

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

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

Plaintiffs do not believe that additional words are necessary to brief the Constitutional issues in this case. Instead, PTP's overlength brief continues PTP's trend of unnecessarily increasing the length and cost of this litigation. *See* ECF No. 307 (denying PTP's previous request to exceed the word count by 83%).

PTP does not need the additional 7,299 words it seeks. For example, PTP spends 31 pages walking through each special use permit and other permissions to argue that the Wineries may not engage in certain activities, so the Wineries do not have standing to challenge the Winery Ordinances containing the same restrictions. (ECF No.470-2, PageID.17286.) This argument is circular because it is the Winery Ordinances themselves which require the Wineries to seek approval from Peninsula Township to engage in activities protected by the Constitution and allowed under Michigan law.

PTP also argues that the Wineries are precluded from exercising their Constitutional rights because the Township Ordinance, in general, does not give them that right. (See ECF 470-2, PageID.17287.) PTP is essentially arguing its well-worn position that “[a]t bottom, Plaintiffs complain about zoning.” (ECF No. 470-2, PageID.17311.) But this case is not about zoning. Recently, another district court in this Circuit addressed a similar argument in a case challenging a sign ordinance under the First Amendment. *Lamar Company, LLC v. Lexington-Fayette Urban County Government*, 2021 WL 2697127 (E.D. Ky. June 30, 2021). In rejecting the City of Lexington’s characterization of the case as “constitutional claims arising out of land use disputes,” the court noted that “at its core, this lawsuit ... is a direct challenge of the constitutionality of the ordinance under the First and Fourteenth Amendments.” *Id.* at *5. The analysis from *Lamar* applies here. Whether or not Peninsula Township further restricted the Winery activities by withholding permissions from their SUPs or other permits is simply irrelevant as to whether the Winery Ordinances are unconstitutional.

PTP spends several pages discussing conservation easements and argues that a winery is not an allowed agricultural use. But the record proves otherwise. Peninsula Township, the grantee of the easements, has determined that according to the “PDR easement, agricultural development of the land with structures in this area is allowed, more specifically, a winery-chateau is considered an acceptable agricultural use upon the land.” (See ECF No. 457-13, PageID.16248.) This decision was made after counsel for the Township provided an opinion concluding that conservation easements do not preclude the activities the Wineries intended to engage in. (See ECF No. 275-1, PageID.10057.) (“the [SUP] application from [Bonobo] does comply with the zoning ordinance land requirement for a winery-Chateau and that the terms of the conservation

easement do not preclude this acreage from being included in the proposed development.”¹ Further, the memo also makes clear that PTP is incorrect in alleging that the parcel containing Bonobo’s winery building is subject to a conservation easement. It is two other parcels, which contain the grapevines, which are subject to conservation easements: “The two (2) parcels used for adjacent farming are subject to a conservation easement.” *Id.* Further, even if an easement was violated, PTP is not a party to the easement and has no standing to enforce its terms. Thus, PTP simply wastes words on an irrelevant issue.

It is not until ECF No. 470-2, PageID.17289—page 31 of its proposed brief—that PTP discusses an issue relevant to these proceedings. Finally, Plaintiffs note that PTP failed to seek concurrence in its request to exceed the word count, as required by LCivR 7.1(d). A copy of PTP’s alleged request for concurrence is attached as **Exhibit A**. Plaintiffs otherwise leave this Court to its discretion regarding PTP’s motion to exceed the word count.

Respectfully submitted,

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

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¹ The same would be true for Black Star. In addition, PTP has not established that the winery building is even burdened by a conservation easement because, frankly, the easement itself is unclear in that it just contains a hand drawn map without any distances or reference points. See ECF No. 457-10, PageID.16216.

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(b)(ii)

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(ii) because this Brief contains 663 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2023, I filed the foregoing Response to Protect the Peninsula's Motion to Exceed Word Count and Page Limit for Motion for Partial Summary Judgment 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