

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal  
Corporation,

Honorable Paul L. Maloney  
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

ORAL ARGUMENT REQUESTED

Intervenor-Defendant.

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

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## **I.** **INTRODUCTION**

The Wineries move for partial summary judgment on Counts I, II, IV and X<sup>1</sup> of their First Amended Complaint<sup>2</sup> and ask the Court to declare unconstitutional Sections 6.7.2(19)(b)(1)(v), 6.7.2(19)(b)(6), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(a), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) of Peninsula Township's Ordinances under the First Amendment, Fifth Amendment and/or Fourteenth Amendment<sup>3</sup> and enjoin further enforcement of the Ordinances.<sup>4</sup>

## **II.** **BACKGROUND FACTS**

### **A. Prior Rulings.**

This Court ruled on the issues presented in this Motion on June 2, 2022. (ECF 162.) Following PTP's intervention, portions of that Order were set aside to allow PTP to make certain arguments while prohibiting the Township from re-arguing constitutional issues. (ECF 301; PageID.10702-03, ECF No. 319, PageID.11890, ECF 303, PageID.10838.)<sup>5</sup> PTP's involvement should have no effect on this Court reinstating its prior decision.

### **B. The Purpose of the Ordinances.**

Peninsula Township was ordered to identify the governmental interests underlying the

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<sup>1</sup> At this time the Wineries do not move for summary judgment on Count VII, Regulatory Taking. Once this Court rules on the Wineries Preemption Summary Judgment motion and determines the Wineries' property rights, the Wineries will present this issue at trial.

<sup>2</sup> This Court previously granted the Wineries summary judgment on Counts IV, V and VI. (ECF 162.)

<sup>3</sup> The Wineries have separately moved for summary judgment on Counts VIII, IX and X. (ECF 333-334.)

<sup>4</sup> The Wineries have also moved for summary judgment on PTP and the Township's Affirmative Defenses. (ECF 439-42.)

<sup>5</sup> This Court did not grant either party summary judgment on the issue of content-based speech so the Township should be allowed to respond.

Ordinances as required by *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). (ECF No. 68, PageID.3115; ECF No. 69.) The Township identified the following:

[1] preserving the agricultural production industry and providing permanent land for the same; [2] maintaining the Township's character; [3] providing economically feasible public sewer and water systems to serve a future population; [4] establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.

Exhibit 1: Rog. Resp. 7-8. "In a nutshell, these stated interests are 'to preserve the agricultural environment in the Agricultural district in the Township.'" (ECF 162, PageID.6006, citing ECF 142, PageID.4984.) PTP similarly desires the Ordinances "to preserve the agricultural character of the area." (ECF No. 304, PageID.10848.)

**C. Enforcement of the Ordinances.**

The Township has enforced the Ordinances against the Wineries. Exhibit 2: Deeren Dep., 8-9, 26, 41, 49-50, 52, 59, 64-65, 68, 72-73, 75-76, 78, 80, 82, 84, 86-88, 92, 97-98. Its practice was to impose the same restrictions upon all Wineries. Exhibit 3: Mielnik Dep., pp. 28-30; Exhibit 4: Manigold Dep., 66-69, 179-80 and Exhibit 5: Hayward Dep., 36-37.

**III.  
ARGUMENT**

This Court is well aware of the restrictions contained within the Ordinances. See ECF Nos. 135 and 162. The Wineries include the table attached as Exhibit 6 to assist the Court.

**A. Standard of Review.**

"A district court must grant summary judgment when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Hartman v. Thompson*, 931 F.3d 471, 478 (6th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)).

**B. The Ordinances Unlawfully Regulate Commercial Speech.**

This Court previously determined that the Township “failed to meet its burden under the *Central Hudson* test” and awarded the Wineries “summary judgment on their commercial speech claim as to §§ 6.7.2(19)(b)(1)(v), 6.7.2(19)(b)(6), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k).” (ECF 162, PageID.6008.) PTP’s involvement should not change this analysis.

**1. The Ordinances are unconstitutional both facially and as applied.**

“*Central Hudson* applies to both facial and as-applied challenges.” *Educational Media Co. Virginia Tech, Inc. v. Insley*, 731 F.3d 291, 298 (4th Cir. 2013). However, the type of challenge dictates the state’s burden of proof. “[A] court considering a facial challenge is to assess the constitutionality of the challenged law ‘without regard to its impact on the plaintiff asserting the facial challenge.’” *Id.* at n. 5 (quoting *Educ. Media Co. v. Swecker*, 602 F.3d 583, 588 (4th Cir.2010)). In contrast, an as-applied challenge is “based on a developed factual record and the application of a statute to a specific person....” *Id.* (quoting *Richmond Med. Ctr. for Women v. Herring*, 570 F.3d 165, 172 (4th Cir. 2009) (en banc)). In an as-applied challenge, the government must justify the challenged regulation with regard to its impact on the plaintiffs. *Id.* at 298.

As discussed below, Ordinances do not pass the *Central Hudson* test and are unconstitutional both facially and as applied.

**2. The Wineries are engaged in commercial speech.**

This Court early on determined that §§ 6.7.2(19)(b)(1)(v), 8.7.3(12)(i), and 8.7.3(12)(k), related to advertising, were restrictions on commercial speech. (ECF No. 34, PageID.1869.) Other sections also regulate commercial speech regarding the type of products a winery can sell, types of music that can be played, the size of winery retail spaces, who the Wineries may host, types of

promotions the Wineries can (or must) offer and other similar restrictions. See 6.7.2(19)(b)(6), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g) and 8.7.3(10)(u)(5)(h). This Court also determined that each of these “unquestionably regulate commercial speech.” (ECF No. 162, PageID.6008.)<sup>6</sup> However, the Court determined that 6.7.2(19)(a) and 8.7.3(10)(u)(2)(d) did not regulate commercial speech. *Id.* at PageID.6004. The Court should revisit this determination as these events are forms of agritourism which are intended to bring consumers to the winery property for the purpose of “proposing a commercial transaction:” the sale of wine.

Commercial speech encompasses “expression related solely to the economic interests of the speaker and its audience” and “speech proposing a commercial transaction.” *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 493 (1995). Commercial speech “serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system.” *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 421 (1993). “It is undisputed that commercial speech is entitled to the protection of the First Amendment.” *New York State Rest. Ass’n v. N.Y. City Bd. of Health*, 556 F.3d 114, 131 (2d Cir. 2009). “[E]ven a communication that does no more than propose a commercial transaction is entitled to the coverage of the First Amendment.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). But speech can also be commercial even if it does not propose a commercial transaction. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60 (1983). If any of the three *Bolger* factors are present the speech is likely commercial: (1) is the speech an advertisement; (2) does the speech refer to a specific product or service; and (3) does the speaker have an economic

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<sup>6</sup> The Wineries incorporate this Court’s prior decision as well as the Wineries’ prior pleadings on this issue. ECF No. 136, PageID.4727-4729, ECF NO. 14, PageID.5736-5737.

motivation for the speech. See *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 721 F.3d 264, 285 (4th Cir. 2013); *U.S. Healthcare, Inc. v. Blue Cross of Greater Phila.*, 898 F.2d 914, 933 (3d Cir. 1990)).

In *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989), the Supreme Court determined that Tupperware parties were commercial speech because they “propose a commercial transaction.” These “Tupperware parties...consist[] of demonstrating and offering products for sale to groups of 10 or more prospective buyers at gatherings assembled and hosted by one of those prospective buyers (for which the host or hostess stands to receive some bonus or reward).” *Id.* at 472. The Court concluded that “[t]here is no doubt that the AFS ‘Tupperware parties’ the students seek to hold ‘propose a commercial transaction.’” *Id.* at 473. Commercial speech is not subject to “rigid classifications” dependent on any definite set of characteristics. *Bolger*, 463 U.S. at 81, (1983) (Stevens, J., concurring). Activities which seek to “have prospects enter their stores and purchase Plaintiffs’ products...is commercial speech.” *FF Cosmetics FL Inc. v. City of Miami Beach, Florida*, 129 F. Supp. 3d 1316, 1321 (S.D. Fla. 2015).<sup>7</sup>

Section 6.7.2(19)(a) states that “[a]ctivities such as weddings, receptions and other social functions for hire are not allowed.” While it now admits the opposite, the Township previously interpreted 8.7.3(10)(u)(2)(d) as precluding weddings, wedding receptions and family reunions. This Court determined that these sections did not regulate commercial speech “because weddings themselves are not speech intended to promote a commercial transaction.” (ECF No. 162, PageID.6004.) This is likely because the Wineries’ prior argument focused too much on the word “wedding” and not enough on explaining that weddings, receptions, and social events for hire are

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<sup>7</sup> See also *Nordyke v. Santa Clara County*, 110 F.3d 707, 710 (9th Cir. 1997) (guns shows are commercial speech); *Northern Indiana Gun & Outdoor Shows, Inc. v. Hedman*, 104 F. Supp. 2d 1009 (N.D. Ind. 2000) (same).

opportunities for wineries to get potential consumers to their vineyard and they “propose a commercial transaction:” the sale of wine.

These events are agritourism which is a form of advertising. According to the State of Michigan, “Agritourism is a niche form of tourism and defines the places where agriculture and tourism connect, including any time a farming operation opens its doors to the public inviting visitors to enjoy their products and services. Agriculture and tourism are leading economic drivers in Michigan. Agritourism offers farmers a path to diversification of their businesses to include value-added products and activities, which helps them better withstand things like poor weather conditions and market fluctuations.” Exhibit 7. “Examples of agritourism include...wineries[,] on-farm weddings and events...and much more.” *Id.*<sup>8</sup>

Other states agree. Agritourism is “the practice of engaging in activities, events, and services ... to allow consumers to experience, learn about, and participate in various facets of agricultural industry.” Col. Rev. Stat. § 38-13-801.5. These activities include “[s]pecial events such as weddings, retreats, family reunions, meetings,” “festivals” and “Winery tours and tastings” as “Agritourism offers consumers unique leisure, educational and recreation experiences that they value and are willing to pay for.”<sup>9</sup> Agritourism is “attracting visitors to a farm to attend events or activities.” N.H. Rev. Stat. § 21:34-a(II)(b)(5); *see also* Ga. Code § 48-5-7.4. (“‘agritourism’ means charging admission for persons to visit, view, or participate in the operation of a farm ... or selling farm or dairy products to persons who visit such farm or dairy.”)

The Wineries are trying to attract consumers to their vineyards to sell wine. “People...want to be in the vineyard. They want to be right next to the vineyard. You could have a dining in the

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<sup>8</sup> PTP’s proposed expert agrees that farm weddings are agritourism in Michigan. Exhibit 8; p. 84.

<sup>9</sup> <https://ag.colorado.gov/markets/marketing/promotions/agritourism>

vines, you could have a wedding reception with tables, right along next to the vineyard.... They want to experience the beauty of the agriculture around us.” Exhibit 9; Fenton Dep. at 13. These agricultural experiences are the Wineries’ best form of promotion and guests book events at the wineries because they have experienced the winery first-hand at an “agricultural experience.” Exhibit 10; Fenton Dep. at 43-45. “It’s experiential advertising.” *Id.* at 46.

“The sole use of having corporate events, weddings are to make a statement and show people what [the winery] is about. It’s really only experienced best in person. Not being able to have those types of events...severely precluded us from promoting our business, precluded us from creating those lifelong memories with people that have their event here.” Exhibit 11; Dalese Dep. at 37. “[W]ord of mouth was our number one advertising tactic. So by the sheer force of not hosting these types of things we have missed out on the word of mouth advertising that comes through them.” *Id.* “[E]vents in and of themselves are marketing, right? That’s a chance to actually...promote the business, to get people to fall in love with the place, I mean that’s marketing. That side of—I guess you’d call it that commercial speech where the things you do and sell inside the place, you know, they represent marketing.” Exhibit 12; Baldyga Dep. at 59.

These winery events are agritourism and, thus, commercial speech.<sup>10</sup>

3. Peninsula Township cannot meet its burden of proof under Central Hudson and PTP cannot change this fact.

The *Central Hudson* test imposes a rigorous burden on the government to demonstrate that speech restrictions directly advance a substantial government interest and are narrowly tailored.

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<sup>10</sup> While the Wineries have argued that their events involving music are commercial speech, the Court could just as easily determine that musical events are protected free speech, as the First Amendment protects music as a form of speech. *Reed v. Village of Shorewood*, 704 F. 2d 943, 949-50 (7th Cir. 1983) (forbidding the playing of “rock and roll” music was a violation of a property owner’s free speech.); *Fact Concerts, Inc. v. City of Newport*, 626 F. 2d 1060 1st Cir. 1980) (free speech rights violated when license revoked unless the plaintiff agreed to uninvite a particular band.)

447 U.S. at 566. If the speech concerns lawful activity and is not misleading (like here), then the challenged regulation violates the First Amendment unless the government can establish that: (1) it has identified a substantial government interest; (2) the regulation “directly advances” that interest; and (3) the regulation “is no more extensive than is necessary to serve that interest.” *Id.*

The government’s evidentiary burden is not light. It must show that the regulation advances a substantial government interest “in a direct and material way” and this “is not satisfied by mere speculation or conjecture; rather, a government body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restrictions will alleviate them to a material degree.” *Rubin*, 514 U.S. at 487 (quoting *Edenfield*, 507 U.S. at 770-71). “[T]he government must come forward with some quantum of evidence, beyond its own belief in the necessity for regulation, that the harms it seeks to remedy are concrete and that its regulatory regime advances the stated goals.” *Pagan v. Fruchey*, 492 F.3d 766, 771 (6th Cir. 2007).

**4. Peninsula Township’s alleged interests are not substantial.**

In ruling last year, this Court assumed that the Township’s alleged interest in preserving agriculture was substantial. ECF No. 162, PageID.6006. The Township, however, did not meet its burden. It is insufficient to allege that agricultural land needs to be preserved without demonstrating that, at the time the ordinances were passed, there was a problem of agricultural land being lost.

An interest is “substantial” only when the government shows that a problem actually exists. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 561 (2001). Peninsula Township “must do more than simply ‘posit the existence of the disease sought to be cured.’” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994) (internal citations omitted). Evidence, “such as studies, empirical data or professional literature” are necessary “to substantiate the connection between the



government interest and the regulation at issue.” *Interstate Outdoor Advert. v. Zoning Bd. of Tp. of Cherry Hill*, 672 F. Supp. 2d 675 (D.N.J. 2009). *See also Edenfield*, 507 U.S. at 770-71; *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076, 1080 (C.D. Cal. 2000). In *Burkow*, the court considered a law which prohibited citizens from displaying for-sale signs on vehicles:

the [government] has presented no studies or even anecdotal evidence, and “not even Plaintiff’s own conduct suggests that Defendant’s concerns are justified.” Instead of demonstrating how “the harms it recites are real and that its restriction will in fact alleviate them,” Defendant employs circular reasoning to suggest that the mere act of passing the ordinance is evidence that there were “serious” problems. This is inadequate.

119 F. Supp. 2d at 1080–81 (quoting *Edenfield*, 507 U.S. at 770-71) (cleaned up). Restraints on commercial speech must be justified by evidence that was before the government at the time that the statute was adopted. *Moore v. Morales*, 63 F.3d 358, 362 (5th Cir.1995).

The Township has presented no documentary evidence demonstrating that its asserted interests are in response to real problems. None of its witnesses could testify that the harms were real. Supervisor Manigold testified that the real purpose of the Ordinances was to prevent farmland from being developed into houses. Exhibit 4, 22-25, 40-42.<sup>11</sup> Manigold conceded that the alleged interest “in a nutshell...is prohibiting farmland from becoming houses and subdivisions which would then increase traffic.” *Id.* at 48. But the Wineries are not looking to convert their farms to houses. Instead, the Wineries are trying to keep their farmland viable. The Township offered no evidence that the Wineries add to housing density,<sup>12</sup> and while cherry farms have been sold off for development, the same is not true of wineries. PTP agrees it is extremely unlikely the Winery

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<sup>11</sup> Manigold testified that sewer and water system preservation has nothing to do with wineries and only relates to houses. *Id.* at p. 39.

<sup>12</sup> The Township also cannot show the restrictions are necessary given its successful Purchase Development Rights program, started in 1994 with the stated purpose of preserving 9,200 acres; to date, 7,000 acres have been protected. Exhibit 4, 22-25.

lands will be sold for housing development even if they go bankrupt: “That is the finest agricultural land in this nation [and] someone else will come in [and] take over the operations and continue it, or it would be used for other types of agriculture.” Exhibit 13: J. Wunsch Dep. at 50.

“In light of the absence of any appropriate data, reports, or even anecdotal evidence on this issue, the Court cannot conclude that Defendant’s articulated interests are based on ‘a problem that exists in fact’ as opposed to ‘mere speculation or conjecture.’” *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, 2021 WL 3471585, \*13 (S.D. Fla. Aug. 8, 2021) (quoting *FF Cosmetics*, 866 F.3d at 1298 and *Edenfield*, 507 U.S. at 770). “While a township has the right to determine that the community should be beautiful...there are problems in and limits to aesthetic zoning, particularly when it conflicts with beauty of a different sort—free speech.” *Interstate Outdoor*, 672 F. Supp. 2d at 681 (internal quotation and citation omitted). “A municipality cannot simply assert the importance of aesthetics and ignore First Amendment protections in the name of beautification.” *Id.*

**5. The Ordinances hinder, rather than advances, any alleged government interest.**

A “commercial speech regulation ‘may not be sustained if it provides only ineffective or remote support for the government’s purpose.’” *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 505 (1996) (quoting *Cent. Hudson*, 447 U.S. at 564). “For that reason, the State bears the burden of showing not merely that its regulation will advance its interest, but also that it will do so ‘to a material degree.’” *Id.* (quoting *Edenfield*, 507 U.S. at 771). The Township could not show any connection between the Ordinances and its alleged interests, let alone that the restrictions advance those interests “to a material degree.” The Township (now, PTP) “must come forward with some quantum of evidence, beyond its own belief in the necessity of the regulation, that the harms it seeks to remedy are concrete and that its regulatory regime advances the stated goals.” *Pagan*, 492 F.3d at 771 (citing *Edenfield v. Fane*, 507 U.S. 761, 770–72, (1993)).

While PTP members fear they will be harmed without the Ordinances, their speculative fears are not enough. “Without concrete evidence of relevant complaints, the fact that some of [the citizens] may feel ‘anxious’ is woefully insufficient to demonstrate that [the Township] ‘faces real harms, which are materially palliated by the [Ordinances].’” *Aptive Environmental, LLC v. Town of Castle Rock, Colorado*, 959 F.3d 961, 996 (10th Cir. 2020).

In *Aptive*, an ordinance which imposed a curfew on commercial solicitation, rationalizing that the later the solicitation the more anxious a citizen may be. *Id.* The court determined that “Castle Rock cannot infringe on Aptive’s First Amendment interests in its commercial speech based on conjectural harms and suppositions regarding how their citizens might feel about the removal of such harms.” *Id.* The court also noted that the fact that other municipalities may have similar ordinances did not save the ordinance, because there was no assurance other ordinances were not themselves grounded in “the same sort of inadequate commonsense and anecdotal evidence as Castle Rock’s [ordinance],” and that based on Castle Rock’s showing, there was inadequate evidence the proffered harm was real. *Id.* at 995.

Here, the Township provided no evidence to show that the Ordinance is materially effective at preventing farmland from being developed into houses. Neither has PTP. The record is devoid of any reports, data or any other appropriate evidence on this issue. Due to the dearth of any supporting evidence, the Township fails to satisfy its burden. *See, e.g., Rubin*, 514 U.S. at 490 (“The Government did not offer any convincing evidence that the labeling ban has inhibited strength wars.”); *Edenfield*, 507 U.S. at 771 (“The Board has not demonstrated that, as applied in the business context, the ban on CPA solicitation advances its asserted interests in any direct and material way.”).

In *Marras v. City of Livonia*, 575 F. Supp. 2d 807, (E.D. Mich. 2008), Livonia enacted an

ordinance prohibiting parking vehicles with commercial messages. The court found that the prohibition did not further the government's stated interest because it allowed non-commercial messages. *Id.* at 818. Here, the Township has conceded that weddings, reunions and other events, can occur at churches, parks, residences and other locations, so long as they do not occur at wineries. Exhibit 14; RFA 15-20, 69-70. These events could take place every day on those properties, but Peninsula Township and PTP allege that restricting these events from occurring on eleven distinct properties within Peninsula Township somehow advances the interest in maintaining a rural character.

In *Keener v. Ralph Township Zoning Hearing Board*, 79 A.3d 1205, 1207 (Pa. Commw. Ct. 2013), the plaintiff sought to use his farm to host activities on a commercial basis. Such activities would have been allowed if operated in a non-commercial manner. *Id.* at 1208. The court struck down the prohibition as not having any real or substantial relation to the health, welfare or safety of the community:

a banquet facility operated by an owner who charges a fee is the same in all respects as a banquet facility operated by an owner who charges no fee. There is no perceivable difference in the operations or the impacts on the community. As far as use goes, they are identical. ... There simply is no support in the record for that conclusion, and Court cannot envision any such distinction. The distinction, therefore, does not bear any real or substantial relation to the health, safety and welfare of the community and will not be upheld.

*Id.* at 1216.<sup>13</sup> Peninsula Township draws a similar distinction between commercial and non-commercial activities. *Id.* at Req. to Admit # 17.

Regardless, the Township conceded that numerous sections of the Ordinances do not further a governmental interest or alleviate any harm:

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<sup>13</sup> Ironically, PTP member John Jacobs has hosted a wedding at his home in Peninsula Township. Exhibit 15; p. 75-76. He also hosts a weekly party at his house where his guests drink alcohol. *Id.* at 77.

<b>Ordinance</b>	<b>Testimony</b>
8.7.3(12)(j): Winery logo requirement.	Q: “[W]hat is the harm of selling a packaged food, for example, mustard, without the winery’s logo on it? What is the harm to the Township? A. “I don’t see any.” (Exhibit 4 p. 66.)
8.7.3(12)(k): Sign/advertising prohibition.	Q: [C]an you think of any way that this promotes a government interest of Peninsula Township? A. No. ... Q. [T]here’s no harm you can think of to the government that...this is trying to prevent, right? A. Right. (Id, 69-71.)
6.7.2(19)(a): Restaurant prohibition.	Q: [H]ow is one of those four government interests...furthered by not allowing a farm processing facility to have a restaurant? A. I don’t know that it’s furthered by not having a restaurant. (Manigold, 73-74.) Q: how does this further one of your governmental interests, and you said, “I don’t see how it does.” Is that right? A. Yeah, I don’t. We just don’t want, and it’s very clear, restaurants or bars. ... Q. [W]hich of these four interests that you have identified does it further? How does not having a restaurant prevent ag land from becoming houses? A. Ag land from becoming houses, I don’t think that’s comparable. Q. Because it doesn’t, right? A. Right. (Id, 75-76) Q. Is there any other harm you can think of? A. No. (Id, 78.)
Wedding prohibition.	Q: Do you have a study that shows that if a winery has a wedding, a farmer can’t farm his land? ... A. No, I don’t. (Exhibit 16. Parsons Dep. p. 130-31.)
6.7.2(19)(b)(1)(iv): Food restriction.	Q. I’m assuming you can’t tell me...how this furthers the government’s interest? A. No, I don’t. ... Q How does this remedy a harm...? [] A. I don’t know. (Exhibit 4, p. 102)
6.7.2(19)(b)(1)(v): Merchandise restriction.	Q: [H]ow does limiting the sale of merchandise to logoed items that relate to fresh or processed agriculture...further one of these four governmental interests?

	<p>A. I don't know.</p> <p>...</p> <p>Q: do you know what the harm is the government was trying to prevent by having this ordinance?</p> <p>A. No.</p> <p>(<i>Id</i>, 103-104.)</p> <p>Q. [H]ow [is] the governmental interest...furthered by restricting how a farm processing winery can use its logo.</p> <p>A. I don't know.</p> <p>(Exhibit 16, p. 112)</p>
6.7.2(19)(b)(6): Facility size restriction.	<p>Q. [Y]ou're limiting the size of the retail space there, right?</p> <p>A. Yes.</p> <p>Q. Why?</p> <p>A. It's designed to sell the person's product from the peninsula, and that, that's been determined to be their logoed items. Was that number too high or too low? We can always change....</p> <p>Q. Is this just a number they picked out of a hat?</p> <p>A. I believe it.</p> <p>Q. Okay. There's no basis for that number?</p> <p>A. I couldn't point it to you.</p> <p>(Exhibit 4, p. 109-10.)</p>
8.7.3(10)(u)(1)(b): Required promotion of Peninsula agriculture.	<p>Q. [H]ow does this ordinance further one of the four governmental interests...?</p> <p>A. ... I can't relate it to the four.</p> <p>Q. ... you can't tell me the harm it was trying to prevent?</p> <p>A. No.</p> <p>(<i>Id</i>, 115.)</p>
8.7.3(10)(u)(1)(d): Guest Activity restriction.	<p>Q. [D]o you know what it means?</p> <p>A. No.</p> <p>Q. ...I'm assuming you can't tell me how this furthers --</p> <p>A. Nope, nope.</p> <p>Q. -- a government interest?</p> <p>A. No.</p> <p>Q. And you can't tell me what harm this is intended to prevent?</p> <p>A. No, I can't.</p> <p>(<i>Id</i>, 115-116.)</p>
8.7.3(10)(u)(2)(b): 501(c)(3) meeting restriction.	<p>Q. [How does] preventing 501(c)(3)s from out of Grand Traverse County from holding meetings...further any of those four governmental interests?</p> <p>A. I don't know.</p> <p>...</p> <p>Q. What is the harm of...a meeting at a Peninsula Township winery chateau?</p> <p>...</p> <p>A. I don't know that there is a harm.</p> <p>(<i>Id</i>, 126-128)</p>

8.7.3(10)(u)(2)(c): Meeting prohibition.	<p>Q. [H]ow does limiting who can use meeting rooms to just ag groups...further any of these four governmental interests?</p> <p>A. I guess my answer would be “I don’t know” all the way through.</p> <p>...</p> <p>Q. [Y]ou don’t know on interest, you don’t know on the harm to be prevented, you don’t know on what less-restrictive means?</p> <p>A. Hmmm-mmm.</p> <p>(<i>Id.</i>, 129.)</p>
8.7.3(10)(u)(5)(g): Amplified music prohibition.	<p>Q. [T]he prohibition on amplified instrumental music has nothing to do with the four governmental interests...?</p> <p>A. I can’t, I can’t say that it does.</p> <p>Q. And so you can’t tell me the harm the township was trying to remedy by not allowing amplified instrumental music?</p> <p>A. Not without reading the minutes of why it’s there, no</p> <p>(<i>Id.</i>, 192)</p>

These concessions are fatal to the Township because they prove that the Ordinances do not support Peninsula Township’s interests. *44 Liquormart*, 517 U.S. at 505. On this prong, this Court concluded that “[n]ot only does the Township’s motion completely fail to address the last two prongs of the Central Hudson test, but Supervisor Manigold’s deposition also confirms that these challenged sections of the Township Ordinances likely do not advance the stated interests, and that the Township never considered less-restrictive means.” ECF No. 162, PageID.6006. PTP’s involvement in this case does not change this result.

During discovery, the Wineries requested that PTP describe how each subsection of the Ordinances “directly advances the governmental interest.” Exhibit 17; Rog #9. PTP’s response simply pointed to the text of the ordinances and the master plan. *Id.*

Thus, this Court should reinstate its prior summary judgment decision on this issue.

**6. The Ordinances restrict more speech than necessary.**

“[I]f the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.” *Cent. Hudson*, 447 U.S. at 564. The burden to establish a “reasonable fit” between the government’s substantial interest and the

ordinance provision rests with the Township. *Cincinnati*, 507 U.S. at 416. The Township must establish that it has “carefully calculated the costs and benefits associated with the burden on speech imposed” by the Ordinances. *Id.* at 417. “[I]f the Government could achieve its interests in a manner that does not restrict speech, or that restricts less speech, the Government must do so.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 371-72 (2002). The existence of alternative laws that “could advance the Government’s asserted interest in a manner less intrusive to First Amendment rights indicate[s] that the law [is] more extensive than necessary.” *Id.* (cleaned up).

The Township provided no evidence on this factor and failed to carry its burden. *See Ocheesee Creamery LLC v. Putnam*, 851 F.3d 1228, 1240 (11th Cir. 2017) (burden not met where state “has introduced no evidence at all”). It considered no alternatives to its restrictions “much less that it gathered evidence that any such measures would be less effective. And once again, such a one-track mind is fatal under *Central Hudson*.” *Kimberly-Clark Corp. v. District of Columbia*, 286 F. Supp. 3d 128 (D.D.C.). Once again, the testimony bears this out:

Ordinance	Testimony
8.7.3(10)(u)(1)(b): Required promotion of Peninsula agriculture.	Q. You can’t tell me what less-restrictive means you considered...? A. No. (Exhibit 4, 115.)
8.7.3(10)(u)(1)(d): Restriction on guest activities	Q. [Y]ou can’t tell me any less-restrictive means that the Township considered? A. No. ( <i>Id.</i> , 116.)
8.7.3(10)(u)(2)(c): Meeting restriction.	Q. [Y]ou don’t know on what less-restrictive means? A. [No] ( <i>Id.</i> , 129.)
8.7.3(10)(u)(5)(g): Prohibition on amplified music.	Q. [Y]ou can’t tell me any less-restrictive means the Township considered...? A. I’m guessing it was on a complaint, but I don’t know, no. ( <i>Id.</i> , 192.)
6.7.2(19)(b)(1)(v): Merchandise restriction.	Q. [D]o you know if the government considered less-restrictive means? A. Whatever we considered is in that document.



	<p>Q. In the ordinance?</p> <p>A. Mmm-hmm.</p> <p>Q. So there's nothing else that says, "We considered these four other ordinances and we rejected those"?</p> <p>A. I'm unaware of that.</p> <p>(<i>Id.</i>, 104.)</p>
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Because the Township did not consider any less restrictive means, the Ordinances are not narrowly tailored. This Court concluded that "Supervisor Manigold's deposition...confirms that these challenged sections of the Township Ordinances likely do not advance the stated interests, and that the Township never considered less-restrictive means." ECF No. 162, PageID.6006. PTP's involvement in this case does not change this result; indeed, PTP member John Wunsch agrees that the Township did not consider any less restrictive means. Exhibit 13, p. 51-52.<sup>14</sup>

**C. The Ordinances are content based, a prior restraint, and compels speech.**

**1. The Ordinances are not content or viewpoint neutral.**

In denying the Wineries summary judgment on this issue, this Court determined that "[c]ontent-based speech targets a type of speech based on its message or content, not who conveys that message or content." ECF No. 162, PageID.6010. But, "[c]haracterizing a distinction as speaker based is only the beginning—not the end—of the inquiry." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 170 (2015). A speaker-based distinction "would not automatically render the law content neutral." *Id.* at 157.

"Because '[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content,'" the Supreme Court has "insisted that 'laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference.'" *Id.* at 170 (quoting *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010) and *Turner*, 512 U.S. at 658)); *see also Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1266 (11th Cir.

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<sup>14</sup> PTP's proposed expert is not providing an opinion on this issue. Exhibit 8, p. 108.

2005) (“The sign code exemptions that pick and choose the speakers entitled to preferential treatment are no less content based than those that select among subjects or messages.”).

Here, the Wineries challenge four sections as content-based restrictions on speech: 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c) and 8.7.3(10)(u)(5)(a). Each restricts events at a winery to only non-profit groups located in Grand Traverse County and/or events that contain an agriculturally related message. ECF No. 162, PageID.6012 (“According to Director Deeren, such activities must be ‘agriculturally related.’”) Put another way, the ordinances prohibit events which involve for-profit groups, or which involve speech other than agricultural speech. Thus, content is limited to charitable and agricultural endeavors. And, as the Court noted, “[t]here does not appear to be any definite criteria or definition to determine what type of activity is ‘agriculturally related.’ Instead, Director Deeren makes that determination, and she has regularly denied many events, such as Yoga in the Vines, Painting in the Vines, and snow shoeing.” *Id.* Notably, the Township has never argued that a group of farmers having a meeting at a winery somehow burdens Peninsula Township less than a group of accountants.

“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). “Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.* It does not matter that the Ordinances prohibit all forms of speech other than agricultural speech:

The dissent’s assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints reflects an insupportable assumption that all debate is bipolar.... It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude

one, the other, or yet another political, economic, or social viewpoint. The dissent's declaration that debate is not skewed so long as multiple voices are silenced is simply wrong; the debate is skewed in multiple ways.

*Id.* at 831-832.

“One reliable way to tell if a law restricting speech is content-based is to ask whether enforcement authorities must ‘examine the content of the message that is conveyed’ to know whether the law has been violated.” *Otto v. City of Boca Raton, Florida*, 981 F.3d 854, 862 (11th Cir. 2020) (quoting *McCullen v. Coakley*, 573 U.S. 464, 479 (2014)). For example, “[t]o see if a robocall was legal, authorities needed to know what the call was about: collecting government debt or anything else. ‘That is about as content-based as it gets.’” *Id.* (quoting *Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (plurality opinion); *see also F.C.C. v. League of Women Voters of Ca.*, 468 U.S. 364, 383 (1984) (to determine whether a particular statement was prohibited, “enforcement authorities must necessarily examine the content of the message that is conveyed”). The Township’s former Director of Zoning testified that it was her job to “make a determination of whether or not the group is agriculturally related.” See ECF. No. 136, PageID.4742-4743. This too “is about as content-based as it gets.”

In *www.RicardoPacheco.com v. City of Baldwin Park*, 2017 WL 2962772, \*5 (C.D. Cal. July 10, 2017), the plaintiff challenged an ordinance alleging it “imposes impermissible content-based restrictions on speech because it prefers commercial speech over non-commercial speech.” The court found that there “were ‘serious questions’ as to whether the City’s preference for speakers that are businesses, in particular businesses hosting special events, reflects a content preference for commercial speech.” *Id.* (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011)). The court continued, “if the City did not hold such a preference, why wouldn’t the City permit any entity on non-residential property to display a sign...” *Id.* (citing

*Chaker v. Crogan*, 428 F.3d 1215, 1227 (9th Cir. 2005)). *See also Chaker*, 428 F.3d at 1227 (“The Supreme Court has looked skeptically on statutes that exempt certain speech from regulation, where the exempted speech implicates the very same concerns as the regulated speech.”). The court concluded that the ordinance which preferred commercial over non-commercial signs was content based and subject to strict scrutiny. *Baldwin Park*, 2017 WL 2962772, at \*7.

In *Aptive*, the court determined that an ordinance placing a curfew on commercial door-to-door solicitation was a content-based restriction because the “ordinance determines to whom the curfew applies by distinguishing between the commercial and noncommercial content of the solicitors’ speech” and “[b]ecause the [ordinance] facially makes the application of its [c]urfew turn on whether the speech is commercial or not, the law is content-based.” 959 F.3d at 982. Here, the Ordinances’ restrictions are based on whether the event has an agricultural or non-profit message. “When an ordinance makes these sorts of facial distinctions...it contemplates a distinction based on content.” *Ass’n of Cmty. Orgs. for Reform Now v. Municipality of Golden*, 744 F.2d 739, 749 (10th Cir. 1984) (internal quotations omitted).

## **2. Peninsula Township’s requirements for conducting “Guest Activities” are unconstitutional prior restraints on speech.**

A prior restraint is “the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). Such restraints carry “a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). If a government regulator carries more than “ministerial discretion,” the system of prior restraint is “suspect.” *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1362 (11th Cir. 1999). The elements of a prior restraint are: (1) whether a person must seek government permission, (2) permission is based on the content of the speech, (3) approval is dependent upon the government’s affirmative action; and (4) approval is not a routine matter, but

involves an examination of the facts, an exercise of judgment, and the formation of an opinion. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975).

“The absence of clear standards guiding the discretion of the public official vested with the authority to enforce the enactment invites abuse by enabling the official to administer the policy on the basis of impermissible factors.” *United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 359 (6th Cir. 1998). Moreover, an unlawful prior restraint may exist where, even if it is based on a content-neutral regulation, it “[places] unbridled discretion in the hands of a government official or agency...[and] may result in censorship.” *Polaris Amphitheater Concerts, Inc. v. City of Westerville*, 267 F.3d 503, 507 (6th Cir. 2001). Thus, if “a regulation fails to place appropriate limits on the discretion of public officials to administer the law in a manner that is abusive of speech, the result should be no different that if the law had brazenly set out to discriminate on the basis of content.” *Id.*

*Jersey’s All-American Sports Bar, Inc. v. Washington State Liquor Control Board*, 55 F. Supp. 2d 1131 (W.D. Wash. 1999), is particularly relevant. There, a bar owner challenged a statute which required a permit before the bar could offer music or dancing. The defendant argued that “licenses are almost never denied” and that it identified a legitimate goal “unrelated to the suppression of speech or ideas—maintaining safe conditions in and around premises licensed to sell alcohol.” *Id.* The court found that it was hard to “conceive of a more blatant prior restraint on speech” than one which required prior approval of music or dancing for patrons. *Id.* Whether licenses were ever denied was immaterial:

the mere existence of the licensor’s unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988). In other words, an unfettered prior restraint itself burdens speech, and the Court does not need to find that licenses have been improperly denied to find that such a prior restraint violates the First

Amendment.

*Id.* at 1137.

As this Court recognized, “[i]t appears that Director Deeren can exercise unfettered discretion when choosing whether or not to allow a Winery to host a Guest Activity. The Township Ordinances fail to define ‘agriculturally related,’ leaving room for Director Deeren to make that determination.” ECF No. 162, PageID.6013. Deposition testimony confirmed as much:

Q. But do you need to make a determination of whether or not the group is agriculturally related?

A. Yes, meetings of agricultural-related groups. Yes, so I would have to know the relationship to the agricultural affiliation.

Q. Okay. So like the, like a realtors’ association, would that be related to agriculture or not?

A. It depends. I guess it could be.

Q. Okay. How about a bankers’ association?

A. It could be.

Q. How about a lawyers’ association?

A. It could be.

Q. How about an accountants’ association?

A. Again, it could be.

...

Q. Okay. And what criteria do you use to determine whether or not that group relates to agriculture?

A. Well, they would have to supply me, you know, how it is affiliated. So they would have to give me how they’re affiliated to this agriculturally-related group.

Exhibit 2, p. 56-58. There are no specific criteria used to make this determination. *Id.*, 58. But somehow, “[i]f it doesn’t meet the criteria, then I couldn’t approve it.” *Id.* Approval of a meeting of a non-profit also requires approval and if a request involved a non-Grand Traverse County non-profit it would be denied. *Id.*, 53. Many requests have been denied:

Q. So why is Yoga in the Vines not an event?

A. Well, how does yoga relate to wine tasting and tours? So I have to ask myself, is this, you know, an event that is allowed by the Township.... So Yoga in the Vines is not something that’s specified in the ordinance as an event, so therefore it wouldn’t be an allowable use as an event.

Q. Okay. And the only things that are allowed as an event are what are defined in the ordinance, is that what you’re saying?

A. Yes.

...

Q. Okay, Painting in the Vines, tell me why you denied that event.

A. Again, if it wasn't something that was allowed within their SUP and it wasn't something that was allowed in the ordinance, then it was something that I couldn't allow to occur.

Q. Okay. So you're saying because the words "Painting in the Vines" isn't in the ordinance, the winery ordinance, it would not be allowed, or you denied it?

A. Correct.

Q. Okay. How about snow shoeing, why did you deny that event?

A. Again, same reasons.

*Id.* 20-22. Other examples include the following:

- An event involving car enthusiasts was denied because the group was not the type of group allowed at a winery. Exhibit 18: RFP001448-001449.
- "[A]ctivities advertised as 'Floral Education Series' and 'Yoga in the Vines'" not allowed and would "be subject to enforcement activity by the Township." *Id.* RFP001527-1528.
- Three events were ordered canceled as they were not the types of events which were allowed. *Id.* 002499-2500.
- Peninsula Township denied Plaintiff Bonobo Winery's application for Guest Activity Uses. *Id.* RFP006464.

And while 8.7.3(10)(u)(2)(a) only requires prior notice of wine and food seminars and cooking classes, in practice, prior approval is required: "what I would be approving on it is the number of guests they have in it" but that it "would still require [her] approval." Exhibit 2, 51.

Peninsula Township engages in a prior restraint by requiring approval left to the subjective discretion of its Director of Zoning, who could not state any objective criteria used to approve an application. PTP has conceded that it has no information on the Township's ordinance enforcement. ECF No. 291, ¶¶ 199-202.

**3. The Ordinances compel speech and PTP admits it has no interest in defending this claim.**

The First Amendment "presume[s] that speakers, not the government, know best both what they want to say and how to say it." *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 791

(1988). “Laws that compel speakers to utter or distribute speech bearing a particular message are subject to [strict] scrutiny.” *Turner*, 512 U.S. at 642. This Court previously concluded that “Plaintiffs’ [summary judgment] motion demonstrates that the Township is indeed enforcing these sections as a mandate, and as such, the Township failed to meet its burden.” ECF No. 162, PageID.6016 (discussing 8.7.3(10)(u)(5)(a) and 8.7.3(1)(u)(1)(b)). PTP does not dispute that the Ordinances operate as a mandate. ECF No. 304, PageID.10859.<sup>15</sup> PTP also does not assert that it has an interest in defending the compelled speech claims and admits that its members do not have a property interest in defending 8.7.3(10)(u)(5)(a) as compelling speech. *Id.* Thus, for 8.7.3(10)(u)(5)(a) this Court should reinstate its prior decision of unconstitutionality, but also should do the same for 8.7.3(1)(u)(1)(b) as the two work in concert using identical language. 8.7.3(1)(u)(1)(b) is the intent of promoting Peninsula Agriculture while 8.7.3(10)(u)(5)(a) puts that intent into action by mandating the promotion of Peninsula Agriculture.

8.7.3(10)(u)(5)(a) requires all Guest Activities at a winery to promote Township agriculture by doing one of the following: (1) identifying “Peninsula Produced” food or beverages, (2) providing “Peninsula Agriculture” promotional materials, or (3) including tours through the winery and/or other agriculture located in the Township. Peninsula Township confirmed the section is a mandate:

Q. Okay. So as part of the guest activity use, Peninsula Township is requiring that a winery-chateau include agricultural production promotion as part of the activity?

A. Yes.

...

Q. [A] are you reading it to say that they can comply by doing any one of these three things or they have to do all three things?

A. It says it “shall include agricultural production promotion as part of the activity as follows.” So is it all three of these things? I would say it’s not all three of these things, but they have to include one of these things.

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<sup>15</sup> PTP also admits that it has no knowledge on how guest activity use requests were made or the Township’s approval process. Exhibit 19; RFA 29-30.



Exhibit 6, 73-75. Because Peninsula Township is enforcing these sections as a mandate, they are subject to strict scrutiny.

**4. The Ordinances fail strict scrutiny analysis.**

Content-based regulations, prior restraints and compelled speech are all subject to strict scrutiny. *Russell v Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015). Strict scrutiny is “the most demanding test known to constitutional law.” *Id.* The Ordinances are unconstitutional because they are not necessary to promote a compelling interest and narrowly tailored to serve that interest. *Id.* The burden is on the government to establish that those requirements are met. *Id.*

**(a) Peninsula Township provides no compelling interest.**

Interests are “compelling” when they are fundamental to the ability of a free society to function. *Dunn v. Blumstein*, 405 U.S. 330, 345 (1972) (election fraud); *Haig v. Agee*, 453 U.S. 280, 307 (1981) (national security). By contrast, the Supreme Court has struck down interests that it deemed “valid” but not “compelling,” such as maintaining a stable, racially integrated neighborhood and minimizing the visual clutter associated with signs. *Linmark Assocs., Inc. v. Willingboro*, 431 U.S. 85 (1977); *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994). Peninsula Township’s stated interests are not compelling:

- a. preserving the agricultural production industry and providing permanent land for the same;
- b. maintaining the Township’s character;
- c. providing economically feasible public sewer and water systems to serve a future population;
- d. establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.

Peninsula Township does not state why its restrictions are necessary for the Township to function as a free society—plainly, they are not. Courts have held that “[a]esthetics,” traffic, and

“community character” are not compelling interests.<sup>16</sup> See *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006) (“the visual impact of the Project does not implicate a compelling government interest.”); *XXL of Ohio, Inc. v. City of Broadview Heights*, 341 F. Supp. 2d 765, 789-90 (N.D. Ohio 2004) (holding that aesthetics and neighborhood preservation are not sufficiently compelling interests). Strict-scrutiny analysis should end here.

**(b) The First Amendment restrictions are not narrowly tailored.**

Even if Peninsula Township had proffered a compelling interest, its methods are not narrowly tailored to serve that interest, which requires that “[i]f a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

The burden of proof lies with Peninsula Township. *Turner*, 512 U.S. at 664. As discussed in Sections (B)(4) and (5), above, Peninsula Township has no evidence that the restrictions placed on the Wineries alleviate any claimed harms in a material way and, in fact, admitted that many of the restrictions in the Ordinances have no relationship whatsoever to the alleged harm.

**D. The Township admitted that Wineries may host weddings, wedding receptions and family reunions and there is no explicit closing time. PTP cannot change this admission.**

For years, Peninsula Township has ruled that “[w]eddings aren’t allowed.” Exhibit 4, 133. Thus, the Wineries have turned down numerous requests for weddings. Exhibit 12, 53-54; Exhibit 20, 32-33; Exhibit 21, 18, 23, 27; Exhibit 10, 44-45. Once sued, the Township changed its position and asserted that the Ordinances do not prohibit weddings or similar events:

Q. We’ve established that in order to engage in a guest activity use, a winery-chateau needs your approval as the [] director of zoning, correct?

A. Yes.

Q. [W]e’ve established that under 2(d), entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass are not guest activity uses,

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<sup>16</sup> These are essentially the same interests PTP alleges it has in the Ordinances.

correct?

A. Correct.

Q. [B]ecause they are not guest activity uses, winery-chateaus do not need your approval, as the director of zoning, to engage in entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass, correct?

A. Yes.

...

Q. Does that section prevent...weddings...receptions, family reunions, outside of the classification of guest activities for a particular winery?

A. No.

Exhibit 2, 62-64, 112. PTP has nothing more to add as it has admitted that it has no authority to interpret the Ordinances. Exhibit 19; RFA 3.

As for hours of operation, PTP and the Township have conceded in this lawsuit that the Ordinances do not contain closing times for any of the wineries and the only hours restriction is for guest activities. ECF No. 159, PageID.5884-5885, ECF No. 356, PageID.12966. Despite these recent concessions, historically the Township believed that a closing time of 9:30 p.m. was inferred:

Q. It doesn't say that a winery has to close all business at 9:30, right?

A. I believe it's inferred. I'm going to stick with that.

Q. Does it explicitly say it, yes or no?

A. Explicitly, no.

Q. But you believe it's implied?

A. I believe it's the ordinance and it's the law.

Q. But it doesn't actually say that they have to close at 9:30, right?

A. Well, that's what I'm enforcing.

Exhibit 4, 179.

Conceding the issue only after being sued does not make up for years of improper restrictions. The Wineries request a Court ruling confirming that there is no local hours restriction on any of the Wineries and an award of lost profits due to the years of improper enforcement by Peninsula Township.

**E. After finding liability, this Court should award Plaintiffs damages and declare their uses allowed.**

Local governments are liable under 42 U.S.C. § 1983 for money damages. *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978); *Carey v. Piphus*, 435 U.S. 247, 255 (1978). General damages are presumed. *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 311 (1986); *Walje v. City of Winchester*, 827 F.2d 10, 13 (6th Cir. 1987). Other recoverable damages include, but are not limited to, lost profits and increased expenses. *See, e.g., W.H Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 219-20 (5th Cir. 1999).

Further, this Court should declare that the uses restricted by the unconstitutional Ordinances are allowed uses. “After a zoning ordinance has been declared unconstitutional...a judge may provide relief in the form of a declaration that the plaintiff’s proposed use is reasonable, assuming the plaintiff’s burden has been met, and an injunction preventing the defendant from interfering with that use.” *Schwartz v. Flint*, 426 Mich. 295, 329 (1986). As discussed above, the Wineries seek to use their property to engage in agritourism. Such a use is reasonable.

**F. The Court should award the Wineries their costs and attorneys’ fees against both the Township and PTP.**

While it is common to award a prevailing Section 1983 plaintiff its costs and attorneys’ fees under 18 U.S.C. § 1988, such an award can also be imposed against an intervening defendant. *See Burney v. Housing Authority of Beaver County*, 735 F.2d 113 (3rd Cir. 1984); *Charles v. Daley*, 846 F.2d 1057 (7th Cir. 1988). PTP “chose to intervene voluntarily in this lawsuit [] and thereby vested the district court with the authority to award fees to the prevailing plaintiffs against it.” *Burney*, 735 F.2d at 117. “[N]otwithstanding the fact that the intervenors were not and could not themselves have been found guilty of violations of the plaintiffs’ constitutional rights...plaintiffs can be fairly said to have prevailed equally against both parties-- the State defendants and the intervenors.’ *Charles*, 846 F.2d at 1065.

**G. The harms PTP complains of are speculative.**

PTP has admitted that none of its members have been harmed by any Winery activities. Exhibit 17; Rog. 6-7. Instead, PTP speculates that its members might be harmed in the future.

**1. Traffic.**

At its core, PTP does not want more vehicles on the road, although PTP cannot point to any traffic studies that Township roads cannot handle increased traffic.

John Jacobs: Jacobs believes that if the Wineries have more events the roads will be more crowded. Exhibit 15, p. 38. But he admits that winery traffic does not come near his home, and he has never had difficulty getting to his home. *Id.* at 39, 43. Jacobs concedes that for weddings, by way of example, if guests utilized shuttle buses, then he “wouldn’t have too much of an objection” to the Wineries having weddings. *Id.* at 46-47.

Scott Phillips: Phillips is upset about any kind of traffic, regardless of whether it involves a winery. Exhibit 22, p. 36. Phillips believes that local cars should be favored. *Id.* at 78. Not even a shuttle bus would satisfy him, because “you have the issue of the shuttle itself that would otherwise not be there.” *Id.* at 61-62.

Barbara Wunsch: Her concerns over traffic stem from the fact in October, when she drives into Traverse City, she must “plan an extra ten minutes,” although this is not caused solely by Winery guests. Exhibit 23, p. 78-79. Ironically, Barbara Wunsch recently opened a cider mill and has advertised extensively to drum up business: <https://www.facebook.com/cherryupick>.

John Wunsch: His concern is winery events “brings more traffic, which is more wear and tear on our infrastructure, so it’s a tax burden on me.” Exhibit 13, p. 22. Accordingly, he wants to prevent “more people coming to the wineries for purposes other than tasting and purchasing products grown on the property.” *Id.* at 47-48.

Michelle Zebell: She is okay with groups meeting at a local church or public park, but if

that same group met at a winery to taste wine she objects. Exhibit 24, pp. 42-44, 69. She just does not want more people on her peninsula.

Mark Nadolski: He is a real estate agent who creates more traffic by showing houses to potential customers. His concern is that winery guests drive sports cars and are “burning their tires” when they leave a winery. Exhibit 25, p. 69. He complains about visitors to Peninsula Cellars which is located eight miles away. *Id.* at 69-70.

**2. PTP’s complaints about noise were made up.**

PTP’s concerns about noise are either fantasy or, candidly, standard NIMBY complaints.

Jacobs: Jacobs lives more than two miles from the closest winery, yet he complains of noise from “vehicles pulling in to wineries [and] starting their engines.” Exhibit 15, pp. 29-30. He has never heard noise from the closest winery but claims on one occasion to have heard noise from a different winery, three miles away. He lives close to a public beach from which he hears car noise, music, boat noise and people talking loudly but has never complained to the Township. *Id.* at 32, 37. Jacobs also hears music from boats in Old Mission Harbor and hears traffic noise from the City of Elk Rapids. These noises are acceptable. *Id.* at 34.

Phillips: He complains that “on occasion, I hear vehicles entering, exiting, and operating at Mari Vineyard.” Exhibit 22, p. 22. Phillips lives close to Center Road and when he bought his house, he anticipated road noise. *Id.* at 23. He also lives adjacent to a public boat launch and anticipated hearing noise from cars and trucks launching boats. *Id.* He hears music coming from trucks launching boats and boats themselves when they are on the water. *Id.* This noise is okay. As for music from Mari, Phillips admitted that in the twenty-three years he has lived in his house he has only heard music coming from Mari “a half a dozen times.” *Id.* at 70.

B. Wunsch: She is not concerned about noise from the Wineries because she does not live close to any wineries. Exhibit 23, p. 72.

J. Wunsch: He lives a bit under two miles from any winery, but he has never heard noise from one and has no concerns over winery noise. Exhibit 13, p. 34, 36.

Nadolski: His complaints are limited to car noise on Center Road as he does not hear any noise coming from the Wineries. Exhibit 25, p. 73.

Zebell: She complains about hearing a person talking into a microphone at Bowers Harbor and one time she heard glasses clink while walking in a public park. Exhibit 24, p. 27-31. Not all noise bothers Zebell, only winery noise. When a soccer league used a nearby park, she was thrilled. *Id.* at 33-34. She did concede a winery playing amplified music indoors would not harm her and if it was done outdoors it would depend on the volume. *Id.* at 78. She agreed that a generally applicable noise ordinance would alleviate her concerns. *Id.* at 79.<sup>17</sup>

PTP members single out the wineries as the source of their ire, while tolerating other sources of noise, and are overly sensitive. Notably, not once in this case has PTP alleged that the Wineries have violated Peninsula Township's noise ordinance.

### **3. Property values.**

Some members are concerned property values will decrease with more wineries, though they have no evidence to support this concern. Oddly, Barbara Wunsch believes if the Wineries are allowed to have events, then land values would increase; this concerns her because her business, of which her son and Township Supervisor is CEO, would like to buy more land. Exhibit 23, p. 25, 52-53. She wants to depress property values so Wunsch Farms can acquire more land. *Id.* at 69-71. John Wunsch was asked if Wunsch Farms would buy more land; he responded that it was doubtful "given the values that have been put on that land." Exhibit 13, p. 50. Perhaps this is why the Wunsch family is trying to depress land values.

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<sup>17</sup> PTP's proposed expert also agreed that a noise ordinance would address any impacts from noise. Exhibit 8, p. 41.

#### 4. Farming.

Barb Wunsch runs a farming business with her son, Isaiah, the Township Supervisor, but their land is not near any Wineries; the closest is Mari Vineyard “a few miles” away. Exhibit 23, p. 8-9, 23-24, 27.<sup>18</sup> While Wunsch speculates about future winery events hindering her ability to move equipment on Township roads, the majority of the fruit picked by Wunsch Farms is moved using two pickup trucks and is close to its main facility at the very end of Peninsula Township; an area without any wineries or residences. *Id.* at 34, 43-44. Wunsch Farms does have larger semi-trucks picking up fruit from its business and bringing it down state, but those trucks only make about one or two trips per month. *Id.* at p. 47.

Ms. Wunsch complained in an affidavit that winery events could hamper her ability to spray crops. But she was unable to answer any questions regarding her spray practices and did not know how often her crops were sprayed. *Id.* at 35-36. She did know enough to testify that “spray drift” is not a common occurrence for Wunsch Farms. *Id.* at 37. This is good because Michigan law prohibits spray drift. *Id.* at 37-38. Wunsch Farms typically sprays crops at “3 or 4:00 in the morning.” *Id.* at 40.

She admitted that none of the Wineries pose a threat, but there is “the potential of other farms becoming wineries, and then having wineries close to my operations with these added rights.” *Id.* at 62. She continued, “[i]t’s not that it’s happening to my farm today, but there’s that potential....” *Id.*

John Wunsch is not a farmer, but believes that if the ordinances are deemed unconstitutional, his personal reputation will suffer because he is invested in the Ordinances: “It is my personal reputation, my personal legacy, what I have dedicated my life to.” Exhibit 13, pp.

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<sup>18</sup> Wunsch Farms does manage Plaintiff Hawthorne’s cherry trees at its vineyard. *Id.* at 26.



17-19.

**5. Food and Catering.**

Jacobs: He has an issue with the Wineries serving a guest a sandwich unless all the ingredients in the sandwich are grown on site. Exhibit 15, pp. 52-53. He has an issue with a winery catering an event at a residence in Peninsula Township because there may be noise and drunk driving, but he has no issue with a winery catering an event outside of Peninsula Township. *Id.* at 54-55.

J. Wunsch: It is acceptable to serve a winery guest a single slice of pizza, but not a full pizza. Exhibit 13, pp. 27-28. A sandwich would also be okay so long as it was “[n]ot a full sandwich.” *Id.*

Nadolski: He also does not have an issue with a winery selling pizza but does take issue with operating restaurant because “they are violating the ordinance.” Exhibit 25, pp. 91-92. Similarly, catering only harms Nadolski “in the fact that it is against the ordinance.” *Id.* at 95.

Zebell: She objects to Wineries serving a charcuterie board if it is “gargantuan.” In her mind, if people “hear about the amazing charcuterie board or the wonderful sandwich or pizza” consumers will drive out just for those items and “won’t consume wine.” Exhibit 24, p. 72.

**6. Merchandise.**

Jacobs and Nadolski: They believe if the Wineries are allowed to sell merchandise, they will open grocery stores on their property. Exhibit 15, p. 56-57; Exhibit 25, p. 71.

B. Wunsch: She believes the Wineries will start selling things like toilet paper and groceries and that residents of Traverse City will drive fifteen miles to the Wineries to shop for everyday items. Exhibit 23, p. 80-85.

J. Wunsch: He believes the Wineries will open gift shops which he believes will make them more attractive for customers. Exhibit 13, p. 34-35.

PTP's "complaints" are speculative, vague, and conclusory.

**IV.**  
**CONCLUSION**

Plaintiffs respectfully requests that this Court enter a judgment in their favor on Counts I, II, IV, and X, and declare that Sections 6.7.2(19)(b)(1)(v), 6.7.2(19)(b)(6), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(a), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) are unconstitutional, award Plaintiffs damages to be determined at trial and award Plaintiffs' their costs and attorneys' fees incurred in bringing this action.

Respectfully submitted,

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

By: /s/ Joseph M. Infante  
Joseph M. Infante (P68719)  
Stephen M. Ragatzki (P81952)  
Christopher J. Gartman (P83286)  
99 Monroe Avenue NW, Suite 1200  
Grand Rapids, MI 49503  
(616) 776-6333  
infante@millercanfield.com  
gartman@millercanfield.com

Dated: October 6, 2023

**CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.2(B)(I)**

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.2(b)(i) because this Brief contains 10,779 words.

/s/ Joseph M. Infante  
Joseph M. Infante

**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2023, I filed the foregoing Motion for Partial Summary Judgment and Brief in Support via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante  
Joseph M. Infante

# **Exhibit 1**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WINERIES OF THE OLD MISSION  
PENINSULA (WOMP) ASSOC.,  
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, L.L.C.,  
a Michigan Limited Liability Company,

Plaintiffs,

vs.

PENINSULA TOWNSHIP, a Michigan  
Municipal Corporation,

Defendant.

Case № 1:20-cv-01008  
Hon. Paul L. Maloney  
Magistrate Judge Ray S. Kent

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MILLER, CANFIELD, PADDOCK et al  
JOSEPH M. INFANTE (P68719)  
CHRISTOPHER J. GARTMAN (P83286)  
Attorneys for Plaintiffs  
99 Monroe Avenue NW, Suite 1200  
Grand Rapids, MI 49503  
(616) 776-6333  
[infante@millercanfield.com](mailto:infante@millercanfield.com)  
[gartman@millercanfield.com](mailto:gartman@millercanfield.com)

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GREGORY M. MEIHN (P38939)  
MATTHEW T. WISE (P76794)  
FOLEY & MANSFIELD, P.L.L.P.  
Attorneys for Defendant  
130 E. 9 Mile Rd.  
Ferndale, MI 48220-3728  
(248) 721-4200 / Fax: (248) 721-4201  
[gmeihn@foleymansfield.com](mailto:gmeihn@foleymansfield.com)  
[mwise@foleymansfield.com](mailto:mwise@foleymansfield.com)

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**DEFENDANT PENINSULA TOWNSHIP'S SUPPLEMENTAL ANSWERS  
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant, Peninsula Township (the "Township"), through their attorneys, Foley & Mansfield, PLLP, and in supplemental response to Plaintiffs' First Set of Interrogatories<sup>1</sup>, states as follows:

**General Objections**

1. The Township objects to Plaintiffs' Interrogatories to the extent they seek to impose obligations on it that exceed those allowed under the Federal Rules of Civil Procedure, any applicable law or regulation, or Order of this Court.

2. The Township objects to each and every Interrogatory to the extent it seeks information or documents that are (i) not in the Township's possession, custody or control, (ii) publicly or otherwise available to Plaintiffs, (iii) more appropriately obtained from other sources, and/or (iv) the information or documents are already in Plaintiffs' possession, custody or control, including but not limited to information or documents any other party to this action produced or will produce in response to discovery requests.

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<sup>1</sup> These responses are provided in accordance with the Court's May 25, 2021 Order. (ECF No. 69). Prior interrogatories and answers to the same are not included in these supplemental responses.

to Produce #21. Additionally the Ordinances and their amendments are publicly available to Plaintiffs if not already in their possession and clearly state the value added and purposes behind the enactment of the Ordinance at issue.

**Interrogatory #7:** Regarding Ordinance Section 8.7.3(10), identify the following:

- 1) All harms the Township was seeking to remedy in enacting the ordinance (specifically by sub-paragraph);
- 2) All government interests in enacting the ordinance (specifically by sub-paragraph);
- 3) All ways in which the ordinance section (specifically by sub-paragraph) fulfills the government interest(s);
- 4) All less restrictive means (specifically by sub-paragraph) the Township considered in fulfilling the governmental interest(s);
- 5) Identify all documents relating hereto.

**ANSWER:** Objection. Interrogatory #7 calls for legal conclusions. Subject to and without waiving the same, the Township's Ordinances, including Section 8.7.3(10), and the intent of the same speaks for themselves and the Township further responds as follows:

- 1) The Township sought to prevent deterioration of the agricultural district and character of the Township's land and to the agricultural production industry and farming as well as promote the government interests outlined below.
- 2) The government interests in enacting this Ordinance were, including but not limited to: preserving the agricultural production industry and providing permanent land for the same; maintaining the Township's character; providing economically feasible public sewer and water systems to serve a future population; establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts while permitting some commercial uses related to agricultural production after some of the Wineries had already engaged in the same.
- 3) The intent of the Ordinance at issue speaks for itself and the Township relies upon the language of the Ordinances, the amendments and the documents previously produced by it and/or that are publicly available in support of how the Ordinance accomplishes the government interests noted above.
- 4) The documents previously produced by the Township demonstrate the extensive efforts of the Township's Planning Commission and Township Board to seek input, advice and opinions from relevant agencies and



organizations and legal opinions regarding the sustainability and enforceability of the amendments to the Ordinance at issue.

- 5) All documents relating hereto have been previously produced to Plaintiffs and are identified as responsive to Request to Produce #1, Request to Produce #3, Request to Produce #19, Request to Produce #20 and/or Request to Produce #21. Additionally the Ordinances and their amendments are publicly available to Plaintiffs if not already in their possession and clearly state the value added and purposes behind the enactment of the Ordinance at issue.

**Interrogatory #8:** Regarding Ordinance Section 8.7.3(12), identify the following:

- 1) All harms the Township was seeking to remedy in enacting the ordinance (specifically by sub-paragraph);
- 2) All government interests in enacting the ordinance (specifically by sub-paragraph);
- 3) All ways in which the ordinance section (specifically by sub-paragraph) fulfills the government interest(s);
- 4) All less restrictive means (specifically by sub-paragraph) the Township considered in fulfilling the governmental interest(s);
- 5) Identify all documents relating hereto.

**ANSWER:** Objection. Interrogatory #8 calls for legal conclusions. Subject to and without waiving the same, the Township's Ordinances, including Section 8.7.3(12), and the intent of the same speaks for themselves and the Township further responds as follows:

- 1) The Township sought to prevent deterioration of the agricultural district and character of the Township's land and to the agricultural production industry and farming as well as promote the government interests outlined below.
- 2) The government interests in enacting this Ordinance were, including but not limited to: preserving the agricultural production industry and providing permanent land for the same; maintaining the Township's character; providing economically feasible public sewer and water systems to serve a future population; establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.
- 3) The intent of the Ordinance at issue speaks for itself and the Township relies upon the language of the Ordinances, the amendments and the documents previously produced by it and/or that are publicly available in support of how the Ordinance accomplishes the government interests noted above.

- 4) The documents previously produced by the Township demonstrate the extensive efforts of the Township's Planning Commission and Township Board to seek input, advice and opinions from relevant agencies and organizations and legal opinions regarding the sustainability and enforceability of the amendments to the Ordinance at issue.
- 5) All documents relating hereto have been previously produced to Plaintiffs and are identified as responsive to Request to Produce #1, Request to Produce #3, Request to Produce #19, Request to Produce #20 and/or Request to Produce #21. Additionally the Ordinances and their amendments are publicly available to Plaintiffs if not already in their possession and clearly state the value added and purposes behind the enactment of the Ordinance at issue.

**Interrogatory #9:** Identify all current and previous Peninsula Township employees and/or elected official who grow grapes, produce, or other fruit within Peninsula Township or who have an interest in an entity that grows grapes, produce, or other fruit within Peninsula Township. For each Peninsula Township employee and/or elected official so identified, identify and describe any and all instances of a sale of grapes, produce or other fruit to any Peninsula Township winery by invoice number, purchasing winery, the date of the sale, grape

provided” relating to Defendant’s allegations in Paragraphs C and V of its Affirmative Defenses. Identify any documents relating hereto.

**ANSWER:** Objection. Interrogatory #13 calls for a legal conclusion. Discovery in this matter is just beginning and ongoing such that this interrogatory is premature. Subject to and without waiving the same, the Defendant has provisionally pled this Affirmative Defense in accordance with Fed. R. Civ. P. 8 and if discovery does not support said defense, Defendant will waive the same.

Dated: June 24, 2021

By: /s/ Gregory M. Meihn  
Foley & Mansfield, PLLP  
130 E. 9 Mile Rd.  
Ferndale, MI 48220  
(248) 721-4200  
gmeihn@foleymansfield.com  
P38939

**Proof of Service**

I, Katie R. Johnson , certify that the *Defendant Peninsula Township’s Supplemental Answers to Plaintiff’s First Set of Interrogatories* was served on all parties in this case to each of the attorneys of record at their respective addresses as disclosed on the pleadings in this case on **June 24, 2021** by:

<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Fax
<input type="checkbox"/> Hand Delivery (2/26/2021)	<input type="checkbox"/> UPS Overnight
<input type="checkbox"/> Federal Express	<input checked="" type="checkbox"/> Email: <u>infante@millercanfield.com</u> ; <u>gartman@millercanfield.com</u>
<input type="checkbox"/> Other- E-FILING	

Signature: /s/ Katie R. Johnson  
Katie R. Johnson

# **Exhibit 2**

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE WESTERN DISTRICT OF MICHIGAN  
3  
4

5 WINERIES OF THE OLD MISSION  
6 PENINSULA (WOMP) ASSOC., a Michigan  
7 Nonprofit Corporation, et al.,  
8                   Plaintiffs,

9                   vs.

Case No. 1:20-cv-01008

10  
11                   Hon. Paul L. Maloney  
12                   Magistrate Ray S. Kent

13 PENINSULA TOWNSHIP, Michigan  
14 Municipal Corporation,  
15                   Defendant.  
16  
17  
18

19                   The Deposition of CHRISTINA DEEREN,  
20                   Taken at 13235 Center Road,  
21                   Traverse City, Michigan,  
22                   Commencing at 8:06 a.m.,  
23                   Friday, November 5, 2021,  
24                   Before Rebecca L. Russo, CSR-2759, RMR, CRR.  
25

WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP  
DEEREN, CHRISTINA 11/05/2021

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<p style="text-align: right;">Page 6</p> <p>1 Q. Okay, I'm going to give you some ground rules, really 2 mostly for our -- 3 MR. INFANTE: Off the record. 4 (Off the record at 8:07 a.m.) 5 (Back on the record at 8:08 a.m.) 6 BY MR. INFANTE: 7 Q. I was about to tell you we're going to go over some 8 ground rules, which is mostly for our court reporter's 9 assistance here. 10 I'm going to ask you questions today. I'm 11 only going to ask you -- I want you to answer what you 12 know or what you remember. I'm not asking for you to 13 guess. I'm not asking for you to speculate. So just 14 what you know and what you remember. If you don't 15 know or you don't remember, "I don't know" or "I don't 16 remember" is a perfectly acceptable answer, and we'll 17 move on. 18 <b>A. Okay.</b> 19 Q. A lot of the questions I'm going to ask you are going 20 to require a yes-or-no answer. I'd appreciate you 21 saying the word "yes" or "no." People tend to shake 22 their head or say "uh-uh" or "uh-huh." Those don't 23 come across in writing very well. You'll do it, 24 everyone does it, all the witnesses so far have done 25 it, and what I'll say is, I'll just say, "Is that a</p>	<p style="text-align: right;">Page 8</p> <p>1 question and be able to answer my question, and I 2 don't want you to be confused or guess what my 3 question was. 4 But if you do just go ahead and answer my 5 question without telling me you don't understand, I'm 6 going to assume that you did understand my question 7 and you're answering my question. Is that fair. 8 <b>A. Yes.</b> 9 Q. Okay. Also, this is not a marathon. If you need to 10 take a break, just tell me you want to take a break 11 and we can take a bathroom break, coffee break, 12 whatever it is. The only thing I'll ask is, if I have 13 a series of questions that we're currently working on, 14 I may -- I will want to finish that series of 15 questions. 16 And, also, if there's a question pending, 17 we can't take a break until you answer that question. 18 <b>A. Okay.</b> 19 Q. All set? 20 <b>A. Yes.</b> 21 <b>Q. All right. Ms. Deeren, what is your current</b> 22 <b>employment?</b> 23 <b>A. I am currently employed by Peninsula Township.</b> 24 <b>Q. And what is your role?</b> 25 <b>A. I'm the, employed as the director of zoning.</b></p>
<p style="text-align: right;">Page 7</p> <p>1 yes, is that a no." Not trying to be rude. It's just 2 a prompt for you to say, "Oh, yeah, I need to say yes 3 or no." 4 A lot of times when I ask you a question, 5 you're going to know the question I'm asking, and in 6 normal conversation you jump right in and start 7 talking and tell me the answer. That's really 8 difficult for our court reporter, because then she has 9 two people talking at once. 10 So what I'd like you to do is please wait 11 until after I ask the question, then answer. I will 12 do my best when you're answering a question not to 13 interrupt you and let you answer the question. I may 14 interrupt you if I think you are misinterpreting my 15 question, answering something else. I may try to 16 bring you back to the question, and I'll apologize 17 because I will interrupt you then, and I'm not trying 18 to be rude. I'm really just trying to keep these 19 depositions moving forward expeditiously, if I don't 20 think you really understood my question. 21 But on the idea of understanding my 22 question, if I ask you a question and you don't 23 understand it, please tell me you don't understand it, 24 ask me to ask it in a different way, if that would 25 help you, or explain it to you. I want you to know my</p>	<p style="text-align: right;">Page 9</p> <p>1 <b>Q. And what does the director of zoning do?</b> 2 <b>A. I oversee the zoning department, so I'm responsible</b> 3 <b>for land use permits. I'm responsible for</b> 4 <b>enforcement. I'm responsible for presenting cases to</b> 5 <b>the Zoning Board of Appeals.</b> 6 Q. Zoning cases to the Zoning Board of Appeals? 7 <b>A. Correct.</b> 8 Q. Would that be if someone's asking for a permit, you'll 9 bring that to the Zoning Board of Appeals? 10 <b>A. Someone asking or requesting a variance from an</b> 11 <b>ordinance goes to the Zoning Board of Appeals.</b> 12 Q. Okay. And then how about enforcement; do you bring 13 those cases to the Zoning Board of Appeals? 14 <b>A. No.</b> 15 Q. Does someone else do that or does it go somewhere 16 else? 17 <b>A. So enforcement situations are handled differently. So</b> 18 <b>enforcement is handled in a couple of different ways.</b> 19 <b>Enforcement through the Township is typically a</b> 20 <b>written notice if there's a violation. And then, you</b> 21 <b>know, going through the process of trying to get</b> 22 <b>compliance, we try to always get people to come into</b> 23 <b>compliance with whatever it is. And then, if need be,</b> 24 <b>it goes on to a citation or a court hearing. So it's</b> 25 <b>not handled through the Zoning Board of Appeals at</b></p>

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<p style="text-align: right;">Page 26</p> <p>1 approved or denied?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Does anyone else have that authority?</p> <p>4 <b>A. No.</b></p> <p>5 Q. You have sole authority to determine whether a guest</p> <p>6 activity is approved or not approved?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay, and --</p> <p>9 <b>A. Unless it is something that is specifically outlined</b></p> <p>10 <b>within their SUP that was agreed upon in the</b></p> <p>11 <b>conditions of their special use permits.</b></p> <p>12 Q. How would that change who has authority to approve or</p> <p>13 not approve?</p> <p>14 <b>A. It doesn't change who has the authority. It just, it</b></p> <p>15 <b>changes what is the allowable use.</b></p> <p>16 Q. The authority is still with you?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. That's the question.</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What you look at is a separate issue. I just want to</p> <p>21 know who has the authority.</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. So can you -- are all requests for guest</p> <p>24 activities approved?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">Page 28</p> <p>1 Go ahead.</p> <p>2 <b>A. May have been a handful.</b></p> <p>3 BY MR. INFANTE:</p> <p>4 Q. Do you keep logs of the approvals and the denials?</p> <p>5 <b>A. No.</b></p> <p>6 Q. So how do you -- do you keep any records of approvals</p> <p>7 and denials?</p> <p>8 <b>A. Of requests?</b></p> <p>9 Q. Yes.</p> <p>10 <b>A. If it's been written.</b></p> <p>11 Q. Then how do you keep, how do you maintain those</p> <p>12 records?</p> <p>13 <b>A. There's not -- to be honest with you, there's not a</b></p> <p>14 <b>whole lot of wineries that actually request events.</b></p> <p>15 <b>So the requests don't come in on a --</b></p> <p>16 MR. MEIHN: Please answer his question.</p> <p>17 He's asked you how you maintain records on request.</p> <p>18 <b>THE WITNESS: It's through correspondence.</b></p> <p>19 BY MR. INFANTE:</p> <p>20 Q. Is that typically through email?</p> <p>21 <b>A. Can be.</b></p> <p>22 Q. Okay. Are you aware that in this case we've asked for</p> <p>23 certain records -- don't tell me about your</p> <p>24 conversations with your counsel, obviously, but has</p> <p>25 your counsel asked you to provide him your records</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Are all requests for guest activities denied?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Okay. The approval and denials fall somewhere in</p> <p>4 between?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Okay. Would you say that you approve more than you</p> <p>7 deny or deny more than you approve?</p> <p>8 MR. MEIHN: I'm going to object, you're</p> <p>9 asking for speculation.</p> <p>10 But go ahead, ma'am, if you can answer.</p> <p>11 <b>A. I would say there's more approved than denied.</b></p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Can you give me an estimate of the split?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Are a fair amount --</p> <p>16 MR. MEIHN: Objection to speculation.</p> <p>17 Go ahead.</p> <p>18 BY MR. INFANTE:</p> <p>19 Q. Do you think --</p> <p>20 <b>A. No.</b></p> <p>21 Q. Are a fair amount of them denied?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Okay. In a given year, how many do you think are</p> <p>24 denied?</p> <p>25 MR. MEIHN: Object to foundation.</p>	<p style="text-align: right;">Page 29</p> <p>1 related to approval and denial of guest activities?</p> <p>2 <b>A. Repeat the question, please?</b></p> <p>3 Q. Has your counsel asked you to provide him your records</p> <p>4 regarding approvals and denials of guest activities?</p> <p>5 <b>A. Yes, everything's been provided.</b></p> <p>6 Q. You've produced all those to your counsel?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Can you tell me, what is entertainment?</p> <p>9 MR. MEIHN: Again, for clarification,</p> <p>10 define it in the concept of enforcement of her job as</p> <p>11 an enforcement officer, please.</p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Yes, in the context of enforcement, what is</p> <p>14 entertainment, in the context of the winery</p> <p>15 ordinances?</p> <p>16 <b>A. Entertainment would be bringing in musicians, people</b></p> <p>17 <b>playing music, that would be defined as entertainment.</b></p> <p>18 Q. Anything else?</p> <p>19 <b>A. Not that I can think of.</b></p> <p>20 Q. Entertainment means music?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. It doesn't mean anything else?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Okay. Are wineries allowed to engage in entertainment</p> <p>25 or offer entertainment?</p>



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<p style="text-align: right;">Page 38</p> <p>1 Is that right?</p> <p>2 <b>A. An activity is a guest activity and there's no</b></p> <p>3 <b>difference between the two of?</b></p> <p>4 Q. There's no different definition for activity or --</p> <p>5 versus guest activity; that was your testimony.</p> <p>6 <b>A. It is all actually supposed to -- I'm getting</b></p> <p>7 <b>confused, I'm sorry. Say that again?</b></p> <p>8 Q. Your testimony was that there is no different</p> <p>9 definition for activity than there is for guest</p> <p>10 activity.</p> <p>11 MR. MEIHN: In the ordinance.</p> <p>12 <b>A. In the ordinance, no, I think it's defined out as</b></p> <p>13 <b>guest activity.</b></p> <p>14 BY MR. INFANTE:</p> <p>15 Q. Okay, let's look at Section 10, Subpart (r). It's on</p> <p>16 page 129. Do you see that? Okay.</p> <p>17 Just follow along, it says: Activities and</p> <p>18 outdoor gatherings: Activities made available to</p> <p>19 registered guests shall be on the site used for the</p> <p>20 facility or on lands under the direct control of the</p> <p>21 operator either by ownership or lease. Outdoor</p> <p>22 activities shall be permitted if conducted at such</p> <p>23 hours and in such manner as to not be disruptive to</p> <p>24 neighboring properties.</p> <p>25 Is it your testimony that when the word</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Okay. But you're the director of zoning. Are you</p> <p>3 charged with enforcing 19(u)1(b), the section I just</p> <p>4 read?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. Let's look at 1 -- actually, let me back up.</p> <p>7 Is Peninsula Township currently enforcing</p> <p>8 19(u)1(b)?</p> <p>9 MR. MEIHN: And I'm going to object.</p> <p>10 19(u)1(b) is not a provision or paragraph to be</p> <p>11 enforced. It is an intentioned paragraph, no action</p> <p>12 can be taken, no anything can be taken. So it's an</p> <p>13 improper question because it's not an enforcement</p> <p>14 paragraph.</p> <p>15 MR. INFANTE: Counsel --</p> <p>16 MR. MEIHN: But go ahead and answer.</p> <p>17 MR. INFANTE: -- please do not do a</p> <p>18 speaking objection to lead the witness to the answer</p> <p>19 you like.</p> <p>20 MR. MEIHN: I'm not leading, sir, but you</p> <p>21 know by reading it, sir, it's an intent, and now</p> <p>22 you're asking about enforcement, and you're confusing</p> <p>23 the witness with a misrepresentation.</p> <p>24 But go ahead, please.</p> <p>25</p>
<p style="text-align: right;">Page 39</p> <p>1 "activities" is used here it means guest activities?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Let's turn to (u), (u)1(b). It's on page 130. Our</p> <p>4 court reporter is going to be so mad when we're done</p> <p>5 because I keep reading sections of the ordinance over</p> <p>6 and over, but it's easier if I read it out loud.</p> <p>7 I'm going to read 1(b), just follow along.</p> <p>8 It says: Guest activity uses are intended to help in</p> <p>9 the promotion of peninsula agriculture by:</p> <p>10 a) identifying peninsula produce, food or beverage,</p> <p>11 for consumption by the attendees; b) providing</p> <p>12 peninsula agriculture promotional brochures, maps and</p> <p>13 awards; and/or c) including tours through the winery</p> <p>14 and/or other peninsula agriculture locations.</p> <p>15 Can you tell what that section means from a</p> <p>16 zoning and enforcement perspective?</p> <p>17 MR. MEIHN: I'm going to object. This</p> <p>18 person can't testify as to a legal meaning of what a</p> <p>19 particular section means. This is beyond her</p> <p>20 capability.</p> <p>21 But if you can provide a legal basis of</p> <p>22 what that means, go ahead. If you don't, don't have</p> <p>23 that capability, please don't do so.</p> <p>24 <b>A. I'm unsure.</b></p> <p>25</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Would you like me to ask the question again?</p> <p>3 <b>A. Please.</b></p> <p>4 Q. Okay. We're looking at 19(u)1(b). Is this a</p> <p>5 paragraph of the winery ordinances that your</p> <p>6 enforcement -- I shouldn't say -- that you are, that</p> <p>7 the -- that Peninsula Township is enforcing?</p> <p>8 <b>A. As part of the entire ordinance, yes.</b></p> <p>9 Q. Okay, let's look at -- and, I apologize, when I said</p> <p>10 19(u)1(b), I meant 10(u)1(b). I apologize. The</p> <p>11 winery-chateau is in Section 10. Did you understand</p> <p>12 that?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay, I apologize. The numbering of this ordinance is</p> <p>15 sometimes hard to follow.</p> <p>16 Okay, let's look at, then -- if I just</p> <p>17 say 1(b) instead of 10(u)1(b), can you follow along</p> <p>18 with me?</p> <p>19 <b>A. Mmm-hmm.</b></p> <p>20 Q. Yes?</p> <p>21 <b>A. Yes. If I can't, I will ask you.</b></p> <p>22 Q. Perfect. Let's look at 1(d). 1(d) says: Guest</p> <p>23 activity uses do not include wine tasting and such</p> <p>24 related promotional activities as political rallies,</p> <p>25 winery tours and free entertainment (example -</p>

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<p style="text-align: right;">Page 46</p> <p>1 that your testimony?</p> <p>2 <b>A. No, I'm not saying they're not allowed. What I'm</b></p> <p>3 <b>saying is that it is part -- the statement, in my</b></p> <p>4 <b>opinion, is saying that guest activity uses do not</b></p> <p>5 <b>include those things. It doesn't mean they're not</b></p> <p>6 <b>necessarily allowed. It just says that it doesn't</b></p> <p>7 <b>include.</b></p> <p>8 <b>So when they apply for guest activity uses,</b></p> <p>9 <b>when guest activity uses are defined, these are</b></p> <p>10 <b>specifically saying these are not included as part of</b></p> <p>11 <b>guest activity uses, yes.</b></p> <p>12 Q. But they could be allowed somewhere else?</p> <p>13 <b>A. Well, wine tours are allowed, free entertainment is</b></p> <p>14 <b>allowed, Jazz at Sunset is allowed.</b></p> <p>15 Q. Are these just things they don't have to get approval</p> <p>16 for?</p> <p>17 <b>A. No. It's specifically talking about guest activity</b></p> <p>18 <b>uses. It's saying that it does not include those</b></p> <p>19 <b>things.</b></p> <p>20 Q. I understand that, but -- okay, we're going to step</p> <p>21 back to guest activity uses. Guest activity uses</p> <p>22 require your approval, right?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Your approval as the director of zoning, correct?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>What this states is this -- the rest of</b></p> <p>2 <b>this statement is specifically aimed to give a</b></p> <p>3 <b>depiction of what would not be included as a guest</b></p> <p>4 <b>activity. It says guest activity uses to not include</b></p> <p>5 <b>these things. That doesn't necessarily mean -- it</b></p> <p>6 <b>doesn't say in here anything about whether they're</b></p> <p>7 <b>allowable outside of -- they're not supposed to be</b></p> <p>8 <b>included as guest activity uses. That's what it's</b></p> <p>9 <b>simply saying to me.</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. It doesn't mean anything else other than these things</b></p> <p>12 <b>are not included as guest activity uses. That's what</b></p> <p>13 <b>it simply states to me.</b></p> <p>14 Q. Okay. Are there uses that the wineries are allowed to</p> <p>15 engage in, just without your approval?</p> <p>16 <b>A. Yeah.</b></p> <p>17 Q. Okay. Can you give me examples of those?</p> <p>18 <b>A. Wine tasting. They don't have to engage me with wine</b></p> <p>19 <b>tasting. They don't have to engage me if they have</b></p> <p>20 <b>people sitting outdoors. They don't have to engage me</b></p> <p>21 <b>if they are, you know, normal open business hours.</b></p> <p>22 <b>So there are certain things they don't have</b></p> <p>23 <b>to engage us with. There are other things they do</b></p> <p>24 <b>have to engage us with.</b></p> <p>25 <b>Q. Give me some examples of things they have to engage</b></p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. So my then question is, under 1(d), these are</p> <p>2 items that wineries do not need to get your approval</p> <p>3 for?</p> <p>4 MR. MEIHN: Could you restate that, please?</p> <p>5 I don't want to object, but I don't understand.</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. Under 1(d), are these things that wineries do not need</p> <p>8 to get your approval to engage in?</p> <p>9 <b>A. I don't believe that 1(d) is something that requires</b></p> <p>10 <b>approval, because it is not stating that it is</b></p> <p>11 <b>something that comes before me for approval. It's</b></p> <p>12 <b>saying what it doesn't include as a guest activity</b></p> <p>13 <b>use.</b></p> <p>14 Q. So they don't need your approval to do these things</p> <p>15 and they can just do them?</p> <p>16 MR. MEIHN: Under 1(d), sir?</p> <p>17 <b>A. No, I would not say that that's true, not the way</b></p> <p>18 <b>you're asking the question.</b></p> <p>19 BY MR. INFANTE:</p> <p>20 Q. Okay, explain what, tell me what's wrong with my</p> <p>21 question or why I'm asking my question improperly.</p> <p>22 <b>A. You're asking me to give you a yes/no statement on</b></p> <p>23 <b>whether this is something that is allowed or would be</b></p> <p>24 <b>allowed or approved or they could just do, and I think</b></p> <p>25 <b>that is not pertinent to what this states.</b></p>	<p style="text-align: right;">Page 49</p> <p>1 <b>you with.</b></p> <p>2 <b>A. So they have to notify us if they're having dinners.</b></p> <p>3 <b>So if they're having an advertised wine pairing</b></p> <p>4 <b>dinner, cooking classes, those types of things are</b></p> <p>5 <b>what they have to engage us and notify us of.</b></p> <p>6 Q. I want to make sure I'm very clear. When you say, you</p> <p>7 say "notify of," is there a difference between</p> <p>8 notifying you and notifying you and getting your</p> <p>9 approval?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Okay. So like when you said in order to do a food</p> <p>12 pairing dinner they have to notify you, is it correct</p> <p>13 to say in order to do a food pairing dinner, they have</p> <p>14 to notify you and then get your approval?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Okay, so are there certain -- I apologize, because you</p> <p>17 actually just answered my questions contradicting, and</p> <p>18 you're -- I think your counsel laughed a little bit.</p> <p>19 <b>Okay, is there a -- I asked, is there a</b></p> <p>20 <b>difference between notifying you and notifying you and</b></p> <p>21 <b>getting your approval?</b></p> <p>22 <b>A. The ordinance says they have to notify the township 30</b></p> <p>23 <b>days prior to an activity that they want to do. So</b></p> <p>24 <b>let's say that they are doing a dinner, wine pairing</b></p> <p>25 <b>dinner; they have to give a 30-day notification to the</b></p>

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<p style="text-align: right;">Page 50</p> <p><b>1 Township.</b></p> <p><b>2 Q. Okay. And then you approve or don't approve?</b></p> <p><b>3 A. Yes.</b></p> <p>4 Q. Okay. What I'm trying to get at is, are there certain</p> <p>5 uses where all they need to do is notify you and there</p> <p>6 is no approval or disapproval process?</p> <p><b>7 A. No.</b></p> <p>8 Q. Let's look at 2, uses allowed.</p> <p>9 MR. MEIHN: So just for refreshing the</p> <p>10 record, this is again the chateau ordinance.</p> <p>11 MR. INFANTE: The chateau ordinance, yes.</p> <p>12 MR. MEIHN: I just want to make sure --</p> <p>13 they're different when we go to different places, and</p> <p>14 I want her to be familiar with where we're at.</p> <p>15 MR. INFANTE: I appreciate that.</p> <p>16 BY MR. INFANTE:</p> <p>17 Q. I'm going to leave off the 10(u) portion when I cite</p> <p>18 to a section. Is that acceptable to you?</p> <p><b>19 A. Mmm-hmm.</b></p> <p>20 Q. Yes?</p> <p><b>21 A. Yes.</b></p> <p>22 Q. So we're just going to look at 2, which is on page</p> <p>23 130. Okay, so 2 at the top says: Notwithstanding</p> <p>24 Section 8.7.3(10)(m); the following guest activity</p> <p>25 uses may be approved with a special use permit by the</p>	<p style="text-align: right;">Page 52</p> <p>1 Same preamble question. This use requires</p> <p>2 your approval, correct?</p> <p><b>3 A. I've actually not, I have not dealt with this. I have</b></p> <p><b>4 not had this request before me.</b></p> <p>5 Q. Okay. As the -- well, we can take it as a</p> <p>6 hypothetical. If a winery, if a winery came with a,</p> <p>7 filed a request with you for a meeting of a</p> <p>8 501(c)(3) non-profit group, would that request require</p> <p>9 your approval?</p> <p><b>10 A. The ordinance doesn't specifically state in either</b></p> <p><b>11 (2)(b) that they have to give an advanced notice to</b></p> <p><b>12 the zoning administrator.</b></p> <p>13 Q. Okay.</p> <p><b>14 A. So I would say as long as it is something that is a</b></p> <p><b>15 guest activity use that was approved in their special</b></p> <p><b>16 permit, then no.</b></p> <p><b>17 Q. Okay. But this is, this is a section of the ordinance</b></p> <p><b>18 that you are charged with enforcing, correct?</b></p> <p><b>19 A. Yes.</b></p> <p>20 Q. Okay. And is it correct that this ordinance limits</p> <p>21 the 501(c)(3)s who can have a meeting at a</p> <p>22 winery-chateau to only Grand Traverse County</p> <p>23 501(c)(3)s?</p> <p>24 MR. MEIHN: Would you please restate that</p> <p>25 one more time? I don't want to object, I want to make</p>
<p style="text-align: right;">Page 51</p> <p>1 township board.</p> <p>2 And (a) says: Wine and food seminars and</p> <p>3 cooking classes that are scheduled at least 30 days in</p> <p>4 advance with notice provided to the zoning</p> <p>5 administrator. Attendees may consume food prepared in</p> <p>6 the class.</p> <p>7 This one says "with notice provided to the</p> <p>8 zoning administrator," and given your prior testimony,</p> <p>9 you're saying and then approval, correct? And then</p> <p>10 you have to approve it, correct?</p> <p><b>11 A. Well, what I would be approving on it is the number of</b></p> <p><b>12 guests that they have in it.</b></p> <p>13 Q. Okay, we're going to come back to the number of guests</p> <p>14 piece. I do want to talk about that.</p> <p><b>15 A. Sure.</b></p> <p>16 Q. But is that the only thing you would approve regarding</p> <p>17 a wine and food seminar and cooking classes?</p> <p><b>18 A. Yes.</b></p> <p>19 Q. Okay, but it still would require your approval?</p> <p><b>20 A. Yes.</b></p> <p>21 Q. Okay. And looking at 2(b): Meetings of 501(c)(3)</p> <p>22 non-profit groups within Grand Traverse County. These</p> <p>23 activities are not intended to be or resemble a bar or</p> <p>24 restaurant use and therefore full-course meals are not</p> <p>25 allowed, however light lunch or buffet may be served.</p>	<p style="text-align: right;">Page 53</p> <p>1 sure I'm understanding.</p> <p>2 BY MR. INFANTE:</p> <p><b>3 Q. Let's take it from an enforcement perspective, okay?</b></p> <p><b>4 If a winery held a meeting of a 501(c)(3) group that</b></p> <p><b>5 was based out of Kent County, is that allowed or not</b></p> <p><b>6 allowed?</b></p> <p><b>7 A. Well, it specifically states that meetings of</b></p> <p><b>8 501(c)(3) non-profit groups within Grand Traverse</b></p> <p><b>9 County. So I would say that if it was somebody from</b></p> <p><b>10 Kent County, it would not be allowed.</b></p> <p><b>11 Q. Okay. And that is an enforcement action that your</b></p> <p><b>12 office would then take?</b></p> <p><b>13 A. Yes.</b></p> <p>14 MR. MEIHN: Thank you for repeating your</p> <p>15 question.</p> <p>16 BY MR. INFANTE:</p> <p>17 Q. Okay, let's move on to 2(c): Meetings of agricultural</p> <p>18 related groups that have a direct relationship to</p> <p>19 agricultural production, provided that the meetings</p> <p>20 are scheduled at least one month in advance with the</p> <p>21 zoning administrator given adequate notice of the</p> <p>22 scheduling so that the zoning administrator can give</p> <p>23 prior approval.</p> <p>24 Do you see that?</p> <p><b>25 A. Mmm-hmm.</b></p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. Yes?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay.</p> <p>4 MR. MEIHN: You can't do "mmm-hmms." I</p> <p>5 know, it's a reminder to do it. We all do it.</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. So a meeting of an agricultural related group requires</p> <p>8 your prior approval?</p> <p>9 <b>A. As outlined within the ordinance, yes.</b></p> <p>10 Q. Okay. Now this says, in (c)(i): The meetings are</p> <p>11 scheduled at least one month in advance with the</p> <p>12 zoning administrator given adequate advanced notice of</p> <p>13 the scheduling so that the zoning administrator can</p> <p>14 give prior approval.</p> <p>15 Do you see that?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Okay. But now if you look back at 2(a), 2(a) says</p> <p>18 "scheduled at least 30 days in advance with notice</p> <p>19 provided to the zoning administrator" but does not say</p> <p>20 anything about prior approval. Do you see that?</p> <p>21 <b>A. I do.</b></p> <p>22 Q. Okay. So do you want to change your testimony, that</p> <p>23 2(a) requires, use under 2(a) requires your prior</p> <p>24 approval?</p> <p>25 <b>A. I don't think I used the word "prior approval."</b></p>	<p style="text-align: right;">Page 56</p> <p>1 meetings do require your prior approval, correct?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Okay. And what, you know, what is your process for</p> <p>4 deciding whether to approve or not to approve?</p> <p>5 <b>A. Again, if it's following suit with: The following</b></p> <p>6 <b>guest uses may be approved with a special use permit</b></p> <p>7 <b>by the township board.</b></p> <p>8 <b>So not all of these entities operate and</b></p> <p>9 <b>have the same types of SUPs. Yes, there's a baseline,</b></p> <p>10 <b>but there are differences within each one of them.</b></p> <p>11 Q. But do you need to make a determination of whether or</p> <p>12 not the group is agriculturally related?</p> <p>13 <b>A. Yes, meetings of agricultural-related groups. Yes, so</b></p> <p>14 <b>I would have to know the relationship to the</b></p> <p>15 <b>agricultural affiliation.</b></p> <p>16 Q. Okay. So like the, like a realtors' association,</p> <p>17 would that be related to agriculture or not?</p> <p>18 <b>A. It depends. I guess it could be.</b></p> <p>19 Q. Okay. How about a bankers' association?</p> <p>20 <b>A. It could be.</b></p> <p>21 Q. How about a lawyers' association?</p> <p>22 <b>A. It could be.</b></p> <p>23 Q. How about an accountants' association?</p> <p>24 <b>A. Again, it could be.</b></p> <p>25 Q. How about a school board?</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. MEIHN: Counsel, in 2(a), what you</p> <p>2 asked her is if it would be subjected to her approval</p> <p>3 in 2(a). It wasn't that they had to submit it under</p> <p>4 30 days prior. That was the question that was asked</p> <p>5 earlier regarding the 30-day advance, but it wasn't</p> <p>6 asked in that one.</p> <p>7 MR. INFANTE: Counsel, I get to ask the</p> <p>8 questions.</p> <p>9 <b>A. So they have to provide 30 days' advance notice, and</b></p> <p>10 <b>it doesn't say anything about, in 2(a), approval or</b></p> <p>11 <b>prior approval.</b></p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Okay. So is it fair to say that --</p> <p>14 <b>A. So, no, they do not need my approval, apparently, for</b></p> <p>15 <b>that.</b></p> <p>16 Q. Okay. But have you in the past required wineries to</p> <p>17 get your approval to do wine and food seminars and</p> <p>18 cooking classes?</p> <p>19 <b>A. Have I had that, have I requested them to get my</b></p> <p>20 <b>approval prior to that? No.</b></p> <p>21 Q. You've never done that?</p> <p>22 <b>A. Not to my knowledge.</b></p> <p>23 Q. All right. Looking back at 2(c), a meeting of an</p> <p>24 agricultural-related group that has a direct</p> <p>25 relationship to agricultural production, these</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. MEIHN: I'm going to object. These are</p> <p>2 hypotheticals that don't provide the detail, and if</p> <p>3 all you're going to get from her is a quick -- I think</p> <p>4 it's not appropriate.</p> <p>5 MR. INFANTE: Counsel, you can object to</p> <p>6 the form.</p> <p>7 MR. MEIHN: I object to the form.</p> <p>8 MR. INFANTE: Thank you.</p> <p>9 BY MR. INFANTE:</p> <p>10 Q. How about a school board?</p> <p>11 <b>A. I would have to know exactly how it's agriculturally</b></p> <p>12 <b>related to the group.</b></p> <p>13 MR. INFANTE: Let's go off the record real</p> <p>14 quick.</p> <p>15 (Off the record at 9:25 a.m.)</p> <p>16 (Back on the record at 9:26 a.m.)</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. Okay, Ms. Deeren, I believe your last answer was that</p> <p>19 you would need to look to see how they're related to</p> <p>20 agriculture, is that right?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Okay. So for each group you would, you'd make a</p> <p>23 determination of whether or not that group has a</p> <p>24 relationship to agriculture?</p> <p>25 <b>A. Correct.</b></p>



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<p style="text-align: right;">Page 58</p> <p>1 Q. And then you decide to approve or not approve it?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And what criteria do you use to determine</p> <p>4 whether or not that group relates to agriculture?</p> <p>5 A. Well, they would have to supply me, you know, how it</p> <p>6 is affiliated. So they would have to give me how</p> <p>7 they're affiliated to this agriculturally-related</p> <p>8 group.</p> <p>9 Q. Okay, what kind of information would you request?</p> <p>10 A. Exactly that. I would request, tell me how you're</p> <p>11 affiliated, tell me how you're related.</p> <p>12 Q. To agriculture?</p> <p>13 A. To agriculture.</p> <p>14 Q. And if they can't provide you with sufficient</p> <p>15 information to show a relation to agriculture, you</p> <p>16 would deny the guest use?</p> <p>17 A. Well, I couldn't approve it. It's not a guest use.</p> <p>18 Oh, yeah, I'm sorry.</p> <p>19 If it doesn't meet the criteria, then I</p> <p>20 couldn't approve it.</p> <p>21 Q. And then that means they couldn't hold the meeting?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Now, looking at 2(d): Guest activity uses do</p> <p>24 not include entertainment, weddings, wedding</p> <p>25 receptions, family reunions or sale of wine by the</p>	<p style="text-align: right;">Page 60</p> <p>1 family unions or sale of wine by the glass.</p> <p>2 Do these --</p> <p>3 MR. MEIHN: Now I'm lost, I'm sorry. I got</p> <p>4 1(d).</p> <p>5 MR. INFANTE: I'd just like her to</p> <p>6 compare --</p> <p>7 MR. MEIHN: No-no, I'm trying to find the</p> <p>8 paragraph you're comparing, that's all.</p> <p>9 MR. INFANTE: 1(d) and 2(d).</p> <p>10 MR. MEIHN: Oh, I thought you said (b). I</p> <p>11 apologize, go ahead.</p> <p>12 BY MR. INFANTE:</p> <p>13 Q. 1(d) and 2(d), and my question is -- both of these</p> <p>14 paragraphs start with the words "guest activity uses</p> <p>15 do not include," and my question is, are these</p> <p>16 enforced differently or are these enforced the same</p> <p>17 way? Because I think your testimony on 1(d) was that</p> <p>18 they can't do these things.</p> <p>19 A. I don't remember saying that they couldn't do those</p> <p>20 things. I said that the guest activity uses do not</p> <p>21 include these things.</p> <p>22 Q. But then it could be allowed, right?</p> <p>23 A. It could be allowed.</p> <p>24 Q. Okay. And that's my same question for 2(d), because</p> <p>25 2(d) says guest activity uses do not include these</p>
<p style="text-align: right;">Page 59</p> <p>1 glass.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. I should back up, sorry. On 2(c), Peninsula Township</p> <p>5 is enforcing this section of the chateau ordinance?</p> <p>6 A. If we become aware of a problem, yes, it would be</p> <p>7 something that would be enforced.</p> <p>8 Q. Looking at, sorry, now to 2(d): Guest activity uses</p> <p>9 do not include entertainment, weddings, wedding</p> <p>10 receptions, family reunions or sale of wine by the</p> <p>11 glass.</p> <p>12 Do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay, do you know what this means?</p> <p>15 A. Exactly that: Guest activity uses do not include</p> <p>16 entertainment, weddings, wedding receptions, family</p> <p>17 reunions or sale of wine by the glass.</p> <p>18 Q. Looking back, I'd like you to -- and from an</p> <p>19 enforcement perspective, 1(d) says: Guest activity</p> <p>20 uses do not include wine tasting and such related</p> <p>21 promotional activities such as political rallies,</p> <p>22 et cetera.</p> <p>23 A. Where are you at?</p> <p>24 Q. 1(d). And then 2(d) says: Guest activity uses do not</p> <p>25 include entertainment, weddings, wedding receptions,</p>	<p style="text-align: right;">Page 61</p> <p>1 things, but then my question is, but they could be</p> <p>2 allowed, is that right?</p> <p>3 A. I think in order to answer that question you have to</p> <p>4 go back to the intent in the main body of the</p> <p>5 ordinance.</p> <p>6 Q. How so?</p> <p>7 A. Well, because these are little subsections off of what</p> <p>8 number 2 is. It says: The following guest activity</p> <p>9 uses may be approved with a special use permit by the</p> <p>10 board.</p> <p>11 Q. So are you saying the uses in 2(d) may be allowed?</p> <p>12 A. If it is something that's approved by the board. The</p> <p>13 rest of those are things that are allowed under a</p> <p>14 special use permit.</p> <p>15 Q. Okay. So maybe the -- is it fair to say that 2(d) is</p> <p>16 not an outright prohibition on these uses?</p> <p>17 A. I would say that it says, again, "guest activity uses</p> <p>18 do not include." It doesn't say that it excludes.</p> <p>19 It says, as guest activities relates to this</p> <p>20 statement, guest activity uses do not include these</p> <p>21 items.</p> <p>22 Q. Okay.</p> <p>23 A. So there's nothing that says that they're excluded; it</p> <p>24 just says under guest activity uses, it does not</p> <p>25 include those specific items.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. And in order for a winery-chateau to engage in a guest 2 activity use, they need your approval, right? 3 <b>A. Yes.</b> 4 Q. Okay. And entertainment, weddings, wedding 5 receptions, family unions or sale of wine by the glass 6 are not guest activity uses, right? 7 <b>A. According to this, yes.</b> 8 Q. So then winery-chateaus do not need your approval to 9 engage in entertainment, weddings, wedding receptions, 10 family reunions or sale of wine by the glass, correct? 11 <b>A. I don't believe that's what I said, no.</b> 12 Q. They all need your approval to engage in guest 13 activities, right? 14 <b>A. One minute ...</b> 15 <b>So the township board may approve guest</b> 16 <b>activity uses.</b> 17 MR. MEIHN: Can I ask you a question for 18 clarification? 19 MR. INFANTE: No, I have a question 20 pending. 21 <b>A. So restate your question to me, please.</b> 22 MR. MEIHN: Then I won't, thank you. 23 BY MR. INFANTE: 24 Q. Okay. My question is, wineries do not need your 25 approval to engage in entertainment, weddings, wedding</p>	<p style="text-align: right;">Page 64</p> <p>1 <b>A. Yes.</b> 2 Q. Let's look at 2(c) [sic]: No food service other than 3 as allowed above or as allowed for wine tasting may be 4 provided by the winery-chateau. If wine is served, it 5 shall only be served with food and shall be limited to 6 Old Mission Peninsula appellation wine produced at the 7 winery, except as allowed by Section 6, below. 8 <b>A. Please, I'm lost.</b> 9 MR. MEIHN: Where are you reading? 10 MR. INFANTE: It's 2(c) -- sorry, 2(e), I 11 apologize. 12 <b>THE WITNESS: That's why I'm confused.</b> 13 MR. INFANTE: 2(e). 14 BY MR. INFANTE 15 Q. And I've read it into the record, so just go ahead and 16 read it so I don't have to read it again, or our court 17 reporter doesn't have to type it again. 18 Have you read it? 19 <b>A. I have.</b> 20 Q. Okay. As the zoning, director of zoning -- I keep 21 calling you the zoning administrator, and I 22 apologize -- director of zoning, are you charged with 23 enforcing 2(e)? 24 <b>A. Yes.</b> 25 Q. Okay. And can you tell me what that enforcement</p>
<p style="text-align: right;">Page 63</p> <p>1 receptions, family reunions or sale of wine by the 2 glass, correct? 3 <b>A. I'm sure -- I don't know how to answer -- I don't</b> 4 <b>know. That's my answer.</b> 5 Q. A fair answer is you don't know. That's a fair 6 answer, that you don't know if they need your 7 approval. Is that what you're saying? 8 <b>A. I guess I don't understand, I'm not understanding</b> 9 <b>something here. Repeat your question originally.</b> 10 Q. Okay. We've established that in order to engage in a 11 guest activity use, a winery-chateau needs your 12 approval as the zoning administrator -- or, sorry, 13 director of zoning, correct? 14 <b>A. Yes.</b> 15 Q. Okay. And we've established that under 2(d), 16 entertainment, weddings, wedding receptions, family 17 reunions or sale of wine by the glass are not guest 18 activity uses, correct? 19 <b>A. Correct.</b> 20 Q. Okay. So then my follow-up question to that is, 21 because they are not guest activity uses, 22 winery-chateaus do not need your approval, as the 23 director of zoning, to engage in entertainment, 24 weddings, wedding receptions, family reunions or sale 25 of wine by the glass, correct?</p>	<p style="text-align: right;">Page 65</p> <p>1 entails? How do you enforce 2(e)? 2 <b>A. So "no food service other than as allowed above" --</b> 3 MR. MEIHN: He's just asking you how you 4 enforce it. 5 <b>THE WITNESS: How would I enforce that?</b> 6 BY MR. INFANTE: 7 Q. Yeah. 8 <b>A. The same way I would enforce anything else. If I</b> 9 <b>found there was violation, I would do an investigation</b> 10 <b>and I would find out, you know, if what they did was</b> 11 <b>compliant with the ordinance or not compliant with the</b> 12 <b>ordinance.</b> 13 Q. Okay. Let me ask it a different way, because maybe my 14 question was not articulate. 15 So we have a guest activity -- a guest 16 activity, an approved guest activity is going to occur 17 that you have already approved. I'm assuming 18 enforcement doesn't end at your approval, correct? 19 <b>A. No.</b> 20 Q. You're going to make sure that they are complying with 21 the winery-chateau ordinance at that event, correct? 22 <b>A. Yes.</b> 23 Q. And then maybe by a complaint or maybe by Mr. Sanger 24 visiting that event, correct, or yourself? 25 <b>A. Well, okay, continue.</b></p>

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<p style="text-align: right;">Page 70</p> <p>1 not crossing properties to go look at how many grapes 2 are actually brought in. That would be impossible for 3 me to do.</p> <p>4 Q. Okay, fair enough. Now, am I correct, then, that -- 5 so in order to have a guest at a guest activity, so in 6 order to have one guest at a guest activity, a 7 winery-chateau has to either grow 1.25 tons of grapes 8 on land other than their winery-chateau land or 9 purchase 1.25 tons of grapes from some other farmer in 10 Peninsula Township?</p> <p>11 MR. MEIHN: Object, paragraph 3 speaks for 12 itself.</p> <p>13 But if you want to repeat it, you can do 14 so.</p> <p>15 A. I don't think I understand your question in its 16 entirety. So can you repeat your question? In order 17 for them to have one guest?</p> <p>18 I don't know how to answer that question.</p> <p>19 BY MR. INFANTE:</p> <p>20 Q. All right, let me try to ask this in another way.</p> <p>21 A. Please.</p> <p>22 Q. So in a given year, a winery-chateau will qualify for 23 a certain number of guests that they can have at a 24 guest activity based on their tonnage report, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 72</p> <p>1 For a guest activity use, a winery is only 2 allowed to have as many guests as they have qualified 3 for based on the formula in Section 3, right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And so my question is, let's say a 6 winery-chateau has qualified for 50 guests.</p> <p>7 A. Okay.</p> <p>8 Q. They're not allowed to have a guest activity use for 9 75 guests, correct?</p> <p>10 A. If they don't qualify for it, no.</p> <p>11 Q. And then would you deny the application or would you 12 approve it for 50 guests?</p> <p>13 A. Well, I would let them know it had to be limited to 14 whatever their tonnage was, that that's what they 15 needed to have as their number of guests.</p> <p>16 Q. And you, as the director of zoning for Peninsula 17 Township, are you currently enforcing Section 3 --</p> <p>18 A. Yes.</p> <p>19 Q. -- of the winery-chateau ordinance?</p> <p>20 A. Yes.</p> <p>21 Q. And let's look at 4, it's on page 132. It says: The 22 number of persons allowed to participate in guest 23 activity uses shall be determined as follows. 24 And you had mentioned earlier that it caps 25 out, the number of guests. If you look at the end of</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. And so let's say, for example, a winery-chateau 2 is qualified for 50 guests because of their tonnage 3 report to you. You follow?</p> <p>4 A. I do.</p> <p>5 Q. Okay. And then if they submit a guest activity, or 6 request for approval of a guest activity to you that 7 includes 60 guests, would you approve or not approve 8 that?</p> <p>9 A. If they gave me a tonnage report that reflected what 10 they could have for their guest activity amounts and 11 the number was that, yes, I would approve it.</p> <p>12 Q. Okay. What if it was more?</p> <p>13 A. It caps out at 111.</p> <p>14 Q. But my question is, if they qualified for 50 guests 15 because of their tonnage report and they want to have 16 a guest activity use with 75 guests, you would not 17 approve that?</p> <p>18 A. I would not prohibit them from having it if they had 19 the qualifying tonnage.</p> <p>20 Q. But you would prohibit them from having 75 guests; you 21 would limit it to 50 guests, correct?</p> <p>22 A. No -- now you're confusing me. I don't understand.</p> <p>23 Q. Well, I'm just trying to get an idea of -- for guest 24 activity uses, a winery qualifies for, I mean -- 25 strike that.</p>	<p style="text-align: right;">Page 73</p> <p>1 4(a)(i), it says: In no case will the number exceed 2 111 or the fire marshal maximum occupancy, whichever 3 is less.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Is that what you meant by "capping out"?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So is it no matter how much -- how many tons of 9 grapes a winery-chateau purchases, it can never have 10 more than 111 guests at a guest activity use?</p> <p>11 A. Yes.</p> <p>12 Q. And are you, as the director of zoning for Peninsula 13 Township, currently enforcing that restriction?</p> <p>14 A. Yes.</p> <p>15 Q. Let's look at 5, please. This says: Requirements for 16 guest activity uses. Okay, 5(a) says: All guest 17 activity uses shall include agricultural production 18 promotion as part of the activity as follows. 19 I'm not going to read the "as follows." 20 You, as the director of zoning, are you enforcing 21 5(a)?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So as part of the guest activity use, Peninsula 24 Township is requiring that a winery-chateau include 25 agricultural production promotion as part of the</p>

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<p style="text-align: right;">Page 74</p> <p>1 activity?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And is that something that you monitor as the director</p> <p>4 of zoning?</p> <p>5 <b>A. As far as am I on-site when they're having all of</b></p> <p>6 <b>their wine tours and their dinners, and whatever their</b></p> <p>7 <b>guest activity use is? No, I'm not on-site when these</b></p> <p>8 <b>things are occurring.</b></p> <p>9 You know, they have a -- if this is what</p> <p>10 they've applied for, this is what they need to be on</p> <p>11 their own doing. But if I find that there's a</p> <p>12 violation of it, then, yes, I would enforce it.</p> <p>13 Q. All right. I'm going to, I want to actually look at</p> <p>14 5(a)(i) -- it's (ii) and (iii). So 5(a) says: All</p> <p>15 guest activity uses shall include agricultural</p> <p>16 production promotion as part of the activity as</p> <p>17 follows:</p> <p>18 Identify peninsula produced food or</p> <p>19 beverage that is consumed by the attendees;</p> <p>20 Provide peninsula agriculture promotional</p> <p>21 materials;</p> <p>22 Include tours through the winery and/or</p> <p>23 other peninsula agricultural locations.</p> <p>24 My question to you as the director of</p> <p>25 zoning is, do they need to do all three of these</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Let's look at 5(b): Hours of operation for guest</p> <p>2 activity uses shall be as determined by the town</p> <p>3 board, but no later than 9:30 p.m. daily.</p> <p>4 Are you, as the director of zoning,</p> <p>5 enforcing 5(b)?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. 5(c): No alcoholic beverages, except those produced</p> <p>8 on the site, are allowed with guest activity uses.</p> <p>9 I'm not sure what this is. Do you know</p> <p>10 what this prohibits?</p> <p>11 <b>A. It would prohibit you bringing alcohol out, from</b></p> <p>12 <b>outside on to the property. So if I am a winery, I</b></p> <p>13 <b>can't have my guests bring in a bottle of bourbon.</b></p> <p>14 Q. But whatever that winery produces they can sell or</p> <p>15 serve?</p> <p>16 <b>A. Yes. It's outside, no alcoholic beverages that is</b></p> <p>17 <b>outside. So if I'm going to one of these activities,</b></p> <p>18 <b>I can't bring in my little flask of whatever I want to</b></p> <p>19 <b>hang out with my friends that are in the guest</b></p> <p>20 <b>activity.</b></p> <p>21 Q. Can I assume there may be --</p> <p>22 MR. MEIHN: Or at least not get caught.</p> <p>23 BY MR. INFANTE:</p> <p>24 Q. Well, that's sort of my question. Can I assume</p> <p>25 there's a little bit of leeway there, if someone</p>
<p style="text-align: right;">Page 75</p> <p>1 things?</p> <p>2 MR. MEIHN: You used the "director of</p> <p>3 zoning."</p> <p>4 MR. INFANTE: That's her title.</p> <p>5 MR. MEIHN: I'm sorry, I had it flipped the</p> <p>6 other way, you got me.</p> <p>7 <b>A. It says it "shall include." It doesn't say, it</b></p> <p>8 <b>doesn't say that it needs to have all three of these,</b></p> <p>9 <b>but it needs to include as part of their activities</b></p> <p>10 <b>these items.</b></p> <p>11 BY MR. INFANTE:</p> <p>12 Q. Well, I only ask because (ii) after it doesn't include</p> <p>13 an "or" and it doesn't include an "and."</p> <p>14 <b>A. Right.</b></p> <p>15 Q. So are you reading it to say that they can comply by</p> <p>16 doing any one of these three things or they have to do</p> <p>17 all three things?</p> <p>18 <b>A. It says it "shall include agricultural production</b></p> <p>19 <b>promotion as part of the activity as follows." So is</b></p> <p>20 <b>it all three of these things? I would say it's not</b></p> <p>21 <b>all three of these things, but they have to include</b></p> <p>22 <b>one of these things.</b></p> <p>23 Q. And I may have already asked this, but you, as the</p> <p>24 director of zoning, you are enforcing 5(a)?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 77</p> <p>1 brings in a flask in their pocket and the winery</p> <p>2 doesn't know about it?</p> <p>3 <b>A. Well, I mean, that's -- yeah, you know, I think that</b></p> <p>4 <b>it's being prohibited because they don't want people</b></p> <p>5 <b>to bring in other types of alcohol to these entities.</b></p> <p>6 (Off the record at 9:54 a.m.)</p> <p>7 (Back on the record at 10:14 a.m.)</p> <p>8 MR. MEIHN: Can you restate the last</p> <p>9 question that he asked and she answered so I can just</p> <p>10 have a focus of where we're at?</p> <p>11 (The following portion of the record was</p> <p>12 read by the reporter at 10:14 a.m.:</p> <p>13 "Q. Well, that's sort of my question. Can</p> <p>14 I assume there's a little bit of leeway</p> <p>15 there, if someone brings in a flask in</p> <p>16 their pocket and the winery doesn't know</p> <p>17 about it?</p> <p>18 A. Well, I mean, that's -- yeah, you know,</p> <p>19 I think that it's being prohibited because</p> <p>20 they don't want people to bring in other</p> <p>21 types of alcohol to these entities.")</p> <p>22 BY MR. INFANTE:</p> <p>23 Q. All right, let's look at 5(d): Sales of wine by the</p> <p>24 glass or sales of bottles of wine for on-premises</p> <p>25 consumption are not allowed except as provided in</p>



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<p style="text-align: right;">Page 78</p> <p>1 Section 2(e) above.</p> <p>2 You, as the director of zoning, are you</p> <p>3 enforcing 5(d)?</p> <p>4 <b>A. Yes, it's enforced.</b></p> <p>5 Q. Let's look at 5(e): No outdoor food, beverages or</p> <p>6 temporary structures are allowed except as allowed by</p> <p>7 8(c) below.</p> <p>8 Are you, as the director of zoning,</p> <p>9 enforcing 5(e)?</p> <p>10 <b>A. With exceptions.</b></p> <p>11 Q. With the exception allowed by 8(c)?</p> <p>12 <b>A. Well, no, I mean, there are some exceptions that have</b></p> <p>13 <b>been given that this would pertain to.</b></p> <p>14 Q. What do you mean by that?</p> <p>15 <b>A. With the allowance for COVID, temporary structures</b></p> <p>16 <b>have been allowed if they've been permitted. The</b></p> <p>17 <b>township board passed an exception to allow temporary</b></p> <p>18 <b>structures to have outdoor areas for these wineries so</b></p> <p>19 <b>that they could still operate their businesses,</b></p> <p>20 <b>because they weren't making it at the 50 percent</b></p> <p>21 <b>capacity level that they were under with the whole</b></p> <p>22 <b>COVID restrictions.</b></p> <p>23 <b>So the township board allowed them to put</b></p> <p>24 <b>up temporary structures if they got them permitted,</b></p> <p>25 <b>and then, obviously, with the health department lift</b></p>	<p style="text-align: right;">Page 80</p> <p>1 She's not a lawyer. If you would rephrase that to put</p> <p>2 the word in for her, "are you enforcing," then I think</p> <p>3 your question is proper.</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. Prior to COVID, were you, as the director of zoning,</p> <p>6 enforcing a prohibition on food or beverages outdoors</p> <p>7 at winery-chateaus?</p> <p>8 <b>A. No.</b></p> <p>9 MR. MEIHN: And thank you, Counsel.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. Let's look at 2(f) -- I'm sorry, it's not 2, it's</p> <p>12 5(f), on page 133. That says: No sounds related to</p> <p>13 the guest activity shall be discernible at the</p> <p>14 property lines.</p> <p>15 Are you, as the director of zoning,</p> <p>16 enforcing 5(f)?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And tell me you how you enforce it.</p> <p>19 <b>A. Well, if there's a guest activity going on, and</b></p> <p>20 <b>there's obviously adjacent properties, if it's being</b></p> <p>21 <b>heard at the property lines, then it's gotta be</b></p> <p>22 <b>enforced.</b></p> <p>23 Q. Okay. So if a guest activity is going, is occurring</p> <p>24 at a winery-chateau, would it be that you or</p> <p>25 Mr. Sanger would stand at the property line of that</p>
<p style="text-align: right;">Page 79</p> <p>1 in their restrictions, there was some allowance for</p> <p>2 some of these things to occur outside.</p> <p>3 Q. Okay. Well, how about no outdoor food or beverages,</p> <p>4 are you enforcing no outdoor food or beverages at the</p> <p>5 winery-chateaus?</p> <p>6 <b>A. In a normal year we would be, but not -- unless</b></p> <p>7 <b>otherwise specified. But with this whole</b></p> <p>8 <b>COVID-related situation, that hasn't been as enforced,</b></p> <p>9 <b>because we want them to be successful.</b></p> <p>10 Q. Setting aside COVID, prior to COVID are you saying</p> <p>11 winery-chateaus were not allowed to have wine</p> <p>12 outdoors?</p> <p>13 <b>A. Not necessarily wine, it just says beverages.</b></p> <p>14 Q. Okay, is wine a beverage?</p> <p>15 <b>A. It's an alcohol, yeah. I mean, it's a beverage, too,</b></p> <p>16 <b>I mean, but ...</b></p> <p>17 Q. My question is, are you saying before COVID, wineries</p> <p>18 were not allowed to serve wine outdoors?</p> <p>19 <b>A. No, I'm not saying that.</b></p> <p>20 Q. So they were allowed to have wine outdoors?</p> <p>21 MR. MEIHN: Well, can I redirect the</p> <p>22 question? You're asking her --</p> <p>23 MR. INFANTE: Counsel.</p> <p>24 MR. MEIHN: No, you're asking her a legal</p> <p>25 question for which she has no ability to answer.</p>	<p style="text-align: right;">Page 81</p> <p>1 chateau and if you heard any sounds from the guest</p> <p>2 activity, you would enforce the paragraph 5(f)?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. How would you enforce it?</p> <p>5 <b>A. The same way that we enforce everything else. I mean,</b></p> <p>6 <b>you obviously start gathering the facts, and then</b></p> <p>7 <b>probably what would happen in this situation is if it</b></p> <p>8 <b>was something that was -- we would go in and talk with</b></p> <p>9 <b>management of the winery.</b></p> <p>10 Q. Okay. I guess my question, I mean, is there a</p> <p>11 judgment call that you make or you or Mr. Sanger would</p> <p>12 make to say -- you're standing at the property line</p> <p>13 and you hear a sound. Is it absolutely no sound is</p> <p>14 allowed or is there some judgment you use to say,</p> <p>15 "Well, that's not loud enough"?</p> <p>16 <b>A. It says no sound related to the guest activity.</b></p> <p>17 Q. Okay. So you would enforce that as absolutely zero</p> <p>18 sound at the property line?</p> <p>19 <b>A. I would have to, yes.</b></p> <p>20 Q. All right. 5(g) says: No amplified instrumental</p> <p>21 music is allowed, however amplified voice and recorded</p> <p>22 background music is allowed, provided the</p> <p>23 amplification level is no greater than normal</p> <p>24 conversation at the edge of the area designated within</p> <p>25 the building for guest purposes.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Are you enforcing this provision?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And how do you enforce this?</p> <p>4 <b>A. Again, no amplified instrumental music is allowed, so</b></p> <p>5 <b>they can't have amplified instrumental music.</b></p> <p>6 <b>If there's amplified voice and recorded</b></p> <p>7 <b>background music, then it has to be at an</b></p> <p>8 <b>amplification that is no greater than a normal</b></p> <p>9 <b>conversation.</b></p> <p>10 Q. Okay, and how do you, how do you make that</p> <p>11 determination of what is no greater than a normal</p> <p>12 conversation?</p> <p>13 <b>A. Well, it would have to be a normal talking voice.</b></p> <p>14 Q. Okay. Is that based on your level of hearing,</p> <p>15 Mr. Sanger's level of hearing, or somebody else's</p> <p>16 level of hearing?</p> <p>17 <b>A. It would have to be at our own discretion, because</b></p> <p>18 <b>it's not otherwise -- it would have to be at our</b></p> <p>19 <b>discretion.</b></p> <p>20 Q. No amplified instrumental music. To you, as the</p> <p>21 director of zoning, what is instrumental music?</p> <p>22 <b>A. Anything with an instrument.</b></p> <p>23 Q. I guess that's my question. Is it someone playing an</p> <p>24 instrument that has been amplified, is that the</p> <p>25 distinction, or is it -- and maybe I'm not phrasing it</p>	<p style="text-align: right;">Page 84</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Okay, that was just my question.</p> <p>3 But, say, an electric guitar, someone</p> <p>4 playing electric guitar in person would not be</p> <p>5 allowed?</p> <p>6 <b>A. Not if it's not -- as long as it's not amplified.</b></p> <p>7 <b>They could play an electric guitar as long as it's not</b></p> <p>8 <b>amplified. They could play acoustic guitar as long as</b></p> <p>9 <b>it's not amplified. Does that make sense?</b></p> <p>10 Q. I think so. But someone could play a trombone as long</p> <p>11 as it's not amplified?</p> <p>12 <b>A. Yeah.</b></p> <p>13 Q. Someone could play a base drum as long as it's not</p> <p>14 amplified?</p> <p>15 <b>A. Right.</b></p> <p>16 Q. So a marching band, so long as it's not amplified,</p> <p>17 would be allowed?</p> <p>18 <b>A. I don't know the answer to that.</b></p> <p>19 <b>Q. Fair enough. Let's look at 5(h), outdoor displays --</b></p> <p>20 <b>it says: No outdoor displays of merchandise,</b></p> <p>21 <b>equipment or signs are allowed.</b></p> <p>22 <b>Are you currently enforcing this --</b></p> <p>23 <b>A. Yes.</b></p> <p>24 Q. -- ordinance? Thank you.</p> <p>25 Can you tell me, when you're enforcing it,</p>
<p style="text-align: right;">Page 83</p> <p>1 right, because -- it says "amplified instrumental</p> <p>2 music." Is that because there's someone there playing</p> <p>3 a musical instrument or that a recording includes</p> <p>4 instrumental music?</p> <p>5 MR. MEIHN: I'm going to object. The</p> <p>6 paragraph says what it says, and you confuse a</p> <p>7 recording and amplified music.</p> <p>8 But if you can answer it as asked, please</p> <p>9 do.</p> <p>10 <b>A. So I would say amplified is anything that is louder</b></p> <p>11 <b>than if you're normally playing. So if you're playing</b></p> <p>12 <b>a flute and you have the flute hooked up to a mic with</b></p> <p>13 <b>speakers, it's amplified. If you have a guitar and</b></p> <p>14 <b>you're just strumming a guitar, acoustic guitar,</b></p> <p>15 <b>that's not amplified. If you have it hooked up to a</b></p> <p>16 <b>machine and are putting out the music, that would be</b></p> <p>17 <b>amplified.</b></p> <p>18 <b>So I would have to say, however, amplified</b></p> <p>19 <b>voice and recorded background music is allowed that</b></p> <p>20 <b>would be amplified through, I don't know, elevator</b></p> <p>21 <b>music playing in the background or --</b></p> <p>22 BY MR. INFANTE:</p> <p>23 Q. I guess that's sort of my question. Someone could</p> <p>24 play a compact disc that has amplified -- that has</p> <p>25 instrumental music on it. That's allowed?</p>	<p style="text-align: right;">Page 85</p> <p>1 what, what does "equipment" mean?</p> <p>2 MR. MEIHN: I'm going to object to</p> <p>3 foundation.</p> <p>4 <b>A. Well, equipment could have a vast variety of meaning,</b></p> <p>5 <b>from, you know, farm equipment, to equipment for the</b></p> <p>6 <b>winery, you know, things that they use to process</b></p> <p>7 <b>their wines out of. Equipment could be -- it has lots</b></p> <p>8 <b>of meanings.</b></p> <p>9 BY MR. INFANTE:</p> <p>10 Q. Okay, but what is meant by a display as it relates to</p> <p>11 your enforcement of this section of the ordinance?</p> <p>12 <b>A. So a display?</b></p> <p>13 Q. Yes.</p> <p>14 <b>A. So a display of merchandise. What's merchandise for a</b></p> <p>15 <b>winery-chateau? So I would say they couldn't have</b></p> <p>16 <b>displays of merchandise, their wines, you know;</b></p> <p>17 <b>anything that they're allowed to sell they couldn't</b></p> <p>18 <b>have displayed outside.</b></p> <p>19 Q. What's a display of equipment?</p> <p>20 <b>A. Same thing. I would think that the equipment relating</b></p> <p>21 <b>to the winery. So internally their stills, whatever</b></p> <p>22 <b>they're called, their fermenting stuff, that would be</b></p> <p>23 <b>equipment that they would use. So it's all equipment</b></p> <p>24 <b>related right to the winery that couldn't be sitting</b></p> <p>25 <b>outside, like as a feature piece, art piece type of</b></p>

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<p style="text-align: right;">Page 86</p> <p>1 thing.</p> <p>2 Q. Okay. So like if they have a piece of farming</p> <p>3 equipment, like a tractor, they can't have that</p> <p>4 sitting out at the winery, it has to be indoors, is</p> <p>5 that what this says?</p> <p>6 A. I would say, yes, unless it's being used.</p> <p>7 Q. You just can't, it just can't sit outside?</p> <p>8 A. It just can't sit outside.</p> <p>9 Q. Do you know -- I'm looking across the street right now</p> <p>10 and I see a farm across the street. Is that farmer</p> <p>11 precluded from having his tractor and his equipment</p> <p>12 outside, as well?</p> <p>13 MR. MEIHN: I'm going to object to</p> <p>14 foundation.</p> <p>15 A. No.</p> <p>16 BY MR. INFANTE:</p> <p>17 Q. Just the wineries are?</p> <p>18 A. Right. It's -- yes.</p> <p>19 Q. Okay. Let's look at 5(i): Kitchen facilities may be</p> <p>20 used for on-site food service related to guest</p> <p>21 activity uses but not for off-site catering.</p> <p>22 Is this something that you, as the director</p> <p>23 of zoning, are enforcing?</p> <p>24 A. Yes.</p> <p>25 Q. And how do you enforce this?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Okay.</p> <p>2 Q. Okay. I'm going to try to distill what 12(i) says</p> <p>3 without having to read the whole thing.</p> <p>4 Is it fair to say that 12(i) states that</p> <p>5 the sale of non-food items is limited to those that</p> <p>6 promote the winery or agriculture and have the logo of</p> <p>7 the winery on it?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And is this something that you, as the zoning,</p> <p>10 director of zoning, are enforcing?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And it also says the logo has to be at least</p> <p>13 twice as large as any other advertising on the item.</p> <p>14 Is this also something that you, as the director of</p> <p>15 zoning, are enforcing?</p> <p>16 A. Yes.</p> <p>17 Q. And it says also that: Promotional items allowed may</p> <p>18 include corkscrews, wine glasses, gift boxes,</p> <p>19 T-shirts, bumper stickers, et cetera.</p> <p>20 Is this something that as the director of</p> <p>21 zoning you are enforcing?</p> <p>22 A. Yes.</p> <p>23 Q. Okay, as the director of zoning, what is included in</p> <p>24 "et cetera"?</p> <p>25 A. It would be and other items similar to what's listed,</p>
<p style="text-align: right;">Page 87</p> <p>1 A. If we find out that somebody's been doing off-site</p> <p>2 catering, obviously we would inquire and investigate</p> <p>3 and then enforce this rule.</p> <p>4 Q. Okay. So if a winery-chateau did off-site catering of</p> <p>5 a food and wine pairing in the city of Traverse City,</p> <p>6 that -- and you found out about it, that would result</p> <p>7 in a violation?</p> <p>8 A. Yes.</p> <p>9 Q. I'll show you Exhibit 1. Exhibit 1, this is the</p> <p>10 Section 12, I believe it's (u) of the ordinance. This</p> <p>11 is the remote winery tasting room section. Are you</p> <p>12 familiar with this?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let's look at 12(h), at the top. It says:</p> <p>15 Sales of wine by the bottle produced at the winery are</p> <p>16 allowed for off-premises consumption.</p> <p>17 As the director of zoning, does this mean</p> <p>18 that wine, bottles of wine cannot be consumed on-site?</p> <p>19 A. I believe so.</p> <p>20 Q. Okay. And is this something, is this an ordinance</p> <p>21 provision that you, as the director of zoning, are</p> <p>22 currently enforcing?</p> <p>23 A. Yes.</p> <p>24 Q. Let's look at 12(i). I'm going to let you read 12(i),</p> <p>25 it's very long, if you want to just read that quickly.</p>	<p style="text-align: right;">Page 89</p> <p>1 I believe.</p> <p>2 Q. Can you give me some examples?</p> <p>3 A. I have not actually had anybody ask me that question</p> <p>4 before.</p> <p>5 Q. Can you think of any examples today?</p> <p>6 A. So if it's keeping in line with the kind of thing</p> <p>7 that's going here, cork screws. I might say a wine</p> <p>8 opener, wine glasses. You might have the sniffer</p> <p>9 glasses that you might sell. You might have something</p> <p>10 that is along with that.</p> <p>11 Gift boxes, which I'm guessing have, you</p> <p>12 know, their products in it.</p> <p>13 T-shirts, keeping in line with that, you</p> <p>14 probably could have something else similar to a</p> <p>15 T-shirt, maybe a sweatshirt.</p> <p>16 Bumper stickers or, you know, any other</p> <p>17 emblems that are on a car.</p> <p>18 Q. Well, T-shirts, how about -- you said a sweatshirt.</p> <p>19 How about like a jacket?</p> <p>20 A. Maybe.</p> <p>21 Q. How about a hat?</p> <p>22 A. Maybe.</p> <p>23 Q. How about shorts?</p> <p>24 A. Maybe.</p> <p>25 Q. Is it -- you are the director of zoning, and so are</p>

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<p style="text-align: right;">Page 90</p> <p>1 you the person who makes the determination of what</p> <p>2 would be included in this "et cetera" provision?</p> <p>3 <b>A. Unless it was something that was already specified</b></p> <p>4 <b>within their special use permit. If they identified</b></p> <p>5 <b>certain materials that they wanted to sell within</b></p> <p>6 <b>their winery and those were the only listed items,</b></p> <p>7 <b>then, yes, then this "et cetera" would be something</b></p> <p>8 <b>that I would have to enforce and make a determination</b></p> <p>9 <b>on.</b></p> <p>10 Q. But my question is, you are the person who makes that</p> <p>11 determination, correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. Okay. And I know you've said that Mr. Sanger here, he</p> <p>14 reports to you, is that right?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Okay. Does Mr. Sanger have the authority to interpret</p> <p>17 any of the provisions of the winery ordinance, or is</p> <p>18 that authority yours alone?</p> <p>19 <b>A. No, I think that initially he has to interpret the</b></p> <p>20 <b>ordinances. Otherwise, how does he make a</b></p> <p>21 <b>determination on whether there's something that needs</b></p> <p>22 <b>to be investigated or not investigated? Obviously, he</b></p> <p>23 <b>has enforcement of the ordinance, as well.</b></p> <p>24 Q. But he reports to you, correct?</p> <p>25 <b>A. He does report to me, yes.</b></p>	<p style="text-align: right;">Page 92</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Okay. 12(j), go ahead and read that section.</p> <p>3 MR. MEIHN: And again, we're talking about</p> <p>4 remote tasting, just for the record.</p> <p>5 MR. INFANTE: We are on Exhibit 1.</p> <p>6 <b>A. Yes.</b></p> <p>7 BY MR. INFANTE:</p> <p>8 Q. I apologize, did you say yes, you're ready?</p> <p>9 <b>A. Yes.</b></p> <p>10 <b>Q. Okay. Are you, as the director of zoning, enforcing</b></p> <p>11 <b>12(j)?</b></p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. And how are you enforcing this? And maybe it</p> <p>14 would be easier to take it sentence-by-sentence.</p> <p>15 Would that be helpful?</p> <p>16 <b>A. Say it again?</b></p> <p>17 Q. Would it be helpful to take it sentence-by-sentence?</p> <p>18 <b>A. Yes, let's do that.</b></p> <p>19 Q. So the first sentence, in a nutshell, says that</p> <p>20 packaged food items can be sold, but they must contain</p> <p>21 wine or fruit produced in Peninsula Township?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. How do you enforce that provision?</p> <p>24 <b>A. Well, the products that are sold and packaged for</b></p> <p>25 <b>retail sale have to be part of the, produced in the</b></p>
<p style="text-align: right;">Page 91</p> <p>1 Q. And is the final enforcement decision made by</p> <p>2 Mr. Sanger or is it made by you?</p> <p>3 <b>A. It comes to me and then is initiated by me, and it</b></p> <p>4 <b>isn't always just my decision to enforce or not</b></p> <p>5 <b>enforce something. Obviously, I have a supervisor --</b></p> <p>6 MR. MEIHN: Just answer his question,</p> <p>7 please. Go ahead.</p> <p>8 <b>A. So, no.</b></p> <p>9 BY MR. INFANTE:</p> <p>10 Q. Okay. So my question is, what I'm trying to get to</p> <p>11 is, okay, Mr. Sanger goes out to a remote winery</p> <p>12 tasting room and he sees an item that is not listed in</p> <p>13 12(i), and let's say it's a sweatshirt or a hat.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. Does he make, is he allowed to make the decision that</p> <p>16 that is an allowed promotional item or do you have to</p> <p>17 make that decision?</p> <p>18 <b>A. I would say I would make that decision, and if ...</b></p> <p>19 Q. So then my larger question, really, for all three</p> <p>20 sections of the winery ordinance, all right, the</p> <p>21 remote tasting room, the chateau, and the farm</p> <p>22 processing, same general question: If he goes out and</p> <p>23 believes he sees a violation, the ultimate decision of</p> <p>24 whether it is or is not a violation is your decision</p> <p>25 and not Mr. Sanger's decision, correct?</p>	<p style="text-align: right;">Page 93</p> <p>1 peninsula.</p> <p>2 <b>So if I had a question of what was being</b></p> <p>3 <b>sold, I would inquire on where the products had come</b></p> <p>4 <b>from, so I would have to find out where they received</b></p> <p>5 <b>the product from and whether -- determine whether it</b></p> <p>6 <b>was a peninsula item or an outside item.</b></p> <p>7 Q. All right. And, you as the director of enforcement,</p> <p>8 the word "produced," can you tell me what that means?</p> <p>9 <b>A. Well, grown, produced. So it would have to be</b></p> <p>10 <b>something that was grown here, produced here in</b></p> <p>11 <b>Peninsula Township.</b></p> <p>12 Q. Okay. Does produced mean grown or does produced mean,</p> <p>13 you know, that it was, you know, changed? Maybe I'm</p> <p>14 not asking that question right. So like salsa?</p> <p>15 <b>A. I didn't hear you.</b></p> <p>16 Q. Salsa.</p> <p>17 <b>A. Okay.</b></p> <p>18 Q. Okay, salsa is a combination of tomatoes and onions</p> <p>19 and garlic and some other things, right --</p> <p>20 <b>A. Mmm-hmm.</b></p> <p>21 Q. -- safe to say?</p> <p>22 If a winery makes salsa, is that</p> <p>23 production, is that produced?</p> <p>24 <b>A. I would say yes.</b></p> <p>25 Q. So let's say a winery buys tomatoes from downstate</p>



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<p style="text-align: right;">Page 94</p> <p>1 Michigan, brings them up to its winery and makes salsa 2 out of those tomatoes. 3 <b>A. Okay.</b> 4 Q. If they were made in the winery in Peninsula Township, 5 would that be allowed because that was produced in 6 Peninsula Township? 7 MR. MEIHN: I'm going to ask you just to 8 rephrase it in terms of would that be something you 9 would enforce so that she's not providing an opinion 10 as a lawyer. 11 BY MR. INFANTE: 12 Q. You, as the director of zoning, is that something that 13 you would -- you believe would be allowed or would you 14 issue a complaint for that? 15 <b>A. I'm really not sure how to answer that question.</b> 16 <b>Honestly, I'd get my attorney's opinion.</b> 17 Q. Well, that's fair. But let me ask the question again. 18 So you, as the director of zoning, are not sure 19 whether a winery, using my salsa example, whether a 20 winery could purchase tomatoes from downstate 21 Michigan, bring those tomatoes to their winery, make 22 salsa out of those tomatoes, and then sell that salsa? 23 <b>A. Well, I think if you were going to look at the rest of</b> 24 <b>the subsection of this, I think then you could serve</b> 25 <b>it as a, you know, product in the -- as a food item,</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>a statement, complete statement: Retail sale of</b> 2 <b>packaged food items allowed in addition to bottled</b> 3 <b>wine are those which contain wine or fruit produced in</b> 4 <b>Peninsula Township.</b> 5 <b>It doesn't give a caveat to differentiate</b> 6 <b>from anything other than produced in Peninsula</b> 7 <b>Township.</b> 8 Q. Okay. Well, let's say it's going to contain -- the 9 packaged food item is going to be cherries, cherry 10 jam, for example. If one of those cherries was grown 11 in Peninsula Township and every other cherry was grown 12 outside of Peninsula Township, does that retail 13 packaged food item contain fruit produced in Peninsula 14 Township? 15 <b>A. A percentage of it would.</b> 16 Q. So it would contain fruit grown in Peninsula Township? 17 <b>A. Not the whole thing.</b> 18 Q. That's not my question. Would it contain fruit grown 19 in Peninsula Township? 20 <b>A. Yes.</b> 21 Q. It says, continuing with -- the second-to-the-last 22 sentence says: Such food items shall be intended for 23 off-premise consumption. 24 Is it safe to assume that you, as the 25 director of -- well, you as the director of</p>
<p style="text-align: right;">Page 95</p> <p>1 <b>but I don't know that you could sell it as a retail.</b> 2 Q. Well, this section only applies to, as I read it, it 3 applies to the retail sale of packaged food items 4 right at the beginning. 5 MR. MEIHN: I'm just going to object. She 6 testified she would go to counsel on this because she 7 wouldn't know how to answer it. 8 But if you can continue to answer it or 9 have a different answer, go ahead. 10 <b>THE WITNESS: I don't know how to answer</b> 11 <b>it.</b> 12 BY MR. INFANTE: 13 Q. Fair enough. Looking still at that first sentence of 14 12(j), it says: Retail sale of packaged food items 15 allowed in addition to bottled wine are those which 16 contain wine or fruit produced in Peninsula Township. 17 My question to you, as the director of 18 zoning for Peninsula Township, regarding enforcement, 19 is there -- where it says "produced in Peninsula 20 Township," is that one hundred percent production has 21 to happen in Peninsula Township or one percent of 22 production has to happen in Peninsula Township? 23 <b>A. I would say one hundred.</b> 24 Q. And where does it say that -- 25 <b>A. It doesn't, it doesn't define it either way, but it's</b></p>	<p style="text-align: right;">Page 97</p> <p>1 enforcement, do you interpret this to mean that retail 2 food items cannot be consumed on premise? 3 <b>A. Yes.</b> 4 Q. <b>And is this something that you, as the director of</b> 5 <b>zoning, are enforcing?</b> 6 <b>A. Yes.</b> 7 Q. The last item, last sentence says: Such allowed 8 packaged food items may include mustard, vinegar and 9 non-carbonated beverages, et cetera. 10 We already talked about the prior provision 11 that had the word "et cetera" in it, and my question 12 is, are you the person at Peninsula Township who would 13 make the determination of what is included in 14 "et cetera"? 15 <b>A. Yes.</b> 16 Q. And I believe your testimony is that would be at your 17 discretion? 18 <b>A. It would be -- I don't know that I used the word</b> 19 <b>"discretion," but other like items continuation of</b> 20 <b>what is exemplified.</b> 21 Q. Okay. But you are the person that makes that 22 determination? 23 <b>A. Yes.</b> 24 Q. Does any other person at Peninsula Township make that 25 determination?</p>

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<p style="text-align: right;">Page 98</p> <p>1 <b>A. No.</b></p> <p>2 Q. Okay. And do you have any, any guidance, is there any</p> <p>3 document that guides you, besides the ordinance</p> <p>4 itself, or this section of the ordinance, as to what</p> <p>5 would be included in that "et cetera" sentence?</p> <p>6 <b>A. Other than the beginning portion of the ordinance,</b></p> <p>7 <b>which gives us some, you know, different delineations</b></p> <p>8 <b>of how to interpret words and stuff. The ordinance</b></p> <p>9 <b>itself is what I use.</b></p> <p>10 Q. There's no other document in your office, or anything</p> <p>11 like that?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Okay. (K) is: Signs and other advertising may not</p> <p>14 promote, list or in any way identify any of the food</p> <p>15 are non-food items allowed for sale in the tasting</p> <p>16 room.</p> <p>17 Can you tell me as the director of</p> <p>18 zoning -- well, are you enforcing this provision?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And how do you enforce it?</p> <p>21 <b>A. Well, if I saw signs that were identifying or</b></p> <p>22 <b>promoting food or non-food items, I would address it.</b></p> <p>23 Q. Okay. Are those indoor signs or outdoor signs?</p> <p>24 <b>A. It's not specific. It says: Signs and other</b></p> <p>25 <b>advertising may not promote, list or in any way</b></p>	<p style="text-align: right;">Page 100</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Sorry, you're talking over me. Let me finish my</p> <p>3 question.</p> <p>4 You would enforce the ordinance 12(k) and</p> <p>5 require them to remove that sign?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Okay. Now, 12(k) also says "other advertising."</p> <p>8 Let's say, for example, that a remote winery tasting</p> <p>9 has a menu or a price sheet that lists the food and</p> <p>10 non-food items for sale and the price. Is that a</p> <p>11 violation of 12(k)?</p> <p>12 <b>A. If it's an advertisement. So I don't know that I</b></p> <p>13 <b>would necessarily determine that as an advertisement</b></p> <p>14 <b>if it's a menu. I mean, you're listing what you have</b></p> <p>15 <b>on a menu item.</b></p> <p>16 In my mind, an advertisement would be, you</p> <p>17 know, putting out an ad in the paper that we have</p> <p>18 remote wine tasting here in Peninsula Township, and</p> <p>19 along with the remote wine tasting we have these food</p> <p>20 items and these non-food items available. That's what</p> <p>21 I would think of as advertising.</p> <p>22 If it's a menu and it's got something</p> <p>23 listed on it, that may be the appropriate place for</p> <p>24 it.</p> <p>25 Q. Okay. So I think what you're saying is a remote</p>
<p style="text-align: right;">Page 99</p> <p>1 identify any of the food or non-food items allowed.</p> <p>2 So if I drove up to a winery and there was</p> <p>3 an exterior sign that was promoting food and non-food</p> <p>4 items, that would be, obviously, what I would look at.</p> <p>5 Q. How about if you walk inside of a remote winery</p> <p>6 tasting room and saw a sign that listed the, you know,</p> <p>7 non-food -- the food items and the non-food items for</p> <p>8 sale. Is that an enforcement issue?</p> <p>9 <b>A. I would say so, yes.</b></p> <p>10 Q. Okay. So if you walked into a remote winery tasting</p> <p>11 room and there was a chalkboard that said, you know,</p> <p>12 these are the things we have for sale, for example,</p> <p>13 mustard, vinegar, non-carbonated beverages, and here's</p> <p>14 the price --</p> <p>15 <b>A. T-shirts.</b></p> <p>16 Q. Well, T-shirts are allowed, correct?</p> <p>17 And it listed on a chalkboard, these are</p> <p>18 the things we have for sale, is that -- are you saying</p> <p>19 as the director of enforcement that's not allowed?</p> <p>20 <b>A. It's not allowed because it doesn't give me -- it</b></p> <p>21 <b>doesn't depict whether it's interior or exterior. It</b></p> <p>22 <b>just says signs, period.</b></p> <p>23 Q. And you would enforce the ordinance --</p> <p>24 <b>A. As is.</b></p> <p>25 Q. -- and make them take down --</p>	<p style="text-align: right;">Page 101</p> <p>1 winery tasting -- the Record-Eagle is the newspaper in</p> <p>2 Traverse City, correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. You're saying that under 12(k), a remote winery</p> <p>5 tasting room could not take out an ad in the</p> <p>6 Record-Eagle that says we have these food items or</p> <p>7 this merchandise for sale?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. That would be a violation of 12(k)?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. And you would enforce that?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. And then within the -- I guess the same thing.</p> <p>14 If they took out a radio ad that said we have this</p> <p>15 food for sale and we have these non-food items for</p> <p>16 sale --</p> <p>17 <b>A. Or they're being featured on the news.</b></p> <p>18 Q. If there was a news story about them and that winery,</p> <p>19 they couldn't do that, either?</p> <p>20 <b>A. Not if they were advertising it. And they could pan</b></p> <p>21 <b>and show it, but if they were actually advertising</b></p> <p>22 <b>that they had all of these things, then that would be</b></p> <p>23 <b>a violation.</b></p> <p>24 Q. Okay. But then getting back to inside the tasting</p> <p>25 room, let's say that a remote winery tasting room has</p>

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1 **A. No.**

2 Q. Okay. And do you have any, any guidance, is there any  
3 document that guides you, besides the ordinance  
4 itself, or this section of the ordinance, as to what  
5 would be included in that "et cetera" sentence?

6 **A. Other than the beginning portion of the ordinance,  
7 which gives us some, you know, different delineations  
8 of how to interpret words and stuff. The ordinance  
9 itself is what I use.**

10 Q. There's no other document in your office, or anything  
11 like that?

12 **A. No.**

13 Q. Okay. (K) is: Signs and other advertising may not  
14 promote, list or in any way identify any of the food  
15 are non-food items allowed for sale in the tasting  
16 room.

17 Can you tell me as the director of  
18 zoning -- well, are you enforcing this provision?

19 **A. Yes.**

20 Q. And how do you enforce it?

21 **A. Well, if I saw signs that were identifying or  
22 promoting food or non-food items, I would address it.**

23 Q. Okay. Are those indoor signs or outdoor signs?

24 **A. It's not specific. It says: Signs and other  
25 advertising may not promote, list or in any way**

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1 **identify any of the food or non-food items allowed.**

2 **So if I drove up to a winery and there was  
3 an exterior sign that was promoting food and non-food  
4 items, that would be, obviously, what I would look at.**

5 Q. How about if you walk inside of a remote winery  
6 tasting room and saw a sign that listed the, you know,  
7 non-food -- the food items and the non-food items for  
8 sale. Is that an enforcement issue?

9 **A. I would say so, yes.**

10 Q. Okay. So if you walked into a remote winery tasting  
11 room and there was a chalkboard that said, you know,  
12 these are the things we have for sale, for example,  
13 mustard, vinegar, non-carbonated beverages, and here's  
14 the price --

15 **A. T-shirts.**

16 Q. Well, T-shirts are allowed, correct?

17 And it listed on a chalkboard, these are  
18 the things we have for sale, is that -- are you saying  
19 as the director of enforcement that's not allowed?

20 **A. It's not allowed because it doesn't give me -- it  
21 doesn't depict whether it's interior or exterior. It  
22 just says signs, period.**

23 Q. And you would enforce the ordinance --

24 **A. As is.**

25 Q. -- and make them take down --

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1 **A. Yes.**

2 Q. Sorry, you're talking over me. Let me finish my  
3 question.

4 You would enforce the ordinance 12(k) and  
5 require them to remove that sign?

6 **A. Yes.**

7 Q. Okay. Now, 12(k) also says "other advertising."  
8 Let's say, for example, that a remote winery tasting  
9 has a menu or a price sheet that lists the food and  
10 non-food items for sale and the price. Is that a  
11 violation of 12(k)?

12 **A. If it's an advertisement. So I don't know that I  
13 would necessarily determine that as an advertisement  
14 if it's a menu. I mean, you're listing what you have  
15 on a menu item.**

16 In my mind, an advertisement would be, you  
17 know, putting out an ad in the paper that we have  
18 remote wine tasting here in Peninsula Township, and  
19 along with the remote wine tasting we have these food  
20 items and these non-food items available. That's what  
21 I would think of as advertising.

22 If it's a menu and it's got something  
23 listed on it, that may be the appropriate place for  
24 it.

25 Q. Okay. So I think what you're saying is a remote

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1 winery tasting -- the Record-Eagle is the newspaper in  
2 Traverse City, correct?

3 **A. Correct.**

4 Q. You're saying that under 12(k), a remote winery  
5 tasting room could not take out an ad in the  
6 Record-Eagle that says we have these food items or  
7 this merchandise for sale?

8 **A. Correct.**

9 Q. That would be a violation of 12(k)?

10 **A. Right.**

11 Q. And you would enforce that?

12 **A. Yes.**

13 Q. Okay. And then within the -- I guess the same thing.  
14 If they took out a radio ad that said we have this  
15 food for sale and we have these non-food items for  
16 sale --

17 **A. Or they're being featured on the news.**

18 Q. If there was a news story about them and that winery,  
19 they couldn't do that, either?

20 **A. Not if they were advertising it. And they could pan  
21 and show it, but if they were actually advertising  
22 that they had all of these things, then that would be  
23 a violation.**

24 Q. Okay. But then getting back to inside the tasting  
25 room, let's say that a remote winery tasting room has

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<p style="text-align: right;">Page 106</p> <p>1 Q. I asked you a little bit earlier to define guest 2 activity use for me. Are you aware that over the 3 years, Peninsula Township has requested from its 4 counsel an interpretation of what is meant by the term 5 "guest activity use"?</p> <p>6 <b>A. I have seen limited documentation on that.</b></p> <p>7 Q. Okay, my question is, have you seen documentation on 8 the request.</p> <p>9 <b>A. No.</b></p> <p>10 Q. Have you seen the answer?</p> <p>11 <b>A. I'm unsure.</b></p> <p>12 Q. Okay. Well, I asked have you ever seen a document 13 from counsel, a lawyer for Peninsula Township, not 14 just Mr. Meihn, that interprets the term "guest 15 activity use."</p> <p>16 <b>A. I don't believe so.</b></p> <p>17 Q. Okay.</p> <p>18 MARKED FOR IDENTIFICATION: 19 DEPOSITION EXHIBIT 7 20 10:58 a.m.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. I'm showing you what's marked as Exhibit 7. And 23 again, same caveat, these are emails drafted by 24 Michelle Reardon, but I just want you to look at the 25 second page, and this is, it looks to be a letter or</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. This email before?</p> <p>2 <b>A. No, I have not.</b></p> <p>3 Q. Have you ever seen the letter that is attached to this 4 email?</p> <p>5 <b>A. Not to my knowledge. I didn't look forward and see 6 what says.</b></p> <p>7 Q. Well, I'm going to have you turn the page.</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. Okay, this is a letter dated June 21, 2016. At the 10 top it says Young Graham Elsenheimer &amp; Wendling PC. 11 Do you see that?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. Okay. Have you ever seen this document before?</p> <p>14 <b>A. Not to my knowledge, I have not.</b></p> <p>15 Q. And at the end it's signed: Sincerely, Peter R. 16 Wendling?</p> <p>17 <b>A. I see that.</b></p> <p>18 Q. Okay. And you've never seen this document before?</p> <p>19 <b>A. I have not.</b></p> <p>20 Q. Okay. So if you've never seen this document before, 21 safe to say you don't use this document with regard to 22 your enforcement efforts as the director of zoning?</p> <p>23 <b>A. I couldn't if I didn't know it existed.</b></p> <p>24 Q. Okay. Turn to page 2. 25 MR. MEIHN: Of the letter or of the</p>
<p style="text-align: right;">Page 107</p> <p>1 memo from the Peninsula Township Zoning Board of 2 Appeals to Michelle Reardon, dated May 5, 2016. 3 Have you ever seen this before?</p> <p>4 <b>A. I have not.</b></p> <p>5 Q. Okay, and if you look at the third -- sorry, fourth 6 page ...</p> <p>7 <b>A. This one?</b></p> <p>8 Q. Yes, the fourth page, it's an email. Okay, this is an 9 email, it looks like from, Lauri Broome, B-R-O-O-M-E, 10 at upnorthlaw.com, on June 22, 2016, and it's to 11 planner@peninsulatownship.com and 12 zoning@peninsulatownship.com, and it says: 13 Michelle, Peter's letter regarding guest 14 activity uses under Section 8.7.3(10) of the zoning 15 ordinance is attached. Please provide the ZBA with 16 the applicable rules from the Michigan Liquor Control 17 Commission and the Michigan Department of Agriculture 18 permits in the packet as well.</p> <p>19 Have you ever seen a letter from Peter? It 20 looks like Peter Wendling.</p> <p>21 MR. MEIHN: You mean the letter that 22 follows it or the email that follows?</p> <p>23 BY MR. INFANTE:</p> <p>24 Q. First, have you ever seen this email before?</p> <p>25 <b>A. Have I ever seen this --</b></p>	<p style="text-align: right;">Page 109</p> <p>1 document?</p> <p>2 MR. INFANTE: Of the letter.</p> <p>3 MR. MEIHN: He's talking about the letter, 4 Peter Wendling's letter.</p> <p>5 BY MR. INFANTE:</p> <p>6 <b>Q. At the very last paragraph there, it says:</b> 7 <b>As the board can see, the issue is</b> 8 <b>relatively complex. The best way to handle this would</b> 9 <b>be to list in separate columns what constitutes a</b> 10 <b>guest activity use and what constitutes an accessory</b> 11 <b>use otherwise allowed by a winery-chateau.</b> 12 <b>Did I read that right?</b></p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q. Okay. Have you ever seen a list of separate columns</b> 15 <b>of what constitutes a guest activity use and what</b> 16 <b>constitutes an accessory use?</b></p> <p>17 <b>A. I have not.</b></p> <p>18 <b>Q. Okay. Do you know if one exists?</b></p> <p>19 <b>A. No, I -- if one exists, I have never seen it.</b></p> <p>20 <b>Q. Okay. So if such a document does exist, you do not</b> 21 <b>use that document as the director of zoning in your</b> 22 <b>enforcement activities?</b></p> <p>23 <b>A. No.</b></p> <p>24 MR. MEIHN: Can you say, "No, I do not use 25 that document"?</p>



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<p style="text-align: right;">Page 110</p> <p><b>1 THE WITNESS: No, I do not use what this is</b></p> <p><b>2 specifically relating to.</b></p> <p>3 MR. MEIHN: Thank you.</p> <p>4 MR. INFANTE: Thank you, Counsel, I</p> <p>5 appreciate that.</p> <p>6 Give me one second, I may be done ...</p> <p>7 I don't have any further questions.</p> <p>8 MR. MEIHN: I have a few questions.</p> <p>9 EXAMINATION</p> <p>10 BY MR. MEIHN:</p> <p>11 Q. I'd like you to start from the front to back for a</p> <p>12 moment. If you would grab Exhibit 6 for a moment and</p> <p>13 get to the part of -- I'm sorry, 7, and get to the</p> <p>14 part of the Young Graham Elsenheimer &amp; Wendling</p> <p>15 letter, please?</p> <p>16 And do you remember being asked questions</p> <p>17 about the guest activity as it relates to weddings and</p> <p>18 other activities?</p> <p><b>19 A. Yes.</b></p> <p>20 Q. In fact, let's see if I can find that real quick.</p> <p>21 Let me go at it this way, if I can. Do you</p> <p>22 remember in discussing -- on Section 10(u)(2), you</p> <p>23 were asked a number of questions regarding the</p> <p>24 reference to the weddings and other activities that</p> <p>25 are prohibited as guest activities?</p>	<p style="text-align: right;">Page 112</p> <p>1 may not be registered guests) as an additional support</p> <p>2 and use, subject to the following."</p> <p>3 Q. All right. And then in terms of weddings and other</p> <p>4 types of similar events, do you recall where in the</p> <p>5 section of the ordinance it provides for that?</p> <p><b>6 A. For the ability to have weddings?</b></p> <p>7 Q. No, the ability that deals with weddings. Section 2,</p> <p>8 do you see Section 2? All right.</p> <p><b>9 A. So 2(d).</b></p> <p>10 Q. Says what?</p> <p><b>11 A. "Guest activity uses do not include entertainment,</b></p> <p><b>12 weddings, wedding receptions, family reunions or sale</b></p> <p><b>13 of wine by the glass."</b></p> <p>14 Q. Does that section prevent guest activities -- sorry,</p> <p>15 prevent weddings --</p> <p><b>16 A. No.</b></p> <p>17 Q. -- receptions, family reunions, outside of the</p> <p>18 classification of guest activities for a particular</p> <p>19 winery?</p> <p><b>20 A. No.</b></p> <p>21 Q. All right. If you go back to the Young Graham</p> <p>22 Elsenheimer &amp; Wendling letter, and on the first page,</p> <p>23 third paragraph, where it starts off "given this</p> <p>24 disclaimer," can you review that, please?</p> <p>25 MR. INFANTE: Counsel, I just want to make</p>
<p style="text-align: right;">Page 111</p> <p><b>1 A. Yes.</b></p> <p>2 Q. Okay. And do you remember being asked as to whether</p> <p>3 or not weddings and other activities that are</p> <p>4 referenced in that particular section that are</p> <p>5 prohibited as guest activities are permitted in other</p> <p>6 means or manner other than guest activities for that</p> <p>7 winery?</p> <p><b>8 A. Yes.</b></p> <p>9 Q. And what do you recall your testimony to be?</p> <p><b>10 A. That -- do I have to just recall from memory?</b></p> <p>11 Q. Yeah. Well, let me just ask you this. Isn't it true</p> <p>12 that under 10(u)(2) --</p> <p>13 MR. INFANTE: Counsel, objection, leading.</p> <p><b>14 A. Can I -- it would help me if I looked at it. Can I</b></p> <p><b>15 look at the ordinance?</b></p> <p>16 BY MR. MEIHN:</p> <p>17 Q. Yeah, absolutely, you can always look at the</p> <p>18 ordinance.</p> <p><b>19 A. What page are you looking at?</b></p> <p>20 Q. I have my pages so mixed up. I'm looking for</p> <p>21 10(u)(2). Thank you.</p> <p><b>22 A. Guest activities, right?</b></p> <p>23 Q. Correct, and then go and read what that says, please.</p> <p><b>24 A. "Guest activity uses. The township board may approve</b></p> <p><b>25 guest activity uses (activities by persons who may or</b></p>	<p style="text-align: right;">Page 113</p> <p>1 sure, you're asking about a letter she's never seen</p> <p>2 before?</p> <p>3 MR. MEIHN: Yes, sir.</p> <p>4 BY MR. MEIHN:</p> <p>5 Q. Have you finished reviewing that?</p> <p><b>6 A. I'm reviewing it again.</b></p> <p>7 Q. Okay, let me know when you're done.</p> <p><b>8 A. Okay.</b></p> <p>9 Q. In reading that paragraph -- you've never seen this</p> <p>10 letter before, correct?</p> <p><b>11 A. I have not.</b></p> <p>12 Q. The writing in paragraph 3, does the writing</p> <p>13 articulate the way you have interpreted the ordinance</p> <p>14 and how you've enforced it?</p> <p><b>15 A. Yes.</b></p> <p>16 Q. Have you received at any time during your holding the</p> <p>17 position as the zoning director any requests from the</p> <p>18 wineries for weddings?</p> <p><b>19 A. No.</b></p> <p>20 Q. Have you received any requests from the wineries to</p> <p>21 have outdoor amplified music?</p> <p><b>22 A. No.</b></p> <p>23 Q. Have you received any requests from the wineries to</p> <p>24 have off-site catering?</p> <p><b>25 A. No.</b></p>

# **Exhibit 3**

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE WESTERN DISTRICT OF MICHIGAN  
3  
4

5 WINERIES OF THE OLD MISSION  
6 PENINSULA (WOMP) ASSOC., a Michigan  
7 Nonprofit Corporation, et al.,  
8                                 Plaintiffs,

9                   vs.

Case No. 1:20-cv-01008

10  
11                                 Hon. Paul L. Maloney  
12                                 Magistrate Ray S. Kent

13 PENINSULA TOWNSHIP, Michigan  
14 Municipal Corporation,  
15                                 Defendant.  
16  
17

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18           The Deposition of RANDY MIELNIK,  
19           Appearing Remotely Via Videoconference from  
20           Traverse City, Michigan,  
21           Commencing at 12:07 p.m.,  
22           Tuesday, December 7, 2021,  
23           Before Rebecca L. Russo, CSR-2759, RMR, CRR.  
24           Appearing Remotely Via Videoconference from  
25           Kent County, Michigan.

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<p style="text-align: right;">Page 22</p> <p>1 permits. There were probably a dozen or so that came 2 in the door in the three years. Some of them included 3 Bowers Harbor, Brys, and others. 4 Also did some work on the purchase of 5 development rights ordinance update. There was a 6 thought of moving forward with a new levy, but that 7 was, again, before COVID and so that was set aside. 8 And then some miscellaneous grant work that 9 I did. 10 Q. Okay. How about zoning enforcement, was that the job 11 of the planner? 12 A. No. 13 Q. Whose job is zoning enforcement? 14 A. That would be both Christina and Dave Sanger. 15 Q. Okay. How about zoning interpretation, is that the 16 job of the planner? 17 A. Not directly. I would think my work was always 18 focussed going forward in terms of updating the zoning 19 ordinance, both in terms of this large update and then 20 also, as you know, in terms of updating it with regard 21 to the wineries. 22 There was also a zoning amendment process 23 with regard to solar equipment being placed in the 24 township, and then also another zoning amendment that 25 was done separate that had to do with the farm</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Well, as you know, Peninsula Township has -- you know, 2 people put a great deal of scrutiny on local 3 regulations, and it took time. It also took time to 4 work on the zoning map itself in addition to the 5 document, to move that to a digital form. 6 Q. I assume you're aware of this lawsuit, correct? 7 A. Yes. 8 Q. Okay. And you're aware that this lawsuit involves 9 portions of the zoning ordinance, right? 10 A. Yes. 11 Q. Okay. And if I refer to those portions as the winery 12 ordinances, do you know what I'm referring to? 13 A. I believe you'd be referring to the winery-chateau, 14 the remote tasting room, and the food processing. 15 Q. Farm processing. 16 A. Farm processing, excuse me. 17 Q. So if I use that term "winery ordinance," I'm 18 referring to those three sections of the ordinance. 19 Is that okay? 20 A. Yes. 21 Q. Okay. And if I want to refer you to a specific 22 ordinance section, I will point that out to you. 23 A. Okay. 24 Q. My question for you, very simply, is, did you have any 25 involvement in the drafting of the winery ordinances?</p>
<p style="text-align: right;">Page 23</p> <p>1 processing lot size requirements and building size 2 requirements that was processed through the Township, 3 I worked on that. 4 Q. Okay. And anything else that you worked on or that is 5 the job of the planner that you haven't told me about? 6 A. I think that's the bulk of it. I mean, that's a 7 summary, obviously. 8 Q. Okay. You mentioned that the ordinance rewrite had 9 been happening -- or had been started before you got 10 there in 2018, right? 11 A. Correct. 12 Q. Do you know how long it had been going on before you 13 got there? 14 A. Oh, couple years, two, three years. Three years, 15 maybe. 16 Q. Okay. And it's been three years since you started, 17 and that zoning rewrite is not complete yet, is it? 18 A. It's very close, as I understand it. Again, I'm not 19 in the loop on all the steps being taken, but I 20 believe it's very close. 21 The Township -- the planning commission had 22 three public hearings. The Township board has had 23 public hearings. I think we're very close to having 24 it done. 25 Q. I guess my question is, why does it take six years?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. No, other than the amendment that was done to the farm 2 processing, which occurred two years ago, I think, or 3 thereabouts. 4 Q. And what amendment was that? 5 A. I don't have the number in front of me, but it was a 6 number that Mr. Lee Lutes was involved in that 7 conversation about the minimum acreage requirements as 8 well as the building size requirements. 9 Q. Okay. And was that to expand the building size 10 requirement? 11 A. Yes. 12 Q. I guess it would be an allowance, correct? 13 A. Yes. Well, it's a use by right. So it's not a 14 special use permit, so it is a use by right. So that 15 requirement is how much of the building can be used 16 for retail sales and so forth, and the maximum size. 17 I met with Lee, actually, and we discussed 18 the needs of his operation and others. 19 Q. Okay. And were you the one who drafted the amendment? 20 A. I did, with, of course, help from Greg. I would 21 always have any zoning amendment material reviewed by 22 legal counsel. 23 Q. Was anybody else involved in drafting it? 24 A. Not that I recall. 25 Q. Okay. Now, the remote winery tasting room ordinance,</p>

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<p style="text-align: right;">Page 26</p> <p>1 you had no involvement in the drafting or enactment of</p> <p>2 that ordinance, right?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Okay. And if I asked you what was the purpose for</p> <p>5 that ordinance when it was enacted, you wouldn't know,</p> <p>6 would you?</p> <p>7 <b>A. Not direct knowledge, no.</b></p> <p>8 Q. And the winery-chateau ordinance, you were not</p> <p>9 involved in the drafting or enactment of that</p> <p>10 ordinance, correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Okay. And again, if I asked you what was the purpose</p> <p>13 of that ordinance when it was enacted, you wouldn't</p> <p>14 know because you were not involved, correct?</p> <p>15 <b>A. That's correct, other than what I've heard from</b></p> <p>16 <b>talking with people here.</b></p> <p>17 Q. Okay. And with the farm processing facility</p> <p>18 ordinance, aside from the amendment we just discussed,</p> <p>19 you were not involved in the drafting of the original</p> <p>20 ordinance, is that right?</p> <p>21 <b>A. That's correct.</b></p> <p>22 Q. Or any other amendments to that ordinance, correct?</p> <p>23 <b>A. That was the only amendment that I was involved in.</b></p> <p>24 Q. Okay. And again, if I asked you what the purpose of</p> <p>25 the farm processing ordinance was when it was enacted,</p>	<p style="text-align: right;">Page 28</p> <p>1 Peninsula Township ordinance. So I'm not going to</p> <p>2 give you all couple hundred pages of the ordinance,</p> <p>3 I'm just going to give you certain snippets, if that's</p> <p>4 okay.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. Okay. So in your role as the planner, did you have</p> <p>7 any responsibility for the enforcement of the remote</p> <p>8 winery tasting room ordinance?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. You said that was Ms. Deeren and Mr. Sanger,</p> <p>11 correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. While you were there, right?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Okay. And it could have been a different -- I believe</p> <p>16 Ms. Deeren's title is director of zoning enforcement,</p> <p>17 or something like that?</p> <p>18 <b>A. Director of zoning.</b></p> <p>19 Q. Director of zoning, okay.</p> <p>20 And so that would be left to the director</p> <p>21 of zoning, whoever it was at that time in history,</p> <p>22 right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay. Were you ever asked to interpret the remote</p> <p>25 winery tasting room ordinance?</p>
<p style="text-align: right;">Page 27</p> <p>1 you wouldn't know because you were not there, correct?</p> <p>2 <b>A. Well, I wasn't there, but I obviously became</b></p> <p>3 <b>acquainted with the purposes of all the winery</b></p> <p>4 <b>ordinances from discussions with Gordon and others,</b></p> <p>5 <b>and I've read, obviously, tried to understand where</b></p> <p>6 <b>these ordinances came from, how they were put</b></p> <p>7 <b>together.</b></p> <p>8 <b>Obviously, I wasn't here for it, but it's</b></p> <p>9 <b>important to understand the roots of those, that</b></p> <p>10 <b>material.</b></p> <p>11 Q. Okay. But any information you had is secondhand,</p> <p>12 correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Okay. Let's look at -- can you grab Exhibit 1 from</p> <p>15 the exhibits?</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. Okay.</p> <p>18 <b>A. I'll pull this a little closer to me.</b></p> <p>19 Q. Okay. We're looking at Exhibit 1, which is the remote</p> <p>20 winery tasting room ordinance. Do you see that?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. And you recognize this document, right?</p> <p>23 <b>A. It looks like the original zoning ordinance.</b></p> <p>24 Q. Okay. And this is just -- for ease of this</p> <p>25 deposition, we are just using portions of the full</p>	<p style="text-align: right;">Page 29</p> <p>1 <b>A. Not that I recall.</b></p> <p>2 Q. Okay. And were you ever -- did Ms. Deeren ever come</p> <p>3 to you and ask you whether or not the Township should</p> <p>4 enforce provisions of the remote winery tasting room</p> <p>5 ordinance?</p> <p>6 <b>A. Not that I recall.</b></p> <p>7 Q. Okay. Let's look at (12)(i). It says: Retail sale</p> <p>8 of non-food items which promote the winery or</p> <p>9 Peninsula agriculture and has the logo of the winery</p> <p>10 permanently affixed to the item by silkscreening,</p> <p>11 embroidery, monogramming, decals or other means of</p> <p>12 permanence.</p> <p>13 Do you know what this ordinance is trying</p> <p>14 to do?</p> <p>15 <b>A. The way I would interpret that would be that the</b></p> <p>16 <b>ordinance is attempting to limit the commercial sale</b></p> <p>17 <b>of material that's not related to the winery.</b></p> <p>18 Q. Okay. Do you know why this is the chosen method to do</p> <p>19 so?</p> <p>20 <b>A. I don't. I don't know why that was written in that</b></p> <p>21 <b>way, although I could -- to me, the intent seems to</b></p> <p>22 <b>be, again, not being a commercial property, it's</b></p> <p>23 <b>allowing for some commercial sale of material and</b></p> <p>24 <b>limiting that action to material that relates to the</b></p> <p>25 <b>winery as a way of promoting local agriculture and</b></p>

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<p style="text-align: right;">Page 30</p> <p><b>1 wine products.</b></p> <p><b>2 Q.</b> Okay. Do you know what, you know, what is the --</p> <p><b>3 let's talk about, say, a wine glass. What's the</b></p> <p><b>4 difference or what's the problem if a winery sells a</b></p> <p><b>5 wine glass with a logo on it and a wine glass without</b></p> <p><b>6 a logo on it?</b></p> <p><b>7 A.</b> Well, I think you're trying to connect the winery, or</p> <p><b>8 the winery -- excuse me.</b></p> <p><b>9 The wine glass with the logo on it clearly</b></p> <p><b>10 attaches to the wine production and growing in</b></p> <p><b>11 Peninsula Township, which is advocating and supporting</b></p> <p><b>12 local agriculture. A wine glass that is not is</b></p> <p><b>13 general commercial, in my mind; that is, you could buy</b></p> <p><b>14 it at Target or --</b></p> <p><b>15 Q.</b> But aren't both a means to drink wine, which is an</p> <p><b>16 agricultural product?</b></p> <p><b>17 A.</b> Well, they are. I think the idea, if I can interpret</p> <p><b>18 or try --</b></p> <p><b>19 Q.</b> Let me stop you there.</p> <p><b>20 Are you interpreting this ordinance as you</b></p> <p><b>21 sit here today or is this an interpretation that you</b></p> <p><b>22 had when you were the planner?</b></p> <p><b>23 A.</b> Well, I see this as a way of interpreting what's here.</p> <p><b>24 I don't -- you're asking me a very focused question on</b></p> <p><b>25 one provision in the remote wine tasting room, and</b></p>	<p style="text-align: right;">Page 32</p> <p><b>1 Q.</b> Is it fair to say that your -- you were the planner --</p> <p><b>2 your involvement as it related to the winery</b></p> <p><b>3 ordinances really started once the, once the committee</b></p> <p><b>4 was formed to look at revising and rewriting the</b></p> <p><b>5 winery ordinances?</b></p> <p><b>6 A.</b> Yes, except that my role also included processing</p> <p><b>7 special use permits, and there were four of them, I</b></p> <p><b>8 believe, that were done while I was here. Two of them</b></p> <p><b>9 for Brys. The State went through and revised their</b></p> <p><b>10 SUPs. Those were done while I was here. The one for</b></p> <p><b>11 Bowers Harbor and the one for Hawthorne Vineyards.</b></p> <p><b>12 So that necessitated me getting into the</b></p> <p><b>13 inner workings of the winery ordinances collectively.</b></p> <p><b>14 We didn't have anything -- I didn't have any activity</b></p> <p><b>15 with the remote tasting rooms.</b></p> <p><b>16 Q.</b> Okay. So besides the involvement with the SUPs and</p> <p><b>17 the revisions to the winery ordinances, that was your</b></p> <p><b>18 only involvement directly with the winery ordinances</b></p> <p><b>19 while you were planner?</b></p> <p><b>20 A.</b> The only official role.</p> <p><b>21 Q.</b> Okay. And when it came to the SUPs, you know, am I</p> <p><b>22 correct that your involvement with the ordinances</b></p> <p><b>23 would have been to walk through, for lack of a better</b></p> <p><b>24 term, walk through the ordinance sections, for</b></p> <p><b>25 example, the winery-chateau ordinance, and confirm</b></p>
<p style="text-align: right;">Page 31</p> <p><b>1 that's how I interpret it. I would think that would</b></p> <p><b>2 be the same view now as it would have been two years</b></p> <p><b>3 ago.</b></p> <p><b>4 Q.</b> Okay. Well, I guess -- let me back up.</p> <p><b>5 When you were the planner, you were never</b></p> <p><b>6 asked to interpret any provision of the remote winery</b></p> <p><b>7 tasting room ordinance, is that right?</b></p> <p><b>8 A.</b> Not in a formal sense.</p> <p><b>9 Q.</b> How about in an informal sense?</p> <p><b>10 A.</b> Well, I don't recall every casual conversation that</p> <p><b>11 there might have been in the hallway or something. I</b></p> <p><b>12 don't -- so it's hard for me to say. When people say,</b></p> <p><b>13 "Well, what do you think of this," I might give an</b></p> <p><b>14 answer, but it was not -- it would be a casual kind of</b></p> <p><b>15 discussion.</b></p> <p><b>16 Q.</b> Okay. But that wasn't your role, right?</p> <p><b>17 A.</b> No, no, because my role became focused on this when we</p> <p><b>18 had our committee established by the planning</b></p> <p><b>19 commission to look at potential updates to all the</b></p> <p><b>20 winery ordinances.</b></p> <p><b>21 Then, then the role, in my mind, shifted</b></p> <p><b>22 towards, you know, how do we, how do we improve on the</b></p> <p><b>23 regulations here and make them more clear and make</b></p> <p><b>24 them more intentional and more aligned to the goals of</b></p> <p><b>25 the Township, to its master plan.</b></p>	<p style="text-align: right;">Page 33</p> <p><b>1 that the winery met the conditions in the -- in that</b></p> <p><b>2 ordinance section?</b></p> <p><b>3 A.</b> Yes. There were certain findings of fact and certain</p> <p><b>4 conclusions that needed to be drawn, and so material</b></p> <p><b>5 was organized and aligned to the zoning ordinance, and</b></p> <p><b>6 then a document was prepared that described the</b></p> <p><b>7 proposed activity from the change of the SUP, and</b></p> <p><b>8 conditions of approval were defined and it was -- all</b></p> <p><b>9 four of those were ultimately acted on and approved.</b></p> <p><b>10 Q.</b> Okay. Pull up Exhibit 3 for me, please.</p> <p><b>11 A.</b> Okay.</p> <p><b>12 Q.</b> Okay, this is the winery-chateau section. I just want</p> <p><b>13 to --</b></p> <p><b>14 A.</b> I don't think it is. I think it's farm processing.</p> <p><b>15 Q.</b> Exhibit 3?</p> <p><b>16 A.</b> Yes.</p> <p><b>17 Q.</b> I'm sorry, I may have misnumbered them. Look at what</p> <p><b>18 the document is that's marked as Exhibit 2.</b></p> <p><b>19 A.</b> Okay, that's winery-chateau.</p> <p><b>20 Q.</b> All right. I apologize, the file is mismarked, but</p> <p><b>21 this had previously been marked as Exhibit 3.</b></p> <p><b>22 Why don't you scroll to, say, the second</b></p> <p><b>23 page. Let's look at, say, subpart (i). Do you see</b></p> <p><b>24 that? It says "the facility shall have."</b></p> <p><b>25 A.</b> Yes.</p>

# **Exhibit 4**

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE WESTERN DISTRICT OF MICHIGAN  
3  
4

5 WINERIES OF THE OLD MISSION  
6 PENINSULA (WOMP) ASSOC., a Michigan  
7 Nonprofit Corporation, et al.,  
8                                 Plaintiffs,

9                   vs.                                 Case No. 1:20-cv-01008

10  
11   Hon. Paul L. Maloney  
12   Magistrate Ray S. Kent

13 PENINSULA TOWNSHIP, Michigan  
14 Municipal Corporation,  
15                                 Defendant.  
16

17  
18                   The Deposition of ROBERT MANIGOLD,  
19                   Taken at 420 East Front Street,  
20                   Traverse City, Michigan,  
21                   Commencing at 10:22 a.m.,  
22                   Wednesday, November 3, 2021,  
23                   Before Rebecca L. Russo, CSR-2759, RMR, CRR.  
24  
25



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1 Q. All right. How about this? Peninsula Township is not  
2 the only place in the United States that grows  
3 vinifera wine grapes?

4 A. True.

5 Q. Okay. And in the world, again, they are not the only  
6 place that grows vinifera wine grapes?

7 A. True.

8 Q. Okay. And, in fact, Peninsula Township grows a very,  
9 very small portion of all of vinifera wine grapes in  
10 the world?

11 A. I don't know that.

12 Q. The second governmental interest that the Township set  
13 forth in its discovery responses was the interest in  
14 maintaining the township's character. What does that  
15 mean?

16 A. Well, through a lot of public opinion and surveying,  
17 the people on the Old Mission Peninsula obviously  
18 realize that they're in a unique geographic area,  
19 which compounds, I believe, our ability to do things.

20 For instance, we're not your typical  
21 six-by-six mile Michigan Township. We're 18,000  
22 miles -- or, excuse me, 18,000 acres sticking out in  
23 the middle of Lake Michigan, the widest point about  
24 three-and-a-half miles.

25 So, you see, whenever we run into an issue

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1 point in the township. We either needed to oversize  
2 the sewer lines and come out and get ready for a  
3 massive growth of subdivisions -- because, I mean,  
4 you've gotta admit, it's a very beautiful place to  
5 live -- or could we go the other way and try to save  
6 the agricultural component and allow growth at the  
7 south end of the peninsula, where we kept the water  
8 and sewer, and along the shoreline, which was pretty  
9 much gone at the time, anyway, with cottages. Now  
10 what you're seeing, the smaller houses are being  
11 replaced by larger.

12 But it was that character of the peninsula,  
13 of the scenic views that we identified and were able  
14 to purchase with money from different organizations,  
15 those scenic views would be in perpetuity.

16 We actually got money from the Michigan  
17 Natural Trust Fund, resource trust fund, a million  
18 dollars to save those views. We had support letters,  
19 if you can believe it, from the Chamber of Commerce  
20 and the home builders, which they don't agree with  
21 anything, you know, removing any building component.

22 Q. So, as I understand, you know, it's a long answer, but  
23 as I understand it, you were trying to prevent,  
24 really, more houses from spreading north on the  
25 peninsula?

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1 of fighting a fire, we pretty much have to be  
2 self-contained. We only have one way in and out of  
3 the peninsula, through Traverse City at the base, and  
4 what we've tried to do is look at the carrying  
5 capacity and different things of what we have as our  
6 infrastructure, and we have as a community voted not  
7 to extend sewer or water --

8 Q. Well, let me stop you. How does infrastructure and  
9 roads and sewer and water, how is that the township's  
10 character?

11 A. Well, what we've tried to do is maintain the character  
12 by keeping a strong agricultural component.

13 Of the 18,000 acres, roughly 10,000 is  
14 zoned agricultural, and we have then tried to keep  
15 that, and through our planning commission, I think we  
16 went -- in '94, the same year we went for the purchase  
17 of development rights, we identified 9200 acres that  
18 was worth saving.

19 And currently through conservation  
20 easements, some zoning, and the American Farmland  
21 Trust, the State of Michigan, and the Grand Traverse  
22 Regional Land Conservancy, we have a conservation  
23 easement over about 7,000 of those acres.

24 So when, in 1988 when Gordon Hayward and I  
25 got on the scene, it was -- we felt it was a turning

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1 A. Wherever land was left that hadn't been subdivided, we  
2 were offering a program to the owner that he could  
3 sell it at a better price, and when they actually put  
4 the numbers to it, they actually made more money  
5 taking the money for development rights than trying to  
6 make a development, wait the years for the lots to  
7 sell.

8 Q. Yeah.

9 A. And so we kept an agricultural component.

10 Q. Yeah, well, I mean, as I understand it, you -- all  
11 right, so you're a farmer, and let's say there's 80  
12 acres in Peninsula Township that that farmer is  
13 deciding, do I subdivide this and build houses or do I  
14 keep it as agricultural land or open space --

15 A. Mmm-hmm.

16 Q. -- to protect the views, right?

17 A. Yes.

18 Q. And the Township wanted it to remain as open space for  
19 the views, correct?

20 A. The residents of the township, yes.

21 Q. But the residents speak through the Township, which  
22 speak through you, as the supervisor, correct?

23 A. Yes.

24 Q. So the Township wanted to keep that 80 acres from  
25 becoming a bunch of houses, and the way you did that

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1 A. Well, two things entered into that. Actually, the  
2 original sizing of the sewer would extend it to a  
3 certain area, and the same with water. But as a  
4 county, we took on the project of going to each  
5 township, in sewer and water, and deciding, you know,  
6 where they were going to expand and how much capacity  
7 they needed from the new wastewater treatment plant  
8 here in Traverse City down the road. And the same for  
9 the water, because we suck water out of Lake Michigan.

10 And, for instance, Elmwood, Garfield, and  
11 Peninsula Township have city water, and -- which we  
12 purchase from them, obviously. So they needed to know  
13 how big a plant to make. At the sewer plant, you  
14 know, do we have to build a second one or can we make  
15 improvements. And we actually went to a tertiary  
16 system that, quite frankly, was state of the art at  
17 the time.

18 We wanted to be at the end of the -- where  
19 the water comes out of the sewer plant into the river,  
20 we wanted to be in there with champagne glasses and  
21 drink it, it was that clean, but the health department  
22 wouldn't let us.

23 Q. All right.

24 MR. WISE: Hey, Joe, I apologize, I don't  
25 mean to interrupt, I was going to wait for him to

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1 finish. TJ made us aware she needs to swap out the  
2 laptops, I guess, that they're probably using for my  
3 connection. I don't know if now is a good stopping  
4 point for that, but whenever you get a minute or you  
5 feel you've gotten to a good stopping point, she just  
6 wanted me to let you know.

7 MR. INFANTE: All right. Let me just ask  
8 this section I'm on right now, then we can stop.

9 MR. WISE: No problem, thanks.

10 BY MR. INFANTE:

11 Q. So the third governmental interest that the Township  
12 has said or put forward for enacting these winery  
13 ordinances, number 3 was providing  
14 economically-feasible public sewer and water systems  
15 to serve future populations.

16 But what I just heard you say is you  
17 stopped the sewer and water where it is.

18 A. Mmm-hmm.

19 Q. And it's not planning to go any further, correct?

20 A. Correct.

21 Q. So it is where it is?

22 A. Municipal sewer and water. We do have, Peninsula  
23 Township has its own water system at the Underwood  
24 Farm markets -- or Underwood development. It used to  
25 be a farm market, sorry, and we could supply water to

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1 the existing municipal water customers, plus extend.  
2 The plans that would be -- that we would do  
3 is if there were additional houses that we needed  
4 sewer and water, we would probably do an SBR plant,  
5 and that would be sited somewhere, substantial [sic]  
6 batch reactor. And then we also have the ability to  
7 do cluster systems for sewer, and we also have the  
8 technology to do small water systems.

9 Q. Okay. But everything you're talking about there is  
10 for houses, right?

11 A. Yes.

12 Q. It doesn't have anything to do with wineries, though,  
13 because the wineries aren't connected to the sewer and  
14 the water.

15 A. Phil and Mari may have the opportunity, but all the  
16 rest of them don't.

17 Q. So what you're talking about, is when you say  
18 providing economically-feasible public sewer and water  
19 systems to serve a future population, that has nothing  
20 to do with wineries, right?

21 A. None of them are in that area.

22 Q. Yeah, so it only really has to do with if you have  
23 more houses, right?

24 A. Mmm-hmm.

25 Q. Yes?

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1 A. I believe so.

2 Q. The last one is -- bear with me, this is kind of  
3 long -- establishing a complete buildout population  
4 scenario and permitting the vertical integration of  
5 agricultural production without changing the  
6 agriculturally-zoned lands of the township to  
7 commercial property inconsistent with the use of those  
8 respective districts.

9 A. Yes.

10 Q. What does that mean?

11 A. That means we're trying to preserve, we're -- I know  
12 who wrote that, Gordon Hayward, way back when.

13 In my words, that means we go down allowing  
14 reasonable growth and -- because people need houses,  
15 we have to do that. We're missing a component of, I  
16 don't want to say low-income houses, but affordable  
17 houses, and that's something I'm really trying to work  
18 on. But while allowing our agricultural area to  
19 expand, and there's no sense keeping agricultural land  
20 if it's -- the people, the easy way to say it, they  
21 have to make a living on it to keep it viable.

22 And early on in all of the public meetings,  
23 all of the people who live on the shoreline, all  
24 the -- probably more than actual farmers agreed that  
25 that's a component we have to save. You'll hear many

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<p style="text-align: right;">Page 42</p> <p>1 of the cherry farmers and the apple growers, they just</p> <p>2 want to be able to get that semi down M-37 and out</p> <p>3 through Traverse City several times a day to haul</p> <p>4 fruit.</p> <p>5 Q. But, again, this deals with the houses and not having</p> <p>6 more houses, correct?</p> <p>7 A. Well, keeping agriculture viable, that keeps you from</p> <p>8 putting your farm on the market and selling it for a</p> <p>9 housing development.</p> <p>10 Q. Which is what the PDR program is for?</p> <p>11 A. Well, that's one thing it was for, but, as you know,</p> <p>12 some people are independent thinkers and they're going</p> <p>13 to -- "I'm going to build," and they will and they do.</p> <p>14 Q. But, I mean, at bottom, what you're saying is the</p> <p>15 point of the ordinances were really to prevent farms</p> <p>16 from becoming houses and subdivisions?</p> <p>17 A. I think that came into effect over time, but when you</p> <p>18 look at our ordinance, Gary Harsch was a, I think a</p> <p>19 senior at Michigan State, and he got hired and drafted</p> <p>20 the first ordinance in '68, and then it was adopted, I</p> <p>21 think, in '72, and we've had some amendments, you</p> <p>22 know, to keep up with laws, but that's the same</p> <p>23 document.</p> <p>24 Q. Yeah, for --</p> <p>25 A. So I can't say that, you know, that it was geared for</p>	<p style="text-align: right;">Page 44</p> <p>1 You know, I'll use the word "at bottom"</p> <p>2 again, and I don't really like that phrase, but, at</p> <p>3 bottom, the interest of the government is to prevent</p> <p>4 farms from becoming houses and subdivisions.</p> <p>5 A. I would say keeping farms profitable.</p> <p>6 Q. So they don't become houses and subdivisions?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Which then houses and subdivisions lead to</p> <p>9 increased traffic because of these trips?</p> <p>10 A. It becomes more of a tax burden on everything. We</p> <p>11 need more police, more fire department, more</p> <p>12 infrastructure.</p> <p>13 Q. And the Township just added a new fire station</p> <p>14 recently, right?</p> <p>15 A. Yeah. Again, because of our geographics, basically,</p> <p>16 and our demographics. We have an older population,</p> <p>17 and when we call -- I mean, we have reciprocal</p> <p>18 agreements with Traverse City, Elmwood and Metro,</p> <p>19 other places, but if you want your life saved or your</p> <p>20 health saved, we've gotta have those bodies right on</p> <p>21 the peninsula, and we have to have them so many miles</p> <p>22 apart to get a quick response.</p> <p>23 And, quite frankly, by going with ALS,</p> <p>24 we've already got documented cases where we've saved</p> <p>25 people's lives because we could get there in three to</p>
<p style="text-align: right;">Page 43</p> <p>1 that in the beginning. Is it geared for that now? I</p> <p>2 think you're going to find everybody wants to -- Bob</p> <p>3 Begin, from Chateau Chantal, always called the</p> <p>4 peninsula, you know, "People want to come out here</p> <p>5 because of the natural ambiance," a word he used in</p> <p>6 almost every other sentence, so it's in my brain, I</p> <p>7 can't get rid of it.</p> <p>8 But I believe that to be true, and people</p> <p>9 will pay more to live in an agricultural community</p> <p>10 that everything is done right, and --</p> <p>11 Q. I understand that. But what I'm saying is, when you</p> <p>12 say "establishing a complete buildout population</p> <p>13 scenario and permitting the vertical integration of</p> <p>14 agricultural production without changing the</p> <p>15 agriculturally-zoned lands of the township to</p> <p>16 commercial property inconsistent with the use of those</p> <p>17 respective districts," what you're saying is, "We</p> <p>18 don't want farms to become houses and subdivisions,"</p> <p>19 you know, in simple terms, is that right?</p> <p>20 A. I'm going to say that one is hard for me to</p> <p>21 understand, too.</p> <p>22 Q. That long sentence?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. How about this. Because we've gone through</p> <p>25 these four interests that the Township put down.</p>	<p style="text-align: right;">Page 45</p> <p>1 five minutes rather than fifteen.</p> <p>2 Q. Okay. And the Township now has a second police</p> <p>3 officer, right?</p> <p>4 A. We have contracted, and he's not -- it's a union, the</p> <p>5 job will be posted, but hopefully we'll have him by</p> <p>6 the first of the year, maybe.</p> <p>7 Q. But for a long time the township had one police</p> <p>8 officer, right?</p> <p>9 A. Correct.</p> <p>10 Q. And I think I remember that guy saying he works</p> <p>11 eight-hour shifts, five days a week, and --</p> <p>12 A. The union does tens now.</p> <p>13 Q. Tens. Five tens or four tens?</p> <p>14 A. Four tens.</p> <p>15 Q. So there's three days a week there's no police officer</p> <p>16 in Peninsula Township?</p> <p>17 A. We have about three State Police, we have one FBI, we</p> <p>18 have two -- one or two city police, and one sheriff</p> <p>19 deputy who live on the peninsula, that I'm aware of.</p> <p>20 But you can see, as a county, they have two</p> <p>21 officers on patrol all the time, and if they did head</p> <p>22 out to Peninsula Township and then there's a</p> <p>23 disturbance in Blair Township, at the other end of the</p> <p>24 county, there's time to get there. So they don't</p> <p>25 usually cruise out there.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. I mean, but to remedy that now, the Township decided</p> <p>2 that it would contract for one more officer?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And that officer hopefully starts the beginning of the</p> <p>5 year?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. All right.</p> <p>8 MR. INFANTE: Hey, Matt, this is a good</p> <p>9 place to stop.</p> <p>10 (Off the record at 11:20 a.m.)</p> <p>11 (Back on the record at 11:29 a.m.)</p> <p>12 MR. INFANTE: Back on the record.</p> <p>13 BY MR. INFANTE:</p> <p>14 Q. Okay, so I have Plaintiffs' Exhibit 1 in front of you.</p> <p>15 We've already identified it as the portion of the</p> <p>16 winery ordinance related to remote winery tasting</p> <p>17 rooms. So I want to look at specific portions of this</p> <p>18 ordinance. So look at -- we're going to look at item</p> <p>19 12(h).</p> <p>20 It says, and just follow along, it says:</p> <p>21 Sales of wine by the bottle produced at the winery are</p> <p>22 allowed for off-premises consumption.</p> <p>23 So my first question is, does this mean</p> <p>24 that sales of -- that bottles of wine are not allowed</p> <p>25 for on-premise consumption?</p>	<p style="text-align: right;">Page 48</p> <p>1 consumption are not allowed, and your answer was?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Okay. This section here -- so we had talked about the</p> <p>4 government, governmental interest in a nutshell is, is</p> <p>5 prohibiting farmland from becoming houses and</p> <p>6 subdivisions which would then increase traffic, right,</p> <p>7 in a nutshell?</p> <p>8 MR. WISE: Object to form.</p> <p>9 Go ahead.</p> <p>10 <b>A. Yes.</b></p> <p>11 BY MR. INFANTE:</p> <p>12 Q. Okay. So how does this portion of the ordinance</p> <p>13 further that governmental interest, meaning, how does</p> <p>14 this ordinance prevent farmland from becoming houses</p> <p>15 and subdivisions?</p> <p>16 <b>A. I believe the remote wine tasting actually helps the</b></p> <p>17 <b>farming/the wineries another option to sell their</b></p> <p>18 <b>product at a retail possibility which we've included</b></p> <p>19 <b>in the carrying capacity. We have to have the winery</b></p> <p>20 <b>successful, but what I have to tell you is, I know</b></p> <p>21 <b>that liquor laws have changed after we did this, so</b></p> <p>22 <b>I'm not sure about on-site consumption by the bottle.</b></p> <p>23 Q. Okay. But you would agree with me that if the liquor</p> <p>24 laws have changed and the liquor laws allow on-premise</p> <p>25 consumption by the bottle, if the ordinances</p>
<p style="text-align: right;">Page 47</p> <p>1 <b>A. I don't know.</b></p> <p>2 MR. WISE: Can you guys hear me okay?</p> <p>3 MR. INFANTE: It's a little bit of reverb,</p> <p>4 but it's fine.</p> <p>5 (Off the record at 11:32 a.m.)</p> <p>6 (Back on the record at 11:32 a.m.)</p> <p>7 MR. INFANTE: Matt, we had you on mute,</p> <p>8 unfortunately. I'm just going to back up. I had</p> <p>9 asked one question. I'll just back up, okay?</p> <p>10 MR. WISE: I don't know what you're talking</p> <p>11 about.</p> <p>12 MR. INFANTE: You couldn't hear us, and we</p> <p>13 started asking questions.</p> <p>14 MR. WISE: Oh, okay, got it, got it.</p> <p>15 MR. INFANTE: I'm going to back up. I only</p> <p>16 asked, I think, one question, so ...</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. Okay, so we're looking at Plaintiffs' Exhibit 1 which</p> <p>19 you identified as the Peninsula Township ordinance</p> <p>20 section related to remote winery tasting rooms, and,</p> <p>21 Mr. Manigold, I asked you to look at 12(h).</p> <p>22 My question was -- I read, "Sales of wine</p> <p>23 by the bottle produced at the winery are allowed for</p> <p>24 off-premises consumption," and my question to you was,</p> <p>25 does this mean that bottles of wine for on-premise</p>	<p style="text-align: right;">Page 49</p> <p>1 restricted that, then the liquor laws would control,</p> <p>2 correct?</p> <p>3 MR. WISE: Object to foundation.</p> <p>4 Go ahead.</p> <p>5 <b>A. I don't think so.</b></p> <p>6 BY MR. INFANTE:</p> <p>7 Q. Well, the Township has changed its ordinances in the</p> <p>8 past when the liquor control laws changed to allow</p> <p>9 certain uses at wineries, right?</p> <p>10 <b>A. True.</b></p> <p>11 Q. Okay. And the ordinances were changed because they</p> <p>12 were in conflict, then, with state law, right?</p> <p>13 MR. WISE: Same.</p> <p>14 Go ahead.</p> <p>15 <b>A. I think they're all subject to their own special use</b></p> <p>16 <b>permit, on what the people agree to when we --</b></p> <p>17 BY MR. INFANTE:</p> <p>18 Q. We're just talking about the ordinances right now.</p> <p>19 The Township changed its ordinances in the</p> <p>20 past where they conflicted with state law, right?</p> <p>21 <b>A. I'm going to say yes. Because of the enabling</b></p> <p>22 <b>legislation on certain things, we have done that.</b></p> <p>23 Q. Let's look at (i), 12(i). It says: Retail sale of</p> <p>24 non-food items which promote the winery or Peninsula</p> <p>25 agriculture and has the logo of the winery permanently</p>



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1 MR. WISE: Yup.  
 2 MR. INFANTE: Okay.  
 3 BY MR. INFANTE:  
 4 Q. So let me, so Christina -- it's Christina Deerens  
 5 [sic], right?  
 6 A. Mmm-hmm.  
 7 Q. D-E-E-R-E-N-S? Yes?  
 8 A. Yes.  
 9 Q. All right. So Christina Deeren sent a letter to the  
 10 Michigan Attorney General's Office asking for an  
 11 interpretation of the word "small plate"?  
 12 A. I asked her to send a letter to the Attorney General,  
 13 because a small plate kept being used in different  
 14 things, and what did that mean. And we've never  
 15 received a response, to my knowledge.  
 16 Q. All right. Any other requests to the Attorney  
 17 General's Office?  
 18 A. No.  
 19 Q. Okay. Getting back to 12(j), again, what is the, what  
 20 is the harm of selling a packaged food, for example,  
 21 mustard, without the winery's logo on it? What is the  
 22 harm to the Township?  
 23 A. I don't see any.  
 24 Q. Let's look at 12(k). 12(k) says: Signs and other  
 25 advertising may not promote, list or in any way

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1 identify any of the food or non-food items allowed for  
 2 sale in the tasting room.  
 3 What does that mean?  
 4 A. We have a very strict sign ordinance in Peninsula  
 5 Township. I guess that's my answer.  
 6 Q. Okay. My question is, this can be read to say that,  
 7 for example, a remote winery tasting room cannot have  
 8 a menu that lists the items it has for sale. Is that  
 9 what this is supposed to prevent?  
 10 A. I don't see it saying that.  
 11 Q. Okay. Well, it says: Signs and other advertising may  
 12 not promote, list or in any way identify any of the  
 13 food or non-food items allowed for sale in the tasting  
 14 room.  
 15 So let me give you an example. Say we're  
 16 in a remote winery tasting room, we're inside, and on  
 17 the wall there is a list of food that's for sale or  
 18 merchandise that's for sale with the price. Do you  
 19 agree or disagree that that ordinance would prohibit  
 20 that sign?  
 21 A. I don't think it would prohibit it, because it's  
 22 actually what they do there.  
 23 Q. But it's a sign?  
 24 A. Mmm-hmm.  
 25 Q. Yes?

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1 A. Mmm-hmm.  
 2 Q. You've gotta say "yes" or "no."  
 3 A. I'm sorry, yes.  
 4 Q. And it's advertising what they have for sale, right?  
 5 A. It's on a blackboard, yup.  
 6 Q. Okay. 12(k) prohibits that sign. If you read 12(k),  
 7 it would prohibit that sign, yes or no?  
 8 A. It would appear to.  
 9 Q. Okay. Was the intent of 12(k) to prohibit a sign  
 10 outside along the road that listed what they had for  
 11 sale and the price?  
 12 A. I'm not sure.  
 13 Q. Okay. But you agree that this would prohibit a  
 14 blackboard inside the tasting room that says what they  
 15 are selling and the price?  
 16 A. I think it could say that, yes.  
 17 Q. Okay, my question is, why? What is the -- how does  
 18 this further the government's interest in this case?  
 19 A. Well, I don't know that -- you keep referring to the  
 20 government's interest. What we run into is the guy  
 21 who's paying the commercial taxes on the market down  
 22 the road, and items that are sold in the wineries on  
 23 agricultural land he thinks he should be selling in  
 24 his store.  
 25 Q. Well, let me stop you there. The wineries and their

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1 tasting rooms are paying commercial tax, right?  
 2 A. For the building.  
 3 Q. So commercial tax doesn't really matter in this  
 4 scenario, right?  
 5 A. Well, let's -- maybe if I use the word "zoned" --  
 6 Q. Okay.  
 7 A. -- "commercial," where people expect to go to buy food  
 8 items, get a sandwich, get a pizza, yes.  
 9 Q. Okay. But how does prohibiting a remote winery  
 10 tasting room from having a sign or an advertisement,  
 11 how does that promote an interest of Peninsula  
 12 Township?  
 13 A. I don't know why that's in there, I can't explain it  
 14 to you.  
 15 Q. Okay. But can you think of any way that this promotes  
 16 a government interest of Peninsula Township?  
 17 A. No.  
 18 Q. And can you think of any harm to the government that  
 19 this is trying to prevent?  
 20 A. The only thing I could even think of is if we got  
 21 complaints from the market, the store of any item  
 22 being sold there, but I don't recall that.  
 23 Q. You don't know if that happened or didn't happen?  
 24 A. Nmm-mmm.  
 25 Q. No? You've gotta say "no."

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1 **A. No. You got me there, I'll give you that one.**

2 Q. All right. But it's not, it's not the government's  
3 interest to prevent competition amongst its  
4 businesses, right?

5 **A. It's not competition. It's usually done by complaint  
6 of one person, who's set up in a commercially-zoned  
7 area to sell, competing with a person that's not in a  
8 commercial area.**

9 Q. But they're both businesses, right?

10 **A. Both businesses, correct.**

11 Q. Is it the job of Peninsula Township to pick the  
12 winners and the losers between two businesses in the  
13 township?

14 **A. No, it's to keep items that these people have agreed  
15 to sell and these people have the ability to sell.**

16 Q. Well, but if we look at 12(k), the Township prohibits  
17 them from even having a sign or advertisement of the  
18 items they are allowed to sell, right?

19 **A. I don't know why that's in there, and I'm thinking  
20 when you said it, it was maybe something outside,  
21 maybe that's missing, but I don't understand why it's  
22 there.**

23 Q. I mean, there's no harm you can think of to the  
24 government that comes from -- that this is trying to  
25 prevent, right?

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1 **A. Right.**

2 Q. Okay. I'm going to quickly run through these again.  
3 So let's just start at the end, 12(k). Is Peninsula  
4 Township still enforcing this ordinance?

5 **A. I don't know if there's been any violations ever  
6 issued on it. I don't believe so.**

7 Q. But it's still on the books, correct?

8 **A. If it's here, that's why we -- we're rewriting the  
9 ordinance, but we put a hold on this for now, so I'm  
10 going to say yes.**

11 Q. Yes, you're enforcing it?

12 **A. Well, we will if we have a, have a notion that it's  
13 being done incorrectly.**

14 Q. Okay. 12(j), is Peninsula Township still enforcing  
15 this ordinance?

16 **A. To my knowledge.**

17 Q. Okay. 12(i), is Peninsula Township still enforcing  
18 this ordinance?

19 **A. I believe so. If we haven't worked with the owner to  
20 change them and these are the ones that are there and  
21 they haven't complained, we probably haven't gotten  
22 back to them to change it.**

23 Q. But for right now the Township is enforcing this  
24 ordinance?

25 **A. I think so, yes.**

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1 Q. Okay. How about 12(h); is the Township enforcing this  
2 ordinance?

3 **A. I don't believe so, because I think the law changed,  
4 that's my --**

5 Q. It's no longer being -- you're no longer enforcing  
6 12(h) because the liquor control law changed to allow  
7 on-premise bottle consumption, correct?

8 **A. Correct.**

9 Q. Okay.

10 **A. I think we may find that in some other ones that when  
11 the law preempted, we haven't gotten back to change  
12 the special use permit or the language.**

13 Q. Yeah. So the liquor control law preempted the local  
14 zoning ordinance. It may still be on the books, but  
15 you're no longer going to enforce it but it's  
16 preempted, right?

17 **A. Correct.**

18 Q. And you think that's what's going on with 12(h),  
19 correct?

20 **A. Mmm-hmm.**

21 Q. Yes?

22 **A. Yes.**

23 Q. You're not doing any worse than most, don't worry.

24 All right, let's look at --

25 **A. Do you want this back?**

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1 Q. You can actually give it to Becky because she needs to  
2 keep that.

3 MARKED FOR IDENTIFICATION:

4 DEPOSITION EXHIBIT 2

5 12:08 p.m.

6 MR. INFANTE: This is Exhibit 2.

7 Matt, we are looking at the farm processing  
8 section of the ordinance.

9 MR. WISE: Got it.

10 BY MR. INFANTE:

11 Q. We're kind of going to do the same exercise again.

12 **A. Mmm-hmm.**

13 Q. Okay, starting with 19(a), really after the first  
14 sentence, it says: The farm processing facility use  
15 includes retail and wholesale sales of fresh and  
16 processed agricultural produce but is not intended to  
17 allow a bar or restaurant on agricultural properties  
18 and the Township shall not approve such a license.

19 So what is the government interest in  
20 preventing a farm processing facility from having a  
21 restaurant?

22 I guess, how is the government interest

23 fulfilled by not allowing them to have a restaurant?

24 **A. I guess if they put that farm processing on**

25 **commercial, they could, but in the agricultural area,**

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1 I think the restaurant isn't -- restaurants only go  
 2 into commercial areas.  
 3 Q. That's my question. My question is, how is one of  
 4 those four government interests we talked about, how  
 5 is one of those four furthered by not allowing a farm  
 6 processing facility to have a restaurant?  
 7 A. I don't know that it's furthered by not having a  
 8 restaurant. I do know that it's not set up with the  
 9 health department, health safety and welfare, that we  
 10 are -- took an oath to do. And none of them have a  
 11 septic tank. They don't have a grease trap.  
 12 Q. But those, those issues, health department, grease  
 13 trap, septic, those are county health department  
 14 issues, correct?  
 15 A. Currently.  
 16 Q. Okay. Peninsula Township has nothing to do with  
 17 permitting or licensing grease traps, septic,  
 18 commercial kitchens, correct?  
 19 A. I think we would have to approve a kitchen.  
 20 Q. You think Peninsula Township has the right to approve  
 21 a kitchen? Where is that in the ordinance?  
 22 A. Well, it says you can't have it here.  
 23 Q. This says you can't have a restaurant. But you just  
 24 told me not having a restaurant doesn't further any  
 25 government interest.

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1 A. I guess I need to see "restaurant" and "kitchen," what  
 2 the difference is.  
 3 Q. Well, my question is -- so I asked you, how does this  
 4 further one of your governmental interests, and you  
 5 said, "I don't see how it does." Is that right?  
 6 A. Yeah, I don't. We just don't want, and it's very  
 7 clear, restaurants or bars. If you want to take this  
 8 route, that's what you have to comply with to get the  
 9 use by right, not going in front of the planning  
 10 commission, spend the time. You do have to get all  
 11 the health department approvals.  
 12 Q. But if they had all the health department approvals,  
 13 would Peninsula Township allow it?  
 14 A. A restaurant?  
 15 Q. Yeah. At a farm processing facility?  
 16 A. A restaurant where you would go in and get Sunday  
 17 brunch --  
 18 Q. Sure.  
 19 A. -- something not designed with alcohol? No, we would  
 20 not allow it.  
 21 Q. And what interest does that further?  
 22 A. Those uses are given to commercial areas.  
 23 Q. But what interest does it further, which of these four  
 24 interests that you have identified does it further?  
 25 How does not having a restaurant prevent ag land from

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1 becoming houses?  
 2 A. Ag land from becoming houses, I don't think that's  
 3 comparable.  
 4 Q. Because it doesn't, right?  
 5 A. Right.  
 6 Q. Okay. And what is the harm that the Township is  
 7 trying to prevent by not allowing wineries to have  
 8 restaurants?  
 9 A. Wineries are set up as another option to increase the  
 10 farm gate, which is the sale of their wine and  
 11 advertising that promotes them nationally or in  
 12 Michigan.  
 13 Food is, food is there basically to, in my  
 14 opinion, in layman's terms, to soak up some of the  
 15 alcohol so we don't have alcohol issues on the road.  
 16 Q. So serving food is a good thing?  
 17 A. Serving a small plate is a good thing, I think.  
 18 Q. So you're saying serving a minimal amount of food is a  
 19 good thing?  
 20 A. I'm saying bread, fruit, grapes, cheese -- fruits is a  
 21 good thing -- crackers.  
 22 Q. But a sandwich is a bad thing?  
 23 A. Yes.  
 24 Q. Why is a sandwich a bad thing?  
 25 A. You know, it's a fine line always that we get into

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1 when we do these things. And through the community  
 2 process, I think everyone would agree that it's a good  
 3 thing while you're tasting wine.  
 4 And I know those guys, I know the people  
 5 that are behind the bars, they're trained and they  
 6 aren't going to allow someone to get crazy, but I  
 7 don't care who you are, you taste several different  
 8 wines and then go to the next one, it's always good to  
 9 have something in your stomach.  
 10 Q. So now we're back to food is a good thing.  
 11 A. Well, I never said it's not a good thing. You said a  
 12 sandwich. I said food, small plate.  
 13 Q. How about this. What is the harm of a farm processing  
 14 winery serving a customer a sandwich? What is the  
 15 harm to the government if a farm processing facility  
 16 winery serves someone a sandwich?  
 17 A. Well, I would say it would take away from the retail  
 18 and the commercial, and they have a hard time making  
 19 it.  
 20 Q. So, but now we're back to -- but you told me before  
 21 the government's job is not to protect businesses from  
 22 competition, right?  
 23 A. It's not my job to run their business plans, but when  
 24 they move into an area where they know they have  
 25 certain zoned things that they can do and in a

<p style="text-align: right;">Page 78</p> <p>1 different area, now they're trying to emerge into</p> <p>2 that, there's an, I think there is an issue.</p> <p>3 Q. Okay. So the harm of the farm -- let me try to wrap</p> <p>4 this up. The harm to the government if a farm</p> <p>5 processing facility serves someone a sandwich, for</p> <p>6 example, is that it would harm another restaurant --</p> <p>7 harm a different business in the township that is</p> <p>8 operating a restaurant. Is that what you're saying?</p> <p>9 A. I think there's a relationship there, because now</p> <p>10 they're going to be a McDonald's, what? You know, a</p> <p>11 sandwich.</p> <p>12 Q. Is there any other harm you can think of?</p> <p>13 A. No.</p> <p>14 Q. And before prohibiting restaurants at farm processing</p> <p>15 facilities, were there any other less-restrictive mean</p> <p>16 of protecting the other restaurants on the peninsula</p> <p>17 that the Township considered besides an outright ban?</p> <p>18 A. I think when the food came out, we asked that instead</p> <p>19 of everybody going in to put in a kitchen, that they</p> <p>20 would support the local restaurants in more of a</p> <p>21 catering kind of a capacity, so that everybody could</p> <p>22 benefit from food.</p> <p>23 Q. So your solution was to require the wineries to pay</p> <p>24 the other restaurants to cater food to their wineries?</p> <p>25 A. No. We suggested to keep everybody -- because</p>	<p style="text-align: right;">Page 80</p> <p>1 grocery store. Do you require those restaurants and</p> <p>2 those grocery stores to only serve, only serve and</p> <p>3 only sell wine from Peninsula Township wineries?</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. They're commercial.</p> <p>7 Q. So you can't tell them what to do?</p> <p>8 A. Right.</p> <p>9 Q. But you control the commercial zoning.</p> <p>10 A. Yeah.</p> <p>11 Q. But you don't control what they sell?</p> <p>12 A. Not in commercial.</p> <p>13 Q. You only control what ag properties sell?</p> <p>14 A. It's the ordinance that allows them to and worked out</p> <p>15 with the property owner and the community, and that's</p> <p>16 what they can sell.</p> <p>17 Q. How about this. You're a cherry farmer, you have ag</p> <p>18 land, right?</p> <p>19 A. Mmm-hmm.</p> <p>20 Q. Yes?</p> <p>21 A. Yes.</p> <p>22 Q. Does Peninsula Township tell you who you can sell your</p> <p>23 cherries to?</p> <p>24 A. No.</p> <p>25 Q. Okay. And do you only sell your cherries to other</p>
<p style="text-align: right;">Page 79</p> <p>1 everybody is struggling, you know, they make a lot of</p> <p>2 money in the summer and then how to keep the doors</p> <p>3 open in the winter.</p> <p>4 And the wineries and the restaurants have a</p> <p>5 very good relationship. We put out, we've always</p> <p>6 had -- if they came to us and they wanted events, we</p> <p>7 have six, probably, events that serve food.</p> <p>8 Q. How many restaurants are in Peninsula Township?</p> <p>9 A. Four, and then food from the grocery store --</p> <p>10 Q. Okay. And do you own any of those restaurants?</p> <p>11 A. -- five, maybe. No.</p> <p>12 Q. Does Peninsula Township own any of those restaurants?</p> <p>13 A. No.</p> <p>14 Q. But Peninsula Township is protecting those</p> <p>15 restaurants' business through this ordinance?</p> <p>16 A. Peninsula Township, when people come together and want</p> <p>17 additional uses, other people are allowed to come to a</p> <p>18 public meeting and say, "Hey, I'm in a commercial</p> <p>19 business and I sell that. I don't want the</p> <p>20 competition." That you're put in an unfair playing</p> <p>21 field.</p> <p>22 Q. So you said there's four restaurants and a grocery</p> <p>23 store?</p> <p>24 A. I'm thinking, yeah, there might be five.</p> <p>25 Q. So let's go with the four to five restaurants and a</p>	<p style="text-align: right;">Page 81</p> <p>1 businesses in Peninsula Township?</p> <p>2 A. Yeah, actually.</p> <p>3 Q. Who do you sell your cherries to?</p> <p>4 A. I sell it to a mini co-op, and then they sell it from</p> <p>5 there.</p> <p>6 Q. You sell it to a co-op which is located in Peninsula</p> <p>7 Township?</p> <p>8 A. Yes.</p> <p>9 Q. And you're a member of the co-op, right?</p> <p>10 A. Yes.</p> <p>11 Q. Because it's a co-op, so you're a member of it, right?</p> <p>12 A. Correct.</p> <p>13 Q. But that co-op sells its cherries outside Peninsula</p> <p>14 Township?</p> <p>15 A. Pennsylvania.</p> <p>16 Q. You sell your cherries to outside the state, yes?</p> <p>17 A. Mmm-hmm. Actually, they may go downstate. I'm not</p> <p>18 sure anymore with all the trucking stuff.</p> <p>19 Q. But you don't sell your cherries -- there is no</p> <p>20 requirement in the Peninsula Township ordinances that</p> <p>21 you sell your cherries only to Peninsula Township</p> <p>22 businesses?</p> <p>23 A. Right.</p> <p>24 Q. But you're on ag land.</p> <p>25 A. Mmm-hmm.</p>



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1 **A. I don't know the answer for that.**

2 Q. So you don't even know what that means?

3 **A. No, I don't.**

4 Q. Well, if you don't know what it means, I'm assuming

5 you can't tell me what the -- you know, how this

6 furthers the government's interest?

7 **A. No, I don't. No, I don't.**

8 Q. If you don't know what it means, you can't tell me

9 what harm to the government interest there is by

10 limiting food items, to having limited food items?

11 **A. We keep going back to that same circle, that I'm**

12 **thinking. I think your premise, as we got through**

13 **those four items, that might be something, but we're**

14 **trying to put all of these things in that box, and I'm**

15 **having a struggle --**

16 Q. Well, I didn't create that box.

17 **A. I know.**

18 Q. You guys created, the Township created this box. This

19 is your box, not my box. And so I'm asking you the

20 question, how does this fit in the box the Township

21 created? How does this remedy a harm to the box the

22 Township created? And if you don't know, you can just

23 say "I don't know."

24 **A. I don't know.**

25 Q. Okay.

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1 **A. I think that would probably be better than me**  
2 **guessing.**

3 Q. B(1)(v) we're on now. It says: Logo merchandise may  
4 be sold provided: The logo merchandise is directly  
5 related to the consumption and use of the fresh and/or  
6 processed agricultural produce sold at retail;

7 The logo is prominently displayed and  
8 permanently affixed to the merchandise;

9 And then in 4 it says -- you know, in 3 it  
10 lists what is specifically allowed, and then 4 says:

11 Specifically not allowed are unrelated ancillary  
12 merchandise such as clothing, coffee cups, and bumper  
13 stickers.

14 Okay, same questions. How does requiring a  
15 logo, right -- because I'm assuming that this would  
16 mean non-logoed items could not be sold.

17 **A. I believe that's true.**

18 Q. Okay. So if we're talking about logoed items, how  
19 does limiting the sale of merchandise to logoed items  
20 that relate to fresh or processed agriculture, how  
21 does that further one of these four governmental  
22 interests?

23 **A. I don't know.**

24 Q. Okay. And if you don't know how it furthers it, I

25 mean, do you know what the harm is the government was

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1 trying to prevent by having this ordinance?

2 **A. No.**

3 Q. Okay. And do you know if the government considered

4 less-restrictive means?

5 **A. Whatever we considered is in that document.**

6 Q. In the ordinance?

7 **A. Mmm-hmm.**

8 Q. So there's nothing else that says, "We considered

9 these four other ordinances and we rejected those"?

10 **A. I'm unaware of that.**

11 Q. Okay. Is the Township still enforcing this ordinance?

12 **A. Yes.**

13 Q. And at the end it says: Specifically not allowed are

14 unrelated ancillary merchandise such as clothing,

15 coffee cups, bumper stickers.

16 Okay, how does prohibiting clothing, coffee

17 cups, and bumper stickers, how does that further a

18 governmental interest?

19 **A. I can tell you, at the time there was a concern if we**

20 **were going to get this passed that it not turn**

21 **agricultural into commercial uses. So I'm guessing,**

22 **my guess is that's what that's in there for.**

23 Q. Okay, but that wasn't one of four governmental

24 interests the Township has identified, right? So how

25 does it fit into one of these four governmental

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1 interests that you --

2 **A. Don't know.**

3 Q. And what is the harm, what is the harm if a farm

4 processing facility sells a logoed T-shirt? What's

5 the harm to the governmental interest?

6 **A. Don't know.**

7 Q. I'm assuming you don't know if there was any  
8 less-restrictive means considered?

9 **A. Not that I recall.**

10 Q. Okay. Is the Township still enforcing this ordinance?

11 **A. Yes.**

12 Q. All right. 2(i), we've already addressed this, not  
13 less than 85 -- this is the 85 percent and 15 percent,  
14 we've addressed that.

15 2(v) says: Dried fruit, a minimum of 85  
16 percent by weight which is grown on Old Mission  
17 Peninsula and a minimum of 50 percent by weight which  
18 is grown on the farm, may be dried off premises and  
19 sold in the farm processing facility retail room,  
20 provided no more than the amount of fruit sent out for  
21 this processing is returned for retail sale.

22 What does that mean?

23 **A. I believe there was a concern of sending things out**  
24 **and processed in a different location you couldn't use**  
25 **for the appellation, but I'm not sure.**

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- 1 Q. So you're not quite sure what this means?
- 2 **A. Not.**
- 3 Q. It implies a dried fruit.
- 4 **A. Yes.**
- 5 Q. It doesn't even apply to wine.
- 6 **A. Well, when you have, for instance, cherries, dryers**
- 7 **are very expensive, so there are very few plants in**
- 8 **Michigan that are allowed to dry them.**
- 9 Q. But you're not using dried fruit for wine.
- 10 **A. This is an ordinance for all things. If I wanted to**
- 11 **dry the fruit that I grow and sell it as dried**
- 12 **cherries or dried chocolate-covered cherries and I**
- 13 **don't have the chocolate thing, I can send it out and**
- 14 **get it back. Or if I wanted to process the juice --**
- 15 **it's a different press for apples than it is for**
- 16 **grapes, usually -- then I could send it out, get it**
- 17 **back, and --**
- 18 Q. Is this intended to prevent you from bringing in more
- 19 dried fruit than you send out?
- 20 **A. No.**
- 21 Q. Well, what harm is this trying to prevent?
- 22 **A. I believe it's hitting the 85 percent of everything**
- 23 **that is a premise, but I know now we're not using wine**
- 24 **but we're using fruit. So we wanted to make it clear**
- 25 **that we realize that if you went under this and wanted**

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- 1 **to be successful, maybe you can't spend 25 grand for**
- 2 **the apple press.**
- 3 Q. All right. Let's look at 6, which is on page 45. It
- 4 is section, it's section 6. It says: Farm processing
- 5 facility size. The total floor area above finished
- 6 grade (one or two stories) of the farm processing
- 7 facility including retail space room shall be no
- 8 larger than 6,000 square feet or one-half percent of
- 9 the parcel size, whichever is less. The retail space
- 10 shall be a separate room and may be the greater of 500
- 11 square feet in area or 25 percent of the floor area
- 12 above finished grade.
- 13 So let's take the first sentence. My
- 14 question is, why, if the goal is to -- if the Township
- 15 wants to keep land in ag, why would you limit the
- 16 amount of space that they have to process ag products?
- 17 **A. The key there is "above ground." The conversation**
- 18 **was -- because wines usually go in underground so that**
- 19 **they can maintain a constant temperature --**
- 20 Q. Well, you're telling me this section applies to all
- 21 fruit growers.
- 22 **A. Yeah, but it's, it's the ability to put that size**
- 23 **building up for your retail and your things. We**
- 24 **realize you need storage, so you can go underground in**
- 25 **the basement the whole 40 acres. Above ground for**

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- 1 **that amount -- it isn't stopping anybody from putting**
- 2 **in the basement storage.**
- 3 Q. Well, why do you -- why limit the above ground?
- 4 **A. Scenic beauty.**
- 5 Q. Well, but you have, you have --
- 6 **A. Character.**
- 7 Q. -- but you have building codes that would -- you know,
- 8 you could dictate what the buildings look like, right?
- 9 **A. Well, there's some landscaping things, but we don't**
- 10 **tell you what color to paint your house or your**
- 11 **building.**
- 12 Q. You could.
- 13 **A. Well, those are available.**
- 14 Q. Have you considered that -- has the Township
- 15 considered that?
- 16 **A. It came up one time in a historical designation,**
- 17 **but ...**
- 18 Q. Why hasn't the Township looked into those sorts of
- 19 ordinances?
- 20 **A. We figured it's over the line.**
- 21 Q. That's over the line?
- 22 **A. If we're telling you to paint your house a certain**
- 23 **color, yes.**
- 24 Q. But you're limiting the amount of space -- I mean,
- 25 isn't limiting the size of a farm processing facility,

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- 1 isn't that hindering their ability to be successful?
- 2 **A. Actually, you have an old copy here. This isn't the**
- 3 **current copy.**
- 4 Q. This is the copy that's on your website.
- 5 **A. It's not the current copy, because it's been amended**
- 6 **to 10,000, because the --**
- 7 Q. Even if it's 10,000.
- 8 **A. Well, it's happened in -- there are only a couple of**
- 9 **these and they work within the limits, and one is**
- 10 **Black Star.**
- 11 Q. Well, regardless of whether they work within the
- 12 limits, I mean, do you agree or disagree with my
- 13 premise that by limiting the size of their facilities,
- 14 you are limiting the potential for a farm processing
- 15 facility to be successful?
- 16 **A. No, because we have not limited the size of their**
- 17 **building.**
- 18 Q. The size of their facility above ground?
- 19 **A. I don't think it would be unsuccessful.**
- 20 **Q. Okay. The next part says: The retail space shall be**
- 21 **a separate room and may be the greater of 500 square**
- 22 **feet in area or 25 percent of the floor area above**
- 23 **finished grade.**
- 24 **So you're limiting the size of the retail**
- 25 **space there, right?**

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1 A. Yes.

2 Q. Why?

3 A. It's designed to sell the person's product from the  
4 peninsula, and that, that's been determined to be  
5 their logoed items. Was that number too high or too  
6 low? We can always change. I think that's real  
7 negotiable. But something had to be plugged in, so it  
8 was.

9 Q. Is this just a number they picked out of a hat?

10 A. I believe it.

11 Q. Okay. There's no basis for that number?

12 A. I couldn't point it to you.

13 Q. But you're amenable to that number changing?

14 A. Yeah. I don't know, you got me now, because you know  
15 where we talked about that, and I don't know if I --  
16 okay.

17 Q. We talked about that. All right, you can hand that  
18 to ...

19 MARKED FOR IDENTIFICATION:

20 DEPOSITION EXHIBIT 3

21 12:56 p.m.

22 MR. INFANTE: All right, Matt, we're on the  
23 winery chateau sections.

24 MR. WISE: Got it.

25

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1 rooms, and there's a formula for one house given up --  
2 they get three rooms, up to twelve, and a lot of times  
3 they wanted to do seminars, weddings, and all those  
4 rooms would be available for them.

5 Q. Well, it says: Facilities, meeting rooms, and food  
6 and beverage services shall be for registered guests  
7 only.

8 A. Yeah.

9 Q. That's not true, though, right?

10 A. Right. They can have a full-course dinner there,  
11 yeah.

12 Q. Well, but a non-registered guest could have beverages,  
13 right?

14 A. It would have been free wine tasting at the time this  
15 was written, yes.

16 Q. But now they can have, a non-registered guest can have  
17 wine, right?

18 A. I believe it, yup.

19 Q. And a non-registered guest can have food, right?

20 A. There's a complex formula that goes along with that  
21 that I --

22 Q. How about some food, some form of food?

23 A. Small plate.

24 Q. All right. And a non-registered guest could use the  
25 facility, right?

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1 BY MR. INFANTE:

2 Q. Okay. So I've handed you Plaintiffs' Exhibit 3 --  
3 actually, I should back up.

4 You had Exhibit 2, which was the farm  
5 processing section of the ordinance. You recognize  
6 this document?

7 A. Yes.

8 Q. You think this may not be current?

9 A. It isn't.

10 Q. Okay. I would say that your website needs to be  
11 updated, then.

12 All right, so I've handed you Plaintiffs'  
13 Exhibit 3. This is the winery chateau section of the  
14 Peninsula Township ordinance. Do you recognize this?

15 A. Mmm-hmm.

16 Q. Yes?

17 A. Yes, I do.

18 Q. All right. We're going to do the same exercise again.

19 All right, let's look at -- go to page, on the bottom  
20 129. So we're going to start at 10(m) at the very  
21 top. It says: Accessory uses such as facilities,  
22 meeting rooms, and food and beverage services shall be  
23 for registered guests only.

24 What does that mean?

25 A. In a winery chateau, they actually have on-site guest

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1 A. The bathroom, yeah.

2 Q. Well, and a non-registered guest could use a meeting  
3 room, right?

4 A. I believe there's --

5 Q. I guess what I'm getting at is, isn't this provision  
6 now obsolete because it's been preempted by other  
7 provisions of the ordinance?

8 A. I think you may be true.

9 Q. Because you're not enforcing part (m) here to prevent  
10 a non-registered guest from tasting wine, are you?

11 A. No, because, as you said, the law has changed.

12 Q. Okay, so --

13 A. Has it been redone in the ordinance? No.

14 Q. Okay. And by "law," you mean the Liquor Control Code  
15 has been changed?

16 A. Correct.

17 Q. All right. Let's look at item, it's (u)(1). This is  
18 the guest activity uses provision, right?

19 A. Mmm-hmm.

20 Q. All right. And let's look at (b). It says: Guest  
21 activity uses are intended to help in the promotion of  
22 peninsula agriculture by identifying peninsula  
23 produced food or beverage for consumption by the  
24 attendees; providing peninsula agriculture promotional  
25 brochures, maps and awards; and including tours

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1 through the winery and/or other peninsula agricultural  
2 locations.

3 Okay, what does this mean?

4 **A. I believe that's the part I was referring to where**

5 **Mr. Begin came to the Township and asked, "How can I**  
6 **get" -- and Jim Krupka at the time was CEO -- "how can**  
7 **we get more people in and do more events."**

8 Q. My question is, what does it mean?

9 **A. I'm sorry, what page were you on?**

10 Q. I'm on, it's 130, and it's item (1)(b).

11 **A. I believe the guest activity -- as I said, there was**  
12 **an amendment, and it had to do with the more land that**  
13 **they brought in for grape consumption from the**  
14 **peninsula, there was a formula that they could get a**  
15 **number of people to do these guest activities, and the**  
16 **guest activities were structured around things that**  
17 **promote the peninsula, I think 501(c)(3)s.**

18 Q. This one right here, I guess my question is, does this  
19 mean that a Peninsula Township winery is required to  
20 identify peninsula produce, provide promotional  
21 brochures and maps of peninsula agriculture, and have  
22 tours through the winery and other peninsula  
23 agricultural locations?

24 **A. Mmm-hmm.**

25 Q. Is that what that means?

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1 **A. Mmm-hmm.**

2 Q. Yes?

3 **A. Yes, to my knowledge.**

4 Q. Okay. How does this ordinance further one of the four  
5 governmental interests we talked about?

6 **A. Again, as determined -- I can't relate it to the four.**

7 Q. Okay. And so if you can't relate it to the four, you  
8 can't tell me the harm it was trying to prevent?

9 **A. No.**

10 Q. You can't tell me what less-restrictive means you  
11 considered, the Township considered?

12 **A. No.**

13 Q. Okay. Let's look at (d). It says: Guest activity  
14 uses do not include wine tasting and such related  
15 promotional activities as political rallies, winery  
16 tours, and free entertainment (for example, Jazz at  
17 Sunset) which are limited to the tasting room and for  
18 which no fee or donation of any kind is received.

19 What does this mean?

20 **A. I don't recall how we got to that one.**

21 Q. But do you know what it means?

22 **A. No.**

23 Q. Okay. If you don't know what it means, I'm assuming  
24 you can't tell me how this furthers --

25 **A. Nope, nope.**

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1 Q. -- a government interest?

2 **A. No.**

3 Q. And you can't tell me what harm this is intended to  
4 prevent?

5 **A. No, I can't.**

6 Q. And you can't tell me any less-restrictive means that  
7 the Township considered?

8 **A. No.**

9 Q. Is the Township still enforcing 1(d)?

10 **A. Not that I'm aware of. I don't -- if it's in the**  
11 **ordinance and it's not changed by a law, then we**  
12 **would --**

13 Q. You would enforce it?

14 **A. Well, we would talk to the people about it and then**  
15 **work with them to change it.**

16 Q. Do you think it needs to be changed?

17 **A. Well, I need to find out why -- what it truly means,**  
18 **why it was there. I don't recall.**

19 Q. Okay. And 1(b), we talked about that, is this still  
20 being enforced, the promotional items -- or the  
21 advertisement?

22 **A. I'm going to have to say yes until I've -- if it's in**  
23 **the ordinance, the procedure is we would go and say,**  
24 **"Hey, we need to change this." Then we'd work through**  
25 **it and change them all, in all the chateaus to be the**

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1 **same.**

2 Q. Do you think this needs to be changed?

3 **A. I think personally we've gotta get rid of this whole**  
4 **ordinance and start a new one, my feeling.**

5 Q. Have you taken action to get rid of this entire  
6 ordinance?

7 **A. I brought it up at several meetings, to tell people**  
8 **that it would be better to create a winery ordinance.**  
9 **We'd have a use by right and maybe two tiers of winery**  
10 **ordinance that would be more effective. This is like**  
11 **impossible, for these reasons, to enforce.**

12 Q. Because you don't know what it means, right?

13 **A. Yeah. My zoning people, they may, because they're in**  
14 **and out of it all the time. But for me, I don't.**

15 Q. You, as the township supervisor, you don't know what  
16 these ordinances mean, right?

17 **A. We did this thing 20 years ago, and it's been amended,**  
18 **and I can't tell you what those sentences mean now or**  
19 **why they're important to be in there.**

20 Q. Okay.

21 **A. I will tell you this. As crazy as that zoning**  
22 **ordinance is, written in '72, I don't think we've ever**  
23 **lost in court sticking to it. That I'll hang my hat**  
24 **on.**

25 **So if there's something in here, maybe it**

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1 Q. Okay. I guess, are you enforcing -- so I'll give you  
2 an example. I sit on the foundation board for Hospice  
3 of Michigan, okay, which is not based in Grand  
4 Traverse County, it's, I believe it's based in Ann  
5 Arbor, and if we wanted to have -- actually, I've got  
6 a perfect example.

7 Hospice of Michigan, we had our foundation  
8 board meeting in Traverse City, I believe it was three  
9 years ago, four years ago, and we could not hold our  
10 meetings at a winery on Old Mission Peninsula. We  
11 went to Leelanau County, because we're not a Grand  
12 Traverse based 501(c)(3).

13 A. Mmm-hmm.

14 Q. Why?

15 A. Well --

16 Q. What is the harm of having Hospice of Michigan's  
17 foundation board and board of directors have a meeting  
18 at a Peninsula Township winery chateau?

19 A. Well, you could have if you would have rented the  
20 rooms.

21 Q. We had to stay there?

22 A. Yeah.

23 Q. But what's the harm if we didn't stay there?

24 A. I don't know that there is a harm. I know that  
25 through the negotiation and what the people asked for,

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1 we gave them. You've got -- these guys come to us, we  
2 give them everything they want. Now they say that  
3 they don't like it and they signed a contract, they've  
4 got a problem.

5 Q. Well, I get that, but I want to know, you know, how  
6 does preventing a 501(c)(3) non-profit based  
7 downstate, you know, how does preventing them from  
8 holding a meeting at a winery chateau further an  
9 interest of Peninsula Township?

10 A. Maybe it took up a date that someone else in Grand  
11 Traverse wanted. I don't know your answer.

12 Q. Do you know how it, how it furthers the interest?

13 A. Furthers the interest of the winery?

14 Q. No, of Peninsula Township. Preventing a 501(c)(3) not  
15 located in Grand Traverse County from holding a  
16 meeting, how does that further an interest of  
17 Peninsula Township?

18 A. Well, the ordinances are designed to further the  
19 interests of the winery, so ...

20 Q. But you have identified four governmental interests --

21 A. Yes.

22 Q. -- that were used when enacting these ordinances.

23 A. Mmm-hmm.

24 Q. I want to know how preventing 501(c)(3)s from out of  
25 Grand Traverse County from holding meetings, how does

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1 it further any of those four governmental interests?

2 A. I don't know.

3 Q. Do you think it does?

4 A. I don't know.

5 Q. Okay. If you don't know how -- I assume you then

6 don't know what harm is trying to be prevented?

7 A. I don't.

8 Q. Okay. And I assume you don't know if there are any

9 less-restrictive means considered?

10 A. Don't recall.

11 Q. Okay. Is the Township still enforcing this ordinance?

12 A. I think if they're -- no, I'm not aware of any  
13 violations.

14 Q. Well --

15 A. We are going to enforce that ordinance unless there's  
16 a violation, and then we'll proceed to "how do we do  
17 that."

18 Q. So you are going to enforce it, if it comes up?

19 A. If it comes up and there's an issue, yeah, we have to.  
20 We're not out going door-to-door looking. We're  
21 trying to work with the people, and that is our  
22 procedure. We don't turn our back to it. We talk to  
23 the people, and I know all the people, and usually  
24 voluntarily it's corrected.

25 Q. All right. Well, let's look at (c). (C) is sort of

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1 the same issue as (b). (C) says: Meetings of  
2 agricultural related groups that have a direct  
3 relationship to agricultural production, provided  
4 that -- and there's sort of a list here and there's  
5 some examples.

6 A. Mmm-hmm.

7 Q. I guess my question is, what government interest is  
8 furthered by limiting the groups that can use -- that  
9 can have meetings at wineries to being only ag groups?

10 A. The concept has been the same in the beginning. We  
11 want our ag, all of our ag -- if you're growing  
12 lavender, whatever -- to be successful.

13 Q. But how does limiting who can use meeting rooms to  
14 just ag groups, how does that further any of these  
15 four governmental interests?

16 A. I guess my answer would be "I don't know" all the way  
17 through.

18 Q. So you don't know on interest, you don't know on the  
19 harm to be prevented, you don't know on what  
20 less-restrictive means?

21 A. Hmmm-mmm.

22 Q. No?

23 A. No.

24 Q. Is the Township still enforcing this ordinance?

25 A. Again, the Township, we're enforcing -- anything that



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1 we find is in violation, we're kind of in a holding  
 2 pattern, waiting through the court, unless it's a very  
 3 health, safety and welfare issue.  
 4 Q. What do you mean by "health, safety and welfare"?  
 5 A. If they put too many people in the building in the  
 6 fire code, then I'm going to bust them.  
 7 Q. Fair enough. Anything else?  
 8 A. Well, it would depend on the individual circumstances.  
 9 Q. Okay. Well, I guess, so meetings of agricultural  
 10 groups, that's not a health, safety and welfare issue,  
 11 is it?  
 12 A. Well, any group in a confined area, and parking, and  
 13 all of those things come into play.  
 14 Q. Well, setting aside the number of people at the  
 15 meeting and the parking, just the fact that a  
 16 non-agricultural group has a meeting, that's not a  
 17 health, safety and welfare issue, right?  
 18 A. No.  
 19 Q. And the same for a 501(c)(3) located not in Grand  
 20 Traverse County; that's not a health, safety and  
 21 welfare issue, right?  
 22 A. No.  
 23 Q. And promoting the guest activity uses, you know, this  
 24 part, the wine tasting, looking at 1(d), such as  
 25 related promotional activities, political rallies,

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1 et cetera, that's not a health, safety and welfare  
 2 issue, right?  
 3 A. No.  
 4 Q. Okay. And requiring the promotion of peninsula  
 5 agriculture in 1(b), that's not a health, safety and  
 6 welfare issue, right?  
 7 A. No.  
 8 Q. And just stepping back, requiring a winery to use  
 9 85 percent Old Mission grapes, that's not a health,  
 10 safety and welfare issue, right?  
 11 A. No.  
 12 Q. And requiring wineries to have their logo on  
 13 merchandise and non-food items, that's not a health,  
 14 safety and welfare issue, right?  
 15 A. No, I don't believe so.  
 16 Q. And limiting the size of a retail space of a winery, a  
 17 farm processing facility, that's not a health, safety  
 18 and welfare issue, is it?  
 19 A. No, I don't believe so.  
 20 Q. And restricting for sale remote tasting room, remote  
 21 winery tasting rooms, restricting the signs or  
 22 advertising they use to promote their products, that's  
 23 not a health, safety and welfare issue, right?  
 24 A. I don't believe so.  
 25 Q. Are any of these ordinance sections we've gone through

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1 so far, are any of them, do you believe, health,  
 2 safety and welfare issues?  
 3 A. The ones we've talked about -- I couldn't say for all  
 4 of them, I can't remember all of them, but for the  
 5 most part, probably no.  
 6 I want to make it clear that until the  
 7 ordinance is changed, we do enforce, in fairness, and  
 8 we do that in a process where we notify the person  
 9 when either we see the complaint, one of our guys, or  
 10 someone calls in.  
 11 Q. But we talked about health, safety and welfare, I  
 12 mean, feel free to agree or disagree or expand on what  
 13 I'm saying, but health, safety and welfare, like you  
 14 mentioned, is the number of people in a building for  
 15 fire code issues, right?  
 16 A. Mmm-hmm.  
 17 Q. It's the number of, you know -- it's do you have  
 18 enough parking for the people that are there, do you  
 19 have signs for ingress and egress.  
 20 A. Mmm-hmm.  
 21 Q. I mean, are there other health, safety and welfare  
 22 issues that the Township, you know, regulates or wants  
 23 to regulate?  
 24 A. I would say noise is the next one.  
 25 Q. Okay.

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1 A. Quality of living, quality of life issues.  
 2 Q. And what are those?  
 3 A. Well, amplified music, when your noise is leaving your  
 4 property into the residential area, and they're  
 5 entitled to their peace and quiet, also. I would bust  
 6 them if it was going the other way.  
 7 Q. Well, we'll talk about those. Anything else?  
 8 A. Off the top of my head, no.  
 9 Q. Okay. Looking at 2(d) it says: Guest activity uses  
 10 do not include entertainment, weddings, wedding  
 11 receptions, family reunions or sale of wine by the  
 12 glass.  
 13 What does that mean?  
 14 A. I don't know. I think I'm on the wrong page. What  
 15 are you on now?  
 16 Q. It's 131, at (d).  
 17 A. (D)? Oh. That's always been an issue and a concern  
 18 in the community of those kinds of weddings that  
 19 aren't wine tasting. And I think this is just in for  
 20 a prohibition of that.  
 21 Q. Well, we'll take that in parts. You say weddings that  
 22 aren't wine tastings. So a wedding related to a  
 23 wine -- that includes a wine tasting is allowed?  
 24 A. No. Weddings aren't allowed -- actually, they are in  
 25 Chantal, we have the rooms.

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1 **come down a state highway.**  
 2 Q. But you don't think that this causes more people to  
 3 come out to Old Mission Peninsula to visit the  
 4 lavender farm and the nursery and the restaurants?  
 5 **A. I think that the intention of that in there was to**  
 6 **promote our agricultural area, our appellation, and it**  
 7 **came from the wine guys. The Township didn't put the**  
 8 **appellation together. The wine guys did.**  
 9 Q. All right. Let's look at 5(b): Hours of operation  
 10 for guest activity uses shall be as determined by the  
 11 town board, but no later than 9:30 p.m. daily.  
 12 **A. Mmm-hmm.**  
 13 Q. So winery chateaus -- well, so this is hours of  
 14 operation for guest activities?  
 15 **A. Actually, for everybody.**  
 16 Q. Well, hold on: Hours of operation for guest activity  
 17 uses shall be as determined by the town board, but no  
 18 later than 9:30 p.m. daily.  
 19 **A. Mmm-hmm.**  
 20 Q. So this says that a guest activity must end by  
 21 9:30 p.m., right?  
 22 **A. Mmm-hmm.**  
 23 Q. Yes?  
 24 **A. Mmm-hmm.**  
 25 Q. You have to say the word "yes."

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1 **A. I'm sorry, yes.**  
 2 Q. But it doesn't say that a winery has to close all  
 3 business at 9:30, right?  
 4 **A. I think that's inferred.**  
 5 Q. It doesn't say that a winery has to close all business  
 6 at 9:30, right?  
 7 **A. I believe it's inferred. I'm going to stick with**  
 8 **that.**  
 9 Q. Does it explicitly say it, yes or no?  
 10 **A. Explicitly, no.**  
 11 Q. But you believe it's implied?  
 12 **A. I believe it's the ordinance and it's the law.**  
 13 Q. But it doesn't actually say that they have to close at  
 14 9:30, right?  
 15 **A. Well, that's what I'm enforcing.**  
 16 Q. Well, that's my follow-up question. You are enforcing  
 17 the wineries to close their tasting rooms at 9:30  
 18 p.m., correct?  
 19 **A. Yes.**  
 20 Q. Even though the ordinance does not say that they need  
 21 to close at 9:30 p.m., correct?  
 22 **A. We believe that 9:30 is the closing.**  
 23 Q. Okay, the township is interpreting this to mean 9:30  
 24 to close all business?  
 25 **A. Yes.**

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1 Q. Even though the ordinance doesn't say it?  
 2 **A. It does to us.**  
 3 Q. Tell me where it says that a tasting room has to close  
 4 at 9:30 p.m.  
 5 **A. To us, that's what was implied there.**  
 6 Q. 5(c) says: No alcoholic beverages, except those  
 7 produced on the site, are allowed with guest activity  
 8 uses.  
 9 What does this mean?  
 10 **A. Well, you can't bring in a case of beer and sit in the**  
 11 **parking lot, basically, like on a Brew Bus, but I**  
 12 **don't know that the wineries probably enforce that.**  
 13 Q. Is this sort of if you make it, you can sell it?  
 14 **A. If you make it, you can sell it, yeah.**  
 15 Q. Okay. Now, what if -- are you aware of what a  
 16 catering license is?  
 17 **A. I'm aware that you need a commercial kitchen and**  
 18 **certification from the health department.**  
 19 Q. Okay. But places like, I'm sure The Boathouse has a  
 20 catering license, I imagine?  
 21 **A. Yeah. A restaurant, I would think, would --**  
 22 Q. Okay. Would this prohibit The Boathouse from catering  
 23 alcohol at a winery?  
 24 **A. I guess unless they bought the wine from the winery**  
 25 **and brought it.**

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1 Q. But if they bought --  
 2 **A. I think that could be construed that way, yeah.**  
 3 Q. Item 5(d): Sales of wine by the glass or sales of  
 4 bottles of wine for on-premises consumption are not  
 5 allowed except as provided in Section 2(e) above.  
 6 Are you enforcing this?  
 7 **A. No, because the State -- I think the State overruled**  
 8 **this one.**  
 9 Q. The Liquor Control Code says this is allowed, and that  
 10 preempts this item (d)?  
 11 **A. I believe that.**  
 12 Q. That's correct?  
 13 **A. I think, I believe so.**  
 14 Q. Okay, (e): No outdoor food, beverages or temporary  
 15 structures are allowed except as allowed by 8(c)  
 16 below.  
 17 Are you enforcing no outdoor food or  
 18 beverages?  
 19 **A. What has happened since COVID, we have taken the**  
 20 **policy to allow tents outside, and igloos, and I think**  
 21 **some other structures. Awning.**  
 22 Q. I'm talking about food or beverages. Are you  
 23 enforcing the ordinance which prohibits outdoor food  
 24 and beverages?  
 25 **A. I think since COVID, things have -- we've allowed that**

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1 **A. Why would we discriminate between a guy playing a**  
2 **flute and --**  
3 Q. And a guy playing a guitar, yeah.  
4 **A. Yeah. I'll have to research that one. There's a**  
5 **reason, probably, but I don't know.**  
6 Q. You don't know the reason for that?  
7 **A. Off the top of my head. I'm just saying no amplified**  
8 **music is allowed, and keep it outside.**  
9 Q. Well, this says amplified music is allowed, amplified  
10 voice is allowed, but amplified instrumental music is  
11 not allowed. What is it about amplified instrumental  
12 music that the government needs to control?  
13 **A. No amplified music is allowed.**  
14 Q. No, it says no amplified instrumental music is  
15 allowed.  
16 **A. Yeah, but it also says no amplified instrumental music**  
17 **is allowed.**  
18 Q. Read it again.  
19 **A. Yeah, I am. I don't know the difference between the**  
20 **instrumental and the amplified voice. I'd have to**  
21 **look that up. It's probably in the minutes someplace.**  
22 Q. You don't know the difference or you don't know why  
23 they're treated differently?  
24 **A. I don't know why they're treated differently.**  
25 Q. But you'd agree with me that you're discriminating

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1 against instrumental music --  
2 **A. It's not that I agree with you on anything.**  
3 Q. You just said you're discriminating. So what is it  
4 about, you know, an electric guitar versus a trombone  
5 that makes a trombone less offensive?  
6 **A. I would have to look that up. To me, I can't explain**  
7 **that one to you right now.**  
8 Q. Because under this ordinance, I mean, we could put a  
9 marching band out there. We could have some tubas,  
10 some base drums, some trombones, some flutists?  
11 **A. I'm sure there was a reason, but I don't know at this**  
12 **time at the table.**  
13 Q. All right. So if I asked you these questions we've  
14 been doing, what's the governmental interest you're  
15 trying to further by prohibiting amplified  
16 instrumental music, you wouldn't know?  
17 **A. I'm going to say that it's just keeping the**  
18 **neighborhood quiet and respecting the neighbors.**  
19 Q. Okay, but that's not one of the four governmental  
20 interests you gave me earlier.  
21 **A. Well, you asked me what it's doing, and those were**  
22 **written a long time ago, too, and haven't been updated**  
23 **to what we are at now. And some of these wineries**  
24 **have been allowed to be built with residential areas**  
25 **next to them. That's where we're starting to see the**

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1 **conflict.**  
2 **And then the conflict is going to be who**  
3 **has the right to farm, and then when one of those**  
4 **shows up next to my farm, and I'm driving the air**  
5 **blast sprayer and I spray those people, who's going to**  
6 **be --**  
7 Q. But that has nothing to do with instruments.  
8 **A. You're right, but I'm trying to give you an example.**  
9 Q. I get it, but you would agree with me, **the prohibition**  
10 **on amplified instrumental music has nothing to do with**  
11 **the four governmental interests we've been talking**  
12 **about today?**  
13 **A. I can't, I can't say that it does.**  
14 Q. Okay. And so you can't tell me the harm the township  
15 was trying to remedy by not allowing amplified  
16 instrumental music?  
17 **A. Not without reading the minutes of why it's there, no.**  
18 Q. Okay. And you can't tell me any less-restrictive  
19 means the Township considered before prohibiting  
20 amplified instrumental music?  
21 **A. I'm guessing it was on a complaint, but I don't know,**  
22 **no.**  
23 Q. Okay. And the Township is still enforcing this,  
24 though, right?  
25 **A. We are enforcing amplified music leaving the ground.**

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1 Q. You're enforcing all amplified music leaving the --  
2 you're restricting all amplified music?  
3 **A. Mmm-hmm.**  
4 Q. Yes?  
5 **A. Mmm-hmm.**  
6 Q. Where in the ordinance does it say there's -- no  
7 amplified music is allowed?  
8 **A. Well, we're doing the complaints, and I'm telling you**  
9 **that Christina is working on letters and notification**  
10 **of no amplified music.**  
11 Q. Well, that's fine, but tell me where in your ordinance  
12 does it say that amplified music of any kind is  
13 prohibited.  
14 **A. I can't point to the exact point right now.**  
15 Q. Because the ordinance says amplified voice and  
16 recorded background music is allowed, right?  
17 **A. But only -- it has to stay within the building and**  
18 **designated area of the building for guest purposes.**  
19 Q. Okay.  
20 **A. So when it leaves your site and disturbs someone**  
21 **else's --**  
22 Q. But then we're falling back to (f), which is the "no  
23 sounds related to the guest activity shall be  
24 discernible at the property lines."  
25 **A. Well, in our noise ordinance, you have to keep your**



# **Exhibit 5**

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE WESTERN DISTRICT OF MICHIGAN  
3  
4

5 WINERIES OF THE OLD MISSION  
6 PENINSULA (WOMP) ASSOC., a Michigan  
7 Nonprofit Corporation, et al.,  
8                   Plaintiffs,

9                   vs.   Case No. 1:20-cv-01008

10  
11   Hon. Paul L. Maloney  
12   Magistrate Ray S. Kent

13 PENINSULA TOWNSHIP, Michigan  
14 Municipal Corporation,  
15                   Defendant.  
16  
17  
18

19                   The Deposition of GORDON HAYWARD,  
20                   Taken at 13235 Center Road,  
21                   Traverse City, Michigan,  
22                   Commencing at 11:31 a.m.,  
23                   Friday, November 5, 2021,  
24                   Before Rebecca L. Russo, CSR-2759, RMR, CRR.  
25

WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP  
HAYWARD, GORDON 11/05/2021

Job 16653  
34..37

<p style="text-align: right;">Page 34</p> <p>1 respond to. One is "promoting" and the second one is</p> <p>2 "identifying."</p> <p>3 Q. Okay. How does that help you answer my question?</p> <p>4 A. Any signs or advertising may not promote or identify</p> <p>5 food or non-food items allowed for sale in the tasting</p> <p>6 room. We're talking about selling food.</p> <p>7 Q. Mmm-hmm.</p> <p>8 A. Not providing food, not making food. Selling food.</p> <p>9 Q. I'm sorry, are you done?</p> <p>10 A. I could -- yes.</p> <p>11 Q. Okay. So I think what you're saying is -- is it fair</p> <p>12 to say that 12(k) prohibits a remote winery tasting</p> <p>13 room from identifying the food items, the allowed food</p> <p>14 items that it has for sale?</p> <p>15 MR. MEIHN: That's not what he said. I'd</p> <p>16 object because you left the word out "promote."</p> <p>17 But if you can answer it one more time,</p> <p>18 please.</p> <p>19 A. Well, I guess I'm not sure what you're asking.</p> <p>20 BY MR. INFANTE:</p> <p>21 Q. Okay. Does 12(k) prohibit a remote winery tasting</p> <p>22 room from listing the food items they have for sale?</p> <p>23 A. I don't think so.</p> <p>24 Q. Okay. And would it prohibit -- if inside the remote</p> <p>25 winery tasting room they have a chalkboard on the</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Can you give me examples of signs or advertising that</p> <p>3 are not allowed?</p> <p>4 MR. MEIHN: I'm going to object to the</p> <p>5 hypothetical and requesting the witness to come up</p> <p>6 with his own question.</p> <p>7 But, subject to that, if you can, please go</p> <p>8 forward with it.</p> <p>9 A. For example, let's say out by the road you've got a</p> <p>10 sign that meets the sign ordinance, and on that sign</p> <p>11 it says, "Mustard, \$4." That would be illegal.</p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Okay, and what is --</p> <p>14 A. Because the -- I'm sorry?</p> <p>15 Q. What is the harm in having a sign that says, "Mustard,</p> <p>16 \$4"?</p> <p>17 A. The harm is that now we're talking about a commercial</p> <p>18 use in the ag zone.</p> <p>19 Q. Hold on. They're allowed to sell mustard, but they're</p> <p>20 not allowed to advertise to have the mustard for sale?</p> <p>21 A. The purpose of the ordinance is to promote production</p> <p>22 of agriculture, it's not to sell mustard. Selling</p> <p>23 mustard is what you go to the grocery store to buy.</p> <p>24 Is a value added to the -- is value added</p> <p>25 by the ordinance allowing some food to be sold? That</p>
<p style="text-align: right;">Page 35</p> <p>1 wall, would a remote winery tasting room be allowed to</p> <p>2 list the food that it has for sale and then the price?</p> <p>3 A. I'm having trouble with the word "food."</p> <p>4 Q. Do you not know what food is?</p> <p>5 A. Well, there's food that's allowed. If you grow it,</p> <p>6 you can sell it, essentially.</p> <p>7 Q. I understand. I'm talking about the food that they</p> <p>8 are allowed to sell.</p> <p>9 Are you telling me that 12(k) would</p> <p>10 prohibit them from having a chalkboard on the wall</p> <p>11 that would list the food they're allowed to sell and</p> <p>12 the price of that food?</p> <p>13 A. Retail sale of packaged food items, so you're talking</p> <p>14 about packaged food items? So, yes, the sale of</p> <p>15 packaged food items allowed, in addition to bottled</p> <p>16 wine, are those which contain wine or food produced in</p> <p>17 Peninsula Township.</p> <p>18 So if you're talking about can they sell or</p> <p>19 list, let's say, maybe they've got a list that says</p> <p>20 mustard or something that's got some wine in it, that</p> <p>21 would be fine.</p> <p>22 Q. They could have that list on the wall?</p> <p>23 A. Yeah.</p> <p>24 MR. MEIHN: You've gotta say it louder.</p> <p>25 THE WITNESS: I'm sorry, yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 food has, that food has something in it that was,</p> <p>2 that's grown on Old Mission Peninsula, whether it's a</p> <p>3 tomato or whatever, but ...</p> <p>4 Q. Let me see if I can --</p> <p>5 A. But in -- the agricultural district is designed to</p> <p>6 grow, process, wholesale/retail sales of farm</p> <p>7 products. So we don't say that -- well, what we do</p> <p>8 say is that you can sell some limited types of</p> <p>9 products if they are products that contain products</p> <p>10 grown on Old Mission Peninsula.</p> <p>11 Q. So let me see if I can -- so you can grow it, you can</p> <p>12 process it, you can sell it, but you can't advertise</p> <p>13 you have it for sale, is that what you're saying?</p> <p>14 MR. MEIHN: I'm going to object, that's not</p> <p>15 what (k) says at all.</p> <p>16 MR. INFANTE: Counsel, I'm trying to --</p> <p>17 MR. MEIHN: He's answered this question</p> <p>18 four times, sir, and you're expanding it and you're</p> <p>19 not staying within the confines of (k).</p> <p>20 MR. INFANTE: Counsel, please just state</p> <p>21 your objection.</p> <p>22 MR. MEIHN: Well, I'm about ready to ask</p> <p>23 him not to answer anymore, because you're not liking</p> <p>24 his answer so you're trying to beat him up a little</p> <p>25 bit, with all due respect.</p>