UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION

1

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

PENINSULA TOWNSHIP'S MOTION TO DISMISS PURSUANT TO RULES 12(b)(1) AND 12(h)(3) FOR LACK OF SUBJECT MATTER JURISDICTION

****ORAL ARGUMENT REQUESTED****

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DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC, AND TABONE VINEYARDS, LLC'S CLAIMS PURSUANT TO RULE 12(b)(1) AND 12(h)(3) FOR LACK OF SUBJECT MATTER JURISDICTION

NOW COMES DEFENDANT, Peninsula Township, by and through its attorneys, McGraw Morris, P.C., and hereby moves to dismiss Counts II, III, and VII of Plaintiffs' Two Lads, LLC, Black Star Farms, LLC and Tabone Vineyard, LLC's First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3) for lack of subject matter jurisdiction, and in support of the same relies upon its Brief in Support and the exhibits attached thereto.

Peninsula Township further moves to dismiss Plaintiffs' Two Lads, LLC, Black Star Farms, LLC and Tabone Vineyard, LLC's claims for declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X of the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3) for lack of subject matter jurisdiction, and in support of the same relies upon its Brief in Support and the exhibits attached thereto.

WHEREFORE, Defendant Peninsula Township respectfully requests that this Honorable Court grant its Motion to Dismiss and dismiss Plaintiffs', Two Lads, LLC, Black Star Farms, LLC, and Tabone Vineyards, LLC', regulatory takings claim (Count VII) and as-applied claims (Counts II and III) in the First Amended Complaint for lack of subject matter jurisdiction because they have failed to achieve finality. Moreover, Defendant Peninsula Township respectfully requests that this Honorable Court grant its Motion to Dismiss and dismiss Plaintiffs', Two Lads, LLC, Black Star Farms, LLC, and Tabone Vineyards, LLC', claims to the extent they seek declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X because the requested relief is moot, depriving the Court of subject matter jurisdiction over those claims for relief.

BY:

McGRAW MORRIS, P.C. Attorneys for Defendant Peninsula Township

Dated: October 6, 2023

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Plaintiffs,

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

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PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

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PROTECT THE PENINSULA,

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PENINSULA TOWNSHIP'S BRIEF IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULES 12(b)(1) AND 12(h)(3) FOR LACK OF SUBJECT MATTER JURISDICTION

****ORAL ARGUMENT REQUESTED****

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BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) AND 12(h)(3) BASED ON LACK OF SUBJECT MATTER JURISDICTION

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EXHIBITS

Exhibit 1	-	Deposition of Peninsula Township
Exhibit 2	-	Two Lads Preliminary Farm Processing Permit
Exhibit 3	-	Two Lads Final Farm Processing Permit
Exhibit 4	-	Deposition of Two Lads
Exhibit 5	-	Summer 2014 Correspondence
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I. INTRODUCTION

Plaintiffs, Two Lads, LLC, Black Star Farms, LLC, and Tabone Vineyards (collectively "Plaintiffs") operate wineries in Peninsula Township (the "Township"). While there are several remaining plaintiffs in this litigation, the Plaintiffs subject to this motion operate (or, for Tabone, alleged to operate) as a use by right under the Peninsula Township Zoning Ordinance ("PTZO") as Farm Processing Facilities.¹

For many of Plaintiffs' claims, this case does not belong in federal court – at least not yet or not in their current form. Federal suits like this one are centered on "matters of local concern more aptly suited for local resolution." *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 347 (2nd Cir. 2005); *Insomnia, Inc. v. City of Memphis, Tenn.*, 278 Fed. Appx. 609 (6th Cir. 2008); *Grace Comm. Church v. Lenox Twp.*, 544 F.3d 609 (6th Cir. 2008). Federal suits in the land-use context are generally not ripe for adjudication until a land owner receives a final definitive decision on a land use application. *Williamson Cnty. Reg. Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). *See also Pearson v. City of Grand Blanc*, 961 F.2d 1211 (6th Cir. 1992). This is generally referred to as achieving finality. Here, Plaintiffs have not received – and, indeed not even attempted to obtain – a final decision regarding the application of the PTZO to their properties.

As facilities that operate as a use by right, in order to achieve finality, Plaintiffs must seek an appeal to the Township Zoning Board of Appeals ("ZBA") to the extent they feel aggrieved by the Zoning Administrator's application of the PTZO to their land. Permits for Farm Processing

¹ Tabone alleges in the First Amended Complaint that is operates as a Farm Processing Facility, but has never received a permit to operate under that section of the PTZO. Instead, Tabone acquired its property from a predecessor in interest that was operating a Food Processing Facility pursuant to a Special Use Permit ("SUP").

Facilities are issued directly by the Zoning Administrator (unlike uses permitted by SUP, which are handled by the Township Board). The PTZO permits a direct appeal to the ZBA from a determination of the Zoning Administrator. Moreover, Plaintiffs may seek a non-use variance from the application of the PTZO to the ZBA, or otherwise seek an interpretation of the provisions of the PTZO. Under these scenarios, if a Plaintiff is aggrieved by a decision of the ZBA, it has the right to appeal that decision to the Circuit Court. *See* Mich. Ct. R. 7.122; MCL 125.3605

None of the Plaintiffs ever sought or obtained a final decision regarding the application of the PTZO to their properties before filing suit. Two Lads never appealed the scope of their land use permits to the ZBA. Instead, as it testified during its deposition, Two Lads did not even know an appeal to the ZBA was available. Further, while Black Star and Tabone knew they could seek ZBA review of the PTZO's application to their properties, the ZBA never denied an appeal or request for variance from either Black Star or Tabone.

This failure is significant because it deprives this Court of subject matter jurisdiction over claims where finality has not been achieved. Plaintiffs' Fifth Amendment regulatory taking claims (Count VII) and as-applied constitutional claims (Count II and Count III) are not ripe for judicial review until they prove they have received "a final decision regarding the application of the regulations to the property at issue." *Grace Cmty Church v. Lenox Twp.*, 544 F.3d 609, 615 (6th Cir. 2008) ("*Grace I*") (quoting *Insomnia Inc. v. City of Memphis, Tenn.*, 278 Fed. Appx. 609, 612 (6th Cir. 2008)).

Further, in December, 2022, the Township approved Amendment 201 to the PTZO, which makes comprehensive changes to the PTZO and moots a significant number of Plaintiffs' claims. As such, Section 6.7.2(19) no longer exists in the substantive form challenged in Plaintiffs' First Amended Complaint. Like finality, mootness affects this Court's subject matter jurisdiction. "A federal court 'lacks jurisdiction to consider any case or issue that has lost its character as a present, live controversy and thereby becomes moot.''' *Kerr for Kerr v. Comm'r of Soc. Sec.*, 874 F.3d 926, 930 (6th Cir. 2017). "'Mootness results when events occur during the pendency of the litigation which render the court unable to grant the requested relief.'" *Burger v. Cuyahoga Cnty. Bar Ass 'n*, 983 F.2d 718, 724 (6th Cir. 1993). Because of these comprehensive changes to the PTZO through Amendment 201, Plaintiffs' claims for declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X are moot.

The Court should, therefore, grant the Township's motion to dismiss Plaintiffs' regulatory takings claims (Count VII) and as-applied challenges (Counts II and III) based on lack of subject matter jurisdiction because Plaintiffs have failed to achieve finality. Further, to the extent Plaintiffs seek declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X, that relief is moot based on the passage of Amendment 201.²

II. STATEMENT OF FACTS

A. Zoning Authorization for Farm Processing Facilities.

On July 9, 2002, Peninsula Township (the "Township") adopted Amendment 139 to the PTZO, permitting agriculturally-zoned landowners to operate Farm Processing Facilities as a matter of right. Under §6.7.2(19) of the PTZO, "[i]t is the intent of this subsection to promote a thriving agricultural production industry and preservation of rural character by allowing constructing and use of a Farm Processing Facility." (ECF No. 29-1, PageID.1183). Under the PTZO, Farm Processing Facilities are permitted as a use by right in the A-1 Agricultural District that does not require an SUP, or approval by the Township, so long as the use is in compliance

² If the Court deems proper, it can consider the Township's Motion under Fed. R. Civ. P. 56. However, the Township submits that is not necessary.

with the conditions and regulations of the PTZO and the specific limitations contained in §6.7.2(19).

Farm Processing Facilities, as a use by right, need only obtain a farm processing permit from the Zoning Administrator before commencing operations. The Zoning Administrator will issue a preliminary permit upon the applicant providing a site plan, application fee, approval from the Grand Traverse County Health Department, and showing of compliance of limitations in the PTZO. (ECF No. 29-1, PageID.1187; Section 6.7.2(19)(b)(14)(I)-(IV)). No processing or sales may occur until a Final Farm Processing Facility Permit has been obtained. (*See id.*; Section 6.7.2(19)(b)(14)(V)). After a Preliminary Farm Processing Facility Permit has been issued, the applicant then seeks a Final Farm Processing Facility Permit from the Zoning Administrator. This includes the applicant providing all permits required by state and federal law and the Zoning Administrator completing an on-site visit. (*See id.*).

B. <u>Challenging Zoning Decisions for Wineries that Operate as a Use By Right.</u>

A Farm Processing Facility would challenge the issuance of a permit or a determination by the Zoning Administrator through an appeal to the ZBA.

Section V of PTZO details the duties and powers of the ZBA which was established to safeguard the objectives of the PTZO and provide "a means for competent interpretation and controlled flexibility in the application of this Ordinance." (ECF No. 29-1, Page.ID 1162; Section 5.1.1). Because permits for a Farm Processing Facility are issued solely by the Zoning Administrator, under §5.7.1 of the PTZO, the ZBA has the power to review the Zoning Administrator's decision. The ZBA "shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the

Zoning Administrator or by any other official in administering or enforcing any provisions of this Ordinance." (*Id.* at PageID.1164; Section 5.7.1).

To the extent a Farm Processing Facility seeks an interpretation of the PTZO, under §5.7.2 the ZBA has the power to interpret, upon request "the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance \ldots " (*Id.*). Finally, if a Farm Processing Facility seeks a variance, under §5.7.3 the Township Board has the power to authorize specific variance requests provided that all basic conditions under §5.7.3(1) and any one special condition under §5.7.3(2) can be satisfied.

"The Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises." (ECF No. 29-1 Page.ID 1163; §5.6). The ZBA shall have the "power in passing upon appeals to vary or modify any of its rules, regulations, or provisions so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done." (*Id.*).

If an applicant is seeking a variance or an interpretation of the PTZO, the request would originate with the Zoning Administrator. "[T]he zoning administrator would then guide them through the application process, what needs to be submitted to have a complete application and help them to understand what the process looks like." (**Exhibit 1**, Dep of Peninsula Township at 36). A completed application must be submitted to the Zoning Administrator four weeks prior to meeting with the ZBA, during which, staff will complete a "package of materials that goes to the zoning board of appeals, which includes all of the application materials as well as a staff report." (*Id.* at 37).

If anyone is aggrieved by a decision of the ZBA, they have the right to appeal to the Circuit Court. *See* Mich. Ct. R. 7.122 ("This rule governs appeals to the circuit court from a determination

under a zoning ordinance by any . . . zoning board of appeals"); *see also* MCL 125.3605. Appeals governed by Mich. Ct. R. 7.122 are appeals of right. Mich. Ct. R. 7.122(A)(3).

C. History of Land Use Approvals for Farm Processing Facilities

1. Two Lads

Two Lads has been in operation for well over a decade before this litigation was filed. In May, 2007, Two Lads obtained its Preliminary Farm Processing Facility permit. (**Exhibit 2**, Two Lads Preliminary Farm Processing Permit). In October, 2007, Two Lads received its Final Farm Processing Facility Permit from the Township. (**Exhibit 3**, Two Lads Final Farm Processing Permit). Two Lads has not applied for any amendments to their Farm Processing Facility Permit. (**Exhibit 1** at 51). Two Lads has been in continuous operation since.

Both Two Lads and the Township agree that Two Lads never requested a variance, an interpretation from, or appealed to the ZBA. (Exhibit 1, at 51; Exhibit 4, Dep. of Two Lads at 79-80). In fact, when asked whether it sought an interpretation from the ZBA, Two Lads' representative testified, "[O]h, I didn't even know that was a thing. No, I didn't." (*Id.* at 80). While the ability to seek an interpretation is laid out in the text of the PTZO, in 2014 the Township's Zoning Administrator informed Two Lads that "several events" it had planned for the summer may be in violation of Two Lads' permits. (Exhibit 5, Summer 2014 Correspondence). The Zoning Administrator invited Two Lads to "contact us immediately to discuss the scheduled events so that staff can make a determination as to whether or not these uses a permitted by Section 6.7.2(19)" of the PTZO. (*Id.*). Two Lads did not seek an interpretation, but instead, stated, "[a]fter our discussion in your office on the 24th 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." (*Id.*). In fact, as noted above, when asked whether Two Lads sought an interpretation regarding what he heard from

the Zoning Administrator in response to the 2014 letter, Two Lads' representative noted he did not even know that was "a thing" and did not seek an interpretation. (Exhibit 4 at 79-80).

2. Black Star

Black Star obtained its Preliminary Farm Processing Permit in March, 2007. (Exhibit 6, Black Star Preliminary Farm Processing Permit). The Preliminary Farm Processing Permit did not allow processing or sales until the final permit is issued. (*Id.*). In September, 2007 Black Star obtained its Final Farm Processing Permit. (Exhibit 7, Black Star Final Farm Processing Permit). Black Star has been in continuous operation since. The Township has not received or processed any request to amend the permit issued in 2007. (Exhibit 1 at 52-54).

Black Star does have a history of variance requests to the Township – but it still failed to obtain a final decision. In the thirteen years before the filing of the First Amended Complaint, Black Star submitted multiple variance requests to Peninsula Township. None of the variance requests were ever denied.

- In 2007, Black Star received a dimensional variance. (Exhibit 8, ZBA Approval of Dimensional Variance). The variance allowed Black Star to use a pre-existing building, which exceeded 6,000 square feet, for its Farm Processing Facility under §6.7.2(19)(b)(7) of the PTZO. (Exhibit 9, Dep of Black Star Representative Lee Lutes at 26).
- Later in 2007, the ZBA, at Black Star's request, approved an exception to §6.7.2(19)(2) of the PTZO. (Exhibit 10, ZBA August 9, 2007 Meeting Minutes). This exception allowed Black Star's location in the Township to sell wine and permit tastings of wine that had been made from grapes grown on the Peninsula but processed at a Black Star facility located in Leelanau County. (*Id.*) This resulted in litigation which ultimately was resolved allowing Black Star to sell to the public red wines for growing years 2004 and 2005 and white wines for growing years 2005 and 2006. (Exhibit 11, Exception to sell red and white wines).
- In 2011, Black Star requested a variance to expand the processing and storage area of its facility. The requested variance was for an expansion of their current facility of approximately 7,000 square feet. (Exhibit 12, 2011 Variance Request). In lieu of proceeding with the variance request, on January 26, 2012, Black Star removed its variance request from consideration stating the winery plans to pursue other options as

they relate to the production facility and it will not be continuing with the ZBA request to expand production space. (Exhibit 13, Variance Request withdrawn).

- Finally, in 2018, Black Star submitted another variance application for the pre-existing structure requesting more space for wine storage. (Exhibit 14, 2018 Variance Request). The Township did not process the variance request, instead indicated that an amendment to the Zoning Ordinance would be required. (Exhibit 15, Letter from The Township to Black Star). Black Star took no further action.
- 3. Tabone

In the First Amended Complaint, Tabone claims it operates its winery as a Farm Processing Facility. (ECF No. 29, PageId.1092, Para. 45; **Exhibit 16**, Tabone Dep. at 39). This is incorrect. Tabone's predecessor in interest, J. Josef Vineyards, applied for and obtained an SUP in April, 2000, that allowed it to operate as a Food Processing Plant. (**Exhibit 17**, SUP No. 73). The SUP was transferred to Tabone in February, 2004. (ECF No. 32-2, PageID.1636). The allowed use under SUP No. 73 is for a "Food Processing Plant – Winery and Bottled Juice". Food Processing Plants are allowed as a special use under §8.5 of the PTZO. (*Id.*). SUP No. 73 allows for grapes to be crushed, pressed and transported inside for fermenting and bottling inside. (*Id.*). Retail sales of wine for off premises consumption is allowed but wine tasting is not allowed on the premises. (*Id.*).

Mario Tabone, on behalf of Tabone, mistakenly believes that Tabone is a Farm Processing Facility. On January 29, 2016, Burkholder Construction applied for a Farm Processing Permit and Land Use Permit on behalf of Mario Tabone for a "Winery Farm Processing & Tasting Room" structure. (**Exhibit 18**, Application). On April 27, 2016, Peninsula Township advised Tabone of outstanding items to complete in support of the application for a Farm Processing Facility. (**Exhibit 19**, April 27, 2016 e-mail). Specifically, Tabone was instructed to submit an application for a variance to the ZBA requesting a setback of 11 feet from the required 100-foot side yard setback required under §6.2.7(19)(b)(5) of the PTZO. (*Id.*). Tabone applied for a variance of the setback requirements. A public hearing before the ZBA on the variance was scheduled for June 28, 2016. On June 21, 2016, the Township Planner e-mailed Mr. Tabone discussing the option of working within the current SUP, and advising Tabone that currently the winery is not authorized for wine tasting within the building, to do so will require the winery to convert to a Farm Processing Facility – pending a variance of 11 feet from the 100-foot side yard setback – or convert to a Winery-Chateau. (Exhibit 20, June 21, 2016 e-mail). Mr. Tabone replied to this email confirming that Tabone withdraws Variance Request No. 851 in light of Tabone pursing operations outlined by SUP No. 73. (*Id.*).

Tabone's Farm Processing and Tasting Room Land Use Permit application was subsequently updated to reflect that the proposed use of the structure would continue to be a Food Processing Plant. (Exhibit 21, Revised Application).

Tabone has never filed any applications to amend SUP No. 73. (Exhibit 1 at 86). At most, Tabone claims its Farm Processing Facility application was approved prior to Tabone's 2018 opening. (Exhibit 15 at 53-54). However, the Township never approved any application for Tabone to become a Farm Processing Facility. (Exhibit 1 at 86). Other than the variance discussed above, Tabone has never applied for or requested a variance or interpretation from the ZBA regarding SUP No. 73. (Exhibit 1 at 86).

D. <u>The Township Amended the PTZO Through Amendment 201 Which Eliminated</u> Farm Processing Facilities as a Use By Right.

After completing the public process required by the MZEA, on December 13, 2022, the Township passed Zoning Ordinance Amendment No. 201. (ECF NO. 444-2, PageID.15907-15930). Amendment 201 makes comprehensive changes to the PTZO and moots a significant number of Plaintiffs' claims.

Farm Processing Facilities have been eliminated from the PTZO. Section 6.7.2(19) – Farm Processing Facility has been replaced with Section 6.7.2(19) – Wholesale Farm Processing Facility. (*Id.* at 15909-15915). As such, Section 6.7.2(19)(a) and Section 6.7.2(19)(b)(1)(iv) no longer exist in the substantive form challenged in Plaintiffs' Complaint. (*Id.*). Moving forward, pursuant to Section 6.7.3(22), the Township will recognize Retail Farm Processing Facilities as a subordinate, accessory use permitted by SUP subject to the requirements of Section 8.7.3(10) and (11) which have been repealed and replaced. (*Id.* at 15915). Now, pursuant to Section 8.7.3(10), Retail Farm Processing Facility (Indoors Only), and Section 8.7.3(11), Retail Farm Processing Facility (with Outdoor Seating), are permitted only as subordinate, accessory uses by SUP. (*Id.* at 10-22).

LAW AND ARGUMENT

III. STANDARD OF REVIEW

The Township moves to dismiss Plaintiffs' takings and as-applied claims pursuant to Federal Rule of Civil Procedure 12(b)(1) and through Federal Rule of Civil Procedure 12(h)(3) which provides that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." A motion to dismiss under Rule 12(h)(3) is analyzed in the same manner as a motion to dismiss under Rule 12(b)(1). *Cohan v. LVJ, Inc.*, No. 20-cv-10979, 2021 WL 4552247, at *1 (E.D. Mich., Oct. 5, 2021) (citing *Gates v. Black Hills Health Care Sys. (BHHCS)*, 997 F.Supp.2d 1024, 1029 (D.S.D. 2014) and *Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.3d 874, 879 n.3 (3d Cir. 1992). Rule 12(b)(1) permits dismissal for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Subject matter jurisdiction is a threshold determination for a district court. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 82, 101; 118 S.Ct. 1003 (1998); *Am. Telecom Co., L.L.C. v. Republic of Lebanon*, 501 F.3d 534 (6th Cir. 2007).

The Township's challenge to subject matter jurisdiction is factual in nature. A Rule 12(b)(1) motion based on lack of subject matter jurisdiction can come in two varieties: a facial attack or a factual attack. *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014). "A facial attack on the subject-matter jurisdiction alleged in the complaint questions merely the sufficiency of the pleading." *Gentek Bldg. Prods. V. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). "When reviewing a facial attack, a district court takes the allegations in the complaint as true," and construes them in the light most favorable to the nonmoving party, a procedure like that utilized under Rule 12(b)(6). *Id.*; *see also United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). "If those allegations establish federal claims, jurisdiction exists." *Gentek Bldg. Prods.*, 491 F.3d at 330.

On the other hand, "[a] factual attack challenges the existence of subject matter jurisdiction." *Cartwright*, 751 F.3d at 759. "When a Rule 12(b)(1) motion attacks the factual basis for jurisdiction, the district court must weigh the evidence and the plaintiff has the burden of proving that the court has jurisdiction over the subject matter." *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005). When considering a factual attack to subject matter jurisdiction, "a court has broad discretion with respect to what evidence to consider in deciding whether subject matter jurisdiction exists, including evidence outside of the pleadings, and has the power to weigh the evidence and determine the effect of that evidence on the court's authority to hear the case." *Cartwright*, 751 F.3d at 759-760 (citing *Ritchie*, 15 F.3d at 598). The Court may consider documentary evidence and may even hold a limited evidentiary hearing to resolve disputed jurisdictional facts. *Ohio Nat'l Life Ind. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990).

The United States Supreme Court has consistently cautioned that "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived."

Arbaugh v. Y&H Corp., 546 U.S. 500, 514; 126 S.Ct. 1235 (2006) (quoting *United States v. Cotton*, 535 U.S. 625, 630; 122 S.Ct. 1781 (2002)); *see also Gonzalez v. Thaler*, 565 U.S. 134, 141; 132 S.Ct. 641 (2012) ("Subject-matter jurisdiction can never be waived or forfeited."). Subject-matter jurisdiction can be addressed at any time, "objections [to subject-matter jurisdiction] may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety." *Gonzalez*, 565 U.S. at 141. The Supreme Court has consistently held that courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge of any party." *Arbaugh*, 546 U.S. at 514 (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583; 119 S.Ct. 1563 (1999)).

IV. PLAINTIFFS HAVE FAILED TO ACHIEVE FINALITY RENDERING THEIR TAKINGS AND AS-APPLIED CHALLENGES UNRIPE AND LEAVING THIS COURT WITHOUT SUBJECT MATTER JURISDICTION OVER THOSE CLAIMS.

Plaintiffs filed the present lawsuit in federal court asserting takings and as-applied challenges to the PTZO. However, before filing the instant litigation, Two Lads, Black Star, and Tabone failed to obtain a final decision from the Township regarding the application of the PTZO to their respective properties regarding the claims alleged in the lawsuit. Because Plaintiffs failed to achieve finality, their takings and as-applied challenges are not ripe, and this Court lacks subject matter to adjudicate those claims.

Two Lads and Black Star have not applied for an amendment to their land use permits for their respective farm processing facilities or site plan. Further, while Tabone claims it is a Farm Processing Facility, there is no evidence that Tabone ever obtained a permit to operate as such. In reality, Tabone has not sought an amendment to the SUP under which it operates as a Food Processing Plant. Simply speaking, Two Lads, Black Star, and Tabone have been operating for years before filing this lawsuit and failed to obtain a final decision from the Township. Moreover, Two Lads has never sought a variance or interpretation from the ZBA. As it testified, it was not even aware that an appeal or request for interpretation from the ZBA was an option. The only variance request Tabone applied for was subsequently withdrawn and never heard by the ZBA. Tabone has not submitted a request for interpretation or appeal on any "restriction" from the ZBA. Black Star sought several variances and every variance or interpretation that went to the ZBA was granted by the Township. On two other instances, Black Star's request was never heard by the ZBA, and Black Star never sought further relief.

Finally, even if Two Lads, Black Star, or Tabone received an adverse decision from the ZBA – which none of them did – they never appealed the hypothetical decision to the Circuit Court, which is available as a matter of right under the Michigan Court Rules.

Two Lads, Black Star, and Tabone have failed to achieve finality and, as such, their takings and as-applied claims are not ripe.

The requirement of finality emanates from the ripeness requirements of Article III of the United States Constitution. Article III, among other things, limits the jurisdiction of federal courts to actual cases and controversies, and precludes federal courts from providing advisory opinions. *Arnett v. Myers*, 281 F.3d 552, 562 (6th Cir. 2002) (citing *Adcock v. Firestone Tire and Rubber Co.*, 822 F.2d 623, 627 (6th Cir. 1987)). The doctrine of ripeness "focuses on the timing of the action." *United States Postal Serv. v. Nat'l Ass'n of Letter Carriers*, 330 F.3d 747, 751 (6th Cir. 2003). Ripeness encompasses "Article III limitations on judicial power" as well as "prudential reasons for refusing to exercise jurisdiction." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808; 123 S.Ct. 2026 (2003) (internal citation and quotation marks omitted). Through enforcement of ripeness requirements, courts discourage "premature adjudication" of legal questions and avoid judicial entanglement in abstract controversies. *Warshak v. United States*, 532

F.3d 521, 525 (6th Cir. 2008) (en banc). Ripeness "is more than a mere procedural question; it is determinative of jurisdiction. If a claim is unripe, federal courts lack subject matter jurisdiction and the complaint must be dismissed." *River City Capital, LP. v. Bd. of Cty. Comm'rs*, 491 F.3d 301, 309 (6th Cir. 2007) (internal citation and quotation marks omitted).

The Sixth Circuit in Miles Christi Religious Order v. Township of Northville, 629 F.3d 533

(6th Cir. 2010), explained how the ripeness doctrine has evolved into a "finality" requirement in

the land-use context. The "insistence on finality" is a foundational prerequisite for any federal

land-use claim:

To decide whether a dispute has ripened into an action amenable to and appropriate for judicial resolution, we ask two questions: (1) is the dispute "fit" for a court decision in the sense that it arises in "a concrete factual context" and involves "a dispute that is likely to come to pass"? and (2) what are the risks to the claimant if the federal courts stay their hand? Warshak, 532 F.3d at 525; see Abbott Labs., 387 U.S. at 149, 87 S.Ct. 1507. In the land-use context, the demands of "a concrete factual context" and "a dispute that is likely to come to pass" converge in an insistence on "finality," an insistence that the relevant administrative agency resolve the appropriate application of the zoning ordinance to the property in dispute. In the related context of takings claims under the Fifth and Fourteenth Amendments, courts likewise insist that a claimant "obtain[] a final decision regarding the application of the zoning ordinance[s] ... to its property," Williamson Cnty. Reg.'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), a requirement rooted in ripeness considerations, see id. at 186-94, 105 S.Ct. 3108; Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1012-13, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). In addition to takings claims, we have applied the finality requirement to other constitutional and statutory challenges to local land-use requirements. See Grace Cmty. Church, 544 F.3d at 615 (RLUIPA); Insomnia Inc. v. City of Memphis, 278 Fed. Appx. 609, 613 (6th Cir. 2008) (Free Speech Clause); Bannum, Inc. v. City of Louisville, 958 F.2d 1354, 1362 (6th Cir. 1992) (Equal Protection Clause).

Miles Christi, 629 F.3d at 537.

The State of Michigan and its municipalities have adopted procedures designed to keep building and land use issues at a local level subject to appropriate judicial review. The process provides a mechanism for resolving disputes. The seminal case of *Williamson County Reg.* *Planning Com. v. Hamilton Bank of Johnson County*, 473 U.S. 172 (1985) and its progeny highlight the importance of this process and have cautioned federal courts not to interfere with this process.

As set forth by the Court in *Williamson County*, 473 U.S. at 187: "[A] claim that the application of government regulations affects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the applicability of the regulations to the property at issue." Local regulatory decisions are generally not ripe for constitutional attack until all of the state law processes have been exhausted. *Braun v. Ann Arbor Charter Township*, 519 F.3d 564 (6th Cir. 2008); *Bigelow v. Michigan Department of Natural Resources*, 970 F.2d 154 (6th Cir. 1992). The Michigan Supreme Court has echoed this requirement in *Paragon Properties Co. v. City of Novi*, 452 Mich. 568, 576-577; 550 N.W.2d 772 (1996), holding that an as-applied challenge to the constitutionality of a zoning ordinance is not ripe until the plaintiff has obtained a final decision regarding the permitted use of the land. The Michigan Supreme Court quoted favorable to *Williamson County*, "'[T]he finality requirement 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*, 473 U.S. at 186).

Plaintiffs' Fifth Amendment regulatory taking claim (Count VII) and as-applied constitutional claims (Count II and Count III) are not ripe for judicial review until they prove they have received "a final decision regarding the application of the regulations to the property at issue." *Grace Cmty Church v. Lenox Twp.*, 544 F.3d 609, 615 (6th Cir. 2008) ("*Grace I*") (quoting *Insomnia Inc. v. City of Memphis, Tenn.*, 278 Fed. Appx. 609, 612 (6th Cir. 2008)). *See also, Dubuc v. Green Oak Twp.*, 406 Fed. Appx. 983, 989-991 (6th Cir. 2011); *Beacon Hill Farm*

Associates II, Ltd. Partnership v. Loudoun Cty. Bd. of Sup'rs, 875 F.2d 1081 (4th Cir. 1989) (discussing distinctions between facial and as-applied challenges in relationship to finality requirements).

A. <u>Two Lads, Black Star, and Tabone's Fifth Amendment Takings Claims are Not Ripe.</u>

Until recently, a plaintiff was required to prove two requirements before pursuing a takings claim in federal court: (1) the government entity charged with implementing the regulations had reached a final decision regarding the applications of the regulations to the property at issue; and (2) the property owner has exhausted the proper state procedures (i.e., the property owner filed and pursued a case in state court). *See, e.g., Crosby v. Pickaway Cnty. Gen. Health Dist.*, 303 Fed. Appx. 251, 259 (6th Cir. 2008) (citing *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985)). But relatively recently the Supreme Court eliminated the second requirement, meaning that filing a state court action is no longer a prerequisite to pursuing a Fifth Amendment takings claim. *See Knick v. Twp. of Scott, Pa.*, U.S. ____; 139 S.Ct. 2162 (2019).

Nevertheless, the *Knick* Court explicitly left the "finality" requirement intact, meaning that there must still be a "final" decision before a takings claim is ripe for judicial review in federal court. *Id.* at 2169 ("Knick does not question the validity of this finality requirement, which is not at issue here."); *see also, Oberer Land Dev. Ltd. v. Sugarcreek Twp., Ohio*, No. 21-3834, 2022 WL 1773722, at *4, n.1 (6th Cir., June 1, 2022) ("The Supreme Court recently overruled *Williamson County* in *Knick v. Township of Scott*, 139 S. Ct. 2162 (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"); *Delta Business Center, LLC v. City of Taylor*, No. 2:19-CV-13618, 2020 WL

4284054, at *2 (E.D. Mich., July 27, 2020) ("The finality requirement, which was not at issue in *Knick*, was left intact. This means that there still must be a 'final' decision before a takings claim is ripe for judicial review in federal court."). Accordingly, Plaintiffs are still obligated to meet the "final decision" requirement to establish that their Fifth Amendment regulatory takings claims are ripe for judicial review.

A "final decision" under Williamson County exists when: "(1) a decision has been made "about how a plaintiff's own land may be used" and (2) the local land-use board has exercised its judgment regarding a particular use of a specific parcel of land, eliminating the possibility that it may "soften[] the strictures of the general regulations [it] administer[s]." Adam Bros. Farming, Inc. v. Cnty. Of Santa Barbara, 604 F.3d 1142, 1147 (9th Cir. 2010) (quoting Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725, 738-739 (1997)). In other words, a decision relating to Plaintiffs' land use is not "final" until the local "land-use board" - here, the Peninsula Township Board – is presented with the issues and has had an opportunity to render a decision. The Sixth Circuit has explained, "[i]n the land-use context, the demands of 'a concrete factual context' and 'a dispute that is likely to come to pass' converge in an insistence on 'finality,' an insistence that the relevant administrative agency resolve the appropriate application of the zoning ordinance to the property in dispute." Miles Christi, 629 F.3d at 537. Therefore, the Sixth Circuit has cautioned, "courts . . . insist that a claimant 'obtain[] a final decision regarding the application of the zoning ordinance[s] . . . to its property,' a requirement rooted in ripeness consideration[.]" Id. (internal citations omitted). See also Shaw v. City of Riverview, No. 16-11693, 2017 WL 914245, at *7-8 (E.D. Mich., Mar. 8, 2017) ("Finality requires the plaintiff to demonstrate that the decision-making body has reached a final decision regarding the application of the regulation at issue.") (citing *Lilly* Investments v. City of Rochester, 674 Fed. Appx. 523, 526 (6th Cir. 2017)).

The requirement for finality is well-founded in the ripeness doctrine, as "a final, definitive decision from local zoning authorities ensures that federal review – should the occasion eventually arise – is premised on concrete and established facts and that all non-constitutional avenues of resolution have been explored first, perhaps obviating the need for judicial entanglement in constitutional disputes." *Insomnia Inc. v. City of Memphis, Tenn.*, 278 Fed. Appx. 609, 615 (6th Cir. 2008) (internal citation and quotation marks omitted).

As entities operating as a use by right under the PTZO, if the Plaintiffs wanted to challenge the issuance of their Farm Processing Facility permits (which are issued solely by the Zoning Administrator) they must have filed an appeal to the ZBA. If Plaintiffs instead sought a variance, that application would go straight to the ZBA through the assistance of the Zoning Administrator. Finally, if, after the ZBA reached a decision regarding an appeal or variance request, any Plaintiff aggrieved by the decision of the ZBA has the right to appeal that decision to the Circuit Court. *See* Mich. Ct. R. 7.122. This is an absolute requirement, because "[f]inality is a prerequisite to litigation." *Grace Community Church v. Lenox Twp.*, 544 F.3d 609, 617 (6th Cir. 2008).

In this case, Plaintiffs' First Amended Complaint is devoid of sufficient facts to establish that Plaintiffs satisfied the finality requirements. Indeed, beyond the allegations contained in the First Amended Complaint, discovery in this case proves the same.

- Two Lads obtained its final Farm Processing Facility permit in 2007. Since then, Two Lads has not challenged the decision of the Zoning Administrator regarding its land use permit to the ZBA, sought an interpretation from the ZBA, or sought a variance from the ZBA. This comes despite the Township inviting Two Lads to seek a determination regarding the events it planned to host in 2014.
- Black Star obtained its final Farm Processing Facility permit in 2007. Since then, Black Star has not challenged the decision of the Zoning Administrator regarding its land use permit to the ZBA. While Black Star has sought and obtained more than one variance, Black Star was never denied a variance request.

• Tabone claims it is operating as a Farm Processing Facility when, in reality, its land use approvals support that it is a Food Processing Plant operating pursuant to a Special Use Permit. Tabone never obtained a Farm Processing Facility Permit. In order to obtain a Farm Processing Facility Permit, Tabone was required to obtain a dimensional variance from the ZBA. While Tabone initially sought a variance from the ZBA in 2016, it withdrew the request and has been operating since without any further challenge. The ZBA never ruled on the variance request.

Therefore, as a matter of law, Plaintiffs have not sought "a final, definitive decision from

local zoning authorities" before filing this federal lawsuit that "ensures that federal review - should

the occasion eventually arise - is premised on concrete and established facts" that should

"obviate[] the need for judicial entanglement in constitutional disputes." Insomnia, Inc., 278 Fed.

Appx. at 617.

Plaintiffs' avoidance of seeking a final decision from the ZBA regarding the regulatory effects of the PTZO on their properties confirm that their takings claims are not ripe for judicial review. The Sixth Circuit's decision in *Miles Christi* is demonstrative of the issue. In *Miles Christi*, the Sixth Circuit reasoned that a land-use decision was not final where the local zoning authority was neither presented with nor ruled upon the interpretation of the regulations at issue:

This position, however, does not square with the relevant regulations. At the time the complaint was filed, the Northville Code provided that "[t]he Zoning Board of Appeals shall be responsible for interpretations to the text of [the zoning ordinances]" and shall be responsible for "interpret[ing] the provisions or meaning of standards of [the ordinances]."

* * *

An administrative appeal to the zoning board thus will resolve at least three questions, all of which lie within the zoning board's plenary interpretive jurisdiction, about Miles Christi's obligations or indeed whether it has any obligations at all: (1) Has Miles Christi put its house to a "more intensive use" within the meaning of § 170–33.2 of the Northville Code? (2) Is the Miles Christi house a "church" within the meaning of § 170–26.2 of the Code? and (3) Does Miles Christi have an obligation to submit a site plan in the first instance in view of the meaning of these ordinances and its request for a variance? Finality requires the input of the zoning board on these unresolved questions.

629 F.3d at 538 (internal citations omitted). The Sixth Circuit has also explained that:

An appeal to the zoning board not only will ground this dispute in a concrete legal setting—by permitting the zoning board to clarify the township's application of its land-use laws to this property—but it also may help Miles Christi. The zoning board may grant a variance to the religious order, or it may provide a different intensive-use determination. Both forms of relief will considerably narrow the grounds of dispute between the parties if not end the dispute altogether.

Id. Consistent with the analysis of the Sixth Circuit in *Miles Christi*, the takings claim in this case is not ripe for judicial review.

Here, in order to achieve finality, Plaintiffs should have either: (1) appealed the Zoning Administrator's application of the PTZO to their properties to the ZBA; (2) sought a variance from the ZBA; or (3) sought an interpretation from the ZBA. Under the PTZO, if Plaintiffs wanted to challenge the Zoning Administrator's decision regarding a Farm Processing Facility Permit, they had the right to directly challenge that decision with the ZBA. (*See* ECF No. 29-1, PageID.1164; Section 5.7.3). If it is a variance or interpretation of the PTZO the Plaintiffs seek, the PTZO places authority to interpret, apply, or vary from the PTZO within the jurisdiction of the ZBA. (*See id.*, PageID.1164; Section 5.7.2 and 5.7.3). Finally, if a Plaintiff received an adverse decision from the ZBA on an appeal, request for variance, or request for interpretation, they are entitled to an appeal as a matter of right to the Circuit Court for Grand Traverse County. *See* MCR 7.122. Just as in *Miles Christi*, finality requires that the Township Board (on an SUP application) or the ZBA (on a variance application or request for interpretation) reach a final decision prior to achieving finality.

Plaintiffs have not alleged they *sought* a decision from the ZBA on the issues raised in the Complaint prior to filing suit, let alone proving they *obtained* a final decision. Plaintiffs' taking claim is therefore subject to dismissal because it is not ripe for judicial review. *See, e.g., Delta Business Center, LLC*, 2020 WL 4284054, at *3 (holding that takings claim was not ripe because

"Plaintiff has not satisfied the well-settled finality requirement, which is a prerequisite to litigation."); *Asmar v. City of Walled Lake*, 2017 WL 4585706, at *4 (E.D. Mich., Oct. 16, 2017) ("Here, to demonstrate ripeness, Plaintiffs would need to allege that Walled Lake made a final decision creating an impasse between the parties; Plaintiffs utilized remedial procedures such as zoning variance applications; Walled Lake provided inadequate procedures; or that remedial procedures were unavailable. Plaintiffs do not allege any of these facts. And so, the claim is not ripe on its face.").

This Court lacks subject matter jurisdiction over Plaintiffs' Fifth Amendment taking claim, and should therefore dismiss Count VII.

B. <u>Two Lads, Black Star, and Tabone's As-Applied Challenges are Similarly Not Ripe for</u> <u>Review.</u>

The finality requirement applies not only to Plaintiffs' regulatory takings claim, but also to their as-applied constitutional claims (Counts II and III) as well. *See Miles Christi*, 629 F.3d at 537 ("In addition to takings claim, we have applied the finality requirement to other constitutional and statutory challenges to local land-use requirements."). Here, the same finality requirements as discussed *supra* regarding the takings claim applies to Plaintiffs' as-applied First Amendment claims in Counts II and III.

The Sixth Circuit's decision in *Insomnia, Inc.* leads the analysis. In *Insomnia, Inc.*, the trial court dismissed the plaintiffs' First Amendment claim for lack of ripeness. In affirming the trial court, the Sixth Circuit rejected the plaintiffs' argument, "that, in the First Amendment context, there is no finality requirement; rather, an injury to land use becomes legally cognizable as soon as the adverse governmental decision is made." *Insomnia, Inc.*, 278 Fed. Appx. at 612. In reaching its conclusion, the Sixth Circuit noted that the Second Circuit in *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342 (2nd Cir. 2005) departed from its decision in *Dougherty v. Town*

of North Hempstead Bd. of Zoning Appeals, 282 F.3d 83 (2nd Cir. 2002) and required finality in the First Amendment context. *Insomnia, Inc.*, 278 Fed. Appx. at 614-615.

In Insomnia, Inc., the Sixth Circuit noted that the Second Circuit utilizes a two-part analysis to determine whether a plaintiff is subject to finality. Id. at 615. The court asks "whether the [plaintiffs] experienced an immediate injury as a result of [the defendant's] actions and (2) whether requiring the [plaintiffs] to pursue additional administrative remedies would further define their alleged injuries." Id. (quoting Murphy, 402 F.3d at 351). The Sixth Circuit applied the Second Circuit's two-part test in Insomnia, Inc., and concluded that the plaintiffs had "not suffered an immediate injury as a result of the Defendant's actions." Id. at 615. To the contrary, had the plaintiffs followed the available administrative options, "there is a chance that their proposal [would] be approved" and they would have obtained the result their sought. Id. As the Sixth Circuit noted, "[s]uch an outcome would discharge any claim of First Amendment retaliation and obviate the need for federal review. If, however, Plaintiffs' renewed plan . . . is rejected, this outcome [would] further define the contours of Plaintiffs' claim of First Amendment retaliation." Id. at 615-616. The Insomnia, Inc. Court concluded: "Taken together, these two prongs indicate that the district court acted properly in dismissing Plaintiffs' claim as premature." Id. at 616. Finally, the Sixth Circuit also observed that this result comports with policy considerations that underly the finality requirement, including ensuring "the development of a full record," providing the plaintiffs a chance to obtain the relief requested without judicial entanglement in constitutional disputes, and showing "respect for federalism principles by recognizing that land use disputes are uniquely matters of local concern more aptly suited for local resolution." Id.

Here, the analysis from *Insomnia, Inc.* is instructive. Had Plaintiffs worked through the administrative options available to them, "there is a chance" they would have been successful in

obtaining the approvals they seek to compel through this lawsuit without the need for federal review or that the outcome in obtaining finality would "further define the contours" of the claim. *Id.* at 615-616. *See also Miles Christi*, 629 F.3d 533 (analyzing application of finality requirement in First Amendment context); *Grace Community Church v. Lenox Twp.*, 544 F.3d 609 (6th Cir. 2008); *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Twp.*, 836 F.Supp.2d 504 (E.D. Mich. 2011) (finding as applied First Amendment claim not ripe because plaintiff failed to achieve finality).

Because Plaintiffs failed to achieve finality on the as-applied First Amendment claims, Counts II and III, the Court lacks subject matter jurisdiction over those counts and they should be dismissed.

V. AMENDMENT 201 MOOTS PLAINTIFFS' CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF IN COUNTS I, II, III, IV, V, VI, VII, AND X THEREBY DEPRIVING THIS COURT OF SUBJECT MATTER JURISDICTION OVER THOSE CLAIMS FOR RELIEF.³

In Counts I (Facial Challenge to Violation of Freedom of Speech, Freedom of Expression and Free Exercise of Religion Under the First and Fourteenth Amendments), II (As-Applied Challenge to Violation of Plaintiffs' Freedom of Speech Under the First and Fourteenth Amendments), III (Violation of Freedom of Association Under the First and Fourteenth Amendments), IV (Violation of Due Process), V (Dormant Commerce Clause – Discrimination Against Interstate Commerce), VI (Dormant Commerce Clause – Excessive Burden on Interstate Commerce), VII (Regulatory Taking), and X (Injunctive Relief), Plaintiffs seek injunctive and declaratory relief regarding sections of the PTZO which were completely removed via Amendment 201. Because the challenged sections of the PTZO related to Farm Processing Facilities have been

³ The Township has previously addressed mootness as it relates to Count VIII (Preemption) in its Motion for Summary Judgment (ECF No. 444). It will not readdress that argument here.

removed from the ordinance, the Court no longer has subject matter jurisdiction over the requests for declaratory and injunctive relief. This does not apply to Plaintiffs' claims for damages.

"Mootness results when events occur during the pendency of the litigation which render the court unable to grant the requested relief." *Burger v. Cuyahoga Cnty. Bar Ass'n*, 983 F.2d 718, 724 (6th Cir. 1993) (quoting *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986)). Similar to finality (which deals with ripeness), mootness affects whether the Court has subject matter jurisdiction. "A federal court 'lacks jurisdiction to consider any case or issue that has lost its character as a present, live controversy and thereby becomes moot." *Kerr for Kerr v. Comm'r of Soc. Sec.*, 874 F.3d 926, 930 (6th Cir. 2017) (quoting *Demis v. Sniezek*, 558 F.3d 508, 512 (6th Cir. 2009)). "[I]f in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot." *Uzuegbunam v. Preczewski*, _____U.S. ___; 141 S. Ct. 792, 796 (2021).

"Generally, when an ordinance is repealed any challenges to the constitutionality of that ordinance become moot." *Tini-Bikinis*, 836 F.Supp.2d at 519 (quoting *Coal. for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1310 (11th Cir. 2000)). While this generally does not apply to claims for damages, it does moot claims for declaratory and injunctive relief. *See Tini-Bikinis*, 836 F.Supp.2d at 520 (citing *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830, 836 ("We can neither declare unconstitutional nor enjoin the enforcement of a provision that is no longer in effect.")). *See also Intl. Outdoor, Inc. v. City of Troy*, 361 F.Supp.3d 713 (E.D. Mich. 2019) (rejecting claims for declaratory and injunctive relief as moot given amendment to challenged ordinance). As the Eastern District of Michigan in *Tini-Bikinis* reasoned, declaring a repealed ordinance void and/or enjoining its enforcement would be an empty act:

In this case, as in *Brandywine*, Plaintiffs' First Amendment claim for injunctive and declaratory relief regarding the 2010 Ordinance is moot. Indeed, declaring a

repealed ordinance void and enjoining its enforcement—particularly when the current ordinance is also before the Court—would be an empty act. In the vernacular, declaring it void would be as meaningful as shooting a dead horse. And enjoining its enforcement, moreover, would be shooting the horse once again.

836 F.Supp.2d at 520.

The same analysis applies in this case. Every section of the PTZO that Plaintiffs challenge as unconstitutional has been removed through Amendment 201. Entering an order declaring that sections of an ordinance that no longer exist would be tantamount to an advisory opinion. As the *Tini-Bikinis* Court concluded, it "would be an empty act." *Id.* at 520. Further, enjoining the enforcement of the PTZO, given that it has been completely rewritten to remove each and every one of the challenged sections, would be shooting a dead horse not once, but twice.

The claims for declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X are moot and should be dismissed for lack of subject matter jurisdiction. Again, this does not apply to Plaintiffs' request for damages.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated, Defendant Peninsula Township respectfully requests that this Honorable Court grant its motion to dismiss and dismiss Plaintiffs', Two Lads, Black Star, and Tabone, regulatory takings claim (Count VII) and as-applied claims (Counts II and III) in the First Amended Complaint for lack of subject matter jurisdiction because they have failed to achieve finality.

Moreover, Defendant Peninsula Township respectfully requests that this Honorable Court grant its motion to dismiss and dismiss Plaintiffs', Two Lads, Black Star, and Tabone, claims to the extent they seek declaratory and injunctive relief in Counts I, II, III, IV, V, VI, VII, and X because the requested relief is moot, depriving the Court of subject matter jurisdiction over those claims for relief. BY:

McGRAW MORRIS, P.C. Attorneys for Defendant Peninsula Township

Dated: October 6, 2023

/s/Bogomir Rajsic, IIIBogomir Rajsic, III (P79191)Tracey R. DeVries (P84286)300 Ottawa Avenue, NW, Ste. 820Grand Rapids, MI 49503(616) 288-3700brajsic@mcgrawmorris.com

Thomas J. McGraw (P48817) 2075 W. Big Beaver Rd., Suite 750 Troy, MI 48084 (248) 502-4000 <u>tmcgraw@mcgrawmorris.com</u>

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

EXHIBIT 1

Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16350 Filed 10/06/23 Page 2 of 11

JENNIFER CRAM Wineries of the Old Mission vs Peninsula Township July 21, 2023 1

1	UNITED STATES DISTRICT COURT						
2	WESTERN DISTRICT OF MICHIGAN						
3	SOUTHERN DIVISION						
4 5 7 8 9 .0 .1 .2 .3	SOUTHERN DIVISION WINERIES OF THE OLD MISSION PENINSULA ASSOC. (WOMP), a Michigan nonprofit corporation; BOWERS HARBOR VINEYARD & WINERY, INC., a Michigan corporation; BRYS WINERY, LC, a Michigan corporation; CHATEAU GRAND TRAVERSE, LTD, a Michigan corporation; CHATEAU OPERATIONS, LTD, a Michigan corporation; GRAPE HARBOR, INC, a Michigan corporation; MONTAGUE DEVELOPMENT, LLC, a Michigan limited liability company; OV THE FARM, LLC, a Michigan limited liability company; TABONE VINEYARDS, LLC, a Michigan limited liability company; TWO LADS, LLC, a Michigan limited liability company; VILLA MARI, LLC, a Michigan limited liability company; WINERY AT BLACK STAR FARMS, LLC, a Michigan limited liability company, Plaintiffs,						
.4	v File No. 1:20-cv-01008						
.6 .7 .8	PENINSULA TOWNSHIP, a Michigan municipal corporation, Defendant, and						
20	PROTECT THE PENINSULA, INC.,						
22 23	Intervener-Defendant. /						
24							
25							
	ESQUIRE B00.211.DEPO (3376) EsquireSolutions.com						

Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16351 Filed 10/06/23 Page 3 of 11

JENNIFER CRAM July 21, 2023 Wineries of the Old Mission vs Peninsula Township DEPOSITION OF JENNIFER CRAM Taken by the Intervener-Defendant on the 21st day of July, 2023, at 15900 Rue de Vin, Traverse City, Michigan, at 10:00 a.m. Stacey M. Seals, CER 7908 RECORDED BY: Certified Electronic Recorder Esquire Deposition Solutions Firm Registration Number 8035



Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16352 Filed 10/06/23 Page 4 of 11

JENNIFER CRAM Wineries of the Old Mission vs Peninsula Township July 21, 2023 3

1	APPEARANCES:	
2	For the Plaintiffs:	MR. JOSEPH MIKHAIL INFANTE (P68719) Miller Canfield Paddock & Stone, PLC
3		99 Monroe Avenue, NW, Suite 1200 Grand Rapids, Michigan 49503
4		(616) 776-6333
5	For the Defendant:	MR. BOGOMIR RAJSIC III (P79191) McGraw Morris, PC
6 7		300 Ottawa Avenue, NW, Suite 800 Grand Rapids, Michigan 49503 (616) 288-2700
8	For the	MS. TRACY JANE ANDREWS (P67467)
9	Intervener-Defendant:	
9 10		Traverse City, Michigan 49686 (231) 714-9402
11		And
12		MS. HOLLY LYNN HILLYER (P85318) Olson Bzdok & Howard, PC
13		420 East Front Street Traverse City, Michigan 49686
14		(231) 946-0044
15	Also Present:	Jessie Williams Bruce Hawthorne
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
	ESQUIRE DEPOSITION SOLUTIONS	800.211.DEPO (3376) EsquireSolutions.com

Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16353 Filed 10/06/23 Page 5 of 11

JENNIFER CRAM	
Wineries of the Old Mission vs Peninsula Township	

1	Q	Officials or staff; elected officials or staff.
2	А	Okay. Ultimately the township board is charged to enforce
3		the zoning ordinance, and so if a complaint comes forward or
4		if they have a concern they may authorize staff; either the
5		zoning administrator, planner or ordinance enforcement
б		officer; to administer and enforce the zoning ordinance.
7		They have the ultimately authority over staff.

- 8 Q Okay. I think we can cover one more short topic before we 9 take a break. We talked a little bit about what the zoning 10 board of appeals can do. What is the process for seeking a 11 variance?
- 12 Similar to what we discussed before. If an applicant is Α 13 seeking a variance or an interpretation they would come and 14 speak to the zoning administrator and -- because they are 15 the staff that staffs the board when the position is filled. 16 I've been doing both. But so they would come and speak to 17 the zoning administrator about the request, the zoning 18 administrator would then guide them through the application 19 process, what needs to be submitted to have a complete 20 application and help them to understand what the process 21 looks like. And so then following the -- and so because variances are run with the land, it is important to make 22 23 sure that there is time to review those materials and get 24 input and so a complete application has to be submitted to 25 the zoning administrator four weeks prior to the meeting



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	JENN	IFER CRAMJuly 21, 2023ies of the Old Mission vs Peninsula Township51
1	A	To my knowledge, yes. They haven't applied for any
2		amendments to their farm processing facility that I'm aware
3		of.
4	Q	Okay. So you said that you weren't aware of any amendments
5		to or requests for amendments to the land use permit.
б		Have there been any requests for amendments to the site
7		plan?
8		MR. INFANTE: Objection; foundation, form.
9	A	Not that I am aware.
10	Q	Are you aware of any applications or requests for a variance
11		or an interpretation from the zoning board of appeals with
12		respect to this permit?
13		MR. INFANTE: Objection; foundation.
14	A	Not that I am aware.
15	Q	And is the township aware of any judicial challenge or
16		appeal to the permit in a court of competent jurisdiction,
17		such as this circuit court?
18		MR. INFANTE: Objection; form, foundation.
19	A	Not that I am aware.
20	Q	Okay. So moving on to Black Star Farms. Are you familiar
21		with the winery at Black Star Farms in Peninsula Township?
22	A	I am.
23	Q	Okay.
24		(Deposition Exhibit 102 marked)
25		MS. HILLYER: And this document is identified as
	Y	ESQUIRE BEDOSITION SOLUTIONS BESQUIRESOLUTIONS BESQUIRESOLUTIONS

Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16355 Filed 10/06/23 Page 7 of 11

JENNIFER CRAM Wineries of the Old Mission vs Peninsula Township

		· · · · · · · · · · · · · · · · · · ·
1		Defendant's Response to 1st RFP 006830, and this was
2		previous marked as PTP Deposition Exhibit 38 in connection
3		with the deposition of Lee Lutes.
4		MR. RAJSIC: Can we go off the record briefly?
5		(Off the record)
6	Q	So I just handed you Exhibit 102, Defendant's Response to
7		1st RFP 006830, which was previously marked as PTP
8		Deposition Exhibit 38. And can you briefly describe what
9		we're looking at here?
10		MR. INFANTE: Objection; form, foundation,
11		document speaks for itself.
12	A	Again, this is the final farm processing permit for the
13		Black Star Winery.
14	Q	Okay. And what does this permit allow Black Star to do?
15		MR. INFANTE: Same objection.
16	А	According to this document they are allowed to conduct in
17		the processing of agricultural products on the property and
18		it was authorized by Gordon Uecker on September 27th, 2007.
19	Q	And do you see at the bottom where it looks like maybe
20		Gordon's initials and above that it says, "Retail
21		Sales/Tasting," and then it says in all caps next to his
22		initials, "NONE"?
23	А	I see that.
24	Q	Do you know why it might say "NONE" there?
25		MR. INFANTE: Objection; form, foundation.



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Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16356 Filed 10/06/23 Page 8 of 11

JENNIFER CRAM July 21, 2023 Wineries of the Old Mission vs Peninsula Township 53 1 I'm going to refer back to Exhibit 101, and so you saw that Α 2 there were two steps in the process, and so at the time of 3 approving the processing and the final, you know, facility, 4 they had not yet obtained their approval for retail sales 5 and tasting. 6 So would I be correct in understanding that I'm looking at 0 7 just the permission for the wine processing part of the 8 winery operation? MR. INFANTE: Objection; form, foundation. 9 10 That is correct. Α Are you aware of any subsequent final farm processing 11 0 12 permits that allow additional uses on the property? 13 MR. INFANTE: Objection; form, foundation. 14 I have not seen those documents so, no, I am not aware. А 15 MS. ANDREWS: Can we go off the record for a 16 second? 17 (Off the record) 18 So I think we had just talked about you're not aware of any 0 19 additional farm processing permits associated with this 20 property; is that right? 21 MR. INFANTE: Objection; foundation. 22 That is correct, I have not reviewed any. Α 23 Are you aware of any requests for amendments to this or 0 24 changes to this permit? 25 MR. INFANTE: Objection; foundation.



Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16357 Filed 10/06/23 Page 9 of 11

		FER CRAMJuly 21, 2023es of the Old Mission vs Peninsula Township54
1	А	I am not aware of any amendments to the farm processing
2		permit.
3	Q	Are you aware of any applications or requests for a variance
4		or a special exception or interpretation from the zoning
5		board of appeals with respect to Black Star's permit?
6		MR. INFANTE: Objection; form, foundation.
7	A	I am aware that Black Star did apply for a variance.
8	Q	Can you tell me anything more about what the variance was
9		for?
10		MR. INFANTE: Objection; form, foundation.
11	A	The variance request was to allow them to sell wine in their
12		tasting room that was produced from grapes in Leelanau
13		County.
14	Q	And do you know what the outcome of that zoning board of
15		appeals decision was?
16	A	I do.
17	Q	What was that?
18	A	The zoning board of appeals approved that request.
19	Q	Do you know when that was?
20	A	I do not know. It was prior to me being the director of
21		planning and zoning, and I don't want to guess.
22	Q	I appreciate that. Are you aware of any other requests
23		that or applications that Black Star has made to the
24		zoning board of appeals?
25	A	I am not aware of any others.



Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16358 Filed 10/06/23 Page 10 of 11

JENNIFER CRAM	July 21, 2023
Wineries of the Old Mission vs Peninsula Township	86

1		and SUP approval to Tabone and so then it is my
2		understanding that when Tabone purchased the property there
3		was an existing food processing facility that subsequently
4		burned and so they applied for a land use permit to
5		reconstruct it.
6		MR. INFANTE: Can I ask for a clarification for
7		the record? You say "Tabone," can you use the full name of
8		the Tabones on there?
9		THE WITNESS: Sure. Mary Ann and Mario Tabone.
10		MR. INFANTE: Thank you.
11	А	So this land use permit authorized Mary Ann and Mario Tabone
12		to reconstruct a food processing plant structure that
13		burned.
14	Q	Okay. Are you aware of any applications for amendments or
15		changes to that original SUP 73?
16	А	There were no amendments to SUP number 73, but I do know
17		that there was an application submitted for a farm
18		processing facility.
19	Q	Do you know the status of that application?
20	А	that application was never approved.
21	Q	Okay. And are you aware of any applications or requests for
22		a variance or an interpretation from the zoning board of
23		appeals with respect to SUP 73?
24		MR. INFANTE: Objection; form, foundation.
25	A	There were not variance requests associated with SUP number

Case 1:20-cv-01008-PLM-RSK ECF No. 459-1, PageID.16359 Filed 10/06/23 Page 11 of 11

	IIFER CRAM July 21, 2023 ries of the Old Mission vs Peninsula Township 87
1	73.
2 Q	Okay. And is the township aware of any appeal or judicial
3	challenge that Tabone has pursued with respect to any zoning
4	decisions related to SUP 73?
5	MR. INFANTE: Objection; form, foundation, vague,
6	calls for a legal conclusion.
7 A	None that I am aware of.
8 Q	Turning away from the wineries now for just a minute. Is
9	the township aware of any other requests for an
0	interpretation of the zoning ordinance that relate to winery
1	chateaus, farm processing facilities or remote winery
2	tasting rooms that have gone to the zoning board of appeals?
3	MR. RAJSIC: Objection; form, foundation,
4	potentially exceeding the Rule 30(b)(6) Deposition Notice.
5	Go ahead if you can.
6	MR. INFANTE: I will join and add vague.
7 A	I do know that staff, Gordon Hayward, requested as staff
8	requested an interpretation from the zoning board of
9	appeals.
0 Q	Do you know what that was about?
1 A	I believe it was around registered guests. I think
2	something with guests.
3 Q	Do you know roughly when that was?
4 A	I do not recall.
5	MS. HILLYER: Let me check my notes.
2	ESQUIRE BESOLUTIONS 800.211.DEPO (3376) EsquireSolutions.com

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

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,				
Owner: Address:	110-004-30 BOQ, LLC & Two Lac 18000 Smokey Hollow	ds, LLC w Road, Trave	erse City I	MI 49686		
			TOON	Dengel	D101A/	

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

Farm Processing Facility Use 1:

Proof of Ownership: Driveway: 07-000072	Y DNR:	Site: N	Y Soil Ero	HD Permit: s:		irvey: ij. to AG?	Y Y
<u>Parcel</u> Width: Depth: Area:	1372 905 58 A 30 A	Total Site Facility Site		Required 330 *** 40 Acres 20 Acres	Total Site Facility Site		
<u>Setbacks</u> Front: OHWL: Rear: Side 1: Side 2: <u>Structure</u> Height: Stories:	300 N/A 500 + 425 800 + 20 1			50 60 100 100 100 35 2.5			
Existing Area: Proposed Area: Total Area: Parking : Retail Tasting Area: 1st Floor:	3200 0 5644 8844 10 1256 5023		Cverage Cverage	9 1256 6000	Maximum		
Percent of Lot Cover	age:	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: ____

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

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

10-18-07

Gordon L. Uecker Date Peninsula Township Zoning Administrator

<u>Retail sales / Tasting</u>

NoneGordon L. UeckerDatePeninsula Township Zoning Administrator

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

Case 1:20-cv-01008-PLM-RSK ECF No. 459-4, PageID.16365 Filed 10/06/23 Page 2 of 5

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

DEPOSITION OF CHRISTOPHER BALDYGA

U	NITED STATES DIS	TRICT COU	JRT
W	ESTERN DISTRICT	OF MICHIC	GAN
	SOUTHERN DIV	ISION	
WINERIES OF THE OLD PENINSULA ASSOC. (WO nonprofit corporatio VINEYARD & WINERY, I corporation; BRYS WI Michigan corporation TRAVERSE, LTD, a Mic CHATEAU OPERATIONS, corporation; GRAPE H corporation; MONTAGU Michigan limited lia THE FARM, LLC, a Mic company; TABONE VINE Michigan limited lia LADS, LLC, a Michiga company; VILLA MARI, liability company; W LLC, a Michigan limit	MP), a Michigan n; BOWERS HARBOR NC., a Michigan NERY, LC, a ; CHATEAU GRAND higan corporatio LTD, a Michigan ARBOR, INC, a Mi E DEVELOPMENT, L bility company; higan limited li YARDS, LLC, a bility company; n limited liabil LLC, a Michigan INERY AT BLACK S	n; LC, a OV ability TWO ity limited TAR FARMS	ς,
Plaintiffs	,		
v		File No	. 1:20-cv-01008
PENINSULA TOWNSHIP, municipal corporatio			JL L. MALONEY DGE RAY S. KENT
Defendant,			
and			
PROTECT THE PENINSUL	A, INC.,		
Intervener	-Defendant.		
	/		
	Daga 1		
	Page 1		

STATEWIDE COURT REPORTERS 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-4, PageID.16366 Filed 10/06/23 Page 3 of 5

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

DEPOSITION OF CHRISTOPHER BALDYGA

1	DEPOSITI	ON OF CHRISTOPHER BALDYGA
2	Taken by the Interv	ener-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 MR. CHRISTOPHER J. GARTMAN (P83286)
9		Miller Canfield Paddock & Stone, PLC 99 Monroe Avenue, NW, Suite 1200
10		Grand Rapids, Michigan 49503 (616) 776-6333
11	For the Defendant:	MR. BOGOMIR RAJSIC III (P79191)
12		McGraw Morris, PC 300 Ottawa Avenue, NW, Suite 800
13		Grand Rapids, Michigan 49503 (616) 288-2700
14	For the Intervener-Defendant:	MS. TRACY JANE ANDREWS (P67467) Law Office of Tracy Jane Andrews, PLLC
15		619 Webster Street Traverse City, Michigan 49686
16		(231) 714-9402
17		And
18		MS. HOLLY LYNN HILLYER (P85318) Olson Bzdok & Howard, PC
19		420 East Front Street Traverse City, Michigan 49686
20		(231) 946-0044
21	Also Present:	Rebecca Chown
22		
23	RECORDED BY:	Stacey M. Seals, CER 7908 Certified Electronic Recorder
24		Network Reporting Corporation Firm Registration Number 8151
25		1-800-632-2720
		Page 2

STATEWIDE COURT REPORTERS 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-4, PageID.16367 Filed 10/06/23 Page 4 of 5

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

DEPOSITION OF CHRISTOPHER BALDYGA

1 А You did ask and the answer was, no, we did not. 2 We talked about that with the Winter Warmup and I just 0 3 wanted to clarify. 4 Α I think you're right, I don't think you did actually ask on 5 the second one. It was on the first, you're right. 6 MR. INFANTE: No, she did. 7 THE WITNESS: She did? All right. 8 Q Did you seek an appeal or clarification or any -- take any 9 action in response to your understanding of what the 10 township's interpretation of the social events for hire was 11 following the 2014 events that are in PTP 25 and 26? 12 I don't think there was any specific reaction just to that Α 13 one event, but like I said before, since 2008 I know that 14 we've been working with all the different planners and town 15 boards and winery language rewrites, committees to change 16 all of this, you know, wholesale. So I don't think I did 17 anything specifically after that one event, no, in response 18 to that. 19 0 And to clarify, I'm asking specifically about the 20 township's -- your understanding of the township's 21 interpretation of what social events for hire means, not 22 necessarily the attempt to change the language, but rather 23 the interpretation of that as it was being applied or as you 24 understood it. For example, a request for interpretation 25 from the board of zoning appeals, ZBA.

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NetworkReporting STATEWINE COURT REPORTERS 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-4, PageID.16368 Filed 10/06/23 Page 5 of 5

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

DEPOSITION OF CHRISTOPHER BALDYGA

1 А Oh, I didn't even know that was a thing. No, I didn't. 2 So if you didn't know it was a thing I assume that means you 0 3 didn't ask for it? 4 А No. Is that a thing? 5 It is a thing. 0 6 MS. ANDREWS: I'm not testifying, the zoning 7 ordinance speaks for itself. 8 MR. INFANTE: It sounds like you are. 9 My question is did you apply for it, it sounds like from Q 10 your answer you did not? 11 А No; no. 12 MR. INFANTE: You also shouldn't be asking 13 questions. 14 THE WITNESS: I'm sorry. 15 MR. INFANTE: This deposition is going off the 16 rails. 17 MR. RAJSIC: TJ, are you changing gears at all? 18 Would it be a good time for a break? 19 MS. ANDREWS: Where are we at on our time? 20 REPORTER: 1:55. 21 MS. ANDREWS: It's time for a break. 22 (Off the record) 23 Mr. Baldyga, before the break we were talking about the 2014 0 24 correspondence between you and the township. Since then has 25 Two Lads -- would you call that an enforcement effort? Page 80

NetworkReporting STATEWINE COURT REPORTERS 800-632-2720

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686 Ph: 231.223.7322 Fax: 231.223.7117

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, 2nd 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,

Michalle Kiad A

- what's antenent? - can me put in a schedule

EPOSITION

Case 1:20-cv-01008-PLM-RSK ECF No. 459-5, PageID.16371 Filed 10/06/23 Page 3 of 3

Response ((mpy) emailed to michelle on 6/25/14

2 Lads Winery --- 16985 Smokey Hollow Rd --- T.C. MI 49686



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 24th 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 5th and the 'BBQ and Bubbly' event we had planned in late August.

Sincerely,

Chris Baldyga Owner and General Manager

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

Case	1:20-cv-01008	3-PLM-RS	K ECF No. 4	159-6, Pa	gelD.16373 I	Filed 10/0	06/23 Page 2	of 2
		<u>La</u>	and Use Pern	nit-Penins	<u>ula Township</u>			
Parcel ID:	28-11-030-0	06-35	Permit #	4647	Zoned:	A-1		
Owner: Address:			ord; Winery at raverse City N		ar Farms, L.L.	C., Tenar	nt	
Property:	Section: Address:	30 360 Mcł	Town: Kinley Road	T28N	Range:	R10W		
Use 1:	Farm Proces	ssing facili	ty					
Proof of C	Ownership:	Y	Site:	Y	HD Permit:	Y	Survey:	Y
Driveway	: N	DNR:	Ν	Soil Erc	os:	N	adj. to AG?	Y
<u>Parcel</u>					Required			
Width:		330			330			
Depth:		1440			***			
Area:		42.3A			5 Acres			
<u>Setbacks</u>								
Front:		23.7			35			
OHWL:		N/A			60			
Rear:		1040			50			
Side 1:		120			50			
Side 2:		110			50			
<u>Structure</u>							No. 1	
Height:		1			35			
Stories:		2000			2.5			
Existing /	Area:	25,750			***			
Proposed	l Area:	25,750			***			
Total Are	a:				***			
Percent o	of Lot Covera	ge:	N/A			Maximu	ım: none	
Commen	ts:	of produ has bee	ct shall take p n issued. Sai	blace until d final per	rmit will not be	ocessing issued u	Facility permit	

has been issued. 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, and the executed and recorded lease between Robert Mampe and Winery at Black Star Farms L.L.C. has been submitted. Check # 2634 Robert N. Mampe

Date Approved:	3/30/2007	Expires:	3/30/2008
Zoning Administrator:		Gordo	n L. Uecker
Owner/Landlord Signature:			
Tenant Signature:			

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

Case 1:20-cv-01008-PLM-RSK ECF No. 459-7, PageID.16375 Filed 10/06/23 Page 2 of 2

Peninsula Township FINAL FARM PROCESSING PERMIT NO. 2

This permit is issued to:

Robert Mampe, Landlord, Winery at Black Star

Farms, LLC, Tenant at 360 McKinley Rd.

In accordance with Section 6.7.2 (19) of the

Peninsula Township Zoning Ordinance, the

following use is permitted:

The processing of agricultural produce

9-27-07

Gordon L. Uecker Date Peninsula Township Zoning Administrator

Retail sales / Tasting

NONE AJU.

Gordon L. UeckerDatePeninsula Township Zoning Administrator

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

REQUEST FOR VARIANCE No. 727

Peninsula Township Zoning Board of Appeals 13235 Center Road Traverse City MI 49686 Parcel Code # 28-11-030-006-10 Zoning : A-1 From: Robert Mampe Owners Address: 363 E. McKinley Rd., TCM 49686 Property Address: 360 E. McKinley Rd., TCM 49686

Hearing date: February 8, 2007

ZONING ORDINANCE REFERENCE AND /OR ZONING ADMINISTRATOR'S DECISION

Section 6.7.2 (19)(b)5.ii requires a 50 ft. front yard setback

Section 6.7.2 (19)(b)7. Proves that variances from the required setbacks may be granted by the Zoning Board of Appeals for pre-existing buildings if it shall be determined extension shall not be inimical to public health, safety or welfare, particularly with regard to surround property owners.

Basis for Variance Request

See attached letter

Specific Request Office Use Only)

Requests a 26.3 ft. variance from the closest point of the front setback line (Right of Way line of McKinley Road) of a triangular portion at the southwesterly corner of a pre-existing building for a proposed use as a Farm Processing Facility.

APPEAL BOARD ACTION

10 Approve

Non-refundable Fee : Regular \$375.00

Special \$850.00

Case 1:20-cv-01008-PLM-RSK ECF No. 459-8, PageID.16378 Filed 10/06/23 Page 3 of 6

Old Mission Peninsula

black star farms-old mission

Located just 1-1/2 miles north of Traverse City at the base of the Old Mission Peninsula, Black Star Farms Old Mission occupies what was the original Underwood Farms cherry processing facility. As with the Leelanau winery location, this will certainly become known as an agricultural destination in its own right, eventually supporting a winery, distillery, stables and farm market. Due to open summer of 2007, call ahead or visit our web site when planning your visit.

Web: <u>www.blackstarfarms.com</u> Email: <u>info@blackstarfarms.com</u>

360 McKinley Road East Traverse City, MI 49686 (231) 932-7416

Directions: Located at the base of the Old Mission Peninsula and just east of M-37 (Center Road). Turn right on McKinley Road East and go 1/4 mile to winery on the left.

Hours:

Year-round: Sun 12-5 May-Oct: Mon-Sat 11-6 Nov-April: Mon-Sat 11-5

go back to the top

PENINSULA TOWNSHIP ZONING BOARD OF APPEALS NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Board of Zoning Appeals will hold a regular meeting on February 8, 2007 at 7:00 p.m. at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 727, Zoning A-1

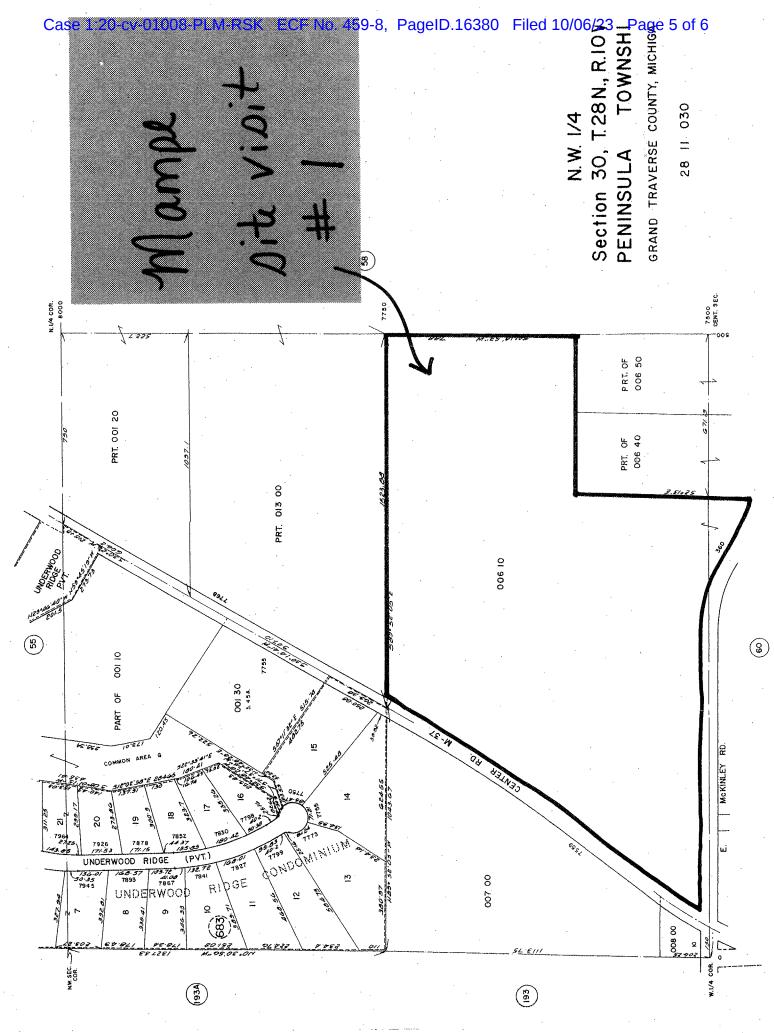
Robert Mampe, 363 E. McKinley Road, Traverse City MI 49686 Property address: 360 E. McKinley Road, Traverse City MI 49686 Requests a 26.3 ft. variance from the closest point of the front setback line (Right of Way line of McKinley Road) of a triangular portion at the southwesterly corner of a pre-existing building for a proposed use as a Farm Processing Facility. Parcel code # 28-11-030-006-10.

A site visit by the Zoning Board of Appeals will be made to each parcel beginning about 3:00 PM the day of the hearing at the property address of the first request on this notice.

Please be advised that the public may appear at the public hearing in person or by council. If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Zoning office at (231) 223-7322 or call TDD at (231) 922-4766.

Written comment may be submitted to Peninsula Township Zoning Office at 13235 Center Road, Traverse City MI 49686 no later than 4:30 p.m. on the date of the hearing.

January 23, 2007 1t.



Case 1:20-cv-01008-PLM PSK ECF No. 459-8 PagelD 16381 Filed 10/06/23 Page 6 of 6 PENINSULA TOWNSHIP

13235 Center Road

Traverse City, Michigan 49686

ROBERT K. MA SUPERVISO		ONICA A. HOFFMAN CLERK	WEATHERHOLT ASURER
PENELOPE S. ROSI	JED J. HEMMIN	G JILL C. I	JAMES T. HORTON
TRUSTEE	TRUSTEE	TRUS	TRUSTEE

To: Sally Akerley, Assessor

From: Gordon L. Uecker, Zoning Administrator

Subject: Land Division: LDA # 144 Property Owner(s): Robert Mampe Trust Parent Parcel ID No.: 28-11-030-006-10 and also: 28-11-030-006-20 (42.91 Acres-Gross) Child Parcel ID No: 28-11-030-006-25 (Country Estate 10) 28-11-030-006-30 (W'ly P/O Country Estate 13) 28-11-030-006-35 (E'ly P/O Country Estate 13) 28-11-030-006-40 (absorbs triangular 0.43 acre +/portion of 28-11-030-006-35 @ roadside. ...no change to Parcel ID #

Date: March 8, 2007

Please be advised that the above referenced land division, as shown on the Certificate of Survey as prepared by Gourdie Fraser., dated 11-28-06 (Job No. 06515), in conjunction with the February 8, 2007 Zoning Board of Appeals ruling and a February 13, 2007 Town Board approval, meets the Peninsula Township Zoning Requirements.

Gordon L. Uecker Peninsula Township Zoning Administrator



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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

Case 1:20-cv-01008-PLM-RSK ECF No. 459-9, PageID.16383 Filed 10/06/23 Page 2 of 5

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

DEPOSITION OF LEE LUTES

	UNITED STATES DI	STRICT COURT			
	WESTERN DISTRICT OF MICHIGAN				
	SOUTHERN DI	VISION			
PENINSULA nonprofit VINEYARD corporati Michigan TRAVERSE, CHATEAU O corporati Michigan THE FARM, company; Michigan LADS, LLC company; liability	OF THE OLD MISSION ASSOC. (WOMP), a Michigan corporation; BOWERS HARBO & WINERY, INC., a Michigan on; BRYS WINERY, LC, a corporation; CHATEAU GRAND LTD, a Michigan corporatio PERATIONS, LTD, a Michigan on; GRAPE HARBOR, INC, a M on; MONTAGUE DEVELOPMENT, limited liability company; LLC, a Michigan limited l TABONE VINEYARDS, LLC, a limited liability company; , a Michigan limited liabi VILLA MARI, LLC, a Michiga: company; WINERY AT BLACK chigan limited liability company	R on; ichigan LLC, a OV iability TWO lity n limited STAR FARMS,			
	Plaintiffs,				
V		File No. 1:20-cv-01008			
	TOWNSHIP, a Michigan corporation,	HON. PAUL L. MALONEY MAG. JUDGE RAY S. KENT			
	Defendant,				
and					
PROTECT T	HE PENINSULA, INC.,				
	Intervenor-Defendant.				
	/				
	Page 1				

STATEWIDE COURT REPORTERS 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-9, PageID.16384 Filed 10/06/23 Page 3 of 5

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

DEPOSITION OF LEE LUTES

1	RULE 30(b)(6) DEPOSITION OF WINERY AT BLACK STAR FARMS and LEE LUTES
2	
3	Taken by the Intervenor-Defendant on the 12th day of July,
4	2023, at 15900 Rue de Vin, Traverse City, Michigan, at
5	8:00 a.m.
б	
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	Page 2

Network Reporting 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-9, PageID.16385 Filed 10/06/23 Page 4 of 5

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

DEPOSITION OF LEE LUTES

1	APPEARANCES:				
2	For the Plaintiffs:	MR. JOSEPH MIKHAIL INFANTE (P68719) And			
3		MR. STEPHEN MICHAEL RAGATZKI (P81952) Miller Canfield Paddock & Stone, PLC			
4 5		99 Monroe Avenue, NW, Suite 1200 Grand Rapids, Michigan 49503 (616) 776-6333			
б	For the Defendant:	MR. BOGOMIR RAJSIC III (P79191)			
7 8		McGraw Morris, PC 300 Ottawa Avenue, NW, Suite 800 Grand Rapids, Michigan 49503 (616) 288-2700			
9	For the	MS. TRACY JANE ANDREWS (P67467)			
10	Intervenor-Defendant:	Law Office of Tracy Jane Andrews, PLLC 619 Webster Street			
11		Traverse City, Michigan 49686 (231) 714-9402			
12		And			
13		MS. HOLLY LYNN HILLYER (P85318) Olson Bzdok & Howard, PC			
14		420 East Front Street Traverse City, Michigan 49686			
15		(231) 946-0044			
16 17	Also Present:	Becky Chown, Peninsula Township Sherri Fenton, Black Star Farms			
18					
19	RECORDED BY:	Heidi Peckens, CER 9634 Certified Electronic Recorder			
20		Network Reporting Corporation Firm Registration Number 8151			
21		1-800-632-2720			
22					
23					
24					
25					
		Page 3			

Network Reporting 800-632-2720

Case 1:20-cv-01008-PLM-RSK ECF No. 459-9, PageID.16386 Filed 10/06/23 Page 5 of 5

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

DEPOSITION OF LEE LUTES

1 Q Okay.

	~	-
2	A	It seems to me that the farm processing facility designation
3		within the ordinance was actually partly established because
4		of what it was we wanted to do there. Being the type of
5		land that it was, easement protected land, an existing
6		building that was essentially set up for fruit processing
7		and that required a variance to be established.
8		In other words, the township setting up the
9		processing or the fruit processing facility segment of
10		the ordinance wanted to keep anybody who was strictly doing
11		farm processing on the smaller side. The existing building
12		was already about 12,000 square feet, so we had to get a
13		variance, which they granted, to allow us to operate and
14		take advantage of the full size of the building.
15	Q	Okay. Was that around 2007, when this was starting?
16	A	That was also a that the same time; correct.
17		MR. INFANTE: Wait for her to ask the question.
18		THE WITNESS: Yeah.
19		MR. INFANTE: It's normal.
20		MS. HILLYER: I'm bad at it, too.
21	Q	Did Black Star consider the possibility of applying for the
22		kind of permit that Chateau Grand Traverse or Chateau
23		Chantal had as a winery chateau?
24	A	At the time we did not consider that.
25	Q	Do you remember why that wasn't a consideration?
		Page 26

800-632-2720

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

PENINSULA TOWNSHIP ZONING BOARD OF APPEALS August 9, 2007

Meeting called to order at 7:00 p.m.

<u>PRESENT:</u> Sanger, Chair, Byron; Dean; Dumon; Wilson; Uecker, Zoning Administrator; Shelly Leatherman, Recording Secretary. ABSENT: None.

Sanger explained the procedures for the meeting, according to the Administrative bylaws of the ZBA. He also explained that the ZBA is fully staffed with the five regular members tonight. He said that most of the motions would be called by roll call, beginning with Sanger and advancing one member alphabetically by last name with each subsequent vote.

1. Request No. 737, Zoning R-1B

Charles Bennett, 238 Peninsula Hills Drive, Traverse City MI 49686

To grant a 30 ft. variance from the minimum 30 ft. required rear yard setback for construction of a 10 ft. by 12 ft. Michigan Room with or without a deck on top to replace an existing 8.5 ft. by 13ft. deck at the lower level and the upper 5ft. by 7 ft. deck if the Michigan Room has a deck on top; a 10 ft. by 12 ft. deck to replace an existing 8.5 ft. by 13 ft. lower level deck; and/or a 10 ft. by 12 ft. deck to replace an existing 5 ft. by 7 ft. upper level deck. Also, a request that this variance request be applicable to the other seven (7) units in the complex.

Parcel code # <u>28-11-610-007-00</u>

Section 6.8 requires a minimum rear yard setback of 30 ft.

Uecker said that this lot is Peninsula Hills Townhouse Association property. Each unit in the Association has its own platted lot. The unit covers almost the entire lot. They are non-conforming due to lot coverage and they do not meet the setback requirements. Mr. Bennett met with people in the Association and they support his variance request, but some want to build something different. Uecker said that if the ZBA grants the request it expires in six months if a building permit is not obtained.

Sanger opened the public hearing at 7:15 p.m.

Linda Bennett, 238 Peninsula Hills Dr., said that the existing decks are in poor repair. The Association can decide which of the three options they will allow according to their bylaws.

Rick Messick, President of Peninsula Hills Townhouse Association, 250 Peninsula Hills Dr., supports the request. He did know about the six-month expiration. The Association has not given approval to construct the Michigan Room. They will consider the same if the request is granted. Sanger said that all eight Association members support the request, but they all do not intend to build a Michigan Room. Mr. Messick said that the members support the proposed deck dimensions despite a Michigan Room or not. Dumon said that if the Bennetts build an enclosed structure it would obstruct the neighbor's view of the bay by approximately 20%. Mr. Messick is concerned with the same, but he reiterated the Association has not given approval to construct the Michigan Room. Byron said that she understands the Association wants the request granted to allow the members to replace their decks and they will decide whether a Michigan Room will be allowed or not. Mr. Messick agreed.

Andris. Valdmanis, Peninsula Hills Dr., said that he was told he could not replace his decks without a variance. Therefore, he wants the ZBA to grant the request. Mr. Valdmanis said that he must get approval from the Association on what he can build if the ZBA grants the request. He is concerned with the six-month expiration. 10 ft. by 12 ft. would be sufficient space to build. Uecker is concerned if the Association does not allow a Michigan Room and a member comes to him requesting a Land Use Permit to replace their deck with a Michigan Room, he does not think he is bound to withhold the Land Use Permit. Sanger said that this could result in not all units looking alike, which would devalue them.

	EXHIBIT	
tabbies"	C	

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John Martin, 242 Peninsula Hills Dr., said that the Association has always functioned as a condo association. They control the common areas around the building, they carry insurance, and they do maintenance. Administratively, they can make sure the exterior of the building looks similar and like it is one unit.

Sanger closed the public hearing at 7:37 p.m.

Uecker thinks the increase in size of the lower deck is to fit the Michigan Room. Byron asked if the Association should decide what they want to allow according to their Master Plan before the ZBA grants the request. This would also take care of the six-month expiration. Uecker wants the Association's decision in writing so that the blanket variance, if granted, will be specific for this project and not set a precedent for other properties. Wilson suggested denying the request and letting the members replace their deck exactly as it is. If the members do not want to replace their deck exactly as it is, then they could come back to the ZBA with a specific request. Uecker said that he understands the foundations of the decks are not good and require replacing, which does require a variance to be granted by the ZBA. Sanger asked how long it will take all members to prepare a unified plan. The members decided November would be sufficient.

MOTION: Byron/Dean to table Request No. 737 until the ZBA's November Meeting so that the members of the Association have an opportunity to come back to the ZBA with a unified approach of what variance they are requesting the ZBA to grant.

Roll Call Vote: Sanger-yes, Wilson-yes, Byron-yes, Dean-yes, and Dumon-yes.

PASSED UNAN

2. Request No. 739, Zoning R-1B

Jeffrey and Kristi Link, 1120 Lin-Dale Dr., Traverse City MI 49686

A variance from private road standards to permit construction of a cul-de-sac instead of making connections to Lochmoor Lane(a public road) and/or South View Place(a public road) for a private road required to be constructed for a proposed land division. Parcel code # 28-11-005-005-00

Section 7.10.6 (2) Road Layout- Requires that all existing roads that terminate at the boundaries of a proposed development shall be connected with the road system of the development.

Section 7.10.6 (4) Road Layout - Requires that the layout of roads shall provide as much as possible for a continuous circuit for travel.

Uecker said that the applicants want to do land splits in this lot because of its size. The State's and Township's Land Division Acts would allow at least six splits and up to eight lots. The Township Ordinance says that they must create a road and the new parcels must have sufficient frontage on the same and adequate access. They would have to widen their current driveway. The ordinance says that when there are roads on adjacent property any road construction on the property requesting land splits must connect to the roads on the adjacent property, unless there is a hardship. Uecker said that Outlot "D" separating the Link's lot and South View Place was platted for future road purposes. It is to be used to connect new developments to existing roads. The Township Attorney agrees with Uecker.

Sanger said that he received a letter from Gordon Hayward, Township Planner, dated July 12, 2007, saying that the zoning ordinance and the land division act say that any private roads must connect to the public roads unless circumstances present otherwise.

Sanger opened the public hearing at 8:10 p.m.

Zoning Board of Appeals August 9, 2007

Brad Kaye, Gourdie-Fraser, 123 W. Front St., said that Outlot "D" is no longer legally available to the applicants to use to connect to public roads on adjacent property. He provided letters to the ZBA members supporting the same. The Township cannot open the outlot to create a connecting street. Replatting would be required, which requires 100% approval by the subdivision. Mr. Kaye said that he does not think the applicants require a variance regarding South View Place. Regarding Lochmoor Lane, the request is to waive the requirement because it is impossible to construct a connecting road because Lochmoor Lane is elevated, no public interest for a connection exists and the road system is working well, and there is limited distance. The Links did not create the problem. Sanger requested grade information supporting practical difficulty.

Brian Boals, Gourdie-Fraser, 123 W. Front St., said that they cannot create a connecting road because there is 8-10 ft. of grade difference in 90 ft. There are three transitions including having to deal with a vertical curve, not being able to attain a flat approach to the intersection, etc. Sanger is concerned with not having hard engineering data about the elevations and emergency vehicle access. Wilson described options. In response, Mr. Boals said that the neighboring property is too close.

Jackie Harding, 1114 Lindale, said that if the Links had a cul-de-sac that provided adequate access for emergency vehicles, then why does the ordinance require road connections? Uecker said that a cul-de-sac is only a second best solution. Grand Traverse County wants road connections to allow two ways out of subdivisions.

Charles Miller, 11376 South View Place, said that there is another cul-de-sac on Lindale, which has easement onto the Link's property. Uecker said that it is extremely steep. The Links do not use it for their driveway. Mr. Miller said that it does not have the same issue as Outlot "D".

Jeff Link, 1120 Lindale, said they did not use the easement to be neighborly. He said that if they need to do a topographic study, etc., then they will. He is agreeable to tabling the item.

Sanger said that they the applicants will likely need a variance from the road grade.

Ken Taylor, 1196 Quaker Valley Dr., said that he would hate to see Lochmoor Lane connected. Sanger reiterated need for adequate emergency vehicle access.

Sanger closed the public hearing at 9:00 p.m.

Uecker said that denying the request would result in more fees if the applicants reapplied. Wilson suggested tabling the item for the applicants to obtain additional information necessary about why they cannot make the three possible connections and about the grade. Dumon agrees with Attorney Ford's informal opinion about having access off South View Place.

MOTION: Dean/Wilson to table Request No. 739 for sixty days until ZBA's October meeting. Roll Call Vote: Wilson-yes, Byron-yes, Dean-yes, Dumon-yes, and Sanger-yes.

PASSED UNAN

3. Request No. 740, Zoning A-1

J. Kermit Campbell on behalf of Winery at Black Star Farms, LLC, 10844 East Revold Rd, S.B.M 49682 Property address: 360 McKinley Road, Traverse City MI 49686

Applicant requests an interpretation of the intent and meaning of the term "production" of wines to be tasted and sold under Farm Processing Facility, and depending on the interpretation, if necessary, a variance from compliance with the requirement that the tasting and selling of wine is limited to that produced at the Farm Processing Facility and labeled "Old Mission Peninsula" appellation. Said requested variance to be effective through December 31, 2009.

Zoning Board of Appeals August 9, 2007

Parcel Code # <u>28-11-030-006-35</u>

Section 6.7.2 (19)(b)1.iv. States the tasting of wine is limited to that produced at the Farm Processing Facility and labeled "Old Mission Peninsula" appellation.

Section 6.7.2 (19)(b)2.i. states that not less than 85% of all agricultural produce sold fresh or processed shall be grown on Old Mission Peninsula and a majority shall be grown on the land owned or leased for the specific farm operation by the same party owning and operating the specific Farm Processing Facility.

Section 6.7.2 (19) (b) 2.iii. Wine shall be produced and bottles in the winery.

Uecker said that he issued the preliminary farm processing permit months ago. It is a Use by Right, which allows growing, processing, tasting, and retail sales. Our ordinance addresses two issues significant to tonight's request. 1) Majority of grapes used in making of wine must be grown on this Peninsula set aside for this facility. 2) To taste or sell the wine, it must be produced at the facility. The applicants want to open this fall, but no grapes were produced at this facility yet so they want to taste and sell wine made from grapes grown at this location but produced at their other facility in Suttons Bay. Attorney Ford's formal opinion says that the ordinance says you cannot sell wine at this location that has not been produced at this facility. A dimensional time variance or a special exceptional variance, which are not use variances, could be granted to allow relief as a temporary selling permit with restrictions (e.g., vintage, time, etc.) if the ZBA chose to do so. [There is a gap in time between when the facility is constructed and the wine is ready to be sold. A use variance is not allowed to be granted. Uecker said that this type of relief has never been granted to anyone before. Uecker said that this gap in time is a problem that faces most wineries.

Sanger opened the public hearing at 9:35 p.m.

Kerm Campbell, 2721 Nelson Rd., said that BlackStarFarms is owned by several people on this Peninsula. They have many planted acres on this Peninsula. Mr. Campbell reviewed the steps in wine production and the elapsed time of approximately three years before the wine is ready to be tasted and sold. He also reviewed the aging time. The MLCC did grant BlackStarFarms a license. Mr. Campbell said that the ZBA can interpret the ordinance language and they can rule on a dimensional time variance or a special exception variance. He said that if value is decreased not increased, (the intent of the ordinance is undermined. Regarding wines requiring aging, a narrow interpretation of the term "produced" prohibits intent of the ordinance. Mr. Campbell suggested clarifying the intent language and provided support for the same. Other wineries on this Peninsula do not oppose any decision the ZBA might make in favor of BlackStarFarms. Mr. Campbell requested the special exception for 2004 and 2005 vintage red wines through 2009 and for 2005 and 2006 vintage white wines through 2009.

Ken Taylor, 1196 Quaker Valley Dr., said that all of his grapes go to BlackStarFarms. He highly recommends that the ZBA grant in favor of BlackStarFarms.

Marie Hooper, 90674 Montague, said that she is a grower. She wants the ZBA to look at this as a regional issue. The fact that the grapes were grown here is more important rather than whether the wine is produced here.

Mark Nadolski, 10 McKinley Rd., described the creation of the ordinance. It should not be taken lightly or weakened. The ordinance keeps the agricultural community strong. Mr. Nadolski thinks the ZBA is the wrong body to change the ordinance. It should go through the Planning Commission and the Township Board through the normal process. He would support an amendment made through the proper process allowing early sale of wine if all requirements are met. The applicants are asking for a commercial store on this Peninsula for at least two years. Sanger said that equipment has been installed at this facility. Mr. Campbell said they will be ready to receive fruit by approximately September 15, 2007. Uecker said that

Attorney Ford says the ZBA has the right to interpret the ordinance. If the ZBA thinks that production does not mean what has been shown, then the ZBA will be going against the Attorney Ford's opinion. Mr. Nadolski said that at the time of the creation of the ordinance it was accepted that it took three to five years to produce wine on this Peninsula from grapes grown on this Peninsula.

Ed O'Keefe, 12301 Center Rd., said that the ZBA did not protect him against Mr. Campbell's attacks on his se personality. He is concerned for small wineries. Mr. O'Keefe referred to the Code of Federal Regulations. He is concerned with wine being sold on this Peninsula with a label saying produced in Leelanau County. Mr Campbell is also concerned with policing that the grapes were actually grown on this Peninsula. Sanger said that PDR lands and conserved lands can be counted as part of a farm processing facility.

Jim Krupka, 16100 Smokey Hollow, said that Leelanau County has advantages that wineries in Peninsula Township do not have. Peninsula Township rules are tough, but fair. He thinks Amendment No. 139 is excellent. Mr. Krupka will be happy if BlackStarFarms opens in the fall or in the spring. If the ZBA grants the variance, then others might request the same variance. He wants the ZBA to look at the whole picture.

Chris Baldyga, Two Lads Winery, 19268 N. Cedar Run Rd., said that he does not oppose BlackStarFarms opening in the spring and selling wines they made at their facility, but he wants the rules that apply to everyone else to apply to BlackStarFarms. Two Lads Winery is following the normal process.

Ms. Hooper reiterated that the grapes are grown in Peninsula Township and that is the key point. She said that cherries are produced outside Peninsula Township. Mr. O'Keefe said that no appellation is required. Sanger closed the public hearing at 10:25 p.m.

Sanger wants to insure substantial justice.

MOTION: Byron/Wilson to accept Attorney Ford's letter dated June 22, 2007 saying that sales and tasting of wines are prohibited at the BlackStar Underwood's facility, where the wine is processed and bottled in Leelanau County.

Roll Call Vote: Byron-yes, Dean-yes, Dumon-yes, Sanger-yes, and Wilson-yes.

PASSED UNAN

Dumon suggested looking at the special exception variance Uecker mentioned. Byron suggested sending this item to the Planning Commission to look at, because it is a Leelanau County brand (i.e., produced and bottled in Leelanau County) and other wineries have complied with the rules and have not asked for an exception. Dumon said that these vineyards and wineries are in the public's best welfare. He is concerned with the red tape. Dean said that granting a special exception does not change or open Amendment No. 139. Wilson said that the issue is the red wines. He asked if we are going to bend the rules for them? The white wines are ready to be sold. Sanger said that he wants to create a business-friendly environment for the agricultural community. Wilson is concerned with setting a precedent. Byron agrees. Mr. Campbell said that the bottle label shows Old Mission appellation. Sanger read Bern Kroupa's letter.

Cornell Olivier, 13295 Blue Shore Rd., explained Two Lads Winery's time line. He thinks BlackStarFarms should be required to follow the same rules as everyone else. Mr. Olivier said that BlackStarFarms has options to speed the process along to produce wine on this Peninsula to be sold here.

MOTION: Dumon/Dean pursuant to Section 5.7.4 permit the applicant to use 2004 and 2005 vintage red wines and 2005 and 2006 vintage white wines in its Old Mission Peninsula tasting room for tasting and selling, which is in the public's best welfare. We are trying to encourage agricultural production. We want to be business-friendly. This is temporary relief only, which will end on December 31, 2009. 85% or more String. of the grapes must be grown on this Peninsula.

5

Roll Call Vote: Dean-yes, Dumon-yes, Sanger-yes, Wilson-no, and Byron-no.

Zoning Board of Appeals August 9, 2007

Case 1:20-cv-01008-PLM-RSK ECF No. 459-10, PageID.16393 Filed 10/06/23 Page 7 of 7

PASSED

4. Old Business

None.

5. New Business

Sanger said that the Township Board reappointed Gary Wilson to the ZBA.

6. Minutes of July 12, 2007

Byron said that on Page 2, "Juky" should be "July". Sanger said that on Page 2, Randy Chapman's statement should read "If the Janis' approached the Association, it is unlikely the Association would provide the Janis' access."

6

MOTION: Byron/Wilson to approve the minutes as amended.

PASSED UNAN

MOTION: Dean/Wilson to adjourn the meeting at 11:10 p.m.

PASSED UNAN

فحوكمه

Respectfully Submitted,

Shelly Leatherman, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for September 13.

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

November 1, 2007

Rob Manigold, Township Supervisor Peninsula Township

Rob,

Per our phone conversation this morning I am affirming that The Winery at BlackStarFarms is prepared to give up the final calendar year (2009) granted to us by the ZBA as a Special Exception in exchange for the addition of 2006 vintage red wines grown on the OMP. The exception would then stand as the sale of 2005 and 2006 white wines and 2004,2005, and 2006 red wines produced at our Suttons Bay winery from grapes grown on the OMP and fully meeting the sourcing requirements as stated in Ordinance 139 for tasting and sales at our OMP facility through December 31, 2008. Please communicate our position to interested parties.

Thank you,

Kerm Campbell for The Winery at BlackStarFarms

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

December 16, 2011

To: Peninsula Township Zoning Board of Appeals

From : Lee Lutes, Manager, Black Star Farms, Old Mission & Robert Mampe, property owner.

Re: Zoning Variance for the McKinley Road location, Black Star Farms, Old Mission.

To whom it may concern;

This letter is written as an application for a variance from the Peninsula Township winery ordinance, as it applies to wineries recognized as Farm Processing Facilities. This is the current classification for our winery, Black Star Farms, Old Mission (BSFOM), located at 360 McKinley Rd. East. The property is owned by Robert Mampe, is leased to BSFOM, and Mr. Mampe is a partner in the winery ownership.

BSFOM has been in operation at this location since 2007 and is a current member of WOMP – wineries of the Old Mission Peninsula. The Winery at Black Star Farms was very happy to have formed this partnership with Mr. Mampe in 2007, as we now purchase or own (collectively), more than 100 acres of fruit on the Old Mission Peninsula. It was originally our interest to get our white wine processing much closer to the vineyard sources, as this is critical in the production of high quality white wine, and this facility and partnership have allowed us to do just that. In addition, we have revitalized an existing structure on Mr. Mampe's property, have utilized a former office space as our winery tasting room (at the currently allowed 1500 square feet), and have contributed positively to the WOMP wine trail. We are very pleased to be on the Old Mission Peninsula, and plan to remain into the foreseeable future.

With this appeal for a variance, we are making a request to increase the current size of our winery processing facility, primarily for storage, as our needs are expanding with the growing demand for our products. As you likely know, the current size allowed for a winery processing facility, recognized as a Farm Processing Facility, is a mere 6000 sq. ft. As you may also know, we are currently utilizing close to 10,000 square feet for processing and storage, based on an earlier variance allowed for this prior existing building, and we are close to pushing beyond its four walls! The variance we request would allow us to expand by approx. 7000 sq. ft, most of which would be enclosed, and approx. 1700 sq. ft. open but under an extended roof area. This covered, outdoor area would become our crush pad, and would be the primary space for fresh fruit processing in the fall. Most of the area this addition would occupy would be constructed on an existing foundation, as this facility was originally built with expansion in mind. Anyone who visits the site can plainly see this foundation, as the east side includes a 4 - 5 foot cinder block wall. Here again, we hope to make use of the original envelope for this building, to improve our capacity and volume, and the over-all character of the entire site.

We recognize the fact that the wineries on the Old Mission Peninsula are currently working with the township planner to aid in the development of a winery ordinance that will meet the needs of this expanding industry. Black Star Farms, Old Mission is not considered a large winery within the state, but would fit the definition for a medium sized winery. In the years prior to 2011, we were producing approximately 12-15,000 cases. Due to a significant crop of grapes in 2011, we will produce approx. 25,000 cases. We are proud, however, of the fact that 95% of what we produce is grown on the Old Mission Peninsula, including products from cherries, apples, and grapes. The only fruit that does not meet the Old Mission appellation is that which we process from Leelanau or in small quantities from southwest Michigan. Other than that, everything in our tanks and bottles comes from the peninsula where we are based. How many wineries on this peninsula, regardless of classification, can make that claim? Not as many as we would all like! The primary reason for this, however, is the shortage of fruit. There is such a demand for our regional wines that our growers have not yet caught up with the necessary supply of grapes. Fortunately, we have growers that are working to correct this problem and I can predict a day when the wineries on this peninsula will have all the fruit they can process, regardless of the growing season.

The most significant issue for any of the wineries, regardless of size, is storage space. We only get one time of the year to make enough wine to last the entire year, and storing all of that volume requires a great deal of space. There is space required when it is in bulk form, and there is space required when it is in bottled form. Both of these spaces require climate control, as too much heat or cold can be damaging to the product. In addition, there is space required for all of the dry goods that go into making wine, as well as those raw materials necessary for packaging the wine – bottles, caps, labels, etc. Once the product is bottled, and everything we produce requires bottling by the following spring or summer, the storage required increases by 100%. In other words, bulk wine requires less than half the storage space of bottled wine, but bottling is the best way to preserve our delicate white wines. In addition to all of this storage required, we have equipment that must also be stored for 9-10 months of the year, fruit harvest bins that also require long-term storage, and equipment necessary for the production process that also requires covered storage. (See photos of these spaces as examples...). It is this storage space requirement that is forcing us to ask for this variance.

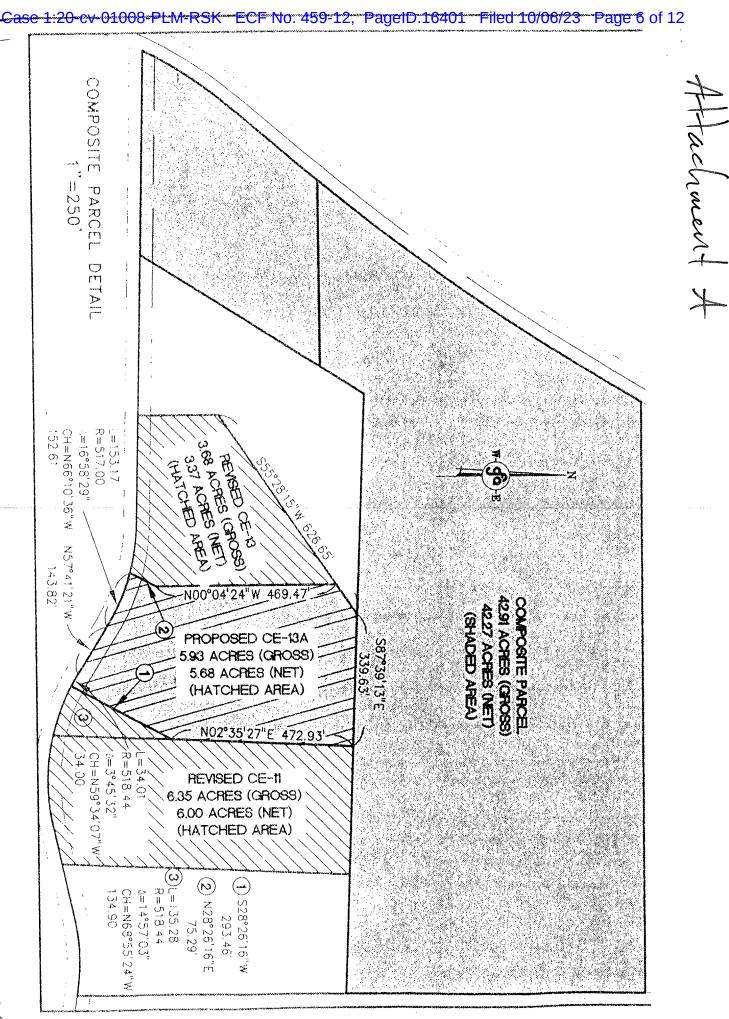
We understand that the Farm Processing Facility category was intended to maintain wineries of a certain size, but it is simply too restrictive for growth. I believe we would all agree that wineries on this peninsula, selling wine made from fruit recognized as coming from this peninsula, is good for maintaining the farm community of this peninsula. I would also propose that the winery demand for an increasing supply of fruit is driving an additional segment of agriculture on this peninsula that may not be here otherwise. We would hope that our industry is one more reason for the agricultural community to keep its land in agriculture, and not development. For these reasons, we would continue to ask the township, and will continue our work with your planner, to find a way to meet the issues of this expanding and dynamic industry. Please keep in mind as well, that with the current acreage requirement for this winery size, WITH our variance increase included, we are occupying little more than 1% of the land at this site with above ground buildings. This would seem to be a reasonable use of space.

In response to the conditions stated as a component of Section 5.7.3:

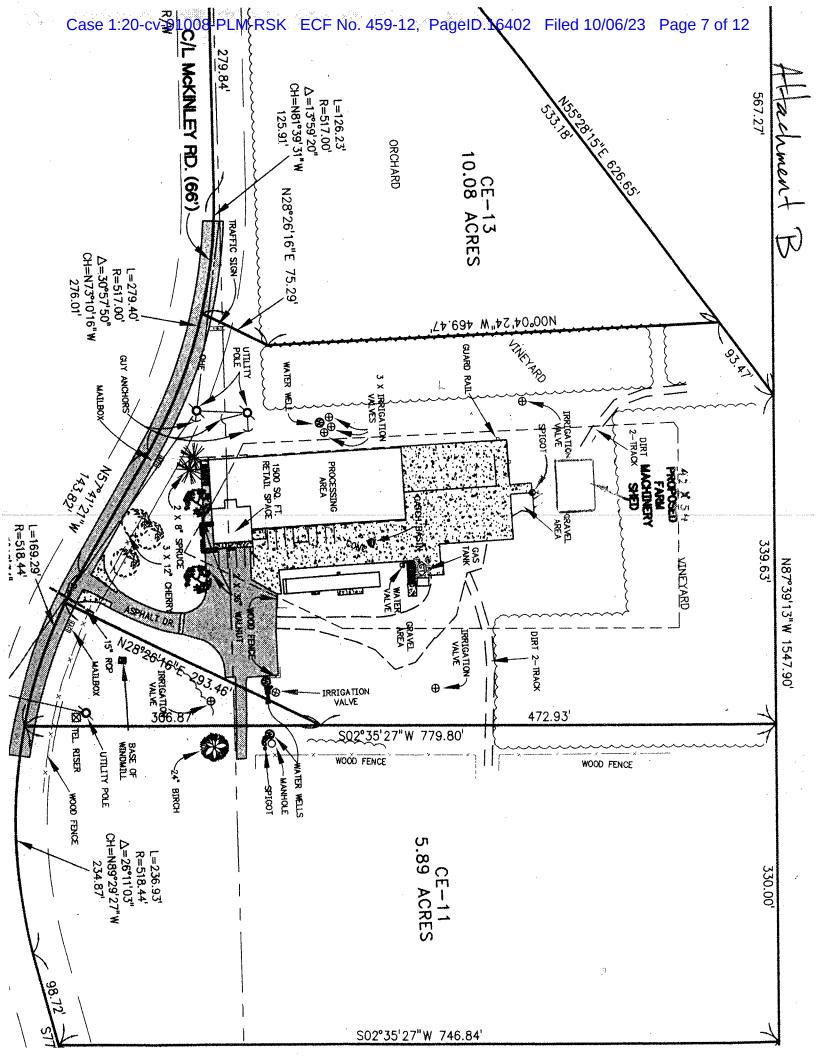
- 1) Basic Conditions;
 - a. This variance will in no way be contrary to any public interest that we are aware of or can foresee at this time, nor does it conflict with the intent and purpose of this ordinance in any way. There is an obvious conflict with the current winery ordinance, as it relates to square feet allowed for "Farm Processing Facilities", but it is our understanding that the township is currently working on revisions to address these and other issues of the industry.
 - b. This variance, if granted, would not change the "intent" of the current winery ordinance, and it's grant for Farm Processing Facilities by right, as all other aspects of the use will be intact. This addition would not change any use for the tasting room (the retail
 - space), nor would it change the current interest in keeping the majority of the fruit
 processed at this location as being local. We believe, that in keeping with the general
 interest of the current ordinance for wineries, there is no need for special or conditional
 use permits for this application.
 - c. This variance, if granted, will not adversely affect property values in the immediate vicinity, or in the district, and we believe will actually have a positive effect on these values. It is partly our intent in making this application that we would create an environment around the processing facility that would be more appealing to neighbors and the visiting guest, and that the "negative visual element" of the winery would be reduced. We have had no complaints on this issue to date, or that we are aware of, however we continually strive to improve the conditions of our environment and the areas around us.
 - d. It is our belief that it *would* be reasonably practical to make this variance a component of the revised winery ordinance, as this is a need that the township has heard and addressed with other wineries in the past. We have heard from the township that they are currently working toward this. The only way to get around the space requirement at this time is to apply for, and work toward the requirements of a "Winery Chateau", however this section of the ordinance incorporates many uses which are beyond our business model for example, the creation of rooms for hire, or the ability to support major functions, such as weddings. Our only intention is to continue making wine, predominately if not entirely from local fruit, and to have a small tasting room operation. We have no desire for a B & B, nor do we wish to cater to large events.
 - e. This variance will relate only to property that is under the control of Black Star Farms, Old Mission, and its ownership.

(2)Special conditions;

a. In making this request for a variance, we are making the case for practical difficulties with the existing ordinance for Farm Processing Facilities, as it relates to square footage allowances. Again, it is our belief that with the current acreage requirements for this type of use, and the fact that a 7,067 sq.ft addition, in addition to the current 10,000 sq. ft., will only occupy approximately 1% of the acreage required for this use.



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Filed 10/06/23 Page 8 of 12 tachment C

Photo Descriptions-

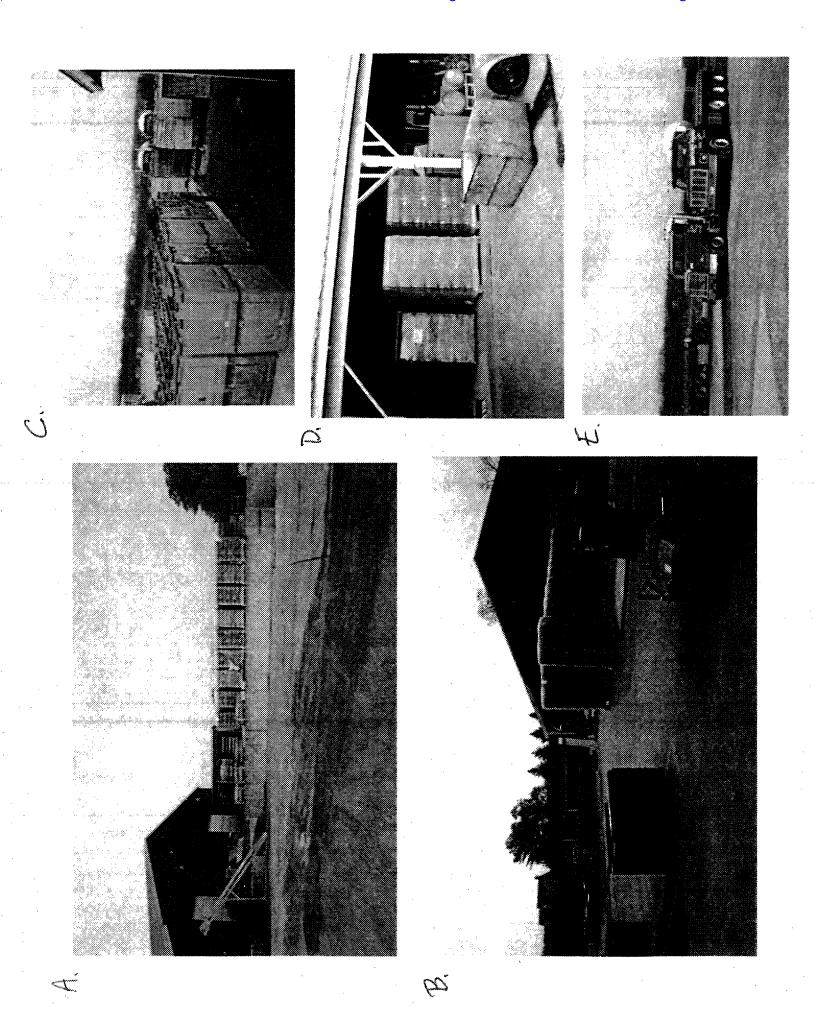
A - this photo is taken looking at the existing foundation's east wall. You can see the cinder block wall just below the pallets of glass (the tall, square, plastic wrapped structures are bottles that we buy in bulk and have to store until needed). This would be the location of the new structure.

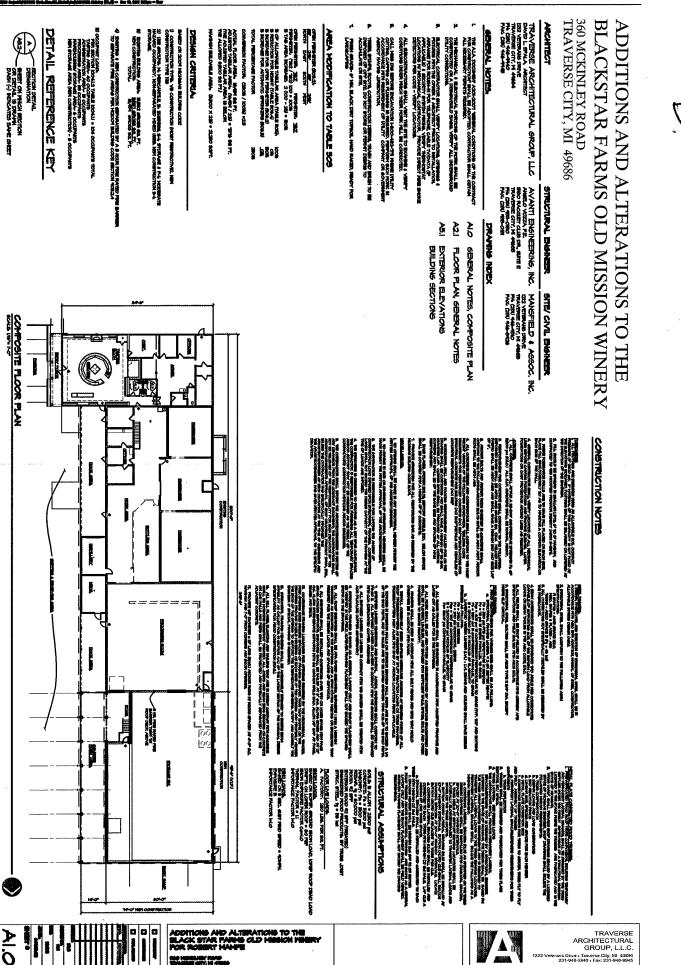
B - This photo is of the same area as above, but has the photo taken from the north and looking south toward the existing building. What this photo shows is some of the material and equipment that we would like to be storing inside of the new structure, that would have it out of the eye sight of the guests to the farm and Mr. Mampe's property, which you can see in the background.

C - This photo is showing the stacks of fruit boxes that are lined up during the harvest along the drive and parking area for the tasting room. We have more than 100 of these fruit bins and they would also be stored under the roof of the new structure – both empty (to be out of the way of auto traffic), and full to protect the fruit from any inclement weather.

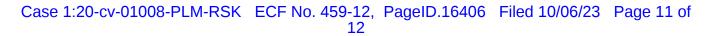
D- This photo is taken near the entrance to the tasting room, showing more of the materials that we would have stored within this new structure. This includes more pallets of empty bottles, a pallet of glass for the tasting room, empty fruit bins, fermentation bins, and barrels for fortified wine that are yet to be filled.

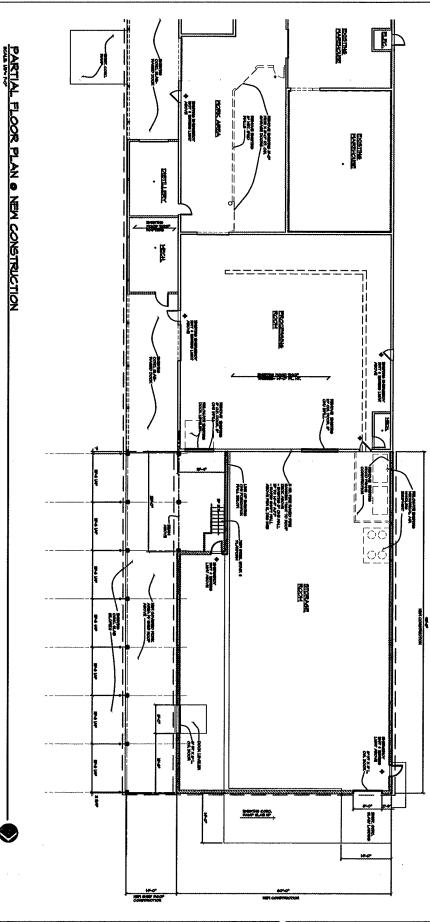
E - This photo shows one of our least favorite equipment rentals – the two tanker truckswe have taken on for excess storage. These trucks are both storing in excess of 5000gallons of fermented wine because of limits within the winery. In part this is due to thesize of the harvest, but also to the fact that we are striving to meet the demand for ourproducts. Case 1:20-cv-01008-PLM-RSK ECF No. 459-12, PageID.16404 Filed 10/06/23 Page 9 of 12

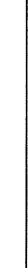




ECF No. 459-12, PageID.16405 12 Case 1:20-cv-01008-PLM-RSK Filed 10/06/23 Page 10 of





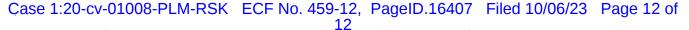


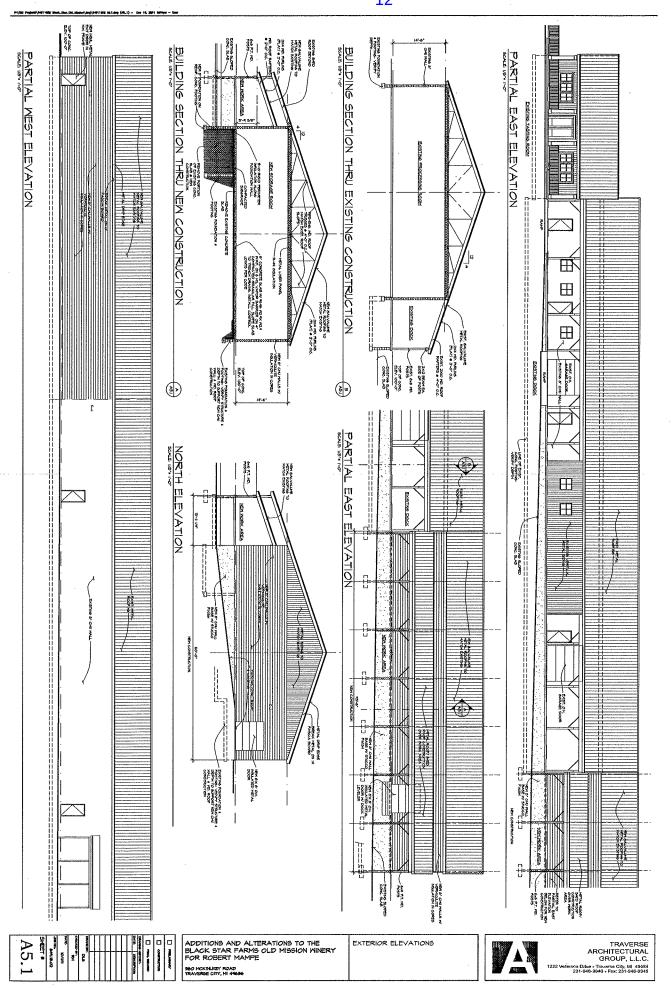


ADDITIONS AND ALLIBRATIONS TO THE BLACK STAR PARTS CLD HESION HINE FOR ROUGHT HANTS SECTIONS TO A



TRAVERSE ARCHITECTURAL GROUP, L.L.C. xors Dibos • Traverse City, MI 49654 231-946-9940 • Fax: 231-946-9945





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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

R 8- Gase 1:20-cv-01008-PLM-RSK ECF No. 459-13, PagelD.16409 Filed 10/06/23 Ppage 2 012 20-25-30-35-40-50

Gordy Uecker

From: Lee Lutes [LLutes@blackstarfarms.com]

Sent: Thursday, January 26, 2012 5:05 PM

To: zoning@peninsulatownship.com

Subject: ZBA request

Gourdie – as per our conversation earlier today, please remove our request to the ZBA from their roster, as we will be pursuing other options as they relate to our production facility on the peninsula. It is NOT our intent to continue with our ZBA request to expand production space for our farm processing facility with Bob Mampe.

Thank You very much,

Lee Lutes Winemaker - General Manager Wineries of Black Star Farms Northwest Michigan 231-944-1281

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

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And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

Peninsula Township Variance Application Application Guidelines 13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117 www.peninsulatownship.com

- 1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at <u>www.peninsulatownship.com/zoning</u>.
- 2. Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. <u>Ten (10) copies must be submitted</u>.
- 3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
- 4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
- 5. It is the applicant's responsibility to ensure that the application is complete upon submission. Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete. An incomplete application will not be considered for review by the ZBA.
- 6. The application will be forwarded to members of the ZBA for a public hearing.
- 7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
- 8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
- 9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
- 10. If the variance(s) are granted, construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.
- 11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. A variance is independent from, and does not substitute for, all other permits.
- 12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

	OFFICE USE ONLY	
Date Received: 51418	Fee Received: 35,00	- Board Action:
Date Complete:	Meeting Date: 41418	

Peninsula Township Variance Application General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. <u>10 copies are required.</u>

Applicant Informa	
Applicant:	Name KOBERT MAMPE
	Address Line 1 363 MCKINLEY ROAD EAST
	Address Line 2
	Phone 23 932 0512 Cell 231 633 1863
	E-mail MM 1504 QAOL, COM
Owner:	Name SAME
	Address Line 1
	Address Line 2
	Phone Cell
	E-mail

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28/1-030-006 -35	Zoning
Address Line 1 360 MCKINLEY ROAT	
Address Line 2	

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

[] Front Yard Setback
[] Side Yard Setback
[] Width to Depth Ratio
[] Lot Coverage
[] Off-Street Parking
[] Signage
[] Height/Width
[] Other: Please Describe:

Attachments

- [⊿] \$375 Fee
- [] Basic Conditions Worksheet
- $[\checkmark]$ 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).

 $\begin{bmatrix} V \end{bmatrix}$ Front elevation diagram drawn to scale.

Peninsula Township Variance Application Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

<u>Section 5.7.3(1) Basic Conditions</u>: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided all of the Basic Conditions listed herein can be satisfied.

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.

Is this condition met? Please explain: Pre-etisting structure. Need to have
additional Storage area top wine (Storage Tashing room
anea of 1500 sa Feet will remain the same. This is a
Unique arcumstance as building was pre-existing prior to
tarm processing ordinance being adapted.

b) The need for the variance is not the result of actions of the property owner (self-created) or previous property owners.

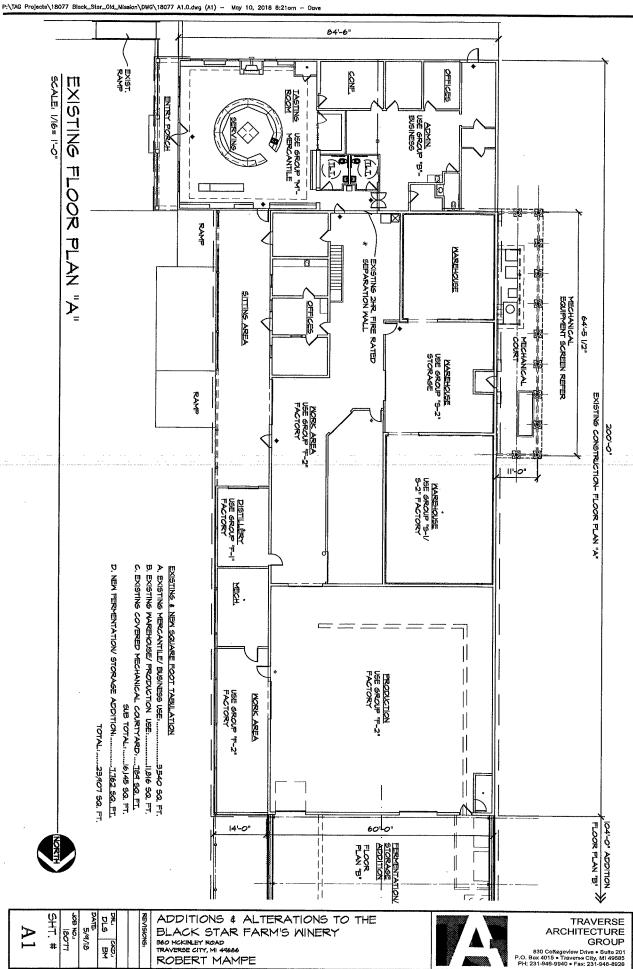
Is this condition met? Please explain: Farm processing Eacility allows for Lospo. Sq. Ft. of blag. This structure was approved w/ 15,672 sq. Ft.
10570.59. Ft. of blag. This structure was Japonned W/ 15,672 sa.Ff
adutional Wood covered porch was added in 2013 of 70454 FF.
Nithout having to obtain a vanance this was a permitter
addition. J

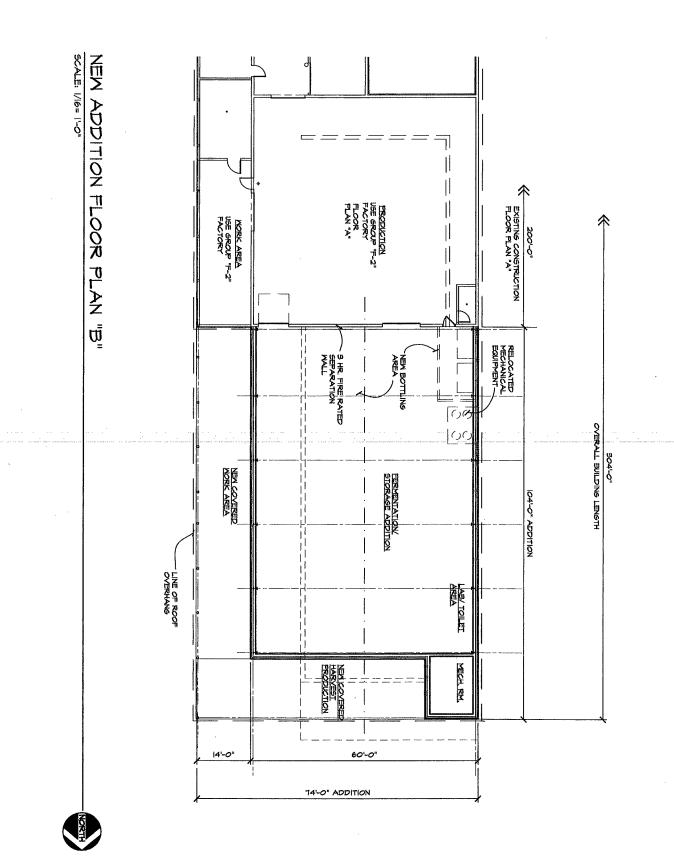
c) That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

Is this condition met? Please explain:

No	warmance is reg	when for set	in within backs. This p		beaks
Whi	ch does not have (a percentage	tor lot covers	igt.	
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the d	the variance will do sub istrict, or whether a less or of the property involve	er relaxation than	applied for woul	d give substantial relief	f to the
Is thi	s condition met? Please ex				0
Fbr		orh nithon		expand to a	
Ch		ss desirable			****

	the variance will not cau nd enjoyment of propert			g property, property va	lues or t
use a	nd enjoyment of proper	y in the neighborl	hood.		lues or t
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Is thi <u>Rot</u> <u>OM</u> <u>Inc</u> Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc IncInc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc Inc 	nd enjoyment of propert s condition met? Please ex Dert Mample + w w a down of the prop work of the prop to a down of the prop work of the property of the pro- the variance shall not pe	y in the neighborl plain: <u>Aface</u> More haw entres. New Adjacent pro	hood. ent parcels eadresse e construction puty bound	are owned by ffcds to any n will not while of any use which i	s not
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AZ REVISIONS:

ADDITIONS & ALTERATIONS TO THE BLACK STAR FARM'S WINERY BEO MCKINLEY ROAD TRAVERSE CITY, M 46666 ROBERT MAMPE



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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686 Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

ROBERT K. MANIGOLDJOANNE WESTPHALSUPERVISORCLERK

MARGARET ACHORN TRUSTEE DAVID SANGER TRUSTEE WARREN WAHL TRUSTEE ISAIAH WUNSCH TRUSTEE

BRAD BICKLE

TREASURER

June 12, 2018

Mr. Robert Mampe 363 E. McKinley Rd., Traverse City, MI 49686

Re: Zoning Board of Appeals request for Variance

Parcel No. 11-030-006-35

Dear Mr. Mampe,

Respectfully.

Director of Zoning

On May 14, 2018 you filed a request for variance under the Farm Processing Ordinance Section 6.7.19 (b) for your structure located at 360 E. McKiley Road.

I have reviewed this information with the Township Supervisor, Rob Manigold and the Township Attorney, Gregory Meihn. I have been advised by Mr. Meihn that this issue should not be addressed before the Zoning Board of Appeals rather an amendment to the current zoning ordinance should be sought.

Therefore, I am returning your application fee for the variance request in check no. 9275 of \$375.00. I apologize in advance for not being able to address this issue at the Zoning Board of Appeals.

Please feel free to contact me if you have any questions regarding this information as I would be happy to assist you.

I thank you in advance for you time in this matter.

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

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Case 1:20-cv-01008-PLM-RSK ECF No. 459-16, PageID.16420 Filed 10/06/23 Page 2 of 5

TABONE VINEYARDS 30(b)(6) WOMP v PENINSULA TOWNSHIP

July 17, 2023 1

1	UNITED STATES DISTRICT COURT	
2	WESTERN DISTRICT OF MICHIGAN	
3	SOUTHERN DIVISION	
4 5	WINERIES OF THE OLD MISSION PENINSULA ASSOC. (WOMP), a Michigan nonprofit corporation; BOWERS HARBOR	
6	VINEYARD & WINERY, INC., a Michigan corporation; BRYS WINERY, LC, a	
7	Michigan corporation; CHATEAU GRAND TRAVERSE, LTD, a Michigan corporation;	
8	CHATEAU OPERATIONS, LTD, a Michigan corporation; GRAPE HARBOR, INC, a Michigan corporation; MONTAGUE DEVELOPMENT, LLC, a	
9	Michigan limited liability company; OV THE FARM, LLC, a Michigan limited liability	
.0	company; TABONE VINEYARDS, LLC, a Michigan limited liability company; TWO	
.1	LADS, LLC, a Michigan limited liability company; VILLA MARI, LLC, a Michigan limited liability company; WINERY AT BLACK STAR FARMS,	
.3	LLC, a Michigan limited liability company,	
.4	Plaintiffs,	
.5	v File No. 1:20-cv-01	L008
.6	HON. PAUL L. MALONE PENINSULA TOWNSHIP, a Michigan MAG. JUDGE RAY S. F municipal corporation,	
.7	Defendant,	
.8	and	
.9	PROTECT THE PENINSULA, INC.,	
20	Intervenor-Defendant.	
21	/	
2		
3		
24		
25		
	ESQUIRE 800.211.DEPO) (3376)
	EsquireSolution	

Case 1:20-cv-01008-PLM-RSK ECF No. 459-16, PageID.16421 Filed 10/06/23 Page 3 of 5

TABONE VINEYARDS 30(b)(6) WOMP v PENINSULA TOWNSHIP

July 17, 2023 2

1	RULE 30(b)(6) DEPOSITION OF TABONE VINEYARDS, LLC and MARIO A. TABONE
2	
3	Taken by the Intervenor-Defendant on the 17th day of July,
4	2023, via Zoom, at 8:00 a.m.
5	
6	
7	RECORDED BY: Heidi Peckens, CER 9634 Certified Electronic Recorder
8	Esquire Deposition Solutions Firm Registration Number 8035
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	ESQUIRE BOO.211.DEPO (3376) EsquireSolutions.com

Case 1:20-cv-01008-PLM-RSK ECF No. 459-16, PageID.16422 Filed 10/06/23 Page 4 of 5

TABONE VINEYARDS 30(b)(6) WOMP v PENINSULA TOWNSHIP

July 17, 2023 3

L RAGATZKI, ESQ. (P81952) A Paddock & Stone, PLC De, NW, Suite 1200 Aichigan 49503 Accanfield.com EVRIES, ESQ. (P84246) PC Due, NW, Suite 800 Aichigan 49503 Wmorris.com REWS, ESQ. (P67467) Tracy Jane Andrews, PLLC
A Paddock & Stone, PLC ae, NW, Suite 1200 Michigan 49503 ccanfield.com EVRIES, ESQ. (P84246) PC nue, NW, Suite 800 Michigan 49503 wmorris.com REWS, ESQ. (P67467)
ae, NW, Suite 1200 Michigan 49503 ccanfield.com EVRIES, ESQ. (P84246) PC nue, NW, Suite 800 Michigan 49503 wmorris.com REWS, ESQ. (P67467)
Michigan 49503 ccanfield.com EVRIES, ESQ. (P84246) PC nue, NW, Suite 800 Michigan 49503 vmorris.com REWS, ESQ. (P67467)
EVRIES, ESQ. (P84246) PC nue, NW, Suite 800 Aichigan 49503 vmorris.com REWS, ESQ. (P67467)
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REWS, ESQ. (P67467)
Street Michigan 49686
v.com
HILLYER, ESQ. (P85318)
Howard, PC Street
Michigan 49686
DM
800.211.DEPO (3376, EsquireSolutions.com

Case 1:20-cv-01008-PLM-RSK ECF No. 459-16, PageID.16423 Filed 10/06/23 Page 5 of 5

TABONE VINEYARDS 30(b)(6) WOMP v PENINSULA TOWNSHIP

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July 17, 2023 39

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	А	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	А	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.



UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

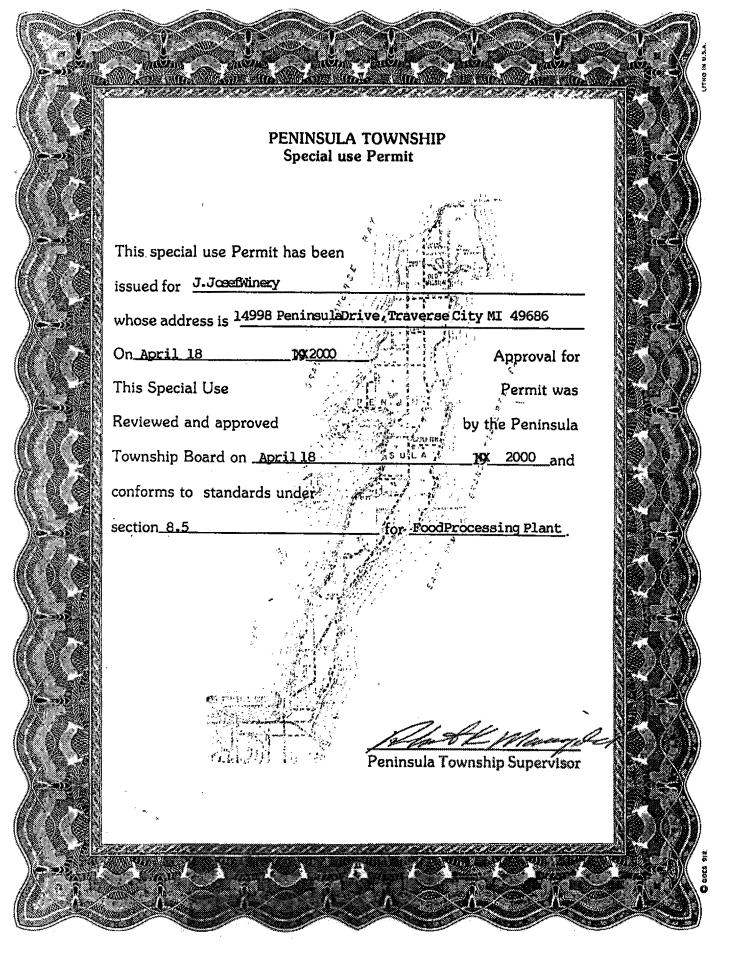
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PROTECT THE PENINSULA, Intervenor-Defendant.

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EXHIBIT 17

Case 1:20-cv-01008-PLM-RSK ECF No. 459-17, PageID.16425 Filed 10/06/23 Page 2 of 10



PENINSULA TOWNSHIP Special Use Permit No. 73

FINDINGS OF FACT

The Peninsula Township Board has reviewed the application of J. Josef Winery, Jack & Paula Seguin, 14998 Peninsula Drive, Traverse City, Michigan 49686 for Special Use Permit No.73 for Food Processing Plant to be located at 14998 Peninsula Drive, in Section 22, T29N; R10W, Peninsula Township, Grand Traverse County, and recommends approval based on the following Findings:

Section 8.5 Food Processing Plants in A-1 Districts:

Section 8.5.2 Required Information: The following information shall be submitted as a basis for judging the suitability of the proposed operation:

A site plan of the property showing the location of all present and proposed buildings, drives, parking areas, waste disposal fields, landscaping, plant materials, screening fences or walls, and other constructions features which shall be proposed.

Attached is the building and site plan for review which will be used for a Winery/ Processing Plant and proposed future Tasting Room. DEQ water discharge exemption permit is pending. A septic site plan review # 7042 by Grand Traverse County Health Dept. 6-24-99.

2. A description of the operations proposed in sufficient detail to indicate the effect of those operations in producing traffic congestion, noise, glare, air pollution, fire or safety hazards, or the emissions of any potentially harmful or obnoxious matter or radiation.

Day to day operations for the J. Josef Winery are outlined as follows. As fruit is being harvested, tractors or trucks will be delivering to the winery. This may include 3-5 deliveries per day for 2-7 days. The fruit is then crushed and pressed and pumped directly to fermenting tanks inside the winery. The juice is then inoculated with a yeast culture and fermentation will continue for 1-2 weeks. Following the finish of fermentation there is a time period of 3-4 months during which the wine is settled, filtered, and prepared for bottling. The bottling operation will consist of a small tank and pump, a filling station and a cork inserter. All this equipment as well as that used during harvest will be electrically operated; therefore no fumes will be emitted. The expected effects of the operations will not pose a problem for adjacent properties. Oversized vehicles will be directed to the overflow parking area. Parking for buses is not provided and buses will be discouraged at the winery. There are no retail sales taking place, however if allowed in the future, application for retail sales is anticipated.

3 Engineering and Architectural Plans for:

a. The treatment and disposal of sewage and industrial waste or unusable byproducts.

The disposal of sewage will be under the regulation of Grand Traverse County Health Department. Solid waste in the form of fruit pulp will be used as a natural fertilizer for the adjoining vineyard and spread accordingly. A septic site plan completed by Grand Traverse County Health Dept. on 6-24-99 notes that site is suitable for an on site septic system. Attachment pages # 1-5 shows site survey and septic system design for the winery.

NO The proposed handling of any excess traffic congestion, noise, glare, air pollution, b. water pollution, fire or safety hazards, emission of potentially harmful or obnoxious matter or radiation.

The Winery will not produce excess traffic, noise, glare, air pollution, water pollution, fire or safety hazards, or emission of potentially harmful or obnoxious matter or radiation. There is an overflow-parking area that prevents parking on the roadway. Signage will be Hudden with a stand provided to direct vehicles to the parking area. The parking area is crushed stone with landscape railroad ties identifying parking spaces. Handicap parking is provided.

4. The proposed number of shifts to be worked and the maximum number of employees of each shift.

There will be a maximum of five (5) employees (owners / family) on the site at any one time during the processing season. Most other times there will be a maximum of two (2) employees on site. There is no proposed shift work. The winery operator (owner) has a residence on the property and will also work at the winery. Employees (owner/ family members) will park at residence or at south building entrance.

Section 8.1.3 General Standards: The Township Board shall review each application for 1. the purpose of determining that each proposed use meets the following stands, and in addition, shall find adequate evidence that each use on the proposed location will:

a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

The building is a 38' x 75' bermed structure with 5-foot cement bermed walls and 5 foot exposed sidewalls. It will be used according to the site plan.

b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community s a whole.

The project is a newly constructed bermed building. The operation will primarily take place within an enclosed building. An electric de-stemmer and water bladder grape press will be used outdoors during the harvest season.

c. Be served adequately by essential facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools. The project will meet the conditions of State and Federal licenses for a Winery in addition to the Health Department requirements for sewage disposal.

d. Not create excessive additional requirements at public cost for public facilities and services. Additional public facilities and services will not be required.

e. Not involve uses, activities, processes, material, and equipment, or conditions or operation that will be detrimental to any person, property, or the general welfare by fumes, glare or odors.

The proposed uses as shown on the site plan will comply with the above concerns.

2. **Specific Requirements**: In reviewing an impact assessment and site plan, the Township board and the Planning Commission shall consider the following standards:

a. That the applicant may legally apply for site plan review. The applicants own the property on which the use is proposed. Deed recorded on 4-1-96 Liber # 1096 page # 274.

b. That all required information has been provided. The application, site plan, and floor plan contain the required information.

c. That the proposed development conforms to all regulations of the zoning district in which it is located.

The proposed development will conform to all regulations of the zoning district in which the Special Use Permit is required. The lot size and setbacks meet the requirements of the ordinance.

The parcel subject to the Special Use Permit is 5 acres of a larger parcel and the set backs are as follows:

Front yard: 251 feet Side yard: 86 feet Rear yard: 255 feet

d. That the plan meets the requirement of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services.

Project plans will be submitted to Fire Chief Rich VanderMey for review. Prior to use of the building a report of inspection will be filed with the zoning administrator.

e. That the plan meets the standards of other governmental agencies where applicable and that the approval of the agencies has been obtained and assured.

The approval of the Health Department for sewage and water disposal, water supply, State and Federal Licenses for a Winery and Juice Bottling Plant will be on file with the Zoning Administrator. Health Department septic site inspection was done 6-24-99.

f. That the natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at site per se.

The site plan shows proposed building and land use plans. The five (5) acre parcel, measuring 544.5 feet deep by 400 feet wide, where the processing plant is located, is identified on the site plan.

g. That the proposed development properly respects floodways and flood plains on or in the vicinity of the subject property

No floodways or flood plains are on the property.

h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development win either be undisturbed or modified in an acceptable manner.

There is completed excavation according to the site plan and site survey dated 6-24-99 indicates that soils are suitable for proposed use.

i. That the proposed development will not cause soil erosion or sedimentation problems. The area is level and no additional construction is planned that would cause soil erosion or sedimentation problems.

j. That the drainage plan for the proposed development is adequate to handle anticipated storm runoff onto neighboring property or overloading of watercourses in the area.

The drainage of the project will be directed towards two (2) retention ponds located on site.

k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

Grading and filling have taken place and have not affected the adjacent or neighboring properties.

1. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

Building is located at lowest elevation on the site with no orchards or vineyards located at a lower elevation. No disruption of the necessary air drainage systems is anticipated.

m. That phases of development are in a logical sequence, so that any one phase WM not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

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.

n. That the plan provide for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

No additional facilities will be required for the proposed use.

o. That landscaping, fences, or walls may be required by the Township Board and Planning commission in pursuance of the objectives of the Ordinance.

Landscaping and buffering will be in compliance with Township regulations.

p. That parking layout will not adversely affect the flow of traffic with the site, to and from adjacent streets.

anew.

Parking will be provided in an existing graveled parking area shown on the site plan.

q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

Driveway access will be from an entrance on Peninsula Drive. A driveway permit # 001756 has been applied for with the Grand Traverse County Road Commission on 2/15/00. See attached application. 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. See attached driveway permit application and site plan. r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
 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.

s. That the proposed site is in accord with the spirit and purpose of the Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

FOLLOWING A PUBLIC HEARING HELD ON APRIL 18, 2000 ON THE SPECIAL USE PERMIT REQUEST FOR FOOD PROCESSING PLANT; A MOTION TO APPROVE WAS MADE BY Devol SECONDED BY Breadon AND APPROVED BY THE FOLLOWING VOTE:

AYES Mc Manus, Grow Steaday Man NAYS: None AND DECLARED ADOPTED. Township Clerk

SUP 73 Findings -5-

Case 1:20-cv-01008-PLM-RSK ECF No. 459-17, PageID.16431 Filed 10/06/23 Page 8 of 10

SPECIAL USE PERMIT Parcel Number <u>28-11-122-010-00</u> 14998 Peninsula Drive

Permit No. 73

Approved by the Township Board, April 18,2000 Parcel Number #28-11-122-010-00 Section 22 T29N;R10W, Peninsula Township, Grand Traverse County. WHEREAS,

Application having been made by J.Josef Vineyards, Inc, Jack and Paula Sequin, 14998 Peninsula Drive, Traverse City MI 49686 for Special Use Permit for Food Processing Plant-Winery on the premises described in Exhibit B attached hereto in Section 22, Town 29N;R10W, Peninsula Township, Grand Traverse County, zoned A-1, and

Due notice having been given, public hearings having been held on said Application and the Township Board having determined that the requested Site Plan and Special Use Permit are appropriate, in the best interest of the township, and meet the specific and special standards set forth in the Zoning Ordinance as required by Section 1610 of Public act 184 of 1943, as amended, and

The Township Board having determined that certain conditions upon the use of the premises are necessary to protect the health, safety and welfare of Township residents, to uphold the spirit and purpose of the Zoning Ordinance, and to insure that the development is harmonious and appropriate,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

The Peninsula Township Board does hereby approve Special Use Permit No. 73 and the Site Plan for the use of the above-referenced property by J.Josef Vineyards, Inc subject to the requirements set forth below.

A. <u>Site Plan</u>

All development of the premises shall be in strict conformance with the Site Plan. The Applicant's application dated 2/28/00, the documents listed below, and the Site Plan dated 4/18/00 attached hereto and incorporated herein as Exhibit "A" consisting of 10 pages shall be the Site Plan for the use of said property. Said plan shall be further subject to the requirements set forth in this Special Use Permit.

The following drawings comprise the Site Plan. Name

<u>Issue Date</u>

Location Map Addendum Winery site plan Parking and Driveway Access Winery and Future Tasting Room Floor Plan Lighting and Sign Location Existing Building Uses Building Lights Location Building Elevations Floor Plan B. <u>Allowed Use</u> - Food Processing Plant - Winery and Bottled Juice.

C. <u>Findings of Fact</u>

The Findings of Fact as approved by the Township Board April 18, 2000 are incorporated herein by reference and such findings are conditions of approval of this Special Use Permit. The Special Use Permit is also subject to following additional conditions:

D. Additional Conditions

1. <u>Waste Disposal</u>

All waste disposal shall be conducted in such a manner as not to create any offensive condition upon premises adjoining the development, and as approved by the Grand Traverse County Health Department.

2. <u>Liquor Control Commission</u>

Applicant shall comply with all applicable rules of the Michigan Liquor Control Commission and Federal Bureau of Alcohol, Tobacco and Firearms.

3. <u>Retail Sales</u>

Retail sales of wine for off premises consumption is allowed, but wine tasting is not allowed on the premises.

4. Parking

Prior to requesting a land use permit for parking, Applicant shall submit to the Zoning Administrator plan including drainage, and surfacing. The plan shall conform to the requirements of the Township Zoning Ordinance, the approved site plan, and shall provide parking as follows: Parking shall be as shown on the site plan.

5. <u>Violations and Notice Requirements</u>

Any violation of these conditions shall serve as grounds for revocation of this Special Use Permit by the Township Board. In the event of any such violation, the Township shall give written notice to the Applicant at the last address furnished to the Township by the Applicant. The notice shall state that unless the violation is corrected or resolved to the satisfaction of the Township Board within 30 days from the date of the notice, then the Township Board may revoke this Special Use Permit after hearing. In the event a hearing becomes necessary, the Township Board shall establish the notice requirements and such other conditions with respect to the hearing as the Township Board may deem appropriate. After the hearing, if the Township Board revokes this Special Use Permit, then enforcement of the revocation may be made by application for appropriate relief in Grand Traverse County Circuit Court and the Township may recover all of the costs, including attorney fees, associated with or resulting from such violation or noncompliance.

6. <u>Storage</u>

During the course of construction within the project, all equipment and building materials shall be located and stored so as not to create unsightly or hazardous conditions.

7. Fees and Expenses

All fees and expenses charged to the Applicant pursuant to township ordinance shall be paid before this permit becomes effective.

8. Non-vesting

The approval of this Special Use Permit by the Peninsula Township Board shall not operate to vest in the Applicant any right to rely upon any permission given herein until compliance has been had with all stated conditions herein. The Applicant waives any claim to vested rights relating to this permit which might otherwise occur by operation of law.

9. Other Uses

Notwithstanding the provisions of Section 6.7 of the Township Zoning Ordinance, uses, other than as shown on the site plan or approved in this permit, whether permitted by right or by special use permit, shall not be carried on within the development except by amendment or other alteration of this Special Use Permit. Although it is not the intention altogether to prohibit such uses, any such proposed use must be integrated into the approved plan in a manner which is consistent with the Township Zoning Ordinance.

Robert & Mangold Robert K. Manigold, Township Supervisor

The undersigned hereby certifies that she is the Clerk for the Township of Peninsula, Grand Traverse County, Michigan and that the foregoing Special Use Permit was approved by the Peninsula Township Board on the 18th Havil 2000

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

×412 C

Lorrie DeVol, Township Clerk

The Applicant hereby acknowledges receipt of the Special Use Permit and agrees to comply with all of the terms and conditions thereof.

Applicant

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

EXHIBIT 18

Case 1:20-cv-01008-PLM-RSK ECF No. 459-18, PageID.16435 Filed 10/06/23 Page 2 of 15

Peninsula Township Application for Land Use Permit and Required Materials

* All structures must meet setbacks & all structures of 25 square fact or greater require a Land Use Dermit *

	* Au structures must meet setbacks & au structures of 25 square feet or greater require à Lana Ose Permit *
1.	Parcel Tax # 28-11- 122 - 010 - 00 . Parcel Zoning $A - /$
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 Property Owner's Name and Address MARI'G A TABONE 14998 Pen i'N SULM DR. TRAVerse City, MT Fees - \$100.00 for a new dwelling, \$75.00 for additions or other construction, Commercial based on Size. 49686
· 4.	Property Owner's Name and Address MA2'6 A TA Bove
	14998 PENINSULA DR. TRAVerse Livy, MI
5.	Fees - \$100.00 for a new dwelling, \$75.00 for additions or other construction, <u>Commercial based on Size</u> . 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. <u>10.1</u> Area of the parcel excluding road rights-of-way. Measured to the Ordinary High Water Mark for shoreline properties. b. <u>Total square footage of existing building footprint(s)</u>. (Including roof overhangs, garages, accessory structures, porches, decks & patios not flush with the ground). c. <u>3658</u> Calculated square footage of proposed building/structure footprint (see instructions on line b). d. <u>39472</u> % 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).
8.	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).
J.	Front Elevation (not greater than 11" x 17") drawn to scale.
13. 14.	 Health Department Permit for well and septic system (unless connected to a central sewer/water). Soil & Erosion Permit from G.T. County Soil Erosion - Sedimentation Office. Driveway Permit from County Road Commission or M.D.O.T. Written approval for construction from the Association's Architectural Committee (if applicable).
Th	e 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).
d9	A(1) $dx = 1/2 a l l l$
An	plicant Signature Date
P	

D<u>COTT A. WRIGHT</u> Applicant Name (Printed) BUNKOLDER CONSMULTION

4

231-941-7180

Phone Number

Case 1:20-cv-01008-PLM-RSK ECF No. 459-18, PageID.16436 Filed 10/06/23 Page 3 of 15
PENINSULA TOWNSHIP APPLICATION FOR FARM PROCESSING FACILITY NO
PARCEL NUMBER: 28-11-122-010-00 PARCEL ADDRESS 14916 Peninsula Drive
APPLICANT NAME AND ADDRESS: TABONE VINCYARDS, LLC
<u>14998 Peninsula DR. TRAVelse Citt, ME. 49686</u> <u>APPLICATION REQUIREMENTS:</u> 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: 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.
<pre>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.</pre>
 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. g. NA 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
Staff Review
Application Complete Date Check #/Date
Staff Signature

*

	DR TRAVERSE CITY, MI 49686	(Property Address)		
Parcel Number: 11-122-010-00				
	~		RY ANN & TABONE MARIO	
		y Information ntial Building Summary	> Assessed Value: \$2	45,300 Taxable Value: \$231,693
		r Built: 1944 - Bedroc Baths: 3 - Half Ba		
	2002 · · · · · · · · · · · · · · · · · ·	Feet: 2,688 - Acres:		
· · · · · ·				
		۰.		
Item 1 of 28 26 Im	ages / 2 Sketches			
Owner and Taxpayer	Information			
Owner	TABONE MARY ANN & TAB	ONETayanyar	TABONE MARY ANN & TABONE	
Owner	MARIO	Oncraspayer	MARIO	•
	379 RED RYDER DR PLYMOUTH, MI 48170		379 RED RYDER DR PLYMOUTH, MI 48170	
		14	(V+/V	
General Information	for Tax Year 2017			
7.1.K 1.1.11. WW 1				
Property Class School District	100 AGRICULTURAL District 28010	Unit Assessed Value	11 PENINSULA TOWNSHIP	
MAP #	29102210	Assessed Value	\$245,300 \$231,693	
USER NUM IDX	104	State Equalized Value	\$245,300	· ·
USER ALPHA 1 USER ALPHA 3	Not Available Not Available	Date of Last Name Chan Notes	nge Not Available Not Available	
Historical District	Not Available	Census Block Group	Not Available	· · · · ·
	Not Available			
-	Exemption Information	unin na an an an Angelan a t		د اور او معادی در معاد او در معاد رو معاد می در معاد او در معاد
Principal Residence		······	luna 1et	Fin
Principal Residence i Homestead Date Qualified Agricultural	Exemption Information		June 1st	Fin: 100.0000 9
Principal Residence	Exemption Information		June 1st	Fin 100.0000 5
Principal Residence i Homestead Date Qualified Agricultural	Exemption Information		· · · · · · · · · · · · · · · · · · ·	
Principal Residence i Homestead Date Qualified Agricultural 2016	Exemption Information	MBOR Assessed	· · · · · · · · · · · · · · · · · · ·	
Principal Residence i Homestead Date Qualified Agricultural 2016 Previous Year Inform	Exemption Information	MBOR Assessed \$245,300	100.0000 %	100.0000 9
Principal Residence A Homestead Date Qualified Agricultural 2016 Previous Year Inform Year	Exemption Information	l	100.0000 %	100.0000 S Final Taxak
Principal Residence i Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016	Exemption Information	\$245,300	100.0000 % Final SEV \$245,300	100.0000 9 Final Taxak \$231,69
Principal Residence i Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015	Exemption Information	\$245,300 \$308,700	100.0000 % Final SEV \$245,300 \$308,700	100.0000 9 Final Taxak \$231,69 \$308,70
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Principal Residence i Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015 2014 Land Information Zoning Code Land Value	Exemption Information 10/02/2003 nation A1 \$280,800 No No Not Available	\$245,300 \$308,700 \$319,200 Total Acres Land Improvements Renaissance Zone Expira Date Mortgage Code	100.0000 % Final SEV \$245,300 \$308,700 \$319,200 18.000 \$3,294 ation Not Available Not Available	100.0000 9 Final Taxak \$231,69 \$308,70
Principal Residence Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015 2014 Land Information Zoning Code Land Value Renaissance Zone	Exemption Information 10/02/2003 nation A1 \$280,800 No Not Available	\$245,300 \$308,700 \$319,200 Total Acres Land Improvements Renaissance Zone Expira Date	100.0000 % Final SEV \$245,300 \$308,700 \$319,200 18.000 \$3,294 ation Not Available Not Available	100.0000 9 Final Taxak \$231,69 \$308,70
Principal Residence Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015 2014 Land Information Zoning Code Land Value Renaissance Zone ECF Neighborhood	Exemption Information 10/02/2003 nation A1 \$280,800 No Not Available	\$245,300 \$308,700 \$319,200 Total Acres Land Improvements Renaissance Zone Expira Date Mortgage Code Neighborhood Enterpris	100.0000 % Final SEV \$245,300 \$308,700 \$319,200 18.000 \$3,294 ation Not Available Not Available	100.0000 9 Final Taxak \$231,69 \$308,70
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Principal Residence Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015 2014 Land Information Zoning Code Land Value Renaissance Zone ECF Neighborhood Lot Dimensions/Comment	Exemption Information 10/02/2003 nation A1 \$280,800 No Not Available	\$245,300 \$308,700 \$319,200 Total Acres Land Improvements Renaissance Zone Expira Date Mortgage Code Neighborhood Enterpris Zone	100.0000 % Final SEV \$245,300 \$308,700 \$319,200 18.000 \$3,294 ation Not Available Not Available	100.0000 9 Final Taxak \$231,69 \$308,70 \$319,20
Principal Residence Homestead Date Qualified Agricultural 2016 Previous Year Inform Year 2016 2015 2014 Land Information Zoning Code Land Value Renaissance Zone ECF Neighborhood Lot Dimensions/Comment	Exemption Information 10/02/2003 nation A1 \$280,800 No Not Available	\$245,300 \$308,700 \$319,200 Total Acres Land Improvements Renaissance Zone Expira Date Mortgage Code Neighborhood Enterpris Zone Frontage	100.0000 % Final SEV \$245,300 \$308,700 \$319,200 18.000 \$3,294 ation Not Available Not Available	100.0000 9 Final Taxak \$231,69 \$308,70 \$319,20

4/25/2016 Case 1:20-cv-01008-PLM-RSK ECF No. 459-18, Page ID 16438 Filed 10/06/23 Page 5 of 15 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

Acreage of Parent 0.00 0 Split Number **Parent Parcel**

Not Available

Unallocated Div.s Transferred 0 **Rights Were Transferred Courtesy Split**

Not Available 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	2	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 vrs

Building Information - 1968 sq ft 1 STY (Residential)

General

Floor Area	1,968 sg 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		Heated
1 Story	Crawl Space	Siding	816 sợ ft	1
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

2

1

3 Fixture Bath

Built-In Information

Appliance Allow.

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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	the states	
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		

General

Floor Area	720 sg ft	Estimated TCV	\$52,143
Garage Area	0 sq ft	Basement Area	0 sq ft
Foundation Size	720 sq ft	haar na haar - 9 i ay	a the second of the second
Year Built	Not Available	Year Remodeled	Not Available
Occupancy	Single Family	Class	Not Available
Effective Age	5 yrs	Tri-Lev e l	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
Redrooms	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

Built-In Information

Standard Range 1

Building Information - 1536 sq ft Utility Building (Agricultural)

160 ft

1992

100%

74%

100%

1

Туре
Floor Area
Perimeter
Year Built
Percent Complete
Physical Percent Good
Economic Percent Good

Utility Building 1,536 sq ft

Class **Estimated TCV** Height Ouality Heat **Functional Percent Good Effective Age**

Not Available \$10,149 10 ft Average No Heating/Cooling 100% 13 yrs

Building Information - 195 sq ft Greenhouse, Framed (Agricultural)

Type Floor Area Perimeter 56 ft Year Built 1992 **Percent Complete Physical Percent Good** 20% **Economic Percent Good**

Greenhouse, Framed 195 sq ft 100% 100%

Estimated TCV Height Quality Heat **Functional Percent Good Effective Age**

Class

Not Available \$484 10 ft Average No Heating/Cooling 100% 60 yrs

Building Information - 120 sq ft Utility Building (Agricultural)

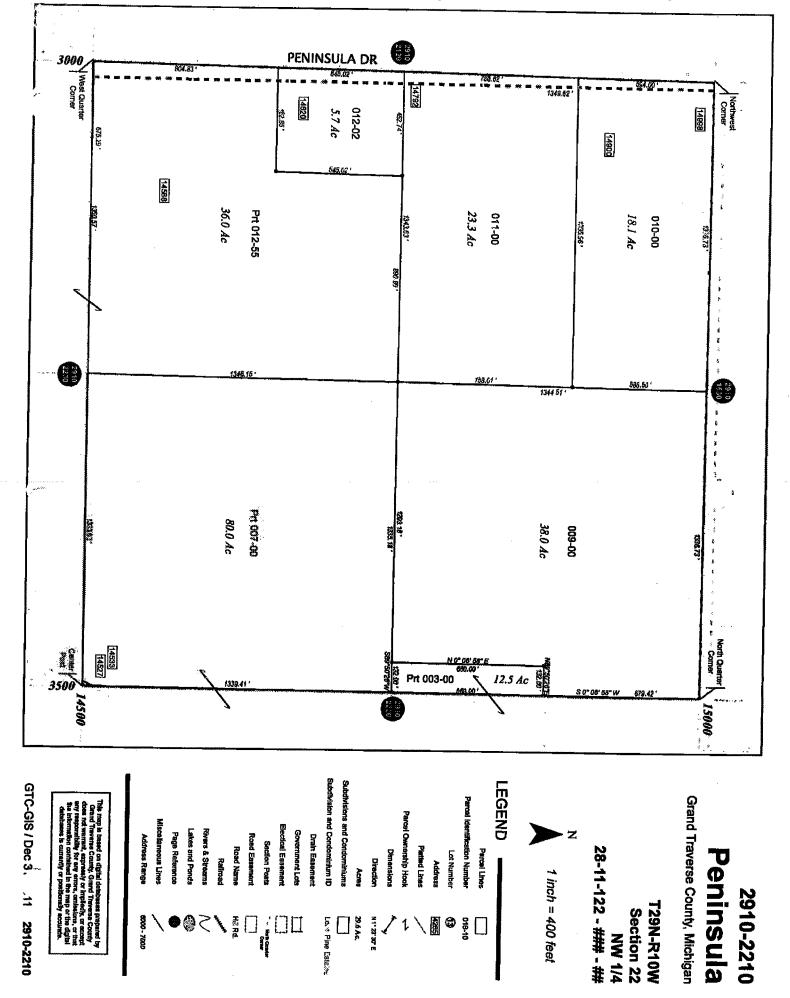
Case 1:20-cv-01008-PLM-RSK ECF No. 459-18, Page ID.16440 Filed 10/06/23 Page 7 of 15

Ę.,

Туре	Utility Building	Class	Not Available
Floor Area	120 sq ft	Estimated TCV	\$1,170
Perimeter	46 ft	Height	10 ft
Year Built	Not Available	Quality	Average
Percent Complete	100%	Heat	Wall/Floor Furnace
Physical Percent Good	70%	Functional Percent Good	100%
Economic Percent Good	100%	Effective Age	15 yrs

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PENINSULA DR TRAVER	RSE CITY, MI 49686 (Prop	erty Address)		
Parcel Number: 11-115-025-05	Duanant	A CHARLEN TARONIC MARNY AN	161	W
;	-	y Owner: TABONE MARY AN ry Information	NIN	
		sed Value: \$97,700 Taxable Value: \$77,7	753	
Error Loading I	mana			
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Item 1 of 4 4 Image	s / 0 Sketches			
*				
Owner and Taxpayer Inf	ormation	· ·		
	, k v 3			
Owner	TABONE MARY ANN	Taxpayer	TABONE MARY ANN	
	379 RED RYDER DR PLYMOUTH, MI 48170		379 RED RYDER DR PLYMOUTH, MI 48170	
General Information for	Tax Year 2017			
· · · · · · · · · · · · · · · · · · ·	······		-	
Property Class	100 AGRICULTURAL	Unit	11 PENINSULA TOWNSHIP	
School District	District 28010	Assessed Value	\$97,700	
MAP # USER NUM IDX	29101530 104	Taxable Value State Equalized Value	\$77,753 \$97,700	
USER ALPHA 1	Not Available	Date of Last Name Change	Not Available	· · ·
USER ALPHA 3	Not Available	Notes	Not Available	
Historical District	Not Available	Census Block Group	Not Available	×
USER ALPHA 2	Not Available	ж ,		
Principal Residence Exe	emption Information			
Homestead Date	11/01/2004			
Qualified Agricultural		No	June 1st	Fi
2016	ан дайрандун ал, дар нарадана жи та нулан та түстөн байлан алдаган та түстөн байлан алдаган түстөн түстөн түстө		100.0000 %	100.0000
Previous Year Informat	lon	ł	1	
Year		MBOR Assessed	Final SEV	Final Tax
2016		\$97,700	\$97,700	\$77,
2015		\$86,100	\$86,100	\$77,
2014		\$80,900	\$80,900	\$76,
Land Information				
Zoning Code	۸1	Total Acres	12 000	
Zoning Code Land Value	A1 \$195,364	Land Improvements	12.000 \$0	
Renaissance Zone	No	Renaissance Zone Expiration		
men Natuli La da sal	Not Available	Date	NI-4 Available	
ECF Neighborhood Lot Dimensions/Comments		Mortgage Code Neighborhood Ent er prise Zone	Not Available No	
	an a			_
Lot(s)		Frontage		De
No lots found.				
		Total Frontage: 0.00 ft		Average Depth: 0.0
Legal Description				
	129N-RIUW, DESC AS BEG AT S	5W COR SEC 15; TH N 00 DEG W, 584		
	G W. 823,24 FT TO POR SUBI	TO A 43 FT WIDE EASEMENT AND 60	FT RADIUS CUL-DE-SAC FO	R INGRESS AND EGRESS SUBLITC

\$0.00 QC

\$0.00¹

2006R-16914

Land Division Act Information

08/09/2006

Comments			PLETED 11/01/2004 SALLY LE			
						VISION RIGHTSFO
	FIVE (5) RESULTI	NG PARCELS 115-0	25-05 HAS ZERO (0) DIVISIO	N RIGHTS PER DEED	2004R-17911	
Date of Last Split/Comb	ine 09/10/2004	Nu	mber of Splits Left	0		
Date Form Filed	Not Available	Un	allocated Div.s of Parent	0		
Date Created	09/10/2004	Un	allocated Div.s Transferred	0		
Acreage of Parent	26.00	Rig	hts Were Transferred	Not Available		
				A A		
Split Number	0	Col	urtesy Split	Not Available		
· · · · · · · · · · · · · · · · · · ·	0 11-115-025-03	Co	urtesy Split	Not Available		
· · · · · · · · · · · · · · · · · · ·	0 11-115-025-03	Con	urtesy Split	Not Available		
Parent Parcel	0 11-115-025-03	Con	urtesy Split	Not Available		
· · · · · · · · · · · · · · · · · · ·	0 11-115-025-03	Co:	irtesy Split	Not Available		
Parent Parcel		Cor e Instrument	1	irantee	Terms of Sale	Liber/Page

MICHAEL J 07/24/2006 \$1.00 \$1.00 QC TABONE MARIO TABONE MARY ANN INVALID SALE 2006R-15527

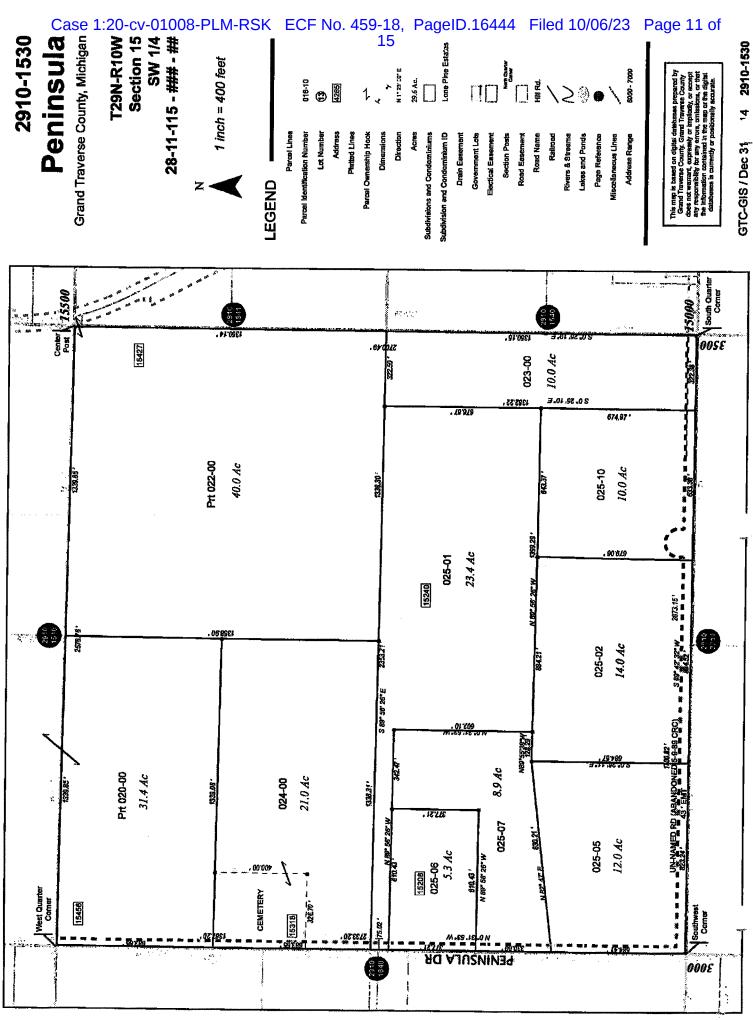
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TABONE MARY ANN

TABONE MARIO A &

INVALID SALE

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19521 CENTER RD TRAN	VERSE CITY, MI 49686 (Prope	erty Address)	•	
Parcel Number: 11-227-009-53	Property O	wner: TABONE MARIO A		
	Summary In		• • • • • • • • • • • • •	x ,, , v
13° H0 100 100 100 100 100 100 100	> Assessed V	alue: \$128,300 Taxable Value: \$71	1,689	
L				
Item 1 of 2 0 Images	/ 2 Sketches			
Owner and Taxpayer Info	ormation			
Owner	TABONE MARIO A	Taxpayer	TABONE MARIO A	
••••••	379 RED RYDER DR	i mipujoi	379 RED RYDER DR	
	PLYMOUTH, MI 48170		PLYMOUTH, MI 48170	
General Information for	Tay Vear 2017		·	
General Information for				
Property Class	160_AG_CONSV'N_RESTRICTED	Unit	11 PENINSULA TOWNSHIP	
School District MAP #	District 28010	Assessed Value	\$128,300	
USER NUM IDX	30102700 0	Taxable Value State Equalized Value	\$71,689 \$128,300	
USER ALPHA 1 USER ALPHA 3	Not Available Not Available	Date of Last Name Change Notes	Not Available Not Available	×
Historical District	Not Available	Census Block Group	Not Available	
USER ALPHA 2	Not Available			
Principal Residence Exer	mption Information			
· · · · · · · · · · · · · · · · · · ·			· · · ·	
Homestead Date	11/05/2013	ç		
Qualified Agricultural			June 1st	Final
2016			100.0000 %	100.0000 %
Previous Year Informati	on			
Year	Μ	BOR Assessed	Final SEV	Final Taxabl
2016		\$128,300	\$128,300	\$71,689
2015	· · ·	\$110,600	\$110,600	\$71,475
2014		\$101,700	\$101,700	\$70,350
Land Information				*****
Zoning Code	A1	Total Acres	21.230	
Land Value Renaissance Zone	\$243,390 No	Land Improvements Renaissance Zone Expiration	\$1,666 Not Available	
		Date		
ECF Neighborhood Lot Dimensions/Comments		Mortgage Code Neighborhood Enterpri se Zone	Not Available No	
Lot(s)		Frontage		Deptl
No lots found.				
No lots lound.	······	Fotal Frontage: 0.00 ft		Average Depth: 0.00 ft
Legal Description				

https://accessmygov.com/SiteSearch/SiteSearchDetails?SearchFocus=All+Records&SearchCategory=Parcel+Number&SearchText=11-227-009-53&uid=221... 1/2

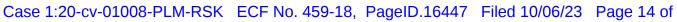
Case 1:20-cv-01008-PLM-RSK	ECF No. 459-18, Page ID. 16446 Record Details Peninsula Township AccessMyGov.	Filed 10/06/23	Page 13 of
	· · · · · · · · · · · · · · · · · · ·		

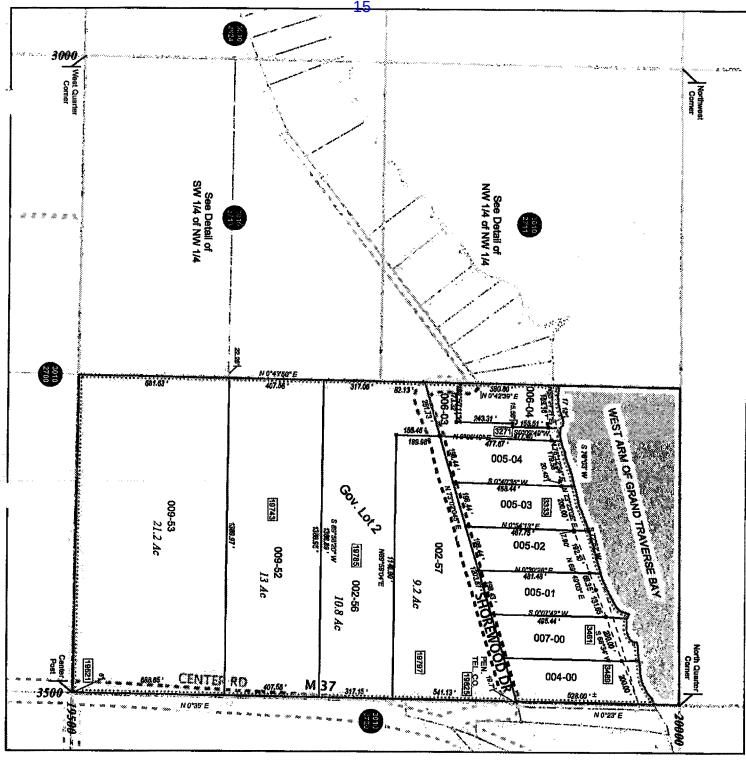
Land Division Act Information

	00		•	LETED BY SALLYLDA # 19 53, 11-227-009-54 LAND [••	RECORDED AT 2013R	• •
Date of Last Split/Co	mbine 11	/05/2013	Num	nber of Splits Left	0		
Date Form Filed		ot Available		located Div.s of Parent	0		
Date Created	11	/05/2013	101 x 11 11 1	located Div.s Transferre	d 0		
Acreage of Parent	91	.84	Righ	nts Were Transferred	Not Available		
Split Number	19	-	Cou	rtesy Split	Not Available		
Parent Parc e l	11	-227-009-55	*ee				
ale 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-0131
Туре	Ec	uipment Shop	Clas	s	Not Available	· · · · · · · · · · · · · · · · · · ·	
Building Information Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Goo	Ec 1, 12 15 10 00 76	n fan er stande an e	Clas Estin Heig Qua Hea Fund	s mated TCV jht lity	Not Available \$11,069 12 ft Average No Heating/Cooling 100% 12 yrs		
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go	Ec 1, 14 16 10 00 76 00 10	uipment Shop 200 sq ft 0 ft 97 0% % 0%	Clas Esti Heig Qua Hea Fun Effe	s mated TCV yht lity t ctional Percent Good ctive Age	\$11,069 12 ft Average No Heating/Cooling 100%		· · · · · · · · · · · · · · · · · · ·
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go Building Informatio	Ec 1, 12 13 10 10 00 76 76 00 10 00 00 10 00 10 00 10 00 10 00 00	uipment Shop 200 sq ft 0 ft 97 0% 7% 0% ft Utility Buildir ility Building	Class Estin Heig Qua Hea Funn Effe ng (Agricultur Class	s mated TCV jht lity t ctional Percent Good ctive Age ral)	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available		· · · · · · · · · · · · · · · · · · ·
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go Economic Percent Go Huilding Informatio Floor Area	Ec 1, 12 16 10 76 500 10 500 10 500 10 500 10 50 50 50 50 50 50 50 50 50 50 50 50 50	uipment Shop 200 sq ft 0 ft 97 0% 6 0% ft Utility Buildir ility Building sq ft	Class Estin Heig Qua Hea Funn Effe ng (Agricultur Class Estin	s mated TCV ght lity t ctional Percent Good ctive Age ral)	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available \$535		· · · · · · · · · · · · · · · · · · ·
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go Building Informatio Type Floor Area Perimeter	Ec 1, 12 13 10 10 76 500 10 500 10 50 10 10 10 10 10 10 10 10 10 1	uipment Shop 200 sq ft 0 ft 97 0% 7 0% ft Utility Buildir Ility Building sq ft	Class Estin Heig Qua Hea Funn Effe ng (Agricultur Class Estin Heig	s mated TCV ght t ctional Percent Good ctive Age ral)	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available \$535 9 ft		
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go Building Informatio Building Informatio Floor Area Perimeter Year Built	Ec 1, 12 13 10 10 76 50 10 10 50 10 50 10 50 10 80 80 80 80 80 80 80 80 80 81 81 81 81 81 81 81 81 81 81 81 81 81	uipment Shop 200 sq ft 0 ft 97 0% % 0% ft Utility Buildir ility Building sq ft ft	Clas Esti Heig Qua Hea Fun Effe Ig (Agricultu Clas Esti Heig Qua	s mated TCV pht lity t ctional Percent Good ctive Age ral) s mated TCV pht lity	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available \$535 9 ft Low Cost		· · · · · · · · · · · · · · · · · · ·
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo Economic Percent Go Building Informatio Building Informatio Floor Area Perimeter Year Built Percent Complete	Ec 1, 12 16 00 76 000 10 00 10 00 10 80 sq 16 88 36 19 10	uipment Shop 200 sq ft 0 ft 97 0% % 0% ft Utility Building 1 sq ft .ft 84 0%	Clas Esti Heig Qua Hea Fun Effe ng (Agricultu Clas Esti Heig Qua Hea	s mated TCV pht lity t ctional Percent Good ctive Age ral) s mated TCV pht lity t	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available \$535 9 ft Low Cost No Heating/Cooling		
Type Floor Area Perimeter Year Built Percent Complete Physical Percent Goo	Ec 1, 12 16 16 76 50 10 50 10 50 10 88 36 36 19 10 50 10 70	uipment Shop 200 sq ft 0 ft 97 0% % 0% ft Utility Buildir ility Building sq ft ft	Clas Esti Heig Qua Hea Fun Effe ng (Agricultu Clas Esti Heig Qua Hea Fun	s mated TCV pht lity t ctional Percent Good ctive Age ral) s mated TCV pht lity	\$11,069 12 ft Average No Heating/Cooling 100% 12 yrs Not Available \$535 9 ft Low Cost		

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GTC-GIS / Dec 31	This map is based on digital detail Oriend Travense County, Grand Goes not warren, acpreasity ori any responsibility for any encourt, the information contained in the adatabases is currently or positi	Direction Acres Subdivisions and Condominiums Drain Easement Government Lob Electical Easement Section Posts Ruad Easement Road Basement Road Rained Rivers & Streams Lakes and Ponds Page Reference Mitscellaneous Lines Address Range	Parcei Lines Parcei Identification Number Lot Number Address Patcei Ownership Hook Dimensions	28-11-22	3 Pen Grand Traverse Co
14 3010-2710	bases prepared by Traveras County Traveras County piledly, or one ormissions, or one ormissions, or the digitst map or the digitst onally accurate.	29.6 Ac. 29.6 Ac. Hill Rd.	, 1 1288 , 1 12888 , 1 128888 , 1 12888 , 1 128888 , 1 128888 , 1 12888 , 1 12888 , 1 12888 , 1 12888 , 1 12888 , 1 128888 , 1 1288888 , 1 128888 , 1 128888 , 1 128888 , 1 128888 , 1 1288888 , 1 12888888 , 1 1288888 , 1 128888 , 1 1288888 , 1 12888888 , 1 1288888 , 1 12888888 , 1 1288888 , 1 12888888 , 1 12888888 , 1 12888888 , 1 128888888 , 1 128888888888888888888888888888888888	227 - ### - ## ch = 400 feet	010-2710 IINSULA ounty, Michigan Gov Lot 2,3 T30N-R10W Section 27 NW 1/4

15

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,

Min

Mario Tabone

Mary Ann Tabone

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

EXHIBIT 19

Claire Schoolmaster

From: Sent:	Claire Schoolmaster <zoning@peninsulatownship.com> Wednesday, April 27, 2016 3:29 PM</zoning@peninsulatownship.com>
То:	'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 detials (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 <u>brianb@gfa.tc</u> 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**.
- Thank you for your submittal regarding the 2nd 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.

1

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

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

EXHIBIT 20

Case 1:20-cv-01008-PLM-RSK ECF No. 459-20, PageID.16453 Filed 10/06/23 Page 2 of 2

Claire Schoolmaster

From: Sent: To: Cc: Subject; Mario Tabone <mario_tabone@hotmail.com> Tuesday, June 21, 2016 3:30 PM Michelle Reardon; 'Claire Schoolmaster' Tabone Orchards 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

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Case No.: 1:20-cv-1008-PLM Honorable Paul L. Maloney Magistrate Judge Ray S. Kent

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant,

And

PROTECT THE PENINSULA, Intervenor-Defendant.

BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S MOTION TO DISMISS PLAINTIFFS' TWO LADS, LLC, BLACK STAR FARMS, LLC AND TABONE VINEYARDS, LLC'S CLAIMS UNDER RULE 12(b)(1) BASED ON LACK OF SUBJECT MATTER JURISDICTION

EXHIBIT 21

Case 1:20-cv-01008-PLM-RSK ECF No. 459-21, PageID.16455 Filed 10/06/23 Page 2 of 2

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.) (See Errail) Proposed use of structure Hinery Farm Processing & TAS Drug Room
3.	Proposed use of structure Windry FARM PROCESSING & TASTING ROOM
4.	Property Owner's Name and Address MARIOA TABONE Food Processing Plant 14998 Peninsula DR. TRAVerse City, MI
5.	Fees - \$100.00 for a new dwelling, \$75.00 for additions or other construction, <u>Commercial based on Size</u> . 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. <u>10.1</u> Area of the parcel excluding road rights-of-way. Measured to the Ordinary High Water Mark for shoreline properties. b. <u>Total square footage of existing building footprint(s).</u> (Including roof overhangs, garages, accessory structures, porches, decks & patios not flush with the ground). c. <u>3658</u> Calculated square footage of proposed building/structure footprint (see instructions on line b). d. <u>3942</u> % 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).
<i>\$</i> .	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).
у	Front Elevation (not greater than 11" x 17") drawn to scale.
13 14	Health Department Permit for well and septic system (unless connected to a central sewer/water). Soil & Erosion Permit from G.T. County Soil Erosion - Sedimentation Office. Driveway Permit from County Road Commission or M.D.O.T. Written approval for construction from the Association's Architectural Committee (if applicable).
	 <u>e following may be required to receive a permit:</u> Property boundaries to be located and marked by a registered land surveyor (if property corners are not marked). <u>(Include Ordinary High Water Mark and Flood Plane Elevation).</u> 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

 $\frac{\int_{C_0} \overline{\Pi} A. WRight}{\text{Applicant Name (Printed)}}$

BUNCHOLDER CONSMULTION

Date

231-941-7180 Phone Number

29/16