

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,

ORAL ARGUMENT REQUESTED

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFFS' RESPONSE TO PENINSULA TOWNSHIP'S MOTION FOR SUMMARY
JUDGMENT ON PREEMPTION CLAIM**

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I. INTRODUCTION

The preemption issues in this case have been thoroughly briefed and the Wineries do not intend to rehash well-covered ground. The Wineries incorporate by reference the arguments made in their previous preemption briefs and focus here on the Township's new arguments. (ECF Nos. 334 and 367.)

II. FACTS

The Wineries have set forth the facts supporting their preemption claims in several briefs. (See ECF Nos. 54, 334, 367) The Wineries incorporate those facts by reference here. The Wineries set forth the facts regarding Amendment #201 below.

A. The Township passed Amendment #201 to manufacture a defense to this lawsuit but failed to follow the Michigan Zoning Enabling Act.

On June 3, 2022, this Court ruled multiple sections of the Peninsula Township Zoning Ordinance to be unconstitutional, preempted, or otherwise contrary to law. (ECF No. 162.) In response, Peninsula Township amended its zoning ordinance. This process occurred over several months, but the Township's theme throughout was to make its ordinance "legally defensible." But, as discussed below, the new ordinance is also preempted by Michigan law.

On July 26, 2022, the Township Board and Planning Commission held a joint study session. The initial proposal was to "remov[e] the winery-chateau use" and "updat[e] the farm processing facility as a use by right." (Exhibit 1: 07/26/2022 Meeting Minutes at 7.) According to Planner Jenn Cram, "Our goal is to develop a zoning ordinance that is legally defensible and also equitable." (*Id.*) "These recommendations, or proposed amendments, have developed as a result of what we have learned from the WOMP lawsuit. I have been working very closely with our legal counsel, Bill Fahey, and his team on what the decisions that Judge Maloney brought forward mean for us and our zoning ordinance." (*Id.* at 6–7.)

On September 25, 2022, Peninsula Township published a public notice “concerning the adoption of amendments to the Peninsula Township Zoning Ordinance related to Farm Processing Facilities, Winery-Chateaus and a Temporary Moratorium in the A-1 Agricultural District....” (Exhibit 2: 09/25/2022 Public Notice.) The notice was silent as to any action with respect to Remote Winery Tasting Rooms (i.e., Peninsula Cellars). That public hearing was held on October 11, 2022. (Exhibit 3: 10/11/2022 Meeting Minutes.) Cram reiterated that “[t]he first goal was to draft a zoning ordinance that is legally defensible.” (*Id.* at 8.) A draft amendment was included in the meeting packet, but did not reference Remote Winery Tasting Rooms. (Exhibit 4: September 26, 2022 Draft.)

During the public hearing, some changes were proposed, although no comments were made regarding Remote Winery Tasting Rooms. (*See* Exhibit 3: 10/11/2022 Meeting Minutes.) Instead of making a written summary of the proposed changes and submitting them to the Township Board,¹ one Planning Commissioner asked, “can we pass it the way it is now and then have Jenn make her tweaks and have that changed?” (*Id.* at 25.) The Planning Commission moved and approved “that the planning commission recommend Amendment 201 to the zoning ordinance to the township board with the recommendations seen this evening.” (*Id.*)

One resident warned that the Michigan Zoning Enabling Act (“MZEA”) requires the Planning Commission to “transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body, which is our township board.” (*Id.* at 3.) Another resident tried to stop the motion so that

¹ “Following the required public hearing...the zoning commission shall transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body of the local unit of government.” MCL 125.3308(1) (emphasis added).

the Planning Commission and Township Board could follow the law. (*Id.* at 26.) The Township Supervisor shouted the citizen down and ignored the warning. (*Id.*)

On November 1, 2022, the Township Planner described the reason for Amendment #201 very clearly: “There are two primary goals for the proposed amendments to the zoning ordinance. The first goal is to draft an ordinance that is legally defensible based on the issues raised in the WOMP lawsuit.”² (Exhibit 5: November 1, 2022 Meeting Minutes.) Enclosed with the packet for the November 1, 2022 meeting was a proposed revised ordinance purportedly incorporating the comments made at the October 11, 2022 meeting. (Exhibit 6: October 27, 2022 Draft.) The draft proposed to delete the definitions of “Winery” and “Winery-Chateau” and to remove the Winery-Chateau ordinance subsection (*Id.* at 2, 21.) A section regarding Remote Tasting Rooms appeared for the first time. (*Id.* at 21.)

A month later, Planner Cram reiterated: “At a closed session on November 10, the board met with legal counsel to discuss a legal opinion in order to make some changes to the zoning ordinance so that it would be more easily defensible with regard to commerce clause claims that have been raised in the WOMP lawsuit.”³ (Exhibit 7: December 13, 2022 Township Board Meeting Minutes at 14.) The draft ordinance at this meeting included a section with respect to Remote Tasting Rooms. (Exhibit 8: November 14, 2022 Draft.) Ultimately, the Township Board passed Amendment #201 on December 12, 2022. (ECF No. 444-2.)

² The second was to make the ordinance “equitable” for other farmers. But, dozens of farmers in the Township, who collectively own 4,800 acres of land, opposed Amendment #201. “We do not see how the Township, in good conscience, can move forward on this proposal, given the overwhelming opposition from nearly every farmer in Peninsula Township.” *Opinion: Farmers Oppose New Farm Processing Facilities Ordinance*, December 7, 2022, available at <https://www.oldmission.net/2022/12/farm-processing-facilities-ordinance/>.

³ If the amendment was not targeted at this lawsuit there would be no reason to operate in closed session.

B. Amendment #201 reinstates ordinance sections this Court already ruled to be unconstitutional or preempted by the Michigan Liquor Control Code.

Amendment #201 reinstated—or made even more restrictive—the preempted sections this Court previously ruled unlawful.

Old Ordinance Sections	Amendment #201
Hours of Operation	
§ 8.7.3(10)(u)(5)(b): “Hours of operation for Guest Activity Uses shall be as determined by the Town Board, but no later than 9:30 PM daily.”	<p>§ 8.7.3(10)(b)(1)(vi): “The hours of operation for retail sales, including a Tasting Room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.” (ECF No. 444-2, PageID.15917.)</p> <p>§ 8.7.3(11)(b)(1)(vi): “The hours of operation for retail sales, including a Tasting Room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.” (ECF No. 444-2, PageID.15923.)</p>
Restaurants and Catering	
<p>§ 6.7.2(19)(a): (no restaurants)</p> <p>§ 6.7.2(19)(b)(1)(iv) (limited food)</p> <p>§ 8.7.3(10)(u)(2)(b) (no full course meals)</p> <p>§ 8.7.3(10)(u)(2)(e): (limited food)</p> <p>§ 8.7.3(10)(u)(5)(i): (no catering)</p> <p>§ 8.7.3(12)(j): (packaged food for off-premise consumption, only)</p>	<p>§ 8.7.3(10)(b)(1)(ix): “No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility.” (ECF No. 444-2, PageID.15917.)</p> <p>§ 8.7.3(11)(b)(1)(ix): “No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility.” (ECF No. 444-2, PageID.15923.)</p> <p>§ 8.7.3(12)(h): “No restaurants, cafes or off-site catering shall be permitted as part of a Remote Tasting Room.” (ECF No. 444-2, PageID.15929.)</p>
Music	
§ 8.7.3(10)(u)(5)(g): (no amplified instrumental music)	“Entertainment: Entertainment as it pertains to a Retail Farm Processing Facility with a state-approved liquor license may allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing by issuance of an entertainment permit by the Michigan Liquor Control Commission, provided that such entertainment shall be

	<p>conducted entirely indoors on the licensed premises and only during Township-approved hours of operation.” (ECF No. 444-2, PageID.15907.)</p> <p>§ 8.7.3(10)(b)(1)(v): “Free entertainment may be provided within a retail sales/Tasting Room indoors only.”</p> <p>§ 8.7.3(11)(b)(1)(v): “Free entertainment may be provided within a retail sales/Tasting Room indoors only.” (ECF No. 444-2, PageId.15923.)</p>
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The Township also reinstated the produce-source limitations that this Court ruled violated the Dormant Commerce Clause. *See* §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(2)(ii), 8.7.3(10)(a), 8.7.3(10)(b)(2)(ii), 8.7.3(10)(a), 8.7.3(10)(b)(16), 8.7.3(11)(a), 8.7.3(11)(b)(2)(ii), 8.7.3(11)(b)(17). (ECF No. 444-2, PageID.15907-15930.) In other words, the Township amended its Zoning Ordinance to make it unlawful ... again.

The Township recognizes that the new ordinance is more restrictive. Peninsula Township Supervisor Isaiah Wunsch said it best: “[T]he new ordinance is much more restrictive than the old ordinance . . . We’ve gone from a scalpel to a tourniquet as our policy tool because of the ongoing legal dispute.” (Exhibit 9: July 26, 2022 Special Meeting Minutes, at 27–28.) Notably, the issue of whether the new ordinance was more or less restrictive came up during a November 17, 2022 hearing. This Court asked counsel for Peninsula Township directly whether the new ordinance was more or less restrictive. He responded that it was “more permissive.” (ECF No. 302, PageID.10786–10787.) That representation was objectively false.

The Township’s motion for summary judgment—which relies primarily on Amendment #201—should be denied.

III. ANALYSIS

A party may move for summary judgment by “identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). The Court may only “grant summary judgment when ‘there is no 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)). Whether a state statute preempts a local zoning ordinance is a question of law. *DeRuiter v. Twp. of Byron*, 949 N.W.2d 91, 96 (Mich. 2020). All parties agree that the question of preemption is a matter of law. (ECF No. 63, PageID.2758; ECF No. 250, PageID.8918.)

A. The Wineries have standing to raise their preemption claims.

This Court determined that the Wineries have standing. (See ECF No. 319, PageID.11888 (“Tabone, Chateau Grand Traverse, and Bonobo have standing to pursue their claims[.]”); ECF No. 162, PageID.5985 (“[T]he Court will note which Plaintiffs have standing to raise each argument in a footnote after each heading.”), PageID.5988 n.12 (finding all Winery-Chateaus “have standing to raise” preemption claims.).)

Despite this, the Township asserts the Wineries lack Article III standing to pursue their preemption claims because “there exists no attempt to revoke Plaintiffs’ SUPS and no enforcement actions are underway.” (ECF No. 444, PageID.15798.) The Township misunderstands the standing analysis. If it “were correct and a party seeking declaratory relief had to show an actual threat of enforcement, a state could evade declaratory review forever by ceasing enforcement activities once the law was challenged, thereby making the case moot, only to ‘return to old tricks once the coast is clear.’” *Dean Foods Co. v. Tracy*, 990 F. Supp. 646, 650 (W.D. Wis. 1997) (quoting *Magnuson v. City of Hickory Hills*, 933 F.2d 562, 565 (7th Cir. 1991)). Instead, the Wineries must demonstrate (1) an “injury in fact,” (2) a “causal connection between the injury and

the conduct complained of,” and (3) that the injury will be “redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

The Wineries have presented evidence at the Rule 56 stage on each of these elements. *See id.* at 561. The Township need not have tried to revoke the Wineries’ SUPs or enforce the ordinance for the Wineries to have standing. Regardless, there is unrebutted testimony that the Township is enforcing the challenged sections.

1. The Wineries have proven an “injury in fact.”

First, the Wineries submitted evidence demonstrating an “injury in fact.” “An injury sufficient to satisfy Article III must be ‘concrete and particularized’ and ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Lujan*, 504 U.S. at 560). But where “threatened action by government is concerned,” the Constitution “do[es] not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007). Rather, “a plaintiff satisfies the injury-in-fact requirement where [s]he alleges ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.’” *Driehaus*, 573 U.S. at 159 (citation omitted).

Therefore, the Wineries need to show either (1) a credible threat of prosecution or (2) actual enforcement. The Wineries have set forth evidence of both. First, a violation of these provisions could result in criminal penalties, or the revocation of the Wineries’ permits. *See* §§ 4.2.1 and 6.7.2(19)(b)(15)⁴. The Wineries have every reason to believe that the Township would enforce

⁴ Section 6.7.2(19)(b)(15): “Any violation of the Land Use Permit issued by the Zoning Administrator for this use shall ... serve as grounds for closing the retail operations, including tasting, portions of the use by the Township Board.”

laws on its books. *See Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (“no reason to assume” the “newly enacted law [would] not be enforced”); *Planned P’hood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1396 (6th Cir. 1987) (“the statutory language of the Ordinance evinces a credible threat of prosecution ...”).

Second, Rob Manigold, the former Township Supervisor, and Christina Deeren, the former Director of Zoning, testified that the Township has enforced the challenged provisions.

Ordinance Section	Enforcement Testimony
§ 8.7.3(10)(u)(5)(b): “Hours of operation for Guest Activity Uses shall be as determined by the Town Board, but no later than 9:30 PM daily.”	<p>Q: You are enforcing the wineries to close their tasting rooms at 9:30 p.m., correct?</p> <p>A: Yes.</p> <p>(Exhibit 10: Manigold Dep., 179.)</p> <p>Q: Are you, as the director of zoning, enforcing 5(b)?</p> <p>A: Yes.</p> <p>(Exhibit 11: Deeren Dep., 76.)</p>
§ 6.7.2(19)(a): “The Farm Processing Facility ... is not intended to allow a bar or restaurant on agricultural properties and the Township shall not approve such a license.”	<p>Q: 19(a), we had asked about – there’s a prohibition on the farm processing facilities having restaurants. The Township is still enforcing that, right?</p> <p>A: We haven’t enforced anything on anybody, that I’m aware of, on that.</p> <p>Q: Well, you would enforce it if they tried to open a restaurant?</p> <p>A: If they opened a Burger King, yeah.</p> <p>Q: Well, what if they just had – they opened for dinner, a dinner service, would you enforce that?</p> <p>A: I believe so.</p>

	(Ex. 10: Manigold Dep., 96-97.)
§ 8.7.3(10)(u)(5)(i): “Kitchen facilities may be used for on-site food service related to Guest Activity Uses but not for off site catering.”	<p>Q: Okay. Let’s look at 5(i): Kitchen facilities may be used for on-site food service related to guest activity uses but not for off-site catering.</p> <p>Is this something that you, as the director of zoning, are enforcing?</p> <p>A: Yes.</p> <p>Q: And how do you enforce this?</p> <p>A: If we find out that somebody’s been doing off-site catering, obviously we would inquire and investigate and then enforce this rule.</p> <p>(Exhibit 11: Deeren Dep., 86-87.)</p>
§ 8.7.3(10)(u)(5)(g): “No amplified instrumental music is allowed, however amplified voice and recorded background music is allowed...”	<p>Q: Are wineries allowed to engage in entertainment or offer entertainment?</p> <p>A: Inside they are.</p> <p>Q: Okay. How about – not outside?</p> <p>A: As long as it’s not amplified, the music.</p> <p>Q: Amplified music or amplified instrumental music?</p> <p>A: Amplified, period.</p> <p>(Exhibit 11: Deeren Dep., 29-30.)</p> <p>Q: Are you enforcing this provision [5(g)]?</p> <p>A: Yes.</p> <p>(<i>Id.</i>, 81-82.)</p>
6.7.2(19)(b)(1)(iv): Restricted to “the sales of limited food items for on-premises consumption.”	<p>Q. At the very end it says “The sales of limited food items for on-premises consumption.” This is what's allowed, okay?</p> <p>A. Mmm-hmm.</p> <p>Q. What does that mean?</p>

	<p>A. I think, I think when, I'm speculating, but I believe when the Liquor Control made that food available, small plate that was referred to, I think that's what it's referring to.</p> <p>(Exhibit 10: Manigold Dep., 100.)</p>
8.7.3(10)(u)(2)(b): "These activities are not intended to be or resemble a bar or restaurant use and therefore full course meals are not allowed, however light lunch or buffet may be served."	<p>Q. [T]his is, this is a section of the ordinance that you are charged with enforcing, correct?</p> <p>A Yes.</p> <p>Q. Okay. And that is an enforcement action that your office would then take?</p> <p>A. Yes.</p> <p>(Exhibit 11: Deeren Dep., 52-53.)</p>
8.7.3(10)(u)(2)(e): "No food service other than as allowed above or as allowed for wine tasting may be provided by the Winery-Chateau."	<p>Q. Okay. As the ... director of zoning, are you charged with enforcing 2(e)?</p> <p>A. Yes.</p> <p>Q. Okay. And can you tell me what that enforcement entails? How do you enforce 2(e)?</p> <p>A. So "no food service other than as allowed above" ... How would I enforce that?</p> <p>Q. Yeah.</p> <p>A. The same way I would enforce anything else. If I found there was violation, I would do an investigation and I would find out, you know, if what they did was compliant with the ordinance or not compliant with the ordinance.</p> <p>(Exhibit 11: Deeren Dep., 64-65.)</p>
8.7.3(12)(j): "Retail sale of packaged food items allowed in addition to bottled wine are those which contain wine or fruit produced in Peninsula Township. Such food items shall be produced in a licensed food establishment and properly labeled including the winery logo as the dominant logo. Such food items shall be intended for off premise consumption. Such	<p>Q Okay. Are you, as the director of zoning, enforcing 12(j)?</p> <p>A. Yes.</p> <p>(Exhibit 11: Deeren Dep., 92.)</p> <p>Q. Is it safe to assume that you as the director</p>

allowed packaged food items may include mustard, vinegar, non-carbonated beverages, etc.”	<p>of enforcement, do you interpret this to mean that retail food items cannot be consumed on premise?</p> <p>A Yes.</p> <p>Q. And is this something that you, as the director of zoning, are enforcing?</p> <p>A. Yes.</p> <p>(<i>Id.</i>, 96-97.)</p> <p>Q. 12(j), is Peninsula Township still enforcing this ordinance?</p> <p>A. To my knowledge.</p> <p>(Exhibit 10: Manigold Dep., p. 71.)</p>
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2. There is a direct connection between the Wineries’ injuries and the Peninsula Township Zoning Ordinance.

The second standing element requires that there be “a causal connection between the injury and the conduct complained of.” *Lujan*, 504 U.S. at 560. Stated another way, “the ‘case or controversy’ limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976). This element has been satisfied. Plaintiffs challenge Peninsula Township’s Zoning Ordinance, and Peninsula Township is the Defendant.

3. A favorable opinion will redress the Wineries’ injuries.

The final element of standing is redressability. The Wineries must show that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 561 (internal quotations omitted). This is a “low bar to clear.” *R. K. by & through J. K. v. Lee*, 53 F.4th 995, 1001 (6th Cir. 2022). The Wineries are asking this Court to declare the

sections of the Peninsula Township Zoning Ordinance restricting hours of operation and banning restaurants, catering, and amplified music preempted by the Michigan Liquor Control Code. This Court also should declare these to be allowed uses, regardless of whether the Zoning Ordinance changes in the future. “After a zoning ordinance has been declared unconstitutional, in addition to that declaration, 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. City of Flint*, 395 N.W.2d 678, 692–93 (Mich. 1986). That protection will redress the Wineries’ injuries and allow them to operate consistently with the rights afforded to them under their state-issued permits and the Michigan Liquor Control Code.

4. Peninsula Township does not support its argument with relevant case law.

Peninsula Township’s caselaw does not help. First is *Sankyo Corp. v. Nakamura Trading Corp.*, 139 F. App’x 648 (6th Cir. 2005), which does not involve a constitutional challenge to a zoning ordinance. Instead, *Sankyo* concerns the interpretation of an arbitration clause in which venue was determined depending on which party sued. *Id.* at 649. One party filed a lawsuit and requested a declaratory judgment that arbitration must take place in Japan. *Id.* The Sixth Circuit affirmed the district court’s dismissal for lack of jurisdiction because there was no case or controversy. *Id.* at 653. “[O]nce an actual claim is asserted, courts decide whether the parties must arbitrate. Sankyo’s approach, on the other hand, places a district court in the untenable position of deciding a question not yet presented, on the basis of uncertain and potentially shifting facts.” *Id.*

Next is *Bench Billboard Co. v. City of Covington, Kentucky*, 2010 WL 420064 (E.D. Ky., Feb. 1, 2010). There, Covington used its right-of-way encroachment ordinance to threaten the

confiscation of pedestrian benches bearing advertising that were in public rights-of-way. *Id.* at *1–3. The advertiser and the City both moved for summary judgment on the constitutionality of the encroachment ordinance and a sign ordinance. *Id.* at *3. The district court determined that the encroachment ordinance was a reasonable time, place, and manner restriction and declared the encroachment ordinance to be constitutional. *Id.* at *8. The district court then ruled that neither party had standing to request a ruling on the constitutionality of the sign ordinance because the encroachment ordinance allowed the City to lawfully confiscate the benches and because the City did not rely on the sign ordinance for its confiscation. *Id.* at *11. Additionally, the advertiser stated that it did not believe the sign ordinance applied at all. *Id.* Therefore, any ruling by the court on the sign ordinance would have been an advisory opinion. *Id.* at *11–12.

Finally, *Tuscola Wind III, LLC v. Almer Charter Township*, 327 F. Supp. 3d 1028 (E.D. Mich. 2018) is far afield. There, a developer applied for a special land use permit to build wind turbines. *Id.* at 1035. The planning commission held a public hearing but decided that it needed more information. *Id.* at 1036. Two weeks later, new members of the Township Board took office and passed a moratorium on the construction of new wind turbines. *Id.* at 1037. Meanwhile, the planning commission held two more public meetings and eventually voted to recommend denial of the application. *Id.* at 1038. The Township Board held a public meeting to review the recommended denial and voted to deny the application. *Id.* at 1039. The developer sued and alleged a violation of the MZEA because the Township used the moratorium as an excuse to deny the application and because the moratorium itself was unlawful. *Id.* at 1051. The district court ruled that the moratorium was not a basis for the application denial. *Id.* The district court further ruled that there was no case or controversy regarding the moratorium moving forward because the developer had not reapplied while the moratorium was pending. Therefore, “an order invalidating

the moratorium would have no effect on [the developer]’s prior application, and so the challenge to the moratorium on that basis is moot.” *Id.* The developer could not show that its conduct was regulated by the moratorium, so there was no case or controversy for the court to decide.

This case is different. Unlike *Sankyo*, the challenged provisions of the Zoning Ordinance prevent the Wineries from staying open later, operating restaurants, catering, and playing amplified music. There is nothing “uncertain” about those facts. *Sankyo*, 139 F. App’x at 653. Unlike *Bench Billboard*, Peninsula Township has asserted that the challenged zoning ordinance provisions justify its decision to regulate hours of operation, restaurants, catering, and amplified music. The Township has not asserted an alternative basis for its bans. And unlike *Tuscola Wind*, this case is not about a request for a permit; rather, the Wineries have permits and have been subjected to unlawful zoning ordinances. The issues here are (1) whether the challenged provisions are unlawful and must be enjoined and (2) whether the Wineries are entitled to damages flowing enforcement of those unlawful ordinances. This Court, unlike *Tuscola Wind*, does not need to assess which zoning scheme to apply to a request for a permit application.

B. The preemption claims are not moot.

Peninsula Township asserts that because it passed Amendment #201, any case or controversy regarding the Farm Processing Facility, Winery-Chateau, or Remote Winery Tasting Room sections of the Peninsula Township Zoning Ordinance are moot. (ECF No. 444, PageID.15801.) Peninsula Township’s mootness argument fails for at least five reasons.

First, Amendment #201 is unlawful because it was not passed in compliance with the MZEA. When a township passes a zoning ordinance or amendment that does not “fully comply with the mandatory proceedings” set forth in its zoning authorization statute, that zoning ordinance is “void.” *Krajenke Buick Sales v. Kopkowski*, 33 N.W.2d 781, 783 (Mich. 1948). *See also Save Our Downtown v. City of Traverse City*, 2022 WL 7724317, at *6 (Mich. Ct. App. Oct. 13, 2022)

(“An initiative that purports to enact or amend a zoning ordinance is invalid unless it complied with the procedural requirements found in the Michigan zoning enabling act.”), *appeal denied*, 993 N.W.2d 829 (Mich. 2023).

Before Peninsula Township may amend its zoning ordinance, the Planning Commission must provide written notice describing the proposed amendments and hold a public hearing. *See* MCL 125.3202(1); 125.3202(2); 125.3103(4). The hearing must happen before any action may be taken. MCL 125.3306. The notice must list the text of the ordinance to be discussed. MCL 125.3306(3). Following the hearing, the Commission must transmit a written summary of the comments to the Township Board. MCL 125.3308. The Township Board may only adopt an ordinance after receiving comments from the Planning Commission. MCL 125.3401(1).

Here, Peninsula Township failed to comply with this process in two ways. First, the Planning Commission never submitted a written summary of comments to the Township Board. Instead, a planning commissioner stated, “can we pass it the way it is now and then have Jenn make her tweaks and have that changed?” (Exhibit 3: 10/11/2022 Meeting Minutes at 25.) The Planning Commission moved and approved “that the planning commission recommend Amendment 201 to the zoning ordinance to the township board with the recommendations seen this evening.” (*Id.*) The Planning Commission and Township Board ignored this requirement despite notice from two residents. The failure to “fully comply” with the requirement to provide written comments, as required by MCL 125.3308(1), renders the entirety of Amendment #201 void. *See Kopkowski*, 33 N.W.2d at 783.

Peninsula Township also failed to comply with the public notice provisions in MCL 125.3103(4) (requiring the public hearing notice to “Describe the nature of the request.”) and § 125.306(3) (requiring the Township to make the “proposed text” available to the public at the

hearing). In its public notice, Peninsula Township provided notice of its intent to “remov[e] the winery-chateau use” and “updat[e] the farm processing facility as a use by right.” (Exhibit 3: 10/11/2022 Meeting Minutes at 7.) Neither the public notice nor the draft ordinance re-write mentioned Remote Winery Tasting Room ordinance. There were no public comments regarding the Remote Winery Tasting Room ordinance during the public hearing. Only after the public hearing—and after the Planning Commission gave Planner Cram unfettered authority to re-write proposed Amendment #201—did proposed changes to the Remote Winery Tasting Room section appear. The public was never notified of those changes and was never given a chance to comment on them. The Planning Commission made no comments about it and did not transmit a summary of the comments received regarding that section because there were none. The Township’s failure to describe the action it intended to take renders Amendment #201 void.

Second, Amendment #201 creates three new classifications of potential wineries with differing rights. Some may have tasting rooms indoors only; others may offer tastings outside; others may not offer tasting at all. Each classification comes with different acreage requirements. The Township, however, does not say which Plaintiffs are in which classification. If the Township intended for Amendment #201 to apply, it should have said *how* it applies to the Wineries. Without more, the Township is merely asserting a position and hoping the Court does the heavy lifting for it. *See McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones.” (citations omitted)).

Third, the *Grand/Sakwa* line of cases concerns a court’s application of the zoning ordinance to an outstanding request for a permit. The “general rule” is that “if a zoning ordinance

has been amended after suit was filed, a court will give effect to the amendment.” *Grand/Sakwa of Northfield, LLC v. Northfield Twp.*, 851 N.W.2d 574, 578 (Mich. Ct. App. 2014) (citation omitted, cleaned up)). There are two exceptions: (1) if “the amendment would destroy a vested property interest acquired before its enactment;” or (2) if “the amendment was enacted in bad faith and with unjustified delay.” *Id.* (citation omitted). These cases do not analyze a situation where the plaintiffs seek damages from a previously unlawful zoning ordinance and where there is no outstanding request for rezoning.

In *Grand/Sakwa*, for example, the plaintiffs applied to rezone their property from agricultural to single family residential. The rezoning was approved but subsequently overturned by referendum. *Id.* at 577. Following the referendum, the township ZBA denied a variance, and plaintiffs filed suit. *Id.* A new township board then amended the zoning ordinance designations and rezoned the property from agricultural to low density residential. *Id.* In effect, that meant the plaintiffs could build one home per two acres (under the new ordinance) instead of one home per one acre (under the old ordinance). *Id.* At issue was which zoning ordinance applied to the plaintiffs’ regulatory taking claim. *Id.* at 577-78. The Court of Appeals found that no vested property interest had been acquired because the rezoning decision never took effect; the referendum prevented that from happening. *Id.*

Here, unlike in *Grand/Sakwa*, the Wineries have a vested property interest—their permits issued by the Michigan Liquor Control Commission. This Court already determined that the Wineries possessed these permits before the Township passed Amendment #201. (ECF No. 162, PageID.5987.)⁵ It would be a curious result indeed if the Township could deny that the Wineries had a vested right based solely on a zoning ordinance that this Court has determined is unlawful.

⁵ The Wineries also have special use permits and use by right permissions from the Township.

Additionally, Amendment #201 was passed in bad faith and was designed to manufacture a defense to this lawsuit. “The factual determination that must control is whether the predominant motivation for the ordinance change was improvement of the municipality's litigation position.” *Grand/Sakwa*, 851 N.W.2d at 579. *See also id.* at 580 (requiring the party opposing the application of a new ordinance to “demonstrate that obtaining a litigation advantage was the predominate reason for the ordinance change”).

There is no dispute that the predominate reason Peninsula Township passed Amendment #201 was to manufacture a defense. The new Township Planner, Jenn Cram, repeatedly said as much during multiple meetings. (Exhibit 7: December 13, 2022 Meeting Minutes at 14 (“At a closed session on November 10, the board met with legal counsel to discuss a legal opinion in order to make some changes to the zoning ordinance so that it would be more easily defensible with regard to commerce clause claims that have been raised in the WOMP lawsuit.”); Exhibit 5: November 1, 2022 Meeting Minutes (“There are two primary goals for the proposed amendments to the zoning ordinance. The first goal is to draft an ordinance that is legally defensible based on the issues raised in the WOMP lawsuit.”).) Therefore, the bad faith exception also should preclude the application of Amendment #201 because the Township’s “predominant motivation” was to manufacture a defense.

Fourth, because Peninsula Township issued the Wineries SUPs which parrot the restrictions contained within the challenged ordinances, the claims are not moot. *See Crown Media, LLC v. Gwinnett County, Ga.*, 380 F.3d 1317 (11th Cir. 2004.) In *Crown Media*, the plaintiff was issued a permit based on an ordinance. After the plaintiff challenged the constitutionality of the ordinance, the ordinance was altered “to address constitutional concerns.”

Id. at 1322. The plaintiff did not challenge the constitutionality of the new ordinance and the defendant claimed that the new ordinance made the claims moot. *Id.* at 1323. The court disagreed:

[I]f the 1990 ordinance is unconstitutional and if, as Crown Media claims, the restrictions in Crown Media's sign and building permits stem from and depend on that 1990 ordinance, then under Georgia law the restrictions in Crown Media's permits would be void and unenforceable as well. This observation illustrates that the existence and scope of Crown Media's property rights in its permits and erected sign under state law and the extent to which they vested prior to the enactment of the 2001 ordinance cannot be fully ascertained until the constitutionality of the 1990 ordinance is determined. Therefore, we conclude that Crown Media's challenge to the constitutionality of the 1990 ordinance is not moot.

Id. at 1330. Here, the same is true. The SUPs parrot the language of the ordinance in stating what restrictions are placed upon the Wineries. The Township Planner has said that the SUPs are still in effect and that they will seek to drive the Wineries into the new ordinance over time:

[A]nother thing I want to make very clear: if this zoning ordinance is adopted, all of the wineries with existing special use permits will be considered legally non-conforming. All of the uses approved with the special use permit would still stand. **Any changes to those uses would come through a process and be under the new zoning ordinance.**

(Exhibit 9: July 26, 2022 Meeting Minutes, at 9 (emphasis added).)⁶

Fifth, even if Amendment #201 did apply, the same restrictions are still at issue. Amendment #201 reinstates—or in many cases, makes more explicit—the ordinance sections that are preempted by the Michigan Liquor Control Code. “It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). “Mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave the defendant free to return to his old ways.” *Id.* at 289

⁶ This has already started. The Township has refused to issue a land use permit to the owner of Bowers Harbor to remodel his home unless he agrees to be bound by the new ordinance. He has been forced to rent a house for nearly a year as a result with his house down to the studs.

n.10 (cleaned up). Here, the Township Planner said that the “zoning ordinance is intended to be a living document” that can be “changed.” (Exhibit 7: December 13, 2022 Meeting Minutes at 16.) The Township is signaling that it will pass an additional ordinance on these activities (hours, restaurants, music, catering, etc.). (*See id.*) Thus, the preemption claims are not moot given that the Township has reinstated the prior unconstitutional restrictions.

C. The Wineries properly alleged their preemption claims.

Peninsula Township argues that the Wineries did not properly assert all their preemption claims in their First Amended Complaint. (*See* ECF No. 444, PageID.15791.) This is wrong:

290. Section 8.7.3(10)(u)(5)(b) conflicts with Mich. Admin Code. R. 436.1403(1), which allows wineries to serve alcohol under 2:00 AM every night.

291. Section 8.7.3(10)(u)5(g) conflicts with MCL 436.1916(11), which grants wineries the right to hos[t] “[t]he performance or playing of an orchestra, piano, or other types of musical instruments, or singing” without a permit.

292. The Winery Ordinances, including Section 8.7.3(10)(u)5(i), conflict with MCL 436.1536, which states a “wine maker [or] small wine maker . . . may own and operate a restaurant . . . as part of the on-premises tasting room . . .,” and with MCL 436.1547, which allows Plaintiffs to [operate] a restaurant to cater private events off their premises where they may serve food and alcohol they manufacture.

(ECF No. 29, PageID.1125-1126.) Hours of operations are in paragraph 290, the amplified music ban is in paragraph 291, and both the restaurant and catering bans are in paragraph 292. Additionally, paragraph 292 broadly refers to the “Winery Ordinances, including Section 8.7.3(10)(u)5(i).” Therefore, the Wineries referenced all the Winery Ordinances, not just Section 8.7.3(10)(u)5(i), with respect to their claim regarding restaurants.

Regardless, even if this Court concludes that all the preemption claims were not properly alleged, this Court can still grant the relief requested. “Every . . . final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.” Fed. R. Civ. P. 54(c). “The ‘theory of the pleadings’ doctrine, under which a plaintiff must succeed

on those theories that are pleaded or not at all, has been effectively abolished under the federal rules.” *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 714 (8th Cir. 1979). “The federal rules, and the decisions construing them, evince a belief that when a party has a valid claim, he should recover on it regardless of his counsel’s failure to perceive the true basis of the claim at the pleading stage, provided that such a shift in the thrust of the case does not work to the prejudice of the opposing party.” *Id.* The Sixth Circuit “has adopted the reasoning set forth in *Oglala Sioux*.” *Bluegrass Ctr., LLC v. U.S. Intec, Inc.*, 49 F. App’x 25, 31 (6th Cir. 2002). *See also Colonial Refrigerated Transp., Inc. v. Worsham*, 705 F.2d 821, 825 (6th Cir. 1983) (adopting reasoning from *Oglala Sioux* and allowing unpleaded claim to proceed).

Here, there is no prejudice to Peninsula Township. The Township has three times briefed every preemption issue dating back to more than two years ago. (ECF No. 63, PageID.2765-2769; ECF No. 444, PageID.15791; ECF No. 353, PageID.12907-12908.) Therefore, the Wineries request that this Court award it all relief to which they are entitled, consistent with Rule 54(c) and Sixth Circuit precedent.

D. The Michigan Liquor Control Code preempts the Peninsula Township Zoning Ordinance.⁷

“Under the Michigan Constitution, the City’s ‘power to adopt resolutions and ordinances relating to its municipal concerns’ is ‘subject to the constitution and the law.’” *Ter Beek v. City of Wyoming (Ter Beek II)*, 846 N.W.2d 531, 541 (Mich. 2014) (quoting Mich. Const. 1963, art. 7, § 22). Thus, a local ordinance may be preempted by state law. *AFSCME v. City of Detroit*, 662 N.W.2d 695, 707 (Mich. 2003). State law “may preempt a local regulation either expressly or by implication.” *DeRuiter*, 949 N.W.2d at 96 (citing *Mich. Gun Owners Inc. v. Ann Arbor Pub. Sch.*,

⁷ The Wineries incorporate their argument from ECF No. 334, PageID.12031-12047.

918 N.W.2d 756 (Mich. 2018)). Put another way, “[i]t would be unconstitutional for a township to attempt to regulate an issue preempted by state law.” *J.A. Bloch & Co. v. Ann Arbor Twp*, 2022 WL 17876842, *13 (Mich. App. Dec. 22, 2022) (citing *Walsh v River Rouge*, 385 Mich. 623, 639 (1971)). Implied preemption occurs when a local ordinance “is in direct conflict with the state statutory scheme” or if state statutory scheme occupies “the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance.” *People v. Llewellyn*, 257 N.W.2d 902, 904 (Mich. 1977).

“In the context of conflict preemption, a direct conflict exists when ‘the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits.’” *DeRuiter*, 949 N.W.2d at 96 (quoting *Llewellyn*, 257 N.W.2d 902, n. 4). *See also Walsh v. City of River Rouge*, 189 N.W.2d 318, 324 (Mich. 1971) (“Assuming the city may add to the conditions, nevertheless the ordinance attempts to prohibit what the statute permits. Both statute and ordinance cannot stand. Therefore, the ordinance is void.”). A municipality may not forbid activity allowed by state law “simply by characterizing the conduct as a zoning violation.” *Ter Beek II*, 846 N.W.2d at 542. As the Michigan Supreme Court explained, that “a local zoning regulation [was] enacted pursuant to the [Michigan Zoning Enabling Act] does not save it from preemption.” *Id.*

For example, an ordinance prohibiting walkathons conflicted with a state statute allowing walkathons where the contestants received physician approval. *Nat’l Amusement Co. v. Johnson*, 259 N.W. 342, 343 (Mich. 1935). Because state law allowed walkathons, Grand Rapids could not ban them. In another case, the City of Wyoming imposed criminal penalties for the use of medical marijuana, even though the Michigan Medical Marijuana Act (“MMMA”) granted immunity from prosecution for the use of medical marijuana. *Ter Beek II*, 846 N.W.2d at 544. Because the MMMA granted immunity from prosecution, the city could not prosecute offenders.

In an example from the alcohol context, Bloomfield Township amended its ordinance to allow automobile service stations to sell alcohol as long as:

(1) alcohol is not sold less than 50 feet from where vehicles are fueled, (2) no drive-thru operations are conducted in the same building, (3) the store meets minimum floor area and lot size requirements, (4) the store has frontage on a major thoroughfare and is not adjacent to a residentially zoned area, (5) the store does not perform any vehicle service operations that would require customers to wait on the premises, and (6) the store is either located in a shopping center or maintains a minimum amount of inventory.

Maple BPA, Inc v. Bloomfield Charter Twp., 838 N.W.2d 915, 919 (Mich. App. 2013). These restrictions were not conflict-preempted because “the Legislature has not expressly spoken concerning the sale of alcohol in buildings with drive-thru windows, the minimum building area of buildings at which alcohol is sold, or the number of parking spaces required for a building from which alcohol is sold.” *Id.* at 922. But even where the Legislature did speak to the issue, “Bloomfield Township's zoning ordinance is not more restrictive. The ordinance mirrors the statutory language—it does not provide any further constraint, or prohibit what the statute permits.” *Id.*

These examples lead to some basic principles. *National Amusement* and *Ter Beek* show that when a state law grants a right, a local government may not take it away. *DeRuiter* and *Maple BPA* show that a local government can add conditions to a state statute, if those conditions do not prohibit what the state statute allows.

1. Mich. Comp. Laws § 436.2114(1), Mich. Admin. Code R. 436.1403, and Mich. Admin. Code R. 436.1503 preempt Peninsula Township’s restrictions on hours of operation.

Section 8.7.3(10)(u)(5)(b), which prevents the Wineries from operating past 9:30 p.m., is preempted by Mich. Comp. Laws § 436.2114(1), Mich. Comp. Laws § 436.2111(1) and Mich. Admin Code R. 436.1403, which allow the Wineries to operate until 2:00 a.m. Additionally, while Section 8.7.3(10)(u)(5)(b) is the only section regulating hours and facially only applies to Guest

Activity Uses, the Township enforces a 9:30 p.m. closing time on all Wineries. (See Exhibit 10: Manigold Dep. at 178-80.)

Ultimately, *Noey v. Saginaw*, 261 N.W. 88 (Mich. 1935), which held that Saginaw's ordinance setting a closing time before 2:00 a.m. was preempted, is still the law in Michigan. *See, e.g.*, Exhibit 12: 1990 Michigan A.G. Opinion No. 6609 ("In *Noey v City of Saginaw*, 271 Mich 595; 261 NW 88 (1935), for example, the Supreme Court held that a regulation promulgated by the Liquor Control Commission which prohibited the sale of alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. could not be superseded by a city ordinance which prohibited sales from midnight to 7:00 a.m."). Any ordinance or policy imposing an earlier closing time is preempted, including Amendment #201.

2. Mich. Comp. Laws § 436.1547 preempts Peninsula Township's ban on catering.

This Court previously determined that Mich. Comp. Laws § 436.1547 preempts Section 8.7.3(10)(u)(5)(i). (ECF No. 162, PageID.5992.) That decision should be reinstated. In addition, the Township has argued, related to catering, "[w]e have an outright prohibition with regard to the farm processing ordinance." (ECF No. 159, PageID.5892.) The Farm Processing section does not contain language prohibiting catering but, if by its actions Peninsula Township also bans catering, then that prohibition is also preempted.

Ultimately, Mich. Comp. Laws § 436.1547 explicitly allowed for a Winery to obtain a catering permit and cater food and beverages offsite from its licensed premises. Any ordinance or policy which restricts this right is preempted, including Amendment #201.

3. Mich. Comp. Laws § 436.1536(7)(h) preempts Peninsula Township's ban on restaurants in winery tasting rooms.

The Liquor Control Code defines the term “Restaurant” as “a food service establishment defined and licensed under the food law, 200 PA 92, MCL 289.1101 to 289.8111.” MCL 436.1111(5). The Food Law defines a “food service establishment” as a:

fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization *serving the public*, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation *where food is served or provided for the public*.

MCL 289.1107(t) (emphasis added). The Township has argued that the Wineries do not have state licenses to operate restaurants. (ECF No. 159, PageID.5903.) But the State of Michigan does not issue restaurant licenses; the Wineries are only required to obtain a Retail or Extended Retail Food Establishment license from the Michigan Department of Agriculture, which the Wineries already possess because these same licenses are required to operate a winery. MCL 289.1111(c) defines a “Retail food establishment” as “an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processor.”⁸ An “Extended retail food establishment” means a retail grocery that does both of the following: (i) Serves or provides an unpackaged food for immediate consumption. (ii) Provides customer seating in the food service area.”⁹ MCL 289.1107(f).

⁸ Pursuant to MCL 289.8107(b)(2), “[a] retail food establishment may sell or offer for sale a prepackaged nonperishable food with or without a label that bears a date.”

⁹ A “Retail grocery” means an operation that sells or offers to sell food to consumers for off-premises consumption. Food for off-premises consumption does not include take-out food intended for immediate consumption.” MCL 289.1111(d).

Stated simply, a restaurant under the Liquor Control Code is one that serves food to the public and holds either a Retail or Extended Retail Food Establishment license issued by the Department of Agriculture. Enforcement of the Food Law is specifically delegated to the local health department, not Peninsula Township. *See* MCL 289.3105. Further, “Except as otherwise provided in [the Food Law], a city, county, or other local unit of government shall not adopt or enforce licensing ordinances or regulations for persons regulated under this act.” MCL 289.4101.

The Liquor Control Code is unequivocal that tasting rooms may have restaurants. “A brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer may own and operate a restaurant or allow another person to operate a restaurant as part of the on-premises tasting room on the manufacturing premises.” MCL 436.1536(7)(h). Thus, the Wineries the right to operate a restaurant as part of their tasting rooms. Other authority confirms this point. For example, the Sixth Circuit recognized “Michigan laws and regulations permit liquor licensees to serve food and alcohol until 2:00 a.m.” *Keego Harbor*, 397 F.3d at 431. And MLCC’s Winery FAQ sheet states a winery “[m]ay serve food or have a restaurant in conjunction with the On-Premises Tasting Room Permit.” (ECF No. 54-12, PageID.2348.)

Despite this authority, Peninsula Township prohibits restaurants at Farm Processing Facilities. “The Farm Processing Facility use includes retail and wholesale sales of fresh and processed agricultural produce but is not intended to allow a bar or restaurant on agricultural properties and the Township shall not approve such a license.” Section 6.7.2(19)(a). And while the Ordinances do not contain a clear ban on restaurants at Winery Chateaus, Peninsula Township interprets the Ordinances to ban restaurants at Winery Chateaus. This is despite Section 8.7.3(10)(c)(2) stating that sale of food for on-premises consumption is allowed pursuant to

Department of Agriculture permitting. The Township ignores this section and instead points to the Guest Activity Use sections which limit food service during Guest Activities. “No food service other than as allowed above or as allowed for wine tasting may be provided by the Winery-Chateau. If wine is served, it shall only be served with food and shall be limited to Old Mission Peninsula appellation wine produced at the Winery, except as allowed by Section 6. below.” Section 8.7.3(10)(u)(2)(e). Section 8.7.3(12)(j) restricts the food that may be sold at a Remote Tasting Room to only “packaged food items ... which contain wine or fruit produced in Peninsula Township.... Such food items shall be intended for off premise consumption. Such allowed packaged food items may include mustard, vinegar, non-carbonated beverages, etc.”

During oral argument on the cross motions for summary judgment, this Court questioned how the restrictions were “consistent with State law?” (ECF No. 159, PageID.5901.) This Court continued, “[i]f it’s a prohibition and not a limitation, why isn’t it fatal to that portion of the ordinance.” (*Id.*) This Court was correct. These ordinances do not place conditions on the operation of a restaurant;¹⁰ Sections 6.7.2(19)(a), 8.7.3(10)(u)(2)(e), and 8.7.3(12)(j) are an outright ban and conflict preempted. “A local ordinance is preempted when it bans an activity that is authorized and regulated by state law.” *DeRuiter*, 949 N.W.2d at 98. It does not matter that the Township is attempting to act under the MZEA. *Ter Beek*, 846 N.W.2d at 541.

The same analysis applies here. MCL 436.1536(7)(h) allows liquor licensees to operate a restaurant as part of their tasting room. The Ordinances completely ban Farm Processing Facilities from operating a restaurant as part of their tasting room and restricts when and for what purpose a Winery Chateau may operate a restaurant. It also restricts a Remote Tasting Room to only

¹⁰ Even a limitation is problematic given that MCL 289.4101 states that a municipality “shall not adopt or enforce licensing ordinances or regulations for persons regulated under this act.”

packaged food for off-premises consumption. Therefore, Sections 6.7.2(19)(a), 8.7.3(10)(u)(2)(e) and 8.7.3(12)(j) are preempted by 436.1536(7)(h). The same is true of the restrictions in Amendment #201.

4. Mich. Comp. Laws § 436.1916(11) preempts Peninsula Township’s ban on amplified music.

This Court previously determined that MCL 436.1916(11) preempts the complete prohibition of amplified music in Section 8.7.3(10)(u)(5)(g) of the Winery Ordinances. (ECF No. 162, PageID.5991-5992.) That ruling should be reinstated.

The Liquor Control Code allows on-premises licensees to play music without prior approval: “The following activities are allowed without the granting of a permit under this section: The performance or playing of an orchestra, piano, or other types of musical instruments, or singing.” MCL 436.1916(11). The Legislature did not leave an option for local units of government to alter this right. As the Sixth Circuit phrased it in *Keego Harbor*, “there is a written regulation that both confers the benefit at issue [playing music with no restriction] and prohibits city officials from rescinding the benefit.” 397 F.3d at 435–36.

Contrary to this plain authorization, the Township does not allow amplified music during a Winery Chateau Guest Activity.¹¹ “No amplified instrumental music is allowed, however amplified voice and recorded background music is allowed, provided the amplification level is no greater than normal conversation at the edge of the area designated within the building for guest purposes.” Section 8.7.3(10)(u)(5)(g). This conflicts with the Wineries’ right to play music

¹¹ The Ordinances do not prohibit Farm Processing Facilities and Remote Winery Tasting Rooms from playing amplified music. Similarly, they do not prohibit Winery Chateaus from playing amplified music at any other times except during a Guest Activity. However, Christina Deeren testified that the Wineries may not play amplified music, “period.” (Exhibit 11: Deeren Dep., 30.)

without issuance of a permit under MCL 436.1916(11). Therefore, MCL 436.1916(11) preempts Section 8.7.3(10)(u)(5)(g).

PTP and the Township have argued that the MLCC is silent on amplification. (ECF No. 250, PageID.8940; ECF No. 63, PageID.2769; ECF No. 174, PageID.6573.) This Court previously held that “establishments that hold an ‘on premise consumption’ license under the MLCC are not required to receive a permit to” play music. (ECF No. 162, PageID.5991.) During a May 2, 2022, hearing this Court asked counsel for the Township “you do have an absolute prohibition on amplified music, correct?” (ECF No. 159, PageID.5894.) Counsel responded, “We do, your honor.” (*Id.*) Ultimately, this Court correctly concluded that the Township’s total prohibition on amplified music was preempted. (ECF No. 162, PageID.5991.)

Amendment #201 requires a different analysis. It states, “entertainment as it pertains to a Retail Farm Processing Facility with a state-approved liquor license may allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing by issuance of an entertainment permit by the Michigan Liquor Control Commission, provided that such entertainment shall be conducted entirely indoors on the licensed premises and only during Township-approved hours of operation.” (ECF No. 444-2, PageID.15907.)

The Michigan Liquor Control Code requires an on-premises licensee to hold an entertainment permit before providing certain types of entertainment. “An on-premises licensee shall not allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises unless the licensee has applied for and been granted an entertainment permit by the commission.” MCL 436.1916(1). However, the Code does not require on-premises licensee to get an entertainment permit before

having musical performances or showing live television. *See* MCL 436.1916(11) (“The following activities are allowed without the granting of a permit under this section: (a) The performance or playing of an orchestra, piano, or other types of musical instruments, or singing[;] (b) Any publicly broadcast television transmission from a federally licensed station.”). Therefore, Amendment #201 imposes an unlawful restriction on activity that does not exist under the Liquor Control Code.

5. The Township cannot rely on Mich. Admin Code R. 436.1030(1).

The Township again invokes Mich. Admin Code R. 436.1003(1) to suggest that local zoning requirements trump the Michigan Liquor Control Code. (ECF No. 444, PageID.15805.) This Court already rejected that argument once and should do so again. (See ECF No. 211, PageID.7808-7809.) Teri Quimby, former Commissioner of the Michigan Liquor Control Commission confirms this Court’s conclusion that the Rule is simply a “reminder,” and “[t]he approval of an alcohol license does not equate to a building occupancy permit, for example.” (Exhibit 13: Quimby Report at 7.)

6. The Township’s argument regarding “location” versus “conduct” is irrelevant.

Finally, the Township argues the ordinances regulate the location of conduct, rather than the conduct itself. According to the Township, the Wineries are “free” to conduct the activities they seek “in the commercial zone.” (ECF No. 444, PageID.15810.) That argument fails because there are only 35 acres of non-contiguous commercially zoned land in Peninsula Township. Under the old ordinance, the Wineries required 40-50 acres to operate; under Amendment #201, they now require 60 acres of contiguous land to offer outdoor service. Therefore, it is impossible to operate a winery in the commercial zone.

Regardless, the question is not whether business can operate in the commercial zone. Instead, the question is whether an entity holding a winemaker or small wine maker permit can

serve until 2:00 a.m., operate a restaurant, cater, or play amplified music in Peninsula Township. The Michigan Liquor Control Code gives permit holders those rights. The Township restricts holders of wine maker and small wine maker permits to the A-1 zone and forbids them from operating in the commercial zone. In response to a recent request from another business, Township Trustee David Sanger stated “our zoning ordinance does not allow a wine tasting, wine-making operation. I know you’re arguing manufacturing versus blending. Our ordinance right now does not allow the use you are asking for in the C-1.” (Exhibit 14: 05/23/2023 Township Meeting Minutes at 6.) Therefore, the Township is prohibiting what the Liquor Control Code allows.

E. Peninsula Township is not immune from damages.

Peninsula Township argues that it is immune from damages under the Michigan Government Tort Liability Act (“GTLA”), MCL 691.1401, *et seq.*, and that damages are not recoverable for preemption claims under Michigan law. Peninsula Township is incorrect on both arguments.

1. The GTLA does not apply to constitutional torts.

For the first time, Peninsula Township asserts the GTLA as a defense to the Wineries’ preemption damages. (ECF No. 444, PageID.15818.) Under the GTLA, governmental agencies “are immune from tort liability when engaged in the exercise or discharge of a governmental function.” MCL 691.1407(1). The GTLA defines “governmental function” as “an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.” MCL 691.1401(b). Assuming the governmental agency can prove that it was engaged in a “governmental function,” it is generally immune from liability unless an enumerated exception applies. *See* MCL 691.1402–691.1406. However, the Township is not entitled to GTLA immunity for several reasons.

First, the Township was not exercising a “governmental function” by passing an ordinance that is preempted by the Michigan Liquor Control Code. A “governmental function” must be “expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.” MCL 691.1401(b). But where the governmental agency engages in ultra vires activity and exceeds the authority given to it, then “tort liability may be imposed.” *Genesee Cnty. Drain Comm’r v. Genesee Cnty.*, 869 N.W.2d 635, 642 n.14 (Mich. Ct. App. 2015); *see also Richardson v. Jackson Cnty.*, 443 N.W.2d 105, 106 (Mich. 1989) (“Conversely, governmental agencies are not entitled to immunity under the act for injuries arising out of ultra vires activity, defined as activity *not* expressly or impliedly mandated or authorized by law.”).

Peninsula Township, as a subordinate unit of government, has only the authority given to it by the Michigan Constitution and Michigan Legislature. *See* Const. 1963, Art. VII, § 17 (“Each organized township shall be a body corporate with powers and immunities provided by law.”); *City of Taylor v. Detroit Edison Co.*, 715 N.W.2d 28, 32 (Mich. 2006) (explaining “the local authorities can exercise those only which are expressly or impliedly conferred, and subject to such regulations or restrictions as are annexed to the grant”); *Hanselman v. Killeen*, 351 N.W.2d 544, 552 (Mich. 1984) (“For, as this Court has repeatedly stated, local governments have no inherent powers and possess only those limited powers which are expressly conferred upon them by the state constitution or state statutes or which are necessarily implied therefrom.”).

The Michigan Constitution, however, delegates “complete control” of alcohol beverage traffic to the Michigan Liquor Control Commission: “Except as prohibited by this section, (t)he legislature may by law establish a liquor control commission which, subject to statutory limitations, shall exercise **complete control** of the alcoholic beverage traffic within this state, including the retail sales thereof.” Const. 1963, Art. IV, § 40 (emphasis added). The Legislature

only allowed local governments to have a say in several discrete areas, including prohibiting alcohol altogether in a county, *see* MCL 436.2113(2); restricting Sunday and holiday sales in cities, townships, and villages, *see* MCL 436.2111(1), 436.2113(5), 436.2114(2); and prohibiting “the sale of spirits and mixed spirit drink,” *see* MCL 436.2113(4). *See also* Ex. 13: Quimby Report at 4-5. Beyond that, the Township has no authority where the Liquor Control Commission regulates. Therefore, Peninsula Township’s decision to step in and regulate those areas was an ultra vires activity.

Second, even if the Township was performing a governmental function, the GTLA does not protect the Township from monetary liability. Just last year, the Michigan Supreme Court held that the GTLA does not protect a municipality from constitutional torts.

Among other remedies for this constitutional violation, plaintiffs seek monetary damages. Although we have never specifically held that monetary damages are available to remedy constitutional torts, we now hold that they are. Inherent in the judiciary’s power is the ability to recognize remedies, including monetary damages, to compensate those aggrieved by the state, whether pursuant to an official policy or not, for violating the Michigan Constitution unless the Constitution has specifically delegated enforcement of the constitutional right at issue to the Legislature or the Legislature has enacted an adequate remedy for the constitutional violation.

Bauserman v. Unemployment Ins. Agency, 983 N.W.2d 855, 859–60 (Mich. 2022). The Wineries’ conflict preemption claim “is a constitutional attack to the facial validity of the township’s ordinances.” *J.A. Bloch*, 2022 WL 17876842, at *13. “It would be unconstitutional for a township to attempt to regulate an issue preempted by state law.” *Id.* Therefore, this Court has the inherent authority to craft a remedy, including money damages, for Peninsula Township’s unconstitutional and unlawful ordinances. *Bauserman*, 983 N.W.2d at 859.

2. The Wineries may recover damages on a preemption claim.

Such a remedy would be in line with other courts who have awarded damages in preemption cases. *See, e.g., HC Gun & Knife Shows, Inc. v. City of Houston*, 201 F.3d 544 (5th

Cir. 2000) (affirming lost profits award when state law preempted local ordinance);¹² *Williams v. Hanover Hous. Auth.*, 113 F.3d 1294, 1298 (1st Cir. 1997) (“[I]t is immaterial for § 1988 purposes that plaintiffs’ success in the § 1983 action results from a favorable ruling on a relevant issue of state law, so long as the state law issue and the federal claims being made in the § 1983 proceeding are closely interrelated.”). It would also be in line with the practice of Michigan courts awarding monetary damages after granting declaratory relief. “Declaratory relief and an award of damages are both appropriate under the court rules and have been since 1963....” *Durant v. State*, 566 N.W.2d 272, 286 n.37 (Mich. 1997). The remedy is especially “appropriate” here where the defendant has engaged in “prolonged ‘recalcitrance.’” *Id.* at 285. “Any other remedy, particularly one that would grant declaratory relief alone, would authorize the [Township] to violate constitutional mandates with little or no consequence.” *Id.* See also *Hofmann v. Auto Club Ins. Ass’n*, 535 N.W.2d 529, 547 (Mich. Ct. App. 1995) (“[U]nder MCR 2.605(F), a court is empowered to grant money damages as are necessary or proper in a declaratory judgment action.”).

Ultimately, even if this Court concludes that the GTLA bars the Wineries’ recovery of damages under their preemption theory, the Wineries should still recover damages from their vagueness challenge. This Court already ruled that § 8.7.3(10)(u)(2)(e) (restaurants), § 8.7.3(10)(u)(5)(i) (catering), § 8.7.3(10)(u)(5)(b) (hours of operation), and § 8.7.3(10)(u)(5)(g) (amplified music) are unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment. (See ECF No. 162, PageID.6016-6019 (original ruling) and ECF No. 211, PageID.7813; ECF No. 301, PageID.10698; ECF No. 319, PageID.11889 (affirming ruling).) Therefore, the Wineries are entitled to damages under 42 U.S.C. § 1983. See, e.g., *Kolender v.*

¹² The Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE § 101.001 *et seq.*, provides similar immunity to the Michigan GTLA but did not bar the recovery of lost profits in *HC Gun & Knife Shows*.

Lawson, 461 U.S. 352, 362 (1983) (affirming statute is unconstitutionally vague and remanding for trial on damages).

IV. CONCLUSION

The Wineries request that this Court deny Peninsula Township's motion on the preemption claims and grant the Wineries' motion (ECF Nos. 333, 334) on this issue.

Respectfully submitted,

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

By: /s/ Joseph M. Infante
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Dated: October 10, 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 10,244 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, I filed the foregoing Response in Opposition to Peninsula Township's Motion Summary Judgment on Preemption Claim via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante

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Exhibit 1

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board and Planning Commission

Joint Special Study Session

July 26, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.

2. **Pledge**

3. **Roll Call**

Planning commission roll call:

Present: Alexander, Dloski, Hornberger, Warren, Shipman

Town board roll call:

Present: Wunsch, Achorn, Sanger, Wahl, Rudolph, Chown, Fahey (by phone)

Absent: Shanafelt

4. **Citizen Comments**

Monnie Peters, 1425 Neahtawanta Road: good evening. It's good to see all these people here. I want to push you all to remember that the zoning code has been under work for now over a year at the town board level. Planning commission first passed it more than a year ago. It was at the July meeting last year that it first came in front of the town board. I think it has been a waste of time not to pass it and been working under the new zoning code. Jenn is doing really good work, and you're asking her to do it under the old code. I really hope it won't be more than the next month before you pass it. You keep identifying problems, but don't solve them under the old code. Solve them under the new code. Pass it; get it done. I've been before you every meeting but one. I will be disappearing to go home and have dinner with grandchildren. Have a good meeting.

Mary Beth Milliken, 7580 East Shore Road: I wish to express my support of the revised ordinance documents produced by planning commissioner Jenn Cram and the efforts of the agricultural advisory committee. I know the resulting documents took a substantial amount of time. They took collaboration and compromise from all involved. They were revised by honest, hardworking professionals with integrity and respect for the Peninsula Township residents as a whole. This was an open process. A number of involved parties were invited to participate but chose not to. Unfortunately, those who choose not to participate often are the loudest critics of what comes out as the result. Sometimes they fail to consider the wishes and vision of the Peninsula Township residents as a whole. The wishes of the residents were evidenced by the survey that was taken and reported on over a year ago. There never will be a perfect document, and I think it's time for all of us to accept that. Put aside the acrimony, adversity, the self-centered belief that the ordinances

from neighbors who get all the noise when you put it outside. What choice do we have? Circumstances change. I worked very hard on these balances. I am sorry to see them go. I am conflicted about it. But I support moving forward. I support the good work Jenn is doing. I support all of you and looking carefully at this, considering it, and trying to move us forward in a way that keeps us from being vulnerable to lawsuits undoing the good intentions we had. Thank you.

Phil Wilson, 2570 Phelps Road: I just want to basically say that the township clearly is a really complex area with a lot of potentially conflicting interests. I do think that the township has in its own somewhat halting way tried really hard to balance those out to achieve some sort of equilibrium. The only constant, of course, is change. Change is something we all basically fear. It seems to me that if there's a lesson from the winery lawsuit, it's to stop and really look carefully at things and work a little harder to get a real true consensus. Or if not a consensus, some sort of larger equilibrium. Thank you.

Chown: Read letters (attached). Correction to Marty Lagina's wording: tonight is not a public hearing; it's a study session. The public hearing will be August 9th.

5. Approve Agenda

Town board

Cram: We are going to move the closed session to the end of the meeting so we can get right into our study session.

Wahl moved to move business item one to business item two and approve the agenda as amended with a second by Rudolph.

Roll call vote: Yes – Achorn, Sanger, Rudolph, Chown, Wunsch

Passed unan

Planning commission

Alexander moved to approve the agenda as amended with a second by Hornberger.

Roll call vote: Yes – Alexander, Dloski, Hornberger, Hall, Shipman

Passed unan

6. Conflict of Interests

Wunsch: I have a conflict of interest. I am one of the larger farm land managers in the township. I will endeavor to work through these issues without allowing my land ownership to impact my decision making, but I would welcome any of you to question if those conditions present a conflict of interest as we move through the decision-making process. If anyone has concerns, I would be happy to recuse myself from decision making.

Planning commission: none

7. Consent Agenda

1. Request to use Charlie Doe sign to advertise the annual Peninsula Community Library book sale

Sanger moved to approve the consent agenda with a second by Chown.

Roll call: Yes – Sanger, Wall, Rudolph, Chown, Wunsch, Achorn

Passed unan

8. Business

1. Joint Study Session on the Agricultural Sections for the Township's Zoning Ordinance

Cram: I want to thank the planning commission, the township board, the citizens, and our attorney for joining us at 7:00 p.m. on a beautiful Tuesday evening. I know that all of you agricultural operators are busy and everybody has lives, but this is important work and I appreciate hearing from all of you. **These recommendations, or proposed amendments, have developed as a result of what we have learned from the WOMP lawsuit. I have been working very closely with our legal counsel, Bill Fahey, and his team on what the decisions**

that Judge Maloney brought forward mean for us and our zoning ordinance. Our goal is to develop a zoning ordinance that is legally defensible and also equitable. The equity is one of the most important things for me personally. I accepted this position to come here because I am a pro-agriculture planner. That was my background before coming here. When I interviewed with this township board, I felt I was making a good decision because I felt that it was pro ag. I started participating with the citizens' agricultural advisory committee in December of 2021, before I was officially an employee with Peninsula Township. I wanted to quickly get up to speed with the issues, with the lawsuit, with where the community was at. And it's true, we only had three agricultural operators who participated. We held three seats for three additional agricultural operators, the wineries. They chose not to join us. That committee is called the citizens' agricultural advisory committee because it was meant to get diverse opinions from the citizens here who are not agricultural operators as well as the agriculture operators. I believe that one thing is very clear: this is a very special place. It is unique because we're surrounded by water. People want to come here to enjoy the scenic views and vistas. People want to live here for the same reasons. And all of those things are possible because of the strong agricultural heritage and culture in this community. I believe that if we continue to work together and come to these study sessions and speak honestly about what is important to us, we can get there. So thank you all for taking the time and being honest. Whether it's pro or against, all comments have helped me to understand the uniqueness of this community and where we're going. I bring with me experience. I understand how agriculture works in other areas, but, again, Peninsula Township is very unique, so I'm excited to walk through these amendments with you. This is a study session. There will be no action this evening. There will be a public hearing on August 9th at 7:00 p.m., where the board and the planning commission will have a joint public hearing to discuss these items further. Tonight, it is going to be very helpful for me to hear from the planning commission and the township board. I will continue to take written comments or you can call me.

The proposed changes we are looking at this evening include removing the winery-chateau use under Section 6.7.3(22), 8.7.2 (11) and 8.7.3(10) from the zoning ordinance. We will be replacing that with two opportunities for obtaining a special use permit for retail farm processing. We will also be updating the farm processing facility as a use by right under section 6.7.2. The other proposed amendments update the definitions, table of contents, parking requirements, and things like that so that the entire document looks at these amendments thoroughly. These amendments are the current priority because of the lawsuit. I want you to know that there will be additional amendments to address new uses such as a farm market. That's what I'm calling it right now, which is the missing middle. That is the smaller acreage for new farmers who want to get in and do some processing, such as if I'm growing blueberries and want to make blueberry jam or other things. Right now, the opportunities for ag operators go from having a roadside stand to a farm processing facility. Not everybody wants to go in that direction. Realistically, there aren't any farm processing facilities here that aren't wineries, maybe one or two. We're hoping to encourage new processing. In other parts of the country, that's called value-added agriculture, when you're taking something that you grow and changing it into something else. We want to provide those opportunities and that missing middle piece.

or one per 75 square feet. You come up with what the total required parking is based on the whole thing. The rest of the changes that you see are really just redlining and removing winery- chateau in its entirety. We'll be going through this to make sure there is consistency with all three of the processes as far as spelling things out, parentheses, all of the things that are duplicative will be consistent.

Sanger: each of these sections, in terms of enforcement, picks up language that at this point is 20 years old. Page 29, approval process number 14. It put the town board as the authority that's going to pull the SUP. I want to be sure that our legal counsel has looked at this. I thought this was unusual when it was done back in 2002. Typical enforcement would involve the issue of a citation and, if it's necessary, to pull the permit and move towards an injunction if we can't get compliance.

Cram: Bill and I have talked about it and he is looking at it.

Fahey: I'm going to take another look at it, but it's not bad; it's in pretty good shape.

Cram: I appreciate your time and attention. Your comments are very helpful.

Chown: we're going to do public comment now and then turn off everything to go into closed session.

9. Citizen Comments

Nancy Heller, 3091 Blue Water Road: I still have concerns about parts of this ordinance that are left up to individual interpretation and creating non-conforming situations. I attend the zoning board of appeals meetings. It's a challenge to meet the six basic conditions. You're giving the impression that they can do this and that, yes, they can. But not necessarily successfully, and at great cost to the applicant.

Town board:

Wunsch moved to enter closed session pursuant to MCL 15.268(1)(h) to discuss a confidential written legal opinion from the township attorney on proposed amendments to the zoning ordinance with a second by Achorn.

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

Planning commission:

Hornberger moved to join the town board in closed session with a second by Alexander.

Roll call vote: yes – Alexander, Dloski, Hornberger, Wahl, Shipman **Passed unan**

Wahl moved to come out of closed session with support by Achorn. **Motion approved by consensus**

Dloski moved to come out of closed session with support by Hornberger. **Motion approved by consensus**

10. Board Comments: none

11. Adjournment:

Wahl moved to adjourn the meeting with support from Chown. **Motion approved by consensus**

Hornberger moved to adjourn the meeting with support from Alexander. **Motion approved by consensus**

Meeting adjourned at 11:00 p.m.

Exhibit 2

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Category Legal Notices

Published Date September 25, 2022

Notice Details

LEGAL NOTICE PUBLIC NOTICE Joint Public Hearing of the Peninsula Township Board and Peninsula Township Planning Commission NOTICE OF JOINT PUBLIC HEARING OF Zoning Ordinance Amendments Adoption PLEASE TAKE NOTICE that the Peninsula Township Board and Planning Commission will conduct a joint public hearing at a joint meeting of the Township Board and Planning Commission concerning the adoption of amendments to the Peninsula Township Zoning Ordinance related to Farm Processing Facilities, Winery-Chateaus and a Temporary Moratorium in the A-1 Agricultural District at the Township Board's regular meeting on October 11, 2022, at 7:00 p.m. at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7314. The Peninsula Township Zoning Ordinance was adopted in 1972. There have been 200 approved amendments to date. Proposed amendments include: Removing the Winery-Chateau use under Sections 6.7.3(22), 8.7.2(11) and 8.7.3(10); Updating the Farm Processing Facility as a use by right under Section 6.7.2(19); Adding new uses for Retail Farm Processing Facilities that are approvable with a Special Use Permit under Sections 6.7.3(22), 8.7.2(11) and 8.7.3; Modifying Section 3.2 - Definitions as they pertain to Farm Processing Facilities and Winery Chateaus; Modifying Section 7.6.3(9) - Off-Street Parking and Loading Requirements by removing Winery-Chateaus and adding requirements for Farm Processing Facilities; Updating the Table of Contents as appropriate for all proposed amendments, and Adoption of a Temporary Moratorium to pause the consideration, approval, location, erection, construction, installation, or commencement of any new or expanded farm processing facility or any new or expanded use permitted by Special Use Permit within the A-1 Agricultural District. All interested persons are invited to attend this meeting. If you are unable to attend, written

comments may be submitted to the Peninsula Township Planning Department, 13235 Center Road, Traverse City, MI 49686 not later than 12:00 p.m. on October 4, 2022. If you are planning to attend this meeting and need reasonable auxiliary aids or services, contact the Peninsula Township Clerk at 231-223-7321 or clerk@peninsulatownship.com. Complete copies of the proposed amendments to the zoning ordinance and moratorium can be viewed by the public Monday-Thursday from 8:00 a.m. to 5:00 p.m. and on the Peninsula Township website homepage at www.peninsulatownship.com. TOWNSHIP OF PENINSULA Jenn Cram, AICP, Director of Planning Peninsula Township 13235 Center Road Traverse City, MI 49686 September 25, 2022-1T591519

Exhibit 3

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board Regular Meeting And Special Joint Meeting with Planning Commission

October 11, 2022, 7:00 p.m.

Township Hall

Minutes

1. Call to Order by Wunsch at 7:00 p.m.

2. Pledge

3. Roll Call

Planning Commission

Present: Couture, Shanafelt, Hornberger, Dloski, Alexander, Hall, Shipman

Township Board

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

4. Citizen Comments

Louis Santucci, 12602 Center Road: it's one of my complaints about the system that you only get three minutes to talk. My question to the board and members of the planning commission is, do any of you believe in good government? I know your answer is probably going to be yes, but I'm afraid your actions belie that statement. First of all, there is a conflict of interest with many of you who may or may not vote on the winery ordinance tonight. First, if you are a member or were a member of PTP, you should not be voting. Todd [Oosterhouse] was asked to leave the planning commission because he was a party to the lawsuit as an owner of one of the wineries. Therefore, quid pro quo, what's good for the goose is good for the gander. Anybody here who is a member or was a member of PTP ought to be off and not participating in the discussion tonight or voting on it. David Sanger in particular is both a board member and an enforcement officer. In my opinion, I've stated this before, he should not be voting on anything to do with zoning. That's like having the judge and jury and enforcement people all in one little thing. Isaiah and Becky have a very close relationship to the conservancy, which buys a lot of the land. In my opinion, if the winery ordinance goes into force, that is going to basically mean that a farmer or a landowner probably has only two choices. One is to sell his land to the highest bidder in the PDR program or to the conservancy. I feel that both those people have very close ties to the conservancy and they shouldn't be voting on the winery ordinance. Now, the moratorium was illegally passed, and public officials have a duty to see that the laws are legally executed. This was not done in the case of the SUPs that were submitted. It was claimed there was a moratorium. We now know the moratorium was illegal. And even if you want to argue that the people were under the impression that it was legal, when the notice of petition was filed with the township that a petition [referendum] was going to be

sought, then that moratorium basically could not go into effect for 30 days. So when people again came and submitted SUPs to the planner, they should have been accepted. I feel this is a violation of her duty and also borders on malfeasance. It's up to this board to address that particular issue. I'm hoping somebody on this board recognizes that a lot of this was illegal.

Wunsch: that's your three minutes.

Santucci: okay. I'll have more to say on the moratorium and winery ordinance in a few minutes.

Andy Blodgett, Parker Harvey Law Firm: you have received Walt's [Knyz] letter on behalf of Family Orchards. I realize the public hearing section of that issue is done, but I did want to give you an update. We filed our lawsuit today in federal court. Your attorney has a copy of that. That was not a desirable outcome. We felt forced to do so after not receiving any action and two invalid moratoria. We will continue with that lawsuit. I believe we still have a valid claim. Even if you pass another moratorium tonight, and even if you do amend the zoning ordinance, we had two valid applications in there. But that being said, as Dr. Knysz said in his letter, we would prefer to continue to have discourse and a reasonable outcome and a settlement that we can live with. All my client wants is a fair shake at the time that his two applications were submitted. Thank you.

Harold David Edmondson, 12414 Center Road: I concur with a lot of what Louis said. But what I want to really say is, do you guys acknowledge how much money has been spent on this winery lawsuit? We're getting a little bit out of control. If you just wanted to give a little bait to the other side, we wouldn't be hemorrhaging all this money. The amount of money that's being spent, we're way past any real win for the township. And the downside is, if you guys looked at the practicality of what they wanted, a lot of it has been inflated by PTP I think. They want to have some events, maybe some weddings. Who's that going to hurt? It's happening out here all over the place already. And now we've spent, what, \$600,000? You guys have a fiduciary responsibility to take care of our money.

David Taft, 952 Neahtawanta Road: what a way to start the evening. You've got a lawsuit, you've got somebody complaining about the amount of money you're spending, and you've got somebody saying everything is illegal. I'm here to compliment you. Thank you, Jenn, for your very thorough analysis that was published in the packet. Lots of facts and details we can follow. It really brings the problem to the table in a very objective and non-emotional way. Second, I was alarmed by the packet addition. The two letters from Mr. Infante to the board and planning commission are in my opinion nothing short of legal threats to frighten you and the public and, in my opinion, should be addressed to our legal counsel, Mr. Fahey. Conveniently, Mr. Infante ignores the fact that the appeals court overrode the district court and voided the injunction, so you and the planning commission can study and do amendments and actually update the zoning ordinance and can follow the zoning ordinance because you have that right to do that. I admire Mr. Lagina developing additional vineyards. It's a good agricultural use, and it's really benefiting this community. He mapped this out very well in his letter, but I'm surprised by his threat to go to court because of the moratorium. The moratorium ends January 1, 2023. Have you guys received an SUP on his proposal for a commercial operation? To my knowledge, no. It would take you four to six months to evaluate such a venture because that's what the

typical timeframe is to do that. Finally, Marc [Santucci] in his letter accuses you in a derogatory way of giving the finger to Judge Maloney. Those are totally inappropriate comments, verbal or written. The township has every right to follow its zoning ordinance and consider amendments. And to correct the record, the citizens' ag committee at the instruction of the township board began evaluating the ag ordinances last December and developed the proposal we're going to discuss tonight. And, of course, three seats were left open for the wineries, and they chose not to participate. They didn't want to participate. Instead, they wanted to sue you. Before speaking in public comment, let's get the facts straight, leave our emotions elsewhere, and speak constructively at these forums. You're doing a great job. Most of us in the community support what you're doing. Thank you very much.

5. Approve Agenda

Town board:

Achorn moved to move item D, update from the Parks Committee, to the first item with a second by Wahl.

Motion passed by consensus

Planning Commission

Hornberger moved to approve the agenda as amended with a second by Alexander.

Motion passed by consensus

Town board

Curt Peterson from the audience asked to make a point of procedure and was invited to speak under the consent agenda.

Sanger moved to approve the agenda as amended with a second by Wahl.

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

6. Conflict of Interest: none

7. Consent Agenda

Curt Peterson, 1356 Buchan Drive: what item is the public hearing on the zoning change?

Wunsch: item C now.

Peterson: the planning commission may want to add a CA or a C1 to be in compliance with the Michigan Zoning and Enabling Act of 2006. If anyone wants to google this, you can look at Michigan Zoning and Enabling Act 125.3308. In terms of your process, the topic is Summary of Public Hearing Comments, Transmission to Legislative Body by the Zoning Commission Report. In this case, the zoning commission is actually the planning commission. You want to add a comment period for the planning commission to get together after the public hearing so they can make the formal recommendation to the township board. Here's what it says in section 306 #1: following the required public hearing under section 306, the zoning commission, and in this case it's the planning commission, is to transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body, which is our township board. So after the public hearing, you guys need to take about 30 minutes to prepare this report and transfer it to the township board, if in fact you want to take some sort of action tonight. If you don't, then you don't need to do this. But if you're planning on passing a zoning change tonight, you need to do this to be legal. Thank you.

Nancy R. Heller, 3091 Blue Water Road: it's been discussed, requested, a few times. What

is insurance covering and what is the out-of-pocket expense for the winery litigation? I ask for some accountability, some sort of communication, to Peninsula Township residents. I try to attend all meetings. I have not heard any reports. I've heard requests. I think it's dangerous hearsay. I think it's important to issue accountability on this.

Wunsch: is that a request to discuss legal invoices, like the consent agenda, immediately, or do you want to see that added to an agenda for a future meeting?

Heller: for a future meeting.

Rudolph moved to approve the consent agenda as amended with a second by Sanger.

Wahl: are we adding C1?

Wunsch: no.

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

Planning Commission Agenda

Hornberger moved to approve the consent agenda as amended with a second by Dloski.

Motion approved by consensus

8. Business

1. Update from Park Committee

Mike Skurksi, 14696 Mallard Drive: our last update was that you had accepted the bid for the five-year plan, which we'll start on at the October meeting. We'll have a series of public hearings that will start soon. Michele is going to talk about a great project for Bowers Harbor.

Michele Zebell, 2616 Bower Harbor Road: in early August, Mike and I met with portions of the township administration for us to come up with a plan for adding playground equipment to Bower Harbors Park. We had to take the swing set down due to a tree coming down and damaging it beyond repair. We had a very ancient and terrifying slide removed. In your packet is a document titled Pavilion One North Playground Proposal. There's a swing set that we want to put in place of the one that was damaged. It includes a toddler swing as well as an ADA swing. We are very fortunate to have a discount program happening right now. If you look at the overview of costs, you'll see that we get a substantial discount if we are able to make this purchase before the end of October. Mike and I went out to measure to make sure everything could fit with the possibility of maybe someday adding pickleball courts where the current basketball court is. We also measured out the basketball location. It might infringe on the volleyball court but I don't think that that is a huge obstacle because we can slide that over. There's plenty of room. And rather than separate the swings from the other equipment, as the company suggested, we could have them next to each other. That eliminates two sections of border edging, which would reduce the cost by about \$1,200 more. We love this idea. When I was helping my husband with the drone photos, there were kids climbing all over the place and one little guy was very excited to know what we were doing. He helped roll in the 200-foot tape and said he would be back in the spring to see if we were able to put the playground up. We hope you will support this idea. We think its proximity to Pavilion One gives people who are using it so many options for recreation. We feel this is in keeping with the master plan location-wise as well as with the identified recreation needs. We're hoping to keep the beloved merry go round that is not affected by the location of those items. Also, if it's deemed safe,

we can keep the little slide that's there. The one item that would have to be moved or removed is the slide you see in the photo. We cannot fit a basketball court in there with that slide present. It is pretty old and some parts need to be replaced. I would thoroughly support moving it and still using it. I think that's the fiscally responsible thing to do, but that's something we won't be able to address until later. Finally, they are not able to schedule installation until sometime in May or June, if we get our purchase agreement in place before the end of October. Once we have that in place, I would very much like to invite the community to come celebrate the addition of this playground equipment and also present new ideas or give people a say in what else should go there and possibly get promissory cards from families who are interested in supporting us financially. I hope that you will consider this. I'm very excited.

Skurski: the initial price estimate is \$52,393.

Ahorn: when is this \$52,000 required to be paid?

Zebell: we need to make payment this month. I don't think we have to pay the full amount. But the contract has to be signed, and if it's paid via credit card there are additional fees.

Rudolph: usually for something like this you pay half down.

Zebell: I would assume so but I don't know.

Skurski: I think that's in the contract details.

Shanafelt: really nice work. Did we lose the zip line? It's modular; maybe we can add it later?

Skurski: yes, the zip line was expensive.

Ahorn: is this the same company we worked with at Haserot?

Zebell: yes.

Hall: with the zip line, is there any discussion around liability insurance?

Skurski: we haven't had that discussion yet.

Zebell: the area around the swing is large because they graft onto the plans the required area needed to keep children and people safe. Because of the movement, there are motion rules.

Wunsch: we need a board decision at this meeting if they are going to move forward with this plan. Board comments?

Wahl: this is long overdue. Equipment has been neglected. I'm happy to see progress.

Chown: it took a lot of boots on the ground to bring this to us tonight. You did your due diligence and worked to make the equipment affordable. I would like to make a motion that we approve this.

Wahl: before I support, do we know how much we have to give initially?

Ahorn: the total amount comes from different places, so we need a vote to approve each of them. We previously had capital campaign donations for capital equipment that was needed in the township. The parks were given \$11,173. The people who didn't know what they wanted to specify said they would just leave it up to the board to decide. That is \$10,927. So the total \$22,100 we could move easily from the restricted funds. The balance of \$30,000 would be a motion to utilize a portion of the ARPA grant that we have. The odd dollars could possibly come from the parks budget.

Chown: Armen, do you have all that? I withdraw my motion.

Shanafelt moved to support funding the playset equipment using funds from the budget described by the treasurer: \$11,173 from an unrestricted set of funds that were donated in the capital campaign, \$10,927 from a restricted set of funds that were allocated to parks as a consequence of the capital campaign, and \$30,000 from the ARPA funds with a second by Chown.

Sanger: if it goes forward, where will the pickleball courts go?

Shanafelt: south side of the tennis courts.

Sanger: where the basketball court is now located? I did look on the bid. Here it says "Payment terms are net 30." Shipment is 12 to 18 weeks so I would assume we would not pay until we receive the merchandise, which is what net 30 is. The installation is net 10. So there is timing here in terms of cash flow.

Achorn: we have the money in house.

Sanger: I understand. I would also request that legal counsel review the contract. That's normal before someone signs the contract. If that's not normal policy, I would like that added to the motion.

Shanafelt included an addendum to the motion that legal counsel review the contract in the context of the township's responsibility in signing for it and to give the supervisor power to sign the contract as appropriate with a second by Chown.

Roll call vote: yes - Rudolph, Wahl, Shanafelt, Chown, Wunsch, Achorn, Sanger. **Passed**
unan

2. Discussion on potential conflicts of interest regarding vote on amendments to the zoning ordinance related to farm processing facilities and winery-chateaus.

Township Legal Counsel William Fahey: the question is whether or not voting on a zoning ordinance amendment presents a conflict of interest for individual board members. To give you an example, let's say we were going to amend the zoning ordinance to address something that would apply to all residences within the township. Would that disqualify anyone from the township board who happens to have a residence from voting on that general provision within the zoning ordinance? The answer to that obviously is no. That's the same rule that would apply to any ordinance of general applicability in the township, including an ordinance that regulates wineries, or any business, or any use. Where a conflict of interest comes in is when the vote that is being taken or the matter that is being discussed has a specific financial benefit or detriment to the individuals who are being asked to vote on it. So, for example, if one of the township board members wanted to open a winery, it would not be appropriate for that township board member to participate in the decision on whether a permit should be given for that particular winery. That's because it is specific to that person's own unique financial interest. That's the nature of a conflict of interest. The distinction you need to make is this: for matters of general applicability, there is no conflict of interest. In fact, the law says you have a duty to act on those things. On the other hand, matters of applicability to your own unique financial interests do present a conflict of interest on which you should abstain from voting or participating. It's a very clear line of demarcation between where conflict exists or does not exist.

3. Public hearing on the adoption of zoning ordinance amendments related to farm processing with potential board action to occur.

Cram: this is the public hearing for proposed zoning amendments that affect the existing winery-chateau ordinance as well as the farm processing ordinances. This was publicly noticed in the Record-Eagle as well as posted to our website. The amendments to the zoning ordinance include:

- Removing the Winery-Chateau use under Sections 6.7.3 (22), 8.7.2(11) and 8.7.3(10)
- Updating the Farm Processing Facility as a use by right under Section 6.7.2(19)
- Adding two new uses for Retail Farm Processing Facilities that are approvable with a special use permit under Sections 6.7.3 (22), 8.7.2(11), 8.7.3(10) and (11) (these replace the existing Winery-Chateau standards)
- Modifying section 3.2 – Definitions as they pertain to Farm Processing Facilities and Winery-Chateaus
- Modifying Section 7.6.3(9) – Off-Street Parking and Loading Requirements by removing Winery-Chateaus and adding requirements for Farm Processing Facilities
- Updating the table of contents as appropriate for all proposed amendments

I've been the planner here for nine months. I've paid close attention to the existing master plan, the proposed master plan, and the community survey that was done in 2019. I've also been digging through past records. May 20, 2019, is when we first became aware that the local wineries had issues with the current zoning ordinance. This was discussed during a public hearing with the planning commission. Moving forward, the [former] director of planning [Randy Mielnik] worked with a subcommittee of the planning commission and local wineries to understand those issues and propose amendments. That work was conducted on a monthly basis from May 2019 to March of 2020. Work on that subcommittee was paused as a result of the COVID-19 pandemic. On October 21, 2020, the WOMP lawsuit was filed. On October 6, 2021, the township board held a special informational meeting at St. Joseph Catholic Church. Public comments were received related to the WOMP lawsuit and concerns with the winery uses were expressed. I reviewed those minutes and all of the attachments and several things rang loud and clear: residents really want to maintain the rural character. They have concerns about the noise from the wineries. And we also heard very clearly from the farmers that they want equity in the zoning ordinance so that it applies fully to all types of agricultural operators. The comments that were received during that special meeting supported what the 2019 resident survey said. Moving forward to November of 2021, the township board appointed a citizens' agricultural advisory committee made up of a combination of residents and farmers. As was noted earlier, three seats were held for the wineries. In December of 2021, this committee began meeting. It was originally charged with providing input and recommendations to the township board related to the ongoing mediation with the WOMP lawsuit. After mediation concluded, the committee evolved to provide policy recommendations for zoning ordinance amendments related to the agricultural sections of the zoning ordinance. On May 16 of 2022, those policy recommendations were forwarded to the planning commission for consideration. Public comment was received during that study session. On July 26 of 2022, the township board and planning commission held a special joint study session to discuss the proposed zoning ordinance amendments to the farm processing facilities and winery-chateaus. The proposed amendments before you were drafted by Township Attorney Bill Fahey and I. We considered community input and

had two goals. The first goal was to draft a zoning ordinance that is legally defensible. The second goal was to update the zoning ordinance so that the farm processing use is equitable and even handed for all agricultural operators, regardless of what they grow. Regarding definitions, "Farm Operation" is an important definition because it takes away the requirement for ownership and allows for more flexibility in getting those contiguous acres together.

"Retail Farm Processing Facility with Indoor Sales," "Retail Farm Processing Facility with Indoor Sales and an Outdoor Seating Area," and "Wholesale Farm Processing Facility" definitions were added, as were definitions for "Raw Produce" and "Vested Right."

"Winery" was updated for consistency with how it is used in the context of the zoning ordinance. A definition for "Contiguous" should be added to be consistent with the PDR ordinance.

Hall: the definition of "Farm Operation" is limited to the production of agricultural crops. Are there farm operations where animals are reared on the peninsula?

Cram: we don't see a lot of those uses happening. This definition could be updated to include that, but this definition is consistent with where it is used in context in the zoning ordinance.

Hall: it means that animals would not be considered a farm operation under our zoning ordinance.

Shanafelt: I imagine that the land use needs for animals are very different than for crops. That might require a totally separate kind of definition.

Cram: correct.

Sanger: I also ask that "Entertainment" be defined. This word is used later on in various sections. My suggestion is that we look at how it is defined by the Michigan Liquor Control Commission.

Cram: I received those comments. I can add that if everyone agrees.

Shanafelt: "Raw Produce" doesn't specify that the produce comes from the farm operation in question. Should we consider adding a component to clarify the source of raw produce? I think that would be consistent.

Wahl: in the definition it's not necessarily needed. When it talks about raw produce later, it does specify it has to be from the farm operation.

Hornberger: within the body of the ordinance, it pinpoints that, but just the definition of raw produce doesn't.

Cram: as proposed, the winery-chateau standards from Section 8.7.3(10) will be removed and replaced with two opportunities for retail farm processing facilities. One use that is currently allowed that will be eliminated is guest rooms. The opportunity to have an owner-occupied bed and breakfast within a single-family residence to provide lodging for guests will still exist in the zoning ordinance. The reasoning for removing this use is that guest rooms are a purely commercial use that is not accessory to agriculture. Guest rooms are currently allowed as a commercial use in the C-1 zone district. For the time being, guest activity uses will also be removed, as they were found to be too vague by the court in the WOMP lawsuit. In addition, the guest activities use did not apply to other agricultural operations other than winery-chateaus. Future amendments to the zoning ordinance will address accessory activities that support agriculture or add value to

agriculture under a new section that applies to all agricultural operations. Discussions with agricultural operators will take place and suggestions will be vetted through a public process.

The comparison chart included in the packet compares the different types of uses and components within the standards. With regard to the existing winery-chateau use, guest rooms are allowed with certain conditions and guest activities are also allowed with certain conditions. Under the proposed zoning ordinance amendments, guest rooms would not be allowed and guest activities would be included under a different section in the future. A township-wide event could be considered. Free entertainment indoors is also an option for both the new retail farm processing facilities. All other components of the uses under the current farm processing facility by right and the winery-chateau by special use permit would be permitted under the proposed amendments. The standards by which these uses would be allowed have been clarified and amendments have been proposed that make them reasonable and equitable for all agricultural operations.

The statements of intent have been amended for all farm processing facilities to further clarify that farm processing is an accessory use to agricultural operations and specifically requires active crop production. As proposed, active crop production must be taking place in order to have a farm processing facility. Simply put, you have to be growing something to get approval for a farm processing use. The intent statements further clarify that farm processing facilities are generally characterized as industrial uses when conducting processing and wholesale sales and as industrial and commercial uses when conducting processing and retail sales. Their location in the agricultural district must be carefully controlled by appropriate regulations and conditions to assure their compatibility with agricultural and residential uses, in or near that district. The intent statements also connect the farm processing activities to the land and clarify that a farm processing facility shall be operated by a farm operation that controls and operates a minimum number of acres in active crop production.

Regarding processing and sales, proposed amendments clarify where, when, and in what specific manner farm processing and wholesale and retail sales may occur. Based on feedback from the community related to noise complaints, processing and sales must occur indoors. The processing and sales changed slightly from wholesale to retail sales with regard to those specific standards.

Regarding sources of raw produce, the current limitation on sources of produce is difficult to enforce. Proposed amendments would require that 70% of raw produce sold fresh or processed by a farm processing facility must be grown on the farm operation's land within Peninsula Township. This amendment helps to justify the farm processing facility as accessory to local agriculture but allows for flexibility for 30% of what is sold fresh or processed to come from land and other farm operations. The proposed amendments better clarify the requirements and will also make enforcement of the ordinance easier. In addition, 65% of the required acreage will need to be in active crop production, and 70% of what is processed would come from the specific farm operation.

Sanger: does this crop production have to be in the grape industry? Or can it be pumpkins and sunflowers?

Cram: we discussed this, and we want to allow for some flexibility. The 70% requirement

will require that they're growing a majority of what they're processing. We want to give the farmer flexibility to plant what is needed for soil conditions so that crops can be rotated and to allow creativity within the industry. We didn't feel that the active crop production had to be only what they were processing because the 70% would require them to be growing the majority of what they are processing.

Sanger: I wonder what's wrong with fallow land. If I were an agricultural producer, I would like to have flexibility and decide if I want to meet the requirement by planting sunflowers, just to meet the requirements, or let the land lie fallow for that year or years. This requirement of setting an active crop production when it does not pertain to grapes...I'm having trouble with telling the agricultural operator that they must do something to the land to keep it active, and I think there's nothing wrong with keeping it fallow.

Cram: to clarify, this doesn't relate specifically to wine; this applies to all agricultural crops. If I am growing predominantly lavender and I want to process it into lavender oil, I would be required by my use by right or my special use permit that 70% of what I process comes from my farm operation. I might have more than 40 acres or even 60 acres so I could be growing other things on my farm.

Sanger: my point is, I don't think it's equitable for government to demand that the farmer do something. For example, lavender is very confined. One can have 10 acres of lavender and that's a lot of lavender. If they're coming in with the minimum 40 acres and they will meet the 70% requirement of product being processed, or if they wish to plant 10 or 20 acres just to get started, the township is going to force that additional burden on them to plant something else. I'm not arguing about that something else per se. It could be sunflowers; it could be most anything. I don't know why we're not happy with that land lying fallow and letting the farmer make the decision.

Cram: are you suggesting that you want one or the other, that you would remove the 65% requirement in active crop production, or you would remove the 70% requirement? They are different. They work together.

Sanger: I know they're different. What I'm questioning is, how do they work together? If one starts out on this peninsula with 40 acres, to plant even 65% is a huge investment. They may start out small. But as they start out small, the township is going to require that [65%] of that 40 acres be in active crop production. It puts an additional financial burden on that startup operation. And I don't see any benefit to the community.

Shanafelt: would a definition of active crop production that included the variable uses of farmland as they are needed to effectively grow particular crops satisfy that concern?

Sanger: I'm trying to get to the basis of why township government cares if the agricultural operator leaves the land fallow in a given year.

Shanafelt: that sounds to me like a very specific case for certain types of crops. Essentially, leaving land fallow is necessary for producing specific types of crops. So can a definition of active crop production include, "whatever is appropriate to effectively grow these crops"? Then the definition is perfectly fine. And then if you need to leave your land fallow, it is part of the active crop growing process because you need to leave it fallow to be successful.

Sanger: don't we need to define an active crop production as leaving fallow?

Shanafelt: you don't have to define leaving fallow. You can just say "what's necessary to

effectively grow the desired crop,” or whatever the accepted standard practice is. We can get feedback from farmers if we really need that.

Cram: there would be flexibility for other crops or for not having crops. The goal is to try to preserve land in agriculture and to ensure there's active crop production going on in order to process. If someone chooses to have a farm processing operation, then they need to be growing something to process.

Rudolph: what Sanger is saying is if you need 40 acres of land in order to have a processing facility, but the crop you're processing only requires you plant 10 acres, then the question is what happens to the other 30 acres? Maybe the way we approach this is we say 65% needs to be in crop production or fallow land or forest. That way we preserve that rural character and let the farm operator decide how much land they actually work.

Hornberger: the 70% of what you're selling comes from your own land to process, so you can still bring in 30% from someplace else. It's not 70% of the land.

Sanger: okay, simple example. One wants to go into the business of growing grapes and making wine. The ordinance says you have to have 40 acres. So one buys 40 acres and that allows them to go buy some distilling equipment or fermenting equipment, basically get in the business of turning grapes into wine. Now the township, and mainly the enforcement officer, he's gonna say, “First of all, I see that you are selling 100 bottles of wine this year. And you have to show me that 70% of the grapes used for that wine came from these 40 acres.” No problem. But then the officer comes along and says 65% of the 40 acres, roughly 25 acres, has to be in active crop production. Now this agricultural operator says, I'm just starting up. I've got five acres in grapes or one acre of lavender, now the township is forcing me to do something with the land except leave it as a forest or leave it fallow. I thought at first we were going down the slippery slope of a vine fruit being pumpkins. We've been down that slope but I found out yesterday that's not what's happening. The township is saying that you must keep 25 of the 40 acres in active crop production even though you only need 10 acres for the size of the winery at that time. I just don't get it. It seems like an overreach.

Shanafelt: what you're saying is, you want to add a definitional component that in your wine example, on the 40 acres using 10 acres for wine, the rest of that land has to be either forest or fallow.

Sanger: that solves the problem if those 10 acres make enough wine for that operation.

Cram: if they're meeting the 70% requirement then why are we requiring them to over plant? That is a good point, and we did discuss this at the citizens' agricultural advisory committee. We don't want someone to take a forest down for the sake of planting something. We had some language in a previous version that said 65% could be made up of forest. The 70% I believe is important and valid. I get what you're saying. That'll be for Bill and I to tackle with input from the board, of course.

Alexander: we talked about preserving existing stands of trees and wetland areas. I think that was the specific language.

Cram: yes, and environmentally sensitive areas could count towards the 65% if there was a wetland or something. But the 70% requirement would have to be met regardless. It will be up to the farmer to make sure that 70% of what is being processed comes from their farm operation.

Alexander: can we look at the next statement, sources of raw produce? Triple I says, "The township board may for that year approve a larger proportion of raw produce grown off the land within the township that is controlled and operated by the specific farm operation that operates the wholesale farm processing facility, provided that verification of such conditions by the United States Department of Agriculture Farm Service Agency." It feels like something is missing.

Board discussion

Alexander: can we just say something like "Provided the verification *is provided* by the department?" I just want to make clear that was the name of the agency.

Cram: noted. Parcel requirements are generally the same. The existing farm processing facility as a use by right requires 40 acres with a minimum 20-acre parcel for the facility. That remains the same. With regard to the existing winery-chateau, it requires 50 acres as a whole. And then for the two new proposed retail farm processing with indoors sales only, it stays consistent with the 50 acres, with a minimum of a 30-acre parcel for the facility. It allows for a little more flexibility. Then the proposed retail farm processing with indoor retail and outdoor seating bumps up to a 60-acre requirement with a minimum of 40 acres for the parcel facility. The justification for the acreage is, we're sticking with what has currently been working for this community. The larger acreages are to mitigate the negative impacts of an industrial/commercial use that is accessory to agriculture. As discussed, we receive noise complaints because sound travels. One of the things that helps mitigate those types of impacts is not only distance but buffering. That's why the acreages are proposed. All these facilities also need to accommodate adequate access, parking, drainage, and crop production.

Alexander: outdoor seating, in the packet, page 15, iii, parcel requirements: "A total of 60 acres of contiguous land must be dedicated." I wonder about the word "contiguous" there. When I look at three i, it says, "At least 40 of the dedicated 60 acres must be in a contiguous parcel." If we took out the word "contiguous" after the total of 60 acres, it seems like it would jive with three i. Because it's 60 acres of land that needs to be dedicated if we just take out contiguous...

Cram: but we want the 60 to also be contiguous.

Board discussion

Cram: that's why we want to introduce this definition of contiguous: "describes two or more parcels of land with a common boundary or point that may be separated solely by private roadway or public right of way."

Rudolf: the citizens' agricultural committee had originally proposed that this be an 80-acre parcel instead of a 60-acre parcel. The reason is that we recognize we've had complaints in the past and we were looking for a way to mitigate the effects on surrounding properties by the operation of the facility with the outdoor seating. We recommended 80 acres as a contiguous package so that there's as much buffer room as we could provide. That was the original recommendation from the advisory committee. I still think we should be talking about 80 acres instead of 60. We have seen a lot of problems with operations with outdoor noise in the past and it is certainly a way to mitigate that or attempt to mitigate it.

Shanafelt: I think the logic is sound. Another way to address it might be increasing the setbacks. Isolating as much as possible.

Alexander: those are 350-foot setbacks.

Cram: as proposed, the setbacks are 200 feet from the side and rear property lines. The outdoor seating associated with a farm processing facility with indoor retail sales and outdoor seating is proposed at 350 feet. I included a drawing in your packet that shows a standard 40-acre parcel and how those setbacks would work. Yes, 80 was recommended. At the study session on July 26, a planning commissioner noted that they didn't see the rationale to go from 50 with indoor retail to 80 just for the outdoor. We do have to address the level of reasonability. Looking at a 40-acre parcel, not all are going to be perfect squares or rectangles. It does allow for flexibility for things to move, and in those particular situations, it will be required that they come through the SUP process. The planning commission and the township board will look at proposed sites and if there are neighborhoods in proximity, in addition to those setbacks, there are buffers that could be provided with landscaping. We are trying to provide for the space that's needed to mitigate those impacts but also be reasonable. We did hear from several agricultural operators that 80 acres was very onerous given the current cost of land. That's why staff and our attorney landed at the 60 acres.

Regarding setbacks, the drawing provided in the packet with a standard 40-acre parcel shows what a 200-foot setback would look like. If you were placing a farm processing facility as a use by right on a 20-acre parcel, based on the square footage requirements, you could have approximately a 10,000-square-foot building. You can see there is flexibility in locating your processing facility and crops where it's optimal. Setbacks are currently proposed at 200 feet from side and rear property lines and 50 feet from the front or public right-of-way. Those are consistent with what currently exists in the zoning ordinance. Right now, the farm processing as a use by right requires a 200-foot setback from residential structures, and that's to mitigate negative impacts. The existing winery-chateau requires a 200-foot setback for guest rooms and guest activities from agricultural operations. That is for safety. Those farm operations need to be able to spray, etc. We did discuss with the citizens' agricultural advisory committee what they felt was reasonable. They unanimously felt that a 200-foot setback was reasonable and necessary to provide for safety from the different uses as well as to mitigate those negative impacts.

Dloski: if I understand it, the minimum frontage is 330 feet. When you impose your setbacks of 200 feet on each side, you can't use that parcel.

Cram: no, the 330 feet is the required road frontage. That is what currently exists. It prevents someone from creating a flag lot or something. In order to have adequate frontage on a public road, the zoning ordinance requires 330 feet. That's just a frontage requirement.

Dloski: what is the frontage on your drawing?

Cram: the standard dimension on a 40-acre parcel is 1,320 feet by 1,320 feet. Of that, in order to meet the standards currently and as proposed, you would have to have 330 feet of frontage so that access can be located adequately to meet view corridors, things like that. If you had a funky-shaped parcel and didn't meet that, it might be difficult to site a farm processing facility.

Dloski: right, if I had 330 feet of a long narrow parcel, I can't use it.

Cram: you would have to apply for a setback variance from the zoning board of appeals.

You would have a unique circumstance.

Dloski: for a farm processing facility where everything is done indoors, you still are imposing 200-foot side yard setbacks and rear yard setbacks. Why when it's all indoors?

Cram: the same reasons. Because of the need to mitigate the negative impacts from residential as well as a farm operation adjacent to another farm operation. If they're spraying and things, you want to have that separation.

Dloski: what objective standards were utilized to establish these setbacks?

Cram: we looked at the existing setbacks, we looked at how they relate to the land, and we looked at other setbacks within the zoning ordinance.

Dloski: what were the objective standards that set the existing setbacks?

Cram: I can't say. The ordinance was adopted in 1972 and has been amended over the last 50 years. The setbacks seemed to be consistent.

Dloski: do you have an opinion from our legal counsel that those are enforceable?

Cram: Bill has reviewed this document. I'll let him comment.

Fahey: the setbacks that I've seen are not out of line whatsoever with other ordinances from around the state. These are very much in the ballpark. We've seen setbacks in other ordinances that are even farther than this. I'm not at all uncomfortable with these.

Cram: we originally started with a 1,000-foot setback, went down to 500, then 350 for the outdoor seating, and then maintained the 200-foot setback that exists. That has not been challenged, nor has it been brought up as a concern.

Sanger: from an enforcement perspective, we have had cases brought to my attention where just a normal matter of closing a car door makes noise. We have to come to grips with these business operations that have people coming and going. When they close at 9:30 at night, you're still going to have car doors slamming. Keep in mind that people who have been imbibing tend to be a little bit louder. Maybe we haven't conducted a study of the attenuation versus sound over the distance, but I think these are reasonable setbacks to address some of the complaints we've received.

Rudolf: on the 350-foot setback for the processing with outdoor seating, I think we may want to include in that statement that the specification for 350 feet is designed to minimize potential conflicts with the use of neighboring properties. And I would say that because it's differentiated from the 200 feet, so we should have some reason for making that differentiation.

Cram: with regard to the farm processing facility size, as proposed, what currently exists for the farm processing facility as a use by right is being carried forward for all farm processing facilities. That is, "250 square feet per acre of land dedicated to the wholesale farm processing facility and shall not exceed a maximum of 30,000 square feet." That was an update that was initiated via Amendment 197. It seems to be working well, allowing for the flexibility for a larger building depending on the acreage, scaled to size. We do want to encourage the use of pre-existing buildings. When we're looking at the farm processing as a use by right, we should make that consistent with the two retail farm processing options.

Chown: I have a request about the placement of new farm processing facilities. I'd love to have some language in here that pays attention to the placement of new farm processing facilities so that they don't occur within a viewshed.

Cram: we can discuss where that belongs. Utilizing the pre-existing buildings hopefully

encourages the adaptive re-use of the historical buildings. The existing ordinance with regard to remote tasting rooms is working well. We were able to see a new use with the historic schoolhouse. With regard to vested rights, we did propose a definition for this. We want to make it clear that farm processing is an accessory use to agriculture; it is essentially an industrial or commercial use. This clarifies that the farm operation is choosing to pursue a farm processing facility. If they choose not to do that and we still have this building, that building can only be used for uses that are allowed in section 6.7.2 for agriculture.

Parking remains the same. The parking requirements from section 7.6 still apply. We did update those specific standards. They are discussed on page seven of the packet.

Signs will conform to the requirements of section 7.11. No change.

Lighting will conform to section 7.14. No change.

Access for a wholesale farm processing facility shall be from a public road. It may be gravel. A retail farm processing facility requires access to be from a public, paved road. The appropriate access permits are required from either the road commission or MDOT. And the site plan would show where that access would be located.

The requirements for water demonstrate that they have adequate water for the use that is required. Adequate sewage and wastewater disposal, fencing, or a planting buffer may be required if we're looking at additional ways to mitigate negative impacts. The outdoor seating area does have a specific requirement that the outdoor seating be defined with a fence and or landscaping.

The process for providing data and records to ensure that the zoning ordinance standards are being met while the farm processing facility use is being conducted has been clarified. Currently, data and records are to be submitted to the zoning administrator. Because the zoning ordinance is so old, it didn't anticipate that we would have both a director of zoning and a director of planning. What this proposes is that data and records be submitted to the planning department because the planner will be taking the application through the process and will understand the details. If there are any enforcement needs, it would revert to zoning and code compliance. The approval process has been updated to reflect current staff responsibilities and clarified with respect to what is required to move forward with a building permit. One of the things I noticed after attending some planning commission meetings and township board meetings is that the zoning ordinance has always identified that a site plan review is required. It's required for the approval of the use by right, and it's also required after a special use permit. What happens is that when someone is going through the special use permit process, they're trying to get approval of a special use. You don't want to put the onus on the applicant to spend the money to have all the final grading plans and final drainage reports created because they don't know if the use is going to be approved. They have to provide evidence that they can meet the standards, but they don't necessarily need to have those drawings done. Once the SUP has been approved by the planning commission, recommended to the board, and the board approves it, then the applicant has to come in and get a land use permit. What's happening is, once they dig in and start getting to their final drawings, sometimes things change. We want to make sure we catch those things before it goes to zoning for approval of the land use permit. We want to make it very clear that the site plan review process is a

requirement and who is responsible for doing what. It was recommended to me by my supervisors that this change be made regarding how our departments currently work.

Shanafelt: this would be best practices, right? For clarification, what that April 15 deadline is reporting, just say something like "from the previous year."

Cram: I've noted that from your written comments; thank you.

Rudolph: on the reporting by April 15 of each year, I think we should include a statement that says, "Failure to provide the reports would be considered a violation of the ordinance and could result in invalidation of the SUP."

Cram: thank you for those comments; they are in the packet for the record. We will have a situation where we'll be getting two different types of data. Because all of the existing winery-chateaus and farm processing facilities are already approved, they will need to continue to meet their recording and data requirements. Then we will have new requirements for the 65% and 70%. I've started to figure out how that might look.

Ahorn: when is the site plan review required to be submitted?

Cram: a site plan review is required as part of the approval for a wholesale farm processing facility as a use by right. That would be an administrative review. That is the current requirement. I'd like to touch on that a minute because I know there have been some concerns as to why the retail use has been removed from farm processing as a use by right. That is because, as it exists, it doesn't allow for public input. With retail comes parking and people and impacts that need to be mitigated. Currently, there is no process for public input. When Bill [Fahey] and I first started talking about this, again, best practices. A farm processing facility is an industrial use when conducting wholesale. Generally, you would not see that as a use by right. I explained that this community is vested in having a farm processing facility as a use by right. How we could allow for a public process is to remove the retail component and move back to what is reviewed under a special use permit. If someone is proposing a farm processing facility with retail, the neighbor should know about that and be able to comment. The current process does not allow for that. We have seen that all the existing farm processing facilities that were approved as a use by right have had complaints about negative impacts. By removing the retail component, we can still have a farm processing facility as a use by right. It's an administrative process they would work through with the director of planning and then the director of zoning for the land use permit. A site plan shows where all the components of a project are. Your access, your parking, the facility. Site plan review is also a process. As part of the special use permit process, the planning commission and the township board would see a site plan. They would review it and make sure it meets all the standards. Once the special use is approved, the applicant goes to work getting all their final plans together. Before they can submit for a land use permit, they need to go through the administrative site plan review process. This already exists in the zoning ordinance; it's just being missed. We're trying to make everybody aware of that. They would go through the administrative site plan review process. The director of planning confirms that the final site plan, drainage plans, all of those are consistent with the SUP. If it's not consistent, it comes back to the planning commission and the board before going on to a land use permit. If the changes are significant enough, it may require an amendment to the SUP. The Seven Hills project that we recently all reviewed and allowed to move forward is an excellent example

of a situation with minor changes. It's planning and zoning working together to make sure what the planning commission and the township board approve is being built correctly.

In closing, this is a public hearing. Members of the planning commission and township board may take action tonight. We recommend that before taking action, they consider all public comments. If you don't take action this evening, you should make a motion to table the public hearing and action to a date specific, which would be the November 1 township board meeting, so that we can continue the discussion, make changes that you all agree to this evening, and come back for another public hearing to allow due process. Last, these farm processing standards are just one part of what the township plans to do. We are working on updating the roadside stand standards to be compliant with Right to Farm and GAAMPs. We're also looking at introducing agritourism uses that could be approved, potentially as a use by right or through the special use permit process to allow for value-added agriculture to occur. There are other amendments coming that will help support agriculture in this community.

Alexander: I have a question on page 11 at the top and again on page 16. I'm talking about retail farm processing facility size. It says, "A tasting room shall be included in the allowable square footage." Should it be, "Tasting room may be included in the allowable square footage." Can we change that to "may" rather than "shall"?

Sanger: what it means is, if you have a tasting room, it shall be included.

Cram: yes. It needs to be shall.

Wunsch: I will close the regular scheduled October 11 meeting and open the public hearing on the proposed farm processing facilities ordinance.

Shipman: the planning commission closes the regular meeting and opens the public hearing for the ordinance.

Peter Kohl, 9466 Rolling Ridge: I am very impressed. I sat here for an hour and a half and wasn't bored for a second. Your planner is outstanding. The committees are marvelous. The work you put into this astounds me. The time, the effort, the compromises you made were really terrific. I thank you for that. Obviously, at some point you're going to approve an amended ordinance. It will be significantly better just listening to you all. I urge you to adopt it. Keep her too; don't get rid of her. She's good. You're all good. This was an education and I learned a lot. But my main issues and why I come to these meetings, as I think is true for the majority of the residents out here, is that we don't want more restaurants. You already have six; we don't need 11 more. We don't want to have parties till two o'clock in the morning. That's what the lawsuit says. They said you can stay open till two o'clock in the morning. They can have events. They can have parties. They can have weddings seven days a week, two a day if they want, one in the afternoon and one at night. So those are my main concerns. Restaurants and playing music till two o'clock in the morning. It would be a catastrophe, I think, and unsafe. But once again, I'm very impressed and thank all of you.

Jill Byron, 2249 Twin Eagles Drive: I'm reading for Grant Parsons (see attached letter).

Bern Kroupa, 3183 Shorewood Drive: maybe the loss of lodging can be made up by all the creative vacation rentals going on in our residential zone these days. That was an intended slam, one of the really bad things going on in this township. Anyway, for 25 years I've

fought for the rights of wineries, and I still don't have a single wine grape in the ground, and I have no intention of having any. I'm one of those growers, many of us are, that are kind of caught in the crossfire. Because [the zoning ordinance changes] affect what our next generation is going to be able to do or not do. I shudder to think what the agricultural environment heading north from here would look like without the wine grape industry. Now I can say with some certainty that every winery is on the site of what is one of three things. Either it was a failed operation from something else, it was a declining or rundown farm, or it was another place to build two or three homes. So it's a wonderful thing. We did a plan 20-some years ago. These guys did [the proposed new] plan this winter. Some smart people were on that panel, and I respect them. But I think it was done in a void. When you're looking ahead at what really is strategic stuff, [they] totally ignored the processed fruit business, which is still the big acreage. Why it shouldn't be ignored is that I can stand here tonight and say a majority of that processed fruit acreage will not be replanted in processed fruit. If we had a real plan going on for looking at agriculture, we would have had not only demographics as we did last time 20-some years ago, but we would have also talked about tree age, etc. Back when we had everybody around the table, we came up with a use by right. We worked hard on the acreage. I would never dream of supporting 80 acres. I don't support 60 acres. We had all the people involved in 40 acres. We've hassled over that for months. That and I'd like to see use by right go all the way through. By the time you turn up all those checkmarks, it should go all the way through.

Nancy R. Heller, 3091 Blue Water Road: I have been in the agricultural business for 52 years in Peninsula Township. This ordinance leaves too much up to individual interpretation by residents and Peninsula Township staff. Also, it is too restrictive for an applicant to make a living because of the cost of doing business in Peninsula Township.

Monnie Petters, 1425 Neahtawanta Road: I think this is wonderful, but it's only the first step. It is a small piece within the much larger zoning code. But it would be great to get it done. I've only been up before both boards for five or six years now talking about this. This is good. And if you pass it tonight, please, please keep going because there is so much more to be done. This won't be perfect. We had a wonderful one-and-a-half-hour discussion by Jenn that got into some of the boring details, unless you're one of these people like I am who actually find this stuff somewhat interesting. So, hip hip hooray. Get this done, but this is only one piece of that much larger document. Do this, pat yourselves on the back, and then go back to doing the rest. This is a small amount, but I think it would be great to get done and I support you all doing it. Thank you.

Jim Rafael, 14826 Mallard Drive: I submitted a letter this afternoon to Jenn for your consideration. It's a minor, fairly practical matter, not a big issue except if it becomes a big issue. It has to do with the language you have in the proposed ordinance related to access to either the wholesale or retail processing facilities. I think it's fine to say it shall be from a public road. However, it's inadequate to protect the interests of established residential neighborhoods in the vicinity of potential new farm processing facilities under consideration in the future. I think there needs to be a second sentence in the ordinance to the effect of, "Public roads previously created to provide ingress or egress for residences in established subdivisions shall not be used for access to a wholesale

processing facility or a retail farm processing facility.” I use that language specifically because of a lot of different jargon and classifications of roads, primary, local, collector, arterial, etc. Some of you know there was a period of time when the township almost required that subdivisions be turned over for public use. The developer would pay for them, then the owners who subsequently bought these lots would reimburse the developer, but they were all built by private monies and then turned over to the public. So what we have, and the reason I suggest this, is that the intent of this language should be clear. I don't think the township wants to allow for planning purposes, for public safety, for practical reasons, commercial and industrial traffic through established residential subdivisions. So I urge you to put some language in there that would restrict access via public roads to however you want to define them. But certainly put language in there that prohibits access via established subdivisions, whose roads were created specifically for ingress and egress to private residences. I don't think any of them are throughways. There are a number of subdivisions on the peninsula that are residential but the roads are dedicated for public use. So just saying “public” I think is inadequate to protect the residential interests of people in subdivisions who are going to be neighbors to proposed wineries in the future. Thank you.

Marie Dalese, 527 Second Street: I'm from the big metropolis to the south. I am also the CEO at Chateau Chantal and that is why I am here this evening. You might also know me better as Bob Begin's daughter. We've had some history in this building. As is often provided at this podium, I'll give a small history. For those who don't know, my family has lived here since 1980. I'm part of the often disparaged second generation of family wine members. I've watched as my dad worked tirelessly for years, with several cohorts in this building on this peninsula, to bring his vision forward. We have a copy, thanks to my mom's scrapbooking efforts from 1989, of a Record-Eagle headline, “Board Stalls Peninsula Winery Plan”: “Peninsula Township board members decide Tuesday that a controversial zoning amendment that farmers say would help save farming on scenic Old Mission Peninsula needs rewriting.” And it did eventually come together as what we know as the winery-chateau ordinance. I've got a personal dedication to carry forward this vision. It's a vision that my dad used to refer to in the Italian sense as “agriturismo,” a favorite word of his back then, defining this practice of merging agriculture and tourism. I think it still rings true. Just last week, the state of Michigan and the Michigan Department of Agriculture jointly proclaimed October as Michigan Agritourism month. In my opinion, the proposed ordinance before you today directly contradicts the direction of the state and Michigan Department of Agriculture. It stifles agritourism [unless we know] what other proposals you have in mind that might address that. Rather than focusing on equity with other farmers on the peninsula, we're faced with a retraction of winery-specific rights. We support the idea of reforming equity and feel agritourism activities can be held with appropriate mitigation rules for noise, traffic, parking, and health and safety concerns. That's what we're here for. It's what we've been asking specifically to be clarified in this ordinance for years. The state and Michigan Department of Agriculture indicated they want people to visit and experience farms as it keeps land in agriculture. To me, these amendments are contrary to that. We've heard the common statement from the board that “We support agriculture in this township.” What I'm reading, though, in the summary

the planner submitted for the board in the October 5 memo, is, "All other components of the uses under the current farm processing facility by right and winery-chateau by SUP would be permitted under the proposed amendments" [see remainder of comments attached at end].

Wunsch: if you've got prepared statements, feel free to submit them and we'll put them in the packet for the next meeting as well.

Chris Baldyga, 9707 Montague Road: I'm before you today as the president of the Old Mission Peninsula Wine Trail, co-owner of Two Lads winery, and grape grower on Montague Road. I don't know if you guys are excited as I am, but October being agritourism month, I thought it would be good to read it into the record because it hits on so many of the things this very ordinance is trying to achieve and should, with work, achieve in the future. This is from Lansing: "Governor Gretchen Whitmer proclaimed October is agritourism month in Michigan to celebrate and honor the economic and social benefits of agritourism to our state's farms and communities. 'Autumn trips to farms, wineries, farm markets, cider mills and other agritourism businesses offer a great opportunity to enjoy all that Michigan has to offer while supporting family farms, small businesses and rural communities across the state. This October we're celebrating agritourism month in Michigan by acknowledging all the hard-working family farmers, processors, wholesalers, retailers, who produce safe, nutritious food for us to eat and offer us unique fun and farm experiences. From farmers markets to on-farm markets to corn mazes, cider mills, wineries, to farm ways, Michigan's farms are backdrops for lifelong memories. I hope to take some time this fall to enjoy Michigan's unparalleled agritourism industry.'"

Agritourism is defined as a niche form of tourism and agriculture meeting together, including any time a farming operation opens its doors to the public, inviting visitors to enjoy their products and services. With agriculture and tourism being leading economic drivers in Michigan, agritourism offers farmers a path to diversification of their businesses to include value-added products and activities that help them better withstand things like poor weather conditions and market fluctuations. This very much encapsulates all that we should be working to do that I don't think we're doing yet. I think it's important to mention that because it shows the proposed ordinance is doing the opposite. It's increasing the barriers for entry. It's increasing the minimum acreages. I don't think they got the gist of your statement, Dave [Sanger], when you were talking about increasing the minimum amount of agriculture and how cost prohibitive that is for new and small farmers. You're creating an ordinance where the minimum entry is for millionaires only, not for bootstrapping farmers. That's the wrong direction. I also want to mention that the memos from Miller Canfield are not a legal threat, as I'm sure most of you know if you read them. They provide in detail a path to why the proposed ordinance is unconstitutional. It is avoiding future pitfalls, avoiding future legal troubles for the township. They're not threats but more of a helpful nudge. Thank you.

Louis Santucci, 12603 Center Road: let's not mince words here. What you're doing is making sure there will never be another winery here on the peninsula but that existing wineries, if they violate their SUP, and some references were made to that, even in the simplest manner, then all of a sudden you're saying the new ordinance is going to apply to

them. Does that mean you're going to say, "Hey, you only have 50 acres; you got to get 60 acres. You don't have 60 acres, you can't buy 10 contiguous acres, sorry, close your winery." This is what the whole purpose of this ordinance is. Let me just make two other comments. One is, Mr. Fahey kind of missed the point of the conflict of interest. Somebody here mentioned best practices. You have best practices, and you have the appearance of a conflict of interest. Mr. Fahey did not address the situation with David Sanger; he did not address the situation with people who are supporters or members of Protect the Peninsula. So we'll just leave it at that. The final thing I want to say is, I congratulate Mr. Fahey. So far, the costs of the lawsuit just for July through September are at \$150,000. Now we've got another lawsuit coming and Mari Vineyards has said they might have to go to a lawsuit. So I think probably in the next three to six months we'll be out of a million dollars. I wish I could work for Mr. Fahey's law firm because then I could get a lot of money to start buying some of the property out here like other people have been able to do. The point is, we're talking big bucks. We're not even at the damages issue; we're just talking legal fees. Now I talked about your obligation to execute the laws, which you have not done. You also have a fiduciary obligation to us. And I think if we get to a million dollars, you guys have violated the fiduciary duty. Because going back before, at St. Mary's [Joseph], where everybody was screaming and hollering, you probably have, we don't know, but you probably had a very good compromise that had been worked out, which you rejected. So the question really becomes, what's more important to you, your fiduciary duty or basically making a couple of people happy who don't like noise, whatever the heck that is. Somebody talked about slamming car doors. Oh my god, I better get some rubber on my car door because my neighbor might be offended that my doors...What are we talking about here? Restaurants. Someone said they don't want more restaurants, that we have enough. Basically, if they have a restaurant in their four walls, what difference is that going to make? Who is that going to bother? Nobody.

Mark Nadolski, 10 McKinley Road: it's interesting that those who are against the current revision of the zoning amendments for farm processing didn't want to be involved early on. They waited until the agricultural committee and our planner, Jenn, spent hours, days, weeks, and months preparing these zoning ordinance amendments. In regards to the lawsuit, the township did not start this lawsuit. The winery group did. They should be responsible for all of the township's costs, not the citizens of this township. Thank you.

Todd Oosterhouse, 7700 Peninsula Drive: I want to talk about unintended consequences. The winery owners lease more than 1,600 acres on this peninsula. Of that, 437 are in PDR land. That leaves another 1,100 acres or so that are just sitting out there not protected by PDR but protected by the agricultural use of wineries and what they're doing. We as farmers, we want to preserve the land for agriculture as we've done for many years. I think that's what we're all talking about here, being an agricultural community. We provide jobs for more than 425 people. Passing this ordinance can drastically affect a number of areas for a number of people. We as a community have to look at the unintended consequences of this change. Wineries have been trying to work with the township for a number of years, and having an agricultural committee that was 30% agriculture does not do anyone justice. The Right to Farm Act and GAAMPS rules need to be looked at, embedded, and signed off by an expert from that community before we do any changes. Some of these

changes that are proposed do not take best farming practices into account, such as producing indoors. How are you supposed to stage? How do you clean your equipment? Where do you run your tractors? Where do you dump your fruit? What happens to your spoils from what you make? Follow the direction of the state of Michigan and Department of Agriculture as addressed earlier. The ordinance needs to be [crafted] by farmers and experts in the field, not citizens that do not or have not farmed. Don't make matters worse by creating something that doesn't make sense. You keep alluding to changes that are going to come down the road. How are we going to take care of this? How are we going to take care of that? Have those vetted out so we see them before we start passing something that restricts a number of people and what they do. Don't go drastically pushing stuff through just because. Let's take a realistic approach and sit down and actually look at it by experts who are operating in the field. Thank you.

Harold David Edmondson, 12414 Center Road: I'd just like to say this township has to figure out how to open the door for new participants in agriculture. We're slamming the door hard and making the degree of difficulty extremely steep. With this new operation, with these new rules, I don't see how it's functional or practical. I'm a lifelong farmer out here and I know what it takes to make it work. We've been successful up here for many generations. Just like you, Isaiah, like Mr. Taft and his family, like Bernie [Kroupa] and his family. But I really feel the door's getting slammed. And not just the winery guys. It's all of the special uses, the smaller guys. This is ridiculous, given the scale of our peninsula. It's so small, I think all the nervous Nellies really don't have to worry. It's not going to blow up into this big circus. I hope we don't pass this because it's not workable. I also would like to say that I was on the agricultural committee, and I was about the only [farmer] who spoke out and there was only one other guy, Lew Seibold, who showed up consistently as well. I spoke with him yesterday. He's concerned too. But I'll let him speak for himself. [See letter from Lew Seibold at the end of the minutes.] If you guys want to see agriculture exist out here, you're going to have to go with what works. Currently, it seems like the wineries are making it work, and you've got to make it work for these other types of ag. Back to the committee, there was no balance there, so I don't know how it could hold any weight. You keep talking about how we made all these decisions. No, PTP made the decisions and a couple of residents. It wasn't the ag community.

Brit Eaton, 1465 Neahtawanta Road: as a member of the citizens' agriculture advisory committee, I want to strongly encourage the township board and the planning commission to adopt the proposed farm processing facility Amendment 201 for the following reasons. Amendment 201 addresses the critical element of parity between the farm processing facilities on the peninsula by codifying into the zoning ordinances use by right and SUP benefits for all farm products, not just the wine tasting industry. The amendment provides a reset and update after years of the township trying to modernize and make adjustments to agricultural zoning ordinances that comply with the state and right to farm laws. Number three, by continuing to rely on the current winery-chateau zoning ordinance, the township will continue to be exposed to the same environment that caused commercial wine tasting room entities to demand even more rights through the SUP creep, as I call it. This summer, I've seen firsthand a tremendous increase in visitor-serving traffic fueled by the national attention to the peninsula and the easing of COVID restrictions. Without well-

organized planing, structured development, and enforcement of our zoning ordinance, the potential increase in visitor-serving sites due to an expansion of retail farm processing facilities, which is estimated to be more than 10, could cause the peninsula's infrastructure to become overwhelmed. Too much retail expansion has the possibility of forever changing the rural character and the peninsula's balance between residential and agricultural communities. In conclusion, you have the opportunity to adopt a new baseline for agricultural zoning after seven years of frustrating attempts. I strongly encourage the board and the planning commission to adopt Amendment 201. Thank you.

John Jacobsen, 5294 Forest Ave: first of all, let me just echo what a number of other people have said, which is, Jenn, you've done a phenomenal job. Let's talk about the ordinance for a second. It's well thought out. You've taken enormous complexity and distilled it down so that it's easily understood. There are thousands of hours of work and input from all viewpoints, including agricultural operators and residents, that went into this. A key benefit, and one that was a primary aim of the citizens' agricultural ordinance committee's work over the last year, is that it provides parity among all agricultural operators, giving non-winery operators the same opportunities as the wineries. That's important. It's clear. Gone is the muddy language and ambiguities in the current ordinance. It advances agricultural businesses while putting reasonable bounds on non-agricultural commercial activities that masquerade as agriculture. Lastly, it protects the cherished rural character of the township while introducing new opportunities for agricultural operators. If I can channel Monnie Peters for a second, let's get this done. It's good, and if we find there are ways to improve it, we can always do that. Thank you very much.

John Wunsch, 17881 Center Road: I have very mixed feelings, as someone who worked very hard to create the use by right, as someone who's been involved in winery amendments all along, and as someone who helped expand facilities for production. I am very sorry we can't keep that balance, but that balance has been blown up. When you take a lawsuit that says now maybe every winery can be a full restaurant, a wedding center, a bar, do whatever they want, it becomes very hard to stay with that language. This language tries to corral that in. When we look at taking away the guest rooms, that's because we need to look at those for all farms, so it doesn't belong here. It belongs as a new topic for us to address. If we're not going to have tasting rooms on 40 acres, that means we have to commit to establishing a co-op tasting facility so those people in those operations can have somewhere for people to have tastings. If this gets passed and we move forward, we can pivot to work on those things. We need to define agritourism; we've got to have more agritourism activities. But we have to figure out how we're going to handle them. I say, we need to build a full package. Better roadside stands, smaller farm markets, get the co-op going. Set up agritourism capabilities and look at how you're going to set up guest rooms on any farm, not just wineries. I do have two questions for you. One, weddings and events are not addressed. I hope between our planner and our lawyer you can let us know that clearly means they are or they are not allowed. The second thing is, I totally agree on pre-existing buildings. Why should they not get the same right to be larger if they have more agriculture? I do want to quickly try to dispel three things that were in the packet. There is no more injunction. All the talk about "You're fighting against the

injunction" is irrelevant. That's gone. Vested rights: nobody's gonna go to the wineries and say you can't do what you do. You're grandfathered in. You're going to keep doing what you're doing. This is about the next 5, 10, 15, or 20 wineries over the next 20 years. Finally, Right to Farm. They've come to us and said they have nothing to do with processing. Processing is under local control. Right to Farm does not address processing. Good luck with your difficult decision. I think we should move forward and get to work on other things.

Becky Chown: Read citizen letters [attached at end of minutes] aloud from Lew Seibold, Fred Doelker, Bob Garvey, Susan and Phil Tarczon, Susan Linden, Leah Stearns, Jon and Sue Kinne, and Mary Swift.

Rudolph: I'd like to clarify one thing. The ordinances we're talking about deal with farm operations that do processing. That's taking a raw product and turning it into something other than the raw product before it's marketed. This does not in any way preclude a farmer from coming in here, a young couple coming in, and buying five acres of land and deciding they want to put rhubarb on it and sell rhubarb. This does not have any effect on any farm operation like that. I just want to clarify that because it seems there's a lot of confusion among some of the people who have commented tonight.

Wunsch: we should probably come to a quick consensus on whether we need to extend the public hearing. We've taken a lot of public feedback. We've heard a lot of input from board members. My sense would be that the two bodies want to adjourn this issue, get some revisions from Jenn, and hold off on making a decision this evening. Is that the consensus of the two boards?

Rudolph: that would be my recommendation.

Wunsch: that's impactful to the motion we should put forward next. If we're done with the public hearing and we're ready to make a motion, we'll close the public hearing. If we're not done with it, we should adjourn until our next joint meeting.

Shanafelt: some of the changes look minor but they're impactful in terms of how they allow the ordinances to be executed. I do think having a chance to review that final form is super important. I think we should do it quickly.

Wunsch: is that a motion to adjourn until November 1?

Shanafelt: that would be my recommendation.

Sanger: I don't see the need to prolong. I don't know what more we're going to hear. I think we're prolonging the agony of making a tough decision. I move we close the public hearing tonight.

Wahl: I agree. We shouldn't keep putting this off. We're always going to have these small minor changes.

Wunsch: my question to Bill is, should we close the public hearing and allow Jenn to make some edits based on what she's heard? Do we need to continue the public hearing if there's small edits? It seems we have consensus on the conceptual plan here.

Fahey: if people have more comments, they can add additional public comments at the next township board meeting. It's going to be difficult to get things done if you don't close the public hearing tonight.

**Sanger moved to close the public hearing with a second by Wahl.
passed by consensus**

Motion

Planning commission**Allen moved to close the public hearing with a second by Dloski.****Motion****passed by consensus**

Cram: Bill, to meet Michigan Zoning Enabling Act requirements, we published a legal notice for this as a public hearing with the potential to adopt this. If we move the action to the November 1 meeting, do we need to make a motion to table that so our legal notice is still effective?

Fahey: you don't need to table it because the public hearing has been closed. The notice was only necessary for the public hearing.

Hornberger: can we pass it the way it is now and then have Jenn make her tweaks and have that changed?

Wunsch: we'd need to do a public hearing and reopen.

Hornberger: so we're better off having the vote in November.

Fahey: you won't need another hearing. Once it's been held, you can make changes; that's the purpose of holding a public hearing. Now we can go ahead and make whatever changes the planning commission wants to recommend and whatever changes the board wants to make in its final decision. It's not necessary to hold another public hearing. There is still a public opportunity for people to come in and participate in public comment at meetings.

Alexander: Monday night we have a planning commission meeting...

Cram: we wanted to see how this meeting went. Susie and Isaiah and I want to be respectful of the planning commission's time. There are no new business items for the planning commission for next Monday. I was going to work on our bylaws, but it's not as time sensitive as this. We propose to cancel the planning commission meeting. I would announce that officially tomorrow with a cancellation agenda and invite the planning commission to join the township board again for the meeting on November 1.

Sanger: does the town board need to receive a recommendation from the planning commission before they take additional action, Bill?

Fahey: the planning commission does have to make a recommendation. They are going to have to take a vote at a public meeting to adopt some version of the ordinance.

Cram: based on the wonderful comments we've received this evening, I would work on amendments, Mr. Fahey would of course review them, and we would get those to the public, the planning commission, and the township board so everyone has due process. Then the planning commission could make a motion or recommendation on November 1 after seeing those changes.

Dloski: why can't we do it now? The changes are minor. Let's get it done.

Hornberger: that's what I was thinking. Let's pass it now.

Shanafelt: if we get the recommendation from the planning committee tonight, that sets the township board up to accept or approve the ordinance with time to look at some of those things.

Hornberger moved that the planning commission recommend Amendment 201 to the zoning ordinance to the township board with the recommendations seen this evening with a second by Alexander.

Louis Santucci (from audience): point of order here. We made a point earlier in the

evening that you have to do a summary of all the comments you got tonight –

Wunsch: Louis, you're out of order.

Santucci: I don't care if I'm out of order –

Wunsch: Louis, you're out of order.

Santucci: ask Mr. Fahey.

Wunsch: Louis, you're not in a position to speak at this time.

Santucci continued to speak, then removed himself from the meeting.

Shipman: we have a motion on the floor. Any further discussion before we do a roll call vote?

Roll call vote: yes – Couture, Shanafelt, Hornberger, Alexander, Hall, Shipman
No – Dloski

Sanger moved to take a five-minute recess with a second by Shanafelt at 10:03 p.m.

Wunsch brought the meeting back to order 10:10 p.m.

4. Public hearing on the adoption of zoning ordinance for temporary moratorium with potential board action to occur

Cram: I have a memo in the packet. Drafting a temporary moratorium is a standard practice so that local governments can pause development or building while zoning ordinances are being developed or amended. Based on recent critiques from the public on the processes by which the township board has adopted a temporary moratorium on the consideration, approval, location, erection, construction, installation, or commencement of any new or expanded farm processing facility or any new or expanded use permitted by special use permit within the A-1 Agricultural District, our legal counsel has drafted another temporary moratorium to be adopted as a zoning moratorium amendment. That is attached. Proper legal notice has been completed for the township board and planning commission to adopt Zoning Moratorium Amendment #202 at this hearing. We will need to follow the same practice with a recommendation from the planning commission to the township board to meet Michigan's Zoning Enabling Act requirements. With that, I'll let Bill offer any other information on the proposed moratorium.

Fahey: this is the third version of the moratorium that the board has had in front of it. The first was adopted as a resolution early in the year. The second was adopted I believe in June as an ordinance. The difference between this one and the one that was adopted in June is that the one you're looking at tonight is being proposed to be adopted under the Zoning Enabling Act. Without addressing the legal issues, I think it's prudent for the board and the planning commission to at least cross this "t." In case it turns out that there is any legal deficiency, we don't have to be hampered by it. We need the public hearing. We need to have a planning commission recommendation. Then the township board has to pass an ordinance. The ordinance as it is currently drafted would continue the moratorium that is now in effect until January 1, 2023. I know there has been some discussion about extending that further, but I'll leave that to the board to discuss. One other thing I did notice when I was looking at it tonight. We initially drafted this some time ago. If you look at section 6.7.6.3, we were suggesting at that time that the planning commission should complete its review of the amendments for the A-1 district by September 30, 2022. They did that work tonight. I think it might be appropriate to simply change that date to tonight's date. Otherwise, this is in substance the same ordinance that you looked at in

June.

Wahl moved to open the public hearing for a temporary moratorium with a second by Chown. Motion approved by consensus

Couture moved to open the public hearing with a second by Hornberger. Motion approved by consensus

Andrew Blodgett, Parker Harvey: on behalf of Family Orchards, I'm just going to point out that everything you are doing tonight are things that were not done in the first two ordinances and that is our basis for argument that those moratoria are invalid and were invalid. And both of the applications submitted under those moratoria should have been considered at that time under the existing rules. Thank you.

Sanger moved to close the public hearing with a second by Wahl. Motion approved by consensus

Couture moved to close the public hearing with a second by Alexander. Motion approved by consensus

Planning commission discussion

Shanafelt: it still makes logical sense to keep this in place while we finalize these ordinances and have a buffer as they get implemented.

Alexander: this is something we may need again in the future for whatever reason. If it's in the ordinance, we can refer back to it. Makes common sense to me.

Couture moved that the planning commission recommend to the township board that it approve the temporary zoning moratorium with the amended date of October 11 in section 6.7.6.3 with a second by Hornberger. Motion approved by consensus

Wunsch: Bill, does the planning commission need to submit a written report of their recommendations to the town board?

Fahey: it does not. It needs to make a recommendation to you. A section was referred to by a gentleman earlier that says they need to provide to you a summary of the comments that were made at the public hearing. The context of that section, however, is not applicable when the township board has just sat through the public hearing.

Shipman: before we adjourn, for clarification, we've made our recommendation regarding the zoning ordinance amendments, so we, the planning commission, are not expected at the November 1 meeting.

Hornberger moved that the planning commission adjourn with a second by Couture. Motion approved by consensus

Planning commission meeting adjourned at 10:22 p.m.

Wunsch: discussion on the recommendation the planning commission just made?

Wahl: no. We've had a year to have this in place. I think we as a board have stated on the record multiple times what our intent is.

Sanger: is our counsel comfortable with the January 1 expiration given it is now almost November 1?

Chown: that is my concern.

Fahey: November 1 is your next meeting. I'm confident that Jenn and I will be able to get a revision together that incorporates all the things we've talked about tonight, but I don't want to be overly optimistic. Do you feel you will be able to take action on November 1?

Board discussion

Chown: what if people get sick? Let's give ourselves a buffer and go with February 15.

Sanger moved that the town board adopt Amendment 202, the moratorium amendment to the zoning ordinance, with new section 6.7.6, as published and recommended by the planning commission, with the date referencing the planning commission meeting in 6.7.6.3 changed to October 11, 2022, and the term of the moratorium in section 6.7.6.3. to remain in effect through February 15, 2023, with a second by Achorn.

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

5. RFP for PDR selection committee

Cram: I want the community to be aware that we are currently accepting letters of interest to serve on the purchase of development rights selection committee. If you are interested, please submit your letter. We will also post this to the front page of the website and do an email blast so the community knows we are accepting these letters. If you have any questions, you can email me. The memo in the packet is part of the public record.

6. Action on Family Orchards LLC waiver request

Cram: staff received a letter from the applicant on July 28, 2022, requesting a waiver from section six of Ordinance 2022-06-14 regarding the current or previous moratorium in the A-1 agricultural district. Per section six, the township board may grant a waiver to the moratorium upon sufficient showing that the landowner will suffer immediate and irreparable harm for the short duration of the moratorium. A public hearing was held on September 13, 2022, where public comments were received. A motion was made to table the public hearing to October 11 so that the board could consider public comments before taking action on the request. Staff has received no additional information from Dr. Knysz of Family Orchards LLC since the September 13 public hearing. One thing that we would like to note for the record is that, according to our assessor's records, the properties involved in the waiver requests were purchased on February 14, 2022, per the register of deeds, more than one month after the original moratorium was put in place by the township board on January 3. Staff and legal counsel are here to answer any other questions that you have regarding this matter.

Wahl: if I remember correctly, no additional documents to support the harm being suffered were provided.

Cram: correct. There was information included about how the moratoriums were illegal but nothing about what the immediate and irreparable harm would be. Bill [Fahey] had proposed some questions that might help the board with its decision, but the applicant opted not to answer those and so no additional information has been received.

Wahl: we did give them opportunity to speak at that meeting.

Cram: correct.

Wahl: I think we discussed on the record what our decision would have been had there not been a moratorium.

Cram: the moratorium actually does the applicant justice by not allowing applications to come in because we don't know what the outcome of zoning ordinance amendments will be until they are adopted and the outcome of the lawsuit is unknown and may require additional amendments. We have some guidance now as to the direction that farm

processing will take, but we are still in a lawsuit. The zoning ordinance is a living document. We're really trying with the zoning ordinance amendments to put up guardrails on the standards. It would have been impossible for me, the planner, to review an application and for the planning commission to make a recommendation based on the fact that we're in a lawsuit. On June 3, there was a decision made that enjoined us from enforcing our zoning ordinance that was reversed in August. We are trying to be respectful of everyone's resources and make a good decision based on the zoning ordinance that is in effect.

Shanafelt: the zoning rewrite has been in process for years. But this part around the farm processing has been almost a year in the making and is evolving. Your points about uncertainty around the lawsuit are spot on. Having a moratorium, not taking action, in this regard, knowing we're in the process of rewriting farm processing, is logical. Another component is that even had the SUP gone under consideration, given the uncertainty, I agree that I don't know how we could have approved it. In terms of the timeframe, that approval probably wouldn't have happened until next year sometime. And if the new ordinances had been passed, then it's kind of irrelevant.

Chown: also, Jenn, I think you've explained that it's the ordinance that's in place at the time the application comes before the township board for *approval* that's utilized, not the ordinance that's in place when the application is submitted.

Cram: if we had allowed an application to come in, based on Judge Maloney's decision, we wouldn't have known what to do with it. Now we have better direction on our zoning ordinance that we believe addresses the issues of the lawsuit so that we can move forward with a defensible zoning ordinance. Yes, the application approval would have been subject to the zoning ordinance that is in place at the time of approval.

Shanafelt: so there's both a logical and a practical situation here. I understand that's not the point of the lawsuit in principle, but it's almost moot.

Cram: I do look forward to working with Mr. Knysz and the Family Orchard LLC once we know more.

Shanafelt: the ordinances are not trying to stop agriculture. All they're doing is clarifying what can be done and the way it can be done on the peninsula. This is unique and complex. It's not a trivial task and it's not a trivial conclusion. Because it's always changing, it won't be perfect. It may not be what any individual wants to do, but it is functional in the context of our rather complex context.

Rudolph: I'd just like to say I'm sorry that Family Orchards is experiencing these delays because of the circumstances here. But the uncertainty caused by the ongoing litigation makes it a disservice for both the applicant and the citizens of the township to go ahead with granting a waiver and proceeding under the winery-chateau ordinance. We can't predict what's going to happen with that. It's not the township that has imposed the uncertainty. In this case, it's the wineries' lawsuit that has imposed the uncertainty on the ordinances. I'm sorry that Family Orchards is experiencing these delays, but I don't see any resolution to it other than not granting the waiver.

Wunsch: I served on the Zoning Board of Appeals for a couple of years before I ran for township trustee. One of the things you always have to look at in granting a variance, whether it's a use variance or a waiver, is the unique set of circumstances. From the

presentation we saw at our last meeting, the rationale for granting a waiver that we heard was that our moratorium was not legally valid. And we weren't really given any other basis to grant a waiver. I would be very concerned if we were to choose to grant a waiver to Family Orchards LLC and not grant a waiver to anyone else since we weren't given information to make a decision on. There's been an allegation that the township is violating the applicant's due process rights. I think the consistency with which we've applied the moratorium to this applicant, as well as others who have tried to submit plans to the township during the period of the moratorium, demonstrates that we are, in fact, respecting the due process rights of all applicants. We're treating everyone equally. We've been given no substantive reason to treat this applicant differently from anyone else.

Sanger: we've had shifting sand over the last two years and definitely over this last eight to nine months. An application came in back in February or March under what is very close to being the old sections of the ordinance. With the tremendous progress that has been made just in the last couple of months, based upon a lot of work that has gone on in the agricultural committee for more than a year, if the township had encouraged an applicant by accepting an application based upon what is soon to be the old ordinance, I would think we would be culpable of giving, frankly, bad advice. If I were the applicant tonight, I would leave feeling relieved that this matter is going to be taken care of, probably no later than February the 15th. That clarity will certainly make up for lost time and definitely make up for expenses that could have been incurred by making assumptions before we had all this history of the last nine months.

Chown: it seems unconscionable to me that we would have accepted an application for a winery-chateau in the midst of the winery lawsuit and the conflicting judgments coming down from the federal court and the appeals court. I couldn't rest easily having wasted the time and resources of any applicant when the uncertainty is so great. I think that matters deeply. I stand by our former decision.

Sanger moved to deny the moratorium waiver request submitted by Family Orchards LLC for the following reasons: 1. The applicant has not stated any facts that would amount to irreparable harm if it waited until the moratorium period is over before submitting its application for a winery special use permit in the agricultural district, and the township board is not aware of any such facts. 2. The township has been actively working on comprehensive revisions to the zoning ordinance, including the provisions governing winery uses, since before the applicant first attempted to apply to establish a winery. 3. The township has had one version or another of a moratorium in place since before the applicant first attempted to establish a winery. 4. The township has produced several successive drafts of revised zoning ordinance provisions governing wineries in the last several months, and the planning commission conducted a public hearing on the current proposed draft amendments this evening. 5. It is likely that by the time the review process has been completed on an application for a new winery that the township's zoning ordinance provisions governing wineries will be substantially different than the current zoning ordinance provides. It would be wasteful both for the applicant and the township to devote substantial time to review of an application until the ongoing ordinance amendment procedures have been concluded. 6. The applicant will have a reasonable opportunity to submit an application to establish a winery after the current

ordinance amendment process is concluded with a second by Shanafelt.

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

Wunsch: we have on our agenda a closed session. I don't know if anyone in this room is in good shape for that.

Fahey: I think it would be cruel and unusual punishment to make you go into closed session right now. The need for a closed session at this moment is not great because we have another meeting set for November 1. I do want to make sure that we do go into closed session to discuss what is likely to be in front of the judge on November 17.

November 1 will be just fine for that.

Sanger moved to table item G until the next meeting with a second by Chown. Motion passed by consensus

9. Citizen comments: none

10. Board comments

Chown: one of our township residents reminded me that tomorrow is National Farmers Day, so everybody go buy and eat some local fruit. The election commission met about a week and a half ago for the public accuracy test of our elections and equipment. That went very smoothly and at that time we appointed our election inspectors for the November 8 election. I have two additions to the list of individuals who will be working or potentially working on Election Day, depending on whether or not anybody gets sick and we need to bring in subs. As backup, I'm appointing two more people with your blessing, [Peninsula township] Election Commission: Beau Buisson and Dean Francis. They are both going to be trained. They have submitted applications. They are duly hired by the election commission to work the election if need be. Thank you.

11. Adjournment

Wahl moved to adjourn with support by Sanger.

Motion approved by consensus

Meeting adjourned at 10:48 p.m.

Exhibit 4

Draft: September 26, 2022

**PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN
DRAFT FARM PROCESSING FACILITY AMENDMENTS (AMENDMENT 201)**

1. *New, deleted and amended definitions in Section 3.2:*

Farm Operation: A Farm Operation is a person, corporation, partnership, or other legal entity engaged in the business of active production of agricultural crops on land that it controls and operates within Peninsula Township. **(ADDED BY AMENDMENT 201)**

[Delete definition of Farm Processing Facility]

Retail Farm Processing Facility – With Indoor Sales: A Retail Farm Processing Facility is an accessory use to the active production of agricultural crops. The building or buildings used as part of the Retail Farm Processing Facility contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). An indoor retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including wine. The facility also includes necessary access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Retail Farm Processing Facility – With Indoor Sales and Outdoor Seating Area: A Retail Farm Processing Facility is an accessory use to the active production of agricultural crops. The building or buildings used as part of the Retail Farm Processing Facility contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). A retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including wine. In addition to a limited indoor retail sales area with a Tasting Room, a clearly defined outdoor seating area with limited seating capacity may be approved. The facility also includes necessary access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Wholesale Farm Processing Facility: A Wholesale Farm Processing Facility is an accessory use to the active production of agricultural crops. The building or buildings contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale sales. Processing shall be conducted within an entirely enclosed building(s). The facility also includes necessary access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT NO 139A AND UPDATED BY AMENDMENT 201)**

Raw Produce: Raw Produce includes agricultural food products in their natural state as harvested, prior to processing. **(ADDED BY AMENDMENT 201)**

Vested Right: A Vested Right is a right protected by law that cannot be impaired or taken away without the owner's consent. **(ADDED BY AMENDMENT 201)**

[Delete definition of Winery-Chateau]

Winery: A Winery is a state licensed facility where agricultural fruit production is maintained, juice is processed into wine from Raw Produce, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a Tasting Room. The site and buildings are used for the production of wine. **(ADDED BY AMENDMENT NO 139A) (REVISED BY AMENDMENT 181 AND UPDATED BY AMENDMENT 201)**

2. Amended Subsection 6.7.2 (19):

(19) Wholesale Farm Processing Facility: (UPDATED BY AMENDMENT 201)

- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Wholesale Farm Processing Facility where and when accessory to a minimum acreage of land in active crop production. The Wholesale Farm Processing Facility use includes wholesale sales of fresh and processed Raw Produce only. The majority of the Raw Produce sold fresh or processed shall be grown on land within the Township exclusively operated and controlled by the specific Farm Operation that operates and controls the Wholesale Farm Processing Facility. Since a Wholesale Farm Processing Facility is generally an industrial use, the approval and operation of a Wholesale Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Wholesale Farm Processing Facility. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Wholesale Farm Processing Facility is permitted only as an accessory use to the active production of agricultural crops on a Farm Operation in the A-1 Agricultural District subject to the following:
 - 1. Wholesale Sales: Wholesale Sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and further provided:
 - i. All processing shall be conducted indoors.
 - ii. No retail sales or consumption of processed products on the premises is permitted.
 - iii. The Michigan Liquor Control Commission shall grant applicable wholesale liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.
 - iv. The Michigan Department of Agriculture and Rural Development shall grant applicable wholesale food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the Wholesale Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the Wholesale Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the Wholesale Farm Processing Facility, provided that verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Wholesale Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Wholesale Farm Processing Facility in any of the preceding five (5) years.

3. Parcel requirements:

- i. A total of forty (40) acres of land shall be dedicated to the operation of a Wholesale Farm Processing Facility.
- ii. The dedicated forty (40) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Wholesale Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least 65% of the forty (40) acres dedicated to the Wholesale Farm Processing Facility shall be in active crop production each year.
- iii. At least twenty (20) of the dedicated forty (40) acres must be in a contiguous parcel with a minimum parcel width of 330 feet and shall contain the Wholesale Farm Processing Facility. There shall be at least ten (10) acres in active crop production on the same parcel as the Wholesale Farm Processing Facility. The parcel shall not be divided for as long as the Wholesale Farm Processing Facility continues in operation.

- iv. The remaining acreage necessary to meet the 40-acre minimum dedication shall consist of a single contiguous parcel or two contiguous parcels separated only by a road.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Wholesale Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the minimum dedicated forty (40) acres shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Wholesale Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Wholesale Farm Processing Facility including required parking shall be:
- i. Front yard 50 feet;
 - ii. Side and rear yards 200 feet;
5. Wholesale Farm Processing Facility Size: A Wholesale Farm Processing Facility shall not include retail space. The total floor area of a Wholesale Farm Processing Facility above finished grade shall not exceed 250 square feet per acre of land dedicated to the Wholesale Farm Processing Facility and shall not exceed a maximum of 30,000 square feet of total floor area above finished grade. The Wholesale Farm Processing Facility may consist of more than one building; however, all buildings used by the Wholesale Farm Processing Facility shall be located on the 20-acre minimum parcel. Underground floor area may be allowed in addition to the permitted square footage of floor area above finished grade, provided it is entirely below the pre-existing ground level and has no more than one loading dock exposed. **(REVISED BY AMENDMENT 197)**
6. Pre-existing Buildings: (built prior to October 11, 2022) may be used for Wholesale Farm Processing Facilities provided that they are no more than 10,000 square feet in size. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for a Wholesale Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Wholesale Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the Wholesale Farm Processing Facility use is discontinued or curtailed.

8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signs shall conform to the requirements of Section 7.11. **(REVISED BY AMENDMENT 174)**
10. Lighting: All lighting shall conform to the requirements of Section 7.14. **(REVISED BY AMENDMENT 175B)**
11. Access: Access to the Wholesale Farm Processing Facility shall be from a public road. An access permit from the County Road Commission or Michigan Department of Transportation shall be required before a land use permit can be issued.
12. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Data and Records:
 - i. The Farm Operation operating the Wholesale Farm Processing Facility shall annually by April 15 of each year provide data and records to the Director of Planning showing (a) that a minimum of 70 percent of the Raw Produce processed is grown on land in the Township exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.
 - ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
 - iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance.

16. Approval Process:

- i. Site plan review shall be required for all Wholesale Farm Processing Facilities. A site plan drawn to scale (one or more sheets as appropriate) shall be submitted to the Director of Planning along with the appropriate site plan review fee as established by the Township Board.
- ii. The site plan shall include at least:
 1. the parcel or parcels with parcel numbers dedicated to the Wholesale Farm Processing Facility with calls and dimensions on all property lines;
 2. legal descriptions of all parcels;
 3. all existing and proposed structures including setbacks from property lines;
 4. proposed parking, landscaping and lighting;
 5. floor plan showing all processing areas; and
 6. the name, mailing address, and phone number of the Farm Operation.
- iii. Site plan approval for a Wholesale Farm Processing Facility shall be issued by the Director of Planning upon showing that the minimum requirements of this Ordinance, including parcel(s), building size, building height, minimum acreage in crop production, setbacks, and parking are met as well as any requirements of a conservation easement.
- iv. Once the site plan is approved by the Planning Director, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Wholesale Farm Processing Facility permit can be issued.
- vi. No processing or wholesale sales of products shall take place until a final site plan approval is issued by the Director of Planning and a Land Use Permit is issued by the Zoning Administrator. The Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator, and the Zoning Administrator has made an on-site inspection to verify compliance with all the requirements of the Zoning Ordinance.

17. Any violation of the Site Plan Approval issued by the Director of Planning or

Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Site Plan Approval and the Land Use Permit.

18. Residence within a Wholesale Farm Processing Facility. **(ADDED BY AMENDMENT NO 146)** A single-family dwelling may be allowed as part of a structure containing a Wholesale Farm Processing Facility provided the following requirements are met:
- i. The dwelling and Wholesale Farm Processing Facility combined shall not exceed any of the Setback or Facility Size requirements established above;
 - ii. The dwelling shall be the only dwelling on the 20-acre parcel containing the Wholesale Farm Processing Facility.
 - iii. The maximum height of the structure shall be 35 feet or 2 ½ stories, whichever is less. **(UPDATED BY AMENDMENT 201)**

3. Amended Subsection 6.7.3 (22):

- (22)** Retail Farm Processing Facilities: Subject to all requirements of Article VIII, Section 8.7.3(10) and (11). **(UPDATED BY AMENDMENT 201)**

4. Amendments to Table of parking space requirements in Section 7.6.3:

(9) <u>Retail Farm Processing Facilities</u>	One (1) for each one hundred (100) square feet of retail floor space plus one (1) for each employee of maximum working shift, plus three (3) spaces for tour buses or cars with trailers. In addition, truck loading and unloading areas shall be designated.
(10) <u>Wholesale Farm Processing Facilities</u>	Five (5) plus one (1) for each one (1) employee for the largest working shift. In addition, truck loading and unloading areas shall be designated.

5. Amended Subsection 8.7.2 (11):

- (11)** Retail Farm Processing Facilities in the Agricultural District.

6. Amended Subsection 8.7.3 (10):

(10) Retail Farm Processing Facility (Indoors Only): (ADDED BY AMENDMENT 201)

- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility where and when accessory to a minimum acreage of land in active crop production. The Retail Farm Processing Facility use includes wholesale sales and indoor retail sales of fresh and processed Raw Produce only. The majority of the Raw Produce sold fresh or processed shall be grown on land within the Township exclusively operated and controlled by the specific Farm Operation that operates and controls the Retail Farm Processing Facility. Since a Retail Farm Processing Facility is generally an industrial and commercial use, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the Retail Farm Processing Facility use is discontinued or curtailed. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility is permitted only as an accessory use to active production of agricultural crops in the A-1 Agricultural District subject to the following:
1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. The consumption of processed products on premises is permitted indoors only.
 - iii. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including wine.
 - iv. Free entertainment may be provided within a retail sales/Tasting Room indoors only.
 - v. The hours of operation for retail sales, including a Tasting Room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
 - vi. The Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted

hereunder.

- vii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- viii. Those Retail Farm Processing Facilities that hold a liquor license may sell limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility.

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the Retail Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility, provided that verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

3. Parcel Requirements:

- i. A total of fifty (50) acres of contiguous land must be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales.
- ii. The dedicated fifty (50) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least 65% of the fifty (50) acres dedicated to the Retail Farm Processing Facility shall be in active crop

production each year.

- iii. At least thirty (30) of the dedicated fifty (50) acres must be in a contiguous parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility. There shall be at least fifteen and one half (15.5) acres in active crop production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
 - iv. The remaining acreage necessary to meet the 50-acre minimum dedication shall consist of a single contiguous parcel or two contiguous parcels separated only by a road.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the minimum dedicated fifty (50) acres shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility including required parking shall be:
- i. Front Yard Setback: 50 feet.
 - ii. Side and Rear Yard Setback: 200 feet.
5. Retail Farm Processing Facility Size:
- i. The total floor area of the Retail Farm Processing Facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific retail farm processing operation but may not exceed 30,000 square feet of total floor area above finished grade.
 - ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility shall be located on the 30-acre minimum parcel that contains the Retail Farm Processing Facility.
 - iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
 - iv. Retail sales space may be a separate room within a Retail Farm Processing

Facility and shall not exceed 1,500 square feet in area.

- v. A Tasting Room shall be included in the allowable square footage for retail sales.
6. Pre-existing Buildings: (built prior to October 11, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the Retail Farm Processing Facility use is discontinued or curtailed.
8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signage shall conform to the requirements of Section 7.11.
10. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.
11. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
12. Water: Demonstration of adequate water for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility into the site, as approved by the Township Board.

16. Data and Records:

- i. The Farm Operation operating the Retail Farm Processing Facility shall annually by April 15 of each year provide data and records to the Director of Planning showing (a) that a minimum of 70 percent of the Raw Produce processed is grown on land in the Township exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.
- ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
- iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance.

17. Approval Process:

- i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.
- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning.
- vii. The site plan shall include at least:
 1. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 2. legal descriptions for all parcels;
 3. all existing and proposed structures including setbacks from property lines;
 4. proposed parking, landscaping and lighting;
 5. floor plan showing all processing areas; and
 6. the name, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.

- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.
- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.
- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.
- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

7. Amended Subsection 8.7.3 (11):

(11) Retail Farm Processing Facility (with Outdoor Seating): (ADDED BY AMENDMENT 201)

- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility with outdoor seating where and when accessory to a minimum acreage of land in active crop production. The Retail Farm Processing Facility with outdoor seating use includes wholesale sales, indoor retail sales of fresh and processed Raw Produce, and the consumption of fresh and processed Raw Produce within an indoor Tasting Room or outdoor seating area only. The majority of the Raw Produce sold fresh or processed shall be grown on land within the Township exclusively operated and controlled by the specific Farm Operation that operates and controls the Wholesale Farm Processing Facility. Since a Retail Farm Processing Facility is generally an industrial and commercial use, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the Retail Farm Processing Facility use with outdoor seating is discontinued or curtailed. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility with outdoor seating is permitted only as an accessory use to active production of agricultural crops in the A-1 Agricultural District

subject to the following:

1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. The consumption of processed products on premises is permitted indoors and within an approved and clearly defined outdoor seating area.
 - iii. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including wine.
 - iv. Free entertainment may be provided within a retail sales/Tasting Room indoors only.
 - v. The hours of operation for retail sales, including a Tasting Room and approved outdoor seating, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
 - vi. The Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
 - vii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
 - viii. Those Retail Farm Processing Facilities with outdoor seating that hold a liquor license may sell limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. Limited food items purchased indoors may be consumed within an approved outdoor seating area. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility with outdoor seating
2. Sources of Raw Produce:
 - i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
 - ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or

processed by the Retail Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility.

- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility, provided that verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility with outdoor seating in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

3. Parcel Requirements:

- i. A total of sixty (60) acres of contiguous land must be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales and an outdoor seating area for consumption only.
- ii. The dedicated sixty (60) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility with outdoor seating. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least 65% of the sixty (60) acres dedicated to the Retail Farm Processing Facility shall be in active crop production each year.
- iii. At least forty (40) of the dedicated sixty (60) acres must be in a contiguous parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility and outdoor seating. There shall be at least twenty (20) acres in active crop production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
- iv. The remaining acreage necessary to meet the 60-acre minimum dedication shall consist of a single contiguous parcel or two contiguous parcels separated only by a road.
- v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
- vi. None of the minimum dedicated sixty (60) acres shall be used to satisfy

acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.

4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility with outdoor seating including required parking shall be:

- i. Front Yard Setback: 50 feet.
- ii. Side and Rear Yard Setback Building: 200 feet.
- iii. Outdoor Seating Area: 350 feet from all property lines.

5. Retail Farm Processing Facility Size:

- i. The total floor area of the Retail Farm Processing Facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific retail farm processing operation but may not exceed 30,000 square feet of total floor area above finished grade.
- ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility with outdoor seating shall be located on the 40-acre minimum parcel that contains the Retail Farm Processing Facility and outdoor seating area.
- iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
- iv. Retail sales space may be a separate room within a Retail Farm Processing Facility and shall not exceed 1,500 square feet in area.
- v. A Tasting Room shall be included in the allowable square footage for retail sales.

6. Pre-existing Buildings: (built prior to October 11, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.

7. Outdoor Seating Area Size:

- i. The outdoor seating area shall be limited to 750 square feet.
- ii. The maximum occupancy for the outdoor seating area shall be 50 persons at all times.

- iii. The limits of the outdoor seating area shall be clearly defined with a fence and/or combination of fencing and landscaping that provides year-round screening from adjacent properties.
 - iv. No temporary structures including tents or canopies are allowed.
8. Vested Right: Approval of a special use permit for a Retail Farm Processing Facility with outdoor seating shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the Retail Farm Processing Facility with outdoor seating use is discontinued or curtailed.
 9. Parking: Parking shall conform to the requirements of Section 7.6.
 10. Signs: All signage shall conform to the requirements of Section 7.11.
 11. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.
 12. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
 13. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
 14. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
 15. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
 16. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility with outdoor seating into the site, as approved by the Township Board.
 17. Data and Records:
 - i. The Farm Operation operating the Retail Farm Processing Facility with

outdoor seating shall annually by April 15 of each year provide data and records to the Director of Planning showing (a) that a minimum of 70 percent of the Raw Produce processed is grown on land in the Township exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.

- ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
- i. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance.

18. Approval Process:

- i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.
- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning. The site plan shall include at least:
 - 1. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 - 2. legal descriptions for all parcels;
 - 3. all existing and proposed structures including setbacks from property lines;
 - 4. proposed parking, landscaping and lighting;
 - 5. floor plan showing all processing areas; and
 - 6. the name, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility with outdoor seating shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.
- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.

- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.
- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.
- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

8. Delete former Subsection 8.7.3 (10) regarding Winery-Chateaus.

Exhibit 5

Peninsula Township
Township Board Special Meeting
Laura Martin, Recording Secretary

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board Special Meeting

November 1, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.

2. **Pledge**

3. **Roll Call**

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

Absent: Rudolph

4. **Citizen Comments**

Sean Mugerian: I'm the other community police officer here at Peninsula Township. I've been a sheriff's deputy in Grand Traverse County for six years. For five of those years, I resided in Garfield Township. I've been here since January. I want to go over some stats and some rumors. I've compiled some trend statistics. Since January 1 to July 13, I've worked 91 days. These are just my stats. In those 91 working days, I stopped 129 cars and issued 55 citations. 77% of the cars I stopped were residents of Traverse City or Old Mission Peninsula. A lot of times I get calls about the tourists causing all the problems, all the speeding, but statistics don't lie: 77% are the locals. A lot of those people just kind of need to look at themselves in the mirror. I personally have responded to more than 700 calls of service. Some of these are for non-criminal offenses – civil situations, traffic crashes, natural deaths, and residential and commercial alarms. The criminal complaints I've dealt with since being here include assaults, domestic violence situations, larcenies, driving while intoxicated, driving under the influence of drugs, fraud, child abuse, elder abuse, malicious destruction of property, home invasions, suicide, suicide attempts, traffic violations, and extortion. The list goes on and on. We're blessed to be in Old Mission where the crime rate is definitely lower than in other parts of Grand Traverse, but we're not immune. I was told not to look at Facebook or the Next Door app. Unfortunately, I have been. A lot of people post on there and say, "We see our cops always at the township office, always at a park somewhere just sitting." I want you to know we're doing reports. We're trying to get caught up. We're not texting; we're not watching movies. We're just sitting in a quiet area knocking out some of the reports I just mentioned. The other thing is, the department asked me to address the horrible crash yesterday morning involving a bicyclist. There's a lot of rumors circulating about the causes of this crash. There's a lot of false information going around. Obviously, a lot of concerns deal with speed. I promise we're doing our best between calls to try to catch as many speeders as we can, but we

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township board as well as written and verbal comments received from the public. I went through all my notes and tried to capture who made what comment and how it was addressed. If Armen [Shanafelt] made a comment, I noted it was Armen's comment, so he could see that his comment had been addressed. Bill Fahey, our legal counsel, is not present this evening. We had in the memo noted that the township board could adopt the proposed amendments this evening. Now we are recommending that any action this evening be tabled to a special meeting where Mr. Fahey can be with us. Right now, we're looking at next Thursday, November 10, at 1:00 p.m., conducting a special meeting with the township board to adopt the zoning ordinance amendment. We can hear some additional public comment and have a clean version that planning commission, township board, and the public can look at prior to adoption.

There are two primary goals for the proposed amendments to the zoning ordinance. The first goal is to draft an ordinance that is legally defensible based on the issues raised in the WOMP lawsuit. We are also updating the zoning ordinance so that the farm processing use is equitable and even handed for all agricultural operators. There is a list of all of the proposed amendments that will carry forward and any legal notice. I want the agricultural community to know that I have vetted the zoning ordinance with Ryan Coffey Hoag, the chair of the advisory committee for the Right to Farm GAAMPS. He gave me approval to provide his comments. He complimented the township on being proactive in amending the zoning ordinance related to processing. As was noted, this is just the first phase of zoning ordinance amendments related to agricultural policies. He made it very clear that the Right to Farm Act applies to the growing, the production of agricultural products, and then the retail and marketing of those products. Processing totally falls to the township and local zoning. He thought the township was actually very generous in allowing processing in the A1 zone district. As is noted in some of the clarifications in the zoning ordinances, processing is not an agricultural production. It is generally an industrial commercial use and not allowed in an agricultural zone district. It would be allowed in the commercial or industrial zone. But because the township supports agriculture and wants to allow for those value-added opportunities, our zoning ordinance has allowed for it and continues to allow for it. He felt that the township is really trying to be fair to all agricultural operators. He found the proposed standards to be reasonable for processing with regard to parcel size and setbacks based on the character of this community and the input the board and community has had with regard to nuisances. He had no concerns with any conflicts with the Right to Farm Act GAAMPS with regard to processing. I plan to continue to work very closely with Ryan and the Michigan Department of Agricultural and Rural Development. Additional amendments will address our roadside stand standards and agritourism. I have requested from the trustees that I have time on the December agenda to start that discussion to bring forward the concepts that we will be looking at for the roadside stands and agritourism. I will continue to meet with agricultural operators. I would like to commit to having those additional amendments before the board for adoption in the first quarter of 2023. It's heartbreaking to hear that some people believe that rights are being taken away or that we're not considering all agricultural operators when this is, again, just one phase. There are many creative things the township can and will support in providing

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relates to a pending lawsuit, trying to make our zoning ordinance defensible so that we can move forward with applications. The board prioritized this over those other things. But as your planner, I understand the importance of that and I have been listening to the community and I'm excited to bring those other things forward.

Baldyga: it's the worry that they're not being addressed. It's the first time I've heard this. I mean, we talked about it in a roundabout way.

Cram: they're there. There are conversations being had and input received. I plan to present that in a public setting so that the township board can give me, the staff, direction on how to move forward with those policies.

Shanafelt: I appreciate you breaking this up into chunks. It's so convoluted. And I think the only way to address it is to start in digestible pieces. This was a good place to start. Trying to do a full rewrite, we'd be talking another decade before that would be approved.

Cram: the sections that we broke it into were farm processing, roadside stands, and agritourism. The small farm processing is kind of a combination of things but it allows for simple things like having a commercial kitchen so that you can turn your strawberries into jam and pies and things like that.

Chris Patterson: with respect to the zoning and amendments that post a recommendation from the planning commission, the township board does have the ability to adopt the zoning ordinance with or without amendment. That is in the act. With respect to those comments about revisions post recommendation, that would be consistent with the Michigan Zoning and Enabling Act. This is entirely traditional and practiced throughout the state of Michigan.

11. Adjournment

Wahl moved to adjourn with a second by Sanger. Motion approved by consensus
Meeting adjourned at 10:05 p.m.

Exhibit 6

PENINSULA TOWNSHIP

MEMO

To: Township Board
From: Jenn Cram, AICP, Director of Planning
Date: October 26, 2022
Re: Proposed Zoning Ordinance Amendments related to Winery-Chateau and Farm Processing Facilities

The Planning Commission and Township Board held a joint public hearing on October 11, 2022 where proposed amendments to the Peninsula Township zoning ordinance regarding winery-chateaus and farm processing facilities were reviewed, discussed and public comment received.

After the public hearing the Planning Commission formally recommended that the Township Board adopt the proposed amendments as presented in the October 11, 2022 packet along with the recommended amendments that were discussed.

Attached to this memo is a clean and redlined version of proposed amendments to date based on the discussion between the Planning Commission and Township Board as well as written and verbal comments received from the public.

The Township Board may adopt the proposed amendments as presented in the packet and discussed during the November 1, 2022 meeting as all requirements of the Michigan Zoning Enabling Act have been fulfilled.

Goals of Proposed Amendments:

The primary goals for the proposed amendments to the zoning ordinance include:

- Updating the zoning ordinance so that it is legally defensible based on issues raised in the WOMP lawsuit.
- Updating the zoning ordinance so that the farm processing use is equitable and even-handed for all agricultural operators from growing and processing lavender to honey crisp apples to grapes and so on.

List of Proposed Amendments:

Amendments to the zoning ordinance include:

- Removing the Winery-Chateau use under Sections 6.7.3(22), 8.7.2(11) and 8.7.3(10);

- Updating the Farm Processing Facility as a use by right under Section 6.7.2(19);
- Adding new uses for Retail Farm Processing Facilities that are approvable with a Special Use Permit under Sections 6.7.3(22), 8.7.2(11), 8.7.3(10) and (11);
- Modifying Section 3.2 – Definitions as they pertain to Farm Processing Facilities and Winery Chateaus;
- Modifying Section 7.6.3(9) – Off-Street Parking and Loading Requirements by removing Winery-Chateaus and adding requirements for Farm Processing Facilities;
- Modifying Sections 8.7.2(13) and 8.7.3(13) – Remote Tasting Rooms to remove the specificity to wineries and making it applicable generally for alcoholic and non-alcoholic beverages.
- Updating the Table of Contents as appropriate for all proposed amendments.

Staff will walk the board through the proposed revisions from October 11 to November 1. A more detailed summary of proposed amendments and attachments is available in the packet published for the October 11, 2022 joint public hearing.

Both staff and the Township Attorney will be available during the meeting on November 1 to receive input and answer questions.

Attachments:

Attachment A – Proposed Zoning Ordinance Amendments (Clean)

Attachment B – Proposed Zoning Ordinance Amendments (Redlined)

Attachment C – Comparison Chart of Existing and Proposed Uses

Attachment D – Scaled Drawing of a Standard 40-acre Parcel with Setbacks

Attachment A

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**PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN
DRAFT FARM PROCESSING FACILITY AMENDMENTS (AMENDMENT 201)**

1. *New, deleted and amended definitions in Section 3.2:*

Active Production: Active Production means the production of agricultural crops on a continuing basis in accordance with generally-accepted agricultural management practices, including periodic crop rotation and scheduled fallow farming practices.

Alcoholic Liquor: Alcoholic Liquor means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing $\frac{1}{2}$ of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the Michigan Liquor Control Commission according to alcoholic content as belonging to 1 of the varieties defined in Chapter 1 of the Michigan Liquor Control Code of 1998.

Contiguous: Contiguous describes two or more parcels of land with a common boundary or point that may be separated solely by a private roadway or public right-of-way.

Entertainment: Entertainment as it pertains to a Retail Farm Processing Facility with a state-approved liquor license may allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing by issuance of an entertainment permit by the Michigan Liquor Control Commission, provided that such entertainment shall be conducted entirely indoors on the licensed premises and only during Township-approved hours of operation.)

Farm Operation: A Farm Operation is a person, corporation, partnership, or other legal entity engaged in the commercial production of Farm Products on land that it controls and operates within Peninsula Township. **(ADDED BY AMENDMENT 201)**

Farm Products: Farm Products include those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan Department of Agriculture and Rural Development. **(ADDED BY AMENDMENT 201)**

[Delete definition of Farm Processing Facility]

Raw Produce: Raw Produce includes Farm Products in their natural state as harvested, prior to processing. **(ADDED BY AMENDMENT 201)**

Retail Farm Processing Facility – With Indoor Sales: A Retail Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings used as part of the Retail Farm Processing Facility may contain an area for processing equipment where Raw Produce is processed

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or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). An indoor retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including Alcoholic Liquor. The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Retail Farm Processing Facility – With Indoor Sales and Outdoor Seating Area: A Retail Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings used as part of the Retail Farm Processing Facility may contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). An indoor retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including Alcoholic Liquor. In addition to a limited indoor retail sales area with a Tasting Room, a clearly defined outdoor seating area with limited seating capacity may be approved. The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Tasting Room: A room in conjunction with a Retail Farm Processing Facility, including a Remote Tasting Room, where the following takes place; a) tasting of fresh and/or processed Raw Produce such as Alcoholic Liquor and non-alcoholic beverages; b) retail sales of Alcoholic Liquor and non-alcoholic beverages by the bottle for off-premises consumption; and c) sales of Alcoholic Liquor and non-alcoholic beverages by the glass for on- premises consumption. **(ADDED BY AMENDMENT NO 139A)(REVISED BY AMENDMENT NO 181)(REVISED BY AMENDMENT 201)**

Vested Right: A Vested Right is a right protected by law that cannot be impaired or taken away without the owner's consent. **(ADDED BY AMENDMENT 201)**

Viewshed: An area designated as a Viewshed on the Prime Scenic Views Map adopted by the Township Board as Appendix 1 to the Purchase of Development Rights Ordinance, Ordinance #23, as amended. **(ADDED BY AMENDMENT 201)**

Wholesale Farm Processing Facility: A Wholesale Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings may contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale sales. Processing shall be conducted within an entirely enclosed building(s). The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT NO 139A AND REVISED BY AMENDMENT 201)**

[Delete definitions of Winery and Winery-Chateau]

2. Amended Subsection 6.7.2 (19):

(19) Wholesale Farm Processing Facility: (UPDATED BY AMENDMENT 201)

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- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Wholesale Farm Processing Facility only where and when accessory to a minimum acreage of land in Active Production. The Wholesale Farm Processing Facility use includes wholesale sales of fresh and processed Raw Produce only. At least seventy percent (70%) of the Raw Produce sold fresh or processed shall be grown on land within the Township that is exclusively operated and controlled by the specific Farm Operation that operates and controls the accessory Wholesale Farm Processing Facility. Since a Wholesale Farm Processing Facility is considered to be an industrial use that is inconsistent with the A-1 Agricultural District when not accessory to a Farm Operation, the approval and operation of a Wholesale Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Wholesale Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Wholesale Farm Processing Facility use is discontinued or curtailed. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Wholesale Farm Processing Facility is permitted only as an accessory use to a Farm Operation in the A-1 Agricultural District subject to the following:
1. Wholesale Sales: Wholesale Sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and further provided:
 - i. All processing shall be conducted indoors.
 - ii. At least fifty percent (50%) of the ingredients of any processed products sold at the Wholesale Farm Processing Facility shall be derived from Raw Produce grown on land within the Township that is exclusively operated and controlled by the specific Farm Operation that operates and controls the Wholesale Farm Processing Facility.
 - iii. No retail sales or consumption of Raw Produce or processed products on the premises is permitted.
 - iv. If Alcoholic Liquor is proposed to be produced or sold at wholesale on the premises, the Michigan Liquor Control Commission shall grant applicable wholesale liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.
 - v. The Michigan Department of Agriculture and Rural Development shall grant applicable wholesale food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.

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2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the Wholesale Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Wholesale Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Wholesale Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Wholesale Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Wholesale Farm Processing Facility in any of the preceding five (5) years.

3. Parcel requirements:

- i. A total of forty (40) acres of land shall be dedicated to the operation of a Wholesale Farm Processing Facility.
- ii. The dedicated forty (40) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the accessory Wholesale Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five (65%) percent of the forty (40) acres dedicated to the Wholesale Farm Processing Facility shall be in Active Production. The required 65% of the dedicated 40 acres in active production may be reduced by approval of the Township Board if an acceptable planting schedule is approved for a time period not to exceed three (3) years during the initial period of operation.
- iii. At least twenty (20) of the dedicated forty (40) acres must be in a single parcel with a minimum parcel width of 330 feet and shall contain the Wholesale Farm Processing Facility. There shall be at least ten (10) acres in Active Production on the same parcel as the Wholesale Farm Processing Facility. The parcel shall not be divided for as long as the

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Wholesale Farm Processing Facility continues in operation.

- iv. The remaining acreage necessary to meet the 40-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Wholesale Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the minimum dedicated forty (40) acres shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Wholesale Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Wholesale Farm Processing Facility including required parking shall be:
- i. Front yard 50 feet.
 - ii. Side and rear yards 200 feet.
 - iii. No Wholesale Farm Processing Facility shall be located within a Viewshed.
5. Wholesale Farm Processing Facility Size: A Wholesale Farm Processing Facility shall not include retail space. The total floor area of a Wholesale Farm Processing Facility above finished grade shall not exceed 250 square feet per acre of land dedicated to the Wholesale Farm Processing Facility and shall not exceed a maximum of 30,000 square feet of total floor area above finished grade. The Wholesale Farm Processing Facility may consist of more than one building; however, all buildings used by the Wholesale Farm Processing Facility shall be located on the 20-acre minimum parcel. Underground floor area may be allowed in addition to the permitted square footage of floor area above finished grade, provided it is entirely below the pre-existing ground level and has no more than one loading dock exposed. **(REVISED BY AMENDMENT 197)**
6. Pre-existing Buildings: (built prior to November 1, 2022) may be used for Wholesale Farm Processing Facilities provided they are not greater in size than the maximum allowable square footage per acre as referenced above... The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for an accessory Wholesale Farm Processing Facility shall not create any Vested Right in the continued

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non-agricultural use of any structures built or used for a Wholesale Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Wholesale Farm Processing Facility use is discontinued or curtailed.

8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signs shall conform to the requirements of Section 7.11. **(REVISED BY AMENDMENT 174)**
10. Lighting: All lighting shall conform to the requirements of Section 7.14. **(REVISED BY AMENDMENT 175B)**
11. Access: Access to the Wholesale Farm Processing Facility shall be from a public road. An access permit from the County Road Commission or Michigan Department of Transportation shall be required before a land use permit can be issued.
12. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Data and Records:
 - i. The Farm Operation operating the Wholesale Farm Processing Facility shall annually by April 15 of each year provide data and records from the previous calendar year to the Director of Planning demonstrating (a) that a minimum of seventy percent (70%) of the Raw Produce processed is grown on land in the Township that is exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.
 - ii. The above data shall be supplied to the Township in a format or form

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approved by the Director of Planning.

- iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the Land Use Permit.

16. Approval Process:

- i. Site plan review shall be required for all Wholesale Farm Processing Facilities. A site plan drawn to scale (one or more sheets as appropriate) shall be submitted to the Director of Planning along with the appropriate site plan review fee as established by the Township Board.
- ii. The site plan shall include at least:
 - 1. the parcel or parcels with parcel numbers dedicated to the Wholesale Farm Processing Facility with calls and dimensions on all property lines;
 - 2. legal descriptions of all parcels;
 - 3. all existing and proposed structures including setbacks from property lines;
 - 4. proposed parking, landscaping and lighting;
 - 5. floor plan showing all processing areas; and
 - 6. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site plan approval for a Wholesale Farm Processing Facility shall be issued by the Director of Planning upon showing that the minimum requirements of this Ordinance, including parcel(s), building size, building height, minimum acreage in crop production, setbacks, and parking are met as well as any requirements of a conservation easement.
- iv. Once the site plan is approved by the Planning Director, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Wholesale Farm Processing Facility can be issued.
- vi. No processing or wholesale sales of products shall take place until a final site plan approval is issued by the Director of Planning and a Land Use Permit is issued by the Zoning Administrator. The Land Use Permit shall not be issued until copies of all permits required by

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state, federal, and other local licenses and permits have been submitted to the Zoning Administrator, and the Zoning Administrator has made an on-site inspection to verify compliance with all the requirements of the Zoning Ordinance.

17. Any violation of the Site Plan Approval issued by the Director of Planning or Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Site Plan Approval and the Land Use Permit.
18. Residence within a Wholesale Farm Processing Facility. **(ADDED BY AMENDMENT NO 146)** A single-family dwelling may be allowed as part of a structure containing a Wholesale Farm Processing Facility provided the following requirements are met:
 - i. The dwelling and Wholesale Farm Processing Facility combined shall not exceed any of the Setback or Facility Size requirements established above;
 - ii. The dwelling shall be the only dwelling on the 20-acre parcel containing the Wholesale Farm Processing Facility.
 - iii. The dwelling shall meet all dimensional requirements of Section 6.8 for the A-1 Agricultural District. **(UPDATED BY AMENDMENT 201)**

3. Amended Subsection 6.7.3 (22):

- (22)** Retail Farm Processing Facilities: Subject to all requirements of Article VIII, Section 8.7.3(10) and (11). **(UPDATED BY AMENDMENT 201)**

4. Amendments to Table of parking space requirements in Section 7.6.3:

(9) <u>Retail Farm Processing Facilities</u>	<p>One (1) for each one hundred (100) square feet of retail floor space plus one (1) for each employee of maximum working shift, plus three (3) spaces for tour buses or cars with trailers.</p> <p>In addition, truck loading and unloading areas shall be designated.</p>
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(10) <u>Wholesale Farm Processing Facilities</u>	Five (5) plus one (1) for each one (1) employee for the largest working shift. In addition, truck loading and unloading areas shall be designated.
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5. Amended Subsection 8.7.2 (11):

(11) Retail Farm Processing Facilities in the Agricultural District.

6. Amended Subsection 8.7.3 (10):**(10) Retail Farm Processing Facility (Indoors Only): (ADDED BY AMENDMENT 201)**

- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility only where and when accessory to a minimum acreage of land in Active Production. The Retail Farm Processing Facility use includes wholesale sales and indoor retail sales of fresh and processed Raw Produce only. The majority of the Raw Produce sold fresh or processed shall be grown on land within the Township exclusively operated and controlled by the specific Farm Operation that operates and controls the Retail Farm Processing Facility. Since a Retail Farm Processing Facility is considered to be an industrial and commercial use that is inconsistent with the A-1 Agricultural District when not accessory to a Farm Operation, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use is discontinued or curtailed. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility is permitted only as an accessory use to a Farm Operation in the A-1 Agricultural District subject to the following:
1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. At least 50% of the ingredients of any processed products sold at the Retail Farm Processing Facility shall be derived from Raw Produce grown on land within the Township that is exclusively operated and controlled by the specific Farm Operation that operates and controls the Retail Farm Processing

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Facility.

- iii. The consumption of processed products on premises is permitted indoors only.
- iv. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including Alcoholic Liquor.
- v. Free entertainment may be provided within a retail sales/Tasting Room indoors only.
- vi. The hours of operation for retail sales, including a Tasting Room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
- vii. If Alcoholic Liquor is proposed to be produced, consumed, or sold on the premises, the Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- viii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- ix. Those Retail Farm Processing Facilities that hold a liquor license may serve limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility.

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce processed by the accessory Retail Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger

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proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

3. Parcel Requirements:

- i. A total of fifty (50) acres of contiguous land must be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales.
 - ii. The dedicated fifty (50) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five percent (65%) of the fifty (50) acres dedicated to the Retail Farm Processing Facility shall be in Active Production.
 - iii. At least thirty (30) of the dedicated fifty (50) acres must be in a single parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility. There shall be at least fifteen and one half (15.5) acres in Active Production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
 - iv. The remaining acreage necessary to meet the 50-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the minimum dedicated fifty (50) acres shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility including required parking shall be:
- i. Front Yard Setback: 50 feet.

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- ii. Side and Rear Yard Setback: 200 feet.
- iii. No Retail Farm Processing Facility shall be located within a Viewshed.

5. Retail Farm Processing Facility Size:

- i. The total floor area of the Retail Farm Processing Facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific retail farm processing operation but may not exceed 30,000 square feet of total floor area above finished grade.
 - ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility shall be located on the 30-acre minimum parcel that contains the Retail Farm Processing Facility.
 - iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
 - iv. Retail sales space may be a separate room within a Retail Farm Processing Facility and shall not exceed 1,500 square feet in area.
 - v. The area of any Tasting Room shall be included in the total allowed square footage for retail sales.
6. Pre-existing Buildings: (built prior to November 1, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for an accessory Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use is discontinued or curtailed.
8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signage shall conform to the requirements of Section 7.11.
10. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.

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11. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
12. Water: Demonstration of adequate water for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility into the site, as approved by the Township Board.
16. Data and Records:
 - i. The Farm Operation operating the Retail Farm Processing Facility shall annually by April 15 of each year provide data and records from the previous year to the Director of Planning demonstrating (a) that a minimum of seventy (70%) percent of the Raw Produce processed is grown on land in the Township exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.
 - ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
 - iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the special use permit.
17. Approval Process:
 - i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.

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- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning.
- vii. The site plan shall include at least:
 - 1. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 - 2. legal descriptions for all parcels;
 - 3. all existing and proposed structures including setbacks from property lines;
 - 4. proposed parking, landscaping and lighting;
 - 5. floor plan showing all processing areas; and
 - 6. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.
- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.
- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.
- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.
- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

7. Amended Subsection 8.7.3 (11):

*Draft: October 27, 2022***(11) Retail Farm Processing Facility (with Outdoor Seating): (ADDED BY AMENDMENT 201)**

- (a) Statement of Intent: It is the intent of this subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility with outdoor seating only where and when accessory to a minimum acreage of land in Active Production. The Retail Farm Processing Facility with outdoor seating use includes wholesale sales, indoor retail sales of fresh and processed Raw Produce, and the consumption of fresh and processed Raw Produce within an indoor Tasting Room or outdoor seating area only. The majority of the Raw Produce sold fresh or processed shall be grown on land within the Township exclusively operated and controlled by the specific Farm Operation that operates and controls the Wholesale Farm Processing Facility. Since a Retail Farm Processing Facility is considered to be an industrial and commercial use that is inconsistent with the A-1 Agricultural District when not accessory to a Farm Operation, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use with outdoor seating is discontinued or curtailed. This Section shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility with outdoor seating is permitted only as an accessory use to a Farm Operation in the A-1 Agricultural District subject to the following:
1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of subsection (b) 2 and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. At least 50% of the ingredients of any processed products sold at the Retail Farm Processing Facility shall be derived from Raw Produce grown on land within the Township that is exclusively operated and controlled by the specific Farm Operation that operates and controls the Retail Farm Processing Facility.
 - iii. The consumption of processed products on premises is permitted indoors and within an approved and clearly defined outdoor seating area.
 - iv. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including Alcoholic Liquor.
 - v. Free entertainment may be provided within a retail sales/Tasting Room indoors only.

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- vi. The hours of operation for retail sales, including a Tasting Room and approved outdoor seating, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
- vii. If Alcoholic Liquor is proposed to be produced, consumed, or sold on the premises, the Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- viii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- ix. Those Retail Farm Processing Facilities with outdoor seating that hold a liquor license may serve limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. Limited food items purchased indoors may be consumed within an approved outdoor seating area. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility with outdoor seating

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce processed by the accessory Retail Farm Processing Facility shall be grown on land within the Township that is controlled and operated by the specific Farm Operation that operates the Retail Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility with outdoor seating in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

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3. Parcel Requirements:

- i. A total of sixty (60) acres of contiguous land must be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales and an outdoor seating area for consumption only.
- ii. The dedicated sixty (60) acres shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility with outdoor seating. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five percent (65%) of the sixty (60) acres dedicated to the Retail Farm Processing Facility shall be in Active Production.
- iii. At least forty (40) of the dedicated sixty (60) acres must be in a single parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility and outdoor seating. There shall be at least twenty (20) acres in Active Production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
- iv. The remaining acreage necessary to meet the 60-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
- v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
- vi. None of the minimum dedicated sixty (60) acres shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.

4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility with outdoor seating including required parking shall be:

- i. Front Yard Setback: 50 feet.
- ii. Side and Rear Yard Setback: 200 feet.
- iii. Outdoor Seating Area: 350 feet from all property lines to minimize negative impacts to neighboring properties from noise, light and odors.
- iv. No Retail Farm Processing Facility shall be located within a Viewshed.

5. Retail Farm Processing Facility Size:

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- i. The total floor area of the Retail Farm Processing Facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific retail farm processing operation but may not exceed 30,000 square feet of total floor area above finished grade.
 - ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility with outdoor seating shall be located on the 40-acre minimum parcel that contains the Retail Farm Processing Facility and outdoor seating area.
 - iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
 - iv. Retail sales space may be a separate room within a Retail Farm Processing Facility and shall not exceed 1,500 square feet in area.
 - v. The area of any Tasting Room shall be included in the total allowed square footage for retail sales.
6. Pre-existing Buildings: (built prior to November 1, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Outdoor Seating Area Size:
- i. The outdoor seating area shall be limited to 750 square feet.
 - ii. The maximum occupancy for the outdoor seating area shall be 50 persons at all times.
 - iii. The limits of the outdoor seating area shall be clearly defined with a fence and/or combination of fencing and landscaping that provides year-round screening from adjacent properties.
 - iv. Table umbrellas or permanent shade structures are permitted.
 - v. No temporary structures including tents or canopies are allowed.
8. Vested Right: Approval of a special use permit for an accessory Retail Farm Processing Facility with outdoor seating shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right

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in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility with outdoor seating use is discontinued or curtailed.

9. Parking: Parking shall conform to the requirements of Section 7.6.
10. Signs: All signage shall conform to the requirements of Section 7.11.
11. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.
12. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
13. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
15. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
16. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility with outdoor seating into the site, as approved by the Township Board.
17. Data and Records:
 - i. The Farm Operation operating the Retail Farm Processing Facility with outdoor seating shall annually by April 15 of each year provide data and records from the previous year to the Director of Planning demonstrating (a) that a minimum of seventy percent (70%) of the Raw Produce processed is grown on land in the Township exclusively controlled and operated by that Farm Operation, and (b) all land within the Township controlled and operated by the Farm Operation meets minimum acreage requirements.
 - ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
 - i. Any change in the above shall be submitted in writing to the Director of

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Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the special use permit.

18. Approval Process:

- i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.
- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning. The site plan shall include at least:
 1. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 2. legal descriptions for all parcels;
 3. all existing and proposed structures including setbacks from property lines;
 4. proposed parking, landscaping and lighting;
 5. floor plan showing all processing areas; and
 6. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility with outdoor seating shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.
- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.
- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.
- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.

- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

8. Delete former Subsection 8.7.3 (10) regarding Winery-Chateaus.

9. Amended Subsection 8.7.3 (13): (REVISED BY AMENDMENT 201)

(13) Remote Tasting Rooms:

- (a) Statement of Intent: It is the intent of this subsection to allow tasting of Alcoholic Liquor and non-alcoholic beverages in a tasting room that is not on the same property as the farm processing facility with which it is associated and to establish reasonable standards for the use.
- (b) There shall be a minimum parcel size of five (5) acres.
- (c) The five-acre parcel shall not have another use such as housing, but may be used for the Active Production of agricultural crops.
- (d) The building used for the Remote Tasting Room shall be consistent with the neighborhood character within one-half mile of the proposed building. Preliminary building elevations shall be submitted with the special use permit application showing roof type, pitch, and color, and siding type and color. The adaptive re-use of existing structures is encouraged.
- (e) The Remote Tasting Room, the parcel on which it is located, and the Farm Processing Facility with which it is associated shall be exclusively controlled and operated by a Farm Operation that also exclusively controls and operates a minimum of 150 acres in Peninsula Township evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least 50% of the 150 acres shall be in Active Production of agricultural crops.
- (f) Tasting of Alcoholic Liquor and non-alcoholic beverages produced by the Farm Operation that controls and operates the Remote Tasting Room shall be the only products tasted in the Remote Tasting Room.
- (g) Sales of Alcoholic Liquor and non-alcoholic beverages by the bottle produced by the Farm Operation that controls and operates the Remote Tasting Room are allowed for off- premises consumption. Sales of Alcoholic Liquor by the glass produced by the Farm Operation that controls and operates the Remote Tasting Room are allowed pursuant to the minimum requirements of the Michigan Liquor Control Commission rules and related Michigan Department of Agriculture permits regarding the sales of limited food items for on-premises consumption, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.

- (h) Those Remote Tasting Rooms that hold a liquor license may serve limited food items indoors to offset the effects of consuming alcohol. Food items are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No restaurants, cafes or off-site catering shall be permitted as part of a Remote Tasting Room.

Exhibit 7

Peninsula Township
Township Board Special Meeting
Laura Martin, Recording Secretary

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board Regular Meeting

December 13, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.
2. **Pledge**
3. **Roll Call**

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

Also present: Attorney Bill Fahey via Zoom

4. **Citizen Comments**

Barbara Hansen, 6438 Mission Ridge: I was elected to a school board three times, so I'm more comfortable being on that side than this side. I'm coming to you about numbers five and six with a totally different outlook than you've probably heard before. When Reverend Peter Dougherty came to what became known as Old Mission in 1839, the Ottawa and Chippewa were already farming here. They had three sisters' gardens and medicinal herbs. This was already an agricultural area. When Dougherty left and followed them, they were already farming more than 200 acres. When Solon Rushmore bought the property, he took apples to the Wisconsin State Fair and said, "This is a great place to grow fruit." By 1917, 110,000 big wooden barrels were [filled with apples] in Old Mission because of Revenue Dougherty and the two cultures coming together as friends. They were shipping dried apples all over the world from the dock that Patty [Rudolph] jumped off as a kid. I'm relatively new, only about a five-year resident up here, but my husband's family had a cottage here for years, so we have a vested interest. As a citizen, I am dismayed to see the war that's going on, and it is portrayed as a war. I want to see the five- and six-generation farmers listened to and not seen as adversaries. If the Chippewa and the Ottawa and Reverend Dougherty could get along, you all should be able to get along and not spend so much money on attorneys. You should be able to sit down and hash this out. We need to preserve the culture that was here in the first place, which was agriculture, and two different cultures getting along.

Dan Fouch, 15259 Smokey Hollow Road: I'd like to address the issue of building wineries. I've lived on Old Mission my entire life. I bought my first cherry farm in 1972. I later bought my parents' farm, the farm I grew up on. I continued to farm the entire 125 acres until my wife and I decided to sell. We finished our final day of harvest just a few weeks ago. When we decided to sell, our goal was for the farm to remain a farm and not be developed. Since we still owned all the development rights to the property, it was obvious we could sell for

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proposed changes that were discussed at the time by a vote of six to one. The township board met again on November 1. We brought forward those changes that were discussed at the October 11 meeting, and those were done via tracked changes so that everything is transparent. We are following the Michigan Zoning Enabling Act. It's my job to take notes and to do the drafting, but I am not making any changes that have not been vetted by either the planning commission or the board. **At a closed session on November 10, the board met with legal counsel to discuss a legal opinion in order to make some changes to the zoning ordinance so that it would be more easily defensible with regard to commerce clause claims that have been raised in the WOMP lawsuit.** Additional changes were proposed as a result. Those are highlighted in the redline version that was posted to the website. All of these changes and when they were made have been posted to the website so that you can see the changes from each meeting as well as the clean version as we move forward. The Michigan Zoning Enabling Act allows that after the planning commission makes its recommendation, your elected board as your legislative body can make additional changes. That is consistent with the Michigan Zoning Enabling Act. In order to allow everybody due process, we got those amendments out 15 days before this meeting so that everybody could review them and make comments. Thank you all for reviewing that material and making comments today.

These amendments are also consistent with the Right to Farm Act. Farm processing is an industrial and commercial use. It is not protected or covered under the Right to Farm Act. The Right to Farm Act protects farmers, supporting them to grow and to produce. It also protects them to be able to market and sell. But processing is different. It's left to local zoning to develop processing standards because of the negative impacts that result from noises and smells and things like that. Because Peninsula Township supports agriculture and value-added agriculture, our zoning ordinance includes farm processing. There has been farm processing as a use by right that requires 40 acres. The proposed amendment continues to offer a use by right with a minimum of 40 acres. The existing winery-chateau ordinance requires a minimum of 50 acres that allows for retail sales. The proposed amendments still allow for that use with a minimum of 50 acres. These amendments establish that farm processing requires you to actually grow what you are processing. Farm processing is accessory to the primary use of the land, which is active production. There have been a number of definitions added that help to explain these things.

The other misconception is the difference between processing and handling produce. There is a clear distinction between processing, which is changing the form of the raw produce, and handling, which is growing, picking, cleaning, sorting, etc. The handling of agricultural products is still a use by right protected by Right to Farm. This ordinance doesn't attempt to change that.

The acreages as proposed help to mitigate the negative impacts. We heard about the wedding that took place and the complaints about noise. What the zoning ordinance can do is [require] setbacks that can separate those uses and allow for buffers to help mitigate those things.

Hours of operation also help to mitigate negative impacts. All of these standards have been approached by scale. Farm processing with wholesale sales that is less intensive than

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Shanafelt: can you talk us through how you ended up at 65%?

Cram: this was the result of a conversation I had with Chris Baldyga, owner of Two Lads. Via the existing winery-chateau and farm processing [ordinance] as a use by right, they are currently required to process 85% of produce grown here on the peninsula. There's no requirement really that they grow much of anything. They just have to process 85% of what's grown here on the peninsula. He is one of the three farm processing facilities that is functioning right now as a use by right. He said based on what he's currently growing and buying from other agricultural operators, he was close to meeting that 70/30 but he was probably functioning more at 65/35. I also looked at the letter that was submitted by the farmers opposed to this and some names stuck out. I know they're not interested in having a farm processing facility; they just want to grow grapes and sell them to the producers here. I didn't want that to be limited or to change. Based on what I heard, I think this is a good starting place. **A zoning ordinance is intended to be a living document. It can be changed, just as we're making changes now.** If we hear from the agricultural community that this isn't working or that there are unintended consequences that we don't want, we will fix it.

Wahl: if I remember correctly from the joint meeting, the gentleman who voted against this felt this was a big issue. He wanted it closer to 60.

Cram: I believe this is reasonable. We want to continue to support the growers.

Edmondson asks question from audience with permission from Wunsch: what do you mean, "The processing can't predominate over the growing of the raw product"?

Cram: that goes back to addressing the commerce clause because we need to be more flexible with where the farm operation and production occur and where the produce comes from. We didn't want the processing of products coming from outside Old Mission Peninsula to dominate what's being grown here. We want to support this community and the growing of agricultural produce here. Processing is essentially an industrial and commercial use. We don't want that industrial or commercial use to dominate over the primary or principal use, which is the growing of agricultural crops.

Edmondson: so what did you mean about having property over in Leelanau Country? It sounds like I can't bring that over here if it exceeded that?

Wunsch: you would be able to because it's part of your farm operation.

Cram: your 65% requirement comes from your farm operation here and possibly other areas. In order to have a farm processing facility here, you have to have the minimum 40 acres as a use by right, and 65% of that 40 acres has to be in active production. But if you also have a farm operation somewhere else, the processing requirement, the 65%, comes from your [entire] farm operation. We just want to make sure that the other kind of incidental parts of the processing does not predominate over the growing of crops here.

Edmondson: where does predominant kick in? Of what percent?

Cram: when you go through the entire zoning ordinance, there is a requirement for data and records. With this use, you would be required to provide your data and records to demonstrate that you continue to control the 40 acres and 65% of that 40 acres is in active production, you are processing 65% of what your farm operation grows, and your processed goods include 50% of what you produce on your farm operation. That's where

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Laura Martin, Recording Secretary

engagement by our residents in this process. I appreciate those efforts to let us, the board and the planning commission, understand your views. This is obviously complicated due to the diverse perspectives across the peninsula. It has led to a solution that does a good job of addressing the complexity of Peninsula Township. I don't expect everyone to be happy with the outcome, but I do think this is something we can live with. As Jenn pointed out, we can modify as we go forward. [The new ordinance amendment] does address the many different perspectives and needs that currently form the township and how it is moving forward. I want to exemplify that. It's not perfect, but we're trying to do the best job we can to make it work. This is really the first step. I look forward to the further development of our ordinances and how they evolve to support our community.

Wunsch: thank you, everyone, for showing up this evening. Thanks for your input. This is not a one and done; we will continue working through these ordinances to look at continuous improvement. What we have now provides us with a really solid foundation that we were lacking before. I joined the planning commission in 2014. The ordinances that were just repealed were the third rail of politics in the township because there were a lot of pieces that neither constituency wanted. I think what we're going to find with the ordinance language that was adopted this evening is that there will be more ability to change, to modify as necessary, and to look at layering in different policies. We can have that menu option instead of a golden ticket for anyone who gets a winery-chateau SUP. Directionally, the changes that were made are good and will leave us with opportunities to continuously improve rather than be stuck with something that no one really likes.

Shanafelt moved to go into closed session to further consider a written confidential legal opinion from the township attorney regarding Mari Vineyards pursuant to MCL 15.268 (1)(h) and MCL 15.243 (1)(g) with support from Chown.

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

Closed session entered at 9:14 p.m.

Wahl moved to come out of closed session at 10:05 p.m. with a second from Sanger.

Roll call vote: yes – Wahl, Sanger, Shanafelt, Rudolph, Chown, Wunsch

Achorn absent and excused

Passed by majority

11. Adjournment

Wahl moved to adjourn with a second by Wunsch.

Motion approved by consensus

Adjourned at 10:05 p.m.

Exhibit 8

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**PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN
DRAFT FARM PROCESSING FACILITY AMENDMENTS (AMENDMENT 201)**

1. New, deleted and amended definitions in Section 3.2:

Active Production: Active Production means the production of agricultural crops on a continuing basis in accordance with generally-accepted agricultural management practices, including periodic crop rotation and scheduled fallow farming practices. **(ADDED BY AMENDMENT 201)**

Alcoholic Liquor: Alcoholic Liquor means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the Michigan Liquor Control Commission according to alcoholic content as belonging to 1 of the varieties defined in Chapter 1 of the Michigan Liquor Control Code of 1998.**(ADDED BY AMENDMENT 201)**

Contiguous: Contiguous describes two or more parcels of land with a common boundary or point that may be separated solely by a private roadway or public right-of-way. **(ADDED BY AMENDMENT 201)**

Entertainment: Entertainment as it pertains to a Retail Farm Processing Facility with a state-approved liquor license may allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing by issuance of an entertainment permit by the Michigan Liquor Control Commission, provided that such entertainment shall be conducted entirely indoors on the licensed premises and only during Township-approved hours of operation. **(ADDED BY AMENDMENT 201)**

Farm Operation: A Farm Operation is a person, corporation, partnership, or other legal entity engaged in the commercial production of Farm Products on land that it controls and operates. **(ADDED BY AMENDMENT 201)**

Farm Products: Farm Products include those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan Department of Agriculture and Rural Development. **(ADDED BY AMENDMENT 201)**

[Delete definition of Farm Processing Facility]

Processing: The alteration or change in form of Raw Produce through crushing, cooking, chemical reaction, fermentation, distillation, or other methods, but not including the picking, sorting, or handling of Raw Produce in preparation for wholesale sale in its natural state. **(ADDED BY AMENDMENT 201)**

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Raw Produce: Raw Produce includes Farm Products in their natural state as harvested, prior to Processing. **(ADDED BY AMENDMENT 201)**

Retail Farm Processing Facility – With Indoor Sales: A Retail Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings used as part of the Retail Farm Processing Facility may contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). An indoor retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including Alcoholic Liquor. The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Retail Farm Processing Facility – With Indoor Sales and Outdoor Seating Area: A Retail Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings used as part of the Retail Farm Processing Facility may contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a limited area indoors for retail sales to customers. Processing and retail sales shall be conducted within an entirely enclosed building(s). An indoor retail sales area may include a Tasting Room for the consumption of fresh or processed Raw Produce, including Alcoholic Liquor. In addition to a limited indoor retail sales area with a Tasting Room, a clearly defined outdoor seating area with limited seating capacity may be approved. The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 201)**

Tasting Room: A room in conjunction with a Retail Farm Processing Facility, including a Remote Tasting Room, where the following takes place; a) tasting of fresh and/or processed Raw Produce such as Alcoholic Liquor and non-alcoholic beverages; b) retail sales of Alcoholic Liquor and non-alcoholic beverages by the bottle for off-premises consumption; and c) sales of Alcoholic Liquor and non-alcoholic beverages by the glass for on- premises consumption. **(ADDED BY AMENDMENT 139A)(REVISED BY AMENDMENT 181)(REVISED BY AMENDMENT 201)**

Vested Right: A Vested Right is a right protected by law that cannot be impaired or taken away without the owner's consent. **(ADDED BY AMENDMENT 201)**

Viewshed: An area designated as a Viewshed on the Prime Scenic Views Map adopted by the Township Board as Appendix 1 to the Purchase of Development Rights Ordinance, Ordinance #23, as amended. **(ADDED BY AMENDMENT 201)**

Wholesale Farm Processing Facility: A Wholesale Farm Processing Facility is an accessory use to a Farm Operation. The building or buildings may contain an area for processing equipment where Raw Produce is processed or packaged and prepared for wholesale sales. Processing shall be conducted within an entirely enclosed building(s). The facility shall also include direct access from a public road as well as parking, lighting and landscaping. **(ADDED BY AMENDMENT 139A)(REVISED BY AMENDMENT 201)**

[Delete definitions of Winery and Winery-Chateau]

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2. Amended Subsection 6.7.2 (19):**(19) Wholesale Farm Processing Facility: (REVISED BY AMENDMENT 201)**

- (a) Statement of Intent: It is the intent of this Subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Wholesale Farm Processing Facility only where and when accessory to a minimum dedicated acreage of a Farm Operation's land in Active Production within the Township, and that accessory use does not predominate over the Farm Operation's Active Production within the Township. The Wholesale Farm Processing Facility accessory use includes wholesale sales of fresh and processed Raw Produce only. At least seventy percent (70%) of the Raw Produce sold fresh or processed shall be grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the accessory Wholesale Farm Processing Facility. Since a Wholesale Farm Processing Facility is considered to be an industrial use that is inconsistent with the A-1 Agricultural District when not accessory and subordinate to a Farm Operation, the approval and operation of a Wholesale Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for an accessory Wholesale Farm Processing Facility or the land dedicated to the Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Wholesale Farm Processing Facility use is discontinued or curtailed. This Subsection shall not supersede or amend the terms of any conservation easement.
- (b) A Wholesale Farm Processing Facility is permitted only as an accessory use subordinate to a Farm Operation in the A-1 Agricultural District and shall not predominate over the Farm Operation's Active Production within the Township. An accessory Wholesale Farm Processing Facility shall be subject to the following requirements:
1. Wholesale Sales: Wholesale Sales of fresh or processed Raw Produce are allowed subject to the requirements of Subsection (19)(b) 2 of this Section and further provided:
 - i. All processing shall be conducted indoors.
 - ii. At least 50% of the ingredients of any processed products sold at the Wholesale Farm Processing Facility shall be derived from Raw Produce grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the Wholesale Farm Processing Facility.
 - iii. No retail sales or consumption of Raw Produce or processed products on the premises is permitted.
 - iv. If Alcoholic Liquor is proposed to be produced or sold at wholesale on the premises, the Michigan Liquor Control Commission shall grant applicable wholesale liquor licenses and regulate compliance with

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those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.

- v. The Michigan Department of Agriculture and Rural Development shall grant applicable wholesale food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and permits granted hereunder.

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce of the same species of Farm Products as are raised by the Farm Operation on the parcel on which the Wholesale Farm Processing Facility is located. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the Wholesale Farm Processing Facility shall be grown on land that is controlled and operated by the specific Farm Operation that operates the accessory Wholesale Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Wholesale Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Wholesale Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Wholesale Farm Processing Facility in any of the preceding five (5) years.

3. Parcel requirements:

- i. At least forty (40) acres of land shall be dedicated to the operation of a Wholesale Farm Processing Facility.
- ii. The dedicated acreage shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the accessory Wholesale Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five (65%) percent of the acreage dedicated to the Wholesale Farm Processing Facility shall be in Active Production.
- iii. At least twenty (20) acres of the dedicated land must be in a single

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parcel with a minimum parcel width of 330 feet and shall contain the Wholesale Farm Processing Facility. There shall be at least ten (10) acres in Active Production on the same parcel as the Wholesale Farm Processing Facility. The parcel shall not be divided for as long as the Wholesale Farm Processing Facility continues in operation.

- iv. The remaining acreage necessary to meet the 40-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Wholesale Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the dedicated land shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Wholesale Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Wholesale Farm Processing Facility including required parking shall be:
- i. Front yard 50 feet.
 - ii. Side and rear yards 200 feet.
 - iii. No Wholesale Farm Processing Facility shall be located within a Viewshed.
5. Wholesale Farm Processing Facility Size:
- i. A Wholesale Farm Processing Facility shall not include retail space.
 - ii. The total floor area of a Wholesale Farm Processing Facility above finished grade shall not exceed 250 square feet per acre of land comprising the dedicated parcel that contains the Wholesale Farm Processing Facility and shall not exceed a maximum of 30,000 square feet of total floor area above finished grade.
 - iii. The Wholesale Farm Processing Facility may consist of more than one building; however, all buildings used by the Wholesale Farm Processing Facility shall be located on the 20-acre minimum parcel that contains the accessory Wholesale Farm Processing Facility and shall not collectively exceed the floor area allowed by Subsection (19)(b) 5 ii above.
 - iv. Underground floor area may be allowed in addition to the permitted square footage of floor area above finished grade, provided it is entirely below the pre-existing ground level and has no more than one

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loading dock exposed. **(REVISED BY AMENDMENT 197)**

6. Pre-existing Buildings: (built prior to December 13, 2022) may be used for Wholesale Farm Processing Facilities provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for an accessory Wholesale Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Wholesale Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Wholesale Farm Processing Facility use is discontinued or curtailed.
8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signs shall conform to the requirements of Section 7.11. **(REVISED BY AMENDMENT 174)**
10. Lighting: All lighting shall conform to the requirements of Section 7.14. **(REVISED BY AMENDMENT 175B)**
11. Access: Access to the Wholesale Farm Processing Facility shall be from a public road. An access permit from the County Road Commission or Michigan Department of Transportation shall be required before a land use permit can be issued.
12. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Data and Records:
 - i. The Farm Operation operating the Wholesale Farm Processing

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Facility shall annually by April 15 of each year provide data and records from the previous calendar year to the Director of Planning demonstrating that (a) a minimum of seventy percent (70%) of the Raw Produce processed is grown on land that is exclusively controlled and operated by that Farm Operation, (b) a minimum of fifty percent (50%) of the ingredients of any processed products sold was derived from Raw Produce grown on land that is exclusively operated and controlled by that Farm Operation and (c) all land within the Township controlled and operated by the Farm Operation meets the dedicated acreage requirements.

- ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
- iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the Land Use Permit.

16. Approval Process:

- i. Site plan review shall be required for all Wholesale Farm Processing Facilities. A site plan drawn to scale (one or more sheets as appropriate) shall be submitted to the Director of Planning along with the appropriate site plan review fee as established by the Township Board.
- ii. The site plan shall include at least:
 - a. the parcel or parcels with parcel numbers dedicated to the Wholesale Farm Processing Facility with calls and dimensions on all property lines;
 - b. legal descriptions of all parcels;
 - c. all existing and proposed structures including setbacks from property lines;
 - d. proposed parking, landscaping and lighting;
 - e. floor plan showing all processing areas; and
 - f. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site plan approval for a Wholesale Farm Processing Facility shall be issued by the Director of Planning upon showing that the minimum requirements of this Ordinance, including parcel(s), building size, building height, minimum acreage in crop production, setbacks, and parking are met as well as any requirements of a conservation easement.
- iv. Once the site plan is approved by the Planning Director, a Land Use

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Permit application may be submitted to the Zoning Administrator.

- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Wholesale Farm Processing Facility can be issued.
 - vi. No processing or wholesale sales of products shall take place until a final site plan approval is issued by the Director of Planning and a Land Use Permit is issued by the Zoning Administrator. The Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator, and the Zoning Administrator has made an on-site inspection to verify compliance with all the requirements of the Zoning Ordinance.
 - vii. Any violation of the Site Plan Approval issued by the Director of Planning or Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Site Plan Approval and the Land Use Permit.
17. Residence within a Wholesale Farm Processing Facility. **(ADDED BY AMENDMENT NO 146)** A single-family dwelling may be allowed as part of a structure containing a Wholesale Farm Processing Facility provided the following requirements are met:
- i. The dwelling and Wholesale Farm Processing Facility combined shall not exceed any of the Setback or Facility Size requirements established above;
 - ii. The dwelling shall be the only dwelling on the 20-acre parcel containing the Wholesale Farm Processing Facility.
 - iii. The dwelling shall meet all dimensional requirements of Section 6.8 for the A-1 Agricultural District. **(UPDATED BY AMENDMENT 201)**

3. Amended Subsection 6.7.3 (22):

- (22)** Retail Farm Processing Facilities: Subject to all requirements of Article VIII, Section 8.7.3(10) and (11). **(UPDATED BY AMENDMENT 201)**

4. Amendments to Table of parking space requirements in Section 7.6.3:

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(9) <u>Retail Farm Processing Facilities</u>	One (1) for each one hundred (100) square feet of retail floor space plus one (1) for each employee of maximum working shift, plus three (3) spaces for tour buses or cars with trailers. In addition, truck loading and unloading areas shall be designated.
(10) <u>Wholesale Farm Processing Facilities</u>	Five (5) plus one (1) for each one (1) employee for the largest working shift. In addition, truck loading and unloading areas shall be designated.

5. Amended Subsection 8.7.2 (11):

(11) Retail Farm Processing Facilities in the A-1 Agricultural District.

6. Amended Subsection 8.7.3 (10):**(10) Retail Farm Processing Facility (Indoors Only): (ADDED BY AMENDMENT 201)**

- (a) Statement of Intent: It is the intent of this Subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility only where and when accessory to a minimum dedicated acreage of a Farm Operation's land in Active Production within the Township, and that accessory use does not predominate over the Farm Operation's Active Production within the Township. The Retail Farm Processing Facility accessory use includes wholesale sales and indoor retail sales of fresh and processed Raw Produce only. At least seventy percent (70%) of the Raw Produce sold fresh or processed shall be grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the accessory Retail Farm Processing Facility. Since a Retail Farm Processing Facility is considered to be an industrial and commercial use that is inconsistent with the A-1 Agricultural District when not accessory and subordinate to a Farm Operation, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for an accessory Retail Farm Processing Facility or the land dedicated to the Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use is discontinued or curtailed. This Subsection shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility is permitted by special use permit only as an accessory use subordinate to a Farm Operation in the A-1 Agricultural District and

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shall not predominate over the Farm Operation's Active Production within the Township. An accessory Retail Farm Processing Facility shall be subject to the following requirements:

1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of Subsection (10)(b) 2 of this Section and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. At least 50% of the ingredients of any processed products sold at the Retail Farm Processing Facility shall be derived from Raw Produce grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the Retail Farm Processing Facility.
 - iii. The consumption of processed products on premises is permitted indoors only.
 - iv. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including Alcoholic Liquor.
 - v. Free entertainment may be provided within a retail sales/Tasting Room indoors only.
 - vi. The hours of operation for retail sales, including a Tasting Room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
 - vii. If Alcoholic Liquor is proposed to be produced, consumed, or sold on the premises, the Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
 - viii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
 - ix. Those Retail Farm Processing Facilities that hold a liquor license may serve limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility.

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2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce of the same species of Farm Products as are raised by the Farm Operation on the parcel on which the Retail Farm Processing Facility is located. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the accessory Retail Farm Processing Facility shall be grown on land that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility.
- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

3. Parcel Requirements:

- i. At least fifty (50) acres of contiguous land shall be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales.
- ii. The dedicated acreage shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five percent (65%) of the acreage dedicated to the Retail Farm Processing Facility shall be in Active Production.
- iii. At least thirty (30) of the dedicated acres must be in a single parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility. There shall be at least fifteen (15) acres in Active Production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
- iv. The remaining acreage necessary to meet the 50-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
- v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1)

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additional single-family dwelling may be located on the remaining dedicated acreage.

- vi. None of the dedicated land shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility including required parking shall be:
- i. Front Yard Setback: 50 feet.
 - ii. Side and Rear Yard Setback: 200 feet.
 - iii. No Retail Farm Processing Facility shall be located within a Viewshed.
5. Retail Farm Processing Facility Size:
- i. The total floor area of the Retail Farm Processing Facility above finished grade shall not exceed 250 square feet per acre of land comprising the dedicated parcel that contains the Retail Farm Processing Facility and shall not exceed 30,000 square feet of total floor area above finished grade.
 - ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility shall be located on the 30-acre minimum parcel that contains the Retail Farm Processing Facility and shall not collectively exceed the floor area allowed by Subsection (10)(b) 5 i above.
 - iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
 - iv. Retail sales space may be a separate room within a Retail Farm Processing Facility and shall not exceed 1,500 square feet in area.
 - v. The area of any Tasting Room shall be included in the total allowed square footage for retail sales.
6. Pre-existing Buildings: (built prior to December 13, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.
7. Vested Right: Approval of a special use permit for an accessory Retail Farm Processing Facility shall not create any Vested Right in the continued non-

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agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use is discontinued or curtailed.

8. Parking: Parking shall conform to the requirements of Section 7.6.
9. Signs: All signage shall conform to the requirements of Section 7.11.
10. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.
11. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
12. Water: Demonstration of adequate water for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
13. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Retail Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
14. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
15. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility into the site, as approved by the Township Board.
16. Data and Records:
 - i. The Farm Operation operating the Retail Farm Processing Facility shall annually by April 15 of each year provide data and records from the previous calendar year to the Director of Planning demonstrating that (a) a minimum of seventy (70%) percent of the Raw Produce processed is grown on land exclusively controlled and operated by that Farm Operation, (b) a minimum of fifty percent (50%) of the ingredients of any processed products sold was derived from Raw Produce grown on land that is exclusively operated and controlled by that Farm Operation and (c) all land within the Township controlled and operated by the Farm Operation meets the dedicated acreage requirements.
 - ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.

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- iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the special use permit.

17. Approval Process:

- i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.
- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning.
- viii. The site plan shall include at least:
 - a. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 - b. legal descriptions for all parcels;
 - c. all existing and proposed structures including setbacks from property lines;
 - d. proposed parking, landscaping and lighting;
 - e. floor plan showing all processing areas; and
 - f. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.
- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.
- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.
- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.

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- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

7. Amended Subsection 8.7.3 (11):

(11) Retail Farm Processing Facility (with Outdoor Seating): (ADDED BY AMENDMENT 201)

- (a) Statement of Intent: It is the intent of this Subsection to promote a thriving local agricultural production industry and preserve the rural character within the Township by allowing the construction and use of a Retail Farm Processing Facility with outdoor seating only where and when accessory to a minimum dedicated acreage of land in Active Production within the Township, and that accessory use does not predominate over the Farm Operation's Active Production within the Township. The Retail Farm Processing Facility with outdoor seating accessory use includes wholesale sales, indoor retail sales of fresh and processed Raw Produce, and the consumption of fresh and processed Raw Produce within an indoor Tasting Room or outdoor seating area only. At least seventy percent (70%) of the Raw Produce sold fresh or processed shall be grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the accessory Retail Farm Processing Facility. Since a Retail Farm Processing Facility is considered to be an industrial and commercial use that is inconsistent with the A-1 Agricultural District when not accessory and subordinate to a Farm Operation, approval of a special use permit for a Retail Farm Processing Facility shall not create any Vested Right in the continued non-agricultural use of any structures built or used for an accessory Retail Farm Processing Facility or the land dedicated to the Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility use with outdoor seating is discontinued or curtailed. This Subsection shall not supersede or amend the terms of any conservation easement.
- (b) A Retail Farm Processing Facility with outdoor seating is permitted by special use permit only as an accessory use subordinate to a Farm Operation in the A-1 Agricultural District and shall not predominate over the Farm Operation's Active Production within the Township. An accessory Retail Farm Processing Facility shall be subject to the following requirements:
 - 1. Retail Sales: Retail sales of fresh or processed Raw Produce are allowed subject to the requirements of Subsection (11)(b) 2 of this Section and the following additional requirements:
 - i. All processing and retail sales shall be conducted indoors.
 - ii. At least 50% of the ingredients of any processed products sold at the Retail Farm Processing Facility shall be derived from Raw Produce grown on land that is exclusively operated and controlled by the specific Farm Operation that

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operates and controls the Retail Farm Processing Facility.

- iii. The consumption of processed products on premises is permitted indoors and within an approved and clearly defined outdoor seating area.
- iv. A Tasting Room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed Raw Produce, including Alcoholic Liquor.
- v. Free entertainment may be provided within a retail sales/Tasting Room indoors only.
- vi. The hours of operation for retail sales, including a Tasting Room and approved outdoor seating, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.
- vii. If Alcoholic Liquor is proposed to be produced, consumed, or sold on the premises, the Michigan Liquor Control Commission shall grant applicable retail liquor licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- viii. The Michigan Department of Agriculture and Rural Development shall grant applicable retail food licenses and regulate compliance with those licenses, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- ix. Those Retail Farm Processing Facilities with outdoor seating that hold a liquor license may serve limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the Retail Farm Processing Facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. Limited food items served indoors may be consumed within an approved outdoor seating area. No restaurants, cafes or off-site catering shall be permitted as part of a Retail Farm Processing Facility with outdoor seating

2. Sources of Raw Produce:

- i. Processing is limited to Raw Produce of the same species of Farm Products as are raised by the Farm Operation on the parcel on which the Retail Farm Processing Facility is located. For example, an apple may be processed into apple juice or applesauce.
- ii. Not less than seventy percent (70%) of the Raw Produce sold fresh or processed by the accessory Retail Farm Processing Facility shall be grown on land that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility.

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- iii. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may for that year approve a larger proportion of Raw Produce grown off the land within the Township that is controlled and operated by the specific Farm Operation that operates the accessory Retail Farm Processing Facility, provided that the verification of such conditions by the United States Department of Agriculture Farm Service Agency. Processed products produced by the Retail Farm Processing Facility with outdoor seating in such a year shall not exceed the highest volume of processed products produced by the Retail Farm Processing Facility in any of the preceding five (5) years.

3. Parcel Requirements:

- i. At least sixty (60) acres of contiguous land shall be dedicated to the operation of a Retail Farm Processing Facility with indoor retail sales and an outdoor seating area for consumption only.
 - ii. The dedicated acreage shall be located within Peninsula Township and shall be exclusively controlled and operated by the same Farm Operation that exclusively controls and operates the Retail Farm Processing Facility with outdoor seating. Control of the dedicated acreage must be evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least sixty-five percent (65%) of the acreage dedicated to the Retail Farm Processing Facility shall be in Active Production.
 - iii. At least forty (40) acres of the dedicated land must be in a single parcel with a minimum parcel width of 330 feet and shall contain the Retail Farm Processing Facility and outdoor seating. There shall be at least twenty (20) acres in Active Production on the same parcel as the Retail Farm Processing Facility. The parcel shall not be divided for as long as the Retail Farm Processing Facility continues in operation.
 - iv. The remaining acreage necessary to meet the 60-acre minimum dedication shall consist of a single parcel or two contiguous parcels.
 - v. Not more than one (1) single-family dwelling may be located on the parcel containing the Retail Farm Processing Facility. Not more than one (1) additional single-family dwelling may be located on the remaining dedicated acreage.
 - vi. None of the dedicated land shall be used to satisfy acreage density or open space requirements of any other use in the Township while the Retail Farm Processing Facility continues in operation.
4. Setbacks: The minimum setbacks for the Retail Farm Processing Facility with outdoor seating including required parking shall be:
- i. Front Yard Setback: 50 feet.

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- ii. Side and Rear Yard Setback: 200 feet.
- iii. Outdoor Seating Area: 350 feet from all property lines to minimize negative impacts to neighboring properties from noise, light and odors.
- iv. No Retail Farm Processing Facility shall be located within a Viewshed.

5. Retail Farm Processing Facility Size:

- i. The total floor area of the Retail Farm Processing Facility above finished grade shall not exceed 250 square feet per acre of land comprising the dedicated parcel that contains the Retail Farm Processing Facility and shall not exceed 30,000 square feet of total floor area above finished grade.
- ii. The Retail Farm Processing Facility may consist of more than one building; however, all buildings used by the Retail Farm Processing Facility with outdoor seating shall be located on the 40-acre minimum parcel that contains the Retail Farm Processing Facility and outdoor seating area and shall not collectively exceed the floor area allowed by Subsection (11)(b) 5 i above.
- iii. Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.
- iv. Retail sales space may be a separate room within a Retail Farm Processing Facility and shall not exceed 1,500 square feet in area.
- v. The area of any Tasting Room shall be included in the total allowed square footage for retail sales.

6. Pre-existing Buildings: (built prior to December 13, 2022) may be used for a Retail Farm Processing Facility provided they are not greater in size than the maximum allowable square footage per acre as referenced above. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings in accordance with Section 5.7.3, giving special attention to avoiding adverse impacts on surrounding property owners.

7. Outdoor Seating Area Size:

- i. The outdoor seating area shall be limited to 750 square feet.
- ii. The maximum occupancy for the outdoor seating area shall be 50 persons at all times.
- iii. The limits of the outdoor seating area shall be clearly defined with a fence and/or combination of fencing and landscaping that provides year-round screening from adjacent properties.

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- iv. Table umbrellas or permanent shade structures are permitted.
- v. No temporary structures including tents or canopies are allowed.
- 8. Vested Right: Approval of a special use permit for an accessory Retail Farm Processing Facility with outdoor seating shall not create any Vested Right in the continued non-agricultural use of any structures built or used for a Retail Farm Processing Facility. Such structures shall only be used for uses permitted by right in Section 6.7.2 in the event that the accessory Retail Farm Processing Facility with outdoor seating use is discontinued or curtailed.
- 9. Parking: Parking shall conform to the requirements of Section 7.6.
- 10. Signs: All signage shall conform to the requirements of Section 7.11.
- 11. Lighting: All exterior lighting shall conform to the requirements of Section 7.14.
- 12. Access: Access shall be from a paved public road. An access permit from the Grand Traverse County Road Commission or Michigan Department of Transportation shall be required before a Land Use Permit may be issued.
- 13. Water: Demonstration of adequate water for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
- 14. Sewage and Wastewater Disposal: Demonstration of adequate sewage and wastewater disposal for the Wholesale Farm Processing Facility shall be provided by the appropriate agencies. Conformance to agency requirements shall be required.
- 15. Fencing or Planting Buffer: In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained.
- 16. Landscaping: The front yard area and/or any side yard adjacent to public right-of-way not used for access and parking shall be planted and maintained in accord with an appropriate landscape design to integrate the Retail Farm Processing facility with outdoor seating into the site, as approved by the Township Board.
- 17. Data and Records:
 - i. The Farm Operation operating the Retail Farm Processing Facility with outdoor seating shall annually by April 15 of each year provide data and records from the previous calendar year to the Director of Planning demonstrating that (a) a minimum of seventy percent (70%) of the Raw Produce processed is grown on land exclusively controlled and operated by that Farm Operation, (b) a minimum of fifty percent (50%) of the ingredients of any processed products sold

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was derived from Raw Produce grown on land that is exclusively operated and controlled by that Farm Operation, and (c) all land within the Township controlled and operated by the Farm Operation meets the dedicated acreage requirements.

- ii. The above data shall be supplied to the Township in a format or form approved by the Director of Planning.
- iii. Any change in the above shall be submitted in writing to the Director of Planning within 60 days of said change. Failure to submit such changes shall be considered a violation of this Ordinance and may be a basis for revocation of the special use permit.

18. Approval Process:

- i. Approval of a Special Use Permit is required subject to all requirements of Article VIII, Section 8.1. followed by the administrative approval of a Site Plan.
- ii. A Site Plan application with all required submittal materials shall be submitted to the Director of Planning. The site plan shall include at least:
 - a. the parcel or parcels with parcel numbers dedicated to the Retail Farm Processing Facility with calls and dimensions on all property lines;
 - b. legal descriptions for all parcels;
 - c. all existing and proposed structures including setbacks from property lines;
 - d. proposed parking, landscaping and lighting;
 - e. floor plan showing all processing areas; and
 - f. the name, email address, mailing address, and phone number of the Farm Operation.
- iii. Site Plan approval for a Retail Farm Processing Facility with outdoor seating shall be issued by the Director of Planning upon showing that it is compliant with this Ordinance, all conservation easements, and the Special Use Permit approval, including minimum parcel requirements, building size, building height, acreage in crop production, setbacks, landscaping and parking.
- iv. Once the Site Plan is approved and signed by the Director of Planning, a Land Use Permit application may be submitted to the Zoning Administrator.
- v. A permit from the Grand Traverse County Health Department is required before a Land Use Permit for a Retail Farm Processing Facility can be issued.
- vi. No processing or wholesale or retail sales of products shall take place until a Land Use Permit has been issued by the Zoning Administrator.

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- vii. Such Land Use Permit shall not be issued until copies of all permits required by state, federal, and other local licenses and permits have been submitted to the Zoning Administrator and the Zoning Administrator has made an on-site inspection to verify compliance with all requirements of the zoning ordinance.
- viii. Any violation of the Special Use Permit issued by the Township Board, the Site Plan Approval issued by the Director of Planning, or the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for revocation of the Special Use Permit, the Site Plan Approval and the Land Use Permit.

8. Delete former Subsection 8.7.3 (10) regarding Winery-Chateaus.

9. Amended Subsection 8.7.3 (13): (REVISED BY AMENDMENT 201)

(13) Remote Tasting Rooms:

- a. Statement of Intent: It is the intent of this Subsection to allow tasting of Alcoholic Liquor and non-alcoholic beverages in a tasting room that is not on the same property as the Farm Processing Facility with which it is associated by special use permit in the A-1 Agricultural District and to establish reasonable standards for the use.
- b. There shall be a minimum parcel size of five (5) acres.
- c. The five-acre parcel shall not have another use such as housing but may be used for the Active Production of agricultural crops.
- d. The building used for the Remote Tasting Room shall be consistent with the neighborhood character within one-half mile of the proposed building. Preliminary building elevations shall be submitted with the special use permit application showing roof type, pitch, and color, and siding type and color. The adaptive re-use of existing structures is encouraged.
- e. The Remote Tasting Room, the parcel on which it is located, and the Farm Processing Facility with which it is associated shall be exclusively controlled and operated by a Farm Operation that also exclusively controls and operates a minimum of 150 acres in Peninsula Township evidenced by a deed, lease, or memorandum of lease in the name of the Farm Operation recorded with the Grand Traverse County Register of Deeds. At least 50% of the 150 acres shall be in Active Production of agricultural crops.
- f. Tasting of Alcoholic Liquor and non-alcoholic beverages produced by the Farm Operation that controls and operates the Remote Tasting Room shall be the only products tasted in the Remote Tasting Room.

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- g. Sales of Alcoholic Liquor and non-alcoholic beverages by the bottle produced by the Farm Operation that controls and operates the Remote Tasting Room are allowed for off- premises consumption. Sales of Alcoholic Liquor by the glass produced by the Farm Operation that controls and operates the Remote Tasting Room are allowed pursuant to the minimum requirements of the Michigan Liquor Control Commission rules and related Michigan Department of Agriculture permits regarding the sales of limited food items for on-premises consumption, subject to the requirements of this Zoning Ordinance and special use permits granted hereunder.
- h. Those Remote Tasting Rooms that hold a liquor license may serve limited food items indoors to offset the effects of consuming alcohol. Food items are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No restaurants, cafes or off-site catering shall be permitted as part of a Remote Tasting Room.

Exhibit 9

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board and Planning Commission

Joint Special Study Session

July 26, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.

2. **Pledge**

3. **Roll Call**

Planning commission roll call:

Present: Alexander, Dloski, Hornberger, Warren, Shipman

Town board roll call:

Present: Wunsch, Achorn, Sanger, Wahl, Rudolph, Chown, Fahey (by phone)

Absent: Shanafelt

4. **Citizen Comments**

Monnie Peters, 1425 Neahtawanta Road: good evening. It's good to see all these people here. I want to push you all to remember that the zoning code has been under work for now over a year at the town board level. Planning commission first passed it more than a year ago. It was at the July meeting last year that it first came in front of the town board. I think it has been a waste of time not to pass it and been working under the new zoning code. Jenn is doing really good work, and you're asking her to do it under the old code. I really hope it won't be more than the next month before you pass it. You keep identifying problems, but don't solve them under the old code. Solve them under the new code. Pass it; get it done. I've been before you every meeting but one. I will be disappearing to go home and have dinner with grandchildren. Have a good meeting.

Mary Beth Milliken, 7580 East Shore Road: I wish to express my support of the revised ordinance documents produced by planning commissioner Jenn Cram and the efforts of the agricultural advisory committee. I know the resulting documents took a substantial amount of time. They took collaboration and compromise from all involved. They were revised by honest, hardworking professionals with integrity and respect for the Peninsula Township residents as a whole. This was an open process. A number of involved parties were invited to participate but chose not to. Unfortunately, those who choose not to participate often are the loudest critics of what comes out as the result. Sometimes they fail to consider the wishes and vision of the Peninsula Township residents as a whole. The wishes of the residents were evidenced by the survey that was taken and reported on over a year ago. There never will be a perfect document, and I think it's time for all of us to accept that. Put aside the acrimony, adversity, the self-centered belief that the ordinances

This is hot off the press; there will be some typos. I am starting on page seven of the packet that I put before you. What I did for the board members is print a packet for them and then hand write page numbers so that I can refer to the numbers. This is the same packet that is posted on the website. The first thing you'll see is updates to the definitions of farm processing. We are proposing three types of farm processing. There will be a farm processing as a use by right, which is a wholesale farm processing. Then there would be two retail farm processing facilities that are approvable through the special use permit process; one is indoors only and one includes some outdoor seating. Being in alphabetical order, the farm processing facility with indoor retail sales is the first definition. I used the existing farm processing facility definition that exists in the zoning ordinance now on page eight as a reference to that, and then tried to make the definition unique to each of those individual uses.

Hall: the sixth line says, "An indoor retail sales area may include a 'tasting' room." You probably mean tasting. The same typo appears in the next paragraph.

Dloski: just so I can put this in context, are the changes that we're going through now starting with page seven the changes that are mandated by the lawsuit?

Cram: some of them, yes. Those are some of the things that Bill will be discussing with us at closed session so we know the things that we need to change direction on. Are we good with definitions? Then I'm moving on to page nine; you'll see the definition of winery-chateau has been removed. Under Winery, new language was added: "From raw produce." We want to support local, regional, and state agriculture. I want to make sure that it is that first stage of processing, the apple or the grape, that is processed. This seemed to be very important to the community as well as supportive to local agriculture. You'll see that language used throughout the ordinance.

Wunsch: if a winery is currently trucking in all their juice from California, they would be a non-conforming use, right?

Cram: another thing I want to make very clear: if this zoning ordinance is adopted, all of the wineries with existing special use permits will be considered legally non-conforming. All of the uses approved with the special use permit would still stand. Any changes to those uses would come through a process and be under the new zoning ordinance. We will be looking in the future to see that existing special use permits are in compliance with what was approved.

Jumping to page ten, under Wholesale Farm Processing Facility, the major change is that retail sales would no longer be allowed. This is intended for the farmer who has a minimum acreage in crop production and has reached a point where they want to add value to that agriculture and change it into something else. Provided that they meet the minimum, then they could have a farm processing facility. The acreage minimum stays the same at 40. Another thing I want to point out from some of the comments that were made by the public is that, yes, 40 is a lot acreage to accumulate, as well as 80, but those acreages do not have to be owned. They can be leased. This supports the ability for new farmers to get in. You don't necessarily have to invest in owning it. But if you are leasing it, and successfully growing it, and want to change that product, then this would be an option for you. The intent statement has been modified to clearly demonstrate that the intent is to allow this use when there is a minimum acreage of land in active crop production. To try

production, you have to have additional acreage. We're trying to tie the use to the land. We felt like 20 acres could accommodate a larger building.

Dloski: if I have 40 acres retail, and I want to have a couple of outdoor seats, I have to have another 40 acres?

Cram: in order to have retail, you have to have 50 acres.

Dloski: so I need another 30 acres just to have four outdoor seats?

Cram: it's not four.

Dloski: what if I wanted four?

Cram: if you want outdoor seating then you would be required to apply for a special use permit for a retail farm processing facility with outdoor seating.

Dloski: and I'd have to have 80 acres.

Cram: yes.

Dloski: I don't get that. Plus a 500-foot setback on the property. I don't see that being feasible for anybody in this township.

Cram: the recommendation when I brought it forward to the citizens' agricultural advisory committee was 50 acres, and the 80-acre minimum came up because of the intensity of the use and wanting to have a certain percentage of acreage to be able to mitigate the negative impacts from the outdoor use. It is open to discussion.

Dloski: if you want to have 10 outdoor seats, you have to have 30 more acres?

Achorn: we're not talking about that level of participation. We're talking about the larger winery-type operation.

Dloski: it's covering any outdoor seating, 80 acres, and you need a 500-foot setback.

Sanger: but the facility itself is still limited to 20 acres. "Contiguous" is misleading. Each of these three sections of the ordinance we're talking about uses this word "contiguous." My interpretation is that means the whole project, but it does that broken up into 20-acre pieces. Basically, when we talked about this outdoor, it could be applicable to 20 whether it's on the retail indoor only or the retail outdoor allowed. When we're talking about setbacks then to allow something to happen outside on 20 acres.

Cram: contiguous means that they touch by a point; there's a property line that we can look at the the minimum acreage as a whole. They don't have to be owned; they don't have to be one parcel. It can be multiple. I do think, Dave, when you present it that way, it does raise an issue because if this facility is on 20 acres, it would be hard to meet a 500-foot setback.

Rudolph: you could not. In fact, if you had 40 acres, I don't think you could do it. I'm trying to remember why we came to the 80 acres. I think the concern was generated by the number of complaints the township got because of noise with the outdoor guests at wineries. We were thinking new facilities on a bigger parcel of land would mitigate the possibility that they're going to be interfering with their neighbors.

Dloski: the noise that the wineries are generating now is illegal. They shouldn't be doing that.

Wunsch: what you're seeing is the emergence of a much more conservative ordinance because, a, we have these issues with enforcement. The township will try to enforce these rules that everybody's agreed to in one area and then we'll have a slip somewhere else and so on. I would agree with you that the new ordinance is much more restrictive than

the old ordinance. It pains me that this is the direction we're moving in. We've gone from a scalpel to a tourniquet as our policy tool because of the ongoing legal dispute. We have the ongoing nuisance issues with outdoor tasting room cases that we're up against now. After the litigation, there's an ongoing risk that we will face lobbying at the state levels to have rules changed that will further erode our ability to control things like outdoor uses. Sighting a winery, or a farm processing facility with outdoor uses, is clearly within the township's purview to do. But we may face challenges in the future on whether we can limit the intensity of that outdoor use. The sighting is relatively low risk for us from a policy standpoint. As we try to control what happens in that outdoor space to mitigate nuisance, our control going forward becomes more tenuous. There's a risk that there will be lobbying at the MLCC or with the state legislature to preempt conditions that have been agreed to during the approval process.

Chown: I would also just say, I can't imagine anyone would build a retail farm processing facility with outdoor seating and only want four seats.

Dloski: I'm saying that just to make a point.

Chown: really, the inclination will always be for more. We're here because the wineries want the maximum usage they can get.

Wahl: as soon as we approve four, then we're stuck with having approved any outdoor seating. That's the issue.

Chown: that is the lesson we have learned from the lawsuit, and it is a sad lesson.

Dloski: what is the lesson?

Sanger: it's called "creep."

Chown: we let the camel's nose under the tent, and now we have a camel in the tent.

Sanger: the enforcement is the problem because it's very difficult. First of all, the county noise ordinance was abolished. The only remedy we have is the township noise ordinance, and who is going to enforce a noise call at 10 o'clock at night? The answer is the sheriff. It gets out of control quickly and there is no practical means of determining the violation unless you want to put some decibel levels in and get very technical.

Deeren: those are not admissible in court.

Sanger: right. We have to think ahead. We thought at one time an evergreen buffer would work. It doesn't. We have to consider worst case. We know that noise attenuates over space, so you need to put enough space in. To do the enforcement, it's getting out the tape measure.

Dloski: my concern is you're eliminating outdoor seating. This ordinance in this format with 80 acres will eliminate outdoor seating. I don't think there's anything wrong with going to a winery, sitting outside, and having a glass of wine. No music, no entertainment.

Hornberger: but it gets noisy.

Dloski: living on center road is noisy.

Chown: you're saying that because you think there are not going to be enough 80-acre parcels?

Dloski: I think that's one case. Also, it's financially a deal killer to get 80 acres to have outdoor seating.

Achorn: this is the only way to mitigate the noise and nuisances.

Wunsch: the real estate acquisition cost is not your barrier to building one of these types

or one per 75 square feet. You come up with what the total required parking is based on the whole thing. The rest of the changes that you see are really just redlining and removing winery- chateau in its entirety. We'll be going through this to make sure there is consistency with all three of the processes as far as spelling things out, parentheses, all of the things that are duplicative will be consistent.

Sanger: each of these sections, in terms of enforcement, picks up language that at this point is 20 years old. Page 29, approval process number 14. It put the town board as the authority that's going to pull the SUP. I want to be sure that our legal counsel has looked at this. I thought this was unusual when it was done back in 2002. Typical enforcement would involve the issue of a citation and, if it's necessary, to pull the permit and move towards an injunction if we can't get compliance.

Cram: Bill and I have talked about it and he is looking at it.

Fahey: I'm going to take another look at it, but it's not bad; it's in pretty good shape.

Cram: I appreciate your time and attention. Your comments are very helpful.

Chown: we're going to do public comment now and then turn off everything to go into closed session.

9. Citizen Comments

Nancy Heller, 3091 Blue Water Road: I still have concerns about parts of this ordinance that are left up to individual interpretation and creating non-conforming situations. I attend the zoning board of appeals meetings. It's a challenge to meet the six basic conditions. You're giving the impression that they can do this and that, yes, they can. But not necessarily successfully, and at great cost to the applicant.

Town board:

Wunsch moved to enter closed session pursuant to MCL 15.268(1)(h) to discuss a confidential written legal opinion from the township attorney on proposed amendments to the zoning ordinance with a second by Achorn.

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

Planning commission:

Hornberger moved to join the town board in closed session with a second by Alexander.

Roll call vote: yes – Alexander, Dloski, Hornberger, Wahl, Shipman Passed unan

Wahl moved to come out of closed session with support by Achorn. Motion approved by consensus

Dloski moved to come out of closed session with support by Hornberger. Motion approved by consensus

10. Board Comments: none

11. Adjournment:

Wahl moved to adjourn the meeting with support from Chown. Motion approved by consensus

Hornberger moved to adjourn the meeting with support from Alexander. Motion approved by consensus

Meeting adjourned at 11:00 p.m.

Exhibit 10

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

WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP
MANIGOLD, ROBERT 11/03/2021

Job 16651
70..73

<p style="text-align: right;">Page 70</p> <p>1 A. No. You got me there, I'll give you that one.</p> <p>2 Q. All right. But it's not, it's not the government's</p> <p>3 interest to prevent competition amongst its</p> <p>4 businesses, right?</p> <p>5 A. It's not competition. It's usually done by complaint</p> <p>6 of one person, who's set up in a commercially-zoned</p> <p>7 area to sell, competing with a person that's not in a</p> <p>8 commercial area.</p> <p>9 Q. But they're both businesses, right?</p> <p>10 A. Both businesses, correct.</p> <p>11 Q. Is it the job of Peninsula Township to pick the</p> <p>12 winners and the losers between two businesses in the</p> <p>13 township?</p> <p>14 A. No, it's to keep items that these people have agreed</p> <p>15 to sell and these people have the ability to sell.</p> <p>16 Q. Well, but if we look at 12(k), the Township prohibits</p> <p>17 them from even having a sign or advertisement of the</p> <p>18 items they are allowed to sell, right?</p> <p>19 A. I don't know why that's in there, and I'm thinking</p> <p>20 when you said it, it was maybe something outside,</p> <p>21 maybe that's missing, but I don't understand why it's</p> <p>22 there.</p> <p>23 Q. I mean, there's no harm you can think of to the</p> <p>24 government that comes from -- that this is trying to</p> <p>25 prevent, right?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay. How about 12(h); is the Township enforcing this</p> <p>2 ordinance?</p> <p>3 A. I don't believe so, because I think the law changed,</p> <p>4 that's my --</p> <p>5 Q. It's no longer being -- you're no longer enforcing</p> <p>6 12(h) because the liquor control law changed to allow</p> <p>7 on-premise bottle consumption, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay.</p> <p>10 A. I think we may find that in some other ones that when</p> <p>11 the law preempted, we haven't gotten back to change</p> <p>12 the special use permit or the language.</p> <p>13 Q. Yeah. So the liquor control law preempted the local</p> <p>14 zoning ordinance. It may still be on the books, but</p> <p>15 you're no longer going to enforce it but it's</p> <p>16 preempted, right?</p> <p>17 A. Correct.</p> <p>18 Q. And you think that's what's going on with 12(h),</p> <p>19 correct?</p> <p>20 A. Mmm-hmm.</p> <p>21 Q. Yes?</p> <p>22 A. Yes.</p> <p>23 Q. You're not doing any worse than most, don't worry.</p> <p>24 All right, let's look at --</p> <p>25 A. Do you want this back?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Right.</p> <p>2 Q. Okay. I'm going to quickly run through these again.</p> <p>3 So let's just start at the end, 12(k). Is Peninsula</p> <p>4 Township still enforcing this ordinance?</p> <p>5 A. I don't know if there's been any violations ever</p> <p>6 issued on it. I don't believe so.</p> <p>7 Q. But it's still on the books, correct?</p> <p>8 A. If it's here, that's why we -- we're rewriting the</p> <p>9 ordinance, but we put a hold on this for now, so I'm</p> <p>10 going to say yes.</p> <p>11 Q. Yes, you're enforcing it?</p> <p>12 A. Well, we will if we have a, have a notion that it's</p> <p>13 being done incorrectly.</p> <p>14 Q. Okay. 12(j), is Peninsula Township still enforcing</p> <p>15 this ordinance?</p> <p>16 A. To my knowledge.</p> <p>17 Q. Okay. 12(i), is Peninsula Township still enforcing</p> <p>18 this ordinance?</p> <p>19 A. I believe so. If we haven't worked with the owner to</p> <p>20 change them and these are the ones that are there and</p> <p>21 they haven't complained, we probably haven't gotten</p> <p>22 back to them to change it.</p> <p>23 Q. But for right now the Township is enforcing this</p> <p>24 ordinance?</p> <p>25 A. I think so, yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. You can actually give it to Becky because she needs to</p> <p>2 keep that.</p> <p>3 MARKED FOR IDENTIFICATION:</p> <p>4 DEPOSITION EXHIBIT 2</p> <p>5 12:08 p.m.</p> <p>6 MR. INFANTE: This is Exhibit 2.</p> <p>7 Matt, we are looking at the farm processing</p> <p>8 section of the ordinance.</p> <p>9 MR. WISE: Got it.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. We're kind of going to do the same exercise again.</p> <p>12 A. Mmm-hmm.</p> <p>13 Q. Okay, starting with 19(a), really after the first</p> <p>14 sentence, it says: The farm processing facility use</p> <p>15 includes retail and wholesale sales of fresh and</p> <p>16 processed agricultural produce but is not intended to</p> <p>17 allow a bar or restaurant on agricultural properties</p> <p>18 and the Township shall not approve such a license.</p> <p>19 So what is the government interest in</p> <p>20 preventing a farm processing facility from having a</p> <p>21 restaurant?</p> <p>22 I guess, how is the government interest</p> <p>23 fulfilled by not allowing them to have a restaurant?</p> <p>24 A. I guess if they put that farm processing on</p> <p>25 commercial, they could, but in the agricultural area,</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. Whatever. Peninsula Township enacts ordinances, you 2 agree, right? 3 A. At the request of the public. 4 Q. But you -- but Peninsula Township enacts ordinances? 5 A. Yes -- 6 Q. Right. 7 A. -- we are the vehicle. 8 Q. Okay. So, I mean, but you sell, you sell OMP -- I 9 mean, you were telling me earlier about how amazing 10 this OMP appellation was and how you need to protect 11 it, and your grapes are amazing in this micro 12 climate -- 13 A. Mmm-hmm. 14 Q. -- but you personally are selling grapes outside of 15 the appellation? 16 A. Mmm-hmm. 17 Q. Yes? 18 A. Yeah. 19 Q. Why? 20 A. Well, right now there's not a tank -- 21 MR. WISE: Asked and answered. 22 A. -- there's not a tank available on the peninsula to 23 sell to. I've got many thousands of pounds hanging 24 there right now and no tanks available, so ... 25</p>	<p style="text-align: right;">Page 96</p> <p>1 the township? 2 A. Yes. 3 Q. And it's fairly common, right? 4 A. Smaller growers, the ones I know, that are usually 5 three to five acres, tie into -- he's got a very good 6 name on a very quality product. 7 Q. Has Peninsula Township ever considered putting an 8 ordinance in that requires grape growers in Peninsula 9 Township to only sell their grapes to Peninsula 10 Township wineries? 11 A. No. 12 Q. Why not? 13 A. Well, I don't think it would be legal. 14 Q. Why, why wouldn't it be legal? 15 A. Well, it's America, you get to sell to who you want. 16 We have thought -- actually, Mr. O'Keefe 17 went down to Lansing and got a license developed which 18 they will put one to an appellation, a community 19 winery, where different growers could go in and under 20 one location sell their product. 21 Q. Okay. 22 A. But we haven't put that together. 23 Q. All right. 19(a), we had asked about -- there's a 24 prohibition on the farm processing facilities having 25 restaurants. The Township is still enforcing that,</p>
<p style="text-align: right;">Page 95</p> <p>1 BY MR. INFANTE: 2 Q. Do you have a contract with Left Foot Charley? 3 A. Nope. 4 Q. How long have you been selling to Left Foot Charley? 5 A. Brian Albrecht has that. He was the wine maker at 6 Peninsula Cellars. He developed the Gewürztraminer 7 wine that we won awards all over the United States and 8 Germany, and he wanted a piece of that when he started 9 his own. 10 Q. Listen to my question. My question is how long you've 11 been selling grapes to -- 12 A. To him through Peninsula Cellars quite a while. When 13 he moved on his own and got that facility, ten years, 14 maybe longer. 15 Q. Left Foot Charley has been around for a long time, 16 right? 17 A. Whenever they opened up, I sold to him that day. 18 Q. So for at least a decade you personally have been 19 selling OMP grapes outside the township? 20 A. Yup. 21 Q. And there's no ordinance that prohibits you from doing 22 that, right? 23 A. No, it's actually -- he pays more, too. 24 Q. And are there other farmers, other grape farmers in 25 Peninsula Township who sell their grapes outside of</p>	<p style="text-align: right;">Page 97</p> <p>1 right? 2 A. We haven't enforced anything on anybody, that I'm 3 aware of, on that. 4 Q. Well, you would enforce it if they tried to open a 5 restaurant? 6 A. If they opened a Burger King, yeah. 7 Q. Well, what if they just had -- they opened for dinner, 8 a dinner service, would you enforce that? 9 A. I believe so. 10 Q. And the requirement that the majority of the produce 11 sold fresh or processed has to be grown on a specific 12 farm operation, is the Township still enforcing that 13 ordinance? 14 A. To my knowledge. 15 Q. Okay. And the requirement that 85 percent of the 16 produce sold fresh or processed has to be grown on Old 17 Mission? 18 A. To my knowledge, yes. 19 Q. Okay. And now, that 85 percent, we were talking 20 about, we were talking about wine, but this actually 21 requires the produce they sell, fresh or processed, to 22 be grown on Old Mission Peninsula. Do you believe 23 it's different than wine? 24 A. No, it would work the same. 25 Q. Okay. So if they wanted to sell cucumbers, those</p>

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<p style="text-align: right;">Page 98</p> <p>1 cucumbers need to be from Old Mission Peninsula?</p> <p>2 A. Under that, it's more of a processing thing. You can</p> <p>3 sell in a farmer's stand cucumbers. If you want to</p> <p>4 turn them into pickles through a processing, that</p> <p>5 would be the one you'd probably want to go under and</p> <p>6 put your own label on it.</p> <p>7 Q. Well, this says "fresh or processed has to be grown on</p> <p>8 Old Mission Peninsula." So if a farm processing</p> <p>9 facility is going to sell cucumbers, whether it be</p> <p>10 fresh or in a dish, in a small plate, those cucumbers</p> <p>11 have to come from Old Mission Peninsula, right?</p> <p>12 A. I don't know that I could stretch that to that point.</p> <p>13 Q. You don't think that's what this means?</p> <p>14 A. I don't think that's what that means, no.</p> <p>15 Q. And, frankly, it wouldn't make any sense, because</p> <p>16 there's a lot of produce that you don't grow on Old</p> <p>17 Mission Peninsula, right?</p> <p>18 A. Right.</p> <p>19 Q. I mean, I'm trying to think of --</p> <p>20 A. Bananas.</p> <p>21 Q. Coconuts, bananas, right?</p> <p>22 A. Right.</p> <p>23 Q. So Old Mission Peninsula doesn't -- no one is growing</p> <p>24 coconuts and bananas out here?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 100</p> <p>1 maker does all that, and I think they could also do</p> <p>2 brandy under that.</p> <p>3 Q. We've talked about this 85 percent. I guess my</p> <p>4 question is, Peninsula Township is still enforcing</p> <p>5 19(b) --</p> <p>6 A. Yes.</p> <p>7 Q. -- (ii) and (iii)?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Look at (b)(iv), I-V.</p> <p>10 A. Mmm-hmm.</p> <p>11 Q. At the very end it says "The sales of limited food</p> <p>12 items for on-premises consumption."</p> <p>13 This is what's allowed, okay?</p> <p>14 A. Mmm-hmm.</p> <p>15 Q. What does that mean?</p> <p>16 A. I think, I think when, I'm speculating, but I believe</p> <p>17 when the Liquor Control made that food available,</p> <p>18 small plate that was referred to, I think that's what</p> <p>19 it's referring to.</p> <p>20 Q. So you keep saying "small plate." Is there a statute</p> <p>21 that says small plate?</p> <p>22 A. I believe in the decision by one of, one of our judges</p> <p>23 in the Begin matter, it was determined that a small</p> <p>24 plate was bread, cheese, fruit, and --</p> <p>25 Q. Okay, but you keep saying Liquor Control Commission.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So there's no possible way that a farm processing</p> <p>2 facility could comply with this requirement, right,</p> <p>3 could comply with the requirement of growing</p> <p>4 50 percent or 85 percent of the bananas they sell.</p> <p>5 It's just not possible, right?</p> <p>6 A. We can't grow it, yeah.</p> <p>7 Q. So it's not possible?</p> <p>8 A. Well, we can't grow it, yeah.</p> <p>9 Q. Okay. All right, looking at 19(b)(ii) and (iii),</p> <p>10 we've talked about this. These basically say: Grape</p> <p>11 wine that is processed, tasted and sold in a farm</p> <p>12 processing facility under this section is limited to</p> <p>13 Old Mission appellation wine, meaning 85 percent of</p> <p>14 the juice will be from fruit grown on Old Mission</p> <p>15 Peninsula.</p> <p>16 And the next one just captures fruit wine,</p> <p>17 which would include cherry wine, right?</p> <p>18 A. Mmm-hmm.</p> <p>19 Q. Yes?</p> <p>20 A. I think that's probably that interpretation, yeah. It</p> <p>21 could be apple, could be -- yeah, another, it's</p> <p>22 another entity that on your farm, if you wanted to do,</p> <p>23 which people do, they would use, under that process</p> <p>24 they could make pear wine, apple wine, apple cider,</p> <p>25 depending on the license, which I think the small wine</p>	<p style="text-align: right;">Page 101</p> <p>1 Is there a statute that says "small plate"?</p> <p>2 A. I'm going to have to look that up. I think there is,</p> <p>3 somewhere I've read that, but I can't recall. And</p> <p>4 that's why I asked Christina if that small plate --</p> <p>5 maybe that's why it doesn't exist and they haven't</p> <p>6 responded to us, but ...</p> <p>7 Q. Okay.</p> <p>8 A. Somewhere I've read that.</p> <p>9 Q. The word "small plate"?</p> <p>10 A. Small plate.</p> <p>11 Q. Okay. So if you think -- so if there is a statute, a</p> <p>12 Liquor Control statute that says wineries can have</p> <p>13 small plates, you, as a township, want to know what</p> <p>14 "small plate" means?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. If there is no statute --</p> <p>17 A. Then it doesn't exist, and that's maybe why they</p> <p>18 haven't gotten back to us.</p> <p>19 Q. Okay. And if there is no statute that says "small</p> <p>20 plate," would you agree that the sale of limited food</p> <p>21 items for on-premises consumption has no meaning? I</p> <p>22 mean, what is --</p> <p>23 MR. WISE: Object to foundation.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. -- the meaning of this?</p>

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<p style="text-align: right;">Page 178</p> <p>1 come down a state highway.</p> <p>2 Q. But you don't think that this causes more people to</p> <p>3 come out to Old Mission Peninsula to visit the</p> <p>4 lavender farm and the nursery and the restaurants?</p> <p>5 A. I think that the intention of that in there was to</p> <p>6 promote our agricultural area, our appellation, and it</p> <p>7 came from the wine guys. The Township didn't put the</p> <p>8 appellation together. The wine guys did.</p> <p>9 Q. All right. Let's look at 5(b): Hours of operation</p> <p>10 for guest activity uses shall be as determined by the</p> <p>11 town board, but no later than 9:30 p.m. daily.</p> <p>12 A. Mmm-hmm.</p> <p>13 Q. So winery chateaus -- well, so this is hours of</p> <p>14 operation for guest activities?</p> <p>15 A. Actually, for everybody.</p> <p>16 Q. Well, hold on: Hours of operation for guest activity</p> <p>17 uses shall be as determined by the town board, but no</p> <p>18 later than 9:30 p.m. daily.</p> <p>19 A. Mmm-hmm.</p> <p>20 Q. So this says that a guest activity must end by</p> <p>21 9:30 p.m., right?</p> <p>22 A. Mmm-hmm.</p> <p>23 Q. Yes?</p> <p>24 A. Mmm-hmm.</p> <p>25 Q. You have to say the word "yes."</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Even though the ordinance doesn't say it?</p> <p>2 A. It does to us.</p> <p>3 Q. Tell me where it says that a tasting room has to close</p> <p>4 at 9:30 p.m.</p> <p>5 A. To us, that's what was implied there.</p> <p>6 Q. 5(c) says: No alcoholic beverages, except those</p> <p>7 produced on the site, are allowed with guest activity</p> <p>8 uses.</p> <p>9 What does this mean?</p> <p>10 A. Well, you can't bring in a case of beer and sit in the</p> <p>11 parking lot, basically, like on a Brew Bus, but I</p> <p>12 don't know that the wineries probably enforce that.</p> <p>13 Q. Is this sort of if you make it, you can sell it?</p> <p>14 A. If you make it, you can sell it, yeah.</p> <p>15 Q. Okay. Now, what if -- are you aware of what a</p> <p>16 catering license is?</p> <p>17 A. I'm aware that you need a commercial kitchen and</p> <p>18 certification from the health department.</p> <p>19 Q. Okay. But places like, I'm sure The Boathouse has a</p> <p>20 catering license, I imagine?</p> <p>21 A. Yeah. A restaurant, I would think, would --</p> <p>22 Q. Okay. Would this prohibit The Boathouse from catering</p> <p>23 alcohol at a winery?</p> <p>24 A. I guess unless they bought the wine from the winery</p> <p>25 and brought it.</p>
<p style="text-align: right;">Page 179</p> <p>1 A. I'm sorry, yes.</p> <p>2 Q. But it doesn't say that a winery has to close all</p> <p>3 business at 9:30, right?</p> <p>4 A. I think that's inferred.</p> <p>5 Q. It doesn't say that a winery has to close all business</p> <p>6 at 9:30, right?</p> <p>7 A. I believe it's inferred. I'm going to stick with</p> <p>8 that.</p> <p>9 Q. Does it explicitly say it, yes or no?</p> <p>10 A. Explicitly, no.</p> <p>11 Q. But you believe it's implied?</p> <p>12 A. I believe it's the ordinance and it's the law.</p> <p>13 Q. But it doesn't actually say that they have to close at</p> <p>14 9:30, right?</p> <p>15 A. Well, that's what I'm enforcing.</p> <p>16 Q. Well, that's my follow-up question. You are enforcing</p> <p>17 the wineries to close their tasting rooms at 9:30</p> <p>18 p.m., correct?</p> <p>19 A. Yes.</p> <p>20 Q. Even though the ordinance does not say that they need</p> <p>21 to close at 9:30 p.m., correct?</p> <p>22 A. We believe that 9:30 is the closing.</p> <p>23 Q. Okay, the township is interpreting this to mean 9:30</p> <p>24 to close all business?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. But if they bought --</p> <p>2 A. I think that could be construed that way, yeah.</p> <p>3 Q. Item 5(d): Sales of wine by the glass or sales of</p> <p>4 bottles of wine for on-premises consumption are not</p> <p>5 allowed except as provided in Section 2(e) above.</p> <p>6 Are you enforcing this?</p> <p>7 A. No, because the State -- I think the State overruled</p> <p>8 this one.</p> <p>9 Q. The Liquor Control Code says this is allowed, and that</p> <p>10 preempts this item (d)?</p> <p>11 A. I believe that.</p> <p>12 Q. That's correct?</p> <p>13 A. I think, I believe so.</p> <p>14 Q. Okay, (e): No outdoor food, beverages or temporary</p> <p>15 structures are allowed except as allowed by 8(c)</p> <p>16 below.</p> <p>17 Are you enforcing no outdoor food or</p> <p>18 beverages?</p> <p>19 A. What has happened since COVID, we have taken the</p> <p>20 policy to allow tents outside, and igloos, and I think</p> <p>21 some other structures. Awning.</p> <p>22 Q. I'm talking about food or beverages. Are you</p> <p>23 enforcing the ordinance which prohibits outdoor food</p> <p>24 and beverages?</p> <p>25 A. I think since COVID, things have -- we've allowed that</p>

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF KENT)

I, REBECCA L. RUSSO, certify that this
deposition was taken before me on the date
hereinbefore set forth; that the foregoing questions
and answers were recorded by me stenographically and
reduced to computer transcription; that this is a
true, full and correct transcript of my stenographic
notes so taken; and that I am not related to, nor of
counsel to, either party nor interested in the event
of this cause.

Rebecca Russo

REBECCA L. RUSSO, CSR-2759
Notary Public,
Kent County, Michigan.

My Commission expires: 6-3-2023

Exhibit 11

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

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<p style="text-align: right;">Page 26</p> <p>1 approved or denied?</p> <p>2 A. Yes.</p> <p>3 Q. Does anyone else have that authority?</p> <p>4 A. No.</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 A. Yes.</p> <p>8 Q. Okay, and --</p> <p>9 A. Unless it is something that is specifically outlined</p> <p>10 within their SUP that was agreed upon in the</p> <p>11 conditions of their special use permits.</p> <p>12 Q. How would that change who has authority to approve or</p> <p>13 not approve?</p> <p>14 A. It doesn't change who has the authority. It just, it</p> <p>15 changes what is the allowable use.</p> <p>16 Q. The authority is still with you?</p> <p>17 A. Yes.</p> <p>18 Q. That's the question.</p> <p>19 A. Yes.</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 A. Yes.</p> <p>23 Q. Okay. So can you -- are all requests for guest</p> <p>24 activities approved?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 28</p> <p>1 Go ahead.</p> <p>2 A. May have been a handful.</p> <p>3 BY MR. INFANTE:</p> <p>4 Q. Do you keep logs of the approvals and the denials?</p> <p>5 A. No.</p> <p>6 Q. So how do you -- do you keep any records of approvals</p> <p>7 and denials?</p> <p>8 A. Of requests?</p> <p>9 Q. Yes.</p> <p>10 A. If it's been written.</p> <p>11 Q. Then how do you keep, how do you maintain those</p> <p>12 records?</p> <p>13 A. There's not -- to be honest with you, there's not a</p> <p>14 whole lot of wineries that actually request events.</p> <p>15 So the requests don't come in on a --</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 THE WITNESS: It's through correspondence.</p> <p>19 BY MR. INFANTE:</p> <p>20 Q. Is that typically through email?</p> <p>21 A. Can be.</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 A. No.</p> <p>3 Q. Okay. The approval and denials fall somewhere in</p> <p>4 between?</p> <p>5 A. Correct.</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 A. I would say there's more approved than denied.</p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Can you give me an estimate of the split?</p> <p>14 A. No.</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 A. No.</p> <p>21 Q. Are a fair amount of them denied?</p> <p>22 A. No.</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 A. Repeat the question, please?</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 A. Yes, everything's been provided.</p> <p>6 Q. You've produced all those to your counsel?</p> <p>7 A. Yes.</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 A. Entertainment would be bringing in musicians, people</p> <p>17 playing music, that would be defined as entertainment.</p> <p>18 Q. Anything else?</p> <p>19 A. Not that I can think of.</p> <p>20 Q. Entertainment means music?</p> <p>21 A. Yes.</p> <p>22 Q. It doesn't mean anything else?</p> <p>23 A. No.</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 30</p> <p>1 A. Inside they are.</p> <p>2 Q. Okay. How about -- not outside?</p> <p>3 A. As long as it's not amplified, the music.</p> <p>4 Q. Amplified music or amplified instrumental music?</p> <p>5 A. Amplified, period.</p> <p>6 Q. So no amplified music is allowed outside?</p> <p>7 A. No.</p> <p>8 Q. Can you tell me, what is free entertainment?</p> <p>9 A. Where it's not charged, they are not charging for, as</p> <p>10 a cover charge to come in the door.</p> <p>11 Q. From an enforcement perspective, is there a difference</p> <p>12 between entertainment and free entertainment?</p> <p>13 A. Yes.</p> <p>14 Q. What is the difference?</p> <p>15 A. One you charge for, one you wouldn't charge for.</p> <p>16 Q. I get that they mean different things, but from an</p> <p>17 enforcement perspective, is there a different calculus</p> <p>18 that you go through based on whether it's</p> <p>19 entertainment or free entertainment?</p> <p>20 A. So as far as enforcement and investigating whether it</p> <p>21 is that, if it's something that's an allowable use,</p> <p>22 no, I mean, then it would be allowed. If it's</p> <p>23 something that's not, it's not allowed.</p> <p>24 Q. Okay. Let me give you an example, and I just want to</p> <p>25 know if there's a difference from an enforcement</p>	<p style="text-align: right;">Page 32</p> <p>1 cover charge?</p> <p>2 A. Correct.</p> <p>3 Q. I'm going to apologize if we covered this. Mr. Meihn</p> <p>4 will tell you sometimes attorneys have notes and you</p> <p>5 go through your notes.</p> <p>6 Under the ordinance, under the winery</p> <p>7 ordinance, you are the person who approves or doesn't</p> <p>8 approve guest activities, right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And so I think you told me that when you get a</p> <p>11 request for a guest activity, you accept that, and</p> <p>12 then what are your -- you say that's the first -- what</p> <p>13 are your steps in deciding whether to approve or not</p> <p>14 approve?</p> <p>15 A. Well, I look at the request. Then there is also a</p> <p>16 calculation of a tonnage report that has to be done</p> <p>17 for guest activities, as well, so I have to make sure</p> <p>18 they are in compliance with what they're asking for.</p> <p>19 So I review what the request is, the dates</p> <p>20 of the request, and the other thing is if they have</p> <p>21 the allowance within their special use permit.</p> <p>22 Q. And then what else do you do?</p> <p>23 A. Then I just, I keep the form with the request on it,</p> <p>24 and if it's something that I can test, then I</p> <p>25 typically get ahold of whoever has requested the</p>
<p style="text-align: right;">Page 31</p> <p>1 perspective in two scenarios, okay.</p> <p>2 A winery inside has a person playing</p> <p>3 acoustic guitar, and they do not charge patrons a</p> <p>4 cover charge to see that musician, versus the same</p> <p>5 winery, same musician playing acoustic music, yet a</p> <p>6 cover charge is charged. Is there a difference from</p> <p>7 an enforcement perspective between those two things?</p> <p>8 A. Yes.</p> <p>9 Q. What is the difference?</p> <p>10 A. That one is being charged a cover charge and the other</p> <p>11 is not.</p> <p>12 Q. Okay, but what's the effect of that?</p> <p>13 A. Whatever the ordinance allows for --</p> <p>14 Q. Okay.</p> <p>15 A. -- is the effect of that.</p> <p>16 Q. Would you, would you give a violation for one of those</p> <p>17 scenarios versus the other?</p> <p>18 A. A violation could be issued for one of those scenarios</p> <p>19 if it's not what the ordinance allows, yes.</p> <p>20 Q. Which one?</p> <p>21 A. For the cover charge.</p> <p>22 Q. Okay, and you're saying the ordinance doesn't allow</p> <p>23 the cover charge?</p> <p>24 A. No.</p> <p>25 Q. But the ordinance would allow the musician without a</p>	<p style="text-align: right;">Page 33</p> <p>1 event. It's not always the winery owners. Sometimes</p> <p>2 it's their management that puts in the request.</p> <p>3 Q. All right, I'm going to show you Exhibit 3. Are you</p> <p>4 familiar with this document?</p> <p>5 A. I am.</p> <p>6 Q. Just for the record, this is just a portion of the</p> <p>7 Peninsula Township ordinance related to</p> <p>8 winery-chateaus. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Okay. I was asking you earlier about -- I asked you</p> <p>11 what's an event. And can you show me where in the</p> <p>12 winery-chateau ordinance the word, where "event" is</p> <p>13 defined?</p> <p>14 A. The word "event" is not defined in the ordinance.</p> <p>15 Q. Okay. So when I asked you to define "event" earlier,</p> <p>16 was that your definition of event?</p> <p>17 MR. MEIHN: I'm Just going to object. She</p> <p>18 indicated the ordinance and the SUP.</p> <p>19 Subject to that clarification, if you can</p> <p>20 answer, please.</p> <p>21 A. Well, you're talking not just the winery ordinance.</p> <p>22 The farm processing and the remote wine tasting is</p> <p>23 what I thought we were talking about earlier.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Okay. Do you know, are those terms defined in that?</p>

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<p style="text-align: right;">Page 50</p> <p>1 Township.</p> <p>2 Q. Okay. And then you approve or don't approve?</p> <p>3 A. Yes.</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>7 A. No.</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>19 A. Mmm-hmm.</p> <p>20 Q. Yes?</p> <p>21 A. Yes.</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>3 A. I've actually not, I have not dealt with this. I have</p> <p>4 not had this request before me.</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>10 A. The ordinance doesn't specifically state in either</p> <p>11 (2)(b) that they have to give an advanced notice to</p> <p>12 the zoning administrator.</p> <p>13 Q. Okay.</p> <p>14 A. So I would say as long as it is something that is a</p> <p>15 guest activity use that was approved in their special</p> <p>16 permit, then no.</p> <p>17 Q. Okay. But this is, this is a section of the ordinance</p> <p>18 that you are charged with enforcing, correct?</p> <p>19 A. Yes.</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>11 A. Well, what I would be approving on it is the number of</p> <p>12 guests that they have in it.</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>15 A. Sure.</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>18 A. Yes.</p> <p>19 Q. Okay, but it still would require your approval?</p> <p>20 A. Yes.</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>3 Q. Let's take it from an enforcement perspective, okay?</p> <p>4 If a winery held a meeting of a 501(c)(3) group that</p> <p>5 was based out of Kent County, is that allowed or not</p> <p>6 allowed?</p> <p>7 A. Well, it specifically states that meetings of</p> <p>8 501(c)(3) non-profit groups within Grand Traverse</p> <p>9 County. So I would say that if it was somebody from</p> <p>10 Kent County, it would not be allowed.</p> <p>11 Q. Okay. And that is an enforcement action that your</p> <p>12 office would then take?</p> <p>13 A. Yes.</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>25 A. Mmm-hmm.</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?</p> <p>3 A. Yes.</p> <p>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?</p> <p>7 A. According to this, yes.</p> <p>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?</p> <p>11 A. I don't believe that's what I said, no.</p> <p>12 Q. They all need your approval to engage in guest 13 activities, right?</p> <p>14 A. One minute ... 15 So the township board may approve guest 16 activity uses.</p> <p>17 MR. MEIHN: Can I ask you a question for 18 clarification?</p> <p>19 MR. INFANTE: No, I have a question 20 pending.</p> <p>21 A. So restate your question to me, please.</p> <p>22 MR. MEIHN: Then I won't, thank you.</p> <p>23 BY MR. INFANTE:</p> <p>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 A. Yes.</p> <p>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.</p> <p>8 A. Please, I'm lost.</p> <p>9 MR. MEIHN: Where are you reading?</p> <p>10 MR. INFANTE: It's 2(c) -- sorry, 2(e), I 11 apologize.</p> <p>12 THE WITNESS: That's why I'm confused.</p> <p>13 MR. INFANTE: 2(e).</p> <p>14 BY MR. INFANTE</p> <p>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.</p> <p>18 Have you read it?</p> <p>19 A. I have.</p> <p>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)?</p> <p>24 A. Yes.</p> <p>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?</p> <p>3 A. I'm sure -- I don't know how to answer -- I don't 4 know. That's my answer.</p> <p>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?</p> <p>8 A. I guess I don't understand, I'm not understanding 9 something here. Repeat your question originally.</p> <p>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?</p> <p>14 A. Yes.</p> <p>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?</p> <p>19 A. Correct.</p> <p>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)?</p> <p>2 A. So "no food service other than as allowed above" -- 3 MR. MEIHN: He's just asking you how you 4 enforce it.</p> <p>5 THE WITNESS: How would I enforce that?</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. Yeah.</p> <p>8 A. The same way I would enforce anything else. If I 9 found there was violation, I would do an investigation 10 and I would find out, you know, if what they did was 11 compliant with the ordinance or not compliant with the 12 ordinance.</p> <p>13 Q. Okay. Let me ask it a different way, because maybe my 14 question was not articulate.</p> <p>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?</p> <p>19 A. No.</p> <p>20 Q. You're going to make sure that they are complying with 21 the winery-chateau ordinance at that event, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And then maybe by a complaint or maybe by Mr. Sanger 24 visiting that event, correct, or yourself?</p> <p>25 A. Well, okay, continue.</p>

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<p style="text-align: right;">Page 74</p> <p>1 activity?</p> <p>2 A. Yes.</p> <p>3 Q. And is that something that you monitor as the director</p> <p>4 of zoning?</p> <p>5 A. As far as am I on-site when they're having all of</p> <p>6 their wine tours and their dinners, and whatever their</p> <p>7 guest activity use is? No, I'm not on-site when these</p> <p>8 things are occurring.</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 A. Yes.</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 A. It would prohibit you bringing alcohol out, from</p> <p>12 outside on to the property. So if I am a winery, I</p> <p>13 can't have my guests bring in a bottle of bourbon.</p> <p>14 Q. But whatever that winery produces they can sell or</p> <p>15 serve?</p> <p>16 A. Yes. It's outside, no alcoholic beverages that is</p> <p>17 outside. So if I'm going to one of these activities,</p> <p>18 I can't bring in my little flask of whatever I want to</p> <p>19 hang out with my friends that are in the guest</p> <p>20 activity.</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 A. It says it "shall include." It doesn't say, it</p> <p>8 doesn't say that it needs to have all three of these,</p> <p>9 but it needs to include as part of their activities</p> <p>10 these items.</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 A. Right.</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 A. It says it "shall include agricultural production</p> <p>19 promotion as part of the activity as follows." So is</p> <p>20 it all three of these things? I would say it's not</p> <p>21 all three of these things, but they have to include</p> <p>22 one of these things.</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 A. Yes.</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 A. Well, I mean, that's -- yeah, you know, I think that</p> <p>4 it's being prohibited because they don't want people</p> <p>5 to bring in other types of alcohol to these entities.</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 82</p> <p>1 Are you enforcing this provision?</p> <p>2 A. Yes.</p> <p>3 Q. And how do you enforce this?</p> <p>4 A. Again, no amplified instrumental music is allowed, so</p> <p>5 they can't have amplified instrumental music.</p> <p>6 If there's amplified voice and recorded</p> <p>7 background music, then it has to be at an</p> <p>8 amplification that is no greater than a normal</p> <p>9 conversation.</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 A. Well, it would have to be a normal talking voice.</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 A. It would have to be at our own discretion, because</p> <p>18 it's not otherwise -- it would have to be at our</p> <p>19 discretion.</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 A. Anything with an instrument.</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 A. Correct.</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 A. Not if it's not -- as long as it's not amplified.</p> <p>7 They could play an electric guitar as long as it's not</p> <p>8 amplified. They could play acoustic guitar as long as</p> <p>9 it's not amplified. Does that make sense?</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 A. Yeah.</p> <p>13 Q. Someone could play a base drum as long as it's not</p> <p>14 amplified?</p> <p>15 A. Right.</p> <p>16 Q. So a marching band, so long as it's not amplified,</p> <p>17 would be allowed?</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Fair enough. Let's look at 5(h), outdoor displays --</p> <p>20 it says: No outdoor displays of merchandise,</p> <p>21 equipment or signs are allowed.</p> <p>22 Are you currently enforcing this --</p> <p>23 A. Yes.</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 A. So I would say amplified is anything that is louder</p> <p>11 than if you're normally playing. So if you're playing</p> <p>12 a flute and you have the flute hooked up to a mic with</p> <p>13 speakers, it's amplified. If you have a guitar and</p> <p>14 you're just strumming a guitar, acoustic guitar,</p> <p>15 that's not amplified. If you have it hooked up to a</p> <p>16 machine and are putting out the music, that would be</p> <p>17 amplified.</p> <p>18 So I would have to say, however, amplified</p> <p>19 voice and recorded background music is allowed that</p> <p>20 would be amplified through, I don't know, elevator</p> <p>21 music playing in the background or --</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 A. Well, equipment could have a vast variety of meaning,</p> <p>5 from, you know, farm equipment, to equipment for the</p> <p>6 winery, you know, things that they use to process</p> <p>7 their wines out of. Equipment could be -- it has lots</p> <p>8 of meanings.</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 A. So a display?</p> <p>13 Q. Yes.</p> <p>14 A. So a display of merchandise. What's merchandise for a</p> <p>15 winery-chateau? So I would say they couldn't have</p> <p>16 displays of merchandise, their wines, you know;</p> <p>17 anything that they're allowed to sell they couldn't</p> <p>18 have displayed outside.</p> <p>19 Q. What's a display of equipment?</p> <p>20 A. Same thing. I would think that the equipment relating</p> <p>21 to the winery. So internally their stills, whatever</p> <p>22 they're called, their fermenting stuff, that would be</p> <p>23 equipment that they would use. So it's all equipment</p> <p>24 related right to the winery that couldn't be sitting</p> <p>25 outside, like as a feature piece, art piece type of</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>

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

<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 A. Okay. 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 A. I'm really not sure how to answer that question. 16 Honestly, I'd get my attorney's opinion. 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 A. Well, I think if you were going to look at the rest of 24 the subsection of this, I think then you could serve 25 it as a, you know, product in the -- as a food item,</p>	<p style="text-align: right;">Page 96</p> <p>1 a statement, complete statement: Retail sale of 2 packaged food items allowed in addition to bottled 3 wine are those which contain wine or fruit produced in 4 Peninsula Township. 5 It doesn't give a caveat to differentiate 6 from anything other than produced in Peninsula 7 Township. 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 A. A percentage of it would. 16 Q. So it would contain fruit grown in Peninsula Township? 17 A. Not the whole thing. 18 Q. That's not my question. Would it contain fruit grown 19 in Peninsula Township? 20 A. Yes. 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 but I don't know that you could sell it as a retail. 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 THE WITNESS: I don't know how to answer 11 it. 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 A. I would say one hundred. 24 Q. And where does it say that -- 25 A. It doesn't, it doesn't define it either way, but it's</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 A. Yes. 4 Q. And is this something that you, as the director of 5 zoning, are enforcing? 6 A. Yes. 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 A. Yes. 16 Q. And I believe your testimony is that would be at your 17 discretion? 18 A. It would be -- I don't know that I used the word 19 "discretion," but other like items continuation of 20 what is exemplified. 21 Q. Okay. But you are the person that makes that 22 determination? 23 A. Yes. 24 Q. Does any other person at Peninsula Township make that 25 determination?</p>

Exhibit 12

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6609

February 9, 1990

MIGRANT AGRICULTURAL WORKERS:

Township zoning authority over migrant labor camps

ZONING AND PLANNING:

Township zoning authority over migrant labor camps

While a township may enact reasonable zoning regulations not inconsistent with state statutes or regulations governing agricultural labor camps, a township may not use its zoning power to effectively prohibit such camps in agricultural areas.

Raj M. Wiener

Director

Department of Public Health

3423 N. Logan, P.O. Box 30195

Lansing, Michigan 48909

You have requested my opinion whether, in view of the statutory authority of the Department of Public Health to regulate and license agricultural labor camps for the temporary housing of migrant workers, a township may further regulate such camps pursuant to its zoning authority, and if so, whether it may enact zoning ordinances, the effect of which is to preclude the construction of agricultural labor camps.

Part 124 of the Public Health Code, MCL 333.12401 et seq; MSA 14.15(12401) et seq, requires a person operating an agricultural labor camp to acquire a license from the Department of Public Health and directs the Department to promulgate rules setting forth minimum standards for construction, health, sanitation, sewage, water supply, plumbing, garbage disposal and operation.

1943 PA 184, MCL 125.271; MSA 5.2963(1), grants townships broad authority to enact zoning regulations in portions of the township outside the limits of cities and villages. Townships have no police power of their own and may exercise zoning power only by grant from the Legislature through zoning enabling acts. *Fredal v Forster*, 9 MichApp 215, 229; 156 NW2d 606 (1967). A municipality may not enact an ordinance which directly conflicts with a state statute. *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977).

In *Dingeman Advertising, Inc v Saginaw Twp*, 92 MichApp 735; 285 NW2d 440 (1979), the court held that the broad general grant of power under the township rural zoning act did not allow a township to enact a zoning ordinance in contravention of the Highway Advertising Act which provided specific standards for billboard advertising. It is clear that this principle also would prohibit a municipality from enacting an ordinance which directly conflicts with a regulation enacted pursuant to statutory authority. In *Noey v City of Saginaw*, 271 Mich 595; 261 NW 88 (1935), for example, the Supreme Court held that a regulation promulgated by the Liquor Control Commission which prohibited the sale of alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. could not be superseded by a city ordinance which prohibited sales from midnight to 7:00 a.m.

However, a township may, when authorized to do so, enact reasonable standards relating to the public welfare which are stricter than minimum standards set by state statute or by rules enacted pursuant to statutory authority. Thus, in *Palmer v Superior Twp*, 60 MichApp 664; 233 NW2d 14 (1975), the Court of Appeals upheld a township ordinance setting standards for mobile home

parks stricter than those in the applicable state statute. The court read the provisions of the state act as evidencing an intent to impose the minimum, not the only, standards.

Section 12421(1) of the Public Health Code, MCL 333.12421(1); MSA 14.15(12421)(1), states:

"The department shall promulgate rules for the protection of the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps."

Pursuant to this authority, the Department has enacted administrative rules, including 1979 AC, R 325.1503, which provides:

"These rules apply to all agricultural labor camps. A provision in these rules shall not take precedence over a requirement in an applicable local rule, ordinance, or code when such requirement is more stringent than the provision in these rules."

Thus, 1979 AC, R 325.1503 expressly permits a township to utilize the power granted by the rural township zoning act to regulate health and safety within agricultural labor camps, so long as the township's zoning requirements are within the minimum standards set by the Department of Public Health and are reasonable.

A township may not, however, under the guise of zoning, completely prohibit agricultural labor camps in areas zoned for farming. In *Waterford Proc v Waterford Twp*, 25 MichApp 507; 181 NW2d 675 (1970), the state health commissioner had issued a license to operate a landfill to the Plaintiff, but the township refused to license the proposed facility. The court stated:

"Once the commissioner has approved a certain site and imposed operating conditions, the local governing body may impose any additional reasonable regulations designed to eliminate any foreseeable health hazard. However, these local regulations may not exclude what the state has permitted. *Builders Association v City of Detroit* (1940), 295 Mich 272. Since the operation of the Waterford Township zoning ordinance has an exclusionary effect in this case, that portion of the ordinance permitting refusal of a local license to a state licensee is void as applied." *Id.* at 511-512. (Emphasis in original.)

See also, *National Amusement Co v Johnson*, 270 Mich 613; 259 NW 342 (1935). To like effect, see OAG, 1969-1970, No 4680, p 94 (October 31, 1969) (where a state statute provided for permits for mobile home parks, a township could not prohibit them); and OAG, 1979-1980, No 5454, p 73 (March 8, 1979) (a statute providing for adult foster care facilities in areas zoned for single family residences supersedes a township zoning ordinance limiting the number of non-related persons occupying single-family homes).

It is my opinion, therefore, that while a township may enact reasonable zoning regulations not inconsistent with state statutes or regulations governing agricultural labor camps, a township may not use its zoning power to effectively prohibit such camps in agricultural areas.

Frank J. Kelley

Attorney General

<http://opinion/datafiles/1990s/op06609.htm>

State of Michigan, Department of Attorney General

Last Updated 11/10/2008 15:49:34

Exhibit 13

Report of Retained Expert Witness

Submitted Under Rule 26(a)(2)(B)
in Support of Plaintiffs

Wineries of the Old Mission Peninsula Association (“WOMP”)

v.

Peninsula Township and Protect the Peninsula, Inc.

Case No. 1:20-cv-01008

Prepared and signed by:

Teri Quimby, J.D., LL.M.,
President
Quimby Consulting Group, LLC

E: teri@terquimby.com

C: 517-230-8320

I have been retained as an expert witness and submit the following information under Rule 26(a)(2)(B):

1. Expert Witness contact Information.
 - a. Name: Teri Quimby, J.D., LL.M.
 - b. Company: President, Quimby Consulting Group
 - c. Address: 776 W. Grand River Avenue, Brighton, MI 48116
 - d. Email: teri@teriquimby.com
 - e. Cell: 517-230-8320
2. Qualifications of witness.
 - a. Former Commissioner, Michigan Liquor Control Commission.
 - b. Eight years of working knowledge and application of the Michigan Liquor Control Code.
 - c. CV attached.
3. Publications. A list is included in my CV; please refer to that list.
4. Sources Reviewed.
 - a. Plaintiff's Brief in Support of Motion for Partial Summary Judgment on Preemption Claims, ECF No. 334.
 - b. Peninsula Township's Corrected Response to Plaintiff's Motion for Partial Summary Judgment on Preemption, ECF 353.
 - c. PTP's Brief Opposing Plaintiff's Motion and Supporting PTP's Cross-Motion for Partial Summary Judgment on Preemption Claims, ECF No. 356.
 - d. Peninsula Township Zoning Ordinance (PTZO), a Land Use Code, Peninsula Township, Grand Traverse County, Traverse City, MI 49686; Effective Date: June 5, 1972; Including Amendments through August 31, 2009.
 - e. Michigan Liquor Control Code, MCL 436.1101 et seq.
 - f. Michigan Administrative Code, R 436.1001 et seq.
 - g. Michigan Constitution, Article IV, § 40
 - h. U.S. Constitution, Twenty-First Amendment.
 - i. *Noey v. Saginaw*, 271 Mich. 595; 261 N.W. 88 (1935).
 - j. *R.S.W.W., Inc. v City of Keego Harbor*, 397 F.3d 427 (6th Cir. 2005).
 - k. *Allen v. Liquor Control Commission*, 122 Mich. App. 718 (1982).
5. Exhibits. No exhibits are submitted.
6. Other cases in last four years where witness has testified as an expert at trial or by deposition. No other cases are listed.
7. Compensation paid for report and testimony.
 - a. Payment is based on an hourly rate.
 - b. The hourly rate is \$425 an hour.

8. Opinion: **The Michigan Liquor Control Commission (MLCC) has sole authority over the alcohol in Michigan as granted to it by the U.S. Constitution, Michigan Constitution, and Michigan statute.**

- a. As a Commissioner, I accepted the great responsibility for the regulation of alcohol at the state level that is established by the Twenty-First Amendment, the Michigan Constitution, and the Michigan liquor control code. The Michigan liquor control commission ("Commission") has sole authority to issue a license for alcohol. When considering commission actions, I looked to the grant of authority from these sources.
- b. The historic era of alcohol prohibition was followed by regulation of it. Even now the alcohol beverage industry continues to be one of the most highly regulated by government. And although the length of the Twenty-First Amendment of the U.S. Constitution may be viewed as short, the carefully chosen words are extremely powerful with meaning for the regulation of this industry. For example, it prohibits the transporting or importing into "any **State**, Territory, or possession of the United States" for "**delivery or use therein**" . . . "in violation of **the laws** thereof." (Emphasis added.). After a state allows alcohol within its borders, then the state government controls it.
- c. In Michigan, the Constitution provides discretion in Article IV, §40 to the Michigan Legislature to statutorily create a liquor control commission. The legislature acted and the law is currently referenced as the "Michigan liquor control code of 1998." The specific wording in §40 states that the Commission "shall exercise **complete control** of the alcohol beverage traffic within this state, **including the retail sales thereof**" subject to statutory limitations. (Emphasis added). Also, it is important to note the words in the final sentence: "Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages **in any county** in which a majority of the electors voting thereon shall prohibit the same." (Emphasis added.). This one specific acknowledgement of local ability—to prohibit alcohol within a county, through the voice of voters—does not equate to a grant of authority to a local unit of government within a county to prohibit the manufacture or sale of alcohol. The state's complete control over alcohol is only limited in the few counties choosing to prohibit alcohol.
- d. MCL 436.1209 creates the Commission and clearly states in law the Commission's responsibilities over alcohol. This includes licensing, purchasing, enforcement, merchandising, and distribution. Further, while the Commission is the only authorized government entity enabled to grant alcohol licenses, it is also clear under MCL 436.1903(1) that commissioners are the only ones

empowered to suspend or revoke an alcohol license—not local units of government.

- e. The constitutional grant of “complete control” is “subject to statutory limitations.” What are examples of these limitations placed on the Commission? If the Commission finds a violation, the maximum fine is set by statute (MCL 436.1903). If the Commission suspends or revokes a license, a notice and hearing is required by statute (MCL 436.1903). If the Commission approves a license in a quota category, the maximum number of available licenses is established in the law (MCL 436.1531). Simply stated, the Commission cannot exercise control beyond any legislatively set limits and has complete control up to those limits.

9. **Opinion: Unless the legislature statutorily limits the commission, the commission has complete control over alcohol in Michigan, which supports the preemption argument.**

- a. As a commissioner I looked to the enacted words—every one of them deemed to be intentionally chosen by the legislature—to guide me in the application of the law to the facts. Every word requires recognition. Only a handful of detailed provisions in the liquor control code exist that allow for very specific actions by local government. One example is MCL 436.2113, which governs Sunday alcohol sales. The wording of these provisions that allow limited local engagement deserves detailed attention.
- b. As noted, the law governing Sunday sales of alcohol is one example from the liquor control code specifically allowing local county governments to exercise extremely limited discretion over a very specific activity. The county may choose to act by resolution to prohibit Sunday sales or it may be forced by petition to place the issue on the ballot. Either way, if the prohibition of Sunday sales is approved for the county, then the prohibition is directed toward the licensee; it is not a limitation on the Commission or the Commission’s complete control over alcohol. Sunday sales are allowed, and regulated by the Commission, unless the county prohibits it by following the specifically outlined provisions set forth in statute.
- c. Once the Commission approves a license, MCL 436.2113(1) clearly states that a licensee “may sell at retail, and a person may buy, spirits or mixed spirit drink between the hours of 7 a.m. on Sunday and 2 a.m. on Monday.” This is the law, and it allows licensees to do this activity on the licensed premise, except for any of these specifically stated statutory reasons:
 - i. a county prohibits Sunday sales by a majority-approved resolution or voter-approved ballot initiative for consumption on or off the premises, or both; or

- ii. any city, village, or township chooses to prohibit Sunday sales by resolution or ordinance—if on a legal holiday, primary election day, general election day, or municipal election day.
- d. The Sunday sales law is specific as to how, when, and which local government may engage on a limited basis in state authorized activities of an alcohol licensee. Also, the law differentiates the actions allowed by the various types of local governments. Further, the statute even sets forth specific ballot language to be used by a county for a Sunday sales vote. Overall, the law is comprehensively prescriptive in nature, leaving little room for the local government's own discretion or agenda.
- e. Defendant Peninsula Township also overlooks a key analytical point in the Keego Harbor case, choosing to quickly dismiss the case's relevance because the ruling is focused on the doctrine of unconstitutional conditions rather than being primarily a preemption or zoning case. (ECF No. 353, p. 24). However, the Keego Harbor Court pays close attention to what a city ordinance can't do, referencing the Noey decision; a city ordinance "cannot fix closing hours to a period shorter than that specified in the state rule." (*R.S.W.W., Inc. v City of Keego Harbor*, 397 F.3d 427, 435, citing *Noey v. City of Saginaw*, 271 Mich.595, 261 N.W. 88 (1935)). The Court comments that Mich. Admin. Code R 436.1403 does not appear to grant an explicit right to remain open "until 2:00 a.m." but, rather, prohibits alcohol sales "after 2:00 a.m." (*Id.*). Once again, the Commission has complete control over the license, licensee, and the licensed premises—including hours of operation. The limitation imposed on the Commission here is clear; the Commission cannot extend a licensee's hours of operation to include the hours between 2:00 a.m. and 7:00 a.m. However, the Commission's exercise of complete control over the legal hours of operation is verified on the Commission's website. Both the Licensing and the Enforcement Divisions reiterate the legal hours for serving or selling alcohol in Michigan is 7:00 A.M. To 2:00A.M. State regulations set and enforce this timeframe for the legal hours. Thus, the sale and service of alcohol is authorized during this time. The only limitation is for very specific reasons, such as by a county's prohibition on alcohol or by a local unit's Sunday sales prohibition for a legal holiday falling on a Sunday.
- f. Further, Michigan Administrative Code R 436.1403 addresses the need for a business wanting to stay open past the legal hours for alcohol sales and service—not for alcohol, but, rather for food service or other non-alcohol activities. Approval for these activities is reserved for and granted by the state.

- g. This state control analysis extends to other provisions of the liquor control code and supports the position that the Commission has complete control over the regulation of alcohol in Michigan, unless specifically limited. Since the Commission is charged with review and consideration of additional activities for a licensee taking place on licensed premises, such as music, dancing, food, catering, and more, the Commission solely regulates the specifically mentioned activities occurring on the state-licensed premises.
- h. As a commissioner I did not interpret the liquor control code as allowing any type of local government engagement in the alcohol licensee's activities on a licensed premise, unless specifically set forth in the liquor control code.

10. Opinion: Defendant applies incorrect reasoning in concluding that because the township merely restricts the location of activities rather than prohibiting them, state law does not preempt the PTZO from doing so.

- a. As a commissioner, I placed great importance on the specificity of a well-defined and clearly marked perimeter of a licensed premise for clarity on exactly where alcohol is, and what activities are taking place where the alcohol is located. Given the highly regulated nature of alcohol, the Commission has complete control over these activities for a licensee at the location of the alcohol license. If the liquor control code authorizes an activity for a licensee, without exceptions, then the licensee may engage in that activity. Period.
- b. Otherwise, this highly regulated product would fall under an undesirable, loosely quilted patchwork of thousands of local governments trying to regulate what is perhaps the highest, or one of the highest, regulated industries of all.
- c. Rulemaking authority is clearly granted to the Commission under MCL 436.1215 to regulate "the duties and responsibilities of licensees in **the proper conduct and management of their licensed places.**" (Emphasis added.). The Commission retains complete control over a license, licensee, and state-specified activities on licensed premises.
- d. The definition of "licensee" describes the relationship between the Commission and the licensee, with the Commission granting authority to the licensee. (MCL 436.1107(13)). The Commission retains complete control over the license, licensee, and state-specified activities on the licensed premises.
- e. The definition of "licensed premises" in R 436.1001(1)(i) basically encompasses any part of the real estate owned or operated by a licensee "in the conduct of the business at the location for which the licensee is licensed by the

commission...". The alcohol license applies to the *conduct of the business*, and to *the location licensed by the commission*. Once the location is licensed by the Commission, the licensed premises along with the conduct of the business at that location falls under the control of the Commission. Any activities on state-licensed premises that are set forth in statute or rules falls exclusively with the Commission. The Commission retains complete control over the license, licensee, and state-specified activities on the licensed premises.

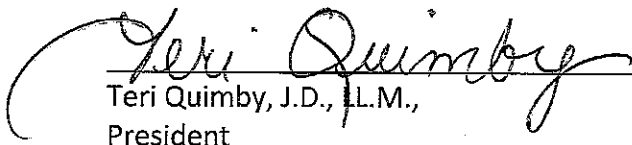
- f. Given the Commission's complete control, the liquor control code and administrative rules preempt the PTZO from restricting the location of state-specified activities allowed under the state regulations for a licensee. The PTZO prohibits what is allowed by statute.

11. Opinion: Defendant places improper reliance on Michigan Administrative Code R 436.1003 by labeling the rule as a "warning" to licensees, as well as improper inference of Commission authority over non-alcohol related codes such as building codes, fire codes, and health codes.

- a. As a Commissioner I would see businesses anxious to open as soon as the alcohol license was approved. While the Commission clearly has control over alcohol licenses, licensees, and activities on licensed premises, the Commission does not have statutory authority to enforce other codes. The approval of an alcohol license does not equate to a building occupancy permit, for example. Nor does it equate to a health department license. And it does not equate to an approval for having the required number of toilets.
- b. At some point while I served as a commissioner, the commissioners made the decision to include the language of R 436.1003 in Commission approval orders and on the license *as a reminder* to work with local units of government on matters concerning building, plumbing, zoning, sanitation, and health laws, rules, and ordinances. The Defendant's choice to label this reminder as a "warning" is misguided in my opinion, based upon my experience with this issue at the Commission. (ECF No. 350, p. 14).
- c. Defendant focuses on the word "zoning" and implies the *Allen* case creates an absolute permission to force compliance with all local zoning ordinances—even if the ordinances create a conflict with state authority. (ECF No. 353, p. 13-14). However, the Court notes that the exercise of police powers by local units of government is subject to the Commission's authority. (*Allen v. Liquor Control Comm.*, 122 Mich. App. 718, 720 (1982). When a conflict arises, as it does here with the PTZO, the Commission's state authority preempts the local regulation.

12. Conclusion. State authority over the regulation of alcohol extends state-wide and is constitutionally limited only in those counties prohibiting the manufacture or sale of alcohol and is statutorily limited only in a few specifically stated circumstances allowing for local government engagement. The state has complete control over state-specified activities occurring on licensed premises. In this case, a conflict arises between the state regulations and the local ordinance (PTZO). The state regulations over alcohol licenses, licensees, and specifically authorized activities on licensed premises preempt the attempted regulation by this local unit of government.

The above opinions are prepared and submitted by:


Teri Quimby, J.D., LL.M.,
President
Quimby Consulting Group, LLC

Teri Quimby, J.D., LL.M.

Corporate Governance · Compliance · Communication

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Accomplished attorney, board member, and former state regulator with background in several heavily regulated industries. Provides critical thinking and a mediator's approach for engaging others to drive actionable, positive solutions. Understands complex issues, appreciates diverse perspectives, and attends to details. A professional who handles information with discretion and care.

Critical Transformation	Challenges status quo by continuously looking for optimized governance and compliance solutions, and streamlined practices, procedures, and modern techniques that move organizations forward to better serve all stakeholders with integrity.
Strategic Guidance	Guides the implementation and maintenance of regulatory and operational policies based on understanding of business practices, identifying opportunities, and managing risks.
Consensus Building	Blends relationship- and knowledge-based approaches to encourage dialogue that facilitates impactful changes rooted in understanding business objectives and stakeholder support.
Thought Leadership	Provides innovative perspectives and insights, impeccable research skills, and effective strategy planning and implementation to move matters forward.

PROFESSIONAL EXPERIENCE

WESTERN MICHIGAN UNIVERSITY-COOLEY LAW SCHOOL · Adjunct Professor 2022 – Present

Adjunct Professor teaching legal drafting, a required third-year law school course, in the writing department.

ATTORNEY AT LAW / CONSULTANT · Teri Quimby Law, PLLC / Quimby Consulting Group, LLC 2019 – Present

Legal services, focusing on administrative law. Consulting services, focusing on governance and compliance initiatives, research, writing, and public policy issues.

GRAND VALLEY STATE UNIVERSITY, CHARTER SCHOOLS OFFICE · Governance & Compliance Consultant 2021 – 2022

Consultant for GVSU chartered school boards, focusing on board governance and compliance with university granted charter authorization contracts and regulatory compliance. Developed board training programs; promoted good governance initiatives.

COMMISSIONER · Michigan Liquor Control Commission 2011 – 2019

Appointed by the Governor of Michigan to carry out Constitutional and statutory responsibilities over alcoholic beverage traffic in Michigan (including manufacturing, importation, possession, transportation, and sales); also served on agency appellate board.

- ▶ **Business Transformation:** Modernized Commission's business practices by creating streamlined, constituent-focused processes.
 - Improved licensing procedures, resulting in 64% less processing time through commission-initiated, staff-driven project.
 - Commission received international recognition with 2016 Process Excellence Network Award for "Best Process Improvement Project Under 90 Days," outcompeting finalists from other states and foreign countries.
- ▶ **Hearings & Appeals:** Conducted and frequently chaired daily meetings to vote on Commission decisions for licensing applications, hearings and appeals, declaratory rulings, rulemaking, and wholesaling of spirit products. Exercised statutory subpoena power.
 - Empaneled as agency appeal board (approx. 200 cases per year); decisions based on careful application of statutes and rules.
 - Authorized actions included revocation and suspension of licenses. Also empowered with statutory authority to issue emergency suspension orders with immediate effect when necessary to maintain health, safety, and welfare.
- ▶ **Wholesale Oversight:** As a "control state" and "market participant" for spirit product sales, oversaw the Commission's money-making state enterprise and proprietary fund, which transfers \$200 million or more annually into the state's general fund.

CERTIFIED CIVIL MEDIATOR · Teri Quimby, Esq. 2006 – 2011

General services focused on civil, domestic, and special education mediations and facilitations. Prepared detailed mediation agreements achieving thoroughness and accuracy, avoiding opportunities for speculation and interpretation.

DEPUTY DIRECTOR & SENIOR LEGAL COUNSEL · Michigan House Of Representatives 1991 – 2006

Within the House Majority Policy Office, worked with both parties, and other internal and external stakeholders, to advance Michigan's public policy formation through legislation. Facilitated consensus with members and interest groups. Directed 20+ policy advisors, advised 50+ caucus members, and supported personnel functions such as including hiring and staff development. Highlights include:

- ▶ **Environmental Policy:** Key participant in collaborative group process codifying related laws into one, user-friendly code—Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994.
- ▶ **Public Utility Policy:** Critical collaborator on major revisions to Michigan Telecommunications Act, Public Act 295 of 2000, and Customer Choice and Electric Reliability Act, Public Act 141 of 2000.

BOARD POSITIONS

VICE-PRESIDENT FINANCE & TREASURER · National Speakers Association-Carolinas Chapter 2023-Present

Elected by members to be entrusted with appropriate handling of all financial aspects of the association, included preparation of monthly and annual P&L statements.

EDITORIAL & ADVISORY BOARD · Society of Corporate Compliance & Ethics, *The Complete Manual* 2023 – Present

Provider of thought leadership and editorial review for this globally distributed, annually updated manual on compliance.

EDITORIAL BOARD · American Craft Spirits Association, *Craft Spirits Magazine* 2022 – Present

Provider of thought leadership and editorial review of this globally distributed magazine on craft spirits.

CORPORATE BOARD OFFICER · Start-Up Company, Finance Sector 2021 – Present

Provider of governance and leadership as secretary and board member for an SEC-regulated corporation.

PRESIDENT & OFFICERS · National Conference of State Liquor Administrators 2015 – 2019

Served as 1st, 2nd, and 3rd Vice President; Central Region Chair; Annual Conference Program Planning Committee Member

Elected by peers from other states to promote dialogue between state regulators and others involved in all aspects of the alcoholic beverage sector. Improved governance through modernization of articles of incorporation, bylaws, and other policies and procedures.

CHARACTER & FITNESS COMMITTEE MEMBER · State Bar of Michigan District E 2010 – 2016

Appointed by the State Bar of Michigan Board of Commissioners to review and determine fitness of applicants for bar admission.

UTILITY CONSUMER PARTICIPATION BOARD CHAIR · State of Michigan 2000 – 2003

Appointed by Michigan Governor to review applications and grant funding to non-profit organizations that represent Michigan utility ratepayers in cost recovery proceedings between utilities and Michigan Public Service Commission.

BOARD TRUSTEE · Delta Charter Township 1992 – 1996

Committees: Environment/Utility Chair; Transportation and Elections Committee

Elected to public office by community to represent 29,000 township constituents and lead 70+ employees, with oversight for responsible spending of \$15 million annual budget. Chosen as Board's representative to serve on Zoning and Sign Boards of Appeals.

AWARDS & RECOGNITION

- ▶ **NLEA:** Award of Appreciation (National) 2021
- ▶ **Crain's Business Detroit:** Most Notable Women Lawyers in Michigan (State) 2017
- ▶ **NALCP:** Best Practices Award for Extraordinary Innovation, Dedication & Leadership (National) 2017

BAR ADMISSIONS & EDUCATION

- ▶ **Michigan & Illinois** · Admitted and in good standing
- ▶ **Post Graduate Certificate in Competition Policy (One Year Course)** · University of East Anglia, Centre for Competition Policy (U.K.)
- ▶ **LLM-Corporate Law: Regulatory Analysis & Compliance** · Widener University, Delaware Law School (U.S.)
- ▶ **JD** · Western Michigan University, Cooley Law School (U.S.)
- ▶ **BA · Major: Justice, Morality & Constitutional Democracy; Minor: German** · Michigan State University, James Madison College (U.S.)

MEDIATION CERTIFICATIONS

- ▶ Civil Mediation
- ▶ Domestic Relations Mediation
- ▶ Special Education Mediation & Facilitation

PROFESSIONAL AFFILIATIONS & MEMBERSHIPS

- ▶ Society of Corporate Compliance and Ethics (SCCE)
- ▶ National Association of Corporate Directors (NACD)
- ▶ Association of Certified Fraud Examiners (ACFE)
- ▶ National & State Speakers Associations (NSA-MI & NC/SC)
- ▶ American Craft Spirits Association (ACSA)
- ▶ National Liquor Law Enforcement Association (NLLEA)

REGULATORY & LEADERSHIP CERTIFICATES & TRAINING

- ▶ 25-hour Internal Investigations Workshop—Society of Corporate Compliance & Ethics (SCCE); special training on investigation techniques, documentary evidence, interviews, legal elements, conclusions and reports.
- ▶ 30-hour Compliance & Ethics Academy—SCCE; comprehensive program on compliance practice, legal and disclosure issues, auditing, best practices, investigations, and anti-corruption enforcement.
- ▶ 40-hour Certificate—NM State University College of Business Administration and Economics, Center for Public Utilities; intensive program on telecommunications rate-making and related issues.
- ▶ 40-hour Certificate—NM State University College of Business Administration and Economics, Center for Public Utilities; intensive program on public utilities rate-making and related issues.
- ▶ 80-hour Certificate—Institute of Public Utilities at MSU; intensive public utility regulatory and policy program.
- ▶ 80-hour Certificate—University of MN Humphrey Institute of Public Affairs, Legislative Staff Management Institute; emphasis on conflict negotiation, management techniques and strategic planning.
- ▶ 160-hour Certificate—Environmental Leadership Institute (Michigan Department of Natural Resources, Western Michigan University and Michigan State University); land management, natural resources, and environment management techniques.

PRESENTATIONS AT NATIONAL & REGIONAL CONFERENCES

- ▶ **Practising Law Institute (PLI)**
 - Ethics of Advising in Grey Areas (2022 & 2023);
 - Legal Issues in Alcohol Industry (2021);
 - Industry Trends & Emerging Legal Issues (2020)
- ▶ **Hospitality Law Annual Conference, Washington D.C.**
 - Evaluating Your Ethics & Compliance Culture: Check the Box, or Test & Track? (2022)
- ▶ **SOVOS Ship Compliant Annual Wine Summit**
 - The Shifting Beverage Alcohol Regulatory Landscape (2021); State Regulations in Motion (2017)
- ▶ **National Conference of State Liquor Administrators (NCSLA) Annual & Regional Conferences**
 - Rise of the Retail Tier & Impact of US Supreme Court Case—*TN Wine & Spirits Retailers v. Thomas* (2019)
 - Revealing the Great Oz—Behind the Curtain of the All-Powerful Regulator (2018)
 - I Know It When I See It—A Regulator's Guide to Tied House Policies & Things of Value (2018)
 - Regulator "Hot Topics" (2017)
 - The Other 3 Tier System of Legislators, Lobbyists & Laws: How Sausage is Really Made & Are Ethics Part of the Ingredients? (2017)
 - Social Media—Can Regulators Keep Up with the Marketplace or Will They & the System Fall Subject to "Adverse Possession?" (2016)
 - Cutting Edge Retail Practices—Balancing Consumer Demand, Market Forces & Regulations (2016)
 - Economic Development to Regulate Strictly, or Promote Economic Development? (2015)
 - Trade Practice Innovation—New, Exciting & Legal? (2015)
- ▶ **National Association of Licensing Compliance Professionals (NALCP) Annual Conferences**
 - Regulatory Updates (2019 & 2016); The Life Cycle of Information Privacy (2018); Innovative Licensing & Alcohol Regulators' Race with Technology in the 21st Century (2017)
- ▶ **Continuing Legal Education International (CLEI) Annual Conferences on Wine, Beer & Spirits Law**
 - The Significance of Regulatory Compliance (2016, 2017 & 2019)
- ▶ **Michigan Bar Association, Administrative Law Section**
 - Annual Meeting Speaker, Regulatory Update (2012-2019)
- ▶ **National Alcohol Beverage Control Association (NABCA) Legal Symposium**
 - Unraveling Trade Practice Violations (2019); Ethics—What Does Industry Want from Regulators? (2015)
- ▶ **National Liquor Law Enforcement Association (NLLEA) Annual Conference**
 - The Three-Tier System—Current Challenges Faced by Regulators & Enforcement (2018)
- ▶ **Responsible Retailing Forum**
 - Regulator Perspectives on Responsible Beverage Service (2017)
- ▶ **Michigan Brewer's Guild Winter Conference**
 - Rules & Regulations Related to Microbreweries (2017)
- ▶ **Responsible Hospitality Institute**
 - Sociable City Leadership Summits—Craft Culture (2017); State & Local Cooperation (2016)
- ▶ **Women in Government 22nd Annual Midwestern Regional Conference**
 - Adult Beverages—History & Update (2015)

MEDIA COVERAGE & PUBLICATIONS

▶ ACSA-Craft Spirits Magazine, "Minding Compliance: Understanding Compliance & Why It Matters to Craft Distillers"	2023
▶ ACSA-Contributor to E-Book, "The ACSA Guide to Starting & Operating A Distillery"	2023
▶ R Street Institute, "Comment to TTB on Potential Competition Rulemaking for the Alcohol Industry"	2023
▶ SCCE-CEP Magazine-Column, "Better Board Communication"	2023
▶ SCCE-CEP Magazine-Column, "What Value Do You Bring to The Board?"	2023
▶ SCCE-CEP Magazine-Column, "Quantity Versus Quality: Communicating Measurements That Matter"	2023
▶ SCCE-CEP Magazine-Column, "Personal Liability Fears: Reaction Versus Response"	2023
▶ SCCE-Ethikos, "Designing Documents: Using the Art of Persuasion to Influence with Integrity"	2023
▶ The American Spectator, "American Saloon Series: A Disturbing Precedent for America"	2022
▶ SCCE-Ethikos, "Building Better Culture & Compliance With Trust"	2022
▶ SCCE-Ethikos, "Culture & Code of Ethics: Connecting the Dots Through Measurement"	2022
▶ SCCE-CEP Magazine (Cover & Featured Interview), "Meet Teri Quimby: Communication is a Priority"	2022
▶ SCCE-Manual, "Government Agencies—Effective Compliance Programs are Necessary for Public Trust"	2022
▶ R Street Institute, "Comments on Alcohol Industry Competition. Docket No. TTB-2021-0007; Notice No. 204."	2021
▶ SCCE-CEP Magazine, "Are compliance violation 'smoking guns' hiding in the board minutes?"	2021
▶ PLI Chronicle, "Export Controls in Academia: Bridging the Gaps"	2021
▶ PLI Chronicle, "Vaccination Verification: Alcohol Licensee Mandates & Compliance Considerations"	2021
▶ PLI Chronicle, "New Year's Resolution for Alcohol Licensees: Tip Scales in Your Favor with More Compliance"	2021
▶ Governing, "A Chance to Liberate Booze Delivery — if Government Allows It"	2021
▶ CEP Magazine, "Blockchain: Moving Target or Trusted Tech Trend?"	2020
▶ SCCE, "Truth or Consequence: Demonstrating Regulator Ready Compliance Plans vs Consequences of First Draft Plans"	2020
▶ USA Today, "A Century After Prohibition, Will the Coronavirus Finally End It? We'll Drink To That"	2020
▶ R Street Institute, "Coming to a Door Near You: Alcohol Delivery in the COVID-19 New Normal"	2020
▶ Crain's Business Detroit, "2017 Notable Women Lawyers in Michigan"	2017
▶ Michigan Bar Journal, "Liquor Licensees: Avoiding Consequences of Negative Employee Actions"	2016

Exhibit 14

Peninsula Township
Township Board Regular Meeting
Laura Martin, Recording Secretary

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PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board Special Meeting

May 23, 2023, 7:00 p.m.

Township Hall

Minutes – Corrected on June

21, 2023 by the clerk

1. **Call to Order** by Wunsch at 7:01 p.m.

2. **Pledge**

3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Rudolph, Chown

Absent: Wahl, Shanafelt

4. **Citizen Comments:**

Sally Erickson, 2228 Kaukauna Ct., Traverse City: I am the developer of Port of Old Mission. In regards to your upcoming agenda items, how will you be enforcing those items as they come forward? With the Seven Hills [Development] and with the vineyards, what are the mechanisms of enforcement for the requirements they'll have to meet?

Cram: in the packet is a findings of fact and conditions. If the board approves the Seven Hills Development this evening, those conditions will be binding. If we receive a complaint, we will investigate. Citizens reach out to me to express concerns, and [township board member] Dave Sanger also acts as our ordinance enforcement officer. Depending on whether it's a specific condition or part of the approval of the special use permit or a violation of the zoning ordinance, once we receive a complaint, we investigate and then work with the applicants. If there is a compliance issue, we work with them to bring them into compliance.

Erickson: thank you; that answers my question.

5. **Approve Agenda**

Chown moved to strike business item number two from the business agenda with a second by Achorn.

Rudolph moved to approve the agenda as amended with a second by Sanger. Motion passed by consensus

6. **Conflict of Interest:** none

7. **Consent Agenda:**

1. Reports

A. Peninsula Community Library

B. OMP Lighthouse Litter Collection

Chown moved to approve the consent agenda with a second by Rudolph. Motion

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through the planning commission. We could have a study session with the planning commission and the board and a joint public hearing to move this forward. I am up for that challenge.

Chown: yes, let's expedite this.

Wunsch: and try and get an administrative special review process?

Cram: we can talk about an expedited process for minor amendments to SUPS. These minutes and the whole process we went through is great documentation to say why this amendment could be a minor amendment.

Chown: it's a lot of work now when your plate is very full, but in the end, it's going to make your life and applicants' lives easier.

Cram: based on the conversations we've had on farm processing, the C-1 district is where we want to have tasting rooms and retail sales of products produced as long as we are minimizing the negative impacts. This scope was very narrow. The applicants agreed that there wouldn't be the manufacturing that comes along with fully distilling something. We have to look at standards to address smells and noise and all of those things to open this up in the C-1 zone district. It needs to be thoroughly vetted.

Wunsch: you are proposing, if the board desires, that we'll push everything but the small winemaker piece through this evening. You'll shoot for getting the ordinance updated within the next couple of months. Simultaneously, there'll be a process where they can work with you to add the small winemaker piece instead of having to go through this whole process again.

Cram: it is dangerous to update the zoning ordinance for just one project. These updates will also benefit other owners that have C-1 properties. This will provide a wonderful opportunity for agricultural operators who maybe have a wholesale farm processing facility who could have a tasting room in the C-1 zone district. This could help us open a cooperative that could offer tastings of other wineries on Old Mission Peninsula.

Chown: it's exciting to consider.

Jay Milliken, 7580 East Shore Road: whether we're serving a glass of wine or a glass of spirits, the licensing is the same. The concern from the board was processing and manufacturing; it's the exact same. A glass of wine has much less alcohol content than a glass of spirits. I don't see any difference. We've been through this process for two years, and I'm having a hard time understanding, with all due respect, just what the thought process is or why it's different to have a winemaker in addition to the DSP (distiller permit). DSP was approved back in January of 2022. We came before you because you received a notification about the small winemaker permit, and that's why we're here now again for the last couple of months. It sounds like you guys have already done all the work. And we've done all the work on findings of fact of how this makes sense in a C-1 zone, to do the manufacturing and processing, which we're not doing. Definitionally, I'm having a tough time grasping this and I appreciate the opportunity to talk and maybe the attorney has better insight, but I just I don't understand the difference at all.

Cram: it would have been helpful if you had told us upfront that you were applying for that license. We didn't learn about it until we received a letter from the MLCC.

Milliken: (LAURA, WAS THIS MILLIKEN OR VALDMANIS?) we have been fully transparent all

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the way through. I wasn't trying to sneak anything by anyone. It was our understanding when we're applying for a license, whether it's a full commercial license where we can buy anything and sell it, which are not available out here, or the DSP, which we explained two years ago in the first meeting. This winemaker thing, once you're approved with the MLCC, it's basically an additional box check that you can serve wine as well. You cannot serve beer unless you have very specific equipment and square footage for the equipment. That's never been in the cards for us. We know we can't do beer; it requires more from our septic and our drainage than we have. The winemaker permit was something that as we were getting through this, we checked another box, paid another fee. You received the same notification for the DSP at the township as well, and there was never a question at that point. So the winemaker, someone was reading the mail that day. We weren't trying to pull anything over on anyone; we knew you would get a notification. We were going through the process regardless. We said, "They're looking at it again; let's apply for this as well." Because we do want to serve wine. We're focused on our spirits, but this is a winery peninsula. People are coming for our spirits, but if people don't drink spirits, we can offer them wine. That's all. It doesn't put more stress on the drain field or the septic. It doesn't put more stress on the neighborhood. People who drink wine tend to be very mellow, as we know. The music doesn't get louder. The traffic doesn't get heavier. Nothing changes by serving wine. Thank you for your time.

Cram: we have to proceed very cautiously because of all the work we did in updating the farm processing amendment specific to making wine and the negative impacts of that. We are currently in a lawsuit regarding that.

Milliken: it's totally different; we have discussed that many times.

Cram: it is not.

Milliken: it really is because we're not a winery. We're a tasting room. The wine is already made.

Cram: but those licenses allow you to do more than what you are committing to.

Rudolph: the problem is that the license says you can distill and you can make wine.

Milliken: correct.

Rudolph: that is the problem.

Milliken: but we're past the distillery part so I don't know what the difference is.

Sanger: our zoning ordinance does not allow a wine tasting, wine-making operation. I know you're arguing manufacturing versus blending. Our ordinance right now does not allow the use you are asking for in the C-1.

Milliken: it doesn't disallow it either, right?

Cram: that's how our zoning ordinance works. If a use is not specifically noted, then it's not allowed.

Milliken: it doesn't allow for distilling either but we've achieved a way to get through that.

Cram: the board is honoring the distillery license it approved in 2022. This was a creative way to move you forward.

Valdmanis: the effects of the verbiage of different agencies doesn't match up. We've gone from Peninsula Township to Grand Traverse County to MLCC. There's a lot of verbiage that doesn't match up.

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effort was born out of the 2019 survey, which was part of the process of updating our master plan. It showed that 80 percent of residents want to see safer roads for everybody: farmers, bikers, walkers, drivers. They want to see a non-motorized plan out here and safer roads altogether. This is a grant that would allow the township to hire a consultant to come out and create the plan.

Wunsch: we've had a non-motorized committee working on this project since 2020 or 2021. Before I became township supervisor, I participated in those meetings, and we were meeting during the pandemic outdoors. It's been a long time in the works.

Chown: the application is being submitted tomorrow.

Wunsch: Susie Shipman put it all together.

Chown: once the initial letter of intent is submitted, then we find out if we're invited to create and submit the entire application. The final decision is made in September.

11. Adjournment

Chown moved to adjourn with a second by Sanger.

Motion approved by consensus

Adjourned at 8:28 p.m.