk</p> <p>11 through the vines or -- you know, when you set up those</p> <p>12 boundaries do you generally keep them outside of the vine</p> <p>13 areas?</p> <p>14 A Oh, no, they love taking photos in front of the vines. Some</p> <p>15 of them pick, unfortunately, though.</p> <p>16 Q Do you offer tours to people? Do you take people around or</p> <p>17 have any -- or have your staff take people through the</p> <p>18 facility or is it -- is it more self-directed?</p> <p>19 A It's on a availability basis.</p> <p>20 Q Okay. And who generally does staff the -- the tasting room</p> <p>21 when, you know, during regular business hours when people</p> <p>22 are there?</p> <p>23 A I have a tasting room manager and she has tasting room</p> <p>24 attendance.</p> <p>25 Q Okay. Who's your tasting room manager?</p>	<p style="text-align: right;">Page 28</p> <p>1 A Yes; told the business that.</p> <p>2 Q When was that?</p> <p>3 A Leading up to this -- this lawsuit.</p> <p>4 Q Do you remember approximately the year? If I were to tell</p> <p>5 you the lawsuit was filed in October 2020, was it close in</p> <p>6 time to that or years before?</p> <p>7 A It would have been between the fall of '18 and the fall of</p> <p>8 2020.</p> <p>9 Q Okay. That's right, you opened the fall of '18.</p> <p>10 A Right.</p> <p>11 Q Is the space ever used by private groups or do people make</p> <p>12 reservations to have some of the space, like for a large</p> <p>13 group tasting or anything like that?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Okay. And is there food available for people?</p> <p>16 A We have limited food items. We can't cook anything, so all</p> <p>17 we can do is plate.</p> <p>18 Q Okay. Do you have a kitchen or a prep area?</p> <p>19 A Just a prep area for very basic charcuterie.</p> <p>20 Q Okay.</p> <p>21 A And sometimes we carry bags of chips.</p> <p>22 Q Okay. And how does Tabone promote the tasting room and --</p> <p>23 and what is available in the tasting room? Do you have a</p> <p>24 webpage or use traditional print advertising or social media</p> <p>25 or some other kind of</p>

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<p style="text-align: right;">Page 29</p> <p>1 A I think first and foremost it's through our membership with          2 the wine trail, --          3 Q Okay.          4 A the Old Mission Peninsula Wine Trail.          5 Q And how does that work? Can you tell me anything more about          6 that?          7 A They're effectively the marketing arm for the -- the wine          8 trail on Old Mission Peninsula.          9 Q Okay. When people visit do you find that a lot of people          10 are touring multiple wineries on the peninsula?          11 A Yes.          12 Q Okay.          13 A The maps are helpful. The wine trail has maps, yes.          14 Q Okay. Yes, where it shows the location of the different          15 wineries of the peninsula?          16 A Correct.          17 Q I have seen those. Do you get a lot of tour busses or          18 people mostly coming in their personal vehicles and doing          19 sort of a self-guided tour?          20 A It's a mix.          21 Q And when people do come to Tabone, where do they park?          22 A In our parking lot, typically.          23 Q Do you know off the top of your head how many spaces you          24 have?          25 A I do not. But we have a crushed-stone lot and then we also</p>	<p style="text-align: right;">Page 31</p> <p>1 Q Yeah. The items that you retail, do you have a -- like a          2 separate space within the facility or are they behind the          3 bar or are just kind of scattered throughout the space?          4 A It depends on the configuration and our tasting room          5 manager, but I would say mostly it would be located in what          6 I would call more of the retail bottle section that -- we          7 have cabinets behind the main cash register that have          8 bottles for sale to take home --          9 Q Okay.          10 A -- and it would be in that area that we would have our          11 merchandise.          12 Q Okay. You mentioned fall is your peak season, on like your          13 busiest Saturday in, say, October, about how many visitors          14 might you expect would come to the tasting room?          15 A That's hard to gauge. And I have not looked at my numbers          16 recently, but it's consistently busy all day.          17 Q Okay. I guess by "consistently busy," would it be fair to          18 say the parking lot's generally full all day, are you using          19 your overflow parking at that point?          20 A Yeah, you're basically full all day to the point that either          21 I or someone would be, you know, making sure that we're on          22 our -- our fire code -- you know, that we're under the fire          23 code.          24 Q Okay.          25 A So very full in September, October.</p>
<p style="text-align: right;">Page 30</p> <p>1 have a lot of acres, mostly grass, that is easily parkable          2 for, you know, if we're slammed in the fall.          3 Q Okay. Do you get a lot of large busses that take up          4 multiple spaces, do you have, like, separate bus parking or          5 is that not usually an issue?          6 A We have an area for busses that it's easy for them to park          7 and turn around.          8 Q Okay. And does Tabone offer any items other than -- other          9 than its wine for retail sales?          10 A Yes.          11 Q What kinds of things do you sell at Tabone?          12 A Some things off the top of my head are glassware, the          13 stemless and stemmed wine glasses featuring our logo, for          14 example.          15 Q Okay. Any t-shirts, hats, corkscrews, anything like that?          16 A Corkscrews; so I don't use corks. Everything I have is          17 either screw -- screw cap or for my sparkling it's a -- you          18 know, the cage, so no screw caps necessary for what I do.          19 Q Excellent.          20 A We do have a bottle opener for some of the sparklings I use.          21 Q Okay.          22 A The pop top, yeah.          23 Q Okay. I have heard good things about screw caps, generally.          24 Has your experience with them been positive?          25 A Yes; yeah. There's no cork taint.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q And what kind of hours do you maintain in September or          2 October?          3 A I guess off the top of my head we would be anywhere from          4 five to seven days a week, --          5 Q Okay.          6 A -- opening typically around 11:00 in the morning and going          7 to -- currently either 6:00 or 7:00 p.m. based on having one          8 shift of workers that day.          9 Q Okay. Are you open throughout the winter?          10 A Yes.          11 Q Do you have more limited hours then or limited days of the          12 week?          13 A Yeah, it's fewer days of the week, it's not seven, for sure.          14 And we might shave an hour, you know, off the closing time,          15 depending, but that's more on staffing and availability.          16 Q And do you do wholesale distribution out of your location?          17 A I do not.          18 Q Okay. Do you do any kind of direct shipping, like a wine          19 club or anything like that?          20 A Yes.          21 Q And so what do you -- you have a wine club; is that right?          22 A I do.          23 Q Okay. What is that like? What do people get for -- if they          24 join the wine club?          25 A There's three separate boxes, and they get a lot of many</p>

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**July 17, 2023  
37-40**

<p style="text-align: right;">Page 37</p> <p>1 talk about the land uses on the property. Do you know how 2 the property came to be a winery? Were there vines there 3 when -- when you started the winery or did you plant those? 4 A There were vines originally and I planted additional. 5 Q And when did you obtain your interest in the property? 6 A I don't recall exactly. I'd have to look at -- refer to the 7 Deed. But it was prior to applying for the liquor license. 8 Q Okay. Do you know who first planted the vines there? 9 A I believe it was Mr. Jack Seguin. I'm not exactly sure how 10 to pronounce that. 11 Q Okay. Is that S-e-g-u-i-n, does that sound right? 12 A Sorry. That sounds right. 13 Q Okay. Thanks. I'd like to look at a document, this is not 14 marked as an exhibit. It's already in the record as ECF 15 number 32-2, starting at page I.D. 1635. 16 MR. RAGATZKI: Is that in the set of documents 17 emailed over this morning? 18 MS. HILLYER: Yes. There should have been two 19 folders; one with documents that don't need to be marked as 20 exhibits but are available for you to reference, like the 21 ordinance sections, and then the others were numbered as 22 exhibits. 23 MR. RAGATZKI: I see this. Mario, do you have it? 24 A Is it ECF 32-2? 25 Q Yes. And if you turn --</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Do you know what J. Joseph Vineyards, Inc. is? 2 A I do not. 3 Q Okay. Are you aware of any other amendments to this special 4 use permit or any other special use permits associated with 5 the property that the winery is located on? 6 MR. RAGATZKI: Objection to form and foundation. 7 A I do not, because we're operating under a -- a farm 8 processing facility. 9 Q Set that aside. So let me get a number on this. I think 10 I'd like you to take a look at PTP Deposition Exhibit 81. 11 (Deposition Exhibit 81 marked) 12 Q And this is marked at the bottom "Defendant's Response to 13 First RFP's 004780 through -4782." And at the top it says, 14 "Land Use Permit Peninsula Township," and it refers to the 15 owners as Marianne and Mario Tabone. Do you see this 16 document? 17 A I see it. 18 Q Okay. And the address on here is 14998 Peninsula Drive; 19 correct? 20 A I see that. 21 Q Okay. Is it your understanding that the Mario and Marianne 22 Tabone referenced as the owners are you and your mother or 23 would it be your mother and your father Mario? 24 A I can't speak to that, because it looks to be a township 25 document, so I'm not sure who they were addressing this to.</p>
<p style="text-align: right;">Page 38</p> <p>1 A Okay. 2 Q -- if you turn past that first page -- that first page says, 3 "Exhibit." I believe it was an exhibit attached to a 4 previous filing in this case, so it says "Exhibit 1" on the 5 cover page, but then if you turn to the actual document at 6 the top it says "Special Use Permit, Permit Number 73" -- 7 A Okay. 8 Q -- "for 14998 Peninsula Drive." Do you recognize this? 9 A I don't recognize it, but I'm looking through it. may Year 10 2000. No, I don't recall this document. 11 Q And I heard you say "2000." Are you referring to the date 12 on the back where it indicates that the special use permit 13 was approved by the Peninsula Township Board on the 18th of 14 April, 2000? 15 A I saw that on the -- the top of page 2 of 4 of this exhibit. 16 Q Yes; "approved by the township board April 18, 2000, for the 17 parcel number 2811122-01000." 18 A Correct. That's what I see. 19 Q And you see about halfway down that page, the resolution 20 language where it says that, 21 "The Peninsula Township Board does hereby approve 22 special use permit number 73 and the site plan for the 23 above-referenced property by J. Joseph Vineyards, Inc., 24 subject to the requirements set forth below?" 25 A I see that.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Do you know does your father have any ownership interest in 2 14998 Peninsula Drive? 3 A No. 4 Q Okay. And does your mother? 5 A Through a life estate. 6 Q And do you? 7 A Yes. 8 Q Okay. So if you scroll down, just below the address, 9 actually, "Use 1, reconstruction of food processing plant 10 structure for SUP 73." Do you know what that means? 11 A I don't recall this specific document, but I -- at least the 12 first word, "Reconstruction," you know, the previous 13 building had burned down, and so what is now the winery 14 building was effectively a reconstruction on that -- that 15 footprint of the barn that had burned down. 16 Q Okay. So do you remember when the fire would have been? 17 A I believe it was Memorial Day, and I want to say 2016, but 18 I -- I don't know if it was '16 or not. I'm pretty sure it 19 was on a Memorial Day. 20 Q Okay. And let's see, down at the bottom where it says the 21 comments, it refers to a check number and then it says, 22 "Burkholder Construction." Would that construction company 23 be one of those agents you told me about earlier that would 24 apply for land use permits on Tabone's behalf? 25 A Yeah. Burkholder was the original contractor for</p>

DEPOSITION  
EXHIBIT

PTP 74

Tabone

**STANDARD FORM COMMERCIAL LEASE****1. PARTIES**

LESSOR, which expression shall include Mary Ann Tabone, a Michigan resident, and her heirs, successors and assigns where the context so admits, does hereby lease to

LESSEE, which expression shall include Tabone Vineyards, LLC, a Michigan limited liability company, and its affiliates, successors, executors, administrators, and assigns where the context so admits, and

the LESSEE hereby leases to LESSOR the following described premises:

**2. PREMISES**

The Southwest Corner of the metes and bounds, (legal description - Part of the Southwest ¼ of Section 15, Town 29 North, Range 10 West, more particularly described as: Beginning at the Southwest corner of said Section 15; thence North 00°31'53" West, 584.41 feet along the West line of said section (also the centerline of Peninsula Drive); thence North 82°47'00" East, 830.21 feet; thence South 00°25'11" East, 684.57 feet to the South line of said section; thence South 89°42'44" West, 823.24 feet to said West section line and the Point of Beginning.

SUBJECT TO a 43 foot wide easement and 60 foot radius cul-de-sac for ingress and egress, and the installation and maintenance of public and private utilities, more fully described as: Beginning at the Southwest corner of said Section 15 said point being on the South line of said 43 foot wide easement; thence North 89°42'44" East, 1777.62 feet along said South section line and the South line of said 43 foot wide easement; thence North 00°17'08" West, 60.00 feet to the center of a 60.00 foot radius cul-de-sac and the Point of Ending of said easement.) that is 250 feet by 250 feet. The Southwest Corner as the point of beginning 250 feet East, then 250 feet North, then 250 feet West, then 250 feet to the Southwest Corner which is the point of beginning, p.o.b. (more commonly known as the southwest corner of 15000 Peninsula Dr., Traverse City, MI 49686, and measuring 250 feet by 250 feet).

**3. TERM**

The term of this lease shall be for ten years commencing on June 4, 2014, and continuing thereafter on a year-by-year basis, unless earlier terminated under the terms of this Lease.

**4. RENT**

The LESSEE shall pay to the LESSOR rent at the rate of One Thousand US Dollars (\$1,000.00) per year, payable annually in arrears.

**5. SECURITY DEPOSIT**

Upon the execution of this lease, the LESSEE shall pay to the LESSOR the amount of One Thousand US Dollars (\$1,000.00), which shall be held as a security for the LESSEE's performance as herein provided and refunded to the LESSEE at the end of this lease subject to the LESSEE's satisfactory compliance with the conditions hereof.

**6. UTILITIES**

The LESSEE shall pay, as they become due, all bills for electricity and other utilities (whether they are used for furnishing heat or other purposes) that are furnished to the leased premises and presently separately metered, and all bills for fuel furnished to a separate tank servicing the leased premises exclusively.

LESSOR shall have no obligation to provide utilities or equipment other than the utilities and equipment within the premises as the commencement date of this lease. In the event LESSEE requires additional utilities or equipment, the installation and maintenance thereof shall be the LESSEE's sole option, provided that such installation shall be subject to the written consent of the LESSOR, which will not be unreasonably withheld.

7. **USE OF LEASED PREMISES** The LESSEE shall use the leased premises only for the purpose of wine production, storage, sale (wholesale and retail), tasting, tours, and other related activities as may be permitted by law.
8. **COMPLIANCE WITH LAWS** The LESSEE acknowledges that no trade or occupation shall be conducted in the leased premises or use made thereof which will be unlawful, improper, or contrary to any law of any municipal by-law or ordinance in force in the city or town in which the premises are situated.
9. **FIRE INSURANCE** The LESSEE shall not permit any use of the leased premises which will make voidable any insurance on the property of which the leased premises are a part, or on the contents of said property or which shall be contrary to any law or regulation from time to time established. The LESSEE shall on demand and after notice reimburse the LESSOR, and all other tenants, all required extra insurance premiums caused by the LESSEE's use of the premises.
10. **MAINTENANCE** The LESSEE agrees to maintain the leased premises in good condition, damage by fire and other casualty only excepted, and whenever necessary, to replace plate glass and other glass therein, acknowledging that the leased premises are now in good order and the glass whole. The LESSEE shall not permit the leased premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste.
  - A. **LESSEE'S OBLIGATIONS**
  - B. **LESSOR'S OBLIGATIONS** The LESSOR agrees to maintain the structure of the building of which the leased premises are a part in the same condition as it is at the commencement of the term or as it may be put in during the term of this lease, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance is required because of the LESSEE or those whose conduct the LESSEE is legally responsible.
11. **ALTERATIONS ADDITIONS** The LESSEE may make structural alterations or additions to the leased premises, provided the LESSOR consents thereto in writing, which consent shall not be unreasonably withheld or delayed. All such allowed alterations shall be at LESSEE's expense and shall be in quality at least equal to the present construction. LESSEE shall not permit any mechanics' liens, or similar liens to remain upon the leased premises for labor and material furnished to LESSEE or claimed to have been furnished to LESSEE in connection with work of any character performed or claimed to have been performed at the direction of LESSEE and shall cause any such lien to be released of record forthwith without cost to LESSOR.
12. **ASSIGNMENT** The LESSEE shall not assign or sublet the whole or any part of the leased



- SUBLEASING** premises without LESSOR's prior written consent. Notwithstanding such consent, LESSEE shall remain liable to LESSOR for the payment of all rent and for the full performance of the covenants and conditions of this lease.
- 13. SUBORDINATION** This lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter, a lien or liens on the property of which the leased premises are a part and the LESSEE shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage.
- 14. LESSOR'S ACCESS** The LESSOR or agents of the LESSOR may, at reasonable times, enter to view the leased premises and may remove placards and signs not approved and affixed as herein provided, and make repairs and alterations as LESSOR should elect to do and may show the leased premises to others, and at any time within three (3) months before the expiration of the term, may affix to any suitable part of the leased premises a notice for letting or selling the leased premises or property of which the leased premises are a part and keep the same so affixed without hindrance or molestation.
- 15. INDEMNIFICATION AND LIABILITY** The LESSEE shall save the LESSOR harmless from all loss and damage occasioned by the use or escape of water or by the bursting of pipes, as well as from any claim or damage resulting from neglect in not removing snow and ice from the roof of the building or from the sidewalks bordering upon the premises so leased, or by any nuisance made or suffered on the leased premises, unless such loss is caused by the neglect of the LESSOR. The removal of snow and ice from the sidewalks bordering upon the leased premises shall be LESSEE's responsibility.
- 16. LESSEE'S LIABILITY INSURANCE** The LESSEE shall maintain with respect to the leased premises and the property of which the leased premises are a part comprehensive public liability insurance in the amount of at least \$1,000,000 with property damage insurance in limits of in responsible companies qualified to do business in Michigan and in good standing therein insuring the LESSOR as well as LESSEE against injury to persons or damage to property as provided.
- 17. FIRE CASUALTY - EMINENT DOMAIN** Should a substantial portion of the leased premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, or be taken by eminent domain, the LESSOR may elect to terminate this lease. When such fire, casualty, or taking renders the leased premises substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and the LESSEE may elect to terminate this lease if:
- (a) The LESSOR fails to give written notice within thirty (30) days of intention to restore leased premises, or
  - (b) The LESSOR fails to restore the leased premises to a condition substantially suitable for their intended use within ninety (90) days of said fire, casualty or taking.

The LESSOR reserves, and the LESSEE grants to the LESSOR, all rights which the LESSEE may have for damages or injury to the leased premises for any taking by eminent domain, except for damage to the LESSEE's fixtures, property, or equipment.

**18. DEFAULT  
AND BANK-  
RUPTCY**

In the event that:

- (a) The LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice thereof; or
- (b) The LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof; or
- (c) The LESSEE shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of LESSEE's property for the benefit for creditors.

then the LESSOR shall have the right thereafter, which such default continues, to re-enter and take complete possession of the leased premises, to declare the term of this lease ended, and remove the LESSEE's effects, without prejudice to any remedies which might be otherwise used for arrears of rent or other default. The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term. If the LESSEE shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on LESSEE's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations insured, shall be paid to the LESSOR by the LESSEE as additional rent.

**19. NOTICE**

Any notice from the LESSOR to the LESSEE relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed to the leased premises, registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSEE, or at such address as the LESSEE may from time to time advise in writing. Any notice from the LESSEE to the LESSOR relating to the leased premises or to the occupancy thereof shall be deemed duly served, if mailed to the LESSOR by registered or certified mail, return receipt requested, postage prepaid addressed to the LESSOR at such address as the LESSOR may from time to time advise in writing. All rent notices shall be paid and sent to the LESSOR at the agreed mailing address.

**20. SURRENDER**

The LESSEE shall at the expiration or other termination of this lease remove all LESSEE's goods and effects from the leased premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or


painted by the LESSEE, either inside or outside the leased premises). LESSEE shall deliver to the LESSOR the leased premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the leased premises, in good condition, damage by fire or other casualty only excepted. In the event of the LESSEE's failure to remove any of LESSEE's property from the premises, LESSOR is hereby authorized, without liability to LESSEE for loss or damage thereto, and at the sole risk of LESSEE, to remove and store any of the property at LESSEE's expense, or to retain same under LESSOR's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.


**21. OTHER  
PROVISIONS**

It is understood and agreed that:

This Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law rules.

UPON WITNESS WHEREOF, the said parties hereunto set their hands and seals this 11th day of June, 2014.

  
\_\_\_\_\_  
LESSEE  
TABONE VINEYARDS, LLC  
MARIO A. TABONE, SOLE MEMBER

  
\_\_\_\_\_  
LESSOR  
MARY ANN TABONE

2016 OCT 17 PM 1:50  
MLCC LICENSING

**FIRST AMENDMENT TO  
STANDARD FORM COMMERCIAL LEASE**

This First Amendment ("Amendment") is effective December 4, 2015, and amends the Standard Form Commercial Lease effective June 11, 2014, between Mary Ann Tabone and Tabone Vineyards, LLC (the "Lease"), a copy of which is attached as Appendix A. Capitalized terms used in this Amendment and not otherwise defined will have the meaning given in the Lease.

1. Terms and Conditions. The parties agree that the Premises as defined by the Lease ("Article 2") shall be updated amended to read the current address of "14916 Peninsula Dr., Traverse City, MI 49686."
2. Full Force and Effect. Except as specifically modified by this Amendment, the parties acknowledge and agree that the Lease otherwise remains in full force and effect in accordance with its terms.

Executed by the undersigned duly authorized representatives of the parties:

**LESSOR**

Mary Ann Tabone

By: Mary Ann Tabone

Name: Mary Ann Tabone

Date: 12-4-15**LESSEE**

Tabone Vineyards, LLC

By: M.A. Tabone

Name: Mario A. Tabone

Title: Owner, Managing Member

Date: 12/4/2015

MLCC LICENSING

2016 JUN -7 PM 3:06

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**APPENDIX A**



**STANDARD FORM COMMERCIAL LEASE****1. PARTIES**

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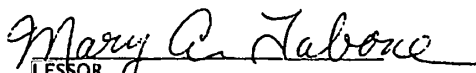
**21. OTHER  
PROVISIONS**

It is understood and agreed that:

This Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law rules.

UPON WITNESS WHEREOF, the said parties hereunto set their hands and seals this 11th day of June, 2014.

  
\_\_\_\_\_  
LESSEE  
TABONE VINEYARDS, LLC  
MARIO A. TABONE, SOLE MEMBER

  
\_\_\_\_\_  
LESSOR  
MARY ANN TABONE



**Peninsula Township Application for Land Use Permit and Required Materials***\* All structures must meet setbacks & all structures of 25 square feet or greater require a Land Use Permit \**

1. Parcel Tax # 28-11- 122 - 010 - 00 Parcel Zoning A-1
2. Property Address 14916 Peninsula Drive  
(If an address has not been assigned it must be requested from the Grand Traverse County Equalization Dept.)
3. Proposed use of structure Winery Farm Processing & Tasting Room
4. Property Owner's Name and Address MARIONA TABONE  
14998 Peninsula Dr, Traverse City, MI
5. Fees - \$100.00 for a new dwelling, \$75.00 for additions or other construction, Commercial based on Size. 49686
6. Evidence of Ownership if not in Township Files. (Recorded Deed or Land Contract).
7. Calculations related to lot, existing, and proposed structures (will be confirmed by staff):
  - a. 18.1 Area of the parcel excluding road rights-of-way. Measured to the Ordinary High Water Mark for shoreline properties.
  - b.        Total square footage of existing building footprint(s). (Including roof overhangs, garages, accessory structures, porches, decks & patios not flush with the ground).
  - c. 3658 Calculated square footage of proposed building/structure footprint (see instructions on line b).
  - d. 3.942 % of lot coverage (Line b & c divided by line a).
8. One (1) full set of construction plans for proposed structures including site plan and elevations (will be kept for Assessing Department).
- ☒ 9. Exterior light fixture detail (See Section 7.14 of the Zoning Ordinance).
- ☒ 10. Copy of Site Plan **not greater than 11" x 17", drawn to scale** showing the following:
  - a. property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM), if any.
  - b. All existing and proposed structures including decks and roof overhangs.
  - c. Setbacks for existing and proposed structures; (Varies by zoning, see Section 6.8 of the Zoning Ordinance).
- ☒ 11. Front Elevation (not greater than 11" x 17") **drawn to scale.**
- ☒ 12. Health Department Permit for well and septic system (unless connected to a central sewer/water).
- ☒ 13. Soil & Erosion Permit from G.T. County Soil Erosion - Sedimentation Office.
- ☒ 14. Driveway Permit from County Road Commission or M.D.O.T.
- ☒ 15. Written approval for construction from the Association's Architectural Committee (if applicable).

**The following may be required to receive a permit:**

- ☐ Property boundaries to be located and marked by a registered land surveyor (if property corners are not marked). (Include Ordinary High Water Mark and Flood Plane Elevation).
- ☐ DNR permit for wetlands or critical erosion areas.
- ☐ Zoning Board of Appeals approval for filling within the Flood Plain, Extension of a non-conforming structure or Dimensional Variance. (See Planning & Zoning Department for requirements).
- ☐ Storm Water Review (for properties within 500 ft. of OHWM) \$850.00 additional fee. (See Planning & Zoning Department for requirements).

Applicant Signature

Date

Applicant Name (Printed)

Phone Number

BUSHMOLDER CONSTRUCTION

PENINSULA TOWNSHIP APPLICATION FOR FARM PROCESSING FACILITY NO. \_\_\_\_\_

PARCEL NUMBER: 28-11-122-010-00 PARCEL ADDRESS 14916 Peninsula DriveAPPLICANT NAME AND ADDRESS: TABONE VINEYARDS, LLC.14998 Peninsula, DR. TRAVERSE CITY, MI 49686APPLICATION REQUIREMENTS:

The following are required with the application to the Township Zoning Administrator:

- \_\_\_\_ 1. Name, address and phone number of the proposed owner and/or operator of the Farm Processing Facility.
- \_\_\_\_ 2. ☒ Farm Processing Facility plans  
Site plan drawn to scale showing the parcel with the following information shown on the site plan or attached on separate sheets:
  - \_\_\_\_ a. ☒ Parcel Requirements - A total of forty (40) acres of land located within Peninsula Township are required to be devoted to the operation of a farm processing facility  
Minimum 40 Acres - Not more than 2 houses total.
    - i. \_\_\_\_\_ Total Acres Owned
    - ii. \_\_\_\_\_ Total Acres Leased - Minimum one year lease.  
(Attach a Copy of Lease or Certificate of Lease Existence)
    - iii. Farm Processing Facility Parcel
      - (1) \_\_\_\_\_ Minimum 20 Acres - Not more than one house.
      - (2) \_\_\_\_\_ Minimum parcel width of 330 feet.
      - (3) \_\_\_\_\_ Minimum of five acres of crops grown.
  - b. Setbacks
    - i. ☒ Front - Minimum 50 feet.
    - ii. ☒ Rear - Minimum of 100 feet.
    - iii. ☒ Side - Minimum of 100 feet.
    - iv. ☒ Minimum of 200 Feet from pre-existing residence on adjacent property.
- \_\_\_\_ c. Preliminary design of all proposed structures.
- \_\_\_\_ d. Existing and proposed structures including setbacks from property lines.
- \_\_\_\_ e. Proposed parking, lighting and signage;
- \_\_\_\_ f. Floor plan showing processing areas and retail areas.
  - i. ☒ Maximum Facility Size - 6,000 square feet above grade.
  - ii. ☒ Maximum Two Stories above finished grade.
  - iii. ☒ Retail space shall be a separate room and may be the greater of 500 square feet in area or 25% of the floor area above finished grade.
  - iv. N/A Underground buildings - May be in excess of 6,000 sq.ft.
- \_\_\_\_ g. ☒ Parcel numbers and/or legal descriptions of the parcels making up all of the minimum parcel requirements.

- \_\_\_\_ 3. Application fee as determined by the Township Board.

Applicant Signature [Signature]Date 1/29/16-----  
Staff Review

Application Complete Date \_\_\_\_\_ Check #/Date \_\_\_\_\_

Staff Signature \_\_\_\_\_

4/25/2016

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FPF Parcel

**14998 PENINSULA DR** TRAVERSE CITY, MI 49686 (Property Address)

Parcel Number: 11-122-010-00



Item 1 of 28 26 Images / 2 Sketches

**Property Owner: TABONE MARY ANN & TABONE MARIO****Summary Information**

- > Residential Building Summary
- Year Built: 1944
- Full Baths: 3
- Sq. Feet: 2,688
- Bedrooms: 4
- Half Baths: 0
- Acres: 18.000
- > Assessed Value: \$245,300 | Taxable Value: \$231,693

**Owner and Taxpayer Information****Owner**

TABONE MARY ANN & TABONE  
MARIO  
379 RED RYDER DR  
PLYMOUTH, MI 48170

**Taxpayer**

TABONE MARY ANN & TABONE  
MARIO  
379 RED RYDER DR  
PLYMOUTH, MI 48170

**General Information for Tax Year 2017**

<b>Property Class</b>	100 AGRICULTURAL	<b>Unit</b>	11 PENINSULA TOWNSHIP
<b>School District</b>	District 28010	<b>Assessed Value</b>	\$245,300
<b>MAP #</b>	29102210	<b>Taxable Value</b>	\$231,693
<b>USER NUM IDX</b>	104	<b>State Equalized Value</b>	\$245,300
<b>USER ALPHA 1</b>	Not Available	<b>Date of Last Name Change</b>	Not Available
<b>USER ALPHA 3</b>	Not Available	<b>Notes</b>	Not Available
<b>Historical District</b>	Not Available	<b>Census Block Group</b>	Not Available
<b>USER ALPHA 2</b>	Not Available		

**Principal Residence Exemption Information**

Homestead Date 10/02/2003

Qualified Agricultural	June 1st	Final
2016	100.0000 %	100.0000 %

**Previous Year Information**

Year	MBOR Assessed	Final SEV	Final Taxable
2016	\$245,300	\$245,300	\$231,693
2015	\$308,700	\$308,700	\$308,700
2014	\$319,200	\$319,200	\$319,200

**Land Information**

<b>Zoning Code</b>	A1	<b>Total Acres</b>	18.000
<b>Land Value</b>	\$280,800	<b>Land Improvements</b>	\$3,294
<b>Renaissance Zone</b>	No	<b>Renaissance Zone Expiration Date</b>	Not Available
<b>ECF Neighborhood</b>	Not Available	<b>Mortgage Code</b>	Not Available
<b>Lot Dimensions/Comments</b>	Not Available	<b>Neighborhood Enterprise Zone</b>	No

Lot(s)	Frontage	Depth
No lots found.		
Total Frontage: 0.00 ft		Average Depth: 0.00 ft

**Legal Description**

SUP # 73...N 18 A OF NW 1/4 OF NW 1/4 1320' E &amp; W BY 594' N &amp; S SEC 22 T29N R10W. 18 A. SEC 22 T29N R10W 18 A

**Land Division Act Information**

4/25/2016

Record Details | Peninsula Township | AccessMyGov.com

Date of Last Split/Combine	Not Available	Number of Splits Left	0
Date Form Filed	Not Available	Unallocated Div.s of Parent	0
Date Created	Not Available	Unallocated Div.s Transferred	0
Acreage of Parent	0.00	Rights Were Transferred	Not Available
Split Number	0	Courtesy Split	Not Available
Parent Parcel	Not Available		

## Sale History

Sale Date	Sale Price	Adj. Sale Price	Instrument	Grantor	Grantee	Terms of Sale	Liber/Page
10/03/2013	\$1.00	\$1.00	QC	TABONE MICHAEL J	TABONE MARIO A	INVALID SALE	2014R-04790
10/10/2006	\$1.00	\$1.00	QC	TABONE MARY ANN	TABONE MARY, MARIO & MICHAEL	INVALID SALE	2006R-21368
08/09/2006	\$0.00	\$0.00	QC	TABONE MARY ANN	TABONE MARIO A & MICHAEL J	INVALID SALE	2006R-16915
07/24/2006	\$1.00	\$1.00	QC	TABONE MARIO MARY ANN	TABONE MARY ANN	INVALID SALE	2006R-15526
09/17/2003	\$475,000.00	\$475,000.00	WD	EPPLER WILLIAM FAMILY TRUST	TABONE MARIO MARY ANN	WARRANTY DEED	L2008 P59
09/09/2002	\$470,000.00	\$470,000.00	WD	SEGUIN JACK J & PAULA	EPPLER WILLIAM TRUST	WARRANTY DEED	L1740 P443
09/29/1983	\$52,900.00	\$52,900.00	WD		SEGUIN J	LAND CONTRACT	597/51

## Building Information - 2850.00 sq ft Industrial, Light Manufacturing (Commercial)

Floor Area	2,850 sq ft	Estimated TCV	\$0
Occupancy	Industrial, Light Manufacturing	Class	Not Available
Stories Above Ground	1	Average Story Height	10 ft
Basement Wall Height	Not Available		
Year Built	1999	Year Remodeled	Not Available
Percent Complete	100%	Heat	Zoned A.C. Warm & Cooled Air
Physical Percent Good	85%	Functional Percent Good	110%
Economic Percent Good	0%	Effective Age	8 yrs

## Building Information - 1968 sq ft 1 STY (Residential)

## General

Floor Area	1,968 sq ft	Estimated TCV	\$142,633
Garage Area	784 sq ft	Basement Area	1,152 sq ft
Foundation Size	1,968 sq ft		
Year Built	1944	Year Remodeled	1996
Occupancy	Single Family	Class	Not Available
Effective Age	19 yrs	Tri-Level	No
Percent Complete	100%	Heat	Forced Air w/ Ducts
AC w/Separate Ducts	Yes	Wood Stove Add-on	No
Basement Rooms	0	Water	Water Well
1st Floor Rooms	6	Sewer	Septic
2nd Floor Rooms	0	Style	1 STY
Bedrooms	4		

## Area Detail - Basic Building Areas

Height	Foundation	Exterior	Area	Heated
1 Story	Crawl Space	Siding	816 sq ft	1 Story
1 Story	Basement	Siding	1,152 sq ft	1 Story

## Basement Finish

Recreation	0 sq ft	Recreation % Good	0%
Living Area	0 sq ft	Living Area % Good	0%
Walk Out Doors	0	No Concrete Floor Area	0 sq ft

## Plumbing Information

3 Fixture Bath 2

## Built-In Information

Appliance Allow. 1

4/25/2016

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**Garage Information**

Area	420 sq ft	Exterior	Siding
Foundation	18 Inch	Common Wall	Detached
Year Built	Not Available	Finished	No
Auto Doors	0	Mech Doors	1
Area	364 sq ft	Exterior	Block
Foundation	18 Inch	Common Wall	Detached
Year Built	Not Available	Finished	No
Auto Doors	0	Mech Doors	1

**Porch Information**

CGEP (1 Story)	42 sq ft	Foundation	Standard
CPP	42 sq ft	Foundation	Standard
WPP	464 sq ft	Foundation	Standard

**Building Information - 720 sq ft 1+ STY (Residential)****General**

Floor Area	720 sq ft	Estimated TCV	\$52,143
Garage Area	0 sq ft	Basement Area	0 sq ft
Foundation Size	720 sq ft		
Year Built	Not Available	Year Remodeled	Not Available
Occupancy	Single Family	Class	Not Available
Effective Age	5 yrs	Tri-Level	No
Percent Complete	100%	Heat	Forced Air w/ Ducts
AC w/Separate Ducts	No	Wood Stove Add-on	No
Basement Rooms	0	Water	Water Well
1st Floor Rooms	0	Sewer	Septic
2nd Floor Rooms	0	Style	1+ STY
Bedrooms	0		

**Area Detail - Basic Building Areas**

Height	Foundation	Exterior	Area	Heated
1 Story	Slab	Block	720 sq ft	1 Story

**Basement Finish**

Recreation	0 sq ft	Recreation % Good	0%
Living Area	0 sq ft	Living Area % Good	0%
Walk Out Doors	0	No Concrete Floor Area	0 sq ft

**Plumbing Information**

3 Fixture Bath	1
----------------	---

**Built-In Information**

Standard Range	1
----------------	---

**Building Information - 1536 sq ft Utility Building (Agricultural)**

Type	Utility Building	Class	Not Available
Floor Area	1,536 sq ft	Estimated TCV	\$10,149
Perimeter	160 ft	Height	10 ft
Year Built	1992	Quality	Average
Percent Complete	100%	Heat	No Heating/Cooling
Physical Percent Good	74%	Functional Percent Good	100%
Economic Percent Good	100%	Effective Age	13 yrs

**Building Information - 195 sq ft Greenhouse, Framed (Agricultural)**

Type	Greenhouse, Framed	Class	Not Available
Floor Area	195 sq ft	Estimated TCV	\$484
Perimeter	56 ft	Height	10 ft
Year Built	1992	Quality	Average
Percent Complete	100%	Heat	No Heating/Cooling
Physical Percent Good	20%	Functional Percent Good	100%
Economic Percent Good	100%	Effective Age	60 yrs

**Building Information - 120 sq ft Utility Building (Agricultural)**



4/25/2016

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<b>Type</b>	Utility Building	<b>Class</b>	Not Available
<b>Floor Area</b>	120 sq ft	<b>Estimated TCV</b>	\$1,170
<b>Perimeter</b>	46 ft	<b>Height</b>	10 ft
<b>Year Built</b>	Not Available	<b>Quality</b>	Average
<b>Percent Complete</b>	100%	<b>Heat</b>	Wall/Floor Furnace
<b>Physical Percent Good</b>	70%	<b>Functional Percent Good</b>	100%
<b>Economic Percent Good</b>	100%	<b>Effective Age</b>	15 yrs

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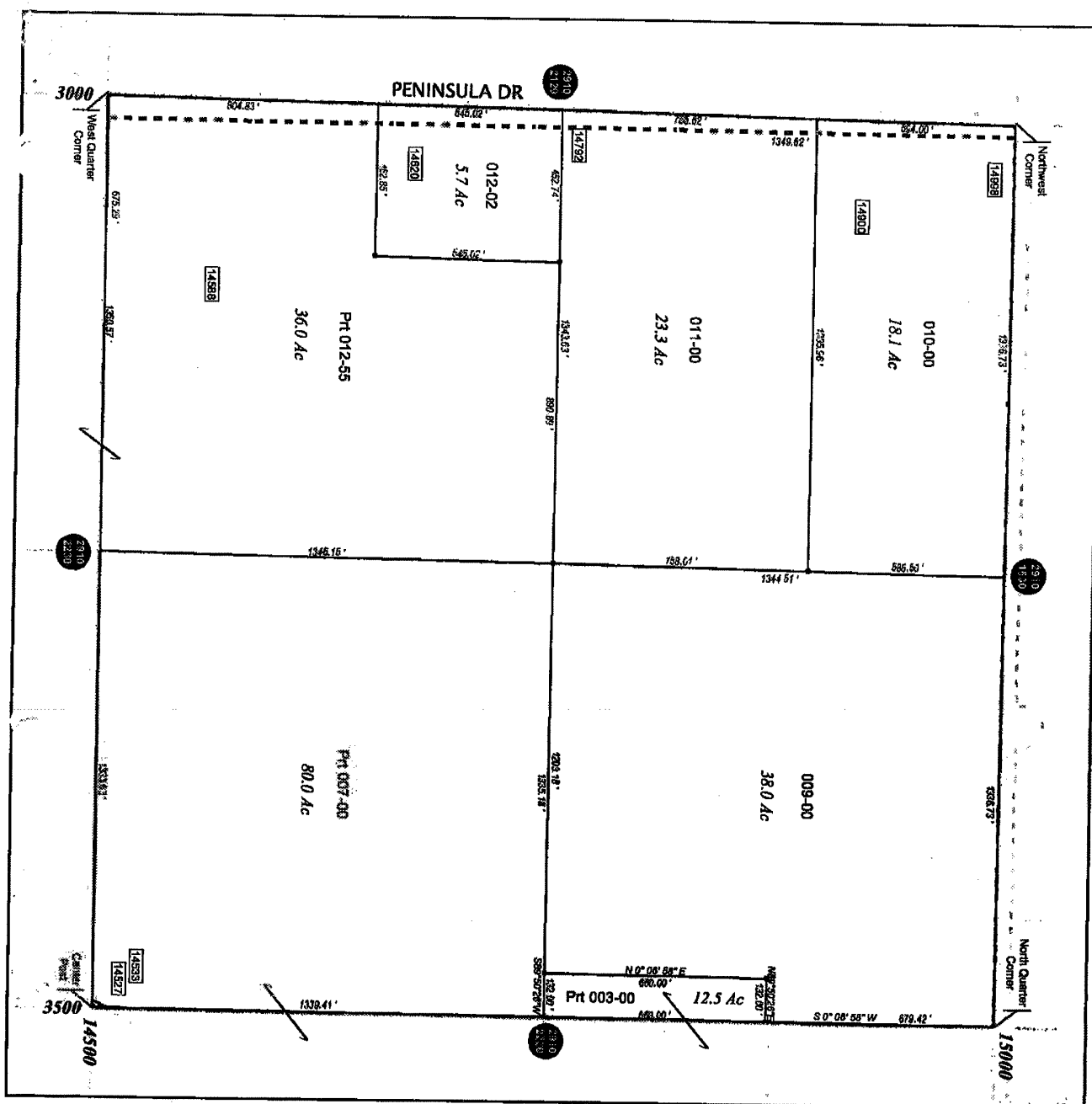
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EXHIBIT 64

PTP Motion for Summary Judgment

October 6, 2023

Page 7 of 16



2910-2210

Peninsula

Grand Traverse County, Michigan

T29N-R10W

Section 22

NW 1/4

28-11-122 - ### - ##



1 inch = 400 feet

## LEGEND

Parcel Lines	
Parcel Identification Number	018-10
Lot Number	
Address	
Parish Lines	
Parcel Ownership Hook	
Dimensions	
Direction	
Acres	
Subdivisions and Condominiums	
Subdivision and Condominium ID	
Drain Easement	
Government Lots	
Electrical Easement	
Section Posts	
Road Easement	
Road Name	
Railroad	
Rivers & Streams	
Lakes and Ponds	
Page Reference	
Miscellaneous Lines	
Address Range	

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GTC-GIS / Dec 3, 11 2910-2210

4/25/2016

Record Details | Peninsula Township | AccessMyGov.com

Conty Parcel

**PENINSULA DR** TRAVERSE CITY, MI 49686 (Property Address)

Parcel Number: 11-115-025-05

**Property Owner:** TABONE MARY ANN**Summary Information**

&gt; Assessed Value: \$97,700 | Taxable Value: \$77,753

Error Loading Image

Item 1 of 4 4 Images / 0 Sketches

**Owner and Taxpayer Information**

<b>Owner</b>	TABONE MARY ANN 379 RED RYDER DR PLYMOUTH, MI 48170	<b>Taxpayer</b>	TABONE MARY ANN 379 RED RYDER DR PLYMOUTH, MI 48170
--------------	---	-----------------	---

**General Information for Tax Year 2017**

<b>Property Class</b>	100 AGRICULTURAL	<b>Unit</b>	11 PENINSULA TOWNSHIP
<b>School District</b>	District 28010	<b>Assessed Value</b>	\$97,700
<b>MAP #</b>	29101530	<b>Taxable Value</b>	\$77,753
<b>USER NUM IDX</b>	104	<b>State Equalized Value</b>	\$97,700
<b>USER ALPHA 1</b>	Not Available	<b>Date of Last Name Change</b>	Not Available
<b>USER ALPHA 3</b>	Not Available	<b>Notes</b>	Not Available
<b>Historical District</b>	Not Available	<b>Census Block Group</b>	Not Available
<b>USER ALPHA 2</b>	Not Available		

**Principal Residence Exemption Information****Homestead Date** 11/01/2004

Qualified Agricultural	June 1st	Final
2016	100.0000 %	100.0000 %

**Previous Year Information**

Year	MBOR Assessed	Final SEV	Final Taxable
2016	\$97,700	\$97,700	\$77,753
2015	\$86,100	\$86,100	\$77,521
2014	\$80,900	\$80,900	\$76,301

**Land Information**

<b>Zoning Code</b>	A1	<b>Total Acres</b>	12.000
<b>Land Value</b>	\$195,364	<b>Land Improvements</b>	\$0
<b>Renaissance Zone</b>	No	<b>Renaissance Zone Expiration Date</b>	Not Available
<b>ECF Neighborhood</b>	Not Available	<b>Mortgage Code</b>	Not Available
<b>Lot Dimensions/Comments</b>	Not Available	<b>Neighborhood Enterprise Zone</b>	No

Lot(s)	Frontage	Depth
No lots found.		

**Total Frontage: 0.00 ft****Average Depth: 0.00 ft****Legal Description**

P/O THE SW 1/4 OF SEC 15, T29N-R10W, DESC AS BEG AT SW COR SEC 15; TH N 00 DEG W, 584.41 FT ALG W LI OF SD SEC; TH N 82 DEG E, 830.21 FT; TH S 00 DEG E, 684.57 FT; TH S 89 DEG W, 823.24 FT TO POB. SUBJ TO A 43 FT WIDE EASEMENT AND 60 FT RADIUS CUL-DE-SAC FOR INGRESS AND EGRESS. SUBJ TO AN EASEMENT FOR UNDERGROUND ELECTRIC LINES, IN FAVOR OF CONSUMERS ENERGY CO, RECORDED AT 2013R-22035. SPLIT/COMB. ON 09/10/2004 COMPLETED 09/10/2004 SALLY LDA 116; PARENT PARCEL(S): 11-115-025-00; CHILD PARCEL(S): 11-115-025-02, 11-115-025-03; SPLIT/COMB. ON 11/01/2004 COMPLETED 11/01/2004 SALLY LDA 120; PARENT PARCEL(S): 11-115-025-03; CHILD PARCEL(S): 11-115-025-04, 11-115-025-05; 115-025-04 HAS FOUR (4) DIVISION RIGHTS...FOR FIVE (5) RESULTING PARCELS 115-025-05 HAS ZERO (0) DIVISION RIGHTS PER DEED 2004R-17911

4/25/2016

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## Land Division Act Information

**Comments** SPLIT/COMB. ON 11/01/2004 COMPLETED 11/01/2004 SALLY LDA 120 ; PARENT PARCEL(S): 11-115-025-03; CHILD PARCEL(S): 11-115-025-04, 11-115-025-05; ----- 115-025-04 HAS FOUR (4) DIVISION RIGHTS...FOR FIVE (5) RESULTING PARCELS 115-025-05 HAS ZERO (0) DIVISION RIGHTS PER DEED 2004R-17911

**Date of Last Split/Combine** 09/10/2004 **Number of Splits Left** 0  
**Date Form Filed** Not Available **Unallocated Div.s of Parent** 0  
**Date Created** 09/10/2004 **Unallocated Div.s Transferred** 0  
**Acreage of Parent** 26.00 **Rights Were Transferred** Not Available  
**Split Number** 0 **Courtesy Split** Not Available  
**Parent Parcel** 11-115-025-03

## Sale History

Sale Date	Sale Price	Adj. Sale Price	Instrument	Grantor	Grantee	Terms of Sale	Liber/Page
10/03/2013	\$1.00	\$1.00	QC	TABONE MICHAEL J	TABONE MARIO A	INVALID SALE	2014R-04789
08/09/2006	\$0.00	\$0.00	QC	TABONE MARY ANN	TABONE MARIO A & MICHAEL J	INVALID SALE	2006R-16914
07/24/2006	\$1.00	\$1.00	QC	TABONE MARIO	TABONE MARY ANN	INVALID SALE	2006R-15527

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2910-1530

# Peninsula

Grand Traverse County, Michigan

T29N-R10W

Section 15

SW 1/4

28-11-115 - ### - ##

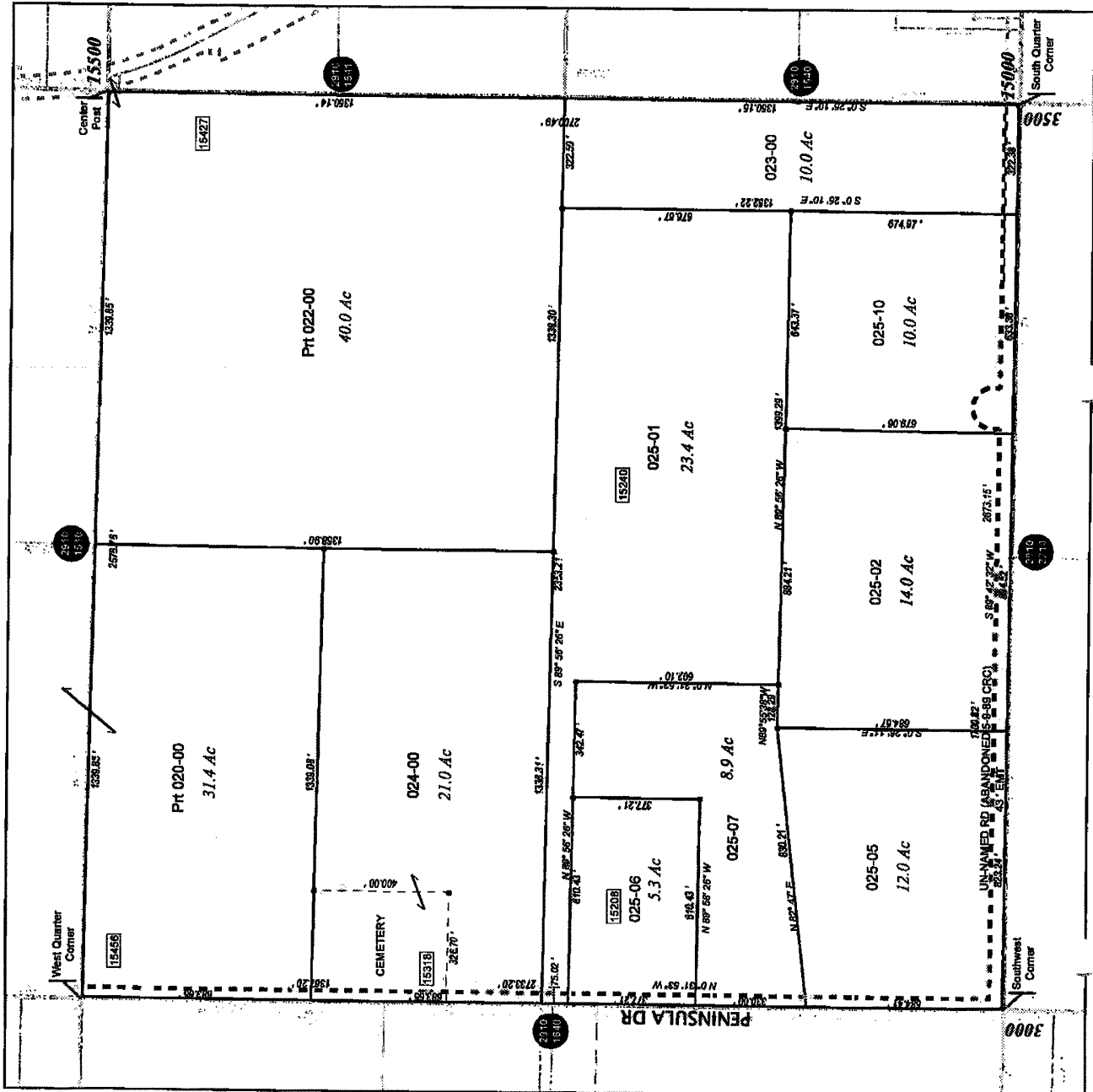


## LEGEND

Parcel Line	016-10
Parcel Identification Number	①
Lot Number	②③④
Address	
Platted Lines	
Parcel Ownership Hook	
Dimensions	
Direction	N 1° 23' 52" E
Acres	29.6 Ac.
Subdivisions and Condominiums	
Subdivision and Condominium ID	Lone Pine Estates
Drain Easement	
Government Lots	
Electrical Easement	
Section Pass	
Road Easement	
Road Name	Hill Rd.
Railroad	
Rivers & Streams	
Lakes and Ponds	
Page Reference	
Miscellaneous Lines	
Address Range	5000 - 7000

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4/25/2016

Record Details | Peninsula Township | AccessMyGov.com

Support Parcel

**19521 CENTER RD** TRAVERSE CITY, MI 49686 (Property Address)

Parcel Number: 11-227-009-53

**Property Owner:** TABONE MARIO A**Summary Information**

&gt; Assessed Value: \$128,300 | Taxable Value: \$71,689

Item 1 of 2

0 Images / 2 Sketches

**Owner and Taxpayer Information****Owner**TABONE MARIO A  
379 RED RYDER DR  
PLYMOUTH, MI 48170**Taxpayer**TABONE MARIO A  
379 RED RYDER DR  
PLYMOUTH, MI 48170**General Information for Tax Year 2017**

<b>Property Class</b>	160_AG_CONSV'N RESTRICTED	<b>Unit</b>	11 PENINSULA TOWNSHIP
<b>School District</b>	District 28010	<b>Assessed Value</b>	\$128,300
<b>MAP #</b>	30102700	<b>Taxable Value</b>	\$71,689
<b>USER NUM IDX</b>	0	<b>State Equalized Value</b>	\$128,300
<b>USER ALPHA 1</b>	Not Available	<b>Date of Last Name Change</b>	Not Available
<b>USER ALPHA 3</b>	Not Available	<b>Notes</b>	Not Available
<b>Historical District</b>	Not Available	<b>Census Block Group</b>	Not Available
<b>USER ALPHA 2</b>	Not Available		

**Principal Residence Exemption Information****Homestead Date** 11/05/2013

Qualified Agricultural	June 1st	Final
2016	100.0000 %	100.0000 %

**Previous Year Information**

Year	MBOR Assessed	Final SEV	Final Taxable
2016	\$128,300	\$128,300	\$71,689
2015	\$110,600	\$110,600	\$71,475
2014	\$101,700	\$101,700	\$70,350

**Land Information**

<b>Zoning Code</b>	A1	<b>Total Acres</b>	21.230
<b>Land Value</b>	\$243,390	<b>Land Improvements</b>	\$1,666
<b>Renaissance Zone</b>	No	<b>Renaissance Zone Expiration Date</b>	Not Available
<b>ECF Neighborhood</b>	Not Available	<b>Mortgage Code</b>	Not Available
<b>Lot Dimensions/Comments</b>	Not Available	<b>Neighborhood Enterprise Zone</b>	No

Lot(s)	Frontage	Depth
No lots found.		

**Total Frontage: 0.00 ft****Average Depth: 0.00 ft****Legal Description**

PDR PROGRAM RECORDED AT LIBER 1216 PAGE 651 AND LIBER 1673 PAGE 374..PART OF THE NW 1/4, SEC 27 T30N R10W. COMMENCING AT THE S 1/4 COR OF SD SEC 27, THENCE N 2665.80 FT, THENCE E 6 FT TO POINT OF BEGINNING; THENCE N 688.65 FT, THENCE W 1389.97 FT TO WEST 1/8TH LINE, THENCE S ALONG SAID 1/8TH LINE 681.63 FT, THENCE E ON 1/4 LINE TO POINT OF BEGINNING. SPLIT/COMB. ON 11/05/2013 COMPLETED BY SALLY--LDA # 196 PARENT PARCEL(S): 11-227-009-55 CHILD PARCEL(S): 11-227-009-51, 11-227-009-52, 11-227-009-53, 11-227-009-54 LAND DIVISION APPLICATION RECORDED AT 2013R-07656

4/25/2016

Record Details | Peninsula Township | AccessMyGov.com

## Land Division Act Information

## Comments

SPLIT/COMB. ON 11/05/2013 COMPLETED BY SALLY--LDA # 196 PARENT PARCEL(S): 11-227-009-55 CHILD PARCEL(S): 11-227-009-51, 11-227-009-52, 11-227-009-53, 11-227-009-54 LAND DIVISION APPLICATION RECORDED AT 2013R-07656

<b>Date of Last Split/Combine</b>	11/05/2013	<b>Number of Splits Left</b>	0
<b>Date Form Filed</b>	Not Available	<b>Unallocated Div.s of Parent</b>	0
<b>Date Created</b>	11/05/2013	<b>Unallocated Div.s Transferred</b>	0
<b>Acreage of Parent</b>	91.84	<b>Rights Were Transferred</b>	Not Available
<b>Split Number</b>	196	<b>Courtesy Split</b>	Not Available
<b>Parent Parcel</b>	11-227-009-55		

## Sale History

Sale Date	Sale Price	Adj. Sale Price	Instrument	Grantor	Grantee	Terms of Sale	Liber/Page
01/16/2015	\$299,000.00	\$299,000.00	WD	SCHUTZ WILLIAM E & JO ANNE	TABONE MARIO A	ARMS LENGTH	2015R-01315

## Building Information - 1200 sq ft Equipment Shop (Agricultural)

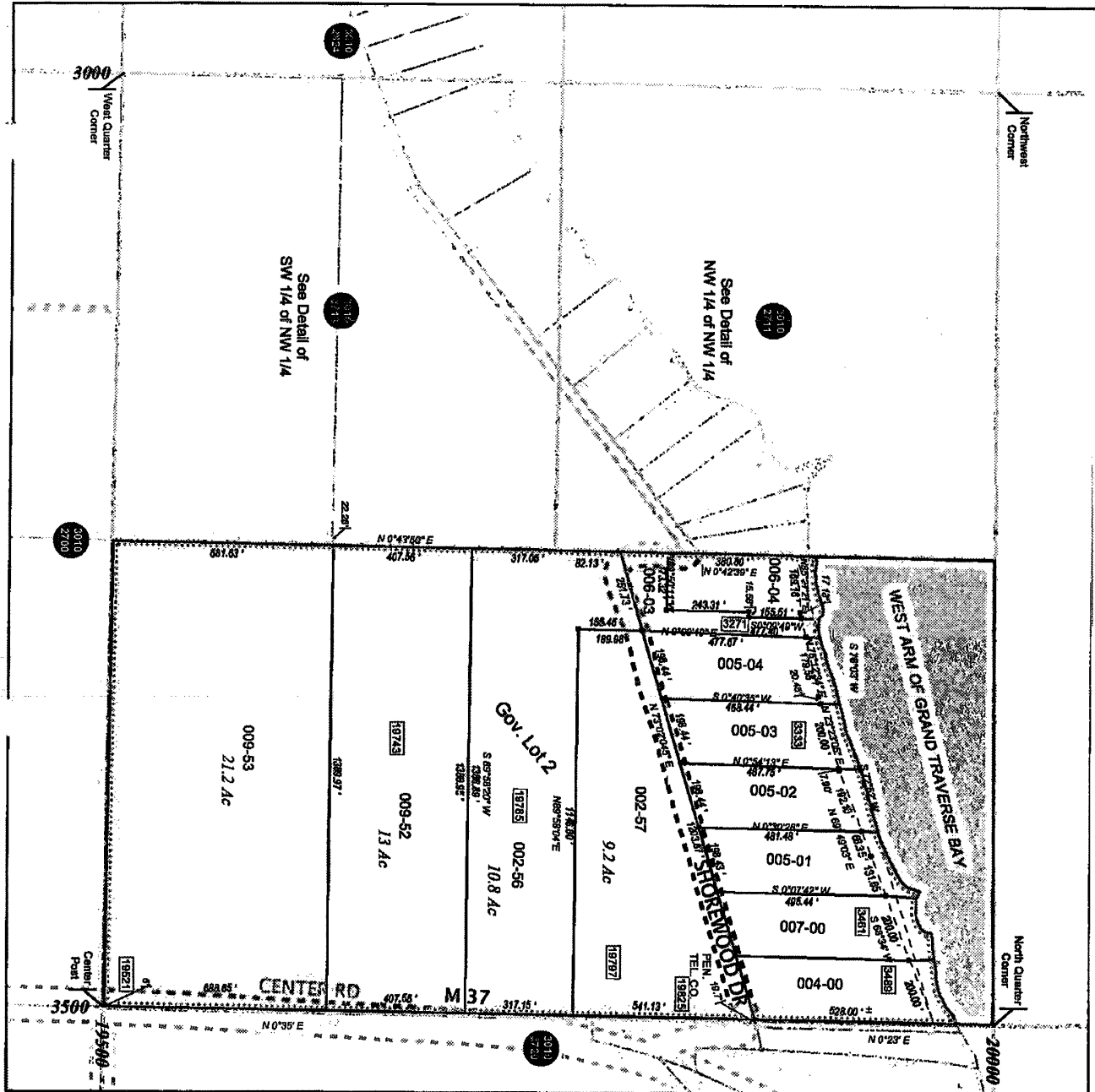
<b>Type</b>	Equipment Shop	<b>Class</b>	Not Available
<b>Floor Area</b>	1,200 sq ft	<b>Estimated TCV</b>	\$11,069
<b>Perimeter</b>	140 ft	<b>Height</b>	12 ft
<b>Year Built</b>	1997	<b>Quality</b>	Average
<b>Percent Complete</b>	100%	<b>Heat</b>	No Heating/Cooling
<b>Physical Percent Good</b>	76%	<b>Functional Percent Good</b>	100%
<b>Economic Percent Good</b>	100%	<b>Effective Age</b>	12 yrs

## Building Information - 80 sq ft Utility Building (Agricultural)

<b>Type</b>	Utility Building	<b>Class</b>	Not Available
<b>Floor Area</b>	80 sq ft	<b>Estimated TCV</b>	\$535
<b>Perimeter</b>	36 ft	<b>Height</b>	9 ft
<b>Year Built</b>	1984	<b>Quality</b>	Low Cost
<b>Percent Complete</b>	100%	<b>Heat</b>	No Heating/Cooling
<b>Physical Percent Good</b>	70%	<b>Functional Percent Good</b>	100%
<b>Economic Percent Good</b>	100%	<b>Effective Age</b>	15 yrs

**\*\*Disclaimer:** BS&A Software provides AccessMyGov.com as a way for municipalities to display information online and is not responsible for the content or accuracy of the data herein. This data is provided for reference only and WITHOUT WARRANTY of any kind, expressed or inferred. Please contact your local municipality if you believe there are errors in the data.

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# 3010-2710 Peninsula

Grand Traverse County, Michigan  
Gov Lot 2,3  
T30N-R10W  
Section 27  
NW 1/4  
28-11-227 - ### - ##



## LEGEND

Parcel Lines	016-10
Parcel Identification Number	13
Lot Number	4265
Address	
Platted Lines	
Parcel Ownership Hook	
Dimensions	
Acres	29.6 Ac
Subdivisions and Condominiums	
Subdivision and Condominium ID	
Drain Easement	
Government Ldb	
Electrical Easement	
Section Posts	
Road Easement	
Road Name	
Railroad	
Rivers & Streams	
Lakes and Ponds	
Page Reference	
Miscellaneous Lines	
Address Range	6000 - 7000

This map is based on digital databases prepared by Grand Traverse County, Grand Traverse County, and other sources. Grand Traverse County is not responsible for any errors or omissions in the information contained in this map or the digital databases is currently or potentially accurate.



### DESIGNATED AGENT AUTHORIZATION

Date: 10/14/15

To Whom It May Concern:

I, Mario & Mary Ann Tabone, authorize Scott Wright/Marc Burkholder of Burkholder Construction to serve as my agent in securing all required permits for construction of Winery Processing building, property Tax No, 11-122-010-00, 14916 Peninsula Drive, Traverse City, Michigan, 49684.

Sincerely,

 ,   
\_\_\_\_\_  
Mario Tabone Mary Ann Tabone

**Claire Schoolmaster**

---

**From:** Claire Schoolmaster <zoning@peninsulatownship.com>  
**Sent:** Wednesday, April 27, 2016 3:29 PM  
**To:** 'Scott Wright'  
**Cc:** 'Mario Tabone'; 'Tabone Orchards'; 'Matthew Wollam'  
**Subject:** Tabone Vineyards LUP Application  
**Attachments:** Major Storm Water Review Application.pdf; Variance Application - ZBA.pdf

Scott,

Thank you for the additional information submitted. After a second full review there are still some outstanding items:

1. A letter releasing SUP 73
  - a. This can certainly be a condition of approval at the very end
2. A copy of your Michigan Liquor Control Commission (MLCC) License per Zoning Ordinance Section 6.7.2(19)(b) 1
  - a. In order for the township to recommend approval (as mentioned in your letter), the applicant must submit the recommendation form that MLCC provides. The form requires is then put on the agenda for the next Township Board Meeting for official approval.
3. Provide full sign details (including scaled visual depiction & proposed location on site). Needs to meet the requirements of Section 7.11 and a sign permit will need to be issued in conjunction with the LUP.
4. Major Stormwater Review (application attached)
  - a. Because the Soil Erosion Permit indicates that there will be greater than an acre of disturbance, this triggers our Major Stormwater Review by our Engineer of Record, Gourdie-Fraser.
  - b. Please submit the application fee to Peninsula Township (\$850).
  - c. Please contact Brian Boals from Gourdie-Fraser at 231-946-5874 or [brianb@gfa.tc](mailto:brianb@gfa.tc) for the exact information needed for the review.
5. Southern side yard setback encroachment shown on updated site plan. This requires **a variance of 11 feet from the required 100 foot side yard setback** granted from the ZBA.
  - a. The variance can be heard based on Section 6.7.2(19)(b) 7. Pre-existing Buildings:
    - i. "The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners."
  - b. Please submit the attached application, supporting materials, and fee at least 4 weeks in advance of the next ZBA meeting.
    1. Since the deadline for the May meeting has passed, the next available meeting is **June 9, 2016** and the application deadline is **May 12, 2016**.
6. Thank you for your submittal regarding the 2<sup>nd</sup> residence. We would like to set up a site visit to confirm compliance. When are you available? Our office hours are Monday 7:30 – 6:30, and Tuesday – Thursday 7:30-5:00.

Lastly, I wanted to let you know I have confirmed that lighting is not required for the parking lot (as you have proposed), and the building façade fixture you provided meets the standards of the Ordinance as well.

Please do not hesitate to contact me with any questions.



Thank you,

**Claire Schoolmaster**  
**Planning & Zoning Coordinator**

Peninsula Township  
13235 Center Road  
Traverse City, MI 49686

p. (231) 223.7318

f. (231) 223.7117

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

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**Claire Schoolmaster**

---

**From:** Mario Tabone <mario\_tabone@hotmail.com>  
**Sent:** Tuesday, June 21, 2016 3:30 PM  
**To:** Michelle Reardon; 'Claire Schoolmaster'  
**Cc:** Tabone Orchards  
**Subject:** Re: Letter Re Request No. 851, Zoning A-1 for Parcel 28-11-122-010-00

Michelle,

Following up on our call just now, Tabone Vineyards, LLC requests that Variance Request No. 851 be withdrawn, without prejudice, in light of us pursuing operations outlined by SUP 73. I look forward to working with you and Claire on expediting the rebuild and making sure you have any necessary information.

Best regards,

Mario

Mario A. Tabone, Owner  
Tabone Vineyards, LLC  
734-354-7271

---

**From:** Michelle Reardon <planner@peninsulatownship.com>  
**Sent:** Tuesday, June 21, 2016 11:12 AM  
**To:** 'Mario Tabone'; 'Claire Schoolmaster'  
**Subject:** RE: Letter Re Request No. 851, Zoning A-1 for Parcel 28-11-122-010-00

Mario,

We can review the plans for compliance with the current SUP and issue a permit as soon as that is satisfied without the need to go to the ZBA.

Section 8.1.3 Specific Requirements m of the Findings of Fact states "Wine tasting within the building is planned if regulations will allow it and an amendment to the Special Use Permit is approved by the Township". The ordinance regulations do not allow for this use as the permit stands. The use will need to be converted to either a Farm Processing Facility (will require the variance) or Winery Chateau (this use has not been explored for compliance with regulations) in order to accommodate a tasting room in the future.

I am free to chat after 3 PM today. Feel free to send a contact number where I can reach you.

**Michelle Reardon**

Ph. (231) 223-7314  
[planner@peninsulatownship.com](mailto:planner@peninsulatownship.com)

**Land Use Permit-Peninsula Township**

Parcel ID: 28-11-122-010-00 Permit # 5433 Zoned: A-1

Owner: Mary Ann &amp; Mario Tabone

Address: 379 Red Ryder Dr., Plymouth, MI 48170

Property: Section: 22 Town: 29N Range: 10W

Address: 14998 Peninsula Dr., Traverse City, MI 49686

Use 1: Reconstruction of Food Processing Plant Structure for SUP 73

Proof of Ownership: Y Site: Y HD Permit: 37081 Survey: NA

Driveway: Y DNR: NA Soil Erosion: 38472 Stormwater: NA

Conforming: Y

<u>Parcel</u>		<u>Required</u>
Width:	586	330
Depth:	1335	***
Square feet:	20 ac	5 ac.

**Setbacks**

Front:	213	35
OHWL:	NA	60
Rear:	1024	50
Side 1:	397	50
Side 2:	77	50

**Structure**

Height:	27	35
Stories:	1.5	2.5
Existing Area:	5468	***
Proposed Area:	3701	***
Total Area:	9169	***

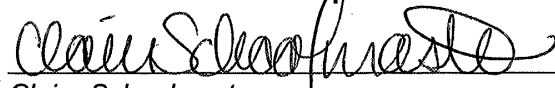
Percent of lot coverage: NA Maximum: N/A

Comments: Reconstruction of Food Processing Plant Structure for SUP 73  
 Check #57373; \$75; Burkholder Construction  
 All exterior lighting shall comply with Section 7.14.

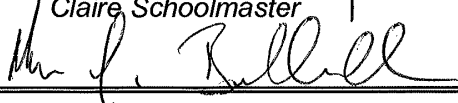
Date Approved: 6/30/2016

Expires: 6/30/2017

Zoning Administrator:

  
 Claire Schoolmaster

Owner/Agent Signature:



DATE 6/30/16

PERMIT NO. 5433

# LAND USE PERMIT

**This Permit Must Be Displayed on the Premises**

**Any person willfully destroying this permit will  
be punished to the fullest extent of the law.**

CONSTRUCTION MUST BE COMPLETED BEFORE PERMIT EXPIRES AND PERMIT  
HOLDER SHALL NOTIFY THE ZONING ADMINISTRATOR WHEN COMPLETED FOR A  
FINAL INSPECTION OF BUILDING BEFORE OCCUPANCY MAY BE PERMITTED

This permit is issued for the reconstruction of a Food Processing  
Plant Structure for SUP 73.

Location: 14998 Peninsula Dr., Traverse City, MI 49686

Fee \$ 75-

This Permit Expires 6/30/2017

PENINSULA TOWNSHIP

By Claire Schuchman

# PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

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

## MEMO

**To:** Mario & Mari Ann Tabone

**cc:** Scott Wright, Burkholder Construction

**From:** Claire Schoolmaster, Planning & Zoning Coordinator



**Re:** No. 28-11-122-010-00, SUP 73

**Date:** June 30, 2016

---

Land Use Permit 5433 was issued on June 30, 2016 for the reconstruction of the food processing plant structure as approved by Special Use Permit 73 (SUP 73).

Please note per Peninsula Township Special Use Permit No. 73 Findings of Fact, the following items will be confirmed for compliance through a scheduled site visit before operations commence:

### Section 8.5.2 Required Information:

3. b. "The parking area is crushed stone with landscape railroad ties identifying parking spaces. Handicap parking is provided."

### Section 8.1.3 General Standards:

1. c. "The project will meet the conditions of State and Federal Licenses for a Winery in addition to the Health Department requirements for sewage disposal."
2. q. "Pedestrian traffic will cross the crushed stone parking area to cement walkway to the north side door entrance. The winery is handicap accessible. There are two (2) marked handicapped parking sites closest to north side building entrance. Handicapped pedestrians accessing this site will walk on crushed stone surface to cement walkway to door entrance."
- r. "Exterior storage of garbage and refuse will be kept in a suitable plastic portable refuse container on wheels at the south side of the winery shielded by the cement wall of the building, therefore not visible from the road or neighboring properties."

EXHIBIT 67

PTP Motion for Summary Judgment

October 6, 2023

Page 1 of 3



Michigan Department of Licensing and Regulatory Affairs  
Liquor Control Commission (MLCC)  
Toll Free: 866-813-0011 • [www.michigan.gov/lcc](http://www.michigan.gov/lcc)

Business ID: \_\_\_\_\_

Request ID: \_\_\_\_\_

(For MLCC use only)

**Local Government Approval**  
(Authorized by MCL 436.1501)

**Instructions for Applicants:**

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

**Instructions for Local Legislative Body:**

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a 2nd Regular meeting of the Township council/board  
(regular or special) (township, city, village)

called to order by Peter Correia, Supervisor on May 23, 2016 at 9:00 AM  
(date) (time)

the following resolution was offered:

Moved by David Weatherholt, Treasurer and supported by Wendy Witkop, Trustee

that the application from Tabone Vineyards, LLC  
(name of applicant)

for the following license(s): Small Wine Maker  
(list specific licenses requested)

to be located at: 14998 Peninsula Dr., Traverse City, MI 49686

and the following permit, if applied for:

☐ Banquet Facility Permit Address of Banquet Facility: n/a

It is the consensus of this body that it recommends this application be considered for  
(recommends/does not recommend)

approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are n/a

**Vote**

Yeas: 7

Nays: 0

Absent: 0

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the Township  
council/board at a 2nd Regular meeting held on May 23, 2016  
(regular or special) (date)

Monica A. Hoffman

Print Name of Clerk

Signature of Clerk

Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission 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 licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059



EXHIBIT 67

PTP Motion for Summary Judgment

October 6, 2023

Page 2 of 3



Michigan Department of Licensing and Regulatory Affairs  
Liquor Control Commission (MLCC)  
Toll Free: 866-813-0011 • [www.michigan.gov/lcc](http://www.michigan.gov/lcc)

Business ID: \_\_\_\_\_

Request ID: \_\_\_\_\_

(For MLCC use only)

**Local Government Approval**  
(Authorized by MCL 436.1501)

**Instructions for Applicants:**

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

**Instructions for Local Legislative Body:**

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a regular meeting of the Township council/board  
(regular or special) (township, city, village)

called to order by Robert Manigold, Supervisor on September 13, 2016 at 7:00 PM  
(date) (time)

the following resolution was offered:

Moved by Jill Byron, Trustee and supported by Robert Manigold, Supervisor

that the application from Tabone Vineyards, LLC  
(name of applicant)

for the following license(s): Small Wine Maker  
(list specific licenses requested)

to be located at: 14916 Peninsula Dr, Traverse City, MI 49686

and the following permit, if applied for:

☐ Banquet Facility Permit Address of Banquet Facility: n/a

It is the consensus of this body that it recommends this application be considered for  
(recommends/does not recommend)

approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are \_\_\_\_\_

**Vote**Yeas: 7Nays: 0Absent: 0

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the Township  
council/board at a regular meeting held on September 13, 2016  
(regular or special) (date) (township, city, village)

Joanne M. Westphal

Print Name of Clerk

Signature of Clerk

9/15/2016

Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission 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 licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059

EXHIBIT 67

PTP Motion for Summary Judgment

October 6, 2023

Page 3 of 3

Resolution 2016-9-13



Michigan Department of Licensing and Regulatory Affairs  
Liquor Control Commission (MLCC)  
Toll Free: 866-813-0011 • [www.michigan.gov/lcc](http://www.michigan.gov/lcc)

Business ID: \_\_\_\_\_

Request ID: 762772  
(For MLCC use only)

**Local Government Approval**  
(Authorized by MCL 436.1501)

**Instructions for Applicants:**

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

**Instructions for Local Legislative Body:**

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a regular meeting of the Township of Peninsula Town Board council/board  
(regular or special) (township, city, village)

called to order by Robert Manigold, Supervisor on September 13, 2016 at 7:00 pm  
(date) (time)

the following resolution was offered:

Moved by Vill Byron, Trustee and supported by Robert Manigold, Supervisor  
that the application from Tabone Vineyards, LLC  
(name of applicant)

for the following license(s): Small Wine Maker  
(list specific licenses requested)

to be located at: 14916 Peninsula Dr., Traverse City, MI 49686

and the following permit, if applied for:

☐ Banquet Facility Permit Address of Banquet Facility: n/a

It is the consensus of this body that it recommends this application be considered for  
(recommends/does not recommend)

approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are \_\_\_\_\_

**Vote**Yeas: 7Nays: 0Absent: 0

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the Township  
council/board at a regular meeting held on September 13, 2016  
(regular or special) (date)

Taanne M. Westphal  
Print Name of Clerk

Taanne M. Westphal  
Signature of Clerk

9/15/2016  
Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission 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 licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059

DEPOSITION  
EXHIBIT

PTP 79

Tabone



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

\* \* \* \* \*

In the matter of the request of	)	
<b>TABONE VINEYARDS, LLC</b>	)	
14916 Peninsula Dr	)	Request ID No. 762772
Traverse City, MI 49686	)	
Peninsula Township	)	
<u>Grand Traverse County</u>	)	

At the March 8, 2017 meeting of the Michigan Liquor Control Commission in  
Lansing, Michigan.

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

**LICENSING APPROVAL ORDER**  
**CORRECTED ORDER**

Tabone Vineyards, LLC ("applicant") has filed an application for a new Small Wine Maker license to be located at the above noted address; and request authorization for the outdoor sale, service, and consumption of alcoholic beverages in an area measuring up to 20' x 28', located directly adjacent to the licensed premises, and which is well-defined and clearly marked.

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor

Request ID No. 762772

Page 2

within this state, including the manufacture, importation, possession, transportation and sale thereof.

The applicant is authorized to do business in Michigan, as required under MCL 436.1535 for licensure.

The Commission finds that it has considered the provisions as required in administrative rule R 436.1105 in the consideration of this request.

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

THEREFORE, IT IS ORDERED that:

A. The applicant's request for a new Small Wine Maker license is APPROVED subject to the following:

1. Pursuant to administrative rule R 436.1050, this approval is valid for two (2) years from the date of this approval order unless the Commission has been provided with a notice of pending litigation involving the application.
2. The licensee shall pay all license fees by April 30<sup>th</sup> each year pursuant to administrative rule R 436.1107.
3. Receipt of executed form LC-MW-816 (Surety Bond).
4. The licensee shall maintain a surety bond, under MCL 436.1801(1)(a).
5. Receipt of executed form LC-95 (Proof of Financial Responsibility).
6. The licensee shall maintain proof of financial responsibility, under MCL 436.1803.
7. **Final inspection by Enforcement to determine renovations have been completed as proposed; to determine furniture, fixtures, and equipment have been installed; to determine seating capacity has been established and posted; to determine that the outdoor service area has been completed as proposed; and to determine the licensed premises meets all requirements of the Michigan Liquor Control Code and Administrative Rules.**

Request ID No. 762772

Page 3

8. Receipt of a Basic Permit or documentary proof that the applicant has received approval from the Alcohol & Tobacco Tax & Trade Bureau (TTB) pursuant to administrative rule R 436.1708(1).
9. Documentary proof that applicant, Tabone Vineyards, LLC, received a \$91,187.50 loan from AG Direct/Green Stone Farm Credit.
10. Receipt of complete, executed lease agreement.
11. Receipt of form LCC-301 (Report of Stockholders/Members/Partners).
12. Receipt of form LCC-107 (Closing Form for New License or License Sale).
13. The licensee has a continuing duty to provide the commission with up-to-date contact information and must notify the commission in writing of any changes to its mailing address, phone numbers, electronic mail address, and other contact information it provides the Commission, pursuant to administrative rule R 436.1048(2).
14. The licensee shall provide documentary proof to the Commission to demonstrate that, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served have successfully completed a server training program approved by the Commission as required under MCL 436.1501(1), within 180 days from the issuance of the license, as provided in administrative rule R 436.1060.
  - a. The licensee shall maintain active certification of completion for server training on the licensed premises at all times as provided in administrative rule R 436.1060.
  - b. Failure to provide this documentary proof to the Commission within 180 days of the issuance of the license shall result in the licensee being charged with failure to comply with this order, under administrative rule R 436.1029, which may result in fines, suspension and/or revocation of the license.
15. The licensee is prohibited from producing more than 50,000 gallons of wine in one calendar year.

Request ID No. 762772

Page 4

16. The licensee may provide samples to consumers at the licensed premises of the wine they manufacture; and also sell that wine for consumption off the licensed premises as defined under MCL 436.1113(9) and MCL 436.1537(1)(o).
  17. The licensee shall comply with the tax collection and reporting system under MCL 436.1301.
  18. The licensee shall label all wine products in accordance with the federal wine regulations published in 27 C.F.R. prior to the sale in Michigan under administrative rule R 436.1719.
  19. The licensee shall not sell wine products until a registration number of approval has been received from the Commission under administrative rule R 436.1719(1)(c).
  20. The licensee shall file a schedule of the net cash prices to retail licensees for all sales of wine before January 1, April 1, July 1, and October 1 of each year under administrative rule R 436.1726(1).
  21. The licensee is approved to bottle bulk domestic or imported wine for sale in any state pursuant to MCL 436.1111(10) and administrative rule R 436.1716(4).
  22. The licensee shall not purchase bulk wine for bottling that is manufactured by another manufacturer unless the other manufacturer has first obtained a written order of approval from the Commission to manufacture the wine for the licensee pursuant to administrative rule R 436.1716(5).
- B. The applicant's request for authorization for the outdoor sale, service, and consumption of alcoholic beverages in an area measuring up to 20' x 28', directly adjacent to the licensed premises, and which is well-defined and clearly marked is APPROVED subject to the following:
1. The licensee will not permit the sale, service, or consumption of alcoholic liquor outdoors, except in the well-defined and clearly marked area pursuant to the provisions of administrative rule R 436.1419(1).



Request ID No. 762772

Page 5

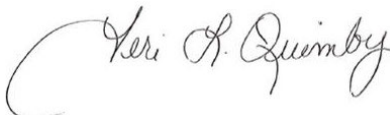
2. The licensee shall not allow alcoholic beverages purchased for consumption in this proposed Outdoor Service area to be removed from and taken to any adjacent unlicensed area(s).
  3. The licensee is prohibited from allowing the sale, service, possession or consumption of alcoholic beverages in any portion of the approved outdoor service area designated for the playing of sporting activities or for sporting events, including any break or intermission.
- C. Under administrative rule R 436.1003(1), 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. Under administrative rule R 436.1003(2), a licensee shall not use a license at the licensed premises unless a temporary or permanent certificate of occupancy has been issued by the local unit of government having jurisdiction over the location of the licensed premises or the licensed premises complies with administrative rule R 436.1003(1). Approval by the Michigan Liquor Control Commission does not waive these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals before opening the business for operation.
- D. Failure to comply with all laws and rules may result in the revocation of the approval contained in this order.

MICHIGAN LIQUOR CONTROL COMMISSION



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Andrew J. Deloney, Chairman



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Teri L. Quimby, Commissioner

Request ID No. 762772

Page 6



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Dennis Olshove, Commissioner

K9

Date Mailed: 07/20/2018

Correction Note: Under the approval Section A, item #10 was a blank line left in the Order in error. Line #10 has been removed and the remaining requirements have been renumbered. The correction has no substantive effect on the decision made by the Commission.



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNORDEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSINGORLENE HAWKS  
DIRECTOR**Manufacturer License On-Premises Tasting Room Compliance Certification**

January 2018

BUSINESS ID: 237290

TABONE VINEYARDS, LLC  
379 RED RYDER DR  
PLYMOUTH, MI 48170-2160

Dear Manufacturer Licensee:

The Michigan Liquor Control Code recently underwent a number of changes that affect manufacturer licenses. A full explanation of all the changes may be viewed at the following webpage: <https://tinyurl.com/mlcc-mfg-update>. One of the major changes made to the Code affects manufacturers that sell, serve, and allow consumption of the alcoholic liquor products they produce at the licensed premises where they are licensed to manufacture their products.

**License Types Affected:**

- Brewer
- Micro Brewer
- Wine Maker
- Small Wine Maker
- Brandy Manufacturer
- Small Distiller
- Mixed Spirit Drink Manufacturer
- Distiller (Manufacturer of Spirits)

**If Licensee Only Wants To Manufacture (No Retail Sales):**

- Manufacturing only – No retail sales to consumers.
- No local governmental unit approval required for Commission approval (the local governmental unit may still require approval under local ordinances).
- No Proof of Financial Responsibility (liquor liability insurance) required.
- No compliance with server training requirements.

**If Licensee Wants To Manufacture AND Sell Its Products At Retail To Customers:**

- Requires On-Premises Tasting Room Permit - \$100.00 initial and annual renewal fee.
- On-Premises Tasting Room Permit requires local governmental unit approval prior to Commission approval.
- Requires Proof of Financial Responsibility (liquor liability insurance) when permit is issued.
- Requires compliance with server training requirements when permit is issued.
- The licensee must actively manufacture the alcoholic liquor product that it is licensed to manufacture on the premises where it holds an On-Premises Tasting Room Permit.
- A Brewer or Micro Brewer licensee that has more than one licensed manufacturing location must manufacture at least 50% of the beer it sells at retail under a On-Premises Tasting Room Permit at the location holding the permit. This requirement does not apply to a Brewer or Micro Brewer location with a functional three-barrel system installed or at a location that the license was applied for prior to October 1, 2018 and ultimately approved and issued.
- A Small Wine Maker licensee may sell wine at retail under its On-Premises Tasting Room Permit that it purchases from another Wine Maker or Small Wine Maker licensee and then bottles, labels, and registers as its own.
- A Wine Maker or Small Wine Maker licensee may sell at retail under its On-Premises Tasting Room Permit shiners that it purchases from another Wine Maker or Small Wine Maker licensee. The shiners must be labeled and registered by the Wine Maker or Small Wine Maker licensee that is selling them at retail, not the producing winery.

**What this means to you:** You have an existing manufacturing license (or licenses) that qualifies for an On-Premises Tasting Room Permit. The legislation that amended the Code to create this new permit requires current licensees to comply with the new law **by April 1, 2019**. You must use the attached certification form to confirm your intentions about your manufacturing premises in order to comply with the new law. Even if your license is in escrow, you need to verify whether or not you want an On-Premises Tasting Room **by April 1, 2019**. Submissions prior to this date are strongly encouraged.

If you certify that you do not want an On-Premises Tasting Room Permit at your manufacturing premises, you will not be able to sell the beer, wine, and/or spirits you manufacture at that location at retail to customers. You will still be able to sell your product to Wholesaler licensees and the ADAs and self-distribute to retailer licensees, as applicable to your license type(s). You will be able to discontinue any Proof of Financial Responsibility (liquor liability insurance) and you will no longer be required to comply with server training requirements, if you do not want an On-Premises Tasting Room Permit at your manufacturing premises. Any permits or permissions that relate to retail sales to consumers, such as Sunday Sales Permit,

TABONE VINEYARDS, LLC – BID 237290  
Page 2

Dance or Entertainment Permits, or outdoor service areas, will be cancelled as those may only be held by a licensee with an On-Premises Tasting Room Permit. Existing Beer & Wine Tasting Permits, Living Quarters Permits, and Direct Connections will not be cancelled as those are permits that may be held by a manufacturer licensee without an On-Premises Tasting Room Permit.

If you certify that you do want an On-Premises Tasting Room Permit at your manufacturing premises, you will be able to continue selling the beer, wine, and/or spirits you manufacture at that location at retail to customers. You will be required to maintain Proof of Financial Responsibility (liquor liability insurance) and comply with server training requirements. Any permits or permissions that relate to retail sales to consumers, such as Sunday Sales Permit, Entertainment Permits, or outdoor service areas, will be attached to your On-Premises Tasting Room Permit. You do not need to obtain local approval, as you are already licensed at this location; local approval will only apply to new locations.

**Please note:** If you do not submit the certification form by April 1, 2019, the Commission will automatically add the On-Premises Tasting Room Permit to your license(s) and you will be required to pay the \$100.00 renewal fee for the permit unless you cancel the permit. If you have more than one licensed manufacturing location, you will receive a certification for each location that you must complete and return.

Sincerely,  
**MICHIGAN LIQUOR CONTROL COMMISSION**  
Licensing Division

**Manufacturer License On-Premises Tasting Room Compliance Certification**  
**Complete and Return by APRIL 1, 2019**

LICENSEE NAME: **TABONE VINEYARDS, LLC** BUSINESS ID: **237290**  
LICENSED ADDRESS: **14916 Peninsula Dr, Traverse City, MI 49686**  
LICENSE(S) & PERMIT(S): **Small Wine Maker (#411924) with Entertainment Permit**

**Manufacturing Only**

\_\_\_\_ I/we certify that the above noted license(s) at the above noted address is/are used only to manufacture beer, wine, and/or spirits and no retail sales to customers occurs. I/we certify that we do not want an On-Premises Tasting Room Permit for the above noted address. I/we understand that unless an On-Premises Tasting Room Permit is approved and issued at the above noted location, the retail sales of beer, wine, and/or spirits produced under the above noted licenses at the above noted address is prohibited. I/we understand that any permits or permissions associated with retail sales, such as Sunday Sales Permits, Dance or Entertainment Permits, or outdoor service areas, will be cancelled if this option is selected.

**Manufacturing and Retail Sales to Customers**

X I/we certify that the above noted license(s) at the above noted address is/are used to manufacture beer, wine, and/or spirits and retail sales to customers occur at this location. I/we certify that I/we want an On-Premises Tasting Room Permit for the above noted address. I/we understand that we will need to continue to maintain Proof of Financial Responsibility (liquor liability insurance) and comply with server training requirements in order to qualify for an On-Premises Tasting Room Permit at the above noted address. I/we understand that an On-Premises Tasting Room Permit will cost \$100.00 a year in addition to any other license and permit fees **(do not submit any fees with this certification – the fees will be added to your annual renewal)**.

*By signing below, I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing false or fraudulent information is a violation of the Liquor Control Code pursuant to MCL 436.2003.*

Marie A. Tabone, owner  
Print Name of Licensee

M.A. Tabone  
Signature of Licensee

1/15/2019  
Date

**DO NOT SUBMIT ANY FEES WITH THIS CERTIFICATION**

You may mail, fax, or email the completed certification form and membership list to the Commission **by April 1, 2019:**

Michigan Liquor Control Commission  
P.O. Box 30005  
Lansing, MI 48909

Fax: 517-763-0059  
Email: [LARA-MLCC-TastingRooms@michigan.gov](mailto:LARA-MLCC-TastingRooms@michigan.gov)

# **EXHIBIT 70**

## **UNPUBLISHED CASES**

## Country Mill Farms, LLC v. City of E. Lansing

United States District Court for the Western District of Michigan, Southern Division

December 18, 2019, Decided; December 18, 2019, Filed

No. 1:17-cv-487

### Reporter

2019 U.S. Dist. LEXIS 242129 \*; 2019 WL 13164267

COUNTRY MILL FARMS, LLC and STEPHEN TENNES, Plaintiffs, -v- CITY OF EAST LANSING, Defendant.

**Prior History:** Country Mill Farms, LLC v. City of E. Lansing, 2017 U.S. Dist. LEXIS 224271, 2017 WL 11444048 (W.D. Mich., Sept. 15, 2017)

**Counsel:** [\*1] For Country Mill Farms, LLC, Stephen Tennes, plaintiffs: David Andrew Cortman, Rory Thomas Gray, Alliance Defending Freedom (GA), Lawrenceville, GA; Gregory R. Walters, Jeremy David Tedesco, Jonathan Andrew Scruggs, Ryan Jeffrey Tucker, Samuel David Green, Katherine L. Anderson, Alliance Defending Freedom (AZ), Scottsdale, AZ; Hailey Vrdolyak, James R. Wierenga, Alliance Defending Freedom (DC), Washington, DC; Jeshua Thomas Lauka, David & Wierenga PC, Grand Rapids, MI; John J. Bursch, Bursch Law PLLC, Caledonia, MI; Rachel Csutoros, Alliance Defending Freedom (DC), Washington, DC.

For East Lansing, City of, defendant: Audrey J. Forbush, Plunkett Cooney (Flint), Flint, MI; Michael S. Bogren, Plunkett Cooney (Grand Rapids), Grand Rapids, MI; Thomas M. Yeadon, McGinty Hitch Housefield Person Yeadon & Anderson PC, East Lansing, MI.

For Michigan Catholic Conference, amicus: Thomas J. Rheame, Jr., Bodman LLP (Detroit), Detroit, MI.

**Judges:** Honorable Paul L. Maloney, United States District Judge.

**Opinion by:** Paul L. Maloney

### Opinion

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#### **OPINION AND ORDER GRANTING IN PART AND DENYING IN PART CROSS MOTIONS FOR SUMMARY JUDGMENT**

Many of the claims and defenses in this lawsuit attempt to distinguish between belief and conduct and [\*2] between conduct and expression, concepts not readily conducive to easy categorization. Stephen Tennes owns and operates Country Mill Farms. This civil rights lawsuit arose when Plaintiff Stephen Tennes posted his religious beliefs about marriage on Country Mill Farms' Facebook page. In addition to discussing his religious beliefs, Tennes also stated that he would no longer rent his farm for weddings ceremonies that would violate his religious beliefs. Because of the Facebook post, the City of East Lansing denied Country Mill Farms' vendor application for the City's farmers market. Tennes and Country Mill Farms sued. For their motion for summary judgment, Tennes and Country Mill Farms focus almost exclusively on Tennes' statement concerning his religious beliefs. For the City's motion for summary judgment, it focuses almost exclusively on Tennes' statement that he would not rent his property for same-sex weddings. Because the parties generally decline to engage the arguments advanced by the other side, the Court finds genuine issues



of material facts for many of the outstanding claims.

I.

A trial court should grant a motion for summary judgment only in the absence of a genuine dispute [\*3] of any material fact and when the moving party establishes it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that no genuine issues of material fact exist. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). To meet this burden, the moving party must identify those portions of the pleadings, depositions, answers to interrogatories, admissions and any affidavits and other evidence in the record, which demonstrate the lack of genuine issue of material fact. Fed. R. Civ. P. 56(c)(1); *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 627-28 (6th Cir. 2018). The moving party may also meet its burden by showing the absence of evidence to support an essential element of the nonmoving party's claim. *Holis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 543 (6th Cir. 2014). When faced with a motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Pittman*, 901 F.3d at 628 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). The court must view the facts and draw all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Maben v. Thelen*, 887 F.3d 252, 263 (6th Cir. 2018) (citing *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In resolving a motion for summary judgment, the court does not weigh the evidence and determine the truth of the matter; the court determines only if there exists a genuine issue for trial. *Tolan v. Cotton*, 572 U.S. 650, 656, 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014)

(quoting *Anderson*, 477 U.S. at 249). The question is "whether the evidence presents a sufficient disagreement to require submission [\*4] to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252.

II.

A.

Underlying this dispute are ordinances and guidelines promulgated by the City of East Lansing.<sup>1</sup> In 1972, the City of East Lansing adopted a nondiscrimination ordinance. The Ordinance declares the public policy of the municipality.

It is hereby declared to be contrary to the public policy of the City of East Lansing for any person to deny any other person the enjoyment of his/her civil rights or for any person to discriminate against any other person in the exercise of his/her civil rights or to harass any person because of religion, race, color, national origin, age, height, weight, disability, sex, marital status, sexual orientation, gender identity or expression, student status, or because of the use by an individual of adaptive devices or aids.

City of East Lansing, MI., Code § 22-31. In 2016 when the events giving rise to this lawsuit transpired, the City's ordinances defined the word "harass" to include both conduct and communication.

To harass means to have physical conduct or communication which refers to an individual protected under this article, when such conduct or communication [\*5] demeans or dehumanizes and has the purpose or effect of substantially interfering with an individual's employment, public

<sup>1</sup> The controlling pleading is Plaintiffs' amended complaint. (ECF No. 5 Complaint.) Defendants filed an answer. (ECF No. 31 Answer.)

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accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

*Id.* § 22-32.

The City operates the East Lansing Farmer's Market (ELFM). Vendors are selected by invitation and by application. (Compl. ¶ 95-98 PageID.76; Answer ¶¶ 95-98 PageID.438-39.) The City issues licenses to the vendors so that they may participate in the ELFM. (Compl. ¶ 99 PageID.67; Answer ¶ 99 PageID.439.) Without a license, vendors are not permitted at the ELFM. (Compl. ¶ 101 PageID.76; Answer ¶ 101 PageID.439.) Country Mill was a vendor at the ELFM from 2010 through 2016 and was invited by the City from 2011 through 2016. (Compl. ¶¶ 101-102 PageID.76; Answer ¶¶ 101-102 PageID.439; ECF No. 71-1 Tennes Aff. ¶¶ 21-22 PageID.831.)

In order to secure a license for the ELFM, vendors must pay a fee and must agree to follow the ELFM Vendor Guidelines. The events giving rise to this lawsuit occurred in 2016. Tim McCaffrey, the Director of Parks and Recreation for the City of [\*6] East Lansing, testified that in January and February 2017 the City began to discuss the need to reference or incorporate the City's nondiscrimination ordinance in the ELFM Vendor Guidelines. (ECF No. 68-4 McCaffrey Dep. at 41-41 PageID.730-31.) Heather Surface is the Community Events Coordinator for the City and, as part of her job, she coordinates the ELFM. (ECF No. 68-3 Surface Dep. at 7 PageID.710.) Surface testified that she and McCaffrey reviewed the Vendor Guidelines and consulted with the City's attorney. (*Id.* at 78 PageID.716.)

The 2017 ELFM Vendor Guidelines were

amended to add subsection m to Section 6, to incorporate the nondiscrimination ordinance by reference.

6) VENDORS WILL EMBODY THE SPIRIT OF THE MARKET BY: Multiple factors that affect the success of every vendor are considered.

...

m. Complying with the City of East Lansing's Civil Rights ordinances and the public policy against discrimination contained in Chapter 22 of the East Lansing City Code while at the ELFM and as a general business practice.

(ECF No. 5-1 PageID.114-15.). The Vendor Application requires the applicant to check a box indicating that he or she has read and agrees to all of the ELFM 2017 Vendor Guidelines. [\*7] (See Compl. ¶ 150 PageID.81; Answer ¶ 150 PageID.449.) When the City made the addition to the Vendor Guidelines, the phrase "general business practice" was not defined. Surface thought that the situation involving Country Mill was the "catalyst" for the review of the Vendor Guidelines. (Surface Dep. at 78-79 PageID.716.) The change was necessary because the vendors at the ELFM were not being held to the same standards as were City contractors. (*Id.* at 78.) McCaffrey testified that the City does not look for violations of the Vendor Guidelines but it will enforce the guidelines and the ordinances if situations are brought to the City's attention. (McCaffrey Dep. at 46-47 PageID.732.)

B.

Generally, the parties do not dispute the various acts that occurred. On occasion, one party identifies acts that occurred of which the other party would have no knowledge. The parties do offer competing inferences from the various occurrences and also dispute the legal significance of those occurrences and

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inferences.

Steve Tennes is a parishioner at St. Mary's Catholic Church in Charlotte, Michigan. (ECF No. 68-1 Tennes Dep. at 22 PageID.697.) Tennes believes the Catholic "Church's teaching that marriage [\*8] is a God-ordained, lifelong, sacrificial, and sacramental covenant between one man and one woman, with profound spiritual and societal implications." (ECF No. 71-1 Tennes Dec. ¶ 14 PageID.829.)

Tennes is the owner and operator of Country Mill Farms, LLC. (Tennes Dec. ¶ 2 PageID.826.) The mission statement for Country Mill Farms is "to glorify God by facilitating family fun on the farm and feeding families." (*Id.* ¶ 6 PageID.827.) Tennes "sees it as his calling to run [the] family farm . . . while honoring [his] Roman Catholic faith." (*Id.* ¶ 7 PageID.827.) Tennes and his family host as many as 44 weddings a year and "discovered it was a beautiful way to promote and support our beliefs about marriage." (*Id.* ¶ 13 PageID.829.)

Tennes and his family are "intimately involved" in the weddings. (Tennes Dec. ¶ 15 PageID.829.) He helps plan and layout the venue. (Tennes Dep. at 31-32 PageID.698.) The family meets and communicates with the couple, they help plan the event, they assist in staging the event, and they drive guests from the parking lot to the venue. (Tennes Dec. ¶ 16 PageID.829-30.) Tennes does not inquire about the religious beliefs of the couples who seek to rent Country Mill. (Tennes [\*9] Dep. at 38 PageID.700.) Although Tennes is aware that the Catholic Church requires the Church to annul a prior marriage, Tennes does not inquire about the prior marital status of any individual seeking to rent Country Mill for a wedding ceremony. (*Id.* at 46-47 PageID.701.)

Country Mill Farms has a webpage on the internet site Facebook which it uses to

communicate with the public. (ECF No. 68-1 Tennes Dep. at 64 PageID.705.) The events leading to this lawsuit began around August 24, 2016 with a post on County Mill's Facebook page. An individual wrote that she "heard you're not welcoming of LGBT Groups" and asked if "someone could please make a statement regarding this?" (ECF No. 71-7 PageID.865.) Tennes responded as follows:

Thank you for inquiring about our family farm. We do host weddings on our farm. We have had same sex couples inquire about getting married at our orchard. Due to our personal religious beliefs, we do not participate in the celebration of a same sex union. We have and will continue to respectfully direct wedding inquiries to another mid-Michigan orchard that has more experience in hosting same sex weddings. We welcome all customers for our other activities and products [\*10] on the farm. We have friends, family and business associates in the LBGT community. We respect other people's beliefs and we can only hope that others will respect ours. We have always tried our best to be respectful in this area. Thank you for your understanding.

(*Id.* PageID.866; Tennes Dec. ¶ 18 PageID.830.)

The City became aware of Tennes' Facebook post the next day. On August 25, 2016, an individual sent an email about the August 24 Facebook posts to Heather Surface. (ECF No. 68-5 PageID.737-38.) Surface forwarded the email to McCaffrey, her supervisor. (*Id.*; Surface Dep. at 41 PageID.712.) McCaffrey testified that he had conversations with the City's manager and others about "how to move forward." (McCaffrey Dep. at 24 PageID.727.)

On Friday, August 26, the City asked Country Mill to agree not to attend the ELFM on

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Sunday, August 28.<sup>2</sup> (Tennes Dec. ¶ 24 PageID.832). McCaffrey expressed concern about "protesters, adverse media attention, and possible negative impacts on your business and the business of other vendors." (ECF No. 71-15 Email PageID.883.) Tennes decided to temporarily stop booking all weddings at Country Mills. (Compl. ¶ 127 PageID.79; Tennes Dec. ¶ 26 PageID.832.) Tennes [\*11] attended the ELFM on August 28, despite the City's continued requests not to attend.<sup>3</sup> (Tennes Dec. ¶ 29 PageID.833.) Country Mill participated at the ELFM for the remainder of the 2016 season. (*Id.*; Answer ¶ 137 PageID.446.)

In December 2016, Tennes decided that he would again rent Country Mill Farms for weddings. (Tennes Dec. ¶ 30 PageID.833.) On December 12, 2016, Tennes posted the announcement on Country Mill's Facebook page.

This past fall our family farm stopped booking future wedding ceremonies at our orchard until we could devote the appropriate time to review our policies and how we respectfully communicate and express our beliefs. The Country Mill engages in expressing its purpose and beliefs through the operation of its business and it intentionally communicates

messages that promote its owners' beliefs and declines to communicate messages that violate those beliefs. The Country Mill family and its staff have and will continue to participate in hosting the ceremonies held at our orchard. It remains our deeply held religious belief that marriage is the union of one man and one woman and Country Mill has the First Amendment Right to express and act upon its beliefs. For this reason, Country [\*12] Mill reserves the right to deny a request for services that would require it to communicate, engage in, or host expression that violates the owners' sincerely held religious beliefs and conscience. Furthermore, it remains our religious belief that all people should be treated with respect and dignity regardless of their beliefs and background. We appreciate the tolerance offered to us specifically regarding our participation in hosting wedding ceremonies at our family farm.

(ECF No. 5-1 PageID.112.) Like the August 2016 message, Surface and McCaffrey became aware of the December 2016 through members of the community. The same day Tennes posted his message, December 12, a member of the community posted comments about his announcement on the ELFM's Facebook page. (Surface Dep. at 70 PageID.714; ECF No. 71-21 PageID.893.)

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<sup>2</sup> McCaffrey made several attempts to speak with Country Mill. (McCaffrey Dep. at 25 PageID.727.) He telephoned Diane Tennes several times and left voicemail messages. (*Id.*; ECF No. 71-13 Transcripts PageID.877-79.) He also sent several emails. (ECF No. 71-14 PageID.881; ECF No. 71-15 PageID.882-84; ECF No. 71-16 PageID.885-86.)

<sup>3</sup> McCaffrey testified that the City asked Tennes not to come to the ELFM that weekend, but "if you're going to vend, go ahead. I mean, we're not going to take that right away from you." (McCaffrey Dep. at 26 pageID.728.) Tennes acknowledges the City's request was for voluntary action. (Tennes Dec. ¶ 24 PageID.832.) Tennes testified that the City "did not say that we could not come." (Tennes Dep. at 53 PageID.702.)

In January 2017, the Market Planning Committee for the ELFM met to identify and then invite vendors for the 2017 ELFM. (Compl. ¶ 193 PageID.86; Answer ¶ 193 PageID.460.) Surface testified that McCaffrey informed her that the Committee was not to issue an invitation to Country Mill for the 2017 ELFM. (ECF No. 75 Surface Dep. II at 76-77 PageID.1502-03; ECF No. 71-22 Meeting [\*13] Agenda PageID.894.) McCaffrey testified that "a number of people"



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were involved in the decision, including himself, the City's manager, the City's attorney, and possibly the City's mayor. (McCaffrey Dep. at 51-52 PageID.733.) Surface testified that McCaffrey said if Country Mill submitted a vendor application, the City would deal with it. (Surface Dep. II at 76-77 PageID.1502-03.) The Committee did not invite Country Mill to be a vendor. (Tennes Dec. ¶ 31 PageID.834.)

Country Mill submitted a vendor application, which was reviewed by the City. (Compl. ¶¶ 197 and 199 PageID.86; Answer ¶¶ 197 and 199 PageID.461.) When the Committee received County Mill's application, Surface "walked it straight over to Tim McCaffrey." (Surface Dep. at 82 PageID.717.) Surface denied being involved in the decision to deny Country Mill's application. (ECF No. 78-5 Surface Dep. III at 148 PageID.1693.) A letter was drafted denying the application, which McCaffrey edited and Surface signed. (ECF No. 71-60 McCaffrey Dep. II at 57-59 PageID.1123-25; Surface Dep. at 86-88 PageID.718.) George Lahanas, the City Manager, testified that under normal practices a letter like this one would be drafted by McCaffrey, [\*14] which Lahanas would then review and finalize. (ECF No. 71-61 Lahanas Dep. at 58-59 PageID.1180-81.) By email, the letter was circulated to "Council," which included at least the mayor and City Councilmember Erik Altman, both of whom responded. (ECF No. 71-25 PageID.922; ECF No. 71-26 PageID.925.)

Surface sent Diana Tennes the letter denying Country Mills's vendor application.<sup>4</sup> (Tennes Dec. ¶ 33 PageID.834.) The letter reads

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<sup>4</sup> The letter is dated March 7. The emails were exchanged on March 8. The Court infers that the letter was not sent on March 7 because the initial email uses future tense and states that the McCaffrey and Surface "will be sending" the letter. (PageID.925.)

It was brought to our attention that The Country Mill's general business practices do not comply with East Lansing's Civil Rights ordinances and public policy against discrimination as set forth in Chapter 22 of the City Code and outlined in the 2017 Market Vendor Guidelines, as such, The Country Mill's presence as a vendor is prohibited by the City's Farmer's Market Vendor Guidelines.

(ECF No. 5-2 PageID.129.) Steve Tennes emailed Surface asking for clarification about the business practices that were objectionable. (Tennes Dec. ¶ 34 PageID.834.) Surface forwarded the email to McCaffrey, along with a proposed response. (Surface Dep. at 95 PageID.719; ECF No. 71-28 Email PageID.925.) Surface signed and sent a letter to Steve Tennes referencing his December Facebook [\*15] post as outlining an objectionable business practice. (Tennes Dec. ¶ 34 PageID.834.)

It was brought to our attention this winter that your facebook post dated December 12, 2016 outlines a business practice that would be considered a violation of the City of East Lansing Civil Rights Ordinances and our public policy against discrimination contained in Chapter 22 of the East Lansing City Code.

(ECF No. 5-1 PageID.111.)

C.

Plaintiffs identify a number of statements made by city officials to show that the actions were made because of Tennes' religious beliefs and to show the officials' animosity towards religion. All of the statements were made after Plaintiffs filed this lawsuit.

#### 1. Mayor Mark Meadows

On June 1, 2017, the Mayor of East Lansing, Mark Meadows, posted an on-line comment about the Country Mill lawsuit.

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It will be interesting to see what discovery turns upon when and how the lawsuit was formulated, . . . , and whether the decision to ban same sex marriages from the marriage part of the business is the result of a sincerely held religious belief or an attempt to improve the marriage business portion of the company's activities. I don't doubt the sincerity of the owners of the company. **[\*16]** But our local law is clear and its application is also clear. The participation in the Farmer's Market is not a right, it is a privilege. To qualify, one must agree to comply with the East Lansing Civil Rights Ordinance while operating there and while operating elsewhere. In fact, Country Mill's application indicated that the 2017 guidelines were read and agreed to. Obviously, that representation would be false. Country Mill Farm . . . in fact was going to operate a discriminatory marriage business and thus could not comply with the guidelines. The decision to reject the application thus had nothing to do with the personal beliefs or expression of those beliefs by one of the owners of the company.

(ECF No. 71-33 PageID.951.)

On September 9, 2017, the Detroit News published an editorial by Ingrid Jacques defending Steve Tennes. Mayor Meadows posted a response to the editorial.

. . . . East Lansing does not have a problem with Steve's religious beliefs. It has a problem with the business practices of his corporation, . . . . Steve is not hosting weddings, Country Mill Farms, Inc. does. . . . When the corporation made its application to be a vendor at the East Lansing Farmer's Market, it **[\*17]** was provided a copy of the updated participation rules. It still submitted its application and checked the box indicating

it had read the rules and would comply with them. It did not intend to when asked, it confirmed that it would not. It was not provided a space at the market as a result.

(ECF No. 71-32 PageID.947.) Meadows then addressed the author's assertion that the City's actions violated the First Amendment.

I think she is forgetting that Country Mills lost its spot at the Farmers Market because Steve's firmly held 'Catholic views on marriage' were not just his views. He made it his corporation's views and translated it into a business practice instead of free speech. Same sex couples have a right to be married. County Mill offers a public accommodation that discriminates against same sex couples. . . . Ingrid says Steve (actually the corporation) had no option but to sue. In fact it did have another option. It could have stopped discriminating against same sex couples.

(*Id.*)

## 2. City Council Member Ruth Beier

City Council Member Ruth Beier participated in a City Council Debate hosted by a Michigan State University student association on September 20, 2017. The topic to which she responded was **[\*18]** the City's decision not to appeal this Court's preliminary injunction. Beier stated, in part:

We're hoping when we can actually make our case we will prevail because the substance of the injunction said that the city was discriminating against Country Farms based on something that they said, and that is not the case. We don't doubt you're allowed to be a bigot. You're allowed to say whatever you want. You can say it on Facebook. You can say ridiculous, horrible, hateful things. What we said is if you actually do discriminate in



your business by not allowing - - not allowing same-sex couples to marry on your farm, then we don't want you in East Lansing. It's nothing to do with what they said. So I think when we make the case, we will prevail.

(ECF No. 71-41 Transcript at 3-4 PageID.971-72.) The same day, Beier sent an email response to a community member. Beier wrote "Thank you for your reasoned response. You make good points. I disagree that the views held by people like this vendor or [sic] not likely to change. It was not that long ago that a farm like this one might have prohibited interracial marriage. That commonly held view changed. This one will too."

(ECF No. 71-38 PageID.964.) Beier [\*19] was asked about this email at her deposition. She explained she was "making an analogy between disagreeing with gay marriage and disagreeing with interracial marriage." (ECF No. 71-63 Beier Dep. at 38 PageID.1235.) She clarified that she "was talking not about his religion. I was talking about his discrimination against people. The discrimination against a group of people who are gay, I was making an analogy to discrimination against a group of people who are black, or black and white." (*Id.* at 39 PageID.1236.) She also explained that she believed "that we will come to a place where gay people are accepted as being able to marry, just like black and white people are accepted as being able to marry." (*Id.*) And, she "would hope that Mr. Tennes's views would change too." (*Id.* at 40 PageID.1237.)

### 3. City Manager George Lahanas

The City Manager George Lahanas was quoted in several articles. The first article appeared in the Huffington Post. Lahanas offered a defense of the decision to reject Country Mill's application. "It's because of their business practice of excluding people, [that's]

the issue. . . . They can have any belief they want, but if they're excluding people, that's the difference." [\*20] (ECF No. 71-44 PageID.979) (alteration in original.) In a second article published on a Jackson, Michigan new channel's website (WILX), Lahanas is quoted as saying "It's got nothing to do with their free speech it has to do with their business practice." (ECF No. 71-42 PageID.795.) According to the article, Lahanas stated that "if they allow same-sex couples or stop holding weddings altogether again, they'd be welcomed back." (*Id.*) In another article published by WLNS TV, Lahanas is quoted as saying "If the same thing were held where they were excluding people because of their race or religion from purchasing products at their facility in another city then wanted to sell at our farmers market and say but we're not discriminating here . . . that to us isn't acceptable." (ECF No. 71-42 PageID.977.)

Plaintiffs also identify some of the statements Lahanas made at his deposition. When asked whether he agreed with Beier's statements, Lahanas said

She maybe said it different than I would have said it. I mean, the City of East Lansing's job is enforcing all the laws, ordinances, in the US, including protecting people's free speech. We would work to protect everybody's free speech. We had some [\*21] of the most objectionable speech ever come to East Lansing and we spent time and money - - if I can think of the name of the group. The Westboro Baptist Church people came and told us they were coming and we set up barricades and we protected them because it's their free speech rights. Nobody agrees with their - - I mean, I don't think anybody agrees with what they say, and I certainly do not. It's horrible, hateful stuff. But our police still protected them

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because its our job to protect free speech. So we all take very seriously, me most of all, that that is the people's constitutional right and it's protected. So I would agree with that. Yes, you can say whatever you want, hateful, horrible stuff, its free speech, and that's great. But if you act on it and discriminate against somebody then we have an issue.

(Lahanas Dep. at 107-08 PageID.1208-09.) Lahanas was then asked to clarify the City's objections to Tennes' or Country Mill's conduct.

So the issue isn't what he said, the issue isn't his beliefs, because you can't control someone's beliefs, wishes or what they say. They can say whatever they want. Free speech. The issue is he has a barn venue that he opens for people to get married [\*22] and he will rent it to opposite-sex couples to get married but he won't rent it to same-sex couples. So his venue is not available for same-sex couples, and to me that's the discrimination and that's the business practice that we are most concerned with and that's the one that got him excluded from the farmer's market. And even still, if he said what he was saying, that's fine. If he goes back to the other business practice and doesn't have that business practice we would have no problem with him coming back to the market and, in fact, we did back in that August. He still - - his pronouncement that he's against gay marriage in some way, that didn't matter. What mattered was that he was stopping all weddings so there wasn't going to be discrimination. So, yes, that's an accurate statement of the whole issue.

(Id. at 108-09 PageID.1607-08.) Lahanas was pressed on how the City would address the matter if Tennes' religious beliefs dictate that

he cannot participate in same-sex weddings.

I would say it's the same the thing if you would have talked 60 years ago against African Americans. People can say my religious belief makes me say that I can't provide service to African Americans and they [\*23] can cite the Bible for it. It doesn't make it true. That doesn't make it right. It's still wrong. It's the same thing here.

(Id. at 112 PageID.1611.)

At their depositions, City officials were asked about the City Council's authority and the role the Council played in the amendment to the Vendor Guidelines and the decision to deny Country Mill from the 2017 ELFM. The citizens of East Lansing elect the individual members of the City Council. (Lahanas Dep. at 11 PageID.1135.) The City Council hires the City's attorney and the City's manager. (Id.) As City Manager, Lahanas functions as the chief personnel officer and he has the authority to hire and fire City employees, other than the City Attorney. (Lahanas Dep. at 12 PageID.1136.)

The mayor is a member of the City Council; the elected members of the City Council choose the mayor from its members. (ECF No. 71-62 Meadows Dep. at 13 PageID.1218; ECF No. 71-64 Altmann Dep. at 12 PageID.1254.) The mayor sets the agenda for City Council meetings, but otherwise the mayor's role is not distinct from the role of other councilmembers. (Meadows Dep. at 13 PageID.1218.) The City Council is a decision-making body and it does make decisions about the [\*24] City of East Lansing. (Altmann Dep. at 13 PageID.1255.)

As City Manager, Lahanas carried out the "standard and administrative functions" of the City. (Altmann Dep. at 12 PageID.1254.) Lahanas met each week with Meadows before

the City Council meeting to plan the agenda. (Lahanas Dep. at 15 PageID.1139.) Lahanas would meet with the other councilmembers individually about once every two weeks. (*Id.* at 16 PageID.1140.) Formal directions from the Council to Lahanas would occur during City Council meetings. (*Id.* at 17 PageID.1141.) With other smaller, non-policy issues, Lahanas would take action based on his meetings with individual councilmembers. (*Id.* at 19-20 PageID.1143-44.) If the City Council disagreed with a course of action taken by Lahanas, the Council could vote to change the City's policy, like amending ordinances or passing other legislation. (ECF No. 78-4 Altmann Dep. II at 35 PageID.1686.)

For purposes of interacting with the media, Lahanas speaks for the City. (Lahanas Dep. at 94 PageID.1195.) For a councilmember to speak for the City or for the City Council, there should be a motion to the City Council or some official action. (*Id.*) Of course, as elected officials, councilmembers [\*25] often speak to the media on their own, in which case they speak for themselves. (*Id.*)

Members of the City Council were aware of constituent concerns about the policy at Country Mills at least by August 2016 when Country Mill decided to stop booking weddings. (Lahanas Dep. at 31-33 PageID. 1155-57.) Meadows circulated at least one email about the situation and copied all members of the City Council. (*Id.* at 32-33 PageID.1156-57.)

The amendments to the Vendor Guidelines did not involve members of the City Council. While Lahanas might have been aware that Surface and McCaffrey were making changes to the Vendor Guidelines, Lahanas did not draft any of the amendments. (Lahanas Dep. at 42-45 PageID.1166-67.) Lahanas did not recall that the City Council approved the amendments to the Vendor Guidelines. (*Id.* at 43

PageID.1167.) Because Surface oversaw the ELFM, policy changes would have been made by Surface and McCaffrey. (*Id.* at 43 PageID.1166.) Lahanas admitted that he would have had the final approval for any amendments to the Vendor Guidelines. (*Id.* at 49 PageID.1173.)

Members of the City Council were made aware of the decision to deny Country Mill's 2017 application to vend at ELFM. Lahanas [\*26] confirmed that the email chain was circulated to the council members. (Lahanas Dep. at 55 PageID.1177 and 56-57 PageID.1178-79.) In August 2016, an email was sent to councilmembers suggesting that the City drop its opposition to Country Mill coming to the ELFM because Country Mill decided to stop hosting weddings. (Lahanas Dep. at 34 PageID.1158.) Altmann disagreed and indicated the City should continue to request that Country Mill not come to the ELFM. (*Id.*; Altmann Dep. at 16 PageID.1257.) Lahanas then informed councilmembers that "after further discussions with Tim McCaffrey and Tom Yeadon [the City Attorney] we decided to maintain our request that Country Mill voluntarily elect not to attend the market tomorrow." (Lahanas Dep. at 35 PageID.1159.)

III.

Throughout the complaint and in their motion, Plaintiffs identify the source of their injury as the City of East Lansing's "Policy." Plaintiffs describe that Policy as the incorporation of the nondiscrimination ordinance into the Vendor Guidelines. (Compl. ¶¶ 13-14, 148-49.)

#### A. Free Speech

For Count I, Plaintiffs claim several different violations of their freedom of speech. The parties have moved for summary judgment on some of the causes [\*27] of action arising under the general category of freedom of

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speech.

### 1. Facial Challenge / Overbreadth

Plaintiffs request summary judgment on their overbreadth claim.<sup>5</sup> The City moves for summary judgment on Plaintiffs' overbreadth claim, which it addresses as a facial challenge.<sup>6</sup>

The City argues Plaintiffs' overbreadth challenges to the ordinances are moot and should be dismissed. Since the lawsuit was filed, the disputed language has been amended and the term "general business practice" has been defined.

On January 16, 2019, the Human Relations Committee for the City of East Lansing voted to recommend the City Council approve Ordinance 1447, which amends several provisions of the Code of the City of East Lansing.<sup>7</sup> (ECF No. 68-12 Memo PageID.770.)

Among the changes, the City amended § 22-32, to add a definition of "general business practice," which now means

the typical, standard or usual manner in which a person or entity performs or habitually engages in the operation of a particular aspect of its business; or the customary action a person or entity takes in the operation of its business.

(ECF No. 68-12 Ordinance PageID.771.) The City also amended the portion of § 22-32 which defined "to harass." The harassment [\*28] provision was amended to

<sup>5</sup> Plaintiffs § I.F. In this section of their brief in support, Plaintiffs discussion both their overbreadth claim and their Due Process claim. The Court addresses the Due Process claim below.

<sup>6</sup> Defendant § 1.A

<sup>7</sup> The website for the City of East Lansing contains a list of recently adopted ordinances, including Ordinance No. 1447, which have been adopted by the City Council and are waiting to be integrated into the City Code in its next Code update.

eliminate the words "demeans or dehumanizes and."

To harass means to have physical conduct or communication which refers to an individual protected under this article, when such conduct or communication demeans or dehumanized and has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

(Ordinance PageID.772.)

The City also revised portions of § 22-35, the provision outlining "prohibited practices" that was part of the ordinance concerning public accommodations or services. (*Id.* PageID.773.) The passage below contains the new words (underlined) and the deleted words (strike through).

(b) Prohibited practices. Except where permitted by law, a person shall not:

(1) ...

(2) Print,

calculatecirculate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation [\*29] or public service will be refused, withheld from or denied an individual because of religion, race, color, national origin, age, height, weight, sex, disability, marital status, sexual orientation, gender identity or expression, or student status, or because of an individual's use of adaptive devices or aids

, or that an individual's patronage of or



presence at a place of public accommodation, is objectionable, unwelcome, unacceptable, or undesirable because of religion, race, color, national origin, age, height, weight, disability, sex, marital status, sexual orientation, gender identity or expression, or student status or because of the use by an individual of adaptive devices or aids.

(*Id.*)

With these amendments in mind, the Court considers the law concerning free speech. The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. Amend. I. Under the Free Speech Clause, "a government, including a municipal government vested with state authority, 'has no power to restrict expression because of its message, its ideas, its subject matter or its content.'" *Reed v. Town of Gilbert, Arizona*, 576 U.S. 155, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015) (quoting *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972)). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it [\*30] conveys." *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 828, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227 (citation omitted). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger*, 515 U.S. at 828. "Viewpoint discrimination is thus an egregious form of content discrimination." *Id.* Content-based laws "are presumptively unconstitutional and may be justified only if the government proves that

they are narrowly tailored to serve compelling state interests." *Reed*, 135 S. Ct. at 2226 (citations omitted).

Ordinarily, the individual challenging the constitutionality of a statute must have had that statute applied to him or her, and courts do not consider challenges to a statute on the ground that it might be applied unconstitutionally to others. See *Broadrick v. Oklahoma*, 413 U.S. 601, 610, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973). One exception to this traditional rule of standing arises in the area of the First Amendment. *Id.* at 611-12. Litigants may challenge overly broad statutes "not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally [\*31] protected speech or expression." *Id.* at 612; see *Virginia v. Hicks*, 539 U.S. 113, 119, 123 S. Ct. 2191, 156 L. Ed. 2d 148 (2003).

On a facial challenge, a law may be invalidated as overbroad "if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *United States v. Stevens*, 559 U.S. 460, 472, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 n.6, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008)); see *Broadrick*, 413 U.S. at 615 ("To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."). Because overbreadth challenges are facial challenges, which, if successful, would forbid any enforcement of the statute, application of the overbreadth doctrine is "strong medicine" and should be employed by courts "sparingly and

only as a last resort." *Broadrick*, 413 U.S. at 613.

The first step in an overbreadth challenge "is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *United States v. Williams*, 553 U.S. 285, 293, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008); *Speet v. Schuette*, 726 F.3d 867, 873 (6th Cir. 2013). Once properly understood, the second step is to determine if the statute criminalizes a substantial amount of protected expressive activity. *Williams*, 553 U.S. at 297; *Speet*, 726 F.3d at 878. In any First Amendment facial challenge to a statute, a court must always consider whether the statute "be 'readily [\*32] susceptible' to a narrowing construction that would make it constitutional[.]" *Virginia v. American Bookseller Ass'n*, 484 U.S. 383, 397 (1988). The plaintiff bears the burden of showing substantial overbreadth. *Speet*, 726 F.3d at 878.

A plaintiff "must demonstrate from the text of the statute and from actual fact that a substantial number of instances exist in which the law cannot be applied constitutionally." *United States v. Coss*, 677 F.3d 278, 289 (6th Cir. 2012) (quoting *Am. Booksellers Found. For Free Expression v. Strickland*, 601 F.3d 622, 627 (6th Cir. 2010)). A plaintiff may not "leverage a few alleged unconstitutional applications of the statute into a ruling invalidating a law in all of its applications." *Connection Distrib. [Co. v. Holder]*, 557 F.3d [321,] 340 [(6th Cir. 2009) (en banc)].

*Id.*

In 2001, then Judge and now Justice Alito reviewed a district court's decision to grant a motion to dismiss where plaintiffs challenged a public school's anti-harassment policy on the

basis that the policy interfered with their religiously-motivated speech. The Third Circuit panel conducted an overbreadth analysis and found that the policy violated the First Amendment. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001). The school's policy defined harassment broadly to mean "verbal or physical conduct based on actual or perceived race, religion, color, national origin, gender, sexual orientation, or other personal characteristics and which has the purpose or effect of substantially interfering with a student's educational performance or creating [\*33] an intimidating, hostile, or offensive environment." *Id.* at 202. The policy included examples of harassment.

Harassment can include unwelcome verbal, written or physical conduct which offends, denigrates or belittles an individual because of any of the characteristics described above. Such conduct includes, but is not limited to, remarks, jokes, demeaning comments or behaviors, slurs, mimicking, name calling, graffiti, innuendo, gestures, physical contact, stalking, threatening bullying, extorting or the display or circulation of written material or pictures.

*Id.* at 202-03 (quoting the school's Policy). Judge Alito acknowledged that physically harassing conduct is "entirely outside the ambit of the free speech clause." *Id.* at 206. But, for oral and written expression of ideas, "however detestable the views expressed may be, we cannot turn a blind eye to the First Amendment implications." *Id.* When anti-discrimination laws are applied to harassment claims "founded solely on verbal insults, pictorial or literary matter," the law constitutes viewpoint restrictions on speech. *Id.* (quoting *DeAngelis v. El Paso Mun. Police Officers Ass'n*, 51 F.3d 591, 596-97 (5th Cir. 1995)).

The Third Circuit found the harassment policy



overbroad. First, the policy prohibited harassment on the basis of categories not protected by federal laws ("other personal [\*34] characteristics"). *Id.* at 210. Second, the policy's prohibitions extended beyond harassment that objectively denied equal access to a school's educational resources. The policy extended to speech where the purpose was harassment, rather than considering the systemic effect of the speech on an educational program or activity. *Id.* at 210-11.

This Court grants, in part, Plaintiffs' motion for summary judgment on their overbreadth claim. As potential vendors at the ELFM, Plaintiffs must comply with all of the City's nondiscrimination ordinances. Accordingly, Plaintiffs have standing to challenge aspects of those ordinances, even if the ordinance was not the reason Plaintiffs' application to vend was denied. Plaintiffs have demonstrated that the nondiscrimination ordinance, combined with the definition of the word "harass," reaches a substantial amount of protected expression. And, the ordinances are not readily susceptible to a limiting or narrowing construction. The City's definition of "harass" specifically covers communication, which would include both speech and expressive conduct.

The City's prohibition on harassment suffers the same problems identified in *Saxe*. First, like the policy in *Saxe*, the City's nondiscrimination [\*35] policy covers topics that are not protected by similar federal statutes. The City's policy extends nondiscrimination protections beyond sex, race, color, national origin, age, and disability. See *Saxe*, 240 F.3d at 210. Second, like the policy in *Saxe*, the City's definition of "harass" addresses communication that has "the purpose" of interfering with public accommodations or creating a hostile

environment. See *id.* at 210-11. The ordinance thus regulates speech based on the intent of the speaker, without consideration of any actual consequences.

Third, because ordinance fails to limit what constitutes an "intimidating, hostile, or offensive" environment, "it could conceivably be applied to cover any speech about some enumerated personal characteristics the content of which offends someone." *Id.* at 217. In his concurrence in *Masterpiece Cakeshop*, Justice Thomas emphasized this point. "States cannot punish protected speech because some group finds it offensive, hurtful, stigmatic, unreasonable, or undignified." *Masterpiece Cakeshop*, 138 S. Ct. at 1746 (Thomas, J. concurring). By defining harassment as communication that has the effect of creating an offensive environment, the City has criminalized protected speech. These three aspects of the ordinances assure a substantial [\*36] amount of protected expression fall under what the City has prohibited.<sup>8</sup>

The Court also grants, in part, the City's

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<sup>8</sup> The Court finds it difficult to reconcile the City's prohibition on harassment as a form of discrimination with the comments made by Councilwoman Beier and the City Manager. The City's ordinance prohibits Tennes from making "horrible, hateful" statements, which would include the statement that his religious beliefs limit marriage as a union between one man and one woman. Focusing on the third concern only, and illustrating the overbreadth problem by way of example, while selling apples at the ELFM, Tennes could not profess his religious beliefs to his customers that a marriage is between one man and one woman if one of his customers found that message to be offensive. Vendors who use the term "handicapped" instead of "disabled" might create an offensive environment at the ELFM for some patrons. The City's ordinance prohibits harassment based on gender identity and gender expression, categories not explicitly covered by federal statute. Combining the first and third concerns outlined in *Saxe*, patrons of the ELFM with gender dysphoria could claim that a vendor using pronouns and colloquialisms typically associated with one sex or the other, such as him or her or sir or ma'am, create an intimidating environment.

motion for summary judgment on Plaintiffs' overbreadth claim. Except for the overbreadth problem with the City's definition of "harass," Plaintiffs have not established a genuine issue of material fact concerning their burden described in *Speet*. The City amended its ordinances to eliminate the other words in the definition of "harass" to which Plaintiffs objected, including the words "demean" and "dehumanize." Since the lawsuit was filed, the City has defined the term "general business practice." For that term, Plaintiffs have not met the burden outlined in *Speet*. Similarly, the City is entitled to summary judgment on any overbreadth claim arising from the terms identified in the complaint found in the public accommodation portion of the ordinance. The City has amended that ordinance to eliminate the terms identified in the complaint. Legislative amendments typically moot overbreadth challenges. *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 644 (6th Cir. 1997). In this case, the City no longer defends the previous wording of its ordinances. The record contains no evidence from which this Court could infer an intent by the City to legislatively [\*37] reenact the challenged ordinances. See *id.* at 645.

## 2. Retaliation

As part of Count 1, Plaintiffs allege the amendment to the Vendor Guidelines and the subsequent enforcement of the amended guidelines constituted retaliation for engaging in protected speech. (Compl. ¶¶ 262-274 PageID.93-94.) Both parties move for summary judgment on Plaintiffs' retaliation claims.<sup>9</sup>

For their speech retaliation claim, Plaintiffs argue Tennes' expression of his religious beliefs is protected speech. The City insists its actions were based on statements made that

do not constitute protected speech. The City focuses on Tennes' comments that he would not rent his farm for same-sex weddings.

To establish a claim for retaliation in violation of the First Amendment, a plaintiff must show he or she (1) was engaged in a constitutionally protected activity, (2) the defendant's adverse action caused the plaintiff an injury that would deter or chill a person of ordinary firmness from continuing to engage in that activity, and (3) a causal connection such that the adverse action was motivated at least in part as a response to the exercise of the plaintiff's constitutional rights. *Jenkins v. Rock Hill Local Sch. Dist.*, 513 F.3d 580, 586-87 (6th Cir. 2008); *Thaddeas-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999). If the plaintiff can establish a prima facie case, the burden [\*38] shifts to the defendant to show that it would have taken the same action in the absence of the protected activity. *Thaddeas-X*, 175 F.3d at 399.

"[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981). Messages conveying religious views and doctrines are generally protected speech. See *id.* And, "inherently expressive" conduct has been afforded protection under the First Amendment. See *Rumsfeld v. Forum for Acad. and Inst. Rights, Inc.*, 547 U.S. 47, 66, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006). On the other hand, governmental bodies may impose incidental burdens on speech through valid restrictions and regulations directed at commerce and conduct. See *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011) (collecting cases). "[W]hen 'speech' and 'nonspeech' elements are combined in the same course of

<sup>9</sup> Plaintiffs § I.B; Defendant § 1.B.

conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States v. O'Brien*, 391 U.S. 367, 376, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968). And, where conduct is not inherently expressive, a speaker cannot avoid the government regulations simply by explaining the conduct and demanding the protection of the First Amendment. *Rumsfeld*, 547 U.S. at 66 ("If combining speech and conduct were enough to create expressive conduct, a regulated party could always transform conduct into 'speech' simply by talking about it."). At least one federal district court has [\*39] held that posting social media messages about business practices involving the refusal to assist in same-sex marriages is not protected speech. See *Telescope Media Group v. Lindsey*, 271 F. Supp.3d 1090, 1112 (D. Minn. 2017) ("Posting language on a website telling potential customers that a business will discriminate based on sexual orientation is part of the act of sexual orientation discrimination itself; as conduct carried out through language, this act is not protected by the First Amendment.").

In earlier opinions, the Court reached two conclusions relevant here. First, the Court dismissed Plaintiffs' as-applied challenge to the Policy as a content-based speech regulation. (Opinion Dismissing Claims at 9-14 PageID.383-88.) The Ordinance did not apply to Plaintiffs in August 2016 when the first message was posted. (*Id.* at 13 PageID.387.) For the December 2016 message, the City sent letters explaining the decision to deny the vendor application for the 2017. In those letters, the City referenced Plaintiffs' general business practices: their conduct not their expressions of their religious beliefs. (*Id.* at 14 PageID.388.) The City's ordinance, as applied to Plaintiffs, did not regulate speech.

Second, the Court declined to dismiss Plaintiffs' retaliation claim. For the retaliation [\*40] claim, this Court concluded Plaintiffs pled a plausible claim because the Facebook posts contained both protected and nonprotected speech. (*Id.* at 21 PageID.395.) In the Opinion and Order granting Plaintiffs' motion for a preliminary injunction, the Court noted that it "had not considered whether the City excluded Plaintiffs because of unprotected conduct, as that argument would address the causation element, which the City did not raise in its response." (Opinion Granting Injunction at 11 n.4 PageID.369.)

The Court will deny Plaintiffs' motion for summary judgment on its retaliation claim. In their complaint, Plaintiffs focus on the portion of the Facebook post concerning Tennes' Catholic beliefs. (Compl. ¶¶ 262-274.) In their response to the City's motion, Plaintiffs contend that the entire Facebook post is protected speech. Plaintiffs describe the second part of the December Facebook post as "a reservation of First Amendment rights." Country Mill "reserves the right to deny a request for services that would require it to communicate, engage in, or host expression that would violate the owner's sincerely held religious beliefs and conscience." But, under existing Supreme Court precedent, writing [\*41] about conduct (denying a request for services) does not transform that conduct into expressive conduct protected by the First Amendment. Similarly, claiming that the operation of a business is expression does not make it so. Country Mill has not identified any authority or established any basis for this Court to conclude that the Tennes' family activities identified in the record constitute "expressive conduct." The family meets with the couple to plan the event and the family helps stage the event. Taking the evidence in the light most favorable to Defendants, coordinating the logistics of the event—the

placement of tables and chairs, lighting, sound systems, parking, etc.—does not constitute the sort of expressive conduct protected by the First Amendment.

The Court will also deny the City's motion for summary judgment on Plaintiffs' retaliation claim. In its motion, the City generally ignores the portion of December Facebook post that expresses Plaintiffs' religious beliefs. Instead, the City again insists that statements about conduct are not protected speech and, therefore, the retaliation claim fails. The City's reasoning fails because the December Facebook post does contain protected speech. The retaliation [\*42] claim must therefore address the question of causation, an element the City does not address, again.

The Court finds the majority opinion in *Masterpiece Cakeshop, Limited v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018) controlling here. While religious and philosophical objections to same-sex weddings are protected by the First Amendment, "it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law." *Id.* at 1727. At the same time, Plaintiffs are entitled to "neutral and respectful consideration," *id.* at 1729, of their beliefs by the City of East Lansing. The timing of the amendments Vendor Guidelines and the subsequent enforcement of those amendments "cast doubt on the fairness and impartiality," *id.* at 1730, of the decisionmakers. Accordingly, genuine issues of material fact remain whether it was the protected speech or the unprotected speech that caused the City to act in the manner it did. For this reason, neither side is entitled to summary judgment on the speech retaliation claim.

## B. Unconstitutional Conditions

As their third cause of action, Plaintiffs allege the City violated the prohibition against unconstitutional conditions. [\*43] Plaintiffs argue the City conditioned the benefit of participating in the ELFM as a vendor on the surrendering of Plaintiffs' free speech and free exercise of their religion. The City argues Plaintiffs have no constitutional right to discriminate or to be exempt from antidiscrimination laws because of their religious beliefs. Both parties request summary judgment on Plaintiffs' unconstitutional conditions claim.<sup>10</sup>

The doctrine of unconstitutional conditions prohibits the government from coercing people to give up their constitutional rights in exchange for some government benefit. *Koontz v. St. Johns River Water Mgt. Dist.*, 570 U.S. 595, 604 (2013); see *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1077 (6th Cir. 1994) (noting a "well established Supreme Court precedent to the effect that a state actor cannot constitutionally condition the receipt of a benefit, such as a liquor license or an establishment permit, or an agreement to refrain from exercising one's constitutional rights, especially one's right to free expression."). The doctrine prevents the government from producing a result which it "could not command directly." *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972) (citation omitted). As a corollary, the government cannot withhold a benefit because someone refuses to give up his or her constitutional rights, even when the person would not be entitled to [\*44] the benefit. *Koontz*, 570 U.S. at 608; see *Bd. of Cty. Comm'fs Wabaunsee Cty, Kansas v. Umbehr*, 518 U.S. 668, 674 (1996) (quoting *Perry*, 408 U.S. at 597).

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<sup>10</sup> Plaintiffs § I.D; Defendant § IV.



"Allowing the government to decide that it will not give some people a benefit that it gives to others, even though it is not required to provide such benefit to anyone, simply because a person has exercised a right guaranteed under the Constitution, amounts to a penalty for exercising such right." *Toledo Area AFLCIO Council v. Pizza*, 154 F.3d 307, 321 (6th Cir. 1998). Simply put, the government cannot "penalize conduct it cannot directly ban" because it "raises concerns that the government will be able to curtail by indirect means what the Constitution prohibits it from regulating directly." *Id.*

The same factual dispute that exists for the retaliation claim also prevents this Court from granting either party summary judgment on the unconstitutional conditions claim. For Plaintiffs' motion, the Court views the evidence in the light most favorable to Defendants. In that light, the record supports the conclusion that the City denied the vendor application because of Plaintiffs' conduct, conduct which is not protected by our Constitution. For the City's motion, the Court views the evidence in the light most favorable to Plaintiffs. In that light, the record supports the conclusion that the City denied the vendor application [\*45] because of Plaintiffs' religious beliefs, beliefs which are protected by our Constitution.

### C. Free Exercise

As their fourth cause of action, Plaintiffs allege a violation of the Free Exercise Clause. Plaintiffs assert that their sincerely held religious beliefs require them to express their beliefs through their public statements and that they must operate their business in accordance with those beliefs. (Compl. ¶¶ 302 and 303.) Both parties move for summary judgment on the Free Exercise claim.<sup>11</sup>

In their motion, Plaintiffs contend the City violated the Free Exercise Clause three ways. Each of the three theories is based on a different Supreme Court opinion. First, the City acted with unmistakable hostility toward Plaintiffs' religious beliefs. Plaintiffs rely on the holding in *Masterpiece Cakeshop*. Second, the City denied Plaintiffs' a public benefit because of their religious beliefs. Plaintiffs rely on the holding in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 198 L. Ed. 2d 551 (2017). Third, the City enforced the Policy against Plaintiffs through an individualized assessment. Plaintiffs rely on the holding in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 510, 531 (1993).

For its motion, the City argues the Policy is generally applicable and is neutral on its face. The City also argues that its actions were based entirely on Tennes' conduct and not on his religious beliefs. [\*46]

The Free Exercise Clause of the First Amendment to the United States Constitution applies to the States through the Fourteenth Amendment. *City of Hialeah*, 508 U.S. at 531. "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Emp't Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877 (1990) *overruled by statute* (1993). "The Free Exercise Clause 'protects religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Trinity Lutheran*, 137 S. Ct. at 2019. In its Free Exercise cases, the Supreme Court has "long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not." *Bowen v. Roy*, 476 U.S. 693, 699, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986). Following this

<sup>11</sup> Plaintiffs § IA; Defendants § II.

principle, the Free Exercise Clause "cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Id.*

In addition to protecting religious beliefs from government regulation, the Free Exercise Clause also protects religiously motivated conduct. The Free Exercise Clause is implicated "if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *City of Hialeah*, 508 U.S. at 532; *Prater v. City of Burnside, Kentucky*, 298 F.3d 417, 427 (6th Cir. 2002) ("This Clause protects not only the right to hold a particular religious belief, but also the right to engage [\*47] in conduct motivated by that belief.") (citing *Smith*, 494 U.S. at 822). In its opinions addressing the free exercise of religion, the Supreme Court has established the "general proposition that a law that is neutral and of general applicability need not be justified by a compelling government interest even if that law has the incidental effect of burdening a particular religious practice." *City of Hialeah*, 508 U.S. at 531; see, e.g., *Bob Jones Univ. v. United States*, 461 U.S. 574, 604, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983) (denying a free exercise claim brought by a private religious university that prohibited interracial dating for religious reasons and was denied tax exempt status because the government's interest in eradicating racial discrimination in education was compelling). In *Trinity Lutheran*, the Court noted that "[i]n recent years, when this Court has rejected free exercise challenges, the laws in question have been neutral and generally applicable without regard to religion." *Trinity Lutheran*, 137 S. Ct. at 2020. But, when "the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and is invalid unless it is

justified by a compelling interest and is narrowly tailored to advance that interest." *City of Hialeah*, 508 U.S. at 532 (internal citation omitted).

The Sixth Circuit summarized the limits of the Free Exercise Clause in *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012).

Under this guarantee, public [\*48] authorities may enforce neutral and generally applicable rules and may do so even if they burden faith-based conduct in the process. That is why Oregon could deny unemployment benefits to two members of a Native American tribe found guilty of using a proscribed drug, peyote, even when they used the substance for sacramental purposes. *Employment Div. v. Smith*, 494 U.S. 872, 890, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990). The rule comes with an exception. If the law appears to be neutral and generally applicable on its face, but in practice is riddled with exemptions or worse is a veiled cover for targeting belief or a faith-based practice, the law satisfies the First Amendment only if it "advance[s] interests of the highest order and [is] narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993). That is why the City of Hialeah (Florida) could not enforce ordinances that purported to be neutral and generally applicable on their face---regulating the keeping and killing of animals---but in practice targeted the adherents of one faith (the Santeria religion) and the actions of one faith (animal sacrifices). *Id.* at 524-25, 533-35, 113 S. Ct. 2217.

*Id.* at 738. The circuit has applied these principles to deny free exercise claims brought against neutral and generally applicable laws. E.g., *Mount Elliott Cemetery Ass'n v. City of*



*Troy*, 171 F.3d 398, 405 (6th Cir. 1999) (in a claim brought [\*49] by a non-profit cemetery association that owned and operated four Catholic cemeteries, finding the City's refusal to rezone property for use as a Catholic cemetery did not violate the free exercise clause because the evidence in the record established that the construction and operation of a cemetery was not an exercise of religion and the laws were neutral and of general enforceability).

1. *Masterpiece Cakeshop* (religious hostility / neutral decisionmaker)

For this Free Exercise theory, Plaintiffs assert the decisionmakers were hostile to their religious expression and religious beliefs. The opinion in *Masterpiece Cakeshop* was issued after this Court resolved the City's motion to dismiss. The lawsuit was filed in federal court by a baker, Phillips, who declined to create a wedding cake for a same-sex wedding. At the time he refused to make the cake, Colorado did not recognize same-sex marriages. The Supreme Court held that the Free Exercise Clause requires governmental neutrality when adjudicating disputes involving free exercise claims. *Masterpiece Cakeshop*, 138 S. Ct. at 1729. The Court identified statements made by members of the Colorado's Civil Rights Commission during the hearings which evidenced hostility towards the baker's religious beliefs. *Id.* Of relevance here, "[o]ne [\*50] commissioner suggested that Phillips can believe 'what he wants to believe,' but cannot act on his religious beliefs 'if he wants to do business in the state.'" *Id.* The Court noted that some of the comments were "susceptible of different interpretations." *Id.* The Court then identified additional statements which were more disparaging, including a comparison between the baker's invocation of his religious beliefs to defenses of slavery and the Holocaust. *Id.*

Based on the disparaging statements made by the Commissioners, the Court found that the Commission had abdicated its "solemn responsibility of fair and neutral enforcement of Colorado's antidiscrimination law." *Masterpiece Cakeshop*, 138 S. Ct. at 1729. The Court concluded that "the Commission's treatment of Phillips' case violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731. The Commission was "obligated under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of Phillips' religious beliefs." *Id.*

The Court provided some guidelines when determining governmental neutrality. Courts should consider (1) the historical background of the challenged decision, (2) the specific series of events leading to the [\*51] decision or official policy in question, and (3) any legislative or administrative history, including contemporaneous statements made by the decisionmakers. *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (quoting *City of Hialeah*, 508 U.S. at 540). The Court cautioned that "even 'subtle departures from neutrality'" are barred by the Free Exercise Clause. *Id.* (quoting *City of Hialeah*, 508 U.S. at 534). The Court unequivocally declared "that government has no role in deciding *or even suggesting* whether the religious ground for [a] conscience-based objection is legitimate or illegitimate." *Id.* (emphasis added).

The Court denies Plaintiffs' motion on this Free Exercise theory because the record permits inferences that demonstrate neutrality by the decisionmakers. The statements by Meadows and Lahanas can be interpreted as expressing concern about Tennes' conduct rather than his religious beliefs; the statements are "susceptible of different interpretations." And, the statements were not made

contemporaneous with the amendments to the vendor guidelines or the decision to deny Country Mill's application to the 2017 ELFM. Neither were the statements made during an adjudicatory hearing or review. Finally, the record permits the inference that Beier did not participate in the decision to deny Country Mill's application. [\*52] She is not a listed recipient. And, even if she received the email, the record does not establish that she read the email before the March 7 letter was sent.

The Court also denies the City's motion on this Free Exercise claim because the record permits the inference that the decisionmakers did not operate with the required neutrality. The record establishes that several city officials, including Mayor Meadows and City Manager Lahanas, were involved in the decision to amend the Vendor Guidelines after the 2016 Farmer's Market and in advance of the 2017 Farmer's Market. The record permits the inference that Country Mill was the reason for the amendment. Both Meadows and Lahanas made statements similar to the statements the Supreme Court characterized as "susceptible of different interpretations." *Masterpiece Cakeshop*, 138 S. Ct. at 1729. Their statements can be interpreted as demonstrating hostility to Tennes' religious beliefs. The statements were made as defenses to the decision to deny Country Mill access to the ELFM and "cast doubt on the fairness and impartiality," *see id.* at 1730, of these decisionmakers. More problematic for City are the statements by Councilmember Ruth Baier. The Court infers Baier, as a member of the Council, [\*53] was at least consulted about the decision to deny Country Mill's 2017 application when the initial letter was circulated by email on March 8. Baier's statements defending the City's decision are much closer to the sort of disparaging statements the Supreme Court admonished in *Masterpiece Cakeshop*. *See id.* at 1729.

Although none of the statements were made prior to or as part of the amendment process and the denial of Country Mill's application, nothing in the statements suggest that any hostility developed after the lawsuit was filed. The Court record supports an inference of hostility during the decision-making process requiring trial on the merits.

## 2. *Trinity Lutheran* (public benefit / forced choice)

For this Free Exercise theory, Plaintiffs contend the City excluded them from receiving a public benefit on the basis of their religious beliefs. *Trinity Lutheran* involved a policy of the Missouri Department of Natural Resources (MDNR) which disqualified churches from receiving grants from playground resurfacing program. *Trinity Lutheran*, 137 S. Ct. at 2017. The MDNR established a grant program that awarded money to eligible entities to purchase rubber playground surfaces which were made from recycled tires. Trinity Lutheran Church Child Learning [\*54] Center was a non-profit preschool and daycare which merged with Trinity Lutheran Church and operated on church property. It applied for one of the competitive grants and scored high enough to be awarded one. However, because of a provision in the Missouri Constitution, MDNR officials categorically excluded Trinity Lutheran.

The Court found a violation of the Free Exercise Clause. *Trinity Lutheran*, 137 S. Ct. at 2021. The Court began by outlining some of the basic principles protected by the Free Exercise Clause: laws targeting "religious status" and "religious identity" are subject to strict scrutiny. *Id.* at 2019 (citations omitted). The Court explained that the "policy expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." *Id.* The Court further explained the

choice Trinity Lutheran faced: "participate in an otherwise available benefit program or remain a religious institution." *Id.* at 2021-22. "The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to participate with secular organizations for a grant." *Id.* at 2022.

The Court distinguished the grant process from the scholarship program in *Locke v. Davey*, 540 U.S. 712, 124 S. Ct. 1307, 158 L. Ed. 2d 1 (2004), where [\*55] the Court concluded that Washington could restrict recipients of a state scholarship from using the funds to obtain a degree in devotional theology. The Court explained that "Davey was not denied a scholarship because of who he was; he was denied a scholarship because of what he proposed to do—use the funds to prepare for the ministry." *Trinity Lutheran*, 137 S. Ct. at 2023 (italics in original). Because the MDNR policy required Trinity Lutheran to walk away from its "religious character" in order to participate in a public benefit program, the "condition imposes a penalty on the free exercise of religion that must be subjected to the 'most rigorous' scrutiny." *Id.* at 2024 (citation omitted). Missouri's interest, separating the church and state, was "already ensured under the Establishment Clause of the Federal Constitution . . . [which] is limited by the Free Exercise Clause." *Id.* (quoting *Widmar v. Vincent*, 454 U.S. 263, 276, 102 S. Ct. 269, 70 L. Ed. 2d 440 (1981)).

The Court will grant the City's motion on this Free Exercise Claim and will deny Plaintiffs' motion on this Free Exercise claim. First, neither Country Mill nor Tennes is categorically disqualified from applying to vend at the ELFM. The violation of the Free Exercise Clause in *Trinity Lutheran* occurred when Trinity Lutheran was disqualified, "deemed categorically ineligible," *Trinity Lutheran*, 137

S. Ct. at 2018, because it was a church. The City has not imposed any similar condition. [\*56] Second, the *Trinity Lutheran* opinion does not clearly extend beyond religious institutions. In a footnote, the four of the justices explicitly limited the holding in *Trinity Lutheran* to "express discrimination based on religious identity" and did "not address religious uses of funding or other forms of discrimination."<sup>12</sup> *Trinity Lutheran*, 137 S. Ct. at 2024 n.3. Country Mill is not a religious institution. This past term, the Supreme Court listed *Trinity Lutheran* as one of five cases in a category where the Court "upheld government benefits and tax exemptions that go to religious organizations[.]" *American Legion v. American Humanist Assoc.*, 139 S. Ct. 2067, 2092-93, 204 L. Ed. 2d 452 (2019). In light of the facts in *Trinity Lutheran*, the language used in the opinion, and footnote 3, as well as the characterization of *Trinity Lutheran* in *American Legion*, this Court limits the application of the relevant holding in *Trinity Lutheran* as applying to only religious organizations. In the absence of any circuit authority, this Court will not extend the relevant holding in *Trinity Lutheran* to all organizations and individuals with religious beliefs.

### 3. *City of Hialeah* (individualized assessment / targeting religion)

For their third theory of a Free Exercise claim, Plaintiffs contend the City targeted them because of their religious beliefs. Plaintiffs also contend the Policy permits subjective enforcement (individualized assessments).

In *City of Hialeah*, the Supreme [\*57] Court considered whether three ordinances enacted

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<sup>12</sup> Chief Justice Roberts wrote the majority opinion and was joined by Justices Kennedy, Alito, Kagan, Thomas and Gorsuch. Justices Thomas and Gorsuch, however, did not join this particular footnote.

by the City of Hialeah violated the Free Exercise Clause. In April 1987, the Church of Lukumi Babalu Aye leased land in the City and announced plans to establish a house of worship, a school, and a community center. The Church and its congregation practice Santeria, a belief system that fused African religion and Roman Catholicism. Santeria requires ritual animal sacrifices. Over several months, the City held several meetings and requested an opinion from the State's Attorney General. Then, in September 1987, the city council adopted three ordinances addressing religious animal sacrifice.

The Court held that the ordinances were neither neutral nor of general applicability. First, the Court discussed whether the ordinances were neutral. The record established that the object of the ordinances was "the suppression of the central element of the Santeria worship service." *City of Hialeah*, 508 U.S. at 534. The manner in which the ordinances were drafted meant that "few if any killings of animals [were] prohibited other than Santeria sacrifice." *Id.* at 236. And, the events leading to the enactment of the ordinances, including the statements made by the decisionmakers and the community, established "significant [\*58] hostility . . . toward the Santeria religion and its practice of animal sacrifice." *Id.* at 541.

Turning to the question of general applicability, the Court also found the ordinances problematic. The City asserted that the ordinances advanced two interests: protecting the public health and preventing cruelty to animals. *Id.* at 543. The Court explained with the ordinances were underinclusive for both stated interests. *Id.* at 543-45.

The Court will deny Plaintiffs' motion on this Free Exercise theory. The Vendor Guidelines incorporate a generally applicable and neutral ordinance which prohibits discrimination in

places of public accommodation. To qualify as a vendor at the ELFM, a business must agree to conduct its business practices consistent with that generally applicable and neutral ordinance. The ordinance applies to religious and secular businesses. The amendments to the City's ordinances largely eliminate the City's ability to selectively or individually enforce the Policy. Viewing the evidence in the light most favorable to the City, there remain genuine issues of material fact concerning the motivation for the amendment to the Vendor Guidelines and the decision to deny Country Mill's 2017 application. While Country [\*59] Mill might have been the "catalyst" for various decisions, the catalytic impetus could be the practice at the farm and not the religious beliefs. The decisionmakers testified generally that Tennes' motivation for the practice at Country Mill was not relevant to the denial of the application. What mattered was the practice at Country Mill.

The Court will also deny the City's motion on this Free Exercise theory. Viewing the facts in the light most favorable to Plaintiffs, genuine issues of material fact remain. A trier of fact could find that the City targeted Tennes and Country Mills because of his religious practices. A trier of fact could find that the Vendor Guidelines were changed because Tennes made the December 2016 announcement that Country Mill would again book wedding, but only for ceremonies between one man and one woman. And, a trier of fact could find that that the City's decision to deny Country Mill's application was motivated by Plaintiffs' religious beliefs. A trier of fact could choose not to believe the explanation provided by the decisionmakers.

#### D. Establishment Clause

For Count 5, Plaintiffs assert a violation of the Establishment Clause of the First Amendment. Plaintiffs reason that the City's enforcement



of [\*60] its Policy lacks a secular purpose and singles out religious speech and beliefs for hostility and exclusion. Both parties move for summary judgment on Plaintiffs' Establishment Clause claim.<sup>13</sup> The Establishment Clause applies to the States through the Fourteenth Amendment by incorporation. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 863 (6th Cir. 2015).

The Establishment Clause of the First Amendment to the United States Constitution does not merely prohibit the establishment of a religion by the government, it prohibits the government from making a law "respecting the establishment of religion." U.S. Const., Amend. I. The "touchstone" for evaluating Establishment Clause cases "is the principle that the 'First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" *McCreary Cty., Kentucky v. ACLU of Kentucky*, 545 U.S. 844, 859, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005).

The Supreme Court has described the language used in the Establishment Clause as "at best opaque." *Lemon v. Kurtzman*, 403 U.S. 602, 612, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). "The First Amendment contains no textual definition of 'establishment,' and the term is certainly not self-defining." *McCreary Cty.*, 545 U.S. at 874-75. As a result of the less than precise language used, each "inquiry calls for line drawing; no fixed, *per se* rule can be framed." *Lynch v. Donnelly*, 465 U.S. 668, 678, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984). When forced to draw lines between acceptable government action and prohibited government action, courts should keep in mind "the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active

involvement of the sovereign in religious activity.'" *Lemon*, 403 U.S. at 612 (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 668, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970) [\*61]). In each case, the court should consider whether the challenged law or conduct has a secular purpose, whether its principle or primary effect is to advance or hinder religion, and whether it creates an excessive entanglement of government with religion. *Lynch*, 465 U.S. at 678; *Lemon*, 403 U.S. at 612-13.

In the years since *Lemon*, the Supreme Court has refined the first two prongs. *ACLU of Ohio Found., Inc. v. DeWeese*, 633 F.3d 424, 431 (6th Cir. 2011). The first prong in *Lemon* is now "the predominant purpose test." *Id.* (citing *ACLU of Kentucky v. Mercer Cty., Kentucky*, 432 F.3d 624, 635 (6th Cir. 2005)); see *McCreary*, 545 U.S. at 860 ("When the government acts with the ostensible and predominant purpose of advancing religion, it violates that Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides."); *Satawa v. Macomb Cty. Rd. Comm'n*, 689 F.3d 506, 636 (6th Cir. 2012) ("Under today's *Lemon* test, we ask: (1) whether the government's predominant purpose was secular . . . ."). For this inquiry, "we generally accept the government's stated rationale for its action." *Satawa*, 689 F.3d at 526. But, the court has a duty to determine whether the stated secular reason is genuine or a mere sham. *Id.* For the predominant purpose test, the court held that "[p]urpose is determined from the perspective of an objective observer, who is 'credited with knowledge of 'readily discoverable fact,' including 'the traditional external signs that show up in the [\*62] text, legislative history, and implementation of a statute, or comparable official act.'" *ACLU of Kentucky v. Grayson Cty., Kentucky*, 591 F.3d 837, 848 (6th Cir. 2010) (internal quotation marks

<sup>13</sup> Plaintiffs § IC; Defendant § III.

omitted) (quoting *McCreary Cty.*, 545 U.S. at 862). When considering purpose, the history and context of the government's action are significant. *DeWeese*, 633 F.3d at 432.

In the second prong of the *Lemon* test, the court considers the primary effect of the government's action. *American Atheists, Inc. v. City of Detroit Downtown Devel. Auth.*, 567 F.3d 278, 291-94 (6th Cir. 2009). The court should consider "whether 'the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.'" *Grayson Cty.*, 591 F.3d at 854 (quoting *Cty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, (198) *abrogated by Town of Greece, New York v. Galloway*, 572 U.S. 565, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)). Where purpose considers the intended effect, the second inquiry of the *Lemon* test considers the actual effect. *Id.* (citing *Adland v. Russ*, 307 F.3d 471, 484 (6th Cir. 2002)). The second inquiry also uses the standard of an objective observer. *Id.* "If context, history, and the act itself sends the unmistakable message of endorsing religion, then the act is unconstitutional." *Id.* (quoting *Mercer Cty.*, 432 F.3d at 637).

The Court will deny Plaintiffs' motion on their claim under the Establishment Clause. The same genuine issue of material fact remains—the motivation behind the purpose of the City's actions are in dispute. The various decisionmakers and other city officials [\*63] generally testified that they thought Tennes' decision not to permit Country Mill to be used as a venue for same-sex weddings violated the City's nondiscrimination ordinance, regardless of Tennes' motivations. Viewing the evidence in the light most favorable to City an objective observer could conclude that the

primary purpose of amendment to the Vendor Guidelines and the denial of Country Mill's 2017 application was the enforcement of the nondiscrimination ordinance, a secular purpose. An objective observer could also conclude the same evidence establishes the actual effect was the same. The effect was to bar from the ELFM all of the vendors who were known to the City to act in a manner inconsistent with the nondiscrimination ordinance.

The Court will also deny the City's motion on Plaintiffs' Establishment Clause claim. Viewing the evidence in the light most favorable to Plaintiffs, an objective observer could infer that the primary purpose of the Policy was a reaction to Tennes's announcement about his religious beliefs. An objective observer could conclude that the only effect of the Policy was to prevent Country Mill from participating in the 2017 ELFM. Based on the current record, no city official [\*64] had knowledge that any same-sex couples had actually sought to rent the farm after the Tennes made his announcement on Facebook.

#### E. Due Process

For their seventh cause of action, Plaintiffs argue the City violated the Due Process Clause in the Fourteenth Amendment. Plaintiff contend the nondiscrimination ordinance contains a number of vague and undefined terms which grant the City unbridled discretion to arbitrarily censure expression the City disfavors. In the complaint, Plaintiffs explicitly identify the terms "general business practices," "discriminate," "unwelcome," "objectionable," "unacceptable," and "undesirable." In their motion for summary judgment, Plaintiffs focus on the term "general business practices" and the harassment provision of nondiscrimination ordinance. Plaintiffs further contend the City used its discretion to punish Plaintiffs' speech.



Both parties request summary judgment for Plaintiffs' due process claim.<sup>14</sup> In their motions and responses, the parties generally do not attempt to distinguish Plaintiffs' claims for damages and their claims for prospective relief.

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden [\*65] or required." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1982). The void-for-vagueness doctrine addresses two due process concerns: (1) that regulated parties should know what is required of them so they conduct themselves appropriately, and (2) precision and guidance are necessary so that those enforcing the law do not act in an arbitrary and discriminatory manner. *Fox Television Stations*, 567 U.S. at 253; *Grayned*, 408 U.S. at 108. Where vague terms risk chilling protected speech, courts should carefully scrutinize statutes to ensure they meet the requirements of due process. See *Fox Television*, 567 U.S. at 253. "Due process requires that we hold a state enactment void for vagueness if its prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion." *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth.*, 163 F.3d 341, 358-59 (6th Cir. 1998).

Federal courts exercise authority over cases and controversies, which "must exist not only

'at the time the complaint is filed,' but through 'all stages' of the litigation." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013) (citation omitted). A claim becomes moot when "the issues present are no longer 'live' or parties lack a legally cognizable interest in the outcome." *Cty. of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 59 L. Ed. 2d 642 (1978). Where a claimant seeks prospective [\*66] relief, the repeal or amendment of an ordinance while a case is pending will ordinarily moot the claim. See *Terry*, 108 F.3d at 644. Where a claimant seeks damages, however, legislative repeal or amendment will not moot the claim. *Ermold v. Davis*, 855 F.3d 715, 719-20 (6th Cir. 2017).

For portions of the due process claim, Plaintiffs' motion will be denied and the City's motion will be granted.

First, Plaintiffs' claims for prospective relief based on the alleged vagueness the phrase "general business practice" has been rendered moot. Since this lawsuit was initiated, the City has amended its ordinances to define the phrase "general business practice." Although Plaintiffs assert the added definition does not resolve the problem, their reasoning is unpersuasive. As the term is now defined, the City no longer has unbridled discretion to determine what constitutes a "general business practice." The practice must be typical, usual, habitual or customary for the regulated entity. The persons regulated would have some idea which aspects of their own business practices would be typical, usual, standard and habitual. The definition, therefore, provides sufficient clarity to inform those regulated and the regulators. Plaintiffs' evidence on this issue relies on questions [\*67] asked to various officials about the meaning of "general business practices" before the City amended the ordinances to define the phrase. Any request

<sup>14</sup> Plaintiffs § I.F.; Defendant § V. Plaintiffs combine the discussion of their overbreadth claim and their Due Process claim.

for prospective relief based on a vagueness challenge to the phrase "general business practice" term is moot.

Plaintiffs contend that Defendant could still decline to allow Tennes a license at the farmers market should he criticize, in a business communication, the beliefs, associations or actions of protected class members. Perhaps. But, the amendments place Tennes and other potential vendors on notice that such criticism, as a general business practice, would have consequences. Accordingly, Plaintiffs may have a different claim, but they do not have due process void-for-vagueness claim arising from the phrase "general business practice."

Second, Plaintiffs' claims for prospective relief based on the terms "objectionable," "unwelcome," "unacceptable," and "undesirable" in § 22-35(2) are moot. The City amended its ordinance and deleted the portion of the last sentence that contained all of the allegedly vague terms. The Ordinance now reads as follows:

(b) *Prohibited practices.* Except where permitted by law, a person shall not:

...

(2) Print, circulate, [\*68] post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied to an individual because of religion, race, color, national origin, age, height, weight, sex, disability, marital status, sexual orientation, gender identity or expression, or student status, or because of an individual's use of adaptive devices or aids.

(City of East Lansing, MI. Code § 22-35.)

Third, neither party is entitled to summary judgment on any claim for damages arising from denial of Country Mill's 2017 vendor application. The City denied Country Mill's 2017 application because of Country Mill's general business practices. To the extent Country Mill has a vagueness claim for damages based on the, at the time, undefined term, Plaintiffs have not requested summary judgment. To the extent the phrase "general business practice" must be interpreted in the context of other City ordinances, Plaintiffs' claim would arise from the ordinances before they were amended. Furthermore, [\*69] the City has not established that the ordinance was "clear in their application to plaintiffs' proposed conduct." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 21, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010). Section 6(m), the addition to the Vendor Guidelines, does not clearly inform potential vendors that their conduct outside of the City's jurisdiction can be used as a reason to deny the application.<sup>15</sup>

Finally, for one portion of Plaintiffs' due process claim, Plaintiffs' motion will be granted and the City's motion denied. While the City amended the ordinance defining the word "harass" to remove the words "demean" and

<sup>15</sup> Plaintiffs insist, on several occasions in their briefs and at the hearing, that Tennes "does not discriminate against anyone. He serves everyone on his farm and at the market with no regard for their sexual orientation, marital status, or other characteristic." (ECF No. 71 Pl. Br. at 29 PageID.814.) The record supports the conclusion that Tennes and Country Mill do not discriminate at the ELFM. At the ELFM, Plaintiffs will sell their goods to everyone. Tennes and Country Mill, however, do make distinctions or differentiate between opposite sex couples and same sex couples for the purpose of renting Country Mill for wedding ceremonies. As recognized by the Sixth Circuit, dictionaries define the word "discriminate" as "to distinguish; to make distinctions in treatment[.]" *White v. Burlington Northern & Sante Fe R. Co.*, 364 F.3d 789, 798 n.4 (6th Cir. 2004) (citation omitted). At Country Mill, Plaintiffs will not rent the venue to everyone.

"dehumanize," the words "intimidating" and "offensive" remain in the ordinance. The Sixth Circuit previously found void for vagueness a university policy using similar words. See *Dambrot v. Central Michigan Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995). The Sixth Circuit found that "to determine what conduct will be considered 'negative' or 'offensive' by the university, one must make a subjective reference." *Id.* The court reasoned, the "necessity of subjective reference" did not provide "fair notice of what speech would violate the policy." *Id.* The same is true here. The ordinance provides no mechanism for objectively evaluating when a message is "intimidating" or "offensive." The definition of "harass" provides too broad a delegation [\*70] of authority to restrict communication based on the subjective effect on people who hear the message.

#### F. Hybrid Rights

Plaintiffs raise this argument as part of their motion for summary judgment solely to preserve it for appeal.<sup>16</sup> The claim has already been dismissed based on Plaintiffs' concession that the Court must follow binding precedent. As part of their Free Exercise claim, Plaintiff assert their rights under the hybrid-rights doctrine were violated. (Compl. ¶ 320.) The City moved to dismiss any claim based on the hybrid-rights doctrine, citing *Kissinger v. Board of Trustees of the Ohio State University*, 5 F.3d 177, 180 (6th Cir. 1993). In their response to the motion to dismiss, Plaintiffs concede this Court must follow *Kissinger*. (ECF No. 21 Pl. Resp. to Mot. Dismiss at 16 PageID.288.) In their motion for summary judgment, Plaintiffs again concede this Court must follow *Kissinger*. Plaintiffs' hybrid-rights claim has already been dismissed based on Plaintiffs' concession. (ECF No. 28

Opinion and Order at 24-25 n. 5 PageID.398-99.)

#### G. Michigan Constitution

In Count 9 of the Complaint, Plaintiffs assert violations of Article 1, § 4 of Michigan's Constitution. Plaintiffs contend Michigan's Constitution provides broader protections for religious beliefs than its federal counterparts. Plaintiffs request summary judgment on [\*71] this claim<sup>17</sup>, relying on a five-part test. See *Champion v. Sec'y of State*, 281 Mich. App. 307, 761 N.W.2d 747, 753 (Mich. Ct. App. 2008) (citing *McCready v. Hoffius*, 459 Mich. 131, 586 N.W.2d 723, 728-29 (Mich. 1998)); *Reid v. Kenowa Hills Pub. Schs.*, 680 N.W.2d 62, 68-69 (Mich. Ct. App. 2004)). The City argues the state constitutional law claims should be subject to the same analysis as the federal constitutional claims. See *Scalise v. Boy Scouts of America*, 265 Mich. App. 1, 692 N.W.2d 858, 868 (Mich. Ct. App. 2006) (citing *In re Legislature's Request for an Opinion on the Constitutionality of Chapter 2 of the Amendatory Act No. 100 of Public Acts of 1970*, 384 Mich. 82, 180 N.W.2d 265, 274 (Mich. 1970) (stating that the Establishment and Free Exercise Clauses in the state and federal constitutions are "subject to similar interpretation.")).

The Michigan Supreme Court and the Michigan Court of Appeals have provided confusing guidance for how trial courts should evaluate challenges arising under Michigan's constitutional protections for religious freedoms. The Michigan Constitution, Article 1, § 4, protects religious freedoms. Article 1, § 4 contains a free exercise and an establishment clause. *In re Legislature's Request*, 180 N.W.2d at 274. The same provision protects an individual's freedom to worship according to his or her own conscience. *Champion*, 761

<sup>16</sup> Plaintiffs § I.A.4.

<sup>17</sup> Plaintiffs § I.G.

N.W.2d at 752-53. In 1970, the Michigan Supreme Court offered an advisory opinion indicating that Michigan's protections for religious freedoms should be evaluated in the same manner as parallel federal claims. *In re Legislature's Request*, 180 N.W.2d at 274 (holding that Michigan's Establishment and Free Exercise Clauses are "an expanded and more explicit statement" of the same clause in the Federal Constitution and "are, accordingly, subject to similar interpretation.").

After *In re Legislature's Request*, the United States Supreme Court issued [\*72] two important opinions interpreting the Free Exercise Clause. First, in 1972, the United States Supreme Court decided *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). *Yoder* involved a free-exercise challenge to Wisconsin's compulsory school-attendance law, which required children to attend either private or public school until the age of 16. Two plaintiffs were members of the Old Order Amish religion and another plaintiff was a member of the Conservative Amish Mennonite Church. Members of those faiths did not send children to school beyond the eighth grade. Evidence introduced at trial established the plaintiffs believed that sending children to school after the eighth grade was inconsistent with the tenets of the Old Order Amish communities in general and was contrary to the Amish religion and way of life. *Id.* at 209. The evidence at trial also established that plaintiffs believed that sending their children to high school "would not only expose themselves to the danger of the censure of the church community," but also "endanger their own salvation and that of their children." *Id.* Finally, experts testified that Old Order Amish communities held a fundamental belief that "salvation requires life in a church community separate and apart from the world and worldly [\*73] influences." *Id.* at 210. The Court found that the "impact of the

compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform act undeniably at odds with fundamental tenets of their religious beliefs." *Id.* at 218. The Court also found that Wisconsin's interest in enforcing the law—the importance of education to our political system and the preparation of self-reliant individuals—was not so compelling as to overcome the plaintiffs' religious beliefs. *Id.* at 221-29. The Court struck down the law, finding that the First and Fourteenth Amendments prevented Wisconsin from compelling the Amish to send their sixteen-year old children to high school. *Id.* at 234.

Eighteen years later, in *Employment Division, Department of Human Resources of Oregon v. Smith*, the Court considered a free exercise challenge to a federal law criminalizing peyote. The two Native American plaintiffs were fired after using peyote, a controlled substance prohibited by Oregon law, for sacramental religious purposes. They filed a lawsuit when their request for unemployment compensation was denied. The Court held that the plaintiffs did not have [\*74] a Free Exercise claim because an individual's religious beliefs do not excuse him or her from complying "with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith*, 494 U.S. at 879. The Court distinguished *Yoder* and other cases which involved a neutral, generally applicable law that implicated not only the Free Exercise clause, but also "other constitutional protections, such as . . . , the right of parents, . . . , to direct the education of their children . . . ." *Id.* at 881.

Eight years after *Smith*, the Michigan Supreme Court considered a claim arising under Michigan's Civil Rights Act brought by unmarried couple. *McCready*, 586 N.W.2d at



724-25 (*McReady I*). Michigan's Civil Rights Act prohibited discrimination based on marital status. *Id.* at 725. One of the defendant landlords explained that he would not rent apartment units to the plaintiffs because "unmarried cohabitation violated his religious beliefs." *Id.* at 725. The defendants raised defenses under both the Michigan Constitution and the First Amendment to the United States Constitution. *Id.* at 728. The Michigan Supreme Court analyzed the landlords' federal defense by applying the *Smith* test. *Id.* The Court concluded the Michigan Civil Rights Act was a generally applicable law which had no religious motivation and, therefore, did not violate the Free Exercise Clause of the First Amendment. *Id.*

For the landlords' [\*75] defense under Article I, Section 4 of the Michigan Constitution, the Court applied the compelling state interest test from *Yoder*. *Id.* at 729. The Court outlined a five-part test: (1) the claimant's belief or conduct motivated by belief, was sincerely held, (2) his or her belief or conduct motivated by belief was sincere in nature, (3) whether the state regulation imposed a burden on the exercise of the belief or conduct, (4) whether a compelling state interest justifies the burden imposed and (5) whether a less obtrusive form of regulation was available. *Id.* at 729 (citing *Yoder*, 406 U.S. at 214-230). The court determined that Michigan's "need to provide equal access to such a fundamental need as housing outweighs defendant's religious beliefs[.]" *Id.* The court also concluded that the act did not require the landlord to violate his sincerely held religious belief, explaining that "if they wish to participate in the real estate market by offering housing for rent, they must comply with the Civil Rights Act. The burden placed on the defendant's religious beliefs affects their commercial activities sooner than their beliefs." *Id.* (citations omitted).

Four months later, on a motion for rehearing, the Michigan Supreme Court vacated its earlier opinion. *McCready v. Hoffius*, 459 Mich. 1235, 593 N.W.2d 545 (Mich. 1999) (table opinion) (*McCready II*). The court specifically [\*76] vacated "that portion of the December 22, 1998 opinion of the Court which holds that the Civil Rights Act does not violate the Free Exercise Clause of the First Amendment of the United States Constitution or Article 1, § 4 of the Michigan Constitution." *Id.* The matter was remanded to the Jackson County Circuit court for "further consideration of that issue[.]" *Id.*

Panels of the Michigan Court of Appeals have reached different conclusions about the significance of the *McCready* opinions. In *Reid*, 680 N.W.2d at 68-69, the court evaluated a free exercise challenge using the compelling state interest test from *McCready* and *Yoder*. The plaintiffs were parents who home schooled their children for religious reasons and they filed the lawsuit because the Michigan High School Athletic Association (MHSAA) required enrollment in order for students to participate in extracurricular athletic programs. The court concluded that the MHSAA's requirement did violate the Michigan Constitution. *Id.* at 69. Notably, the court found that the desire to have the children participate in extracurricular athletic events ran counter to the plaintiffs' stated religious reason for homeschooling the students. *Id.*

In contrast to *Reid*, two other panels, both involving Establishment Clause challenges, cited *In re Legislature's Request* for the proposition that state courts should evaluate both Free Exercise and Establishment challenges [\*77] under the State's Constitution with the same criteria as used for challenges under the Federal Constitution. See *Weishuhn v. Catholic Diocese of Lansing*, 756 N.W.2d 463, 488 n.10 (Mich. Ct. App.



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2008); *Scalise*, 692 N.W.2d at 868.

For this lawsuit, the Court will evaluate Plaintiffs' state constitutional claims in the same manner as Plaintiffs' federal constitutional claims. The relevant holding in *McCready I*, which suggested a different analysis for state Free Exercise claims, was subsequently vacated. The state court of appeals has not been consistent with its treatment of religious freedom claims brought under state law. Complicating any analysis of this state law claim, the parties have not identified any Michigan courts that have considered the nuances outlined by Plaintiffs in their three different theories for their First Amendment Free Exercise claim. And, because Plaintiffs have a federal cause of action for the same rights protected by the Michigan Constitution, Plaintiffs cannot have a damages remedy against the City for their Michigan Constitution claims. *See Jones v. Powell*, 462 Mich. 329, 612 N.W.2d 423, 426-27 (Mich. 2000); *see also Leaphart v. City of Detroit*, No. 271050, 2007 Mich. App. LEXIS 955, 2007 WL 914306, at \*2 (Mich. Ct. App. Mar. 27, 2007) (citing *Jones*) ("Our Supreme Court has declined to infer a damage remedy for a violation of the state constitution by a municipality or individual government employee since other remedies are available against such defendants."); *Fifield v. City of Lansing*, No. 221755, 2001 Mich. App. LEXIS 2538, 2001 WL 1134607, at \*5 (Mich. Ct. App. Sept. 21, 2001) (same). **[\*78]**

IV.

Plaintiffs used Facebook to announce both their religious beliefs and their business practices. The City reacted to the Facebook post, culminating in the denial of Country Mill's application to participate in the East Lansing Farm's Market. The parties disagree whether City's actions were because of Plaintiffs' statement about their religious beliefs or

whether the City's actions were because of Plaintiffs' statement about their business practices. Because the record contains evidence from which the finder of fact could conclude that the City reacted to Plaintiffs' statements about their religious beliefs, the cross motions for summary judgment must be denied for many of the claims. The trier of fact must decide what the City's motivation was.

### **ORDER**

For the reasons contained in the accompanying Opinion, Plaintiffs' motion for summary judgment (ECF No. 70) is **GRANTED IN PART and DENIED IN PART**, and Defendant's motion for summary judgment (ECF No. 67) is **GRANTED IN PART and DENIED IN PART. IT IS SO ORDERED.**

Date: December 18, 2019

/s/ Paul L. Maloney

Paul L. Maloney

United States District Judge

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## Dep't of Agric. & Rural Dev. v. Engle

Court of Appeals of Michigan

November 10, 2022, Decided

No. 359098

### Reporter

2022 Mich. App. LEXIS 6801 \*

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT and ACME TOWNSHIP, Plaintiffs-Appellees, v KENNETH L. ENGLE and JANET C. ENGLE, Defendants/Cross-Defendants-Appellants and YUBA ORCHARD COMPANY, LLC, Defendant/Cross-Plaintiff-Appellee.

**Notice:** THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE FINAL PUBLICATION IN THE MICHIGAN COURT OF APPEALS REPORTS.

**Prior History:** [\*1] Grand Traverse Circuit Court. LC No. 2020-035493-CZ.

Dep't of Agric. & Rural Dev. v. Engle, 2022 Mich. App. LEXIS 1610 (Mich. Ct. App., Mar. 23, 2022)

**Counsel:** For AGRICULTURE AND RURAL DEVELOPMENT DEPARTMENT OF, Plaintiff - Appellee: ALLISON-YOKOM DANIELLE.

For ACME TOWNSHIP, Plaintiff - Appellee: JEFFREY L. JOCKS.

For KENNETH L. ENGLE, Defendant - Cross-Defendant - Appellant: JOSEPH R. ZAYAZ.

For YUBA ORCHARD COMPANY LLC, Defendant - Appellee: TROY W. STEWART.

**Judges:** Before: MARKEY, P.J., and SAWYER and BOONSTRA, JJ.

### Opinion

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Defendants Engle (defendants) appeal by leave granted from an order of the circuit court denying their motion for summary disposition and granting summary disposition to plaintiffs and rescinding the sale of property by defendants to defendant Yuba Orchard Company (Yuba). We affirm.

The trial court provided the following concise statement of the facts underlying this appeal:

The Engles owned two adjoining parcels, consisting of 102.91 total acres, of real property ("Protected Property") in Acme Township. On March 30, 2012, the Engles granted a Conservation Easement to Acme Township, the Michigan Department of Agriculture and Rural Development (MDARD) by and for the State of Michigan, the United States Department of Agriculture by and for the United States of America, and the Natural [\*2] Resources Conservation Service (NRCS) acting on behalf of the Commodity Credit Corporation. The Conservation Easement was conveyed in consideration for \$402,900. Under the Conservation Easement, the Engles (hereinafter the "Grantor") retained the right to convey the Protected Property, including the right to sell, lease, mortgage, bequeath, assign or donate the land.<sup>1</sup> However, the Conservation Easement expressly prohibited the Grantor from "dividing, subdividing, partitioning or otherwise

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creating or permitting separate ownership of the Protected Property."<sup>2</sup>

On April 5, 2019, the Grantor entered into a Purchase Agreement with [Defendant] Yuba Orchard Company ("Yuba"), and on July 12, 2019, conveyed the north parcel of the Protected Property to Yuba in exchange for \$328,800. Pursuant to the remedies outlined in the Conservation Easement, MDARD and Acme notified the Grantor on January 10, 2020, of the violation and requested that it be cured. Subsequently, on September 25, 2020, MDARD filed a complaint for declaratory and injunctive relief, entreating the Court to order the Protected Property be returned to single ownership. On February 16, 2021, Yuba filed a Cross Claim against the Grantor [\*3] asserting breach of contract. The Grantor filed a Motion for Summary Disposition on February 22, 2021, asserting that: (1) the Conservation Easement should not be interpreted to prohibit the sale of one of the parcels; (2) the Court lacks authority to reverse the sale to Yuba; (3) the prohibition against division constitutes an unreasonable restriction on alienation; and (4) laches should bar the Plaintiff's claim. On April 12, 2021, the Court heard oral arguments on the Grantor's motion and took the matter under advisement.

The trial court concluded that the subject easement protected "the entirety of the 102.91 acres" without distinguishing between the two separate tax parcels, and that the prohibition on division or separate ownership was not an unreasonable restraint on alienation. The court further rejected the defendants' invocation of the doctrine of laches. The court additionally decreed that, "Following resolution on appeal, .

. . Plaintiff shall record a copy of this Decision and Order and that recording shall act to rescind the Warranty Deed, dated July 12, 2019, from the Grantor to Yuba".

Defendants first argue that the trial court erred in determining that a restraint on [\*4] alienation was reasonable. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ford Credit Int'l, Inc v Dep't of Treasury*, 270 Mich App 530, 534; 716 NW2d 593 (2006). More particularly, the parties and court below regarded this issue as one of first impression to be decided by the court as a question of law. Questions of law are reviewed de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994), citing *Cardinal Mooney High Sch v Mich High Sch Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

We agree with the trial court that the restraint on alienation at issue here is reasonable. As explained in *LaFond v Rumler*, 226 Mich App 447, 451; 574 NW2d 40 (1997):

Michigan follows the common-law rule against unreasonable restraints on alienation of property. A restraint on alienation of property is defined as an attempt by an otherwise effective conveyance or contract to cause a later conveyance (1) to be void (disabling restraint), (2) to impose a contractual liability upon the conveyance for conveying in breach of the agreement not to convey (promissory restraint), or (3) to terminate all or part of a conveyed property interest (forfeiture restraint). [Citations omitted.]

At issue here is a disabling restraint, given that the trial court ordered rescission of defendants-appellants' sale of the northern parcel to defendant Yuba.

In *LaFond*, this Court noted generally that, "If

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<sup>2</sup> Section 6(A).

one's interest in property is [\*5] absolute, as a fee simple, restriction on his right of alienation is void as repugnant to the grant," but that "[w]here the grantor retains an interest in the property . . . the interest generally will support the imposing of a restriction on alienation." *Id.*, quoting *Sloman v Cutler*, 258 Mich 372, 374-376; 242 NW 735 (1932). In this case, the conservation easement left defendants retaining many basic ownership rights over the protected property, while conveying to plaintiffs the rights to insist that uses of the protected property be limited as specified in order to conserve its agricultural or open-space character.

This Court in *LaFond* cited authorities for the "basic premise . . . that nonassignability provisions in land contracts exist for the benefit of the vendor to safeguard performance," and, "[u]nder reasonable circumstances, these restrictions will be enforced solely for that purpose." *LaFond*, 226 Mich App at 455. Accordingly, *LaFond* noted with approval other cases involving land contracts in which the question of reasonableness depended on whether the vendor was vulnerable to suffering waste, or impairment or loss of security, with regard to the subject real property. *Id.* at 453-454, 457.

Defendants argue that the trial court erred by not concerning itself with waste or impairment of [\*6] security, suggesting that, where there is no finding of such hazards, any attendant restraint on alienation is necessarily unreasonable and thus invalid. Defendants attach too much significance to the inquiry into waste or impairment of security. A vendor performing a land contract obviously retains a dire interest in the subject real property until the sale is completed, and so guarding against waste or other impairments of security is reasonable. The conservation easement underlying this case, however, was not part of

any actual or envisioned conveyance of the fee. In short, neither party have much to fear from the other as to concerns of waste or impairment of security.

Moreover, neither *LaFond*, nor the cases it cited, suggested that waste, or impairment of security, were the sole bases for finding a restraint on alienation reasonable. *LaFond*, in fact, noted generally that, after *Sloman*, 258 Mich 372, "the few cases dealing with the issue of restraints on alienation in land contract provisions have taken a more measured approach and have focused on the reasonableness of the restriction at issue." *LaFond*, 226 Mich App at 453. See also *id.* n 2 (noting that the Restatement, Property, § 406, p 2406 (1944), "specifies that a restraint is permissible if it is reasonable [\*7] under the circumstances"). For these reasons, the trial court did not err by deciding the question of reasonableness without narrowly tying the inquiry to concerns over waste or impairment of security.

Additionally, these conservation easements serve an important public function. "The social utility of devoting property to conservation, historic preservation, and charitable purposes is strong enough to justify severe restraints on alienation that are reasonably necessary or convenient to assure that the property will be used to carry out the intended purposes." Restatement 3d, Property: Servitudes, § 3.4, comment I, p 448. Accordingly, "Restraints on alienation of conservation servitudes . . . are valid as a matter of common law so long as they are imposed to serve a conservation or other legitimate purpose and are rationally related to accomplishing that purpose." *Id.*

More to the point, § 6(A) of the easement states that the "[g]rantor is prohibited from dividing, subdividing, partitioning or otherwise creating or permitting separate ownership on the Protected Property." And § 1(D) expresses

the grantor's willingness to convey, i.e., surrender as part of the deal, "the interest in and the [\*8] right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space uses" as part of the transaction. In short, defendants agreed to restrict their right to subdivide the parcel.

For these reasons, we agree with the trial court that the restraint on alienation at issue is a reasonable one.

Next, defendants argue that the trial court erred when it interpreted the easement to include an unreasonable restraint on alienation when alternative interpretations were consistent with the easement language and would not render any part of the agreement void. We disagree.

Resolution of this issue requires that we interpret the easement itself. "The language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts." *Wiggins v City of Burton*, 291 Mich App 532, 551; 805 NW2d 517 (2011). This Court reviews de novo issues of contract interpretation. See *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000).

Defendants propose as a saving interpretation that the provision be read as applying to division of the two individual tax parcels composing their land, such that each may be sold separately if in its entirety. Defendants do not argue that their interpretation is more [\*9] faithful to the express terms of the easement, or otherwise tout it as superior to the one the trial court adopted, except that "applying this reasonable interpretation of the Easement would not render the 'multiple owner' language void, as an unreasonable restriction on alienation." But, setting aside that, as

discussed above, the trial court correctly concluded that the easement, as interpreted, was not void as an unreasonable restraint on alienation, defendants cite no authority for the proposition that a court has some duty to interpret easement language so as to minimize the burdens on the servient estate.

The trial court explained as follows:

As the language of the Conservation Easement is not ambiguous, it must be enforced as written. The Conservation Easement does not distinguish between the two separate tax parcels, but instead defines the Protected Property as the entirety of the 102.91 acres owned by the Grantor. Thus, the sale of the northern parcel of the Protected Property to Yuba was expressly prohibited by the terms of the Conservation Easement. There can be no alternate interpretation.

We agree with the trial court.

The easement references no subdivisions of the protected [\*10] property, which itself is defined on the first page as "all or any part or portion of this land" described in the legal description provided with the easement and the certificate of survey. The legal descriptions of three separate areas of land are set forth: the "2012 CONSERVATION EASEMENT" which "contains 98.73 Acres of land," the "FARMSTEAD COMPLEX" (1.22 acres), and the "BUILDING ENVELOPE/FARMSTEAD COMPLEX" (2.96 ACRES). These add up to 102.91 acres. The certificate of survey repeats the legal descriptions, then sets forth a diagram of the premises, which includes a notation, "ENGLE FARM 2011 easement 98.73 AC. Gross (Not including USDA easement or 2 exceptions)." Nothing in the description or diagram implies any recognition of that what defendants now call the northern parcel as having any status rendering it severable from the protected property as a



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whole.

For these reasons, the trial court did not clearly err by concluding that the protected property consisted of the whole, not two separately recognized parcels.

Defendants next argue that the trial court erred in ordering rescission of the warranty deed from defendants to Yuba. Again, we disagree.

"Rescission abrogates a contract [\*11] and restores the parties to the relative positions that they would have occupied if the contract had never been made." *Bazzi*, 502 Mich at 409. "Specific performance is a remedy of grace and not of right, resting within the sound discretion of the court, the granting of which depends upon the peculiar circumstances of each case." *Zenko v Boucher*, 60 Mich App 699, 703; 233 NW2d 30 (1975) (quotation marks and citation omitted).

In this case, § 10(F) of the conservation easement states as follows:

The Grantor agrees that the Township's remedies at law for any violation of the terms of this Easement are inadequate and that the Township shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the Township may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

The trial court held that, given its conclusion that defendants-appellants "violated the express terms of the Conservation Easement by dividing the Protected Property and creating separate ownership . . . , rescission or nullification of the Warranty Deed to Yuba is warranted in order to restore the Plaintiff and the [\*12] Grantor to their original positions

under the Conservation Easement".

Defendants argue that it is a mischaracterization for the trial court to grant rescission of the deed under the label of specific performance. But defendants' obligations under the easement were principally to refrain from taking certain actions, including subdividing the property. Therefore, in this context, specific performance would include precluding defendants from subdividing the property. Similarly, defendants argue that plaintiffs did not request rescission. But plaintiffs' request to return the property to single ownership would include the remedy of rescinding the deed.

Defendants also cite caselaw for the proposition that rescission of a deed may be appropriate in cases of fraud, mistake of fact, coercion, or undue influence, and protest that the instant case involves none of those. That principle might apply were Yuba wishing to rescind the deed. Yuba might cite a misunderstanding regarding defendants' right to sell only part of the protected property as a mistake of fact, see *Garb-Ko, Inc v Lansing-Lewis Servs, Inc*, 167 Mich App 779, 782; 423 NW2d 355 (1988) (a contract for the sale of commercial real property "may be rescinded because of a mutual mistake of the parties"), or a defect [\*13] in title, see *Stover v Whiting*, 157 Mich App 462, 468; 403 NW2d 575 (1987) ("Generally speaking, the vendor is under an obligation to convey a merchantable or marketable title. Marketable title is one of such character which should assure the vendee the quiet and peaceful enjoyment of the property, which must be free from encumbrance. A title may be regarded as 'unmarketable' where a reasonably prudent man, familiar with the facts, would refuse to accept title in the ordinary course of business, and it is not necessary that the title actually be bad in order to render it unmarketable."). That is, in light of

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the easement, title to only a portion of the property would be unmarketable. But as plaintiffs point out, this case is not a dispute between the parties to the deed at issue, but rather a dispute over the rights of plaintiffs, who are strangers to that deed, but parties to the conservation easement with a right to enforce it.

In sum, defendants agreed in the easement to keep the property whole. They violated that agreement by subdividing the property. Legal remedies are inadequate and, therefore, the trial court reasonably turned to the equitable remedy of rescinding the deed and making the property whole again. We note that defendants do [\*14] not offer any other preferable remedy that would achieve this end.

Defendants' final argument is to attempt to invoke the doctrine of laches. We review de novo the trial court's decision whether to apply the equitable doctrine of laches. *Knight v Northpointe Bank*, 300 Mich. App. 109, 113; 832 N.W.2d 439 (2013).

In rejecting defendants' invocation of the doctrine of laches, the trial court noted that the subject easement included the provision, "No delay in enforcement shall be construed as a waiver of the . . . right to enforce the terms of this Conservation Easement at a later date". The court further explained:

Here, the Grantor improperly attempts to shift the burden to Plaintiff for failing to prevent the transfer, however, the Plaintiff had no duty or obligation to prevent the Grantor from violating the express terms of the Conservation Easement. Additionally, the assertion that Plaintiff had sufficient time to seek an injunction to prevent the transfer is somewhat disingenuous given that the sale occurred less than a month after Plaintiff was made aware of the Grantor's intent. Finally, Grantor has failed

to adequately demonstrate how it has been prejudiced by Plaintiff's inaction. The Court finds that the situation of neither party has changed materially [\*15] since June 2019 and the delay of the Plaintiff in seeking relief has not put the Grantor in a worse condition, therefore, the defense of laches is inappropriate.

We agree with the trial court that the quoted clause from the easement precludes application of the doctrine of laches. Similarly, the trial court correctly concludes that plaintiffs had no obligation to prevent defendants from violating the express terms of the easement.<sup>3</sup>

Affirmed. Plaintiffs may tax costs.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ Mark T. Boonstra

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<sup>3</sup> Indeed, this point would seem to suggest the application of the clean-hands doctrine and, by violating the easement, defendants do not come to court with clean hands, thus denying their right to an equitable defense. See *Save Our Downtown v Traverse City*, \_\_ Mich App \_\_, slip op at 9; \_\_ NW2d \_\_, 2022 Mich. App. LEXIS 6164 (No. 359536, issued 10/13/2022).

## Hendee v. Twp. of Putnam

Court of Appeals of Michigan

August 26, 2008, Decided

No. 270594, No. 275469

### Reporter

2008 Mich. App. LEXIS 1746 \*

JEFFREY HENDEE, MICHAEL HENDEE, LOUANN DEMOREST HENDEE, and VILLAGE POINT DEVELOPMENT, LLC, Plaintiffs-Appellees, v TOWNSHIP OF PUTNAM, Defendant-Appellant. JEFFREY HENDEE, MICHAEL HENDEE, LOUANN DEMOREST HENDEE, and VILLAGE POINT DEVELOPMENT, LLC, Plaintiffs-Appellants-Cross-Appellees, v TOWNSHIP OF PUTNAM, Defendant-Appellee-Cross-Appellant.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Subsequent History:** Application granted by, Review pending at, Motion granted by Hendee v. Twp. of Putnam, 483 Mich. 983, 765 N.W.2d 14, 2009 Mich. LEXIS 1583 (2009)

Motion granted by Hendee v. Twp. of Putnam, 768 N.W.2d 85, 2009 Mich. LEXIS 1575 (Mich., 2009)

Motion granted by Hendee v. Twp. of Putnam, 772 N.W.2d 783, 2009 Mich. LEXIS 2343 (Mich., 2009)

Reversed by, Remanded by Hendee v. Putnam Twp., 2010 Mich. LEXIS 1453 (Mich., July 15, 2010)

**Prior History:** [\*1] Livingston Circuit Court. LC No. 04-020676-CZ. Livingston Circuit Court. LC No. 04-020676-CZ.

**Disposition:** Affirmed in part, and reversed in part.

**Judges:** Before: Donofrio, P.J., and Sawyer and Murphy, JJ. DONOFRIO, J. (dissenting).

### Opinion

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PER CURIAM.

In these consolidated appeals arising out of litigation concerning the zoning of property, we affirm in part and reverse in part the trial court's judgment, entered after a bench trial, in Docket No. 270594, <sup>1</sup> and we affirm the trial court's order on the issues of taxation of costs and attorney fees in Docket No. 275469.

#### I. Overview

This case concerns a vacant 144-acre tract of land (the property or subject property) owned by the Hendee plaintiffs <sup>2</sup> that is located in Livingston County and within the boundaries of defendant Putnam Township (the township). The property is comprised of some flat areas, steep rolling and sloping hills, wetlands, woodlands, and streams. The property is

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<sup>1</sup> While the trial court erred in ruling in plaintiffs' favor on some of the causes of action, we ultimately uphold the sole remedy ordered by the court.

<sup>2</sup> Plaintiff Village Point Development, LLC (Village Point) entered into a contingent purchase agreement with the Hendees for the property that is subject to the condition that rezoning occurs such that residential development will be permitted at a much greater density than that allowed under the current zoning classification.

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zoned as an agricultural-open space (A-O) district, which allows on the property, among other uses, farming and the development and construction [\*2] of single-family residential dwellings on, minimally, ten-acre lots. After the Hendee plaintiffs put the property up for sale in 2001, they found that builders and developers might be interested in purchasing the property, but not if the property remained designated as an A-O zone. Plaintiffs first attempted to have it rezoned to R-1-B, which would have allowed construction of single-family residential dwellings on one-acre lots, in an effort to pursue a development encompassing 95 residences. On recommendation of the county planning commission, plaintiffs' rezoning plan later sought consideration of a planned unit development (PUD) overlay, and we shall refer to the overall rezoning request as one for a 95-lot PUD. The rezoning application was eventually denied by the township board, and a subsequent request to the zoning board of appeals (ZBA) for a use variance to permit a density of up to 95 residential lots on the property was also rejected. In the midst of these proceedings, plaintiffs began contemplating and planning, in the alternative to the 95-lot PUD, the development of a manufactured housing community (MHC) on the property, which ultimately envisioned 498 units, and which [\*3] plaintiffs contended constituted a reasonable use of the property. But plaintiffs never fully pursued a request to the township for permission or rezoning to develop a 498-unit MHC, instead opting to continue the doomed rezoning application for the 95-lot PUD.

After the 95-lot PUD was rejected, and without any decision by the township on the 498-unit MHC plan given the lack of any rezoning application on the matter, plaintiffs filed suit, alleging that the A-O zoning classification and the township's refusal to allow rezoning resulted in an equal protection infringement, a

violation of substantive due process, and a regulatory taking without just compensation, and that, with respect to an MHC, the township violated MCL 125.297a, which prohibits exclusionary zoning, by not designating any township property for MHCs. In the context of the exclusionary zoning claim, [\*4] plaintiffs also sought a declaration that the township's actions were unconstitutional. The thrust of plaintiffs' allegations was that any development or use of the property under the A-O zoning classification was not economically feasible, that an MHC, for which there was a demonstrated need, constituted a reasonable use of the property, and that the township could not lawfully prohibit MHCs from being located in the township. Cross-motions for summary disposition were denied, as was the township's motion seeking to preclude the testimony of one of plaintiffs' experts, Brian Frantz. Before trial, plaintiffs stipulated to waive any claim for money damages, reserving their right to pursue equitable and declaratory relief, plus costs and fees, and the township dropped its demand for a jury trial. Following a bench trial, and based on the evidence presented, including some stipulated facts, the court ruled that the A-O zoning classification was unconstitutional as applied to plaintiffs' property, that the total exclusion of MHCs in the township constituted illegal exclusionary zoning and violated plaintiffs' substantive due process and equal protection rights, that the development of [\*5] a 498-unit MHC on plaintiffs' property reflected a reasonable use of the property, and that the township was enjoined from enforcing the A-O zoning classification and from interfering with plaintiffs' development of an MHC. The township appeals that judgment in Docket No. 270594. Subsequently, the trial court awarded plaintiffs \$ 43,177 in taxable costs for expert witness fees, but denied plaintiffs' request, made pursuant to 42 USC 1983 and 1988, for \$ 123,871 in attorney fees. In Docket No.

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275469, plaintiffs appeal the denial of attorney fees, and the township cross appeals, arguing that the court erred in awarding plaintiffs taxable costs for expert witness fees.

## II. Standards of Review

This Court reviews a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003), citing MCR 2.613(C) and *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). Similarly, when reviewing a trial court's rulings on matters of equity, this Court reviews the trial court's conclusions de novo, but the court's underlying findings of fact are reviewed for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). [\*6] Constitutional issues and other questions of law are reviewed de novo on appeal. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004); *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004). Finally, considering that the township argues that the trial court should have dismissed the case at summary disposition on the basis of ripeness, rulings on motions for summary disposition are reviewed de novo on appeal. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

## III. Analysis -- Docket No. 270594

### A. Doctrine of Ripeness -- Rule of Finality

The township argues that plaintiffs' constitutional claims were not ripe for litigation and should have been dismissed and that, assuming in the alternative that the claims were ripe, they fail on the merits.

We begin by framing and properly characterizing the claims brought by plaintiffs. On review of the complaint and lower court proceedings, we conclude that plaintiffs

pursued three constitutional challenges (substantive due process, equal protection, and a regulatory taking) on the basis that the A-O zoning classification, as applied to plaintiffs' property, and the failure to allow rezoning of the property left the property [\*7] in an undevelopable state, as costs would exceed the income generated by sales if the property was developed under the A-O zoning designation or even as a 95-lot PUD. These particular constitutional claims were not predicated on exclusionary zoning principles. Next, plaintiffs pursued an exclusionary zoning claim on the basis of MCL 125.297a and the township's failure to zone land for MHCs, and they also requested a declaration that the township's exclusionary zoning practice relative to MHCs is unconstitutional. In other words, there were constitutional claims that simply challenged the application of an A-O zoning classification to the property and constitutional challenges that arose out of the exclusionary zoning allegations. Exclusionary zoning can not only violate MCL 125.297a, it can offend due process and equal protection rights. *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173-176; 667 NW2d 93 (2003).

"[I]t is settled law in Michigan that the zoning and rezoning of property are legislative functions." *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000); see also *Arthur Land Co, LLC v Otsego Twp*, 249 Mich App 650, 662; 645 NW2d 50 (2002). In the context [\*8] of zoning cases, the doctrine of ripeness is tied to the rule of finality, which is concerned with whether the initial decisionmaker has arrived at a definitive position on an issue that inflicts an actual and concrete injury. *Paragon Properties Co v Novi*, 452 Mich 568, 577; 550 NW2d 772 (1996)(constitutional claim is not ripe for review without a final decision from which an actual or concrete injury can be determined);



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*Bevan v Brandon Twp*, 438 Mich 385, 392 n 8; 475 NW2d 37 (1991)(addressing "finality (ripeness) requirements"); *Electro-Tech, Inc v H F Campbell Co*, 433 Mich 57, 74; 445 NW2d 61 (1989)(action not ripe because the plaintiff failed to satisfy the rule of finality where the "plaintiff had not yet completed the available procedures which might have enabled it to build"); *Conlin v Scio Twp*, 262 Mich App 379, 382; 686 NW2d 16 (2004); *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 158-159; 683 NW2d 755 (2004).<sup>3</sup> In *Paragon Properties, supra* at 576-577, our Supreme Court explained the differences between "facial" challenges to an ordinance and "as applied" challenges for purposes of determining whether the rule of finality is applicable, stating:

A challenge to the validity [\*9] of a zoning ordinance "as applied," whether analyzed under 42 USC 1983 as a denial of equal protection, as a deprivation of due process under the Fourteenth Amendment, or as a taking under the Just Compensation Clause of the Fifth Amendment, *is subject*

*to the rule of finality.*

\* \* \*

Finality is not required for facial challenges because such challenges attack the very existence or enactment of an ordinance. [Citations and footnotes omitted; emphasis added; see also *Conlin, supra* at 383 and *Frericks v Highland Twp*, 228 Mich App 575, 595; 579 NW2d 441 (1998).]<sup>4</sup>

Here, [\*11] the only rezoning request presented by plaintiffs to the township pertained to the planned 95-lot PUD, which was rejected, as was the request for a variance relative to a 95-lot development. However, as noted above, plaintiffs ultimately did not challenge these decisions, nor do they want to develop a 95-lot PUD. Rather, plaintiffs wish to develop a 498-unit MHC, but that request was never presented to any township body or official for a decision, either in the form of a rezoning application or a variance request. Thus, the township did not arrive at any position, let alone a definitive position, on the issue of a 498-unit MHC.

This case presents, in part, an "as applied" constitutional challenge to the A-O zoning district, where there was no assertion at trial that the ordinance governing A-O districts was generally unconstitutional regardless of its application to and effect on particular property. It was the actual execution of the A-O zoning ordinance through designation of plaintiffs' particular piece of property as an A-O zone that gave rise to the constitutional claims that

<sup>3</sup> Both the state and federal constitutions confer only "judicial power" on the courts, US Const, art III, § 2; Const 1963, art 3, § 2, and US Const, art III, § 2 limits that judicial power to cases and controversies. *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 369; 716 NW2d 561 (2006). In order to prevent the judiciary from usurping the power of coordinate branches of government, our Supreme Court and the federal courts have developed justiciability doctrines to ensure that cases brought to the courts are appropriate for judicial action, and these doctrines include, along with standing [\*10] and mootness, the doctrine of ripeness. *Id.* at 370-371. In general, the doctrine of ripeness precludes the adjudication of hypothetical or contingent claims before an actual injury has been sustained, and an action is not ripe if it rests on contingent future events that may not occur as anticipated or may not occur at all. *Id.* at 371 n 14. These doctrines are constitutionally derived, and "[w]here a lower court has erroneously exercised its judicial power, an appellate court has 'jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.'" *Id.* at 371, 374 (citation omitted).

<sup>4</sup> As stated in *Jott, Inc v Clinton Charter Twp*, 224 Mich App 513, 525; 569 NW2d 841 (1997), "[a] facial challenge is one that attacks the very existence or enactment of the ordinance; it alleges that the mere existence and threatened enforcement of the ordinance adversely affects all property regulated in the market as opposed to a particular parcel." "An 'as applied' challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution." *Paragon Properties, supra* at 576.

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plaintiffs' property could not be used in an economically viable manner. Plaintiffs' constitutional causes [\*12] of action that challenged the application of the A-O zoning classification to their property were subject to the rule of finality.

With respect to the exclusionary zoning claim, the caselaw suggests that it would constitute a facial challenge that is not subject to the rule of finality.<sup>5</sup> We find it unnecessary, however, to determine whether plaintiffs' exclusionary zoning claim constituted a facial challenge and whether it was subject to the rule of finality, holding that further township proceedings would have been futile assuming application of the rule. The record is a bit unclear whether the township had ordinance language in place that generally recognized, outside of the master plan for future land use, an MHC district or zone that would allow MHCs as a permissible use for consideration relative to rezoning applications, and the parties presented conflicting oral arguments on the

matter. It does appear from the record, however, that an R-6 district for MHCs had been created by the township, and we shall proceed on that basis, although it is agreed that no particular land had actually been designated as an MHC district (again, outside the master plan). Accordingly, we are faced [\*13] with a case in which an MHC exclusionary zoning claim is made in the context of a situation where the township could conceivably have approved rezoning or a variance allowing the use claimed to have been excluded, i.e., MHCs as created in the ordinance scheme, and where plaintiffs failed to submit an application or request to use their property for an MHC. Under these circumstances, it would seem problematic to conclude that, for purposes of the rule of finality, ripeness, and simply establishing that the township was truly engaged in exclusionary zoning, plaintiffs had no obligation to first present an MHC application to the township, regardless of whether an exclusionary zoning claim is generally deemed a facial challenge under the caselaw.<sup>6</sup>

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<sup>5</sup> In *Landon Holdings*, *supra*, this Court addressed a complaint that alleged exclusionary zoning in violation of MCL 125.297a and the constitutional guarantees of due process and equal protection. The defendant argued that, because the plaintiffs had never sought a special use permit, nor waited for a response to their rezoning request, the action should have been dismissed for failure to exhaust administrative remedies. This Court, citing *Paragon Properties*, *supra* at 577, [\*14] and *Countrywalk Condominiums, Inc v City of Orchard Lake Village*, 221 Mich App 19, 23; 561 NW2d 405 (1997), rejected the argument, finding that the "[p]laintiffs in the present case raise facial challenges." *Landon Holdings*, *supra* at 177. In *Countrywalk*, the plaintiff argued that the zoning ordinance violated equal protection and due process rights, where it totally excluded multiple family dwellings from the city. The defendant contended that the claims should have been dismissed because the plaintiff did not obtain a final decision from the defendant regarding the use of the plaintiff's property. This argument effectively invoked the doctrine of ripeness or rule of finality and parallels the township's argument here. The *Countrywalk* panel rejected the argument and, citing *Paragon*, *supra* at 577, held that the plaintiff had made a facial challenge to the ordinance and thus the rule of finality was inapplicable. *Countrywalk*, *supra* at 22.

In *Paragon*, *supra* at 581-583, our Supreme Court addressed the plaintiff's argument that seeking a use variance, which was not done, would have been futile; therefore, the Court should not apply the rule of finality. The futility argument was premised on the claim that a

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<sup>6</sup> With regard to exclusionary zoning, this lawsuit does not present a case in which the municipality enacted ordinance language expressly prohibiting a particular use, which most certainly would give rise to a facial challenge without implicating the [\*15] rule of finality. It could be said that the case at bar reflects a facial challenge with "as applied" attributes or features, considering that execution of the ordinance scheme with respect to a recognized yet unapplied MHC district can go to the issue of whether the township engaged in exclusionary zoning. Later in this opinion, we shall discuss the effect of plaintiffs' failure to present an MHC application to the township on the question of whether the township effectively excluded or prohibited MHCs within its borders.

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hardship, as a grounds for a potential variance request, must be unique or peculiar to the property for which the variance is sought, and the plaintiff's claimed hardship affected multiple properties, making a variance request futile. *Id.* at 581-582. The Court rejected the futility argument, finding that a hardship variance may have been granted if sought because a hardship variance is not limited [\*16] to situations in which a single ownership parcel of land is negatively affected. *Id.* at 582-583. *Paragon* does suggest, therefore, that a futility exception to the rule of finality exists, but a legally sound argument invoking the exception under the right circumstances must be presented.<sup>7</sup> The *Paragon* Court's acceptance of a futility exception to the rule of finality, despite a finding that the circumstances did not merit invocation of the exception, is consistent with *Electro-Tech*, *supra* at 87, in which the Court stated:

In light of the record in the instant case as well as the purpose underlying the . . . finality requirement, we reject the plaintiff's assertion that it would have been futile to submit an amended site plan to the building department.

In light of the facts and record here, it is abundantly clear that presenting an MHC application to the township would have been an exercise in futility and nothing more than a formal step to the courthouse. Plaintiffs had

already endured a lengthy process relative to the 95-lot PUD rezoning application, which ultimately required plaintiffs to commence litigation against the township in order to simply procure a final decision on the application. Given that plaintiffs did in fact engage in township proceedings, that a lower density 95-lot PUD was soundly rejected as a rezoning and variance request, that the parties are embroiled in litigation, with the township aggressively fighting plaintiffs' attempt to develop an MHC, and that, for reasons stated later in this opinion, the township clearly has no intent to allow MHCs within its boundaries, it would have been futile for plaintiffs to submit any application or request for [\*18] a 498-unit MHC to the township. We acknowledge *Seguin v Sterling Heights*, 968 F2d 584, 589 (CA 6, 1992), wherein the Sixth Circuit for the United States Court of Appeals stated that "[w]e agree with the Seventh and Ninth Circuits that at least one meaningful application must be submitted as a prerequisite to a plaintiff's attempt to benefit from the futility exception." Although plaintiffs here did not present an MHC application to the township for resolution, they did indeed initially pursue efforts through the township to obtain rezoning and a variance with respect to their property. This is not a case in which plaintiffs contemptuously ignored the township, and we find it appropriate to allow plaintiffs to benefit from the futility exception under the factual circumstances presented.<sup>8</sup>

In light of our ruling invoking the futility exception, even though we found some of

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<sup>7</sup> Discussing the futility exception in the context of exhaustion of administrative remedies, this Court has stated that it will not require parties to undertake vain and useless acts, and where it is clear that further administrative proceedings would be an exercise in futility and nothing more than a formal step on the way to the courthouse, resort to the administrative body is not mandated. *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 358; 733 NW2d 107 (2007); [\*17] *Turner v Lansing Twp*, 108 Mich App 103, 108; 310 NW2d 287 (1981). However, "[f]utility will not be presumed," and a mere expectation that an agency will decide or act in a certain way is insufficient to satisfy the futility exception. *L & L Wine*, *supra* at 358-359.

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<sup>8</sup> We note that there was evidence that plaintiffs had initiated the process of preparing and submitting an MHC rezoning application to the township, but they were informed that, because the 95-lot PUD rezoning application was still pending at the time, they could only pursue one application at a time and had to make a choice between the two. Plaintiffs chose to continue seeking the 95-lot PUD, given [\*19] the significant amount of time already devoted to that application.

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plaintiffs' constitutional claims to be "as applied" challenges subject to the rule of finality, dismissal of those claims under the doctrine is not appropriate, and, again, it is unnecessary to categorize the exclusionary zoning claim as either an "as applied" or "facial" challenge and to determine whether the rule of finality is applicable. Given that the futility exception to the rule of finality operates as if the municipality had expressly come to a definitive position on an MHC, we find that the action was ripe for suit.

In sum, the threshold issue of ripeness did not bar plaintiffs' action against the township. We now turn to the merits of the causes of action.

#### B. Merits of the "As Applied" Constitutional Claims

Plaintiffs' substantive due process and equal protection "as applied" claims ultimately boil down to whether plaintiffs established that application of the A-O zoning classification to their property did not advance, nor was rationally related to, a legitimate governmental interest or whether plaintiffs established that [\*20] application of the A-O zoning classification to their property was unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question. *Houdek v Centerville Twp*, 276 Mich App 568, 582-586; 741 NW2d 587 (2007).

The rational basis analysis does not test the wisdom, need, or appropriateness of the ordinance, or whether any classification is made with "mathematical nicety," or even whether it results in some inequity; rather, the analysis entails only whether the ordinance is reasonably related to a legitimate governmental purposes. *Muskegon Area Rental Ass'n v City of Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001). The ordinance will be constitutional if the

municipality's judgment is supported by any set of facts, either known or which could reasonably be assumed, even if those facts are debatable. *Id.* The challenging party needs to show that the ordinance is solely based on reasons unrelated to the pursuit of the municipality's goals. *Id.*

Under these principles, and outside the context of the exclusionary zoning claim, we cannot conclude that plaintiffs' substantive due process and equal protection rights [\*21] were violated through application of the A-O zoning district to their property. The township's purposes in zoning land under the A-O designation are to protect the local agricultural economy from premature disinvestment, discourage urban sprawl and untimely and unplanned growth, reduce conflicts between neighbors, and to retain critical natural features and wildlife habitats. These goals and interests, as considered relative to plaintiffs' property, are reasonable governmental interests, given the nature, character, and topography of the township, the surrounding land, and the property itself, as well as the bordering zoning classifications. And the governmental interests are being advanced by the A-O zoning classification. This conclusion is supported by MCL 125.3203(1), and "it is clear that avoiding overcrowding and preserving open space are 'legitimate governmental interests.'" *Conlin, supra* at 394.

Additionally, excluding MHCs from this rural, open-space area (plaintiffs' property), which consists of wetlands, streams, woodlands, and rolling and sloping hills, does not reach the level of constituting arbitrary, capricious, and unfounded action by the township, considering the location [\*22] and character of the area, including surrounding properties, the demographics of the township, and the population centers.

With respect to a regulatory taking, plaintiffs'



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case was even weaker. Given all of the enumerated permitted uses in an A-O zoning district and uses that could be pursued on obtaining a special use permit, which were not explored or developed at trial, and considering the historical use and zoning of the property and that nearly half the acreage could be used for farming crops as evidenced by testimony regarding the leasing of the property for such a purpose, there was simply a failure to establish a regulatory taking. See *K & K Constr, Inc v Dep't of Natural Resources*, 456 Mich 570, 576-577; 575 NW2d 531 (1998).

Accordingly, the trial court erred in finding that the "as applied" constitutional claims relative to the A-O zoning district and plaintiffs' property merited relief.

### C. Exclusionary Zoning

With respect to the exclusionary zoning claim, the township argues that it does not totally exclude mobile homes, that there was no total prohibition in a geographic area close to the township, that there is no demonstrated need for manufactured housing, and that the trial [\*23] court erred in not excluding the testimony of plaintiffs' expert Brian Frantz in regard to "needs" analysis. Additionally, the township contends that reversal is warranted because plaintiffs never proposed a 498-unit MHC to the township and because the use of the property for a 498-unit MHC is unreasonable.

We have already addressed the issue of ripeness relative to the exclusionary zoning claim, and we find it unnecessary to examine the issue of whether the township engaged in exclusionary zoning in violation of MCL 125.297a because we conclude that the township engaged in exclusionary zoning in violation of the constitution; the remedies for either type of violation are the same. We shall, however, briefly address the statute, but only

for the purposes of explaining why it is unnecessary to address some of the issues raised by the township on appeal. MCL 125.297a<sup>9</sup> provided:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where [\*24] the use may be appropriately located, or the use is unlawful.

To establish a claim of exclusionary zoning under the statute, a party must show (1) that the challenged ordinance has the effect of totally excluding the land use within the township, (2) there is a demonstrated need for the excluded land use in the township or surrounding area, (3) a location exists within the township where the use would be appropriate, and (4) the use is lawful. *Houdek, supra* at 575; see also *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 684; 625 NW2d 377 (2001). As indicated above, the township presents arguments on the issue of demonstrated need, including the claims that Frantz was not qualified to testify on the issue, that his analysis of the issue was based on insufficient and biased data, and that Frantz utilized an unreliable methodology. [\*25] The township also maintains that, even if Frantz's testimony is not excluded, plaintiffs failed to establish demonstrated need. Because the issue of "demonstrated need"

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<sup>9</sup> Although repealed by 2006 PA 110, effective July 1, 2006, which enacted the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*, the Township Zoning Act (TZA) still controls this case. MCL 125.3702(2). We note that the prohibition against exclusionary zoning formerly found in MCL 125.297a was recodified with nearly identical language in MCL 125.3207.



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relates to MCL 125.297a and is not a required part of the constitutional analysis, as will be seen below, we decline to address the issues associated with demonstrated need.

The trial court ruled that the total exclusion of MHCs in the township constitutes unlawful exclusionary zoning under MCL 125.297a and violates plaintiffs' rights to substantive due process and equal protection. In *Kropf v Sterling Heights*, 391 Mich 139, 155-156; 215 NW2d 179 (1974), our Supreme Court explained:

On its face, an ordinance which *totally* excludes from a municipality a use recognized by the Constitution or other laws of this State as legitimate also carries with it a strong taint of unlawful discrimination and a denial of equal protection of the law as to the excluded use. Such a taint can hardly be presumed to be present in cases such as that presently before us when the general use is reasonably permitted in the community and the only issue is whether it was arbitrarily or capriciously denied as to this particular parcel of land. [Emphasis [\*26] in original.]

In *Landon Holdings*, *supra* at 176, this Court held that if a plaintiff asserting equal protection and substantive due process violations regarding a zoning ordinance establishes that a use is totally excluded, the burden shifts to the defendant to justify the exclusionary ordinance.

In *Countrywalk*, *supra*, this Court addressed an exclusionary zoning claim made solely pursuant to equal protection and substantive due process rights. The Court stated that the plaintiff had established a *prima facie* case when it presented evidence that the defendant's ordinance excluded multiple dwellings. *Id.* at 23. The *Countrywalk* panel

then set forth the applicable analytical framework:

Although not presumed valid, because it totally excludes multiple dwellings, the ordinance will be declared valid if the exclusion has a reasonable relationship to the health, safety, or general welfare of the community. Upon a showing by the challenging party that an ordinance totally excludes a legitimate use, the zoning authority has the burden of going forward with such evidence. If the defendant provides it, the burden of proof falls upon the challenging party to show that the ordinance does not bear a [\*27] real and substantial relationship to the safety or welfare of the public. [*Id.* at 24 (citations omitted).]

We must first address whether there was a total prohibition or exclusion of MHCs in the township.

As of the date of trial, no land in the township was presently designated for use as an MHC, nor were any MHCs in existence. While the township's master plan for future land use designated 80 acres near the village of Pinckney for an MHC, the evidence strongly supports, and we find no error with, the trial court's conclusion that this land is unsuitable for an MHC.

The township contends that there is no exclusionary zoning because there are some mobile or manufactured homes in the township.<sup>10</sup> However, the use at issue here is not individual manufactured or mobile homes; rather, the relevant use is MHCs. There is a difference between placing an individual home on a site and developing an entire community of manufactured homes on a site.

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<sup>10</sup> Frantz testified that 4% of the single-family homes in the township in 2000 were mobile homes (78 homes).

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The township relies on the following passages from *Landon Holdings*, *supra* at 168-169, 172:  
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[A] use is not necessarily excluded simply because it [\*28] does not yet exist, particularly when the defendant asserts that it has received no requests for that use.

\* \* \*

The failure to designate specific property as zoned for manufactured housing does not indicate that the ordinance amendment is illusory and that defendant has no intention of allowing manufactured housing. Rather, it was logical for defendant to wait for rezoning requests rather than rezone property to manufactured housing absent the owners' request.

In *Landon Holdings*, the trial court invalidated the defendant's zoning ordinance that required a special use permit for manufactured housing, and, while the litigation proceeded, the defendant amended the ordinance, [\*29] adding MHCs to the list of zoning districts recognized by the defendant. No land had yet been designated for MHCs; rather, property owners needed to apply for rezoning to an MHC district. The landowner plaintiffs applied for rezoning, but this Court noted that the record did not indicate the status of that rezoning application. The trial court found that the new ordinance did not violate MCL 125.297a, and this Court agreed. *Id.* at 156-

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<sup>11</sup> Although much of the opinion in *Landon Holdings* focused on whether there was an exclusion or prohibition of manufactured housing relative to MCL 125.297a, the panel also carried that analysis over when discussing exclusionary zoning under the constitutional claims. Therefore, and because a constitutional exclusionary zoning claim also requires exclusion of a use, *Landon Holdings* is relevant as are other cases that touch on the exclusion or prohibition aspect, despite addressing the issue in relation to the statute.

160. On appeal, the plaintiffs had claimed that the new ordinance was illusory because it did not actually rezone any property and because the defendant's land use map did not identify any property suitable for a manufactured housing district. This Court concluded that the defendant's "amended ordinance does not totally exclude manufactured housing communities, either effectively or on its face[;] [t]herefore, the ordinance in question does not violate MCL 125.297a." *Id.* at 172-173.

*Landon Holdings* appears to indicate that the mere fact that a township has an ordinance recognizing MHCs as a zoning classification and permissible use, it is sufficient to preclude a finding of exclusionary zoning, even if no land is specifically designated for MHCs. <sup>12</sup> Here, [\*30] we are proceeding on the basis that the township created and recognized an MHC zoning district, although no land is designated as such. There currently is no land zoned in the township that provides for the possibility of an MHC as a "special use." It is noted that "[t]he possibility of a variance alone would likely be insufficient to prevent an ordinance from being exclusionary." *Id.* at 170. In the vein of variances, special use permits, and rezoning applications, the *Landon Holdings* panel stated:

However, the special permit procedure in defendant's ordinance is not an authorization to engage in *prohibited* uses, like variances, rather it creates conditions to ensure that the particular use and location are appropriate. Landowners must meet much lower standards than for variances. Further, the amended ordinance allows manufactured housing not only by

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<sup>12</sup> The panel stated that the "amended ordinance [\*31] included a district allowing [MHCs] as a permitted use. This indicates that defendant did not intend to exclude [MHCs]." *Landon Holdings*, *supra* at 171.

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special use permit but also by rezoning to a manufactured housing district, which is clearly distinguishable from a variance. The use is permitted as of right in that district; the township has just not yet decided where it is appropriate. [*Id.* at 170-171 (footnote omitted; emphasis in original).]

Again, the township has no land zoned that provides for MHCs as a special use. On the other hand, the township recognizes an MHC zoning classification as a potential permissible use subject to a rezoning request.

In *Countrywalk*, *supra* at 23, the panel stated:

In the instant case, defendant admitted in its answer that its zoning ordinance did not set aside any area within the city for multiple family dwellings. The fact that plaintiff could apply for a variance or a special permit does not cure the defect in the zoning ordinance. *Eveline Twp v H & D Trucking Co*, 181 Mich App 25, 34; 448 NW2d 727 (1989). Therefore, plaintiff has established a prima facie case by presenting evidence that defendant's ordinance excludes multiple dwellings.<sup>13</sup>

*Countrywalk* suggests that the availability of a special use permit relative to the use at issue is insufficient to prevent a finding of exclusionary zoning. That proposition would reasonably extend to a situation where a municipality recognizes a zoning classification and conceptually would permit a certain use on a rezoning request but has not actually designated any land under the zoning classification. As in *Countrywalk*, defendant

township's ordinance scheme does not currently set aside any area within the township for MHCs. We again note that *Countrywalk* did not address exclusionary zoning in the context of the statute; it analyzed the issue purely under equal protection and due process principles. *Countrywalk*, *supra* at 23.<sup>14</sup>

In *English v Augusta Twp*, 204 Mich App 33, 38; 514 NW2d 172 (1994), this Court found that the defendant engaged in exclusionary zoning even where some land was actually zoned for a mobile home park, stating:

Defendant argues that the existence of the site presently zoned MHP requires a finding that mobile-home parks are not totally excluded from the township. However, there was ample evidence that the zoning of that parcel for mobile homes was nothing less than a subterfuge for the township's unwritten policy of excluding mobile-home parks altogether. As noted above, the township board chose the site [\*34] because they believed that it would never be developed. The township supervisor owned the vast majority of the site, fully intending to continue to operate

<sup>13</sup> In *Landon Holdings*, *supra* at 170, the panel attempted to negate the language in *Countrywalk* by asserting that the *Countrywalk* panel "did not clarify its reference to a 'special use permit' and the facts indicated the desired use was permitted in the township only as a nonconforming use, not as a use requiring [\*32] a special use permit."

<sup>14</sup> The township also quotes the following statement from *Guy v Brandon Twp*, 181 Mich App 775, 785-786; 450 NW2d 279 (1989): "The total-prohibition requirement of this statute [MCL 125.297a] is not satisfied if the use sought by the landowner otherwise occurs within township boundaries or within close geographical proximity." (Emphasis added.) The township correctly points out that there was evidence of numerous MHCs in Livingston County, [\*33] including one within a 6.1 mile radius of the subject property, yet outside the township. Assuming *Guy* is relevant outside of the statutory context, the quoted statement is inconsistent with the statutory language and inconsistent with post-1990 decisions, which are binding on this Court, as opposed to *Guy*, and which speak only of total exclusions within the township or relevant municipality, not surrounding areas. MCR 7.215(J)(1); *Adams Outdoor Advertising*, *supra* at 684; *Houdek*, *supra* at 575. Accordingly, we decline to give any weight to the statement in *Guy* that is cited by the township.

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the property as a family farm. In addition, the site was inappropriate for its zoned use because of the unavailability of water and sewer service and its proximity to a toxic-waste landfill and a federal prison. Thus, in effect, the township has designated no appropriate site for a mobile-home park.

Finally, in *Anspaugh v Imlay Twp*, 273 Mich App 122, 127-128; 729 NW2d 251 (2006), vacated 480 Mich. 964, 741 N.W.2d 518 (2007), this Court stated that "[a] zoning ordinance that creates a classification but does not apply that classification to any land is exclusionary on its face." While *Anspaugh* was vacated, on unrelated grounds, and the quoted proposition constituted dicta, the Court cited *Smookler v Wheatfield Twp*, 394 Mich 574, 577; 232 NW2d 616 (1975), in support of the proposition. Justice Williams, in a separate opinion in *Smookler*, stated:

This zoning appeal invites this Court to once again confront a facet of exclusionary zoning, this time the creation of a zoning classification without attaching it to any specific land. Such a zoning ordinance [\*35] is, of course, invalid on its face, and this causes us to invalidate the zoning ordinance of the defendant township as exclusionary. [*Id.*]

*Smookler, Sabo v Monroe Twp*, 394 Mich 531; 232 NW2d 584 (1975), overruled in part on other grounds *Kirk v Tyrone Twp*, 398 Mich 429; 247 NW2d 848 (1976), and *Nickola v Grand Blanc Twp*, 394 Mich 589; 232 NW2d 604 (1975), formed a trilogy of cases that were separately submitted but decided at the same time, although in three separate opinions, and the cases involved actions by the plaintiffs to use land, zoned for either family residential or agricultural use, for development of mobile-home parks. Although somewhat difficult to ascertain because the opinions are splintered and cross-reference each other, we conclude

that a majority of the Justices deciding *Smookler* found that exclusionary zoning had occurred. And while Justice Williams was the only one who expressly stated that a zoning ordinance that creates a classification but does not apply that classification to any land is exclusionary on its face, the majority was necessarily in agreement.

Keeping in mind the cited caselaw, we hold that the township effectively and totally prohibited MHC land [\*36] use because (1) there is no land presently designated for MHCs, (2) the land designated in the master plan (80 acres near Pinckney) for an MHC is not actually suitable for an MHC, thereby reflecting an intent to exclude any and all MHCs in the township, (3) the township has a problematic history of designating land for MHCs in master plans and then removing the land in subsequent plans, again reflecting an exclusionary intent, (4) there is no land allowing for an MHC pursuant to a special use permit, and (5) although the current ordinance scheme recognizes an MHC classification zone as a possible permissible use for purposes of a rezoning request, it is evident that the township will not grant any such rezoning requests for anyone and is effectively prohibiting MHCs.<sup>15</sup> Moreover, on the last point in the preceding sentence, *Smookler* would dictate that regardless of whether the

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<sup>15</sup> We reach this conclusion because of the evident game playing with respect to designating [\*37] MHC land and then removing the land in master plans and because of the clear unsuitability of the Pinckney 80 acres. Although the owner(s) of the 80 acres near Pinckney (currently zoned AO) might conceivably be granted a rezoning request for an MHC in light of the master plan, it is highly doubtful that any such request would ever be submitted, given the unsuitability of the land for an MHC. The evidence supports a conclusion that the unsuitability of the Pinckney 80 acres was and is known by the township, and it is reasonable to infer that, knowing this, the township was hopeful and confident that no one would ever attempt to develop that land for an MHC. There is no evidence that any such attempt has been made.



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ordinance scheme created and recognizes an MHC classification, the township is engaged in exclusionary zoning because the classification has not been applied to any land in the township so as to allow for present day development.

We also distinguish the present case from *Kirk, supra*, in which the plaintiffs argued that the township zoning ordinance excluded mobile home parks and our Supreme Court ruled that the plaintiffs failed to demonstrate that the township excluded such parks. *Kirk* brings us back to our earlier discussion on ripeness regarding whether plaintiffs' failure to seek permission from the township to develop an MHC essentially negates a conclusion that the township effectively excluded [\*38] MHCs. The *Kirk* Court, conducting its analysis of the issue presented, stated:

The proposed Master Plan for Future Land Use indicates two areas earmarked for mobile home parks, one of 80 acres and the other of 600-800 acres. There was some question as to whether the Master Plan was ever adopted. However, such a plan does exist, and the fact of its adoption goes only to the evidentiary weight of its reasonableness, and not to its admissibility.

There has been no request made by the owners of the larger parcel for rezoning. Of greater significance is the status of the 80 acre property rezoned to mobile home park use by the same court which denied plaintiffs' request. Despite the rezoning gained through successful court action, as of oral argument, there had been no request made for a building permit, and no progress made on actually building a mobile home park.

Thus the facts before us differ from other cases in which exclusion was present. For example, in *Gust v Canton Twp*, 342 Mich

436, 438; 70 NW2d 772 (1955), the ordinance and record disclosed the exclusion of mobile homes from the entire township. In *Roman Catholic Archbishop of Detroit v Village of Orchard Lake*, 333 Mich 389, 391; 53 NW2d 308 (1952), [\*39] we found that although the ordinance, on its face, permitted churches and schools in about 10% of the village's area, in effect, they were excluded by ordinance from the entire village. In *Dequindre Development Co v Warren Twp*, 359 Mich 634, 638; 103 NW2d 600 (1960), although the township already contained one mobile home park, we held that exclusion was established where the zoning ordinance "in effect, prohibited trailer parks by making no provision therefor."

Plaintiffs attempt to demonstrate that by zoning land for mobile home parks which is unsuitable for that purpose, the township is, as a practical matter, following a policy of exclusion. As to the 80 acres judicially rezoned, it was apparently not the judgment of either the trial court or the plaintiff requesting the rezoning that the land was unsuitable for mobile home parks. As to the 600-800 acres, there has been no such record developed before this Court.

At the present time there is no evidence, in view of the apparent dearth of requests, that the township precludes the possibility of rezoning other suitable land for this purpose if needed.

Under the facts before us today, a case of exclusion of mobile home parks from the [\*40] township has not been established. [*Kirk, supra* at 442-444 (citation and footnote omitted; emphasis in original).]

Here, no land is being used for an MHC and the land designated in the master plan for an MHC is, contrary to the situation in *Kirk*,



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unsuitable for an MHC. While we too have an apparent dearth of requests for MHC development, and thus no rejections, and while rezoning or a variance allowing an MHC is conceptually conceivable given the creation and recognition of an MHC district, it is beyond rationale argument that the township is against plaintiffs using their land for an MHC. And the designation of unsuitable land in the master plans and the accompanying gamesmanship relative to designating and undesignating land for MHCs in the master plans reflect an intent to exclude MHCs, supporting a conclusion that a rezoning or variance request for an MHC by landowners other than plaintiffs would also be rejected.

Having found that MHCs are effectively and totally excluded from the township, we must next ascertain whether the township is justified in excluding MHCs, i.e., whether it established that the exclusion has a reasonable relationship to the health, safety, or general welfare [\*41] of the community. *Landon Holdings, supra* at 176; *Countrywalk, supra* at 24. While the township has successfully argued to us that excluding an MHC from plaintiffs' property served a legitimate governmental interest, asserting that a township-wide exclusion of MHCs has a reasonable relationship to the health, safety, or general welfare of the township's citizens is a strained and losing argument on the record presented. Claiming that there is no demonstrated need does not suffice under the constitutional analysis as a lack of need is not related to the health, safety, and welfare of the community.<sup>16</sup> But claiming that there is no

body through the enactment of a statute. *Stanhope v Village of Hart*, 233 Mich 206, 209; 206 NW 346 (1925) ("The provisions of the Constitution clearly point decision herein, and we find no occasion to go to statutory provisions on the same [\*43] subject[.]; [t]he Constitution controls."); see also *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 710; 614 NW2d 607 (2000) (statute cannot contravene "the dictates of our state or federal constitution"). Thus, if a constitutional violation arises from the practice of exclusionary zoning despite the absence of a demonstrated need for the use at issue, the constitutional cause of action cannot be limited by requiring a showing of demonstrated need merely because a statute includes such a requirement. The Michigan cases that have specifically addressed the required analysis relative to a constitutionally-based exclusionary zoning claim do not make any reference whatsoever to a demonstrated-need element; rather, the question is simply whether the total exclusion of a lawful use has a reasonable relationship to the health, safety, or general welfare of the community. *Bzovi v Livonia*, 350 Mich 489, 492; 87 NW2d 110 (1957) (outdoor theater); *Gust v Twp of Canton*, 342 Mich 436, 438; 70 NW2d 772 (1955) (trailer camp); *Roman Catholic Archbishop of Detroit v Village of Orchard Lake*, 333 Mich 389, 392-393; 53 NW2d 308 (1952) (church and school); *Landon Holdings, supra* at 176; *Countrywalk, supra* at 24; [\*44] *Ottawa Co Farms, Inc v Polkton Twp*, 131 Mich App 222, 225-226; 345 NW2d 672 (1983) (sanitary landfill); *Binkowski v Shelby Twp*, 46 Mich App 451, 460; 208 NW2d 243 (1973) (mobile home park); *Sisters of Bon Secours Hosp v Grosse Pointe*, 8 Mich App 342, 349-350; 154 NW2d 644 (1967) (hospital). Finally, with respect to the dissent's reliance on this Court's opinion in *Anspaugh, supra*, and our Supreme Court's order vacating that opinion, we cannot agree that the order reflects the Supreme Court's determination or acceptance, implicit or otherwise, that "demonstrated need" forms part of the analysis relative to a constitutionally-based exclusionary zoning claim. In *Anspaugh*, the plaintiffs unsuccessfully sought to have property rezoned from R-1 (residential) and I-1 (light industrial) to I-2 (heavy industrial), where the I-2 district had been created by Imlay Township but not applied to any particular land at the time of the rezoning requests and the initiation of the lawsuit. With regard to the nature of the suit, this Court observed, "[P]laintiffs filed the instant suit for declaratory and injunctive relief, alleging that the township's zoning scheme was violative of substantive due process [\*45] and wholly exclusionary, both as applied and on its face, because it 'prohibits . . . even the possibility of I-2 uses.' An amended complaint, adding allegations that the township's actions and ordinance denied plaintiffs equal protection, was [later] filed[.]" *Id.* at 124-125 (omission in original). The trial court dismissed the exclusionary zoning action, finding that exclusionary zoning was not being practiced in light of the fact that the township had recently amended its zoning ordinance that actually designated land for I-2 uses. *Id.* at 127. This Court reversed, noting that exclusionary zoning can effectively occur even

<sup>16</sup> We respectfully disagree with our dissenting colleague's opinion that a showing of "demonstrated need," which is language found in the exclusionary zoning statute, comprises part of the analysis for purposes of a constitutionally-based exclusionary zoning claim. First, a fundamental and indisputable tenet of law is that a constitutional mandate cannot be restricted or limited by the whims of a legislative

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where land has been designated for the use ostensibly excluded. *Id.* at 128. The panel found that the township had engaged in exclusionary zoning regardless of the I-2 designated land, where there was a demonstrated need for the uses allowed in an I-2 district and the I-2 usage of the land was not appropriate for the designated location. *Id.* at 129-130. Any I-2 use of the land was not possible or appropriate because, according to this Court, there was no direct route of travel to the I-2 designated location. *Id.* at 130.

Contrary to the dissent's interpretation of [\*46] *Anspaugh* here, it is not clear that the case only addressed a constitutionally-based exclusionary zoning claim. Indeed, it appears that the *Anspaugh* panel was addressing a statutory exclusionary zoning claim, despite the initial, cursory reference to the causes of action in the complaint, where the panel proceeded to analyze cases dealing with MCL 125.297a, to quote MCL 125.297a, to recognize that MCL 125.297a was recodified with nearly identical language in MCL 125.3207, to acknowledge the test to establish exclusionary zoning under MCL 125.297a, and to apply the test. *Anspaugh, supra* at 128-130. There is no reference to *any* constitutional analysis as set forth in the case law. Moreover, the issue of demonstrated need was not the focus of the Supreme Court's subsequent order, wherein the Court, finding improper fact-finding by this Court in relation to property access and suitability, stated:

Pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we vacate the judgment of the Court of Appeals, and we remand this case to the Lapeer Circuit Court for further hearing, if necessary, and further findings of fact. The Court of Appeals engaged in appellate fact-finding when it [\*47] concluded that "we too find that the I-2 zoning provided for by defendants is exclusionary," because "there is no direct route of travel" to the property zoned for I-2 use, and consequently "the I-2 land use siting provided by the township is not appropriate to foster the commercial uses to which land designated for I-2 uses must be put." On remand, the Lapeer Circuit Court shall determine whether, as the Court of Appeals held, "the township's zoning ordinance effectively excludes lawful and otherwise appropriate I-2 uses for which there is a demonstrated need," owing to the unsuitability for I-2 uses of the available routes of access to the I-2 zoned property within the township. In making this determination, the Lapeer Circuit Court shall consider whether there are available indirect routes that provide reasonably suitable access to the I-2 zoned property. . . . [*Anspaugh v Imlay Twp*, 480 Mich 964; 741 NW2d 518 (2007) (citations omitted).]

To extrapolate from this order, when read in conjunction with this Court's vacated opinion in *Anspaugh*, that our Supreme Court supports the proposition that the statutorily-based "demonstrated need" element is also part of the constitutional

appropriate location for an MHC and that allowing a development in such a situation might endanger the health, safety, and welfare of the citizenry could be an acceptable argument. However, the township argued that the Pinckney 80 acres would be an appropriate location for an MHC, but, aside from designating that area, still zoned A-O, in the master plan for future purposes, the township has not currently designated any land for MHCs. There was some testimony that there is no ideal land anywhere in the township for an MHC. However, even ruling out the Pinckney [\*42] 80 acres on the basis of unsuitability, the township never truly presented evidence and an argument that there was no land anywhere in the township appropriate for an MHC. The township did not satisfy its burden to show that the exclusion of MHCs has a reasonable relationship to the health, safety, or general welfare of the community. Thus, we hold that the trial court properly found that the township engaged in exclusionary zoning in violation of equal protection and due process guarantees. The next step is to determine the appropriate remedy.

The seminal Michigan case on zoning remedies where the municipality engaged in unlawful zoning practices is *Schwartz v Flint*, 426 Mich 295; 395 NW2d 678 (1986). The Supreme Court held that if a court declares that a zoning ordinance is unconstitutional, it may additionally declare that the plaintiff's proposed land use is reasonable and enjoin the municipality from interfering with the use, where the plaintiff has established, by a

analysis [\*48] defies sound reasoning. While we acknowledge that it appears easier to pursue an exclusionary zoning claim under the state and federal constitutions rather than the statute, leaving one to question the thought processes of the Legislature, we are not at liberty to ignore the constitutional dictates, as developed and analyzed under the cited case law, relative to exclusionary zoning.

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preponderance of the evidence, that the use is indeed reasonable. *Id.* at 329. "The defendant is always free to rezone consistent with the limiting conditions of plaintiff's proposed use, or not so limited, where plaintiff's use has not been declared reasonable." *Id.* The *Schwartz* Court was not addressing a claim of exclusionary zoning, but the Court referenced the theory in two [\*49] footnotes, stating:

Like the New York Court and others, we would be inclined to distinguish situations involving discriminatory or exclusionary zoning. We do not consider here the proper role of the court in such cases.

Again, the analysis is confined to situations in which the court has found a particular ordinance to be unconstitutionally *applied*. Exclusionary zoning is an entirely different type of determination, necessitating potentially broader relief. [*Id.* at 309 n 11, 325-326 n 24, respectively (emphasis in original).]

In *English, supra* at 39-41, this Court, picking up where *Schwartz* left off and addressing the appropriate remedy where the municipality engaged in exclusionary zoning, held:

Having determined that defendant has improperly engaged in exclusionary zoning, the question of plaintiffs' remedy remains. The trial court ordered defendant to rezone plaintiffs' property from AR to MHP [manufactured housing park]. However, we believe that the trial court went too far in fashioning a remedy.

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We recognize that the *Schwartz* decision was limited to cases involving an unconstitutional application of a zoning ordinance to a particular parcel. The Supreme Court noted that cases [\*50] of exclusionary zoning involved "an entirely different type of determination, necessitating potentially broader relief." *Id.*

at 325-326, n 24. However, the Supreme Court did not explain what that "potentially broader relief" might be.

Accordingly, in light of the strong language in *Schwartz, supra* at 319-321, prohibiting any form of judicial zoning, we conclude that the trial court went too far when it ordered defendant to change the zoning classification of plaintiffs' property. Thus, we vacate the trial court's order requiring defendant to rezone plaintiffs' property from AR to MHP.

However, while we vacate the trial court's order, we do not leave plaintiffs without any relief. Instead, we fashion a remedy in accordance with *Schwartz, supra*. The abundant record in this case not only supports the trial court's finding that plaintiffs' property was suitable for the proposed use under the test for exclusionary zoning, . . . but also that plaintiffs' proposal was a "specific reasonable use" under the standard adopted in *Schwartz, supra* at 327-328. Stated differently, while the trial court did not specifically analyze the present case in light of *Schwartz*, the trial court's findings nevertheless [\*51] make it clear that plaintiffs have satisfied the burden of demonstrating that the mobile-home park was a "specific reasonable use." Notably, while a proposed use must be specific, "it need not amount to a 'plan.'" *Id.* at 328.

Thus, we remand this matter to the trial court with instructions to enter an injunction prohibiting defendant from interfering with plaintiffs' reasonable, proposed use of their property as a mobile-home park. *Schwartz, supra* at 329. However, we note that our decision does not exempt plaintiffs from complying with all applicable federal, state, and local regulations governing mobile-home parks.

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In particular, plaintiffs are not exempt from the site-plan review process. Further, plaintiffs may be required to contribute to certain costs for the construction and maintenance of the development's infrastructure. We express no opinion regarding such details, which may necessitate additional public hearings in the township and in the trial court.

The decision of the trial court that defendant engaged in exclusionary zoning is affirmed. The trial court's order of rezoning is vacated, with instructions to enter an injunction preventing defendant from interfering with plaintiffs' [\*52] specific reasonable use of their property as a mobile-home park.

Accordingly, because constitutionally offensive exclusionary zoning was established by plaintiffs, they are entitled to develop an MHC on their property, without interference from the township, if they showed that using the property for an MHC constituted a specific reasonable use.

The township argues that developing a 498-unit MHC on plaintiffs' property is not reasonable because (1) it would conflict with surrounding land uses, (2) it would be inconsistent with the master plan, (3) it would equate to spot zoning, (4) it would create traffic hazards, and (5) it would have a negative environmental impact on the area. The township complains that a 498-unit MHC would constitute a density use that would be five times more intense than the 95-lot PUD.<sup>17</sup>

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<sup>17</sup> A preliminary matter that must be addressed, which harkens back to the township's ripeness arguments, is the township's claim that *Schwartz* limited its "reasonable use" analysis to situations where the use was first sought at the municipal level. We see no language in *Schwartz* suggesting that, before a party is entitled to a reasonable use analysis in regard to fashioning [\*53] a remedy on a finding of unlawful zoning activity, the party must have initially proposed the use to the

The evidence supports the trial court's ruling that developing an MHC on plaintiffs' property would be a reasonable use of the property. There might be some inconsistencies with surrounding uses and the master plan, but there are existing residential developments already in some areas around the property and they are growing, albeit with lower density housing, and a conflict with surrounding uses would also exist if an MHC were developed on the Pinckney 80 acres. Any potential traffic hazards could be lessened by the township dictating that plaintiffs construct or pay for the construction of turn and deceleration lanes, and there was evidence that the roadways had the capacity to handle the volume of traffic that would be generated by a 498-unit MHC. Further, the property's location on D-19 was viewed as a plus by everyone. There was not any specific evidence showing that harmful environmental effects [\*54] would be created by a 498-unit MHC as planned by plaintiffs. The property had a smaller percentage of wetlands than the Pinckney 80 acres. Engineer David Call testified that the plan envisioned construction of a community well for water and a waste-water/sewage treatment plant. He found that on consideration of such matters as roads, storm water drainage, detention basins, and other features of the property, it would be suitable for a 498-unit MHC. There was also evidence that the soils on the subject property were well-suited for an MHC, and they were of much better quality than the soils on the Pinckney 80 acres. While the property was hilly in locations, grading could take care of that matter. Brian Frantz opined that the development of a 498-unit MHC on the property constituted a reasonable use of the property considering the totality of the circumstances. The planned development

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municipality. *Schwartz* simply did not address the issue of ripeness and the rule of finality, and the proposition proffered by the township supposedly based on *Schwartz* lacks merit.



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also complied with the MHCA according to Charles Patterson, who assisted in drafting the act. Further, the planned development would have fewer units per acre than a development on the Pinckney 80 acres. While the township's expert, Paul LeBlanc, testified that development of a 498-unit MHC on the property [\*55] would not be reasonable, he never even walked the property, and there is sufficient evidence to support our finding that developing an MHC constitutes a reasonable use of plaintiffs' property. Accordingly, the trial court did not err in enjoining the township from interfering with plaintiffs' use of the property for an MHC. We wish to emphasize, however, consistent with *English, supra* at 41, that our decision does not exempt plaintiffs from complying with all applicable federal, state, and local regulations governing MHCs, they are not exempt from any site-plan review process, and plaintiffs may be required to contribute to the costs of any construction and maintenance of the development's infrastructure. As stated by the *English* panel, we too "express no opinion regarding such details, which may necessitate additional public hearings in the township and in the trial court." *Id.*

#### IV. Analysis -- Docket No. 275469

Plaintiffs argue that the trial court erroneously denied their motion for attorney fees under 42 USC 1988, where plaintiffs prevailed on all of the constitutional claims advanced against the township under 42 USC 1983, and where there existed no special circumstances that would [\*56] justify denial of fees. The township argues that the court did not abuse its discretion in denying the motion for attorney fees, where plaintiffs never pled an action under 42 USC 1983, there was no discovery taken regarding a § 1983 claim, and where there were no proofs or arguments concerning a § 1983 claim. The trial court denied the motion, declining an award on the basis of its

right to exercise its discretion on the matter.

In *Outdoor Sys, Inc v City of Clawson*, 273 Mich App 204, 209-210; 729 NW2d 893 (2006), this Court, addressing awards of attorney fees under 42 USC 1988, stated:

The Civil Rights Attorney's Fees Awards Act, 42 USC 1988, governs the award of attorney fees in actions to enforce various federal civil rights and antidiscrimination statutes. Section 1988 provides in pertinent part, "In any action or proceeding to enforce a provision of [42 USC 1983], . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. . . ." 42 USC 1988(b). Although the phrase "may allow" might appear to be permissive, the United States Supreme Court has interpreted the phrase as mandating attorney fees [\*57] when the plaintiff prevails and certain special circumstances are not present. *Independent Federation of Flight Attendants v Zipes*, 491 U.S. 754, 761; 109 S Ct 2732; 105 L Ed 2d 639 (1989).

The Court noted that 42 USC 1988 does not contain any public-interest exception when it rejected the city's claim that attorney fees should not be allowed because the litigation involved a question of public interest. *Clawson, supra* at 212 n 4.

The purpose of 42 USC 1988 is to ensure effective access to the judicial process for individuals who have civil rights grievances, and a prevailing party should ordinarily recover an attorney's fee unless special circumstances exist that would render such an award unjust. *Hensley v Eckerhart*, 461 U.S. 424, 429; 103 S Ct 1933; 76 L Ed 2d 40 (1983).

Equal protection, due process, and a takings claims would generally fall under the umbrella



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of 42 USC 1983.<sup>18</sup> But, as argued by the township, plaintiffs never framed their constitutional claims or desired remedies under § 1983 at any time. In fact, the complaint merely references equal protection, due process, and a regulatory taking without any express citation or reference whatsoever to the relevant federal and [\*58] state constitutional provisions. Michigan of course has similar constitutional protections; therefore, it cannot necessarily be concluded that plaintiffs were seeking to enforce their federal civil rights. See *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 30; 703 NW2d 822 (2005). Reversal is unwarranted.<sup>19</sup>

Next, the township argues in its cross-appeal that the trial court erred by granting taxable costs to plaintiffs because the award was contrary to public policy and plaintiffs did not establish an entitlement to all of the claimed expert witness fees. In support of this argument, the township maintains that this case presented issues of first impression that are significant and important to the public policy of this state. Further, the township contends that any of the expert witness fees

associated with consulting and strategic planning services are not recoverable pursuant to *Detroit v Lufran Co*, 159 Mich App 62, 64; 406 NW2d 235 (1987). The township proceeds to dissect and attack some of the entries on the invoices relative to plaintiffs' experts.

First, in responding to plaintiffs' motion for taxable costs, the township never argued that some of the expert witness fees could not be recovered because they related to consulting and strategic planning services. The township only presented the public policy argument. Not until its motion for reconsideration [\*60] did the township first assert that some of the expert witness fees were not recoverable as they related to consulting and strategic planning services. In the order on the motion for reconsideration, the court found that the township had never claimed that the expert witness fees were unreasonable, and the court determined that the fees were normal, usual, and customary. An argument is not properly preserved for appeal when a party raises an issue for the first time in a motion for reconsideration; however, we may address the issue if it involves a question of law and the parties have presented all of the facts necessary for its resolution. *Farmers Ins Exch v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 106, 117-118; 724 NW2d 485 (2006). We decline to address the issue because it was forfeited and because all of the facts necessary to resolve the issue were not presented, considering that there was no detailed review of each component of the requested fees.

Moving to the issue of taxable costs and the public policy argument, this Court reviews a trial court's decision to award expert witness fees for an abuse of discretion. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 466; 633 NW2d 418 (2001). [\*61] MCR 2.625 provides that "[c]osts will be allowed to the

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<sup>18</sup> 42 USC 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the [\*59] District of Columbia.

<sup>19</sup> We also note that plaintiffs were not successful on all of their constitutional claims, given our ruling.

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prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." "MCL 600.2164 authorizes a trial court to award expert witness fees as an element of taxable costs." *Rickwalt*, *supra* at 466.

In *American Aggregates Corp v Highland Twp*, 151 Mich App 37, 54; 390 NW2d 192 (1986), this Court observed that "Michigan courts frequently refuse to award costs in cases involving public questions. In addition, we note that this Court has specifically refused to award costs in landowners' suits challenging the constitutionality of zoning ordinances as applied to their property, since such cases involve public questions." (Citations omitted.) Here, the underlying basis for the township's public question or policy argument is that this case presented an issue of first impression, where plaintiffs were granted equitable relief that allowed for the development of an MHC despite the fact that they never made a request for an MHC to the township before filing suit. We observe that if you narrowly tailor any description of a case, you could argue [\*62] that it presents an issue of first impression. As evident from this opinion, there are plenty of cases on the issue of ripeness and the rule of finality in which zoning matters were not fully explored in municipality proceedings. Under all of the circumstances in this case, we cannot find that the trial court abused its discretion in awarding costs.

#### V. Conclusion

The constitutional "as applied" counts (substantive due process, equal protection, and regulatory taking) challenging the A-O zoning classification and the failure to rezone were subject to the rule of finality; however, the futility exception to the rule was applicable. Regardless, these claims fail on the merits because the township was advancing a

legitimate governmental interest in maintaining the A-O classification with regard to the property, it was not acting arbitrarily or capriciously, and because all avenues of use, and thus economic feasibility, were not explored and negated.

The constitutional exclusionary zoning claim appears to be a "facial" challenge under the caselaw and thus not subject to the rule of finality, but it is unnecessary to reach the issue because, assuming the contrary, the futility exception applied; [\*63] the claim was ripe for suit. Further, we hold that there was, effectively, a total exclusion of MHCs in the township and that the township, on the matter of justification, failed to show that the exclusion had a reasonable relationship to the health, safety, or general welfare of the citizenry, thereby violating plaintiffs' constitutional rights to due process and equal protection. With respect to the appropriate remedy, the trial court properly found that developing a 498-unit MHC on plaintiffs' property constituted a reasonable use of the property. Accordingly, the trial court did not err in enjoining the township from interfering with plaintiffs' use of the property for an MHC. In light of these conclusions, it is unnecessary to address the statutory exclusionary zoning claim.

Finally, the trial court did not err in declining to award attorney fees to plaintiffs, given that a claim or remedy under 42 USC 1983 was not expressly alleged. And the court did not abuse its discretion in awarding plaintiffs expert witness fees, considering that a public question of first impression was not litigated and because the township forfeited any claim that some of the expert witness fees were not [\*64] recoverable.

Affirmed in part, and reversed in part.

/s/ David H. Sawyer

/s/ William B. Murphy

**Dissent by:** Pat M. Donofrio

## **Dissent**

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DONOFRIO, J. (*dissenting*)

I concur in part and respectfully dissent in part. I also write separately to clarify the application of the rule set forth in *Braun v Ann Arbor Charter Twp*, 262 Mich App 154; 683 NW2d 755 (2004). I would vacate the trial court's ruling that the zoning classification was unconstitutional as applied to plaintiffs' property because the takings claim as well as the attendant as applied constitutional claims were unripe for judicial review. I would further vacate the trial court's holdings that the exclusion of MHCs in the township constituted exclusionary zoning for the reasons that they were unripe for judicial review and furthermore that plaintiffs did not meet their burden of establishing demonstrated need.

I

Plaintiffs' complaint alleges the following claims: violation of plaintiffs' constitutional right to equal protection (count I); violation of plaintiffs' constitutional right to substantive due process (count II); unconstitutional taking of plaintiffs' property without just compensation (count III); and, exclusionary zoning claim on the basis of MCL 125.297a [\*65] (count IV). All of plaintiffs' counts went to trial, but plaintiffs stipulated to waive any and all claims for money damages but reserved their right to seek equitable and declaratory relief, plus allowable costs and fees. As summarized by the majority, "[f]ollowing a bench trial, and based on the evidence presented, including some stipulated facts, the court ruled that the A-O zoning classification was unconstitutional as applied to plaintiffs' property, that the total

exclusion of MHCs in the township constituted illegal exclusionary zoning and violated plaintiffs' substantive due process and equal protection rights, that the development of a 498-unit MHC on plaintiffs' property reflected a reasonable use of the property, and that the township was enjoined from enforcing the A-O zoning classification and from interfering with plaintiffs' development of an MHC." Defendant appeals as of right.

II

Defendant argues that all of plaintiffs' constitutional claims are not ripe for review and should be dismissed. Plaintiffs' complaint alleges that defendant's refusal to rezone their property constituted both "as applied" due process and equal protection violations as well as facial due process [\*66] and equal protection violations. "An 'as applied challenge' alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution." *Paragon Properties Co v Novi*, 452 Mich 568, 576; 550 NW2d 772 (1996). In order to be ripe for judicial review, plaintiffs "as applied" constitutional challenges must satisfy the rule of finality. The rule of finality is "'concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury.'" *Id.* at 577 quoting *Williamson Co Regional Planning Comm v Hamilton Bank of Johnson City*, 473 U.S. 172, 186; 105 S Ct 3108; 87 L Ed 2d 126 (1985). "In other words, where the possibility exists that a municipality may have granted a variance--or some other form of relief--from the challenged provision of the ordinance, the extent of the alleged injury is unascertainable unless these alternative forms of potential relief are pursued to a final conclusion." *Conlin v Scio Twp*, 262 Mich App 379, 382; 686 NW2d 16 (2004). To the contrary, "[f]inality is not required for facial challenges because such challenges attack

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the very existence or enactment of an [\*67] ordinance." *Paragon Properties, supra* at 577.

This case is similar to *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 158-159; 683 NW2d 755 (2004), a zoning case, wherein the plaintiffs alleged very similar violations to the instant case. Specifically, in *Braun*, the plaintiffs asserted that the defendant's denial of their rezoning petition violated substantive due process, equal protection, exclusionary zoning-substantive due process, and constituted an unconstitutional taking of property without just compensation. *Braun, supra* at 156. The *Braun* Court properly observed the rule that finality is required for all "as applied" constitutional claims. However, I find *Braun* particularly useful in the analysis of whether the present case is ripe for judicial review because *Braun* expressly addressed cases like this one, where the plaintiffs assert a takings claim in addition to any "as applied" constitutional claims.

Addressing the plaintiffs' argument that the trial court erred in dismissing their claims on the basis of ripeness, the *Braun* Court quoted *MacDonald, Sommer & Frates v Yolo Co*, 477 U.S. 340, 349; 106 S Ct 2561; 91 L Ed 2d 285 (1986), a takings (only) case, where the United States [\*68] Supreme Court stated that, "[u]ntil a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [existing] expectation interests ha[ve] been destroyed." *Braun, supra* at 158. The *Braun* Court also acknowledged that in *MacDonald, supra* at 351, the Supreme Court stated that "[o]ur cases uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport

to limit it." *Braun, supra* at 158.

The *Braun* Court then quoted *Palazzolo v Rhode Island*, 533 U.S. 606, 620-621; 121 S Ct 2448; 150 L Ed 2d 592 (2001), an inverse condemnation action, where the United States Supreme Court similarly stated:

Under our ripeness rules a *takings claim* based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity [\*69] to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established. [*Braun, supra* at 159, quoting *Palazzolo, supra* at 620-621.]

The *Braun* Court also recognized that

[b]oth *Palazzolo* and *MacDonald* counsel that a determination of alternative uses of property as zoned is a condition precedent to a valid takings claim. In other words, the landowner must show that he sought alternative uses of the property as zoned and was denied, thus leaving the property owner with land having no economically productive or reasonably beneficial use. [*Id.*]

Based on *Palazzolo* and *MacDonald*, the *Braun* Court concluded that because the plaintiffs had not applied for a variance, or sought review of the board of trustees' decision before the ZBA, there was "no way to discern whether the land as zoned has any reasonable beneficial use, or whether plaintiff's expectation interests have been destroyed." *Id.*



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The *Braun* Court concluded that the trial court had correctly found that the plaintiff's inverse condemnation claim was not ripe for judicial review. *Id.* at 160.

The [\*70] *Braun* Court also found that the plaintiffs' "as applied" constitutional claims were also not ripe for judicial review because the plaintiffs had not satisfied the rule of finality, stating:

The Supreme Court decision in *MacDonald* dealt with claims arising under the takings clause of the Fifth Amendment. Unlike the case at bar, *MacDonald* did not involve any other constitutional claims. In *Paragon Properties* . . . our Supreme Court held that a judicial challenge to the constitutionality of a zoning ordinance, as applied to a particular parcel of land, is not ripe for judicial review until the plaintiff has obtained a final, nonjudicial determination regarding the permitted use of the land. The Court stated specifically that, "[a] challenge to the validity of a zoning ordinance 'as applied,' whether analyzed under 42 USC 1983 as a denial of equal protection, as a deprivation of due process under the Fourteenth Amendment, or as a taking under the Just Compensation Clause of the Fifth Amendment, is subject to the rule of finality." The purpose of this requirement is to ensure that the plaintiff has suffered an "actual, concrete injury."

As we stated above, we are not satisfied plaintiffs [\*71] established that a final decision was made regarding the permitted uses of the property. For this reason, in accordance with *Paragon*, we find that plaintiffs' remaining constitutional claims are likewise not ripe for judicial review. Summary disposition of plaintiffs' remaining constitutional claims pursuant to MCR 2.116(C)(4) was appropriate. [*Id.* at 160-161 (internal quotations and citations

omitted).]

The *Braun* Court dismissed the plaintiffs' remaining "as applied" constitutional challenges to the zoning decision because the plaintiffs had not met the requirement of finality in regard to their takings claim and thus the takings claim as well as the attendant "as applied" constitutional claims were not ripe for judicial review.<sup>1</sup>

The holding in *Braun* stands for the proposition that in zoning cases where the plaintiffs [\*73] assert a takings claim as well as one or more "as applied" constitutional claims, the plaintiffs must establish finality with regard to the takings claim before the entire matter is ripe for judicial review. *Braun* articulates its ripeness test as follows, whether plaintiffs "sought alternative uses of the property as zoned and was denied," or applied for the "the minimum variance that is necessary to place

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<sup>1</sup> After this Court's decision on appeal, the *Braun* plaintiffs sought and were denied a use variance and sued in federal court, asserting violations of procedural due process, substantive due process, equal protection, an unconstitutional taking, and a violation of 42 USC 1983. *Braun v Ann Arbor Twp*, 519 F3d 564, 568; 2008 WL 656630 (CA 6, 2008), slip op at \*4. The federal district court granted summary judgment to the defendant, finding that the takings claim was [\*72] not ripe because the plaintiffs had failed to seek just compensation in state court after the application for a variance was denied. *Id.* at 568, \*4-5. Seemingly piggybacking this Court's holding that ripeness and finality are required for all "as applied" constitutional claims in cases where the plaintiffs also assert a takings claim, the federal district court then specifically held that the plaintiffs' remaining constitutional claims were also unripe for review because they were "ancillary" to the takings claim. *Id.* at 568-569, \*5, 7. The district court stated, "resolution of the takings claim was necessary in order to address the attendant process-related issues." *Id.* at 571, \*7. The district court also stated that if the plaintiffs prevailed on the takings claim, no other constitutional injury would likely exist. *Id.* at 572, \*8. On appeal, the federal appellate court recognized the doctrine and accepted that the plaintiffs' claims may be ancillary and therefore unripe. *Id.* at 572-572, \*7-10. However, the federal appellate court held that, even assuming that the claims were not ancillary, they would not be ripe for review. *Id.*



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the land in productive economic use within the zoning classification." But *Braun* only applies to those claims that combine a takings claim with one or more "as applied" constitutional challenges.

Some practitioners may read *Braun* to mean that all plaintiffs in all zoning cases must meet the *Braun* ripeness test in order for "as applied" constitutional challenges to be ripe for judicial review. This is simply not the case. A careful reading of *Braun* and *Paragon* shows that only those plaintiffs who asserts a takings claims with attendant "as applied" constitutional challenges in their complaint are subject to the *Braun* minimum land use determination to establish finality in order for their "as applied" constitutional claims to be ripe for judicial review. In other words, the *Braun* ripeness [\*74] test--i.e., whether plaintiff "sought alternative uses of the property as zoned and was denied," or applied for the "the minimum variance that is necessary to place the land in productive economic use within the zoning classification"--does not apply to cases where the plaintiffs brought "as applied" constitutional claims without a takings claims. This distinction makes sense because in a takings claim the court's goal is to ascertain the limits of the development that would be permitted on the property, if any, in order to determine any diminution in value that results from the alleged taking so the plaintiff can be provided "just compensation." *Lingle v Chevron USA, Inc*, 544 U.S. 528, 536-540; 125 S Ct 2074; 161 L Ed 2d 876 (2005). Conversely, issues such as the remaining value of the land or what productive uses might be allowed by the municipality are not relevant in cases where the plaintiff does not raise a takings claim and does not make a demand for damages based on diminution in value or otherwise. In cases where the plaintiff simply claims that, "as applied," a zoning ordinance does not substantially advance a

legitimate government interest, and is arbitrary and capricious [\*75] the *Braun* test does not apply. The United States Supreme Court has recognized that the substantially advances test "prescribes an inquiry in the nature of due process, not a takings test." *Lingle, supra* at 540-541. It is a test for ascertaining the validity of the underlying regulation. *Id.* at 542-543. If an action is so arbitrary as to violate due process, that is the end of the inquiry, and "[n]o amount of compensation can authorize such action." *Id.* at 543. The *Lingle* Court recognized that commingling the two tests is understandable, but concluded that doing so is invalid, inappropriate, and imprecise. *Id.* at 541-542, 545, 548.

Like the plaintiffs in *Braun*, plaintiffs here assert a takings claim in their complaint as well as other "as applied" constitutional challenges. Thus, *Braun* applies and plaintiffs must establish finality before the matter--the takings claim as well as the "as applied" constitutional challenges--is ripe for judicial review. Again, plaintiffs must show that they "sought alternative uses of the property as zoned and was denied," or that they applied for the "the minimum variance that is necessary to place the land in productive economic use within the zoning [\*76] classification." The record reflects that plaintiffs submitted only one rezoning request to the Putnam Township Board pertaining to the planned 95-lot PUD. The Putnam Township Board rejected plaintiffs' rezoning request and also rejected plaintiffs' requests for variances relative to a 95-lot development and, apparently, a 40-lot development. The record also reflects that plaintiffs ultimately did not challenge these decisions, and in fact, they no longer seek to develop a 95-lot PUD. Instead, plaintiffs now seek to develop a 498-unit MHC. But plaintiffs never submitted a request for a 498-unit MHC to Putnam Township Board for a decision either as a rezoning application or a variance

request.

After reviewing the record, I conclude that plaintiffs cannot show that they sought alternative uses of the property and were denied, or that they applied for the minimum variance necessary to place the land in productive economic use within the zoning classification. Plaintiffs did not seek a decision from the appropriate administrative body regarding either a rezoning application or a variance request regarding a 498-unit MHC and instead sought premature relief from the judiciary by filing the [\*77] instant lawsuit. In my view, plaintiffs have not established finality as required by *Braun* and thus plaintiffs' takings claim nor their "as applied" constitutional challenges are ripe for judicial review.

While I find the majority's discussion and application of the futility exception to finality interesting, I am not of the view that it can be employed on the first request for a zoning use never before applied for and absent an application for such land use. Plaintiffs did not make even a minimal showing under the *Braun* rule of finality and by their action--or inaction--has in effect denied Putnam Township the opportunity to grant a request for the contemplated zoning use within their township. Plaintiffs should not benefit from a situation of their own making. In sum, I would conclude that plaintiffs have not established finality as required by *Braun* and thus neither plaintiffs' takings claim nor their "as applied" constitutional challenges are ripe for judicial review.

III

Defendant also argues that plaintiffs' facial constitutional claims fail on the merits. Specifically, defendants contend plaintiffs' equal protection claims (Count I) and substantive due process claims (Count II)

[\*78] fail on the merits because the zoning ordinance rationally serves government interests. In their complaint, plaintiffs pleaded their equal protection claim (Count I) and substantive due process claim (Count II) as both "as applied" and facial challenges. Because of my previous analysis regarding the "as applied" constitutional challenge, the substance of that claim is not ripe for judicial review. However, constitutional claims that are classified as facial are not subject to the same finality/ripeness rules and must be analyzed as part of this appeal. I agree with the majority's conclusion that plaintiffs' substantive due process and equal protection claims fail, though, I disagree with the majority's labeling of these claims as "as applied" constitutional challenges. Like the majority, I would analyze the substance of plaintiffs' facial due process and equal protection claims under the rational basis test.

The rational basis analysis tests only whether the ordinance is reasonably related to a legitimate governmental purpose. *Muskegon Area Rental Ass'n v City of Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001). The majority has included a lengthy and comprehensive list of legitimate [\*79] governmental purposes advanced by the A-O zoning classification, some of which are as follows: "protect the local agricultural economy from premature disinvestment, discourage urban sprawl and untimely and unplanned growth, reduce conflicts between neighbors, and to retain critical natural features and wildlife habitats." While for purposes of this substantive analysis I would characterize the constitutional challenges as facial, I wholly concur with the majority's rational basis analysis and would similarly conclude that the trial court erred when it found that plaintiffs' substantive due process and equal protection claims relative to the A-O zoning classification merited relief because the

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ordinance is reasonably related to legitimate governmental purposes. *Id.*

#### IV

Finally, I address plaintiffs' exclusionary zoning claim (Count IV). As evidenced by the majority opinion, this issue is complicated and requires a multi-tiered analysis. In order to properly address this complex issue, I must break it down into its component parts and determine on what basis in law plaintiffs assert their exclusionary zoning claim: statutory, constitutional, or some combination of both. I first consult [\*80] plaintiffs' complaint. Plaintiffs' complaint narrowly alleged that Putnam Township engaged in exclusionary zoning in violation of former MCL 125.297a,<sup>2</sup> a statutory violation. In my view, the language in the complaint at Count IV asserting a claim of exclusionary zoning does not contain allegations of exclusionary zoning relying on protections afforded in either the United States or Michigan Constitution and does not discuss its exclusionary zoning claim in any terms clearly implicating other constitutional violations. Thus, I would analyze the issue solely on the basis of the alleged statutory violation. But, I do not have the luxury of reviewing this issue in a vacuum. Clearly, in the trial court, the parties litigated plaintiffs' exclusionary zoning claim as a mixed issue of law grounded in both statutory and constitutional violations. Though, in my view, it does not appear that plaintiffs properly pled a count for constitutional exclusionary zoning, whether plaintiffs properly pled it or not, it was litigated and decided. Thus, I will analyze

plaintiffs' exclusionary zoning claim based on both statutory and constitutional violations separately addressing ripeness and any affect [\*81] it may have on either basis.

#### A. MCL 125.297a - Ripeness

MCL 125.297a provides that:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful.

The language of the statute does not address the application of an ordinance to a particular plaintiff's individual parcel of land. Rather, to establish an exclusionary zoning claim, the statute requires a showing that the ordinance has "the effect of totally prohibiting the establishment of a land use within a township or surrounding area within the state." In light of [\*82] the plain language of the statute, the *Braun* ripeness test--i.e., whether plaintiff "sought alternative uses of the property as zoned and was denied," or applied for the "the minimum variance that is necessary to place the land in productive economic use within the zoning classification"--can not apply to statutory exclusionary zoning challenges.

When considering the specific language of the statute, in the context of a ripeness analysis, if finality in the *Braun* sense were required, it would be an insurmountable requirement for plaintiffs and the statute would be rendered nugatory for all reasonable intents and purposes. This is because the holding in *Braun* requires that plaintiffs must establish finality with regard to a takings claim before the entire matter is ripe for judicial review by requiring

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<sup>2</sup> Although repealed by 2006 PA 110, effective July 1, 2006, which enacted the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*, the TZA still controls this case. MCL 125.3702(2). We note that the prohibition against exclusionary zoning formerly found in MCL 125.297a was recodified with nearly identical language in § 207 of the Michigan Zoning Enabling Act. MCL 125.3207.

that plaintiffs "sought alternative uses of the property as zoned and was denied," or applied for the "the minimum variance that is necessary to place the land in productive economic use within the zoning classification." In exclusionary zoning claims brought under MCL 125.297a, making this showing would be impossible. Pursuant to MCL 125.297a, the denial of a petition to rezone one's [\*83] singular parcel of property within a township cannot show that the municipality has reached a final decision on whether to totally prohibit a particular use within an entire township, but only that parcel of land on which the request has been submitted. In other words, a *Braun-type* finality test is inappropriate for exclusionary zoning cases because requiring a plaintiff to petition to rezone someone else's property or to rezone the entire township to test the outside limits of the rezoning denial would be inapposite to the plain language of the statute.

But, my conclusion that the *Braun* finality test does not apply to claims brought under MCL 125.297a in no way exempts plaintiffs from first submitting their rezoning request or request for a variance to the appropriate legislative body before seeking relief from the court system. Whether a municipality will allow a particular requested use in the township must be decided with reference to what the municipality has authorized and will authorize in its comprehensive zoning map of the township. While plaintiffs need not satisfy the stringent requirements of the *Braun* test, plaintiffs seeking relief under the statute must seek and receive [\*84] an administrative determination on a request regarding a particular parcel of land because a use is not necessarily excluded simply because it does not yet exist in the zoning map. See *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 168-169; 667 NW2d 93 (2003).

In *Landon*, the plaintiffs did not apply for rezoning or for a special land use permit for the particular use of manufactured housing before filing suit. The *Landon* Court found that while the zoning plan allowed for the use, and regardless of the fact that the municipality had not yet designated land for that use because it had not yet been requested, there could be no exclusionary zoning violation. *Landon, supra* at 157-158, 160. I read the holding in *Landon* to mean that exclusionary zoning exists *only after* a request has been submitted to the proper administrative body, considered by that body, and ultimately denied. A plaintiff's request before the proper administrative body provides the township the opportunity to revisit its zoning plan and make an administrative determination on a plaintiff's particular request. It is in this exercise that the township, in its legislative function, is provided with public comment, expert [\*85] analysis, use analysis, community analysis, needs analysis, and other expert opinions relative to its proper legislative role in zoning to ensure that it does not violate the prohibition against exclusionary zoning. Thus, failing to make the initial zoning request before the township administrative body denies a township the opportunity to consider designating land for the requested land use. Denying the municipality the opportunity to make the initial determination improperly usurps decision-making authority from the municipality and inappropriately transforms the judiciary into a kind of "super-zoning" authority making zoning decisions for particular communities.

In sum, I conclude that while "finality" in the *Braun* context is not required to establish ripeness in exclusionary zoning claims, at a minimum, plaintiffs must submit their zoning request for consideration before the proper administrative body for a suitability and needs determination in that particular community for the claim to be ripe and judicial review



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appropriate. Because plaintiffs here never submitted their request for an MHC to the township zoning commission, plaintiff's statutory claim for exclusionary zoning is [\*86] not ripe for judicial review and I would decline to review its merits.

#### B. Constitutional Exclusionary Zoning Claim - Ripeness

Ordinances are usually presumed to be valid. *Smookler v Wheatfield Twp*, 394 Mich 574, 581; 232 NW2d 616 (1975). However, "an ordinance which totally excludes from a municipality a use recognized by the constitution and other laws of this state as legitimate also carries with it a strong taint of unlawful discrimination and a denial of equal protection of the law as to the excluded use." *Id.*, quoting *Kropf v City of Sterling Hts*, 391 Mich 139, 156; 215 NW2d 179 (1974). Like the statutory exclusionary zoning challenge under MCL 125.297a, a constitutional exclusionary zoning challenge requires a proponent to establish that the use is excluded in the municipality. See *id.* As the Court in *Smookler* observed, "when confronted with a regulation invalid on its face, it is not necessary for this Court to examine the reasonableness of the ordinance as applied to plaintiff's land." *Smookler, supra* at 581 (emphasis added). For this reason, plaintiffs' constitutional exclusionary zoning claim whether labeled as an "as applied" claim or a facial claim, as a matter of law can [\*87] in substance only be a facial claim. *Id.* And "[f]inality is not required for facial challenges because such challenges attack the very existence or enactment of an ordinance." *Paragon Properties, supra* at 577. The analysis does not stop there, however. While in this facial challenge "it is not necessary for this Court to examine the reasonableness of the ordinance as applied to plaintiff's land," *Smookler, supra* at 581, still, the trial court must have some manner available to it to determine whether the zoning

ordinance at issue indeed is "invalid on its face."

Like statutory exclusionary zoning challenges, I conclude that in constitutional exclusionary zoning claims, plaintiffs must submit their zoning request for consideration before the proper administrative body for a suitability and needs determination for the claim to be ripe for judicial review. This is because whether a plaintiff's exclusionary zoning challenge is brought pursuant to the statute or under the constitution, the zoning map underlying the challenge is part of the zoning ordinance. See MCL 125.271; MCL 125.280; see also *Paragon, supra* at 573-574. And a use not yet present in the zoning map is not necessarily excluded [\*88] simply because it does not yet exist in the zoning map. See *Landon, supra* at 168-169. I conclude that *Landon* also applies in exclusionary zoning claims brought under the constitution.<sup>3</sup> Thus, like statutory exclusionary zoning claims, while plaintiffs need not satisfy the stringent requirements of the *Braun* finality test, plaintiffs seeking constitutional redress must first seek and receive an administrative determination on a request regarding a particular parcel of land. Because plaintiffs here never submitted their request for an MHC to the township zoning commission, plaintiff's constitutional claim for exclusionary zoning is not ripe for judicial review and I would decline to review its merits.

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<sup>3</sup> I am simply unwilling to accept the bald proposition that if a community has not designated a certain land use within its borders that exclusionary zoning exists on its face. For example, merely because the administrative body responsible for zoning in Mackinac Island has not zoned land for industrial purposes does not mean that exclusionary zoning exists on its face. There must be a request and an appropriate determination for that community by the administrative body responsible for zoning. [\*89] In other words, a community cannot engage in exclusionary zoning if there is no "demonstrated need" for the zoning requested in that community. See *Landon, supra* at 168-169.



### C. Substance of the Exclusionary Zoning Claims

While I would not review the substance of the exclusionary zoning claims because I believe they are not ripe for judicial review, I must address the majority's substantive analysis of the exclusionary zoning claims. Whether brought solely under MCL 125.297a or solely under the constitution, I would analyze the claims in the same manner. I would utilize the mechanism prescribed by the legislature, namely MCL 125.297a. "[I]t is settled law in Michigan that the zoning and rezoning of property are legislative functions." *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000); see also *Arthur Land Co, LLC v Otsego Twp*, 249 Mich App 650, 662; 645 NW2d 50 (2002). Zoning is a recognized legislative function that is provided for by statute. Thus, zoning is a legislative action and the legislature can properly define its terms, requirements, and review mechanisms. In the enactment of MCL 125.297a our legislature weighed in on exclusionary zoning and explicitly [\*90] prescribed how to demonstrate exclusionary zoning in the absence of a suspect class.

Further support that a statutory analysis should be employed in deciding whether zoning is exclusionary in either constitutional or statutory claims is found in our Supreme Court's order in *Anspaugh v Imlay Twp*, 480 Mich 964; 741 NW2d 518 (2007). In *Anspaugh*, our Supreme Court issued an order vacating this Court's determination on the plaintiffs' claim for constitutional exclusionary zoning in *Anspaugh v Imlay Twp*, 273 Mich App 122; 729 NW2d 251 (2006). In *Anspaugh*, the plaintiffs sought to rezone property from residential to heavy industrial and the defendant township denied their request. The plaintiffs brought suit alleging purely

constitutional exclusionary zoning, specifically "that the township's zoning scheme was violative of substantive due process and wholly exclusionary, both as applied and on its face, because it 'prohibit[ed] . . . even the possibility of I-2 uses.' An amended complaint, add[ed] allegations that the township's actions and ordinance denied plaintiffs equal protection." *Anspaugh, supra* at 273 Mich App 124-125. This Court found in favor of the plaintiffs and held that township's [\*91] zoning scheme was exclusionary. *Id.* at 129-130. On appeal, our Supreme Court vacated this Court's opinion and sent it back to the circuit court for a factual determination of whether there was a "demonstrated need" for the zoning classification in the township. *Anspaugh, supra* at 480 Mich 964. While our Supreme Court did not explicitly state that it was remanding the plaintiff's constitutional exclusionary zoning claim to the circuit court for analysis in accordance with the exclusionary zoning statute, MCL 125.297a, that is exactly what it did when it remanded for a "demonstrated needs" determination. For these reasons, while I would not review plaintiffs' exclusionary zoning claims for the reason that they are not ripe for judicial review, I must review their substance because my opinion differs with the majority's view. I will review plaintiffs' exclusionary zoning claims--statutory or constitutional--in accordance with the mechanism provided by the legislature, MCL 125.297a, and tacitly approved by our Supreme Court in *Anspaugh, supra* at 480 Mich 964.

Moving on to the substance of plaintiffs' exclusionary zoning allegations, defendant argues that plaintiffs' exclusionary zoning [\*92] claim fails because: Putnam Township does not totally exclude mobile homes; there is no demonstrated need for manufactured housing; and, the trial court should have excluded evidence from plaintiffs' expert

witness. Former MCL 125.297a, provided:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful.

Interpreting this provision, this Court has stated that "[t]o establish a violation of MCL 125.297a, plaintiffs must show (1) that the challenged ordinance has the effect of totally excluding the land use within the township, (2) there is a demonstrated need for the excluded land use in the township or surrounding area, (3) the use is appropriate for the location, and (4) the use is lawful." *Houdek v Centerville Twp*, 276 Mich App 568, 575; 741 NW2d 587 (2007).

On appeal, amongst other arguments, Putnam Township presents several arguments focused on the issue of demonstrated [\*93] need. The majority affirmatively declined to address the issue of "demonstrated need" stating that it relates only to a statutory analysis pursuant to MCL 125.297a and is not required as part of the constitutional exclusionary zoning analysis it found to be applicable. As I explained above, I believe that this analysis is appropriate as part of a statutory or constitutional exclusionary zoning claim, therefore I respectfully disagree with the majority's conclusion that an analysis of "demonstrated need" is not required in this case.

In the instant case, in regard to demonstrated need, the township claims that plaintiffs' expert, Brian Frantz, was not qualified to testify regarding demonstrated need and that his testimony should have been excluded on that basis. Further, the township claims that the

substance of Frantz's testimony should be excluded from consideration because Frantz's analysis of demonstrated need was based on insufficient and biased data and that he used an unreliable methodology in his calculations. The township brought a motion before the trial court to strike Frantz as an expert and exclude his testimony. The trial court denied the motion stating as follows:

The Court [\*94] will first address that as to strike Mr. Frantz as an expert. I do believe that the -- I'm not going to strike Mr. Frantz as a witness, I believe he would be able to testify at the time of trial. I think the argument that counsel's making goes to his credibility and to the weight that would be given to his testimony and not necessarily to the admissibility, I so make that finding.

The party proffering the expert bears the burden of persuading the trial court that the expert is qualified to testify. *Siirila v Barrios*, 398 Mich 576, 591; 248 NW2d 171 (1976). A witness may be qualified as an expert by knowledge, skill, experience, training or education. MRE 702; *Mulholland v DEC Int'l Corp*, 432 Mich 395, 403; 443 NW2d 340 (1989). MRE 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion . . . .

The trial court's role as gatekeeper does not require it to search for absolute truth, to admit only uncontested evidence, or to resolve [\*95] genuine scientific disputes; rather, it is to preclude evidence that is unreliable. *Chapin v A & L Parts, Inc*, 274 Mich App 122, 127; 732 NW2d 578 (2007). The inquiry is whether an

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expert's opinion is rationally derived from a sound foundation. *Nelson v American Sterilizer Co (On Remand)*, 223 Mich App 485, 491-492; 566 NW2d 671 (1997). The standard focuses on the scientific validity of the expert's methods rather than on the correctness or soundness of the expert's particular proposed testimony. *Daubert v Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 589-590; 113 S Ct 2786; 125 L Ed 2d 469 (1993). An expert's opinion is admissible if it is based on the "methods and procedures of science," as opposed to "subjective belief or unsupported speculation." *Id.* at 590.

Frantz had an undergraduate degree in geography and earth science. Although Frantz had taken a course in technical writing, one marketing course, and other various research courses he had no specialized education qualifying him to prepare a demand--let alone a needs--analysis regarding manufactured housing. While he had been employed as a planner, he had no professional experience or training that would otherwise qualify him to [\*96] prepare statistical analyses concerning aspects of the marketing, demand, or need for manufactured housing in a particular area.

Pursuant to MCL 125.297a, plaintiffs must show a "demonstrated need" for the excluded land use within "the township or surrounding area." In my view, plaintiffs failed on both counts. First, the record is very clear that the Frantz prepared only "demand analysis" as opposed to a "demonstrated need analysis." Next, Frantz's demand analysis only accounted for a small portion of the township, namely a six-mile radius of plaintiffs' property and ignored the remainder of the township and the surrounding area. The record reflects that choosing a six mile radius had the effect of not considering the existence of a mobile home park just 6.1 miles from plaintiffs' property. Thus, the demand analysis offered by Frantz

only considered a six-mile radius surrounding plaintiffs' property and plainly failed to consider "the township or surrounding area" as required by the statute.

Moreover, the record displays that Frantz also did not consider any readily available and seemingly relevant county-wide data regarding the existence of current and proposed mobile home communities [\*97] in the county. Frantz admitted that he did not consider data important if it "didn't fall within the geographic area I was looking at . . . ." I also find Frantz's analysis--biased at best, suspect at worst--for the fact that he collected and used data from friends and family not in the area to form the basis of some of his demand analysis. For these reasons, I conclude that Frantz's methods for arriving at his demand analysis are irrational and fundamentally unsound. *Nelson, supra* at 491-492. Frantz's conclusions regarding the demand for manufactured housing was therefore not "rationally derived from a sound foundation," nor was Frantz "qualified as an expert by knowledge, skill, experience, training, or education" to give any conclusions.

Ultimately, given Frantz's lack of knowledge, experience, and training in preparing need analyses in the manufactured housing industry coupled with the lack of objective, supportive evidence to bolster his opinions, the trial court erred finding that any concerns went to weight and credibility. The trial court abused its discretion by failing to exclude his proposed expert testimony as unreliable. Plaintiffs provided no other evidence regarding demonstrated [\*98] need at trial. Because plaintiffs failed to establish that there is a demonstrated need for the excluded land use in the township or surrounding area in accordance with MCL 125.297a, I would hold that their exclusionary zoning claim fails and I need not discuss the remaining requirements

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of an exclusionary zoning claim. See *Houdek*,  
*supra* at 578.

While I concur in part, I would vacate the  
judgment for the reasons stated, and remand  
for entry of dismissal consistent with this  
dissenting opinion.

/s/ Pat M. Donofrio

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## Johnson v. Knox Cnty.

United States District Court for the Eastern District of Tennessee

March 25, 2022, Filed

No.: 3:19-CV-179-KAC-DCP

### Reporter

2022 U.S. Dist. LEXIS 54166 \*; 2022 WL 894601

SHARLES JOHNSON, Plaintiff, v. KNOX COUNTY, TENNESSEE, et al., Defendants.

**Prior History:** Johnson v. Knox Cty., 2020 U.S. Dist. LEXIS 88828, 2020 WL 2562806 (E.D. Tenn., May 20, 2020)

**Counsel:** [\*1] Charles Johnson, Plaintiff, Pro se, Knoxville, TN.

Shentasia Johnson, Plaintiff, Pro se, Knoxville, TN.

Shakal-El Johnson, Plaintiff, Pro se, Knoxville, TN.

For Knox County, Tennessee, Knox County Board of Education, doing business as, Knox County Schools, Defendants: David M Sanders, LEAD ATTORNEY, Knox County Law Director's Office, Knoxville, TN.

**Judges:** KATHERINE A. CRYTZER, United States District Judge.

**Opinion by:** KATHERINE A. CRYTZER

### Opinion

#### MEMORANDUM OPINION AND ORDER DISMISSING CASE

Before the Court are (1) the Motion to Dismiss Plaintiff's Amended Complaint of Defendants Knox County, Tennessee and Knox County Board of Education [Doc. 26], (2) the Amended Motions to Dismiss of Defendant former Knox County Law Director Richard B. "Bud"

Armstrong [Docs. 37, 38], and (3) various pleadings filed by Plaintiff Charles Johnson attempting to further amend his Amended Complaint [Docs. 40, 43, 48, 49]. Because Plaintiff's Amended Complaint fails to state a claim for relief that is plausible on its face, the Court grants Defendants' motions to dismiss. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). And the Court denies Plaintiff leave to further amend his Amended Complaint.

Plaintiff, who is proceeding pro se, has a long running dispute with the Knox County school [\*2] system that dates back to at least 2010 [Doc. 17 at 13-14].<sup>1</sup> Plaintiff has children who attend, or have attended, school in the Knox County school system [*Id.* at 8]. Plaintiff previously volunteered at Northshore Elementary School by helping in the cafeteria, reading in the classroom, and dressing as the school mascot [*Id.* at 16-17]. However, he is no longer allowed on "property owned by Knox County Schools" [See *id.* at 3-4]. According to Plaintiff's Amended Complaint, over time, the school system accused Plaintiff of, among other things, "screaming at a child in the hallway" of A.L. Lotts Elementary School and "inappropriate interactions with staff at Northshore Elementary School" [*Id.* at 13, 26-27]. On February 29, 2016, the school system

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<sup>1</sup>At this stage in the litigation, the Court construes the Amended Complaint in the light most favorable to Plaintiff, accepts all well-pled factual allegations as true, and draws all reasonable inferences in Plaintiff's favor. See *Hogan v. Jacobson*, 823 F.3d 872, 884 (6th Cir. 2016).



issued a "No Trespass Order" against Plaintiff that barred him from "any property owned by the Knox County Schools or controlled properties that are part of the facility" [*Id.* at 26-27]. The February 2016 No Trespass Order gave rise to this lawsuit, which Plaintiff filed on May 17, 2019 [See Doc. 2].

## I. PROCEDURAL HISTORY

After Plaintiff filed his initial Complaint on May 17, 2019, Defendants mailed him a letter outlining alleged deficiencies in [\*3] Plaintiff's Complaint [See Doc. 13-1]. At the Parties' joint request, the Court granted Plaintiff leave to file an Amended Complaint to attempt to rectify those alleged deficiencies [Docs. 13, 15]. Instead, Plaintiff sought to add twenty-seven (27) new defendants in his Amended Complaint [Doc. 17]. Three days later, he filed an Addendum to his Amended Complaint adding fourteen pages of factual allegations and exhibits [Doc. 18]. The Court struck the new defendants from the Amended Complaint but allowed the claims against Defendants Knox County, Knox County Board of Education, and Armstrong to move forward [Doc. 25]. On May 26 and June 10, 2020, Defendants filed motions to dismiss the claims in Plaintiff's Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) [Docs. 26, 27, 28].<sup>2</sup> Plaintiff requested and received a thirty-day extension of time to respond to the motions to dismiss [See Docs. 31, 39].

Approximately seventeen (17) months after Defendants first filed a motion to dismiss, Plaintiff filed a response, postmarked October 12, 2021 [Doc. 40]. Plaintiff's four-sentence

response opposed the motions to dismiss and requested leave to amend his complaint again [*Id.*]. The response did not substantively address [\*4] any of the arguments in the motions to dismiss [*Id.*]. But the response attached an eighty-two-page proposed Second Amended Complaint [*Id.* at 2-83]. To the extent that Plaintiff was attempting to seek consent from Defendants to file a Second Amended Complaint, Defendants opposed [See Doc. 45 at 3].

Following Defendants' reply in further support of their motions to dismiss [Doc. 42], Plaintiff filed several further responses without obtaining leave of Court. First, he filed an eight-page narrative as an addendum to his response to the motions to dismiss [Doc. 43]. This Addendum appears to seek to add further factual support to the claims in the proposed Second Amended Complaint, but it, again, did not address the arguments Defendants raised in their motions to dismiss [*Id.*]. Defendants moved to strike the Addendum as immaterial, unauthorized, and untimely [Doc. 44]. Second, almost one month later, Plaintiff filed another response to the motions to dismiss, well out of time [Doc. 46]. See E.D. Tenn. L.R. 7.1(b). While that response generally opposed the Court granting Defendants' motions to dismiss, it, again, failed to substantively address Defendants' arguments [See *id.*]. Third, on January 31, 2022, Plaintiff [\*5] filed a "Motion to File New Evidence/Addendum to Filing," which seeks to "amend or add to allegations filed a few months ago" [Doc. 48 at 1]. In substance, the motion merely attached additional emails that Plaintiff asserts support his claims [See *id.*]. And finally, on February 11, 2022, Plaintiff filed another "Motion to Amend Original Complaint and Damages," which attempts to (1) add two criminal charges, (2) add three defendants, who the Court previously struck from Plaintiff's Amended Complaint, (3) increase Plaintiff's

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<sup>2</sup>Defendant Armstrong has since filed amended motions to dismiss, which correct a technical deficiency [See Docs. 37, 38].

claim for damages, and (4) remove several claims [Doc. 49]. Defendants maintain that any further amendment of Plaintiff's Amended Complaint is futile and oppose any such amendment [See Docs. 50, 51].

## II. PLAINTIFF'S CLAIMS

Plaintiff's Amended Complaint and Addendum [Docs. 17, 18], which are operative,<sup>3</sup> attempt to assert several Constitutional and statutory claims under 42 U.S.C. § 1983 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The pleadings contain a litany of accusations against various individuals, but only seven claims remain in this suit—six claims against Defendants Knox County and Knox County Board of Education (the "County Defendants") and one claim against Defendant Armstrong. The Court has dismissed all other [\*6] claims in the Amended Complaint and Addendum [See Doc. 25 (dismissing all Defendants except Knox County, Knox County Board of Education, and Armstrong); Doc. 47 (dismissing claims of former Plaintiffs S.J. and S-E.J.)].

Plaintiff specifically raises six claims against the County Defendants. First, Plaintiff asserts a claim under Section 1983 for an alleged violation of his First Amendment right to freedom of speech, contending that the County Defendants issued the February 2016 No Trespass Order to retaliate against him for filing complaints with the United States Department of Education Office for Civil Rights [Doc. 17 at 3]. Second, Plaintiff asserts another claim under Section 1983 for an alleged violation of his First Amendment right to "free exercise of religion" [*Id.*]. This claim appears to assert that the No Trespass Order was issued to retaliate against Plaintiff for

holding certain "religious beliefs and cultural beliefs" [*Id.* at 5]. Third, Plaintiff asserts a claim under Section 1983 for alleged violations of his procedural due process rights under the Fifth and Fourteenth Amendments [*Id.* at 3]. Purportedly, the County Defendants refused to set up a grievance process and issued the No Trespass Order in February 2016 without due process [*Id.* at 3, 37]. Fourth, Plaintiff [\*7] arguably asserts a Section 1983 claim for a violation of his substantive due process rights under the Fourteenth Amendment based on the alleged deprivation of his right to access his children's schools because of the No Trespass Order [See *id.* at 3-4, 37]. Fifth, Plaintiff attempts to assert a Section 1983 claim for a violation of the Equal Protection Clause of the Fourteenth Amendment, based on the No Trespass Order [*Id.* at 3-4]. And Sixth, Plaintiff asserts a violation of Title VI of the Civil Rights Act of 1964, premised on the issuance of the No Trespass Order [*Id.*].

Against Defendant Armstrong, Plaintiff only asserts one generalized claim for a "due process" violation, which the Court construes as a claim under Section 1983 [See *id.* at 11-12]. Viewing the Amended Complaint in the light most favorable to Plaintiff, Plaintiff alleges that on or about October 8, 2018, Defendant Armstrong "was in possession of the fraudulent 2nd version of the No Trespass Order and didn't do anything about it or make sure that it wasn't violating any of the Plaintiff's constitutional rights" [*Id.* at 11-12, 33, 89-90]. For that reason, Defendant Armstrong purportedly "failed to provide the Plaintiff due process" [*Id.* at 11-12].

Defendants Knox County, Knox County Board of Education, and Armstrong assert that [\*8] (1) various statutes of limitations bar Plaintiff's claims; (2) Plaintiff has not asserted a claim for liability under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611

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<sup>3</sup> For the reasons set forth in detail below, the Court denies Plaintiff leave to further amend his Amended Complaint.

(1978); (3) Plaintiff does not have a Constitutional right to access school property; and (4) Plaintiff has failed to state plausible claims [See Docs. 26 at 1-2; 37 at 1-2]. Defendant Armstrong additionally asserts that the suit against him in an official capacity is redundant because he was an agent of Knox County [See Doc. 38]. In his individual capacity, he also asserts that (1) he is entitled to qualified immunity, (2) he cannot be held vicariously liable under 42 U.S.C § 1983, and (3) he has no duty to protect the legal interests of Plaintiff at issue in this dispute [See Doc. 37].

### III. DEFENDANTS' MOTIONS TO DISMISS

To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). The Court must construe the operative complaint in the light most favorable to Plaintiff, accept all well-pled factual allegations as true, and draw all [\*9] reasonable inferences in Plaintiff's favor. See *Hogan*, 823 F.3d at 884. "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

#### **A. A one-year statute of limitations bars each of Plaintiff's claims against Defendants Knox County and Knox County Board of Education.**

A one-year statute of limitations applies to Plaintiff's Section 1983 and Title VI claims against the County Defendants and bars Plaintiff's untimely claims. The statute of limitations for Section 1983 claims is governed by the state law applicable to personal injury actions. *Eidson v. Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 634 (6th Cir. 2007). Tennessee provides a one-year statute of limitations for personal actions under federal civil rights statutes. See *Sharpe v. Cureton*, 319 F.3d 259, 266 (6th Cir. 2003) (citing Tenn. Code Ann. § 28-3-104(a)). A one-year statute of limitations also applies to Plaintiff's Title VI claim. See *Wade v. Knoxville Utils. Bd.*, 259 F.3d 452, 460 (6th Cir. 2001). The statute of limitations begins to run "when the plaintiff knows or has reason to know" of his injury. *Eidson*, 510 F.3d at 635.

All of Plaintiff's claims against the County Defendants arise from the No Trespass Order that Plaintiff received on February 29, 2016 [See Doc. 17 at 25-26]. Although the Amended Complaint recites facts occurring after that [\*10] date, none of those facts support additional, separate causes of action against the County Defendants [*Id.* at 33-37]. At most, they illustrate that Plaintiff has continued to oppose the No Trespass Order [See, e.g., *id.* at 36 ("5/16/2019 2:05 pm Mr. Johnson sent a letter to Mayor Jacobs pertaining to the No Trespass Order.")]. Thus, the one-year statute of limitations expired well before Plaintiff filed his initial Complaint on May 17, 2019 [See Doc. 2].

Plaintiff asserts that his suit is timely because Defendants' alleged violations are "continuous and permanent," but the law does not support his argument [See Doc. 17 at 2]. The applicable one-year statute of limitations may be tolled under the "continuous violation" doctrine. See *Basista Holdings, LLC v. Ellsworth Twp.*, 710 F. App'x 688, 693 (6th Cir.

2017); *see also Hensley v. City of Columbus*, 557 F.3d 693, 697 (6th Cir. 2009). The Sixth Circuit has recognized two categories of continuous violations. *See Howell v. Cox*, 758 F. App'x 480, 484-85 (6th Cir. 2018). First, a continuous violation arises when defendants engage in "a longstanding and demonstrable policy" of illegality. *Sharpe*, 319 F.3d at 268. "This requires a showing by a preponderance of the evidence that some form of intentional discrimination against the class of which plaintiff was a member was the . . . standing operating procedure." *Basista Holdings*, 710 F. App'x at 693 (quoting *Sharpe*, 319 F.3d at 268). "The plaintiff 'must demonstrate [\*11] something more than the existence of discriminatory treatment in his case.'" *Id.* Second, a continuous violation exists when the cumulative effect of serial acts amounts to an actionable violation. *Howell*, 758 F. App'x at 485. Under this theory, a continuous violation occurs with the accumulation of multiple incidents, none of which is individually actionable. *Id.* The continuous violation doctrine does not apply to discrete acts that are easily identifiable and individually actionable. *Id.*; *see also Sharpe*, 319 F.3d at 267-68. A continuous violation is "occasioned by continual unlawful acts, not continual ill effects from an original violation." *Eidson*, 510 F.3d at 635 (quoting *Tolbert v. Ohio Dep't of Transp.*, 172 F.3d 934, 940 (6th Cir. 1999)). "Passive inaction does not support a continuing violation theory." *Id.* To evaluate whether Plaintiff has alleged a continuing violation, the Court must "first consider the contours of the civil rights claim he has asserted." *Eidson*, 510 F.3d at 635.

Plaintiff's Section 1983 claims for violations of his First Amendment rights (Claims One and Two) and Fifth and Fourteenth Amendment procedural due process rights (Claim Three) do not constitute continuing violations. Rather, the claims arose from a discrete, actionable

event—the issuance of the No Trespass Order in February 2016. As pled, the alleged retaliation in violation of the First Amendment occurred, if at all, when [\*12] the County Defendants issued the No Trespass Order [See Doc. 17 at 3-5]. The alleged procedural deprivation too occurred, if at all, when Plaintiff received the No Trespass Order on February 29, 2016 without appropriate process [See *id.* at 3, 37]. Even construing the facts in the light most favorable to Plaintiff, "[i]n procedural due process claims, the deprivation by state action of a constitutionally protected interest in life, liberty or property is not itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law.*" *Eidson*, 510 F.3d at 635 (emphasis in original) (internal citations omitted). Plaintiff asserts that the No Trespass Order remains in effect, [Doc. 17 at 2], but that alone does not create a continuing violation under the law, *see Eidson*, 510 F.3d at 635.

As pled, Plaintiff's other federal civil rights claims against the County Defendants also fail to satisfy the continuing violation doctrine. Plaintiff's Section 1983 substantive due process claim, Section 1983 equal protection claim, and Title VI claim (Claims Four, Five, and Six) fail to allege a "longstanding and demonstrable" policy of discrimination. *See Sharpe*, 319 F.3d at 268. Rather, the No Trespass Order applies solely to Plaintiff, and he has not [\*13] demonstrated "something more than the existence of discriminatory treatment in his case." *Id.* The alleged wrongful conduct—the issuance of the No Trespass Order—also does not constitute a serial violation because it was a discrete, easily identifiable act. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002) ("Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify."). Although the February 2016 No



Trespass Order allegedly remains in effect, "[m]ere continuity of a sanction does not make it a continuing violation." *Cherry v. City of Bowling Green*, 347 F. App'x 214, 217 (6th Cir. 2009). Plaintiff had clear notice of his alleged injury in February 2016, which is evidenced by the fact that he allegedly filed a complaint related to the No Trespass Order with the Office of Civil Rights immediately after the Order issued [See Doc. 17 at 31]. Accordingly, the applicable one-year statute of limitations bars Plaintiff's federal civil rights claims against Knox County and Knox County Board of Education. And Plaintiff's Amended Complaint fails to state any claims against the County Defendants that are plausible.

**B. Plaintiff fails to state a Section 1983 "due process" claim against Defendant Armstrong.**

Even liberally construing the pleadings, Plaintiff also fails [\*14] to state a Section 1983 "due process" claim against Defendant Armstrong. The Fourteenth Amendment protects an individual from the deprivation of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "Due process" has a procedural component and a substantive component. To establish a procedural due process claim, Plaintiff must demonstrate that: (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the relevant state actor did not afford him adequate procedural protections. *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014). Substantive due process, on the other hand, protects those rights and liberties that are "objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*,

521 U.S. 702, 720-21, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997) (citations and quotations omitted). Substantive due process protects against "arbitrary and capricious government action that 'shocks the conscience and violates the decencies of civilized conduct.'" *Guertin v. State*, 912 F.3d 907, 918 (6th Cir. 2019) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)). The class of interests protected by the Substantive Due Process Clause is "narrower than those protected by procedural due process." *In re City of Detroit*, 841 F.3d 684, 699 (6th Cir. 2016) (quoting *Range v. Douglas*, 763 F.3d 573, 588 (6th Cir. 2014)).

Plaintiff's constitutional claim against Defendant Armstrong fails [\*15] at the threshold because Plaintiff does not have a constitutionally protected due process interest in accessing Knox County School property. *See Ritchie v. Coldwater Cmty. Sch.*, No. 11-CV-530, 2012 U.S. Dist. LEXIS 95566, 2012 WL 2862037, \*16-17 (W.D. Mich. July 11, 2012). "In the context of due process claims . . . every court that has considered the issue has concluded that citizens, including parents, do not have a liberty or property interest in accessing school property." *Id.* ((citations omitted) (compiling cases)); *see also Guy v. Bd. of Educ. Rock Hill Loc. Sch. Dist.*, No. 18-CV-893, 2020 U.S. Dist. LEXIS 94778, 2020 WL 2838508, \*2-5 (S.D. Ohio May 31, 2020) (concluding that plaintiff failed to state a due process claim for being banned from school property without notice or opportunity to be heard). Because Plaintiff does not have a constitutionally protected due process interest in accessing Knox County School property, his due process claim fails, and the Court need not analyze the procedural protections afforded to Plaintiff. Any substantive due process claim likewise fails because Plaintiff does not have a fundamental right to access



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Knox County School property that is implicit to our concept of ordered liberty. See *Glucksberg*, 521 U.S. at 720-21; see also *In re City of Detroit*, 841 F.3d at 699 (noting that the rights protected by substantive due process are more limited than the rights protected by procedural due process). Accordingly, Plaintiff fails to state a Section 1983 "due process" claim against Defendant [\*16] Armstrong. And Plaintiff's Amended Complaint fails to state any plausible claim upon which the Court may grant relief.<sup>4</sup>

#### IV. PLAINTIFF'S EFFORTS TO FURTHER AMEND HIS AMENDED COMPLAINT

Plaintiff filed various documents attempting to, or purporting to, further amend his Amended Complaint, [see Docs. 40, 43, 48, 49], but he failed to demonstrate that justice requires the Court to grant him leave to do so. Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); see also *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). However, the Court may deny a motion to amend for "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment." *Foman*, 371 U.S. at 182. "A proposed amendment is futile if it could not withstand a Rule 12(b)(6) motion to dismiss." *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000).

Here, undue delay and undue prejudice to Defendants, Plaintiff's repeated failure to cure deficiencies, and the futility of further amendment all counsel against granting

Plaintiff leave to further amend his Amended Complaint. **First**, Plaintiff moved to amend for a second time almost two and a half years after filing his initial Complaint [\*17] [See Docs. 2, 40]. He filed his latest attempt to amend nearly three years after filing his initial Complaint and well after Defendants' motions to dismiss were fully briefed [See Docs. 2, 42, 49]. "Ordinarily, delay alone, does not justify denial of leave to amend." *Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir. 2002). But "at some point," "delay will become undue." *Id.* (internal citations omitted). Extensive, unexplained delay may constitute an undue delay. See, e.g., *Murphy v. Grenier*, 406 F. App'x 972, 977 (6th Cir. 2011) (finding a seven-month delay between filing of dispositive motions and moving to amend created undue delay and prejudice). Plaintiff provided no explanation for his delay in moving to amend, [see Docs. 40, 49], and permitting Plaintiff to further amend his Amended Complaint well after Defendants' dispositive motions were filed and briefed would prejudice Defendants by requiring them to relitigate each of those motions. See *Knight Cap. Partners Corp. v. Henkel AG & Co.*, 930 F.3d 775, 786 (6th Cir. 2019); *Murphy*, 406 F. App'x at 977. At this point, Plaintiff's lengthy, unexplained, and prejudicial delay constitutes undue delay and prejudice, and the Court cannot fairly grant Plaintiff further leave to amend.

**Second**, even if there were no undue delay and prejudice, Plaintiff's repeated failure to cure the deficiencies in his complaint further justifies denying leave to amend. [\*18] See *Modesty v. Shockley*, 434 F. App'x 469, 472 (6th Cir. 2011) ("Because the district court had already allowed for two amendments, it was not an abuse of discretion to deny leave to amend a third time."). Prior notice of a deficiency is a "critical factor[]" in determining whether an amendment should be granted."

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<sup>4</sup> Because Plaintiff fails to state any claim, the Court does not address the remaining arguments in Defendants' motions to dismiss.

*Pittman ex rel. Sykes v. Franklin*, 282 F. App'x 418, 425 (6th Cir. 2008) (quoting *Wade*, 259 F.3d at 458-59). Defendants previously notified Plaintiff of the deficiencies in his Complaint, and the Court previously granted Plaintiff leave to amend to address those alleged deficiencies [See Docs. 13-1, 15]. As discussed above, Plaintiff's Amended Complaint failed to sufficiently address the deficiencies raised by Defendants. And once again, Plaintiff's proposed Second Amended Complaint and Addendum failed to address the deficiencies Defendants raised over two years ago [See Docs. 40, 43]. Although the proposed Second Amended Complaint and Addendum are entirely new documents, most of the underlying claims and factual allegations remain the same [Compare Docs. 17, 18, with Docs. 40, 43]. Claims One through Five, and Seven of the proposed Second Amended Complaint repeat claims from Plaintiff's Amended Complaint [*Id.*]. Those claims continue to arise from the February 29, 2016 No Trespass Order [See, e.g., Doc. 40 at 33-52]. And [\*19] Plaintiff admits that, "[t]he events in this [proposed Second Amended] complaint can mostly be traced back to the 2015-2016 school year" [*Id.* at 6]. Therefore, just as in Plaintiff's Amended Complaint, and as Defendants identified years ago [see Doc. 13-1 at 2], these claims in the proposed Second Amended Complaint are barred by the statute of limitations. Plaintiff's most recent "Motion to File New Evidence/Addendum to Filing" and "Motion to Amend Original Complaint and Damages" [Docs. 48, 49] suffer from the same defect. Those claims are almost identical to Plaintiff's proposed Second Amended Complaint, and the additional information included fails to address the significant deficiencies in Plaintiff's pleadings [Compare Doc. 40, with Doc. 49]. This failure too counsels heavily against granting Plaintiff further leave to amend.

**Finally**, allowing Plaintiff to further amend his Amended Complaint to add new claims or parties would be futile. Plaintiff's proposed Second Amended Complaint would assert four new claims, but each of those proposed claims suffers from an insurmountable limitations period defect [See Doc. 40 at 75-78]. Each of Plaintiff's four proposed new claims is subject [\*20] to a limitations period of one-year or less. See Tenn. Code Ann. § 28-3-104; see also Tenn. Code Ann. § 49-6-3205 (providing a parent with thirty days to obtain judicial review of a student assignment). But the conduct underlying the claims occurred more than one year before Plaintiff filed his initial Complaint.<sup>5</sup> First, Plaintiff's proposed claim under "Section 1010 Parent and Family Engagement,"<sup>6</sup> arose from "Defendants installing a permanent No Trespass Order" against him in February 2016 [Doc. 40 at 75]. Second, Plaintiff's second and third claims, under Tennessee Code Annotated §§ 49-6-3109 and 49-6-3201, also fall outside of the limitations period—Plaintiff complained of events that allegedly occurred in 2015 [*Id.* at 12-13, 77]. Finally, Plaintiff's allegation of a "misapplication" of Knox County Board of Education Policy C-210 arose directly from the February 2016 No Trespass Order [*Id.* at 78]. Therefore, a limitations period would bar all of Plaintiff's claims in his proposed Second Amended Complaint, and amendment would be futile. Plaintiff's "Motion to File New Evidence/Addendum to Filing" and "Motion to Amend Original Complaint and Damages" [Docs. 48, 49] are similarly defective. The Court previously struck from Plaintiff's Amended Complaint the three defendants that

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<sup>5</sup> For purposes of this Memorandum Opinion and Order, the Court presumes, without deciding, that Plaintiff's proposed new claims would relate back to the filing of Plaintiff's initial Complaint. See Fed. R. Civ. P. 15(c).

<sup>6</sup> "Section 1010" is a part of the Every Student Succeeds Act, 20 U.S.C. § 6301, *et seq.*

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Plaintiff seeks [\*21] to add in his latest filings [See Docs. 25, 48, 49]. And Plaintiff's latest proposed new claims, under 18 U.S.C. §§ 241 and 242 [see Doc. 49 at 1-2], would be dismissed because he has no private right of action under either of those criminal statutes. *See United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003) (citations omitted). Therefore, it would be futile for the Court to permit Plaintiff to amend his Amended Complaint further. As such, Plaintiff has failed to demonstrate that justice requires the Court to grant him leave to further amended his Amended Complaint.

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## V. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motions to Dismiss Plaintiff's Amended Complaint [Docs. 26, 37, 38] and **DENIES** Plaintiff leave to further amend his Amended Complaint [see Docs. 40, 43, 48, 49]. An appropriate judgment shall enter.

IT IS SO ORDERED.

/s/ Katherine A. Crytzer

KATHERINE A. CRYTZER

United States District Judge

## JUDGMENT

Pursuant to the Memorandum Opinion and Order Dismissing Case, this action is **DISMISSED** with prejudice. The Clerk is **DIRECTED** to close the case.

IT IS SO ORDERED.

/s/ Katherine A. Crytzer

KATHERINE A. CRYTZER

United States District Judge

## Mitchell v. Clackamas River Water

United States District Court for the District of Oregon

October 31, 2016, Decided; October 31, 2016, Filed

No. 3:16-cv-00537-HZ

### Reporter

2016 U.S. Dist. LEXIS 151096 \*; 2016 WL 6471450

WARREN MITCHELL, Plaintiff, v.  
CLACKAMAS RIVER WATER, MICHAEL  
CARDWELL, KENNETH HUMBERSTON,  
HUGH KALANI, BARBARA KEMPER,  
KATHERINE KEHOE, CYNDI LEWIS-  
WOLFRAM, LARRY SOWA, LEE E. MOORE  
SR., DEAN MARK PHILLIPS, PHILLIPS LAW  
OFFICE, SPECIAL DISTRICTS  
ASSOCIATION OF OREGON, AND SPECIAL  
DISTRICTS INSURANCE SERVICES,  
Defendants.

**Subsequent History:** Affirmed by Mitchell v.  
Clackamas River Water, 2018 U.S. App.  
LEXIS 16653 (9th Cir. Or., June 20, 2018)

**Prior History:** Clackamas Cnty. Or. v.  
Clackamas River Water, 280 Ore. App. 366,  
382 P.3d 598, 2016 Ore. App. LEXIS 1011  
(Aug. 24, 2016)

Clackamas River Water v. Holloway, 261 Ore.  
App. 852, 322 P.3d 614, 2014 Ore. App.  
LEXIS 370 (Mar. 26, 2014)

**Counsel:** [\*1] For Plaintiff: James D.  
Huffman, St. Helens, OR.

For Defendants: Brett Mersereau, The Law  
Office of Brett Mersereau, Portland, OR.

**Judges:** MARCO A. HERNÁNDEZ, United  
States District Judge.

**Opinion by:** MARCO A. HERNÁNDEZ

### Opinion

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### OPINION & ORDER

HERNÁNDEZ, District Judge:

Plaintiff Warren Mitchell, a former member of the Board of Commissioners of Clackamas River Water ("CRW"), brings First Amendment retaliation claims under 42 U.S.C. § 1983 and derivative state law claims against thirteen defendants including CRW and several individuals and organizations associated with CRW. Am. Compl. 4-8, ECF No. 5. Defendants allegedly retaliated against Plaintiff after he initiated and contributed to multiple criminal and civil proceedings against CRW board members and employees for fraud, mismanagement of public funds, and election violations. Plaintiff's other claims include: wrongful initiation of civil proceedings; intentional infliction of emotional distress ("IIED"); breach of contract; and restitution of unlawful expenditure of public moneys.

Defendants move to dismiss for failure to state a claim. Fed. R. Civ. P. 12(b)(6). In their 12(b)(6) motion, Defendants also move to strike Plaintiff's references to an alleged settlement offer under Rule 408 of the Federal Rules of Evidence and make a special motion to strike the [\*2] IIED claim under Oregon law.

The Court grants Defendants' motion to dismiss. As explained below, the Court dismisses Plaintiff's First Amendment retaliation and IIED claims for failure to state a claim. The Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims and dismisses

those as well. Defendants' motion to strike and special motion to strike are denied as moot.

## BACKGROUND

The facts alleged are taken from Plaintiff's Amended Complaint. Plaintiff was elected to the CRW Board of Commissioners on July 1, 2007, and served until June 30, 2009. Am. Compl. 4. When Plaintiff joined the board it consisted of: Barbara Kemper, Cyndi Lewis-Wolfram, Patricia Holloway, and Michael Cardwell. Id. at 11. Two days after his election to the board, Plaintiff was also elected as the Board Treasurer. Id.

The inciting incident of this case occurred between August and October of 2007. Kemper allegedly removed the audio recording of the minutes from a CRW executive sessions meeting and refused to return the recording. Id. Plaintiff, as a private citizen, filed a criminal complaint in Clackamas County for the return of the recordings. Acting as a commissioner, Plaintiff also moved that the [\*3] CRW board censure Kemper.

In January 2008, Plaintiff, acting as a commissioner, requested CRW emails from July 1, 2007, forward. Id. at 12. Kemper, Lewis-Wolfram, and Cardwell denied the request. Plaintiff later filed a public records request for the same emails as a private citizen with Clackamas County. The district attorney ordered CRW to release the emails. Id. In March 2008, Plaintiff received the emails and gave copies to Holloway and others. Id.

Between April 2008 and April 2011, Plaintiff determined that Lewis-Wolfram and Kemper claimed reimbursements for meetings and events for which they were not entitled. Id. at 11. Kemper and Lewis-Wolfram did not return the money to Clackamas County and Plaintiff filed a fraud complaint with the Clackamas

County Sheriff's Department and an ethics complaint with the Oregon Government Ethics Commission ("OGE"). Id.

Between May 2008 and April 2009, Plaintiff discovered from the CRW emails that CRW's Information Manager, Quincy Whitfield, was operating a computer consulting business using CRW's computers during work hours and was transferring surplus computer equipment to his stepson for re-sale. Id. at 12. Plaintiff filed a successful OGE complaint and Whitfield was [\*4] fined. Id.

In or about August 2008, a private individual filed a complaint in Clackamas County Circuit Court against Kemper, Lewis-Wolfram, and Cardwell alleging unlawful expenditure of public money. Id. at 12-13. Some of the exhibits to the complaint in that case included excerpts taken from the CRW emails that Plaintiff obtained. Kemper, Lewis-Wolfram, and Cardwell sought legal advice to regain the emails on privilege grounds and were advised that because they had released the records to a member of the public, they could not re-assert privilege. Id. at 13-14.

On February 20, 2009, while Plaintiff's OGE complaint against Whitfield was pending, CRW demanded that Plaintiff and Holloway return the emails and that none be given to OGE. Id. at 14. Plaintiff did not return the emails. His term ended on June 30, 2009, and Defendant Katherine Kehoe's term of office began on July 1, 2009. Between November 2010 and February 2012, Plaintiff wrote several letters to the Clackamas County Sheriff's Department and the Clackamas County District Attorney providing additional material to support the outstanding fraud claims against Kemper and Lewis-Wolfram. Id. at 15.

On March 17, 2011, despite having been advised that the emails were no [\*5] longer privileged, the CRW board convened a special



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meeting and non-public executive session to vote to sue Plaintiff and Holloway for an injunction to obtain the return of the emails. Id. at 15-16. The board approved the action and filed suit against Plaintiff and Holloway alleging that they had violated the responsibilities of their public office by obtaining and retaining the emails. Id. On April 14, 2011, Plaintiff attended a public CRW board meeting and attempted to make a comment on the pending fraud case. The board ordered that he be ejected and security escorted Plaintiff out of the meeting. Id. at 16.

On April 28, 2011, Plaintiff requested legal defense from CRW's insurance provider Defendants Special Districts Association of Oregon and Special Districts Insurance Services ("SDAO/SDIS") to prepare for the hearing regarding CRW's lawsuit for an injunction to return the emails. Id. at 16. After delaying a response for thirty days, SDAO/SDIS offered Plaintiff legal defense after sixty days with the caveat that he repay the legal fees if he was successful. Id. at 16-17.

On July 25, 2011, the Clackamas County Circuit Court denied CRW's request for an injunction for the return of the emails. On the same day or within a few [\*6] days of that ruling, CRW drafted and obtained a court order prohibiting Plaintiff from "using, disclosing, or otherwise disseminating any records created, maintained, or kept in the ordinary course of plaintiff's business that are now or have been in defendants' possession at any time." Id. at 17. Plaintiff and Holloway appealed the so-called "gag order" in the Oregon Court of Appeals in or about July 2011. SDAO/SDIS refused to pay the legal costs of the appeal. Id. at 17-18.

On January 5, 2012, Plaintiff published a Community Soapbox article in the Portland Tribune criticizing CRW and exposing past

convictions of CRW's employees. Id. at 18.

Between March and May of 2013, Plaintiff alleges that the then-existing CRW board (Larry Sowa, Kenneth Humberston, Hugh Kalani, Grafton Sterling), as well as CRW General Manager Lee Moore Sr., and CRW attorney Phillips received documents and testimony about the inaccuracies of the CRW special district voter list for the upcoming election on May 21, 2013. Id. at 19. The election proceeded unaltered despite the board's awareness of the alleged inaccuracies in the voter list. Sowa, Humberston, and Kalani were elected to the CRW board. On June 26, 2013, Plaintiff filed a Petition of Contest [\*7] of Election ("election contest") in Clackamas County Circuit Court, challenging the election of Sowa, Humberston, and Kalani on the grounds that illegal votes were cast and the incumbent commissioners had knowledge of the illegality of the election. Id.

On July 5, 2013, CRW filed a motion to intervene as a defendant in the election contest that was granted on October 1, 2013. On November 20, 2013, the trial court found that Plaintiff had failed to satisfy his burden in the election contest. Id. at 21. On March 17, 2014, the court entered a general judgment in favor of the defendants and awarded CRW over \$54,000 in attorney fees and costs. Id. at 21-23. On February 24, 2014, CRW's attorney called Plaintiff's counsel and offered to forego the award in exchange for Holloway agreeing to drop her separate pending federal case against CRW.<sup>1</sup>

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<sup>1</sup> The Court takes judicial notice of the case Holloway v. Clackamas River Water, et al., No. 3:13-cv-01787-AC, 2014 U.S. Dist. LEXIS 170616, 2014 WL 6998084 (D. Or. Dec. 12, 2014) (granting defendants' motion to dismiss); 2016 U.S. Dist. LEXIS 131978, 2016 WL 5477548 (D. Or. Sept. 25, 2016) (denying plaintiff's request for leave to amend and dismissing the case with prejudice). Holloway and Plaintiff's claims are based on many of the same facts. Holloway also

On March 26, 2014, the Oregon Court of Appeals reversed the "gag order" and on October 22, 2014, it issued a supplemental judgment awarding Plaintiff approximately \$11,130 in attorney fees and costs. *Id.* at 24. On November 26, 2014, Defendants refused to pay the supplemental judgment to allegedly offset the \$54,965.31 that Plaintiff owed CRW as the prevailing party in the election contest. *Id.* at 24-25.

## DISCUSSION

Plaintiff pleads five claims for relief: First Amendment retaliation under 42 U.S.C. § 1983; wrongful initiation of civil proceedings; IIED; breach of contract; and restitution of unlawful expenditure of public moneys. The Court dismisses all of Plaintiff's claims. First, Plaintiff's § 1983 claim is dismissed as untimely and barred by the *Noerr-Pennington* doctrine. Second, the IIED claim is dismissed for failure to state a claim because Plaintiff fails to allege conduct that is extreme or outrageous. Finally, pursuant to the Court's dismissal of all claims arising under federal law, it declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

### I. First Amendment Retaliation Claim Under 42 U.S.C. § 1983

Plaintiff alleges that Defendants retaliated against [\*9] him for speaking out on matters of public importance and exercising his right to petition. Am. Compl. 26-28. Specifically, he contends that Defendants initiated "sham" litigation to obtain a "gag order" restraining Plaintiff's free speech and chilling his First

Amendment rights. The retaliatory conduct also includes CRW ordering security to escort Plaintiff from public board meeting when he attempted to raise the issue of the outstanding fraud investigation against some CRW board members. He further alleges that SDAO/SDIS retaliated against him by delaying legal representation for his initial defense against the "gag order" lawsuit and by refusing to fund his legal defense on appeal. Plaintiff also alleges that CRW retaliated against him by wrongfully intervening in the election contest that he filed. Finally, Plaintiff alleges that Defendants continued to retaliate against him by refusing to pay the supplemental judgment rendered in his favor when the "gag order" was lifted on appeal.

Nearly all of Plaintiff's allegations occurred outside of the two-year statute of limitations period for 42 U.S.C § 1983 claims. Plaintiff's allegations within the two-year period do not survive Defendants' motion to dismiss because [\*10] they fail to state a First Amendment retaliation claim or relate to Defendants' litigation conduct immunized by the *Noerr-Pennington* doctrine.

The length of statute of limitations periods is governed by state law and "courts considering § 1983 claims should borrow the general or residual statute for personal injury actions." *Silva v. Crain*, 169 F.3d 608, 610 (9th Cir. 1999) (quoting *Owens v. Okure*, 488 U.S. 235, 250, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989)). "Section 1983 claims are characterized as personal injury suits for statute of limitations purposes." *Davis v. Harvey*, 789 F.2d 1332, 1333 (9th Cir.1986). Oregon's statute of limitations for such suits is two years. ORS § 12.110(1); *Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009).

While state law governs the limitations period, federal law governs when the cause of action accrues. *Wallace v. Kato*, 549 U.S. 384, 388,

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sued CRW alleging First Amendment retaliation, IIED, and wrongful initiation [\*8] of a civil proceeding, based in part on CRW's litigation obtaining the "gag order."

127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) ("[T]he accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law."). In the Ninth Circuit, a claim accrues "when the plaintiff knows or should know of the injury that is the basis of the cause of action." Douglas, 567 F.3d at 1109. "Thus, '[a]n action ordinarily accrues on the date of the injury.'" Belanus v. Clark, 796 F.3d 1021, 1025 (9th Cir. 2015), *cert. denied*, (U.S. Oct. 3, 2016) (quoting Kimes v. Stone, 84 F.3d 1121, 1128 (9th Cir. 1996)).

Federal law also applies a continuing violation theory to § 1983 actions. Knox v. Davis, 260 F.3d 1009, 1013 (9th Cir. 2001). Under this theory, a plaintiff may seek relief for events outside of the limitations period. Id. The Ninth Circuit has repeatedly held, however, "that a mere continuing *impact* from past violations [\*11] is not actionable." Id. at 1013 (quotation and citation omitted); Abramson v. Univ. of Hawaii, 594 F.2d 202, 209 (9th Cir. 1979) ("The proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful.").

In 2012, the Supreme Court clarified the continuing violation doctrine, explaining:

First, discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Because each discrete act starts a new clock for filing charges alleging that act, the charge must be filed within the [applicable] period after the act occurred. The existence of past acts and the [plaintiff's] prior knowledge of their occurrence, however, does not bar [plaintiffs] from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves

timely filed. Nor does the statute bar [a plaintiff] from using the prior acts as background evidence to support a timely claim.

AMTRAK v. Morgan, 536 U.S. 101, 113, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002); *see also* Ervine v. Desert View Reg'l Med. Ctr. Holdings, LLC, 753 F.3d 862, 869 (9th Cir. 2014) (recognizing that while Morgan applied to Title VII, its holding applies "with equal force" to other laws including § 1983).

Plaintiff lists several allegations to support the argument that his § 1983 claim is timely. [\*12] Pl. Resp. 22-23, ECF No. 10; Am. Compl. ¶¶ 24, 25, 28, 43-45, 48, 50, 51. All of the acts which occurred outside of the two year § 1983 statute of limitations period are time barred. In other words, Plaintiff's First Amendment retaliation claim cannot be based upon acts which occurred before March 26, 2014 (two years before the date the case was filed). Plaintiff argues that the following allegations occurred within the two-year period:

- May 1, 2014: the date that the Oregon appellate court judgment to lift the "gag order" became final.
- March 31, 2014: The date that CRW filed a petition for attorney fees and costs as the prevailing party in the election contest.
- November 26, 2014: The date when CRW refused to pay Plaintiff his supplemental judgment awarding fees and costs for the "gag order" litigation.

Pl. Resp. 22-23. The Court will address these three allegations in order below.

#### **A. "Gag Order" Allegations**

The statute of limitations regarding the "gag order" accrued on the date that the order was

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issued which was outside of the two-year limitations period. Plaintiff argues that the "gag order" constituted a continuing violation of his First Amendment rights that persisted until the appellate court judgment lifting the [\*13] order became final. However, an action accrues when Plaintiff knew or should have known about his injury. Douglas, 567 F.3d at 1109. In other words, the date of accrual for the action was when the "gag order" was first issued in July 2011. While the gag order had a continuing impact on Plaintiff, he was well aware of the injury on the date the order was issued and had all of the facts necessary to state his claim. Knox, 260 F.3d at 1013. The proper focus for accrual purposes was the time the violation occurred, "not upon the time at which the consequences of the acts became most painful." Abramson, 594 F.2d at 209. Therefore, Plaintiff's § 1983 claim relating to the "gag order" is time-barred and dismissed.

Second, even if Plaintiff's claim regarding the "gag order" was timely, it would still be barred "[b]ecause any order restraining [Plaintiff's] speech was issued by a court and not Defendants." Holloway v. Clackamas River Water et al., No. 3:13-cv-01787-AC, 2016 U.S. Dist. LEXIS 133510, 2016 WL 5429659, at \*5 (D. Or. Jul. 5, 2016), F. & R. adopted, 2016 U.S. Dist. LEXIS 131978, 2016 WL 5477548 (D. Or. Sept. 25, 2016) (denying Holloway's request for leave to amend to include a claim regarding the same "gag order" at issue in this case).

### ***B. Election Contest and Other Conduct***

In addition to Plaintiff's time-barred "gag order" related claim, he argues that "Allegations 25, 38, 42, 44, and 45 all occurred within the [\*14] two-year statute of limitations, and the tort is ongoing." Pl. Resp. 23. Allegation 25 refers to Plaintiff's ejection from a CRW board

meeting in 2011 and is untimely. The remaining allegations involve Plaintiff's election contest. The only allegation that occurred within the two-year limitation period is Allegation 45, which reads in full, "March 31, 2014: In [the election contest], CRW filed a Petition for Attorney Fees and Costs and Disbursement Pursuant to ORCP 68." Am. Compl. 22.

Plaintiff alleges that filing the election contest was an act of protected speech which formed the basis of the alleged retaliation. Am. Compl. 28. However, the actual retaliatory acts connected with this allegation are unclear. Plaintiff re-alleges the facts of the election contest and claims that Defendants "implemented CRW Policy to inflict financial injury on Plaintiff and to unlawfully intervene to influence the outcome of a nomination or election." Am. Compl. 31.

Plaintiff filed the election contest on June 26, 2013. Am. Compl. 19. The basis of Plaintiff's claims against Moore and other CRW defendants arise out of Moore's expenditure of public funds to file a motion allowing CRW to intervene in the [\*15] election contest. Am. Compl. 20. The motion to intervene was filed on July 5, 2013 and granted on October, 1 2013. Both dates are outside of the two-year limitations period. Defendants' motion for attorney fees in a case in which they prevailed over Plaintiff is not a discrete violation of Plaintiff's First Amendment rights. Plaintiff knew or should have known all of the facts necessary to state his claim against Defendants for CRW's intervention in the election contest when it intervened.

### ***C. Refusal to Pay the Supplemental Judgment***

Plaintiff alleges that once he obtained a favorable judgment lifting the "gag order" and



was awarded attorney fees and costs, Defendants refused to pay the supplemental judgment and "continue[d] their unconstitutional retaliation." Am. Compl. 24. The Court has difficulty envisioning how the failure to pay a judgment to can be a form of First Amendment retaliation as against CRW. However, Plaintiff has alleged a distinct violation and injury regarding CRW's refusal to pay Plaintiff in retaliation for Plaintiff's exercise of his First Amendment right to speak on a matter of public concern and right to petition. Therefore, Plaintiff's § 1983 claim as to CRW's refusal to pay the supplemental judgment survives the motion [\*16] to dismiss on the grounds that it is untimely.

However, The Court grants Defendants' motion to dismiss Plaintiff's § 1983 claim regarding the allegation of the failure to pay the supplemental judgment on the grounds that it is immunized by the *Noerr-Pennington* doctrine. The Court applies a heightened pleading standard "[w]here the claim involves the right to petition governmental bodies" including courts. Oregon Nat. Res. Council v. Mohla, 944 F.2d 531, 533 (9th Cir. 1991). "The *Noerr—Pennington* doctrine shields individuals from, *inter alia*, liability for engaging in litigation." Microsoft Corp. v. Motorola, Inc., 795 F.3d 1024, 1047 (9th Cir. 2015); *see also* Theme Promotions, Inc. v. News Am. Mktg. FSI, 546 F.3d 991, 1006 (9th Cir. 2008) ("The essence of the *Noerr—Pennington* doctrine is that those who petition any department of the government for redress are immune from statutory liability for their petitioning conduct."). To satisfy the heightened pleading standard "a complaint must include allegations of the specific activities which bring defendant's conduct into one of the exceptions." Oregon Nat. Res. Council, 944 F.2d at 533 (quotation and citation omitted). "Conclusory allegations are not sufficient to strip a defendant's activities of *Noerr-Pennington* protection." *Id.*

Parties may not be subjected to liability for conduct that is "intimately related" or "incidental" to their petitioning activities. Sosa v. DIRECTV, Inc., 437 F.3d 923, 934-35 (9th Cir. 2006)

There is a "sham litigation" exception to the [\*17] *Noerr-Pennington* doctrine which requires showing that Defendants' actions were "not genuinely aimed at procuring favorable government action." Motorola, 795 F.3d at 1047, n.17. There are three circumstances when litigation may be a sham:

[F]irst, where the lawsuit is objectively baseless and the defendant's motive in bringing it was unlawful; second, where the conduct involves a series of lawsuits brought pursuant to a policy of starting legal proceedings without regard to the merits and for an unlawful purpose; and third, if the allegedly unlawful conduct consists of making intentional misrepresentations to the court . . . depriv[ing] the litigation of its legitimacy.

Sosa, 437 F.3d at 938 (9th Cir. 2006) (citations and quotations omitted).

It is also worth noting that the Court considered the same "gag order" litigation in Holloway and concluded that the defendants' petitioning conduct was protected under the *Noerr-Pennington* doctrine. Holloway, 2016 U.S. Dist. LEXIS 133510, 2016 WL 5429659, at \*5 (D. Or. Jul. 5, 2016) (citing Motorola, 795 F.3d at 1047 n.17), F. & R. adopted, 2016 U.S. Dist. LEXIS 131978, 2016 WL 5477548 (D. Or. Sept. 25, 2016). Here, Defendants' failure to pay the supplemental judgment in the "gag order" litigation is conduct incidentally related to Defendants' petitioning activity protected under *Noerr-Pennington*. *See Sosa*, 437 F.3d at 934-36 ("[I]n the litigation context, not only petitions sent directly to the court in the course of litigation, but also [\*18] conduct incidental to the prosecution of the suit is protected by



the *Noerr-Pennington* doctrine.") (quotation and citation omitted). In *Sosa*, the Ninth Circuit took a broad view of *Noerr-Pennington* and held that where the "underlying litigation fell within the protection of the Petition Clause, such incidental conduct would also be protected." *Id.* at 935.

Here, Defendants' refusal to pay the judgment is sufficiently connected with the petitioning conduct to trigger *Noerr-Pennington* protection. *Id.* (citing *Columbia Pictures Indus., Inc. v. Prof'l Real Estate Inv'rs, Inc.*, 944 F.2d 1525, 1528 (9th Cir. 1991), *aff'd*, 508 U.S. 49, 113 S. Ct. 1920, 123 L. Ed. 2d 611 (1993)). Defendants' have allegedly refused to pay Plaintiff's supplemental judgment of \$11,130 from the "gag order" litigation to offset the \$54,000 award Plaintiff owed CRW for the election contest. *Id.* Defendants' refusal to pay the supplemental judgment is incidental to their petitioning conduct and therefore immunized under the *Noerr-Pennington* doctrine.

Plaintiff has failed to allege any facts that Defendants' litigation was a sham. The litigation was not objectively baseless because Defendants' prevailed in their initial litigation and obtained the "gag order" which was later overturned on appeal. "Stating a claim under the 'sham' exception to the *Noerr-Pennington* doctrine requires more than a showing [\*19] of a history of failed appeals." 2016 U.S. Dist. LEXIS 133510, [WL] at \*5 (citing *Oregon Nat. Res. Council*, 944 F.2d at 533-34). The fact that the appellate court disagreed with the trial court's decision to issue the "gag order" does not, by itself, turn the litigation into a sham. The second type of sham litigation does not apply because Plaintiff has not alleged that Defendants brought a series of litigation against him for an unlawful purpose. Plaintiff also fails to allege any facts which demonstrate that Defendants made intentional

misrepresentations to any court in the course of their litigation. Therefore, the "sham" litigation exception to the *Noerr-Pennington* doctrine is inapplicable to Defendants' protected conduct regarding the "gag order" litigation.

## II. Intentional Infliction of Emotional Distress Claim

Plaintiff alleges that the lawsuit to obtain the "gag order," the delayed legal defense representation in that case, and the subsequent refusal to provide legal representation on appeal intentionally inflicted emotional distress. Am. Compl. 37-38.

IIED claims in Oregon have a two-year statute of limitations period. *Stupek v. Wyle Laboratories Corp.*, 327 Or. 433, 436, 963 P.2d 678, 679-80 (1998); ORS 12.110(1). For the reasons discussed above, all of Defendants' actions which occurred before March 26, 2014, including the "gag order" litigation, are [\*20] time-barred.

As to the other allegations, they fail to state a claim. To make out a valid IIED claim, Plaintiff must demonstrate: "(1) the defendant intended to inflict severe emotional distress on the plaintiff, (2) the defendant's acts were the cause of the plaintiff's severe emotional distress, and (3) the defendant's acts constituted an extraordinary transgression of the bounds of socially tolerable conduct." *Babick v. Oregon Arena Corp.*, 333 Or. 401, 410-11, 40 P.3d 1059, 1063 (2002) (quoting *McGanty v. Staudenraus*, 321 Or. 532, 543, 901 P.2d 841, 849 (1995)). The conduct alleged must be "extreme and outrageous." *McGanty*, 321 Or. at 545, 901 P.2d 841 at 850.

Plaintiff has not alleged facts which constitute outrageous conduct that transgress the bounds of what is socially tolerable. Allegedly

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frivolous lawsuits and the delay or failure to provide Plaintiff with legal representation is not the type of "flagrantly unacceptable" behavior adequate to support a plausible IIED claim. See Holloway, 2014 U.S. Dist. LEXIS 172346, 2014 WL 6998069, at \*6-7 (D. Or. Sept. 9, 2014), F. & R. adopted, 2014 U.S. Dist. LEXIS 170616, 2014 WL 6998084, at \*8 (D. Or. Dec. 9, 2014). Plaintiff's IIED claims are therefore dismissed.

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### **III. Remaining State Law Claims**

Plaintiff remaining state law claims include: wrongful initiation of civil proceeding, breach of contract, and restitution of unlawful expenditure of public moneys. At this point, the Court has dismissed all of Plaintiff's federal claims over which it had original jurisdiction. The Court [\*21] now declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims and dismisses those claims without prejudice. 28 U.S.C. § 1367(c)(3).

### **IV. Motions to Strike**

The Court has dismissed all of Plaintiff's claims on other grounds and finds that Defendants' motion to strike and special motion to strike are moot and are therefore dismissed.

### **CONCLUSION**

Defendants' motion to dismiss [6] is granted. Defendants' motion to strike and special motion to strike are denied as moot.

Dated this 31 day of October, 2016.

/s/ Marco A. Hernández

MARCO A. HERNÁNDEZ

United States District Judge

## Moskovic v. City of New Buffalo

United States District Court for the Western District of Michigan, Southern Division

October 31, 2022, Decided; October 31, 2022, Filed

Case No. 1:21-cv-144; Case No. 1:21-cv-674

### Reporter

638 F. Supp. 3d 770 \*; 2022 U.S. Dist. LEXIS 197730 \*\*

JOANNE MOSKOVIC, et al., Plaintiffs, v. CITY OF NEW BUFFALO, Defendant. 218 S BRONSON LLC, et al., Plaintiffs, v. CITY OF NEW BUFFALO, Defendant.

**Subsequent History:** Reconsideration denied by Moskovic v. City of New Buffalo, 2023 U.S. Dist. LEXIS 7052 (W.D. Mich., Jan. 13, 2023)

**Prior History:** Moskovic v. City of New Buffalo, 2021 U.S. Dist. LEXIS 72576, 2021 WL 1422680 (W.D. Mich., Apr. 15, 2021)

**Counsel:** **[\*\*1]** For Joanne Moskovic, Alexander Moskovic, Gene Khalimsky, Carol Skoczylas, Barbra Healy, Chris Yonker, Garrett Bruinius, Gerald Gajos, Dan Skoczylas, Jodi Grant, Diane Gajos, Jolie Yonker, Edan Gelt, Jeff Segebarth, William Carroll, John Grant, John O'Loughlin, plaintiffs (1:21-cv-00144-HYJ-RSK): Ronald E. Reynolds, Berry Reynolds & Rogowski PC, Farmington Hills, MI; Stephen Russell Gee, Fisher & Phillips LLP, Bingham Farms, MI; Daniel J. Hatch, Hilger Hammond, Grand Rapids, MI.

For Parpat LLC, plaintiff (1:21-cv-00144-HYJ-RSK): Ronald E. Reynolds, LEAD ATTORNEY, Fisher & Phillips (MI), Bingham Farms, MI; Daniel J. Hatch, Hilger Hammond, Grand Rapids, MI.

For City of New Buffalo, a municipal corporation, defendant (1:21-cv-00144-HYJ-RSK): Matthew Jason Zalewski, Melanie Hesano, Rosati Schultz Joppich & Amtsbuechler, PC (Farmington Hills),

Farmington Hills, MI.

For John Taylor, Cynthia Marquard, plaintiffs (1:21-cv-00674-HYJ-RSK): Ronald E. Reynolds, LEAD ATTORNEY, Fisher & Phillips (MI), Bingham Farms, MI; Daniel J. Hatch, Hilger Hammond, Grand Rapids, MI.

For 218 S Bronson LLC, Adam Tymowski, Melissa Piorkowski, Michael Davis, Nicholas Holevas, Jarvis Hall Properties, LLC, plaintiffs (1:21-cv-00674-HYJ-RSK): **[\*\*2]** Daniel J. Hatch, LEAD ATTORNEY, Hilger Hammond, Grand Rapids, MI; Ronald E. Reynolds, LEAD ATTORNEY, Fisher & Phillips (MI), Bingham Farms, MI.

For City of New Buffalo, a municipal corporation, defendant (1:21-cv-00674-HYJ-RSK): Melanie Hesano, Matthew Jason Zalewski, Rosati Schultz Joppich & Amtsbuechler, PC (Farmington Hills), Farmington Hills, MI.

**Judges:** Hon. HALA Y. JARBOU, CHIEF UNITED STATES DISTRICT JUDGE.

**Opinion by:** HALA Y. JARBOU

### Opinion

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**[\*778]** Plaintiffs in this consolidated action own homes in the City of New Buffalo, Michigan, that they have used, or intend to use, as short-term rental properties. In 2019, the City passed an ordinance requiring homeowners in the City to obtain a permit before using their homes as short-term rentals.

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In 2020, the City adopted a resolution that suspended the issuance of such permits. Plaintiffs brought this action against the City to challenge the validity of that resolution under state and federal law. Before the Court is Plaintiffs' motion for partial summary judgment (ECF No. 116)<sup>1</sup> on Counts V and VII of the amended complaint. Also before the Court is the City's motion for summary judgment (ECF No. 117). For the reasons herein, the Court will grant Plaintiffs' motion in part **[\*\*3]** and grant the City's motion in part. The Court will grant summary judgment in favor of 218 S Bronson LLC on the equal protection claim. The Court will dismiss all other claims.

## I. BACKGROUND

### A. History

The City of New Buffalo is located on the Lake Michigan shoreline near the Indiana border. It is a popular destination for tourists from Michigan, Indiana, and Illinois, especially during the summertime. Plaintiffs purchased homes in the City with the intent to rent them to visitors on a short-term basis, *i.e.*, for terms of less than a month at a time.

#### 1. Ordinance 237 Requires Permits for Short-Term Rentals

In April 2019, after some members of the City Council became concerned about the impacts of short-term rentals on the character of the community, the City passed Ordinance 237, which required homeowners to apply for and obtain a permit from the City in order to use their homes as short-term rentals. (Ordinance 237, ECF No. 13-2.) To qualify for a permit,

applicants had to provide their contact information and the contact information for a local agent. Also, they had to provide information about their home, certify that they had working smoke alarms and fire extinguishers, consent to inspections **[\*\*4]** upon request, and create a brochure for guests providing their contact information. (*Id.*, PageID.311-312.) Finally, they had to submit to an annual inspection "for compliance with applicable codes and ordinances," including "zoning, construction, fire, and property maintenance codes[.]" (*Id.*, PageID.313.) Failure to "satisfactorily complete an inspection" could be grounds for withholding a permit or deeming it void. (*Id.*, PageID.312.) The ordinance also put a limit on the number of people that could occupy a dwelling. (*Id.*, PageID.315.) There was no cap on the number of permits that the City would issue.

#### 2. Moratorium

On May 18, 2020, the City Council adopted Resolution 2020-11, which imposed an eight-month moratorium ("Moratorium") on all permit applications for, and **[\*779]** registrations of, short-term rental units in the City. (Resolution 2020-11, ECF No. 61-3.) The City Council indicated that it was "concerned that further increases in short-term rentals in certain areas of the City could undermine the character and stability of neighborhoods in certain districts" by, among other things, decreasing the number of long-term residents, decreasing enrollment in schools, decreasing the availability **[\*\*5]** of long-term housing, permitting significant numbers of vacant homes during winter months, and increasing noise levels, traffic, and on-street parking during summer months. (*Id.*, PageID.2362.) The City Council also indicated that it was considering "appropriate ordinance amendments to address this concern relating

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<sup>1</sup> All citations to the record refer to the record in Case No. 1:21-cv-144 unless otherwise noted.

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to the City's existing-short term rental ordinance[.]" (*Id.*)

On May 22, 2020, the City Clerk accidentally distributed a draft copy of Resolution 2020-11 that contained exceptions that were not part of the final version. (Fidler Dep., ECF No. 117-2, PageID.3564.)

A few weeks later, on June 15, 2020, the City Council adopted Resolution 2020-16, which carved out exceptions to the Moratorium for certain property owners with "investment-backed expectations" in their property, including those who had made "substantial investments in prospective rental properties" before the Moratorium. (Resolution 2020-16, ECF No. 61-6.) It allowed the City to process applications received during the next 30 days, where: (1) the property was already registered as a short-term rental and was conveyed to new owner before June 15, 2020; (2) the applicant took title to the property between March 1, 2020 [**\*\*6**] and May 18, 2020, with the intent to use it as a short-term rental; (3) the applicant recently completed construction or renovations with intent to use the property as a short term rental and was issued a certificate of occupancy after March 1, 2020; (4) the applicant entered into a contract to purchase the property on or before May 18, 2020, with intent to use it as a short-term rental; or (5) the applicant had a valid building permit for construction or renovation of a dwelling as of May 18, 2020, with intent to render it suitable for use as a short-term rental. (*Id.*)

## **B. Review of Ordinance Amendments**

In November 2020, three new members were elected to the City Council, including the City's Mayor, John Humphrey. (11/16/2020 City Council Minutes, ECF No. 121-7.)

By December 2020, the City Council's review of proposed regulations for short-term rentals was not complete. The Interim City Manager reported that "additional research needs to be done" and that "enforcement of the ordinance needs [to be] addressed." (Manager's Rep., ECF No. 13-10.) The review had been complicated by the fact that the City Manager had fallen ill with COVID-19 before Thanksgiving and passed away in early December. [**\*\*7**] The Interim City Manager recommended extending the Moratorium for an additional eight months. The City Council did so on December 21, 2020.

On March 17, 2021, the City Council and the City's Planning Commission held a joint meeting to review a draft amendment to Ordinance 237 and a draft amendment to the City's Zoning Ordinance that addressed short-term rentals. (3/17/2021 Meeting Agenda, ECF No. 121-8.) The proposed zoning ordinance amendment would cap the number of short-term rentals in the R-1 residential district at the "existing level" of 65. (Proposed Ordinance, ECF No. 121-8, PageID.5452-5453.)

The Planning Commission held a public hearing on the proposed amendment to the zoning ordinance on April 13, 2021, after [**\*780**] which it tabled the amendment for further discussion. (4/13/2021 Planning Comm'n Minutes, ECF No. 121-9, PageID.5465.) At its next meeting a week later, the Planning Commission recommended that the City Council make a few small changes to the proposed zoning ordinance amendment. (4/20/2021 Planning Comm'n Minutes, ECF No. 121-10, PageID.5470.)

On May 17, 2021, the City Council adopted Ordinance 248, which amended Ordinance 237 by adding additional requirements for obtaining, [**\*\*8**] maintaining, and transferring a short-term rental permit. (See Ordinance 248, ECF No. 41-7.) The Moratorium continued.



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On August 31, 2021, the City Council extended the Moratorium for another two months, until November 1, 2021, in order to continue considering the "proposed zoning amendment." (Resolution 2021-21, ECF No. 117-3, PageID.3601.) That same day, the City Council proposed an alternative zoning ordinance amendment that would prohibit short-term rentals in the R-1, R-2, and R-3 zoning districts. Those are the districts where almost all of Plaintiffs' properties are located. It referred this proposed amendment to the Planning Commission. (See 8/31/2021 City Council Minutes, ECF No. 117-4, PageID.3605.) In support of extending the Moratorium, the City Manager explained

[T]he city has made considerable progress in studying various issues relating to short-term rentals; developing a modified set of regulations; implementing a strategy for not only short-term rentals, but city-wide enforcement; and the commencement of data collection. This progress was also to include the Planning Commission and City Council determining the need for improved zoning regulations.

The city's ultimate **[\*\*9]** goal has been to develop the necessary framework for terminating the moratorium in the city. In order to achieve this, the most imperative of which is the Planning Commission's work in developing zoning ordinance amendments. The city has . . . received bids for a consultant to assist with this endeavor. . . .

(8/31/2021 Mem. from City Manager to Mayor, ECF No. 121-12.) He recommended an extension of the Moratorium "to facilitate the review and updating of the city's Zoning Ordinance." (*Id.*)

On September 16, 2021, the Planning Commission held a public hearing on the two alternative proposed zoning ordinance

amendments. (9/16/2021 Planning Comm'n Minutes, ECF No. 118-35.) The Planning Commission tabled the matter until its next meeting on September 21.

On September 20, 2021, the City Council adopted a resolution directing the Planning Commission to make a recommendation on the two zoning amendments at the September 21 meeting "so that the Council can commence its deliberations on the proposed amendment in October, before the moratorium expires." (Resolution 2021-22.a, ECF No. 121-14.)

At its meeting on September 21, 2021, the Planning Commission recommended against both of the proposed amendments. **[\*\*10]** (9/21/2021 Planning Comm'n Minutes, ECF No. 118-38.) Part of the meeting was held in a closed session to discuss an "attorney-client privileged memorandum." (*Id.*, PageID.4655.)

Because the Planning Commission's recommendation was not binding, the City Council held the "first reading" on the proposed amendments on October 4, 2021. (10/4/2021 City Council Agenda, ECF No. 117-5.) Before the second reading, property owners demanded a public hearing on the amendments. The City Council held a public hearing and the second reading on November 23, 2021. (Special Council Meeting Agenda, ECF No. 117-7.)

### **[\*781] C. Ordinance 253 Prohibits New Short-Term Rentals in Certain Districts**

At the public meeting on November 23, 2021, the City Council adopted Ordinance 253, which generally prohibits the use of homes as short-term rentals in the R-1, R-2, and R-3 residential zoning districts. (See Ordinance No. 253, ECF No. 117-10, PageID.3688-3690.) Short-term rental units "that existed and

were registered" as of November 23, 2021, could continue as "nonconforming uses" if they complied with the City's regulatory requirements. (*Id.*, PageID.3690.) Ordinance 253 became effective on December 13, 2021, the day that the **[\*\*11]** Moratorium expired.

## D. Procedural History

### 1. Plaintiffs' Complaint

The plaintiffs in each case filed their respective actions while the Moratorium was in effect. The plaintiffs in Case No. 1:21-cv-144 filed their original complaint in this Court in February 2021. The plaintiffs in Case No. 1:21-cv-674 filed their original complaint in Berrien County Circuit Court in June 2021. The City subsequently removed that action to this Court, where it was eventually consolidated with Case No. 1:21-cv-144. The most recent versions of the complaints in each case are substantially the same as one another, so the Court will refer to those pleadings as the complaint.

Plaintiffs are 26 individuals and several entities owning approximately 17 homes in the City. They claim that they have been unable to obtain a permit to use their properties as short-term rentals. They submitted applications for short-term rental permits but the City did not process them due to the Moratorium. And because of Ordinance 253, they claim that they will not be able to use their homes as short-term rentals in the future.

Plaintiffs assert the following claims against the City: violation of the "doctrine of legislative equivalency" **[\*\*12]**<sup>2</sup> (Count I); violation of

Michigan's Zoning Enabling Act (MZEA), Mich. Comp. Laws § 125.3101 et seq. (Count II); violation of the Commerce Clause of the U.S. Constitution (Count III); violation of Michigan's Open Meetings Act (OMA), Mich. Comp. Laws § 15.263 (Count IV); violation of the right to substantive due process in the Michigan constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution (Count V); denial of procedural due process under the Michigan constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution (Count VI); denial of the right to equal protection in the Michigan Constitution and the Fourteenth Amendment to the U.S. Constitution (Count VII); the City took their property without just compensation, in violation of the Michigan and U.S. constitutions (Count VIII); and preemption under the Michigan Constitution (Count IX).

### 2. Court's Prior Opinions

On April 15, 2021, the Court denied Plaintiffs' request in Case No. 1:21-cv-144 to enjoin the Moratorium because the Court was not persuaded that they had shown a substantial likelihood of success or irreparable harm in the absence of an injunction. (4/15/2021 Op., ECF No. 22.)

On February 3, 2022, the Court denied Plaintiffs' motion for partial summary judgment on Counts I and II of the complaint because those counts challenged the validity of the Moratorium, which no longer existed. Plaintiffs filed their motion in July 2021. Before the Court ruled on that motion, the Moratorium **[\*\*13]** expired. The **[\*782]** Court asked the parties to provide supplemental briefing on the effect of that expiration on Plaintiffs' motion. After they did so, the Court denied Plaintiffs' motion, summarizing its reasoning as follows:

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<sup>2</sup> Plaintiffs contend that the Moratorium effectively suspended Ordinance 237. They argue that the City could not suspend an ordinance using a resolution.

[A]t this stage of the proceedings, the Court is not persuaded that it can grant any relief on Counts I and II, which challenge the validity of a moratorium that no longer exists. Neither Plaintiffs' motion for summary judgment on those claims, nor their subsequent briefing, adequately account for the fact that the Moratorium has expired. Plaintiffs cite no persuasive authority for the proposition that the Court can award meaningful relief in these circumstances. Plaintiffs might be entitled to some form of injunctive relief if they can satisfy an exception to the general rule that the Court is obligated to apply the zoning law in effect at the time of its decision. However, Plaintiffs have not squarely addressed that issue.

(2/3/2022 Op. 9, ECF No. 84.)

Plaintiffs now seek summary judgment on Counts V (substantive due process) and VII (equal protection). The City seeks summary judgment on all counts.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the [\*\*14] movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Summary judgment is not an opportunity for the Court to resolve factual disputes. *Id.* at 249. The Court "must shy away from weighing the evidence and instead view all the facts in the light most favorable to the nonmoving party and draw all justifiable

inferences in their favor." *Wyatt v. Nissan N. Am., Inc.*, 999 F.3d 400, 410 (6th Cir. 2021). "This standard of review remains the same for reviewing cross-motions for summary judgment." *Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 441 (6th Cir. 2021). "[A] case involving cross-motions for summary judgment requires 'evaluat[ing] each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration.'" *Id.* at 442 (quoting *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 425 (6th Cir. 2019)).

## III. ANALYSIS

### A. Standing Generally

The City argues that some Plaintiffs lack standing.

#### 1. Gene Khalimsky and Edan Gelt

The City initially argued that Plaintiffs Khalimsky and Gelt lacked standing in this matter because they had transferred their property to themselves [\*\*15] as trustees of The Gene M. Khalimsky and Edan J. Gelt Trust. They applied for a permit on behalf of the trust. Plaintiffs note that Khalimsky and Gelt have standing because they are agents of the Trust and the Trust assigned its rights in its claims to them. Accordingly, the City has withdrawn its standing argument as to these Plaintiffs. (See Def.'s Reply Br. 3, ECF No. 123.)

#### 2. Jodi Grant and Jeff Segbarth

The City argues that Plaintiffs Grant and Segbarth lack standing because their

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properties are located in WM and PUD districts, respectively. However, these plaintiffs have standing because they claim injury as a result of Ordinance 237 and the Moratorium, which required them to obtain a permit for using their home as [\*783] a short-term rental and then prevented them from doing so. Accordingly, they have suffered an injury in fact necessary to establish standing.

## B. Counts I & II

The City argues that the Court should grant summary judgment in their favor on *all* claims that challenge the validity of the Moratorium, which has expired. The City argues that these claims are moot. As the Court discussed in its February 3, 2022, opinion, the Court is not persuaded that it can grant damages under [\*16] Counts I and II of the amended complaint. (2/3/2022 Op. 9.) Count I asserts that the Moratorium was invalid under the doctrine of legislative equivalency and Count II asserts that the Moratorium was invalid under the MZEA. Plaintiffs cite no precedent for damages relief under the doctrine of legislative equivalency or for a violation of the MZEA. But as Plaintiffs point out, they also seek damages under their *other* claims, which arise under the U.S. and Michigan constitutions. Where damages are available, Plaintiffs' claims are not moot.

In its February 3, 2022, opinion the Court also concluded that Plaintiffs would not be entitled to declaratory or injunctive relief under Counts I and II because Michigan courts generally apply the law "which was in effect at the time of decision [by the trial court]. Thus, if a zoning ordinance has been amended [after suit was filed] . . . a court will give effect to the amendment[.]" *Grand/Sakwa of Northfield, LLC v. Northfield Twp.*, 304 Mich. App. 137, 851 N.W.2d 574, 578 (Mich. Ct. App. 2014)

(quoting *Klyman v. City of Troy*, 40 Mich. App. 273, 198 N.W.2d 822, 824 (Mich. Ct. App. 1972)). Here, the law in effect is Ordinance 253, which prohibits short-term rentals in the areas where the homes of most of the plaintiffs are located. Although Ordinances 237 and 248 allowed short-term rentals with a permit, Ordinance 253 prohibits permits for [\*17] new properties. If Michigan law requires the Court to give effect to Ordinance 253, rather than 237 or 248, then Plaintiff's challenges to the validity of the Moratorium in Counts I and II are effectively moot. Enjoining the Moratorium or declaring it invalid would serve no purpose. Plaintiffs seek to have the Court enforce Ordinance 248 without the Moratorium, but the general rule in *Grand/Sakwa* prevents the Court from doing so.

The Court's previous opinion is not the final word, however, because the rule in *Grand/Sakwa* is subject to "two narrow exceptions." *Id.* "A court will not apply an amendment to a zoning ordinance where (1) the amendment would destroy a vested property interest acquired before its enactment, or (2) the amendment was enacted in bad faith and with unjustified delay." *Id.* (quoting *Rodney Lockwood & Co. v. City of Southfield*, 93 Mich. App. 206, 286 N.W.2d 87, 89 (Mich. Ct. App. 1979)). Plaintiffs did not argue these exceptions in their previous motion for partial summary judgment, so the Court did not address them. Plaintiffs now contend that both exceptions apply.

*Exception 1: Vested Property Interest.* Plaintiffs contend that they acquired a vested property interest in using their homes as short-term rentals by using them as such, or preparing to do so, before the enactment of Ordinance [\*18] 253. The Michigan Supreme Court has described a "prior nonconforming use [as] a vested right in the use of particular property that does not conform to zoning



restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Heath Twp. v. Sall*, 442 Mich. 434, 502 N.W.2d 627, 629 (Mich. 1993). "To be protected, the nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception [\*784] does not draw such protection." *Lyon Charter Twp. v. Petty*, 317 Mich. App. 482, 896 N.W.2d 477, 481 (Mich. Ct. App. 2016).

Similarly, the MZEA expressly protects nonconforming uses that were legal before the enactment of a zoning ordinance:

If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. . . .

Mich. Comp. Laws § 125.3208(1). In other words, "alterations to zoning or other property-use ordinances may only apply prospectively and may not destroy already-vested property interests." *Twp. of Indianfields v. Carpenter*, No. 350116, 2020 Mich. App. LEXIS 4740, 2020 WL 4249168, at \*7 (Mich. Ct. App. July 23, 2020).

To obtain a vested right in a nonconforming use, a property owner must actually use their property lawfully in the nonconforming way or conduct "work of a 'substantial character' . . . by way of preparation for an actual [\*19] use of the premises" before the zoning requirements change. *Bloomfield Twp. v. Beardslee*, 349 Mich. 296, 84 N.W.2d 537, 542 (Mich. 1957). "Mere 'preliminary' operations, e.g., ordering of plans, surveying the land, removal of old buildings, are not sufficient." *Id.* (quoting *City of Lansing v. Dawley*, 247 Mich. 394, 225 N.W. 500 (Mich. 1929)). Here, Plaintiffs aver that, before the enactment of Ordinance 253, they were either lawfully using

their homes as short-term rental properties or they had performed substantial work to prepare their homes for that use. (See Pls.' Affs., ECF Nos. 118-2 to 118-24.)

The City responds that, in fact, Plaintiffs' uses were not lawful under the City's Zoning Ordinance. That ordinance provided, in relevant part:

E. Uses permitted by right. All land development specifically listed under the heading "Uses Permitted by Right" shall be allowed when determined to be in accordance with all provisions of this ordinance and all other applicable laws, regulations or ordinances having jurisdiction over the proposed use of land. *Where not specifically permitted, uses are prohibited, unless construed to be similar to a use as expressly determined in accordance with Section 1-4G.*

\* \* \*

G. Uses not specifically mentioned.

1. Any use of land or development activity not specifically mentioned in this ordinance may [\*20] be classified by the Zoning Administrator as the use most similar in character to the proposed use.

2. If the Zoning Administrator needs further interpretation of the proposed use, the Official may refer the proposed use to the Board of Zoning Appeals for classification.

3. If the Board of Zoning Appeals finds that the use is not similar in character to uses listed in the Ordinance they shall so find. The applicant may then make application to the Planning Commission for consideration of an amendment to the Zoning Ordinance to include the proposed use in one or more of the zoning districts of this ordinance, either as a Use Permitted by Right or a Use Permitted by Special Land Use.

(Zoning Ordinance § 1-4, ECF No. 121-2



(emphasis added).)

In other words, the Zoning Ordinance prohibited uses that were not expressly permitted. Plaintiffs do not contend that the Zoning Ordinance expressly permitted the use of residential property for short-term rentals, and there is no evidence that the Zoning Administrator or the Board of Zoning Appeals decided to classify that use as a permitted use or as similar to one. **[\*785]** Accordingly, the Zoning Ordinance indicates that Plaintiffs did not acquire a vested **[\*\*21]** property interest in using their properties as short-term rentals because that use was never "lawful."

The City acknowledges that there was some "historical ambiguity" on this point. (Def.'s Br. in Resp. in Pls.' Mot. 4, ECF No. 121.) At a meeting with the City Council in October 2020, the City Attorney indicated that the City "has interpreted the zoning ordinance to allow [short-term rentals as] a part of the various permitted 'dwelling' uses," meaning that such rentals "are allowed by right in residential zoning districts[.]" See Video of City Council-Planning Commission Special Joint Meeting: October 12, 2020, available at <https://cityofnewbuffalo.org/meetings/city-council-planning-commission-special-joint-meeting-october-12-2020/>. He made similar statements in his deposition. (Curcio Dep. 51, 148, ECF No. 118-25.) But as the City notes, those statements are legal opinions. They do not bind the City or the Court in this litigation. The City Attorney acts as an advisor to the City Council; his statements are not the law. (See City Charter § 4.5(b), ECF No. 117-8.) Plaintiffs offer no interpretation of the Zoning Ordinance that would support their position.

Plaintiffs argue that the **[\*\*22]** City's decision to pass Ordinance 237, which expressly prohibited short-term rentals without a valid permit, establishes that such uses were, in fact, permitted by the Zoning Ordinance.

Generally speaking, "[p]ermits are not issued by local authorities when the contemplated use for which the permit is issued conflicts with a local zoning ordinance." *Dingeman Advert. v. Algoma Twp.*, 393 Mich. 89, 223 N.W.2d 689, 691 (Mich. 1974). But that is not always the case. See, e.g., *Pittsfield Twp. v. Malcolm*, 375 Mich. 135, 134 N.W.2d 166, 172 (Mich. 1965) (city granted building permit despite violation of zoning ordinance). A municipality could decide to regulate and monitor certain uses, as the City did here, rather than enforce a zoning ordinance that would prohibit them. And at any rate, this Court must interpret the Zoning Ordinance as it is written. See *Brandon Charter Twp. v. Tippet*, 241 Mich. App. 417, 616 N.W.2d 243, 245 (Mich. Ct. App. 2000) (noting that ordinances are interpreted in the same manner as statutes). Plaintiffs have provided no plausible argument for construing the text of the City's Zoning Ordinance to permit short-term rentals.

This might have been a different case if the City had given permits to Plaintiffs, who then relied on those permits to use their homes for short-term rentals. In that situation, Plaintiffs could potentially claim a protected interest in the permits. See *Dingeman Advert.*, 223 N.W.2d at 691 ("[T]he issuance of a permit . . . **[\*\*23]** . . . the possession thereof, and substantial reliance thereon, will give" "vested rights to a nonconforming use to the holder thereof[.]"). But that is not what happened here. Plaintiffs never received permits from the City to use their homes as short-term rentals. Accordingly, Plaintiffs do not have a protected property interest in the nonconforming use of their homes as short-term rentals because that use was not permitted by the City's Zoning Ordinance.

In the alternative, the City argues that Plaintiffs cannot claim a protected property interest because they were not using their homes

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"lawfully" under Ordinance 237, which required a permit for short-term rentals. That argument is not persuasive. The Michigan Supreme Court's decision in *Drysdale v. Beachnau*, 359 Mich. 152, 101 N.W.2d 346 (Mich. 1960) undermines the City's position. There, the property owner operated a garbage dump in violation of county health regulations. *Id.* at 347. The township later enacted a zoning ordinance that rendered the property's use as a dump a nonconforming use. Three years [\*786] later, the county health department contacted the property owner, who promptly complied with the health regulations. The appellants argued that the owner's violation of the health regulations meant that [\*24] the nonconforming use was not "lawful." The Michigan Supreme Court disagreed, stating that "violation of a . . . regulatory ordinance [does not] necessarily destroy[] the lawfulness of the basic use where compliance with the regulation can be had on demand and where such compliance actually follows." *Id.* (emphasis added).

Years later, the Michigan Court of Appeals cited *Drysdale* and suggested in dicta that a landowner's failure to obtain an operating license before the passage of a zoning ordinance did not destroy his right to the nonconforming use in his property. See *Warholak v. Northfield Twp. Supervisor*, 57 Mich. App. 360, 225 N.W.2d 767, 770 (Mich. Ct. App. 1975) ("If a failure to make a timely application for a license under the original resolution was the plaintiff's only problem in establishing a nonconforming use prior to adoption of the 1972 resolution and zoning amendment, then he would be entitled to sympathetic treatment by a court of equity.").

Consistent with *Drysdale* and *Warholak*, Plaintiffs interpret the "lawful use" requirement in Mich. Comp. Laws § 125.3208(1) to refer to compliance with *zoning* ordinances, rather

than compliance with *regulatory* ordinances. See 8A McQuillin Mun. Corp. § 25:259 (3d ed.) ("Where illegality results from a statutory provision not related to land use or zoning, one view is that the use does [\*25] not thereby lose its status as a valid nonconforming use.") (citing cases, but acknowledging that some courts take a different view); accord 4 Rathkopf's The Law of Zoning and Planning § 72:14 (4th ed.). Indeed, the MZEA refers to the lawful "use" of a dwelling, building, structure, or land. Michigan courts have associated "use" of a building with zoning ordinances. According to the Michigan Court of Appeals, zoning ordinances "regulate[] the use of land and buildings according to districts, areas, or locations," whereas regulatory ordinances control how "activity must be conducted pursuant to certain regulations, [such as] obtain[ing] a permit[.]" *Nat. Aggregates Corp. v. Brighton Twp.*, 213 Mich. App. 287, 539 N.W.2d 761, 768 (Mich. Ct. App. 1995) (emphases added).

Plaintiffs' argument is also consistent with the MZEA more generally, which governs zoning matters. Thus, the Court concludes that a Michigan court would interpret "lawful" in the MZEA to refer to compliance with existing zoning restrictions. *Cf. Morgan v. Jackson Cnty.*, 290 Ore. App. 111, 414 P.3d 917, 921-22 (Or. App. 2018) (distinguishing compliance with "business or occupational licensing" from compliance with "zoning or land use regulation" and holding that failure to obtain a business license did not render an auto yard's nonconforming use unlawful under Oregon's zoning statute). It does not [\*26] refer to compliance with regulatory ordinances.

Ordinance 237 was a regulatory ordinance, not a zoning ordinance. It was adopted as part of Chapter 11 of the City's Code of Ordinances; it did not amend the City's Zoning Ordinance. Also, it did not prohibit short-term rentals

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altogether. Instead, it regulated the *manner* in which such rentals were operated by imposing "safeguards" to "ensure that the operation of short-term rentals is done in a safe and controllable manner for the well-being of all in the community." (Ordinance 237, PageID.309.) Accordingly, that ordinance did not render Plaintiffs' use of their property unlawful within the meaning of the MZEA.

In summary, Plaintiffs' failure or inability to obtain a short-term rental permit did not prevent them from obtaining a vested property interest in the nonconforming use of their properties as short-term rentals. [\*787] Instead, they did not obtain a vested property interest because their nonconforming use did not comply with the Zoning Ordinance in effect before Ordinance 253. Thus, the first exception in *Grand/Sakwa* does not apply because Plaintiffs have not shown that they acquired a vested property interest that was destroyed by Ordinance 253. [\*\*27]

*Exception 2: Bad Faith & Unjustified Delay.* Plaintiffs also argue that they satisfy the bad faith exception to application of the current zoning ordinance. "[T]he test to determine bad faith is whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit." *Landon Holdings, Inc. v. Grattan Twp.*, 257 Mich. App. 154, 667 N.W.2d 93, 98 (Mich. Ct. App. 2003) (quoting *Rodney Lockwood*, 286 N.W.2d at 89). The Court can apply a new ordinance even if "it serve[s] to strengthen [the municipality's] litigating position." *Grand/Sakwa*, 851 N.W.2d at 579. "The factual determination that must control is whether the *predominant* motivation for the ordinance change was improvement of the municipality's litigation position." *Id.*

The Michigan Court of Appeals has identified some factors a court can consider, including:

(a) whether the plaintiff had an unquestionable right to issuance of a

permit before the amendment, (b) whether the municipality had not forbidden the type of construction the plaintiff proposed before the amendment, (c) whether the ordinance was amended for the purpose of manufacturing a defense to the plaintiff's suit, and (d) whether the city waited until the last possible minute to assert the defense.

*Great Lakes Soc'y v. Georgetown Charter Twp.*, 281 Mich. App. 396, 761 N.W.2d 371, 386 (Mich. Ct. App. 2008).

In *Rodney Lockwood*, the Michigan Court of Appeals found that the bad faith exception did not apply in the following circumstances: [\*\*28]

There is evidence to indicate that the amendment was intended to clarify an ambiguous ordinance. There is also evidence that it had always been the intent of the city council to prohibit persons from living on three levels within the zoning classification. The amendment did not simply rezone plaintiffs' property, but applied equally to all apartment structures throughout the city.

*Rodney Lockwood*, 286 N.W.2d at 89; see *Great Lakes Soc'y*, 761 N.W.2d at 386-87 (considering the same factors).

Similar circumstances are present here. When the City Council first adopted the Moratorium in May 2020, it stated that it was concerned by the effects of "further increases in short-term rentals in several areas of the City[.]" (Resolution 2020-11, PageID.2362.) It also stated that it was "considering appropriate ordinance amendments to address this concern relating to the City's existing short-term rental ordinance[.]" (*Id.*) It hoped to "adopt new regulations" within the next six months. (*Id.*) These statements indicate that the City was considering regulatory amendments (i.e.,

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amendments to Ordinance 237) specifically, but that its *overall concern* was the increasing *number* of properties used as short-term rentals. Indeed, at the meeting where the City Council adopted the **[\*\*29]** Moratorium, the City Attorney advised that the "moratorium would put a freeze in play until the City makes a permanent decision in regards to rentals, such as, the *number* of rentals the City would allow." (5/18/2020 City Council Minutes, ECF No. 13-5, PageID.325.)

On February 11, 2021, the day before Plaintiffs filed the first of their two lawsuits, the Interim City Manager reported to the City Council that the "City Staff and City Attorney are working on revisions to **[\*788]** the proposed [short-term rental] regulatory ordinance . . . . The Planning commission will simultaneously begin discussion of a *possible zoning amendment to restrict new [short-term rentals]* at a soon to be scheduled special meeting[.]" (2/11/2021 Manager's Rep., ECF No. 13-14, PageID.352 (emphasis added).)

The plaintiffs in Case No. 1:21-cv-144 filed their initial complaint on February 12, 2021.<sup>3</sup> (Compl., ECF No. 1.) A few weeks later, the City Council held a special meeting with the City's Planning Commission to review a draft amendment to Ordinance 237 *and* a proposed amendment to the Zoning Ordinance that restricted the number of short-term rentals in part of the City. (See 3/17/2021 Special Meeting Agenda, ECF No. 121-8.) **[\*\*30]** The Interim City Manager explained that the amended zoning ordinance would "[c]ap[] the total number of short-term rental units in the R-1 zoning district at existing levels." (Workshop Staff Rep., ECF No. 121-8, PageID.5451.) The proposed amendment to the zoning ordinance

cited the same concerns with short-term rentals that were identified in the resolution imposing the Moratorium. (See Draft Zoning Ordinance Amendment, ECF No. 121-8, PageID.5452.) In other words, before Plaintiffs ever filed their complaints, the City expressed concerns about the number of short-term rentals and began considering legal changes that would address those concerns, *including* a zoning amendment that would limit the number of properties used as short-term rentals. Ordinance 253 became that amendment. This timing indicates that Plaintiffs' lawsuits were not the predominant motivation for Ordinance 253.

Further, this case is similar to *Rodney Lockwood* in that Ordinance 253 did not target Plaintiffs' properties specifically. It applies to everyone who owns homes in the R-1, R-2, and R3 districts. And it does not apply to the few plaintiffs who own homes outside those districts.

Finally, as in **[\*\*31]** *Rodney Lockwood*, there is evidence that the City amended its Zoning Ordinance to address a potential ambiguity regarding short-term rentals. As the City Attorney explained at the City's planning meeting in October 2020, the City had interpreted the Zoning Ordinance to allow short-term rentals because the ordinance did not specifically mention short-term rentals, or any type of rental occupancy. And as discussed below, the City's Mayor, John Humphrey, referred to this issue at a City Council meeting in September 2021. Ordinance 253 clarifies any possible ambiguity by addressing both short-term and long-term rentals.

As evidence in their favor, Plaintiffs point to statements by Humphrey at the City Council meeting on September 20, 2021. At that meeting, Council Member O'Donnell expressed concerns about moving forward on

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<sup>3</sup>The plaintiffs in Case No. 1:21-cv-674 filed their initial complaint in state court on October 5, 2021. (*Nofziger v. City of New Buffalo*, No. 1:21-cv-674 (W.D. Mich.), ECF No. 1-1.)



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the proposed zoning restrictions for short-term rentals because he wanted more data; he wanted to know "what areas [of the City] are the worst." See 9/20/2021 Council Meeting Video 1:13:49, <https://cityofnewbuffalo.org/meetings/citycouncil-regular-meeting-september-20-2021/>. He argued that "there's no rhyme or reason" why the City was proposing to restrict short-term rentals in all **[\*\*32]** three residential districts or even one.<sup>4</sup> *Id.* at 1:16:24. Humphrey responded, **[\*789]** "There definitely is. . . . This was brought to us by our attorneys based on what is going on with our lawsuit." *Id.* Humphrey asserted that rentals were not defined in the City's "charter," so the existing ones were "technically" illegal in the residential zones. *Id.* at 1:16:44. In order to regulate rentals going forward, Humphrey argued that the City needed to be consistent in how it treated them in all three residential zoning districts. *Id.* at 1:17:28. After passing the amendment to the Zoning Ordinance, the City could "make all the changes that we want"; in other words, the City could decide at a future date to limit the number of short-term rentals to a different number based on "data" regarding "how many we need." *Id.* at 1:18:01-1:18:56. Humphrey also bemoaned the lack of enforcement action in the past against "illegal rentals." *Id.* at 1:19:17. In that context, Humphrey stated that the City had been "asking [its] attorneys based on the situation to make this go through in order to meet the deadlines[.]" *Id.* at 1:20:06.

Later in the meeting, there was a discussion about imposing a tax on short-term rentals **[\*\*33]** to compensate for their local effects and the costs of enforcement. *Id.* at

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<sup>4</sup> Recall that the City Council was discussing a resolution to direct the Planning Commission to consider two proposed amendments to the Zoning Ordinance. One draft proposed limits on short-term rentals in only the R-1 district, whereas the other draft proposed limits in the R-1, R-2, and R-3 districts.

1:23:03-1:24:11. Humphrey asserted that a tax was not possible and that it would not be fair to tax everyone in the City, including those who do not own rental properties. *Id.* at 1:24:44. The "fair" solution, Humphrey argued, was to "separate these uses through the zoning [ordinance]." *Id.* He stated that he understood the "position" against zoning, but "[the zoning amendments are] recommended to us by our attorneys who feel that, given the lawsuits against the City, following their recommendations is best." *Id.* at 1:25:43.

At another point, O'Donnell expressed concern about restricting short-term rentals in all three residential zones. He wanted more data to evaluate "density in all these areas"; he thought the City was "arbitrarily just making decisions" and that Humphrey was "just trying to push this through." *Id.* at 1:37:13-1:37:31. He suggested that the City Council "wait a couple months." *Id.* at 1:40:35. After some discussion, Humphrey responded that the Council had been "working on" the issue for three years; he mentioned "reports" and "maps" that had been created to examine the "saturation" of short-term **[\*\*34]** rentals. *Id.* at 1:42:55-1:43:32. O'Donnell derided Humphrey's position as "just rushing this through because of the lawsuit." *Id.* at 1:43:40. Humphrey responded, "I wouldn't say we are rushing it; we are doing it based on the recommendation of our attorneys . . . and you should have a conversation with Matt Zelewski<sup>5</sup> about that." *Id.* at 1:43:50.

Plaintiffs characterize Humphrey's statements as a disclosure that the City was adopting Ordinance 253 in order to improve its position in this lawsuit. To the contrary, all his statements were directed at O'Donnell's concern about imposing restrictions on short-

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<sup>5</sup> Zelewski is an attorney representing the City in these legal proceedings.



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term rentals in one or more residential districts before considering more data. O'Donnell wanted to delay action by the City in order to obtain more information, but Humphrey argued that the City had been considering the issue for an extended period of time and that it had already gathered sufficient data. Humphrey argued that a zoning amendment was the best way forward, legally and equitably. His references to the lawsuit and to the attorneys' advice were made in support of that argument, which had little to do with gaining a legal advantage in Plaintiffs' lawsuits. Further, his reference **[\*\*35]** to "deadlines" was an apparent reference to the deadline for expiration of the Moratorium. Accordingly, Humphrey's statements **[\*790]** provide little support for Plaintiffs' argument.

Plaintiffs also point to testimony by Donald Stoneburner, who was a member of the Planning Commission. He testified that he was told at the Planning Commission's September 21, 2020, meeting that "the City Council needed to pass the short-term rental zoning ordinance amendment because of legal challenges to the moratorium." (Stoneburner Dep. 45, ECF No. 121-15.) But he does not recall who told him this. (*Id.* at 46.) He did not speak with anyone on the City Council about the short-term rental amendments, other than Mayor Humphrey. (*Id.* at 48.) And that conversation with Humphrey occurred "[w]ay before" the September meeting. (*Id.*) In that conversation, Humphrey told Stoneburner that short-term rentals "needed to be addressed immediately because there [were] too many short-term rentals affecting too many residents." (*Id.* at 49.)

In Stoneburner's view, *part* of the reason why the City Council wanted to pass a short-term rental ordinance amendment was "the legal challenges to the moratorium[.]" (*Id.* at 57.) But he also **[\*\*36]** thought that the City Council

was pushing forward because it "wanted the short-term rental ordinance enforced." (*Id.*) He could not say whether the lawsuits were the "predominant" reason. (*Id.*) Indeed, he was not a member of the City Council, so he could not give an opinion on the motivation of its members. (*See id.* at 47.)

As Stoneburner himself acknowledged, his statements are speculation about the motives of the City Council. And none of them suggest that the City Council's predominant motivation was to obtain an advantage in Plaintiffs' lawsuits. Indeed, Plaintiffs' lawsuits have focused on the Moratorium, as Stoneburner recognized. If anything, Stoneburner's comments suggest that the lawsuits were spurring the City to act more quickly so that it could end the Moratorium, which is not a bad faith basis for passing a zoning ordinance that it had been considering for some time.

Plaintiffs also contend that the text of Ordinance 253 supports their argument because it "reclassifie[s] short-term rentals from a permitted use to a prohibited use[.]" (Pls.' Br. in Supp. of Mot. for Summ. J. 21, ECF No. 118.) Plaintiffs do not identify the textual support for this assertion, and the Court **[\*\*37]** cannot find any. Ordinance 253 says that short-term rental units that "existed and were registered" before its enactment "may be continued as nonconforming uses"; it does not say that such uses were previously permitted by the prior Zoning Ordinance, so it does not "reclassify" them in that respect. (*See* Ordinance 253, PageID.3690.) Accordingly, this argument is not supported.

Finally, Plaintiffs argue that the November 23, 2021, date in Ordinance 253 by which a property owner had to obtain a permit in order to qualify their short-term rental as a nonconforming use "serves no purpose other than prohibiting Plaintiffs from using their properties as short-term rentals." (Pls.' Reply

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Br. in Supp. of Mot. for Summ. J. 6, ECF No. 122.) But that is not the case. It is not directed at Plaintiffs in particular; it applies to all homeowners. It is consistent with the City's actions before Plaintiffs filed their lawsuit and with its concerns about the increase in short-term rentals. And it corresponds to the date that the City Council adopted Ordinance 253.

In short, Plaintiffs have not shown bad faith. And to the extent "unjustified delay" is a necessary component of the bad faith exception, [\*\*38] Plaintiffs have not expressly addressed that component. Therefore, Plaintiffs have not shown that they meet the standard in Michigan law for enforcing a previous version of an ordinance that was [\*\*791] amended while a lawsuit was pending. That being the case, Plaintiffs' challenges to Ordinance 237 and the Moratorium under state law in Counts I and II are moot because no relief is available to them. Plaintiffs who own properties in the R-1, R-2, or R-3 residential districts are subject to Ordinance 253, and the Court must apply that ordinance. Plaintiffs who own properties outside those districts are not subject to Ordinance 253, so they do not require injunctive relief.

### C. Count III (Commerce Clause)

The City seeks summary judgment on Plaintiffs' claim that the Moratorium violated the Commerce Clause of the U.S. Constitution. As the Court explained in its April 15, 2021, Opinion,

"Courts generally reserve dormant Commerce Clause review for laws that protect in-state economic interests at the expense of out-of-state competitors." *Garber v. Menendez*, 888 F.3d 839, 843 (6th Cir. 2018). State laws that explicitly discriminate against interstate commerce "are almost always invalid," as are laws

"that appear neutral but have an impermissibly protectionist purpose or effect." *Id.* In this case, however, there is no evidence [\*\*39] of discrimination or protectionist purpose or effect. [Ordinance 237] and the [M]oratorium treat residents and non-residents of the state the same. In addition, they treat interstate and intrastate commerce the same. Residents of Michigan who wish to rent a home in New Buffalo on a short-term basis (as renters or rentees) are in the same position as non-residents.

Where a law "has only an incidental effect on interstate commerce, laxer review applies. Such laws will be upheld unless they impose burdens on interstate commerce that clearly exceed their local benefits." *Id.* (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 144-46, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970)). In this case, however, there is no indication that the ordinance or moratorium imposes any undue burden whatsoever on interstate commerce. To the extent that the ordinance and moratorium prevent homeowners or renters from using homes in New Buffalo for short-term rentals, the burden is the same regardless of whether the homeowner or renter are from this state or not. Plaintiffs fail to cite any relevant authority in which a court struck down a law or regulation under the Commerce Clause because the regulation inhibited commercial transactions that sometimes involve out-of-state participants. Indeed, such a rule would put [\*\*40] many local laws to the test simply because they regulate businesses involved in interstate transactions.

(4/15/2021 Op. 6.)

Plaintiffs now argue that the Moratorium imposed an excessive burden on interstate

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commerce that outweighed any local benefits. They argue that it prevented homeowners from earning lost rental income. Some of these homeowners reside outside Michigan, so rentals involving those homeowners might involve interstate transactions. Plaintiffs also argue that the Moratorium prevented them, and many other homeowners on the short-term rental "waitlist" (see Short Term Rental Contact List, ECF No. 118-16 (identifying permit applicants)), from providing lodging for travelers, many of whom travel to Michigan from other states.

The Sixth Circuit has adopted "a two-step analysis to evaluate challenges to the dormant Commerce Clause." *Am. Beverage Ass'n v. Snyder*, 735 F.3d 362, 369 (6th Cir. 2013). Under the first step, the Court looks at whether the state regulation "directly regulates or discriminates against interstate commerce, or [whether] its effect is to favor in-state economic interests [\*792] over out-of-state interests." *Id.* at 369-70 (quoting *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644 (6th Cir. 2010)). "A [state regulation] can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, [\*41] or (c) in practical effect." *Id.* at 370 (quoting *Int'l Dairy Foods*, 622 F.3d at 648). "[T]he critical consideration is the overall effect of the statute on both local and interstate activity." *Id.* (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579, 106 S. Ct. 2080, 90 L. Ed. 2d 552 (1986)). Plaintiffs bear the initial burden of proof to show that the state regulation is discriminatory. *Id.*

If Plaintiffs satisfy their burden, then "a discriminatory law is virtually *per se* invalid and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* (quoting *Dep't of Revenue of Ky. v. Davis*, 553

U.S. 328, 338, 128 S. Ct. 1801, 170 L. Ed. 2d 685 (2008)). But if the state regulation is "neither discriminatory nor extraterritorial, then the Court must apply the balancing test established in *Pike*." *Id.*

Here, Plaintiffs do not contend that the Moratorium regulated or discriminated against interstate commerce. Instead, they argue that it fails the balancing test in *Pike* because the burdens that it imposed on interstate commerce clearly outweighed any local benefits. However, Plaintiffs have not offered evidence that would allow a court to make that analysis. They provide no real evidence of how much the Moratorium burdened interstate commerce, let alone an undue burden in relation to local benefits. The burdens identified by Plaintiffs [\*42] (i.e., a loss of rental income for out-of-state homeowners and a reduction in the amount of available lodging for travelers) may have had no meaningful impact on interstate commerce, particularly if other options for lodging were available. It is also possible that any burdens affected *intrastate* commerce more than *interstate* commerce. At any rate, conjecture "is no replacement for the kind of proof of real burdens, as opposed to 'hypothetical' burdens, needed to support such a challenge." *Garber*, 888 F.3d at 845. "[C]ourts have held that the party challenging the law bears the responsibility of proving that the burdens placed on interstate commerce outweigh the law's benefits, and have turned away challengers who failed to meet that responsibility[.]" *Id.* (citations omitted). Plaintiffs have not fulfilled their responsibility here. Accordingly, the Court will dismiss their claim in Count III.

#### D. Count IV (Open Meetings Act)

The City moves for summary judgment on

Count IV, which asserts that the Moratorium violated the requirements of the OMA. Plaintiffs seek to invalidate the Moratorium (and certain resolutions modifying or extending it) under Mich. Comp. Laws § 15.270(2). Specifically, Plaintiffs target Resolutions 2020-11 and 2020-16, **[\*\*43]** as well as the City Council's vote to extend the Moratorium on December 21, 2021.

### 1. Available Relief

Damages are not available under this claim because Plaintiffs have not sued a public official. See Mich. Comp. Laws § 15.273(1) (providing for a damages remedy in a suit against a public official for an intentional violation of the OMA).

And as discussed above, a declaration that the Moratorium was invalid under state law would serve no purpose because the Moratorium has expired and Michigan precedent requires this Court to apply the state law in effect at the time of its decision. Accordingly, this claim is effectively moot because no relief is available to Plaintiffs.

**[\*793]** Plaintiffs argue that there is an exception to mootness for cases that are "capable of repetition, yet evading review." *S. Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515, 31 S. Ct. 279, 55 L. Ed. 310 (1911). However, the issue here is that the Court is bound to apply Michigan law as a Michigan court would. If a Michigan court would not grant relief in these circumstances, then this Court cannot do so either.

### 2. Statute of Limitations

In addition, the City notes that much of the claim is untimely. The statute of limitations for bringing a claim under Mich. Comp. Laws §

15.270 is "60 days after the approved minutes are made available to the public by the public **[\*\*44]** body[.]" Mich. Comp. Laws § 15.270(3)(a). Here, the City Council started the Moratorium by adopting Resolution 2020-11 at its May 18, 2020, meeting. It carved out exceptions to the Moratorium through Resolution 2020-16, which was adopted at its June 15, 2020, meeting. It extended the Moratorium through a vote at a City Council meeting on December 21, 2020. The minutes for these meetings were approved on June 15, 2020 (6/15/2020 City Council Minutes, ECF No. 13-8), June 24, 2020 (6/24/2020 City Council Minutes, ECF No. 13-20), and January 19, 2021 (1/19/2021 City Council Minutes, ECF No. 13-21), respectively. Accordingly, the 60-day limitation periods for challenging those actions expired on August 17, 2020, August 24, 2020, and March 22, 2021, respectively. The plaintiffs in Case No. 1:21-cv-144 filed their complaint before the March 2021 date. The other plaintiffs filed their complaint months later. Thus, the only claim not barred by the statute of limitations is the challenge to the Moratorium extension vote on December 21, 2020, brought by the plaintiffs in Case No. 1:21-cv-144.

### 3. Merits

The remaining aspect of the claim is meritless. The City conducted its December 21, 2020, meeting by Zoom. For a meeting held **[\*\*45]** electronically, the OMA required the following in terms of advance notice:

- (a) Why the public body is meeting electronically.
- (b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.
- (c) How members of the public may



contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(d) How persons with disabilities may participate in the meeting.

Mich. Comp. Laws § 15.263a(4).

Here, the City points to the notice that it provided in advance of the meeting. (See Notice of Public Meeting via Video Conference, ECF No. 117-20.) The City Clerk, Ann Fidler, posted this notice on the City's website. (Fidler Dep., ECF No. 117-2, PageID.3518-3519.) On its face, the notice satisfies all the requirements of Mich. Comp. Laws § 15.263a(4).

Plaintiffs assert that the City's notice failed to satisfy subsections (a), (b), and (d) of Mich. Comp. Laws § 15.263a(4). In their brief, however, Plaintiffs rely on what appears to be a different version of the notice obtained from the City's website. Fidler testified that the City's website changed in 2021, and the notice she published in 2020 was not transferred [\*\*46] to the new website. (Fidler Dep., PageID.3519.) Plaintiffs do not discuss the notice provided by the City or Fidler's testimony supporting it. Nor do [\*\*794] Plaintiffs provide support for the version they have provided.

Further, to establish a claim under the OMA, Plaintiffs must show that "noncompliance with the OMA has impaired the rights of the public." *Jude v. Heselschwerdt*, 228 Mich. App. 667, 578 N.W.2d 704, 707 (Mich. Ct. App. 1998). Here, Plaintiffs contend, without evidence, that their rights were impaired because the City failed to post information about how the public could participate electronically, leaving them unable to participate. However, the City's notice provided a Zoom link for participation. It also stated that members of the public could submit their comments in writing by email to

the City Clerk. (See Notice of Public Meeting, PageID.4079.) Plaintiffs do not explain why the information provided by the City was inadequate and prevented them from participating. Accordingly, the City is entitled to summary judgment for this claim.

## E. Count V (Substantive Due Process)

Both sides seek summary judgment on Count V, which asserts violations of substantive due process under federal and state law. "[S]ubstantive due process requires that both state legislative [\*\*47] and administrative actions that deprive the citizen of 'life, liberty or property' must have some rational basis." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 862 (6th Cir. 2012) (quoting *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1223 (6th Cir. 1992)). "A plaintiff alleging a substantive due process violation resulting from a zoning decision must show 'that (1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action.'" *Tollbrook, LLC v. City of Troy*, 774 F. App'x 929, 934 (6th Cir. 2019) (quoting *EJS Props.*, 698 F.3d at 855).

*Protected Property Interest.* The City argues that Plaintiffs did not have a protected property interest that would give rise to a due process claim. "Whether a person has a property interest is traditionally a question of state law. Federal constitutional law, however, 'determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause.'" *Id.* (quoting *EJS Props.*, 698 F.3d at 856). The Court of Appeals for the Sixth Circuit has indicated that Michigan property owners have a protected interest in uses that were permitted by a zoning classification. See *Nasierowski Bros. Inv. Co. v. City of Sterling*



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*Heights*, 949 F.2d 890, 897 (6th Cir. 1991); see also *Tollbrook*, 774 F. App'x at 934 ("[A] property owner may have a property interest in the existing zoning classification of his or her property."). As discussed above, however, Plaintiffs have not shown that their uses were **[\*\*48]** permitted by the City's Zoning Ordinance.

The City also notes that, even if Plaintiffs have a protected interest in using their properties as short-term rentals, they would still have to comply with the permitting requirement in Ordinance 248. And Plaintiffs do not have a protected interest in a short-term rental permit because a first-time applicant for a permit does not have such an interest. See *Wojcik v. Romulus*, 257 F.3d 600, 610 (6th Cir. 2001) ("[A] first time liquor license applicant [is] not entitled to procedural due process rights under Michigan law."); *Women's Med. Prof. Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006) (citing *Wojcik* and holding that the plaintiff "has no property or liberty interest in a license for its operation because it was a first-time applicant for the ASF license").

Plaintiffs respond that *Wojcik*, *Women's Medical*, and similar cases involved the discretionary grant of a license; however, **[\*795]** those cases do not discuss the issue of discretion. Instead, they rely on the distinction between the holder of a license and a first-time applicant for one. Like the first-time applicants in *Wojcik* and *Women's Medical*, Plaintiffs did not have a protected property interest in obtaining permits for operating their homes as short-term rentals.

Plaintiffs also rely on cases suggesting that there might **[\*\*49]** be a legitimate claim of entitlement to a land use permit where the issuance of the permit is not discretionary. See, e.g., *Triomphe Invs. v. City of Northwood*, 49 F.3d 198, 203 (6th Cir. 1995) (citing *Silver v. Franklin Twp. Bd. of Zoning App.*, 966 F.2d

1031, 1036 (6th Cir. 1992)); *Andreano v. City of Westlake*, 136 F. App'x 865 (6th Cir. 2005); *Oakwood Homeowners Assoc. at Stonecliffe v. City of Mackinac Island*, No. 99-1139, 2000 U.S. App. LEXIS 25258, 2000 WL 1434708 (6th Cir. Sept. 20, 2000). But those cases are not helpful for Plaintiffs. There, courts concluded that there was no legitimate claim of entitlement to the permit because the decisions to issue the permit were discretionary, see *Triomphe Invs.*, 49 F.3d at 202-03 (also discussing *Silver*); *Andreano*, 136 F. App'x at 871, or because the plaintiffs never applied for one, see *Oakwood Homeowners Assoc.*, 2000 U.S. App. LEXIS 25258, 2000 WL 1434708, at \*3. See also *EJS Props.*, 698 F.3d at 859 ("The law is clear that a party cannot have a property interest in a discretionary benefit[.]"). Those courts did not find that first-time applicants for a permit had a protected interest in one.

Also, those cases are distinguishable because they involved special use permits under zoning regulations. They did not involve a permit to conduct a business activity like the permit at issue here, which requires inspections and compliance with a regulatory scheme. Thus, Plaintiffs' case is more analogous to *Wojcik* and *Women's Medical* than *Triomphe* or *Silver*.

Next, Plaintiffs argue that they have an "interest" in being "free from arbitrary and irrational zoning decisions." (Pls.' Reply Br. 7, ECF No. 122 (citing *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 263, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977)).) Here, Plaintiffs are conflating their constitutional claim with an interest **[\*\*50]** protected by due process. The City did not deprive Plaintiffs of their claim. Accordingly, Plaintiffs have failed to demonstrate a protected interest, which is an essential element of a substantive due process claim.

*Arbitrary & Capricious Action*. In addition,

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Plaintiffs have not shown arbitrary and capricious action necessary for a substantive due process claim because they have not shown that the City's actions were so irrational that they "shock the conscience." See *EJS Props.*, 698 F.3d at 862. Zoning decisions do not shock the conscience if they survive "rational-basis review." See *id.* Under that standard, Plaintiffs must "negate every conceivable basis supporting the City Council's action." *Id.* at 865 (quotation marks omitted); see *Houdek v. Centerville Twp.*, 276 Mich. App. 568, 741 N.W.2d 587, 597 (Mich. Ct. App. 2007) ("[T]o show that an ordinance is not rationally related to a legitimate governmental interest, a challenger must negate every conceivable basis that might support the ordinance or show that the ordinance is based solely on reasons totally unrelated to the pursuit of the State's goals.") (quotation marks omitted).

"Under rational basis review, the defendant 'has no obligation to produce evidence to sustain the rationality of its actions; its choice is presumptively valid and may be based [**\*\*51**] on rational speculation unsupported by evidence or empirical data.'" *Loesel v. City of Frankenmuth*, 692 F.3d 452, 465 (6th Cir. 2012) (quoting *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 790 [**\*796**] (6th Cir. 2005)). Thus, it is Plaintiffs' burden to demonstrate that the City's actions lack a rational basis. *Id.* They have not met that burden.

The City ostensibly passed the Moratorium due to various concerns about the impact of short-term rentals on the quality of life in the City, including declining school enrollment, declining long-term housing stock, declining long-term resident population, and an increase in vacant homes during winter months. (See Resolution 2020-11, PageID.2362.) It is not difficult to see how an increase in the number

of properties used as short-term rentals could have the negative effects identified by the City. Plaintiffs provide evidence suggesting that some of these concerns are not supported by available data, but Plaintiffs do not negate every conceivable basis for restrictions on short-term rentals, such as a decrease in available housing stock for long-term residents. Furthermore, "courts have long recognized that municipalities may regulate in order to protect communities' 'residential character[.]'" *Styller v. Zoning Bd. of App. of Lynnfield*, 487 Mass. 588, 169 N.E.3d 160, 171 (Mass. 2021) (quoting *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394, 47 S. Ct. 114, 71 L. Ed. 303, 4 Ohio Law Abs. 816 (1926)). "Short-term rental use of a one family home is inconsistent with the zoning [**\*\*52**] purpose of the single-residence zoning district in which it is situated, i.e., to preserve the residential character of the neighborhood." *Id.*; see also *Nekrilov v. City of Jersey City*, 45 F.4th 662, 681 (3d Cir. 2022) (upholding a short-term rental zoning restriction against a substantive due process challenge because it furthered "several legitimate state interests," including "(1) protecting the long-term housing supply; (2) reducing 'deleterious effects' on neighborhoods caused by short-term rentals; and (3) protecting the residential character and density of neighborhoods").

The Moratorium paused the grant of new permits for short-term rentals while the City considered "appropriate ordinance amendments" to address the City's concerns. (Resolution 2020-11, PageID.2362.) The City initially amended its regulatory ordinance through Ordinance 248. Later, the City addressed its concerns about short-term rentals by limiting the total number of them through Ordinance 253. Thus, both the Moratorium and Ordinance 253 were rationally related to the City's legitimate concerns. Plaintiffs have not negated each of the City's

concerns and the relationship between the City's actions and those concerns. Accordingly, Plaintiffs have not shown arbitrary or capricious **[\*\*53]** action.

Plaintiffs contend that Ordinance 253 is "oppressive" because it operates retroactively to restrict Plaintiffs' property rights, in violation of state law. (Pls.' Resp. to Def.'s Mot. for Summ. J. 26, ECF No. 120.) However, a violation of state law does not necessarily give rise to a constitutional claim. And the violation alleged here does not shock the conscience. Therefore, the Court will dismiss Plaintiffs' substantive due process claim.

#### F. Count VI (Procedural Due Process)

The City seeks summary judgment on Plaintiffs' procedural due process claim. Plaintiffs argue that the City deprived them of due process by failing to provide them with adequate notice of Ordinance 237 and the Moratorium. They assert that the City did not provide individual notice by mail of Ordinance 237. Also, Plaintiffs contend that the City provided no notice to the public before it adopted the Moratorium.

To prevail on a procedural due process claim, Plaintiffs must show "(1) [they] had a constitutionally protected interest, **[\*797]** (2) [they were] deprived of that interest, and (3) the state did not afford [them] adequate procedures." *Golf Vill. N., LLC v. City of Powell*, 42 F.4th 593, 598 (6th Cir. 2022).

*Protected Interest.* Plaintiffs' due process claim fails to satisfy the **[\*\*54]** first element. As discussed above, Plaintiffs have not shown that they possessed a protected property interest.

*Adequate Process.* The City also argues that it afforded Plaintiffs adequate process. First, the

City Council published notice of its meetings and then held a public meeting on April 15, 2019, at which Ordinance 237 was discussed and adopted. It then published notice of the ordinance in a local newspaper along with information about how to obtain a copy, in accordance with Mich. Comp. Laws § 117.3(k). (See Aff. of Publication, ECF No. 117-27, PageID.4127-4128.)

Next, the City adopted and extended the Moratorium via resolutions. Under state law, resolutions do not require publication. Instead, they require that the vote be recorded in the meeting minutes. See Mich. Comp. Laws § 15.269(1). That is what occurred here. (See 6/15/2020 Minutes, ECF No. 13-8.)

In their response, Plaintiffs do not contest the process provided in connection with Ordinance 237. Instead, they challenge the process provided in connection with the Moratorium. They assert that, in the context of zoning amendments, "when a relatively small number of persons are affected on individual grounds, the right to a hearing is triggered." *Nasierowski Bros.*, 949 F.2d at 896. The latter category includes **[\*\*55]** a situation where "a government unit singles out and specifically targets an individual's property for a zoning change after notice of a general plan of amendment has been published." *Id.*

Plaintiffs do not fall into the category identified in *Nasierowski*. First, the Moratorium was not a zoning amendment. It did not rezone or reclassify any property. Instead, it paused the grant of permits under a regulatory scheme for short-term rentals. Second, the Moratorium did not single out or target a particular person, or even a relatively small number of persons, on individual grounds. Everyone in the City who was interested in using their property for short-term rentals and who did not already have a permit was affected by the Moratorium. Accordingly, Plaintiffs have not shown that

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they were entitled to notice or an opportunity to be heard before the City Council passed the Moratorium. Therefore, for all the foregoing reasons, Plaintiffs' procedural due process claim is meritless.

### G. Count VII (Equal Protection)

Both sides seek summary judgment on Plaintiffs' equal protection claim. Plaintiffs contend that the City has treated them differently from homeowners who rent their properties for the long term, **[\*\*56]** i.e., more than 30 days at a time. They also contend that the City treated them differently from homeowners who were granted permits while the Moratorium was still in effect.

"To establish a claim for relief under the Equal Protection Clause, a plaintiff must demonstrate that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby*, 470 F.3d 286, 298 (6th Cir. 2006), *overruled on other grounds as recognized by Davis v. Prison Health Servs.*, 679 F.3d 433, 442 n.3 (6th Cir. 2012). Plaintiffs do not assert that the City burdened a fundamental right or targeted a suspect class, so if they can prove disparate **[\*798]** treatment, they must also prove that the City's disparate treatment had no rational basis. As indicated above, rational basis review means that the City's actions "must be sustained if any conceivable basis rationally supports [them]." *TriHealth*, 430 F.3d at 790.

#### 1. Long-Term Renters

Plaintiffs argue that they are similarly situated with owners who rent their properties for more

than thirty days, and that there is no rational basis for treating them differently. The Court disagrees. As the City puts it, short-term rentals "operate more akin to commercial lodging and cater to transient **[\*\*57]** populations, vacationers, bachelor/bachelorette parties, and others that have no stake in the community." (Def.'s Br. in Supp. of Mot. for Summ. J. 30, ECF No. 117.) In contrast, "long-term rentals . . . connote a permanency of residence akin to a homesteaded residence." (*Id.*) In other words, long-term rentals house people who are more likely to contribute to the community. There is a rational basis for treating them differently.

#### 2. Permits Granted During Moratorium

Plaintiffs assert that they are similarly situated with Jeff McClorey and Ron Oselka, who were granted permits under exceptions to the Moratorium set forth in Resolution 2020-16. (See 6/28/2020 City Attorney Mem. re McClorey Application, ECF No. 122-6; Watson Dep., ECF No. 117-17, PageID.3875.) But with the possible exception of former Plaintiffs Ryan and Shawn Nofziger, none of the Plaintiffs submitted a permit application under the Moratorium exclusions in Resolution 2020-16. "[T]iming and context are both relevant to the similarly-situated inquiry" because "differential treatment . . . may indicate a change in policy rather than an intent to discriminate." *Taylor Acquisitions, LLC v. City of Taylor*, 313 F. App'x 826, 836 (6th Cir. 2009). Here, the City changed its policy by granting exceptions to **[\*\*58]** the Moratorium for a limited time. Plaintiffs are not similarly situated with those who applied under the exceptions in Resolution 2020-16 because that resolution created a different policy for granting permits.

Furthermore, the City had a rational basis for



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this new policy, which created exceptions to the Moratorium for property owners with "investment-backed expectations" that developed shortly before the Moratorium was implemented. In addition, the City had a rational basis for limiting the number of applicants who could qualify under these exceptions by limiting the time period for submitting those applications. The purpose of the Moratorium was to freeze the number of existing short-term rental permits while the City considered modifications to its regulations for short-term rentals. It did not have to grant any exceptions to the Moratorium to satisfy Plaintiffs' right to equal protection, but in doing so, it was not irrational to provide a window for submitting applications that sought a permit under specific exceptions.

Plaintiffs argue that McClorey and Oselka did not actually qualify for permits under Resolution 2020-16, yet the City gave them permits anyway. For instance, the **[\*\*59]** City Attorney determined that Oselka had a permit for construction of a new dwelling or renovation, yet Oselka submitted his application in December 2020, long after the Moratorium exception period expired. (See Watson Dep., PageID.3888-3893.) And McClorey apparently did not have a valid building permit, despite the City's belief that he did. Regardless, Plaintiffs were not similarly situated with McClorey and Oselka because the latter applied at a different time and were considered for permits under a different set of rules. Other than the Nofzigers, none of the Plaintiffs contend that they applied for **[\*799]** a permit under any of the Moratorium exceptions in Resolution 2020-16.

### 3. Nofzigers

Unlike the other Plaintiffs, the Nofzigers applied in June 2020 under a Moratorium

exception. (See Nofziger Aff. ¶ 15, ECF No. 118-12, PageID.4309.) They owned property located at 218 S. Bronson Street and possessed a building permit to make renovations in order to make their property suitable for short-term rentals. (*Id.* ¶¶ 2, 16.) The City denied their permit application. The Nofzigers asked City officials for reconsideration several times, to no avail. The City now acknowledges that the Nofzigers qualified **[\*\*60]** for a permit under an exception in Resolution 2020-16. (Watson Dep., PageID.3935.)

#### (a) Standing

The Nofzigers are no longer part of the case. In March 2021, they recorded a quitclaim deed assigning their property to their company, 218 S Bronson LLC. (Quit Claim Deed, ECF No. 117-15.) After the Court consolidated Plaintiffs' cases in September 2021, the Nofzigers transferred their claims and their right to relief to 218 S Bronson LLC, which has replaced them as a party. (See Nofziger Aff. ¶ 4; Assignment of Claims, ECF No. 118-12, PageID.4316.)<sup>6</sup>

The City contends that 218 S Bronson LLC lacks standing because it did not own the property when the Nofzigers were denied a permit. However, an assignee has standing to assert the rights of the assignor, including the right to assert claims that accrued to the assignor. See *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 271, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008).

The City asserts that, because the property transfer preceded the transfer of claims by several months, the Nofzigers' claims were somehow mooted by the property transfer.

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<sup>6</sup> The assignment document is undated, but it references the consolidation of these cases.



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That argument does not follow. For instance, an individual's ability to recover damages for past harm would not be mooted by the transfer of their property. Accordingly, 218 S Bronson LLC has standing to assert **[\*\*61]** claims for injuries suffered by the Nofzigers.

### (b) Merits

Plaintiffs assert that there was no rational basis for denying the Nofzigers' permit application, and the Court cannot discern one. The City suggests that the denial may have been a mistake, but a jury could infer otherwise based on the City's repeated denial of the Nofzigers' application. Also, the City offers no evidence to support their assertion, apart from speculation by the City's Attorney. Thus, Plaintiffs have provided sufficient evidence to undercut the City's explanation and the City offers no evidence in response. Accordingly, there is no genuine dispute that the City denied the Nofzigers' right to equal protection because it denied their application, intentionally treating them differently from similarly situated applicants without a rational basis for doing so. The Court will grant summary judgment on this claim in favor of 218 S Bronson LLC.

### H. Count VIII (Takings)

The United States and Michigan constitutions prohibit government taking of private property for public use without just compensation. There are two types of takings, physical takings and regulatory takings. A physical taking occurs when "the government physically **[\*\*62]** takes possession of an interest in property for some public purpose[.]" *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002). Here, Plaintiffs assert a regulatory taking,

which occurs **[\*800]** when "regulations . . . prohibit a property owner from making certain uses of her private property." *Id.* at 321-22. A physical taking always requires compensation, whereas a regulatory taking "necessarily entails complex factual assessments of the purposes and economic effects of government actions." *Id.* at 323 (quoting *Yee v. Escondido*, 503 U.S. 519, 523, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992)). In other words, "if regulation goes too far, it will be recognized as a taking" requiring compensation. *Id.* at 326 (quoting *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S. Ct. 158, 67 L. Ed. 322 (1922)).

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992), the Supreme Court held that a regulation "goes too far" when it calls upon the owner of real property to "sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle[.]" *Id.* at 1019. In such a case, the property owner is *categorically* entitled to compensation, "except to the extent that 'background principles of nuisance and property law' independently restrict the owner's intended use of the property." *Lingle v. Chevron, U.S.A., Inc.*, 544 U.S. 528, 538, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005) (citing *Lucas*, 505 U.S. at 1026-32). But *Lucas* does not apply here. The categorical rule in *Lucas* only applies to "the extraordinary case in which a regulation *permanently* deprives property of all value[.]" *Tahoe-Sierra*, 535 U.S. at 332 (emphasis **[\*\*63]** added). The City correctly asserts that Plaintiffs have not shown that the City's actions have permanently deprived their properties of all value. For instance, those properties are still valuable as dwellings.

Plaintiffs respond that the City has deprived them of a property interest in using their properties as short-term rentals. They rely on the test in *Penn Central Transportation Co. v.*

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*City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978), which considers several factors in the context of a non-categorical taking, including: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good[.]'" *Lingle*, 544 U.S. at 538-39 (quoting *Penn Central*, 438 U.S. at 124). The *Penn Central* test is the proper test for a regulatory taking like the one here, which does not permanently deprive a property of all value. The City does not address these factors in its briefing.

However, the City also argues that it did not take anything because Plaintiffs never possessed a vested right to a permit. **[\*\*64]** A regulation does not constitute a taking if the party's interests "were not part of his title to begin with." *Lucas*, 505 U.S. at 1027; see *Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001) ("[T]he existence of a valid property interest is necessary in all takings claims."). Plaintiffs respond that the property right at issue is a "vested interest in the nonconforming use of their properties as short-term rentals." (Pls.' Resp. to Mot. for Summ. J. 31, ECF No. 120.) But Plaintiffs did not possess such a property interest for the reasons described in Section III.A, above. Accordingly, they have not shown that they are entitled to compensation under Count VIII.

#### I. Count IX (State Law Preemption)

In their last claim, Plaintiffs assert that the Moratorium was preempted **[\*801]** by the

MZEA, which allows lawful nonconforming uses to continue under a new zoning ordinance. See Mich. Comp. Laws § 125.3208(1). A state law can preempt a local regulation where there is a direct conflict between the two, i.e., "when 'the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits.'" *DeRuiter v. Twp. of Byron*, 505 Mich. 130, 949 N.W.2d 91, 96 (Mich. 2020) (quoting *People v. Llewellyn*, 401 Mich. 314, 257 N.W.2d 902, 904 n.4 (Mich. 1977)). Here, there is no conflict between the MZEA and the Moratorium because the Moratorium was not an ordinance, let alone a zoning ordinance.

Plaintiffs respond that *Ordinance 253* **[\*\*65]** conflicts with the MZEA because it expressly limits short-term rentals to those properties that had obtained a short-term rental permit. Plaintiffs contend that Ordinance 253 should allow all short-term rentals to continue as nonconforming uses. This claim is not properly before the Court because it is not part of Plaintiffs' complaint, which asserts that "the moratorium is preempted by [the MZEA]." (See 2d Am. Compl. ¶ 365, ECF No. 61; 1st Am. Compl. ¶ 334, ECF No. 62.) The complaint does not assert that Ordinance 253 is preempted by the MZEA.

At any rate, Plaintiffs' new claim is meritless because Plaintiffs have not shown that the Zoning Ordinance in effect before Ordinance 253 permitted short-term rentals. In other words, they have not shown that short-term rentals were lawful uses that the MZEA would protect. Accordingly, the City is entitled to summary judgment for this claim.

#### IV. CONCLUSION

For all the foregoing reasons, the Court will grant Plaintiffs' motion for summary judgment in part and deny the City's motion for summary

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judgment in part, solely as to the equal protection claim asserted by 218 S Bronson LLC in Count VII of the complaint. In all other respects, Plaintiffs' **[\*\*66]** motion for summary judgment will be denied and the City's motion for summary judgment will be granted. Accordingly, the Court will dismiss all other claims.

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

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An order will enter consistent with this Opinion.

Dated: October 31, 2022

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

### **ORDER**

In accordance with the Court's opinion entered this date:

**IT IS ORDERED** that Plaintiffs' motion for partial summary judgment (ECF No. 116) is **GRANTED IN PART**, solely with respect to the equal protection claims by 218 S Bronson LLC in Count VII of Plaintiffs' complaint in Case No. 1:21-cv-674. For all other claims, the motion is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant's motion for summary judgment (ECF No. 117) is **DENIED IN PART**, solely with respect to the equal protection claims by 218 S Bronson LLC in Count VII of Plaintiffs' complaint in Case No. 1:21-cv-674. For all other claims, the motion is **GRANTED**.

**IT IS FURTHER ORDERED** that, but for the equal protection claims by 218 S Bronson LLC in Count VII of Plaintiffs' complaint in Case No. 1:21-cv-674, Plaintiffs' claims are **DISMISSED**.

Dated: October 31, 2022

## Nixon v. Webster Twp.

Court of Appeals of Michigan

January 21, 2020, Decided

No. 343505

### Reporter

2020 Mich. App. LEXIS 438 \*; 2020 WL 359625

RYAN S. NIXON and NIXON FARMS, LLC, Plaintiffs-Appellees, v WEBSTER TOWNSHIP, Defendant-Appellant, and FRANK KOLAKOWSKI and SHERRY KOLAKOWSKI, Intervenor-Appellants.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** [\*1] Washtenaw Circuit Court. LC No. 17-000084-CZ.

**Judges:** Before: CAMERON, P.J., AND SHAPIRO AND SWARTZLE, JJ.

### Opinion

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PER CURIAM.

Defendant, Webster Township ("Township"), and Intervenor, Frank and Sherry Kolakowski (collectively, "the Township parties") appeal the trial court's order, ruling in favor of plaintiffs Ryan S. Nixon and Nixon Farms, LLC ("plaintiffs"). The trial court reversed the decision of the Webster Township Zoning Board of Appeals ("ZBA") and concluded that the ZBA erroneously determined that wedding barns were not included within the definition of "seasonal agri-tourism" under the Township's Agriculture Zoning District's ("Agriculture District") permitted land uses. We reverse.

In June 2011, the Township adopted the Webster Township Zoning Ordinance ("Ordinance"), effective July 8, 2011. The Ordinance created several zoning districts, including the Agriculture District. The intent of the Agriculture District was to enable productive farming, to encourage the continuation of contiguous blocks of active farms, to preserve the rural character of the Township, and to allow very low density housing that is compatible with the Township's agricultural heritage. Webster Ordinance, § 9.10(A). The Ordinance [\*2] included as a permitted use within the Agriculture District: "Seasonal agri-tourism, including but not limited to hay rides, pumpkin patches, corn mazes, and Christmas tree farms." Webster Ordinance, § 9.10(B)(ix).

Plaintiffs operated 330 acres of farmland in the Agriculture District and grew corn, soybeans, pumpkins, and hay. In 2012, Nixon began to rent a barn on his property for weddings. According to Nixon, he requested and was given permission from the Township zoning administrator to do so because that use was considered "seasonal."

In July 2016, the Township sent Nixon a letter to inform him "that the Michigan Court of Appeals has confirmed the ruling of the Washtenaw County Circuit Court that the operation of event barns is not allowed within the Agricultural Zoning District in Webster

Township."<sup>1</sup> The Township stated that it would delay enforcement of the ruling until October 31, 2016, but that any weddings, receptions, or similar events held at Nixon Farms thereafter would be considered a violation of the Zoning Ordinance.

Plaintiffs then requested that the ZBA define the term "agri-tourism" as provided in Webster Ordinance, § 9.10(B)(ix), effective July 8, 2011, to include holding [\*3] barn weddings and receptions within the agricultural zoning district. The Township asked the ZBA to reject plaintiffs' interpretation and argued that in order for the land use to qualify as "seasonal agri-tourism," barn wedding ceremonies and receptions would have to fit within one of the examples of "seasonal agri-tourism" listed in the Ordinance.

The ZBA held two public hearings regarding the requests for interpretation of the Ordinance. Some of the community members who addressed the ZBA were in favor of interpreting "agri-tourism" to include wedding barns. However, a greater number of community members disagreed, expressing concerns regarding the noise, traffic, light pollution, waste, and safety issues related to wedding barns, as well as the potential disruptions to the rural character of the Agriculture District and the Township. The ZBA concluded that wedding barns were not included within the definition of agri-tourism because they did not conform to the examples

provided in the Ordinance. Additionally, the ZBA concluded that "event barns" had previously been rejected by the Township as a special use within the Agriculture District.

Plaintiffs appealed the ZBA's decision to [\*4] the trial court. The trial court determined that there was doubt regarding the legislative intent of the Ordinance and therefore, the language of the Ordinance must be construed in plaintiffs' favor as the property owner. The trial court reversed the ZBA's decision and concluded that wedding barns were included in the definition of "seasonal agri-tourism" under the Ordinance. This appeal followed.

The Township and amici curiae in support of the Township argue on appeal that the trial court improperly applied rules of statutory and ordinance construction and exceeded its reviewing authority when it reversed the ZBA's factual findings and conclusions of law. We agree.

We review de novo the underlying interpretation and application of an ordinance. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008). The Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*, provides the standard used to review the decision of a local zoning board of appeals. It provides, in relevant part:

(1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the [\*5] constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of

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<sup>1</sup> The Township referred to *Webster Twp v Waitz*, unpublished per curiam opinion of the Court of Appeals, issued June 7, 2016 (Docket No. 325008), 2016 Mich. App. LEXIS 1109, in which a panel of this Court affirmed a trial court order that prohibited the defendants from operating a commercial event barn. Notably, the panel did not address whether the barn constituted "seasonal agritourism." See *id.* at 6 n 1. ("While the [defendants] contend that holding weddings in a barn can constitute agritourism, even if this was the case, there is no question that the barn operated year-round rather than seasonally.").



discretion granted by law to the zoning board of appeals. [MCL 125.3606.]

In other words, "[t]he decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material, and substantial evidence on the record, or an abuse of discretion." *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich App 197, 201; 651 NW2d 464 (2002).

A trial court "may affirm, reverse, or modify the decision of the zoning board of appeals" or "make other orders as justice requires." MCL 125.3606(4). Generally, a reviewing court gives deference to a municipality's interpretation of its ordinance. *Macenas v Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989). "[I]n cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance." *Id.* However, if the language of an ordinance is unambiguous, "the ordinance must be enforced as written." *Kalinoff v Columbus Twp*, 214 Mich App 7, 10; 542 NW2d 276 (1995).

The purpose of interpreting a statute or an ordinance is "to discern and give effect [\*6] to the intent of the legislative body." *Great Lakes*, 281 Mich App at 407-408. We presume that the legislative body intended the meaning it plainly expressed in the statute or ordinance. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205-206; 815 NW2d 412 (2012). Clear statutory language must be enforced as written. *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012). If the plain and ordinary meaning of the language is clear, "judicial construction is neither necessary nor permitted." *Pace v Edel-Harrelson*, 499 Mich 1,

7; 878 NW2d 784 (2016). A statutory provision is ambiguous only if it irreconcilably conflicts with another provision or it is equally susceptible to more than one meaning. See *Mayor of Lansing v Public Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) (quotation marks and citation omitted).

Terms are given their plain and ordinary meanings. *Great Lakes*, 281 Mich App at 408. "When a term or phrase is not defined in a statute, the court may consult a dictionary to ascertain its commonly accepted meaning." *Motycka v Gen Motors Corp*, 257 Mich App 578, 581-582; 669 NW2d 292 (2003). Unless it is clear that something different was intended, words and phrases should be read in their grammatical context, and in the context of the entire legislative scheme. See *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). "The statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme." See *id.*

The doctrine of *ejusdem generis* is

a rule whereby in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed [\*7] to be and construed as restricted by the particular designation and as including only things of the same kind, class, character or nature as those specifically enumerated. *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 242; 615 NW2d 241 (2000) (quotation marks and citation omitted).

However, the doctrine also applies "[w]hen a statute uses a general term followed by specific examples included within the general term." *Huggett v Dep't of Natural Resources*, 464 Mich 711, 718; 629 NW2d 915 (2001); *Belanger v Warren Consol Sch Dist, Bd of Ed*,

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432 Mich 575, 583; 443 NW2d 372 (1989).<sup>2</sup> The doctrine "accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words." *Belanger*, 432 Mich at 583 (quotation marks and citation omitted).

In this case, when defining the term "agritourism," the ZBA concluded as follows:

The Ordinance does not contain a definition for agritourism, as such, the ZBA exercises its discretion to utilize other dictionaries and other tools to assist its interpretation. Merriam-Webster defines agritourism as "the practice of touring agricultural areas to see farms and often participate in farm activities." Further, the State of Michigan Agricultural Tourism Advisory Commission [\*8] defined "agricultural tourism" as "the practice of visiting an agribusiness, horticultural, or agricultural operation, including, but not limited to, a farm, orchard, or winery or a companion animal or livestock show, for the purpose of recreation, education, or active involvement in the operation, other than as a contractor or employee of operation."

The ZBA then interpreted the term "seasonal" as it relates to agri-tourism as follows:

When interpreting the language of a statute or ordinance, a word or phrase is given meaning by its context or setting. Section 9.10(B)(ix) provides a number of sample (seasonal) agritourism activities. These activities include, but are not limited to, "hay rides, pumpkin patches, corn mazes, and Christmas tree farms." These uses show that *seasonal* agritourism in Webster Township is related to an agricultural product, connected with an agricultural or harvest season, open to the public, has dispersed traffic patterns consisting largely of passenger vehicles, mainly occurs during daytime hours, utilizes a rural setting, and has sounds and noise traditionally associated with agricultural activities.

\* \* \*

[T]he modifier "seasonal" in the listed permitted use of "Seasonal agritourism" [\*9] of [the Ordinance] compels a more restrictive interpretation of the term "agritourism" in this community.

We conclude that the ZBA complied with the rules of interpretation outlined above when it interpreted Webster Ordinance, § 9.10(B)(ix) to exclude wedding barns from the permitted uses under "seasonal agri-tourism."<sup>3</sup> Specifically, the text of the Ordinance provides that "seasonal agri-tourism" "includ[es] but [is] not limited to hay rides, pumpkin patches, corn mazes, and Christmas tree farms." The term "includes" can be one of enlargement or of limitation, depending on the context. See *Frame v Nehls*, 452 Mich 171, 178-179; 550 NW2d 739 (1996). In this case, it is clear that "including, but not limited to" is a phrase of

<sup>2</sup> To the extent that this Court in *Brown v Farm Bureau Gen Ins Co of Mich*, 273 Mich App 658, 664; 730 NW2d 518 (2007), stated that the doctrine of *ejusdem generis* does not apply when the general term precedes the more specific terms, this statement of the law was contrary to *Huggett*, 464 Mich at 718, and *Belanger*, 432 Mich at 583. This Court is bound to follow decisions of the Michigan Supreme Court when decisions of this Court conflict with Supreme Court decisions. See *Kennedy v Robert Lee Auto Sales*, 313 Mich App 277, 298 n 14; 882 NW2d 563 (2015).

<sup>3</sup> Although plaintiffs urge this Court to interpret "seasonal agri-tourism" more expansively, interpreting the Ordinance is within the province of the ZBA so long as it did not err. Because the ZBA did not do so, we decline to assign our own definition to the term "seasonal agri-tourism."

enlargement, rather than limitation, to describe nonexclusive examples of "seasonal agri-tourism." See *Bedford Pub Schs v Bedford Edu Ass'n MEA/NEA*, 305 Mich. App. 558, 567; 853 N.W.2d 452 (2014).

However, the examples of agri-tourism listed in the Ordinance relate to recreational or amusement activities on a farm that occur during the autumn and winter seasons and during the holidays. As reasoned by the ZBA, these activities share the common characteristics of being associated with an agricultural or harvest season. The activities are also open to the public and involve members of the public coming and going during the [\*10] hours that the activities are available. The examples identified in the Ordinance involve products that are grown on a farm, namely hay, pumpkins, corn, and Christmas trees. The examples of seasonal agri-tourism listed in the Ordinance also involve visiting farms and participating in farm activities, i.e., "harvesting" pumpkins or cutting down Christmas trees. See *Huggett*, 464 Mich at 719 (holding that the statute exempted "farming activities" and that the examples of "farming activities" demonstrated that the activities were related to the operation of a farm or the practice of farming).

In contrast, wedding ceremonies and receptions are private events that are not associated with a particular agricultural product or harvest season. As reasoned by the ZBA, agricultural products are not necessary or utilized during a wedding ceremony or reception. Although plaintiffs argue that there is a "wedding season" generally from May to September, weddings are unrelated to an agricultural or harvest season that takes place on a farm as contemplated by the Ordinance. Weddings have concentrated traffic patterns at the beginning and end of the event and may also include significant commercial traffic for

vendors. Wedding [\*11] receptions often stretch late into the night. The ZBA further reasoned that the sounds of hundreds of wedding attendees and amplified music for dancing and celebrating are not traditional agricultural sounds or noise associated with agricultural activities.

Additionally, the context and legislative scheme of the Ordinance supports the conclusion that the Township intended to exclude wedding barns from the permitted use of "seasonal agri-tourism." The Township Master Plan, as amended in 2015, provides that agriculture was historically a major economic activity in the Township, and Township residents supported farmland preservation and preservation of natural features. The Township established the planning goals of preserving the rural character of the Township, strengthening the rural identity of the Township, and maintaining large areas of active agricultural land. Regarding agriculture area policies, the Master Plan provided that Township residents emphasized the importance of farming and agricultural preservation. The Master Plan provided that "[i]ntense commercial operations such as event barns are not compatible within the Agriculture district." Therefore, wedding barns were expressly [\*12] contrary to the purposes of the Agriculture District under which "seasonal agri-tourism" was a permitted use. Further, the purposes of the Agriculture District support the conclusion that "seasonal agri-tourism" did not include wedding barns. The intent of the Agriculture District was to "enable productive farming, encourage the continuation of contiguous blocks of active farms, preserve the rural character of the Township, and allow very low density housing that is compatible with the Township's agricultural heritage."

The ZBA considered the Ordinance scheme,

the purpose of the Agriculture District, and the rural character of the Township and rejected plaintiffs' proffered definitions of "agri-tourism" from other sources and jurisdictions as specific to those communities. Additionally, it concluded that plaintiffs' proffered definitions of "agri-tourism" were contrary to the plain language and legislative scheme of the Ordinance. More specifically, as already discussed, the ZBA found that weddings have concentrated traffic patterns at the beginning and end of the event and that sounds associated with wedding receptions are not traditional agricultural sounds that can be associated [\*13] with agricultural activities. Therefore, the ZBA's determination that weddings do not promote the rural character of the Agriculture District and the Township was supported by its findings.

Regarding the Township's prior legislative activity, the ZBA considered that the Township previously decided that wedding barns were a commercial activity and were therefore not appropriate as a "special use" within the Agriculture District. Although this legislative activity occurred in 2012 and 2013, i.e., after the Township adopted the Ordinance, the ZBA considered the Township's actions regarding the Ordinance and whether wedding barns should be permitted in the Agriculture District when interpreting the meaning of "seasonal agri-tourism" at the time plaintiffs requested that the ZBA interpret the Ordinance. The ZBA properly considered the legislative history to further support its interpretation, but it did not allow it to supersede its analysis of the plain language of the Ordinance and the scheme and context of the Ordinance. See *Mason Co v Dep't of Community Health*, 293 Mich App 462, 473-479; 820 NW2d 192 (2011) (explaining that a court may consider predecessor statutes and the law's historical development, as well as the law's historical context); but see *Universal Underwriters Ins Group v Auto Club*

*Ins Ass'n*, 256 Mich App 541, 546; 666 NW2d 294 (2003) ("[W]e note that [\*14] legislative analyses are unpersuasive tools of statutory construction.").

Because the ZBA's decision was supported by the plain language of the Ordinance and the context of the provision regarding "seasonal agri-tourism" in the legislative scheme of the Ordinance, the principle of interpretation discussed in *Talcott v Midland*, 150 Mich App 143; 387 NW2d 845 (1985), was not applicable.<sup>4</sup> The *Talcott* Court stated that "[w]hen interpreting the language of an ordinance to determine the extent of a restriction upon the use of property, the language must be interpreted, where doubt exists regarding legislative intent, in favor of the property owner." *Talcott*, 150 Mich App at 147. However, *Talcott* did not establish a rule requiring that an ordinance be construed in favor of a property owner when a term in the ordinance is *unambiguous* and the Legislative intent is clear. In this case, the ZBA properly based its determination that wedding barns were not included in the definition of "seasonal agri-tourism" on the plain language and the scheme of the Ordinance. Therefore, the principle of interpretation in *Talcott* is not applicable in this case. See *Talcott*, 150 Mich App at 147.

We conclude that the ZBA's decision to exclude wedding barns from the term "seasonal agri-tourism" was authorized by law and supported [\*15] by competent, material,

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<sup>4</sup> Additionally, we acknowledge that Court of Appeals cases decided before November 1, 1990, are not binding. MCR 7.215(J)(1). Although this Court is not "strictly required to follow uncontradicted opinions from this Court decided prior to November 1, 1990," those opinions are nonetheless "considered to be precedent and entitled to significantly greater deference than are unpublished cases." *People v Bensch*, 328 Mich App 1, 7 n 6; 935 NW2d 382 (2019), quoting *Woodring v Phoenix Ins Co*, 325 Mich App 108, 114-115; 923 NW2d 607 (2018) (emphasis omitted).

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and substantial evidence on the whole record and was a reasonable exercise of its discretion. See MCL 125.3606; *Olsen v Chikaming Twp*, 325 Mich. App. 170, 179-180; 924 N.W.2d 889 (2018). We conclude that the trial court should have afforded deference to the ZBA's expertise. See *Macenas*, 433 Mich at 398. We further conclude that the trial court erred by failing to apply the correct legal principles, by misapplying the substantial-evidence test to the ZBA's findings of fact and conclusions of law, and by reversing the ZBA's determination that "seasonal agri-tourism" did not include wedding barns. See MCL 125.3606(4); *Olsen*, 325 Mich App at 179-180.<sup>5</sup>

Reversed. The findings and decision of the ZBA are reinstated.

/s/ Thomas C. Cameron

/s/ Douglas B. Shapiro

/s/ Brock A. Swartzle

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<sup>5</sup> Notwithstanding our decision in this case, we acknowledge that in August 2018, the Township further defined the term "seasonal agri-tourism" to expressly excluded event and wedding barns.



## Oberer Land Devs. v. Sugarcreek Twp., Ohio

United States Court of Appeals for the Sixth Circuit

June 1, 2022, Filed

File Name: 22a0216n.06

Case No. 21-3834

### Reporter

2022 U.S. App. LEXIS 15290 \*; 2022 FED App. 0216N (6th Cir.); 2022 WL 1773722

OBERER LAND DEVELOPERS LTD.; PETER RAMMEL, Plaintiffs-Appellants, v. SUGARCREEK TOWNSHIP, OHIO; SUGARCREEK TOWNSHIP, OHIO BOARD OF TRUSTEES, Defendants-Appellees.

Frick, Christopher T. Herman, Jeffrey Charles Turner, Surdyk, Dowd & Turner, Dayton, OH.

**Judges:** Before: GIBBONS, McKEAGUE, and THAPAR, Circuit Judges.

**Opinion by:** McKEAGUE

### Opinion

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**Notice:** NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

**Prior History:** [\*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

Oberer Land Developers, Ltd. v. Sugarcreek Twp., 2021 U.S. Dist. LEXIS 164383, 2021 WL 3883922 (S.D. Ohio, Aug. 30, 2021)

Oberer Land Developers, Ltd. v. Sugarcreek Twp., 2020 U.S. Dist. LEXIS 53791, 2020 WL 1466184 (S.D. Ohio, Mar. 25, 2020)

**Counsel:** For OBERER LAND DEVELOPERS LTD, PETER RAMMEL, Plaintiff - Appellant: Michael P. McNamee, Alexander Cloonan, McNamee & McNamee, Beaver Creek, OH.

For SUGARCREEK TOWNSHIP, OH, SUGARCREEK TOWNSHIP, OH BOARD OF TRUSTEES, Defendant - Appellee: Dawn M.

**McKEAGUE, Circuit Judge.** Plaintiffs appeal the district court's order granting summary judgment in favor of Defendants Sugarcreek Township, Ohio and the Township Board of Trustees on the plaintiffs' claims that the defendants violated the Equal Protection Clause of the Fourteenth Amendment and Takings Clause of the Fifth Amendment. They also appeal the district court's order dismissing their state-law claim without prejudice after declining to exercise supplemental jurisdiction. We affirm.

I.

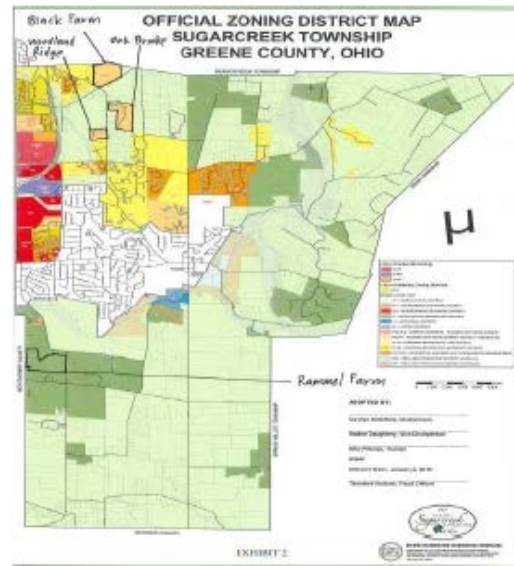
Plaintiff Oberer Land Developers, Ltd. is a developer of residential real estate located in Dayton, Ohio, the seat of Montgomery County. Located just to the east of Montgomery County is Greene County. This case concerns Oberer's development activity in Sugarcreek Township, a small municipality located in the [\*2] southwest corner of Greene County. Sugarcreek Township's western border separates Greene County from Montgomery County and also separates the Township from

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the city of Centerville, a larger suburb of Dayton.

In 2004, Oberer's predecessor purchased over 200 acres of land in Sugarcreek Township for development. See *Sugarcreek Twp. v. Centerville*, 184 Ohio App. 3d 480, 2009- Ohio 4794, 921 N.E.2d 655, 658-59 (Ohio Ct. App. 2009). The parties refer to this development as the Dille/Cornerstone property. Eventually, in 2006, Centerville annexed the Dille/Cornerstone property, shrinking the size of Sugarcreek Township. *Id.* at 662. Centerville's annexation of the Dille/Cornerstone property from Sugarcreek Township spawned years of litigation between the Township and Centerville regarding the tax consequences of the annexation. See *id.* at 658-63; *Sugarcreek Twp. v. Centerville*, 133 Ohio St. 3d 467, 2012- Ohio 4649, 979 N.E.2d 261 (Ohio 2012); *Sugarcreek Twp. v. Centerville*, 2014 Ohio 863, 2014 WL 895420 (Ohio Ct. App. Mar. 7, 2014). Oberer alleges that the Board of Trustees, the Township's legislative body, harbors ill will toward Oberer because of the Dille/Cornerstone litigation.

In 2013, the Township adopted a "Long-Range Land Use Plan" to, among other goals, "[r]etain the rural character of the township" and to "[p]rotect the geographic boundaries of" the Township given projected growth in the Dayton region. The Plan divided areas of the Township into "Planning Areas" and called for the "evaluation of the [\*3] Planning Areas in light of heightened annexation threats." This is the Township's zoning map, as annotated by its director of Planning and Zoning:



Relevant here are Planning Areas 1 and 3. Planning Area 1 is in the northwest corner of the Township, which now includes the subdivisions of Woodland Ridge, Black Farm, and Oak Brooke annotated on the map. Planning Area 3 is in the more rural southwestern side of the Township and encompasses the Rammel Farm, also annotated on the map. According to the Plan, Planning Area 1 was a priority area for residential development. Given the projected growth of the Dayton region (which the Township anticipated would increase the demand for housing as people move outward from the Dayton suburbs), the Township hoped that by increasing the capacity for development in Planning Area 1—an already populated area of the Township—"the pressure to develop the rural properties in the south will be reduced." To that end, the Plan recommended that the principal use of the more rural Planning Area 3 should "continue to be for agricultural uses" and noted that the area was a priority for "conservation subdivisions characterized by the clustering of lots to preserve [\*4] 50 percent or more of a site."

To protect its land from the threat of

annexation by neighboring municipalities, such as Centerville, the Township Board of Trustees offered "Non-Annexation Agreements" to property owners. In 2014, the Board of Trustees entered into one such agreement with the owner of the Rammel Farm, plaintiff Peter Rammel. Under the agreement, Rammel agreed for a period of 10 years "not to seek and to oppose any annexation of any portion" of his 107 acres of property. In exchange, the Township agreed not to impose tax increment financing legislation on the property during that period.

Despite the alleged ill will toward Oberer, the Board of Trustees approved multiple Oberer developments in the Township following the Dille/Cornerstone litigation. In 2014, the Board approved a rezoning application for the Oak Brooke development in Planning Area 1. In 2015, it approved a rezoning application for the Woodland Ridge development, also in Planning Area 1 seen on the map above. Both of these developments involved a rezoning from "A-1 (Agriculture) District to PUD-R (Residential Planned Unit Development) District[.]"

Following the developments in Planning Area 1, Oberer sought [\*5] to develop the Rammel Farm in Planning Area 3. In 2017, Rammel agreed to sell a portion of the farm to Oberer "for the purpose of development, subject to necessary governmental approvals." Oberer then began the process of getting the proposed development approved.

Oberer first met with the Greene County Regional Planning Commission. Its initial proposal included 113 lots. During the Greene County commission meetings, a Sugarcreek Township trustee wanted Oberer to address certain traffic issues in the proposal. Accounting for the road construction necessary to address those issues, Oberer subsequently revised its proposal to include 98

lots, and the Greene County commission recommended approval of Oberer's proposal.

To carry out its proposed 98-lot development, Oberer applied to rezone its portion of the Rammel Farm from Rural Estate Resident District (E-Rural) to Residential Planned Unit Conservation Development District (R-PUCD). Oberer was the first developer, and Rammel the first landowner, to request R-PUCD zoning in that area. The purpose of an R-PUCD district is to "maintain and protect the rural, natural, and scenic qualities of Sugarcreek Township . . . where 50% of a site is [\*6] preserved as open space." R. 28-1 at Ex. 1, ¶ 4. The purpose of E-Rural, on the other hand, is to allow for "residential lots of a relatively rural and spacious nature . . . in outlying rural areas where urbanization is not expected to occur" any time soon. *Id.*

The first stop for Oberer's application was the Township Board of Zoning Commission, which makes recommendations to the Board of Trustees on whether to grant or deny a rezoning application. At a public meeting of the zoning commission in December 2018, over 130 residents attended, many of whom voiced opposition to the proposed development. They voiced concern about the threat of annexation, that the development would increase traffic and population density, and that it would decrease the scenic open space characteristic of the Township. One resident, whose family had lived in Sugarcreek Township since the 1950s, stated that residents would circulate a referendum if the application was approved and would "easily" get the necessary 450 signatures. After considering the application and listening to the public's concerns, the Zoning Commission voted unanimously to recommend denial of Oberer's application due to "concerns about density, [\*7] traffic, and a failure to meet the standards for an R-PUCD." *Id.* at Ex. 1, ¶ 10. One member also noted the

non-annexation agreement between Rammel and the Township and that the 2013 Long-Range Land Use Plan identified the Rammel Farm as a high risk area for annexation.

Oberer next presented its application to the Board of Trustees. In a February 2019 public meeting, residents again attended and voiced concerns about the proposed development. The Board tabled deliberations until March. At the March meeting, the Board of Trustees deliberated and unanimously voted to deny Oberer's application. Individual trustees noted that a proposed development has never had such a level of input from citizens. They came to the consensus that the proposed development did not keep with the character of the Township and did not meet the goals of the Long-Range Land Use Plan. One trustee noted that she saw "no reason" to overturn the Zoning Commission's recommendation but that the Township could work with Oberer on a different plan for the Rammel Farm.

Soon after the Board denied the application, Oberer and Rammel filed this suit against Sugarcreek Township and the Township Board of Trustees in the Southern [\*8] District of Ohio. Oberer and Rammel asserted several federal constitutional claims under 42 U.S.C. § 1983 and claims under Ohio law. The Township and the Board moved to dismiss, which the district court granted in part and denied in part. Three of Oberer and Rammel's claims survived: that the defendants violated the Equal Protection Clause of the Fourteenth Amendment and the Takings Clause of the Fifth Amendment, and that Rammel's non-annexation agreement is invalid under Ohio law. Both parties subsequently moved for summary judgment. The district court granted summary judgment in favor of the Township and the Board of Trustees on Oberer and Rammel's federal claims. It dismissed the remaining state-law claim without prejudice

after declining to exercise supplemental jurisdiction under 28 U.S.C. § 1367. Oberer and Rammel appeal.

II.

We review a district court's grant of summary judgment de novo, viewing the evidence in the light most favorable to the non-movant. *Fisher v. Nissan N. Am., Inc.*, 951 F.3d 409, 416 (6th Cir. 2020) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). Summary judgment is appropriate when there are no genuine issues of material fact and a party must prevail as a matter of law. *Id.*; Fed. R. Civ. P. 56(a). Oberer and Rammel appeal the district court's grant of summary judgment on their equal protection and takings claims. We address each in turn.

### A. Equal protection claim

Proceeding under a "class-of-one" [\*9] theory, Oberer and Rammel claim that the Township violated the Fourteenth Amendment's Equal Protection Clause in denying their rezoning application. To succeed on a class-of-one claim, they must show (1) that they were "intentionally treated differently from others similarly situated" and (2) that "there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000) (per curiam). "Class-of-one claims are generally viewed skeptically," so Oberer and Rammel bear a "heavy burden" to prevail. *Loesel v. City of Frankenmuth*, 692 F.3d 452, 461-62 (6th Cir. 2012) (citation and internal quotation marks omitted); see also *TriHealth, Inc. v. Bd. of Comm'rs, Hamilton Cnty.*, 430 F.3d 783, 791 (6th Cir. 2005) ("This standard of review is 'a paradigm of judicial restraint,' growing out of recognition that 'equal protection is not a license for courts to judge the wisdom, fairness or logic of legislative



choices." (citation omitted)).

Oberer and Rammel's class-of-one claim cannot withstand summary judgment. While the first prong is generally a fact issue for the jury, Oberer and Rammel have produced no evidence that Township treated them differently from others similarly situated. See *Loesel*, 692 F.3d at 462. Class-of-one claims concern different treatment of "individuals[.]" so the relevant inquiry focuses on "the properties and their owners." *Id.* at 463 (emphasis added). Oberer and Rammel focus their analysis entirely on three [\*10] comparator developments that the Township approved in Planning Area 1. But notwithstanding the material differences in those developments from the Rammel Farm—such as their location in Planning Area 1 of the Township and the fact that none of those developments were zoned under R-PUCD—Oberer and Rammel say nothing about different treatment of the owners of those developments. See *id.* Indeed, Oberer itself was the developer for two of those three developments that the Township approved in Planning Area 1, thus undercutting any inference that the Township has treated Oberer differently from other property owners in violation of the Equal Protection Clause.

They have also failed to create a genuine dispute regarding whether the Township lacked a rational basis for denying their application. To show that the Township lacked a rational basis for its action, Oberer and Rammel must either "negat[e] every conceivable basis which might support" the action or show that the government action "was motivated by animus or ill-will." *Anders v. Cuevas*, 984 F.3d 1166, 1179 (6th Cir. 2021) (quoting *Warren v. City of Athens*, 411 F.3d 697, 711 (6th Cir. 2005)). The Township has "no obligation to produce evidence to sustain the rationality of its action;" the burden is on

Oberer and Rammel to show that the action was "irrational." *TriHealth, Inc.*, 430 F.3d at 790-91 (citations [\*11] omitted).

In arguing that the Township lacked a rational basis, Oberer and Rammel rely exclusively on the theory that the Township's decision was motivated by animus against Oberer. "Animus is defined as 'ill will, antagonism, or hostility usually controlled but deep-seated and sometimes virulent.'" *Loesel*, 692 F.3d at 466 (quoting *Webster's Third New International Dictionary, Unabridged* (2002)). Importantly, to succeed on an animus theory, plaintiffs must show that the animus was against them specifically and not just against the proposed development. *Id.* at 467 (collecting cases).

Oberer and Rammel claim that the Board of Trustees must have had animus against Oberer because of protracted litigation that ensued between the Township and the city of Centerville because of Oberer's Dille/Cornerstone development in 2006 (and the subsequent annexation of that development by Centerville). See *Sugarcreek Twp.*, 921 N.E.2d at 658. But, as the district court correctly noted, the record contains no evidence supporting that allegation. Without any evidence to show that the Dille/Cornerstone litigation created animus against Oberer, which then motivated the Township's actions here, the inference of animus Oberer and Rammel ask us to draw amounts to pure speculation [\*12] insufficient to survive summary judgment. See *Jones v. City of Franklin*, 677 F. App'x 279, 282 (6th Cir. 2017).

Oberer and Rammel point to the evidence that the Rammel Farm was "identified as a high risk area for annexation" and that the "Township took measures to avoid annexation from happening" because of Oberer's Dille/Cornerstone development. Appellants' Br. at 31-32. At most, however, this evidence



supports that the Township had animus against the proposed development, not against Oberer or Rammel. See *Loesel*, 692 F.3d at 467; see also *Taylor Acquisitions, L.L.C. v. City of Taylor*, 313 F. App'x 826, 838 (6th Cir. 2009) (affirming summary judgment against developer on class-of-one claim where the developer's "evidence demonstrated animus toward the *project*, not toward [the developer] itself"). One trustee even noted her willingness to work with Oberer on a different plan for the Rammel Farm. And the Township's approval of other Oberer developments in 2014 and 2015 negates any inference that the Township secretly harbored animus against Oberer because of the Dille/Cornerstone project. The Township and the Board of Trustees are entitled to summary judgment.

## B. Takings claim

Next, Oberer and Rammel challenge the Township's denial of their zoning application as a regulatory taking.<sup>1</sup> The Fifth Amendment's Takings Clause, made applicable to state governments through the Fourteenth Amendment, states: "[N]or [\*13] shall private property be taken for public use, without just compensation." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071, 210 L. Ed. 2d

369 (2021) (quoting U.S. Const. amend. V). "Takings" can fall into two general categories. The first, *per se* takings, occur when the government acquires, occupies, or regulates in a way that "physically appropriates" private property. *Id.* at 2071-72. The second, regulatory takings, occur when government regulation goes "too far" in restricting an owner's use of the property. *Id.* (citation omitted).

A regulatory taking can either be "categorical" or "non-categorical[.]" *Coal. for Gov't Procurement v. Fed. Prison Indus., Inc.*, 365 F.3d 435, 482-83 (6th Cir. 2004). A taking is "categorical" where the challenged "regulation deprives property of all [economic] value." *Id.* (citation omitted); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1028-32, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992). A taking is "non-categorical" if the challenged regulation does not deprive the property of all economic value, but nonetheless goes "too far." *Coal. for Gov't Procurement*, 365 F.3d at 482-83.

Oberer and Rammel argue that the denial of their rezoning application deprived them of "all economically viable use of the Property"—and thus it amounts to a categorical taking—because the cost of developing the property under its current zoning would "exceed the potential lot sales and return on investment." Appellants' Br. at 34-36. This argument misconstrues what it means for property to lose all economically viable [\*14] use. See *Lucas*, 505 U.S. at 1028-32. In *Lucas*, for example, the plaintiff acquired two beachfront lots along the South Carolina coast with plans to build single-family residences on the lots. *Id.* at 1008. But *after* the plaintiff acquired the property, South Carolina enacted beach preservation legislation that prevented the plaintiff from building any structures on the lots, thus depriving the lots of any economic value. *Id.* at 1008-09, 1020. Here, unlike the

<sup>1</sup>The Township argues that Oberer and Rammel's takings claim is not ripe under the finality requirement set out in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985). The Supreme Court recently overruled *Williamson County* in *Knick v. Township of Scott*, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019), but left in place *Williamson County*'s finality requirement: that a takings claim "is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186; *Knick*, 139 S. Ct. at 2169. Here, the Township does not contend that the Board of Trustees decision denying the rezoning application was not final. Thus, *Knick* and *Williamson County* do not bar Oberer and Rammel's takings claim.

lots in *Lucas*, the Rammel Farm remains worth \$564,000 under its current zoning, according to Oberer's own expert. The fact that Oberer, according to its expert, would be unable to make a profit if it developed the property under its current zoning does not mean that the property has no economic value. The Takings Clause does not guarantee a return on investment for private property developers.

The Township's denial of the zoning application did not deprive the Rammel Farm of all economic value, so Oberer and Rammel's claim could only fall into the "non-categorical" bucket. To determine whether a regulation amounts to a "non-categorical" regulatory taking, courts apply an "ad hoc, factual inquiry" set out by the Supreme Court in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). *Coal. for Gov't Procurement*, 365 F.3d at 483. The *Penn Central* inquiry involves "three significant factors: (1) the economic impact of [\*15] the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Id.* Applying those factors here, the Township's denial of Oberer's zoning application does not come close to a regulatory taking.

1) *Economic impact.* Oberer submits expert testimony that the value of the Rammel Farm undeveloped and zoned as E-Rural is \$564,000. The denial of the rezoning application did not decrease that value; it prevented the Rammel Farm from realizing a higher value had the land been rezoned as R-PUCD for development. But that is far from what is required to establish a regulatory taking. See *Concrete Pipe & Prod. of Cal., Inc. v. Const. Laborers' Pension Tr. for S. Cal.*, 508 U.S. 602, 645 (1993) (collecting cases) (explaining that a "mere diminution in the value

of property, however serious, is insufficient to demonstrate a taking").

2) *Investment-backed expectations.* Oberer and Rammel have not shown that the denial of their application interfered with any "distinct investment-backed expectations[.]" *Coal. for Gov't Procurement*, 365 F.3d at 483. The purchase agreement between Oberer and Rammel is "subject to necessary government approvals" for Oberer's planned development. In other words, the contract expressly accounts for the risk [\*16] that the proposed development would not get the Township's necessary approval. Because the approval upon which the sale was contingent did not occur, Oberer did not invest in developing the property and risk losing money on its investment. And Rammel will be left with his property at it was. 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." *Loveladies Harbor, Inc. v. United States*, 28 F.3d 1171, 1177 (Fed. Cir. 1994) (collecting cases), *abrogated on other grounds by Bass Enters. Prod. Co. v. United States*, 381 F.3d 1360, 1369-70 (Fed. Cir. 2004). The denial of Oberer and Rammel's "ability to exploit a property interest" that they thought *might* be "available for development" is insufficient to establish a regulatory taking. *Penn Cent. Transp. Co.*, 438 U.S. at 130.

3) *Character of the government action.* The final factor also cuts against Oberer and Rammel. The *Penn Central* test aims "to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Tenn. Scrap Recyclers Ass'n v. Bredesen*, 556 F.3d 442, 457 (6th Cir. 2009) (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005)). Here,

the legitimate denial of a rezoning application is not at all "functionally equivalent to the classic taking" where the "government directly appropriates private property[.]" *Id.* (citation omitted). Nor did the [\*17] Township force Oberer or Rammel to "alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* (quoting *Armstrong v. United States*, 364 U.S. 40, 49, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960)).

In sum, the Township and the Board of Trustees are entitled to summary judgment on Oberer and Rammel's takings claim.

### III.

Oberer and Rammel also appeal the district court's dismissal of their state-law claims without prejudice after declining to exercise supplemental jurisdiction. "We review a district court's decision declining to exercise supplemental jurisdiction for an abuse of discretion." *Veneklase v. Bridgewater Condos, L.C.*, 670 F.3d 705, 709 (6th Cir. 2012) (citing *Gamel v. City of Cincinnati*, 625 F.3d 949, 951 (6th Cir. 2010)). We reverse only if "we are left with 'the definite and firm conviction that the district court made a clear error of judgment in its conclusion upon weighing relevant factors.'" *Id.* (quoting *Gamel*, 625 F.3d at 951). District courts have "supplemental jurisdiction over" all claims "that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . . ." 28 U.S.C. § 1367(a). But a district court "may decline to exercise supplemental jurisdiction" if, among other factors, "the district court has dismissed all claims over which it has original jurisdiction[.]" *Id.* § 1367(c)(3). That is what the district court did here. [\*18]

Out of comity to state courts, this circuit applies a "strong presumption against the exercise of supplemental jurisdiction once

federal claims have been dismissed." *Packard v. Farmers Ins. Co. of Columbus Inc.*, 423 F. App'x 580, 584 (6th Cir. 2011). District courts should retain supplemental jurisdiction "only in cases where the interests of judicial economy and the avoidance of multiplicity of litigation outweigh our concern over needlessly deciding state law issues." *Id.* (quoting *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006)); see also *Musson Theatrical v. Fed. Express Corp.*, 89 F.3d 1244, 1254-55 (6th Cir. 1996) ("When all federal claims are dismissed before trial, the balance of considerations usually will point to dismissing the state law claims" without prejudice.).

The district court was well within its discretion to decline supplemental jurisdiction and leave it to Ohio courts to pass judgment on this local land dispute. To Oberer and Rammel, the validity of the non-annexation agreement—an issue of state law that could have important local consequences—undergirds this whole dispute. Thus, while re-filing in state court will be "inconvenient" for them, they have not shown that the "interests of judicial economy and the avoidance of multiplicity of litigation outweigh" the strong presumption in favor of declining supplemental jurisdiction out of comity to Ohio courts. *Packard*, 423 F. App'x at 584-85 (citation [\*19] omitted).

### IV.

We AFFIRM the district court's judgment.

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## Webster Twp. v. Waitz

Court of Appeals of Michigan

June 7, 2016, Decided

No. 325008

### Reporter

2016 Mich. App. LEXIS 1109 \*

WEBSTER TOWNSHIP, Plaintiff/Counter-Defendant-Appellee, and JOHN SCHARF, ANDREA SCHARF, DUNCAN J. J. MAGOON AND MARILYN J. MAGOON REVOCABLE TRUST, and SUBHAM HOLDINGS, L.L.C., Intervening Plaintiffs-Appellees, v DANIEL WAITZ, LAURA WAITZ, and COTTONWOOD BARN, L.L.C., Defendants/Counter-Plaintiffs-Appellants.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** [\*1] Washtenaw Circuit Court. LC No. 2013-000948-CZ.

**Judges:** Before: O'CONNELL, P.J., and OWENS and BECKERING, JJ. BECKERING, J. (concurring). OWENS, J. (concurring).

### Opinion

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PER CURIAM.

Defendants, Daniel Waitz, Laura Waitz, and Cottonwood Barn, L.L.C. (collectively, the Waitzes) appeal as of right the trial court's order granting summary disposition under MCR 2.116(C)(10) to plaintiffs, Webster Township and the individual plaintiffs (collectively, the Township), and permanently enjoining Cottonwood Barn from operating as

a commercial event barn. We affirm.

### I. FACTUAL BACKGROUND

On July 25, 2012, Daniel Waitz met with the Township's zoning administrator, Bruce Pindzia, to discuss the proposed use of a property that they were considering purchasing. On August 2, 2012, Pindzia sent the Waitzes a letter:

Thank you for meeting with me on July 25, 2012 to discuss a proposed land use at [the property]. These two parcels are adjacent to one another. I understand that you desire to host wedding receptions and similar events in the barn. I further understand that the occurrence of such events would be seasonal. You anticipate typically scheduled for the warmer months. Please consider this communication as your authorization to proceed [\*2] with this concept based upon the Zoning Ordinance currently in effect.

\* \* \*

The home is considered the principal structure on the subject property. The primary use of the property is residential. The barns are defined as an accessory structure to the home. The hosting of wedding receptions and similar gatherings is considered to be an accessory use which is incidental and subordinate to the single-family dwelling (§ 9.05.A.2.c.). Furthermore, you have adequate space for on-site parking. Impacts to the neighboring parcels are not anticipated.



However, on August 27, 2012, Pindzia indicated that he had follow-up questions about the "intensity" of the Waitzes' anticipated activities, including how often the Waitzes intended to rent the barn, how many guests would be expected, whether the activity would be seasonal or year-round, whether they would have additional employees, what hours the barn would operate, whether there would be indoor or outdoor entertainment, and whether the single-family home on the property would be occupied or vacant. On August 31, 2012, the Waitzes responded that they expected events to be year-round, "rented every weekend through the summer and probably not so often [\*3] in winter," with "anywhere from 25-200 guests at any one time." They might hire "part-time high school kids to help set up chairs, tables, etc." There would likely be a band or DJ at "many of the events," and the band or DJ would be "inside or outside depending on the weather." Finally, the Waitzes intended that the house would be occupied.

At the end of his responsive letter, Daniel indicated:

I'm a little concerned about the timing of this as we are expected to close within 30 days. If you foresee any issues I really need to know right away.

Webster Township Supervisor John Kingsley emailed the Waitzes on September 19, 2012:

I would not wish for you to close on this property with the feeling that you would be permitted to as you have purposed [sic] without many things being clarified.

The Waitzes purchased the barn on October 4, 2012. The Waitzes acquired a repair building permit in February 2013 through Washtenaw County to add a dormer, replace the roof, and fill some openings, with an estimated cost of \$25,000 in construction. The Township emailed Washtenaw County, stating "Webster

Township understands the project to consist of replacing the barn roof and the addition of dormers to [\*4] the building. Since the building footprint won't change, a township zoning permit is not required."

In April 2013, the Waitzes sought to expand the original building permit to include interior structural alterations. Pindzia emailed Washtenaw County, stating in pertinent part, "I understand that there will be floor, partition, electrical and plumbing work done on the interior. I further understand that the purpose behind these improvements is to create an event venue suitable for leasing. Based on the current Zoning Ordinance, I have no difficulty with this."

Pindzia stated that in late June 2013, he began receiving complaints from neighbors about the intensity of the use on the property. Pindzia again asked the Waitzes to describe their use of the property. On July 25, 2013, the Waitzes responded that they expected a rental every weekend from late spring to early fall, with "[f]ewer events during winter and during the week," and that the barn would operate year-round. He indicated that "[M]ost weddings seem to have about 150 people. Some may be 300 but most are 150." He intended to hire a parking attendant and possibly a caretaker. He expected to have both indoor and outdoor entertainment that would [\*5] end by 11 p.m., and everyone would leave by midnight. Activities included rehearsal dinners on Friday evenings and cleanup on Sunday mornings.

On September 3, 2013, Pindzia notified the Waitzes of a potential ordinance violation by a letter that stated in pertinent part:

My correspondence to you dated August 2, 2012, indicated that your proposal to host wedding receptions at the above addresses would be acceptable if it were conducted as an accessory use to the single family dwelling on the premises.



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Copies of that correspondence were distributed to the Township Board and Planning Commission, which resulted in a number of questions being raised about the intended scope and intensity of your proposed accessory use.

Upon clarification of your intentions, it appeared that you were proposing much more than an "accessory use" within the barn on the premises. . . .

\* \* \*

According to your July 25, 2013 email, you propose to use the premises for events most every weekend from late Spring through early Fall, and expect from 150 to 300 people in attendance at each event. You propose to have live, amplified music both inside and outside during the events into the late evening. You also propose to [\*6] have other events on the premises during the week. With the use you are proposing, the residence on the property would no longer be the principal use of the property. Instead of being "clearly incidental to," "customarily found in conjunction with," and "subordinate to" the single family residence, the use you are now proposing would itself be the principal use of the premises.

Pindzia averred that he received a complaint on September 10, 2013, that the Waitzes were engaging in unauthorized work on the property. Pindzia notified the Waitzes to stop constructing a parking lot because they had not filed an approved site plan. On September 18, 2013, the Waitzes sought to further revise their building permit to include "[r]emodeling the entire barn inside and outside," with an estimated cost of \$525,000. The Township filed its complaint in this action on September 25, 2013, alleging that the Waitzes' use of the property violated the Township's zoning ordinance. The individual plaintiffs intervened

on similar grounds. The Waitzes counterclaimed for violations of equal protection, due process, and equitable estoppel, contending that because the Township had approved building permits, it could not now [\*7] seek to enforce the ordinance. The Waitzes also contended that they had a vested right to use the property as an event barn.

The Township and individual plaintiffs filed a joint motion for summary disposition under MCR 2.116(C)(8) and (10), alleging that there were no questions of material fact regarding whether the Waitzes' use of the property violated the zoning ordinance. In response, the Waitzes contended that several issues of material fact precluded summary disposition. The trial court granted summary disposition under MCR 2.116(C)(10) in an extensive written opinion:

Whether or not the house is occupied, it is clear that event barn use is a commercial operation that exceeds the residential use of the property. The noise, disruption, traffic, and activity of which the plaintiffs complain have no connection to the house as a residence. The guests at the events have no relation, generally, to the occupants of the house. The investment in the property was solely, or almost solely, for the purpose of operating a non-agricultural business out of the barn; the owners of the business do not reside on the property.

\* \* \*

As things turned out, with the benefit of hindsight, the Court would agree with defendants that no preliminary [\*8] certificate would have been necessary had the event barn really been an accessory use to the residential use of the property. The record shows that the event barn became the principal or primary use, and it

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was, in fact a change in the type of use—or at least in the type of occupancy—of the property. Thus, defendants were required to obtain a certificate.

It is not clear that defendants should have known a preliminary certificate was necessary. . . . If a proposed use is a change in use, or an extension of a nonconforming use, the Ordinance requires an application, site plan and preliminary certificate—it is not permissive, and does not relieve a party who acts in good faith from the obligation of complying with the Ordinance.

\* \* \*

Defendants, however, have not provided any evidence, such as an affidavit from a person with knowledge of Webster Township's practices, to support their assertion that it is common for the Township, or townships in general, to provide a letter to serve as a certificate of zoning compliance. The letter was not provided in response to a written application. Defendants do not claim that they posted either Pindzia's letter or the April 2013 email on the property [\*9] during the construction activities, which they would have been required to do with a preliminary certificate of zoning compliance. Even if the [August 2, 2012 letter] was intended by Pindzia to be the preliminary certificate, Pindzia had no authority to issue it without the application and site plan having been filed and it was, therefore, not a *valid* preliminary certificate.

\* \* \*

Considering all the facts submitted and the circumstances as a whole, the Court finds that defendants cannot establish that they reasonably relied on the Township's representation that the event barn, as it developed, was a permitted or accessory use in the AG district.

\* \* \*

Whatever general approval the Township gave defendants to proceed with the project described in the February 2013 permit as an accessory use does not constitute estoppel to enforce the ordinance against what became much greater than that. . . .

The trial court permanently enjoined the Waitzes from operating a commercial event barn. The Waitzes now appeal.

## II. STANDARDS OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When a party moves the trial court for summary disposition under MCR 2.116(C)(8) and [\*10] (10), and the trial court considered documents outside the pleadings when deciding the motion, we review the trial court's decision under MCR 2.116(C)(10). *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party. *Maiden*, 461 Mich at 120. A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

This Court reviews de novo the property interpretation of zoning ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). This Court applies the rules of statutory construction when interpreting a zoning ordinance. *Kalinoff v Columbus Twp*,

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214 Mich App 7, 10; 542 NW2d 276 (1995). We also review de novo the application of equitable doctrines, such as estoppel. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005).

### III. ACCESSORY USE

The Waitzes contend that the trial court improperly determined that their use of the barn was a commercial use under the Township's ordinances. We disagree.

The Township's zoning ordinance provides that uses not specifically permitted in the ordinance may be permitted if they are an "accessory use," Webster Township Zoning Ordinances, [\*11] § 1.20, which the ordinance defines as a use "clearly incidental to, customarily found in conjunction with, subordinate to, and located on the same zoning lot as a permitted use . . . .", Ordinances, § 2.10. Permitted uses within the agricultural district include single family dwellings, farms or farmer's market, farm operations for crops or animals, home occupation, licensed home-based occupations, public utilities, seasonal agritourism,<sup>1</sup> private stables, and state licensed residential facilities. Ordinances, § 9.10(B).

In this case, the barn's use was not "subordinate to" the property's use as a single-family dwelling. Setting aside the questions of fact that did exist—including whether the home was occupied—the property's actual use as an events venue far outstripped its use as a single-family dwelling. While families occasionally host weddings and gatherings in their backyards and outbuildings, the Waitzes provide no evidence that such gatherings are a year-round weekly occurrence at single-

family [\*12] homes. Most tellingly, in September 2013, the Waitzes began constructing a parking lot. Single family homes have driveways, not parking lots. There is no question that the property's character as a commercial events venue overtook its character as a single-family dwelling.

We conclude that the trial court properly determined that there was no question of fact regarding whether the Waitzes' use of the barn was an accessory use.

### IV. VESTED RIGHTS

The Waitzes contend that they acquired vested rights to operate a commercial events barn through the issuance of building permits. We disagree.

To have a vested right in a particular land use, a property owner must acquire a building permit and do anything of a "substantial character towards the construction" of the project for which the permit was obtained. *Lansing v Dawley*, 247 Mich 394, 396-397; 225 NW 500 (1929). "[A] building permit, or its counterpart, a permit to commence operations, is the *sine qua non* for obtaining 'vested rights.'" *Schubiner v West Bloomfield Twp*, 133 Mich App 490, 501; 351 NW2d 214 (1984). The building permit must be validly issued, and the holder must have commenced work before being informed of a conflicting ordinance. *Dingeman Advertising, Inc v Algoma Twp*, 393 Mich 89, 98-99; 223 NW2d 689 (1974). "[I]n order that a nonconforming use may vest, equity demands that, at the very least, all actions which have been undertaken [\*13] and completed by the holder of the permit prior to actual notification to him of the revocation of such permit must be considered." *Id.* at 99.

In this case, the February and April 2013 building permits sought roof replacement and interior electrical and plumbing work that were consistent with accessory use of the barn. The

<sup>1</sup> While the Waitzes contend that holding weddings in a barn can constitute agritourism, even if this was the case, there is no question that the barn operated year-round rather than seasonally.

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Township has never contended that using a barn to host events may never be an accessory use—only that, in this case, the Waitzes' use of the barn became commercial. It was not until the September 18, 2013 building permit that the Waitzes sought to do substantial remodeling, including building a parking lot.<sup>2</sup> Pindzia's approval of the Waitzes' concept *specifically* mentioned the barn having sufficient on-site parking for the proposed use. The September 2013 building permit was issued *after* Pindzia informed the Waitzes that their use was not consistent with the ordinance and *after* the Township issued a stop work order. The Waitzes cannot show they had a vested right in a commercial events barn at that time. See *Dingeman*, 393 Mich at 99. We conclude that the building permits in this case did not lead the Waitzes to acquire a vested right in the commercial operation of the barn.

#### V. ESTOPPEL AND LACHES

The Waitzes contend that Pindzia's August 2, 2012 email was a certificate of zoning compliance and that the trial court erred when it determined that the facts in this case did not justify estopping the Township from enforcing its zoning ordinance. We disagree.

We reject the Waitzes' argument that a question of fact exists regarding whether Pindzia's initial email was a certificate of zoning compliance. In this case, the Township's zoning ordinance clearly outlines the steps necessary to acquire a certificate of zoning compliance. Ordinances, § 3.80. These steps include filing a formal permit application, paying an application fee, submitting a site plan, and displaying a certificate of zoning compliance at the construction site.

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<sup>2</sup>The Waitzes had already [\*14] begun constructing the parking lot at least as of September 10, 2013. It is difficult to imagine that they relied on the building permit not yet issued at that point in time.

Ordinances, §§ 3.80(B) and (E). Because there are no facts in the record to indicate that the Waitzes followed these steps, there is no question of fact regarding whether Pindzia's email was actually a certificate of zoning compliance.

Whether the Waitzes reasonably [\*15] relied on Pindzia's email is a separate question. An equitable estoppel is appropriate when:

- (1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts. . . . [Howard Twp Bd of Trustees v Waldo, 168 Mich App 565, 575; 425 NW2d 180 (1988) (quotation marks and citation omitted).]

"The general rule is that zoning authorities will not be estopped from enforcing their ordinances absent exceptional circumstances." *Id.* Compelling circumstances may exist if the parties acted in good faith, proper notice was given and a building permit was posted on the premises, the building is specialized and construction work on it would put anyone in the area on notice that something unusual was taking place, and the building is a specialty building "of otherwise doubtful utility." See *Pittsfield Twp v Malcolm*, 375 Mich 135, 148; 134 NW2d 166 (1965).

We agree with the trial court that the Waitzes cannot establish that they reasonably relied on the Township's communications before they engaged in significant construction on the barn. While Pindzia initially indicated that the Waitzes' proposed use of the barn was [\*16] "an accessory use which is incidental and subordinate to the single-family dwelling," the extensive follow-up that took place indicated that whether the ordinance permitted the



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proposed use of the barn "would depend on the intensity of activities in the barn." On September 19, 2012, before the Waitzes closed on the property, the Township emailed them that they would not be able to engage in their proposed use of the property without "many things being clarified." No reasonable mind could conclude that, after being informed that further clarification was necessary, the Waitzes could reasonably believe that Pindzia's email was a valid certificate of zoning compliance and that their proposed use was an accessory use. It is clear from the documentary evidence that whether the Waitzes' use of the barn was an accessory use was not, at that point, determined. Any other belief was not a justified belief.

Additionally, the trial court properly concluded that exceptional circumstances do not exist in this case.

The Waitzes contend that the fact that they spent over \$750,000 militates in favor of equitable estoppel. As previously discussed, before Pindzia's September 3, 2013 notice of ordinance [\*17] violation, the Waitzes had approved building permits for roof replacement, dormers, and work on the floors, electrical, and plumbing in an expected amount of \$25,000. The Waitzes did not seek to expand their building permit to include interior and exterior remodeling until September 18, 2013, after Pindzia issued a stop work order on September 10, 2013. Even if the Waitzes did expend \$750,000 on the barn, there is no indication that this amount was spent in reasonable reliance on the February and April 2012 building permits. Those building permits that were issued concerned \$25,000 in repairs, substantially less than the September 2013 building permit.

Regarding the remainder of the factors, the building was not a specialized construction. Reroofing a barn and updating its interior is not

such an uncommon event that it would put the community on notice that something unusual was taking place. The Waitzes provided no evidence that they posted the building permits on the premises. Even presuming that the Waitzes acted in good faith, we conclude that the circumstances of this case do not present an exceptional or compelling circumstance to prevent the Township from enforcing the ordinance. [\*18]

We also reject the Waitzes' unpreserved laches claim. We review unpreserved issues for plain error affecting the party's substantial rights. *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 532; 866 NW2d 817 (2014). "If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches." *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). In this case, there is no indication that the Township waited a substantial period of time to enforce their rights. Accordingly, we conclude that the trial court did not plainly err by failing to apply the doctrine of laches.

## VI. ADDITIONAL ISSUES

The Waitzes contend that the trial court applied an improper standing for deciding a motion for summary disposition and that several issues of material fact remain. We disagree.

First, the Waitzes contend that issues of fact remained regarding whether the Township selectively enforced the ordinance on events barns. The Waitzes failed to provide any facts that would show an issue of material fact. To survive a motion for summary disposition, once the nonmoving party has identified issues in which there are no disputed issues of material fact, the burden is on the plaintiff to show that disputed issues exist. [\*19] *Quinto v*



*Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The nonmoving party "must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id.* at 362. Here, the Waitzes failed to provide any facts to support these allegations.

Second, while the trial court stated at one point that it was relying on Pindzia's affidavit, it is clear from reading the trial court's decision in context that it was actually relying on the documentary evidence of Pindzia's emails. Third, as can be seen from the previous excerpt from the trial court's opinion, it determined that whether the property was occupied or not did not affect its analysis. We conclude that the trial court did not engage in fact-finding under its analysis. The remainder of the Waitzes' issues with the trial court's analysis are similarly lacking in merit.

We conclude that the trial court applied a proper standard for a motion for summary disposition and did not engage in improper fact-finding.

We affirm.

/s/ Peter D. O'Connell

**Concur by:** Jane M. Beckering; Donald S. Owens

### **Concur**

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BECKERING, J. (*concurring*).

Because I agree that defendants, Daniel Waitz, Laura Waitz, and Cottonwood Barn, L.L.C., are unable to show reasonable reliance with respect to their equitable estoppel [\*20] claim—which is a form of relief to be applied in exceptional circumstances—I concur in the result reached by the majority opinion. I write separately simply to acknowledge that

responsibility for the current situation lies at the feet of both defendants and plaintiff, Webster Township, and to make clear that our ruling pertains to the nature of the use of Cottonwood Barn by defendants, not whether seasonal use of a barn to host weddings or other events that is truly incidental and subordinate to the permitted use of the property can be considered an accessory use within the parameters of the zoning ordinance at issue.

### I. PERTINENT FACTS AND PROCEDURAL HISTORY

After successfully restoring and renovating a barn located on his property, Daniel Waitz began looking for another barn to renovate and restore. Unlike the first barn, which he was unable to lease for events due to a deed restriction, Daniel hoped to make this new barn available for lease as an event center at which wedding receptions and similar events could be held. Daniel found what he believed was a suitable project located on Farrell Road in Webster Township. The property, which was zoned as agricultural, contained a home as [\*21] well as an outdated, dilapidated barn. This property would eventually become known as the "Cottonwood Barn."

On or about July 25, 2012, Daniel met with Webster Township Zoning Administrator Bruce Pindzia to discuss the proposed land use on the property he was considering buying. On August 2, 2012, Pindzia penned a letter to Daniel indicating that he understood Daniel desired to host events in the barn and that the hosting of these events "would be seasonal" and would occur during "the warmer months." Further, it provided that the letter was "your authorization to proceed with this concept based upon the Zoning Ordinance currently in effect." The letter went on to state that the principal structure on the property was the home, and that the barn was "defined as an

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accessory to the home. The hosting of wedding receptions and similar gatherings is considered to be an accessory use which is incidental and subordinate to the single-family dwelling."<sup>1</sup>

Despite writing a letter of approval, Pindzia wrote to Daniel on August 27, 2012, informing the latter that Pindzia had been:

asked to gather additional information regarding the 'intensity' anticipated by your activities. Since I didn't have a written application to work from, the circumstances limiting the authorization of such land use were few and may not be clear to others. As such, I am seeking more information from you.

The letter sought responses to eight questions concerning how often Daniel anticipated renting the barn, how many guests would be at events, whether the barn would be rented seasonally or year-round, the number of anticipated employees, whether there would be entertainment, such as a band, offered for events, whether the entertainment would be indoors or outdoors, the hours of operation, [\*23] and whether the single-family home on the property, which was "assumed to be the primary use of the land," would remain occupied.

Daniel responded on August 31, 2012 by indicating that he anticipated renting the barn for events year-round, that approximately 25-

200 guests would attend events, that his wife, Laura Waitz, would manage the event center, and any other employees would likely be "part-time high school kids." In addition, Daniel indicated that he anticipated there would be a band or DJ at many events, and that the entertainment could potentially be outdoors, depending on the weather. Daniel anticipated that events would end at 11 p.m., and that the single-family house located on the property would continue to be occupied. Daniel, who had not yet purchased the property, stated that he was "a little concerned about the timing of this as we are expected to close [on the property] within 30 days. If you foresee any issues I really need to know right away."

The record does not contain a response from Pindzia; however, on September 18, 2012, Webster Township Supervisor John Kingsley e-mailed Daniel and informed him that various township board members had raised "a number of questions" [\*24] about the proposed change in use of the barn. Kingsley invited Daniel to attend a board meeting that evening, cautioning that "I would not wish for you to close on this property with the feeling that you would be permitted to do as you have proposed without many things being clarified." Kingsley concluded his e-mail by informing Daniel that either he or Pindzia would provide Daniel with more information at some point in the future. Daniel, who was out of town that day, did not attend the board meeting that evening.

The record is silent as to any follow-up communications between the Daniel and Pindzia or Daniel and Kingsley, or between Daniel and any township officials, for that matter. Daniel and Laura purchased the property on October 4, 2012.

In early 2013, Daniel applied for a building permit. The permit described the work to be done as follows: "ADD DORMERS-REPLACE

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<sup>1</sup> Daniel did not apply for a preliminary certificate of zoning compliance, which would be required in the event his intended use and development plans were deemed a change in the type of use of the land or occupancy of any building, as compared [\*22] to a mere accessory use to the residential use of the property. The ordinances applicable to such an undertaking would have required the submission of, among other documents, an application and a site plan. See Webster Township Ordinance, § 3.80. Instead, it appears that he sought approval for his proposed change in the use of the barn solely through his interactions with Pindzia.

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ROOF & FILLING SOME OPENINGS." The estimated cost of construction was listed at \$25,000. Pindzia sent an e-mail to Washtenaw County—ostensibly the entity responsible for issuing building permits in Webster Township—indicating that a township zoning permit was not required for the proposed improvements and that the requested [\*25] building permit should be issued. Thereafter, Washtenaw Township issued a building permit to Daniel for work on the barn.

Daniel subsequently sought a revision of the building permit for interior work on the barn, including flooring work and electrical and plumbing improvements. The estimated cost of construction—\$25,000—remained unchanged. On April 29, 2013, Pindzia e-mailed Washtenaw County officials indicating that they should "consider this as your authorization to issue a building permit regarding these improvements." Pindzia's e-mail stated the proposed purpose of the improvements on the barn was "to create an event venue suitable for leasing. Based on the current Zoning Ordinance, I have no difficulty with this."

In May 2013, Washtenaw County issued a revised building permit, again with an estimated cost of construction of \$25,000. The revised permit mentioned floor and stairway work, as well as additional window work and the installation of beams and doors. According to Daniel's affidavit, he obtained not only building permits for work on the barn, but also sewage permits, electrical permits, plumbing permits, soil and sedimentation control permits, and mechanical permits.

The [\*26] barn was not yet open for business in the summer of 2013. However, neighboring landowners, concerned with the construction, apparently began to complain about the renovation project and proposed use of the barn. On July 22, 2013, Pindzia wrote an e-

mail to Webster Township board members and stated that Daniel had misinformed him about the proposed use and nature of the barn. According to the e-mail, "the representations made to me by [Daniel] . . . last year are not the parameters the business is now being run under. In other words, the details and things I see happening today . . . [are] different than what [Daniel] said [he was] going to do." In particular, Pindzia stated that

the situation was presented to me that the subject property would remain primarily as a single family dwelling with an out building. [Daniel] was going to purchase it. The barn events would be occasional and SEASONAL. No outdoor activities were specified.<sup>2</sup> No building improvements were proposed. All of these conditions have been changed. Massive construction improvements have been made. The business activities are not seasonal but all year long. The primary use of the property has shifted to a Conference Center [\*27] with a 3 bedroom outbuilding (formerly someone's home).

Pindzia concluded his e-mail by informing board members that any prior authorization given to Daniel was revoked, that Daniel would be subject to an enforcement action, and that the barn would not be afforded non-conforming use status.

Three days later, on July 25, 2013, Pindzia e-mailed Daniel and indicated that he could not locate the list of answers Daniel had given in response to Pindzia's August 27, 2012 letter. Pindzia asked if Daniel could respond to the same eight questions he posed to Daniel in the

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<sup>2</sup>The record contains no indication from Daniel that the barn would only be used seasonally; rather, his August 31, 2012 letter expressly stated that he intended to host events at the barn on a year-round basis. In addition, Daniel's letter expressly indicated that entertainment at the barn, including a band, was likely to either be indoor or outdoor entertainment.

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letter because the township board was exploring the use of historic barns, and he had "been asked to discover more information about your project." Daniel responded to the e-mail with answers that largely mirrored his August 31, 2012 answers, but included responses that [\*28] increased the potential number of guests at events to 150-300 guests, added additional employees, such as a parking attendant and "[m]aybe a caretaker," and which indicated that events at the barn were to end by 11 p.m., but everyone would be "completely gone by midnight."

Daniel continued construction and renovation on the barn and stated in an affidavit that he had started to accept reservations for events at the barn during the summer, even though the barn was not scheduled to open until October 2013. He averred that he was almost finished with construction when he received a "Notice of Potential Violation" from Pindzia on September 3, 2013. The notice stated that Pindzia considered the barn to "be acceptable if it were conducted as an accessory use to the single family dwelling on the premises." However, the document continued, based "[u]pon clarification" of Daniel's intentions via his most recent e-mail, "it appeared that [Daniel was] proposing much more than an 'accessory use' within the barn on the premises." The document advised Daniel that the intended use of the barn as a commercial, rather than accessory use, was unlawful under township zoning ordinances.<sup>3</sup> It further advised that he was [\*29] not to pursue his anticipated construction of a parking lot adjacent to the

barn, given that a parking lot designed to serve 300 guests represented a change to another use requiring review and approval of a site plan.

Despite the warning about the parking lot, it appears that Daniel pursued construction of the parking lot, prompting a September 10, 2013 stop-work order from Pindzia. The order noted that the parking lot construction was contrary to the earlier warning. It also noted that Daniel began construction on the parking lot without first obtaining prior review or site plan approval.

On September 18, 2013, Washtenaw County issued another revised building permit to Daniel for work on the barn.<sup>4</sup> The permit listed "REMODELING ENTIRE BARN INSIDE & [\*30] OUTSIDE" in the project description, and listed an estimated project cost of \$525,000. It is not apparent from the record why this permit was issued after Daniel received the notice of a potential violation and a stop work order.

On September 25, 2013, Webster Township initiated this action by filing a complaint and alleging that Daniel's use of the property violated township zoning ordinances. Intervening plaintiffs alleged similar ordinance violations and argued that the use of the barn constituted a public nuisance per se, a private nuisance per se, and a trespass. Defendants filed a counterclaim. In October 2014, the trial court granted summary disposition to Webster Township and intervening plaintiffs, concluding that an event barn was not an expressly or impliedly "permitted use" under Section 1.20 of the Ordinance, and as for whether it constituted an "accessory use" to a permitted use, the trial court stated as follows:

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<sup>3</sup> In its thorough and well-analyzed October 15, 2014 Opinion and Order, the trial court cogently details the chronology of events that occurred during the relevant time period, including the fact that the Township Planning Commission and Township Board considered, but rejected, proposed changes to the Township Zoning Ordinance that would have addressed the type of use defendants were proposing for their barn, being beyond mere accessory use.

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<sup>4</sup> The record does not appear to contain an application for the permit or any other documents associated with the issuance of the permit.



The prior, permitted use of the property was as a residence; the [former occupants] have moved out and, as of the filing of plaintiffs' [\*31] motion, the house was unoccupied. The events in the barn, however, occur each weekend, from Friday through Sunday and sometimes during the week. They often involve large numbers of people and substantial traffic, all connected with the barn activities. As an accessory use, the tail is now wagging the dog.

\* \* \*

Whether or not the house is occupied, it is clear that event barn use is a commercial operation that exceeds the residential use of the property. The noise, disruption, traffic and activity of which the plaintiffs complain have no connection to the house as a residence. The guests at the events have no relation, generally, to the occupants of the house. The investment in the property was solely, or almost solely, for the purpose of operating a non-agricultural business out of the barn; the owners of the business do not reside on the property.

\* \* \*

. . . The record shows that the event barn became the principal or primary use, and it was, in fact, a change in the type of use—or at least in the type of occupancy—of the property.

The trial court also found that defendants could not establish that they reasonably relied on the township's representation that the event barn, as it developed, [\*32] was a permitted or accessory use in the agricultural district under the circumstances presented.

## II. EQUITABLE ESTOPPEL

While I agree with the well-reasoned majority opinion, I write separately to briefly discuss defendants' equitable estoppel claim. "An

equitable estoppel arises where (1) a party by representation, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on this belief, and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts." *Hughes v Almena Twp*, 284 Mich App 50, 78; 771 NW2d 453 (2009). "Generally, a city is not precluded by estoppel from enforcing its zoning code." *Holland v Manish Enterprises*, 174 Mich App 509, 514; 436 NW2d 398 (1988). See also *Pittsfield Twp v Malcolm*, 375 Mich 135, 146-147; 134 NW2d 166 (1965). However, our courts have recognized an exception to the rule of nonestoppel in "exceptional circumstances." *Pittsfield Twp*, 375 Mich at 147. The entire circumstances, viewed together, must present compelling reasons why the zoning authority should not be allowed to enforce the ordinance. *Id.* at 148.

I agree that defendants cannot establish reasonable reliance in this case. Daniel discussed the event-barn concept with Pindzia in July 2012, and Pindzia issued a letter of authorization "to proceed with this concept"—a seasonal event barn that was accessory to [\*33] the primary use of the property as a single-family home—in August 2012. However, shortly after giving this approval, Pindzia began requesting more details about the project, particularly details about the "intensity" of the proposed use of the barn. Pindzia requested these details because, in his words, he "didn't have a written application to work from" and was unable to specify the scope of the authorization.<sup>5</sup> This request for clarification

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<sup>5</sup> As noted above, the record reveals that Daniel did not comply with zoning requirements about submitting an application and site plan for his proposed use. Daniel is charged with having knowledge of these zoning requirements. See *Hughes*, 284 Mich App at 78.



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should have signaled to Daniel that all might not be well with his planned use of the barn.

Daniel's subsequent responses to Pindzia's requests also raise a question as to whether his reliance was reasonable. Daniel indicated, in response to Pindzia's questions, that he was planning to use the barn to host events year-round. He did so despite Pindzia's earlier statement that he anticipated the barn to be an accessory use if it were used to host *seasonal* events. Indeed, the approval Pindzia gave was for "this concept"; Pindzia [\*34] described the concept as a "seasonal" use of the event barn for events "typically scheduled for the warmer months." Daniel's decision to stray from the type of limited in scope, "incidental and subordinate to the single-family dwelling" use approved by Pindzia discounts the notion that he reasonably relied on Pindzia's approval.

Furthermore, as the majority notes, the September 18, 2012 e-mail to Daniel from Kingsley should have signaled a potential problem to Daniel and further discounts the idea that his reliance on Pindzia's earlier approval was reasonable. Kingsley specifically stated that township board members "have raised a number of questions about this change in use—more questions than we have answers." Kingsley expressly told Daniel that he did not wish for the latter to close on the property "with the feeling that you would be permitted to do as you have proposed without *many things being clarified*." This was an express warning that Daniel should not continue with the project thinking he could use the barn in the manner he was proposing. Yet, despite this warning, Daniel proceeded forward with the project in an effort to use the barn as he had proposed to do. Moreover, as [\*35] noted by the trial court, with each successive revision of the building permit, the project became more substantial and significant, evidencing an ever expanding use

above and beyond the initially understood concept by Pindzia that this was to be an accessory use to the permitted use as residential property.

Accordingly, I agree with the majority that defendants cannot establish the element of reasonable reliance. That is not to say, however, that the rest of the players involved in this case are blameless. For instance, the county issued, at the township's behest, several building permits to Daniel. The township urged the county to do so despite the fact that Daniel responded to Pindzia's inquiries by stating that he intended to use the barn in a year-round fashion for hosting numerous events. Also, according to Daniel's affidavit, the barn was located within 1/4 mile of township offices, and many officials walked through the barn during the construction phase. Pindzia himself admitted, in his July 22, 2013 e-mail, that "[m]assive construction improvements have been made." Yet, despite having at least some knowledge of the massive improvements Daniel was making to the barn—and by implication, [\*36] that he likely intended to lease the barn in a manner so as to recoup his expenses—township officials apparently saw fit to allow construction to continue for a period of time. Nevertheless, because defendants cannot show reasonable reliance in light of the entirety of the circumstances, their equitable estoppel claim must fail.

### III. ACCESSORY USE

I also agree with the majority's conclusion that the particular use of the barn by defendants, i.e., a year-round leasing facility designed to host numerous events, is not an accessory use under the zoning ordinance. I note, however, that neither this Court nor the trial court was asked to weigh in on whether a far more limited in scope use of the barn, such as for occasional weddings and gatherings in a

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manner that is truly incidental and subordinate to the primary use of the property as residential, is nevertheless permitted.<sup>6</sup> The parties did not seek such a determination. Thus, our ruling should not be construed so as to preclude any use of the barn in a manner that qualifies as an accessory use under the applicable zoning ordinance.

In all other respects, I concur with the majority opinion.

/s/ Jane M. Beckering

OWENS, J. (*concurring*).

I concur in the result reached by the majority opinion for the reasons given in Judge Beckering's concurrence.

/s/ Donald S. Owens

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<sup>6</sup> The trial court's final judgment declared that defendants were "permanently enjoined from operating as a *commercial* [\*37] hosting operation ("event barn") as *historically done by Cottonwood Barn, LLC . . .*" (emphasis added). As the trial court aptly noted, "no preliminary certificate would have been necessary had the event barn really been an accessory use to the residential use of the property. The record shows that the event barn became the principal or primary use, and it was, in fact a change in the type of use. . . of the property." This, in my opinion, does not preclude a lesser use of the barn, should the lesser use be determined to fit within the parameters of an "accessory use" under applicable zoning ordinances.

## Whitmore Lake 23/Llc v. Ann Arbor Charter Twp.

Court of Appeals of Michigan

April 28, 2011, Decided

No. 294696

### Reporter

2011 Mich. App. LEXIS 790 \*; 2011 WL 1600507

WHITMORE LAKE 23/LLC, <sup>1</sup> ZAKHOUR I. YOUSSEF, ANDOULLA YOUSSEF, MUAIAD SHIHADDEH, and AIDA SHIHADDEH, Plaintiffs-Appellants, and ELIE R. KHOURY and FARIDEH KHOURY, <sup>2</sup> Plaintiffs, v ANN ARBOR CHARTER TOWNSHIP, Defendant-Appellee.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** [\*1] Washtenaw Circuit Court. LC No. 06-000513-CZ.

**Judges:** Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

### Opinion

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PER CURIAM.

Plaintiffs appeal by right the trial court's September 29, 2009 order granting defendant's motion to dismiss at the close of plaintiffs' proofs at trial on plaintiffs' claim that

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<sup>1</sup> Whitmore Lake 23/LLC no longer has an interest in this litigation because its option to purchase the property expired during the proceedings below.

<sup>2</sup> Plaintiffs Elie Khoury and Farideh Khoury are part owners of the property in issue but are not listed as appellants because they were not included the claim of appeal. See MCR 7.204(D)(1).

defendant's zoning ordinance as applied to plaintiffs' property violated plaintiffs' constitutional rights to substantive due process and equal protection. On appeal plaintiffs only assert the trial court erred regarding its substantive due process claim. We affirm.

Plaintiffs also assert the trial court erred in its December 4, 2007, "Order Granting In Part and Denying In Part Defendant's Motion for Summary Disposition and Dismissing Plaintiff's Claim of Appeal." This order denied defendant's motion for summary disposition and affirmed the decision of defendant's zoning board of appeals (ZBA), denying plaintiffs' application for several variances. The ZBA ruled it did not have the authority to grant plaintiffs' requested variances to develop single-family residences on 1/2-acre lots because the request was for a use variance rather than a nonuse or dimensional variance. We conclude plaintiffs' appeal of [\*2] the circuit court's decision affirming the ZBA decision is by leave, not by right. MCR 7.203(A)(1)(a); MCR 7.203(B)(1) or (4). Plaintiffs did not file an application for leave to appeal within 12 months of the entry of the December 4, 2007 order. MCR 7.205(F)(3). Consequently, this Court must dismiss this part of plaintiffs' appeal for lack of jurisdiction. See *Chen v Wayne State Univ*, 284 Mich App 172, 193, 199; 771 NW2d 820 (2009).

### I. FACTUAL BACKGROUND

The six individual plaintiffs purchased the subject 166 acres of land in the township comprised of two adjacent parcels in 1981.

2011 Mich. App. LEXIS 790, \*2

The northern parcel, 110 acres, is zoned A-1 (general agriculture), which permits among other uses single-family residences on lots of at least 10 acres. Defendant's zoning ordinance describes the intended purposes of this district as follows:

*General agriculture district (A-1).* This district is intended to protect and preserve areas of prime agricultural soils for continued agricultural uses. The district is intended to be located in the areas of the Township that are designated in the general development plan for agricultural use. The regulations in this district are the minimum necessary to protect the open, [\*3] rural character of the agricultural area from intrusion of urban and suburban uses, that is in turn necessary to permit continuation of agricultural operations. Rural residences are considered compatible with the intent of this district if developed at the low density provided in this district and in such a manner that they will not interfere with agricultural operations. [Compiled Ordinances 1990, § 130.1002(A)(2); see also current § 74-427(a)(2).]

The southern 56-acre parcel is zoned R-2, which permits among other uses single-family residences on lots of at least one-acre. Defendant's zoning ordinance describes the intended purposes of this district as follows:

*Single-family suburban residential district (R-2).* This district is intended to provide areas for single-family, non-farm residences on lots of sufficient size to permit the use of on-site water supply and wastewater treatment systems. The district is intended to be applied to areas designated in the general development plan for suburban residential use at a density of 0.5 to 1 DU/acre. This district is intended to be used in the parts of the

areas described in [rural/agricultural and rural/residential] that do not have natural [\*4] features that would be endangered by development at the density permitted in this district. [Compiled Ordinances 1990, § 130.1002(A)(2); see also current § 74-427(a)(2).]

In 2002, plaintiffs entered an agreement with Whitmore Lake/23 LLC granting it an option to purchase the subject property. The option was amended several times, finally expiring during the proceedings below. Plaintiffs and Whitmore Lake desired to develop the subject property by building single-family residences situated on 1/2 acre lots. In 2005, Whitmore Lake filed an application with the township's planning commission seeking to rezone the property from A-1 and R-2 to R-3A, which would permit among other uses single-family residences on 1/2-acre lots. On September 6, 2005, the planning commission adopted a resolution recommending that the township board deny the rezoning application. On November 21, 2005, defendant's board of trustees adopted a resolution denying plaintiffs' application for rezoning.

Plaintiffs thereafter submitted to defendant's ZBA an application for variances of lot size and other requirements in A-1 and R-2 districts so as to permit the development single-family residences on 1/2-acre lots in [\*5] accordance with the original rezoning request that was denied by the township board. Although plaintiffs contended the variances they were requesting were "dimensional," on April 19, 2006, the ZBA denied the request on the basis that the ZBA lacked authority to grant use variances. The defendant's ordinance provides with respect to variances:

The Board of Appeals shall have no authority to hear or make any determination on a request for a change in the use of any property in the Township

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otherwise prohibited by this chapter (sometimes referred to as a "use variance"), and any such change in the use of property shall be only by legislative act of the Township Board as provided in this chapter. All references to variances in section 24.11 of this article [now 74-266] shall mean dimensional variances as described in 24.04.2 [now 74-259(a)(2)]<sup>3</sup> and not use variances. [Compiled Ordinances 1990, § 130.2404; see also current § 74-259(d).]

Plaintiffs filed this action on May 9, 2006, asserting five claims: Count I—violation of substantive due process; Count II—exclusionary zoning; [\*6] Count III—denial of equal protection; Count IV—inverse condemnation; and Count V—an appeal of the ZBA's denial of plaintiffs' request for variances. On December 4, 2007, the trial court entered an order granting in part and denying in part defendant's motion for summary disposition. Plaintiffs' counts II and IV were dismissed with prejudice by stipulation of the parties. The trial court denied defendant's motion as to counts I and III. This order also affirmed the ZBA decision regarding plaintiffs' variance requests and "dismissed with prejudice" count V of plaintiffs' complaint.

The hearing on plaintiffs' appeal of the ZBA decision was held on April 13, 2007, but no order was entered until December 4, 2007. Instead, the case proceeded through discovery. Defendant's motion for summary disposition was heard and denied on November 14, 2007. Thereafter, the case proceeded to trial on March 14, 2008, May 23, 2008, and August 1, 2008 with the trial court receiving testimony and other evidence, including certain depositions the parties had

taken. At the conclusion of plaintiffs' proofs, defendant moved for dismissal. By opinion and order dated September 28, 2009, the trial court granted defendant's [\*7] motion and dismissed plaintiffs' remaining claims that defendant's zoning ordinance violated plaintiffs' substantive due process and equal protection rights. The trial court ruled that defendant's zoning scheme was rationally related to legitimate government interests, and that plaintiffs' evidence had not overcome the presumption the ordinance was constitutional. Plaintiffs appeal.

## II. APPEAL OF CIRCUIT COURT ZBA RULING

The decision of the circuit court on a ZBA appeal is not a final judgment appealable by right to this Court. MCR 7.203(A)(1)(a) provides for an appeal of right: "The court has jurisdiction of an appeal of right filed by an aggrieved party from the following: (1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court (a) on appeal from any other court or tribunal." The circuit court's decision also does not fall within the definition of "final judgment" under MCR 7.202(6)(a)(iii)-(v). Therefore, the circuit court's appellate decision regarding a ZBA ruling is by application for leave pursuant to MCR 2.203(B)(1), which provides for an appeal by leave of "a judgment or order of [\*8] the circuit court, court of claims, and recorder's court which is not a final judgment appealable of right." See *Risko v Grand Haven Charter Twp*, 284 Mich App 453, 454; 773 NW2d 730 (2009); and *Hughes v Almena Twp*, 284 Mich App 50, 53; 771 NW2d 453 (2009).

In this case, the circuit court's decision on the ZBA appeal was entered on December 4, 2007. An application for leave to appeal was not timely filed within 21 days, MCR 7.205(A), or within 12 months on delayed application for

<sup>3</sup> This subsection states: "Dimensional variances pertaining to area, placement, height, setback or similar matters."



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leave, MCR 7.205(F)(3)(b). This Court has held that the failure to timely apply for leave to appeal as provided by the court rules deprives this Court of jurisdiction to hear the appeal. *Chen*, 284 Mich App at 193. In *Chen*, the plaintiff comingled claims within the jurisdiction of the Court of Claims with other claims within the jurisdiction of the circuit court. The parts of the plaintiff's complaint within the jurisdiction of the Court of Claims were dismissed about one year before the plaintiff's circuit court claims were likewise dismissed. *Id.* at 189. After entry of the last order, the plaintiff filed an untimely claim of appeal and he was required to apply for leave to appeal as to both orders, which were [\*9] assigned separate docket numbers in this Court. *Id.* at 190.

The plaintiff argued that the two parts of his consolidated claims must be treated as a single case for purposes of appeal. According to this argument, the last order resolving the circuit court issues was the "final judgment" or "final order" under MCR 7.202(6). This Court rejected the plaintiff's argument, reasoning that the rule "defines the final judgment or order for a 'civil case' . . . [meaning] the final judgment or order in a *single* case. Consequently, MCR 7.202(6)(a) cannot be understood to require that consolidated cases be treated as a single case for purposes of determining the timeliness of appeals." *Chen*, 284 Mich App at 194. The Court went on to review the court rules and case law regarding joinder and consolidation, as well as discussion in Longhofer, Michigan Court Rules Practice (5th ed). The Court observed that two situations may arise: one where multiple claims are merged into a single case and one where claims are consolidated for reasons of efficiency of administration. *Chen*, 284 Mich App at 195-199. In the latter situation, "consolidation is a matter of convenience and economy in administration and does [\*10] not merge the suits into a single cause, or change

the rights of the parties, or make those who are parties in one suit parties in another." *Id.* at 197 (citations and internal quotations omitted). The Court concluded consolidation of the circuit court claims and Court of Claims action under MCL 600.6421 was for the sake of convenience and efficiency, and therefore, the two actions retained their separate identities. *Chen*, 284 Mich App at 198-199. As a result, the *Chen* Court held, "[b]ecause the cases retained their separate identities, the time for appeal must be determined by reference to the final judgment or order for the individual cases." *Id.* at 199. Since the plaintiff did not file its application for leave to appeal regarding the order dismissing the Court of Claims action, "it was untimely and this Court did not have the discretion to grant leave to appeal." *Id.* Indeed, the Court held that the plaintiff's appeal must be dismissed "for lack of jurisdiction." *Id.*

In the present case, plaintiffs filed a complaint on May 9, 2006, asserting five counts, one of which was an appeal of the ZBA's denial of plaintiffs' request for variances. After defendant filed an answer to the complaint [\*11] and affirmative defenses, plaintiffs filed, on July 11, 2006, a separate "claim of appeal" regarding the ZBA's decision to deny plaintiffs' requested variances. The ZBA appeal proceeded through the filing of the ZBA record, briefing, and oral argument on April 13, 2007 when the trial court rendered its decision on the record to dismiss the appeal. No order was entered at that time and discovery on plaintiffs' circuit court claims continued leading to defendant's motion for summary disposition, which the trial court heard and denied on November 14, 2007. Thereafter, on December 4, 2007, the trial court entered its order denying defendant's motion for summary disposition as to plaintiffs' claims regarding substantive due process and equal protection, dismissing by stipulation of the parties two other counts of plaintiffs' complaint, and

denying plaintiffs' claim of appeal by affirming the decision of the ZBA. This order was titled: "Order Granting In Part and Denying In Part Defendant's Motion for Summary Disposition and Dismissing Plaintiff's Claim of Appeal."

No formal action appears in the record to either consolidate or sever plaintiffs' circuit court claims from the appeal of the [\*12] administrative decision of the ZBA. It is clear, however, that the ZBA appeal and plaintiffs other circuit court claims proceeded, as they must, on separate tracks. See e.g., *Houdini Properties, LLC v Romulus*, 480 Mich 1022; 743 NW2d 198 (2008). The ZBA appeal was on the record to determine whether the administrative decision (a) complied with the constitution and laws of the state, (b) was based upon proper procedure, (c) was supported by competent, material, and substantial evidence on the record, and (d) represented the reasonable exercise of discretion granted by law to the ZBA. MCL 125.3606(1). Plaintiffs' circuit court claims proceeded though discovery, motions, and ultimately trial at which plaintiffs bore the burden of proof, resulting in the trial court's September 29, 2009 opinion and order dismissing plaintiffs' constitutional claims. The circuit through the same circuit court docket number processed the ZBA appeal and plaintiffs' circuit court claims. This informal consolidation appears to have been a "matter of convenience and economy in administration." The ZBA appeal and the circuit court constitutional claims retained their separate identities, legal standards, and [\*13] the resolution of one would not affect the other. Consequently, for the reasons discussed already, plaintiffs appeal in this Court of the circuit court order affirming the ZBA decision is by application for leave to appeal, and must be timely as determined by the date of entry of the order on December 4, 2007. Plaintiffs did not timely file an application

for leave to appeal within 12 months of the entry of the order. MCR 7.205(F)(3). Therefore, this Court must dismiss plaintiffs' ZBA appeal for lack of jurisdiction. *Chen*, 284 Mich App at 199.

### III. PLAINTIFFS' CONSTITUTIONAL CLAIMS

MCR 2.504(B)(2) provides that at the close of the plaintiff's proofs at trial, the defendant may "move for dismissal on the ground that on the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff," and if it does, "the court shall make findings as provided in MCR 2.517." On appeal, any legal rulings of the trial court are reviewed de novo while the trial court's findings of fact are reviewed for clear error. *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Thus, this Court reviews [\*14] de novo the trial court's ultimate ruling regarding plaintiffs' constitutional challenge to defendant's zoning ordinance. *Kyser v Kasson Twp*, 486 Mich 514, 519; 786 NW2d 543 (2010).

Plaintiffs argue that the trial court erred by dismissing their substantive due process claim because the evidence indicated defendant's zoning classification was driven by an impermissible desire to preserve the aesthetic benefits of rural living. Plaintiffs also contend that agricultural activities lack material economic value in the township and that permitting 10-acre lots for residential use does not preserve farming. Citing *Scots Ventures, Inc v Hayes Twp*, 212 Mich App 530, 533; 537 NW2d 610 (1995), plaintiffs further contend that the 10-acre minimum lot size, as applied to plaintiffs' northern parcel is arbitrary and capricious; consequently, it is unreasonable. As for defendant's concerns regarding infrastructure, plaintiffs assert that any increased demand for public services that

would accompany development would be paid for by the increased tax base. Thus, plaintiffs argue, this Court should reverse the trial court and find that the zoning of plaintiffs' property violates plaintiffs' substantive [\*15] due process rights.

Defendant argues that the zoning ordinance is presumed valid, and plaintiffs bear the burden of proving that it is an arbitrary and unreasonable restriction. Further, our Supreme Court has held that zoning will withstand constitutional challenge "if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Muskegon Area Rental Ass'n v Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001). Here, defendant argues, the trial court correctly ruled that plaintiffs failed to sustain their high burden of proof in challenging the constitutionality of defendant's ordinance.

This Court has often identified preserving the identity or character of an area as a legitimate governmental interest that may be advanced by a municipality in its zoning ordinance. See *Dorman v Clinton Twp*, 269 Mich App 638, 651-652; 714 NW2d 350 (2006). Additionally, this Court has recognized that preserving the agricultural or rural character of an area furthers legitimate governmental interests, *Scots Ventures*, 212 Mich App at 533, as are avoiding overcrowding and preserving open space, and that density restrictions [\*16] advance these goals, *Conlin v Scio Twp*, 262 Mich App 379, 383; 686 NW2d 16 (2004). Defendant's zoning ordinance also advances legitimate governmental interests in maintaining compatibility of surrounding areas, protecting and preserving natural resources, and ensuring adequate infrastructure such as roads, water supply, and sewage disposal systems. See *Frericks v Highland Twp*, 228 Mich App 575, 608-609; 579 NW2d 441

(1998). Also, contrary to plaintiffs' argument, improving and protecting the aesthetics of an area may legitimately be advanced by the government through zoning. See *Gackler Land Co, Inc v Yankee Springs Twp*, 427 Mich 562, 572; 398 NW2d 393 (1986), and *Norman Corp v City of East Tawas*, 263 Mich App 194, 200-201; 687 NW2d 861 (2004).

Finally, defendant argues, the trial evidence fully supported the trial court's findings that at best plaintiffs established only that the reasonableness of the zoning of plaintiffs' property is debatable. Plaintiffs' own expert, David Call, made numerous admissions demonstrating plaintiffs' inability to overcome the presumption that the zoning of the property is constitutional. For example, Call acknowledged that defendant's zoning rationally [\*17] advanced several legitimate state interests, and, in particular, that controlling overcrowding is rationally advanced by requiring large lot sizes. Call also admitted that that protecting agricultural land and land use is a legitimate governmental interest and defendant's zoning classification serves that interest. With respect to the conclusion of defendant's expert that the zoning ordinance was reasonable, Call agreed that the reasonableness of defendant's zoning ordinance was debatable. In light of the case law regarding plaintiffs' constitutional claims, the trial court correctly ruled plaintiffs failed to meet their burden of proof. The trial court correctly granted defendant's motion to dismiss. We agree.

The legal principles the trial court applied to plaintiffs' constitutional challenge to defendant's zoning have recently been reaffirmed by our Supreme Court, notwithstanding anything to the contrary in this Court's decision in *Scots Venture*. The Court in *Kyser v Kasson Twp*, 486 Mich 514, opined:

Zoning constitutes a legislative function.

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The Legislature has empowered local governments to zone for the broad purposes identified in MCL 125.3201(1).<sup>1</sup> This Court has recognized zoning [\*18] as a reasonable exercise of the police power that not only protects the integrity of a community's current structure, but also plans and controls a community's future development. Because local governments have been invested with a broad grant of power to zone, it should not be artificially limited. Recognizing that zoning is a legislative function, this Court has repeatedly stated that it does not sit as a superzoning commission. Instead, the people of the community, through their appropriate legislative body, and not the courts, govern its growth and its life. We reaffirm these propositions.

However, the local power to zone is not absolute. When the government exercises its police power in a way that affects individual constitutional rights, a citizen is entitled to due process of law. . . . The test to determine whether legislation enacted pursuant to the police power comports with due process is whether the legislation bears a reasonable relation to a

permissible legislative objective. The level of the governmental interest that is sufficient depends on the nature of the affected private interest. When the individual interest concerns restrictions on the use of property through [\*19] a zoning ordinance, the question is whether the power, as exercised, involves an undue invasion of private constitutional rights without a reasonable justification in relation to the public welfare. A zoning ordinance is presumed to be reasonable. Starting with such a presumption, the burden is upon the person challenging such an ordinance to overcome this presumption by proving that there is no reasonable governmental interest being advanced by the zoning ordinance. Stated another way, the challenger must demonstrate that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property. Under this standard, a zoning ordinance will be struck down only if it constitutes an arbitrary fiat, a whimsical *ipse dixit*, and . . . there is no room for a legitimate difference of opinion concerning its [un]reasonableness. [Kyser, 486 Mich 520-522; Citations and quotation marks omitted.]

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<sup>1</sup> 1. MCL 125.3201(1) provides:

A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's [\*20] citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

Under this standard, the trial court did not err in finding that plaintiffs' evidence regarding defendant's zoning ordinance fell far short of overcoming the presumption of validity. As applied to plaintiffs' property, defendant's zoning ordinance is rationally related to advancing numerous legitimate governmental interests. These include preventing overcrowding, preserving farmland and the rural character of the area—even if those primarily relate to aesthetics—and ensuring that adequate infrastructure and public services are available to support any increase in population. Plaintiffs' evidence and [\*21] arguments relate to the wisdom of the



zoning, i.e., that farming is not the best use for the property and that denser residential use would not only be more profitable but also would serve a growing nearby urban community. But the wisdom of defendant's zoning choices does not affect the constitutionality of the ordinance, as reiterated in *Kyser*, 486 Mich 522 n 2, quoting *TIG Ins Co, Inc v Dep't of Treasury*, 464 Mich 548, 557-558; 629 NW2d 402 (2001):

"Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000). Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id.* at 259-260. To prevail under this standard, a party challenging a statute must overcome the presumption that the statute is constitutional. *Thoman v Lansing*, 315 Mich 566, 576; 24 NW2d 213 (1946).

The [\*22] only authority that supports plaintiffs' theory of the case is *Scots Ventures*, 212 Mich App 530. In examining the holding of that case, a panel of this Court in *Conlin*, 262 Mich App 379, politely observed that the majority in *Scots Ventures* strayed from the constitutional principles established by our Supreme Court, opining:

It appears that the Court in *Scots* invalidated the minimum lot size requirement because "it resulted in some inequity" and because the facts alleged in support were "debatable." See [*Scots*

*Ventures*, 212 Mich App] at 533-535. In a dissenting opinion, Judge Griffin opined that the majority merely substituted its judgment regarding the reasonableness of the township's goals, and the means chosen to achieve them. *Id.* at 535-536. We do not believe that the decision would survive the rational basis test as set out by the Supreme Court in *Muskegon Rental*, 465 Mich 456]. [*Conlin*, 262 Mich App at 392-393.]

The rational basis test applied in a substantive due process claim, not involving heightened scrutiny applicable to a suspect classification, as stated in *Muskegon Rental*, was derived from *Crego*, 463 Mich at 259, and *TIG Ins Co*, 464 Mich at 557-558. These are the same authorities [\*23] on which the trial court relied, and the *Kyser* Court reaffirmed. Although we respectfully agree with the *Conlin* panel's analysis of the *Scots Ventures* decision, it is sufficient to note that *Scots Ventures* is factually distinguished from the present case.

First, as the trial court observed, the property at issue here had been used as farmland in the past whereas the property in *Scots Ventures* had not; it had been used for recreational purposes. Second, in *Scots Ventures*, 212 Mich App at 533, the Court found that the defendant's zoning restrictions were not reasonably related to the legitimate governmental interests of "preservation of farmland and the area's rural character." In contrast, here, plaintiffs' expert agreed that defendant's zoning scheme is a reasonable way to avoid overcrowding and infrastructure problems. Additionally, in *Scots Ventures*, the plaintiff sought to develop 5-acre residential sites in a district requiring 10-acre minimum lot sizes. In contrast, plaintiffs here desired to drastically increase the potential residential density 20-fold in the larger 110-acre parcel and by 200 percent in the smaller 56-acre



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parcel. Moreover, the majority in *Scots Ventures*, 212 Mich App at 533, [\*24] recognized that "preservation of farmland and the area's rural character" are legitimate governmental interests, and the evidence here supported the trial court's finding that defendant's zoning restrictions reasonably advanced those interests. Consequently, the trial court did not err in dismissing plaintiffs' constitutional claims.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

/s/ Cynthia Diane Stephens

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## Yetto v. City of Jackson

United States District Court for the Western District of Tennessee, Eastern Division

February 5, 2019, Decided; February 5, 2019, Filed

No. 1:17-cv-01205-STA-egb

### Reporter

2019 U.S. Dist. LEXIS 18285 \*; 2019 WL 454603

SHARI YETTO and PAUL YETTO, Plaintiffs, v. CITY OF JACKSON, JERRY GIST, in his official capacity as mayor, and ELVIS HOLLIS, in his official capacity as city planner, Defendants.

**Subsequent History:** Findings of fact/conclusions of law at, Injunction granted at, Costs and fees proceeding at Yetto v. City of Jackson, 2019 U.S. Dist. LEXIS 108334 (W.D. Tenn., June 28, 2019)

**Counsel:** [\*1] For Ms. Shari Yetto, Mr. Paul Yetto, Plaintiffs: Amanda Strickland Floyd, AMERICAN CIVIL LIBERTIES UNION OF TENNESSEE, Nashville, TN; Thomas Hauser Castelli, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TENNESSEE, Nashville, TN.

For City of Jackson, Tennessee, Mayor Jerry Gist, Elvis Hollis, Defendants: John D. Burleson, Milton Dale Conder, Jr., RAINEY KIZER REVIERE & BELL, Jackson, TN; Matthew Robert Courtner, RAINEY KIZER REVIERE & BELL, PLC - Jackson, Jackson, TN.

**Judges:** S. THOMAS ANDERSON, CHIEF UNITED STATES DISTRICT JUDGE.

**Opinion by:** S. THOMAS ANDERSON

### Opinion

### ORDER DENYING PLAINTIFFS' MOTION

### FOR SUMMARY JUDGMENT AND PARTIALLY GRANTING AND PARTIALLY DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Shari and Paul Yetto filed this action against the City of Jackson, Tennessee, Mayor Jerry Gist, in his official capacity, and City Planner Elvis Hollis, in his official capacity, alleging that they violated the equal-terms provision of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") 42 U.S.C. §§ 2000cc-2000cc-5, and the First Amendment's Free Exercise Clause.<sup>1</sup> Plaintiffs seek a declaratory judgment ruling that the Zoning Ordinance at issue in this case does not regulate the type of small, religious gatherings held by them in their home, as well as [\*2] a permanent injunction prohibiting the enforcement of the Zoning Ordinance against them and their religious gatherings.

On November 21, 2017, Plaintiffs filed a motion for a preliminary injunction. (ECF No. 15.) A hearing was held on the motion on December 22, 2017. (ECF No. 24). The Court orally granted the motion at the hearing, and a written order was entered on January 29, 2018. (ECF 25.) Defendants and their officers, agents, servants, employees, attorneys, and any other persons acting in concert with them

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<sup>1</sup> Plaintiffs have sued Mayor Gist and City Planner Hollis in their official capacities. These claims are the same as the claims against the City. See *Stewart v. City of Memphis*, 2017 U.S. Dist. LEXIS 21098, 2017 WL 627467 at \*4 (W.D. Tenn. Feb. 15, 2017) ("It is well-settled that an official capacity suit is nothing more than a suit against the governmental entity.")

were enjoined from enforcing or threatening to enforce the Zoning Ordinance against Plaintiffs for holding religious gatherings in their home and on their private residential property until further orders of the Court. (*Id.*)

The parties have now filed cross motions for summary judgment. (ECF Nos. 33, 34). The motions have been fully briefed. (Pls' Resp., ECF No. 37; Defs' Resp., ECF No. 38; Pls' Reply, ECF No. 39; Defs' Reply, ECF No. 40.) For the reasons set forth below, Plaintiffs' motion is **DENIED**, and Defendants' motion is **PARTIALLY GRANTED** and **PARTIALLY DENIED**.

#### Standard of Review

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and [\*3] admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When deciding a motion for summary judgment, the court must review all the evidence and draw all reasonable inferences in favor of the non-movant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). In reviewing a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party, and it "may not make credibility determinations or weigh the evidence." *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014). When the motion is supported by documentary proof such as depositions and affidavits, the nonmoving party may not rest on his pleadings but, rather, must present some "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986);

*Eastham v. Chesapeake Appalachia, L.L.C.*, 754 F.3d 356, 360 (6th Cir. 2014). These facts must be more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

When determining if summary judgment is appropriate, the Court should ask "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must [\*4] prevail as a matter of law." *Id.* at 251-52. The Court must enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

#### Statement of Undisputed Material Facts

Pursuant to Local Rule 56.1, the parties have submitted the following statements of facts (Pls' St. of Mat. Facts, ECF No. 33-2; Defs' St. of Mat. Facts, ECF No. 34-2), which are undisputed unless otherwise noted.<sup>2</sup>

The Yettos are a married couple and two of the founders of a non-profit religious corporation known as the Temple of the Ancient Ones.

Shari Yetto owns two adjacent plots of land in the City of Jackson, where she and her husband live. One of the plots of land is located at 203 Harts Bridge Road. Ms. Yetto also owns the plot of land on the corner of Dustin Road, which is adjacent to the plot at

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<sup>2</sup> The facts are stated for the purpose of deciding these motions only.

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203 Harts Bridge Road. One plot is owned in fee simple not subject to any liens or encumbrances, while the other is owned subject to a mortgage.

The Yettos follow the Pagan faith tradition, an "earth-based" religion through which they celebrate Pagan gods and goddesses. There are ten to fifteen members of [\*5] the Temple of the Ancient Ones who gather to perform Pagan religious traditions. For years, the Yettos have hosted the only Pagan gatherings in Madison County. Each year the members hold between twenty-four and thirty-two gatherings, with each gathering lasting thirty to forty-five minutes. At the end of the gatherings, the members share a meal.<sup>3</sup>

The Yetto residence serves as the mailing address for the Temple.

On March 31, 2016, Elvis Hollis, on behalf of the City of Jackson Planning Department, sent a letter to the Yetto residence with the subject line that read: "ZONING VIOLATION AT 203 Harts Bridge Road, Jackson, TN 38301." The letter stated:

Our office has been made aware that there may be a church operating at this location. . . . Churches or similar places of worship are uses permitted as special exceptions within [the RS-1] zoning classification. Therefore, you must obtain approval by the City Board of Zoning Appeals in order to operate a church at this location. A site plan that includes an off-street parking area must be submitted along with your application to appear before this board which meets on the fourth Monday of every month. In addition, the structure used for

this purpose [\*6] must be in compliance with all building and fire codes. The use of this property for a church should be discontinued until the process outlined above is completed.

The letter provided that "[f]ailure to correct this problem within thirty (30) days of your receipt of this letter will result in further action by the City of Jackson." "Further action" was explained as:

[A]ny person violating any provision of the City of Jackson Zoning Ordinance who fails to correct said violation within this notification period shall be issued an injunction through the Environmental Court to correct this problem or face a fine of Fifty Dollars (\$50.00) for each separate violation until the required action has been taken or face imprisonment not to exceed ten (10) days. Each day that any such violation continues shall constitute a separate violation.

Hollis sent the letter in response to a telephone complaint from an anonymous caller. Hollis does not recall the date of the call, does not know the name of the caller, and took no notes of the call. Hollis did not complete or have the caller complete the "Alleged Zoning Violation Complaint Form" developed by the City of Jackson Planning Department. The anonymous [\*7] caller reported that the Yettos were operating a church at their residence but did not describe what activity was taking place at the residence or why the caller believed that the Yettos were operating a church.<sup>4</sup>

The Yettos ceased holding all Pagan gatherings after receiving the City's letter and

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<sup>3</sup> Although Defendants have objected to some of Plaintiffs' facts as being not material to the determination of the motions, they do not dispute the accuracy of those facts. To the extent a fact is undisputed but is not material, the Court has included it as background.

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<sup>4</sup> Defendants have disputed this fact to the extent that there is an "inference" that the City determined that the Yettos were operating a church as the term is defined in the Zoning Ordinance. (Defs' Resp. para. 15, ECF No. 38-1.) The Court has drawn no such inference.

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did not host another gathering until after this Court granted a preliminary injunction in their favor. During the time period between the receipt of the letter from the City and the issuance of the injunction, the Yettos were not only prohibited from holding regular Pagan assemblies at their home, they were also prohibited from holding sacred ceremonies for loved ones who had passed away. Ms. Yetto was prevented from having religious memorial services for either of her parents.

After receiving the call, Hollis drove past the Yetto Residence once, took a photograph of a small sign that read "Temple of the Ancient Ones," and drove away without entering the Yetto residence or speaking with the Yettos. Hollis has since deleted the photograph he took of the sign. The sign was small, eighteen-inch by eighteen-inch, and was on the lot adjacent to the Yettos' residence. It stood alongside other signs [\*8] showing subjects for which the Yettos had an affinity - such as a sign for Avon products and a sign reading "Watch Out for Motorcycles." The Yettos later removed the sign, in part, in response to the City's letter.

The Planning Department undertook no additional investigation prior to the sending of the March 31, 2016 letter, and Hollis was not aware of any policies or procedures that set forth how such an investigation should take place.

The Yettos discussed the situation repeatedly and at length with City officials. Based on the March 31, 2016 letter and, at the direction of Hollis, the Yettos submitted a Board of Zoning Appeals application seeking a special exception. A Google maps printout of the property supplemented the application.<sup>5</sup> Hollis

went to the Yettos' residence, toured their property, and took photographs, which he placed in the application file. The City's Engineering Department, at the request of Hollis, conducted a traffic review at the Yettos' residence.

Hollis prepared a Planning Staff Report for the use of the Board of Zoning Appeals. The Report stated that the planning staff recommended approval of the use of the property as a place of worship "contingent upon the [\*9] following":

1. A walk thru inspection be completed by the City of Jackson Building Department and Fire Marshal before occupying the buildings.
2. All applicable building permits are obtained before any modification of the buildings.
3. A privacy fence or a vegetative screen needs to be installed around the perimeter of the parking area in order to provide a screen for the adjoining residential properties.
4. The existing 16' driveway needs to be widened to a minimum 24' two-way drive in order to meet the standards governing driveways.
5. Both lots owned by the applicant need to be combined by a final plat since the driveway access is located on 104 Dustin Drive.

The Report stated that the parking lot exceeded the requirements for "a place of worship with the seating capacity of 20 people," which was drawn from Hollis' knowledge that the Yettos planned on having a maximum of twenty people attend their gatherings. Hollis testified in his deposition that requirement number three, a privacy fence or vegetative screen, and number five regarding the combining of the properties, were not required by the Zoning Ordinance. Hollis could

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<sup>5</sup> The parties dispute who printed the map, but that fact is not material to the resolution of the motions. (Defs' Resp. para. 24, ECF No. 38-1.)



not identify the basis in the Zoning Ordinance for requiring [\*10] a widening of the driveway.

The Yettos were originally scheduled to go before the Board of Zoning Appeals on June 27, 2016. However, given that Hollis would not recommend that they receive a special exception without the changes listed in the Report and the high cost of these changes, the Yettos decided they could not pursue a special exception and felt they had no choice but to pursue their rights in a lawsuit.

On July 21, 2016, the Yettos started a Change.org petition in which they accused the City of violating their right to freely worship. In their petition, the Yettos said, "We feel it is time to stand up not only for ourselves but for anyone else that might have these [r]ights as well as others taken from them, Pagan or otherwise." Also on July 21, 2016, the Yettos launched a GoFundMe campaign to raise attorney's fees to fight the City.

The July 25, 2016 meeting of the Board of Zoning Appeals at which the Yettos' application was to be considered was canceled because the notice to affected property owners was not sufficient.

Prior to July 25, 2016, Paul Yetto told the City's attorney that they were going to sue the City. The Yettos hired the ACLU to represent them in this matter prior [\*11] to September 26, 2016. The Yettos filed their complaint in this Court on November 3, 2017.

The Zoning Ordinance of the City of Jackson was created to provide administration, enforcement, and amendment" of city zoning regulation.<sup>6</sup> "In interpreting and applying the provisions of [the Zoning Ordinance, its

provisions] shall be considered as the minimum requirements for the promotion of the public safety, health, morals and general welfare."

The Planning Department of the City of Jackson regulates the use of property in accordance with the Zoning Ordinance.

The Yetto residence is located in a district that is residential in nature and is designated as a RS-1 residential district.

Pursuant to the Zoning Ordinance, each zoning category has uses that are permitted uses, uses that are prohibited, and uses that are permitted only with approval from the Board of Zoning Appeals. With respect to special exceptions, the Board of Zoning Appeals is empowered to attach conditions for approval.

As part of the process for obtaining a special exemption, an applicant must fill out an application and appear before the Board. The staff of the Planning Department makes recommendations to the Board of Zoning Appeals, [\*12] and the Board may approve or deny the application. The application fee for obtaining a special exemption is \$100. The Planning Department makes its recommendations through a Planning Staff Report.

The Zoning Ordinance regulates "churches or similar places of worship" as a use that is permitted by way of a special exception. The Zoning Ordinance does not define the phrase "churches or similar places of worship," and the City maintains no policies or guidance with respect to the definition or interpretation of "churches or similar places of worship" as that phrase is used in the Zoning Ordinance.<sup>7</sup> The

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<sup>6</sup> Defendants do not dispute this statement or other statements concerning the purpose and requirements of the Zoning Ordinance but contend that "the Zoning Ordinance speaks for itself." (Defs' Resp. paras 34 -35, 50, ECF No. 38-1.)

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<sup>7</sup> Defendants correctly point out that there is no record citation to this "statement of fact," and they ask the Court to ignore the

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City maintains no policy or guidance with respect to the application of special exceptions with respect to "churches or similar places of worship."

The Planning Staff Report acknowledged that the gatherings at the Yetto residence would not exceed twenty people and stated expressly that parking on the Yettos' property was sufficient in that it exceeded "the parking requirement" for gatherings of that size.

The Zoning Ordinance includes "Private Clubs" as a use that is permitted only by way of special exception. The term "Private Clubs" is defined in the Zoning Ordinance as "[b]uildings and [\*13] facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business."

In the City, there are organizations and assemblies of a secular nature that regularly meet on private property, such as Boy Scouts and Girl Scouts. In addition, families, like the Yettos, regularly hold events of comparative size and frequency to that of the Yettos' religious gatherings, such as family reunions, holiday parties, and gatherings to watch sports. A neighbor on the same street as the Yettos regularly held large gatherings every Saturday and Sunday night, which included loud music and a large number of vehicles parked on the street.<sup>8</sup>

There are multiple churches in the Jackson

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statement. (Defs' Resp. para. 45, ECF No. 38-1.) However, Defendants do not claim that the phrase "churches or similar places of worship" is defined in the Zoning Ordinance, and they do not dispute that the City "maintains no policies or guidance with respect to the definition or interpretation" of that phrase. (*Id.* at para. 46.)

<sup>8</sup> Defendants do not dispute these statements but contend that the statements do "not meet the requirements of establishing comparators for the Yettos." (*Id.* at paras. 52 - 54.)

area that host weekly or monthly Bible study groups in various residential homes. These churches include West Jackson Baptist Church, Campbell Street Church, First Baptist Church, Fellowship Bible Church, and First Cumberland Presbyterian Church. Another church, All Saints Anglican Church, hosted weekly religious meetings in a residence until at least 2014. None of these private [\*14] homes were required to comply with the zoning regulations for religious organizations.<sup>9</sup>

### Analysis

#### Section 1983

Defendants contend that they are entitled to summary judgment on Plaintiffs' § 1983 First Amendment Free Exercise claim because they waited more than a year after the accrual of their claim to commence this action, and, thus, the one-year statute of limitations bars the claim. Because the Court finds Defendants' contention to be meritorious, the Court need not reach the issue presented in Plaintiffs' motion for summary judgment as to whether Defendants' application of the Zoning Ordinance violates the Free Exercise Clause.

As noted by Defendants, § 1983 provides for a federal cause of action but looks to the law of the state in which the cause of action arose to determine the applicable statute of limitations. See *Wallace v. Kato*, 549 U.S. 384, 387, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) (reiterating that suits under § 1983 have the same statute of limitations as the personal injury statute of limitations in the state in which the action is brought); Tenn. Code Ann. § 28-3-104 (the statute of limitations in Tennessee

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<sup>9</sup> Defendants do not dispute these statements but contend that these gatherings are not sufficiently like the Yettos to serve as comparators. (*Id.* at para. 59.)

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for personal injury claims is one year). It is "the standard rule that [accrual occurs] when the plaintiff has 'a complete and present cause of action,'" *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201, 118 S. Ct. 542, 139 L. Ed. 2d 553 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98, 61 S. Ct. 473, 85 L. Ed. 605 (1941)), that is, when "the plaintiff can file suit and obtain relief." [\*15] *Id.* "[I]n determining when a cause of action accrues in § 1983 actions, [courts] have looked to what event should have alerted the typical lay person to protect his or her right." *Howell v. Farris*, 655 F. App'x 349, 351 (6th Cir. 2016) (quoting *Kuhnle Bros., Inc. v. County of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997)).

Defendants point to the following actions and corresponding dates as the accrual date(s) for Plaintiffs' claims:<sup>10</sup>

The March 31, 2016 letter sent to Plaintiffs by Hollis regarding the use of their property for religious purposes which was received no later than early April 2016;

Plaintiffs' decision in June 2016 that they could not pursue a special exception because of "the high cost and arbitrariness of these changes" and they had no choice but to pursue their rights in a lawsuit;<sup>11</sup>

Plaintiffs' July 21, 2016 decision to "stand up . . . for [themselves and] for anyone else that might have these [r]ights taken from them" by starting a Change.org petition which accused the City of violating their right to freely worship;

Plaintiffs' launching of a GoFundMe campaign on July 21, 2016, to raise attorney's fees to fight the City over the alleged violation of their constitutional rights;

Plaintiffs' hiring of the ACLU to represent them in this matter before September 2016, and the ALCU's representation of Plaintiffs [\*16] no later than September 26, 2016.

The complaint in this matter was filed on November 3, 2017. According to Defendants, Plaintiffs' cause of action accrued on any of these dates which preceded November 3, 2017, by more than one year, and, therefore, the cause of action is barred by the one-year statute of limitations. Plaintiffs contend that their claim is not time-barred because Defendants' actions constitute a continuing violation, while Defendants argue that the continuing violation doctrine does not apply to Plaintiffs' claim.

Federal courts recognize that, when a pattern or practice of behavior results in a continuing violation of a plaintiff's rights, the statute of limitations is deemed to begin running only with the conclusion of the pattern of harmful conduct such as when the last wrongful event occurs. *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002).<sup>12</sup> That is, a continuing

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<sup>10</sup> These dates are not disputed by Plaintiffs, although they do dispute the effect that the dates had on the accrual of their claim.

<sup>11</sup> "However, given that Mr. Hollis would not recommend that Plaintiff receive a special exception without the changes listed in the Report, and the high cost and arbitrariness of these changes, the Yettos decided they could not pursue a special exception and felt they had no choice but to pursue their rights in the current lawsuit." (Pls' Memo. p. 7, ECF No. 33-1.)

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<sup>12</sup> *Morgan*, a case governed by Title VII's anti-discrimination provision, distinguished between "discrete discriminatory acts" that are individually actionable and acts of harassment that, while not individually actionable, may collectively subject an employer to liability under a hostile work environment theory. The Sixth Circuit has applied *Morgan* and the continuing violation doctrine to § 1983 cases - although "rarely." See *Sharpe v. Cureton*, 319 F.3d 259, 267 (6th Cir. 2003) (explaining that the longer statute of limitations for § 1983 actions minimizes the need for a continuing violations exception compared to the relatively short deadlines for Title VII claims).

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violation exists when "discriminatory acts [are] committed under an ongoing policy of discrimination." *Annis v. County of Westchester*, 136 F.3d 239, 246 (2d Cir. 1998) (internal quotation marks and citation omitted.) However, a continuing violation claim fails when "the plaintiff knew, or through the exercise of reasonable diligence would have known, she was being discriminated against at the time the earlier events [\*17] occurred." *Davidson v. America Online, Inc.*, 337 F.3d 1179, 1184 (10th Cir. 1993). The continuing violation theory is premised on the equitable notion that the statute of limitations should not begin to run until a reasonable person would be aware that his or her rights have been violated. *Id.* (citation and quotation omitted).

The Eleventh Circuit also has "limited the application of the continuing violation doctrine to situations in which a reasonably prudent plaintiff would have been able to determine that a violation had occurred." *Center for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1335 (11th Cir. 2006). "If an event or series of events should have alerted a reasonable person to act to assert his or her rights at the time of the violation, the victim cannot later rely on the continuing violation doctrine[.]" *Id.* (alteration in original) (internal quotation marks and citation omitted). See also *Flowers v. Carville*, 310 F.3d 1118, 1126 (9th Cir. 2002) ("The doctrine applies [when] there is no single incident that can fairly or realistically be identified as the cause of significant harm."); *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001) ("[M]ere continuing impact from past violations is not actionable.").

Defendants rely, in part, on *Mitchell v. Clackamas River Water*, 2016 U.S. Dist. LEXIS 151096, 2016 WL 6471450 (D. Or.), *aff'd* 727 Fed. Appx. 418 (9th Cir. 2018), in support of their argument that Plaintiffs' action is time-barred. In *Mitchell*, the defendant

obtained a gag order prohibiting the plaintiff from "using, disclosing, [\*18] or otherwise disseminating any records created, maintained, or kept in the ordinary course of plaintiff's business that are now or have been in defendant's possession at any time." 2016 U.S. Dist. LEXIS 151096, [WL] at \*2. The gag order was entered on July 25, 2011. *Id.* On March 26, 2016, the plaintiff filed a lawsuit alleging that the gag order violated his First Amendment rights. 2016 U.S. Dist. LEXIS 151096, [WL] at \*5. The defendant moved to dismiss because the gag order was entered before March 26, 2014, and, thus, was time-barred under Oregon's two-year statute of limitations. *Id.* In response, the plaintiff argued that the gag order constituted a continuing violation of his rights that persisted until the appellate court judgment lifting the order became final. *Id.*

The district court held that the cause of action accrued on the day that the gag order was issued and dismissed the complaint as untimely. The plaintiff "was well aware of the injury on the date the order was issued and had all the facts necessary to state his claim." *Id.* What the plaintiff characterized as a continuing violation was, instead, the continuing effects of the alleged violation. *Id.*

Defendants also direct the Court's attention to *Beebe v. Birkett*, 749 F. Supp. 2d 580, 596 (E.D. Mich. 2010). In *Beebe*, a prisoner filed a § 1983 action against prison officials alleging, [\*19] *inter alia*, that he was denied Kosher meals and Jewish religious services in violation of the Free Exercise Clause of the First Amendment. The prisoner plaintiff applied for the prison's kosher meal program, but the warden denied him access to the program. The plaintiff waited over two years after being notified of the denial before filing suit. *Id.* at 584. The Court determined that the decision denying the request for access to the meal



program was a discrete act; therefore, the continuing violation doctrine did not apply to save any claims that were filed outside Michigan's statute of limitations. *Id.* at 596-97.

According to Defendants, notification to Plaintiffs that they could not hold gatherings at their house was a discrete act that caused the accrual of their cause of action. Thus, Defendants reason that the cause of action accrued in early April 2016, upon receipt of the City's letter, or, at the latest, when they made the decision to sue based in June and July 2016.<sup>13</sup> Defendants also point out that Plaintiffs had hired the ACLU to represent them by September 2016. All these dates occurred more than one year before the filing of their lawsuit.

In response, Plaintiffs rely on *Kuhnle Bros., Inc. v. County of Geauga*, 103 F.3d 516 (6th Cir. 1997), which held that "the continued enforcement of an unconstitutional [\*20] statute cannot be insulated by the statute of limitations." *Id.* at 522 (citation omitted). In *Kuhnle Brothers*, a trucking company challenged the constitutionality of a county ordinance that banned truck travel on county roads. *Id.* at 521-522. The Court held that, because the ordinance barred the company from using the roads in question on an ongoing basis, it deprived the company of its constitutional rights every day that it remained in effect, thus inflicting "continuing and accumulating harm." *Id.* Plaintiffs note that they ceased holding all gatherings based on

their receipt of the City's letter and their fear of threatened fines and imprisonment. According to Plaintiffs, Defendants continued to violate their rights on a daily basis by threatening fines and/or imprisonment until the entry of the preliminary injunction, and, thus, their claims are not barred by the statute of limitations.

Defendants have replied that the Sixth Circuit distinguished *Kuhnle Brothers* in *Goldsmith v. Sharrett*, 614 Fed. App'x 824, 828 (6th Cir. 2015), a First Amendment case. In *Goldsmith*, the prisoner plaintiff complained of "a series of events involving repeated seizures of his manuscripts by prison staff." *Id.* at 825. Eventually, the defendants allegedly "instituted a complete and ongoing ban on his writing" which the plaintiff [\*21] claimed "constitute[ed] a continuing violation of his rights under the First Amendment." *Id.* at 828. In arguing that his cause of action was not barred by the statute of limitations, the plaintiff relied on *Kuhnle Brothers*. *Id.*

The *Goldsmith* Court found *Kuhnle Brothers* inapplicable because *Kuhnle Brothers* involved a county resolution that was found to be unlawful and, in that case, "each day that the invalid resolution remained in effect, it inflicted 'continuing and accumulating harm' on Kuhnle." *Id.* (quoting *Kuhnle Brothers*, 103 F.3d at 522). There was no such unlawful or invalid resolution, ruling, or law in *Goldsmith*. Likewise, in the present case, the Zoning Ordinance has not been found to be invalid or unlawful.

*Kovacik v. Cuyahoga County. Dep't of Children and Family Servs.*, 606 F.3d 301, 308 (6th Cir. 2010), is illustrative. In *Kovacik*, the plaintiff mother alleged a violation of her due process rights based on the removal of her children by the police. *Id.* at 307. The Court found that the plaintiff's claim accrued on the day the juvenile court magistrate found probable cause to keep her children in the temporary care of Family

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<sup>13</sup>Paul Yetto testified in his deposition that he told the City "sometime before July 25th" that they were going to file a lawsuit based on a "First Amendment violation, freedom of religion." (P. Yetto Depo. pp. 21 - 22, ECF No. 34-3.) At that point, he was told that all future correspondence must go through Lewis Cobb, the City's attorney. (*Id.*) He also testified that, at that point, they had begun "the process of trying to find a lawyer to handle" the lawsuit, and they set up the GoFund Me account to raise money to pay a retainer. (*Id.*)



Services and rejected her argument that the removal of her children was a "continuing violation" which did not end until their return to her because "the precipitating event in this action was the initial removal [\*22] of her children from her custody." (*Id.*)

Nancy [Kovacic] concedes that the precipitating event in this action was the initial removal of her children from her custody on March 26, 2002. A continuing violation in a § 1983 action occurs when there are continued unlawful acts, not by continued ill effects from the original violation. *McCune v. The City of Grand Rapids*, 842 F.2d 903, 905 (6th Cir. 1988). We have held in a similar case that "mere inaction" on a temporary custody petition is not enough to find a continuing violation. *Eidson v. State of Tenn. Dep't of Children's Sevs.*, 510 F.3d 631, 637 (6th Cir. 2007).

*Kovacic*, 606 F.3d at 308. The Court further explained that, with regard to plaintiff's argument "that her claim did not accrue until [the custody petition] was dismissed in November 2003, resolution of the claims in her complaint was not dependent on a final determination of her custody case. If, as Nancy claims, the removal was unlawful, it remained unlawful regardless of the final disposition of her case." *Id.* Here the "precipitating event" was the letter sent by Hollis.

Accordingly, the Court finds that Plaintiffs' First Amendment claim arises from discrete acts by Defendants, acts whose occurrence and consequences were readily ascertainable to Plaintiffs. Plaintiffs had a viable claim on the date that they received the letter. They certainly had one by the time the Planning [\*23] Department staff had recommended conditions for the approval of a special use exception. As evidenced by Plaintiff Paul Yetto's conversation with City

Attorney Lewis Cobb, Plaintiffs believed that their rights had been violated by the City's letter and by the Planning Staffing Report which stated that an exception would be granted only upon the completion of certain requirements, and they planned to sue the City based on the alleged violation. Under these circumstances, the continuing violation doctrine does not apply to toll the running of the statute of limitations beyond one year from those dates cited by Defendants. See *Robinson v. Genesee Cty. Sheriff's Dept*, 2018 U.S. Dist. LEXIS 147953, 2018 WL 4145933 at \*5 (E.D. Mich. Aug. 30, 2018) ("When the alleged 'continuing violation' consists of actions that are actionable on their own, they do not qualify in the aggregate as a continuing violation.") (citing *Goldsmith*, 614 F. App'x at 828-29)). Thus, Plaintiffs' First Amendment claim is untimely and is dismissed.

#### RLUIPA

Plaintiffs contend that they are entitled to summary judgment on their RLUIPA claim because the undisputed facts show that, by singling out their religious meetings, the City's Zoning Ordinance has been selectively enforced against a religious observance. They seek a declaration that the Zoning Ordinance violates RLUIPA facially and/or [\*24] as applied. Defendants contend that they are entitled to summary judgment because Plaintiffs cannot establish a prima facie case under RLUIPA and they cannot establish that the Zoning Ordinance differentiates between religious and nonreligious assemblies or institutions. The Court finds that this case presents disputed facts that preclude granting summary judgment to either party.

RLUIPA prohibits governments from implementing land use regulations that impose "a substantial burden" on religious exercise or

that "treat[ ] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."<sup>14</sup> 42 U.S.C.A. § 2000cc. It is a violation of RLUIPA if: (1) a statute facially differentiates between religious and nonreligious assemblies or institutions; (2) a facially neutral statute is "gerrymandered" in a way that it places a burden solely on religious, as opposed to nonreligious, assemblies or institutions; or (3) a truly neutral statute is selectively enforced against religious, as opposed to nonreligious, assemblies or institutions. *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cty.*, 450 F.3d 1295, 1308 (11th Cir. 2006). In the present case, Plaintiffs have asserted claims for the first and third types of violations.<sup>15</sup> That is, they claim that (1) the Zoning Ordinance [\*25] facially differentiates between religious and nonreligious assemblies and institutions and (2) the Zoning Ordinance is selectively enforced against religious assemblies or institutions.

The first matter the Court must decide is whether Plaintiffs have established a prima facie case under RLUIPA. To establish a prima facie case under the equal-terms provision, a plaintiff must show that (1) it is a religious assembly or institution, (2) subject to a land use regulation, that (3) treats it on less than equal terms with (4) a nonreligious assembly or institution. *Tree of Life Christian Sch. v. City of Upper Arlington, Ohio*, 905 F.3d 357, 367 (6th Cir. 2018) (*Tree of Life III*). Defendants contend that Plaintiffs cannot meet the requirements of the first element because they are not a "religious assembly or institution."

<sup>14</sup> Plaintiffs have clarified that, while their motion for summary judgment mentions the substantial burden portion of RLUIPA, their claims are brought only under the equal-terms aspect of RLUIPA only. (Pls' Reply p. 7 n. 6, ECF No. 39.)

<sup>15</sup> Plaintiffs have not asserted a claim under the second type of violation - religious gerrymandering. (Pls' Resp. p. 8 n. 5, ECF No. 37.)

Plaintiffs have countered that the equal-terms provision protects individuals as well as houses of worship and other religious institutions. The Court need not decide the issue of whether the provision protects individuals because there is undisputed evidence in the record that Plaintiffs and a group of their fellow Pagans have periodically assembled on Plaintiffs' property for religious observances, and, thus, they constitute a "religious assembly."<sup>16</sup>

There is no dispute [\*26] that Plaintiffs and their assemblies have been subjected to land use regulation. However, Defendants contend that Plaintiffs cannot show that they were treated on less equal terms than a nonreligious assembly or institution, the third and fourth elements of a prima facie case. "[A] comparator for an equal terms claim must be similarly situated with regard to the regulation at issue." *Tree of Life III*, 905 F.3d 357, 2018 WL 4443591 at \*7. "[T]he comparison required by RLUIPA's equal terms provision is to be conducted with regard to legitimate zoning criteria set forth in a municipal ordinance in question." 905 F.3d 357, *Id.* at \*8. In applying this test, "the Eleventh Circuit evaluated whether a comparator was similarly situated to a house of worship by considering whether permitted land uses had a 'comparable community impact'" *Id.* (discussing *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005)). This requires proof that "a similarly situated nonreligious comparator received differential treatment under the challenged regulation." *Id.* (quoting *Primera Iglesia Bautista Hispana*, 450 F.3d at 1311 and n.1).

In the present case, Defendants have pointed to the deposition testimony of Plaintiff Shari Yetto that "religious, nonreligious doesn't really

<sup>16</sup> Whether these "assemblies" or gatherings qualify as a "church" within the meaning of the Zoning Ordinance is discussed below.

matter. They're not bothering anybody else but us." (S. Yetto Depo. p. 65 - [\*27] 66, ECF No. 34-4.) Defendants assert that this testimony shows that no distinction was made between the City's treatment of Plaintiffs regarding their land usage and that of nonreligious entities.

Plaintiffs have responded that they have provided evidence of appropriate comparators under the equal-terms provision. Specifically, they point to Plaintiff Shari Yetto's testimony that secular organizations, such as Boy Scouts and Girl Scouts, regularly meet on private property in residential neighborhoods. (*Id.* at pp. 60-62.) In addition, families hold events of comparative size and frequency to that of the Plaintiffs' gatherings, such as family reunions, holiday parties, and gatherings to watch sports. (*Id.* at pp. 61-62.) A neighbor on Plaintiffs' street regularly holds large gatherings every Saturday and Sunday night; these gatherings involve loud music and a large number of vehicles parked on the street. (*Id.*)<sup>17</sup>

Although Defendants argue that Plaintiffs have not sufficiently explained how these secular gatherings are proper comparators to Plaintiffs' gatherings, the Court finds that, for the purpose of establishing a prima facie case, Plaintiffs have presented enough evidence, in particular the deposition testimony [\*28] of Plaintiff Shari Yetto, to show that their religious gatherings were treated differently than similar secular gatherings. At trial, Defendants will have the opportunity to rebut Plaintiffs'

evidence as to whether the previously mentioned secular gatherings are, in fact, proper comparators.

Accordingly, the Court finds that Plaintiffs have set forth prima facie evidence to support their equal-terms RLUIPA claims, and Defendants must bear the burden of persuasion as to each of the elements of those claims. See 42 U.S.C.A. § 2000cc-2(b) ("If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim . . . .")

Next, the Court must decide if the Zoning Ordinance applies to the Temple of the Ancient Ones as a matter of law. Plaintiffs contend that it does not, and they seek a declaratory judgment to that effect. Because there are disputed issues of fact as to whether the Temple of the Ancient Ones is a church, the Court denies this aspect of Plaintiffs' motion.

In support of their motion, Plaintiffs point to the following evidence. The Zoning Ordinance regulates "churches [\*29] or similar places of worship" as a use that is permitted by way of a special exception. However, the Zoning Ordinance does not define "churches or similar places of worship." Furthermore, the City maintains no policies or guidance with respect to the definition or interpretation of "churches or similar places of worship" as that phrase is used in the Zoning Ordinance. According to Plaintiffs, because the Zoning Ordinance fails to define "church" or "similar places of worship," the provision is ambiguous and must be resolved using the customary principles of statutory construction. Plaintiffs ask the Court to adopt the "natural and ordinary meaning" of the term "church" as set forth in *Black's Law Dictionary* - "a building dedicated to worship."

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<sup>17</sup> The City does not dispute that there are assemblies of a secular nature hosted on private property in Jackson and that these secular gatherings are not required to undertake any application process in order to assemble. (Defs' Resp. to Pls' St. of Mat. Facts paras. 52 - 55, ECF No. 38-1.) Likewise, the City does not dispute that other religious denominations host weekly or monthly Bible study groups in homes. (*Id.* at paras. 56-58.) These assemblies also have not been required to comply with zoning regulations for religious organizations. (*Id.* at para. 59.)

Plaintiffs contend that their gatherings do not require a dedicated building and, instead, they meet outside or in their home. They state that their residence is not held out to be a place of worship open to the public; it does not keep regularly scheduled hours or host daily or weekly programs; and they do not offer any activities or services that are traditionally associated with operating a church building. (P. Yetto Decl. ECF No. 33-13; S. [\*30] Yetto Decl. ECF No. 33-14.)

In response, Defendants offer their own definition of the term "church" as a building or place for worship or "a body or organization of religious believers." Defendants point to the following evidence which suggests that the Temple of the Ancient Ones is a church or similar place of worship. The complaint itself alleges that Plaintiffs are "members of the Pagan church known as The Temple of the Ancient Ones." (Cmplt para. 11, ECF No. 1.) At her deposition, when Plaintiff Shari Yetto was asked if she was "a member of the Pagan church known as The Temple of the Ancient Ones," she answered "yes." (S. Yetto's Depo. p. 8, ECF No. 34-4.)

Plaintiff Shari Yetto testified that The Temple of the Ancient Ones meets twenty-four to thirty-two times a year to worship a god or goddess around a stone circle with an altar; each gathering lasts thirty to forty-five minutes. (*Id.* at pp. 13 - 14, 23, 74). The worship is conducted with the members in a circle that is marked by stones and complete with altars. (*Id.* at pp. 14, 16, 18, 20).

Shari Yetto also testified that they put events on Temple of the Ancient Ones' Facebook page to let people know "hey, we have a pagan church here." (*Id.* at p. 24). Plaintiffs' Internet postings [\*31] and documents describe The Temple of the Ancient Ones as a church. Temple of the Ancient Ones Jackson TN Friendly Pagans ("We are a 501c3 Pagan

Church located in Jackson, TN since February 1, 2011.") (ECF No. 38-2); Temple of the Ancient Ones Release of Liability and Agreement to Hold Harmless (referring to the Temple as "the Church") (ECF No. 38-3). Additionally, Temple of the Ancient Ones has bylaws that members must read and follow. Confidential Questionnaire at p. 5 (ECF No. 38-4.)

If "a church or other place of worship" requires a building, then Plaintiffs are correct that the Zoning Ordinance does not apply to them. However, if Defendants are correct that "a church or other place of worship" may be a building or a place of worship or a body of religious believers, then the Ordinance may apply — if Defendants can show that Plaintiffs' gatherings may be categorized as a place of worship or a body of religious believers subject to land use regulation. Defendants' evidence cited above would indicate that Plaintiffs' gatherings may be so categorized. However, it is undisputed that Christian churches in the Jackson area have been allowed to host weekly or monthly Bible study groups in various residential homes seemingly [\*32] without having the Zoning Ordinance enforced against them. If at trial, evidence is produced showing that these Christian home study groups are similar in all relevant aspects to Plaintiffs' gatherings and that the City did not subject them to the requirements of the Zoning Ordinance, then the Court could find that, by its actions, Defendants have defined "churches and other places of worship" subject to the Zoning Ordinance as religious groups with a dedicated building which would lead to a subsequent finding that the Ordinance does not apply to Plaintiffs' gatherings. However, there are disputed issues of fact that preclude such a finding at this stage of the litigation.

Next, Plaintiffs contend that the Zoning Ordinance violates RLUIPA facially and/or as



applied. The Court must first determine what standard of review is appropriate. Plaintiffs contend that the Court must use strict scrutiny to equal-terms claims under RLUIPA while Defendants contend that a lesser standard is warranted. The parties agree that the Sixth Circuit has not decided this issue.

In support of their argument, Plaintiffs rely on *Konikov v. Orange Cty.*, Fla., 410 F.3d 1317 (11th Cir. 2005), as persuasive authority for the proposition that RLUIPA directs the Court to apply [\*33] strict scrutiny when a land use provision treats religious organizations on less than equal terms than nonreligious organizations. Defendants rely on Judge Amul Thapar's discussion of strict scrutiny in the dissent in *Tree of Life III*, 905 F.3d 357, 382-83 (Thapar, J. Dissent).

Judge Thapar analyzed the standard to use in RLUIPA cases as follows.

One final point about the legal standard: because RLUIPA places the ultimate burden on the government, some courts have interpreted the text to include a strict scrutiny "safe harbor." 42 U.S.C. § 2000cc-2(b); *Midrash Sephardi [v. Town of Surfside]*, 366 F.3d [1214] at 1232 [11th Cir. 2004]. For these courts, a zoning action that is a prima facie violation can be saved if the government can show that it satisfies strict scrutiny. But just as "similarly situated" does not appear anywhere in the Equal Terms provision, neither does "strict scrutiny" nor any other terms that might trigger a strict scrutiny analysis. And, again, when words do not appear in a statute, we should not add to what Congress has provided with what we think Congress should have provided. Congress could have told courts to apply strict scrutiny if the plaintiff makes out a prima facie case. In fact, Congress did exactly that—in a different provision in

RLUIPA. Just a few lines above the Equal Terms subsection, [\*34] Congress included a provision that prohibits governments from enacting land-use regulations that substantially burden religious exercise unless they have a "compelling governmental interest" and the regulation is the "least restrictive means" of furthering that interest. 42 U.S.C. § 2000cc(a)(1). We thus know that Congress was aware of the strict scrutiny buzzwords and included none of them in the Equal Terms provision. *Centro Familiar [Cristiano Buenas Nuevas v. City of Yuma]*, 651 F.3d [1163] at 1171 [(9th Cir. 2011)] ("The Constitutional phrases, 'substantial burden,' 'compelling governmental interest,' and 'least restrictive means' are all included in the 'substantial burden' provision, not the 'equal terms' provision."); *Lighthouse Inst. [for Evangelism, Inc. v. City of Long Branch]*, 510 F.3d [253] at 269 [(3d Cir. 2007)] ("[W]e find that Congress clearly signaled its intent that the operation of the Equal Terms provision not include strict scrutiny by the express language of [the Substantial Burden provision] ...."). We must respect that decision and refrain from adding it in ourselves. And that means that if governments do not carry their burden once shifted, RLUIPA holds them liable without exception.

*Tree of Life III*, 905 F.3d 357, 382-83 (Thapar, J., dissenting).

The Court agrees with Plaintiffs that Judge Thapar's dissent does not reject a strict scrutiny standard in favor of a lesser standard. [\*35] Instead, he urges that a strict scrutiny analysis not be used as a "safe harbor" to benefit the government after a finding of a prima facie violation of RLUIPA. *Id.* Instead of allowing the government such a safe harbor, he proposes an interpretation of



RLUIPA that holds governments "liable without exception." *Id.*; *c.f. Tree of Life Christian Schs v. City of Upper Arlington*, 823 F.3d 365, 369-70 (6th Cir. 2016) (*Tree of Life II*) ("All of our sister circuits that have interpreted the Equal Terms Provision have glossed the statutory language in a way that allows defendant governments some safe harbor for permissible land-use regulation.")

However, at this juncture, this Court need not decide what standard is appropriate (strict scrutiny, some lesser standard, or liability "without exception") because, as explained in *Tree of Life II*,

[g]ranting summary judgment to the government is erroneous under any test, because "summary judgment must be denied in a proceeding for equitable relief ... [when] genuine issues of material fact exist." *Hasan v. Clevetrust Realty Inv'rs*, 729 F.2d 372, 374 (6th Cir. 1984); *cf. Hess v. Schlesinger*, 486 F.2d 1311, 1313, 159 U.S. App. D.C. 51 (D.C. Cir. 1973) (holding that, when a plaintiff seeking an injunction raises a genuine issue of fact material to the defendant government's claim regarding its justification for a policy, summary judgment is inappropriate); *Windsurfing Int'l, Inc. v. Ostermann*, 534 F. Supp. 581 (S.D.N.Y. 1982) (holding that, when a defendant's [\*36] assertion depends on proof to be offered at trial, summary judgment is inappropriate).

*Tree of Life I*, 823 F.3d at 370-71. In the present case, there are disputed issues of fact as to Plaintiffs' equal-terms claim, as discussed below, and Plaintiffs have sought equitable relief. Therefore, summary judgment is not appropriate on Plaintiffs' claims that the Zoning Ordinance violates RLUIPA facially or as applied.

As for their facial challenge, Plaintiffs assert

that, if the Court finds that Defendants' interpretation of the term "[c]hurch or similar place of worship" controls, then such an interpretation would violate RLUIPA by facially differentiating between religious and nonreligious assemblies or institutions. Because the Court has found that there are disputed issues of fact as to the meaning of that term as used in the Zoning Ordinance, it would be premature for the Court to determine whether a finding as to one particular meaning would result in a subsequent finding that the Ordinance facially violates RLUIPA. The Court must first determine the meaning of the term "[c]hurch or similar place of worship" before proceeding to the second step of determining a RLUIPA violation. Therefore, this portion of Plaintiffs' [\*37] motion must be denied.

As for the applied challenge, Plaintiffs assert that Defendants have imposed zoning requirements on their home which hosts a religious based group but have placed no additional requirements on homes which regularly host secular gatherings so as to constitute a violation of RLUIPA. In support of their argument, they point to evidence that organizations of a secular nature regularly meet on private property, such as Boy Scouts and Girl Scouts, and families regularly hold non-religious events of a comparative size and frequency to that of Plaintiffs' religious gatherings. Plaintiffs argue that Defendants have applied the Zoning Ordinance in a manner that requires them to go through the process of applying for and obtaining a special use exception to hold small, religious gatherings on their private property, while secular gatherings of a similar size are not required to undertake such measures. Defendants have responded that Plaintiffs have not established that the proffered secular groups are proper comparators.

As noted above, "a comparator for an equal

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terms claim must be similarly situated with regard to the regulation at issue." *Tree of Life III*, 905 F.3d at 368. At this stage in the litigation, [\*38] the record has not been fully developed as to whether the comparators identified by Plaintiffs are similarly situated to Plaintiffs and their gatherings for the purposes of the land use regulation at issue. Therefore, summary judgment must be denied on the as applied challenge.

In summary, Defendants' motion for summary judgment on Plaintiffs' § 1983 claim is **GRANTED** on the ground that the claim is barred by the statute of limitations. Defendants' motion for summary judgment and Plaintiffs' motion for summary judgment on the RLUIPA claim are both **DENIED** because there are disputed issues of material fact that preclude summary judgment.

**IT IS SO ORDERED.**

**/s/ S. Thomas Anderson**

S. THOMAS ANDERSON

CHIEF UNITED STATES DISTRICT JUDGE

Date: February 5, 2019.

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