

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WINERIES OF THE OLD MISSION
PENINSULA ASSOC. (WOMP), a Michigan
nonprofit corporation; BOWERS HARBOR
VINEYARD & WINERY, INC, a Michigan
corporation; BRYS WINERY, LC, a Michigan
corporation; CHATEAU GRAND TRAVERSE,
LTD, a Michigan corporation; CHATEAU
OPERATIONS, LTD, a Michigan corporation;
GRAPE HARBOR, INC, a Michigan corporation;
MONTAGUE DEVELOPMENT, LLC, a
Michigan limited liability company; OV THE
FARM, LLC, a Michigan limited liability
company; TABONE VINEYARDS, LLC, a
Michigan limited liability company; TWO LADS,
LLC, a Michigan limited liability company;
VILLA MARI, LLC, a Michigan limited liability
company; WINERY AT BLACK STAR FARMS,
LLC, a Michigan limited liability company;

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal
corporation,

Defendant,

and

PROTECT THE PENINSULA, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-01008

HON. PAUL L. MALONEY

MAG. JUDGE RAY S. KENT

**PROTECT THE PENINSULA'S
BRIEF OPPOSING PLAINTIFFS'
MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON COUNTS I, II, IV, AND X (ECF 468)**

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**PTP'S BRIEF OPPOSING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON COUNTS I, II, IV, AND X (ECF 468)**

I. INTRODUCTION

The Court should deny Plaintiffs' motion for summary judgment on Counts I, II, IV, and X. While Counts I and II assert several First Amendment claims, Plaintiffs' motion advances only flawed speech claims, which fail fundamentally because they identify no "speech" restrained by the 13 (or 16¹) challenged Peninsula Township Zoning Ordinance (PTZO) subsections. Recognizing this, Plaintiffs advance a new theory based not on any challenged subsections but emanating from their agricultural zoning classification. Plaintiffs repackage long-standing grievances about zoning limits on commercial events in the A-1 District by labeling them "agritourism," which they describe as "marketing" that – if not limited by A-1 zoning – would let them offer more wine for sale to event participants. Under their theory, such events become "commercial speech," so PTZO limits on them are unconstitutional. Plaintiffs ask the Court to authorize "agritourism" as they define it in A-1. Plaintiffs' motion is logically, factually, and legally flawed, and they are not entitled to summary judgment for the reasons below and, with respect to 6.7.2(19)(a) and 8.7.3(10)(u)(5)(c) and (g), also for failing to move for summary judgment.

Plaintiffs' motion does not address, develop, or support their request for summary judgment on Count IV (Due Process), so it must be denied. Moreover, the Court previously granted and did not vacate summary judgment on this claim. (ECF 162; ECF 301, PageID 10698; ECF 319, PageID.11889) PTP maintains Count IV is as meritless as Plaintiffs' speech claims and would so demonstrate given the proper opportunity. Given the prior rulings and Plaintiffs' failure to advance any arguments, PTP concludes Count IV is not presently ripe to relitigate.

¹ Plaintiffs discuss but did not move for summary judgment on 6.7.2(19)(a) and 8.7.3(10)(u)(5)(c) and (g).

Plaintiffs request summary judgment on Count X (Injunctive Relief) in three sentences, one quoting an inapplicable case. They ignore the 2022 PTZO amendments modifying numerous challenged provisions, including eliminating Guest Activity Uses (GAUs). They ignore that challenged provisions apply differently to each Plaintiff through unique Special Use Permits (SUPs), where each has different non-conforming uses and vested rights. Instead of asking the Court to declare unconstitutional provisions invalid, they ask it to declare “agritourism” a reasonable use. Even if Plaintiffs succeed in showing challenged subsections are unconstitutional, they are not entitled to their requested injunctive relief.

The Court should deny Plaintiffs’ motion for the reasons below and because most Plaintiffs lack standing, their claims are untimely, and their remaining constitutional claims fail on the merits, as explained in PTP’s brief in support of its proposed motion for summary judgment. (ECF 470-2)

II. COUNTERSTATEMENT OF BACKGROUND FACTS

Because 11 Wineries challenge numerous government decisions spanning decades, throughout this brief, PTP cites record evidence illustratively, not exclusively.

A. Prior rulings give PTP the opportunity to defend the PTZO.

This Court decided summary judgment on these Counts on June 3, 2022, then vacated much of that Order so PTP could litigate them after being granted intervention. (ECF 162; ECF 301). PTP intervention gives the Court its first opportunity to decide key issues with the benefit of a fully developed record and thorough briefing. *See Wineries of Old Mission Peninsula Ass’n v. Peninsula Township*, 2022 U.S. App. LEXIS 23575 *6-*7 (6th Cir. 2022) (*WOMP II*) (PTP intervention fundamentally alters evaluation of prior summary judgment decision).

B. The PTZO protects agricultural and compatible land uses in A-1.

The purposes of the PTZO are, broadly, to protect the public health, safety, and general welfare of Township residents. 2.1. The purpose of A-1 is, *inter alia*, to preserve farmland while allowing limited uses “compatible with agricultural and open space uses.” 6.7.1. Wineries, which are facilities “where agricultural fruit production is maintained, [and] juice is processed into wine, stored in bulk, packaged, and sold,” are identified as compatible uses. 3.2, 6.7.2(19), 8.7.3(10), 8.7.3(12). So are “Tasting Rooms.” *Id.* Farm Processing Facilities promote the thriving local agricultural production industry and preserve rural character by allowing farms to have, by right, on-site processing, tasting, retail, and wholesale facilities for their grapes. 6.7.2(19)(a). Winery-Chateaus and Remote Winery Tasting Rooms are special uses that provide “practical latitude” and “reasonable flexibility” by authorizing uses potentially “injurious to surrounding properties” while protecting residents’ health, safety, convenience, and general welfare. 8.1.1. Winery-Chateaus – facilities where wine may be processed, sold, and tasted and “guest rooms with meals” may be offered – were intended to “maintain the agricultural environment, be harmonious with the character of the surrounding land and uses,” avoid “undue traffic congestion, noise, or other conflict with the surrounding properties.” 3.2, 8.7.3(10)(a). Remote Winery Tasting Rooms allow tasting and retail separated from farming and processing. 8.7.3(12). Guest Activity Uses (GAUs) were intended to incentivize using Peninsula farmland for crop production and promote Peninsula agriculture. 8.7.3(10)(u)(1). The Township also stated its interests in enacting 6.7.2(19), 8.7.3(10), and 8.7.3(12) as, *inter alia*, preserving farmland, agriculture, and the Township’s character, and allowing limited “commercial uses related to agricultural production” in A-1 while maintaining compatibility of land uses. (ECF 469-1)

C. Plaintiffs did not establish the Township enforced challenged provisions against them.

Plaintiffs claim “[t]he Township has enforced the Ordinances against [them]” without identifying a single supporting fact. Which provisions? Which Wineries? When? How? What resulted? PTP sought answers to these questions in discovery and received little more than unsupported legal conclusions in response. (ECF 457-4)

Plaintiffs cite deposition testimony from former Zoning Administrator Christina Deeren, none of which establishes any fact supporting a finding that the Township enforced any particular provision against any Plaintiff. Ms. Deeren mainly confirmed what PTZO Article IV says: the Zoning Administrator is “in charge” of zoning enforcement, and the Township may pursue enforcement for violation of “any provision.” PTZO 4.1.2, 4.2.1. (*See, e.g.*, ECF 469-2 dep 9 (“I’m responsible for enforcement.”); 41 (Township enforces 8.7.3(10)(u)(1)(b) “[a]s part of the entire ordinance”); 59 (“*If* we became aware of a problem, [8.7.3(10)(u)(2)(c)] . . . *would* be . . . enforced.”); 64 (she is “charged with enforcing” 8.7.3(10)(u)(2)(e)); 87 (by “enforcing” 8.7.3(10)(u)(5)(k), she means “[*i*]*f*” she learned of a potential violation, she would “investigate and *then* enforce this rule.”) (emphases added)) Ms. Deeren’s remaining testimony is unrelated to enforcement and concerns her general understanding of the notice and approval process for individual GAUs. (*See, e.g.*, ECF 469-2 dep 55-59 (she has never required a winery to obtain approval for wine and food seminars or cooking classes under 8.7.3(10)(u)(2)(a); *if* she received a request for a meeting of a group unrelated to agriculture, she could not approve it))

Plaintiffs seem to use “enforce” when they mean “in force.” (*See, e.g.*, ECF 469-4 dep 71) Ms. Deeren’s testimony only shows the challenged subsections were “in force” – *i.e.*, not repealed. To enforce a law is to *compel* obedience with it – *e.g.*, sending violation notices, issuing citations, making arrests. *See, e.g., Board of Trustees of State Univ. of N. Y. v. Fox*, 492 U.S. 469, 472 (1989)

(when salesperson refused to leave for violating regulation, police “arrested her and charged her with trespass, soliciting without a permit, and loitering”); *FF Cosms. FL Inc. v. City of Miami Beach*, 129 F.Supp.3d 1316, 1321 (S.D. Fla. 2015), *aff’d* 866 F.3d 1290 (11th Cir. 2017) (city “began enforcing” anti-solicitation and anti-handbilling ordinances by issuing “a number of citations”).

There is little record evidence of enforcement: a 2014 letter to Farm Processing Facility Two Lads regarding a planned pig roast, three 2016 citations to Bonobo for hosting GAUs without GAU approval in SUP 118, pre-2019 systemic compliance issues at Bowers Harbor under amended SUP 32 issued under 8.7.2(3), before it became a Winery-Chateau under 8.7.3(10); and a 2021 letter to Peninsula Cellars for amplified music. (ECF 470-42, ECF 457-8, ECF 308-11, ECF 470-25) Mostly, the record shows Plaintiffs blatantly violate challenged rules (*e.g.*, by hosting commercial weddings) without any enforcement. (ECF 470-53, 470-54, 470-61, 470-63) Plaintiffs paint a picture of an iron-fisted regulator but the opposite is true.

Plaintiffs’ vague claim that the Township’s “practice was to impose the same restrictions upon all Wineries” is also wholly unsupported. (ECF 469-5, PageID.17039 (Mr. Hayward discussing 8.7.3(12)(k)); ECF 469-3, PageID.17017-17018 (Mr. Mielnik explaining he was not responsible for enforcing 8.7.3(12) and discussing 8.7.3(12)(i)); ECF 469-4, PageID.17025, PageID.17935 (Mr. Manigold discussing 8.7.3(12)(j) and (k) and his “belie[f]” that 9:30 closing time for all wineries is “implied”)) No one whose depositions Plaintiffs cite had authority to interpret or enforce the PTZO. 4.1.2 (Zoning Administrator enforces), 5.7.2 (Zoning Board of Appeals (ZBA) interprets). Their testimony mostly concerns their understanding of three

subsections of 8.7.3(12), now repealed,² applicable since 1998 without complaint to Peninsula Cellars alone by SUP 62. (ECF 32-9) Closing tasting rooms before 9:30 p.m. is simply the norm in rural northern Michigan – Black Star even closes its Leelanau tasting room between 5:00 and 8:00 p.m. (**Ex 1**) While Plaintiffs’ motion targets GAU subsections, five Plaintiffs have SUP approval for GAUs and only two have hosted GAUs. (ECF 470-3) No other Plaintiffs are subject to GAU provisions. No Plaintiff produced evidence the Township applied an inapplicable provision to it.

III. ARGUMENT

A. Standard of review

Plaintiffs are not entitled to summary judgment where there is any genuine issue of material fact, construing all reasonable factual inferences in favor of the non-moving defendants. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

1. The PTZO regulates land uses and associated non-expressive conduct lawfully, not commercial speech unconstitutionally.

Plaintiffs’ commercial speech argument has two parts: first, it requests summary judgment, without evidence or argument, that 11 PTZO subsections regulate commercial speech on the basis the Township failed to argue otherwise; second, it insists zoning limits on commercial weddings and other events, previously judged to be *not* commercial speech, are “agritourism,” thus commercial speech. Their arguments are sweeping, vague, and meritless.

² 8.7.3(12)(k) was repealed in December 2022 with PTZO Amendment 201.

https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/ordinance_amendment_201_-_farm_processing.pdf. See p. 23. Last visited Nov. 2, 2023.

PTP first poses the threshold question against which all Plaintiffs' speech claims must be evaluated: What is the speech? What message are Plaintiffs trying to express? What does the Township prevent them from saying? Often, in cases finding regulations burden First Amendment speech, the speech is so obvious or well-established by precedent that these questions are not asked. Regulations of signs, theaters, bookstores, and adult entertainment are typical in zoning. *See, e.g., Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (sign ordinance); *Young v. Am. Mini Theaters*, 427 U.S. 50 (1976) (theaters); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) (adult entertainment). This case has been pending for three years, discovery conducted twice, and Plaintiffs moved for summary judgment twice. Yet Plaintiffs still have not articulated their message. It is clear they want to host commercial events in A-1 but unclear what speech is burdened.

The second threshold question is: What do Plaintiffs mean by "agritourism"? It must be stated, because Plaintiffs ignore it, that Peninsula Township has embraced agritourism. It is indisputable the PTZO authorizes three kinds of wineries with nearly unlimited use of tasting rooms to sell wine and promotional merchandise and provide food and entertainment for visitors. Plaintiffs serve wine indoors, outdoors, and underground. Visitors tour their wineries and vineyards, learning about winemaking while sipping and snacking. Plaintiffs promote all the experiences available at their wineries through print ads, brochures, radio programs, social media, websites, WOMP's Wine Trail map and events, and more. In peak season, thousands of people daily travel the Peninsula's one main road to visit the wineries dotting its 17-mile spine and marvel at agricultural vistas and bay views preserved by Township tax dollars. This is agritourism.

Plaintiffs want agricultural zoning to permit *more*. They want to host business conferences and conventions; host evening weddings and events after demand for winetasting wanes; sell

tickets for entertainment; entice customers for wine and dinner, not winetasting with charcuterie; and to sell wine to people who come not to taste wine but to celebrate with friends and family who have rented Plaintiffs' facilities. This is conduct, not speech; this is commerce, not expression. Labeling it "agritourism" does not create commercial speech protected by the First Amendment.

2. Plaintiffs fail to prove as-applied claims so lack standing to bring facial challenges.

Plaintiffs say these are facial and as-applied commercial speech challenges, but their discussion is missing *any* facts about *any* actual First Amendment injuries. Nor did they identify *any* in discovery. (See, e.g., ECF 470-4, PageID.16084-16085) *Each* Plaintiff must establish an injury to its First Amendment rights caused by application of *each* regulation it challenges to establish standing.³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992); *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 349-40 (6th Cir 2007). Then *each* Plaintiff with standing must show the Township applied the regulation to it in an unconstitutional way to prove an as-applied challenge. *McCullen v. Coakley*, 573 U.S. 464, 485 n. 4 (2014). These are preconditions before a Plaintiff may proceed with a facial challenge. *Prime Media*, 485 F.3d at 351 n. 4. Plaintiffs fail from the start by demonstrating no injury. Any provisions that have been applied to Plaintiffs do not regulate speech; any provisions that may regulate speech have never been unconstitutionally applied to them.

³ PTP discusses this thoroughly in its proposed summary judgment motion on Plaintiffs' constitutional and takings claims. (ECF 470-2)

3. **Plaintiffs seek to engage in commerce, not speech.**

a. The 11 challenged subsections do not regulate commercial speech.

Plaintiffs’ first bucket of commercial speech challenges rests on the Court’s prior decision granting summary judgment invalidating 11 PTZO subsections. (ECF 162, PageID.6008) They present no supporting evidence or argument, instead incorporating previous pleadings and the Court’s prior decision. (ECF 469, PageID.16952 n. 6) Plaintiffs’ renewed motion is an improper attempt to circumvent the word count limit. W.D. Mich. LCivR 7.2(b)(i). It should be rejected on this basis alone.

Plaintiffs also ignore that the prior decision, grounded in Township omissions, was vacated. (ECF 301, PageID.10698; ECF 162, PageID.6004-6008); *WOMP II*, *supra*, at * 7 (summary judgement based on Township “waivers, defaults, and/or concessions”). The Township failed to state the obvious: *Central Hudson* does not apply because, with one insignificant exception addressed below, the challenged subsections do not regulate *speech* – commercial or otherwise. PTP corrects this omission, Plaintiffs’ prior arguments do not withstand thorough briefing on a fully developed record.

Plaintiffs assert the 11 subsections “regulate commercial speech *regarding* the type of products a winery can sell, types of music that can be played, the size of winery retail spaces, who [Plaintiffs] may host, types of promotions [Plaintiffs] can (or must) offer and other similar restrictions.” (ECF 469, PageID.16951-16952 (emphasis added)) Except for 8.7.3(12)(k) (regulating Remote Winery Tasting Room non-wine retail items signs and advertising),⁴ on their face, these subsections regulate conduct – not commercial speech *regarding* the conduct:

⁴ Plaintiffs produced no evidence 8.7.3(12)(k) was enforced or caused injury before it was repealed in 2022.

- 6.7.2(19)(b)(1)(v) allows logo merchandise sales for Farm Processors;
- 6.7.2(19)(b)(6) sets maximum above-grade floor area for Farm Processors;
- 8.7.3(10)(m) allows accessory uses for registered overnight guests for Winery-Chateaus;
- 8.7.3(10)(u)(1)(b) describes GAUs as intended to help promote Peninsula agriculture;
- 8.7.3(10)(u)(1)(d) identifies activities that are not GAUs;
- 8.7.3(10)(u)(2)(a) allows wine and food seminars and cooking classes as GAUs;
- 8.7.3(10)(u)(5)(c) limits alcoholic beverages at GAUs to those produced onsite;
- 8.7.3(10)(u)(5)(g) prohibits amplified instrumental music during GAUs;
- 8.7.3(10)(u)(5)(h) prohibits outdoor displays during GAUs; and
- 8.7.3(12)(i) allows logo merchandise sales for Remote Winery Tasting Rooms.

Plaintiffs mischaracterize and decontextualize prior Court statements about 6.7.2(19)(b)(1)(v), 8.7.3(12)(i), and 8.7.3(12)(k). It never “determine[d]” they “were restrictions on commercial speech”; it found that, for preliminary injunction, they were “*closer* to restrictions on commercial speech than to content-based regulations.” (ECF 34, PageID.19869-1870 (emphasis added)) When the Court in summary judgment said the 11 subsections “unquestionably regulate commercial speech,” there was no question about the applicability of *Central Hudson* because this Court had just determined that *the Township never raised one*. (ECF 162, PageID.6004, Township “conceded” *Central Hudson* applied)

Plaintiffs’ “incorporated” briefing is also unhelpful. It addressed three subsections (8.7.3(12)(k), 8.7.3(10)(u)(5)(g), and 6.7.2(19)(a)), assuming the rest regulate commercial speech without discussion. (ECF 163, PageID.4728; ECF 146, PageID.5736) PTP agrees 8.7.3(12)(k) concerns advertising; it passes *Central Hudson*, as explained below. Section 6.7.2(19)(a) relates to commercial events and is discussed next in Part B. On 8.7.3(10)(u)(5)(g), Plaintiffs only said

“amplified instrumental music [] is commercial speech” and cited one non-precedential and non-relevant case for support. (ECF 136, PageID.4728) Plaintiffs have not shown amplification of instrumental music during GAUs is commercial speech, and it is not.

These 10 subsections do not regulate the proposal of commercial transactions. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 561–62 (1980); *Wine & Spirits Retails, Inc. v. Rhode Island*, 418 F.3d 36, 49 (1st Cir. 2005). None restricts how Plaintiffs describe their products nor prevents them from promoting their wineries, tasting rooms, wines, food, events, merchandise, or anything else they lawfully offer. Nor do Plaintiffs argue they have been injured by restrictions on their ability to advertise or otherwise promote the regulated conduct – they object to their inability to engage in the regulated conduct itself. They seek millions in lost revenues from private events they did not *have*, not private events they did not *advertise*. See *Rumsfeld v. Forum for Academic & Inst. Rights, Inc.*, 547 U.S. 47, 62, 66 (2006) (no abridgment of freedom of speech “to make a course of conduct illegal” because it may also be talked or written about; talking about conduct does not make conduct expressive).

b. Agritourism is not *per se* commercial speech.

After Plaintiffs rest on the prior Order considering those 11 subsections, they disregard the same Order addressing commercial events. The Court rejected their theory that zoning limits on weddings for hire and similar activities constitute commercial speech “because weddings themselves are not speech intended to promote a commercial transaction.” (ECF 162, PageID.6004) The Court vacated its commercial speech analysis based on the Township’s anemic defense. (ECF 301, PageID.10698) But the Court agreed with the one argument the Township did advance – that weddings and other large gatherings are not “commercial speech.” (ECF 162, PageID.6004-6005)

Plaintiffs seek reconsideration without demonstrating palpable defect in the original analysis that misled the Court and parties. W.D. Mich. LCivR 7.4(a). They now say commercial events are “agritourism” “intended to bring consumers to the winery property for the purpose of ‘proposing a commercial transaction:’ the sale of wine.” Using a different label does not change the analysis – PTZO restrictions on commercial weddings and other events are still not restrictions on commercial speech. The Court’s original analysis was correct.

Before unpacking Plaintiffs’ misleading “agritourism” argument, PTP notes three contextual points. First, the commercial transactions Plaintiffs want to propose (wine sales) are unlimited by the PTZO. Plaintiffs may sell wine by the bottle or glass all day every day. They may advertise wine for sale anywhere, any way they want. They may invite people or groups to buy wine in person or virtually. They may entice people onsite to buy wine by providing free entertainment. The PTZO does not limit wine sales or advertising, it limits commercial events for hire. Plaintiffs’ argument that they want to host weddings and other commercial events for hire to propose wine sales is simply not credible. They want to host events because they could charge substantial facilities fees, entice more customers, and generate additional revenue streams. (ECF 470-54, ECF 470-63)

Second, Plaintiffs here are not challenging particular PTZO subsections. Though they point to 6.7.2(19)(a) and 8.7.3(10)(u)(2)(d), those are not the source of zoning limits on commercial events for hire. Section 6.7.2(19)(a) recognizes “weddings, receptions and other social functions for hire” are excluded from the scope of the permitted Farm Processing Facility use and 8.7.3(10)(u)(2)(d) recognizes “weddings, wedding receptions, and family reunions” are not GAUs. Deleting that language would not resolve Plaintiffs’ grievances because commercial events remain unauthorized land uses in A-1. The PTZO lists allowable and prohibits non-listed land uses. 6.1.4;

Pittsfield v. Malcolm, 375 Mich. 135, 142-43; 134 N.W.2d 166 (1965) (“Under the ordinance which specifically sets forth permissible uses under each zoning classification, therefore, absence of the specifically stated use must be regarded as excluding that use.”); *Whitman v. Galien Twp.*, 288 Mich. App. 672, 683-84; 808 N.W.2d 9 (2010) (requirement for zoning ordinance to specifically identify authorized land uses ensures uniformity within districts, guards against haphazardly creating inconsistent uses); *Independence Twp. v. Shibowski*, 136 Mich. App. 178, 184; 355 N.W.2d 903 (1984).

In their request for relief, Plaintiffs acknowledge the source of their plight is the absence of commercial events as authorized land uses in A-1. They say, “this Court should declare that the uses restricted by the unconstitutional Ordinances are allowed uses. ... [T]he Wineries seek to use their property to engage in agritourism. Such a use is reasonable.” (ECF 469, PageID.16976) Plaintiffs rely on *Schwartz v. Flint*, but the issue there was that continuing to apply A-1 zoning to the plaintiff’s particular parcel was an unconstitutional taking, given localized conditions. 426 Mich. 295, 301; 395 N.W.2d 678 (1986). *Schwartz* addressed the necessary follow-up question: what *should* that parcel be zoned? That is not Plaintiffs’ case. Plaintiffs are mostly tenants, not landowners, who never challenged A-1 zoning as applied to their parcels. There is no question these farm parcels are appropriately classified A-1 and should remain so. *Raabe v. Walker*, 383 Mich. 165, 177-79; 174 N.W.2d 789 (1970) (cautioning against rezoning absent mistake or change in character of neighborhood given community interests in zoning stability). Moreover, Plaintiffs ignore *Schwartz*’s extensive discussion cautioning against improper “judicial zoning” through injunction because zoning is legislative, not judicial:

Zoning, by its nature, is most uniquely suited to the exercise of the police power because of the value judgments that must be made regarding aesthetics, economics, transportation, health, safety, and a community’s aspirations and values in general. By the same token, zoning, which requires

linedrawing that oftentimes by its nature is arbitrary, is uniquely unsuited to the judicial arena.

Id. at 313 (internal quotation and citation omitted). Plaintiffs invite the Court to do just that by declaring agritourism as they define it an allowed use in A-1.

Third, agritourism remains just commerce in an agricultural setting, not speech proposing or promoting commerce. (ECF 469-7, PageID.17045-17046 (agritourism is “any time a farming operation opens its doors to the public inviting visitors to enjoy their products and services.”)) It is a business activity to attract customers. A restaurant that adds plant-based menu options might attract vegans, but selling veggie burgers is not advertising. Commercial speech is not implicated by zoning that regulates commercial activities that could attract customers and be advertised. Plaintiffs concede agritourism events are not speech (spoken or written words) but occasions during which they might engage in commercial speech. They want to host private events for hire “to bring consumers to the winery” to propose wine sales, which is conduct. (ECF 469, PageID.16952, PageID.16954)

The First Amendment protects activity or conduct only if it is “inherently expressive” – *i.e.*, sufficiently imbued with elements of communication – and to a lesser degree than speech. *Rumsfeld*, 547 U.S. at 66; *Spence v. State of Washington*, 418 U.S. 405, 409 (1974); *Lichtenstein v. Hargett*, 83 F.4th 575, 596 (6th Cir. 2023). In *United States v. O’Brien*, the Supreme Court rejected “the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.” 391 U.S. 367, 376 (1968). Expressive conduct thus requires both the “intent to convey a particularized message” *and* a “[great] likelihood . . . that the message would be understood” by its audience. *Spence*, 418 U.S. at 410–11; *see also Lichtenstein*, 83 F.4th at 594.

Plaintiffs' reliance on *Bolger v. Youngs Drug Products Corp.* for the premise that speech can be commercial without proposing a commercial transaction is misplaced because *Bolger* involved *speech* (mailings). 463 U.S. 60 (1983). *Bolger* sought "to ensure that speech deserving of *greater* constitutional protection [wa]s not inadvertently suppressed" by deeming it commercial. *Id.* at 66 (emphasis added). *Bolger* factors identify when speech is likely commercial, thus entitled to *less* protection than speech about, say, politics or religion. *Bolger* factors do not transform non-expressive *conduct* into commercial *speech*.

Plaintiffs suggest commercial weddings are like Tupperware parties, which have been found to propose a commercial transaction because they "consist[] of demonstrating and offering products for sale to groups of . . . prospective buyers at gatherings assembled and hosted by one of those prospective buyers (for which the host or hostess stands to receive some bonus or reward)." *Fox*, 492 U.S. at 472. But brides and others who might rent event space at wineries are not entrepreneurs gathering prospective buyers for product demonstrations and sales. They want a beautiful place to gather their friends and family for personal celebrations. (ECF 470-41, ECF 470-60)

Plaintiffs misuse *FF Cosmetics*, which considered the impact of anti-solicitation and anti-handbilling ordinances on speech by sidewalk greeters encouraging passersby to enter their employers' stores. 129 F.Supp.3d 1316. Plaintiffs borrow half a sentence to assert that "[a]ctivities which seek to 'have prospects enter their stores and purchase Plaintiffs' products'" are commercial speech, ignoring that *FF Cosmetics* concerned not "activities" but *speech*: "Whatever form the greeters' *speech* takes, their engagements with the walking public have one underlying *message* and one object, albeit often indirectly stated: to have prospects enter their stores and purchase Plaintiffs' products." *Id.* at 1321 (emphasis added).

Absent law supporting their agritourism theory, Plaintiffs turn to a press release proclaiming October “Michigan Agritourism Month,” which lists “on-farm weddings and events” as examples of agritourism. (ECF 469-7) Respectfully, more authoritative sources reject commercial farm weddings as agricultural activities for zoning purposes. The Michigan Agricultural Tourism Advisory Commission supported agritourism to encourage “farm-related activities;” it identified scores of examples but weddings were not included. *Agricultural Tourism Local Zoning Guidebook and Model Zoning Ordinance Provisions* (Jan. 2007).⁵ The Commission categorized wedding spaces as “non-agriculturally related uses” for model zoning purposes. *Id.* at p 24 (emphasis added). Courts have likewise rejected farm weddings as agricultural land uses for zoning purposes. *See Nixon v. Webster Twp*, 2020 Mich. App. LEXIS 438 *11-*12 (Jan. 21, 2020) (“[W]edding ceremonies and receptions are private events . . . not associated with a particular agricultural product or harvest season. . . . Weddings have concentrated traffic patterns at the beginning and end of the event and may also include significant commercial traffic for vendors. Wedding receptions often stretch late into the night.”); *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 430 (Tenn. 2013) (“entertainment activities occurring on a farm are not an agricultural use”); *Miami Twp. v. Powlette*, 197 N.E.3d 998 ¶ 23 (Ohio 2022) (distinguishing barn built to serve as event venue from barn incident to agricultural use).

Desperate for support, Plaintiffs cite three state statutes, but *none* include weddings and private events in otherwise inapplicable agritourism definitions. *See* Col. Rev. Stat. § 38-13-801.5(3)(a)(III)(A) (defining agritourism, no mention of weddings/events); Col. Rev. Stat. § 13-21-121(2)(b) (same); N.H. Rev. Stat. § 21:34-a(II)(b)(5) (same; agritourism subject to local regulations); Ga. Code §§ 48-5-7.4(d), 48-5-7.4(p)(7)(B), 48-5-7.4(p)(8) (state conservation

⁵ Available at <https://www.networksnorthwest.org/userfiles/filemanager/3159/>, last visited Nov. 2, 2023.

easements; “farm weddings” *excluded* from agritourism definition). Plaintiffs also cite a Colorado marketing website encouraging Colorado landowners to consider diversifying ranch and farm operations:⁶



Plaintiffs’ deposition testimony theorizing events are marketing does not make *events* commercial *speech*. Plaintiffs failed to establish that the First Amendment applies to these claims. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 294, n. 5 (1984) (plaintiffs must do more than “‘advance[] . . . a plausible contention’ that their conduct is expressive”; “it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies”; “To hold otherwise would be to create a rule that all conduct is presumptively expressive.”).

⁶ <https://ag.colorado.gov/markets/marketing/promotions/agritourism>, last visited Nov. 2, 2023.

4. The PTZO would satisfy *Central Hudson*, if applicable.

Except in 8.7.3(12)(k), Plaintiffs identify no zoning regulating commercial speech, only non-expressive conduct. Plaintiffs identified no cases, nor has PTP found any, where a court applied *Central Hudson* to regulation of activities or conduct so far removed from speech.

Plaintiffs mischaracterize PTZO subsections as *restricting* winery operators' speech when each is part of a zoning amendment adopted specifically to *expand* non-expressive commercial conduct related to agricultural production at wineries. Starting when Chateau Chantal founder Robert Begin first proposed Amendment 79 to realize his vision of a Winery-Chateau, the Township repeatedly amended zoning to support winemakers by adding retail uses accessory to agricultural production. Each amendment was initiated by a winery; each required the Township to ensure the new activities directly related to agricultural production. The Township Board enacts amendments upon report and recommendation of the Planning Commission, which thoroughly considers proposals and alternatives with input from proponents, public, staff, and others. MCL 125.3305, 125.3401. For example, the Township created the Winery-Chateau use in 1989 and, after years of additional proposals, litigation, public hearings, and revisions, added GAUs as "additional uses" in 2004. (ECF 305-7, PageID.11075; ECF 305-9, PageID.11088-11089)

Plaintiffs twist the former Supervisor's testimony to suggest the Township interests in agricultural zoning are contrived and its successful Purchase of Development Rights (PDR) program is sufficient to protect the community interest in preserving productive agriculture. Their exclusive reliance on depositions to establish governmental interests and rationales for decades-old legislative acts is facially farcical. The overarching rule in construing a zoning ordinance is to give effect to its plain text and the legislators' intent. *Macenas v. Michiana*, 433 Mich. 380, 396-97; 446 N.W.2d 102 (1989); *Fremont Twp. v. McGarvie*, 164 Mich. App. 611, 614; 417 N.W.2d 560 (1987); *Executive Art Studio, Inc. v. Kalamazoo*, 674 F.Supp. 1288, 1290 (W.D. Mich. 1987).

To give effect to the drafters' intent, "the entire ordinance must be read together," effectuating ordinances that create "homogeneous use areas by confining each district to a limited number of compatible uses." *Prevost v. Macomb Twp.* 6 Mich. App. 462, 467; 149 N.W.2d 453 (1967); *Executive Art*, 674 F.Supp. at 1290 ("In determining legislative intent, the Court has read the language of the [zoning] ordinance in the context of the problems the statute seeks to address, in this case, land use, parking and traffic problems associated with certain types of commercial as well as noncommercial enterprises."). To the extent the Court considers evidence beyond ordinance language to evaluate amendments adopted 20 or more years ago, contemporaneous meeting minutes of authorized decisionmakers (committees, Planning Commission, quorum of Township Board) are more credible than confusing contemporary depositions. *46th Circuit Trial Court v. Crawford Co.*, 266 Mich. App. 150, 161; 702 N.W.2d 588 (2005), rev'd on other grounds 476 Mich. 131 (2006) (local government "board speaks only through its official minutes and resolutions and their import may not be altered or supplemented by parol evidence regarding the intention of the individual members").

While Plaintiffs devote their commercial speech argument to their new "agritourism" theory with only passing lip service to the challenged 11 subsections (ECF 469, PageID.16951-16955), they flip that in their *Central Hudson* argument. (ECF 469, PageID.16956-16965) They extensively quote confused depositions about isolated subsections but cite three words to support their argument that the A-1 limitation on weddings for hire does not further governmental interests. (ECF 469, PageID.16961-16965)

5. The Township's interests are substantial.

The statements of purpose and intent in the PTZO and Township interrogatory responses (discussed in Part II.B.) identify at least substantial governmental interests in the challenged

zoning. Townships zone to meet citizen needs for “food, fiber, energy” and other resources and ensure land uses are “situated in appropriate locations and relationships.” MCL 125.3201(1). A local government’s interest in zoning is not just substantial but *compelling*. *Greater Bible Way Temple of Jackson v. City of Jackson*, 478 Mich. 373, 403; 733 N.W.2d 734, 751 (2007) (citing cases). Ensuring consistency within districts and avoiding spot zoning (small zones of inconsistent uses) is also at least a substantial governmental interest. *Penning v. Owens*, 340 Mich 355, 367 (1954); *Whitman*, 288 Mich. App. at 683-84.

Preserving farmland and the agricultural economy it supports is critical. The threat to farmland is real and well-documented; evidence-based interventions include effective agricultural zoning and investment in farmland preservation programs.⁷ Agricultural preservation is important to protect our food supply, strengthen our economy, and increase climate resilience, as recognized by numerous state and federal programs. *Id.*; *see, e.g.*, MCL 324.36101 *et seq*; 16 U.S.C. § 3865(b)(3) (protecting agricultural uses “by limiting nonagricultural uses of that land that negatively affect” them).

Peninsula Township’s agricultural heritage is existential. (ECF 144-1, PageID.15851-15852; **Ex 3**, pp 14-20; OMP Viticultural Area, 51 Fed.Reg. 41639 (Nov. 18, 1986)) Increasing regional urbanization and other pressures threatened Peninsula agriculture.⁸ (ECF 444-1,

⁷ Hunter, Mitch, et al., Farms Under Threat 2040: Choosing an Abundant Future, 2022, available at https://farmlandinfo.org/wp-content/uploads/sites/2/2022/08/AFT_FUT_Abundant-Future-7_29_22-WEB.pdf, last accessed Nov. 2, 2023.

⁸ Bidwell, Dennis P., et al, Forging New Protection: Purchasing Development Rights to Save Farmland, How Peninsula Township, Michigan, Designed and Built Support for Farmland Preservation, 1996, pp. 6-8, available at

https://s30428.pcdn.co/wp-content/uploads/sites/2/2019/09/FORGING_NEW_PROTECTIONS_1.pdf, last accessed Nov. 2, 2023; Westphal, Joanne, Managing Agricultural Resources at the urban–rural interface: A case study of the Old Mission Peninsula. *Landscape and Urban Planning* (2001).

[https://doi.org/10.1016/s0169-2046\(01\)00185-2](https://doi.org/10.1016/s0169-2046(01)00185-2) last accessed Nov. 2, 2023.

PageID.15831-15832) The Master Plan documents substantial community support for agricultural production and consistent uses to preserve the Township's rural character.⁹ (ECF 444-4, PageID.15846) In 1972, the Township enacted agricultural zoning to help preserve agricultural uses of agricultural lands and limit nonagricultural uses of those lands. (*Id.*, PageID.15840-15842; **Ex 3**, pp 14-20) In 1994, it created the first local PDR program in Michigan and has spent over \$15 million raised from ballot-supported property tax millages to preserve over 3,300 acres identified in its Master Plan and protected by its agricultural zoning. (**Ex 3**, p 9)

The original PTZO authorized Food Processing Plants by SUP in A-1; they include no retail activities. 8.5. To support agricultural production, following extensive deliberations, drafts, meetings, and hearings, the Township authorized successively more accessory retail activities tied to agricultural production for wineries in A-1 with Winery-Chateau (1989), Remote Winery Tasting Room (1998), Farm Processing Facility (2002), and GAU (2004) amendments. (ECF 305-7, 305-8, 305-9, **Ex 2**; **Exs 4-7**; **Ex 3** pp 21-29)

6. The challenged zoning advances the Township's interests.

Plaintiffs challenge subparts of PTZO sections adopted to expand winery land uses to permit retail activities pertaining to agricultural production. By locating agricultural uses like farming and agricultural production in A-1 and commercial uses like shops and restaurants elsewhere, the Township ensures the compatibility of adjacent land uses and prevents the conversion of agricultural land to commercial land.¹⁰ MCL 125.3201; *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (zoning regulates land uses relative to circumstances and location).

⁹ PTP was unable to locate the Master Plans contemporaneous to historic zoning amendments.

¹⁰ Plaintiffs suggest the Township's only concern is preventing farmland conversion into residential development, which is inaccurate and completely contradicted by the PTZO and record. (**Ex 2**)

Winery land uses further Township interests in maintaining A-1 for agricultural and compatible uses directly and materially by allowing farmers to generate revenue through commercial activity directly related to wine production and wine sales while limiting commercial activity unrelated to agricultural production and winemaking like facility rentals for private events. *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 625-26 (1995); **Ex 3** pp 24-31. They advance Township interests in maintaining uniform districts and avoiding inconsistent commercial mini-zones within the larger A-1 district. *Penning, supra.*; **Ex 3** pp 24-31.

All challenged subsections ensure commercial activity permitted in the agricultural district is sufficiently related to agriculture to constitute an agricultural use. For example, the Township amended the PTZO to add 8.7.3(12), including limits on non-wine sales and advertisements, to accommodate Peninsula Cellars' request to relocate its tasting room from the Old Mission Store in the commercial district to the historic schoolhouse on Center Road in A-1. (**Ex 2**, pp 36-56; ECF 32-9) The Township adopted the new land use and corresponding SUP after considering traffic, noise, sales, signage, spot zoning, commercialization of A-1, and more. (*Id.*; **Ex 2**, p 42 (Grand Traverse founder "Ed O'Keefe[] believe[d] that remote tasting rooms should be located on commercial property, that this amendment is a form of spot zoning, and this would hurt winery development now and in the future.") The Township thereby expanded Peninsula Cellars' promotional opportunities for agricultural production with limits to prevent a convenience store at this convenient A-1 location.

Ample reliable evidence confirms the Township's careful consistent effort to authorize additional agriculturally-related accessory activities to support Wineries, with limits to prevent commercial uses not tied to agricultural production in A-1. (*See, e.g.*, **Ex 2**, pp 67 ("striving to document the direct relationship between" proposed GAUs and "actual production of crops on the

Peninsula”); 72 (describing GAU amendment’s intent as “allow[ing] some reasonable activities, in exchange for a guarantee of fruit production on the Peninsula, as well as Old Mission Peninsula wine being tasted and used in the activities”); 86-87 (recommending Board approve more expansive version of GAU amendment in 2003); 88-89 (discussing Board’s return of 2003 version of GAU amendment because Grand Traverse County Planning Commission reviewed it and recommended denial for inconsistency with Master Plan, which said uses on agricultural land “should be limited to those directly related to the operation of a farm”); 90-91 (recommending Board approve GAU amendment in 2004)).

Plaintiffs disregard the challenged provisions’ plain language and the contemporaneous record explaining how they advance Township interests and instead recite misplaced, misleading, and selective deposition testimony, which they characterize as “conced[ing]” the challenged subsections advance no government interest and mitigate no harm. They cite select random¹¹ opinions and interpretations by Mr. Manigold who, before his deposition, had not looked at the PTZO in 10 years, and never had authority to interpret it. (Ex 4 dep 143, 147) Plaintiffs also ignore Mr. Manigold’s testimony that *does* explain how challenged subsections advance Township interests, for example, that 8.7.3(12)(i), allowing logo merchandise sales, helps wineries “be successful” and get their name out. (Ex 4 dep 49-52) Plaintiffs’ counsel hypothesized 8.7.3(12)(k) prohibits listing food and merchandise for sale but Mr. Manigold disagreed: “I don’t think it would prohibit it, *because it’s actually what they do there,*” and equivocated on further hypotheticals. (Ex 4 dep 66-69) (emphasis added). His difficulty articulating how subsections furthered Township interests arose because they were enacted to further – not restrict – *Plaintiffs’* interests. (Ex 4 dep 126-127) Mr. Manigold testified extensively that challenged zoning tried to *support* wineries with

¹¹ Plaintiffs address unchallenged subsections.

added promotional activities to bring in more customers while carefully drawing lines to maintain A-1 as the agricultural not commercial district, notwithstanding occasional concessions to Plaintiffs' exhausting nonsensical requests for legal interpretation. (Ex 4 dep 18-25, 26-27, 46-61, 66-80, 121-27, 129, 143, 149-53, 169-73, 176-77, 189-92, 196-99)

Regarding "wedding prohibition," Plaintiffs cite a deceptive sliver of testimony from Township witness Grant Parsons, who participated in drafting PTZO amendments. Before and after he said "no, I don't" to an absurd hypothetical asking if the Township had a "study that shows if a winery has a wedding, a farmer can't farm his land," Mr. Parsons testified in detail how keeping weddings and private events for hire out of A-1 furthers Township interests. (Ex 6 dep 129-30)

Plaintiffs ignore other Township witnesses who testified the provisions advance Township interests. Former Zoning Administrator and Planner Gordon Hayward explained that allowing the sale of logo merchandise allows wineries to market themselves, which the Township recognizes as an agricultural use because wineries are agricultural production facilities, but limits commercial retail sales unrelated to agriculture. (Ex 5 dep 24-30, "[I]f you're promoting agriculture in the agricultural production area, then it's okay. If you're not, then you're in the wrong zone.") Regarding the 8.7.3(12)(k) restriction on promoting non-wine items, Mr. Hayward testified it supports vertical integration of farm products, allowing growing, processing, selling, and promoting "things that you grow," otherwise it is a commercial use. (Ex 5 dep 32-41) Township witness and ordinance co-drafter John Wunsch bolstered the ample evidence supporting the Township's long-standing and reasonable efforts through carefully tailored zoning supporting agricultural production while keeping principally commercial uses out of the agricultural district, thereby ensuring farmland availability, preventing land fragmentation, and reducing potential conflict between farmers and farm area visitors. (Ex 7; *see also* Ex 5 dep 59-62, 96-103; Ex 6)

The legislative history is consistent. (*See, e.g.*, ECF 305-8, PageID.11079, premise of Farm Processing Facility is “if you grow it and process/package it, you can sell it”; **Ex 2**, pp 66-69, 78-80; ECF 305-9, PageID.11088)

Plaintiffs rely on four cases finding advertising restrictions did not advance governmental interests; none involve zoning, let alone regulations that loosened limitations on non-expressive activities. (ECF 469, PageID.16958-16959, discussing *44 Liquormart* (advertisement of alcohol prices), *Rubin* (disclosing alcohol content), *Aptive* (door-to-door solicitation), *Edenfield* (personal solicitation of clients)).

Plaintiffs suggest that zoning distinguishing between commercial and non-commercial *land uses* is improper. They lean first on *Marras*, which involved a *sign* ordinance distinguishing between commercial and non-commercial *speech*. (ECF 469, PageID.16960) Then they cite *Keener*, where the Pennsylvania court found a zoning board’s distinction between for-profit and nonprofit operation of *the same use* arbitrary. Banquet facilities were expressly permitted for nonprofit operation but not for-profit operation. *Keener* lends no support to Plaintiffs’ argument they should get to operate commercial event venues because people host private parties at home.

The Township never conceded that weddings and other events can occur at other Township locations “so long as they do not occur at wineries.” The Township does not regulate where people gather with friends and family to marry or celebrate occasions – a couple can exchange vows in a church or on the patio at Brys, friends can celebrate a birthday in Two Lads’ tasting room or at Haserot Beach. Plaintiffs want to rent out their facilities as commercial event venues. Plaintiffs cannot seriously argue that John Jacobs spontaneously inviting a couple to marry on his patio for free is the same as Chateau Chantal making \$10,000 for each 200-person wedding it wants to host.

Plaintiffs’ alleged damages, based on their measure of lost revenue, indicates challenged zoning avoided \$74 million in winery profits from large commercial events in A-1 over 5 years – an estimated 1,484 large commercial events annually.¹² (ECF 171-1, PageID.6371). The challenged zoning, developed responsively over 40 years through the local democratic process, directly and materially advances the Township’s compelling zoning interests. *Went for It*, 515 U.S. at 625-26.

7. The challenged zoning is not excessively restrictive of commercial speech.

The PTZO does not limit Plaintiffs’ opportunities to advertise their lawful products and activities. It authorizes virtually unlimited advertising and use of winery facilities for wine production, wine sales, wine tasting, winery promotion, and free entertainment in the tasting room. For 8.7.3(12)(k), Peninsula Cellars is free in every way to advertise its wine, wine club, wine specials, tasting room entertainment, and more. It may not advertise food and “non-food items” (e.g., corkscrews, wine glasses, t-shirts) allowed to be sold in the tasting room. 8.7.3(12)(i), (j), (k). If it sells these elsewhere – e.g., Peninsula Market, Traverse City – it may advertise them. This does not regulate commercial speech beyond advertising non-agricultural items for sale at the sole stand-alone tasting room in the agricultural district. (Ex 2, pp 36-56; ECF 32-9)

The same analysis applies to the remaining challenged provisions, which limit *permissions* for accessory activities not commercial speech. Their plain language confirms they reasonably, if not perfectly, fit the Township zoning goals and interests, proportionate to the interests served. *Went for It*, 515 U.S. at 632. The adopted provisions were tailored to authorize more commercial

¹² Plaintiffs claim they collectively lost \$74,210,988 from “lost event hosting (large events and weddings)” over five years, or \$1,349,290 per Winery annually. Assuming \$10,000 in lost profits per event, the PTZO avoided 126 large events at each Winery each year, or 1,484 large events in the Township annually.

activities associated with the principal agricultural production land use: uses of facilities for meetings and promotional activities tied to agriculture, with limited music at GAUs and retail related to wine production. The Township considered more expansive permissions but rejected them because they were unrelated to agriculture, conflicted with its master plan, and belonged in a commercial zone. (*See, e.g., Ex 2*, pp 12-18 (considering 1996 request for “conference center, seminars, and weddings”), 23-35 (considering 1997 request for pool, tents, food service, and other accessory uses); 59-62 (considering 2001 request for “Contract Groups, Contract Events, and Community Events”)); ECF 305-9, PageID.11088-11089 (enacting GAU amendment))

Plaintiffs rely on Mr. Manigold’s testimony that he could not identify “less-restrictive alternatives” the Township considered to isolated subsections. The standard is assuring the government carefully considered the costs of burdening speech against desired benefits of the regulation. *Pagan v. Fruchey*, 492 F.3d 766, 771 (6th Cir. 2007) (citation omitted). The provisions were developed with excruciating care. Mr. Manigold expressed confusion over how to identify “less-restrictive alternatives” where the Township had no intent to loosen zoning before Grand Traverse, Chateau Chantal, and Peninsula Cellars urged it. (*Ex 4* dep 59, *see also* 115-16, 129, 175) The record is replete with evidence the Township drew careful lines between supportive agricultural and improper commercial uses without burdening speech. (*See, e.g., Ex 5* dep 14-15, 20-27, 42-44; *see also Ex 6* dep 48-60, 67-73, 129-33; *Ex 2* pp 2, 25, 42, 53, 79, 81, 85, 87, 89, 91) Plaintiffs’ commercial speech claims are meritless.

B. Plaintiffs’ other speech theories also fail.

1. Plaintiffs identify no content-based restrictions on speech.

Plaintiffs’ argument that 8.7.3(10)(u)(1)(b) (GAU intent), 8.7.3(10)(u)(2)(b) (non-profit meetings), 8.7.3(10)(u)(2)(c) (ag group meetings) and 8.7.3(10)(u)(5)(a) (promotion) are content-

based restrictions fails because these do not restrict speech. In discovery, Plaintiffs appropriately abandoned the theory that 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) are content-based restrictions because they are not. (ECF 457-4, PageID.16136-37) The Court already denied summary judgment on this theory and did not vacate that Order; Plaintiffs get no second bite.¹³ (ECF 162, PageID.6008-6010; ECF 301, PageID.10697-10698)

Plaintiffs' argument fails because 8.7.3(10)(u)(2)(b) and (c) are content-neutral regulations of non-expressive conduct, not speech. Content-based laws are those that "target *speech* based on its *communicative content*." *Reed*, 576 U.S. at 163 (emphasis added). Plaintiffs fail to show how provisions allowing local non-profit and agricultural group meetings involve both *speech* and *communicative content*. And these subsections *restrict* nothing. They are components of zoning amendments that authorized GAUs to *remove* restrictions on the use of Winery-Chateau facilities.

Plaintiffs' contention that these provisions operate to prohibit events involving for-profit groups or speech about non-agriculture is simply wrong. Winery-Chateaus may freely host for-profits, non-agricultural groups, and anyone else for wine tasting and free promotional events and entertainment in the tasting room. GAUs also include "food and wine seminars" open to corporate, non-local nonprofit, non-ag, and other groups. Wineries also host groups and events under the terms of their unique SUPs: live music, community-wide celebrations, wine club gatherings, wine dinners, cooking classes, private tours, weddings for overnight guests at Winery-Chateaus, and more. (*See, e.g.*, ECF 32-11, 308-8, 334-7, 470-6, 470-15, 470-52) Multiple wineries have hosted yoga groups:

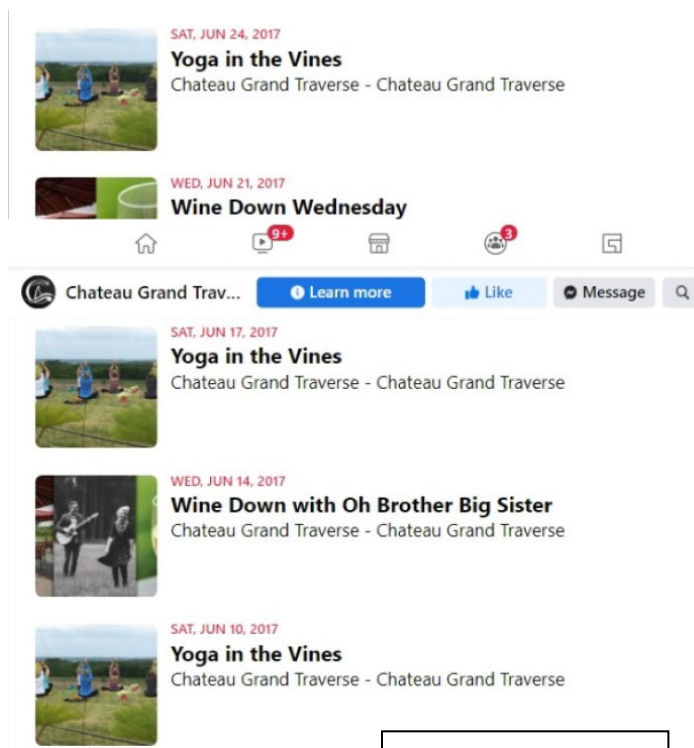
¹³ Plaintiffs make no attempt to meet the standard for reconsideration. W.D. Mich. LCivR 7.4(a). To the extent they modified their argument, it remains improper and untimely.



WOMP0011811



WOMP0013764



WOMP0011459

(See also ECF 470-52, PageID.17610) Plaintiffs also host community-wide events targeting preferred audiences. Plaintiffs produced nothing suggesting these provisions obligate Winery-Chateaus to turn away nonlocal nonprofits, for-profits, or groups unrelated to agriculture.

2. GAUs requirements are not prior restraints.

Plaintiffs’ prior restraint argument identifies no particular subsections, instead vaguely challenging “requirements for conducting” GAUs. PTP assumes Plaintiffs challenge 8.7.3(10)(u)(2)(c), allowing meetings of groups with a direct relationship to agricultural production. It provides the Zoning Administrator “can give prior approval,” but approval is not required. To the very limited extent it provides the opportunity for prior approval, it is to engage in non-expressive conduct – *i.e.*, providing food service and meeting facilities for a fee – based on relationship to agriculture, not content of speech or expressive conduct. 8.7.3(10)(u)(2)(c)(ii) provides detailed examples to guide whether there is a direct relationship to agricultural production and (iii) provides an appeal mechanism. No Plaintiff sought, nor was denied, GAU approval under this subsection.

Jersey’s All-American Sports Bar, Inc. v. Washington State Liquor Control Board is not relevant. 55 F.Supp. 2d 1131 (W.D. Wash. 1999). It concerned a statute requiring liquor license holders to obtain a license to have “any music, dancing, or entertainment whatsoever” – *i.e.*, protected First Amendment activities. *Id.* at 1137. The GAU provisions are permissive and restrict no speech nor expressive conduct.

Plaintiffs misconstrue the GAU provisions and Ms. Deeren’s testimony to suggest the Township exercises discretion over all events at wineries. Regarding never-used 8.7.3(10)(u)(2)(c), Ms. Deeren confirmed she would determine whether a group has a direct relationship to agricultural production based on the information supplied to her *if* she ever received such a request,

and deny the request *if* there was no such relationship. (ECF 469-2 dep 55-58) Plaintiffs ignore the 8 listed examples that guide the determination.

Plaintiffs recite Ms. Deeren’s testimony about approving “events” misleadingly. Just before the cited exchange, Ms. Deeren explained that by “events,” she meant “something that is scheduled thirty days prior to its occurrence,” like a “wine pairing with dinner and a tour of the vineyards.” (ECF 136-6, dep 18-19) She was clearly describing GAUs, which require 30 days’ advance notice and most commonly involve wine pairing dinners, not events in the colloquial sense. She then listed examples of events that are plainly not GAUs: Yoga in the Vines, Painting in the Vines, and snowshoeing. (ECF 136-6, dep 20-21) Those activities and more take place at Plaintiffs’ wineries. (*See, e.g.*, ECF 470-20, PageID.17409 (painting classes); **Ex 8** (snowshoeing); *supra* (yoga)) Ms. Deeren also described fielding inquiries about whether certain events would be allowed under the PTZO. This is not “approving” events, but interpreting the PTZO, which is the province of the ZBA. If any Plaintiff doubted Ms. Deeren’s informal interpretation whether, *e.g.*, Yoga in the Vines is a “food and wine seminar,” they should have appealed her determination or requested ZBA interpretation. PTZO 5.3, 5.7.2.

Plaintiffs provide *no* examples of Township GAU denials.

- In 2017, a Model T Jamboree leader decided bathroom facilities at a Township park were inadequate for his 200+ participants; he was not permitted to use Bowers Harbor’s “wonderful bathroom facilities” and have lunch there instead. (ECF 469-18, PageID.17117-17118) At the time, Bowers Harbor was not a Winery-Chateau with GAU authorization; its unique “Special Open Space Uses” SUP 32 authorized only particular events. (ECF 308-11). Two years later, the Township approved SUP 132 for Bowers Harbor to become a Winery-Chateau with GAU authorization. (ECF 32-7, PageID.1782-1798)

- The 2018 letter regarding flower classes and yoga at Bowers Harbor issued over a year before Bowers became a Winery-Chateau, while it was still under SUP 32. (*Id.*)
- When Two Lads planned then cancelled two events in 2014, it was (and still is) a Farm Processing Facility, not a Winery-Chateau. (ECF 470-44) Two Lads is ineligible for GAUs.
- Bonobo applied for a second amendment to SUP 118 in 2015 to authorize GAUs, which was denied because Bonobo was chronically noncompliant with crop-planting requirements. (ECF 457-6, 457-7, 457-8, 457-9)

Plaintiffs say Ms. Deeren testified “food and wine seminars” also require her approval, but the PTZO says otherwise. Anyway, the cited testimony addressed occupancy limits. (ECF 469-2 dep 51) There is simply no prior restraint of speech.

3. The challenged provisions do not unconstitutionally compel speech.

Unconstitutional compelled speech arises where “an individual is obliged personally to express a message *he disagrees with*, imposed by the government” or “an individual is required by the government to subsidize a message *he disagrees with*, expressed by a private entity.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 557 (2005) (emphasis added). Plaintiffs cite one example of the former: *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 784 (1988) (charitable organizations, solicitors objected to compelled disclosure of fundraising information they would not otherwise disclose).¹⁴ The First Amendment may prevent the government from requiring a person to “repeat an objectionable message out of their own mouth[.],” “use their own property to convey an antagonistic ideological message,” “respond to a hostile message when they would prefer to remain silent,” “be publicly identified or associated with another’s message,” or

¹⁴ Plaintiffs also cite cases applying strict scrutiny in other contexts.

“pay subsidies for speech to which they object.” *Glickman v. Wileman Bros. & Elliott*, 521 U.S. 457, 470–71 (1997) (citations and quotations omitted); *U.S. v. United Foods, Inc.*, 533 U.S. 405, 410 (2001). No such circumstances exist here.

A Winery-Chateau hosting a GAU satisfies 8.7.3(10)(u)(5)(a) by simply identifying its wine served to attendees. Chateau Chantal and Mari – the only Winery-Chateaus that lawfully hosted GAUs – expressed no objection to promoting themselves or their wines. (ECF 470-12 dep 53, 55-58; ECF 470-55 dep 107-108; ECF 470-19) On the contrary, *all* Plaintiffs demand *more* opportunities to promote themselves and their wines. Promoting their wine to their guests cannot be both disagreeable and desirable. These claims are illogical and meritless.

4. If strict scrutiny applied, the challenged provisions would satisfy it.

As with *Central Hudson*, Plaintiffs identified and PTP located no caselaw applying First Amendment strict scrutiny to regulations that restrict nothing and regulate non-expressive conduct. Nevertheless, Plaintiffs insist so PTP responds. The Township interests in zoning, including preserving agriculture and limiting commercial land uses in A-1, are compelling. *Greater Bible Way Temple*, 478 Mich. at 403 (“It has long been recognized that local governments have a compelling interest in protecting the health and safety of their communities through the enforcement of the local zoning regulations.”) (citation and internal quotation omitted) As discussed for the *Central Hudson* test, Peninsula Township has worked for decades to effectively preserve agricultural uses and prevent incompatible land uses in A-1 through zoning and taxation. On their face, the challenged provisions are narrowly tailored – it is their narrowness that apparently frustrates Plaintiffs. Any restriction of Plaintiffs’ speech is unstated, unidentifiable, and unproven. These claims should be rejected.

C. No Township “admissions” modify the PTZO.

Plaintiffs are entitled to no order allowing them to host weddings and operate at all hours. First, the Township did not change any positions about the PTZO. Ms. Deeren accurately testified weddings, receptions, and family reunions are not GAUs, so they do not need Township approval. (ECF 469-2 dep 61-64) Approval of impermissible land uses is not a thing. She also accurately testified 8.7.3(10)(u)(2)(d) does not prevent wedding receptions and family reunions for a particular winery. (*Id.* dep 112) It does not – though A-1 zoning likely does. Further, 8.7.3(10)(u)(2)(d) does not apply to any particular winery, it is an SUP standard. Plaintiffs understand commercial weddings are not permitted in A-1 but long pushed for zoning amendments to change that, so 8.7.3(10)(u)(2)(d) reasonably clarifies GAUs do *not* include such events.

As for hours, there is simply no restriction in the PTZO on operating hours in A-1 except for GAUs. This is no position change. Anyone could read the PTZO and see it does not specify operating hours except for GAUs. Had the Township actually ever “enforced” a closing time by requiring a winery to shut down its tasting room at any particular time, the winery would obviously have had recourse. But *no* Plaintiff produced *any* evidence the Township *ever* forced early closing. Plaintiffs close in the early evening because demand for wine tasting wanes, not because they have to. (ECF 480) This is probably why the PTZO did not specify closing times for tasting rooms – *wine-tasting* is self-limiting. In response to questions that clearly recognize there is no 9:30 p.m. closing time in the PTZO except for GAUs, Mr. Manigold said “that’s what I’m enforcing.” (ECF 469-4, dep 179-80) This ambiguous, uncorroborated testimony from a PTZO non-enforcer is evidence of nothing.

Second, even if former Township officers had testified that the PTZO means something other than what it says (neither did), municipal witnesses cannot interpret or modify zoning

through deposition. *See Moskovic v. City of New Buffalo*, 2023 U.S. Dist. LEXIS 7052 *9, *24 (W.D. Mich. Jan. 13, 2023) (citation omitted). The Supervisor is not authorized to interpret or enforce the PTZO. The ZBA and courts interpret it. *Id.*, PTZO 5.7.2. The Zoning Administrator and Ordinance Enforcement Officer (Mr. Sanger) enforce it. 4.1.1, 4.1.2; ECF 356-10; ECF 356-9. Township officials cannot modify the plain language of duly enacted laws. *46th Circuit Trial Court* 266 Mich. App. 150 at 161 (2005); *Stevenson v. Bay City*, 26 Mich 44, 46-47 (1872).

Third, even if two former officials “admitted” Wineries may host commercial events and must close at 9:30 p.m., so what? That proves nothing relevant to any legal claim or theory. These so-called “admissions” are deposition snippets in search of relevance. They float untethered to the First Amendment or another claim. Plaintiffs ask the Court to award them lost profits for the “years of improper enforcement.” (ECF 469, PageID.16975) They cite no claim nor caselaw authorizing damages for their contrived claimless arguments. These theories should be dismissed.

D. Plaintiffs would be entitled to limited relief.

Plaintiffs ask the Court to award them money damages and declare “that the uses restricted by the unconstitutional Ordinances are allowed uses” and agritourism as they define it “is reasonable.” (ECF 469, PageID.16976) Plaintiffs are entitled to neither remedy.

First, any damages would be truly minor. Most Plaintiffs have not proven an injury caused by challenged subsections. Plaintiffs never articulated when or how challenged subsections injured their First Amendment rights – they said they were injured *because* subsections are unconstitutional. (*See, e.g.*, ECF 457-4, PageID.16094-16095) While each Plaintiff asserts enormous “lost profits” from commercial events they imagine they might have hosted, they establish no viable First Amendment right to host commercial events. (ECF 171-1, PageID.6371)

If the Court found challenged subsections impair a Plaintiff's First Amendment speech rights, it could prohibit the Township from enforcing them. *H.D.V. – Greektown LLC v. Detroit*, 568 F.3d 609, 620 (6th Cir. 2009). But it's complicated here. Severability must be considered. *International Outdoor, Inc. v. City of Troy*, 77 F.3d 432, 437-38 (2023); PTZO 10.1. For example, if the Court found unconstitutional GAU "Agricultural Production Promotion" requirements or allowing agricultural groups to use Winery-Chateau facilities for meetings or limiting non-wine advertising for Peninsula Cellars, these might be carved out. But Plaintiffs' imprecise challenges hinder identification of what is challenged, severable, and independently operable. Most challenged subsections are no longer operable since their 2022 repeal by Amendment 201, but they remain in some SUPs. *See Brandywine, Inc. v. City of Richmond*, 359 F.3d 830, 836 (6th Cir. 2004) ("We can neither declare unconstitutional nor enjoin the enforcement of a provision that is no longer in effect."). For example, while Amendment 201 eliminated GAUs, five Plaintiffs' SUPs authorize GAUs. (ECF 32-11, ECF 32-7, ECF 32-5, ECF 32-10, ECF 63-10) Therefore, GAUs may be non-conforming uses for some Plaintiffs. MCL 125.3208; PTZO 7.5 Questions arise over vested non-conforming uses, as that requires an actual and substantial land change, not just intentions. *See Lansing v. Dawley*, 247 Mich. 394, 396-397; 225 N.W. 500 (1929); *Belvidere Twp. v. Heinze*, 241 Mich. App. 324, 328; 615 N.W.2d 250 (2000); *Webster Twp, supra* *12 (lawful work converting barn for commercial use did not vest right in commercial *events* barn). Plaintiffs that never hosted GAUs probably lack a vested interest in them. Whether and under what conditions which Plaintiffs may lawfully host valid GAUs is unclear.

Finally, *Schwartz* does not provide the remedy here. 426 Mich. 295. *Schwartz* guides judicial intervention in rezoning cases where continued application of a zoning classification to a particular parcel is unconstitutional. The *Schwartz* plaintiff sought rezoning of a parcel from

agricultural to commercial. *Id.* at 300. After the township refused, Schwartz sued to declare the agricultural classification unconstitutional as applied to his parcel. The appellate court held the agricultural classification as applied to Schwartz’s parcel was an unconstitutional taking. *Id.* at 301 (citation omitted). Under then-prevailing precedent, the lower court accepted proposals and crafted what it considered appropriate for the parcel. *Id.* at 303. The Michigan Supreme Court overruled that approach “as an improper usurpation by the judiciary of a legislative function.” *Id.* at 305. After discussing constitutional separation of powers, it rejected “judicial zoning” because courts should not determine “the best use of the land.” *Id.* at 307 (citation omitted). Courts determine unconstitutionality but the judiciary may not “guarantee a replacement for an unconstitutional ordinance.” *Id.* at 308. Granting appropriate relief should not inject courts “into the legislative realm.” *Id.* at 314-16. Instead, the Court adopted the “specific reasonable use” rule where a plaintiff must show reasonableness “by a preponderance of the evidence,” like what is initially required “to find a particular zoning ordinance unconstitutional as applied.” *Id.* at 325, 327. Reasonableness considers existing uses and nearby zoning. *Id.* at 328. The municipality “is always free to rezone consistent with the limiting conditions of plaintiff’s proposed use, or not so limited, where plaintiff’s use has not been declared reasonable.” *Id.* at 329.

Plaintiffs cite no case applying *Schwartz* to a First Amendment challenge, and PTP did not locate any. *Schwartz* guides relief when the application of a zoning classification *to a particular parcel* is unconstitutional; the “specific reasonable use” rule is intertwined and parcel-specific. *See Electro-Tech, Inc. v. H F Campbell Co.*, 433 Mich. 57, 90; 445 N.W.2d 61 (1989) (*Schwartz* provides remedy when applying zoning “to a particular parcel” constitutes an unconstitutional taking); *Hendee v. Putnam Twp.*, 486 Mich. 556 n. 29; 786 N.W.2d 521 (2010) (under *Schwartz*,

court authorized to grant injunctive relief allowing use “only if the ordinance’s *classification of the property* was unconstitutional.”) (emphasis added).

Courts invoke *Schwartz* in parcel-specific takings cases. *See Pulte Land Co. v. Alpine Twp.*, 2006 Mich. App. LEXIS 2641 (Sept 12, 2006); *Wolters Realty v. Saugatuck*, 2005 Mich. App. LEXIS 2608 (Oct 25, 2005); *Grand/Sakawa Macomb Airport v. Macomb Twp.*, 2005 Mich. App. LEXIS 1398 (June 7, 2005). Each concluded the municipality’s refusal to rezone a parcel to a different zoning classification was unconstitutional and considered the appropriateness of the proposed rezoning based on parcel-specific evidence. None involved judicial creation of new land uses for multiple parcels in an existing zoning district.

Schwartz does not apply here, where Plaintiffs bring no parcel taking claim and treat parcel particulars and nearby uses as practically irrelevant. (*See, e.g.*, ECF 477, PageID.18387; ECF 28, PageID.1070) Plaintiffs are not entitled to a declaration that “agritourism” is a reasonable land use in A-1, and doing so would violate the separation of powers principles that guided *Schwartz*. *See also Brae Burn, Inc. v. Bloomfield Hills*, 350 Mich. 425, 436-38; 86 N.W.2d 166 (1957).

E. PTP is not responsible for Plaintiffs’ attorney fees.

Plaintiffs support their threat to seek costs and attorneys’ fees from PTP with two stale cases. (ECF 469, PageID.16976). Courts subsequently rejected the argument that an intervener is responsible for Section 1988 attorney fees unless its position was frivolous, unreasonable, or without foundation. *Indep. Fed’n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989); *Heald v. Granholm*, 457 F.Supp.2d 790, 791-93 (E.D. Mich. 2006) (“The rule to be gleaned from *Zipes* is that a prevailing plaintiff may not obtain attorney fees from a losing intervening defendant, pursuant to a fee-shifting statute such as . . . § 1988, unless the intervening defendant’s position

was frivolous, unreasonable, or without foundation.”); *Bogaert v. Land*, 2009 U.S. Dist. LEXIS 31491 *4 (W.D. Mich. April 14, 2009) (intervention by right demonstrated intervention was not “frivolous, unreasonable, or without foundation”).

F. Plaintiffs keep inviting PTP members to speculate about avoided harms.

For decades, PTP and its members supported agricultural zoning limits on commercial activities in A-1 because they protect the Peninsula’s pastoral setting and quality of life. (ECF 41-2) PTP members fully articulated in affidavits and depositions their reasonable concerns that invalidating zoning will negatively impact traffic, noise, land values, farming, and more. That these concerns have not materialized does not make them speculative, it makes them latent. Plaintiffs repeatedly mistake PTP intervention interests as nuisance claims, which PTP does not assert. Misplaced snippets from PTP member depositions have no bearing on Plaintiffs’ entitlement to summary judgment on their First Amendment claims. PTP declines to waste further judicial resources responding to this irrelevant exercise.

IV. CONCLUSION AND RELIEF REQUESTED

For the above reasons, PTP respectfully asks this Court to find Plaintiffs’ speech claims fail as a matter of law, deny Plaintiffs’ Motion (ECF No. 468), and grant all appropriate relief.

Respectfully submitted,

Date: November 3, 2023

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews hereby certify that on the 3rd day of November, 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: /s/ Tracy Jane Andrews
Tracy Jane Andrews (P67467)
Holly L. Hillyer (P85318)

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(b)(i)

This Brief complies with the word count limit of L. Ci. R. 7.2(b)(i). This brief was written using Microsoft Word Office 365 and has a word count of 10,754 words.

Respectfully submitted,

Date: November 3, 2023

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WINERY SHOP INN DINING EVENTS STABLES ABOUT



SUTTONS BAY TASTING ROOM

The original Black Star Farms tasting room is located just 13 miles from downtown Traverse City on the beautiful Leelanau Peninsula. The gorgeous 160-acre estate also features a winery, destination Inn, *Hearth & Vine Café*, unique event venues, equestrian facility and hiking trails. In addition to multiple tasting bars, we offer wines by the glass on our seasonal *Terrace Patio*. Wine club members and Inn guests also have access to the exclusive *Barrel Room*, where they will experience a level of refinement above and beyond our standard tasting room.

Learn more about our Premium Wine & Cheese Tastings!

*Enjoy new signature cocktails on the Terrace Patio **Fridays & Saturdays 6pm-8pm.***

MORE INFORMATION

<https://web.archive.org/web/20190929091631/http://www.blackstarfarms.com/tasting/> – June 22, 2023

WOMP013665



SUTTONS BAY TASTING ROOM INFORMATION

We are currently open daily 11-5 for curbside carry out and offering 20% off all purchases, excluding brandies—Call 231-944-1270 to place an order. You may also order online and receive free shipping on purchases of 6 or more bottles. Please note, online orders are not available for curbside pick up.

HOURS

11 am-5 pm daily

LOCATION

<https://web.archive.org/web/20201203110906/https://www.blackstarfarms.com/suttons-bay-tasting-room-information/> – June 22, 2023

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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Mary K. Belding
 PENINSULA TOWNSHIP CLERK
 PHONE (616) 223-7136 17630 SMOKY HOLLOW ROAD
 TRAVERSE CITY, MICHIGAN
 49684

PENINSULA TOWNSHIP BOARD
 SPECIAL MEETING
 August 15, 1989

Meeting called to order at 7:32 p.m. Present: Supervisor Manigold,
 Clerk Belding, Treasurer Breadon, Trustees Fulmer and Gray.

Clerk asked for confirmation of wording of motion made at 8/8/89
 regular meeting regarding Nelson Road as related to Old Mission Estates.

7:38 p.m.: Supervisor asked Robert Begin to present his slide presentation, and stated that during ensuing public hearing to follow regarding Amendment #79 A-E, all persons requiring to speak will give their names and use the microphone.

Begin described his project for 30 acres on Center Road, near intersection of Kroupa, including 75% in agricultural production and open space; (6) homes on 1 acre lots, a winery and a chateau of 14 rooms. This amendment was approved by Planning Commission and forwarded to Town Board.

8:12 p.m.: Al Hyde, of Planning Commission, and a member of committee which drafted the amendment, gave a history of steps taken to date, and spoke of special use permits which will be required following consideration of amendment. He stated that an agricultural survey done in '87 indicated the need for additional uses of farmland other than cherry production. He also stated that the inception of Begin's request began prior to deletion of "private resorts" from Zoning Ordinance, Section 8.7.2. (3), as per Amendment #80, hence Begin is "grandfathered" into same.

8:23 p.m. PUBLIC HEARING OPENED.

The following persons letters were read by Supervisor and Clerk and are listed as to "for" or "against" Amendment #79 passage, wholly or in part:

FOR	FOR	AGAINST
Douglas Keyes	M/M Farnham	Richard Marr
Jim Jerrett	Thelma Crawford	John Vicary
Marc Kroupa	Dave and Gwen Murray	Joan Murray
Gary and Wendy Warren		Marjorie Arney
Jack Holman	George Kelly	Lillian Wallace
David and Joan Kroupa		Annette Evans
Don and Joyce Smith	Mark Johnson	Michael and Mary Hodges
Robert DeVol	Rebecca Wells	Richard and Marjorie Fox
Marge and Phil Weatherholt		Marian Moore
Cass and Agnes Plagens		Dick Templeton
Carynne Keyes	Nick Kroupa	Bud Stych
Carol and Jack Holmes		Dr. and Mrs. Sweeney
David and Mary Shultz		
Michael Dakoske		
Mary and Whitney Lyon		
Roger and Bonnie Ostrander		
Thomas and Monica Crawford		
Nancy McDoe		
M/M Ken Gay		

PTP0000448

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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8/15/89

Town Board - Public Hearing, Amendment #79

p.2

Supervisor read the heading on petitions bearing 99 signatures supporting Planning Commission's approval of Amendment #79 and requesting Town Board to adopt same. He stated that the signatures represent 80% of the farming community. Petitions are on file at both Supervisor and Clerk offices.

The following persons were present and stated their positions:

<u>FOR</u>	<u>AGAINST</u>
Harold McManus, Jr.	Walter Johnson
Ed O'Keefe	Linda Fulmer
George Penney	Mark Nadolski
Colleen Sweeney	

Mr. Begin presented correspondence from his neighbors on Center Road (vineyard location) stating their approval of his project: Dale Christopher, Vern and Bette Stoppa, Elton and Doris Dohm, Carl and Suzanne Lehto, Mr. and Mrs. Hines, Mr. and Mrs. Dunne, and Mr. and Mrs. Gore.

In response to Bud Stych's questions, Al Gray read from minutes of County Planning Commission, and Dick Templeton's letter was read.

9:29 p.m.: Public hearing closed, all persons having spoken.

Board comments: Al Gray (excerpted from lengthy comments) :

"In some ways, amendment is not consistent with our comprehensive plan".

"It puts commercial in agricultural district". "It is spot zoning".

Quoting Bob Hotaling "If the proposed deviation is inconsistent with land use plan or zoning district, it is spot zoning".

"Would not allow for proper planning because, in essence, the entire Peninsula would be open to all these uses mentioned in the amendment".

"I don't believe it's the purpose of zoning to subsidize private business".

"Amendment deals with the desires of only one person".

"This is going to have a very significant effect upon the peninsula . . . our planning should be in place first to make sure land uses will be adequately placed".

Re contact with MTA legal: "I asked him the reasonableness of linking an agri crop to a commercial use in a non-commercial district and his response was that he didn't understand why we would want to do that".

"I think this amendment would provide a different market for farming community . . . would increase value of ag land. However, there would be no immediate benefit"(reference Begin's remark re years required to create profitability).

"I'm a little concerned that I was not aware of petitions being circulated . . that I was not given any information. The few farmers I talked with showed no desire to go into this type of agri crop".

"Another problem . . how enforceable is special use permit . . only through the court process. SUP subverts the zoning process".

"This (type of activity) is too costly for farmers to get into . . . what we would have is, I would guess, is the people with big bucks, and would not end up having people that you like out here . . and this is not a bottom-line community".

"The motel/restaurant and accessory uses would not benefit anyone other than the applicant".

"I feel, as the amendment , as written, is not in Township's best interests".

"I feel the PC did a commendable job but there are a lot of different possibilities" (in matter of compromise).

Manigold responded to several of Gray's comments, indicating a positive rather than a negative reaction. He stated that, as a farmer, he was well aware of the need for options for farming families.

Begin asked for opportunity to "respond to Gray's unilateral statements."

Manigold stated that same was not possible at this time, which is for Board.

PTP0000449

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Gary Fulmer:

Fulmer stated that he favors the concept, but is concerned about the "rental" aspect, that time-sharing may develop. He is concerned about the percentage of commercial use, and also a "lack of specificity" i.e., amendment does not state "grape production". He believes that this amendment is being fine-tuned for one individual when it affects the whole peninsula, and wonders whether this type of activity is viable for other farm families.

Manigold: "If passed, this amendment could be used by another individual".

Fulmer: "If each item were controlled as Mr. Begin has laid out . . . but we have no guarantee of that".

Fulmer's prime concern is with 79E and 79G.

Don Breadon:

Breadon approves of concept, but feels some items need more specificity, i.e., 11(d) "agriculture" . . . I feel that should be expanded upon, and, at minimum, should be agricultural production. "What kind of agriculture are we talking about . . . cherries, grapes, what?"

(g) "14 rooms . . . I feel that should be graduated".

(i) "Should be beefed up . . . needs to be more specific".

Suggested sending back to PC for "fine-tuning". He feels this is necessary "because of the potential impact" of the amendment.

Mary Kay Belding:

"I agree with the ~~motion~~ ^{amendment} as it is. I don't have a problem with it. However, having heard the first three speakers, there is little hope of passing this this evening".

Belding expressed hope for better liaison between TB members, referring to correspondence with MTA legal staff and rewrite of amendment #79, said information not circulated until August 11 to entire Board, stating that MTA response should have been forwarded to our attorney and certainly to PC, for any possible insight.

Rob Manigold:

"I, too, am in favor of the concept, because I feel it is important to offer alternatives to the agri community."

He is concerned that when farmers are hard-pressed, subdivisions will increase and "subdivisions and farming do not mix".

"As to addition of motel, or B&B concept, I admit it's a jump for agri district, but it's something that will stabilize the uncertainty of crop. There are few in farming who can make it without a second occupation".

Breadon/Fulmer moved to return Amendment #79A-E to Planning Commission for further review, taking into consideration the comments of Town Board members.

MOTION

Vote: 4 ayes, Belding, nay.

Addenda to vote, Manigold requested a two-month deadline for re-submittal.

Michael Houlihan, PC Chr., stated that he "wants to give us a product that's useful", and directed questions to Breadon's specific points. He stated that one of the things that troubled the Committee, and then the PC was the issue of graduated scale for rooms.

Houlihan: "Were you thinking of a scale that relates both to size of the site and size of guest rooms?"

Breadon: "My feeling is more maximum. I think 14 is a good maximum. But I think we should look at the project . . . not just this project, but any project that comes down the road and make a determination".

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Fulmer expressed concern about room size. Houlihan thanked him for bringing forth idea of time-share, stating such had not been considered. "We can make it clear tht it is not permitted. It's not what we had intended at PC".

Fulmer is also concerned about building height, 35' vs. 28', also that 75% used for agri purposes should pertain to winery.

Hyde: We did not specify grapes, as cherries will be in production ten years of so. For that reason it was left "agricultural" . . suggested "fruit production". Hyde stated that SUP will be written to cover details.

Belding suggested that we might expedite this by submitting to PC the "amended amendment" written in concert by Fulmer and Gray, and amended again by Gray, as all points are covered therein.

There being no further business, meeting adjourned at 10:40 p.m.

Mary Kay Belding, Clerk

These minutes stand for approval.

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

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**PENINSULA TOWNSHIP PLANNING COMMISSION
SEPTEMBER 18, 1989****REGULAR MEETING**

Present: Chr. Houlihan, Coulter, Johnson, Teahen, Hyde, Gray, Hite.
Z/A Hayward and Atty. William Wise also present.

Chr. called the meeting to order at 7:33 p.m. Hyde/Teahen motion to approve last meeting's minutes. Carried Unan. Chr. Houlihan extended a welcome to Rex Hite, new appointee to PC, replacing Glenn Lewis. Chr. appoints Jim Teahen chairman of the Nominating Committee for officers for 1989-1990 PC year, with leave to appoint such members as seems appropriate with the exception of Houlihan. He asks for report at next regular meeting. There being no additions to agenda or public input, the meeting continued.

TOWNBOARD REPORT: Al Gray reported on the 9-12-89 meeting. A new township employee position has been established: Fire Chief EMT. Petitions to pave streets at Council Oaks and Wrightwood Terrace Subdivisions were approved. The township property, on Swaney Rd., intended for use as a cemetery has been put up for sale. The Hoeft SUP was approved. There was a brief presentation of the proposed State Park Plan with a Public Hearing to be held on Oct. 18, 1989. Joanne Westphal presented a 6 point proposal for a new comprehensive plan. Also announced a Drainage District Mtg. to be held on 9-21-89. Coulter offered feedback on the Westphal presentation. She feels the township should spend that amount of money working towards changes in the ordinance. Gray states that the end result of a new comprehensive plan would be ordinance changes. He notes that Manigold is interested in investigating other ways to achieve this end. In fact, Manigold believes the Farmland Trust rewrites ordinances as standard procedure for free.

CHATEAU PROPOSAL: Chr. Houlihan states that the document presented tonight is the latest revision of Amendment 79. The PC believes this amendment now represents sufficient compromise of competing interests and may pass the Townboard. The fundamental change is to establish a formula for analyzing all of the uses on the site. The intention is to look at the uses that are permitted and analyze these uses as presently permitted in agriculture. Basically, this amendment requires a minimum 50 acre site, permitting a winery, guest rooms, mgr.'s residence, and single family residences as part of the site. Also, not less than 75% of the site shall be used for the active production of crops for wine production. Since the Townboard prefers a written report from the PC on this rather than a joint meeting with the PC, the next step is a public hearing. Teahen/Coulter motion to schedule a Public Hearing for Amendment # 79 for the next regular PC mtg. on Oct. 16, 1989. Carried Unan.

Al Hyde suggests a content deletion on page one and it is agreed upon. Also, under 79C he feels there should be one parking space added for each guest room. PC agreed.

Rex Hite refers to term "juice is processed" on amendment under 79A, wondering whether this language is too vague. Both Hite and Gray feel we may not be addressing many aspects of the wine-making industry due to our lack of knowledge of it. Gray refers to California with 30 years experience, the pitfalls seen by them, and the zoning amendments they have found necessary.

SUBDIVISION CONTROL ORDINANCE; Plat Committee Chr. Coulter reports great difficulty contacting Gerry Harsch and there has been no progress. Houlihan suggests getting present text together, and having the Plat Comm. meet with Hayward to map out some direction for dealing with this. Atty. Wise volunteers to try to get needed information from Harsch.

AIRPORT OVERLAY ZONE: Hyde has reviewed and edited the proposed amendment to our ordinance and feels it is now acceptable and ready for a Public Hearing. Hyde/Coulter motions that the amendment be processed for a Public Hearing on Oct. 16, 1989. Carried Unan.

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**PENINSULA PLANNING COMMISSION
OCTOBER 16, 1989****REGULAR MEETING**

Present: Chr. Houlihan, Coulter, Hite, Gray, Hyde, Johnson, and Z/A Hayward. Teahen absent. Atty. Wise arrived at 8:20 p.m.

The meeting was called to order at 7:32 p.m. HYDE/HITE motioned that the September minutes be approved, with the request that the type be returned to original type size. Carried Unan. There was no public comment.

TOWNBOARD REPORT: Al Gray reported on the 10-10-89 meeting. The November meeting of the townboard has been changed to Nov. 21, '89. Weds., Oct 18, '89 there is a DNR mtg. at Old Mission Peninsula School at 7:00 p.m. regarding the State Park. It was decided that the Westphal study would not be made. At the Nov. TB meeting, the comprehensive plan proposed by Z/A Hayward will be discussed. The Fire Dept. requested to be included on the committee for Seasonal Labor Housing. The C-TEC request for a franchise for cable T.V. was tabled until the Nov. mtg. Amendment # 77 re decks was passed with a request for more latitude to be given to the Z/A. Mission Hills received final plat approval. Peninsula Knolls received final plat approval. Blue Water Bluffs presented 2 proposals. Proposal A, the plan approved by the PC, was passed. Rich VanderMey was hired for the new Fire Chief-EMT position. A motion was made regarding commercial aspects being removed from PUD's. (Hayward will submit a report to the PC in regard to this.)

NOMINATING COMMITTEE will report at Nov. meeting.

CHATEAU PROPOSAL (Bob Begin) PUBLIC HEARING ON AMENDMENT # 79:

Houlihan described the process that Amend. # 79 has been through up to date. He stated that mechanically, it has been changed to assign a formula to all areas involved. He reiterated that this amendment would allow a minimum 50 acre site to accommodate all uses permitted in a chateau winery, (a managers residence, 6 single family residences, up to 12 guest rooms, and a winery).

PUBLIC HEARING OPENED AT 7:43 p.m. Walter Johnson, 10862 Old Mission Rd., stated 2 objections: 1) The assumption that allowing a lesser Ag. setback than the 200 ft. offers equal protection. 2) He feels the proposed situation is a commercial operation; and will not maintain an agricultural environment, as required by the amendment. Mark Nadolski, 10 McKinley Rd., requested a definition of term used in SUP, "agricultural environment." Bud Quick, 12221 N. Bluff Rd., questioned whether it was possible to go to the Private Resort Provision rather than change the ordinance. Houlihan explained that the phrase "Private Resort" was found in the ordinance as a permitted use in an ag. district. The TB and PC felt that since it was vague with no regulations governing it, it was best to delete it from the ordinance for the time being. Mr. Begin's original application was made for a "private resort". After discussion, he agreed to defer that application while the TB and the PC considered his application for a winery chateau. It would be possible to proceed under the Private Resort Provision, but there are serious negatives, since there are no standards. We have not taken away, nor can we, his rights to proceed under that provision if he so chooses. John Matson, 12062 Peninsula Dr., questioned the formula: Based on the proposed amendment allowing 12 guest rooms on a 50 acre site, could there be 48 rooms if 200

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acres were involved? Houlihan answered no since the number is capped at 12. Bud Stych, Bluff Rd., asked if a person with 1000 acres could divide it into 50 acre parcels and put 12 guest rooms on each parcel? Houlihan answered that potentially, it could happen. PUBLIC HEARING CLOSED 7:58 p.m.

Coulter solicited the TB's comments from Al Gray. Gray's comments: 1) referred to (79m) accessory uses, stating there were no standards for meeting rooms, beverage or food services. 2) Questioned the deletion of the word "overnight" from the phrase "registered overnight guests". 3) Felt the project was too concentrated on the amount of property involved. 4) Feels the amendment is attempting to be all-encompassing and not addressing individual issues enough, especially the wine making industry itself, and is concerned about "headaches" later on. 5) Questioned whether there is enough concrete evidence to warrant such an amendment? Hyde pointed out that at the Sept. 89 PC Mtg., this same document was approved by the PC, and stated that he felt Gray's comments should have been made at that time, prior to the expense of advertising a public hearing. Houlihan addressed Gray's comment about the lack of standards for accessory uses, stating that there were standards and explained them. He also pointed out to Gray that there has been substantial support from the farming community. Hite also questioned whether this amendment had the farmers support. Hite suggested a survey to determine: 1) How many farm properties fall within the amendment? What are the maximum number of potential wineries? 2) How many farmers are interested in this pursuit? 3) Is there a causal relationship between putting these amendments in the ordinance and a benefit to farmers? Coulter responded by referring to the large number of farmers who have indicated support. She feels these issues cannot be covered by a survey since this is a wait-and-see issue. A variety of issues in regard to additional opportunities for farmers were discussed. Coulter stated that although we don't have the expertise of Napa Valley, this amendment is a good place for us to begin. She noted that amendments can be amended if needed.

HYDE/COULTER motioned to adopt Amendment # 79 and forward it to the TB for their action. Roll Call Vote: Coulter: Yes. I've not been excited about the density, but am very excited about promoting another Ag. crop. Hyde: Yes. Houlihan: Yes. Hite: No. Gray: No. Johnson: No. Motion Failed. The amendment is not recommended to the TB by the PC, but at Begin's request, will be forwarded to the TB to be considered at the Nov. 21st mtg.

Meeting recessed at 8:29 p.m. and resumed at 8:38 p.m.

AIRPORT OVERLAY ZONE - AMENDMENT # 78. Houlihan explained that this is an addition to our zoning ordinance, to comply with FAA regulations, which places some limitations on structure heights within a certain radius of the airport. PUBLIC HEARING OPENED at 8:40 p.m. and CLOSED at 8:41 p.m. HYDE/COULTER motioned approval of Amendment # 78. Roll call vote. Unan.

SUBDIVISION CONTROL ORDINANCE: Plat Committee Chr. Coulter reported that the ordinance will be changed over to the computer now that it is ready for final review and changes before printing. Hopefully it will be completed and ready for presentation by the beginning of 1990 according to Coulter. The method for presenting differences of old vs. new ordinances for Sub. Cont. was discussed. Gray inquired if language in the Sub. Cont. Ord. addressed buildable lots in wetlands? Hayward responded that he will check and see.

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**PENINSULA TOWNSHIP PLANNING COMMISSION
NOVEMBER 20, 1989****REGULAR MEETING**

Present: All members, Z/A Hayward and Atty. Wise.

Meeting was called to order at 7:30 p.m. Hite/Coulter motioned approval of the October minutes. Carried Unan.

Chr. Houlihan made 3 observations regarding the Town hall. The handicapped access entrance requires snow removal for use. The light above the handicapped entrance is not functioning properly. The American flag must be illuminated if flown at night.

Hyde/Coulter motioned to have special meetings of the PC on the 2nd Monday of Jan., Feb., and March 1990 to address changes to the Zoning Ordinance, the Sign Provision of the Ordinance, the Subdivision Control Ordinance, and the Protection of Scenic Views on the peninsula. Carried Unan.

A Board consensus added a bill from Atty. Wise to the agenda.

TOWNSHIP BOARD REPORT: Gray reported that there was no report since the meeting had been changed to tomorrow night, 11-21-89.

NOMINATING COMMITTEE REPORT: Teahen reported the committee's recommendations. Teahen/Hyde motioned appointment of Dean Johnson as Secretary, Virginia Coulter as Vice Chairperson, and Michael Houlihan as Chairman. Carried Unan.

CHATEAU PROPOSAL: Hite expressed his desire that a study and subsequent changes be made to the Master Plan and the Zoning Ordinance prior to passing this Amendment. The intent of the study would be to get a handle on the number of potential wineries, to define geographically the agricultural land on the peninsula that would be subject to this special use. Johnson questioned how these areas would be determined. He stated that he envisioned several hundred parcels. He also asked how this would be limited. Hite responded that possibly a committee would be formed to identify areas that would result in the least impact, using a process similar to defining commercial uses. Gray stated that he felt the idea of identification of types of land is good since some Ag. lands are more conducive to particular crops than others. Hyde felt the idea had merit and that we need to look at agriculture other than cherry classifications. However, he was opposed at the present time since he felt a special effort at this time is unnecessary. Coulter stated that she didn't understand the issue at this time since there are presently only two people growing grapes on the peninsula. She asked how a farmer could be told that he has or has not the potential, or can or cannot grow a particular crop.

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Hite/Gray made a motion to make changes in the Master Plan and to make corresponding changes in the Zoning Ordinance to designate certain agricultural lands on the peninsula as being suitable for winery chateau's, restricting them from other areas prior to passing Amendment # 79. Roll Call Vote. Coulter: No. When the Master Plan is revised, consideration should be made then. It is not essential to do so now. Houlihan: No. Hyde: No. Johnson: No. Has no objection to the idea, but there is not a complete plan presented and it is a lot of work for the township to take on. Hite: Yes. Gray: Yes. It is a good idea for the peninsula to define separate types of Ag. land. Teahen: No. Motion Defeated.

On 11-21-89 the Township Board will act on Amendment # 79 without the recommendation from the PC. To avoid another delay Coulter/Teahen motioned that in event the proposed amendment is passed on 11-21-89, a SUP Public Hearing will be scheduled for December. If it is not, no hearing will be set.

Carried Unan.

Gray inquired of Begin whether he had a preference or problem with the resort approach as opposed to the Chateau approach? Begin chronicled the history of his request, noting that his own vested interest could work under either approach but he was pursuing the Chateau Winery approach at the request of the township. Due to this becoming a political issue, with growing community support, he preferred to continue with the present approach at this time.

BLUE WATER BLUFFS NO. 2 - TENTATIVE PRELIMINARY PLAT APPROVAL: A written report was presented from the Plat Committee. Chr. Coulter reiterated the committee's recommendations: (1) a waiver of 200' setback from the North property across Bluewater. (2) the commons area parking lot will be graveled, not paved; existing trees will remain; site will be kept natural; the parking lot will not be accessible from Bluff Road; an evergreen barrier will be established along neighbors property. (3) the club house will be used as a common element for the sub with restrictions.

Hite questioned the club house use. He asked what was determined as to our ordinance. Hayward responded that accessory uses are allowed under the Ordinance as part of section 7.4. Hyde noted that a preliminary declaration of deed restrictions yet needs to be submitted. Jim Whitman, proprietor, stated that a preliminary draft had been submitted, requesting distribution of same to the Plat Review Committee, with a more complete draft forthcoming based on the recommendations of the PC. Houlihan expressed concern that a subdivision club house might not be an accessory use due to the property being zoned for single family residential use. He requested an opinion by Wise. Coulter noted that the developers are receptive to negotiating the use of the building.

Rademaker requested tentative preliminary plat approval with the condition that Township Atty. validate the usage of this structure for the purposes indicated.

Dave Murphy, 1279 Londolyn Terrace, stated an objection to the

**PENINSULA TOWNSHIP PLANNING COMMISSION
JANUARY 15, 1990****REGULAR MEETING**

Present: All members and ZA/P Hayward.
Meeting was called to order at 7:31 p.m.

Hyde/Teahen moved to approve December minutes.

CARRIED UNAN.

Houlihan gave a reminder of the February and March 12 special PC meetings.

LETTER FROM EDWARD STYCH, JR.: A letter from Stych, dated December 14, 1989, was presented to the PC. It stated that three petitions had been submitted to the PC and they had not been approved. It requested that the PC refer these to the TB for their consideration.

- 1.) Commercial uses be eliminated from PUD's.
- 2.) Golf courses and club houses not share open space of a PUD.
- 3.) Petitions for change to the Zoning Ordinance to be acted on within a reasonable time frame.

The consensus of the board was that items 1 & 2 are presently being addressed by the PC. Item 3 was considered and rejected as not appropriate. Coulter stated that Atty. Wise had expressed a concern regarding a definite time frame because the PC can't always react within a certain time frame due to outside factors. She added that the TB and the PC always act within a timely fashion to the best they are able. Mark Nadolski stated that the first two items were submitted in Feb., 1988 and the third in Jan., 1989. He disagreed with these lengths of time constituting action in a timely fashion. Gray opined that petitions should be dealt with in the order received.

Hite/Johnson moved to refer item 3 to the TB for their determination, but items 1 & 2 are near resolution and would not be referred to the TB.

CARRIED UNAN.

CHATEAU PROPOSAL: Houlihan noted that the SUP proposal set for approval is dated January 15, 1990. He explained some of the revisions made since Amendment 79 passed, including:

- 1.) Language which deals with the effective date of the SUP, as recommended by Bill Wise.
- 2.) A revised site plan that reflects the standards that more than 75% of the land remain in Agriculture.
- 3.) A program that demonstrates an alternative to the internal 200 foot setbacks in order for Begin to be granted a modification on the same. Begin proposed a spray program involving the use of materials with a limited toxicity and special equipment for application with a confinement of spray. Five letters from recognized experts were submitted, which stated that this proposed program would provide a level of protection equal or greater than that provided by the 200 foot setback.

Coulter stated concern that no compliance is required by an outside agency regarding drainage and queried how it would be regulated.

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It was determined that compliance is mandatory with the Soil and Sedimentation Permit, not with our Special Use Permit. Coulter suggested that the PC consider imposing a fee for monitoring his compliance with this spray plan since it would take the Z/A's time to do so. Hite noted that the spray program was for the vineyards but the orchards would be sprayed in the conventional manner. He pointed out that there is an orchard adjacent to one of the proposed homes and was concerned that there were no setbacks imposed there. Houlihan responded that the Zoning Ordinance setbacks do not apply to single family residences, but only within 200 feet of public facilities. He stated that the purpose of the interior buffer is to protect guests at the facility who may not be in a position to make an informed decision regarding risks. Outside the special buffer area any spray techniques that are lawful may be used on the balance of the vineyard and orchards. Gray asked how individual owners of these homes differ from subdivisions and their setbacks? Coulter answered that the single family homes are on Ag. land which makes the purchaser an Ag land owner. Farmers cannot be told where to put their homes in relationship to the orchards. The purchasers will be informed at the time of purchase by written statement that commercial farming will be conducted and that such activity could impact use of the parcel. Hite disagreed that these purchasers would be actual farmers and stated that there are a new set of responsibilities when selling an Ag zoned home to a non-farmer. He expressed concern that they are informed of the spraying, but not the hazards involved. He opined that if we have a basis for a 200 foot setback, we need to be consistent in its application.

Gray asked if the road coming from Center Rd. could go in a more direct route to the winery for fire safety reasons. He questioned whether the Fire Dept. had reviewed the road plan and felt that a letter from the FD should be solicited. Begin responded that changing the road did not fit in his or his landscape architect's plan. He also stated that he is required to confer with the FD prior to the issuance of a Land Use Permit. Gray also asked questions regarding architectural heights, signs, clarifications of open space, the special setback, special spray techniques and the availability of the special equipment, disposal of waste, the SUP intent regarding restaurants and alcoholic beverages, language in Part 4, Sec. 6.7, the maximum number of people allowed at special functions, the definition of a registered guest, standards for swimming pool and tennis courts. All questions were discussed and answered. Gray moved that the Special Use Permit indicate that only wine will be sold by the glass or the bottle, and that the eating facility will not provide kitchen facilities. Due to lack of support, the motion failed. Teahen/Hyde moved approval of the January 15, 1990 draft of the Chateau Special Use Permit and moved recommendation of support to the TB. Yes: Coulter, Hite, Houlihan, Hyde, Johnson, Teahen. No: Gray.

Begin thanked the board for their time and energy expended on this "gutsy" issue.

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Cronander / McManus
approved 4/15/96

PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
MARCH 18, 1996

PRESENT: Chair Coulter; Cronander; McManus; Johnson; Teahen; Fiebing; Attorney Ford; Z/A Planner Hayward.

ABSENT: Sturmer excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Coulter mentioned the following to ask the TB for money to publish the master plan, have a commercial committee to consider sexually orientated businesses. Coulter also mentioned that she received a letter ^{FROM} the County Road Commission they would like a response by April 15.- referred to the planner.

ADDITION TO AGENDA Move item #3 to the end of the agenda.

TB REPORT McManus gave report.

ZBA REPORT Johnson gave report.

COMMITTEE REPORTS

Communications - Coulter the draft newsletter is on hold.

Site Plan Review - No report.

Plat Review - No report.

Sewer - No report.

Village Center - Later under #5.

Recreational Unit Park Committee - Later under #3.

Master Plan - Has met, waiting for a lighter agenda.

Home Occupation - Public Hearing in April.

State Park - Concept Plan adopted by the Park Board.

Planning Committee - Not met.

PUBLIC INPUT None

MOTION: Cronander/Fiebing approve minutes of 2/12/96 with correction. **Passed Unan**

1. **Consumers Power/ Underwood Farms - Transmission Lines Relocation.**

Hayward reviewed the problem with the power lines, saying that they are in the prime scenic view. The Township Board has asked that PC have a committee review this issue.

Johnson what is the time frame on this? Hayward we will have to move on it. Fiebing are they consolidating lines on the poles? Hayward they are being used as distribution lines, and they need to be a certain height over M-37. Teahen what does the TB want us to address? Hayward location in the scenic view in regards to the SUP. The following Consumers Power Committee of Teahen, Coulter, and Cronander will meet on Monday March 24, 1996 at 10:00 am.

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2. Consider Special Meeting with City Planning Commission Regarding Peninsula Drive improvements in the City.

Coulter the PC will have a joint meeting with the City Planning Commission on March 20, 1996 at 7:00 pm. at the City Chambers.

3. Report on County Focus 20/20 - Hayward

Hayward reviewed the Focus 20/20 information. The PC had no comments or suggestions regarding this.

4. Village Center - Consider expanding a committee.

Coulter suggested that the township mention in the newsletter that they are looking for people to serve on the committee along with members of the PC.

The PC discussed the proposed Coastal Zone Grant Contract with Groudie/Fraser and Associates. The committee reviewed the contract and made the following motion.

MOTION: Coulter/Teahen that the committee review the contract and return it to the township board. Passed Unan

5. Cosgrove Special Use Permit #49 - Planned Unit Development

Johnson mentioned that he has property on two sides of this PUD and asked that the board allow him to abstain on this request.

MOTION: Coulter/McManus that Johnson be allowed to abstain from this SUP. Passed Unan

Leslie Young represented her father (James Cosgrove). Young gave a brief presentation and stated that they would like to have 5 homesites, three on the road, and sites in the back of the property. They would like to maintain two smaller orchards that would be owned by Cosgrove, without affecting the 200 foot setback.

Fiebing how many acres? Young 26 acres. Cronander have you thought of having only one curb cut instead of three drives? Young that is a possibility. Coulter would this have to go to the ZBA because of the 10 foot access to the back of the parcel? Hayward yes they would have to.

The plat committee will review this request and return to the PC at the next meeting.

6. Chateau Chantal - Revision to Special Use Permit #21 Winery Chateau. Consider possible application for Zoning Ordinance Amendment.

Bob Begin presented his request. He would like to have the PC clarify or broadening the definition of a registered guest under

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subsection (m) and (r) of the Winery-Chateau to include scheduled or private events at the Chateau.

He would like to add to the Winery Chateau SUP, by maxing out the buildable area of 20,000 square feet, currently he has just under 4,000 square feet. Begin would like to add 12 more rooms, and a space used for a conference center, seminars, and weddings. Coulter asked Hayward that when this was passed was Begin granted the right to 20,000 square feet? Hayward no, the 12 rooms, the winery in the basement, the managers office, the tasting room, and the parking were all approved in the SUP. Hayward plus six single family dwelling units. Begin the original site plan could not be put together because of financing. Coulter feels that this appears to be quite a commercial enterprise which will create a lot of additional traffic, she suggested that it be sent to a committee, to review.

The PC set up a committee to meet and review his request, the Chateau Sub Committee will be Johnson, Teahen, Sturmer, and Coulter.

7. The Willows - Special Use Permit.
Planned Unit Development - Al Gray.

Hayward reviewed the water issue in Bay East and said that the township has contacted the surrounding property owners regarding their water. He also mentioned that over half of the people who responded are interested in the township checking into a water system.

Gray said he would not have any problem with central water if it is brought to his property line.

Gray mentioned that he has provided the letter from the Phillips that gives him the OK to use the 12 foot easement. I have provided one from Tom Phillips Jr acting on behalf of his parents (Tom and Joanne) and one from Tom and Joanne. Gray does this meet the requirements? Ford said he has not yet reviewed the letter. Hayward we will have Ford review this and report back to you.

Fiebing how are you going to handle the 200 foot setback? Gray as suggested by the plat committee.

MOTION: Teahen/Fiebing to approve this to the township board with the following restriction, that the sign location is outside the right-of-way and is two sided. That fencing is provided on the south and west side. That the setback on lots 4, 5 & 7 be reduced to 100 feet, and that two rows of trees are to remain or be planted and grown to maturity as a buffer, and that the large trees remain on the south fence line. That there be a 20 foot private and public underground utility easement for water and sewer, this

6/17/96

Fiebing/McManus

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
MAY 20, 1996**

PRESENT: Chair Coulter; Cronander; McManus; Johnson; Teahen; Fiebing; Attorney Ford; Z/A Planner Hayward.

ABSENT: Sturmer excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Special Meeting on May 28th at 7:30 pm.

ADDITION TO AGENDA None.

TB REPORT McManus gave report.

ZBA REPORT Johnson gave report.

COMMITTEE REPORTS

Communications - No report.

Site Plan Review - No report.

Plat Review - No report.

Sewer - No report.

Village Center - No report.

Recreational Unit Park Committee - No report.

Master Plan - No report.

Home Occupation - No report.

State Park - No report.

Ag/Commercial Committee - No report.

PUBLIC INPUT Dick Templeton, 10436 E Marion Dr., Felt that the PC should get more information from the Town Board regarding the poles other than what McManus said was good input. McManus responded. Susan Deseranno, 16165 Arbor Trail, commented on the poles. Laura Wigfield 17881 Center Rd., Said that the audience at the TB was not in favor of moving this forward. Carlo Carlino, 14157 Seven Hills Rd., Not in favor of the poles, but he is in favor of having the wires buried.

MOTION: Teahen/McManus approve the minutes 4/15/96 as corrected. Passed Unan

1. Cosgrove Special Use Permit #49 - Planned Unit Development Committee Report.

Leslie Young reviewed the changes for the PC. The Health Department has gotten perkable areas; and they have also ^{met} meet the road standards of the township so they will not need to obtain a variance for the road.

Young said that they are requesting a reduction on the 200 foot setback on both the road side and also from the south side from the Hemmings property.

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The PC asked that they return with buffering and fencing on the site plan, for the next regular meeting.

MOTION: Cronander/Teahen to set a Public Hearing for the June 17 meeting. **Passed Unan**

2. Mapleton Square - SUP #50 Revision to SUP #38 Site Plan for:
 - a. Interim self storage use of office building with gravel parking.
 - b. Sign revisions for center and Kelly's Roadhouse.
 - c. Revision to North Entrance.

Tom McIntyre reviewed his request. He would like to design the building so he could convert it from storage to an office building. He would like to have a low sign that is about 15 square feet. He will be meeting with the MDOT regarding the radius at the entrance on the North side.

Hayward asked if he has considered a second access from the North. McIntyre is working with Fire Chief VanderMey on this. Fiebing how long would it be until you converted it into an office building? McIntyre was not sure. McManus is the size of this building the same as they had approved with the SUP? Hayward the size of this building is OK. McIntyre asked if he could change this to an office building from storage without coming back to the PC? Coulter did not know and mentioned that she is concerned with congestion there. Coulter asked if he knew the number of people who would be using the building for an office? McIntyre in a similar building we have about 18 people.

The consensus of the board was that McIntyre return to the PC at the May 28 special meeting with recommendation from MDOT, and also a phasing plan to convert the storage building to office space.

3. Chateau Chantal - SUP #51 - Revision to Special Use Permit #21 Winery Chateau. Review proposed Zoning Ordinance and Special Use Permit Amendments.

Hayward explained the request.

Public Hearing opened at 8:42 pm.

Laura Wigfield, 17881 Center Rd., She is opposed to the following an ordinance change for a convention center, a change in the liquor license from a resort to a class C, three meals a day being served, restaurant/bar use, and there would be no way to stop anyone from doing this.

Dick Templeton, 10436 E Marion Dr., He felt that it was presumptuous of Begin to rewrite the ordinance. He feels that the

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objectives of Mr. Begin have changed and also asked how many weddings have been held, and what size of weddings are being held to date.

Judy Ginow, 18585 Whispering Trail Read a letter she had written in opposition of Begins request.

Harley Morrison, 15411 Kroupa Rd., Mentioned that there are lots which he has not sold yet that he could build on. He also mentioned the 200 foot ag setbacks. Hayward answered the question regarding the setbacks.

Carlo Carlino, 14151 Seven Hills Rd., He is opposed because of the precedence being set here and because of increased traffic.

Al Gray, 8017 E Shore Rd., referred to certain sections of the ordinance he was concerned with, he felt that this request may require a special Ag zoning.

Peter McGoun, 9888 Peninsula Dr., opposes the ordinance change, he is concerned with the noise pollution and added traffic on the road.

Mark Nadolski, 10 McKinley Rd., wondered what the PC had in mind when they worked on the original Winery Chateau, he also reminded them that a lot work was done on the ordinance at the time amended.

Karen Barrows, 18585 Whispering Trail, opposed to the request.

Elliott Morrison, 14068 Bay View Ave, oppressed to the request.

Jack Stegenga, 2896 Bowers Harbor Rd., applauded Begin for doing what he wants to do. He feels that the PC is sending a confusing message because they want more people with the Village Center versus no additional people with the Begin request.

Barbara Rosi, 18027 Whispering Trail not opposed to new businesses on the Peninsula but she is in favor of preserving the beauty of the Peninsula.

John Wunsch, 17881 Center Rd., he is opposed to an ordinance change.

MOTION: Cronander/Fiebing to close PH at 9:25 pm. Passed Unan

Begin reviewed the concerns of the residents, and mentioned that this past weekend he had the following number of people in attendance for the following occasions; Friday 60 people attended a memorial service, Saturday another function; Sunday 100+ people attended Blossom Days. Monday a group of about 60 people attended a Bonsai planting seminar.

MOTION: Cronander/Fiebing to reopen PH at 9:50 pm. **Passed Unan**

Laura Wigfield, 17881 Center Rd., is against the request.

Mark Nadolski, 10 McKinley Rd., mentioned that no one is against the current use.

Carlo Carlino, 14157 Seven Hills Rd., Begin is turning this into primary use not an accessory use.

Dick Templeton, 10436 E Marion Dr., mentioned that 125 people inside and 125 people outside is an excessive.

Harley Morrison, 15411 Kroupa Rd., is opposed to the change.

MOTION: Teahen/Fiebing to close the PH at 9:59 pm. **Passed Unan**

Begin reviewed the comments. Coulter feels that the Begin has violated the ordinance and she also feels that his flags are being used as advertising. McManus said that the 12 units were approved, but he is not in favor of changing the ordinance.

MOTION: Teahen/Fiebing to send this back to the Ag Committee and return to the next meeting June 17 with a report. **Passed Unan**

4. Campbell - SUP #52 - Revision to SUP #24 & #43 site Plan to move berm, Committee Report.

The PC decided to hold a site visit and return to the next meeting with a recommendation and set up a public hearing.

5. Richards - SUP #53 Greenhouse with retail sales.

Bret Richards explained the plans. He would like to have a 30 x 70 foot greenhouse and provided a list of items he would like to be able to sell there. The consensus of the PC was that the Plat Review Committee review this and return to the PC with a recommendation at the next meeting.

ATTORNEY'S REPORT No report.

PLANNER'S REPORT No report.

MOTION: Teahen/Fiebing to adjourn at 10:40pm. **Passed Unan**

These minutes stand to be approved: _____
Minutes recorded by Monica A. Hoffman recording clerk.

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*approved
Tucker / Cronander
8/16/96*

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
AUGUST 19, 1996**

PRESENT: Chair Coulter; Cronander; McManus; Sturmer; Johnson; Fiebing; Attorney Ford; Z/A Planner Hayward.

ABSENT: Teahen excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None.

ADDITION TO AGENDA To consider being able to split out a house on Ag that was built after the ordinance.

TB REPORT McManus gave report, and said that the PC needed to decide if they wanted Johnson to again represent them on the ZBA. The consensus of PC was the Johnson would serve another term as their representative on the ZBA.

ZBA REPORT Johnson gave report.

COMMITTEE REPORTS

Communications - No report.

Site Plan Review - No report.

Plat Review - No report.

Sewer - No report.

Village Center - No report.

Recreational Unit Park Committee - No report.

Master Plan - No report.

Home Occupation - Below under #5.

State Park - No report, and the PC decided to keep the committee.

Ag/Commercial Committee - No report.

PUBLIC INPUT None

MOTION: Cronander/Fiebing approve the minutes of July 15, 1996 as corrected. **Passed Unan**

1. County Planning presentation - Roger Williams

Williams showed a video and presented the plan to the PC.

MOTION: Johnson/Cronander to offer resolution support for the 2020 Grand Traverse County Master Plan. **Passed Unan**

2. County Road Designation - Possible recommendation.

The PC received a letter from the County regarding road designation. Hayward reviewed the plan for the PC, and mentioned that this would effect the township if there was any further road improvement such as subdivision that may go in along one of these

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roads. Fiebing are they trying to reserve these widths against future developments? Hayward and to recognize how they anticipate how they expect that street to function in the future.

Fiebing has a problem with such large road right of way widths in our township. Because our township is so narrow and the roads serve nothing more than to move the people within our township. He is also concerned with the county wanting these large swaths of roads.

After some brief discussion it was the consensus of the PC that Hayward & Coulter would write a letter to the Road Commission regarding their concerns.

3. Public Hearing - Zoning Ordinance amendment #112. Revisions to Winery Chateau section of the ordinance.

Hayward reviewed the proposed changes to the Winery Chateau. Hayward said that it would not have any immediate effect on any current Winery Chateau. They would have to come before the board for a change in the SUP.

Sturmer read two letters one in favor of the request from Robert E Kelly, one opposed from Edward and Barbara Greese. Coulter mentioned that both of these letters are specific to Bob Begins Chateau Chantal, but what we are discussing tonight is not specific to Bob Begins project.

Fiebing said that the changes that Hayward reviewed came after many hours of committee meetings. Cronander appreciates the amount of time that the committee has spent on this but, doesn't feel that this is something that is consistent with the Ag policy at this time. Coulter feels we have moved through this with great haste.

Public Hearing opened at 8:47 pm.

Harley Morrison 15411 Kroupa Rd., T.C asked for a clarification regarding winery chateau and the other wineries. Coulter they were ordinance changes and would apply to anyone who would want have a Winery Chateau. Morrison is also concerned with the amount of people allowed? Hayward there is no change in number currently it is 75 outside without special approval, no specific amount inside, the inside is limited by the capacity of the building.

Mark Nadolski, 10 McKinley Rd., T.C. mentioned that this would allow many more Chateaus on the Peninsula and on the ridge tops. He feels that this is a bad example for a trend setting township to set. Nadolski someone asked for an ordinance change, did it come from the township? Coulter no. He is also concerned because he is asking for additional uses for violating rules, he feels that we are rewarding people for doing this. He feels this is no longer an Ag use but a commercial use.

Judy Gienow, 18585 Whispering Trail, T.C. supports all the comments that have been made already.

Al Gray, 8017 East Shore Rd. T.C. he is concerned with certain with the wording and the reasoning in parts of the ordinance such as, selling wine by the glass versus selling wine by the bottle, the amount of people allowed for events. Gray said he favors a special ag zoning.

Laura Wigfield, 17881 Center Rd., T.C. agrees with Gray, and reiterated some of the same concerns that were mentioned, and was opposed to the request. She also mentioned that if groups that have used the Chateau would have known that they were violating rules they would not have done so.

Karen Barrows, 18585 Whispering Trail, T.C. she is against any convention center on the Peninsula.

Bill Weisell, 1819 Neahtawanta Rd., T.C. he does not feel that the residents of Peninsula Township are interested in this. He agrees with Wigfield and is also opposed to this request.

Laura Johnson, 3464 Kroupa Rd., T.C. regarding the current SUP, how is compliance determined and how are the ordinances enforced? Hayward all SUP are reviewed by the Z/A if there is a violation they are written a letter and if they do not apply then we go to the township board, and ask for approval to start legal action. The Townships policy is to obtain voluntary compliance.

Chuck Goodman, 10259 Center Rd., T.C. he is concerned with the tying of the attendance at Chateau Chantal to the purchase of wine. Because of purchasing an alcoholic beverage and then having people driving on the highways. He does not feel that is a wise thing for a township to promote, he also agrees with the other comments that have been made.

John Wunsch, 17178 Center Rd., T.C. he is not in favor of a resort or conventional style activities in the township. He is not in favor of changing the laws for people who are currently breaking the law. He is concerned with people who have large amounts of money coming and doing this same thing. He does not feel that the township can practically enforce the changes that are suggested. He feels that there needs to be a limit to the number of guests. He also mentioned that he is concerned with over building on the ridge line. Wunsch does not feels that the township can change laws because people over invest.

Bob Begin, 15900 Rue De Vin, T.C. said he concurs with many of the people here today regarding the text amendment to the ordinance. It has been his contention from the beginning about building out the existing SUP. There was one area in my mind that required an amendment to the text and that was to build a homestead over what

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we currently are allowed with the SUP. This would require a text amendment because it dealt with area of equivalency. At that time we went into a number of alterations and clarification of the text and the ordinance. Since then there has been a number of negotiations and discussions, and this ordinance came about. The only reason I went into the ordinance was for the homestead. That part is no longer in this ordinance. I believe everything else that we are dealing with here are items that can be altered by the township board, except the one item. So I don't have any support for or against it. It doesn't deal with what I want to deal with. Begin said that in terms of violating the ordinance as it stands, he wants to go on record saying that he has not done that.

★ Hayward felt that after attending the committee meetings he felt that the question was are the proposed uses in the Winery Chateau are they really promoting ag production. There is no question that selling wine promotes ag, as does buying any other ag products. The committee knows that they have to draw a line somewhere. The committee drew the line was a something that could be looked at a restaurant or a bar. In neither case could someone drive up the Peninsula stop in get dinner and a glass of wine. Those are commercial uses and are allowed in commercial districts. They felt that a group that came in and take advantage of the facility and use it on a prearranged basis, maybe there is a possibility when that might be a acceptable use, within the context of promoting ag production.

Fiebing the only reason we addressed this in the first place was because we had a request.

Harley Morrison, 15411 Kroupa Rd., T.C. he is concerned with increased commercial use, and that there is no fixed limit on the number.

Mark Nadolski, 10 McKinley Rd., T.C. during a public hearing why isn't the public informed about the size of the building, all of the potential uses, all of the people who will use it, how much traffic will it generate. If we are going to change an ordinance let us know what it will do to us.

MOTION: Cronander/Johnson to close PH at 9:36 pm. Passed Unan

Johnson would like to have this return to committee, he feels that there are issues that need to be worked out. We are not dealing with Begins, ^{we're} were dealing with an ordinance change. I feel that the 75 people indoors should be part of the ordinance and not the SUP. Gatherings that are not ag related such as the large weddings ^{and} that are disruptive to the neighborhood should not be allowed, also the number of meeting rooms need to be addressed.

MOTION: Johnson/Fiebing to return this to the committee for clarification. ^{modification} Passed Unan

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*approved Fiebing / Cronander
4/21/97*

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
MARCH 17, 1997**

PRESENT: Chair Coulter; Cronander; Teahen; Johnson; Fiebing; Attorney Ford; Z/A Planner Hayward.

ABSENT: Sturmer; McManus excused

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Coulter asked that each member of the board look at the Edmondson property regarding the view shed public hearing. Coulter also asked about the subdivision control act changes. Hayward said that there is a meeting on the subject and he will report back to the PC.

ADDITION TO AGENDA None.

TB REPORT Hayward gave report.

ZBA REPORT Johnson gave report.

COMMITTEE REPORTS

Communications - Coulter asked about a newsletter. Hayward said that they have discussed one but no date has been set.

Site Plan Review - Hayward said they are on hold the Village Center Committee, and the subdivision control act. *for*

Plat Review - No report.

Sewer - Hayward and Cronander met with Bob Hammond, he would like to come to a joint meeting of the PC and TB.

Village Center - Below under #7.

Recreational Unit Park - Below under #2.

Master Plan - Coulter would like to publish this fiscal year.

State Park - Hayward gave brief report.

Aq/Commercial - No report.

Wrightwood Terrace Road - No report, on hold until Spring.

PUBLIC INPUT None.

MOTION: Cronander/Fiebing approve minutes of 2/18/97 as corrected.
Passed Unan

1. Knisley SUP #55 - Light Manufacturing.

Hayward said that he has not heard from Knisley. Coulter asked Hayward to contact Knisley regarding this issue, and have him report to the PC.

Ford felt that the changes made were significant to republish and hold another public hearing. After some brief discussion the following motion was made.

MOTION: Cronander/Fiebing to rescind the previous motion.
Passed Unan

MOTION: Teahen/Cronander To republish amendment 114 A - H and return it to the PC for another public hearing in April, as recommended by the Township Attorney.
Passed Unan

3. **Cellular Tower Report**

Hayward gave a report to the PC. Cronander asked because this is for communication is it federally controlled. Hayward said that we cannot prohibit them but we can regulate them.

A Cellular Tower Committee of Teahen, Fiebing, and Johnson will return to the PC at the next meeting with a recommendation.

4. **Winery/Chateau report**

Hayward reviewed the Winery Chateau Ordinance and the following changes were made.

Page 1 (d) Guest Rooms, Manager's/Owner's Residence, and Single Family Residences shall be allowed as support uses on the same property as Winery. Also added; Appropriate permits shall have been obtained from regulations County or State agencies.

(f) add Manager's/Owner's
Residence: Five (5) acres.

(g) The Manager's/Owners's residence shall not contain or be used for rental guest rooms.

(m) A "Registered Guest" is a "A person who stays overnight and has signed a guest register."

Letter m is now (n) Facilities for accessory uses such as meeting rooms, and food and beverages services shall be for registered guest only.

The PC decided not to strikeout the following.
Facilities for accessory uses shall not be greater in size or number than these reasonably required for the use of registered guests.

(o) Kitchen facilities shall be only used for on-site service, no off-site catering.

(t) No exterior amplified music shall be allowed, and outside

activities shall be terminated by 10:00 p.m.

(u) No food shall be served except to registered guests. This does not limit the ability to have cheese, fruit, bread, crackers or similar cold foods provided at no cost to persons tasting wine.

Some of the letters were relabeled as follows: m is now n, o was added, q is now p, r is now q, s is now r, t is now s, u is now t, u was added, x is now v, and y is now w.

There was some discussion regarding Bob Begins letter and the interpretation of the current language. Ford said that the PC could add to the minutes the following: That this was our intent when it was adopted, but we are adding it just for purpose of clarification of a Winery Chateau.

MOTION: Cronander/Fiebing to add the language by Ford to clarify what has always been the intent of the Township for a Winery Chateau. The language they are adding is - *It is not the intent to allow a bar or restaurant in any form.* Passed Unan

MOTION: Fiebing/Teahen to revise the amendment and have a public hearing at the April 21, PC meeting. Passed Unan

Hayward asked Ford to comment on the lawsuit against Begin for the Winery Chateau. Ford while the Township is working on this amendment there is an understanding in writing between the Township and the attorney representing Mr. Begin. That this passage of time that is occurring will not be held against the Township in the event there is a need to enforce the ordinance. There will not be a defence that says in the past five months you haven't done anything therefore you can't do it now.

5. Wall/Fence amendment draft

Add to next agenda

6. Farmhouse Committee report on Reserved Dwelling sites on Purchase of Development Rights Program restricted parcels

Add to next agenda

7. Village Center report

Add to next agenda

8. Set agenda items for next meeting.

Knisley SUP #55
Recreational Unit Park - Public Hearing
Winery Chateau - Public Hearing
Cellular Towers
Wall/Fence report
Farmhouse Committee report
Village Center report

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Cronander / Fiebing
6/10/97 approved

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
MAY 19, 1997**

PRESENT: Chair Coulter; Cronander; Teahen; Johnson; Fiebing;
McManus; Attorney Ford; Z/A Planner Hayward.

ABSENT: Sturmer excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None.

ADDITION TO AGENDA None.

PUBLIC INPUT None.

1. Farmhouse Committee Consider Public Hearing

Hayward reviewed the committee report. The PC made changes to #3 of the report. It will now read as follows. *If access is provided by a driveway and not a public road then the front yard setback will be 50 feet for the residence, rather than the 35 feet as required from a public road.*

MOTION: Teahen/Fiebing To accept the committee report and have it brought back in amendment form at the July 21st meeting and hold a public hearing.
Passed Unan

2. Knisley SUP #55 - Light Manufacturing

Mark Knisley was not present at the time this was discussed. Hayward suggested that the PC have the committee work with Knisley and come back to the PC with a recommendation at the next meeting.

The Plat Review committee Teahen, Coulter, Sturmer will meet with Knisley.

3. Chateau Chantal - SUP #56

Bob Begin reviewed his request, he would like to be allowed the following. To allow private contract gathering such as weddings, and corporate gatherings for 200 people. He would like to serve food to them, but not to people off of the street.

Johnson gave the committee report, discussion followed. The PC reviewed the letter dated 4/14/97 from Sondee, Racine & Doren requesting the changes that Begin wanted to make to SUP #24. The consensus was to make the following changes to the SUP.

1. Outdoor activities must terminate by 10:00 pm. (same as the Boathouse).

2. There may not be any outdoor amplified sound.

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3. There may not be any restaurant or bar, where food or alcohol by the glass is served to the general public. Food, wine and beverage activity is limited to Chateau registered (overnight) guests only as an accessory use to the primary Winery Chateau use.

4. Changes from the previous site plan include a bonded warehouse facility at the northeast part of the property.

5. Additional approach and parking for the Chateau to be approved by the committee.

6. Only one flag pole at the entrance with one 4' x 6' flag.

7. Indoor music is allowed but they may not charge (including no cover charge), and no disturbance beyond the property line.

MOTION: Cronander/Teahen to have a public hearing at the June 16 meeting and that the committee work on the language for the public hearing, and that the full commission will hold a site visit prior to the meeting. Passed Unan

4. Longcore - Rezoning Request

Jim Longcore requested that his land be rezoned to R-1A from Ag. They are surrounded by residential zoned properties. They would like to have the property rezoned so they can sell a parcel to their daughter so her family can build a home. Coulter asked if there are any problems with this? Hayward no, he is asking for the lowest residential zone.

MOTION: Teahen/Cronander to schedule a public hearing at the June meeting if the attorney can make the deadline to complete the paperwork if not, then at the July meeting. Passed Unan

TB REPORT McManus gave report, discussion followed regarding the Home Occupation amendment and the Keyholing amendment.

MOTION: Fiebing/Cronander that the Town Board reconsider the Home Occupation amendment, with the intent that they pass it or, return it to the PC with their concerns and comments. Passed Unan

The consensus of the PC was that Fiebing will go to the Town Board meeting and voice their concerns on the Keyholing amendment.

5. Set agenda items for the next meeting

Longcore - Public Hearing
Chateau Chantal - Public Hearing
Knisley SUP - Committee Report
Recreational Unit Park - Committee Report

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approved 8/18/97
Teahen / Cronander

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
JULY 21, 1997**

PRESENT: Chair Coulter; Cronander; Teahen; Fiebing; Sturmer; McManus; Attorney Ford; Z/A Planner Hayward.

ABSENT: Johnson absent.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS No Comments.

ADDITION TO AGENDA None.

PUBLIC INPUT None.

MOTION: Cronander/Teahen to approve the minutes of 6/3/97, 6/16/97, 6/19/97. **Passed Unan**

**1. Knisley SUP #55 - Light Manufacturing
Brief Update by Hayward**

The Committee has met with Knisley and they recommend that he be allowed to continue his business on the present site while looking for a place to relocate. Knisley was present and said it is still not his desire to remain on the site. He would like to relocate his business off the Peninsula. Brief discussion followed.

MOTION: Teahen/Sturmer to give Knisley until December 31, 1998 to relocate his business or come to the Planning Commission and start his SUP. And, in order that he retain this permission he must provide Hayward with a quarterly report of his progress even if there is no progress being made. **Passed Unan**

2. Longcore Rezone - Public Hearing

Jim Longcore said that his original request was to rezone his entire property from AG to R1A. But, after some consideration he would like to rezone only the North East corner to either R1A or R1B. He wants to be able to continue farming the parcel but wants to rezone the one parcel so that his daughter can build a home there.

Coulter asked if we would have to republish for this? Hayward yes we should. Sturmer is the reason you want to rezone to R1B now is because of the road frontage? Longcore no, we only want one additional house there.

The PC received two letters from neighbors Scott & Kathy Beiser, and Donald & Maragret Dennis all are in support of the request.

PC reg 7/21/97

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6. Chateau Chantal
Brief Committee Report

Fiebing read the committee report and their recommendation.

The recommendation are as follows:

1. Regarding the proposed 5,000 sq. ft. bonded warehouse with parking for seven autos to be located at the northeast par of the property. Committee recommends approval but total foot print of winery building not to exceed the total original footprint of 20,000 sq. ft.

2. Regarding the additional eastern approach and parking for sixteen vehicles for the Chateau. Committee recommends denial until the PC considers the entire Chateau structure.

3. Regarding the pool. Committee recommends denial, it is not an accessory use to the principle use which is the winery.

4. Regarding the two additional flags. Committee recommends denial and the one allowed American Flag be limited in size to 4 x 6.

Private accessory uses.

1. Regarding temporary structures such as tents. Committee recommends denial, need to be accessory to the winery, not the inn, and have a Land Use Permit 4.1.3 Accessory Use Page 2.

2. Regarding food service. Committee recommends that food be allowed to registered guests only Sec 8.7.3 10(D) & (M).

3. Note: All accessory uses need to be accessory to the winery, not the Inn.

Public Accessory uses.

1. Committee recommends approval so long as there is no charge or fee.

2. Regarding outdoor functions. Committee recommends no change from the original SUP No 21. The Applicant has the ability to receive a permit from the Township Board to hold functions larger than are presently allowed. Note: Applicant has not done this yet.

MOTION: Teahen/Cronander to send the committee recommendation on to the Town Board along with the letter from Fiebing. Passed Unan

PC reg 7/21/97

PENINSULA TOWNSHIP BOARD REGULAR MEETING**August 12, 1997**

The meeting was called to order at 7:30 p.m. at the Town Hall. All members were present: Manigold, DeVol, McManus, Gray and Breadon. Item 6, Edmonson PDR, to be removed from agenda. GRAY/MANIGOLD MOTION to accept consent calendar with additional Fire Dept. bills as presented. CARRIED, UNAN.

REPORTS AND ANNOUNCEMENTS

Reports were presented on activity for the month of July for the following departments: Supervisor, Sheriff Department, Fire Department, Parks Department, Planning Commission, and Zoning Board of Appeals.

NEW BUSINESSPlanning Commission and ZBA Appointments

Virginia Coulter and Dean Johnson of the Planning Commission and Lynn Ferris, Janice Beckett and Warren Verhage, alternate, of the ZBA have terms expiring this month, and all have agreed to serve an additional term. GRAY/MCMANUS MOTION to appoint Virginia Coulter and Dean Johnson to a three year term on the Planning Commission through August, 2000, and to appoint Lynn Ferris, Janice Beckett and Warren Verhage, alternate, to a three year term on the Zoning Board of Appeals through August, 2000. CARRIED, UNAN.

Proposal for Water Supply Analysis

Bob Hammond, from Gourdie-Fraser and Associates, presented a proposed agreement for analysis of the water supply in the Township, to analyze two alternatives including bulk water purchase from the City and through the township well system. The study will take approximately 30-45 days to complete, and the proposed cost is \$ 4800.00. This will include production, operation and maintenance, and capital costs. This is a more in-depth analysis of the preliminary study prepared in May, 1997. BREADON/MANIGOLD MOTION to accept proposal from Gourdie-Fraser for water system analysis as presented. CARRIED, UNAN.

Field Bed and Breakfast SUP # 57 - Public Hearing

Hayward presented the request including site plan drawings and Findings of Fact. He also stated that Fire Chief VanderMey reported that fire and safety issues have been addressed. Hearing opened and closed at 7:55 p.m. with no comment. Mrs. Field stated that she was requesting that the parking on the north side would be the two spaces outlined on the map which are nearest to Center Road, and a vegetation buffer will be planted on the north of the parking area. The parking on the map submitted shows three spaces on the north side, but this is more than what is required. GRAY/MCMANUS MOTION to approve the application of Jenifer Field for Special Use Permit # 57, for a Bed and Breakfast Establishment at 15627 Center Road, with 4 parking spaces, and to approve the Findings of Fact, with page 1 to reflect 4 parking spaces. CARRIED, UNAN.

P 2

Tower Site Lease Agreement - Set Hearing Date

Manigold suggested that a special meeting be set for August 27, 7:30 p.m. at the Town Hall to hold a public hearing and to present a proposed site lease agreement for tower construction at the Fire Station No. 1 property. Board concurred. The proposed Ordinance amendments that have been reviewed by the Planning Commission will be the subject of public hearings at the regular meeting in September.

Quaker Valley II Special Assessment District - 2nd Public Hearing

DeVol presented resolutions and proposed tax roll in the amount of \$ 31,640.31. Public hearing opened at 8:13 p.m. and the following persons addressed the board:

Brad Spanski, 10985 Trillium Court, asked about the width of the project on the cul-de-sac, and how it would affect the existing landscaping. Manigold suggested he contact Harold Sheffer at the Road Commission to address the question on the cul-de-sac.

Pierre Ingold, 1151 Londolyn Terrace, commented that he does not live within the proposed SAD, but stated that the project will be built to County Road standards.

Mark Johnson, 1444 Braebury Way, asked when the assessment would be levied. DeVol stated that the Road Commission has guaranteed the cost estimate through the year 2000, the hearing process will be completed, and the tax roll amount established. The county will contact the township treasurer when they are ready for construction, and then the bills will be sent out.

Hearing closed at 8:20 p.m. and regular meeting re-opened. BREADON/GRAY MOTION to table further action on the Quaker Valley II SAD until further information is available from the County. CARRIED, UNAN. The next contact the citizens will have is when they receive the tax notices. There are no more hearings required.

Chateau Chantal SUP Amendment - Public Hearing

The public hearing was opened at 8:37 p.m.

Manigold stated that there were several letters received on the day of the meeting and the day prior, stating that his staff had not had adequate time to copy and distribute them prior to the meeting. Members received copies at the meeting, and Manigold summarized the contents. Manigold outlined the request and the planning commission recommendations as follows:

1. Regarding the 5,000 sq. ft. bonded warehouse - P.C. recommends approval, but total footprint of winery building not to exceed the total original footprint of 20,000 sq. ft.
2. Regarding the additional eastern approach and parking for sixteen vehicles for the chateau. - P.C. recommends denial until the P.C. considers the entire chateau structure.
3. Regarding the pool. -P.C. recommends denial, it is not an accessory use to the principle use which is the winery.
4. Regarding two additional flags.- P.C. recommends denial and the allowed flag be limited in size to 4 x 6.

P 3

Private accessory Uses.

1. Regarding temporary structures such as tents. - P.C. recommends denial, use needs to be accessory to the winery, not the inn, and have a land use permit.
2. Regarding food service. - P.C. recommends that food be allowed to registered guests only as stated in Sec 8.7.3 10(D) and (M).

P.C. noted that all accessory uses must be accessory to the winery, not the inn.

Public Accessory Uses

1. P.C. recommends approval, as long as there is no charge or fee.
2. Regarding outdoor functions. - P.C. recommends no change from the original SUP #21.

Hayward stated that the Zoning Board of Appeals has ruled that the definition of a registered guest is a person or people who stay overnight and sign a guest register. Gray asked about food service and serving wine by the glass. Hayward answered that food can be served to registered guests, including wine with a meal, according to the ordinance. Manigold stated that the Liquor Control Commission is looking into possible violations of the license. Bob Begin, Chateau Chantal, gave a brief history of the original application process, stating he originally submitted application for the chateau on March 31, 1989 under the private resort section of special open space uses allowed in the ag district under the ordinance at that time. He stated that there was no provision for the winery chateau that he intended to operate, so he applied under the private resort section. The private resort section of the ordinance was later removed by board action, and the planning commission was drafting a winery chateau amendment to the ordinance. Begin stated that he did not recall the status of his original application. Hayward stated that it was withdrawn by Begin. Begin stated that he believes that the ordinance allows accessory uses to the principle and supporting uses. And he stated that the definition of a registered guest should include invitees who are registered through the signing up for an event, in addition to overnight guests. In reference to the P.C. recommendations, he said that he does not agree and believes the Town Board has the discretion to approve accessory uses for all uses, principle and supporting. He said that the interpretation of allowed food service differs from the planning commission. He said that he has provided free service to a number of groups, and that he should be allowed to charge a fee. Regarding outdoor functions, he said he agrees with the planning commission recommendation that there be no change from the original SUP #21. He thinks the zoning administrator should have the authority to issue a permit for special events, and not take the request to the Town Board. He said that the board should not be concerned with setting precedent, but should use discretion with each special use permit.

Hearing continued.:

Karen Barrows, 18585 Whispering Trail, opposes expansion request, stating that it will drastically change the character of the peninsula, and that there will be more requests. Virginia Coulter, chair of the Planning Commission, 16550 Center Road, stated that she was on the commission when the winery chateau ordinance was written. She said that what Bob said was true, that we did not want a resort there at that time, and we do not want a resort there now.

P 4

Nancy Elzer, 15208 Peninsula Drive, supports the request, and is concerned that if farming is not profitable, then the farmer will be forced to sell, if not allowed other options.

Laura Wigfield, 17881 Center Road, said that this issue has been touted as a preservation project, but that in fact, Mr. Begin intends to fully develop the land to the maximum allowed by zoning. She urged the board to accept the planning commission recommendations, stating that they were thoroughly reviewed, and they make sense for the peninsula.

Rick Fuller, 15517 N. Bluff Road, stated he lives below the winery, is against the expansion request, especially outdoor uses, and thinks the township needs to enforce the ordinance.

Zac Gore, 15233 Peninsula Drive, thinks it is inevitable that this type of business will be on the peninsula and asked whether we want it to be "one of ours" or an outside investor like the Holiday Inn.

Grant Parsons, 7348 Maple Terrace, addressed Gore's comment, stating the danger in making decisions based on individuals instead of looking to the future. He supports the planning commission recommendations.

Bob DeVol, 18293 Mission Road, stated support for the request, and stated the flags should be allowed.

Mary Lyon, 2211 Island View, supports the request, stating the more people who see that beautiful view up on that hill, the better.

Tom Nussdorfer, 12914 Peninsula Drive, he would much rather see business development, than additional housing, which taxes the infrastructure. If we approve this SUP request, we don't have to approve additional ones, it will not set precedent. Supports the request.

Ken Lardie, 13956 Seven Hills Road, stated that the character of the peninsula is constantly changing, and thinks that what Mr. Begin is requesting is good for the peninsula and good for agriculture.

Judy Gienow, 18585 Whispering Trail, urged the board to take the recommendations of the planning commission very seriously. She has no problem with the ag uses allowed, growing grapes, making wine, and wine tasting facilities. But, she stated that the request crosses the line of agricultural use, and is a request for a resort as a primary use, with the ag uses as secondary.

Cory Reamer, 14246 Center Road, stated that he can hear the noise from activity at the chateau at his house, and he stated that if Mr. Begin wants to operate that type of a commercial operation, he should do so on commercially zoned property, not in an ag zone.

Allison Frederickson, 18555 Whispering Trail, lives in Minnesota now, and is visiting her family home. She bought ag. property six years ago in Minnesota, and now lives in the suburbs. In just six years, the whole character of her area changed. She urged the board to control the growth, support the character of the area, and stated that the families who live here really don't want a resort there.

Christy Sorum, 18765 Whispering Trail, asked whether this request, if approved, would set a precedent. Hayward responded that a SUP is a use permitted by right if the conditions outlined in the ordinance are met.

P 5

Ted Bagley, 18654 Center Road, stated that the township cannot discriminate, and must allow all requests for SUP if they meet the requirements of the ordinance.

Bill Weisell, 1819 Neah-ta-wanta Road, is opposed to the request, especially to expand food service to other than registered guests.

Jon Wunsch, 17881 Center Road, does not want to set a precedent that we will have to live with. He stated he attended meetings when the winery chateau ordinance was created, and did not think they would proliferate because of the nature of the ordinance. He believes that if the food service and additional private functions are allowed and expanded, they will proliferate. He added that on the 63 acre parcel, there will be the full 12 building uses already approved and a fully operating farm, which is the maximum allowed. Allowing additional food service and functions exceeds the allowable uses. He supports the uses that were originally allowed on the parcel.

Greg Fiebing, 1725 Alpine Drive, has been on the planning commission committee dealing with this issue since March, 1996 when Mr. Begin requested clarification of uses outlined in the ordinance. He stated that Begin had been notified that he was in violation of the ordinance, and that the only way to be able to continue the uses would be to amend the ordinance. The planning commission held a hearing to take comment on the issue of contract groups. The comment was overwhelmingly in opposition to allowing this type of use, Begin withdrew his request, and the issue was tabled. In March 1997, Begin again submitted request for an amendment to his SUP. The planning commission reviewed the comments from the previous hearing and determined that they would not propose a change in the ordinance to allow for contract groups. Other issues were addressed, and the P.C. recommendations to amend the ordinance have been forwarded to the Town Board. Then, Begin submitted a request for a change in his SUP. The recommendations were made and forwarded.

Pierre Ingold, 1151 Londolyn Terrace, supports the request, is not concerned about a precedent.

Barbara Below, 18555 Whispering Trail, urged the board to support the planning commission, keep the nature of the peninsula rural, and do not allow additional commercial uses. She commented on the growth that has occurred in Doerr County, from what was once rural farmland and is now rows of inns, resorts, gift shops, restaurants and other commercial development. She urged the board to keep the intent of the winery chateau ordinance.

Harley Morrison, 15411 Kroupa Road, he sees this request as another little step that eats away at the rural nature of the peninsula, and he supports the planning commission recommendations.

Hearing closed at 9:49 p.m. and regular meeting re-opened. There was discussion about the large number of letters received, and how they should be addressed. Board members have received only a portion of them, because many were received just prior to the meeting or the day before. Manigold summarized:

Those in favor: Jim Dohm, John and Jane Hall, Inge and James Grost, Rebecca Wells, Kurt and Karen Schmidt, Bud Quick, Virginia and John Hemming, Dawn and Jed Hemming, Mr. and Mrs. Kevin Ostlund, Sherwin Lutz and Carol Olson.

Those opposed: Bill Serocki, Charlene Hamlyn, Pat Shaffer, Joyce Richards, Bev McCort, James and Peggy Phenix Richard, Dorothy and Joe Bennett, Fred Doelker, Phil

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Source: Peninsula Township Board and PC Mintues

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and Susan Tarczon, Glenn Wolff, Mary Alice Treadway, Martha and Bill Hyslop, Bill and Debbie Hyslop, and Anne Treadway Arvca.

Breadon expressed concern for taking action on this proposal without further addressing the uses that are occurring presently on the property and clarifying alleged violations. Gray questioned the language that Begin presented to define private accessory uses and registered guests, stating that the definitions are confusing, and all-inclusive. He stated that ordinance language should be clear and specific so that the applicant and township understand the intent and requirements. Manigold expressed concern that there may be possible violations of the liquor license. He cited a letter from the Liquor Control Commission. Breadon suggested a closed session with the attorney, if the Open Meetings Act allows it. Manigold requested that applicant provide a drawing with the additional 16 parking spaces and the additional eastern approach. DEVOL/BREADON MOTION to table action on the Chateau Chantal SUP #56 until the next meeting, and that a closed session be held with the attorney, if such a meeting is in accordance with the Open Meetings Act. CARRIED, UNAN.

AUDIENCE PARTICIPATION -none at this time.

There being no further business, meeting adjourned at 10:25 p.m.

Respectfully submitted,



Lorrie DeVol
Clerk

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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Alexander / Teahen
approved
as
amended

PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
JANUARY 19, 1998

PRESENT: Chair Coulter; Cronander; Johnson; Teahen; Fiebing; McManus; Z/A Planner Hayward.

ABSENT: Sturmer; Attorney Ford excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None

ADDITION TO AGENDA Coulter said that the nominating committees report needed to be added to the agenda. Teahen made the following motion.

MOTION: Teahen/Fiebing that the committee recommends the following for officers; Virginia Coulter as Chair; Betty Cronander as Vice Chair and Jim Sturmer as Secretary. **Passed Unan**

PUBLIC INPUT Nancy Heller, 3091 Blue Water Rd., T.C. would like the Township to move forward with building new offices. She has passed this same message on to the Town Board and would like the PC to look at this also.

MOTION: Cronander/Teahen approve minutes 12/15/97. **Passed Unan**

1. **Reschedule February meeting - Conflicts with Presidents Day**
 The consensus of the PC is to change the meeting to Tuesday, February 17th.

2. **O'Keefe - Special Use Permit Revision - Winery/Chateau**
Consider setting Public Hearing

Fiebing reviewed the committee report. The committee had suggested that acreage that was not contiguous be used towards the density on the parcel. Hayward said that he would check with Dick Ford prior to the public hearing. Hayward did not see a problem as long as it is deed restricted.

Coulter asked if they will have outdoor activities? O'Keefe not there, but at the winery. Johnson mentioned that setback was a concern with the committee, and also said that they would like a list of products produced and sold.

MOTION: Fiebing/McManus to set a public hearing for February 17th and prior to the meeting the committee will meet and also Hayward will review the density question with Dick Ford. **Passed Unan**

The entire PC will also meet at the site (Chateau Grand Traverse) on February 17th at 4:00 pm.

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3. Winery/Wine Tasting - Proposed Ordinance Amendment.

The PC received a proposed ordinance amendment for wine tasting. After some brief discussion this was sent to the Ag/Commercial committee (Teahen, Fiebing, Johnson).

4. Peninsula Cellars - Wine Tasting Request.

This request is submitted by Dave and Joan Kroupa, and Lee Lutes. They are proposing to move their current wine tasting from the store in Old Mission to the old school house on the corner of Center and Carroll Roads. Hayward said that currently the ordinance does not provide for wine tasting so the ordinance would have to be amended or they would have to apply for a rezoning on the parcel. After some brief discussion this was sent to the Ag/Commercial committee (Teahen, Fiebing, Johnson).

5. County Septage Plan - Committee Report.

Hayward reviewed the committees report for the septage plan.

Fiebing asked if Harbor Springs ^{was} given a special permit to use a snow gun to spread the septage. Hayward they are treating the sewage and storing the effluent in tanks so it is essentially water they are making snow out of. Fiebing does the current state law allow land treatment in the winter time? Hayward it allows land treatment but it has to be plowed or disc in within 24 hours from application. Hayward also felt that this land could be used for crop rotation.

Fiebing are all of the townships in the county ~~are~~ participating and what is the county plan? Hayward recalled that the county said that they would take care of the townships that did participate. Fiebing so if Peninsula township opted out and the county did their own then the township would have to provide for their own disposal. Hayward that was the assumption that I had. Hayward also mentioned that the city would not be participating because it is all sewers, and a large portion of some of the other townships are all sewers. Fiebing also mentioned that the township is already taxing themselves to avoid such costs. The board also discussed using property that the development rights have been purchased on ~~be~~ used. as disposal sites.

Fiebing felt that if we did participate that holding tanks be assessed an additional amount. Cronander said that the committee also felt that the people with septic tanks are subsidizing those with holding tanks - almost unrealistically. The committee felt that a middle ground be looked at.

Mark Nadolski asked if all of the townships were going to have a meeting to listen to other options and ideas? Coulter said she would bring that up at the Planning Commissions chair meeting.

The PC decide to forward a copy of their committee report and the above comments to the township board for the February meeting.

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*approved
Teahen/McManus
5/18/98*

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
APRIL 13, 1998**

PRESENT: Chair Coulter; Cronander; Johnson; Teahen; Fiebing; Sturmer; McManus; Attorney Ford; Z/A Planner Hayward.

ABSENT: None.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None

ADDITION TO AGENDA LaBontes' setback reduction request as #6.

PUBLIC INPUT None

MOTION: Cronander/Sturmer to approve minutes of 3/23/98 as corrected. **Passed Unan**

1. Zoning Amendment 115 - Fences - Public Hearing
Hayward reviewed the amendment.

Public Hearing opened at 7:43 pm.

Gil Uithol, 2888 Phelps Rd., T.C. If it is a board fence which side does the board go on? Hayward if it is closer than the two feet then the two property owners will decide on it.

Paul Nietz, 10664 Craig Rd., T.C. Is a hedge a fence? Hayward no.

Pierre Ingold, 1151 Londolyn Terrace, T.C. What is the problem we are trying to solve? Coulter spite fences, and the ZBA has requested that the PC look at fences. Ingold said that he has this experience and the four feet between the fences becomes abandoned and unowned. He suggested that the fences be put on the property line with the good side out.

Gil Uithol, 2888 Phelps Rd., T.C. State law says that a property owner can put a fence on their property line. Ford is not aware of any law where you can go on someone else's property to maintain it.

Pierre Ingold, 1151 Londolyn Terrace, T.C. reiterated what he had said earlier.

Al Gray, 8017 E Shore Rd., T.C. If a fence is a structure does it change the setback? Hayward no.

MOTION: Fiebing/Cronander to close PH at 7:50 pm. **Passed Unan**

Sturmer asked where we will keep the approval between the neighbors? Hayward in their files.

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MOTION: Fiebing/McManus to send the fence ordinance on to the Township Board. Passed Unan

2. Zoning Amendment 120 - Remote Wine Tasting Room. Hearing

Hayward reviewed the amendment. Coulter what do you mean by deed restricted? Hayward it could not be sold. Sturmer asked for a clarification on the single ownership? Hayward both the farm property and the remote wine tasting room property must be under the same ownership. Hayward the only wine that can be tasted or sold at the tasting room must be produced at the winery. Cronander does the 150 acres have to be on the Peninsula, because it does not say that? Hayward yes, it does need to be in Peninsula Township. Cronander would you have two tasting rooms with one winery? Hayward did not think that this would prevent it if the PC and Town Board allowed it.

Public Hearing opened 8:08 pm.

Jim Thompson, 10552 Center Rd., T.C. wondered why the PC choose 150 acres? Fiebing explained.

Pierre Ingold, 1151 Londolyn Terrace, T.C. asked if the PC reviewed this according to the State Liquor Laws, and he also wondered what Leelanau County has for remote wine tasting rooms? Hayward said they must meet the State Liquor Laws, and he was not aware if Leelanau has an ordinance on this or not.

Jack Stegenga, 2896 Bowers Harbor Rd., T.C. he feels that the 150 acres is too large, and wineries are licensed by the state and are allowed multiple tasting rooms.

Pierre Ingold, 1151 Londolyn Terrace, T.C. feels that the winery and the tasting room should not be on separate parcels, they are making it commercial doing it this way.

Nancy Heller 3091 Blue Water Rd., T.C. said that she owns a property on the Peninsula and yet 80% of the services she receives services such as telephone and electric is under a commercial rate, except for real estates taxes.

Ed O'Keefe, 10719 Center Rd., T.C. could the winery, tasting room and the 150 acres be in three separate places? Hayward yes.

MOTION: Fiebing/Teahen to close PH at 8:18 pm. Passed Unan

Coulter under (f) of the amendment it states *the wine tasting room must be managed by a Peninsula Township Winery*. Coulter thought that the winery and tasting room had to both be owned the same. Hayward in this case it also has to be owned. Coulter so this says that it will be owned and operated by a Peninsula Township Winery. Hayward yes, it deals with that under (e). Johnson asked Ford if

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we will need to hold another public hearing because this amendment does not say that all of the property must be in Peninsula Township? Ford yes, this will need to be updated and come back to the PC for another public hearing because this is being more restrictive. Cronander would like the PC to look into what regulations if any Leelanau County may have. Cronander is also concerned that this is a fine line between ag and commercial, she is also concerned with the extra sales and the remote area that can be away from the winery. After this discussion the PC decided to reopen the public hearing.

Public Hearing opened at 8:39 pm

Lee Lutz, 1012 S. Union, T.C. said that Leelanau allows remote wine tasting in ag and used an example on M-72.

Dave Kroupa, 2324 Kroupa Rd., T.C. said that he already has a tasting room in a commercial district and is asking to move it to a different location.

Arnie Ochs, 14088 Bluff Rd., T.C. is more concerned with the subdivision on Center Road than about wine tasting rooms.

Paul Neitz, 10664 Cragg Rd., T.C. feels that this is a good idea.

Rob Manigold, P.O. Box 22 Old Mission, T.C. feels that all of the ordinance should stand on their own.

Jack Stegenga, 2896 Bowers Harbor Rd., T.C. asked if they have tried to get any input from the people who own the wineries?

Pierre Ingold, 1151 Londolyn Terrace T.C. feels that the board should be consistent.

MOTION: Teahen/Fiebing to close the PH at 9:53 pm. **Passed Unan**

MOTION: Fiebing/McManus to send this to the TB with recommendation for approval and that this be placed on the agenda for the next meeting. **Motion Passed 5 - 1 (Cronander) (Teahen Abstained)**

3. Public Information Meeting - Winery/Wine Tasting Proposed Zoning Amendment

Hayward reviewed the proposed ordinance. The following people commented at the public information meeting; Pierre Ingold, Jim Thompson, Gil Uithol, Chuck Goodman, Nancy Heller, Ken Lardie, Dick Erickson, Rob Manigold, Arnie Ochs.

The consensus of the PC was to send this on to the Ag/Commercial committee and bring it back to the PC in amendment form at the next meeting.

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PENINSULA TOWNSHIP BOARD MEETING

May 12, 1998

The meeting was called to order at 7:30 p.m. at the Town Hall with all members present: Manigold, DeVol, Breadon, McManus, Gray. Breadon request that minutes for 4/13/98 reflect that the budget amendment for the Parks was for \$2,700, not \$2,603 as recorded. The agenda was amended to remove item #3, DPW Cross Connection Control Program until further notice. GRAY/MCMANUS MOTION to approve the consent calendar, as amended. CARRIED, UNAN.

REPORTS

Supervisor – The DPW plant is at capacity, and the capacity issue needs to be addressed. He will report back next month on recommendations.

Clerk – Two residents submitted petitions for candidacy in the August primary for Park Commissioner. They are Bill Beckett and David Weatherholt.

Fire Department – There are several reports of phone solicitations for firefighters charitable contributions. These are not associated with our department and they are being investigated. There were 8 ambulance runs and 7 fire runs in April.

Planning Commission – an informational meeting concerning remote wine tasting was held.

Zoning board of Appeals – Five requests were heard, one for sign revision and four for non-conforming structures. All passed except one part of one of the requests.

BUSINESS

1. Fire Department Millage Levy (1 mill) – Public Hearing

The hearing opened at 7:49 p.m. This is the first of two required hearings for the Fire Department Special Assessment District.

Pierre Ingold, 1151 Londolyn Terrace, asked whether the department had considered putting the communication equipment on the new tower. Members responded tat the department decided to leave the equipment on the county tower for now. Hearing closed at 7:51 p.m.

2. TV – 2 Request for Funding

Mike Kroes, from TV –2, presented information on operations and requested funding of 1% of the 5% franchise fee. Breadon stated that, in the past, we have used the revenue to fund the Building Fund and the Road Fund. He thinks we should continue with these priorities. The board concurred and there was no motion made for the TV –2 request.

3. Parade of Homes – Request for Signs

A letter from the Home Builders Association requested a directional sign permit, with signs to be placed from June 19 through July 1. BREADON/GRAY MOTION to approve request for the Parade of Homes directional sign permit as requested in letter dated April 22, 1998. CARRIED, UNAN.

4. Lindale Estates/Camelback Hills Special Assessment District Public Hearing – Road Improvement
Hearing opened at 8:02 p.m.

Donald Nixon, is opposed to the project, stating that of the 43 properties involved, only 20 owners have gone on record in favor of the project.

Harold Glaugh, is opposed to the project, stating that over 2/3 of the work is being done within the Lindale Estates subdivision. He stated that the last time there was an assessment, the costs were based on a per front foot basis. He does not think that the road needs to be resurfaced with asphalt, and that the county should pay the costs for maintenance.

Robert Shurly, 1156 Lindale Drive, had many questions about the drainage plan, and asphalt as opposed to tar and chip, and stated that many of the neighbors have concerns.

Christie Link, owns a metes and bounds parcel adjacent, she thinks the residents should be polled again to see if they still want the district.

Hearing closed at 8:14 p.m. Gray questioned whether the residents who are opposed are opposed because they don't want to have the road resurfaced, or because they don't agree with the way the costs are being distributed (per lot). Harold Glaugh responded that the tar and chip is fine, and he is opposed to both the project, and the distribution of costs. He would like the costs to be based on a per foot basis. MANIGOLD/BREADON MOTION to table action on the Lindale/Camelback Hills road improvement project for further information. CARRIED, UNAN.

5. Amendment No. 120 – Remote Wine Tasting – Public Hearing

Hearing opened at 8:35 p.m. Hayward summarized the amendment, stating this would allow for a remote wine tasting facility in the agricultural district which is not located on the same property which supports it. The standards for use were summarized as follows: there must be a minimum of five acres, the building used for the tasting room must be in keeping with the character of the neighborhood, the winery and tasting room must be under the same ownership, the owner must have a minimum of 150 acres with 50% of the land being in active agricultural production, the winery and tasting room must be under the same management, only win produced at the winery will be allowed to be used for tasting in the remote facility, there would be no fee charged for wine tasting, limited sales of packaged and non-packaged food is allowed which would be specifically addressed in the special use permit required with this amendment. The entire 150 acres required would be subject to the special use permit.

Nancy Heller, 3091 Blue Water Road, has no objection to the concept, but believes the amendment is too vague. She asked how leasing comes in to play, as opposed to ownership, is tasting restricted to a specific number of rooms does single ownership need to be addressed, does peninsula produced wine need to be defined, how does state licensing affect this type of operation, what type of sign regulations would be imposed, and would a remote tasting room decrease the value of a home located next to it. Pierre Ingold, 1151 Londolyn Terrace, thinks the amendment is being developed for a special interest and there is no basis for the 150 acre requirement, and he thinks this needs more discussion. Dave Kroupa, 2324 Kroupa Road, tasting rooms are regulated by state and federal laws, and tasting rooms are not allowed to sell wine by the glass. He thinks it makes more sense to start with the 150 acre minimum requirement and amend it to a smaller requirement if the board thinks that is appropriate at a later date, rather than to start with a smaller requirement and try to make amendments later.

The following letters were read in to the record:

Ed O'Keefe, believes that remote tasting rooms should be located on commercial property, that this amendment is a form of spot zoning, and this would hurt winery development now and in the future. He stated that he was unable to attend the meeting and would like an opportunity to address the board on the issue before it is voted on.

John Wunsch, supports the amendment, and suggests the words, "for off premise consumption only" be added to paragraph (h).

Hearing closed at 8:48 p.m., and regular meeting resumed. Breadon suggested that page 2, paragraph (d) be revised as follows: strike the word "winery" and insert "wine tasting". He thinks that language should be added to clarify that this is for products produced within the township. Gray suggested we add "for off premise consumption only" to paragraph (h). Manigold stated that this amendment would allow the use within the ordinance, and that the details of each site applied for would be addressed with the special use permit process. Hayward commented that this would make it easier for a landowner that is operating a winery and producing a product to market the product through the tasting room in a workable location. McManus stated that agricultural operations are commercial in nature, in that the products must be marketed. He thinks that this amendment encourages ag production by requiring that at least 50% of the associated property must be in active production. GRAY/MANIGOLD MOTION to approve Amendment No. 120 to Ordinance No. 2 as presented with the following revisions: delete the word "winery" on page 2 paragraph (d) and insert "wine tasting", add "for off premise consumption only" to page 2 paragraph (h),

clarify the intent that the associated winery must be located within the township. Roll Call vote: Ayes – McManus, Gray, Breadon, Manigold, DeVol; Nays – None. CARRIED, UNAN.

6. Port of Old Mission Special Use Permit Language and Findings of Fact

Hayward presented the language for the Findings of Fact and Special Use Permit No. 61 for Port of Old Mission, based on the concepts previously agreed upon. GRAY/BREADON MOTION to approve Port of Old Mission Findings of Fact as presented. CARRIED, UNAN.

GRAY/MCMANUS MOTION to approve Port of Old Mission Special Use Permit No. 61, as presented. CARRIED, UNAN.

There being no further business, meeting adjourned at 9:35 p.m.

Respectfully submitted,

Lorrie DeVol
Township Clerk

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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6/15/98
Cronander
Fiebing
approved

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
MAY 18, 1998**

PRESENT: Vice Chair Cronander; Johnson; Teahen; Fiebing; McManus; Attorney Ford; Z/A Planner Hayward.

ABSENT: Chair Coulter; Sturmer excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Cronander mentioned a thank you letter that the PC received from the Grand Traverse County Planning Commission regarding the County Planning tour on May 6.

ADDITION TO AGENDA None.

PUBLIC INPUT None.

MOTION: Teahen/McManus to approve minutes of 4/13/98. Passed Unan

1. Old Mission Estates - Request for Reduced Agricultural setback for lot 19.

Betsy Labonte requested a reduction in the 200 foot ag setback.

Mike Doan suggested that the LaBontes could use the tall evergreen trees that are already there as part of the buffer. Hayward the trees are not on their property but on the Gazarek's. Doan said that they currently have a 150 feet of restricted area with a descriptions from the Gazeark's. The PC felt that this easement needed to be farther to the North.

MOTION: Fiebing/Teahen to send this on to the Town Board with the following recommendation; that the easement that extends the distance from the house in all directions a minimum of two hundred feet, be accepted with the required setback. Or in the event that they cannot obtain an extension to the easement that they have already obtained covering that northeast corner, than a planning buffer of three rows of evergreen trees, 8 feet high, staggered on 8 foot centers, this is assuming that the house is placed 100 feet west of the east line. And, add the following to the agreement: This agreement shall bind the Gazarek's their heirs, and assigns, purchasers and successor in interest, unless allowed to be changed by the township board. Also, that the applicants make every attempt to do the 1st recommendation by the PC and if they cannot then they can use the planting buffer. Passed Unan

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2. Kroupa - Remote Wine Tasting Special Use Permit - Introduction

Dave Kroupa presented their request and said that have an opportunity to purchase the Maple Grove School and would like to put their wine tasting room there. They already have a winery and a tasting room in Old Mission but, would like to move the wine tasting room to the old school location. Kroupa provided a layout of the building which he plans to keep as original as possible, and said he is working with the County Road Commission regarding the driveway to the property.

Fiebing asked about signage? Kroupa we are planning a 9 square foot sign that would not be lighted. Fiebing does the parking have to be paved? Hayward no, but it has to be dust free. Johnson how much parking will be required? Hayward what ever the TB feels is necessary. Cronander asked about buffering from the two residents that are behind the school? Kroupa there is a row of lilacs there which we would like to keep and also plant two acres of grapes. Cronander would the hours of operation be in the SUP? Hayward yes.

MOTION: Fiebing/Teahen to send this to the Ag Committee, that the committee schedule a site visit with Kroupa and meet with him as soon as he meets the requirements of the ordinance. Passed Unan

MOTION: Fiebing/Teahen to schedule a Public Hearing at the June 15th, meeting and give the committee authority to determine if the requirements are met to hold the Public Hearing. Passed Unan

3. Zimmer Rezoning request - Introduction

Joe Zimmer presented the introduction of his request for a rezoning of the following parcels #28-11-336-097-00, #28-11-336-034-30, #28-11-336-034-40, #28-11-336-034-50. All of the parcels are currently zoned R-1A, and he is requested they be rezoned to R-1C. Zimmer said that he is requesting the rezone to get the greater density due to the sewer and water system, and roads that will be required for these properties. He also mentioned that the property is in the sewer and water district on the Townships Master Plan.

Cronander could this be considered spot zoning? Ford no, this is adjacent to land that is already zoned R-1C.

MOTION: Fiebing/McManus to schedule a Public Hearing at the June 15th, meeting on the requested rezoning of these parcels from R-1A to R-1C. Passed Unan

MOTION: Fiebing/Johnson that they authorize the PC chair and the Master Plan Committee to review and schedule a Public Hearing on amending the Master Plan for this rezoning, and possibly others that are in this general vicinity so that the zoning conforms with the Master Plan. Passed Unan

PC reg 5/18/98

2

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
JULY 20, 1998**

PRESENT: Chair Coulter; Cronander; Sturmer; Teahen; Fiebing;
McManus; Attorney Ford; Z/A Planner Hayward.
ABSENT: Johnson excused.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS None

ADDITION TO AGENDA To Delete #3 from the agenda.

PUBLIC INPUT None.

1. Master Plan - Public Hearing

Hayward presented the proposed Master Plan amendment, the Sewer and Water plan, and Transfer of Development Rights. Fiebing reminded the audience that a change in the Master Plan is not a change in the zoning.

Public Hearing opened at 8:00 pm

Andy Gaines, 277 Knollwood, why are parts of Peninsula Knolls R1C and R1A, and some subs the same zoning? Hayward does not know why.

Mark Nadolski, 10 McKinley Rd., feels that it is important to consider the people who live there, and he feels the PC needs to take more time to make a decision, he suggested an impact study.

Tom Auer, 6757 Franklin Woods Dr., he is concerned with runoff to his property if the rezoning goes through on the Zimmers.

Dave Murphy, 6943 E Shore Rd., people have made decisions to purchase property on what was there at the time. He and his neighbors do not feel that they need more roads. He would also like the township to consider this property for the PDR program.

Robin Graham, 401 Peninsula Knolls, not opposed to the development, but feels that the quality of life will change.

Dennis Murphy, 7230 Center Rd., worked with getting the PDR established to preserve property on the North end of the Peninsula would like the same consideration for the South end.

Dave Hauser, 6717 Franklin Woods Dr., also worked on the PDR program and the first time he heard of the TDR he felt betrayed not knowing about it before. He feels that this needs a careful environmental assessment. He also feels that the increase is at the expense of people who live there.

Al Gray, 8017 E Shore Rd., feels a questionnaire should be sent out so people can respond to proposed changes of the Master Plan.

PC reg 7/20/98

1

Dick Templeton, 10436 E Marion Dr., reminded the PC of two referendums that took place in the past and feels that this need more time and would like to see a study on this.

Denny Everett, 6735 Franklin Woods Dr., asked for an explanation of the PDR program, and viewsheds. Hayward explained. Everett asked Ford if property is rezoned can the township hold the developer to a certain plan? Ford it depends if there is something other than a rezone.

Doug Bishop, 288 Knollwood, feels that the PC needs to hear more from the people prior to a change in the Master Plan for a rezone.

Mike Weeda, 6605 Franklin Woods Dr., we have PDR on the North end, but the South end is being changed, he is also concerned with urban sprawl.

Sturmer read a letter from John Wunsch and Laura Wigfield, both in opposition to any rezoning on the South end.

MOTION: Cronander/Fiebing to close the PH 8:53 pm. Passed Unan

Fiebing feels that the residents want to slow down with any changes to the Master Plan. Coulter asked Hayward how quickly the PC needs to make a decision on this? Hayward whatever is reasonably possible.

The PC decided to send this to the Master Plan committee which they will hold on Tuesday at 3:00 pm.

2. **SUP # 62 - Kroupa's Remote Wine Tasting - Introduction**
Dave and Joan Kroupa presented their plan for the Maple Grove School. They want to use the old school for their wine tasting and sales room.

Cronander asked about the hours? J Kroupa Monday through Saturday from 10:00 am until 6:00 pm, maybe until 7:00 pm. Sunday from noon till 6:00 pm. Cronander will you have music? J Kroupa no. Cronander will you have weddings there? J Kroupa no.

The PC asked Kroupas to provide the following prior to any publication of a public hearing.

1. A layout of the building showing what is inside and how the spaces will be used.
2. A layout of their property that makes up the required 150 acres for the request.
3. A map showing the 50% of the 150 acres in active agriculture use.

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approved
Cronander / Teahen
10/19/98

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
SEPTEMBER 21, 1998**

PRESENT: Chair Coulter; Cronander; Sturmer; Johnson; Teahen; Fiebing; McManus; Attorney Ford; Hoffman; Z/A Planner Hayward.

ABSENT: None

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Coulter who is going to the MSPO conference in Mackinaw? Johnson said he is going from the PC.

ADDITION TO AGENDA None.

MOTION: Cronander/Fiebing to approve the minutes of 8/12/98 special meeting and 8/17/98 regular meeting. **Passed Unan**

PUBLIC INPUT None.

1. **Consumers/NPI request for Antennae Repeater - Public Hearing**
Richard Wolf who works for NPI presented the request.

Teahen is there any other place that you can put this? Wolf we have asked other land owners and have not been able to find one who wants it. Teahen have you tried to find a suitable place West on Mathison? Wolf we cannot reach the other pole for a signal from that area. McManus will the repeater extend higher than the pole? Wolf it will be just to the top of the pole. Fiebing is the pole 40 feet high? Wolf that is what we have been told by Consumers. Johnson what size is the repeater? Wolf 4 feet high and 6 inches wide. Cronander was concerned that our ordinance did not allow for pole and repeaters to be placed in a residential zone. Hayward read section 7.12.1 of the ordinance and it states that the poles and repeaters may be placed in the Ag and Commercial zones. Coulter do you anticipate needed more repeaters? Wolf no, this problem has existed since we started. Teahen what size is the area that you are unable to service? Wolf about a $\frac{1}{4}$ mile. Since this property is zoned R-1C Coulter asked Ford if they should proceed with the public hearing? Ford suggested that they do have the public hearing.

Public Hearing opened at 7:54 pm.

No public comment

MOTION: Sturmer/McManus to close the PH at 7:54 pm. **Passed Unan**

Ford and Hayward will review the ordinance and determine if the repeater can be placed there. It was also suggested that the applicant check with the Dalton's who own the barn on the South side of Mathison to see if the repeater could be placed there.

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MOTION: Fiebing/Teahen to table this until the next PC meeting on October 19th. Passed Unan

2. Kroupa's Remote Wine Tasting - Public Hearing

The board had a site visit prior to the meeting.

Dave Kroupa presented the request and said that the outside of the Maple Grove School will not change on the outside. The reason they are moving is because they would like a Center Road location.

Cronander asked what their hours of operation are? Joan Kroupa said that they are looking at 7 days a week, from May to December. With week day hours 11 - 8, and weekend noon to 8. The hours in from October to December may not be as long depending on the traffic at that time of the year.

Public Hearing opened at 8:18 pm.

Paul Conlen, 2381 Carroll Rd., is concerned with additional traffic this will bring to the area, and compared this to Chateau Grand Traverse and felt that they could have 1,000+ cars and buses stopping. He is also concerned with the following, the added dust from the dirt road, that he can see the parking from his front yard, the old school does not meet the setbacks, the outside lighting, and commercial retail sales, and he feels that this is not for the local residents, only tourist. The township has identified Mapleton as a retail area, and feels that this is where a retail wine sales should be located. He is very opposed to the request and does not feel that it is in keeping with the character of the neighborhood.

Hayward reviewed what is allowed in the commercial zone and in the ag district

Arnold Mummert, 2466 Carroll Rd., supports what Conlen said and asked how many people would come there in a day, he is concerned that they will have people parking on the road because the parking lot will be filled. Joan Kroupa said that they currently have between 40 and 50 people per day at the store in Old Mission. Mummert do you anticipate more people at this location? Kroupa's said they hoped to have more. Mummert also said that they purchased the property with restrictions, and wondered if any of these apply to this parcel.

Barb Stacey, 2494 Carroll Rd., lives at the end of Carroll Road and is concerned with people turning around in their driveway. She also mentioned that Carroll Road is very narrow and she is concerned that there will be an accident on it.

Ivan Lumbert, 2378 Carroll Rd., is concerned with traffic, noise, light pollution, and parking on Carroll Road.

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John Bay, 11393 Center Rd., feels that people are already driving down Center Road to stop at other wineries. He is concerned with signage, and the large parking lot.

Allen Hoeft, 2443 Carroll Rd., he is concerned because this is a new ordinance and it has never been tested or questioned. Who initiate this amendment, is it even necessary, and why can't it be with their winery? He does not think that the remote idea will stop with a wine tasting room. He feels that this gives a lot of impression of a commercial use. We already have a commercial zone in Mapleton. He is concerned if the building is structurally sound. He is concerned with people driving down Carroll Road and turning around in his driveway. Hoeft referred to a conversation that he had with Ed O'Keefe and said that O'Keefe told him that he gets between 2000 to 3000 cars on a weekend. O'Keefe said that was a busy weekend, but on a normal week he may have between 500 - 1000 cars. He is concerned how the ownership will be monitored, about lighting of the property and the building, and landscaping towards Carroll Road. He is also concerned with the safety on Center Road. Hoeft asked that the board table this requests until some of these questions are answered.

Dick Cutler, 19963 Center Rd., owns the property around the school house, he is concerned with this becoming a commercial area. He is especially concerned with the added traffic to the neighborhood.

Brian Ulbrich, 2464 Kroupa Rd., is a wine maker for the Kroupa's and said that their operation is on a much smaller scale.

Alan Hoeft, 2443 Carroll Rd., are you on the wine tour? Ulbrich yes, we are.

John Bay, 11393 Center Rd., if the permit is granted could they be restricted to day light hours only?

Sturmer read two letters one from Donald & Donna Olendorf, and one from Cindy & Jay Ruzak.

MOTION: Fiebing/Cronander to close PH at 8:58 pm. Passed Unan

Coulter said that there is a lot of concern for the use of Center Road, the visual impact, and noise. Johnson asked about lighting? J. Kroupa there will be lighting on the entrance and exit signs. Hayward said that all lighting must be down lit.

MOTION: Teahen/Fiebing to table this request until the next meeting October 19th, and that the committee will meet with the Kroupa's and review some of the concerns that the neighbors have addressed today. Passed Unan

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Exempt O'Keefe #4 *approved Cronander 11/30/98 Fiebing*

**PENINSULA TOWNSHIP PLANNING COMMISSION REGULAR MEETING
OCTOBER 19, 1998**

PRESENT: Chair Coulter; Cronander; Sturmer; Johnson; Teahen; McManus; Attorney Ford; Hoffman; Z/A Planner Hayward.

ABSENT: Fiebing.

Meeting was called to order at 7:30 pm.

CHAIR'S REMARKS Coulter mentioned that a couple of the PC members went to the Mackinaw conference and would report about it at an upcoming meeting. Coulter also asked Teahen and McManus if they would serve on the nominating committee for the PC.

ADDITION TO AGENDA No additions, but Coulter asked that the Winery/Tasting Room be put on a future agenda because of the length of this agenda.

MOTION: Cronander/Teahen to approve the minutes of 9/21/98 as corrected. Passed Unan

PUBLIC INPUT None

1. Winery/Tasting Room Zoning Ordinance Amendment - Introduction Cronander read a portion of a committee report from 1992 It reads; Cumulative effect of wineries. It is currently anticipated that 5 or less wineries would be built on the Peninsula since wine tasting would be restricted to wines from fruit grown on the Peninsula. If in the future it becomes apparent that more than five wineries is likely an amendment to the township master plan and zoning ordinance should be considered, to address possible adverse effects due to the wine tour traffic, excessive consumption of alcohol, or other problems. Cronander along with that there was one other concern raised by the same committee is that wine tasting and retail sales that take place at a location separate from the winery, the committee felt that this was retail in nature and should only be allowed in a commercial zone.

MOTION: Teahen/Cronander to table this until the November PC meeting. Passed Unan

2. Kroupa's Remote Wine Tasting - SUP # 62 - Tabled from September

Hayward reviewed the request and the committee report.

Coulter asked Ford to address the legal analysis from Conlen's attorney - Karen Ferguson. Ford said that he had not had a chance to address this since it was just given to him this evening. Ford feels that the township has an obligation to the applicant to

PC reg 10/19/98

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proceed in a timely fashion. And at the same time has the responsibility to the residents to look at any problems that may be in an amendment.

Joan Kroupa would like to have more retail space than what the committee has suggested possibly 5 to 10%.

Coulter accepted comments from the public but it was not a public hearing.

Paul Conlen, 2381 Carroll Rd., mentioned that the ordinance requires that all of the property be under one ownership and currently it is not. He feels that this is rezoning of a parcel, and he does not feel that they meet the requirements of the SUP.

Allen Hoeft, 2443 Carroll Rd., he feels that some of the recommendations by the committee should have been put into the original amendment, and that parts of the amendment are too vague. He asks that the PC not approve this request.

Don Olendorf, 2466 Carroll Rd., is concerned with bringing traffic off of a paved road on to a dirt road. He would like to see all of the traffic kept off of Carroll Road. Hayward this was addressed at a previous meeting and the best access to the parcel is off of Carroll Road. Olendorf was that the suggestion of the County Road Commission? Hayward no.

Nancy Heller, 3091 Blue Water Rd., mentioned that people do not always use a parking lot.

Allen Mummert 2446 Carroll Rd., is concerned with the trees and the buffer.

Coulter said that she is concerned about the wording of the buffering, she would like to see specific wording regarding size and type of trees. Coulter suggested that the committee invite some of the neighbors who are effected by the buffering to work on it with them. Coulter said that she has taken a firm stand for retail space. She feels that this is different and the Kroupas request is like that of a Chateau because in doing this they are giving up a substantial development right by preserving their ag land. Coulter asked Hayward does that mean that they could put houses on that ag land? Hayward the 50% of the farm would have to stay in ag production, which would not mean houses. Hayward the way the application came to use is that they define the 150 acres that is subject to the SUP. Hayward if they wanted to sell 5 acres with a house they would have to show us that they would still be in compliance. Hayward it is not the intent that they could not buy and sell land as long as they have 150 acres in Peninsula Township. Coulter but we do have 75 acres that is restricted to ag. Coulter wanted to point out that the Winery Chateau ~~that we have that there is sometimes~~ the misconception that they gave up development rights

but they did not, they sold or shifted them. But with this SUP there is 75 acres where they are promising not to develop. Hayward that is correct. Al Hoeft is that a conservation easement? Coulter it is not a conservation easement but it is part of the SUP, as long as they have this use, then they can not build on this. Hayward it is a legal condition of the SUP so we will enforce the 150 acre ownership with 75 of it being in active ag.

Cronander how much space do you currently use in your store? Kroupa explained but said that she will not be able to sell some of the items from the store in Old Mission in the new location. Ed O'Keefe asked what kind of license they will have with the state? O'Keefe is concerned that they will need a commercial wine tasting license, it is a separate license and is for commercial property. He said that there is a difference between a tasting room and a winery. Kroupa we have to have a tasting license from the state. Hayward said that one of the requirements of the SUP is that the Kroupa's get all of the appropriate licenses. Coulter asked about the size for retail space. Kroupa asked if they could go by percentage with a combination of wall and floor space maybe up to 10%. Hayward 10% of the floor area or the wall area? Kroupa probably the floor space. Coulter if we did it by percentage of floor space no greater than 5 feet high would that work? Hayward recommended 2 or 3%, not 10% and not limiting the height, so they could go higher on a wall. The consensus was that the area be 3% which is 54 square feet. Coulter asked how they would deal with the dirt road and the dust created? Sturmer asked about the covenants and the ownership? Ford if we have a requirement that for the SUP it needs to be under one ownership then it will have to be. Coulter asked Ford about the covenants? Ford it is not the townships responsibility to enforce private deed restrictions.

MOTION: Teahen/Johnson to recommend approval of this on to the Town Board, along with the committee recommendations for signage, lighting, and buffering also add spruce for evergreens and that the planting be done in the best manner to block the view of the parking area, with replanting as necessary to maintain it. That the retail space be no greater than 3% of the floor area, and that the Kroupa's do agree to keep the road (Carroll Road) oiled or similar kind of dust control along their North property line that adjoins Carroll road. And that Ford review the legal analysis that was provided before the meeting. Role Call Vote McManus yes, Johnson yes, Cronander yes, Teahen yes, Coulter yes, Sturmer yes. Passed Unan

3. Asava Commercial Development - Introduction - SUP #65

Dawn Asava presented the plan and a list of ideas as to what they would like to do on the site which is the current location of Big Jon's. Their ideas include a cafe type restaurant, a place for vending machines, games and putting greens. They are also looking at rent-a-space for people to repair, and detailing, on their own

*File Copy***PENINSULA TOWNSHIP BOARD MEETING****November 10, 1998**

The meeting was called to order at the Town Hall at 7:30 p.m. with all members present: Manigold, Breadon, DeVol, Gray, McManus.

REPORTS

Supervisor - Manigold reported that the regular meeting for December will be held on Wednesday, December 9, instead of the usual date of Tuesday, December 8, due to conflicts.

Clerk - DeVol reported that due to the passage of the county wide millage election for BATA, the township request for millage has been changed. The equalization department has revised our form to read zero millage request for BATA/Sr. Center. Breadon commented that the county made an error in striking the requested levy from our form, but we will have enough funds available to pay the senior center invoice for this year, and it would be complicated to change the request at this late date. BREADON/DEVOL MOTION to leave the millage levy request for the BATA/Sr. Center levy at zero for this year. CARRIED, UNAN.

Parks - Ward Johnson reported that the parks are being winterized. The Haserot Beach parking committee has met, and they must provide an engineered plan for drainage to the county before they can get approval. There was board consensus that they should proceed with obtaining bids for the engineering if money is available in the budget.

Sheriff Dept. - Chris Oosse reported on October activity, including over 40 criminal complaints.

Fire Dept. - Rich VanderMey reported that the fire truck has been delivered and tested, and the manufacturer was present. He would like to pick up the payment, as planned, but did not have the title with him. Breadon suggested that we remove this payment from the consent calendar, and add it as Item 3 on the agenda. BREADON/GRAY MOTION to remove the truck payment from the consent calendar, and include it as Item 3 on the agenda. CARRIED, UNAN. BREADON/GRAY MOTION to approve consent calendar, as presented. CARRIED, UNAN.

Library - Mary Johnson reported that the board hopes to have a new system for accounting in place by mid-December, and that they are requesting input from the Town Board to facilitate this process. DeVol will respond to the request.

McManus reported on Planning Commission activity and Breadon reported on Zoning Board activity for the month of October, stating that the minutes have been distributed to members.

The supervisor reviewed the correspondence, and copies were distributed to members.

BUSINESS1. Construction Code Options

Manigold presented a letter from the GTC Construction Code Office concerning their resolution to assume the administration and enforcement of the Michigan State Plumbing, Electrical and Mechanical Codes for all construction within the county. This action is a result of Public Act 230 of 1972, as amended. The letter outlined the options of the township, including the option to allow the county to administer and enforce the codes on behalf of the township. GRAY/MANIGOLD MOTION to accept Option A from the Grand Traverse County Construction Code letter dated October 14, 1998, which would allow the Grand Traverse County

Construction code office to administer and enforce construction codes for Peninsula Township.
CARRIED, UNAN.

2. Special Use Permit No. 62 - Kroupa Remote Wine Tasting Public Hearing

Manigold apprised the board that he has had business dealings with the applicants, and requested permission to abstain from the discussion concerning the permit. BREADON/GRAY MOTION to allow Manigold to abstain from discussion concerning the Kroupa Special Use Permit No. 62. CARRIED, 4 - 0.

BREADON/GRAY MOTION that the clerk conduct the meeting in the absence of Manigold. CARRIED, 4 - 0.

The hearing opened at 8:00 p.m. Zoning Administrator/Planner Hayward gave an update on the request, and presented the proposed Special Use Permit, Findings of Fact, the site plan, and letters that have been received for the record. The following people commented during the hearing:

Allen Hoeft, 2443 Carroll Road, stated that the standard and special conditions have not been met, he is concerned that tasting rooms are commercial, not agricultural in nature, and should not be allowed in this zone. He believes this will alter the character of the neighborhood, putting additional traffic and noise on an otherwise generally quiet road, and is concerned about the size and location of the parking lot.

Paul Conlen, Carroll Road, stated that this use is not harmonious and appropriate in this location. He believes this use belongs in a commercial zone. He stated that the parking lot will change the character of the area, and it does not improve the vicinity.

Ann Swaney, 18625 Center Road, stated that she is in support of the permit, she thinks this use supports farmland preservation and agriculture, which is in keeping with the character of the peninsula.

Mark Gleason, 16871 Smokey Hollow, stated that compared to previous uses of the area, this is an improvement, and in keeping with the spirit of the ordinance.

Michael Lummert, Carroll Road, thinks this is detrimental to the area, and is not in keeping with the residential uses surrounding the property.

Walter Johnson, 18062 Mission Road, applauds the Kroupa's for trying to retain farmland. He encouraged the board to support the landowners efforts to retain farmland and agricultural uses when possible and appropriate.

Karen Gleason, 16871 Smokey Hollow Road, is supportive of the application, and stated that they are not taking land out of production for the wine tasting. She thinks this is a good and appropriate use of the property.

Karen Brainard, 3195 Shorewood, stated that she rented the property at one time, and that this use will be much less intensive than what existed next door at the Kroupa plant. She supports this use of the property and the special use permit.

Arnold Mummert, Carroll Road, stated that the parking lot will adversely affect the surrounding properties. He is opposed to the 22 car parking lot that is being proposed.

John Bay, 11393 Center Road, stated that the reference to character of the area in the ordinance should be applied as a reference to the general area, not to a specific site or neighborhood. He believes that this is in keeping with the ordinance, and supports the request for Special Use Permit No. 62.

Allen Hoeft, stated that he supports farmers efforts to retain farmland and he supports the agricultural uses on the peninsula, but he feels that this is not an ag use and should be in a commercial zone. He does not want this issue to appear to be an issue of "the farmers vs the residents".

The hearing was closed at 8:35 p.m, and the regular meeting was resumed.

Gray addressed several issues that were brought out in comments and correspondence from citizens. He commented that the deed restrictions that were placed on the property and the properties surrounding were not intended to restrict or limit agricultural uses allowed in the ordinance, nor were they intended to limit the use of the property to residential uses. He thinks that a tasting room is an appropriate use. He would like to see a provision that the fruit used for wine in tasting rooms should be locally or regionally grown. This would prohibit the use of imported fruit or juice. Breadon questioned whether the applicant had submitted proof of ownership. Hayward responded that he would request an opinion from our attorney before issuing a permit, to make sure that the ownership requirements are met. He also stated that the setbacks would only apply for new construction, and this building exists.

GRAY/BREADON MOTION to approve the Kroupa request for Special Use Permit No. 62, including the Findings of Fact with the following conditions:

That the attorney approve that the ownership requirements of the ordinance have been met;
That the requirements of other appropriate state, federal and local agencies have been met;
That the proposed planting buffer include 4 - 6' Norway or White Spruce trees where indicated on the site plan and that the poplar trees be planted according to the site plan;
That the zoning administrator can require Phase II parking at any time at his discretion, and;
That the 2 westerly parking sites are for camper parking and the one easterly site is for bus parking. Roll Call vote: Ayes - McManus, Gray, Breadon, DeVol; Nays - None. CARRIED 4 - 0, 1 abstention.

3. Fire Truck Purchase

Sutphen Corporation representatives inadvertently made the title for the new truck in the name of the Fire Department, and the board agreed that the treasurer can release the check when he has possession of the title. BREADON/GRAY MOTION to authorize the treasurer to wire funds, if necessary to make the payment for the fire truck when he has received the title in the name of Peninsula Township. Roll Call vote: Ayes - Gray, Breadon, Manigold, DeVol, McManus; Nays - none. CARRIED, UNAN.

There being no further business, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Lorrie DeVol

PENINSULA TOWNSHIP BOARD MEETING

February 9, 1999

The meeting was called to order at 7:30 p.m. at the Town Hall with all members present: Manigold, Breadon, DeVol, Gray, McManus. The agenda was amended to include Item #11 – Stegenga request for approval of LCC license revision. The consent calendar was presented, including a memo dated Feb. 8, 1999 which outlined wage adjustments for three employees. GRAY/MCMANUS MOTION to approve consent calendar as presented. CARRIED, UNAN.

REPORTS

Supervisor – The Town Hall meeting room project is completed, with painting, upgraded electrical and speaker systems, the ceiling and cabinets have been redone, and the floor was refinished. Also, curtains are complete, and the meeting table has been repaired.

Manigold presented a plaque to Dean Johnson for his years of service on the zoning Board of Appeals. He will send one to Lynn Ferris, who could not be in attendance. Peninsula Barns will be allowed to complete an application for warehousing, based on a recent court ruling, and the township has been removed from the litigation concerning Bay Lake Partnership.

Clerk – The ballots are in, and the election has been approved for March 8, 1999. Our Sheriff Dept. quarterly contract has risen slightly due to their new contract year.

Parks – Ward Johnson reported that the horticulture studies have been completed, and no problems were noted. Gourdie/Fraser is conducting the engineering work for the property near Haserot Beach, and the committee will meet to finalize a recommended site plan. They will be advertising for bids for log church restoration.

Sheriff Dept. – Chris Oosse gave a report on activity for January, and for the previous year. There were 265 traffic tickets issued, there were 40 arrests, 55 traffic accidents, and they investigated 206 complaints.

Fire Dept. – Rich VanderMey gave a report of activity, including 28 runs and 23 ambulance calls. There was no additional correspondence and no audience comment at this time.

Library – Mary Johnson reported on activities of the Friends of the Library, stating that they will be meeting on Thursday night and all are invited to attend.

Planning Commission – McManus reported that there have been several special meetings for sewer and water issues, and studying master plan revisions. The Buck request was studied. Also, there has been application for a rezoning of a parcel to an agricultural zone.

Zoning Board – Gray reported that a variance from the side yard setback was approved for property at Nehtawanta and Kroupa Road.

BUSINESS

1. Township Office Concepts – Presentation by GBKB

Bob Dehne presented an expansion studies report for office space at the Town Hall site. The report included three possible options and outlined the features of each. The project is projected for 5420 net sq. ft., assuming 5400 gross sq. ft. He projected costs to range from \$550,000 to \$575,000. Audience members asked many questions and there was discussion about possibilities. Manigold commented that this is the first presentation to the board and the public, and that we will consider the project at the next meeting. Dehne emphasized that they do not want to undermine the existing building foundation, and that their plans were prepared with the age and location of the Town Hall in mind.

2. Guidelines for Chateau Chantal – Public Hearing

Manigold reported that the proposed guidelines have been revised based on comments from the previous public hearing, comments from Bob Begin, and correspondence received from residents. Manigold received a letter from Mark Johnson requesting that the hearing be tabled until the next meeting because neither he nor Begin could be in attendance. Manigold suggested that we hold the hearing and then the board should determine whether to act on this issue at this meeting.

The hearing was opened at 8:48p.m.

Grant Parsons, 7348 Maple Terrace, requested that the board take comment and also make a decision at the same meeting, so that the interested residents feel that they have been heard.

Laura Wigfield, 17881 Center Road, she supports the guidelines, and feels that they make clear the intent of the ordinance. She thinks that the Chateau knew ahead of time that the hearing would be held tonight, and they could have had representation. She would like these to be addressed and passed tonight.

Judy Gienow, 18585 Whispering Trail, agrees with Wigfield and would like to see the guidelines passed.

Mark Nadolski, 10 McKinley Road, congratulated the board for sticking with this issue, and preparing a plan that the residents support. Begin had an option to have representation, and we should continue with the business of establishing these guidelines.

Ed O'Keefe, He thinks we should wait to address the guidelines because Begin could not attend.

Jon Wunsch, 17881 Center Road, thinks the guidelines are clear and functional and he urged the board to adopt them as written.

Sarah West, who works for Chateau Chantal, stated that they received the draft documents on Friday.

Manigold read letters into the record from Ted and Lucile Bagley and J.H. Fisher stating support for the guidelines.

DeVol questioned when Begin knew about the hearing and received the documents, wanting to make sure that Begin was aware of the contents and had opportunity to comment. Manigold stated that he was aware of the hearing last month. The changes made recently were immaterial to the context and were just for clarification. He stated that he has had several conversations with Begin and that Begin and Mark Johnson both were aware of the contents of the guidelines.

Manigold asked for comment from the board as to whether to close the hearing or to adjourn it to next month. The consensus was to close the hearing. Hearing closed at 9:05p.m.

GRAY/BREADON MOTION to adopt the Guidelines For Chateau Chantal, as revised on February 2, 1999, and presented February 9, 1999 pursuant to the Consent Agreement Item No. #3. CARRIED, UNAN.

3. Amendment No. 124 Cluster Residential Development – Public Hearing

The public hearing was opened at 9:15 p.m. Hayward explained the amendment stating that this came about from concerns of residents that the existing regulations for subdivisions, condominium subdivisions and planned unit developments don't adequately protect the concerns

Peninsula Township
Planning Commission Regular Meeting
July 16, 2001

Chair Coulter called the meeting to order at 7 p.m. Roll call was taken.

Present: Chair Coulter; Kroupa; Sanger; Fiebing; McManus; Teahen; Cronander; Hayward, zoning administrator; Ford, township attorney; Boursaw, recording secretary.

Chair's Remarks: Coulter suggested adding a consent calendar to the regular agenda. Also, the committee structure was revised as follows:

Master Plan Committee: Fiebing, Kroupa Sanger.
Ag/Commercial Committee: Teahen, Fiebing, Cronander.
Site Plan/Plat Review Committee: Cronander, Coulter, Teahen.
Village Center Committee: disbanded.
Road Committee: Coulter, McManus, Sanger.

Additions to Agenda: Fiebing suggested the following additions:

MOTION FIEBING/SANGER to accept for future consideration of adoption the book, "Architecture and Site Design Guidelines for the Old Mission Peninsula," by Joanne Westphal, published in December, 1997.
APPROVED UNAN

MOTION FIEBING/TEAHEN to authorize the Planner to purchase adequate additional copies of the book, "The Township Guide to Planning & Zoning," developed & published by the Michigan Townships Association, for each Planning Commission member to use and to consider for future adoption as part of the Master Plan.
APPROVED UNAN

MOTION FIEBING/KROUPA to re-schedule the August meeting to August 27.
APPROVED UNAN

Minutes of June 25, 2001: The following changes were discussed:

Item 1, Master Plan, Build Out Numbers, Heritage Road, Buffer/Fences, second to last paragraph should read, "Kroupa, Sanger and Fiebing will outline process and time frame to move forward with Master Plan."

Item 5, Bob Begin - Ordinance Amendment, last motion should read, "MOTION FIEBING/KROUPA to send issue to a committee of Teahen, Cronander and Fiebing for review..."

MOTION CRONANDER/FIEBING to approve meeting minutes of June 25, 2001, with the above changes.
APPROVED UNAN

Public Comment:

Dave Murphy, 6943 East Shore Rd., is disappointed that the Town Board and Planning Commission decided not to move forward with cluster amendment. Hopes the issue is re-considered. Also, at the joint meeting, many names were read into the record as being in support of rejecting the ordinance; however, some of these names were not valid and the person who read them was not

5. Buildout Master Plan - Committee Report.

Sanger outlined the report, including background, development options (Purchase of Development Rights program and Transfer of Development Rights program), and major risks. **Hayward** reviewed possible further steps, i.e. newsletters and meetings to inform township residents. The committee will report back at the next meeting with a plan for the next step.

6. Goodman Ordinance Request - Committee Report. **Fiebing** outlined the request. The property is an 80-acre parcel zoned agriculture, on the corner of Center Road and Gray Road. The Goodmans are requesting an ordinance amendment that would parallel the Winery Chateau section of the ordinance, but without the winery. They would like to preserve the site for agriculture or open space, but provide a source of income from the land without dividing the site into as many as 16 5-acre residential parcels, as is allowed by the ordinance. They also propose a "country inn" of about 16 rooms with an attached residence, a conference center, and 5 or 6 individual home sites. Balance of the land would be agriculture or open space. The concept is favorable to the committee. They also discussed possible future commercial uses. The committee will continue working on the request.

7. Begin Ordinance Request - Committee Report. **Fiebing** reported. Chateau Chantal is requesting a change to allow for three new categories of uses at the Chateau: Contract Groups, Contract Events, and Community Events, in addition to current allowed uses. Hayward has met with Begin and discussed details, which will be drafted and brought back to committee.

Agenda Items 8 - 11 were tabled. **Fiebing** suggested scheduling a special meeting specifically for these items. This was agreed, and a meeting was scheduled for August 6, 9 a.m.

Coulter brought up the matter of people using names to influence a decision. **Ford** recommended that the PC not consider names unless verified with signatures.

Township Board Report: **McManus** reported.

Zoning Board of Appeals Report: **Sanger** reported.

Attorney's Report: None.

Planner's Report: **Hayward** has asked the board to consider hiring an assistant planner/zoning administrator.

Committee Reports: None.

MOTION TEAHEN/KROUPA to adjourn meeting.

APPROVED UNAN

Meeting adjourned at 10:30 p.m.

These minutes stand to be approved: _____

Minutes submitted by Jane Louise Boursaw, recording clerk.

Peninsula Township
Planning Commission Regular Meeting
October 15, 2001

Present: Chair Coulter; Kroupa; Sanger; McManus; Fiebing; Teahen; Cronander; Ford, attorney; Hayward, zoning administrator; Boursaw, recording secretary.

Chair's Remarks: Coulter noted that someone contacted her who was having trouble getting the agenda from the Township Web site. Hayward said the Clerk is working to rectify this. Coulter noted that she and Manigold have formed a new committee to address the issue of agricultural retail. Coulter requested that the Road Committee meet and report to the board.

Public Input: None.

1. Master Plan - 7 p.m. Sanger presented an "Existing Zoning with Overlays" Map. Coulter suggested changing the color scheme, so the land area is something other than blue, and following standard map colors to make it more readable. Hayward explained the overlays and noted that this is just a draft. Sanger outlined the working definition of "development" and also reviewed the buildout areas. Kroupa reviewed the viewshed and agricultural preserve areas. Fiebing outlined a possible scenario involving re-zoning, purchase of development rights, and conservancy monies. A study session was scheduled for Nov. 6, 2001, 1 p.m., to review master plan and ordinance language.

BUSINESS - 7:30 p.m.

2. Consent Calendar.

A. Planning Commission Minutes of Sept. 17, 2001.

B. Communications:

i. Township Board Minutes.

ii. Board of Appeals Minutes.

Fiebing pulled out the Sept. 17, 2001 minutes of the Planning Commission for further clarification.

MOTION FIEBING/TEAHEN to accept Consent Calendar, excluding Planning Commission minutes of Sept. 17, 2001.

APPROVED UNAN

Fiebing noted that the following changes should be made to Items 3, 4 and 5 of the Sept. 17, 2001 minutes: They should be noted as "Proposed Zoning Ordinance Amendment," with the words "and seek public input" added at the end of the sentence.

MOTION CRONANDER/McMANUS to accept the revised Sept. 17, 2001 minutes of the Planning Commission.

APPROVED UNAN

3. Public Hearing - Proposed Zoning Ordinance Amendment No. 137 allowing the Township Board to exercise discretion in the requirement to fence residential development.

The Board had planned to review examples of this item; however, as none were available, it was agreed to table this issue pending further information.

MOTION FIEBING/KROUPA to table Proposed Zoning Ordinance Amendment to allow for storage and seating with decks within the Ordinary High Water Line setback area pending further information.
APPROVED UNAN

6. Winery-Chateau Amendment Request - Committee Report.

Fiebing read the committee report into the record. **Cronander** noted that she would like to see weddings and other celebratory events excluded, as this brings the issue into a commercial area, requiring a zoning change other than agriculture. **Fiebing** feels the restriction is made within the report. **Coulter** respects the concept; however, it doesn't seem to preserve ag land. Rather, it's a trade-off of use for production. She reviewed several concerns she has with the report and suggested that some of the items in the report are not enforceable. Discussion took place. **Sanger** is encouraged with the concept and feels that agri-tourism is here to stay. Likes the concept of tying the success of agricultural enterprises to preservation. **McManus** feels that if this format isn't pursued now, it will be looked at over and over in the next few years. **Teahen** would like to see it go forward into amendment language. **Kroupa** agreed, noting that agriculture is always evolving. It was agreed that the committee will work with **Hayward** to draft amendment language for board review.

7. Open Space Development Conservation District Amendment Request - Committee Report.

Fiebing suggested deferring this item to the special study session, as the language is quite detailed. This was agreed.

Township Board Report: **McManus** reported.

Zoning Board of Appeals Report: **Sanger** reported.

Committee Reports:

Master Plan Committee: **Fiebing, Kroupa, Sanger**

Ag/Commercial Committee: **Teahen, Fiebing, Cronander**

Site Plan/Plat Review Committee: **Cronander, Coulter**

Road Committee: **Kroupa, McManus, Sanger.**

Attorney's Report: None.

Planner's Report: None.

MOTION TEAHEN to adjourn meeting.

APPROVED UNAN

Meeting adjourned at 10:00 p.m.

These minutes stand to be approved: _____

Submitted by Jane Louise Boursaw, recording secretary.

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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Approved
11/17/01

Peninsula Township
Planning Commission Regular Meeting
November 26, 2001

Present: Chair Coulter; Kroupa; Sanger; McManus; Fiebing; Teahen; Cronander; Ford, attorney; Hayward, zoning administrator; Boursaw, recording secretary.

Chair's Remarks: Coulter reviewed the documents distributed tonight. She noted the benefits of receiving the ZBA and Town Board minutes; also liked getting the Planning Commission packet earlier than usual. Inquired as to whether there was a copy of the Master Plan yet. Hayward no.

Additions to Agenda: None.

Public Input:

Ellen Kohler, 7297 East Shore Rd. noted water quality issues regarding the East Shore Road sewer line. She has info from Tip of the Mitt Water Council to share. Hayward will make copies for everyone.

Dave Murphy, 6943 East Shore Rd. noted that the East Shore Road group would like to meet with the Road Committee. The committee will be giving an update tonight and will schedule a meeting.

1. Master Plan Committee Presentation - Open Space Development Conservation District - 7 p.m. Sanger reviewed the committee's report, including a document entitled, "Heritage Preservation and Space Conservation Development, a New Preservation Tool Utilizing Transfer of Development Rights." The report outlines Peninsula Township's heritage, present status and concerns, possible actions, management plan for future growth, agricultural preservation, open space conservation development and criterion/opportunities/potential uses for same within the Township.

The committee sees this as a way of preserving the Peninsula's heritage, managing development without increasing population, and developing a mixed use zone while protecting open space, without taxpayer dollars. They would like to take this before the Town Board on December 11, 2001. Fiebing noted that all they are asking for is an approval on the concept. Coulter would like to include the public and noted that the committee has done a great job. Cronander will like to take before the Town Board be the same as tonight? Fiebing they would like to add some pictures and overheads to further explain the report, before taking it before the public. McManus thinks it's important that it go before the Town Board at their next meeting, as they always have a public hearing. Fiebing noted that it's very conceptual at this point. Kroupa believes the timing is right for a Transfer of Development Rights program. Hayward suggested having the Town Board add it as an agenda item to their next meeting. This was agreed.

2. Road Committee Report. Kroupa reviewed the committee's findings regarding the heritage designation, East Shore Road project (summarized by Dave Murphy), and scenic beauty (which becomes a county road commission issue). These items will be further explored. The next steps will be meeting with MDOT, inventory work with a subcommittee, and further steps for the East Shore

PC Regular Meeting, 11/26/01

Campbell wondered if there's a way they could petition the Board not to have a public hearing, mainly for the sake of expediency. **Hayward** theoretically, the Town Board is not required to hold a public hearing, but they almost always do. **Coulter** is one of the adjacent land owners and said she would not raise an objection to the project. However, the Town Board would not have time to decide whether or not to have a public hearing, as their next meeting is December 11. **Ford** noted that the Planning Commission "may" hold a public hearing. The Planning Commission could waive their public hearing and send it to the Town Board for their Dec. 11 meeting. **Fiebing** is not comfortable recommending approval at this point. **Sanger** would like to have public input. **Kroupa** withdrew the aforementioned Motion.

MOTION KROUPA/McMANUS to send Special Use Permit No. 81 - Ogdensburg United Methodist Church Addition on to the Town Board with recommendation for approval.

Teahen yes. McManus yes. Cronander yes. Kroupa yes. Sanger no. Fiebing no. Coulter yes.

APPROVED 5-2

6. Zoning Ordinance Amendment No. 138 to modify the Agricultural Buffer requirements and other adjustments for setbacks of structures adjacent to agricultural area and farms. Tabled following public hearing on October 15, 2001.

Hayward reviewed the item, as well as changes to the language.

MOTION FIEBING/TEAHEN to accept the language of Zoning Ordinance Amendment No. 138 as presented and send the item on to the Town Board. **APPROVED UNAN**

Hayward noted that this will go to County Planning Commission first, as required by the ordinance.

7. Winery - Chateau Amendment Request - Review Draft Zoning Ordinance Amendment Language.

Hayward reviewed the amendment. **Coulter** feels that the question boils down to whether banquets should be allowed. She doesn't feel that they are directly related to the operation of a farm. Also doesn't feel the formula is stringent enough and that the word "preserve" is a misnomer; "maintaining production agriculture" would be a better term. She also reviewed other details in the language that she is uncomfortable with, including the definition of "restaurant". Discussion took place. **Fiebing** noted that this is not a restaurant, it's a winery, as noted in the ordinance. **Sanger** noted that this is a marketing use, established in order to allow the winery to sell more product on site at retail prices. **Kroupa** feels this is value-added to farming. Takes exception to the idea that this is not seen as "farming". **Coulter** should this be allowed on other types of farms, as well – orchard farms with shoreline, for instance? **Cronander** expressed concerns with wedding receptions and family reunions, which compete with restaurants and rental halls. Also, regarding preservation, 28 acres doesn't seem to be enough. **Hayward** the issues seem to be: verify production numbers and add more definition relative to competing commercial interests for banquet halls or restaurants. **Cronander** would like to go back to the committee and review this further. **Coulter** feels that some of it needs to be clarified. **Teahen** doesn't want to drag it out too much further, since a lot of work has already gone into it. **Fiebing** feels it's time for a public hearing. **Coulter** or possibly a public

information meeting. Sanger suggested fine-tuning some of the allowed activities and how they relate to the sale of wine. It was agreed that the committee will re-group and come back to the Planning Commission at their meeting on Dec. 17.

Planner's Report: Hayward noted that the south property owners were invited to a meeting regarding development opportunities on their property; it became clear that if they worked together, there would be some advantages to the PUD and clustering opportunities available. The property owners have decided to continue meeting on their own to discuss these options. They have asked the Township for help in preparing a fact sheet regarding sewer and water in that area, and the Open Space Development idea has been presented to them. However, nothing has been proposed yet.

Old Business:

Review Zoning Ordinance amendment to allow for storage and seating with decks within the Ordinary High Water Line setback area. It was agreed to table this item and add it as an agenda item to the next meeting. Teahen noted that there are residents waiting to hear the outcome of this item in order to move forward with construction projects.

Bowers Harbor Vineyards Letter dated 4/16/01. Hayward suggested looking at the entire map to see how this fits in.

MOTION FIEBING/KROUPA that the letter from Bowers Harbor Vineyards dated 4/16/01 has been received, and that the Stegenga's should prepare a report regarding why their land should be included in the agricultural production area. **APPROVED UNAN**

Township Board Report: McManus reported.

Zoning Board of Appeals Report: Sanger reported.

Committee Reports:

Master Plan Committee: Fiebing, Kroupa, Sanger.

Ag/Commercial Committee: Teahen, Fiebing, Cronander.

Site Plan/Plat Review Committee: Cronander, Coulter, Teahen.

Road Committee: Kroupa, McManus, Sanger. (Report given earlier in the meeting.)

Attorney's Report: None.

MOTION TEAHEN to adjourn meeting.

APPROVED UNAN

Meeting adjourned at 10:15 p.m.

These minutes stand to be approved: _____

Submitted by Jane Louise Boursaw, recording secretary.

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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Approved
1/21/02.

Peninsula Township
Planning Commission Regular Meeting
December 17, 2001

Present: Chair Coulter; Kroupa; Sanger; McManus; Fiebing; Teahen; Cronander; Ford, attorney; Hayward, zoning administrator; Boursaw, recording secretary.

Chair's Remarks: Coulter reviewed the communications not included in the consent calendar. She noted that the Planning Commission has accomplished a lot this year, including home occupations, Master Plan, and PDR.

Additions to Agenda: None.

Public Input:

1. Master Plan - 7:00 p.m. Sanger noted that the Master Plan Committee gave a report at the regular December meeting of the Town Board.

A. Road Committee. Kroupa reported that the committee met on December 7 and has begun the inventory process of M-37 heritage designation, which includes a mile by mile inventory for each side of the road from Carpenter Hill to the Lighthouse. The committee also spent time on the East Shore Road matter and has asked the Township Supervisor to put a moratorium on the widening of East Shore Road. Kroupa also passed around a "Working Definition of Roads". A January 18 meeting with MDOT is scheduled.

B. Buildout Numbers by Area. Hayward reviewed a map entitled "Potential Future Dwelling Unit Building Sites." He expects the map will be used by Transfer of Development Rights Committee and Road Committee, as well as for predicting capacity improvements on Center Road. Coulter noted that the map is excellent and will be a good tool.

Business - 7:30 p.m.

2. Consent Calendar (any member of the Board or the Public may request an item to be removed from the consent calendar and placed on the agenda for discussion.)

- a. Minutes of November 26, 2001, PC Regular Meeting.
- b. Minutes of November 6, 2001, PC Study Session.
- c. Communications.
 - i. Township Board Minutes.
 - ii. Zoning Board of Appeals Minutes.

MOTION FIEBING/CRONANDER to approve the consent calendar as presented.

APPROVED UNAN

3. Winery-Chateau Amendment - Review Draft Zoning Ordinance Amendment Language.

Hayward reviewed the new draft. The committee is striving to document the direct relationship between additional uses in the form of guest activities and the winery chateau and the actual production of crops on the Peninsula. The committee's new formula is based on acreage rather than production. Other than that, not much has changed from the previous draft. **Cronander** requested clarification on certain language. **Hayward** explained. **Coulter** believes the draft could be improved upon and reviewed her concerns, including selling wine by the glass as part of the language regarding food service. She feels the language should be more straightforward. Other concerns include promotional materials for sale (t-shirts, hats, etc.) and whether the Township would be able to monitor certain uses. (**Fiebing** noted that these things are monitored by complaint.) **Discussion** also took place regarding prohibiting the sale of non-Peninsula wines.

MOTION FIEBING/CRONANDER to fine-tune the language in committee and bring back to the Planning Commission at a future meeting. **APPROVED UNAN**

4. Open Space Conservation Development District Amendment - Determine Next Actions.

Sanger noted that the next step is to put together a concept that makes the proposal economically viable. **Fiebing** said they are studying draft language in committee. **Coulter** noted that TDR should not be confused with PDR. TDR should be viewed as a new tool and not something that would replace PDR. **Hayward** noted that PDR was developed as the first step. TDR isn't something new and was actually considered prior to PDR. The question for the Township is whether to continue the PDR program. He feels that both programs should be in existence. **Discussion** regarding how best to inform the general public. The committee will come back with a plan of action. This will also be an agenda item at the next joint meeting with the Town Board.

5. Farm Processing Plant Amendment - Introduction.

Township Supervisor Rob Manigold reviewed the amendment. A committee draft entitled "Farm Processing Facility - Amendment No.139" was distributed. In basic terms, the amendment is designed to allow farmers to process and sell what they grow. **Hayward** reviewed the outline. **Coulter** would like to take this to the joint meeting with the Town Board, and suggested having a public information meeting at the next regular meeting of the Planning Commission. The joint meeting should include a Master Plan outline, Open Space Conservation Development, TDR, PDR, Farm Processing Plant Amendment, and Winery Chateau Amendment.

6. Review Zoning Ordinance Amendment to allow for storage and seating with decks within the Ordinary High Water Line setback area.

Hayward noted that the photos and drawings have not been completed yet. **Coulter** brought up the idea of allowing either this or a storage building, as opposed to replacing a storage building with this. **Fiebing** the purpose of this amendment is to reduce the trashy look of some of the buildings currently on the beaches. Feels that a deck with low storage is more aesthetic and better preserves the views. **Hayward** will come back to the PC with photos and drawings.

**PENINSULA TOWNSHIP
SPECIAL JOINT MEETING OF THE
PLANNING COMMISSION AND TOWN BOARD
JANUARY 9, 2002 10:00 a.m.**

The meeting was called to order at 10:00 a.m. at the Town Hall. Town Board members present: MANIGOLD, HOFFMAN, WEATHERHOLT, MCMANUS, and GRAY. Planning Commission members present: SANGER, FEIBING, TEAHEN, CRONANDER, COULTER, and KROUPA. Also present: Zoning Administrator/Planner HAYWARD. Absent: None.

MANIGOLD explained that the meeting was for informational purposes only. Three agenda items 1. Farm Processing Facility Amendment, 2. Winery/Chateau Activities Amendment, and 3. Open Space TDR discussion.

1. FARM PROCESSING FACILITY AMENDMENT

Presentation made by Bern Kroupa and John Wunsch. Wunsch explained that following amendment 128 failure, this issue has remained a major issue. Two years of study since then to identify key issues and to get everyone in agreement. Over the past 12 weeks, extreme efforts made to communicate with both sides of the issue. Feels it is a good starting point. Wunsch gave details of specific restrictions such as appellation, retail sales, etc. This amendment is much more specific regarding setbacks, etc. A key feature is that it is a use by right. The community can know in advance what the farmer will be able to do, as well as his limits. Another key issue is that of wine tasting on PDR land. When carefully structured, it will fit on PDR property. Committee still working on it, legal advisors need to look at it, but wanted to bring it before the boards. KROUPA spoke next. KROUPA mentioned that the work into this issue is not only for wine makers, but for value-added agriculture as a whole. Wine making is just the most applicable at this time. Mentioned that farm winery standard going on at the state level is being dealt with. Not land use legislation, but rather a means to provide a 3rd form of winery license in the State of Michigan due to the changing nature of agriculture. A number of old and archaic laws are changing to accommodate small winery. The draft of the Michigan state legislation is helping committee to do an amendment for Peninsula Township. Ours is 40 acres, which is a significant investment. Wunsch: explained that person must own 20 acres; the other 20 acres must be agreed on by the township and land owners that shows that the land is leased, farmed, etc. to make up 40 acres total. The Township must come up with a form for that purpose. 40 acres in active agriculture. No more than one house per 20 acres. Feels it is a good compromise since 128. This amendment does not attempt to replace farm stand rules. It does not effect food processing (like PFE). This is something in between to benefit the individual farm. It is appropriate use by right when set up by right. CRONANDER asked about the leasing of the other 20 acres if not owned, and time limitations. Wunsch explained a lease must be one year minimum; not only July-September. We still need better clarification. Discussion about violation if lease lapsed for more than 30 days. KROUPA explained they are not trying to dictate terms. GRAY asked whose committee is working on draft language at State level. KROUPA explained that it is a subcommittee of Michigan Department of Ag. Chairman is Dan Wyant, sub-chair is Don Coe. Currently it has been forwarded to the Dept. of Ag for approval. After approval, the final draft will be coming back and merging with Liquor Control, then on to further approval.

COULTER is concerned that view shed protection was not dealt with. KROUPA explained that the committee consciously decided not to address that for this amendment. Wunsch said it should apply to all property, but as part of the master plan, not only for this issue. KROUPA said it will be dealt with for everyone. FEIBING clarified view shed issue; it is a voluntary set of restrictions unless you are in PUD. HOFFMAN asked COULTER if this amendment is going to the Planning Commission for a public hearing yet? HOFFMAN has questions regarding leasing agreements and wording. COULTER explained that the PC has adopted new procedures that would call for an informal public information meeting before the public hearing was scheduled. HOFFMAN said she had received some phone calls from people concerned with uses, where they can purchase fruit from, etc. HAYWARD suggested HOFFMAN list the issues she's concerned with and meet with the committee before the issue goes to a public informational meeting. Main issues that need discussion/clarification: 1. Leasing agreement 2. Majority of fruit grown on the property. 3. Enforcement. 4. Setbacks. 5. MDOT access. 6. SUP vs. use by right. 7. Inequality of PDR vs. non-PDR land. GRAYS concerns: 1. Produce and products used interchangeably. Thought it was anything you grow on the farm; doesn't have to be fruit. To keep fair it should be changed to say products instead of produce. 3. Duration of signed lease.

2. WINERY CHATEAU ACTIVITIES AMENDMENT

Sub-committee of CRONANDER, FEIBING, TEAHEN discussed latest information on what's proposed. FEIBING explained the request was brought to us by the Bob Began to allow additional uses in the winery chateau language that are currently not allowed in the ordinance. Originally took development rights and applied them to uses. Currently allowed a winery that takes five acres. Rooms allowed for rental: Each three rooms counts for another five acres, or up to five homes, each a development right. All development rights on 50 acres have been used up. Begin asking for a meeting hall for things such as business organizations coming to TC, and that he be allowed to provide meals. Committee has come up with a formula to preserve additional farm land that is designated in the reserved area for each activity allowed there would be additional land preserved. Still working on it. Basically to allow additional uses in exchange for more preserved farmland. Questions: MANIGOLD asked about the back sheet on page four: Guest activities; talking about contract groups; community and promotional events, etc. over the past years we've gotten different requests from places such as Munson Hospital, Friends of the Library wanting to do a box lunch, farm tours from all over wanting a catered lunch, NMC wanting to do promotional thing with a cherry cuisine fund raiser, and we have to tell them all no. A lot of positives. FEIBING discussed page four, definitions used in the ordinance. Overall is guest activities; may or may not be registered guests. Uses are subordinate to principal use; winery. Activities not intended to be or resemble a restaurant; no one without a reservation; no food unless contracted. Allowed guest activities will promote peninsula agriculture; tours, etc. Community and promotional events; no fee is charged either for use or event; (political rallies, tours, library etc.) tasting room must be open. No food other than what's already allowed. Community lunch prohibited. Box lunch allowed. Contract event is one that is scheduled at least 30 days in advance. Guest must be registered. More than ½ day. Wine seminars, cooking classes, and food provided. Wine by the glass allowed. Contract events; corp seminars; wedding receptions. Family reunions (limit 12 per year/2 per month) allowed. Wine must be Peninsula appellation. HOFFMAN asked if food service is provided by

Begin or if catered? FEIBING: Either. Limits on hours: 9:30 p.m, unless Town Board specifically reduces to an earlier hour. GRAY: feels it is unenforceable. We need to make a decision on what kind of activities are good for the township. What does the Township want? Do we want to have these activities? If we decide we're going to allow this, then forget all the rules and just say yes you can. And make a proposal to allow for exchange of development for promoting peninsula agriculture. FEIBING 1. This is not yet in ordinance form. 2. The farmers have to make a living. We're trying to preserve ambiance and we can't if they can't make any money. The bigger the farmer's investment; the more the community needs to be involved. 3. We need to continue program to preserve farmland. We've taxed ourselves to do it. We should tie new uses to preserve additional land. The need for the uses becomes apparent where tying those uses to preservation. MANIGOLD said this will effect either of the two Winery/Chateaus. COULTER asked about use of appellation wine. Would it also be at the community events? HAYWARD: all events. No wine served but tasting is allowed. COULTER thinks the language needs to be clearer; should add an enforcement procedure. Need to demonstrate a clear link to preservation/production to the allowed used. CRONANDER explained another intent of the committee is to insure uniqueness of the winery chateau be preserved and not strictly commercial. It not end up being some kind of rental hall. Want it to be unique and characteristic to what is already out there.

3. OPEN SPACE CONSERVATION DISTRICT TDR

Master plan sub-committee is SANGER, FEIBING, and KROUPA. Presentation made by SANGER, who read over documents with the boards. Over 5000 acres not preserved. The taxable value of the township is \$344 million. One mil is \$ 344,000. The township taxes, including fire service, for a homestead is 11% of total bill. Median family home \$150,000 for a taxable base of \$75,000. Handout page 2. Schedule ties into recently adopted land use map that is now part of our master plan. 4000 acres protected through PDR, conservation easements or other means. 1320 acres of Ag. land not preserved, and 2000 acres non-prime agriculture land not preserved and developed such as Underwood farms or Old Mission Estates. Handout page 3. Numbers; PDR alone generates enough to protect 1400 acres. In order to preserve the remaining acres we will have to double our current tax for PDR. Shows some TDR examples. Committee believes we can protect 1500 to 2000 acres through TDR. Handout page 4. PDR alone will require significant commitment of tax payers. TDR and open space conservation district (OSCD) can help, by providing mean of addressing re-zoning issues on agriculture land while preserving other agriculture land at no cost to the taxpayer. Handout page 5. Transfer rights from sending zone to receiving zone. Free market value. Owner in receiving zone can use the transferred right for additional rights. The most difficult issue is how to develop equivalencies. We have a comprehensive list of questions, draft ordinance to look at. Should we continue with this program? Wants guidance, and ideas for timing. FEIBING said this is currently our only tool to use to help preserve unprotected agriculture land. Two 40-acre parcels; one designated PDR and the other not. The OSCD would help preserve the good agriculture land by taking their development rights to the less suitable agriculture land that has not been designated. This program would only involve agriculture land. Still looking at restrictions such as open space on receiving zone 65%. HOFFMAN asked who's going to keep track of the transferred rights. FEIBING said it would be through contract like PDR. HAYWARD said there would be a conservation easement. The receiving zone pays for the rights from the sending zone. Why would

Peninsula Township
Planning Commission Regular Meeting
February 19, 2002

Present: Chair Coulter; Cronander; Sanger; McManus; Fiebing; Teahen; Ford, attorney; Hayward, zoning administrator; Boursaw, recording secretary.

Absent: Kroupa.

Note: The regular Planning Commission meeting scheduled for February 18, 2002, was moved to this date, due to President's Day.

Chair's Remarks: Coulter welcomed everyone and roll call was taken.

Additions to Agenda: Hayward suggested addressing the topic of public information meeting on Item 1, Master Plan and Transfer of Development Rights, as this was previously brought up. Consensus to hold a public information meeting for Item 1.

Public Input: None.

1. Master Plan - 7:00 p.m.

a. Transfer of Development Rights (TDR) - Draft Master Plan Amendment. Sanger and Fiebing reviewed Draft 2 of the "Comprehensive Plan for Transfer of Development Rights." This outlines a plan whereby development density can be moved from areas where a lower density is appropriate to an area where additional density can be accommodated with beneficial effects on both the transferring and receiving areas. Hayward explained some of the difference between TDR and PDR programs (Purchase of Development Rights) and defined some of the possible areas on the Peninsula for TDR programs. Public comment was heard. Discussion took place. Fiebing suggested setting a public hearing on the Master Plan Amendment and at the same time holding a public information meeting on the ordinance, since the two work together.

MOTION FIEBING/TEAHEN to set a public hearing for the regular April meeting (April 15, 2002) of the Planning Commission on the Transfer of Development Rights Master Plan Amendment, and also authorize the committee to clean up the language as presented.

APPROVED UNAN

MOTION SANGER/FIEBING to set a public information meeting on the ordinance language at the regular March meeting (March 18, 2002) of the Planning Commission.

APPROVED UNAN

BUSINESS - 7:30 p.m.

2. Consent Calendar (any member of the board or the public may request an item to be removed from the consent calendar and placed on the agenda for discussion.)

a. Minutes of January 21, 2002, regular meeting of the Planning Commission.

b. Communications.

i. Township Board Minutes.

- ii. Zoning Board of Appeals Minutes.
- c. Census Data for your information.

MOTION CRONANDER/FIEBING to approve the consent calendar as presented.

APPROVED UNAN

3. Public Hearing - Special Use Permit No. 82 - Grape Harbor, Inc., d.b.a. Peninsula Cellars - for a new winery building to replace the existing building.

David Kroupa explained the item. They have outgrown their small farm building and need a new facility. Hayward noted that the draft language and findings for SUP No. 82 are included in the board's packet.

Coulter opened the public hearing. No public input.

MOTION CRONANDER/TEAHEN to close the public hearing regarding Special Use Permit No. 82.

APPROVED UNAN

MOTION TEAHEN/SANGER to send Special Use Permit No. 82 onto the Town Board with the recommendation for approval.

APPROVED UNAN

4. Farm Processing Plant Amendment - Public Information Meeting.

Coulter noted that John Wunsch and Rob Manigold, who worked on the committee, are present. Coulter also was on the committee, along with several others. Wunsch reviewed the amendment.

Coulter opened the public information meeting. Audience comments included: what about instances where the grapes are grown on the Peninsula, the wine is made here, but then sent off the Peninsula for finishing and/or bottling? Suggested taking out the words "produced and bottled by", but leaving in "appellation." The objective is to promote agriculture on the Peninsula and allow farmers to make a living from it.

Coulter noted that public input was appreciated. The committee will review the comments, re-draft the amendment, and bring back to Planning Commission in March, with a possible public hearing in April.

MOTION FIEBING/TEAHEN to table the Farm Processing Plant amendment until the March meeting of the Planning Commission, pending further review based on input received tonight.

APPROVED UNAN

5. Winery Chateau Activities Amendment - Review Draft Zoning Ordinance Amendment Language - Public Information Meeting. Cronander reviewed the item. The intent is to allow some reasonable activities, in exchange for a guarantee of fruit production on the Peninsula, as well as Old Mission Peninsula wine being tasted and used in the activities.

Coulter feels the wording should be more straightforward, i.e. "to retain additional farmland" rather than "preserve additional farmland". Feels that the language should clarify that "wine sold by the glass" is allowed. Would also like more clarification on the definition of a "community and promotional event."

Coulter opened the public information meeting. One comment: what is the difference between charging for tasting and selling wine by the glass? The new farm winery bill allows for charging for wine tasting. **Hayward** this is intended to limit the amount people consume. These aren't bars or restaurants where people drink enough to become intoxicated. However, if the farm winery bill eventually allows it, then the Township would have to consider an amendment allowing it.

MOTION CRONANDER/FIEBING to send issues and comments regarding Winery-Chateau Activities Amendment back to committee to structure in ordinance form; then bring back for the Planning Commission to review at the March meeting. **APPROVED UNAN**

6. Review Zoning Ordinance amendment to allow for storage and seating with decks within the Ordinary High Water Line setback area - Public Information Meeting.

Hayward reviewed the item. Discussion took place. **Sanger** inquired about having a setback citing safety of children and aesthetics. **Hayward** the idea was to maximize ability of property owners to store things, so they're not piled up on beach or close to the water.

Coulter opened the public information meeting. **Al Gray** asked about definition of open deck. Also, wondered about umbrellas and other items. **Hayward** doing away with concept of open deck, which is no longer part of the ordinance. Also suggested including umbrellas, etc. as accessory uses to a deck. **Teahen** feels it cleans up the language and gets a lot of stuff off the beach. **Chuck Goodman** feels it could go to 6.5 feet, to allow someone to stand up in order to store kayaks and other large items.

MOTION SANGER/TEAHEN to schedule "Zoning Ordinance Amendment to allow for storage and seating with decks within the Ordinary High Water Line setback area" for public hearing at the regular March meeting of the Planning Commission. **APPROVED UNAN**

7. Consider Appointment of a PDR Committee. **Hayward** this would be to do the groundwork for a new PDR and probably create a new plan since conditions may be different. A group of citizens would like to work on the issue and report back to Planning Commission and Town Board. **Coulter** would like to meet with Hayward and Manigold to determine the committee's role.

MOTION FIEBING/TEAHEN to authorize Coulter to work with whomever she chooses to appoint a PDR committee. **APPROVED UNAN**

Peninsula Township
Planning Commission Regular Meeting
March 18, 2002

Present: Chair Coulter; Cronander; Sanger; McManus; Fiebing; Teahen; Ford, attorney; Hayward, KROUPA zoning administrator; Boursaw, recording secretary.

Absent: None.

Chair's Remarks: Coulter welcomed everyone and roll call was taken. Because of a publishing error, the public hearing for Storage and Seating with Decks will be re-scheduled for the next meeting. Also, the Transfer of Development Rights will be discussed under Item 1, Master Plan.

Additions to Agenda: Hayward suggested addressing the TDR public information meeting under Item 1, Master Plan. This was agreed.

Public Input: None.

1. Master Plan - 7:00 p.m.

A. Transportation Policy/Heritage Route. Kroupa presented a Draft Transportation Policy and reported that the subcommittee, which includes several citizen members, has met. They've been concentrating on East Bay Shore Road, with M-37 emphasized as a major carrier of traffic. A representative from TC-TALUS attended the last meeting and has been very helpful. A TC-TALUS study is forthcoming. The Heritage Study is moving along, and M-DOT has been helping with a management plan that will serve as a template for how the transportation policy is completed. Kroupa would like to have a policy in place by May 31st for review by the Planning Commission.

Ellen Kohler, 7297 East Shore Rd., noted that the committee will be meeting this week if anyone has comments about the language.

B. Transfer of Development Rights (TDR) - Draft Master Plan Amendment. Fiebing noted that the committee has met several times. To avoid confusion among the public, the committee will be finalizing the amendment before bringing it to Town Board. Hayward noted several groups, including the local Board of Realtors and other groups in Pennsylvania and Macomb County, Michigan, that are trying to downplay both the TDR and PDR programs, so it's important for the plan to be on solid ground before proceeding.

Mark Nadolski, 10 McKinley Road, was at the Board of Realtors meeting and noted that they were concerned with TDR at both the state and local levels, but there was no concern regarding PDR.

Scott Gest, 1994 Swan Pointe Dr., Traverse City, is there a process to find out how to be a receiving area for TDR? Coulter the TDR plan is still conceptual at this point, and a public information meeting will be scheduled as the ordinance language becomes more finalized. Fiebing because the master plan amendment and ordinance language are tied together, neither will be brought to Town Board level until the committee has more time to work on it.

Chuck Goodman, 10295 Center Rd., asked the Planning Commission to reconsider the earlier motion with respect to the Proposed Country Inn Amendment, and allow the same possibility of a public hearing at the April meeting.

MOTION KROUPA/FIEBING to move the next regular meeting of the Planning Commission to April 23, 2002. **APPROVED UNAN**

MOTION FIEBING/CRONANDER to amend the previous motion regarding the Proposed Country Inn Amendment and set a public hearing at the April 23, 2002 meeting of the Planning Commission. **APPROVED UNAN**

MOTION SANGER/TEAHEN to set public hearings for the Farm Processing Plant Amendment and Storage with Seating and Decks Amendment for the April 23, 2002 meeting of the Planning Commission. **APPROVED UNAN**

4. Winery-Chateau Activities Amendment - Review Draft Zoning Ordinance Amendment Language - Consider setting a public hearing.

Hayward reviewed the amendment. The intent is to allow some reasonable activities in exchange for a guarantee of fruit production on the Peninsula, as well as Old Mission Peninsula wine being tasted and used in the activities. **Coulter** reviewed several concerns and clarifications.

MOTION KROUPA/SANGER to set a public hearing for the Winery-Chateau Activities Amendment for the next regular meeting of the Planning Commission on April 23, 2002. **APPROVED UNAN**

5. Maylone Enterprises - request approval of antenna for high speed Internet services.

Tim Maylone, 212 River Street, Elk Rapids, MI, explained the request. He is the owner of Maylone Enterprises, Inc., a high-speed Internet company whose primary focus is to deliver high speed technology to small communities being bypassed by larger corporations. The intent is to use existing structures for their antennae, and they would like to use a structure at Chateau Chantal for an antenna base. He presented the 60" antenna that would be used. **Hayward** noted that this is covered under Section 7.12.1 Personal Wireless Communication Towers and Related Facilities. A public hearing is required, along with notification of surrounding property owners. This issue can be handled by the Planning Commission without going to Town Board.

Fiebing have you considered putting the antenna on the existing tower at the fire station? **Maylone** yes, cost and logistics make this option prohibitive. **Discussion** took place regarding frequencies and technology. **Sanger** concerned about using private facilities for public use and wondered if more antennae/towers will be required in the future. Also concerned about obstructing scenic views. **Hayward** suggested having Maylone put up an antenna for Planning Commission review prior to the public hearing.

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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Peninsula Township
Planning Commission Regular Meeting
April 23, 2002

Corrected

Present: Chair Coulter; Sanger; McManus; Teahen; Kroupa; Ford, attorney; Hayward, zoning administrator; Boursaw, recording secretary.

Absent: Fiebing, Cronander.

Chair's Remarks: Coulter welcomed everyone and roll call was taken. She noted that the Farm Processing Facility No. 139 is not ready for public hearing.

MOTION SANGER/TEAHEN to empower the committee to draft final language for Farm Processing Facility No. 139 for public hearing at the regular May meeting of the Planning Commission on May 20, 2002. **APPROVED UNAN**

Kroupa presented a Road Committee Report, including an Action Plan through May 3, 2002. Reviewed heritage designation, access management plan, and TC-TALUS involvement. The committee is hoping to have a preliminary policy in place by the end of May.

Additions to Agenda: None.

Public Input:

Nancy Heller, 3091 Blue Water Rd., would like PC to review permitting process; in particular, a checklist would be helpful. **Hayward** there are forms available; however, applicants should talk to staff to find out what options are available for their particular situation.

Business - 7 p.m.

1. CONSENT CALENDAR (Any member of the board or public may request an item to be removed from the consent calendar and placed on the agenda for discussion).

A. Minutes of March 18, 2002.

B. Communications

- i. Township Board Minutes
- ii. Zoning Board of Appeals Minutes
- iii. PDR PC Committee Report, 4-16-02

MOTION TEAHEN/McMANUS to accept the consent calendar as presented.

APPROVED UNAN

2. PUBLIC HEARING - ZONING ORDINANCE AMENDMENT NO. 140 DECKS AND STORAGE.

Coulter opened the public hearing for Zoning Ordinance Amendment No. 140 Decks and Storage.

Mark Nadolski, 10 McKinley Rd., opposed to amendment. Concerned that it will create commercial uses, convert or re-zone agricultural land to commercial, and lead to uncontrolled commercial use on Peninsula. Feels there are other options available. He is not against the Goodman plan, but is opposed to an ordinance that would negatively impact farmland on the Peninsula.

Chuck Goodman, 10295 Center Rd., feels that change will happen no matter what, and this is a good alternative to a subdivision, which doesn't allow for flexibility in the future. Reviewed safeguards and restrictions of amendment, open space, commercial use, and specific items in ordinance.

Barbara Springer, 1800 Gray Rd., owns property adjacent to Goodman. Supports amendment and the Goodman's proposal.

MOTION TEAHEN/SANGER to close public hearing on Zoning Ordinance Amendment No. 142 Country Inn. **APPROVED UNAN**

Teahen read letters from **E. Thomas Maguire, 2332 Twin Eagles Dr., Traverse City, MI 49686**, who is opposed to amendment; and **J. C. Byron, 10639 Center Rd.**, opposed to amendment.

Teahen suggested clarifying specific points brought up tonight. **Sanger** noted that the Planning Commission has spent many hours discussing specific issues involved, outlined some of those. **Kroupa** feels that hospitality, with restrictions, is a good use for land. **Hayward** noted that Goodman may wish to request changes before recommending it to Township Board. **Coulter** reviewed the changes brought up by Goodman tonight. **Hayward** added that this is subject to Special Use Permit process.

MOTION KROUPA/SANGER to recommend Zoning Ordinance Amendment No. 142 Country Inn to Township Board, including the changes noted tonight.

Kroupa yes, feels that the studies completed two years ago and subsequent actions of the Planning Commission indicate that they're not bullish with regard to commercial activity. **Sanger yes**, believes this provides for the best use of ag land and is consistent with the concept of open space conservation and hospitality usage. Does not feel it's retail commercial, nor that it promotes further development. **McManus yes**, recalls when the property could have been converted to a marina years ago. **Teahen yes**, agrees with other statements of PC members. Feels it's compatible with ag use and also keeps 75 percent in open space. **Coulter no**, feels that 150 guests (75 for rooms, 75 for meeting area) is different from the definition of agricultural adopted by the PC. Hopes the next step will be a C-2 zone that adds additional commercial. **APPROVED 4-1**

4. PUBLIC HEARING - ZONING ORDINANCE AMENDMENT NO. 141 WINERY-CHATEAU ACTIVITIES.

Coulter opened the public hearing for Zoning Ordinance Amendment No. 141 Winery-Chateau Activities.

Peninsula Township
Planning Commission Regular Meeting
June 17, 2002

COULTER called the meeting to order at 7:00 p.m. at the Town Hall. Members present: SANGER, MCMANUS, CRONANDER, COULTER, and KROUPA. Members absent: TEAHEN, FEIBING, Planner/Zoning Administrator HAYWARD, and Attorney FORD.

Chair's Remarks: COULTER welcomed everyone and roll was taken. Regarding no. 8 on the agenda; the public hearing for SUP 84 is in error. There is no public hearing tonight. Also, remove no. 9 from the agenda. Per the May 20, 2002 minutes, it will be sent on to the Town Board following further research. Other additions: none.

Additions to the Agenda: None.

7:00 p.m. PLANNING SESSION

SANGER gave Master Plan committee report: The last month has been spent focusing on reviewing and condensing material presented last month. CRONANDER and KROUPA have worked with him to The next step is to review and identify what is missing. Met with HAYWARD regarding the 1982 map/flyer that is not in compliance with current zoning. Want to focus on future land use map, and establishing a timetable for updating everything, such as the recreation plan that was adopted but not actually been added to the Master Plan. Law states all townships must review their master plans every five years; we are on track. Essentially, the information is adequate, but the format needs to be improved. CRONANDER is willing to help improve that.

PDR STRATEGIC COMMITTEE REPORT

Recommendation to the Planning Commission that is ready to go. Coulter read it into the record. She recommended two public forums; July 17th and July 25th at the Town Hall. Questions: CRONANDER asked what the milage could accomplish if passed, if there is a matching fund, etc. John Wunsch spoke as head of the citizen group. 3200-3600 additional acres may be brought into the program. Mentioned survey results. COULTER feels this is an opportunity to expand; the time is right.

MOTION: SANGER/CRONANDER to resolve that the voters of Peninsula Township be asked to support .75 mills for additional PDR, bringing the total to 2 mills and running an additional 15 years, bringing the end date from 2008 to 2023. Board discussion: None.

CARRIED UNAN.

PUBLIC INPUT

Howard Walker 8481 Underwood Ridge. Introduced himself as a candidate for State Representative in the 104th district.

Michael Estes, Introduced himself as a candidate for State Senate.

Dave Edmonson, 2514 Nelson Road. Asks why his property was part of the legal ad placed regarding SUP 84. He is not participating in that project; only a contiguous property owner. COULTER explained that it was in error. Edmonson said that is not a valid excuse. COULTER advised him to take the matter up with the Town Board.

Joanne Westphall, 2514 Nelson Road. Verbally requests under the FOIA public accounting of monies used for administering the PDR program; specifically costs on an acre-by-acre basis. COULTER advised her to put her request in writing to the Clerk.

BUSINESS 7:30 p.m.

1. **Consent Calendar** (Any member of the board or public may request an item to be removed from the consent calendar and placed on the agenda for discussion.)

- A. Minutes of May 20, 2002 Planning Commission
- B. Communications
 - i. Minutes of the May 14, 2002 Town Board 5/14/02 Town Board
 - ii. Minutes of the May 9, and May 15, 2002 Zoning Board of Appeals
 - iii. Letter to the Town Board from Ellen Kohler

MOTION: COULTER/MCMANUS to accept the consent calendar.

CARRIED UNAN.

2. Public Hearing - Request for communications antenna - Malone

COULTER reviewed from last month's meeting; Board questions: None.

COULTER opened the public hearing at 7:46 p.m.

Ann Swaney, 18625 Center Road. Asked the name of his company. Maylone Enterprises.

MOTION: CRONANDER/MCMANUS to close the public hearing at 7:47 p.m.

CARRIED UNAN.

MOTION: SANGER/KROUPA to approve as presented.

CARRIED UNAN.

3. Public Hearing - Zoning Ordinance Amendment 139 - Farm Processing-

KROUPA explained history beginning last October of establishing a use- by-right amendment. The philosophy of the ad hoc committee was that "if you grow it, you can process it and sell it." KROUPA detailed limitations on ancillary sales, specific provisions, and acreage requirements.

COULTER opened the public hearing at 7:55 p.m.

COULTER read letter into the record sent by Penny Rosi.

Nancy Heller, 3092 Blue Water Road. Concerned with difficulty of enforcing production percentages, thinks language should be changed from "fruit" to "produce", and asks if there is a fee schedule set. KROUPA said it would most likely be the same flat fee as any LUP.

Al Gray, 757 Willow Drive. Concerns regarding the leased land if a property owner doesn't have enough to meet requirements. Feels that this should be part of a SUP and not a use by right. Concerned that applicants will ask for variances if they are unable to acquire/maintain enough leased land.

Dave Edmonson, 2514 Nelson Road. Spoke in favor of approving this amendment.

Pierre Ingold, 1151 Londolyn Terrace. Concerned that this is fundamentally the same as amendment 128.

John Wunsch explained that this amendment has been worked on by all the concerned groups that have agreed that this is a good amendment.

Dave Murphy, 6943 East Shore Road. Spoke in support.

Mark Nadolski, 10 McKinley Road. Speaking as president of Protect the Peninsula; feels this is a farm processing amendment versus a winery amendment. Spoke in support.

Howard Walker, 8481 Underwood Ridge. Spoke in support.

Monica Hoffman, 11786 Center Road. Asks if the leased land (if any) will be recorded so that any prospective purchaser will be aware of it.

Mark Nadolski, 10 McKinley Road. Agrees with Hoffman about recording lease.

John Wunsch, 11781 Center Road. Spoke in Support. Outlined the benefits to the community.

MOTION: CRONANDER/SANGER to close the Public Hearing at 8:47 p.m.

CARRIED UNAN.

Board discussion: Board consensus was to leave it up to the Town Board whether or not to require recording with Register of Deeds. SANGER recommends changing the word "fruit" to "crops", and to clarify the section about the "licensed premises". COULTER also wants document checked for typographical errors.

MOTION: CRONANDER/SANGER to approve and forward to the Town Board with above recommendations, along with the noted differences between this ordinance and Amendment 128 for informational purposes.

CARRIED UNAN.

5. Public Hearing - Special Use Permit No. 83 Bed and Breakfast - Engintunca 14429 Center Rd.

Applicant asks to use three rooms in her home; with a maximum of six guests. Board questions: SANGER confirmed this is a one-acre PUD parcel.

COULTER opened the Public Hearing at 9:14 p.m.

Nancy Heller, 3091 Blue Water Road. Asks if this will be owner-occupied. Yes, and it will only be operational in summer and early fall.

Dave Murphy, 6943 East Shore Road. Several B&B questions; SANGER summarized the ordinance for him.

MOTION: CRONANDER/KROUPA to close the Public Hearing at 9:18 p.m.

CARRIED UNAN.

Board discussion: SANGER has concerns about parking. Board discussion focused on making a condition that the owners park inside the garage, assuring there will be adequate, safe parking for guests. Owner agrees. said on site visit he has concerns about parking. There is a well that makes it difficult to park near the home.

MOTION: COULTER/KROUPA to approve and send to the Town Board with the condition that the owners use the garage for parking their cars so as to maintain adequate safe parking for guests.

CARRIED UNAN.

6. Public Hearing - Special Use Permit No. 85 - Gas Station at Mapleton Square, 14111 Center Rd - Mediterranean Properties, L.L.C.

Presentation by Joel Myler. Distributed revised site plan prior to tonight's meeting. Described the variance granted by the ZBA last Thursday. New plan includes a shed roof instead of a gable roof so the circulation lanes can remain. Board Questions: COULTER asked about walkway to the door. Myler: They may go inside or pay at the door; most likely patrons will pay at the pump.

COULTER opened the public hearing at 9:39 p.m.

Nancy Heller, 3091 Blue Water Road. Thinks there is a great need for a gas station for residents and guests, as well as give a lift to local businesses. Spoke in support.

Mark Nadolski, 10 McKinley Road. Question about canopy roof over the pump and number of pumps. Myer described the canopy roof and the single pump with hoses on either side.

MOTION: CRONANDER/KROUPA to close the public hearing at 9:43 p.m.

CARRIED UNAN.

Board discussion: SANGER has concerns about contention of use; loading zone. Concerned about kids

Nancy Heller, 3091 Blue Water Rd., cited specific sections of amendment that need clarification. Feels off-site catering should be available.

Laura Johnson, 3464 Kroupa Rd., requested clarification on sound uses allowed. Concerned with amplified instruments allowed in temporary structures. **Hayward** reviewed specific noise regulations of the amendment.

Mark Nadolski, 10 McKinley Rd., concerned that this issue keeps coming up year after year, believes it mirrors the activities of the Grand Traverse Resort.

Harley Morrison, 15411 Kroupa Rd., feels the amendment needs clarification.

Chuck Goodman, 10295 Center Rd., expressed disapproval with previous statement that the amendment mirrors activities at Grand Traverse Resort.

MOTION TEAHEN/McMANUS to close public hearing for Zoning Ordinance Amendment No. 141 Winery-Chateau Activities. **APPROVED UNAN**

MOTION SANGER/TEAHEN to recommend Zoning Ordinance Amendment No. 141 Winery-Chateau Activities to the Township Board.

Sanger yes, believes it supports agricultural production tied to marketing of appellation wine. **McManus yes**, feels that this is a good thing for agricultural land on the Peninsula. **Teahen yes**, for previous reasons stated. **Coulter no**, there should be a C-2 zone, which would be a more rational approach because there's no limit on how big this might grow. If additional infrastructure is needed, a C-2 zone would provide for different taxing abilities. Also, feels that off-site catering should be allowed and that the language is confusing, among other things. Also doesn't feel that people should have to bring a box lunch if there's a commercial kitchen on site. **Kroupa yes**, feels it's value-added agriculture. **APPROVED 4-1**

5. SPECIAL USE PERMIT NO. 83 - BED AND BREAKFAST - INTRODUCTION - ENGINTUNCA.

Hayward reviewed the item. The proposed bed and breakfast is located at 14429 Center Rd., is zoned agricultural, and shares a driveway with another parcel. Suggested scheduling a site visit before the next meeting. **Kroupa** would like to see a more detailed packet. It was agreed that Hayward will bring back a more detailed packet to the next PC meeting.

6. SPECIAL USE PERMIT - GAS STATION INTRODUCTION - CHARTWELL.

Joel Myler, president of Chartwell Properties in Traverse City, represents Mediterranean Properties, which leases space to Mapleton Square (Mapleton Grocery, Hardware and Peninsula Grill). The intent is not to build a Shell Mini-Mart, but rather to make it look like an old gas station. Shell will provide the gas, but will not put their name on it. The idea is to increase the frequencies at the

**PENINSULA TOWNSHIP
PLANNING COMMISSION
13235 Center Road, Traverse City, MI
May 19, 2003
7:00 p.m.**

CALL TO ORDER

ROLL CALL

PRESENT: Chair Coulter; Cronander; Sanger; Teahen; Fiebing; Hemming; Hayward, planner; Ford, township attorney; Boursaw, recording secretary.

ABSENT: Kroupa (excused).

CHAIR'S REMARKS: None.

ADDITIONS/CHANGES TO AGENDA: None.

PLANNING - 7:00 Master Plan

Master Plan Committee Report: Sanger reported on the progress of the Master Plan.

BUSINESS - 7:30 P.M.

PUBLIC INPUT - BRIEF COMMENTS (FOR ITEMS NOT ON THE AGENDA):

Ted Kohler, 9600 East Ridge Dr., applied for rezoning on January 20, 2003. It was tabled at that time due to heavy snow on the site. Has a site visit taken place yet? **Coulter** no. **Hayward** outlined the procedure to move forward on this request. It was agreed to send this to the Site Plan/Plat Review Committee. A site visit was scheduled for June 10, 2003, 3 p.m.

MOTION SANGER/FIEBING to assign this request to the Site Plan/Plat Review Committee for review and schedule a site visit by the Planning Commission. **APPROVED UNAN**

Chuck Goodman, 10295 Center Rd., asked for clarification on the ag preserve area map. **Hayward** explained. **Goodman** also noted that the PC referred Ted Kohler's request to committee a few months ago. **Coulter** recalls that it was postponed. **Goodman** feels the process is much longer than it needs to be.

1. **CONSENT CALENDAR** (Any member of the Board or the Public may request an item to be removed from the consent calendar and placed on the agenda for discussion).
 - a. **Planning Commission Minutes of April 21, 2003.**

Fiebing noted that under chair's remarks, it should read PDR not TDR. **Cronander** noted clarifications on the minutes of the combined meeting of the Planning Commission and Town Board on April 29, 2003. **Hayward** will send these comments to the deputy clerk.

6. Amendment 141 Guest Activities - Winery/Chateau, referred back for review and recommendation - Consider Public Hearing.

Hayward reported on the status of this amendment which, because of the lengthy process, has come back to the Planning Commission for review and public hearing. Bob Begin noted clarifications he would like to see made to the amendment. Coulter believes a master plan change is in order before moving forward, as it entails additional uses not related to agriculture. Begin commented on "accessory uses." Teahen suggested sending this to the PUD/Open Space Committee consisting of Teahen, Fiebing and Cronander.

MOTION TEAHEN/FIEBING to send Amendment 141 Guest Activities - Winery/Chateau to the PUD/Open Space Committee for review. **APPROVED UNAN**

7. Amendment to Agricultural Preserve Area Map for PDR Applications - Master Plan Committee Report on Recommendations.

Hayward noted three additional requests for property to be included in the ag preserve map. Discussion took place regarding what land should be included in the ag preserve map. Coulter suggested having the Master Plan Committee continue to review this issue. This was agreed.

Mark Nadolski, 10 McKinley Rd., asked if the PC will consider additional uses in the ag zone? There are current uses by right in ag zoning, and to introduce more commercial uses weakens the intent of PDR.

8. Scenic View Restrictions for PDR Applications - Committee Report.

Hayward requested that this item be tabled pending further information.

9. Zoning Ordinance Amendment for Open Space in a Planned Unit Development - PUD/Open Space Committee Report.

This item was tabled pending further information.

10. Zoning Ordinance Amendment - Fencing - PUD/Open Space Committee Report.

Cronander read a description of fences as denoted by the committee. The committee is still working on this amendment.

Township Board Report: Hemming reported.

Zoning Board of Appeals Report: Sanger reported.

Committee Reports:

Master Plan/TDR Committee: Fiebing, Kroupa, Sanger (chair).

Site Plan/Plat Review Committee: Cronander (chair), Coulter, Teahen.

Ad Hoc Committees:

**PENINSULA TOWNSHIP
PLANNING COMMISSION
13235 Center Road, Traverse City, MI
June 16, 2003
7:00 p.m.**

CALL TO ORDER

ROLL CALL

PRESENT: Chair Coulter; Cronander; Sanger; Teahen; Fiebing; Hemming; Kroupa; Hayward, planner; Ford, township attorney; Boursaw, recording secretary.

ABSENT: None.

CHAIR'S REMARKS: None.

ADDITIONS/CHANGES TO AGENDA: None.

PLANNING - 7:00 Master Plan

Master Plan Committee Report: Sanger reported on the progress of the Master Plan. **Discussion** took place regarding the existing Future Land Use Map and the 2003 draft of the Future Land Use Map. **Hemming** feels it's confusing; suggested breaking it into several maps. **Coulter** feels the public should have an opportunity to comment on the map. **Ford** agrees that it should be used as a tool, but not formally adopted at this point. **Sanger** the public is encouraged to participate in Master Plan Committee meetings. The next meeting is June 20 at 3 p.m.

BUSINESS - 7:30 P.M.

PUBLIC INPUT - BRIEF COMMENTS (FOR ITEMS NOT ON THE AGENDA):

Penny Rosi, 2711 Old Mission Rd., is it possible to change the scale of the Future Land Use Map so it's more readable? **Hayward** for draft and review purposes, this is the largest he can print on his printer.

1. **CONSENT CALENDAR** (Any member of the Board or the Public may request an item to be removed from the consent calendar and placed on the agenda for discussion).
 - a. Planning Commission - Minutes of May 19, 2003.

MOTION FIEBING/CRONANDER to approve the May 19, 2003 minutes of the Planning Commission. **APPROVED UNAN**

2. COMMUNICATIONS

- a. Township Board Minutes - May 13, 2003
- b. Zoning Board of Appeals Minutes - May 8, 2003

Carl Lehto of Gosling Czubak, project manager for Port of Old Mission, presented the special use permit request and reviewed the issues in question. Discussion took place regarding the benefits of a private road versus a driveway. Sanger noted that a cul-de-sac is required by the ordinance; concerned that the Planning Commission is being asked to design the plan. Fiebing agreed, noting that plans should be worked out ahead of time. Sanger feels it should be tabled pending further information from the applicant.

Sally Erickson Bornschein addressed questions from the board.

MOTION CRONANDER/HEMMING to send "Special Use Permit Request - Port of Old Mission Phase IIIA" to the Plat Review Committee prior to scheduling a public hearing.

APPROVED UNAN

5. Review Site Condominium - Zimmers - Tabled for Additional Information.

Hayward has not received any further information at this time.

MOTION FIEBING/SANGER to table "Site Condominium - Zimmers," pending further information.

APPROVED UNAN

6. Amendment 141 Guest Activities - Winery/Chateau, referred back for review and recommendation - Committee Report and Consider Setting Public Hearing.

Hayward reviewed the issue. The request from Bob Begin is to allow additional activities at winery-chateaus over and above what is currently allowed by the zoning ordinance. Hayward outlined the additional activities requested. Coulter noted specific clarifications on the draft. Asked if other forms of agricultural enterprises -- other than winery-chateau -- could benefit from this, as well. Feels it's a mistake to make it too specific. Hayward it's possible that the value-added concept may be looked at for other types of agriculture in the future. Hemming feels it's a mistake to write an ordinance for one person. Feels this ordinance is too complicated and too restrictive. Fiebing noted that there are two winery-chateaus on the Peninsula, but one has taken the lead on this.

MOTION HEMMING/TEAHEN to schedule a public hearing on "Amendment 141 Guest Activities."

APPROVED UNAN

7. Rezoning Request - Theodore J. Kohler A-1 to R-1B on Parcel No. 28-11-017-023-10.

Hayward reviewed the request. He is still missing some information. Cronander noted that there are still concerns over well and septic.

MOTION TEAHEN/FIEBING to send a letter to Kohler asking for specific information regarding the health department and road access. The item will be placed on the agenda when information is received.

APPROVED UNAN

**PENINSULA TOWNSHIP
PLANNING COMMISSION
13235 Center Road, Traverse City, MI
July 14, 2003
7:00 p.m.**

CALL TO ORDER

ROLL CALL

PRESENT: Chair Coulter; Cronander; Sanger; Teahen; Fiebing; Hemming; Kroupa; Hayward, planner; Ford, township attorney; Boursaw, recording secretary.

ABSENT: None.

CHAIR'S REMARKS: None.

ADDITIONS/CHANGES TO AGENDA: None.

PLANNING - 7:00 Master Plan

Master Plan Committee Report: Sanger reported on the Master Plan; feels the process is moving along smoothly and on schedule. The next meeting is scheduled for August 18, with a public hearing possibly in September. Coulter noted that "seasonal housing" should be included under "affordable housing." Also feels that agri-tourism and commercial development should be discussed, since many roadside stands are selling items that do not fall under township guidelines. Discussion took place. Coulter also suggested adding a shoreline overlay to the plan.

BUSINESS - 7:30 P.M.

PUBLIC INPUT - BRIEF COMMENTS (FOR ITEMS NOT ON THE AGENDA):

Steve Beeker, 6296 East Shore Rd., thanked Coulter for her service, as this is her last meeting before resigning from the Planning Commission.

1. **CONSENT CALENDAR** (Any member of the Board or the Public may request an item to be removed from the consent calendar and placed on the agenda for discussion).
 - a. Planning Commission Minutes of June 16, 2003.

MOTION KROUPA/FIEBING to approve the June 16, 2003 minutes of the Planning Commission.

APPROVED UNAN

2. COMMUNICATIONS

- a. Township Board Minutes - June 10, 2003.
- b. Zoning Board of Appeals Minutes - June 12, 2003; Agenda for July 10, 2003.

PC Regular Meeting, 07/14/03

returns with necessary and sufficient information in writing.

APPROVED UNAN

4. Public Hearing - Amendment 141 Guest Activities - Winery/Chateau.

Hayward outlined the proposed amendment. **Coulter** opened the public hearing at 8:25 p.m.

Mark Nadolski, 10 McKinley Rd., reviewed several reasons why he is opposed to the amendment.

Laura Johnson, 3464 Kroupa Rd., lives across from Chateau Chantal. Expressed concerns regarding noise, lighting and traffic, and outlined conflicts with the Comprehensive Plan. This amendment gives special privileges to one specific niche of agriculture and to one specific winery chateau. If approved, more clarification is needed regarding guests, activities, tents, hours, etc. Also, this amendment will impact the community with additional use of parks and other township amenities.

Penny Rosi, 2711 Old Mission Rd., feels this type of agri-tourism will have a negative impact on the community.

Jill Byron, 10639 Center Rd., feels this is a commercial application in an agricultural zone. Need to resolve zoning issue. Also concerned about "contract groups" allowed.

MOTION FIEBING/CRONANDER to close public hearing.

**APPROVED
UNAN**

Coulter closed the public hearing at 9:45 p.m. **Hemming** feels it's too specific and written mainly for Chateau Chantal. Need to broaden the concept to include other types of agriculture. Also feels it would be impossible to enforce. **Sanger** feels this activity will help commerce on the Peninsula re B&B's, gas, stores, etc. **Coulter** reviewed concerns with specific items of the amendment. Also feels it won't be enforced. **Cronander** expressed concerns with the amendment; says this will turn Chateau Chantal into a commercial hall. **Teahen** and **Fiebing** spoke in favor of the amendment; feel that a lot of work has gone into it. **L Johnson** does this include PDR property? **Hayward** yes.

MOTION CRONANDER/FIEBING to recommend approval of "Amendment 141 Guest Activities - Winery/Chateau" to the Township Board, excluding "wedding receptions" and "family reunions".

Fiebing yes. Cronander yes. Coulter no. Sanger yes. Kroupa yes. Hemming yes. Teahen yes.

APPROVED 6-

1

MOTION FIEBING/CRONANDER to accept the language outlined by the Planner regarding removal of "wedding receptions" and "family reunions" and authorize the Planner to make any changes reflecting the removal of these two items.

UNAN

PC Regular Meeting, 07/14/03

November 3, 2023

Source: Peninsula Township Board and PC Minutes

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**PENINSULA TOWNSHIP
PLANNING COMMISSION
September 15, 2003**

Cronander/Sanger
10/20/03
as amended

CALL TO ORDER**ROLL CALL.**

PRESENT: Chair Cronander; Hemming; Kroupa; Sanger; Fiebing; Rosi; Teahen; Hayward, Planner; Ford, township attorney; Witkop, recording secretary.

ABSENT: None.

CHAIR'S REMARKS

Cronander mentioned 2 conferences available to the Planning Commission members.

ADDITIONS TO THE AGENDA:

Sanger requested a report from the Planner on the status of the Mapleton Square business center sign and referenced the Township Board minutes that referred the Chateau Chantal Amendment back to the Planning Commission. Cronander added the 2 items to the agenda.

PUBLIC INPUT - BRIEF COMMENTS (FOR ITEMS NOT ON THE AGENDA):

Ellen Kohler, 7297 East Shore Rd., asked when the South Park Committee and Road Committee are going to be meeting again. Kroupa responded.

MASTER PLAN REPORT

Sanger reported. Rosi stated a concern about the Future Land Use Vision wording in the Master Plan and would like that area to be looked at again before it goes to print. Sanger agreed with Rosi and went over the next steps for the approval of the Master Plan.

1. CONSENT CALENDAR (Any member of the Board or the Public may request an item be removed from the consent calendar and placed on the agenda for discussion.)

a. Planning Commission Minutes of August 18, 2003

MOTION FIEBING/SANGER approve the minutes of August 18, 2003 meeting.

APPROVED UNAN

2. COMMUNICATIONS

a. Township Board Minutes - August 12, 2003 & ZBA Minutes - August 14, 2003

b. Planning Commission Chair memo. to the Zoning Board of Appeals Re: POM

3. ELECTION OF OFFICERS

Hemming reported that the Nominating Committee recommended Fiebing as Chair, Cronander as Vice Chair and Teahen as Secretary.

MOTION Hemming/Teahen to close the slate.

+ unanimously elect the slate

APPROVED UNAN

Fiebing appointed Rosi to the plat review committee.

13. Review Site Condominium - Zimmers - Tabled for additional information.

No additional information. Remained tabled.

14. Preliminary presentation by S.K.H.W. LLC on preliminary Intent for the Development of the nine acre parcel known as Bowers Harbor Inn.

Hayward explained that the developer requested to be last on the agenda. No one present.

15. Request for a report from the Planner on the Mapleton Square Business Center Sign.

Hayward read from the Township Board minutes from December 16, 2002. **Sanger** stated that he was satisfied.

16. Chateau Amendment No. 141

Hemming reported that the Township Board returned this item to the Planning Commission because of the County Planning Commission's decision to recommend denial of this amendment. **Hayward** stated that the County Planning Commission recommended denial based on the Policy section of the Master Plan that deals with allowed uses on Agricultural land, specifically that allowed uses should be limited to those directly related to the operation of a farm and not extend commercial use. **Fiebing** read the opinion of the County Planning Commission. Discussion followed. **Hayward** mentioned a letter that had been received from the Protect the Peninsula group and recommended that the item be tabled pending further discussion with them. **Sanger** stated that he feels that these discussions should take place with a committee of the Planning Commission. **Hayward** explained that this request was originally made by Chateau Chantal and that this discussion was at their request. He further explained that any revised requests would be sent to the Planning Commission for review. **Kroupa** stated that he was concerned with the County Planning Commission's opinion that this item isn't an agricultural use. Discussion continued.

MOTION Teahen/Hemming to table Amendment 141.

APPROVED UNAN

TOWNSHIP BOARD REPORT

Hemming reported on the Hooper purchase.

BOARD OF APPEALS REPORT

Sanger reported on 4 items from the September meeting and explained the challenges that the ZBA deals with on non-conforming structures.

Fiebing stated that the City has a specific policy to deal with non-conforming structures that seems to work well and explained. **Ford** stated that if the ZBA reports to the Planning Commission that there is a pattern of a problem with the Ordinance, the Planning Commission should consider an amendment to the ordinance to correct the problem. **Fiebing** stated that the issue of non-conforming structures and natural life should be sent to Committee and assigning it to the Site Plan review committee. Discussion followed about setbacks and overhangs.

STANDING COMMITTEES REPORTS

Master Plan/TDR Committee- Fiebing, Kroupa, Sanger(Chair)

Site Plan/Plat review - Rosi, Teahen, Cronander(Chair)

Peninsula Township Planning Commission

Peninsula Township Hall

13235 Center Rd., Traverse City, MI 49686

June 21, 2004

7:00 p.m.

CALL TO ORDER

ROLL CALL

PRESENT: Chair Fiebing, Cronander; Sanger; Rosi; Teahen; Hemming; Kroupa; Hayward, planner; Ford, township attorney; Boursaw, recording secretary.

ABSENT: None.

7:00 p.m. - BUSINESS MEETING

CHAIR'S REMARKS: None.

ADDITIONS TO AGENDA: None.

ATTORNEY'S REPORT: None.

PLANNER'S REPORT: Hayward noted that staff is working on getting the Master Plan into a form that can be distributed.

PUBLIC INPUT - BRIEF COMMENTS (FOR ITEMS NOT ON THE AGENDA):

Jill Byron, 10639 Center Rd., asked what was happening at the Goodman Farm (corner of Bluff and Center Roads), where excavating is taking place. Hayward has not received any information, but will check on it.

1. COMMUNICATIONS

- a. Township Board Minutes
- b. Board of Appeals Minutes

2. CONSENT CALENDAR (Any member of the Board or the Public may request an item to be removed from the consent calendar and placed on the agenda for discussion).

- c. PC Minutes of May 17, 2004
- d. Site Condominium - Zimmers - Continue table pending report from applicant on water and sewer availability.

Rosi asked that the minutes be removed for discussion.

MOTION TEAHEN/CRONANDER to approve the consent calendar as amended.

APPROVED

UNAN

PC Regular Meeting, 06/21/04

3. Public Hearing - Ordinance Amendment 141 - Guest Activity Uses - Winery Chateau.

Hayward gave an overview of the specific standards, procedures, and requirements for events that can and cannot take place under this proposed amendment. The amendment clarifies a number of current activities, i.e. wine/food seminars, cooking classes, ag-related events, etc. A number of activities are allowed, but with specific standards and requirements.

Cronander noted that when this was first discussed, the events were not to appear in competition with other commercial operations on the Peninsula. She feels this amendment accomplishes that. **Rosi** discussed parking spaces.

Fiebing opened the public hearing at 7:27 p.m.

Mark Nadolski, 10 McKinley Rd., noted further issues regarding parking.

Fiebing closed the public hearing at 7:28 p.m.

MOTION TEAHEN/CRONANDER to recommend approval of Ordinance Amendment 141 to the Township Board. **APPROVED 6-1, Hemming voting no**

4. Hooper Conservation Easement Request 2.

Teahen asked to be excused from this item, as he is representing the applicant. This was agreed.

Hayward explained the request, noting that this has come back to the Planning Commission after the building envelope was expanded. He believes this is a reasonable request. **Fiebing** doesn't see a problem, but feels it should go to the Development Review Committee for review, to avoid setting a precedent for similar conservation easement modifications in the future. Consensus to send this to committee, which will review and bring back to the Planning Commission.

5. Ordinance Amendment No. 153 - Rezoning Request - Jade Venture Group; Part of 28-11-031-004-00 - Master Plan and Ordinance Committee Report.

John Crosby, Generations Management, representing Jade Venture Group, was present and explained the request. They are requesting that the land be rezoned to R-1A; the surrounding land is also zoned R-1A. Jade Venture Group is seeking a use by right and feels this zoning complies with the zoning in the Master Plan.

Sanger gave a committee report, referencing the applicant's use by right, the PDR program, density, state law, transfer of density from one property to another, and other issues. The committee recommends denial of this rezoning request, as the applicant has other options available. **Fiebing** noted adjacent property owners who might consider transferring development rights. By asking for part of the

Expert Report

By

Thomas L. Daniels, Ph.D.
590 Northlawn Drive
Lancaster, PA 17603
August 28, 2023

In the matter of:

Wineries of the Old Mission Peninsula Assoc. et al v. Peninsula Township and Protect the Peninsula, Case No. 1:20-cv-01008-PLM-RSK (W. Dist. Mich.)

Prepared for:

Protect the Peninsula, Inc.
P.O. Box 1529
Traverse City, MI 49685

Expert Credentials

I am the Crossways Professor in the Department of City and Regional Planning at the University of Pennsylvania. I hold a Ph.D. in Agricultural and Resource Economics. I have taught land use planning for more than 25 years. I am the co-author of *The Small Town Planning Handbook* (3rd ed. 2007, American Planning Association) and co-author of *The Law of Agricultural Land Preservation in the United States* (2018, American Bar Association) and have written several journal articles dealing with agricultural zoning and farmland preservation. I served as the Director of the Lancaster County, PA Agricultural Preserve Board from 1989-1997, which is recognized as one of the leading county farmland preservation programs in the United States. I have performed consulting work and provided expert testimony on several cases involving land use and farmland. A copy of my professional resume is attached as Exhibit 1.

Materials Reviewed

To arrive at my opinions in this report, I reviewed the Michigan Planning Enabling Act, the Michigan Zoning Enabling Act, the Peninsula Township 2011 Master Plan, the Peninsula Township Zoning Ordinance text and maps, the Peninsula Township Purchase of Development Rights Ordinance and maps of preserved lands, Purchase of Development Rights conservation easements, Special Use Permits for Winery-Chateaus, Peninsula Township responses to interrogatories, deposition transcripts, the district court's June 3, 2022 order in the *Wineries of the Old Mission Peninsula Assoc. et al v. Peninsula Township and Protect the Peninsula*, Case No. 1:20-cv-01008-PLM-RSK (W. Dist. Mich.), Jesse Williams—*Balancing Development, Agriculture, and Preservation: Evaluating the Success of Old Mission Peninsula's Purchase of Development Rights Program*, and Tom Daniels—*An Evaluation of the Peninsula Township Farmland Preservation Program*, and additional documents as cited throughout this report. In addition, I toured Peninsula Township on August 9 and 10, 2023. I am presenting my opinions to a reasonable degree of professional certainty.

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November 3, 2023

Source: Report of Expert Dr. Thomas L. Daniels

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4

Introduction

In October 2020, the Wineries of Old Mission Peninsula filed suit against Peninsula Township over provisions in the Peninsula Township Zoning Ordinance. In 2022, Protect the Peninsula was allowed to intervene in the suit.

In short, Plaintiffs' claims isolate a handful of provisions that limit their ability to engage in unfettered commercial activity in an agricultural zone, such as those regulating accessory uses at wineries and limiting production capacity. Any challenged provision must be evaluated in the context of the zoning ordinance as a whole, which, in turn, should be considered according to the content of the Township master plan.

To place the challenged provisions in their proper context, I explain how land use planning and zoning work together to protect public health, safety, and general welfare. I further explain the importance of farmland land preservation, its relationship to public health, safety, and general welfare, and the use of zoning to promote farmland preservation and farming activities. I discuss how the Peninsula Township Zoning Ordinance advances both farmland preservation and farm production goals. I also explain how allowing the unrestricted land uses Plaintiffs seek would undermine agricultural land preservation and the continuation of active agriculture in Peninsula Township.

After a brief description of Peninsula Township and before I address the specifics of the challenged provisions, I feel it is helpful to present an overview of the land use planning process, the use of zoning regulations to control land use, the use of agricultural zoning, the application of agricultural zoning to wineries, and the connection between agricultural zoning and farmland preservation. In discussing these topics, I will draw on research, publications, and practice I have conducted over the last 39 years on land use planning, zoning, agricultural zoning, and farmland preservation.

I. Background

A. Peninsula Township

Peninsula Township was established in 1853 and covers 17,755 acres in Grand Traverse County, Michigan. The Township extends for 18 miles into Grand Traverse Bay of Lake Michigan and borders the City of Traverse City to the south. The Township varies in width between a half mile and three miles, offering spectacular views of Grand Traverse Bay. The Township's permanent population was 6,068 in 2020 and part-time residents add to the population, especially during the summer months.

Peninsula Township is known geographically as Old Mission Peninsula and boasts soils and a microclimate that have long supported agriculture, especially the production of stone fruit (cherries), and more recently, apple orchards and grape vineyards. The Old Mission Peninsula became an American Viticultural Area (AVA) or appellation, known for its distinctive wines in 1987.¹ An AVA is a federal designation, managed by the Alcohol and Tobacco Tax and Trade Bureau within the U.S. Treasury Department. Wine may be labeled "Old Mission Peninsula" if

¹ See 27 C.F.R. § 9.114 (describing boundaries of Old Mission Peninsula AVA).

not less than 85% of it is derived from grapes grown within the AVA boundaries.² The Old Mission Peninsula AVA is 1 of only 5 AVAs in Michigan and 268 nationwide.³

Peninsula Township is a popular tourist destination known for beautiful views of Grand Traverse Bay, gently rolling hills of orchards and vineyards, a historic lighthouse, and miles of pristine beaches and hiking trails. Peninsula Township is close to Traverse City, Michigan, a growing tourism area, and regional attractions, including Sleeping Bear Dunes National Lakeshore. As noted in the Peninsula Township 2011 Master Plan, “[t]he Township’s primary economic base is shared between its agricultural production, tourism, and home-based businesses.”⁴

B. Land Use Planning and Zoning in General

Zoning is the most common regulation to control land use in the United States. Zoning powers are delegated from state legislatures to local governments, including townships, and a township zoning ordinance is a local law. Township zoning serves to implement a township government comprehensive plan (also known as a Master Plan), which describes how the township should grow and change over the next ten to twenty years; this is common planning and zoning practice.

The comprehensive plan provides an important legal base for the zoning ordinance. The comprehensive plan spells out goals and objectives for the township, and zoning is one tool that the township employs to achieve these goals and objectives and further the public health, safety, and welfare.

The United States Supreme Court has long recognized the legality of zoning as a valid use of the police power of government under the Tenth Amendment.⁵ A fundamental purpose of zoning is to protect the public health, safety, and welfare. In doing so, zoning must strike a balance between a property owner’s right to use land and the public’s right to a healthy, safe, and orderly living environment.⁶ Zoning is generally legitimate if it allows a reasonable economic use of the property. Zoning need not allow the “highest and best” use of the property.

Four aspects of zoning promote public health, safety, and welfare. First, zoning separates conflicting land uses (e.g., industrial and residential) and locates compatible land uses near each other. Second, it sets standards for building size, lot coverage, setbacks, and the density of development. Third, it ensures consistent application of standards across zoning districts. Fourth, it creates dispute resolution and enforcement mechanisms.⁷

² 27 C.F.R. § 4.25(e)(3)(ii).

³ Michigan Wine Country. 2023. Michigan’s Five AVAs. <https://michiganwinecountry.com/wines-grapes/avas/>. Accessed May 17, 2023; Alcohol and Tobacco Tax and Trade Bureau. Established American Viticultural Areas. <https://www.ttb.gov/wine/established-avas>. Accessed August 23, 2023.

⁴ Peninsula Township 2011 Master Plan, p. 3. http://www.peninsulatownship.com/uploads/1/0/4/3/10438394/master_plan_2011_-_signed.pdf. Accessed August 23, 2023.

⁵ *Village of Euclid Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁶ Daniels et al. 2007. *The Small Town Planning Handbook*, Chicago: American Planning Association, p. 178.

⁷ *Ibid*, p. 179.

Zoning enables a local government to designate land for a particular zoning district with or without landowner consent.⁸ Zoning allows certain uses on some land and not on others, and can bestow economic benefits to some property owners while imposing economic limits on others.⁹

A zoning ordinance consists of a text and a map. The zoning text divides a township into different land use zones, such as agricultural, residential, and commercial, and zoning districts, such as R-1 single-family residential and R-2 duplex and triplex residential. The zoning map shows the location of the different zones and zoning districts.

The text also describes permissible uses for each district and commonly provides for both by-right uses and special uses. By-right uses generally include uses necessary to accomplish the purposes for which the district was created, such as houses in a residential district and farm buildings in an agricultural district. A by-right use is presumptively allowed if the landowner meets the standards for building and lot size standards, setbacks, use restrictions, and administrative permitting requirements.

Special uses are generally uses that align with the purposes of a zoning district but are not necessary to accomplish them, raise special concerns about public health, safety, and welfare, or both. Examples include childcare facilities in residential districts and produce packing and processing facilities in agricultural districts. Special uses generally require more than just administrative approval, and often involve a public application process before a planning commission, board, or other public body.

In Michigan, a township may provide for special uses in a zoning district subject to review and approval in accordance with its zoning ordinance. Approval may be at the township's discretion, in which case notice and a public hearing are required. The township may approve, deny, or approve with conditions a request for a special use, and its decision "shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed."¹⁰ An applicant has no "right" to a special use permit; the applicant must meet standards and conditions set by the township.

Uses may also be principal (or primary), accessory, or support. A principal use is the preferred use of a property in that zoning district. An accessory use is customary, incidental, and subordinate to the principal use, such as with a shed built in the backyard of a house in a residential district. A support use is like an accessory use in that it is subordinate to the principal use but unlike an accessory use it is needed to support the principal use rather than incidental to it. For example, the principal use of a campground might be overnight camping; restroom facilities may be considered necessary to support that use; and a retail store selling matches and marshmallows may be considered accessory.

If an accessory use increases too much in intensity or size, it can constitute both a zoning permit violation and an unlawful de facto rezoning and spot zoning. For example, if a landowner receives a special use permit to build a 10'x30' farm stand in an agricultural zone but builds a 30'x50' farm

⁸ Daniels and Keene, 2018, *The Law of Agricultural Land Preservation in the United States*, p. 325.

⁹ Daniels et al. *The Small Town Planning Handbook*, p. 180.

¹⁰ MCL § 125.3502.

stand instead, the farm stand would violate the permit. The farm stand may also de facto rezone its location from agricultural to commercial without government approval by creating a primary commercial use in an agricultural zone. This would also create “spot zoning,” which may be deemed illegal for conferring a special benefit on one landowner.

C. Farmland Preservation

Farming is an industry that relies upon a critical mass of farms and farmland to sustain farm support businesses, such as machinery dealers, hardware stores, feed and seed suppliers, food processors, and trucking companies. Farmland preservation can help to retain land in agricultural use and maintain the volume of crop or livestock production and thus help to keep farm support businesses operating. When an agricultural area loses farms, the volume of agricultural production falls, putting financial pressure on both the farm support businesses and the remaining farm operations. Farmland preservation involves the aspiration and opportunity for a long-term future of farming in a community.

Farmland in Michigan is generally defined to include farms of five or more acres where more than half the land is “devoted to an agricultural use.”¹¹ “Agricultural use” means “the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities.”¹²

In the United States, farmland is converted to other uses at a rate of several hundreds of thousands of acres each year.¹³ Purchase of Development Rights (PDR) programs and agricultural zoning are important and complementary tools for keeping land in active agriculture and supporting the continued viability of farming and the farm support economy. PDR provides greater protection than zoning alone because it permanently restricts land use, while agricultural zoning may be changed in accordance with local democratic processes but applies to much more land and at a far lower cost. In Michigan, supportive agricultural zoning, combined with tools like the Michigan Department of Agriculture and Rural Development (MDARD) Farmland and Open Space Preservation Program (formerly PA 116) and local PDR programs help stabilize the state’s farmland base to limit non-farm development and enhance the opportunity for farmland owners to preserve their land through the sale of development rights.

i. Purchase of Development Rights (PDR)

Farmland preservation through PDR programs, which involve the voluntary sale or donation of development rights by a landowner to a government agency or nonprofit land trust has emerged as

¹¹ MCL § 324.36101(h) (also recognizing specialty farms designated by the state and establishing minimum income thresholds for some farms).

¹² MCL § 324.36101(h) (also recognizing specialty farms designated by the state and establishing minimum income thresholds for some farms).

¹³ Sallet, Lori. 2022. American Farmland Trust. June 29, 2022. <https://farmland.org/new-report-smarter-land-use-planning-is-urgently-needed-to-safeguard-the-land-that-grows-our-food/>. Accessed May 23, 2023.

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an important and effective way to maintain land in agricultural use over the long term. The development rights are in effect retired through a deed of easement, also known as a conservation easement. Most conservation easements are perpetual and run with the land, binding future landowners.¹⁴ A conservation easement can be removed through an eminent domain action by a government or a court ruling.

The payment for development rights has enabled farmers to enhance farming operations. Also, PDR supports long-term intergenerational farming and farmland planning.

The first local PDR program was adopted in the Town of Southold in Suffolk County, New York, in 1984.¹⁵ Since then, PDR has become a common nationwide farmland and open space preservation practice, with programs in 29 states and more than 95 counties and townships.¹⁶ The federal government launched the Farm and Ranch Land Protection Program (FRPP) in 1996 to provide matching grants to state and local governments and private, non-profit land trusts to purchase development rights to farmland. In the 2014 Farm Bill, the FRPP was merged with the Wetlands Reserve Program and the Grassland Reserve Program into the Agricultural Conservation Easement Program (ACEP), which has received about \$450 million in federal funding each year in recent years.¹⁷

State farmland preservation programs have spent \$8 billion to preserve 3.4 million acres.¹⁸ Nationwide, local governments, including those in major winery areas, have preserved 540,000 acres as of 2020 at cost of \$2.1 billion.¹⁹ As of 2020, Sonoma County, California, has preserved 36,161 acres through PDR at a cost of \$96,371,250, and the Town of Southold has preserved 2,312 acres at a cost of more than \$67 million.²⁰

Michigan began a program to purchase development rights to farmland in 1994 and has since spent \$55 million to preserve more than 27,000 acres.²¹ Table 1, below, lists the local PDR programs in Michigan. Peninsula Township's is the oldest, indicating its longstanding commitment to maintaining land for agricultural production. Peninsula Township has also invested more local funds and preserved more land with local funding than the other Michigan local governments.

¹⁴ Daniels and Keene, 2018. The Law of Agricultural Land Preservation in the United States, Chicago: American Bar Association, p. 80.

¹⁵ Ibid., p. 74.

¹⁶ See Daniels and Keene, 2018. The Law of Agricultural Land Preservation in the United States, Chicago: American Bar Association, pp. 215-220.

¹⁷ National Sustainable Agriculture Coalition. 2019. Agricultural Conservation Easement Program (ACEP). <https://sustainableagriculture.net/publications/grassrootsguide/conservation-environment/agricultural-conservation-easement-program/>. Accessed August 27, 2023.

¹⁸ American Farmland Trust. 2022. Status of State PACE Programs, 2022, p. 7. https://farmlandinfo.org/wp-content/uploads/sites/2/2022/12/State_PACE_Program_Factsheet_2022.pdf. Accessed May 15, 2023.

¹⁹ American Farmland Trust. 2021. Status of Local PACE Programs, p. 6. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 15, 2023.

²⁰ American Farmland Trust. Status of Local PACE Programs, 2020, pp. 2, 4. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 18, 2023.

²¹ Ibid. p. 5.

Table 1. Michigan Local Governments with Farmland Preservation Programs.

<u>Locality</u>	<u>Year of Inception / Year of First Acquisition</u>	<u>Independent Acres Preserved</u>	<u>Independent Program Funds Spent to Date</u>
Acme Township	2004 / 2009	500	\$1,749,444
Ann Arbor Charter Township	2003 / 2006	1,128	\$3,735,544
Ingham County	2004 / 2006	3,147	\$5,500,000
Kent County	2002 / 2005	1,966	\$494,800
Ottawa County	2008 / NA	91	\$41,400
Peninsula Township	1994 / 1996	3,347	\$15,173,800
Scio Township	2004 / 2008	731	\$4,932,552
Washtenaw County	1998 / NA	2,275	\$3,617,812
Webster Township	2005 / 2009	897	\$1,466,485

Source: American Farmland Trust. 2021. Status of Local PACE Programs, 2020, pp. 2, 4.

PDR alone keeps land from being developed. Effective agricultural zoning supports PDR programs and creates an environment in which farming can thrive on preserved land by ensuring compatibility of land uses and allowing uses that support agriculture while disallowing those that undermine it.

ii. Agricultural Zoning

Many townships and counties across the United States use agricultural zoning to reduce conflicts between farmers and nonfarmers, protect productive farmland from nonfarm development, and limit the density of development. As with all zoning, agricultural zoning is a set of regulations that implement goals expressed in a master plan.

Agriculture as practiced today is essentially an industrial land use involving heavy machinery and chemical sprays and fertilizers to produce food and fiber. These activities generate noise, dust, and odors which can cause conflicts with neighboring nonfarm residential or commercial developments. In turn, nonfarm homes and businesses placed near farms can create traffic that interferes with the movement of farm machinery. Thus, local governments use agricultural zoning districts to separate areas where agriculture is the dominant and preferred land use from residential and commercial zoning districts. Agricultural zoning can also promote orderly growth by limiting how many nonfarm parcels can be subdivided from farms, thereby controlling sprawl and the cost of public services.

A key distinction in an agricultural zoning ordinance is what constitutes an agricultural use as opposed to a commercial use of the property. An agricultural use is the production of food and fiber and may include the processing and sale of those agricultural products on the farm where they are grown and processed. Also, the leading grape and wine producing areas, including Peninsula Township, may allow tasting rooms and the sale of wine-related products, such as wine glasses, but not goods unrelated to wine, such as coffee mugs. By contrast, a commercial use is

the sale of goods and services not related to agriculture and which can be sold or offered at locations in commercial zoning districts.

In an agricultural zone, agricultural production is the principal use; other uses, such as tasting rooms and the sale of wine-related products, are accessory. It is a common practice for local governments to restrict the size of tasting rooms and gift shops at wineries so that the accessory uses do not overtake the principal use of agricultural production, as shown in the four major wine-producing jurisdictions, discussed in section D below.

Agricultural zoning need not allow the highest and best use of a property, such as for a housing development, but must be a reasonable economic use of property in the jurisdiction that enacts it.²² The purpose of agricultural zoning is to maintain land in agricultural production to support the local agricultural economy and, as with zoning in general, to promote the public health, safety, and welfare.

An agricultural zoning ordinance first explains its purpose and defines uses allowed in the agricultural zone. Principal uses are typically those directly related to agricultural production, such as growing crops and raising livestock. Accessory uses may include related activities like processing, marketing, and sales of agricultural products. By-right uses typically include farming, farm dwellings, forestry, greenhouses and nurseries, and a limited number of residences. Special uses may include farm stands for direct sales to consumers, some processing of farm products, and bed and breakfast operations that are accessory to the principal farming operation.

The connection between land zoned for agriculture and land preserved by PDR is critical to the overall success of a community's effort to retain agricultural land and support agricultural operations.²³ The agricultural zone helps to buffer the preserved farmland, limiting residential and commercial development on neighboring properties that could cause conflicts with farming activities on the preserved farmland (see Figure 3). Also, land uses on farmland subject to a conservation easement must comply with the provisions of the underlying agricultural zoning.

D. Agricultural Zoning in Major Wine Producing Regions

Wine production begins with growing grapes, which may involve the use of fertilizers, pesticides, and herbicides. Harvesting can be done by machinery or by hand. Harvested grapes are destemmed, crushed, pressed, fermented, and aged. Then the wine is filtered or "fined," and bottled for sale. A winery is typically used for the post-harvest production steps and storage of finished products. It may or may not have a tasting room where visitors may sample and purchase the wines produced by the winery.

The growing and harvesting of grapes creates noise, dust, and potential chemical spray drift. Wineries require significant space for processing equipment and storage. In essence, wine

²² "Highest and best" use refers to the land use that would produce the highest value for a property.

²³ Daniels and Keene, 2018, *The Law of Agricultural Land Preservation in the United States*, Chicago: American Bar Association, pp. 329-331.

production is an industrial process. This means zoning should work to separate it from non-farm residential and commercial land uses to avoid conflicts and nuisance situations.

Below, I examine how four major grape and wine producing areas use agricultural zoning to regulate wineries: Napa County, California; Sonoma County, California; Yamhill County, Oregon, and Suffolk County, New York. This examination shows that local governments commonly require a special use permit for construction and operation of a winery, increase minimum required lot size for wineries with tasting rooms and retail sales, and regulate the percentage of grapes in wine sold by wineries to protect their appellations and wine reputation.²⁴

Napa County, California, is located in the northern region of the San Francisco Bay area and famous for its premier wines. Napa County has more than 400 wineries and 16 AVAs.²⁵ Napa County's prime grape and wine producing area is protected by an agricultural zoning district, known as the Agricultural Reserve. The Reserve covers 32,000 acres in the heart of the Napa Valley.²⁶ Sonoma County, California, is adjacent to Napa County and is another of America's premier grape and wine producing regions. Sonoma County has more than 425 wineries and 18 AVAs.²⁷ The Town of Southold is located on the north fork of the eastern end of Long Island in Suffolk County, New York. The town has about a dozen wineries and is part of the North Fork of Long Island AVA.²⁸ Yamhill County, Oregon, is located in the Willamette Valley, southwest of Portland. It is a famous wine producing region and part of the Yamhill-Carlton AVA, which has more than 50 wineries.²⁹ Yamhill County has three agricultural zoning districts, EF-80 with an 80-acre minimum lot size, EF-40 with a 40-acre minimum lot size, and EF-20 with a 20-acre minimum lot size. Wineries are a permitted use in each of these three agricultural zoning districts, subject to site design review.³⁰

i. Winery definition

Wineries are agricultural processing facilities. While many people experience them only by visiting their public-facing tasting rooms, wineries are primarily for making wine – not tasting or selling it on-site. Napa County defines a winery as “an agricultural processing facility used for the fermenting and processing of grape juice into wine; or the refermenting of still wine into sparkling

²⁴ See Napa County zoning ordinance, Section 18.104.250 - Wineries—Production capacity C. 1. and 2.

²⁵ Napa Valley Wineries. 2023. <https://www.napavalley.com/wineries/>. Accessed May 17, 2023.

²⁶ Napa Valley Life. 2018. Napa Valley Agricultural Preserve 50 Anniversary. <https://www.napavalleylifemagazine.com/napa-valley-agricultural-preserve-50th-anniversary/#:~:text=The%20best%2Dknown%20part%20is,to%20more%20than%2032%2C000%20acres>. Accessed May 17, 2023.

²⁷ Sonoma County Tourism. 2023. <https://www.sonomacounty.com/activities/wineries-wine#:~:text=With%20more%20than%20425%20wineries,to%20explore%20your%20own%20way>. Accessed May 17, 2023.

²⁸ See North Fork Wine Trail. 2023. <https://blog.signaturepremier.com/north-fork-wine-trail-guide/>. Accessed May 16, 2023; Wine-Searcher. 2023. North Fork of Long Island Wine. <https://www.wine-searcher.com/regions-north+fork+of+long+island#:~:text=North%20Fork%20of%20Long%20Island%20is%20an%20American%20Viticultural%20Area,vinifera%20grapes%20will%20reliably%20ripen>. Accessed May 17, 2023.

²⁹ Yamhill-Carlton AVA. 2023. <https://yamhillcarlton.org/wineries/#:~:text=With%20over%2050%20member%20wineries,for%20everyone%20in%20Yamhill%2DCarlton>. Accessed May 23, 2023).

³⁰ Section 402.02.H.

wine.”³¹ Sonoma County defines wineries as part of “agricultural processing,” which is allowed through a special use permit and “must be sized to accommodate, but not exceed, the needs of the on-site growing or processing operation.”³² The Town of Southold defines a winery as “a place or premises on which wine made from primarily Long Island grapes is produced and sold.”³³ Yamhill County defines a winery as “a facility that produces and sells wine” subject to maximum capacity requirements.³⁴

ii. Special Use Permit for Wineries

Wineries are commonly permitted as special land uses, but sometimes allowed by right. Napa County allows wineries only through a special use permit.³⁵ Uses allowed include wine production and bottling, offices and labs, and the sale of wine.³⁶

Sonoma County requires a special use permit for agricultural processing, defined as “[c]hanging an agricultural product from its natural state to a different form, as grapes to wine, apples to juice or sauce.”³⁷ Processing is limited to agricultural products “grown or produced primarily on-site or in the local area,” and storage, bottling, and canning, is limited to products grown or processed on-site.³⁸

The Town of Southold allows wineries as a by-right use if the winery meets certain standards, including that the wine produced and sold is “made from primarily Long Island grapes.”³⁹ Yamhill County allows a winery by right but subject to site design review.⁴⁰

iii. Tasting Rooms, Food, and Retail Sales

Wine tasting and retail sales are separate uses that may be associated with wineries, regulated either as accessory uses that are incidental and subordinate to the principal agricultural processing use or subject to their own special use permitting process. Tasting and retail sales are generally limited to local wines and wine-related promotional items.

Napa County regulates tasting rooms through the special use permitting process for wineries. Uses permitted as accessory to the principal agricultural processing use of a winery include tours, tasting, and the sale of wine-related products.⁴¹

Similarly, Sonoma County regulates tasting rooms as an additional use that must be authorized in a winery's special use permit. Tasting rooms are defined as “[a] retail food facility where one (1) or more agricultural products grown or processed in the county are tasted and sold,” and include

³¹ Napa County Zoning Ordinance, Section 18.08.640.

³² Sonoma County Zoning Ordinance, Sec. 26-18-030.C.1.

³³ Town of Southold Zoning Ordinance, Section 280-13 (4)(a).

³⁴ Yamhill County Zoning Ordinance, Sec. 402.02(H).

³⁵ Napa County Zoning Ordinance, Section 18.16.030 H.

³⁶ Napa County Zoning Ordinance, Section 19.08.640 G and Section 18.104.250.

³⁷ Sonoma County Zoning Ordinance, Section 26-18-030 A.

³⁸ Sonoma County Zoning Ordinance, Section 26-18-030.

³⁹ Town of Southold Zoning Ordinance, Section 280-13 (4) (a).

⁴⁰ Yamhill County Zoning Ordinance, Section 402.02.H.

⁴¹ Napa County Zoning Ordinance Section 18.08.640 H. 1; Section 18.08.620.

“wine tastings, olive oil, honey, fruit preserves” while excluding farm stands and farm retail sales.⁴²

The Town of Southold allows wineries to have “an accessory gift shop on the premises which may sell items accessory to wine, such as corkscrews, wine glasses, decanters, items for the storage and display of wine, books on winemaking and the region and nonspecific items bearing the insignia of the winery.”⁴³ “Wineries may not have a commercial kitchen as an accessory use but may have a noncommercial kitchen facility for private use by the employees.”⁴⁴

In Yamhill County, a winery may sell only “[w]ines produced in conjunction with the winery” and “[i]tems directly related to wine, the sales of which are incidental to the retail sale of wine on-site and do not exceed 25 percent of the total gross receipts of the retail facility.”⁴⁵ Items may include “those served by a limited service restaurant,” meaning “a restaurant serving only individually portioned prepackaged foods prepared from an approved source by a commercial processor and nonperishable beverages.”⁴⁶

iv. Limits on Production Capacity

Zoning commonly limits winery production capacity by fruit source, facility size, and/or volume of finished product. In Napa County, the maximum production capacity of a winery is established in its special use permit.⁴⁷ Napa County requires that “at least seventy-five percent of the grapes used to make the winery’s still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the county of Napa.”⁴⁸ Napa County, named California’s first AVA in 1981, has a reputation and an appellation to protect and uphold.⁴⁹

Sonoma County requires agricultural processing, including winemaking, in its agricultural zones to be “sized to accommodate, but not exceed, the needs of the on-site growing or processing operation” and “limited to processing of agricultural products grown or produced on site, and bottling, canning, or storage of agricultural products grown and processed on site.”⁵⁰ Sonoma County also limits the combined square footage of all buildings used for processing or storage to 5,000 square feet.⁵¹

The Town of Southold requires that “[a]t least 66% of the agricultural products being processed must have been grown by that bona fide farm operation,” with an exception for “cases of a catastrophic crop failure.”⁵²

⁴² Sonoma County Zoning Ordinance section 26-18-210.

⁴³ Town of Southold Zoning Ordinance, Section 280-13. C. (10).

⁴⁴ Ibid.

⁴⁵ Yamhill County Zoning Ordinance Section 402. 10. I. 2. (a) and (b).

⁴⁶ Yamhill County zoning ordinance Section 402.10 I. 2.; ORS 624.010.

⁴⁷ Napa County Zoning Ordinance Section 18.16.030 H.

⁴⁸ Napa County Zoning Ordinance, Section 18.104.250 B.

⁴⁹ Daniels, The Napa County Agricultural Preserve, p. 106.

⁵⁰ Sonoma County Zoning Ordinance, Sec. 26-18-30(C).

⁵¹ Sonoma County Zoning Ordinance, Sec. 26-18-030(C).

⁵² Town of Southold Zoning Ordinance Section 280-13. C. (13)(e).

Yamhill County defines two sizes of wineries with production capacity limitations based on the size of the vineyards they support. Wineries with a maximum annual production of less than 50,000 gallons must own an on-site vineyard of at least 15 acres, a contiguous vineyard of at least 15 acres, have a long-term contract for the purchase of all grapes from a contiguous vineyard of at least 15 acres, or obtain grapes from a combination of those three options. For wineries that produce between 50,000 and 100,000 gallons, similar requirements apply with 40-acre vineyard requirements replacing the 15-acre vineyard requirements.

The limit on the use of grapes grown outside of Napa County, the Town of Southold, and Yamhill County is consistent with federal AVA standards, designed to ensure the authenticity of wine labeled from those distinct places and to protect the quality and reputation of those distinct wines. In Yamhill County, the requirement that the grapes to support the winery be produced on or adjacent to land on which the winery sits is also a reasonable requirement to protect the quality and reputation of the wine produced by and sold at Yamhill County wineries, and to limit wine production capacity to align with local farming capacity.

The limit on production capacity prioritizes local grape growing while allowing sufficient wineries to process those grapes. Tying the wineries to local grape sources allows the area's grape growing capacity to be a natural limit on the size and number of wineries. These grape source requirements are also part of the AVA designation. Local governments are under no obligation to allow as many wineries as possible, or to allow wineries to make as much wine as possible. Landowners who wish to propose a new winery but cannot meet AVA and local zoning standards may build elsewhere.

v. Summary

Based on my professional experience and research, it is my opinion that agricultural zoning in these four major wine-producing jurisdictions promotes agricultural preservation. By defining the land use to be principally winemaking and tying it to grape growing, these ordinances limit the initial scope of the land use. The ordinances that provide for special uses recognize the potential for additional site-specific considerations and conditions. Further, they restrict commercial, non-agricultural land uses that could otherwise turn agricultural processing facilities (wineries) into primarily commercial retail stores, selling merchandise unrelated to winemaking and tasting. Finally, they ensure agricultural focus through limited production capacity through requirements for the use of local grapes and size of wineries, which further supports the local distinctive AVAs.

E. A Brief History of Land Use Planning, Zoning, Agricultural Zoning, and Farmland Preservation in Peninsula Township

Protecting farmland has been a major goal of Peninsula Township since the first master plan was adopted in 1968. The Township's first zoning ordinance followed in 1972. The ordinance created an A-1 Agricultural zoning district which covered (and still applies to) nearly 12,000 acres or roughly two-thirds of the Township (see Figure 1).

In the late 1970s, with the pending sale of 500 acres at the northern tip of the Township, residents became concerned about the threats of large housing developments and scattered homes that could

rapidly change the rural and agricultural character of the Township. The Township's 1983 master plan called for the "continued viability of agricultural production by protection of valuable farm land." Its 2011 master plan recognizes that "the peninsula is a key asset for its open agricultural lands and recreational opportunities" and articulates a vision to "preserve and protect the unique and scenic character of Old Mission Peninsula."⁵³

Peninsula Township's agricultural zoning protects farmland by, among other things, indicating agriculture as the primary, preferred land use and limiting accessory uses and non-farm uses. It is tied to the goals of the Township's master plan, reflecting the Township's longstanding interest in protecting agricultural land.

Complementary to agricultural zoning, Peninsula Township drafted an Agricultural Preservation Plan (APP) as a subplan to the master plan in 1994.⁵⁴ The APP identifies an Agricultural Preservation Area encompassing a substantial portion of the A-1 Agricultural zoned land (9,861 acres). In 1994, Peninsula Township voters passed Michigan's first township PDR program, for which land in the Agricultural Preservation area is eligible (see Figure 2). Township voters have twice renewed the PDR program, in 2003 and 2022, indicating the importance of the Township's agricultural industry and character to the majority of residents, and reflecting the popularity of the Township's policies to maintain farmland and agriculture on Old Mission Peninsula.

The Township's PDR ordinance notes that "[i]t is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Plan including open space polices, the Farmland and Open Space Preservation Act of 1974 (P.A. 116), the Historic and Conservation Easement Act and the Township ordinances regulating land use by zoning and subdivision control."⁵⁵ Recognizing that "these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline, and open lands under the pressure of increasing urban development," the ordinance establishes a PDR program that will "permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for public benefits which are served by farmlands and open space lands within the Township."⁵⁶

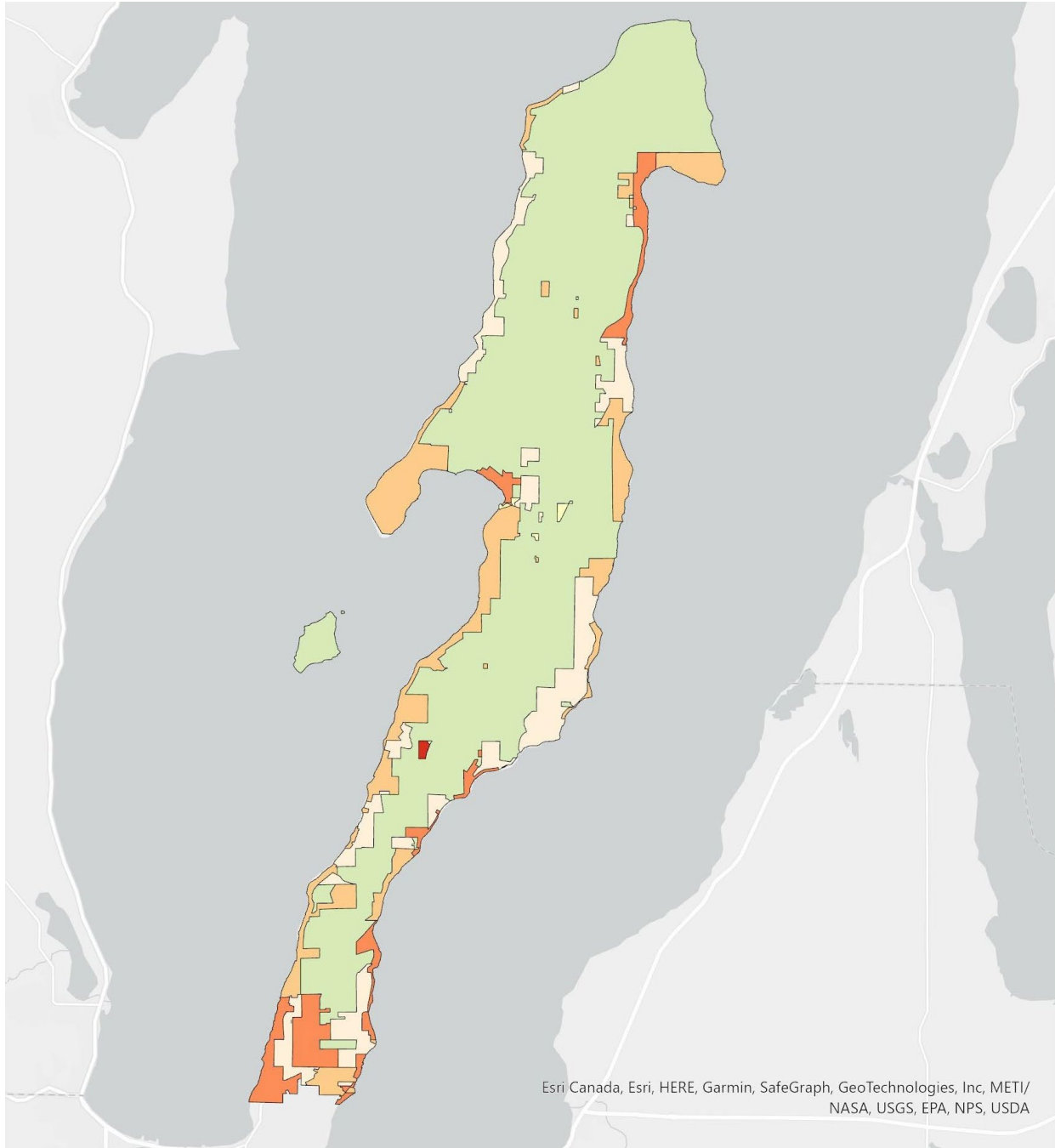
⁵³ 2011 Master Plan, p. 3.

⁵⁴ Williams, Jesse. 2022. Balancing Development, Agriculture, and Preservation: Evaluating the Success of the Old Mission Peninsula's Purchase of Development Rights Program.

⁵⁵ Peninsula Township PDR Ordinance Section 1 (4).

⁵⁶ Ibid.

Figure 1: Peninsula Township Zoning Map



- A-1 Agricultural Zoning
- C-1 Commercial Zoning
- R-1A Rural and Hillside Residential Zoning
- R-1B Coastal Zone Residential Zoning
- R-1C Suburban Residential Zoning
- R-1D Community Residential Zoning

Figure 2. Peninsula Township Agricultural Preservation Area



Agricultural Preservation Area

This map highlights the Agricultural Preservation Area, the prioritized agricultural land that would be desirable to preserve. This does not represent the amount of land currently under conservation easements, although some land in this area is protected (see next figure).

“Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their ‘Agricultural Use,’” defined as “the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities on substantially undeveloped land.”⁵⁷

Peninsula Township has 5,181 acres of preserved agricultural land, accounting for more than half of the land identified in the Agricultural Preservation Area. This is an impressive achievement resulting from more than \$15 million the Township has invested in its PDR program.⁵⁸ In addition, the Township has received funding from the State of Michigan, American Farmland Trust, and the federal Farm and Ranch Lands Protection Program (now part of the federal Agricultural Conservation Easement Program).⁵⁹ The combination of Township and outside funding has provided strong support for the Township’s agricultural economy to enable a long-term future for agriculture on Old Mission Peninsula. The passage of an additional millage for the Township’s PDR program in 2022 is expected to generate additional millions of dollars for farmland preservation.

Four of the eleven wineries on Old Mission Peninsula own or lease preserved farmland: Black Star Farms, Bonobo, Chateau Grand Traverse, and Mari Vineyards. Chateau Grand Traverse sold a permanent conservation easement to the State of Michigan; the Township holds the development rights for Black Star Farms, Bonobo, and Chateau Grand Traverse.

As I reported in 2008:

Peninsula Township has created the most successful farmland preservation program in Michigan and one of the most successful among local governments in the United States. The measures of success are many: a) Nearly one-third of the Township’s 17,755 acres have been placed under permanent conservation easements; b) The preserved farms are often adjacent to each other; c) Landowners continue to apply to sell their development rights; d) The Township has identified a 9,200-acre Agricultural Preservation Zone in its Master Plan where agriculture is the preferred use and 80% of the preserved land is located within the APZ.

* * *

The strategy of the Township PDR program has featured the preservation of farmland with scenic views of Grand Traverse Bay. This strategy has attempted to accomplish two goals at the same time: 1) preserve the scenic views which both the

⁵⁷ Ibid., Section 2 (1).

⁵⁸ American Farmland Trust. 2021. Status of Local PACE Programs, 2020, p. 4. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 18, 2023.

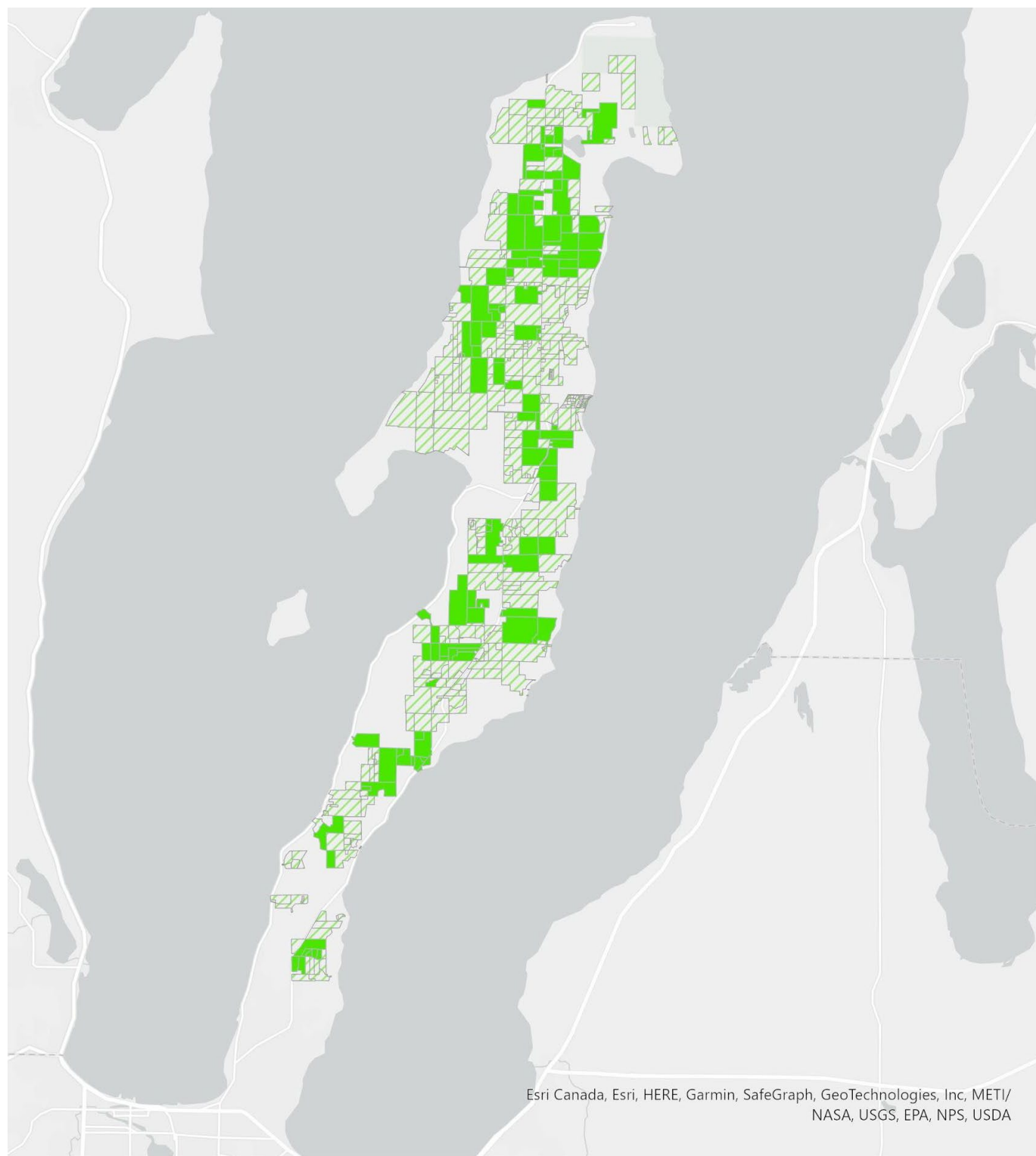
⁵⁹ Daniels, T. 2008. An Evaluation of the Peninsula Township Farmland Preservation Program, p. 4.

Township residents and tourists enjoy; and 2) preserve agricultural land in order to keep the fruit industry alive and thriving on the peninsula. The Township has done a good job of minimizing development along Michigan Route 37, and the views are often spectacular.⁶⁰

Figure 3 below shows how Township farmland has been preserved in several contiguous blocks, which helps to keep non-farm development at a distance, thus minimizing potential conflicts over farming practices.

⁶⁰ Ibid., pp. 5,7.

Figure 3. Preserved Farmland in Peninsula Township.



- Protected Parcels
- Agricultural Preservation Area

II. Analysis of Challenged Zoning Provisions

Plaintiffs challenge select subparts of Peninsula Township Zoning Ordinance sections that establish three winery uses in the A-1 District: Farm Processing Facility – a use by right under Section 6.7.2(19); Winery-Chateau – a special use under Section 8.7.3(10); and Remote Winery Tasting Room at 8.7.3(12). To analyze these challenges, I explain the purpose of the Peninsula Township Zoning Ordinance as a whole, the agricultural zoning provisions within the Township Ordinance, winery uses allowed by right and uses allowed by special use permits. The analysis shows that the challenged provisions are reasonable and are similar to provisions used by the four major wine producing areas cited in this report.

A. Peninsula Township Zoning Ordinance (PTZO)

The purposes of the Peninsula Township Zoning Ordinance (PTZO) are:

[T]o protect the public health, safety, morals and general welfare of the inhabitants of the Township; to provide for adequate light, air and convenience of access to secure safety from fire and other dangers; to avoid undue concentration of population by regulating minimum open spaces and by regulating and limiting types and locations of buildings and regulating the location of trades, industries, and buildings designated for specific uses; to provide for the orderly development of the Township; to encourage the use of lands and resources of the Township in accordance with their character and adaptability; to provide for safety in traffic, adequacy of parking and reduce hazards to life and property; to facilitate the development of adequate systems of fire protection, education, recreation, water supplies and sanitary facilities; and to conserve life, property, natural resources and the use of public funds for public services and improvements to conform with the most advantageous use of lands, resources and properties.⁶¹

To further these purposes, the Peninsula Township Zoning Ordinance divides the Township into six zoning districts: A-1 Agricultural, C-1 Commercial, R-1A Rural and Hillside Residential, R-1B Coastal Zone Residential, R-1C Suburban Residential, and R-1D Community Residential (see Figure 1). For each zoning district, it spells out required minimum lot sizes, setbacks, building height, lot coverage, and uses allowed by right or by special use permit. It also establishes who has zoning authority, the zoning permitting processes and procedures, appeals and requests for interpretation, land uses and their standards, enforcement procedures, and the amendment and re-zoning process. The A-1 Agricultural Zoning District in particular serves the goals of the Township master plan to “protect the unique and scenic character of Old Mission Peninsula” and to “retain and attract growers and agricultural entrepreneurs.”⁶²

i. The A-1 Agricultural Zoning District

⁶¹ Peninsula Township Zoning Ordinance Section 2.1.

⁶² 2011 Master Plan, pp. 3, 27.

The A-1 Agricultural Zoning district “is intended to recognize the unique ecological character of the Peninsula and to preserve, enhance, and stabiliz[e] existing areas within the Township which are presently being used predominately for farming purposes, yet recognize that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses which are deemed to be compatible with agricultural and open space uses.”⁶³ Uses permitted by right include one- and two-family dwellings; mobile homes; “field crop and fruit farming, truck gardening, horticulture, aviaries, hatcheries, apiaries, green houses, tree nurseries, and similar agricultural enterprises along with accessory uses incidental to” those uses; raising and keeping of small animals and livestock; customary home occupations; “[r]oadside stands selling regionally grown fresh and/or processed farm produce, raw forest products, cut flowers, potted plants, agricultural and forest products”; cemeteries; farmworker housing; public parks and recreation areas; conservation areas; customary uses and structures incidental to principal rural residential uses; mining and topsoil removal subject to supplementary use regulations; day care; barn storage; and “Farm Processing Facility” wineries.⁶⁴

Uses permitted by Special Use Permit include Planned Unit Developments, special open space uses, recreational vehicle parks or campgrounds, food processing plants, institutional structures like schools and places of worship, greenhouses and nurseries with retail sales, riding stables, livestock auction yards, raising of fur-bearing animals for profit, for-profit game and hunting preserves, veterinary facilities and kennels, sawmills, agricultural storage, golf courses and country clubs, public buildings and service installations, waste disposal and treatment facilities, airports and airfields, warehouses and light industrial uses, wind energy conversion systems, bed and breakfast establishments, adult foster care facilities, and Winery-Chateau and Remote Winery Tasting Room wineries.⁶⁵

Peninsula Township’s roadside stand provisions are an example of how it seeks to allow some degree of retail activity while maintaining the A-1 District’s purpose of ensuring land is used primarily for farming. It excludes non-regional and non-agricultural items from sale and is intended “to provide only for the limited seasonal sale of agricultural and related products, but not to encourage the size of investment in equipment that would require a commercial zone.”⁶⁶

ii. Winery Uses in the A-1 District

The Peninsula Township Zoning Ordinance defines a winery as “a state licensed facility where agricultural fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility. The site and buildings are used principally for the production of wine.”⁶⁷

Until it was amended in December 2022, the PTZO permitted the following three winery land uses in the A-1 District: Farm Processing Facilities, Winery-Chateaus, and Remote Winery Tasting Rooms. A Farm Processing Facility is “a building or buildings containing an area for processing

⁶³ Peninsula Township Zoning Ordinance Section 6.7.1.

⁶⁴ Peninsula Township Zoning Ordinance Section 6.7.2

⁶⁵ Peninsula Township Zoning Ordinance Section 6.7.3, 8.7.2.

⁶⁶ Peninsula Township Zoning Ordinance Section 6.7.2 (8)(f)

⁶⁷ Peninsula Township Zoning Ordinance Section 3.2

equipment where agricultural produce is processed or packaged and prepared for wholesale and/or retail sales” and “may also include a retail sales area for direct sales to customers and a tasting room for the tasting of fresh or processed agricultural produce including wine, as well as “necessary parking, lighting and access to a public road.”⁶⁸ A Winery-Chateau is “a state licensed facility whereat (1) commercial fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility and (2) a limited number of guest rooms with meals are offered to the public.”⁶⁹ A Remote Winery Tasting Room is a tasting room not located on the same property as its associated winery.⁷⁰

Use by Right – Farm Processing Facility

The construction and use of a Farm Processing Facility winery is allowed by right as a way “to promote a thriving local agricultural production industry and preservation of rural character.”⁷¹ A Farm Processing Facility is intended to include retail and wholesale sales of fresh and processed agricultural produce but is not intended to allow a bar or restaurant on agricultural properties and does not include permission to hold “weddings, receptions and other social functions for hire.”⁷²

Most of the produce sold must be grown on the specific farm operation associated with the Farm Processing Facility and must be grown on Old Mission Peninsula. A Farm Processing Facility must be located on a parcel that meets minimum acreage requirements. While it may have unlimited underground facilities, its above-grade floor area and retail space are limited.⁷³ The above-ground size limitation affects, among other things, stormwater runoff and visual impacts and thus relates to the public health, safety and welfare purpose of zoning.

Limiting accessory uses like food service, marketing, and retail sales; and limiting production capacity, including through building size and grape source requirements, are common practice in the zoning ordinances of the leading grape and wine producing regions mentioned earlier.

Special Uses – Winery Chateau and Remote Winery Tasting Room

The Winery-Chateau is a special use permitting the “construction and use of a winery, guest rooms, and single family residences as a part of a single site.”⁷⁴ It requires a 50-acre minimum site, upon which the principal use is a winery. There are no local grape source requirements for wine produced and sold, but at least 75% of the site must be used for active production of crops that can be used to make wine.⁷⁵ Guest rooms, a manager’s residence, and single-family residences are allowed as support uses, and accessory uses are permitted so long as they are no greater than reasonably necessary to serve the principal use.⁷⁶ “Accessory uses such as facilities, meeting

⁶⁸ Peninsula Township Zoning Ordinance Section 3.2

⁶⁹ Peninsula Township Zoning Ordinance Section 3.2

⁷⁰ Peninsula Township Zoning Ordinance Section 8.7.3 (12)

⁷¹ Peninsula Township Zoning Ordinance Section 6.7.2. (19) (a)

⁷² Peninsula Township Zoning Ordinance Section 6.7.2. (19) (a)

⁷³ Peninsula Township Zoning Ordinance Section 6.7.2. (19) (b) (6)

⁷⁴ Peninsula Township Zoning Ordinance Section 8.7.3 (10)

⁷⁵ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (h)

⁷⁶ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (d)

rooms, and food and beverage services shall be for registered guests only,” and “not . . . greater in size or number than those reasonably required for the use of registered guests.”⁷⁷ The Township Board may approve activities for people in addition to registered guests – “Guest Activity Uses” – as support uses if certain standards designed to promote active crop production beyond the 75% minimum are met.⁷⁸ Guest Activity Uses include wine and food seminars and cooking classes, meetings of local nonprofit groups, and agriculture-related meetings.⁷⁹ “[E]ntertainment, weddings, wedding receptions, [and] family reunions” are excluded from the definition of permissible Guest Activity Uses.⁸⁰

The Remote Winery Tasting Room is a special use that is allowed for a tasting room that is not on the same property as the winery that produces the wine. It is another example of the Township’s effort to use zoning to balance agricultural production with the sale of agricultural products grown on Old Mission Peninsula and protect the public health, safety, and welfare. While it requires only a 5-acre parcel for the tasting room site, the tasting room and winery parcel must be under single ownership with “a minimum of 150 acres in Peninsula Township under that ownership and a minimum of 50% of the 150 acres shall be in active agricultural use.”⁸¹

A discretionary decision whether to approve a special land use requires “a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.”⁸² These findings and conclusions and any conditions appear in the Special Use Permits issued for Winery-Chateaus and the Remote Winery Tasting Room in Peninsula Township.

Seven wineries in the Township have Special Use Permits for Winery-Chateaus (Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Mari) and one has a Special Use Permit for a Remote Winery Tasting Room (Peninsula Cellars). As contemplated by the Michigan Zoning Enabling Act, some have conditions in addition to the requirements of the Peninsula Township Zoning Ordinance to further promote health, safety, and general welfare. For example, in the Mari Vineyards Special Use Permit, the Township added a condition saying there can be no amplified sound outdoors in order to protect the residential neighbors.

B. How the Peninsula Township Zoning Ordinance Promotes Agricultural Preservation

The Peninsula Township Zoning Ordinance serves to implement the Township Master Plan, protect property values, protect natural resources, prevent nuisances, and ensure the compatibility of uses.⁸³ It describes the purpose, intent, and land use regulations for each zoning district, including the purpose for the A-1 District to “preserve, enhance, and stabiliz[e] existing areas

⁷⁷ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (m)

⁷⁸ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (u)(1)(a), 3

⁷⁹ Peninsula Township Zoning Ordinance Section 8.7.3 (10)(u) 2

⁸⁰ Peninsula Township Zoning Ordinance Section 8.7.3 (10)(u)(2)(d).

⁸¹ Peninsula Township Zoning Ordinance Section 8.7.3(12)(a)-(e).

⁸² MCL 125.3502(4).

⁸³ 2011 Master Plan, p. 45.

within the Township . . . used predominately for farming purposes” and allow limited, compatible other uses.⁸⁴

As Peninsula Township stated in response to Plaintiffs’ interrogatories, in adopting the challenged provisions, it “sought to prevent deterioration of the agricultural district and character of the Township’s lands and to the agricultural production industry and farming as well as promote the government interests outlined below.”⁸⁵ It described its interests as follows:

The government interests in enacting this Ordinance were, including but not limited to: preserving the agricultural production industry and providing permanent land for the same; maintaining the Township’s character; providing economically feasible public sewer and water systems to serve a future population; establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.⁸⁶

These statements express common and standard purposes for agricultural zoning and reflect local government’s strong interest in maintaining productive agricultural land and promoting orderly growth. The provisions that are being challenged further these stated interests. For example, by limiting retail sales to logo merchandise and wine-related items, the Peninsula Township Zoning Ordinance allows wineries to be profitable without changing them to commercial uses on agricultural land.

The A-1 Agricultural District “identifies those parcels within the Township where the land’s unique ecological and physical attributes allow viable agricultural operations and farming practices to exist”; its regulations “are designed to preserve, enhance, and stabilize existing areas within Peninsula Township where agriculture is the predominant use of the land.”⁸⁷ The performance standards in the Peninsula Township Zoning Ordinance for Farm Processing Facilities, Winery-Chateaus, and Remote Winery Tasting Rooms further this purpose, as well as the general purpose of zoning to promote the public health, safety, and welfare.

Establishing acreage minimums, limiting production capacity, and ensuring tasting room and other accessory uses do not overshadow the primary use of wine production also aligns with zoning in other major wine-producing jurisdictions.

The performance standards in the Peninsula Township Zoning Ordinance differentiate between principal uses and accessory uses, which cannot overtake the principal use to become the dominant use of the property. Generally, the more acreage in active agricultural production, the more accessory and/or support uses are permitted. A property owner needs only a small area for a Farm Processing Facility use by right, but there are additional grape source requirements and other restrictions (similar to Yamhill County’s agricultural zoning ordinance). More land is

⁸⁴ Peninsula Township Zoning Ordinance Section 6.7.1

⁸⁵ DEFENDANT PENINSULA TOWNSHIP’S SUPPLEMENTAL ANSWERS TO PLAINTIFFS’ FIRST SET OF INTERROGATORIES, p. 7.

⁸⁶ Ibid., p. 8.

⁸⁷ 2011 Master Plan, p. 15.

required for a Winery-Chateau with guest rooms and no grape source requirements. And, Guest Activity Uses can be added to a Winery-Chateau Special Use Permit if the winery produces and/or buys a certain amount of grapes grown on Old Mission Peninsula. Additionally, a landowner needs more land to locate a remote tasting room somewhere other than on the farm parcel.

Below I list the kinds of limitations that the plaintiffs are challenging. Then, I offer a response, part of which includes examples from the zoning ordinances of the major wine producing areas cited in this report to show that the Peninsula Township Zoning Ordinance are common zoning practices in other wine producing areas.

Plaintiffs are challenging the following limitations:

- i. Limits on food and beverage service:
 - 6.7.2(19)(a) – Farm Processing Facilities are not intended, among other things, to allow bar or restaurant uses.
 - 8.7.3(10)(m) – Accessory uses such as facilities, meeting rooms, and food and beverage service at Winery-Chateaus are limited to what is reasonably necessary for registered (i.e., overnight) guests.
 - 8.7.3(10)(u) – Notwithstanding 8.7.3(10)(m), Winery-Chateaus may offer food service to Guest Activity Use attendees under the following circumstances:
 - 8.7.3(10)(u)(2)(a) – Attendees of wine and food seminars and cooking classes may consume food prepared in class;
 - 8.7.3(10)(u)(2)(b) – Light lunch or buffet, but not full course meals, may be served at local nonprofit meetings (which are not to resemble a bar or restaurant use);
 - 8.7.3(10)(u)(2)(c) – Full course meals are permitted at agriculture-related meetings to demonstrate connections between wine and other foods; and
 - 8.7.3(10)(u)(5)(c) – The only alcoholic beverages that may be served during Guest Activity Uses are those produced on-site.

Section 6.7.2(19)(a) states that: “The majority of the produce sold fresh or processed has to be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the Specific Farm Processing Facility. Eighty-five (85) percent of the produce sold fresh or processed has to be grown on Old Mission Peninsula.” This provision reflects the American Viticultural Area designation for wine sold with the Old Mission Peninsula source on the label and helps maintain the distinctiveness and reputation of Old Missing Peninsula wine. The more distinctive a wine, the higher price it is likely to command, which benefits grape growers and wine producers alike. This is what branding is all about.

This provision is also consistent with requirements for a certain percentage of locally grown grapes in wine sold in the four major wine- producing areas cited earlier in this report. For example, Napa County requires at least 75% of grapes used to make a winery’s still wine or the still wine used by

the winery to make sparkling wine to be grown in the county.⁸⁸ The Town of Southold requires at least 66% of agricultural products being processed to have been grown by the winery's own farm operation.⁸⁹

Limitations on food and beverage service at wineries is common. For example, the Town of Southold prohibits wineries from having commercial kitchens.⁹⁰ So is allowing the tasting or sale only of wine produced onsite. For example, wineries in Yamhill County may only sell wines produced in conjunction with the winery.⁹¹

Bars, restaurants, and catering are commercial uses typically separated from other uses and limited to being located in a commercial zoning district. In my experience, a bar or restaurant is a commercial use and not an agricultural use because it does not produce agricultural commodities. By contrast, a tasting room is an accessory use that allows for the tasting and the sale of wine produced on the premises.

ii. Exclusion of weddings, wedding receptions, and other private events for hire from the scope of permitted uses:

- 6.7.2(19)(a) – “Activities such as weddings, receptions and other social functions for hire are not allowed, however, participation in approved township wide events is allowed.”
- 8.7.3(10)(u)(2)(d) – “Guest Activity Uses do not include weddings, wedding receptions, family reunions, or sale of wine by the glass.”
- 8.7.3(10)(m) – Accessory uses such as facilities, meeting rooms, and food and beverage service at Winery-Chateaus are limited to what is reasonably necessary for registered (i.e., overnight) guests.

A general concept in zoning is that uses not expressly permitted in a particular zoning district are presumed not to be permitted. For example, a zoning ordinance does not have to say event venues are not allowed in residential zoning districts. The ordinance would list the uses that are allowed in the zoning district, such as dwellings, churches, parks, and schools.

Wineries, which are the principal permitted use under the Farm Processing Facility and Winery-Chateau provisions, are agricultural processing facilities. Uses like tasting rooms and retail sales of wine produced in these facilities are accessory, meaning customary and incidental to the production of the wine. Winery-led events to promote themselves and local agriculture, like wine club promotional events in the tasting rooms, Guest Activity Uses, and Township-wide events like Blossom Days may be appropriate accessory uses.⁹² But private events for hire and facility rentals

⁸⁸ Napa County zoning ordinance Section 18.104.250B.

⁸⁹ Town of Southold Zoning Ordinance, Section 280-13. C. (13)(e).

⁹⁰ Section 280-13. C. (10).

⁹¹ Yamhill County zoning ordinance Section 402.02(H) 2 (a).

⁹² Blossom Day is a celebration of the cherry blossom in the spring in Peninsula Township. See Old Mission Peninsula Wine Trail. <https://www.ompwinetrail.com/event/blossom-day/>. Accessed August 27, 2023.

that use agriculture as a setting, like weddings, wedding receptions, corporate conferences, and family reunions, are not customary or incidental uses of agricultural processing facilities, so they are not principal nor support uses. At best, they are accessory uses that are reasonably limited.

Limitations on accessory uses, generally, are a common practice in the zoning ordinances of the major wine producing areas cited in this report. Limitations on activities and events such as weddings, wedding receptions, and family reunions are meant to keep non-agricultural uses out of agricultural areas. Like a bar or restaurant, uses such as weddings, receptions and other social functions for hire are commercial uses, not agricultural uses. These uses belong in a Commercial zoning district and that is where they typically occur. Weddings may also be appropriate as accessory uses at places of worship located in residential and agricultural districts, as they would be customary and incidental to those uses (unlike agricultural processing facilities).

iii. Establishing standards and requiring advance notice and/or approval for some activities or events:

- 8.7.3(10)(u) – Allowing the Township Board to approve Guest Activity Uses in a Winery-Chateau's Special Use Permit as "Support Uses" in accordance with certain requirements, including that Guest Activity Uses are limited to food and wine seminars and cooking classes (8.7.3(10)(u)(2)(a)), local 501(c)(3) meetings (8.7.3(10)(u)(2)(b)), and agricultural-related meetings (8.7.3(10)(u)(2)(c)), which require either advance notice or (for ag-related meetings only) approval
- 8.7.3(10)(u) – Establishing standards for Guest Activity Uses, including:
 - 8.7.3(10)(u)(1)(b) – Guest Activity Uses are intended to promote Old Mission Peninsula agriculture by identifying local food/wine, providing promotional materials, or conducting tours;
 - 8.7.3(10)(u)(1)(d) – Guest Activity Uses do not include wine tasting and promotional activities and free entertainment in the tasting room;
 - 8.7.3(10)(u)(2)(d) – Guest Activity Uses do not include weddings, wedding receptions, family reunions, or sale of wine by the glass;
 - 8.7.3(10)(u)(5)(a) – Guest Activity Uses must promote Old Mission Peninsula agriculture by identifying local food/wine, providing promotional materials, or conducting tours;
 - 8.7.3(10)(u)(5)(c) – only wine produced on-site may be served during allowed events.
 - 8.7.3(10)(u)(5)(g) – no amplified instrumental music is allowed during allowed events; and
 - 8.7.3(10)(u)(5)(h) – no outdoor displays of merchandise, equipment, or signs are allowed during allowed events.

Limitations on the tasting and sale of wines only produced onsite is a common practice in the zoning ordinances of the major wine producing areas cited in this report as previously discussed. Limiting activities or events to those that promote local agriculture, including the wine they produce onsite, offers wineries an opportunity to increase their sales and profitability without allowing accessory activity and event uses to overtake the principal winery use of wine production.

Wineries are also likely to benefit from conducting tours of their facilities and promoting a local wine trail to visitors. In my experience, most visitors to a wine region look to sample wines from more than one winery.

Requiring notice or approval for certain activities and events is also, in my opinion, a reasonable way to regulate accessory activities, especially activities that are not normally permitted at a winery part of agricultural processing. The Township A-1 Agricultural District here is favorable to the wineries, in my opinion, by creating a process to allow meetings and activities that otherwise would not be permitted, generally related to food and agriculture at the wineries.

iv. Allowing retail sales of only wine and winery- and agriculture-related merchandise

- 6.7.2(19)(b)(1)(v) – Allows the retail sale of logo merchandise at Farm Processing Facilities “directly related to the consumption and use” of the agricultural produce sold at the winery (i.e., wine); the logo must be permanently affixed to the merchandise and prominent; the sale of wine glasses and corkscrews is permitted, but not clothing, coffee cups, or bumper stickers.
- 8.7.3(12)(i) – Allows the retail sale of logo merchandise that promotes the winery or Old Mission Peninsula agriculture at Remote Winery Tasting Rooms (such as Peninsula Cellars); the logo must be permanently affixed to the merchandise; the sale of corkscrews, wine glasses, t-shirts, and bumper stickers is permitted.

Limitations on the sale of wine and wine-related merchandise is a common practice in the zoning ordinances of the major wine producing regions cited in this report. For example, Napa County allows the sale of “wine-related products,” and the display, but not the sale, of art or items of historical, ecological, or viticultural significance to the wine industry.⁹³

These provisions, in my opinion, advance the goal of encouraging growers to produce, process, and market agricultural products” and thus maintain land in agricultural use. Merchandise not related to wine or the agricultural product grown on the farm property is a commercial activity, and that merchandise can and should be sold in a commercial zoning district.

v. Establishing maximum facility and retail space size

- 6.7.2(19)(b)(6) – Limits above-grade floor area of a Farm Processing Facility to 6,000 square feet or 0.5% of parcel size, whichever is less; requires retail space to be a separate room limited to the greater of 500 square feet or 25% of the facility’s total above-grade floor area.⁹⁴

Other wine-producing areas have provisions in their zoning ordinances to limit winery size. For instance, Yamhill County has a limit of does so by imposing a production capacity limit of 100,000

⁹³ Napa County Zoning Ordinance, Section 18.08.640 H.

⁹⁴ In January 2019, Amendment 197 changed this provision to allow a maximum above-grade facility size of 30,000 square feet with 1,500 square feet for retail, (or 250 square feet per acre with the retail space being no more than 25% of the total facility area, whichever is less).

gallons of wine.⁹⁵ The Town of Southold restricts accessory buildings to 3% of total parcel size.⁹⁶ Sonoma County requires agricultural processing, including winemaking, in its agricultural zones to be “sized to accommodate, but not exceed, the needs of the on-site growing or processing operation” and limits the combined square footage of all buildings used for processing or storage to 5,000 square feet.⁹⁷

C. The Harm If the Provisions of the Peninsula Township Zoning Ordinance Are Invalidated

The provisions discussed above limit or avoid threats to productive agriculture and advance the Township’s master plan principally by limiting nonagricultural uses in the A-1 District. The Plaintiffs through this lawsuit apparently seek to undo the Township’s agricultural zoning through the invalidation of the provisions that the Plaintiffs challenge. If these provisions were eliminated without the opportunity to replace them with other provisions intended to achieve the overall intent of the Peninsula Township Zoning Ordinance – *i.e.*, supporting agricultural preservation and ensuring compatible land uses – and if the result is that wineries may operate without effective limits on production and accessory uses, there would be several negative effects on the Township and its residents, in my opinion. These effects call into question whether the A-1 Agricultural District will be able to function according to its intent and purpose to further the Township’s interests as spelled out both in the Township Master Plan and the Peninsula Township Zoning Ordinance.

The likely negative effects that adversely impact agricultural operations, in my opinion, include but are not limited to:

1. More traffic and greater difficulty in moving farm machinery along roads. During my visit to the Township on Wednesday, August 9, 2023, I observed fairly heavy traffic along M-37 (Center Road) in the late morning and early afternoon. If wineries were allowed to offer additional commercial, non-farm-related goods and services, such as convenience store items, private events for hire, and non-local agricultural produce, traffic levels would likely increase, and the wineries would draw traffic during extended hours. Additional vehicles and additional times of heavier traffic would create additional challenges to moving farm machinery and harvested produce along the roads of Peninsula Township, as most of the wineries are located in the northern two-thirds of the Township.
2. The removal of on-site and local grape source limits will allow wineries in the A-1 District to increase the bottling, labeling, and retail sales of wine produced from juice or grapes produced elsewhere, to the detriment of local agriculture.
3. Adverse impacts on traditional farming through higher land prices brought about by the elevation of accessory uses for the sale of goods and services not related to agriculture above the principal use of properties for agricultural production.

⁹⁵ Yamhill County Zoning Ordinance, Section 402.02(H) 1 (b).

⁹⁶ Town of Southold Zoning Ordinance, 280-15.

⁹⁷ Sonoma County Zoning Ordinance, Sec. 26-18-030(C).

4. Undoing the Township's agricultural zoning to allow the sale of goods and services not related to agriculture and removing production requirements would likely open up agricultural lands to increased commercial development. The distinction between purely commercial use and agriculture would become blurred if wineries were allowed to buy, process, bottle, and sell wine without local active agricultural production. The wineries would simply become wine shops or bars, like those commonly found in a commercial district. Similarly, if the wineries are allowed to sell a variety of foods and generic items, then people on their way to the beaches will start visiting wineries for sandwiches and supplies, not wine tasting.
5. This commercialization of agricultural land would likely push up land prices, posing a threat to active agriculture, including stone fruit and apple production on the Peninsula. The opportunity for conversion from traditional farming to more lucrative land uses like facility rentals for private events and/or residential development will especially become a problem when the current generation of farmers retires because the next generation will be priced out of new entry or expansions due to the higher land costs.

D. Conclusions

Peninsula Township has invested considerable resources over many years to craft the Township Master Plan, A-1 Agricultural District, Agricultural Preservation Plan, Agricultural Preservation Areas, and PDR program to protect and maintain the agricultural land base and to support the agricultural industry on Old Mission Peninsula.

In my opinion, the Plaintiffs misinterpret the fundamental purpose of zoning and, in particular, the purpose of the Township A-1 Agricultural District, which is to "to preserve, enhance, and stabilize existing areas within the Township which are presently being used predominately for farming purposes."⁹⁸ The removal of limitations in the challenged provisions to allow more commercialized uses on agricultural land -would likely create externalities felt on neighboring properties, reducing the enjoyment of those properties by their residents and undermining efforts to maintain agricultural production as the primary land use in the A-1 district.

The Township, in my opinion, through its land use and related programs, strives to balance agricultural production, agricultural processing, and the sale of agricultural products against purely commercial activity with no direct relationship to agriculture. In setting this balance, Peninsula Township designed a zoning ordinance of by-right and special uses that is similar to those found in other leading grape and wine-producing areas in the United States. The balance is delicate but presently working. The A-1 District contains a significant amount of farmland in active agricultural production while allowing for the reasonable economic use of the property, as evidenced by some wineries operating their facilities as principally agricultural businesses in the A-1 District for decades.

Allowing retail sales of non-agricultural items in the A-1 Agricultural District invites a haphazard pattern of commercial development, which is contrary to the present rural and agricultural

⁹⁸ Peninsula Township Zoning Ordinance, Section 6.7.1

character of the Township. Furthermore, the retail sale of non-agricultural items and the addition of non-agricultural activities, such as weddings and receptions for hire, would push up land prices and make it more difficult for farmers on the Peninsula to maintain their agricultural operations over time.

Increased retail sales of non-agricultural goods and commercial hospitality services at the wineries would necessarily generate greater traffic along M-37, given that most of the wineries are located in the northern two-thirds of the county. This increased traffic, in turn, would create greater challenges for farmers attempting to move machinery along the Township's roads and move produce off the Peninsula during harvest time.

Also, the in-effect upzoning of agricultural land to allow for event venues for hire would raise agricultural property values in an undesirable way, reflecting not the fundamental agricultural productivity, but non-agricultural uses allowed on the properties. This puts farmers without venues for hire at a disadvantage in competing for land.

Upzoning wineries for more commercial activities would also create the opportunity to turn accessory non-agricultural uses into the principle uses in the A-1 district, contrary to longstanding Township plans and programs. Converting wineries into commercial uses would in effect mean re-zoning those parcels from agricultural to commercial, which only the Township Board has the authority to do.

In sum, it is my opinion that the Peninsula Township A-1 Agricultural District serves a common, standard, and reasonable public purpose in protecting agricultural land for agricultural production for the benefit and welfare of Township residents.

Exhibit 1



Thomas L. Daniels

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Phone: (215) 573-8965 (W)
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Education

1984 Ph.D. in Agricultural and Resource Economics, Oregon State University.

1977 M.S. in Agricultural and Resource Economics, University of Newcastle-upon-Tyne, England. Study on a Rotary Foundation Fellowship.

1976 B.A. cum laude in Economics, Harvard University.

Planning Experience

July 2003-
Present

Full Professor with Tenure, Department of City and Regional Planning,
University of Pennsylvania.

Teach: Land Use Planning, Environmental Planning, Planning for Climate Change,
and Land Preservation. Acting Chair, January-June 2006, July, 2015-June 2016.
Crossways Professor, 2020-present.

Erasmus Mundo Scholarship, University of Venice IUAV, March, 2017

Clarkson Chair, Department of Urban Planning, University of Buffalo, October, 2011.

July 1998-
June 2003

Full Professor with Tenure, The University at Albany, State University of New
York. Director of the Planning Master's Program, Fall 1998-December 2001.

Fulbright Senior Fellowship, University of New South Wales, Australia,
February-June, 2002.

May 1989-

July 1998

Director, Agricultural Preserve Board of Lancaster County, Pennsylvania. Administered a nationally-recognized farmland preservation easement acquisition program with an annual budget of over \$4 million. Preserved over 16,000 acres in 188 easement projects. Assisted Planning Commission staff with growth management and agricultural zoning issues. The program received the 1993 Outstanding Program Award from the Small Town and Rural Planning Division of the American Planning Association. Received the 1996 National Achievement Award from the American Farmland Trust.

Aug. 1987-

May 1989

Associate Professor with Tenure, Department of Regional and Community Planning, Kansas State University.

Jan. 1985-

July 1987

Assistant Professor, Department of Community and Regional Planning, Iowa State University. Taught in Semester Abroad program in London, Fall 1986.

Publications

Books

2018 The Law of Agricultural Land Preservation in the United States. Chicago: American Bar Association. (Senior author with John Keene).

2014 The Environmental Planning Handbook for Sustainable Communities and Regions (Second Edition). Chicago: American Planning Association.

2011 The Planners Guide to CommunityViz: The Essential Tool for a New Generation of Planning. Chicago: American Planning Association. (Second author with Doug Walker).

2007 The Small Town Planning Handbook (3rd edition). Chicago: American Planning Association. (Senior author with John Keller, Mark Lapping, Katherine Daniels, and Jim Segedy.)

1999 When City and Country Collide: Managing Growth in the Metropolitan Fringe. Washington, D.C.: Island Press.

1997 Holding Our Ground: Protecting America's Farms and Farmland. Washington, D.C.: Island Press. (Senior author with Deborah Bowers).

1989 Rural Planning and Development in the United States, New York: Guilford Publications. (Second author with Mark Lapping and John Keller).

Refereed Journal Articles

2022 "The potential of nature-based solutions to reduce greenhouse gas emissions from US agriculture," Socio-Ecological Practice Research, online August 4, doi.org/10.1007/s42532-022-00120-y

"How can the USA and China cooperate and learn from each other to reduce greenhouse gas emissions? Socio-Ecological Practice Research, online May 6, 2022. DOI 10.1007/s42532-022-00112-y

"Managing urban growth in the wake of climate change: Revisiting greenbelt policy in the US." Land Use Policy. Han, Albert, Thomas L. Daniels, and Chaeri Kim. Land Use Policy 112: 105867. <https://doi.org/10.1016/j.landusepol.2021.105867>.

2021 "Re-designing America's suburbs for the age of climate change and pandemics," Socio-Ecological Practice Research, 3(2), 225-236. <https://doi.org/10.1007/s42532-021-00084-5>.

2019 "Protected Land Management and Governance in the United States: More Than 150 Years of Change," (Senior author with Dan Moscovici). Society and Natural Resources, 33 (6).

"McHarg's Theory and Practice of Regional Ecological Planning: Retrospect and Prospect," Socio-ecological Practice Research, 1: 197–208. <https://doi.org/10.1007/s42532-019-00024-4>

"Assessing the Performance of Farmland Preservation in America's Farmland Preservation Heartland:: A Policy Review. Society and Natural Resources. 33(6):1-11. DOI: 10.1080/08941920.2019.1659893

"California's success in the socio-ecological practice of a forest carbon offset credit option to mitigate greenhouse gas emissions," Socio-ecological Practice and Research, Vol 1, No. 2, pp. 125-138. (2nd author with Chaeri Kim).

"The Napa County Agricultural Preserve: 50 Years as a Foundation of America's Premier Wine Region." *Journal of Planning History* Vol. 18(2): 102-115 .

2018 "The Plan for the Valleys: Assessing the Vision of David Wallace and Ian McHarg." *Journal of Planning History* Vol. 17, No. 1 (February, 2018) pp. 3-19. 2nd author with George Hundt, Jr.).

- 2017 "Preserving Large Farming Landscapes: The Case of Lancaster County Pennsylvania," *Journal of Agriculture, Food Systems and Community Development* Vol. 7, No. 3, pp. 67-81. (senior author with Lauren Payne-Riley).
- 2010 "Integrating Forest Carbon Sequestration Into a Cap-and-Trade Program to Reduce Net CO2 Emissions," *Journal of the American Planning Association*, 76 (4): 463-475.
- "The Use of Green Belts to Control Sprawl in the United States," *Planning Practice and Research*, 25: 2, 255 — 271.
- 2009 "A Trail Across Time: American Environmental Planning from City Beautiful to Sustainability. *Journal of the American Planning Association*. 75 (2): 178-192.
- 2005 "Land Preservation as a Key Element of Smart Growth," *Journal of Planning Literature*, 19:3, 316-329. (Senior author with Mark Lapping).
- 2001 "Smart Growth: A New American Approach to Regional Planning." *Planning Practice & Research*, Vols. 3 &4, pp. 271-281.
- 2000 "Integrated Working Landscape Protection: The Case of Lancaster County, Pennsylvania," *Society & Natural Resources*, 13:3, pp. 261-271.
- 1991 "The Purchase of Development Rights: Preserving Agricultural Land and Open Space," *Journal of the American Planning Association*, Vol. 57, No. 4, pp. 421-431.
- "The Goals and Values of Local Economic Development Strategies in Rural America," *Agriculture and Human Values*, Vol. 8, No. 3, pp. 3-9.
- 1989 "Small Town Economic Development: Growth or Survival?" *Journal of Planning Literature*, Vol. 4, No. 4, pp. 413-429.
- 1988 "America's Conservation Reserve Program: Rural Planning or Just Another Subsidy?" *Journal of Rural Studies*, Vol. 4, No. 4, pp. 405-411.
- 1987 "Small Town Triage: A Rural Settlement Policy for the American Midwest," *Journal of Rural Studies*, Vol. 3, No. 3, pp. 273-280. (Senior author with Mark Lapping).

Conference Papers and Presentations

- 2022 "The State of Farmland Preservation in Your County. Pennsylvania Land

Conservation Conference, March 17, 2022 Gettysburg, PA

2021 “Suzhou, China, Environmental Planning: What China and the United States Can Learn From Each Other, Sept. 24/5, 2021

2019 “Agricultural Performance Results from the 2017 Census of Agriculture and Implications for Farmland Preservation,” Farmland Preservation Roundtable, Saratoga Springs, NY, October 30, 2019.

2018 “The Law of Agricultural Land Preservation,” Pennsylvania Land Trust Association Conference, Malvern, PA, April 13, 2018

2017 “Using GIS to Measure Progress in Farmland Preservation,” Pennsylvania Land Trust Association Conference, Lancaster, PA, May 4, 2017.

2016 “Large Landscape Conservation: East,” American Planning Association National Conference, Phoenix, AZ, April 2, 2016

2015 “Green Infrastructure for Urban Stormwater Management,” Association of Collegiate Schools of Planning Conference, Houston, TX, October 22, 2015.

“What’s New in Environmental Planning?” American Planning Association Conference, Seattle, WA, April 18, 2015

2014 “A Comparison of Urban Containment: Oregon, Maryland, and Four Hybrid Counties.” Association of Collegiate Schools of Planning, Philadelphia, PA, October 30, 2014.

“Return on Investment: How PDR is Strengthening Local Economies and Remaining Relevant Moving Forward.” National Farmland Preservation Conference, Hershey, PA, May 12, 2014.

2013 “Planning for Climate Change: Mitigation and Adaptation,” Planners Training Session, Seattle, June 11-12, 2013.

“Philadelphia: Urban Water: Managing Stormwater, Rivers, and Watersheds,” Urban Ecosystems Services and Decision Making: A Green Philadelphia Conference, Philadelphia, PA, May 23, 2013.

“Climate Change Adaptation,” American Planning Association Conference, Chicago, IL, April 16, 2013.

2012 “Planning for Green Infrastructure,” Planners Training Session, Charlotte, NC, November 15-16, 2012.

- 2011 "Greenbelts to Control Sprawl in the United States," American Planning Association Conference, Boston, April 10, 2011.
- 2010 "Landscape Scale Farmland Preservation," American Society of Landscape Architects Conference, Washington, DC, September 14, 2010.

Professional Reports

- 2022 Regulating Utility-Scale Solar Projects on Agricultural Land, Kleinman Center for Energy Policy, University of Pennsylvania. August, 2022, 7 pp. (Senior author with Hannah Wagner).
- 2021 Study on Inclusionary Housing with Chrissy Quattro for Penn IUR, December 2021, 75 pp.
- 2020 The State of Farmland Preservation in Lancaster County. For Lancaster Farmland Trust, September 2020, 35 pp.

An Analysis of the Economic Impact of the Farmland Preservation Program in Carroll County, Maryland. Westminster, MD: Carroll County, MD, 53 pp.
- 2019 Agricultural Land Protection, Annexation, and Housing Development: An Analysis of Programs and Techniques with Potential Use in Napa County: A Report for the Jack L. Davies Napa Valley Agricultural Preservation Fund, 108 pp.

An Analysis of the Economic Impact of Pennsylvania's Farmland Preservation Program, Pennsylvania Department of Agriculture, 78 pp.
- 2017 Land Use Study, Solebury Township, PA, 25 pp.
- 2010 Cost of Community Services Study for Four Municipalities and the Hempfield School District, for East and West Hempfield Townships and the Hempfield School District in Lancaster County, PA, 51 pp.
- 2008 Ideas for Rural Smart Growth, Promoting the Economic Viability of Farmland and Forestland in the Northeastern United States, for the Office of Smart Growth, US Environmental Protection Agency, Washington, D.C., 40 pp.

An Evaluation of the Peninsula Township, Michigan Farmland Preservation Program, for the Grand Traverse Regional Land Trust, Traverse Bay, MI, 60 pages.

- 2007 An Evaluation of the Consistency of the Plum Creek Timber Company Proposed Concept Plan in the Moosehead Lake Region with the Comprehensive Land Use Plan of the Maine Land Use Regulation Commission, 46 pp.
- 2006 Final Report to the National Fish and Wildlife Foundation: An Evaluation of the Foundation's Conservation Easement and Capacity-Building Grants Program. 221 pp.
- 2003 Dakota County, Minnesota, Farmland and Natural Area Preservation Program Guidelines, 54 pp., co-author with Jean Coleman, June, 2003.

Grants

- 2022 Climate Social Science Network. Agricultural Organizations and Their Messaging About Climate Change and Recommended Responses. \$16,000. Principal Investigator.
- Robert Schalkenbach Foundation. The California Sustainable Agricultural Lands Conservation Program: Evaluating the Use of Cap-and-Trade Funds to Promote Climate Mitigation and Adaptation. \$5,000. Principal Investigator.
- 2021 Kleinman Center for Energy Policy. Regulating Utility-Scale Solar Projects on Agricultural Land. \$4,500. Principal Investigator.
- 2019 Pennsylvania Department of Agriculture, An Analysis of the Economic Impact of Pennsylvania's Farmland Preservation Program, \$13,500. Principal Investigator.
- 2013-17 U.S. EPA. Green Infrastructure for Urban Stormwater Management. \$1 million. Project associate.
- 2004-06 National Fish and Wildlife Foundation. Effectiveness of NFWF's Investments in Conservation Easements to Protect Wildlife Habitat. \$125,000. Principal Investigator.
- 2002 Open Space Institute, Study of Sprawl and Land Use Change in the Capital District of New York, \$40,000. Project associate.
- 2000 Hudson River Foundation, Study of Land Use Planning Techniques in the Chesapeake Bay Estuary and the Hudson River Estuary, \$61,396, Principal Investigator.

Exhibit 1
Expert Witness Report
Source: CV of Thomas Daniels, Ph.D.

8

Professional Memberships

1983 - Member, American Planning Association
Present

2004- Member, Land Protection Committee, Lancaster County
Present Conservancy (PA)

2005- Member, Board of Trustees, Orton Family Foundation
2020

2011- National Advisory Board, Land Conservation Advisory Network, Yarmouth,
Present Maine.

2012- National Advisory Board, Equine Land Conservation Resource,
Present Lexington, KY

2014- National Advisory Board, Conservation Finance Network, Washington, DC
Present

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOSEPH M. INFANTE</p> <p>4 Miller Canfield Paddock and Stone PLC</p> <p>5 99 Monroe Avenue, N.W.</p> <p>6 Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 616.776.6333</p> <p>9 infante@millercanfield.com</p> <p>10 Appearing on behalf of the Plaintiffs.</p> <p>11</p> <p>12</p> <p>13 MATTHEW T. WISE</p> <p>14 Foley & Mansfield PLLP</p> <p>15 139 East 9 Mile Road</p> <p>16 Ferndale, Michigan 48220</p> <p>17 248.721.4200</p> <p>18 mwise@foleymansfield.com</p> <p>19 Appearing Remotely Via Videoconference on behalf of</p> <p>20 the Defendant.</p> <p>21</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 Rebecca Chown - Peninsula Township</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 DEPOSITION EXHIBIT 3 110</p> <p>2 [Winery-Chateau Section of</p> <p>3 Peninsula Township Ordinance]</p> <p>4</p> <p>5 DEPOSITION EXHIBIT 4 204</p> <p>6 [Letter from Gregory Meihn to</p> <p>7 Peninsula Township Board Dated</p> <p>8 09.09.2019]</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 ROBERT MANIGOLD</p> <p>5</p> <p>6 EXAMINATION BY MR. INFANTE 5</p> <p>7 EXAMINATION BY MR. WISE 222</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 EXHIBIT PAGE</p> <p>13 (Exhibits attached to transcript.)</p> <p>14</p> <p>15 DEPOSITION EXHIBIT 1 17</p> <p>16 [Remote Winery Tasting Rooms</p> <p>17 Section of Peninsula Township</p> <p>18 Ordinance]</p> <p>19</p> <p>20 DEPOSITION EXHIBIT 2 73</p> <p>21 [Farm Processing Facility section</p> <p>22 of Peninsula Township Ordinance]</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Traverse City, Michigan</p> <p>2 Wednesday, November 3, 2021</p> <p>3 10:22 a.m.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 ROBERT MANIGOLD,</p> <p>8 was thereupon called as a witness herein, and after</p> <p>9 having first been duly sworn to testify to the truth,</p> <p>10 the whole truth and nothing but the truth, was</p> <p>11 examined and testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. INFANTE:</p> <p>14 Q. Please state your name, for the record.</p> <p>15 A. Robert Kenneth Manigold.</p> <p>16 Q. All right. And, Mr. Manigold, we've met before --</p> <p>17 A. Yes.</p> <p>18 Q. -- Joe Infante, attorney for the wineries in this</p> <p>19 lawsuit. Let me just give you some ground rules --</p> <p>20 A. Okay.</p> <p>21 Q. -- before we start, which are really all for our court</p> <p>22 reporter. A lot of the issues we were sort of</p> <p>23 chitchatting about with her getting things down are</p> <p>24 really to help her.</p> <p>25 So I'm going to ask you questions today.</p>

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<p style="text-align: right;">Page 6</p> <p>1 I'm just asking for what you know, what you remember.</p> <p>2 I don't want you to guess or I don't want you to</p> <p>3 speculate. This is just for you to tell me what you</p> <p>4 know. So if you don't know something, "I don't know"</p> <p>5 is a perfectly acceptable answer.</p> <p>6 A. Okay.</p> <p>7 Q. If I ask you a question and you don't understand it, I</p> <p>8 didn't ask it very well, which will happen sometimes,</p> <p>9 just tell me you don't understand my question, ask me</p> <p>10 to ask it a different way or explain it --</p> <p>11 A. Okay.</p> <p>12 Q. -- and I'll do so. But if you don't ask me to explain</p> <p>13 a question, I'm going to assume you understood my</p> <p>14 question and you're answering my question. Is that</p> <p>15 fair?</p> <p>16 A. Fair.</p> <p>17 Q. Okay. What'll happen in normal conversation is you</p> <p>18 and I will have a conversation and I'll ask you a</p> <p>19 question, and before I'm finished asking it, you'll</p> <p>20 know the question I'm asking and you'll just jump in</p> <p>21 and start talking. That's how we do it in normal</p> <p>22 conversation. What ends up happening is we end up</p> <p>23 talking over each other, and our court reporter has a</p> <p>24 really hard time writing down two people at once.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 a break and we can take five minutes, ten minutes,</p> <p>2 whatever it is, and we can take a break. Good?</p> <p>3 A. Okay.</p> <p>4 Q. All set?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Mr. Manigold, what is your current position --</p> <p>7 A. My current --</p> <p>8 Q. -- of employment?</p> <p>9 A. My current position is the supervisor of Peninsula</p> <p>10 Township.</p> <p>11 Q. And how long have you been the supervisor of Peninsula</p> <p>12 Township?</p> <p>13 A. I've been the supervisor of Peninsula Township since</p> <p>14 1988. I retired for two years, and then I got</p> <p>15 reelected in 2016, and supervisor ever since.</p> <p>16 Q. Okay. So you were elected the first time as</p> <p>17 supervisor in 1988?</p> <p>18 A. Correct.</p> <p>19 Q. Re-elected up until 2012, when you retired?</p> <p>20 A. I believe that's the date. I retired -- well I</p> <p>21 remember I was -- it would have been probably 2014,</p> <p>22 and then a new supervisor was appointed for two years;</p> <p>23 people didn't care for the way he ran the township,</p> <p>24 asked me to run again. I ran again in 2016, and then</p> <p>25 got re-elected in the last election, also.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. And you'll do it, you'll interrupt me, it's just</p> <p>2 normal, and, you know, I'll just say, "Please wait</p> <p>3 until I ask a question." I'm not trying to be rude,</p> <p>4 I'm just trying to help our court reporter get it</p> <p>5 down --</p> <p>6 A. Okay.</p> <p>7 Q. -- because what will end up happening is the</p> <p>8 transcript will be sort of choppy, and she has a</p> <p>9 really hard time and she'll get mad at us.</p> <p>10 The other thing is I'll ask -- a lot of my</p> <p>11 questions will require a "yes" or a "no" answer.</p> <p>12 Please say the word "yes" or the word "no." Most</p> <p>13 people say "uh-huh" or "nuh-uh." The problem is, in</p> <p>14 writing, there's really no difference between those in</p> <p>15 writing and they're really hard to get down, and so we</p> <p>16 get a transcript that sometimes doesn't make sense.</p> <p>17 So you'll do it, you will say "uh-huh" or</p> <p>18 you'll shake your head. Shaking your head doesn't get</p> <p>19 down on paper, she can't write that down. So you'll</p> <p>20 do it, and I'll just say, "Is that a yes, is that a</p> <p>21 no." Again, not trying to be rude, just we need to</p> <p>22 get a clear transcript.</p> <p>23 The last thing is, this is not a marathon.</p> <p>24 So if you need a break, you told me earlier you needed</p> <p>25 a break, whenever you need a break, just say you need</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. And when was that election?</p> <p>2 A. 2020.</p> <p>3 Q. Okay, and how long are your terms?</p> <p>4 A. Four years.</p> <p>5 Q. Okay. So you're up for re-election in two years?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Who was the supervisor for the two years after</p> <p>8 you retired?</p> <p>9 A. Pete Correia.</p> <p>10 Q. Can you spell his last name?</p> <p>11 A. C-E-R --</p> <p>12 MS. CHOWN: C-O-R.</p> <p>13 THE WITNESS: C-O-R-I-E-A.</p> <p>14 MS. CHOWN: Double R, C-O-R-R --</p> <p>15 MR. INFANTE: Hold on. You're not supposed</p> <p>16 to talk during the deposition.</p> <p>17 MS. CHOWN: Oh, sorry.</p> <p>18 THE WITNESS: Correia, with a C.</p> <p>19 C-O-R-R-I-A, I believe.</p> <p>20 BY MR. INFANTE:</p> <p>21 Q. Close enough, okay.</p> <p>22 And as supervisor of Peninsula Township,</p> <p>23 what are your duties?</p> <p>24 A. Well, I have certain statutory duties. Make sure that</p> <p>25 all the properties are taxed in the township. I</p>

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<p style="text-align: right;">Page 10</p> <p>1 haven't really read the MTA book in a while, but there</p> <p>2 was a time I was in charge of dog licenses and things</p> <p>3 under that job.</p> <p>4 But in Peninsula Township, it's probably</p> <p>5 day-to-day working with people, complaints. We have a</p> <p>6 very small office, very effective people, and a</p> <p>7 population of about 6,000, 5500 to 6,000, so ...</p> <p>8 Q. How big is your office, how many people?</p> <p>9 A. Oh, about ten.</p> <p>10 Q. Okay, and --</p> <p>11 A. Well -- yeah. I have ten at Peninsula Township. I'm</p> <p>12 also on the Grand Traverse County board of public</p> <p>13 works, which Grand Traverse County doesn't own</p> <p>14 anything there, but six townships own it all, and we</p> <p>15 have seventeen employees that I work with over there,</p> <p>16 too.</p> <p>17 Q. Okay, what does public works do?</p> <p>18 A. Sewer and water.</p> <p>19 Q. Sewer and water, okay.</p> <p>20 A. And septic.</p> <p>21 Q. And septic. Septic permits, essentially?</p> <p>22 A. No, that's county health. We're the actual physical</p> <p>23 plants, water plant, sewer plant, septic plant.</p> <p>24 Q. Okay. And Peninsula Township has, a small portion of</p> <p>25 it has sewer and water, correct?</p>	<p style="text-align: right;">Page 12</p> <p>1 manage a few hundred acres, also, for other people.</p> <p>2 Q. How big is your farm?</p> <p>3 A. I knew you were going to ask me that. Well, we live</p> <p>4 on an 80; I've got 39 on Old Mission, a 30 on Center</p> <p>5 Road. My son, we just sold him a 30.</p> <p>6 I'm going to say about 150 to 175, and we</p> <p>7 probably manage about 350.</p> <p>8 Q. And how much of that is cherries and how much of that</p> <p>9 is grapes?</p> <p>10 A. I think my best guess would be we probably have 80</p> <p>11 acres of tree fruit currently in the ground and</p> <p>12 probably 80 to 90 acres of vinifera grapes.</p> <p>13 Q. By "tree fruit," you mean cherries and apples?</p> <p>14 A. Cherries, pears, a small pear block, black and sweet,</p> <p>15 sweet and sour cherries.</p> <p>16 Q. I'm sorry, you said 80 acres of tree fruit and 80</p> <p>17 acres of grapes?</p> <p>18 A. Approximately.</p> <p>19 Q. And that's on your acreage?</p> <p>20 A. No, that's on ours and what we manage.</p> <p>21 Q. And what's the other -- you said you have</p> <p>22 approximately 500 to 525 acres, total?</p> <p>23 A. That we manage or own.</p> <p>24 Q. Okay. And what makes up that other acreage, what's</p> <p>25 being grown there?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. That is correct.</p> <p>2 Q. And how far does the sewer and water, you know, where</p> <p>3 does it end in Peninsula Township?</p> <p>4 A. The water ends at, going out Center Road, I believe,</p> <p>5 at McKinley, and it goes out to about a mile past --</p> <p>6 or two miles past McKinley, on Peninsula Drive, and</p> <p>7 goes out about a mile-and-a-half on East Shore Road.</p> <p>8 Q. How about sewer?</p> <p>9 A. Sewer is pretty much the same.</p> <p>10 Q. Okay.</p> <p>11 A. We have a pressure system that extends on East Shore</p> <p>12 Road and the regular municipal-type sewer going down</p> <p>13 Peninsula Drive, and up to approximately McKinley for</p> <p>14 sewer.</p> <p>15 Q. Is it fair to say that the majority of Peninsula</p> <p>16 Township does not have public sewer and public water?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. It's really just a small portion base of the</p> <p>19 peninsula, right?</p> <p>20 A. Correct.</p> <p>21 Q. All right. Besides being the township supervisor and</p> <p>22 on the board of Grand Traverse County public works, do</p> <p>23 you do anything else for employment?</p> <p>24 A. I'm a fourth generation cherry farmer, grape grower.</p> <p>25 We have a significant farm, farming operation, and we</p>	<p style="text-align: right;">Page 13</p> <p>1 A. We've just taken over a parcel called VM-3, and we</p> <p>2 basically -- it's a start-over project, so it's, a lot</p> <p>3 of that acreage right now is grasses that are designed</p> <p>4 to build up the soil before we replant.</p> <p>5 Q. And what are you intending to plant there?</p> <p>6 A. Working with that grower, I think we're going to be in</p> <p>7 the sweet cherry market.</p> <p>8 Q. So you say you've been the supervisor since '88. How</p> <p>9 long have you been in farming?</p> <p>10 A. All my life.</p> <p>11 Q. Okay. Where'd you go -- did you go to school? I</p> <p>12 assume you went to -- where'd you go to high school?</p> <p>13 A. Traverse City Senior High.</p> <p>14 Q. And did you go to college?</p> <p>15 A. Started at Northern, NMC, here, and got my degree at</p> <p>16 CMU, Central Michigan.</p> <p>17 Q. What's your degree in?</p> <p>18 A. Speech and hearing. It doesn't make sense, I know.</p> <p>19 Q. That's all right. I have a geology degree and I'm a</p> <p>20 lawyer, so, it happens.</p> <p>21 So I assume -- did you ever use your</p> <p>22 college degree for speech and hearing?</p> <p>23 A. It requires a master's in this state, and I signed up,</p> <p>24 started some graduate classes, and my friend called</p> <p>25 from Colorado and had a room in a ski town, and I took</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. Okay. And, tell me, what is this?</p> <p>2 A. Dave and Joan Kroupa, fourth, fifth, sixth generation</p> <p>3 farmers --</p> <p>4 Q. This is a section of the Peninsula Township zoning</p> <p>5 ordinances related to remote winery tasting rooms --</p> <p>6 A. Yes.</p> <p>7 Q. -- correct?</p> <p>8 A. Correct.</p> <p>9 Q. Try not to talk over me. You're going to do it,</p> <p>10 everyone does it, all right.</p> <p>11 What I'd like to do, is we're going to walk</p> <p>12 through the ordinances and I'm going to ask you</p> <p>13 questions about the ordinances.</p> <p>14 So in this case, we had asked Peninsula</p> <p>15 Township in discovery to tell us what was the</p> <p>16 governmental interest in passing these ordinances, and</p> <p>17 the Township has stated it had four governmental</p> <p>18 interests in passing the ordinances.</p> <p>19 The first was preserving the agricultural</p> <p>20 industry and providing permanent land for the same.</p> <p>21 A. Okay.</p> <p>22 Q. Can you tell me, what does that mean?</p> <p>23 A. When we began working with the zoning ordinance,</p> <p>24 comprehensive plans and master plans, the intent</p> <p>25 was -- we were a community that was kind of being</p>	<p style="text-align: right;">Page 20</p> <p>1 effect, but not as dramatic as we can on the Old</p> <p>2 Mission Peninsula.</p> <p>3 Q. Yeah, but in Michigan, well, in Michigan, Peninsula</p> <p>4 Township is not the only cherry-growing -- not the</p> <p>5 only place that can grow cherries, right?</p> <p>6 A. Would you repeat that?</p> <p>7 Q. In Michigan, Peninsula Township is not the only place</p> <p>8 that can grow cherries?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. And in the United States, Michigan is not the</p> <p>11 only place that can grow cherries?</p> <p>12 A. True.</p> <p>13 Q. Okay. And in the world, Peninsula Township and</p> <p>14 Michigan are not the only places that grow cherries,</p> <p>15 right?</p> <p>16 A. Well, I believe Turkey -- very few places can, but I</p> <p>17 think the answer may be correct, true.</p> <p>18 Q. And, in fact, Turkey right now leads the world in the</p> <p>19 amount of cherries they grow, right?</p> <p>20 A. They impact us significantly.</p> <p>21 MR. WISE: Object to foundation.</p> <p>22 MR. INFANTE: Sorry, what was that, Matt?</p> <p>23 MR. WISE: Just a foundation objection.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Okay. Do you know what the world leader in cherry</p>
<p style="text-align: right;">Page 19</p> <p>1 discovered, and not only could it be a very beautiful</p> <p>2 place to live, raise your family, but we had a micro</p> <p>3 climate, which is very rare in the, probably the</p> <p>4 world, where we have a sliver of land going out into</p> <p>5 the middle of Lake Michigan and with a body of water</p> <p>6 on each side that's about five miles wide.</p> <p>7 The micro climate works basically where</p> <p>8 during a summer, the water heats up, and then the wind</p> <p>9 basically blows the warmer air in the fall over the</p> <p>10 land, so our -- we won't have a freeze on the Old</p> <p>11 Mission Peninsula probably until sometime in December.</p> <p>12 And it works just the opposite during the winter.</p> <p>13 When it gets cold, the wind blows over the sliver of</p> <p>14 land with a cooler air so the plants don't open.</p> <p>15 So we're allowed to grow certain things</p> <p>16 that many parts of the world, or definitely the United</p> <p>17 States, can't grow. That's why we can grow cherries</p> <p>18 very effectively. And Mr. O'Keefe brought in the</p> <p>19 vinifera grape, which grows very well there.</p> <p>20 Q. All right. But you're not -- Peninsula Township isn't</p> <p>21 the only place in the world that grows cherries,</p> <p>22 right?</p> <p>23 A. No. Michigan grows approximately two-thirds of the</p> <p>24 United States' cherries, and it's all along the</p> <p>25 shoreline, where they can kind of get that same</p>	<p style="text-align: right;">Page 21</p> <p>1 growing is in the -- right now in the world what area</p> <p>2 grows the most cherries?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you know, does Turkey grow a substantial</p> <p>5 portion of cherries?</p> <p>6 A. They do.</p> <p>7 Q. Okay. And the amount of cherries that are grown in</p> <p>8 Turkey impacts the price of cherries in Michigan,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And, really, they produce so many cherries that</p> <p>12 they've driven down the prices in Michigan, right?</p> <p>13 A. I believe that to be true.</p> <p>14 Q. Okay. Now, for grapes, specifically wine grapes,</p> <p>15 okay, we're talking about here?</p> <p>16 A. Well, we're talking vinifera wine grapes.</p> <p>17 Q. Okay. Vinifera wine grapes, Peninsula Township is not</p> <p>18 the only place in Michigan that can grow vinifera wine</p> <p>19 grapes, correct?</p> <p>20 A. I would want to research that. I think they grow more</p> <p>21 French hybrids, different types of grapes downstate.</p> <p>22 I don't think they are very successful, if they are.</p> <p>23 I mean, anybody can put in a plant, but are they</p> <p>24 successful and can they maintain it and have a crop</p> <p>25 every year.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. All right. How about this? Peninsula Township is not 2 the only place in the United States that grows 3 vinifera wine grapes? 4 A. True. 5 Q. Okay. And in the world, again, they are not the only 6 place that grows vinifera wine grapes? 7 A. True. 8 Q. Okay. And, in fact, Peninsula Township grows a very, 9 very small portion of all of vinifera wine grapes in 10 the world? 11 A. I don't know that. 12 Q. The second governmental interest that the Township set 13 forth in its discovery responses was the interest in 14 maintaining the township's character. What does that 15 mean? 16 A. Well, through a lot of public opinion and surveying, 17 the people on the Old Mission Peninsula obviously 18 realize that they're in a unique geographic area, 19 which compounds, I believe, our ability to do things. 20 For instance, we're not your typical 21 six-by-six mile Michigan Township. We're 18,000 22 miles -- or, excuse me, 18,000 acres sticking out in 23 the middle of Lake Michigan, the widest point about 24 three-and-a-half miles. 25 So, you see, whenever we run into an issue</p>	<p style="text-align: right;">Page 24</p> <p>1 point in the township. We either needed to oversize 2 the sewer lines and come out and get ready for a 3 massive growth of subdivisions -- because, I mean, 4 you've gotta admit, it's a very beautiful place to 5 live -- or could we go the other way and try to save 6 the agricultural component and allow growth at the 7 south end of the peninsula, where we kept the water 8 and sewer, and along the shoreline, which was pretty 9 much gone at the time, anyway, with cottages. Now 10 what you're seeing, the smaller houses are being 11 replaced by larger. 12 But it was that character of the peninsula, 13 of the scenic views that we identified and were able 14 to purchase with money from different organizations, 15 those scenic views would be in perpetuity. 16 We actually got money from the Michigan 17 Natural Trust Fund, resource trust fund, a million 18 dollars to save those views. We had support letters, 19 if you can believe it, from the Chamber of Commerce 20 and the home builders, which they don't agree with 21 anything, you know, removing any building component. 22 Q. So, as I understand, you know, it's a long answer, but 23 as I understand it, you were trying to prevent, 24 really, more houses from spreading north on the 25 peninsula?</p>
<p style="text-align: right;">Page 23</p> <p>1 of fighting a fire, we pretty much have to be 2 self-contained. We only have one way in and out of 3 the peninsula, through Traverse City at the base, and 4 what we've tried to do is look at the carrying 5 capacity and different things of what we have as our 6 infrastructure, and we have as a community voted not 7 to extend sewer or water -- 8 Q. Well, let me stop you. How does infrastructure and 9 roads and sewer and water, how is that the township's 10 character? 11 A. Well, what we've tried to do is maintain the character 12 by keeping a strong agricultural component. 13 Of the 18,000 acres, roughly 10,000 is 14 zoned agricultural, and we have then tried to keep 15 that, and through our planning commission, I think we 16 went -- in '94, the same year we went for the purchase 17 of development rights, we identified 9200 acres that 18 was worth saving. 19 And currently through conservation 20 easements, some zoning, and the American Farmland 21 Trust, the State of Michigan, and the Grand Traverse 22 Regional Land Conservancy, we have a conservation 23 easement over about 7,000 of those acres. 24 So when, in 1988 when Gordon Hayward and I 25 got on the scene, it was -- we felt it was a turning</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Wherever land was left that hadn't been subdivided, we 2 were offering a program to the owner that he could 3 sell it at a better price, and when they actually put 4 the numbers to it, they actually made more money 5 taking the money for development rights than trying to 6 make a development, wait the years for the lots to 7 sell. 8 Q. Yeah. 9 A. And so we kept an agricultural component. 10 Q. Yeah, well, I mean, as I understand it, you -- all 11 right, so you're a farmer, and let's say there's 80 12 acres in Peninsula Township that that farmer is 13 deciding, do I subdivide this and build houses or do I 14 keep it as agricultural land or open space -- 15 A. Mmm-hmm. 16 Q. -- to protect the views, right? 17 A. Yes. 18 Q. And the Township wanted it to remain as open space for 19 the views, correct? 20 A. The residents of the township, yes. 21 Q. But the residents speak through the Township, which 22 speak through you, as the supervisor, correct? 23 A. Yes. 24 Q. So the Township wanted to keep that 80 acres from 25 becoming a bunch of houses, and the way you did that</p>

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<p style="text-align: right;">Page 26</p> <p>1 was through the conservation easements and the PDR</p> <p>2 program, correct?</p> <p>3 A. Yes.</p> <p>4 Q. The purchase of development rights, that's called the</p> <p>5 PDR program?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And that started in, you say, '88?</p> <p>8 A. I was elected in '88, and we began studying that. We</p> <p>9 looked at the transfer of development rights, the</p> <p>10 purchase of development rights, new programs that were</p> <p>11 actually out east, the ones we were looking at, in</p> <p>12 Maryland and Pennsylvania.</p> <p>13 But the peninsula -- say if we have 5500</p> <p>14 registered voters, and then if we looked at how many</p> <p>15 voters are on the farmland, probably of that, 10,000</p> <p>16 acres of farmland out of the 18,000 are probably owned</p> <p>17 by, if we looked at votes, 300 votes.</p> <p>18 Many of the people who live out there have</p> <p>19 a substantial amount of farmland.</p> <p>20 Q. Okay. So you mentioned there's 18,000 acres,</p> <p>21 approximately, in Peninsula Township, right?</p> <p>22 A. Correct.</p> <p>23 Q. All right, and you said 10,000 of that is ag land?</p> <p>24 A. Yes.</p> <p>25 Q. Either zoned as ag or used -- well, it's zoned as ag,</p>	<p style="text-align: right;">Page 28</p> <p>1 steep slope.</p> <p>2 Q. Okay, which probably isn't good for -- well, a steep</p> <p>3 slope wouldn't be good for houses.</p> <p>4 A. Right. Well, although they are putting them on it, as</p> <p>5 we all know.</p> <p>6 Q. Yeah. So I guess that's my question. So that other</p> <p>7 800 to a thousand acres that's not prime farmland, is</p> <p>8 the Township intending to protect that land and</p> <p>9 prevent it from becoming houses or are you allowing</p> <p>10 that to become houses?</p> <p>11 A. Well, first of all, all of the farmland is up to the</p> <p>12 owner of the farmland, what they want to do. There's</p> <p>13 no mandate. What we are doing is offering an</p> <p>14 alternative.</p> <p>15 Usually when we see something like that, we</p> <p>16 have other people who -- for instance, the land</p> <p>17 conservancy has been very effective buying up marshes,</p> <p>18 for instance, that are zoned ag that are not on the ag</p> <p>19 map.</p> <p>20 So there are other entities working</p> <p>21 together offering owners a different option.</p> <p>22 Q. Okay. So some of that thousand acres may already be</p> <p>23 protected by somebody else?</p> <p>24 A. Yeah.</p> <p>25 Q. Okay. Do you know how much of that is protected by</p>
<p style="text-align: right;">Page 27</p> <p>1 which doesn't mean that it's a farm, right?</p> <p>2 A. That is true. During the planning commission, we took</p> <p>3 one winter, brought any farmer that wanted to talk</p> <p>4 about it in, and we actually went on a map,</p> <p>5 farm-by-farm, and the conversation was, "Well, Fred</p> <p>6 had that, he tried to grow something and it'd never</p> <p>7 grow," so we took that off as prime farmland. 9200</p> <p>8 acres prime farmland, a little over 10,000 is zoned</p> <p>9 ag.</p> <p>10 Q. And that thousand acres or so just isn't good for</p> <p>11 growing, so it's either woods, it could be -- you</p> <p>12 know, some are stores, right? There's the Peninsula</p> <p>13 Market, that's in ag land, right?</p> <p>14 A. That's zoned commercial.</p> <p>15 Q. That's zoned commercial, but there are businesses that</p> <p>16 are in the ag district, correct?</p> <p>17 A. I'm thinking all of the businesses, the restaurants,</p> <p>18 the markets are all --</p> <p>19 Q. The nursery?</p> <p>20 A. The nursery, I believe, is zoned ag.</p> <p>21 Q. Zoned ag. So there are some businesses, but that may</p> <p>22 be this thousand acres or so that's not good for</p> <p>23 growing?</p> <p>24 A. No, those are good growing areas where they're at.</p> <p>25 It's usually what's identified as a frost pocket or</p>	<p style="text-align: right;">Page 29</p> <p>1 somebody else?</p> <p>2 A. No.</p> <p>3 Q. Okay. So of the 9200 acres that I think you said are</p> <p>4 worth saving, so far the Township has -- I think you</p> <p>5 said you've saved 7,000 of those acres?</p> <p>6 A. I think that's the number we're at, yeah.</p> <p>7 Q. So you're, what, at about 80 percent?</p> <p>8 A. Mmm-hmm.</p> <p>9 Q. Yes?</p> <p>10 A. Yes.</p> <p>11 Q. All right. So the Township has saved, you know -- in</p> <p>12 my head, about roughly 80 percent of the prime</p> <p>13 farmland is protected from development?</p> <p>14 A. Approximately.</p> <p>15 Q. And when that land is sold into the PDR program, the</p> <p>16 point of the PDR program is it can't be developed, you</p> <p>17 can't put houses on it?</p> <p>18 A. If the -- it depends on the easement. They're all a</p> <p>19 little bit different. In the purchase of development</p> <p>20 rights ordinance, you are allowed to keep one house</p> <p>21 every 20 acres.</p> <p>22 So most people wanted to keep one house for</p> <p>23 their kids in the future or something. So a lot of</p> <p>24 the deed-restricted farms will have one home site or</p> <p>25 more on them that still can be developed. Some people</p>

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

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<p style="text-align: right;">Page 50</p> <p>1 affixed to the item by silkscreening, embroidery, 2 monogramming, decals or other means of permanence. 3 Such logo shall be at least twice as large as any 4 other advertising on the item. No generic or non-logo 5 items may be sold. Promotional items allowed may 6 include corkscrews, wine glasses, gift boxes, 7 T-shirts, bumper stickers, et cetera. 8 Okay, what does this mean? 9 A. The Kroupa family, who asked us to do this, wanted to 10 sell additional merchandise, and they worked with the 11 planning commission and came up with that verbiage to 12 sell that out of their remote wine tasting. 13 Q. Well, my question is, but what does this verbiage 14 mean? 15 A. That means they can have their logo on an item and 16 sell it in addition to their wine. 17 Q. Okay, but -- so if their logo is not on an item, they 18 cannot sell it? 19 A. According to this. 20 Q. Okay. And the only items they can sell are 21 corkscrews, wine glasses, gift boxes, T-shirts, bumper 22 stickers, et cetera, with their logo, is that what 23 this says? 24 A. Well, "et cetera" is a lot of things. 25 Q. Okay, well, give me an idea of what the "et cetera"</p>	<p style="text-align: right;">Page 52</p> <p>1 Peninsula Cellars is -- means a lot in the community 2 and it means a lot to people. 3 BY MR. INFANTE: 4 Q. Well, you said a number of times that the goal of the 5 Township is for these wineries to be successful, 6 right? 7 A. Yes. 8 Q. And that if they can't be successful, they can't stay 9 in business, right? 10 A. Well, that would seem to be a logical conclusion -- 11 Q. Logical conclusion, okay. 12 A. -- but I can't -- different people I know, like these 13 people, they are very money conscious and very well 14 done, and they will survive. 15 Q. Well, okay, but if they can't be successful, then 16 there is a risk that that land, then, would become 17 houses, right? 18 MR. WISE: Object to foundation. 19 A. Well, not the land where this is, but they have 20 additional land. They came up with a formula to allow 21 it to happen, they came to us. 22 BY MR. INFANTE: 23 Q. Again, if a winery isn't successful, then there is a 24 risk that that land could become houses, right? And 25 I'm just talking a winery in general, not even just</p>
<p style="text-align: right;">Page 51</p> <p>1 would include. 2 A. Well, what we want to do is have the wineries be 3 successful and to get their name on their product to 4 get it out. You know, Bonobo, on these sunglasses, 5 that is a good trademark to get it out in the public, 6 and that's what we were encouraging the Kroupa family 7 to do. 8 Q. But you also prevent them from selling anything that 9 doesn't have their logo on it, right? 10 A. Well, according to this, yeah, they would have to put 11 their logo on it, a little stamp or seal. 12 Q. And how does that further the governmental interest of 13 preventing farmland from becoming houses? 14 MR. WISE: Object to form. 15 Go ahead. 16 A. I would think any successful agricultural business -- 17 if an agricultural business doesn't survive, and, you 18 know, I can't -- it's not the government's job to do 19 everybody's business plan, because some people just 20 can't handle money. Some people have a trust fund and 21 it just goes through. 22 But the intent of the ordinance was to get 23 that name out and brand out into the community and to 24 work with our appellation to make us a very successful 25 unit. And having that with a peninsula appellation or</p>	<p style="text-align: right;">Page 53</p> <p>1 remote winery tasting room. 2 A. Well, I'm going to say no on that, because when you 3 have a winery and you have that planted in vinifera 4 grapes right now, that there's enough people 5 looking -- and I'm in the business and I know what's 6 going on, that that land would be picked up and 7 another winery would do it because of the amount of 8 infrastructure that's already in the ground and the 9 production, that they could take right off and go. 10 So my guess would be, it would be, it would 11 be crazy to put homes on. To put up a vineyard and to 12 get it into production, I figure 20 grand an acre. 13 Q. So you're saying you don't care if these wineries are 14 successful because some other winery will buy them? 15 A. No, I'm saying -- you asked me if I'm worried about 16 that going into homes, and I don't think with the 17 amount of money that's in there, additional -- if they 18 were to do that, that farmland, the majority of it 19 that's in the vineyard will probably be sold to 20 another winery or another winery would take up 21 where -- 22 Q. But you just told me you want these wineries to be 23 successful. 24 A. I believe that is correct, yes. 25 Q. Okay. So how does restricting what types of items</p>

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<p style="text-align: right;">Page 54</p> <p>1 they can sell, logo versus non-logo, how does that</p> <p>2 help them be successful?</p> <p>3 A. They're getting their brand name out and they are on</p> <p>4 an agricultural-zoned piece of land. These people</p> <p>5 actually were on a commercial piece of land, and they</p> <p>6 sold whatever they wanted, and that was legal. But we</p> <p>7 don't have that much commercial for everybody to do</p> <p>8 that.</p> <p>9 They came to us, they said, "We have a</p> <p>10 large amount of land, although we're off Kroupa Road,"</p> <p>11 which is kind of off road of Center, and they wanted</p> <p>12 to be at a high visibility. So in their business</p> <p>13 plan, they wanted to move to this old schoolhouse and</p> <p>14 fix it up, and by having some logo items in there --</p> <p>15 and of all the years since we've done this, and I</p> <p>16 don't know what the date is on this one, but they've</p> <p>17 never come back and asked for more.</p> <p>18 Q. Well, let me you this question. What is the harm that</p> <p>19 comes from selling a wine glass with a logo versus a</p> <p>20 wine glass without a logo? What's the harm of a wine</p> <p>21 glass without a logo to the government?</p> <p>22 A. To the government --</p> <p>23 Q. To the government, to the government's interest,</p> <p>24 what's the harm?</p> <p>25 A. We want to promote good wine in our appellation, and</p>	<p style="text-align: right;">Page 56</p> <p>1 of these plaintiffs' wineries, right? You don't and</p> <p>2 the Township does not, right?</p> <p>3 A. Correct.</p> <p>4 Q. So is it your job as Peninsula Township to make</p> <p>5 business decisions for the wineries or any other</p> <p>6 business in Peninsula Township, is that your job?</p> <p>7 A. My job is to work with the people that do this who</p> <p>8 wanted to start this business and give them what they</p> <p>9 wanted.</p> <p>10 Q. That's not my question. My question is, is it your</p> <p>11 job to make business decisions of how they're going to</p> <p>12 use their trademarks? Is that Peninsula Township's</p> <p>13 job?</p> <p>14 A. No.</p> <p>15 Q. Okay. And Peninsula Township -- you mentioned the</p> <p>16 appellation. There is an Old Mission Peninsula</p> <p>17 appellation, and you understand what an appellation</p> <p>18 is, I'm assuming, right? Federally, it's a recognized</p> <p>19 area of land, you can get an appellation.</p> <p>20 Peninsula Township does not own the</p> <p>21 appellation, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And, in fact, nobody owns the appellation?</p> <p>24 A. I can't answer yes or no to that.</p> <p>25 Q. Okay. Do you know if someone owns the appellation?</p>
<p style="text-align: right;">Page 55</p> <p>1 you don't do that without a logo on it.</p> <p>2 Q. But that's not the interest that the Township has put</p> <p>3 forth. The interest the Township has put forward for</p> <p>4 having these ordinances is to keep agricultural land</p> <p>5 from becoming houses and to keep traffic from</p> <p>6 increasing.</p> <p>7 So how does having a logo on wine glasses</p> <p>8 versus having a non-logoed wine glass prohibit that</p> <p>9 harm?</p> <p>10 MR. WISE: Object to form, foundation.</p> <p>11 Go ahead.</p> <p>12 A. I don't see the relevancy of -- when you are producing</p> <p>13 a good product and you've got a growing region that's</p> <p>14 one of a kind in Michigan, and probably the world,</p> <p>15 where you've got such a small amount of acreage -- you</p> <p>16 know, Leelanau Peninsula may be comparable, but where</p> <p>17 you have a small amount of acreage and more bay,</p> <p>18 that's something that we want everybody to know in the</p> <p>19 whole United States. And to sell a blank glass</p> <p>20 doesn't make sense to me, nor do I think it makes</p> <p>21 sense to them.</p> <p>22 BY MR. INFANTE:</p> <p>23 Q. Well, do you -- sorry, do you own a winery?</p> <p>24 A. No, I do not.</p> <p>25 Q. Okay. You don't own any of these, you don't own any</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I know that Ed O'Keefe was very adamant, from Chateau</p> <p>2 Grand Traverse, about putting the peninsula</p> <p>3 appellation together and used it actually to sue Black</p> <p>4 Star for violating the appellation and the bottling.</p> <p>5 Q. Let me --</p> <p>6 A. The question is, I know it's very important and I know</p> <p>7 we all respect it, and Ed O'Keefe did it, and I know I</p> <p>8 signed a letter of support, but I don't know who --</p> <p>9 technically, I don't think the Township owns it. I</p> <p>10 don't know how that entity is owned --</p> <p>11 Q. Well --</p> <p>12 A. -- if it is.</p> <p>13 Q. -- I can tell you that appellation is not an entity.</p> <p>14 Do you know that? Do you believe, do you believe the</p> <p>15 OMP, Old Mission Peninsula, appellation is an entity?</p> <p>16 A. No. I believe Old Mission is a designated area, that</p> <p>17 if you looked at, in France, a Bordeaux region, which</p> <p>18 is amazing wine coming out of there and very worldwide</p> <p>19 known, that's their appellation, Bordeaux. We have a</p> <p>20 peninsula appellation.</p> <p>21 Q. And do you understand that an appellation is only a</p> <p>22 labeling designation?</p> <p>23 A. For estate bottled and things, I believe, yes.</p> <p>24 Q. It's doesn't have to be -- do you know what estate</p> <p>25 bottled means?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. I believe -- no, I'm not going to guess.</p> <p>2 Q. Okay, and I'm not going -- I don't need to explain to</p> <p>3 you what estate bottled means, but estate bottled</p> <p>4 isn't an appellation, has nothing to do with</p> <p>5 appellation.</p> <p>6 But appellation is a labeling designation</p> <p>7 by the federal government, do you understand that?</p> <p>8 A. Where the grapes were grown.</p> <p>9 Q. Where a portion of the grapes were grown.</p> <p>10 A. 85 percent.</p> <p>11 Q. And there's a requirement -- the only requirement is</p> <p>12 that a certain -- in order to use a label, to put Old</p> <p>13 Mission Peninsula on the label, it just has to contain</p> <p>14 a certain percentage of grapes. Do you understand</p> <p>15 that?</p> <p>16 A. I believe it, yeah.</p> <p>17 Q. But do you understand there's no requirement that a</p> <p>18 winery located in a certain appellation actually use</p> <p>19 the appellation designation? Do you understand that?</p> <p>20 A. Are you trying to tell me that they would bring in</p> <p>21 wine from a different place and put Peninsula</p> <p>22 appellation on it and --</p> <p>23 Q. No-no-no. They can't use the appellation --</p> <p>24 A. Correct.</p> <p>25 Q. -- but it doesn't mean they can't bottle grapes that</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. But you understand that, you know, when the Township</p> <p>2 enacts a zoning ordinance, it must be legal and</p> <p>3 constitutional?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. When you enacted 12(i), did you look at any</p> <p>6 other ways that the Township could fulfill its</p> <p>7 government interest of, you know, these four items</p> <p>8 that we talked about earlier, besides requiring logos</p> <p>9 on all retail items sold?</p> <p>10 A. Not sure.</p> <p>11 Q. Okay. Let's look at 12(j), which says: Retail sale</p> <p>12 of packaged food items allowed in addition to bottled</p> <p>13 wine are those which contain wine or fruit produced in</p> <p>14 Peninsula Township.</p> <p>15 Okay, what does this mean?</p> <p>16 Well, I guess I should keep reading, and</p> <p>17 then: Such food items shall be produced in a licensed</p> <p>18 food establishment and properly labeled, including the</p> <p>19 winery logo as the dominant logo. Such food items</p> <p>20 shall be intended for off-premise consumption. Such</p> <p>21 allowed packaged food items may include mustard,</p> <p>22 vinegar, non-carbonated beverages, et cetera.</p> <p>23 Okay, so my first question is, what does</p> <p>24 this mean?</p> <p>25 A. I believe at the time of this, tasting rooms didn't</p>
<p style="text-align: right;">Page 59</p> <p>1 don't include -- or bottle wine that doesn't include</p> <p>2 85 percent OMP grapes federally. You understand that,</p> <p>3 right?</p> <p>4 A. Federally, for appellation it has to be 85 percent.</p> <p>5 Q. Only to use the appellation on the label.</p> <p>6 A. Correct.</p> <p>7 Q. If they have a wine that doesn't have the appellation</p> <p>8 on the label, it doesn't matter where the grapes come</p> <p>9 from. Do you understand that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. In looking at part (i) here on the -- which</p> <p>12 requires the logo to be on the products, did the</p> <p>13 Township look at any other less-restrictive means to</p> <p>14 fulfill its interests as opposed to having labeled or,</p> <p>15 you know, logoed items?</p> <p>16 A. Well, I think your question may be a little leading.</p> <p>17 We had no intent on making a remote wine ordinance.</p> <p>18 We had no intent on a chateau wine ordinance. Ed</p> <p>19 O'Keefe came in first and he had a winery ordinance --</p> <p>20 a special use permit. Mr. Begin came in with his</p> <p>21 dream and told us what he wanted. We worked with him,</p> <p>22 he got it.</p> <p>23 The same thing with these people. They</p> <p>24 told us what they wanted, we said, "How about this,"</p> <p>25 and they signed up, said yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 have food at the time it was written. They may have</p> <p>2 had just a little bowl of oyster crackers, which I</p> <p>3 think Black Star still does. Food I believe came in</p> <p>4 after this, with the MLCC rules of food, and I believe</p> <p>5 you could sell -- it became the people of the wineries</p> <p>6 were losing so much money by giving away free tasting,</p> <p>7 they asked how could they get reimbursed for that</p> <p>8 bottle cost. I mean, it was like 30, 40 grand, some</p> <p>9 of them.</p> <p>10 And they went to the State, and the</p> <p>11 Township, I'm not going -- I can't tell you the</p> <p>12 details, but, in simple terms, I believe they could</p> <p>13 sell a small plate for X, and the wine might still be</p> <p>14 free or vice versa. Anyway, they could get reimbursed</p> <p>15 for that glass of wine or that tasting.</p> <p>16 And this, I don't think, was ever amended</p> <p>17 to deal with that food issue.</p> <p>18 Q. Well, do you think this should still be enforced,</p> <p>19 then?</p> <p>20 A. If the law has changed, then the ordinance, the</p> <p>21 ordinance probably should be changed.</p> <p>22 Q. By "the law has changed," you mean the Liquor Control</p> <p>23 Code has changed?</p> <p>24 MR. WISE: Object to foundation.</p> <p>25 A. Well, I feel that the liquor code, I think -- I think</p>

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<p style="text-align: right;">Page 66</p> <p>1 MR. WISE: Yup.</p> <p>2 MR. INFANTE: Okay.</p> <p>3 BY MR. INFANTE:</p> <p>4 Q. So let me, so Christina -- it's Christina Deerens</p> <p>5 [sic], right?</p> <p>6 A. Mmm-hmm.</p> <p>7 Q. D-E-E-R-E-N-S? Yes?</p> <p>8 A. Yes.</p> <p>9 Q. All right. So Christina Deeren sent a letter to the</p> <p>10 Michigan Attorney General's Office asking for an</p> <p>11 interpretation of the word "small plate"?</p> <p>12 A. I asked her to send a letter to the Attorney General,</p> <p>13 because a small plate kept being used in different</p> <p>14 things, and what did that mean. And we've never</p> <p>15 received a response, to my knowledge.</p> <p>16 Q. All right. Any other requests to the Attorney</p> <p>17 General's Office?</p> <p>18 A. No.</p> <p>19 Q. Okay. Getting back to 12(j), again, what is the, what</p> <p>20 is the harm of selling a packaged food, for example,</p> <p>21 mustard, without the winery's logo on it? What is the</p> <p>22 harm to the Township?</p> <p>23 A. I don't see any.</p> <p>24 Q. Let's look at 12(k). 12(k) says: Signs and other</p> <p>25 advertising may not promote, list or in any way</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Mmm-hmm.</p> <p>2 Q. You've gotta say "yes" or "no."</p> <p>3 A. I'm sorry, yes.</p> <p>4 Q. And it's advertising what they have for sale, right?</p> <p>5 A. It's on a blackboard, yup.</p> <p>6 Q. Okay. 12(k) prohibits that sign. If you read 12(k),</p> <p>7 it would prohibit that sign, yes or no?</p> <p>8 A. It would appear to.</p> <p>9 Q. Okay. Was the intent of 12(k) to prohibit a sign</p> <p>10 outside along the road that listed what they had for</p> <p>11 sale and the price?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Okay. But you agree that this would prohibit a</p> <p>14 blackboard inside the tasting room that says what they</p> <p>15 are selling and the price?</p> <p>16 A. I think it could say that, yes.</p> <p>17 Q. Okay, my question is, why? What is the -- how does</p> <p>18 this further the government's interest in this case?</p> <p>19 A. Well, I don't know that -- you keep referring to the</p> <p>20 government's interest. What we run into is the guy</p> <p>21 who's paying the commercial taxes on the market down</p> <p>22 the road, and items that are sold in the wineries on</p> <p>23 agricultural land he thinks he should be selling in</p> <p>24 his store.</p> <p>25 Q. Well, let me stop you there. The wineries and their</p>
<p style="text-align: right;">Page 67</p> <p>1 identify any of the food or non-food items allowed for</p> <p>2 sale in the tasting room.</p> <p>3 What does that mean?</p> <p>4 A. We have a very strict sign ordinance in Peninsula</p> <p>5 Township. I guess that's my answer.</p> <p>6 Q. Okay. My question is, this can be read to say that,</p> <p>7 for example, a remote winery tasting room cannot have</p> <p>8 a menu that lists the items it has for sale. Is that</p> <p>9 what this is supposed to prevent?</p> <p>10 A. I don't see it saying that.</p> <p>11 Q. Okay. Well, it says: Signs and other advertising may</p> <p>12 not promote, list or in any way identify any of the</p> <p>13 food or non-food items allowed for sale in the tasting</p> <p>14 room.</p> <p>15 So let me give you an example. Say we're</p> <p>16 in a remote winery tasting room, we're inside, and on</p> <p>17 the wall there is a list of food that's for sale or</p> <p>18 merchandise that's for sale with the price. Do you</p> <p>19 agree or disagree that that ordinance would prohibit</p> <p>20 that sign?</p> <p>21 A. I don't think it would prohibit it, because it's</p> <p>22 actually what they do there.</p> <p>23 Q. But it's a sign?</p> <p>24 A. Mmm-hmm.</p> <p>25 Q. Yes?</p>	<p style="text-align: right;">Page 69</p> <p>1 tasting rooms are paying commercial tax, right?</p> <p>2 A. For the building.</p> <p>3 Q. So commercial tax doesn't really matter in this</p> <p>4 scenario, right?</p> <p>5 A. Well, let's -- maybe if I use the word "zoned" --</p> <p>6 Q. Okay.</p> <p>7 A. -- "commercial," where people expect to go to buy food</p> <p>8 items, get a sandwich, get a pizza, yes.</p> <p>9 Q. Okay. But how does prohibiting a remote winery</p> <p>10 tasting room from having a sign or an advertisement,</p> <p>11 how does that promote an interest of Peninsula</p> <p>12 Township?</p> <p>13 A. I don't know why that's in there, I can't explain it</p> <p>14 to you.</p> <p>15 Q. Okay. But can you think of any way that this promotes</p> <p>16 a government interest of Peninsula Township?</p> <p>17 A. No.</p> <p>18 Q. And can you think of any harm to the government that</p> <p>19 this is trying to prevent?</p> <p>20 A. The only thing I could even think of is if we got</p> <p>21 complaints from the market, the store of any item</p> <p>22 being sold there, but I don't recall that.</p> <p>23 Q. You don't know if that happened or didn't happen?</p> <p>24 A. Nmm-mmm.</p> <p>25 Q. No? You've gotta say "no."</p>

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<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 74</p> <p>1 I think the restaurant isn't -- restaurants only go</p> <p>2 into commercial areas.</p> <p>3 Q. That's my question. My question is, how is one of</p> <p>4 those four government interests we talked about, how</p> <p>5 is one of those four furthered by not allowing a farm</p> <p>6 processing facility to have a restaurant?</p> <p>7 A. I don't know that it's furthered by not having a</p> <p>8 restaurant. I do know that it's not set up with the</p> <p>9 health department, health safety and welfare, that we</p> <p>10 are -- took an oath to do. And none of them have a</p> <p>11 septic tank. They don't have a grease trap.</p> <p>12 Q. But those, those issues, health department, grease</p> <p>13 trap, septic, those are county health department</p> <p>14 issues, correct?</p> <p>15 A. Currently.</p> <p>16 Q. Okay. Peninsula Township has nothing to do with</p> <p>17 permitting or licensing grease traps, septic,</p> <p>18 commercial kitchens, correct?</p> <p>19 A. I think we would have to approve a kitchen.</p> <p>20 Q. You think Peninsula Township has the right to approve</p> <p>21 a kitchen? Where is that in the ordinance?</p> <p>22 A. Well, it says you can't have it here.</p> <p>23 Q. This says you can't have a restaurant. But you just</p> <p>24 told me not having a restaurant doesn't further any</p> <p>25 government interest.</p>	<p style="text-align: right;">Page 76</p> <p>1 becoming houses?</p> <p>2 A. Ag land from becoming houses, I don't think that's</p> <p>3 comparable.</p> <p>4 Q. Because it doesn't, right?</p> <p>5 A. Right.</p> <p>6 Q. Okay. And what is the harm that the Township is</p> <p>7 trying to prevent by not allowing wineries to have</p> <p>8 restaurants?</p> <p>9 A. Wineries are set up as another option to increase the</p> <p>10 farm gate, which is the sale of their wine and</p> <p>11 advertising that promotes them nationally or in</p> <p>12 Michigan.</p> <p>13 Food is, food is there basically to, in my</p> <p>14 opinion, in layman's terms, to soak up some of the</p> <p>15 alcohol so we don't have alcohol issues on the road.</p> <p>16 Q. So serving food is a good thing?</p> <p>17 A. Serving a small plate is a good thing, I think.</p> <p>18 Q. So you're saying serving a minimal amount of food is a</p> <p>19 good thing?</p> <p>20 A. I'm saying bread, fruit, grapes, cheese -- fruits is a</p> <p>21 good thing -- crackers.</p> <p>22 Q. But a sandwich is a bad thing?</p> <p>23 A. Yes.</p> <p>24 Q. Why is a sandwich a bad thing?</p> <p>25 A. You know, it's a fine line always that we get into</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I guess I need to see "restaurant" and "kitchen," what</p> <p>2 the difference is.</p> <p>3 Q. Well, my question is -- so I asked you, how does this</p> <p>4 further one of your governmental interests, and you</p> <p>5 said, "I don't see how it does." Is that right?</p> <p>6 A. Yeah, I don't. We just don't want, and it's very</p> <p>7 clear, restaurants or bars. If you want to take this</p> <p>8 route, that's what you have to comply with to get the</p> <p>9 use by right, not going in front of the planning</p> <p>10 commission, spend the time. You do have to get all</p> <p>11 the health department approvals.</p> <p>12 Q. But if they had all the health department approvals,</p> <p>13 would Peninsula Township allow it?</p> <p>14 A. A restaurant?</p> <p>15 Q. Yeah. At a farm processing facility?</p> <p>16 A. A restaurant where you would go in and get Sunday</p> <p>17 brunch --</p> <p>18 Q. Sure.</p> <p>19 A. -- something not designed with alcohol? No, we would</p> <p>20 not allow it.</p> <p>21 Q. And what interest does that further?</p> <p>22 A. Those uses are given to commercial areas.</p> <p>23 Q. But what interest does it further, which of these four</p> <p>24 interests that you have identified does it further?</p> <p>25 How does not having a restaurant prevent ag land from</p>	<p style="text-align: right;">Page 77</p> <p>1 when we do these things. And through the community</p> <p>2 process, I think everyone would agree that it's a good</p> <p>3 thing while you're tasting wine.</p> <p>4 And I know those guys, I know the people</p> <p>5 that are behind the bars, they're trained and they</p> <p>6 aren't going to allow someone to get crazy, but I</p> <p>7 don't care who you are, you taste several different</p> <p>8 wines and then go to the next one, it's always good to</p> <p>9 have something in your stomach.</p> <p>10 Q. So now we're back to food is a good thing.</p> <p>11 A. Well, I never said it's not a good thing. You said a</p> <p>12 sandwich. I said food, small plate.</p> <p>13 Q. How about this. What is the harm of a farm processing</p> <p>14 winery serving a customer a sandwich? What is the</p> <p>15 harm to the government if a farm processing facility</p> <p>16 winery serves someone a sandwich?</p> <p>17 A. Well, I would say it would take away from the retail</p> <p>18 and the commercial, and they have a hard time making</p> <p>19 it.</p> <p>20 Q. So, but now we're back to -- but you told me before</p> <p>21 the government's job is not to protect businesses from</p> <p>22 competition, right?</p> <p>23 A. It's not my job to run their business plans, but when</p> <p>24 they move into an area where they know they have</p> <p>25 certain zoned things that they can do and in a</p>

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

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<p style="text-align: right;">Page 110</p> <p>1 A. Yes.</p> <p>2 Q. Why?</p> <p>3 A. It's designed to sell the person's product from the</p> <p>4 peninsula, and that, that's been determined to be</p> <p>5 their logoed items. Was that number too high or too</p> <p>6 low? We can always change. I think that's real</p> <p>7 negotiable. But something had to be plugged in, so it</p> <p>8 was.</p> <p>9 Q. Is this just a number they picked out of a hat?</p> <p>10 A. I believe it.</p> <p>11 Q. Okay. There's no basis for that number?</p> <p>12 A. I couldn't point it to you.</p> <p>13 Q. But you're amenable to that number changing?</p> <p>14 A. Yeah. I don't know, you got me now, because you know</p> <p>15 where we talked about that, and I don't know if I --</p> <p>16 okay.</p> <p>17 Q. We talked about that. All right, you can hand that</p> <p>18 to ...</p> <p>19 MARKED FOR IDENTIFICATION:</p> <p>20 DEPOSITION EXHIBIT 3</p> <p>21 12:56 p.m.</p> <p>22 MR. INFANTE: All right, Matt, we're on the</p> <p>23 winery chateau sections.</p> <p>24 MR. WISE: Got it.</p> <p>25</p>	<p style="text-align: right;">Page 112</p> <p>1 rooms, and there's a formula for one house given up --</p> <p>2 they get three rooms, up to twelve, and a lot of times</p> <p>3 they wanted to do seminars, weddings, and all those</p> <p>4 rooms would be available for them.</p> <p>5 Q. Well, it says: Facilities, meeting rooms, and food</p> <p>6 and beverage services shall be for registered guests</p> <p>7 only.</p> <p>8 A. Yeah.</p> <p>9 Q. That's not true, though, right?</p> <p>10 A. Right. They can have a full-course dinner there,</p> <p>11 yeah.</p> <p>12 Q. Well, but a non-registered guest could have beverages,</p> <p>13 right?</p> <p>14 A. It would have been free wine tasting at the time this</p> <p>15 was written, yes.</p> <p>16 Q. But now they can have, a non-registered guest can have</p> <p>17 wine, right?</p> <p>18 A. I believe it, yup.</p> <p>19 Q. And a non-registered guest can have food, right?</p> <p>20 A. There's a complex formula that goes along with that</p> <p>21 that I --</p> <p>22 Q. How about some food, some form of food?</p> <p>23 A. Small plate.</p> <p>24 Q. All right. And a non-registered guest could use the</p> <p>25 facility, right?</p>
<p style="text-align: right;">Page 111</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Okay. So I've handed you Plaintiffs' Exhibit 3 --</p> <p>3 actually, I should back up.</p> <p>4 You had Exhibit 2, which was the farm</p> <p>5 processing section of the ordinance. You recognize</p> <p>6 this document?</p> <p>7 A. Yes.</p> <p>8 Q. You think this may not be current?</p> <p>9 A. It isn't.</p> <p>10 Q. Okay. I would say that your website needs to be</p> <p>11 updated, then.</p> <p>12 All right, so I've handed you Plaintiffs'</p> <p>13 Exhibit 3. This is the winery chateau section of the</p> <p>14 Peninsula Township ordinance. Do you recognize this?</p> <p>15 A. Mmm-hmm.</p> <p>16 Q. Yes?</p> <p>17 A. Yes, I do.</p> <p>18 Q. All right. We're going to do the same exercise again.</p> <p>19 All right, let's look at -- go to page, on the bottom</p> <p>20 129. So we're going to start at 10(m) at the very</p> <p>21 top. It says: Accessory uses such as facilities,</p> <p>22 meeting rooms, and food and beverage services shall be</p> <p>23 for registered guests only.</p> <p>24 What does that mean?</p> <p>25 A. In a winery chateau, they actually have on-site guest</p>	<p style="text-align: right;">Page 113</p> <p>1 A. The bathroom, yeah.</p> <p>2 Q. Well, and a non-registered guest could use a meeting</p> <p>3 room, right?</p> <p>4 A. I believe there's --</p> <p>5 Q. I guess what I'm getting at is, isn't this provision</p> <p>6 now obsolete because it's been preempted by other</p> <p>7 provisions of the ordinance?</p> <p>8 A. I think you may be true.</p> <p>9 Q. Because you're not enforcing part (m) here to prevent</p> <p>10 a non-registered guest from tasting wine, are you?</p> <p>11 A. No, because, as you said, the law has changed.</p> <p>12 Q. Okay, so --</p> <p>13 A. Has it been redone in the ordinance? No.</p> <p>14 Q. Okay. And by "law," you mean the Liquor Control Code</p> <p>15 has been changed?</p> <p>16 A. Correct.</p> <p>17 Q. All right. Let's look at item, it's (u)(1). This is</p> <p>18 the guest activity uses provision, right?</p> <p>19 A. Mmm-hmm.</p> <p>20 Q. All right. And let's look at (b). It says: Guest</p> <p>21 activity uses are intended to help in the promotion of</p> <p>22 peninsula agriculture by identifying peninsula</p> <p>23 produced food or beverage for consumption by the</p> <p>24 attendees; providing peninsula agriculture promotional</p> <p>25 brochures, maps and awards; and including tours</p>

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<p style="text-align: right;">Page 114</p> <p>1 through the winery and/or other peninsula agricultural</p> <p>2 locations.</p> <p>3 Okay, what does this mean?</p> <p>4 A. I believe that's the part I was referring to where</p> <p>5 Mr. Begin came to the Township and asked, "How can I</p> <p>6 get" -- and Jim Krupka at the time was CEO -- "how can</p> <p>7 we get more people in and do more events."</p> <p>8 Q. My question is, what does it mean?</p> <p>9 A. I'm sorry, what page were you on?</p> <p>10 Q. I'm on, it's 130, and it's item (1)(b).</p> <p>11 A. I believe the guest activity -- as I said, there was</p> <p>12 an amendment, and it had to do with the more land that</p> <p>13 they brought in for grape consumption from the</p> <p>14 peninsula, there was a formula that they could get a</p> <p>15 number of people to do these guest activities, and the</p> <p>16 guest activities were structured around things that</p> <p>17 promote the peninsula, I think 501(c)(3)s.</p> <p>18 Q. This one right here, I guess my question is, does this</p> <p>19 mean that a Peninsula Township winery is required to</p> <p>20 identify peninsula produce, provide promotional</p> <p>21 brochures and maps of peninsula agriculture, and have</p> <p>22 tours through the winery and other peninsula</p> <p>23 agricultural locations?</p> <p>24 A. Mmm-hmm.</p> <p>25 Q. Is that what that means?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. -- a government interest?</p> <p>2 A. No.</p> <p>3 Q. And you can't tell me what harm this is intended to</p> <p>4 prevent?</p> <p>5 A. No, I can't.</p> <p>6 Q. And you can't tell me any less-restrictive means that</p> <p>7 the Township considered?</p> <p>8 A. No.</p> <p>9 Q. Is the Township still enforcing 1(d)?</p> <p>10 A. Not that I'm aware of. I don't -- if it's in the</p> <p>11 ordinance and it's not changed by a law, then we</p> <p>12 would --</p> <p>13 Q. You would enforce it?</p> <p>14 A. Well, we would talk to the people about it and then</p> <p>15 work with them to change it.</p> <p>16 Q. Do you think it needs to be changed?</p> <p>17 A. Well, I need to find out why -- what it truly means,</p> <p>18 why it was there. I don't recall.</p> <p>19 Q. Okay. And 1(b), we talked about that, is this still</p> <p>20 being enforced, the promotional items -- or the</p> <p>21 advertisement?</p> <p>22 A. I'm going to have to say yes until I've -- if it's in</p> <p>23 the ordinance, the procedure is we would go and say,</p> <p>24 "Hey, we need to change this." Then we'd work through</p> <p>25 it and change them all, in all the chateaus to be the</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Mmm-hmm.</p> <p>2 Q. Yes?</p> <p>3 A. Yes, to my knowledge.</p> <p>4 Q. Okay. How does this ordinance further one of the four</p> <p>5 governmental interests we talked about?</p> <p>6 A. Again, as determined -- I can't relate it to the four.</p> <p>7 Q. Okay. And so if you can't relate it to the four, you</p> <p>8 can't tell me the harm it was trying to prevent?</p> <p>9 A. No.</p> <p>10 Q. You can't tell me what less-restrictive means you</p> <p>11 considered, the Township considered?</p> <p>12 A. No.</p> <p>13 Q. Okay. Let's look at (d). It says: Guest activity</p> <p>14 uses do not include wine tasting and such related</p> <p>15 promotional activities as political rallies, winery</p> <p>16 tours, and free entertainment (for example, Jazz at</p> <p>17 Sunset) which are limited to the tasting room and for</p> <p>18 which no fee or donation of any kind is received.</p> <p>19 What does this mean?</p> <p>20 A. I don't recall how we got to that one.</p> <p>21 Q. But do you know what it means?</p> <p>22 A. No.</p> <p>23 Q. Okay. If you don't know what it means, I'm assuming</p> <p>24 you can't tell me how this furthers --</p> <p>25 A. Nope, nope.</p>	<p style="text-align: right;">Page 117</p> <p>1 same.</p> <p>2 Q. Do you think this needs to be changed?</p> <p>3 A. I think personally we've gotta get rid of this whole</p> <p>4 ordinance and start a new one, my feeling.</p> <p>5 Q. Have you taken action to get rid of this entire</p> <p>6 ordinance?</p> <p>7 A. I brought it up at several meetings, to tell people</p> <p>8 that it would be better to create a winery ordinance.</p> <p>9 We'd have a use by right and maybe two tiers of winery</p> <p>10 ordinance that would be more effective. This is like</p> <p>11 impossible, for these reasons, to enforce.</p> <p>12 Q. Because you don't know what it means, right?</p> <p>13 A. Yeah. My zoning people, they may, because they're in</p> <p>14 and out of it all the time. But for me, I don't.</p> <p>15 Q. You, as the township supervisor, you don't know what</p> <p>16 these ordinances mean, right?</p> <p>17 A. We did this thing 20 years ago, and it's been amended,</p> <p>18 and I can't tell you what those sentences mean now or</p> <p>19 why they're important to be in there.</p> <p>20 Q. Okay.</p> <p>21 A. I will tell you this. As crazy as that zoning</p> <p>22 ordinance is, written in '72, I don't think we've ever</p> <p>23 lost in court sticking to it. That I'll hang my hat</p> <p>24 on.</p> <p>25 So if there's something in here, maybe it</p>

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<p style="text-align: right;">Page 118</p> <p>1 made sense to somebody to put it in there, because all</p> <p>2 of these documents -- you know how many attorneys</p> <p>3 living in Peninsula Township scrutinize this stuff?</p> <p>4 So our ordinance is, I think is good, but ...</p> <p>5 Q. But you don't understand it?</p> <p>6 A. I don't understand that one --</p> <p>7 Q. Okay.</p> <p>8 A. -- or I could talk to you about it.</p> <p>9 Q. Have you ever -- you're the township supervisor. Have</p> <p>10 you ever brought a motion at a town board meeting to</p> <p>11 rescind or stay enforcement of these winery ordinances</p> <p>12 while you rewrite them?</p> <p>13 A. I have not taken that to the township board.</p> <p>14 Q. Why not?</p> <p>15 A. Because I've -- we've had a consensus that while we're</p> <p>16 under this and we anticipate changes, we anticipated</p> <p>17 changes with the wine group, that things are going to</p> <p>18 change, and if -- let me put it this way.</p> <p>19 If someone came in on an issue that was</p> <p>20 health, safety and welfare, damn right, I'd be right</p> <p>21 there and close them down. If they had too many</p> <p>22 people in an area, and the fire marshal, I would do</p> <p>23 it.</p> <p>24 But while we're in negotiation, what I do,</p> <p>25 if we're made aware of a violation, I will go and talk</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I recall.</p> <p>2 Q. But the wineries brought their issues to you regarding</p> <p>3 the ordinance a year prior to that, right, more than a</p> <p>4 year prior to that?</p> <p>5 A. We've been on and off these things for even longer</p> <p>6 than that.</p> <p>7 Q. Decades, right, at least a decade?</p> <p>8 A. Every time we got a new planner we would sit down and</p> <p>9 try to accommodate everybody's needs. We had a</p> <p>10 four-tiered system, and it didn't seem to be -- no one</p> <p>11 seemed to like it. Other people wanted to stay with</p> <p>12 what they had.</p> <p>13 And most people decided that were in the</p> <p>14 use by right, as they started and got more successful,</p> <p>15 they would move into the chateau, giving them more</p> <p>16 opportunity.</p> <p>17 Q. But, I mean, these, these ordinance sections that you</p> <p>18 don't understand, I mean, you've had the opportunity</p> <p>19 over the last decade to bring a motion to stay</p> <p>20 enforcement while they're rewritten, right?</p> <p>21 A. We are not enforcing right now while it's being</p> <p>22 rewritten. I've told my staff that. I don't know</p> <p>23 that I can officially report to minutes. I tend to</p> <p>24 work a little too independent at times and get in</p> <p>25 trouble.</p>
<p style="text-align: right;">Page 119</p> <p>1 to that person, and hopefully we would come into</p> <p>2 compliance. The very last thing we would do is go to</p> <p>3 court.</p> <p>4 Q. Okay, but when you --</p> <p>5 A. Voluntary compliance.</p> <p>6 Q. When you say "while we're in this," I assume you mean</p> <p>7 the lawsuit?</p> <p>8 A. No, we're still in negotiation, I hope, on -- to tell</p> <p>9 you the truth, I think I could sit down with those</p> <p>10 guys and in five minutes we could come to 90 percent</p> <p>11 of this lawsuit.</p> <p>12 Q. Well, but we did that for 25 hours and we came to an</p> <p>13 agreement --</p> <p>14 A. No.</p> <p>15 Q. -- and the Township didn't sign it.</p> <p>16 MR. WISE: Objection.</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. But you think you can get it done in five minutes,</p> <p>19 what we didn't get done in 25 hours, apparently?</p> <p>20 A. I think I know all those guys well enough that I could</p> <p>21 sit down and negotiate something relatively quickly.</p> <p>22 Q. Okay. Let me back up. So this lawsuit was filed</p> <p>23 about a year ago?</p> <p>24 A. Mmm-hmm.</p> <p>25 Q. Yes?</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. I'm sorry, so you've told your staff not to enforce</p> <p>2 what?</p> <p>3 A. We're not looking at logoed items. We're not looking</p> <p>4 at those types of violations. We are looking at</p> <p>5 anything that deals, you know, with a flagrant</p> <p>6 violation, as we would term it. But am I in their</p> <p>7 place looking to see if they've got that many guest</p> <p>8 people? No.</p> <p>9 Q. Then why are you not enforcing that?</p> <p>10 A. Because I'm waiting to see what we come out with in</p> <p>11 court.</p> <p>12 Q. Are you not enforcing them because you don't think</p> <p>13 they're enforceable, you don't think they're legal?</p> <p>14 A. No. They're legal while they're there, that's my</p> <p>15 opinion, but I'm not -- I'm trying to get this</p> <p>16 resolved.</p> <p>17 Q. You're not taking a chance that they're not legal?</p> <p>18 A. I'm not going to say that.</p> <p>19 Q. Okay.</p> <p>20 A. I will say I believe in our ordinance, and I think our</p> <p>21 ordinance will prevail.</p> <p>22 Q. All right. Let's look at item 2(a). So I should</p> <p>23 probably read 2. It says: Uses allowed</p> <p>24 notwithstanding 8.7.3(10)(m); the following guest</p> <p>25 activity uses may be approved with a special use</p>

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<p style="text-align: right;">Page 122</p> <p>1 permit by the township board.</p> <p>2 And so (a) says: Wine and food seminars</p> <p>3 and cooking classes that are scheduled at least 30</p> <p>4 days in 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 And I guess I should say, so if we look</p> <p>8 at -- sorry, we're looking at 2. Item 2 has an (a),</p> <p>9 (b), (c), (d) and (e)?</p> <p>10 A. Mmm-hmm.</p> <p>11 Q. And these are the five uses that are allowed, is that</p> <p>12 right?</p> <p>13 A. This is an amendment that was asked for and worked</p> <p>14 out.</p> <p>15 Q. My question is, are these five uses that are allowed</p> <p>16 notwithstanding Section 8.7.3(10)(m)?</p> <p>17 A. Are they allowed?</p> <p>18 Q. My question is, are these the only five uses that are</p> <p>19 allowed?</p> <p>20 A. I don't know the answer. These are definitely</p> <p>21 allowed.</p> <p>22 Q. Okay, so: Wine and food seminars and cooking classes</p> <p>23 that are scheduled at least 30 days in advance with</p> <p>24 notice provided to the zoning administrator.</p> <p>25 Attendees may consume food prepared in the class.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Okay. So they are not allowed to host a 501(c)(3)</p> <p>2 non-profit from Leelanau County?</p> <p>3 A. Correct.</p> <p>4 Q. Why?</p> <p>5 A. I think it was the concentration -- well, it was to</p> <p>6 promote local 501(c)(3)s.</p> <p>7 Q. Is there something wrong with non-local 501(c)(3)s?</p> <p>8 A. No, but after the negotiation, it came out as you see</p> <p>9 it.</p> <p>10 Q. Okay. And so are you telling me it's the job of</p> <p>11 Peninsula Township to promote local 501(c)(3)s over</p> <p>12 non-local 501(c)(3)s?</p> <p>13 A. No. I'm saying that the negotiation between the</p> <p>14 planning commission and the guy who wrote this -- I</p> <p>15 think this was Chateau Chantal, too -- they agreed to.</p> <p>16 Q. Okay. So what government interest does this promote?</p> <p>17 A. It keeps them viable by bringing in additional</p> <p>18 501(c)(3)s, could be --</p> <p>19 Q. But you're prohibiting them from, you're prohibiting</p> <p>20 the pool of 501(c)(3)s they can host.</p> <p>21 A. See, that's where we get a line, too, because if you</p> <p>22 belong to the Cherryland Humane Society and you live</p> <p>23 in Peninsula Township, where is the 501(c)(3), you</p> <p>24 know?</p> <p>25 Q. I agree.</p>
<p style="text-align: right;">Page 123</p> <p>1 What does that mean?</p> <p>2 A. That was something that came up that people wanted</p> <p>3 to --</p> <p>4 Q. The question is, what does it mean?</p> <p>5 A. So you can further your wine tasting, compare it to, I</p> <p>6 don't know, if Irish stew goes with our cabernet, a</p> <p>7 cooking kind of thing that they asked for.</p> <p>8 Q. Okay.</p> <p>9 A. I didn't stay up at night to invent these things.</p> <p>10 They came from the wineries.</p> <p>11 Q. Well, do you know what it means? Do you know why it's</p> <p>12 here? What is this trying to prevent?</p> <p>13 A. It's not trying to prevent. It's trying to make them</p> <p>14 more successful.</p> <p>15 Q. How does it do that?</p> <p>16 A. It brings in cooking classes, things that they don't</p> <p>17 normally market.</p> <p>18 Q. Okay. Well, let's look at 2(b). It says: Meetings</p> <p>19 of 501(c)(3) non-profit groups within Grand Traverse</p> <p>20 County.</p> <p>21 Okay, let's just start with that first</p> <p>22 sentence. So a winery chateau is allowed to host</p> <p>23 meetings of 501(c)(3) non-profit groups that are</p> <p>24 located within Grand Traverse County, right? Yes?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 125</p> <p>1 A. You're supporting your 501(c)(3), so they would be</p> <p>2 there. It was an additional way to drum up business</p> <p>3 in this.</p> <p>4 Q. But like the United Way, all right, the United Way, I</p> <p>5 believe, is based out of Denver, but it's a national</p> <p>6 organization and has lots of members. Under this</p> <p>7 ordinance, the United Way could not have a meeting at</p> <p>8 a winery chateau.</p> <p>9 A. Well, there would be part of people at the United Way,</p> <p>10 so --</p> <p>11 Q. Well, it says the 501(c)(3) non-profit groups within</p> <p>12 Grand Traverse County. So are you --</p> <p>13 A. Well, United Way is within Grand Traverse County.</p> <p>14 Q. Well, are you telling me that the -- does this mean</p> <p>15 that the non-profit group has to be registered in</p> <p>16 Grand Traverse County or just has to have a member in</p> <p>17 Grand Traverse County?</p> <p>18 A. Well, that's an interesting thing, and that's why the</p> <p>19 zoning is -- I'd just like to get rid of the whole</p> <p>20 damn thing. We never -- I can't tell you that, but I</p> <p>21 would not, if they did United Way, I would not bust</p> <p>22 them.</p> <p>23 Q. But you would agree with me that this is vague,</p> <p>24 because you don't know what it means?</p> <p>25 A. That's true.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. I guess, are you enforcing -- so I'll give you 2 an example. I sit on the foundation board for Hospice 3 of Michigan, okay, which is not based in Grand 4 Traverse County, it's, I believe it's based in Ann 5 Arbor, and if we wanted to have -- actually, I've got 6 a perfect example. 7 Hospice of Michigan, we had our foundation 8 board meeting in Traverse City, I believe it was three 9 years ago, four years ago, and we could not hold our 10 meetings at a winery on Old Mission Peninsula. We 11 went to Leelanau County, because we're not a Grand 12 Traverse based 501(c)(3). 13 A. Mmm-hmm. 14 Q. Why? 15 A. Well -- 16 Q. What is the harm of having Hospice of Michigan's 17 foundation board and board of directors have a meeting 18 at a Peninsula Township winery chateau? 19 A. Well, you could have if you would have rented the 20 rooms. 21 Q. We had to stay there? 22 A. Yeah. 23 Q. But what's the harm if we didn't stay there? 24 A. I don't know that there is a harm. I know that 25 through the negotiation and what the people asked for,</p>	<p style="text-align: right;">Page 128</p> <p>1 it further any of those four governmental interests? 2 A. I don't know. 3 Q. Do you think it does? 4 A. I don't know. 5 Q. Okay. If you don't know how -- I assume you then 6 don't know what harm is trying to be prevented? 7 A. I don't. 8 Q. Okay. And I assume you don't know if there are any 9 less-restrictive means considered? 10 A. Don't recall. 11 Q. Okay. Is the Township still enforcing this ordinance? 12 A. I think if they're -- no, I'm not aware of any 13 violations. 14 Q. Well -- 15 A. We are going to enforce that ordinance unless there's 16 a violation, and then we'll proceed to "how do we do 17 that." 18 Q. So you are going to enforce it, if it comes up? 19 A. If it comes up and there's an issue, yeah, we have to. 20 We're not out going door-to-door looking. We're 21 trying to work with the people, and that is our 22 procedure. We don't turn our back to it. We talk to 23 the people, and I know all the people, and usually 24 voluntarily it's corrected. 25 Q. All right. Well, let's look at (c). (C) is sort of</p>
<p style="text-align: right;">Page 127</p> <p>1 we gave them. You've got -- these guys come to us, we 2 give them everything they want. Now they say that 3 they don't like it and they signed a contract, they've 4 got a problem. 5 Q. Well, I get that, but I want to know, you know, how 6 does preventing a 501(c)(3) non-profit based 7 downstate, you know, how does preventing them from 8 holding a meeting at a winery chateau further an 9 interest of Peninsula Township? 10 A. Maybe it took up a date that someone else in Grand 11 Traverse wanted. I don't know your answer. 12 Q. Do you know how it, how it furthers the interest? 13 A. Furthers the interest of the winery? 14 Q. No, of Peninsula Township. Preventing a 501(c)(3) not 15 located in Grand Traverse County from holding a 16 meeting, how does that further an interest of 17 Peninsula Township? 18 A. Well, the ordinances are designed to further the 19 interests of the winery, so ... 20 Q. But you have identified four governmental interests -- 21 A. Yes. 22 Q. -- that were used when enacting these ordinances. 23 A. Mmm-hmm. 24 Q. I want to know how preventing 501(c)(3)s from out of 25 Grand Traverse County from holding meetings, how does</p>	<p style="text-align: right;">Page 129</p> <p>1 the same issue as (b). (C) says: Meetings of 2 agricultural related groups that have a direct 3 relationship to agricultural production, provided 4 that -- and there's sort of a list here and there's 5 some examples. 6 A. Mmm-hmm. 7 Q. I guess my question is, what government interest is 8 furthered by limiting the groups that can use -- that 9 can have meetings at wineries to being only ag groups? 10 A. The concept has been the same in the beginning. We 11 want our ag, all of our ag -- if you're growing 12 lavender, whatever -- to be successful. 13 Q. But how does limiting who can use meeting rooms to 14 just ag groups, how does that further any of these 15 four governmental interests? 16 A. I guess my answer would be "I don't know" all the way 17 through. 18 Q. So you don't know on interest, you don't know on the 19 harm to be prevented, you don't know on what 20 less-restrictive means? 21 A. Hmmm-mmm. 22 Q. No? 23 A. No. 24 Q. Is the Township still enforcing this ordinance? 25 A. Again, the Township, we're enforcing -- anything that</p>

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<p style="text-align: right;">Page 142</p> <p>1 to answer my questions, that is not a privileged</p> <p>2 conversation and is, you know, an improper coaching of</p> <p>3 a witness.</p> <p>4 MR. WISE: Well, I can assure you, and</p> <p>5 whether you want to believe it or not, there was</p> <p>6 actually zero coaching going on there, so you're not</p> <p>7 going to get the contents of the conversation between</p> <p>8 Mr. Meihn and Mr. Manigold.</p> <p>9 MR. INFANTE: Well, I can ask him first. I</p> <p>10 haven't gotten to the contents. I can still ask.</p> <p>11 BY MR. INFANTE:</p> <p>12 Q. Did Mr. Meihn advise you on how you should answer my</p> <p>13 questions? Don't tell me what he told you to answer,</p> <p>14 but did he advise you on how to answer my questions?</p> <p>15 A. I'm going to rely on counsel for an answer.</p> <p>16 MR. INFANTE: Matt, I think he needs to</p> <p>17 answer that.</p> <p>18 MR. WISE: I don't think he has to tell you</p> <p>19 what he advised him. You literally asked him what</p> <p>20 advice he got from his lawyer. It's clearly</p> <p>21 privileged.</p> <p>22 MR. INFANTE: No, I'm asking did he advise</p> <p>23 him how to answer my questions. I don't need the</p> <p>24 contents. Did he advise you how.</p> <p>25 MR. WISE: Right, which is telling him the</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Again, my question is, what is a guest activity? What</p> <p>2 does that word mean?</p> <p>3 A. Well, it's what a guest can do while he's on site, on</p> <p>4 premise, I guess you could say, of liquor control,</p> <p>5 things that can occur and cannot occur.</p> <p>6 Q. Okay, who is a guest?</p> <p>7 A. Well, we did have a lawsuit about that. I don't</p> <p>8 recall how Judge Rogers ruled on that. I think there</p> <p>9 was a controversy of a "guest," that if you just sign</p> <p>10 in are you a guest or do you have to stay, and I know</p> <p>11 we went through a lawsuit, but I'm saying anybody on</p> <p>12 the premises is a guest.</p> <p>13 Q. Regardless of whether you stay there or not, stay the</p> <p>14 night in a room or not?</p> <p>15 A. Yeah. If you stay in a room and you're a registered</p> <p>16 guest, then you have more options.</p> <p>17 Q. Okay. So there is a distinction between a registered</p> <p>18 guest and a guest?</p> <p>19 A. Correct.</p> <p>20 Q. Registered guest means you are staying in a room, or</p> <p>21 whatever, on the property, right?</p> <p>22 A. Yes.</p> <p>23 Q. Guest just means that you come to the property and</p> <p>24 don't stay the night?</p> <p>25 A. Mmm-hmm.</p>
<p style="text-align: right;">Page 143</p> <p>1 contents of what he would have said to him. Whether</p> <p>2 he said it or not, that's absolutely going to be</p> <p>3 privileged information. You said it, one way or the</p> <p>4 other, you're getting the answers to that question and</p> <p>5 the contents of that conversation without directly</p> <p>6 asking what the contents are.</p> <p>7 MR. INFANTE: I'll ask it a different way.</p> <p>8 BY MR. INFANTE:</p> <p>9 Q. And I only want a yes-or-no answer to this. Did</p> <p>10 Mr. Meihn advise you how to answer my questions?</p> <p>11 A. No.</p> <p>12 Q. All right. So we were, we were talking about guest</p> <p>13 activities, and I don't know if you answered the</p> <p>14 question, so, I apologize --</p> <p>15 A. I can't remember.</p> <p>16 Q. -- I'm just going to ask it again.</p> <p>17 A. Okay.</p> <p>18 Q. What is a guest activity?</p> <p>19 A. It was set up -- I read the back part. Now it's</p> <p>20 coming back to me. I haven't actually read this</p> <p>21 ordinance since probably ten years, maybe longer.</p> <p>22 It was set up, when the wineries had slow</p> <p>23 time, they wanted to bring in additional things. They</p> <p>24 asked the community to get involved, and this is what</p> <p>25 came out of that, is guest activities.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Yes?</p> <p>2 A. Correct, you would come to the function.</p> <p>3 Q. Okay. And so the term "guest activity," does that</p> <p>4 relate to registered guest or guest?</p> <p>5 A. I think both, I would say.</p> <p>6 Q. Okay. And so when we talk about, so like if we look</p> <p>7 at, it's part, what is it, 10(u), yeah, okay, so 10(u)</p> <p>8 says: Guest activity uses. The Township board may</p> <p>9 approve guest activity uses (activities by persons who</p> <p>10 may or may not be registered guests) as an additional</p> <p>11 support use, subject to the following.</p> <p>12 Okay, so there is this, doesn't matter if</p> <p>13 you're a registered guest or otherwise, you can</p> <p>14 participate in a guest activity use, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay, and then -- but this says that the Township</p> <p>17 board needs to approve guest activities, right?</p> <p>18 A. They are approved by the Township board and there's a,</p> <p>19 there's a formula, I believe, to get to the number of</p> <p>20 those people that can attend that event.</p> <p>21 Q. We'll talk about that, that formula, but, as I</p> <p>22 understand it, the way that the approval -- well, I</p> <p>23 guess I don't understand completely how the approval</p> <p>24 works, but if I'm a winery or if I'm a winery chateau</p> <p>25 and I want to have a guest activity, I send probably</p>

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<p style="text-align: right;">Page 146</p> <p>1 an email to someone at the Township?</p> <p>2 A. The way it worked, actually with Mr. Krupka at Chateau</p> <p>3 Chantal, which is about the only place that does it,</p> <p>4 he would actually come in person, explain the event,</p> <p>5 and make sure that everybody was on the same page. He</p> <p>6 was very, very good about that. In fact, we hadn't</p> <p>7 had any issues since he had become the CEO at the</p> <p>8 time.</p> <p>9 Q. Well, okay, so I'll pick on one of the wineries. So</p> <p>10 if I'm Bonobo Winery and I want to have an event, they</p> <p>11 need to email the Township or come in, give some</p> <p>12 notice to the Township that, "Hey, I'm going to have a</p> <p>13 guest activity on this date," right?</p> <p>14 A. I don't think that they're following through with</p> <p>15 that, but ...</p> <p>16 Q. Let's just talk about how you -- you're the township</p> <p>17 supervisor, okay. The wineries, under the ordinance,</p> <p>18 you believe that they're required to give you, the</p> <p>19 Township, notice of these events?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. And the Township would approve or not approve</p> <p>22 the events?</p> <p>23 A. Well, that's kind of a -- yes.</p> <p>24 Q. Okay. And who at the Township is responsible for</p> <p>25 approving or not approving events?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. -- to advise her --</p> <p>2 A. No.</p> <p>3 Q. -- or advise the zoning administrator?</p> <p>4 Is it that she makes her own judgment on</p> <p>5 what's allowed and not allowed?</p> <p>6 A. She will follow the ordinance, and if there's an</p> <p>7 issue, she usually brings the town board in to make a</p> <p>8 determination on a certain event, and then it would go</p> <p>9 to the town board.</p> <p>10 Q. Do you know how often that's happened?</p> <p>11 A. I couldn't give you a number, I'm sorry.</p> <p>12 Q. Okay. So requiring approval of a guest activity, what</p> <p>13 government interest does that further?</p> <p>14 A. Would you repeat that?</p> <p>15 Q. Requiring approval of a guest activity, what</p> <p>16 government interest does that further?</p> <p>17 A. Well, anytime we approve any kind of activity, we have</p> <p>18 to be careful of, you know, the carrying capacity on</p> <p>19 the road, is it -- do we have parking, do we have a</p> <p>20 lot of the quality of life issues that we're trying</p> <p>21 to --</p> <p>22 Q. Which of these four governmental interests that you</p> <p>23 identified, the Township identified --</p> <p>24 MR. WISE: Joe, do me a favor and stop</p> <p>25 interrupting him before he's done with his answer. I</p>
<p style="text-align: right;">Page 147</p> <p>1 A. The zoning administrator deals with all of this, all</p> <p>2 the ordinances. I don't, usually.</p> <p>3 Q. Okay, and right now that's Christina Deeren?</p> <p>4 A. Yes.</p> <p>5 Q. So right now Christina Deeren would receive a request</p> <p>6 from a winery to say "I want to have a guest</p> <p>7 activity," and then she would say yes or no?</p> <p>8 A. Yeah, "Can you tell me how many people are there, find</p> <p>9 out what's going to -- yes.</p> <p>10 Q. Okay. What is the criteria that she uses to decide</p> <p>11 whether or not to approve or not approve that guest</p> <p>12 activity?</p> <p>13 A. I think that would be questions for her. I don't</p> <p>14 usually deal with that, to tell you off the top of my</p> <p>15 head.</p> <p>16 Q. Simple question: Do you know what criteria the zoning</p> <p>17 administrator uses to say yes or no to a guest</p> <p>18 activity?</p> <p>19 A. Obviously, we follow the ordinance, but when it's kind</p> <p>20 of blurred on the line, she might go to the Township</p> <p>21 board and ask for us to weigh in.</p> <p>22 Q. Okay. Do you know, is there anything written down</p> <p>23 outside of the ordinance that says, you know, this is</p> <p>24 allowed or this isn't allowed to sort of --</p> <p>25 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 149</p> <p>1 don't know if it's just because you don't like his</p> <p>2 answer, but you have done it a few times. Just give</p> <p>3 him a chance to finish.</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. Which of these four governmental interests the</p> <p>6 Township has identified, which of these is furthered</p> <p>7 by requiring pre-approval of guest activities?</p> <p>8 A. You know, I've forgotten what the four are, by the</p> <p>9 numbers.</p> <p>10 Q. Do you want me to read them to you?</p> <p>11 A. Would you?</p> <p>12 Q. Here, I'll just let you read it, probably go faster</p> <p>13 this way, right?</p> <p>14 A. Yeah, thank you.</p> <p>15 Well, by taking care of preserving the</p> <p>16 agricultural industry, it keeps -- as I said early on,</p> <p>17 you know, we all have to use that road to get our</p> <p>18 products off. So if we have a series of additional</p> <p>19 receptions, things, that adds to all of the traffic on</p> <p>20 the road.</p> <p>21 And again, that's the township character,</p> <p>22 is what we were trying to do, as I said in the</p> <p>23 beginning, keep our rural character, and, you know,</p> <p>24 constant parties at different locations could change</p> <p>25 that.</p>

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<p style="text-align: right;">Page 150</p> <p>1 I don't think it would establish a complete</p> <p>2 buildout of the population, doesn't -- and sewer and</p> <p>3 water aren't affected.</p> <p>4 Q. Okay. So you talked about -- has the Township done a</p> <p>5 study that says that if a winery has a guest activity,</p> <p>6 that the roads in Peninsula Township are then</p> <p>7 overburdened?</p> <p>8 A. I believe in the -- I believe we do have a study. I</p> <p>9 think it's the carrying capacity of M-37 and what we</p> <p>10 could do -- we put it together, I think, back in 1994,</p> <p>11 again with the purchase of development rights of</p> <p>12 what --</p> <p>13 Q. Do you have a study that was written this century?</p> <p>14 A. This century? Well, yeah. It would be 1994, would</p> <p>15 probably be our last one.</p> <p>16 Q. That's 37 years ago.</p> <p>17 A. Mmm-hmm.</p> <p>18 Q. That's your most recent study, is 37 years ago?</p> <p>19 A. I think we've updated things with MDOT and traffic</p> <p>20 studies on different occasions. We've been talking</p> <p>21 about doing a carrying capacity study, because we need</p> <p>22 to get some passing lanes and some things on there we</p> <p>23 need, and every time we have a development we have to</p> <p>24 talk about putting in a third lane, so ...</p> <p>25 Q. Well, so those are things the Township is considering,</p>	<p style="text-align: right;">Page 152</p> <p>1 A. No, just me trying to get across that road driving a</p> <p>2 tractor.</p> <p>3 Q. So your personal perception is what you're basing this</p> <p>4 on?</p> <p>5 A. Well, additional studies, but we haven't done one</p> <p>6 recently.</p> <p>7 Q. You haven't done a study for 37 years. Right?</p> <p>8 A. I believe that to be true.</p> <p>9 Q. Okay.</p> <p>10 A. I'm not sure if Gordon had one or the planner.</p> <p>11 Q. So if you were talking about traffic today, it's your</p> <p>12 personal perception of traffic today?</p> <p>13 A. Well, we do a lot of things with -- that's why we have</p> <p>14 an additional deputy now coming, because of the</p> <p>15 concerns with all the traffic increase and the</p> <p>16 speeding. And again, you know, we have to look at</p> <p>17 that. And today I got passed on the right on a</p> <p>18 double-yellow coming in.</p> <p>19 We had someone on a local blog out there</p> <p>20 that, you know, "No sheriff in sight, everybody is</p> <p>21 driving fast on Peninsula Drive."</p> <p>22 Q. Do you know if those people driving fast, are those</p> <p>23 winery guests or are those residents?</p> <p>24 A. They're people that use the road, and the road is the</p> <p>25 important thing to our character and getting on and</p>
<p style="text-align: right;">Page 151</p> <p>1 adding a passing lane or adding a third lane --</p> <p>2 A. Mmm-hmm.</p> <p>3 Q. -- to alleviate any traffic concerns?</p> <p>4 A. Well, we're trying to help the traffic, but the</p> <p>5 health, safety and welfare, again, comes in when we</p> <p>6 look at -- the church wanted to put in additional</p> <p>7 units, and the traffic was backed up.</p> <p>8 People have got to be able to, especially</p> <p>9 the cherry farmers I hear from all the time, get that</p> <p>10 fruit, and the apple growers, they've gotta have that</p> <p>11 semi going, and when we clutter the roads with a lot</p> <p>12 of additional traffic, that's a health and safety --</p> <p>13 Q. But the most traffic on M-37 happens during the</p> <p>14 commuting hours, right, people commuting --</p> <p>15 A. Not anymore.</p> <p>16 Q. -- people commuting in the morning to Traverse City</p> <p>17 for work?</p> <p>18 A. That may have been true in the beginning, but if you</p> <p>19 live out there, you would notice -- and right now,</p> <p>20 especially with the fall color, the tour buses going</p> <p>21 to the wineries are just constant, and the cars coming</p> <p>22 in and out of there, their parking lots are full. The</p> <p>23 grocery stores are full. We live in a beautiful area</p> <p>24 and it's fall color.</p> <p>25 Q. Do you have a traffic study that confirms this?</p>	<p style="text-align: right;">Page 153</p> <p>1 off, and fire, ambulance.</p> <p>2 Q. But you don't know if those people are winery guests</p> <p>3 or residents or visitors to the Lighthouse?</p> <p>4 A. Only when they go on the tour buses, but there's a lot</p> <p>5 of traffic. The wineries that are like Bonobo, you</p> <p>6 can look right down in their parking lot, Chateau</p> <p>7 Grand Traverse, they're packed, and people are coming</p> <p>8 and going out of the wineries.</p> <p>9 Q. But you don't know that -- these anecdotal comments</p> <p>10 about people passing you on a double-yellow, you don't</p> <p>11 know if that's a resident or a winery guest, right?</p> <p>12 A. No, I don't. I'm just saying there's a very strong</p> <p>13 concern about traffic, always has been, and it's</p> <p>14 played a part in a lot of the ordinances that we do.</p> <p>15 Q. But you're addressing those issues with increased</p> <p>16 police presence, considering adding a third lane,</p> <p>17 considering adding passing lanes, right?</p> <p>18 A. Yes, but I think it also goes into the ordinance.</p> <p>19 When they worked with the groups, they were containing</p> <p>20 and they were concerned about overload of traffic</p> <p>21 on -- additional uses at wineries.</p> <p>22 Q. Okay. But you don't have a study that shows that the</p> <p>23 wineries increase the use of the township -- or</p> <p>24 overload the township roads, right? You don't have a</p> <p>25 study that says that?</p>

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<p style="text-align: right;">Page 166</p> <p>1 there's no health, welfare and safety reason for the</p> <p>2 Township to limit it to 111, right?</p> <p>3 A. 111 --</p> <p>4 MR. WISE: Objection, foundation.</p> <p>5 BY MR. INFANTE:</p> <p>6 Q. Because the fire marshal has already said 150 is safe,</p> <p>7 right?</p> <p>8 A. Where did he say 150?</p> <p>9 Q. If the fire marshal says 150 is the occupancy, that's</p> <p>10 what the fire marshal believes is safe, correct?</p> <p>11 A. Then I think if there was an event over that, and if</p> <p>12 the fire marshal would say that, then it would come to</p> <p>13 the town board for allowing that event. That's the</p> <p>14 way we would go. Zoning would have to go by what we</p> <p>15 have here.</p> <p>16 Q. Well, my question, then, is why would you -- why would</p> <p>17 111 control over whatever the fire marshal says is the</p> <p>18 occupancy?</p> <p>19 A. I didn't understand the way you said that.</p> <p>20 Q. Why does the number 111, the occupancy of 111, why</p> <p>21 does that control over whatever the fire marshal says</p> <p>22 is the right occupancy?</p> <p>23 A. Well, because that's what's been accepted and in a</p> <p>24 contract, signed.</p> <p>25 Q. Okay, are you saying just because that's what's</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. INFANTE: 27.</p> <p>2 A. Okay. You let her talk, I was surprised.</p> <p>3 BY MR. INFANTE:</p> <p>4 Q. My math is bad. You're right, 27.</p> <p>5 There's no current one except from 27 years</p> <p>6 ago, right?</p> <p>7 A. I can't recollect that there's a specific one. I</p> <p>8 think it was in -- we've done surveys. We've talked</p> <p>9 with individual developments on M-37. They do studies</p> <p>10 quite a bit. I can't -- our big one was in '94.</p> <p>11 Q. Okay. Since that traffic study in '94, how many</p> <p>12 houses have been built in Peninsula Township?</p> <p>13 A. I don't know the answer. That's something we can</p> <p>14 obviously look up.</p> <p>15 Q. More than a thousand?</p> <p>16 A. Since that study? I would say yes.</p> <p>17 Q. Okay. The --</p> <p>18 A. But when you look at that, a lot of people in a new</p> <p>19 house, they tore down a small cottage that was on the</p> <p>20 shore and now have expanded, sometimes took two out</p> <p>21 for one house.</p> <p>22 Q. Do you know how much the population of Peninsula</p> <p>23 Township has increased since that study?</p> <p>24 A. Not that much, actually. I think we were at 43.</p> <p>25 We're about 55 now.</p>
<p style="text-align: right;">Page 167</p> <p>1 written down?</p> <p>2 A. Yes.</p> <p>3 Q. But no other reason because -- than because it's</p> <p>4 written down?</p> <p>5 A. It's in the contract, and you have to live within the</p> <p>6 means of your contract.</p> <p>7 Q. Well, an ordinance isn't a contract.</p> <p>8 A. A special use permit is.</p> <p>9 Q. We're talking about the ordinance.</p> <p>10 A. Well, you don't get this without a special use permit.</p> <p>11 Q. You'd agree, an ordinance is not a contract, right?</p> <p>12 A. I do, but if you follow an ordinance, it has a</p> <p>13 contract with it called a special use permit, which</p> <p>14 can specifically dial in those issues.</p> <p>15 Q. Okay. There's no health, welfare and safety reason to</p> <p>16 have occupancy less than what the fire marshal says is</p> <p>17 allowed, correct?</p> <p>18 A. Well, it all comes down to how many people we can put</p> <p>19 on the road at one time, too, and safely.</p> <p>20 Q. But you don't have a traffic study that says what that</p> <p>21 number is?</p> <p>22 A. We do. And we don't have a current one, as you</p> <p>23 pointed out, but we do.</p> <p>24 Q. From 37 years ago?</p> <p>25 MS. CHOWN: 27.</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. The current population is over 6,000, did you know</p> <p>2 that, as of the current census?</p> <p>3 THE WITNESS: Is that the current census?</p> <p>4 MS. CHOWN: Yes.</p> <p>5 A. I'm talking registered voters, then, I'm sorry.</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. The current population is over 6,000, and you think --</p> <p>8 so the population has grown 2,000 since 1994?</p> <p>9 A. I think it's -- what the census doesn't take into</p> <p>10 account is the majority of summer homes.</p> <p>11 Q. Well, it's still residents, right?</p> <p>12 A. Mmm-hmm.</p> <p>13 Q. So people live there, right?</p> <p>14 A. People, yup.</p> <p>15 Q. So the population of the township has grown by at</p> <p>16 least fifty percent. What has the Township done to</p> <p>17 prevent people from moving to Peninsula Township?</p> <p>18 A. The purchase of development rights was the major --</p> <p>19 the national program that we've been recognized for by</p> <p>20 national agencies like American Farmland Trust.</p> <p>21 Q. But you let these 2,000 people move here.</p> <p>22 A. We -- it's not an anti-growth movement. It's a</p> <p>23 sensible growth, saving an agricultural component that</p> <p>24 is rare in the United States. And it's a growing</p> <p>25 region that is not going to come back if it's built</p>

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<p style="text-align: right;">Page 170</p> <p>1 upon.</p> <p>2 Q. Okay. But you let 2,000 new residents come to</p> <p>3 Peninsula Township. You're relying here on a 1994</p> <p>4 traffic study, but yet you allowed 2,000 new</p> <p>5 residents, you allowed a thousand new homes or so.</p> <p>6 What have you done to prevent those new residents from</p> <p>7 driving cars?</p> <p>8 A. Well, obviously, pooling or using a bus to go to</p> <p>9 school rather than everybody driving a car. Those</p> <p>10 kinds of issues can come up.</p> <p>11 Q. Are there any restrictions on new residents driving</p> <p>12 cars?</p> <p>13 A. Of course not.</p> <p>14 Q. Of course not, right?</p> <p>15 A. Right.</p> <p>16 Q. Okay. Is there any restriction to the number of times</p> <p>17 those new residents can go down to Traverse City a</p> <p>18 day?</p> <p>19 A. No.</p> <p>20 Q. Of course not, right?</p> <p>21 A. Right.</p> <p>22 Q. Okay. So the Township hasn't done anything to prevent</p> <p>23 these 2,000 new residents from driving on the township</p> <p>24 roads?</p> <p>25 A. When we do an ordinance, we limit it, and --</p>	<p style="text-align: right;">Page 172</p> <p>1 agricultural production promotion as part of the</p> <p>2 activity as follows:</p> <p>3 Identify peninsula-produced food or</p> <p>4 beverage that is consumed by the attendees;</p> <p>5 Provide peninsula agriculture promotional</p> <p>6 materials;</p> <p>7 Include tours through the winery and/or</p> <p>8 other peninsula agricultural locations.</p> <p>9 This sound familiar? Have you read this in</p> <p>10 a different ordinance? What is the governmental</p> <p>11 interest that is furthered by this?</p> <p>12 A. Well, what we're trying to do is promote our</p> <p>13 appellation, our growing region, our products. We</p> <p>14 want them to stop at all the wineries, we want them to</p> <p>15 stop and cut flowers, and the farm markets, buy some</p> <p>16 cherries.</p> <p>17 Q. So you --</p> <p>18 A. And identifying that through a tour is promoting our</p> <p>19 region agriculturally, which the more agriculture we</p> <p>20 can keep, the less traffic on Center Road.</p> <p>21 Q. So what you're saying is the wineries -- this</p> <p>22 ordinance -- the wineries need to promote other ag</p> <p>23 growers, other business in the township so that</p> <p>24 visitors to the wineries will visit those other</p> <p>25 businesses?</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. No-no.</p> <p>2 A. Yes, we do, right here, and we limit how many people</p> <p>3 can be in those buildings, and so I think that could</p> <p>4 be included in that, also.</p> <p>5 Q. I'm talking about the residents, the new, the 2,000</p> <p>6 new residents. The township has not done anything to</p> <p>7 prevent them from driving on the roads, right?</p> <p>8 A. We've tried to purchase the farm if it was going to be</p> <p>9 developed, and we have been very successful --</p> <p>10 Q. That's not my question. That's not my question.</p> <p>11 A. Well, yeah, it is.</p> <p>12 Q. You have 2,000 new residents, right?</p> <p>13 A. Yes.</p> <p>14 Q. The township has done nothing to prevent those 2,000</p> <p>15 new residents from driving on the roads, right?</p> <p>16 A. Yes.</p> <p>17 Q. All right. We're looking at 5; these are requirements</p> <p>18 for guest activity uses. So am I correct in</p> <p>19 understanding that if you are going to -- if a winery</p> <p>20 is going to qualify for a guest activity use, these</p> <p>21 are the requirements on that use? This is what they</p> <p>22 can and cannot do, am I right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Look at the first one.</p> <p>25 All guest activity uses shall include</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is the harm that the Township is trying to</p> <p>3 prevent if they didn't do this?</p> <p>4 A. Well, you walked into, again, a township that is</p> <p>5 unique, and the people in it are unique, and they've</p> <p>6 come there for the beauty of the area and they're</p> <p>7 paying to keep it that way.</p> <p>8 Q. Yeah, but if, you know, say, you know, Mari, one of</p> <p>9 the wineries, if Mari doesn't promote the lavender</p> <p>10 business down the street -- I mean, do you require</p> <p>11 Mari to promote the lavender business so the lavender</p> <p>12 business doesn't go out of business?</p> <p>13 A. No, but I would like -- it would be beneficial if he</p> <p>14 would say, "We have all these additional things out</p> <p>15 here, please enjoy our peninsula."</p> <p>16 Q. Yeah, but is there any harm to the governmental</p> <p>17 interest if the wineries don't promote other ag</p> <p>18 businesses?</p> <p>19 A. Well, our point is to keep as much land in</p> <p>20 agriculture. I've said over and over, it's a central</p> <p>21 theme. Everybody is paying a lot of money, millions</p> <p>22 and millions, to keep scenic views. The Chamber of</p> <p>23 Commerce, they know when those hotels are full. They</p> <p>24 don't want people to leave Traverse City, and they</p> <p>25 want to drive out and look at a beautiful peninsula,</p>

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<p style="text-align: right;">Page 174</p> <p>1 and we have had to figure out how to balance it all.</p> <p>2 Q. I understand, but what is the harm if they don't do</p> <p>3 it? What harm are you preventing by requiring winery</p> <p>4 chateaus to promote other agricultural businesses?</p> <p>5 A. Well, I'm allowing them the option. Am I -- how can</p> <p>6 we police it? We probably can't, if the guy giving</p> <p>7 the wine tour doesn't say, "Hey, go down the</p> <p>8 peninsula," so ...</p> <p>9 Q. All right. So it sounds like you are not aware of any</p> <p>10 harm that you're trying to prevent, is that fair?</p> <p>11 A. I think the harm -- and the more we talk about it, the</p> <p>12 more I'm thinking the harm is that we're -- no one</p> <p>13 else is going to sell the peninsula appellation unless</p> <p>14 we do. We are the group. And just because I don't</p> <p>15 make wine doesn't mean I'm not proud of that</p> <p>16 significant thing Ed O'Keefe got.</p> <p>17 Q. Do you think that gives Peninsula Township the right</p> <p>18 to force a Peninsula Township business to advertise in</p> <p>19 a certain way?</p> <p>20 A. I think we're giving them an option. If they don't</p> <p>21 want to take it, don't.</p> <p>22 Q. But if they do take it, you're going to force them to</p> <p>23 advertise in a certain way, right?</p> <p>24 A. If they agree to take it, yeah, we have to enforce it,</p> <p>25 if they agree to take it.</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. You said the businesses are doing it. I mean, how are</p> <p>2 these businesses advertising? Facebook, magazines?</p> <p>3 A. There's a group that used to be by Cindy Ruzak, she</p> <p>4 moved out last year, I don't know who has it now, and</p> <p>5 they all chip in and they put out a brochure which</p> <p>6 goes around, and all the wineries I think put them</p> <p>7 out, all the grocery stores, restaurants. The</p> <p>8 Lighthouse has them.</p> <p>9 Q. But is requiring the wineries to have promotional</p> <p>10 materials in their wineries, is that the best means to</p> <p>11 promote Old Mission agriculture?</p> <p>12 A. That's one way.</p> <p>13 Q. Is it the best way?</p> <p>14 A. Compared to what?</p> <p>15 Q. Facebook, email, TV ads?</p> <p>16 A. Well, not everybody goes and takes their computer -- I</p> <p>17 suppose they have their smartphone with them, but, you</p> <p>18 know, when they go on vacation, I don't think they</p> <p>19 take their computer. I think probably through the</p> <p>20 wine clubs, it goes out through their members.</p> <p>21 Q. But these are already people who are going to the</p> <p>22 wineries. Is that your target market, for the other</p> <p>23 ag businesses, you only care about the winery guests?</p> <p>24 A. I think the intent was to promote all the peninsula</p> <p>25 and agriculture, to save agriculture and to save</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. Have you thought of less-restrictive means to promote</p> <p>2 Peninsula Township agriculture, as opposed to these</p> <p>3 restrictions on, or these requirements on winery</p> <p>4 chateaus?</p> <p>5 A. Less restrictive, we're always open to suggestion,</p> <p>6 and, as you know, we can amend the zoning ordinance if</p> <p>7 you come up with a good idea.</p> <p>8 Q. Well, does the township have a promotional budget?</p> <p>9 Does the township buy advertising? Does the township</p> <p>10 do print media?</p> <p>11 A. It's usually done by a group in the township. The</p> <p>12 wineries chip in, everyone chips in to that map.</p> <p>13 Q. Has the township ever looked into its own advertising</p> <p>14 to promote Old Mission agriculture?</p> <p>15 A. Well, when we did the purchase of bellwether rights,</p> <p>16 we advertised across the United States.</p> <p>17 Q. But that was advertised in the PDR program. I'm</p> <p>18 talking about advertising Old Mission agriculture.</p> <p>19 A. Did we have a line item for it? No.</p> <p>20 Q. Why not?</p> <p>21 A. It's being done successfully now.</p> <p>22 Q. Well, it's being done successfully because you're</p> <p>23 compelling it, but have you ever looked at doing it</p> <p>24 yourself?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 177</p> <p>1 additional traffic to keep that main line open.</p> <p>2 Because I don't know how many times I've been pulled</p> <p>3 over by Joan Kroupa and the rest of the cherry</p> <p>4 farmers, "Whatever you do, curb cuts, you know, always</p> <p>5 the subdivisions, don't let them in, buy them, because</p> <p>6 we need that road to carry our product. We've got</p> <p>7 millions and millions of pounds of cherries" --</p> <p>8 Q. Now you're talking about roads. I'm talking about</p> <p>9 advertising.</p> <p>10 A. Well, you were asking me where is the harm.</p> <p>11 Q. What do roads have to do with advertising?</p> <p>12 A. The more people I can keep on a farm and making money,</p> <p>13 the less houses I have and the more successful people</p> <p>14 are.</p> <p>15 Q. But you're --</p> <p>16 A. It's a good neighbor policy.</p> <p>17 Q. You don't see the conflict there? You're trying to</p> <p>18 get them to advertise Old Mission agriculture so more</p> <p>19 people will come and buy Old Mission agriculture.</p> <p>20 Doesn't it inherently mean more people on the roads?</p> <p>21 A. Not necessarily when they order it over the computer</p> <p>22 online.</p> <p>23 Q. So you don't want people to come here, you want them</p> <p>24 to order online?</p> <p>25 A. That would be nice, but I can't tell people they can't</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. So a complaint comes in that a winery is being too 2 loud, an officer comes out, right? 3 A. Not always. We get the complaint, it could be an 4 email. 5 Q. Okay. 6 A. And usually we have an enforcement officer, not an 7 officer-officer. 8 Q. An enforcement officer comes out and has to determine 9 whether or not the noise is loud enough to bother 10 somebody? 11 A. Yeah. And then we ask for a written complaint, and 12 we -- what happens on -- well, Mari Vineyards, 13 neighbors and Underwoods have called, they videotaped, 14 they think, a wedding going on. I mean, we get all 15 this to come in. 16 So the first thing I do, out of courtesy, I 17 talk to Lee, and I say, "We've got a complaint, you 18 know, in your ordinance it says no amplified music." 19 And then he talks, and if it continues, then we -- 20 Q. Well, but (h) doesn't -- or, sorry, (f) doesn't say, 21 we're not talking about amplified music. (F) just 22 says: No sounds related to guest activity shall be 23 discernible at the property lines. 24 But that could just include people talking, 25 right?</p>	<p style="text-align: right;">Page 188</p> <p>1 decibel number and you're going to compare it to the 2 Traverse City chart and make a decision of whether 3 it's -- 4 A. I'm going to turn it over to the attorneys and build a 5 case. 6 Q. At some point someone makes a determination of is it 7 too loud or not too loud, right? 8 A. Well, and that's probably done by the neighbors, 9 really, and then we go and, "Oh, yeah, it was there." 10 A lot of these questions you're asking me 11 are so ambiguous, that I'm telling you how I would 12 approach it, and I try to work with the neighbors 13 first, like we always have. 14 Q. That's part of my question. I know I'm asking 15 ambiguous questions, but, I mean, I think you would 16 agree me that (f) just says: No sounds related to the 17 guest activity shall be discernible at the property 18 lines. 19 It doesn't actually include any, you know, 20 objective value, right? 21 A. I can't say that because I don't know what guest 22 activity is going on. Maybe there was one -- maybe 23 it's the Sweet Adelines and they aren't in tune. 24 Q. And the music bothered them just because they were 25 singing out of tune? Okay.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Well, it could be loud, yeah. 2 Q. But two people talking, I mean, is that, you know, is 3 that discernible? Is that going to be a violation? 4 A. It could be. 5 Q. How do you make that determination? 6 A. We would go out and record and probably get a decibel 7 meter and make a case. 8 Q. Well, okay. If you get a decibel meter, what number 9 are you looking for? 10 A. I think there's certain things that the city uses. 11 There is a chart, I believe. 12 Q. Whose chart? 13 A. I think there's a state chart or city -- I know the 14 city has a what is acceptable, what isn't. They do a 15 decibel. 16 Q. By "city," you mean Traverse City? 17 A. Yes. 18 Q. So you would refer to the Traverse City ordinances, of 19 what they allow? 20 A. No, I would -- what I would try to do is gather enough 21 information, if it were talking, hopefully just by 22 talking to someone and saying, "Can you keep the noise 23 down, please," but being inconsiderate to your 24 neighbors is not going to work out here. 25 Q. But at some point you're going to have a number, a</p>	<p style="text-align: right;">Page 189</p> <p>1 A. Don't know. 2 Q. So what you're saying is it really depends on -- 3 A. A judgment call, I'll give you that. 4 Q. Okay. (G): No amplified instrumental music is 5 allowed, however amplified voice and recorded 6 background music is allowed, provided the 7 amplification level is no greater than normal 8 conversation at the edge of the area designated within 9 the building for guest purposes. 10 It's very long. 11 My question is, why, why carve out no 12 amplified music? Well, sorry, no amplified 13 instrumental music. 14 A. Any amplified music, period, has been a zoning problem 15 for us for a long time, not only in the wineries, in 16 the bars -- excuse me, in the restaurants and bars. 17 Like the Boathouse, they wanted to do an 18 outside porch, and sound travels over water, you know, 19 and we've had a lot of problems. 20 Q. But why the differentiation between amplified 21 instrumental music -- why prohibit, I guess why 22 prohibit amplified instrumental music but allow 23 amplified voice and recorded background music? 24 A. As long as it's inside the building, we don't care. 25 Q. My question is --</p>

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<p style="text-align: right;">Page 190</p> <p>1 A. Why would we discriminate between a guy playing a 2 flute and -- 3 Q. And a guy playing a guitar, yeah. 4 A. Yeah. I'll have to research that one. There's a 5 reason, probably, but I don't know. 6 Q. You don't know the reason for that? 7 A. Off the top of my head. I'm just saying no amplified 8 music is allowed, and keep it outside. 9 Q. Well, this says amplified music is allowed, amplified 10 voice is allowed, but amplified instrumental music is 11 not allowed. What is it about amplified instrumental 12 music that the government needs to control? 13 A. No amplified music is allowed. 14 Q. No, it says no amplified instrumental music is 15 allowed. 16 A. Yeah, but it also says no amplified instrumental music 17 is allowed. 18 Q. Read it again. 19 A. Yeah, I am. I don't know the difference between the 20 instrumental and the amplified voice. I'd have to 21 look that up. It's probably in the minutes someplace. 22 Q. You don't know the difference or you don't know why 23 they're treated differently? 24 A. I don't know why they're treated differently. 25 Q. But you'd agree with me that you're discriminating</p>	<p style="text-align: right;">Page 192</p> <p>1 conflict. 2 And then the conflict is going to be who 3 has the right to farm, and then when one of those 4 shows up next to my farm, and I'm driving the air 5 blast sprayer and I spray those people, who's going to 6 be -- 7 Q. But that has nothing to do with instruments. 8 A. You're right, but I'm trying to give you an example. 9 Q. I get it, but you would agree with me, the prohibition 10 on amplified instrumental music has nothing to do with 11 the four governmental interests we've been talking 12 about today? 13 A. I can't, I can't say that it does. 14 Q. Okay. And so you can't tell me the harm the township 15 was trying to remedy by not allowing amplified 16 instrumental music? 17 A. Not without reading the minutes of why it's there, no. 18 Q. Okay. And you can't tell me any less-restrictive 19 means the Township considered before prohibiting 20 amplified instrumental music? 21 A. I'm guessing it was on a complaint, but I don't know, 22 no. 23 Q. Okay. And the Township is still enforcing this, 24 though, right? 25 A. We are enforcing amplified music leaving the ground.</p>
<p style="text-align: right;">Page 191</p> <p>1 against instrumental music -- 2 A. It's not that I agree with you on anything. 3 Q. You just said you're discriminating. So what is it 4 about, you know, an electric guitar versus a trombone 5 that makes a trombone less offensive? 6 A. I would have to look that up. To me, I can't explain 7 that one to you right now. 8 Q. Because under this ordinance, I mean, we could put a 9 marching band out there. We could have some tubas, 10 some base drums, some trombones, some flutists? 11 A. I'm sure there was a reason, but I don't know at this 12 time at the table. 13 Q. All right. So if I asked you these questions we've 14 been doing, what's the governmental interest you're 15 trying to further by prohibiting amplified 16 instrumental music, you wouldn't know? 17 A. I'm going to say that it's just keeping the 18 neighborhood quiet and respecting the neighbors. 19 Q. Okay, but that's not one of the four governmental 20 interests you gave me earlier. 21 A. Well, you asked me what it's doing, and those were 22 written a long time ago, too, and haven't been updated 23 to what we are at now. And some of these wineries 24 have been allowed to be built with residential areas 25 next to them. That's where we're starting to see the</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. You're enforcing all amplified music leaving the -- 2 you're restricting all amplified music? 3 A. Mmm-hmm. 4 Q. Yes? 5 A. Mmm-hmm. 6 Q. Where in the ordinance does it say there's -- no 7 amplified music is allowed? 8 A. Well, we're doing the complaints, and I'm telling you 9 that Christina is working on letters and notification 10 of no amplified music. 11 Q. Well, that's fine, but tell me where in your ordinance 12 does it say that amplified music of any kind is 13 prohibited. 14 A. I can't point to the exact point right now. 15 Q. Because the ordinance says amplified voice and 16 recorded background music is allowed, right? 17 A. But only -- it has to stay within the building and 18 designated area of the building for guest purposes. 19 Q. Okay. 20 A. So when it leaves your site and disturbs someone 21 else's -- 22 Q. But then we're falling back to (f), which is the "no 23 sounds related to the guest activity shall be 24 discernible at the property lines." 25 A. Well, in our noise ordinance, you have to keep your</p>

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<p style="text-align: right;">Page 194</p> <p>1 noise contained so your neighbor doesn't have to lose</p> <p>2 his quality of life because you make a lot of noise.</p> <p>3 Q. Well, I get that, but you're saying there is a</p> <p>4 complete prohibition on amplified music at wineries?</p> <p>5 A. It's been a normal thing in our zoning ordinance.</p> <p>6 Q. Okay. Peninsula Township is enforcing a complete</p> <p>7 prohibition on amplified music of any kind?</p> <p>8 A. I don't know that I'd say that, but I'd say for -- I'd</p> <p>9 probably have to leave that one alone.</p> <p>10 Q. I'm asking a question, you have to answer it. Is</p> <p>11 Peninsula Township enforcing a complete prohibition on</p> <p>12 amplified music at wineries?</p> <p>13 A. I'm going to say yes.</p> <p>14 Q. (H) says: No outdoor displays of merchandise,</p> <p>15 equipment or signs are allowed.</p> <p>16 Okay, what's equipment?</p> <p>17 A. I guess that would be wine-making equipment.</p> <p>18 Q. They can't have that outside?</p> <p>19 A. In an outdoor display, I guess they could have it</p> <p>20 outside.</p> <p>21 Q. Well, what's a display?</p> <p>22 A. Well, that would be a big billboard kind of thing,</p> <p>23 where you'd draw people over to get attention.</p> <p>24 Q. Well, but you're talking about signs.</p> <p>25 A. Well, I'm talking about a display of merchandise. How</p>	<p style="text-align: right;">Page 196</p> <p>1 he thinks he can make it, that's fine, but I'd like to</p> <p>2 take a couple minutes.</p> <p>3 MR. INFANTE: How about this. I have two</p> <p>4 last questions on this exhibit, and why don't we</p> <p>5 just -- we'll stop there, and we can decide if we take</p> <p>6 a break or not. I've gotta look at my notes again.</p> <p>7 BY MR. INFANTE:</p> <p>8 Q. So what's a display?</p> <p>9 A. Well, a display is putting something out to the public</p> <p>10 and having a sign, "Come in and ride," "Come in and</p> <p>11 buy," to me.</p> <p>12 Q. So it's advertising?</p> <p>13 A. I would think, yeah.</p> <p>14 Q. Okay. And so the Township is prohibiting advertising</p> <p>15 of merchandise, equipment or signs, regardless of</p> <p>16 where they are on the property?</p> <p>17 A. It's displays of them for sale outside.</p> <p>18 Q. Okay. And what is the harm that the Township is</p> <p>19 trying to prohibit here?</p> <p>20 A. I guess we don't want to look like Copemish Flea</p> <p>21 Market.</p> <p>22 Q. Okay. So which of the governmental interests does</p> <p>23 this further?</p> <p>24 A. Well, those all kind of blend into other things. I</p> <p>25 always go back to quality of life and keeping the</p>
<p style="text-align: right;">Page 195</p> <p>1 do you display without a sign?</p> <p>2 Q. I just asked about equipment.</p> <p>3 A. Yeah.</p> <p>4 Q. How do you -- what's --</p> <p>5 A. How do you display equipment without a sign?</p> <p>6 Q. You put equipment out there and have it sit there.</p> <p>7 A. That's not a display.</p> <p>8 Q. What's a display?</p> <p>9 A. Well, I would think you're trying to sell it and make</p> <p>10 a commercial profit on it.</p> <p>11 MR. WISE: Hey, Joe?</p> <p>12 MR. INFANTE: Yeah.</p> <p>13 MR. WISE: Are we looking at a lunch break</p> <p>14 anytime today? I mean, I know just for myself,</p> <p>15 personally, i wouldn't mind having some food, and I</p> <p>16 know Rob hasn't eaten since probably six this morning.</p> <p>17 I'm just trying to get a feel for what's going on. I</p> <p>18 think we should be looking at some sort of break for</p> <p>19 that, and we still have John, as well, today.</p> <p>20 MR. INFANTE: Yeah, we had talked on a</p> <p>21 break about whether we take lunch or not, and I said I</p> <p>22 thought I could be done about 3:30, and Rob said he</p> <p>23 thought that was okay. That's another half an hour.</p> <p>24 MR. WISE: Okay, can we just take like two</p> <p>25 minutes, then? I just need to use the restroom. If</p>	<p style="text-align: right;">Page 197</p> <p>1 rural character of the peninsula, which everybody has</p> <p>2 paid to save. To me, that's what it is, not to have,</p> <p>3 you know, a winery looking like a garage sale. I</p> <p>4 think that's what we're trying to do, keep property</p> <p>5 values up and a quality of living that we all want to</p> <p>6 see out there.</p> <p>7 Q. So the way you do that is to prohibit them from</p> <p>8 displaying what they have for sale?</p> <p>9 A. Well, that's merchandise for sale. I take that as</p> <p>10 more of they're selling you records of, you know,</p> <p>11 somebody doing something in the vineyard or -- but</p> <p>12 they can sell it inside, but they just can't be</p> <p>13 outside with a display.</p> <p>14 And where does it stop, where does it end?</p> <p>15 How many tables? Do you have the proper restroom</p> <p>16 equipment out there, facilities? That's what it all</p> <p>17 comes down to, and the parking and how does that</p> <p>18 influence the turnaround of the fire truck and the</p> <p>19 ambulance.</p> <p>20 Q. So an outside display of merchandise affects parking?</p> <p>21 How is that?</p> <p>22 A. Well, you're going to have to locate it outside, and</p> <p>23 your site plan for your winery designates where you</p> <p>24 can park and where you can't. So now you're filling</p> <p>25 up an area --</p>

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Source: Deposition Excerpt of Robert Manigold

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<p style="text-align: right;">Page 198</p> <p>1 Q. So have you considered just saying you can't have a</p> <p>2 display of merchandise in the parking lot?</p> <p>3 A. Well, I think that's what we're saying.</p> <p>4 Q. Well --</p> <p>5 A. Do you want to add parking lot? I'd go with it.</p> <p>6 Q. But you would agree with me, this would prohibit them</p> <p>7 from having merchandise for display on their patio?</p> <p>8 A. Yes.</p> <p>9 Q. But that wouldn't affect traffic, that wouldn't affect</p> <p>10 parking.</p> <p>11 A. Well, it would come there -- if they had all of these</p> <p>12 nice glasses and then they're selling sunglasses?</p> <p>13 They're a winery.</p> <p>14 Q. Well, but that's not -- now you're getting back to</p> <p>15 what merchandise they can sell. You're just -- I'm</p> <p>16 saying, why prohibit them from selling merchandise on</p> <p>17 their patio, what's the harm?</p> <p>18 A. I don't know that it would be a harm on the patio. It</p> <p>19 says outdoor.</p> <p>20 Q. Okay, but their patio would be outdoors.</p> <p>21 A. I consider that the inside of their building</p> <p>22 footprint. Outdoors would be out in the grass by it,</p> <p>23 but ...</p> <p>24 Q. So this is subject to interpretation?</p> <p>25 A. Well, I think if we saw a display of something</p>	<p style="text-align: right;">Page 200</p> <p>1 outside, right?</p> <p>2 A. Yes.</p> <p>3 Q. All right, so looking at (i): Kitchen facilities may</p> <p>4 be used for on-site food service related to guest</p> <p>5 activity uses but not for off-site catering.</p> <p>6 Why can't they cater off-site?</p> <p>7 A. That was actually in the proposal we were trying to</p> <p>8 change when we got into the lawsuit.</p> <p>9 Q. But are you enforcing this?</p> <p>10 A. I'm not aware of anybody catering off-site.</p> <p>11 Q. If they did cater off-site, would you enforce the</p> <p>12 ordinance?</p> <p>13 A. I'd have to go to the board, but I would say, yes, I'd</p> <p>14 have to talk to them until we got it changed, or maybe</p> <p>15 the board would take the approach like we did with the</p> <p>16 tents for short term.</p> <p>17 Q. But right now it's on the books?</p> <p>18 A. It's on the books and was going to be corrected. That</p> <p>19 was one of things that the planner had brought up,</p> <p>20 catering.</p> <p>21 Q. And what do you mean -- "corrected," what do you mean</p> <p>22 by that?</p> <p>23 A. Taken out, changed in the ordinance.</p> <p>24 Q. And that's because the Liquor Control Code allows for</p> <p>25 catering, right?</p>
<p style="text-align: right;">Page 199</p> <p>1 outside, we would ask them to explain it and probably</p> <p>2 remove it.</p> <p>3 Q. Are any other businesses in Peninsula Township</p> <p>4 prohibited from having displays of merchandise</p> <p>5 outside?</p> <p>6 A. Yes.</p> <p>7 Q. Who?</p> <p>8 A. Mapleton Market, they can't put signs down in the</p> <p>9 front. They were selling hot dogs out there one time,</p> <p>10 they couldn't do that.</p> <p>11 Q. But they're allowed to have signs on the windows.</p> <p>12 They have gas pumps, I believe, at Mapleton Market?</p> <p>13 A. Yes, they're commercial.</p> <p>14 Q. They're allowed to have signs there, right?</p> <p>15 A. Mmm-hmm.</p> <p>16 Q. And as you drive up toward Mapleton Market, there's</p> <p>17 that roadside stand right by there, and they can sell</p> <p>18 all their merchandise outside, right?</p> <p>19 A. The roadside stand does sell outside.</p> <p>20 Q. And I'm not sure of the business, but there's a really</p> <p>21 kitschy business that sells all kinds of stuff on</p> <p>22 their lawn right before you get to Mapleton Market,</p> <p>23 and they can sell their merchandise outside, right?</p> <p>24 A. That's a roadside stand. You're talking a chateau.</p> <p>25 Q. But the roadside stand can sell their merchandise</p>	<p style="text-align: right;">Page 201</p> <p>1 A. I don't know if that's the reason, but it makes sense.</p> <p>2 If you put in a kitchen and you want to have ten</p> <p>3 people to a dinner party and serve your wine, why not?</p> <p>4 Q. Are you aware that the Liquor Control Code allows for</p> <p>5 catering?</p> <p>6 MR. WISE: Object to foundation.</p> <p>7 A. I don't know.</p> <p>8 BY MR. INFANTE:</p> <p>9 Q. Have you ever read the Liquor Control Code?</p> <p>10 A. Just parts --</p> <p>11 Q. Okay.</p> <p>12 A. -- not the whole code.</p> <p>13 Q. But you're not aware there's a catering permit that</p> <p>14 wineries are allowed to obtain?</p> <p>15 A. Is that through the Township or is that one of the</p> <p>16 things that got changed that we have no control?</p> <p>17 Q. That's the Liquor Control, and you have no control,</p> <p>18 yes.</p> <p>19 A. I don't know, I'll check with them.</p> <p>20 MR. WISE: You told me two questions.</p> <p>21 That's about ten questions. Can we get a quick break?</p> <p>22 MR. INFANTE: Just a minute, almost done.</p> <p>23 BY MR. INFANTE:</p> <p>24 Q. You made the comment is that one of the things we're</p> <p>25 not allowed to control. You are aware that the Liquor</p>

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOSEPH M. INFANTE</p> <p>4 Miller Canfield Paddock and Stone PLC</p> <p>5 99 Monroe Avenue, N.W.</p> <p>6 Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 616.776.6333</p> <p>9 infante@millercanfield.com</p> <p>10 Appearing on behalf of the Plaintiffs.</p> <p>11</p> <p>12</p> <p>13 GREGORY M. MEIHN</p> <p>14 Foley & Mansfield PLLP</p> <p>15 139 East 9 Mile Road</p> <p>16 Ferndale, Michigan 48220</p> <p>17 248.721.4200</p> <p>18 gmeihn@foleymansfield.com</p> <p>19 Appearing on behalf of the Defendant.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Traverse City, Michigan</p> <p>2 Friday, November 5, 2021</p> <p>3 11:31 a.m.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 GORDON HAYWARD,</p> <p>8 was thereupon called as a witness herein, and after</p> <p>9 having first been duly sworn to testify to the truth,</p> <p>10 the whole truth and nothing but the truth, was</p> <p>11 examined and testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. INFANTE:</p> <p>14 Q. Would you please state your name, for the record,</p> <p>15 please? Please state your name, for the record.</p> <p>16 A. Yes, thank you. Gordon Lee Hayward.</p> <p>17 Q. Okay. And, Mr. Hayward, have you ever been deposed</p> <p>18 before?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Okay. How many times?</p> <p>21 A. Once.</p> <p>22 Q. I'm just going to give you some ground rules for a</p> <p>23 deposition, mostly intended to help our court</p> <p>24 reporter.</p> <p>25 I'm going to ask you a series of questions.</p>
<p style="text-align: right;">Page 3</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 GORDON HAYWARD</p> <p>5</p> <p>6 EXAMINATION BY MR. INFANTE 4</p> <p>7 EXAMINATION BY MR. MEIHN 85</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 EXHIBIT PAGE</p> <p>13 (Exhibits not offered.)</p> <p>14</p> <p>15 EXHIBITS REFERENCED:</p> <p>16 DEPOSITION EXHIBIT 1 12</p> <p>17 DEPOSITION EXHIBIT 2 44</p> <p>18 DEPOSITION EXHIBIT 3 67</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 I want you to tell me what you know, what you</p> <p>2 remember. I'm not looking for you to guess or to</p> <p>3 speculate or try to help me get to the answer you</p> <p>4 think I'm trying to get to. Just tell me what you</p> <p>5 know and what you remember. We're just trying to get</p> <p>6 facts here.</p> <p>7 A lot of the questions I'm going to ask you</p> <p>8 require a yes-or-no answer. Please respond "yes" or</p> <p>9 "no." People tend to shake their head, say "uh-huh"</p> <p>10 or "nuh-uh." Those don't come across in writing, and</p> <p>11 so what I'll end up doing is I'll say to you, "Is that</p> <p>12 a yes or is that a no?" I'm not trying to be rude,</p> <p>13 just trying to get a clean record.</p> <p>14 A. Understand.</p> <p>15 Q. In normal conversation if I were to ask you a</p> <p>16 question, before I finish asking the question you're</p> <p>17 going to know the question I'm asking. In normal</p> <p>18 conversation you'll jump in and start answering. The</p> <p>19 problem with that is you and I will talk over each</p> <p>20 other, and our court reporter has a really hard time</p> <p>21 writing that down.</p> <p>22 So I'd just ask you to wait until I finish</p> <p>23 my question before you answer, and I'll try to do the</p> <p>24 same thing for you. I'll try not to interrupt your</p> <p>25 answer. You will do it, and I'll ask you to please</p>

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<p style="text-align: right;">Page 6</p> <p>1 wait. Everyone does it.</p> <p>2 If I ask you a question and you don't</p> <p>3 understand my question, please tell me you do not</p> <p>4 understand my question. Ask me to rephrase it, tell</p> <p>5 me you don't understand, and I'll try to ask it a</p> <p>6 different way or I'll try to explain my question.</p> <p>7 But if I ask you a question and you don't</p> <p>8 tell me you don't understand or you don't tell me that</p> <p>9 you -- or you don't ask me to explain it, then I'm</p> <p>10 going to assume that you are answering the question I</p> <p>11 asked. Is that fair?</p> <p>12 A. I understand.</p> <p>13 Q. Okay. And then, last thing, it's not a marathon. If</p> <p>14 you need a break, let me know, we can take a break,</p> <p>15 okay?</p> <p>16 A. Yes.</p> <p>17 Q. All right, here we go. What is your current</p> <p>18 employment?</p> <p>19 A. I'm currently working for Greg.</p> <p>20 Q. You are working directly for Mr. Meihn?</p> <p>21 A. Yes.</p> <p>22 Q. And his law firm?</p> <p>23 MR. MEIHN: Yes, I'm sorry.</p> <p>24 A. Yes.</p> <p>25 MR. MEIHN: I wasn't paying attention,</p>	<p style="text-align: right;">Page 8</p> <p>1 capacity until 2002, when Gordon Uecker became the</p> <p>2 zoning administrator.</p> <p>3 I was assigned the planning job on</p> <p>4 July 15th, 1989. I served in that capacity until I</p> <p>5 retired on January 5th, 2010.</p> <p>6 Q. I'm sorry, you said planning job?</p> <p>7 A. Township planner.</p> <p>8 Q. I'm sorry, those dates were '89 to?</p> <p>9 A. July 1st, 1989, through January 5th, 2010.</p> <p>10 I also was employed by the Township on a</p> <p>11 temporary basis when Michelle Reardon, the planner,</p> <p>12 gave the Township 30 days' notice and left.</p> <p>13 Q. And when was that?</p> <p>14 A. That would have been 2017, I think.</p> <p>15 Q. And how long were you -- you went back into the role</p> <p>16 of township planner?</p> <p>17 A. I was, I was called the interim township planner while</p> <p>18 they were advertising and hiring Daniel Leonard, who</p> <p>19 was the planner after.</p> <p>20 Q. And how long were you in the role of interim township</p> <p>21 planner?</p> <p>22 A. Must have been a year, year and a half. I don't</p> <p>23 recall exactly.</p> <p>24 Q. Sometime in the 2018/2019 time frame?</p> <p>25 A. It would have been within that arena. I don't have</p>
<p style="text-align: right;">Page 7</p> <p>1 sorry.</p> <p>2 BY MR. INFANTE:</p> <p>3 Q. Okay, and how are you working for Mr. Meihn?</p> <p>4 A. I'm providing advice and research, advice on strategy,</p> <p>5 research on documents.</p> <p>6 Q. And you are being paid directly by his law firm?</p> <p>7 MR. MEIHN: Go ahead and answer, yes, it's</p> <p>8 okay.</p> <p>9 A. Yes.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. Okay. Are you currently employed by Peninsula</p> <p>12 Township?</p> <p>13 A. Not currently.</p> <p>14 Q. And you've been previously employed by Peninsula</p> <p>15 Township?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me about that employment.</p> <p>18 A. I don't understand for sure how specific you want to</p> <p>19 be as far as my employment. I've had a lot of</p> <p>20 different jobs over time.</p> <p>21 MR. MEIHN: Please just give him all, give</p> <p>22 him your history, please, just go.</p> <p>23 THE WITNESS: All right.</p> <p>24 I was hired in 1998 by Peninsula Township</p> <p>25 as the zoning administrator. I started in that</p>	<p style="text-align: right;">Page 9</p> <p>1 the exact dates.</p> <p>2 Q. Okay. Now, you said you're currently employed by</p> <p>3 Foley & Mansfield. How much are you being paid?</p> <p>4 A. I'm paid by the hour. It's around \$29 an hour,</p> <p>5 something like that.</p> <p>6 Q. And how many hours a week are you working?</p> <p>7 A. It varies a lot. Sometimes there's, you know, quite a</p> <p>8 few hours, other times there's not. So there isn't</p> <p>9 any specific hours that I work or not work. It's</p> <p>10 based on what the demands are.</p> <p>11 Q. Could you give me a ballpark?</p> <p>12 A. No, not really. It's varies too much.</p> <p>13 Q. And have you been hired as an expert, have you been</p> <p>14 asked to give expert opinion in this case?</p> <p>15 A. No.</p> <p>16 Q. Okay. Have you been hired as a consulting expert in</p> <p>17 this case?</p> <p>18 A. No.</p> <p>19 Q. Okay, so you are not here to provide expert testimony,</p> <p>20 correct?</p> <p>21 A. That's what I understand.</p> <p>22 MR. MEIHN: And I would stipulate to that,</p> <p>23 no expert testimony, no expert consulting.</p> <p>24 MR. INFANTE: Okay.</p> <p>25 MR. MEIHN: Just someone that was helping</p>

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<p style="text-align: right;">Page 14</p> <p>1 the planning commission is going to schedule for</p> <p>2 public hearing, I would look at that final draft and</p> <p>3 be sure that I was comfortable with the language and</p> <p>4 the way it was worded, did it conform to the master</p> <p>5 plan, those kinds of things.</p> <p>6 So it's more of a review and comment than</p> <p>7 an actual scribing. Does that make sense?</p> <p>8 Q. I think it does, but maybe I can parse that out a</p> <p>9 little bit further.</p> <p>10 Is it safe to say that you were not the</p> <p>11 person who came up with the language, but you were the</p> <p>12 person who put it into the final -- the language</p> <p>13 someone else came up with in final form to go to the</p> <p>14 planning commission?</p> <p>15 A. Run that by me again?</p> <p>16 Q. Is it safe to say that you are not the person who came</p> <p>17 up with the actual language of the remote winery</p> <p>18 tasting room ordinance, but you are the person who</p> <p>19 took that final language and put it in its final form</p> <p>20 to go to the planning commission?</p> <p>21 A. I think that would be fair, yeah.</p> <p>22 Q. And then do you know who it was that was actually</p> <p>23 drafting the language of the remote winery tasting</p> <p>24 room ordinance?</p> <p>25 A. Well, I know there were a number of people involved in</p>	<p style="text-align: right;">Page 16</p> <p>1 particular ordinance, there was give-and-take between</p> <p>2 residential community people and, you know, the</p> <p>3 property owners that would be affected, either pro or</p> <p>4 con, so ...</p> <p>5 Q. Okay. The questions I'm going to ask you I've asked</p> <p>6 other people so far, and I'm starting to learn how to</p> <p>7 do it a little faster, I hope.</p> <p>8 I want to ask you questions, specific</p> <p>9 questions, and it's really by individual paragraph of</p> <p>10 the remote winery tasting room. And I'll give you the</p> <p>11 roadmap, because my question is, are you able to</p> <p>12 answer these questions. Because if you're not, then</p> <p>13 we'll just move on and go on to something else.</p> <p>14 I want to ask you questions by individual</p> <p>15 paragraph to ask you do you know what, say, what was</p> <p>16 the government's interest in passing this specific</p> <p>17 paragraph or what was the harm the government was</p> <p>18 trying to prevent by passing this specific paragraph.</p> <p>19 As it relates to the remote winery tasting</p> <p>20 room, if I ask you those questions, are you able to</p> <p>21 give me an answer to that?</p> <p>22 A. If you ask me, I'll know the answer.</p> <p>23 Q. You will know the answer?</p> <p>24 A. Well, I will know an answer. I'll be able to answer</p> <p>25 them, yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 it. The planning commission would have a committee</p> <p>2 appointed by the chair of the planning commission,</p> <p>3 like an ordinance committee or natural resources</p> <p>4 committee, something like that, because they had the</p> <p>5 specific committees that were working. And those</p> <p>6 committees would be working with people that would</p> <p>7 have an impact or issue related to pros and cons of</p> <p>8 what's being asked for.</p> <p>9 All of the winery ordinances, as you're</p> <p>10 calling them, were requested by the property owners.</p> <p>11 The property owners usually, and I would say almost</p> <p>12 always, would be talking to neighboring people, other</p> <p>13 people that are interested, trying to set the stage --</p> <p>14 Q. Let me stop you right there. My question was, do you</p> <p>15 know -- I'm looking for specific names. Can you tell</p> <p>16 me specific names of the persons who actually came up</p> <p>17 with the language for the remote winery tasting room</p> <p>18 ordinance?</p> <p>19 A. I believe that Mr. Sada, who was a property owner, was</p> <p>20 looking for that ordinance. He would be a property</p> <p>21 owner of interest. And as far as I know, there were</p> <p>22 people from Protect the Peninsula. There were people</p> <p>23 that were interested in preserving the agricultural</p> <p>24 industry of the township who would come forward.</p> <p>25 And I think in that case, in this</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. Well, for example, let's look at, we can look</p> <p>2 at 12(h).</p> <p>3 A. I see it.</p> <p>4 Q. So 12(h) at the top says: Sales of wine by the bottle</p> <p>5 produced at the winery are allowed for off-premises</p> <p>6 consumption.</p> <p>7 Do you know why that sentence was put in</p> <p>8 this ordinance?</p> <p>9 A. Yes.</p> <p>10 Q. Okay, why was that sentence put in the ordinance?</p> <p>11 A. The interest of the Township in sales of wine by the</p> <p>12 bottle and off-premises sale was intended to preserve</p> <p>13 the agricultural industry and promote production in</p> <p>14 the township.</p> <p>15 Q. Okay, and how does it accomplish that goal?</p> <p>16 A. By, it accomplishes the goal by allowing someone who</p> <p>17 grows grapes and wants to make wine out of them and</p> <p>18 sell that wine, and that's good for the economy, it</p> <p>19 promotes the preservation of the agricultural</p> <p>20 industry.</p> <p>21 Q. Okay. So this is intended to help the wineries, is</p> <p>22 that what you're saying?</p> <p>23 A. I would say yes.</p> <p>24 Q. Okay. And now 12(h) does not allow sale of wine by</p> <p>25 the bottle to be drank on premise or served on</p>

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<p style="text-align: right;">Page 18</p> <p>1 premise. Do you know why on-premises consumption was</p> <p>2 not allowed?</p> <p>3 A. The remote wine tasting ordinance was designed to --</p> <p>4 where the farmer had a winery or most of his</p> <p>5 production was in a remote area, and Mr. Kroupa had a</p> <p>6 tasting room in a commercial zone and he wanted to</p> <p>7 move to property that he had at an old schoolhouse,</p> <p>8 and he wanted to be able to sell his product there.</p> <p>9 And it was very a contentious question at</p> <p>10 the time, and it took a lot of just work between all</p> <p>11 the various groups, because it was getting close to</p> <p>12 that line of commercial versus agriculture, and --</p> <p>13 Q. I want to focus you on my question.</p> <p>14 A. Sure.</p> <p>15 Q. My question is, what governmental interest is</p> <p>16 furthered by not allowing the on-premise consumption</p> <p>17 of bottles of wine?</p> <p>18 A. The governmental interest really is specifically to</p> <p>19 selling by the bottle or selling by the glass or</p> <p>20 something else.</p> <p>21 Q. Let me ask it a different way.</p> <p>22 A. Well --</p> <p>23 MR. MEIHN: Can you let him finish?</p> <p>24 MR. INFANTE: I thought he was done, I</p> <p>25 apologize.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Well, agriculture in the peninsula --</p> <p>2 MR. MEIHN: You don't get a chance to ask</p> <p>3 him questions, okay? I know you two could have a good</p> <p>4 debate, and I didn't mean to interrupt.</p> <p>5 A. Short answer, agriculture in Peninsula Township is</p> <p>6 producing farm products.</p> <p>7 BY MR. INFANTE:</p> <p>8 Q. Okay. Does agriculture include wineries?</p> <p>9 A. The definition of agriculture is production. The</p> <p>10 ordinances allow not only production, but they allow</p> <p>11 vertical integration; processing, wholesale/retail</p> <p>12 sales, in some cases on-premises consumption, but --</p> <p>13 Q. My question was, does agriculture include -- does your</p> <p>14 definition of agriculture include wineries?</p> <p>15 A. Wineries are allowed in the agricultural zone, yes.</p> <p>16 Q. So they are agriculture?</p> <p>17 A. A winery is agriculture.</p> <p>18 Q. Okay. And is a winery also a farm?</p> <p>19 A. No.</p> <p>20 Q. But a winery grows crops.</p> <p>21 A. The winery does not grow crops.</p> <p>22 Q. The winery doesn't have grapevines?</p> <p>23 A. Wineries do not have grapevines.</p> <p>24 Q. You're telling me that every winery in Peninsula</p> <p>25 Township, none of them have grapevines?</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. MEIHN: I understand.</p> <p>2 Go ahead, sir.</p> <p>3 A. So the governmental interest is always recognizing</p> <p>4 whether, we're looking at the balance between</p> <p>5 commercial uses and agricultural uses, and we wanted</p> <p>6 to be sure that in the agricultural zone, that</p> <p>7 everything that was allowed and any regulations that</p> <p>8 were applied would be protecting and promoting</p> <p>9 agricultural production on the peninsula.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. Okay. So what is the harm in a guest or customer in</p> <p>12 consuming -- being sold a bottle of wine for</p> <p>13 on-premise consumption?</p> <p>14 A. Of not being able?</p> <p>15 Q. Of not being able to, you know, not being able to buy</p> <p>16 a bottle of wine and consume it on the premise, what's</p> <p>17 the harm in that?</p> <p>18 A. The harm in that is there would be over time an</p> <p>19 incremental deterioration of the agricultural zone.</p> <p>20 Q. How?</p> <p>21 A. Because it's getting towards the commercial end of</p> <p>22 things, which you can have a bar or restaurant in a</p> <p>23 commercial zone; you can't have those in an ag zone.</p> <p>24 So what's agriculture?</p> <p>25 Q. You tell me. What's agriculture?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Well, I guess it depends on what the definition of</p> <p>2 "winery" is.</p> <p>3 Q. What's the definition of "winery"?</p> <p>4 A. The definition of winery is processing farm products.</p> <p>5 Q. Okay, and what kind of farm products?</p> <p>6 A. Any farm products that you can make into wine.</p> <p>7 Q. Okay. So if a winery has grapevines planted on their</p> <p>8 property, are they then a farm?</p> <p>9 A. The definition of a farm or agriculture is growing</p> <p>10 farm products. Grapes are a farm product,</p> <p>11 therefore --</p> <p>12 Q. Therefore a winery that grows grapes is a farm?</p> <p>13 A. I'm having trouble with the term "winery." A farm</p> <p>14 owner grows grapes. I'm not sure that the term</p> <p>15 "wineries" is a person. I think of a winery as a use</p> <p>16 as opposed to a person.</p> <p>17 But a person who owns a winery and has --</p> <p>18 and is growing grapes, then, yes, those are farms,</p> <p>19 because they're growing a farm product.</p> <p>20 Q. Are you saying only a person can have a farm?</p> <p>21 A. Yes.</p> <p>22 Q. So a company cannot have a farm?</p> <p>23 MR. MEIHN: Object, it's been asked and</p> <p>24 answered.</p> <p>25 You have to answer if you can, but you get</p>

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<p style="text-align: right;">Page 22</p> <p>1 to do it twice.</p> <p>2 A. Could a company -- well, could you repeat the</p> <p>3 question?</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. Can a company own a farm?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So a company and a person can both own a farm,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So when you said only a person can own a farm,</p> <p>11 that wasn't true?</p> <p>12 A. A company is a person.</p> <p>13 Q. Okay, a company is a person. So a company that owns a</p> <p>14 vineyard that then has a processing facility to</p> <p>15 make -- to convert those grapes into wine, is that a</p> <p>16 farm?</p> <p>17 A. I'm not sure what the question is, I'm sorry.</p> <p>18 Q. We have a piece of property, 50 acres, okay, and it</p> <p>19 has a vineyard on it growing grapes. It also has a</p> <p>20 facility on that 50 acres that converts those grapes</p> <p>21 into wine. Is that a farm?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Looking at 12(i), and I'm going to try to</p> <p>24 refrain from -- can you just read 12(i) for me? Just</p> <p>25 read it to yourself.</p>	<p style="text-align: right;">Page 24</p> <p>1 So can you tell me, what is the</p> <p>2 governmental interest in limiting the sale of non-food</p> <p>3 items at a remote winery tasting room to those that</p> <p>4 include the winery logo only?</p> <p>5 A. Yes. The purpose of that particular section is to</p> <p>6 allow the normal marketing practices of wineries, as</p> <p>7 we're accustomed to them. If they have their logo on</p> <p>8 them, that means that they're proud of their winery</p> <p>9 and they want people to remember it, so they will sell</p> <p>10 things that identify the market it's coming from.</p> <p>11 That's kind of unique in the wine industry</p> <p>12 as compared to, say, cherries or apples, or something</p> <p>13 like that. And so that's recognized in the township</p> <p>14 as more to the agricultural end of that spectrum as</p> <p>15 opposed to the commercial end. And so we want to</p> <p>16 allow the wineries to have as much latitude as we can,</p> <p>17 as long as the -- we don't cross that line from</p> <p>18 agricultural use to a commercial use, which takes</p> <p>19 place in a commercial zone.</p> <p>20 So we know if you put your logo on it,</p> <p>21 you're promoting agriculture. If it doesn't have the</p> <p>22 logo, we don't know whether you're promoting</p> <p>23 production or not.</p> <p>24 So the whole purpose is related to that</p> <p>25 issue of trying to preserve and promote that winery</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Okay.</p> <p>2 Q. Okay, you've read it. Okay, I'm going to try and boil</p> <p>3 this down in a nutshell into simple terms, and if you</p> <p>4 disagree with me, feel free to disagree with me.</p> <p>5 But 12(i) states that the retail sale of</p> <p>6 non-food items which promote the winery with a logo</p> <p>7 affixed to that food item, the logo of the winery can</p> <p>8 be sold. Fair statement of what 12(i) says?</p> <p>9 A. And what's the question?</p> <p>10 Q. Just is that a fair statement of what 12(i) says?</p> <p>11 A. Can you read it again, the part that --</p> <p>12 MR. MEIHN: What he's doing is he's</p> <p>13 summarizing it, and he just wants you to acknowledge</p> <p>14 whether his summary is a reflection of that.</p> <p>15 So, if you could, listen to his summary for</p> <p>16 a moment, please.</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. The summary is that 12(i) states that retail sales of</p> <p>19 non-food items is allowed when that non-food item</p> <p>20 contained the logo of the winery?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And I'm trying to do a summary, because I've</p> <p>23 been reading these ordinances over and over again, and</p> <p>24 it just makes our transcript really long. I'm trying</p> <p>25 not to read it so many times.</p>	<p style="text-align: right;">Page 25</p> <p>1 production in the township, which is our definition of</p> <p>2 farming, and all those kinds of things.</p> <p>3 So that's -- if you're selling glasses, you</p> <p>4 know, I can go to any store in town and buy a glass.</p> <p>5 I may even buy a glass that says Old Mission Peninsula</p> <p>6 or peninsula, or something like that, or Michigan, you</p> <p>7 know. We see them all the time. That's the</p> <p>8 commercial end. The winery, if you're going to buy</p> <p>9 that at a winery, you're on-site, you're at the</p> <p>10 winery, you're at the place where the stuff takes</p> <p>11 place. That's agriculture, that's promotion of</p> <p>12 agriculture.</p> <p>13 So that's how the whole ordinances are put</p> <p>14 together. If it's promoting, if it's supporting, if</p> <p>15 it's encouraging, if it's marketing production, it's</p> <p>16 okay. If it's just buying something and selling it,</p> <p>17 then it's not necessarily promoting agriculture, and</p> <p>18 that's, that's really what this whole governmental</p> <p>19 interest is, is we've got a unique agricultural area</p> <p>20 out here.</p> <p>21 It's got an American Viticulture Area</p> <p>22 designated by the federal government, identifies that</p> <p>23 part of the township. That's -- the basis of our</p> <p>24 industry is production. Everything else flows from</p> <p>25 that.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. What is the harm to the governmental interest</p> <p>2 if a remote winery tasting room sells a wine glass</p> <p>3 without a logo on it?</p> <p>4 A. Well, yeah, kind of the way that I look at that, is if</p> <p>5 you can sell a glass that's not promoting or marketing</p> <p>6 and you're going to need some furniture in your</p> <p>7 winery, you know, why shouldn't we sell furniture out</p> <p>8 of the tasting room? If you're going to have</p> <p>9 air-conditioning units in your building, why shouldn't</p> <p>10 we sell air-conditioning units?</p> <p>11 Q. Okay.</p> <p>12 A. That's a question. Why wouldn't we? And my answer</p> <p>13 is, because it's not related to promoting or</p> <p>14 preserving the agricultural industry.</p> <p>15 Q. Okay, sir, but you didn't answer --</p> <p>16 A. So it's a slippery slope, to who -- I'll try to answer</p> <p>17 your question more specifically. It's a slippery</p> <p>18 slope. If you can do A, why can't you do B, why can't</p> <p>19 you do C, why can't you do D?</p> <p>20 When the committee was putting together</p> <p>21 these ordinances, and I don't recall whether it's</p> <p>22 specific to this one or not, they had to draw that</p> <p>23 line. It's like, it's like case law versus the</p> <p>24 written word. The case law gets into the specifics,</p> <p>25 what does this word mean, what does that word mean.</p>	<p style="text-align: right;">Page 28</p> <p>1 that if a non-logoed wine glass is sold by a remote</p> <p>2 winery tasting room, then the entire agricultural</p> <p>3 industry in Peninsula Township is going to fail?</p> <p>4 A. I don't agree with your analysis.</p> <p>5 Q. My question was, has Peninsula Township done a study</p> <p>6 that says that?</p> <p>7 A. Not that I know of.</p> <p>8 Q. Has Peninsula Township done a study at all that says</p> <p>9 the sale of non-logoed merchandise will deteriorate</p> <p>10 and cause agricultural businesses in Peninsula</p> <p>11 Township to fail?</p> <p>12 A. I don't know of one.</p> <p>13 Q. Okay, but are you telling me that if a remote winery</p> <p>14 tasting room sells a non-logoed wine glass, that some</p> <p>15 farmer or some agricultural business in Peninsula</p> <p>16 Township is going to be harmed by that?</p> <p>17 A. Eventually, yes.</p> <p>18 Q. What is the direct harm?</p> <p>19 MR. MEIHN: I'm going to object, asked and</p> <p>20 answered.</p> <p>21 A. The direct harm is the degradation of the agricultural</p> <p>22 industry over time, because it will tend to go into a</p> <p>23 commercial area.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Well, you're assuming that at some point this remote</p>
<p style="text-align: right;">Page 27</p> <p>1 This is me talking. I'm not an attorney.</p> <p>2 But it's kind of the difference between the generality</p> <p>3 to the specific, and there's always a line. If we</p> <p>4 can't agree, the judge decides what it means.</p> <p>5 So that's the best that I can do to try to</p> <p>6 describe that, the basic concept behind all of these</p> <p>7 specific uses.</p> <p>8 Q. Okay, that's fine, but you didn't answer my question.</p> <p>9 A. I'm sorry.</p> <p>10 Q. My question was, what is the harm, what harm comes to</p> <p>11 the governmental interest if a remote winery tasting</p> <p>12 room sells a non-logoed glass versus selling a logoed</p> <p>13 glass?</p> <p>14 A. I believe it's degrading the agricultural industry.</p> <p>15 Q. Okay, but how does it degrade the agricultural</p> <p>16 industry?</p> <p>17 A. I already explained that.</p> <p>18 MR. MEIHN: I'm just going to object. It</p> <p>19 was asked and answered a moment ago during that long</p> <p>20 explanation.</p> <p>21 But if you can answer it again, please.</p> <p>22 BY MR. INFANTE:</p> <p>23 Q. Let me ask it a different way.</p> <p>24 A. Sure.</p> <p>25 Q. Has Peninsula Township performed a study that says</p>	<p style="text-align: right;">Page 29</p> <p>1 winery tasting room is going to start selling, as your</p> <p>2 example, air conditioners. Is that based on</p> <p>3 assumption?</p> <p>4 A. I didn't say that. I said as far as the ordinances</p> <p>5 are concerned, if you start moving towards a</p> <p>6 commercial use, and the committees and the people that</p> <p>7 wrote the ordinance said we have to draw a line</p> <p>8 someplace, we have to draw the line, and we have to be</p> <p>9 specific enough so that everybody knows where the line</p> <p>10 is.</p> <p>11 And so we end up saying you can have a</p> <p>12 glass with a logo but you can't have a glass without,</p> <p>13 and --</p> <p>14 Q. Why did you draw the line there?</p> <p>15 A. Pardon me?</p> <p>16 Q. Why was -- well, I should ask, are you the person who</p> <p>17 drew that line, or was that the committee?</p> <p>18 A. That was the committee.</p> <p>19 Q. Okay. Did you have any involvement in drawing that</p> <p>20 line?</p> <p>21 A. I probably did.</p> <p>22 Q. Okay. Then why was the line drawn there?</p> <p>23 A. Because you had to draw it someplace, and as I</p> <p>24 indicated before, we have two zones related to -- we</p> <p>25 have a retail zone and we have an agricultural zone,</p>

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<p style="text-align: right;">Page 30</p> <p>1 and the residents of the township understand what's</p> <p>2 commercial and what isn't.</p> <p>3 Q. Okay.</p> <p>4 A. The ordinances are designed to be as specific and as</p> <p>5 clarifying as possible by identifying specific things</p> <p>6 which illustrate where that line is. And if you're</p> <p>7 promoting agriculture in the agricultural production</p> <p>8 area, then it's okay. If you're not, then you're in</p> <p>9 the wrong zone.</p> <p>10 If you want to have a bar or restaurant or</p> <p>11 retail store in a commercial zone, fine. But if you</p> <p>12 want to sell products that are produced in the</p> <p>13 agricultural zone, then they've gotta be directly</p> <p>14 related to the promotion and retention of that</p> <p>15 agriculturally-preserved area.</p> <p>16 Q. So you're saying a wine glass is not related to</p> <p>17 production of wine grapes?</p> <p>18 A. I'm saying that a wine glass is an example of the line</p> <p>19 that the people that drafted this ordinance had to</p> <p>20 draw. It's their decision, the town board's ultimate</p> <p>21 decision, because they reviewed what the planning</p> <p>22 commission recommended, and so forth, and there were a</p> <p>23 whole number of factors that go into where that line</p> <p>24 is drawn.</p> <p>25 Q. But was it your decision?</p>	<p style="text-align: right;">Page 32</p> <p>1 finish the objection.</p> <p>2 Go ahead, though. You started to talk, so</p> <p>3 go ahead. I'll just let it go.</p> <p>4 THE WITNESS: No, we always, we always ask</p> <p>5 the attorneys whether or not the ordinance is legal or</p> <p>6 not, so I depend on attorney reviews, not my personal</p> <p>7 knowledge.</p> <p>8 BY MR. INFANTE:</p> <p>9 Q. Which attorney reviewed the remote winery tasting room</p> <p>10 ordinance?</p> <p>11 A. What year was that? I know that Richard Ford was our</p> <p>12 attorney for a number of years. It was the township</p> <p>13 attorney, whoever that person might be.</p> <p>14 Q. Okay. Do you know specifically, have a specific</p> <p>15 recollection of the township attorney either being</p> <p>16 asked or considering the wineries' First Amendment</p> <p>17 rights?</p> <p>18 A. No.</p> <p>19 Q. Okay, looking at 12(k), the last -- 12(k) is the last</p> <p>20 section. It says: Signs and other advertising may</p> <p>21 not promote, list or in any way identify any of the</p> <p>22 food or non-food items allowed for sale in the tasting</p> <p>23 room.</p> <p>24 My first question is going to be, did you</p> <p>25 help come up with this language or draft this</p>
<p style="text-align: right;">Page 31</p> <p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 A. It was the committee's decision.</p> <p>4 Q. When you -- when the committee was considering the</p> <p>5 remote winery tasting room ordinance, do you know</p> <p>6 whether the committee considered the First Amendment</p> <p>7 rights of the remote wineries?</p> <p>8 MR. MEIHN: I'm going to object. This</p> <p>9 person is not a lawyer, and to ask him a question in</p> <p>10 that regard is improper.</p> <p>11 But you can answer, and if you understand</p> <p>12 what the First Amendment rights are --</p> <p>13 A. What are First Amendment rights?</p> <p>14 BY MR. INFANTE:</p> <p>15 Q. Let me ask a question. Do you know what First</p> <p>16 Amendment rights are?</p> <p>17 A. Not specifically. I couldn't quote it, no.</p> <p>18 Q. Okay. And so if you don't know what they are, is it</p> <p>19 safe to assume that at least as it relates to you</p> <p>20 working on the remote winery tasting ordinance, you</p> <p>21 did not consider First Amendment rights of wineries?</p> <p>22 MR. MEIHN: I'm going to object again,</p> <p>23 because he's not a lawyer and he can't testify --</p> <p>24 A. My answer --</p> <p>25 MR. MEIHN: Hang on, you've gotta let me</p>	<p style="text-align: right;">Page 33</p> <p>1 language?</p> <p>2 A. I was probably, you know, reviewing it, yes.</p> <p>3 Q. Okay, but did you come up with the language?</p> <p>4 A. I honestly don't know.</p> <p>5 Q. So I guess my question is, then, well, one, do you</p> <p>6 know what this language means?</p> <p>7 A. It means that signs or other advertising may not</p> <p>8 promote, list or any way identify any of the food or</p> <p>9 non-food items allowed for sale in the tasting room.</p> <p>10 Q. Do you know if this is supposed to be for both indoor</p> <p>11 and outdoor signs in advertising?</p> <p>12 A. There's a sign ordinance that says what signs are</p> <p>13 available for all of these uses, and it's not in</p> <p>14 conflict with those.</p> <p>15 Q. But the sign ordinance is an outdoor sign ordinance,</p> <p>16 right?</p> <p>17 A. Pardon me?</p> <p>18 Q. The general sign ordinance only relates to outdoor</p> <p>19 signs, correct?</p> <p>20 A. That's not correct.</p> <p>21 Q. This applies to indoor signs, as well?</p> <p>22 A. Yes.</p> <p>23 Q. Is your answer to 12(k) that this applies to both</p> <p>24 indoor and outdoor signs in advertising?</p> <p>25 A. There are two words, I guess, that I would have to</p>

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

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<p style="text-align: right;">Page 38</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Okay, do you need me to repeat my question?</p> <p>3 A. Could you repeat your question, please?</p> <p>4 Q. Sure. So under the winery tasting room ordinance, you</p> <p>5 can grow it, you can process it, and you can sell it,</p> <p>6 food items, but you're not allowed to advertise that</p> <p>7 you have it for sale, is that what you're saying?</p> <p>8 A. No.</p> <p>9 Q. Okay. Then, sir, I'm not sure what you're saying.</p> <p>10 MR. MEIHN: Well, ask him a question about</p> <p>11 it. Ask him again on (k). He did said (k), he gave a</p> <p>12 whole answer. He said those two areas promote and</p> <p>13 identify.</p> <p>14 MR. INFANTE: Counsel, just your objection.</p> <p>15 BY MR. INFANTE:</p> <p>16 Q. Okay. What does (k) prohibit?</p> <p>17 A. I'm sorry?</p> <p>18 Q. What is the harm that (k) is trying to prevent?</p> <p>19 MR. MEIHN: Objection, asked and answered.</p> <p>20 Go ahead, please.</p> <p>21 A. It's trying to keep the agricultural production area</p> <p>22 from being degraded by intrusion of commercial</p> <p>23 activities within the zone.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Okay. Then you gave an example of a sign that said</p>	<p style="text-align: right;">Page 40</p> <p>1 interest there.</p> <p>2 Let's move on. Move on, please.</p> <p>3 MR. INFANTE: Okay, I'm going to ask my</p> <p>4 question.</p> <p>5 BY MR. INFANTE:</p> <p>6 Q. Okay, there's a governmental interest in growing farm</p> <p>7 products, right? Is that what you're saying?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And I believe you said there's a governmental</p> <p>10 interest in processing those farm products?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Is there a governmental interest in selling</p> <p>13 those products?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And is there a distinction between selling</p> <p>16 those products at wholesale and selling them at</p> <p>17 retail?</p> <p>18 A. Let me think about that ...</p> <p>19 I guess I come back to the issue of</p> <p>20 promoting and the sale of food, promoting -- the sale</p> <p>21 of the food is -- well, let me put it this way.</p> <p>22 Selling agricultural products, there's no question</p> <p>23 that's allowed. Obviously, the ag industry or ag</p> <p>24 zone, by definition, is a production zone.</p> <p>25 We allow the vertical integration of those</p>
<p style="text-align: right;">Page 39</p> <p>1 "Mustard, \$4." What harm comes from a sign that says</p> <p>2 "Mustard, \$4"?</p> <p>3 MR. MEIHN: Asked and -- objection, asked</p> <p>4 and answered.</p> <p>5 Go ahead.</p> <p>6 A. The harm is the degradation of the agricultural</p> <p>7 production area in the township, of becoming a</p> <p>8 commercial zone, not an agricultural zone.</p> <p>9 BY MR. INFANTE:</p> <p>10 Q. Okay, but --</p> <p>11 A. And the governmental interest is the preservation of</p> <p>12 that agricultural production area.</p> <p>13 Q. Okay. So are you saying that the government has an</p> <p>14 interest in the growing and processing of farm</p> <p>15 products, but it doesn't have an interest in selling</p> <p>16 those farm products?</p> <p>17 MR. MEIHN: Counsel, that's not what he</p> <p>18 said, and now this is where we're stopping and you're</p> <p>19 not answering this question. We've gone down this</p> <p>20 five times and you're not liking the answer. Now</p> <p>21 you're trying to confuse him.</p> <p>22 He's answered the question of why. He gave</p> <p>23 you the governmental interest. He gave you what could</p> <p>24 be and what can't be, and now you're trying to assert</p> <p>25 an assumption, as he's a lawyer, that there's not an</p>	<p style="text-align: right;">Page 41</p> <p>1 farm products which are grown in the agricultural</p> <p>2 zone. So things that you grow, you can process.</p> <p>3 Things that you grow, you can sell at wholesale.</p> <p>4 Things that you grow, you can sell at retail.</p> <p>5 Anything other than that, the concern of</p> <p>6 the writers of this section, anything other than that</p> <p>7 has to make sure that it's not seen -- or actually is</p> <p>8 a commercial use. So promoting the agricultural</p> <p>9 industry by selling wine is different than promoting</p> <p>10 the agricultural industry by selling mustard.</p> <p>11 Q. Why?</p> <p>12 A. Because the sale of mustard is also a commercial use.</p> <p>13 It's sold by every grocery store in the region.</p> <p>14 Mustard is mustard. It's not wine, it's not an</p> <p>15 agricultural product itself. It contains products,</p> <p>16 and we recognize that. We say, sure, it's okay if it</p> <p>17 contains it. But the promotion -- we're promoting</p> <p>18 wine, we're not promoting mustard.</p> <p>19 Mustard is a product that may be sold if</p> <p>20 its products are made from local production, but it's</p> <p>21 not selling farm products.</p> <p>22 Q. Would it make a difference if it was cherry jam?</p> <p>23 A. Are you growing the cherries?</p> <p>24 Q. Yes.</p> <p>25 A. You can have it.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. So cherry jam and wine --</p> <p>2 A. If you're growing the cherries, you can sell it. You</p> <p>3 can't -- well, if you grow it, you can sell it, I</p> <p>4 guess.</p> <p>5 Q. If you grow it or somebody else in the township grows</p> <p>6 it, right?</p> <p>7 A. Well, in that particular section of the ordinance,</p> <p>8 yes, (k) says that.</p> <p>9 Q. Okay. Do you know, before 12(k) was enacted, do you</p> <p>10 know if the Township considered any less-restrictive</p> <p>11 means to accomplish its stated goals?</p> <p>12 A. Ignoring (k)?</p> <p>13 Q. No-no, looking at (k).</p> <p>14 A. Just looking at (k).</p> <p>15 Q. Do you know if the township considered any</p> <p>16 less-restrictive means to accomplish its governmental</p> <p>17 interest?</p> <p>18 A. There was certainly discussion about the range of</p> <p>19 items that could be sold in a remote, or in a remote</p> <p>20 tasting room. So, so, yes.</p> <p>21 Q. Well, sir, I'm referring to (k), which deals with</p> <p>22 signs and advertising.</p> <p>23 A. Yes.</p> <p>24 Q. Were there any less-restrictive means besides the</p> <p>25 prohibition on signs and advertising that --</p>	<p style="text-align: right;">Page 44</p> <p>1 identification other than that they wanted to be sure</p> <p>2 that any advertising that went out was promoting the</p> <p>3 production and not the sale of food or food items.</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. Okay. So you're not aware of any less-restrictive</p> <p>6 means?</p> <p>7 MR. MEIHN: He's answered the question.</p> <p>8 You don't get to summarize it.</p> <p>9 MR. INFANTE: Okay, it's 12:30, let's take</p> <p>10 a break?</p> <p>11 MR. MEIHN: Good time.</p> <p>12 (Off the record at 12:32 p.m.)</p> <p>13 (Back on the record at 1:09 p.m.)</p> <p>14 BY MR. INFANTE:</p> <p>15 Q. Okay, Mr. Hayward, I have handed you what is marked as</p> <p>16 Plaintiffs' Exhibit 2, and I will represent to you</p> <p>17 that this is the farm processing facility section of</p> <p>18 the winery ordinances, or the Peninsula Township</p> <p>19 ordinance.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When the farm processing facility ordinance was</p> <p>22 passed, it looks like it was Amendment 139B, were you</p> <p>23 on the town board?</p> <p>24 A. No.</p> <p>25 Q. When it was passed, were you on the planning</p>
<p style="text-align: right;">Page 43</p> <p>1 MR. MEIHN: In the tasting room.</p> <p>2 BY MR. INFANTE:</p> <p>3 Q. -- in a remote winery tasting room that the Township</p> <p>4 considered as opposed to this prohibition?</p> <p>5 A. Certainly the consideration of not separating or</p> <p>6 drawing a line of what's commercial and residential</p> <p>7 was considered, but I think the words that are in</p> <p>8 there, the promoting and all of that, were added to be</p> <p>9 sure that the interest in preserving that</p> <p>10 agricultural-producing area was the governmental</p> <p>11 interest.</p> <p>12 And to the extent that we could allow or</p> <p>13 the ordinances could allow some additional, you know,</p> <p>14 accessory sales of limited quantities, as long as it</p> <p>15 didn't break that line between residential and</p> <p>16 commercial, so --</p> <p>17 Q. Let me cut you off, sir. You're not answering the</p> <p>18 question that I asked. I need you to answer the</p> <p>19 question I asked.</p> <p>20 The question I asked was, did Peninsula</p> <p>21 Township consider any less-restrictive means to</p> <p>22 further its governmental interest related to 12(k)</p> <p>23 other than the prohibition of signs and advertising?</p> <p>24 MR. MEIHN: If you're aware, sir.</p> <p>25 A. I don't recall that there was any specific</p>	<p style="text-align: right;">Page 45</p> <p>1 commission?</p> <p>2 A. No.</p> <p>3 Q. Okay. Did you have involvement in the drafting of</p> <p>4 what looks like Amendment 139B?</p> <p>5 A. Yes.</p> <p>6 Q. And what was your involvement?</p> <p>7 A. I was the township planner at that time, and my</p> <p>8 involvement was to review a proposal from the</p> <p>9 agricultural community to allow for a farm processing</p> <p>10 facility, which was essentially a smaller area</p> <p>11 requirement, and it was designed for people that had</p> <p>12 the smaller acreages and just wanted to process and</p> <p>13 sell what they grow --</p> <p>14 Q. I'm just going to stop you, I apologize. I just want</p> <p>15 to really focus in on what your involvement was.</p> <p>16 A. Oh, okay, sure.</p> <p>17 Q. It sounded like you said that, you can correct me if</p> <p>18 I'm wrong, that your role was to review a proposal</p> <p>19 that was put together by another group?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Were you part of the group that drafted that</p> <p>22 proposal?</p> <p>23 A. The original proposal was presented by the ag</p> <p>24 committee, or the agricultural group and committees of</p> <p>25 the planning commission. My role was in support of</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. Did you give an opinion on the number of 2 houses?</p> <p>3 A. I think I was more involved in how to write it. They 4 wanted to be sure that -- I think it was more of 5 scribing at that point rather than making policy, 6 because I think they decided the numbers, but how to 7 write it, what to put in, to be sure we were clear 8 about what we were doing.</p> <p>9 Q. Okay.</p> <p>10 A. I think that pretty well covers it.</p> <p>11 Q. The ones we talked about are the only sections where 12 you provided comment?</p> <p>13 A. Yes.</p> <p>14 Q. And you've told me all the comments that you've made?</p> <p>15 A. Right.</p> <p>16 Q. In looking at this, I know you didn't -- if you could 17 turn to page 45, it's Section --</p> <p>18 A. What section?</p> <p>19 Q. I believe it's Section 5. It would be 19(b)(5), for 20 clarity, of Exhibit 2.</p> <p>21 MR. MEIHN: Setbacks?</p> <p>22 MR. INFANTE: Setbacks.</p> <p>23 MR. MEIHN: It says setbacks. Let me help 24 you with that, sir.</p> <p>25 THE WITNESS: Gotcha.</p>	<p style="text-align: right;">Page 60</p> <p>1 whether that would alleviate the concern of a 2 neighboring farmer needing to spray?</p> <p>3 A. Yes. I can expand on that.</p> <p>4 Q. Please.</p> <p>5 A. The issue of setbacks in all of the agricultural 6 district is that the farmer has a right to farm to his 7 property line. The Right to Farm Act that the 8 legislature adopted gives guidance as to at what point 9 does a farmer violate the ordinance, in other words, 10 is he liable, and as long as the farmer is operating 11 under the rules of the Department of Agriculture and 12 under the generally-accepted management practices, 13 they're exempt from libel suits, including the 14 Township.</p> <p>15 Our ordinances are designed and were 16 designed, both before and after, but it was clear 17 after that ordinance that zoning ordinances are 18 designed to say in the agricultural zone, farming 19 comes first, and the residences have to keep out of 20 the way of the farms, essentially, with setbacks and 21 that, and the ordinances do require residential 22 development that's adjacent to farming land has to 23 have additional setbacks.</p> <p>24 It's not for safety purposes, necessarily, 25 because the farmer has to be sure he's not spraying on</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. And I know you didn't draft this and you didn't 3 comment on it, but the setback made me think of 4 something, that I believe it was Mr. Wunsch or 5 Mr. Parsons made a comment during their deposition 6 about spraying the farms, like a farmer needs to 7 spray, you know, they only have a certain, certain 8 time window to spray. Are you aware of that concept?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And the comment that was made was along the 11 lines of, "Well, you can't have people outside at a 12 winery or an event, because the farmer next-door may 13 need to spray and they only have a certain window of 14 time to spray."</p> <p>15 Have you ever heard comments like that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. When these ordinances were drafted, and I'm 18 talking about all the winery ordinances, do you know 19 if anyone ever considered whether the minimum setbacks 20 should be increased to alleviate the issue of a 21 neighboring farmer needing to spray?</p> <p>22 A. I know the issues that were out there were left up to 23 that question, yes.</p> <p>24 Q. But do you know if anyone ever considered whether or 25 not the minimum setbacks should be increased and</p>	<p style="text-align: right;">Page 61</p> <p>1 somebody else's property.</p> <p>2 However, there are two things that can 3 happen. First, the adjacent property owner smells 4 something. And they don't know whether it's harmful 5 or whether it isn't, but chemicals have an odor and 6 they drift. The farmer is liable if he allows a 7 harmful chemical to drift. He can't necessarily stop 8 odors.</p> <p>9 The ordinance has a setback for houses in 10 those situations where there's a house next or 11 adjacent to agricultural land; not only the house, the 12 swimming pool, those kind of things also have to meet 13 that setback. So there's additional requirements 14 placed on the residences if they are adjacent to an 15 agricultural land and, specifically, if they're in the 16 ag zone. If you're farming in a residential area, 17 then the farmer has to provide the setback.</p> <p>18 And so we have different rules, but they're 19 both designed to separate non-farm people from 20 producing agricultural land.</p> <p>21 And so that's kind of how the spraying and 22 dust and odor and noise, and all those kinds of things 23 that create problems for both the residential family, 24 they also create problems for the farmer. Because if 25 a farmer has just sprayed an orchard, or something</p>

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<p style="text-align: right;">Page 62</p> <p>1 like that, and the kids from next-door say, "Oh, let's 2 go play in the orchard," the farmer is not liable 3 under the Right to Farm Act. But psychologically it 4 hurts, and it hurts to the point where they'll quit 5 farming. 6 And so it's incumbent on the Township in 7 this case to look at that specific issue of 8 agricultural activities which are legitimate, 9 recognized in the Right to Farm Act, and the actuality 10 of what happens on the ground. So we go beyond that 11 and require additional setbacks for houses adjacent to 12 agriculture. 13 That's a long answer to a short question, 14 but it's critical to the whole idea of balancing the 15 needs of both. And in some cases it's the farmer that 16 has to give; in other cases it's the house owner that 17 has to give. 18 BY MR. INFANTE: 19 Q. You're talking about residential. Let's take, for 20 example, a house that's next to a farm but they've 21 complied with the minimum setbacks, and the pool in 22 the backyard complies with the minimum setbacks. As 23 long as they have complied with that minimum setback, 24 there's no restriction on what they can do at their 25 pool, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 required for a winery, whether it's a farm processing 2 or any other winery -- 3 A. Yes. 4 Q. -- was consideration given to this issue of a 5 neighboring farmer needing to spray? 6 A. Was the -- the farmer has a right to spray, period. 7 He doesn't have the right to spray somebody else's 8 land. 9 The setbacks for a farm processing facility 10 are there to affect neighboring properties, whether 11 the property is a farm property or whether the 12 property is adjacent to a residential use or 13 commercial use, or whatever. 14 Q. I understand, but -- 15 A. So I don't know if I've answered your question, but 16 that's the best I can do. 17 MR. MEIHN: Well, can I just place a brief 18 objection? I think what the distinction problem is, 19 is the difference between farm processing activities 20 and farming, which involves spraying. Farm processing 21 activities don't involve spraying. Farm activities 22 involve spraying and can't be touched because of the 23 Right to Farm Act, which is what you said earlier, 24 but -- 25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 Like, they could have a party at their 2 pool. They don't have to defer to the farmer and 3 whatever the farmer is doing on his land, right? 4 A. No. 5 Q. Okay. And so, I apologize, I don't know that you 6 actually answered my specific question. I'm going to 7 ask it again. 8 A. Okay, sure. 9 Q. So when we were talking about a setback for a 10 winery -- 11 A. A winery? 12 Q. A winery, okay? 13 A. Any -- well, I'm sorry, go ahead. Ask your question, 14 I'm sorry. 15 Q. I ask because 19(b)5 lists minimum setbacks for a farm 16 processing facility, and it's side and rear yard, 100 17 feet; front yard, 50 feet; and then it says a minimum 18 of 200 feet from any pre-existing residence on 19 adjoining property. 20 A. Where are you looking, please, number 6 -- or 5? 21 MR. MEIHN: 5. 22 THE WITNESS: 5, okay. I understand. 23 BY MR. INFANTE: 24 Q. Okay. And the reason I'm asking my question is -- I 25 guess my question is, when coming up with the setbacks</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. INFANTE: Counsel, can you -- 2 MR. MEIHN: I'll stop now, but I'm just 3 trying to help to get an answer, because we're going 4 to go in a circle because you're talking Greek and 5 he's talking Latin right now, and I just want you to 6 talk the same. 7 MR. INFANTE: We'll both talk Dutch, how 8 about that? 9 MR. MEIHN: Fair enough. 10 BY MR. INFANTE: 11 Q. Okay, let me just ask it, and if you can give me a 12 yes-or-no answer, maybe we can -- 13 A. I'll try. 14 Q. Just try to. When determining the setbacks for a 15 winery, regardless of what kind of winery, was there 16 ever, was consideration ever given to the issue of a 17 neighboring farm having to spray in deciding the 18 amount of the setback? 19 A. Yes. 20 Q. Okay. And was there ever a discussion to say that we 21 should increase the amount of that setback to better 22 protect -- to better alleviate that issue? 23 MR. MEIHN: I'm just going to object to the 24 question in its form and foundation, because there's a 25 difference between a winery, farming, and processing.</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. And same thing with the board; was it your 2 responsibility to have it in its proper form ready to 3 be approved? 4 A. Yes. 5 Q. All right. And do you recall who was on the remote 6 tasting committees or subcommittees that were 7 involved, sir? 8 MR. INFANTE: Objection, foundation. I'm 9 not sure we've established there's a committee. Maybe 10 I missed it. 11 MR. MEIHN: Let me ask that, yeah. 12 BY MR. MEIHN: 13 Q. You had mentioned that there is a Mr. Sanger, and I 14 don't know that I pronounced that right, and somebody 15 with a P -- I think it was PTP, but let me just ask it 16 in the proper form. 17 How did the remote tasting ordinance come 18 to existence? 19 A. Yes. The Kroupas were asking for that because they 20 wanted to move their tasting room from a commercial 21 zone to the ag zone, and so the question then went to 22 a committee of the planning commission, which is the 23 way that they handled it, probably the ordinance 24 committee. 25 Q. All right. Now, you used the word "probably," so if</p>	<p style="text-align: right;">Page 96</p> <p>1 reflected the interest of the township at the time? 2 A. Yes. 3 Q. All right. Now, there -- I don't -- let me say it 4 another way. 5 Wineries in an agricultural area is a 6 unique placement, is it not? 7 A. Yes, it is. 8 Q. Can you tell us what you understand to have been the 9 interest of Peninsula Township in approving the three 10 ordinances that have been the subject of your 11 conversation, what were the interests that were being 12 sought to be protected that you believe you had 13 responsibility for? 14 MR. INFANTE: Objection, foundation. 15 A. The township had a master plan that was based on a 16 number of things. Related to the wineries was the 17 preservation of a parcel of land that was suitable and 18 used for agricultural production. In addition, there 19 was an American Viticultural Area designation by the 20 federal government which was important to the 21 economics of the township. 22 The township was unique in respect to its 23 geography. It's 18 miles long, three times the length 24 of a standard township, and very narrow, such that 25 everybody lives within a mile of the Great Lakes.</p>
<p style="text-align: right;">Page 95</p> <p>1 we can remove that from your language, neither 2 Mr. Infante and I are interested in "probably." 3 Do you recall specifically how it was 4 referred or handled? 5 A. I don't recall exactly which committee it went to. 6 And so because of that, I can't also identify 7 specifically who was, who on the planning commission 8 was on that committee. 9 Q. Do you recall other than Kroupas anyone else that 10 would have been on that committee? And again, if you 11 don't, that's fine. 12 A. I think -- well, no, I'd be speculating, I guess, if I 13 said anything. 14 Q. Let's not do that in that regard, okay? 15 In terms of the position you held as the 16 planning -- 17 MR. INFANTE: There's someone at the door. 18 (Off the record at 2:45 p.m.) 19 (Back on the record at 2:46 p.m.) 20 BY MR. MEIHN: 21 Q. Sir, as the planner, was it your responsibility when 22 these ordinances, chateau, remote tasting, and farm 23 processing ordinance, came before the planning 24 committee and ultimately the board, was it your 25 responsibility to ensure that these ordinances</p>	<p style="text-align: right;">Page 97</p> <p>1 It's narrowest at its southern terminus with Traverse 2 City. The fire department and ambulance service has 3 to serve 18 miles in one direction and a 4 mile-and-a-half the other direction. 5 So the access -- and everything funnels 6 into Traverse City. We're essentially an island. The 7 only non-street road off of the peninsula is M-37. It 8 ends up at the intersection of Garfield Avenue and 9 Front Street. Everybody that comes on the peninsula 10 or goes off of the peninsula has to go through that 11 intersection. 12 The road itself, particularly from nine 13 miles out, Mapleton area, if you know where Mapleton 14 is, all the way to Traverse City, there's almost no 15 areas where you can legally pass because of horizontal 16 and vertical curves. 17 So one of the interests is how do we get 18 emergency vehicles from the north end to the south end 19 and off of the peninsula, how do we get the truckloads 20 of agricultural products off of the peninsula. We've 21 only got one main road. 22 The master plan dealt with those issues of 23 limited capacity on the road system, and I'll focus on 24 that because it's so important. The way that the 25 master plan dealt with that was, first, to be sure</p>

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<p style="text-align: right;">Page 98</p> <p>1 that that traffic was free-flowing. So you'll notice</p> <p>2 that there are no stop lights, no stop signs on M-37</p> <p>3 until you get to the intersection of Peninsula Drive</p> <p>4 and Center Road, which is in Traverse City.</p> <p>5 So once a truckload of cherries or a</p> <p>6 truckload of grape juice, or whatever, gets going,</p> <p>7 their only limitations are when somebody stops in</p> <p>8 front of them. With free-flowing, they're able to</p> <p>9 make enough speed on the downhill so they can get up</p> <p>10 the next one.</p> <p>11 And you can calculate the number of cars</p> <p>12 and vehicles and what the capacity of that road is</p> <p>13 through a series of formulas that the Department of</p> <p>14 Transportation and federal Department of</p> <p>15 Transportation calculate as the road capacity, and</p> <p>16 it's based on the curves and mix of traffic, and a</p> <p>17 number of things. But it's finite. If the traffic</p> <p>18 gets too high, everybody stops. And we've all been</p> <p>19 through gridlock and those kinds of things.</p> <p>20 Based on the analysis that the planning</p> <p>21 commission arrived at was that those capacity limits</p> <p>22 of the traffic were significant, and it's almost like</p> <p>23 we're rationing ways to get to use the extra trips</p> <p>24 that are available, because there are limited options.</p> <p>25 The master plan looked at an alternate</p>	<p style="text-align: right;">Page 100</p> <p>1 mean that farmers aren't paying taxes, because they</p> <p>2 are some of the largest taxpayers because they have so</p> <p>3 much land compared to a homeowner, who has a house on</p> <p>4 a lot.</p> <p>5 There were costs of government services.</p> <p>6 There were two activities that were done during that</p> <p>7 master plan. One was a study by the American Farmland</p> <p>8 Trust dealing with what are the costs of services for</p> <p>9 various economic centers of local units of government,</p> <p>10 and they looked at open space, farming, commercial,</p> <p>11 residential, those kinds of uses.</p> <p>12 And it was determined that the only sector</p> <p>13 that paid more in taxes than they received in services</p> <p>14 was farmland and open space. Commercial, by itself,</p> <p>15 would pay more in taxes than it used. Residential</p> <p>16 development used more in services than they paid in</p> <p>17 taxes. So you've got a positive on commercial.</p> <p>18 You've got a positive on the farmland and open space.</p> <p>19 You've got a negative on residential and</p> <p>20 residentially-related activities.</p> <p>21 The character of the township was directly</p> <p>22 related to farmland and open space and scenic views.</p> <p>23 Those were identified through social research</p> <p>24 activities. We found out that homeowners did not see</p> <p>25 a difference between farmland that's in production and</p>
<p style="text-align: right;">Page 99</p> <p>1 road, which had been in the old master plan, and</p> <p>2 determined that it was not feasible. Nobody was going</p> <p>3 to pay for it. Nobody was going to build it. There</p> <p>4 wasn't funds available.</p> <p>5 Our sewer and water system was designed,</p> <p>6 built and paid for while I was planner of the township</p> <p>7 and a few years afterwards. So we had limited</p> <p>8 capacity to get a sewer and water system, as we said</p> <p>9 before, going into the city.</p> <p>10 In addition, the township doesn't have a</p> <p>11 police department. We have an agreement with the</p> <p>12 sheriff, we have a deputy, have had a deputy for some</p> <p>13 period of time, but we don't have a police department.</p> <p>14 So law enforcement is a factor, also.</p> <p>15 And that master plan figured out how we can</p> <p>16 put all of those parts together. And we've got a</p> <p>17 residential shoreline, 42 miles with a Great Lakes</p> <p>18 shoreline with a house, let's say, every hundred feet</p> <p>19 or so.</p> <p>20 And our economic base of the township is</p> <p>21 essentially farmers growing products, farm products.</p> <p>22 The sale of those is our basic industry. If the basic</p> <p>23 industry falters, we can only rely on taxes from the</p> <p>24 residential sector, and although the residential</p> <p>25 valuation is 95 percent of the whole township doesn't</p>	<p style="text-align: right;">Page 101</p> <p>1 open space, they liked it both, and they -- but they</p> <p>2 both contributed, more or less, equally to the</p> <p>3 contribution of the character of the township.</p> <p>4 So looking at the economic base, production</p> <p>5 was the largest contributor to that because of this</p> <p>6 area. The ag zone is 9,000 acres of the 17,000 acres</p> <p>7 in the township. 9,000 acres are in the ag preserve</p> <p>8 area. If those 9,000 acres were no longer in</p> <p>9 production, there would be no basis for legally</p> <p>10 maintaining the low density that has been traditional</p> <p>11 in the township.</p> <p>12 If they weren't in production, then the</p> <p>13 township either willingly or unwillingly would be</p> <p>14 rezoning that to some other use. It would probably,</p> <p>15 most likely because of the nature of the township, it</p> <p>16 would probably be some type of residential or</p> <p>17 residentially-related commercial activities.</p> <p>18 We did not have the ability to economically</p> <p>19 service more water or economically preserve a safe</p> <p>20 road. So we lose the economic -- the economic base</p> <p>21 would be no longer supporting the needs of local</p> <p>22 government, so taxes would have to go up. Taxes would</p> <p>23 go up on everybody.</p> <p>24 The second thing that, second commercial</p> <p>25 business in the township, the economic base of the</p>

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<p style="text-align: right;">Page 102</p> <p>1 township, is the residential dwellings and the ability</p> <p>2 to have homeowners operate businesses from their home.</p> <p>3 I think Peninsula Township is unique, in that we allow</p> <p>4 every residence in the township to not only operate a</p> <p>5 business, but they can have two full-time equivalent</p> <p>6 employees as a residential use.</p> <p>7 To maintain the character, then you get</p> <p>8 people to actually run businesses. We have --</p> <p>9 BY MR. MEIHN:</p> <p>10 Q. Let me stop you for a minute there.</p> <p>11 A. I'm sorry.</p> <p>12 Q. No. So then how do wineries fit into this overall</p> <p>13 interest that you're talking about? I think I</p> <p>14 understand how they do in terms of traffic and taxes</p> <p>15 and agriculture, but if you could weave that more in,</p> <p>16 because ...</p> <p>17 A. Sure. The issues of winery are they are an</p> <p>18 incremental -- they're an integral part of the</p> <p>19 economic base, because what they're doing is they're</p> <p>20 converting agricultural crops into a higher-valued</p> <p>21 product. And they certainly contribute to the economy</p> <p>22 of the township, and they also contribute,</p> <p>23 specifically, to the preservation of that agricultural</p> <p>24 production area.</p> <p>25 If we -- we wouldn't have a wine industry</p>	<p style="text-align: right;">Page 104</p> <p>1 number of reasons, economic and character, and so on.</p> <p>2 Q. And what does the PDR do?</p> <p>3 A. The PDR guarantees that there will be land available</p> <p>4 for agricultural production.</p> <p>5 Q. And how does it guarantee that?</p> <p>6 A. The PDR program actually buys the right to develop the</p> <p>7 property and holds it. So the township property</p> <p>8 owners have voted twice to raise their taxes for a</p> <p>9 period of time to buy the right to divide -- to</p> <p>10 develop the farmland.</p> <p>11 Q. And where does that money come from, if you know, for</p> <p>12 the PDR purchasing of property?</p> <p>13 A. That comes from property taxes.</p> <p>14 Q. Okay.</p> <p>15 A. Supplemented --</p> <p>16 Q. You -- go ahead, sorry.</p> <p>17 A. -- supplemented by grants and other things. Once we</p> <p>18 had that, then we were able to get federal grants and</p> <p>19 state monies. The State has one of the easements in</p> <p>20 the township.</p> <p>21 Q. And that's what I wanted to ask you. So as a result</p> <p>22 of creation of the PDR program and, in specific and in</p> <p>23 general, the attempt to preserve agricultural land,</p> <p>24 have you acquired any state or federal grants?</p> <p>25 A. Yes, we have.</p>
<p style="text-align: right;">Page 103</p> <p>1 if we didn't have wineries. We'd be growing grapes</p> <p>2 and selling them off-site.</p> <p>3 Q. Were there other methods that in addition -- so are</p> <p>4 you saying that wineries are part of a land</p> <p>5 preservation process?</p> <p>6 MR. INFANTE: Objection, leading.</p> <p>7 BY MR. MEIHN:</p> <p>8 Q. Is that what I'm understanding, or not correct?</p> <p>9 A. Sure. Well, the wineries are a part of the whole</p> <p>10 picture of agriculture and vertical integration of</p> <p>11 farmland. So the wineries themselves are helping to</p> <p>12 pay for the production. And so, yes, they're an</p> <p>13 economic part of the township.</p> <p>14 Q. And where does PDR, if you know, fit into this?</p> <p>15 A. What the PDR ordinance did -- well, it did two things.</p> <p>16 The first thing that it did is it validated the whole</p> <p>17 concept of a master plan that was based on capacities.</p> <p>18 The homeowners in a survey liked farmland and open</p> <p>19 space so much that in a survey, the question was, "If</p> <p>20 you had to preserve farmland and open space, would you</p> <p>21 be willing to pay for it," specific, almost</p> <p>22 word-for-word, the answer was yes.</p> <p>23 So right from the beginning, they</p> <p>24 understood the relationship between character, value</p> <p>25 of the agricultural segment of the township from a</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Can you please tell us what those are?</p> <p>2 A. The federal Farmland Protection Program, we had -- we</p> <p>3 were getting a grant every year in the millions of</p> <p>4 dollars, so I would say, just offhand, maybe four,</p> <p>5 five, \$6 million of direct federal grant. They were</p> <p>6 matching funds, but we had to match because we had to</p> <p>7 vote a millage.</p> <p>8 The State of Michigan and Peninsula</p> <p>9 Township yearly would get together and divide up and</p> <p>10 apply for the available grant money from the federal</p> <p>11 government for the whole state. And so we would say</p> <p>12 how much could we use and how much could they use, and</p> <p>13 so every year we were working on that for a number of,</p> <p>14 for three or four years.</p> <p>15 Q. And that's still ongoing now until it expires coming</p> <p>16 up, correct?</p> <p>17 A. As far as the local millage?</p> <p>18 Q. Yes.</p> <p>19 A. The local millage expires this year. We sent out our</p> <p>20 final tax bill this year. So next year the tax rate</p> <p>21 will go down by that 1.3 mills.</p> <p>22 Q. Were you involved in the creation of the PDR</p> <p>23 ordinance?</p> <p>24 A. Yes.</p> <p>25 Q. Can you tell us briefly, and without the details, if</p>

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<p style="text-align: right;">Page 2</p> <p>1 REMOTE APPEARANCES:</p> <p>2</p> <p>3 JOSEPH M. INFANTE</p> <p>4 Miller Canfield Paddock and Stone PLC</p> <p>5 99 Monroe Avenue, N.W.</p> <p>6 Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 616.776.6333</p> <p>9 infante@millercanfield.com</p> <p>10 Appearing Remotely Via Videoconference on behalf of</p> <p>11 the Plaintiffs.</p> <p>12</p> <p>13</p> <p>14 GREGORY M. MEIHN</p> <p>15 Foley & Mansfield PLLP</p> <p>16 139 East 9 Mile Road</p> <p>17 Ferndale, Michigan 48220</p> <p>18 248.721.4200</p> <p>19 gmeihn@foleymansfield.com</p> <p>20 Appearing Remotely Via Videoconference on behalf of</p> <p>21 the Defendant.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP PARSONS, GRANT 11/04/2021</p>	<p style="text-align: right;">Page 4</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 GREGORY PARSONS</p> <p>5</p> <p>6 EXAMINATION BY MR. INFANTE 5</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 EXHIBIT PAGE</p> <p>13 (Exhibits not offered.)</p> <p>14</p> <p>15 REFERENCED EXHIBITS:</p> <p>16 DEPOSITION EXHIBIT 1 14</p> <p>17 DEPOSITION EXHIBIT 2 14</p> <p>18 DEPOSITION EXHIBIT 3 14</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Job 16652</p>
<p style="text-align: right;">Page 3</p> <p>1 TRACY JANE ANDREWS</p> <p>2 Law Office of Tracy Jane Andrews PLLC</p> <p>3 619 Webster Street</p> <p>4 Traverse City, Michigan 49686</p> <p>5 231.714.9402</p> <p>6 tjandrews@envlaw.com</p> <p>7 Appearing Remotely Via Videoconference on behalf of</p> <p>8 the Witness.</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 Rebecca Chown - Peninsula Township</p> <p>13 Appearing Remotely Via Videoconference</p> <p>14</p> <p>15 scheduling@fortzlegal.com fortzlegal.com</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Appearing Remotely Via Videoconference from</p> <p>2 Traverse City, Michigan</p> <p>3 Thursday, November 4, 2021</p> <p>4 1:40 p.m.</p> <p>5</p> <p>6</p> <p>7 GREGORY PARSONS,</p> <p>8 was thereupon called as a witness herein, and after</p> <p>9 having first been duly sworn to testify to the truth,</p> <p>10 the whole truth and nothing but the truth, was</p> <p>11 examined and testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. INFANTE:</p> <p>14 Q. All right, Mr. Parsons, my name is Joe Infante. I'm</p> <p>15 the attorney for the wineries in the lawsuit against</p> <p>16 Peninsula Township. I assume you are aware of this</p> <p>17 lawsuit?</p> <p>18 A. Yes, I am.</p> <p>19 Q. Okay. Will you please state your name, for the</p> <p>20 record?</p> <p>21 A. Grant W. Parsons.</p> <p>22 Q. And, Mr. Parsons, have you ever been deposed before?</p> <p>23 A. Yes, I have.</p> <p>24 Q. Okay, and how many times have you been deposed?</p> <p>25 A. A couple times, two times, I think.</p>

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

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<p style="text-align: right;">Page 46</p> <p>1 is a sliver of land, there's about one good road, 2 that's Center Road, and then all these little 3 off-roads, these guys, women/men who own farms, a lot 4 of them are leasing land, and they've gotta get their 5 equipment from one of their owned or leased properties 6 to another.</p> <p>7 MS. ANDREWS: I think this is a good time 8 to take a break. Would this be a good time to do 9 that, take ten minutes [audio distortion]?</p> <p>10 THE WITNESS: I appreciate that, thank you. 11 (Off the record at 2:36 p.m.) 12 (Back on the record at 2:42 p.m.)</p> <p>13 BY MR. INFANTE: 14 Q. Before we took a break, a number of times you, 15 Mr. Parsons, used the term "agriculture," and my 16 question for you is, when you use the term 17 "agriculture," do wineries fall under that term?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And a number of times you used the term "farm." 20 Does a winery fall under that term?</p> <p>21 A. That's the whole purpose of them.</p> <p>22 Q. To be a farm?</p> <p>23 A. Under our zoning code.</p> <p>24 Q. Okay. You believe a winery falls under your 25 definition of a farm?</p> <p style="text-align: right;">WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP PARSONS, GRANT 11/04/2021</p>	<p style="text-align: right;">Page 48</p> <p>1 the way you did speaking objections in the last dep. 2 I'll do my best to stop it, but I'd ask if you'd do 3 your best to not misrepresent the facts.</p> <p>4 MR. INFANTE: Mr. Meihn, are you saying 5 that I'm lying?</p> <p>6 MR. MEIHN: I didn't say you're lying. 7 You've misrepresented our position, sir, that suggests 8 there are four governmental interests only. That's a 9 misrepresentation of our position. That's not lying. 10 You're smart enough to read, you're smart enough to 11 know what lying is, so stop it and get to the 12 deposition, sir. I'm tired of the process that you 13 tend to try to make. Go on with the dep.</p> <p>14 BY MR. INFANTE: 15 Q. All right, Mr. Parsons, looking at 12(i), can you tell 16 me which of the governmental interests is furthered by 17 12(i)?</p> <p>18 A. Yeah, 12(i) goes to allowing sustainability for 19 agriculture, that's a governmental interest. The 20 governmental interest in preventing the 21 commercialization of agricultural lands, that is a 22 governmental interest. And then the preservation of 23 the character of the surrounding vicinity of the 24 neighborhood in which the winery is located, that's a 25 governmental interest.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. As we have defined wineries, yes.</p> <p>2 Q. Thank you. All right, we were looking at Exhibit 1, 3 12(i).</p> <p>4 A. Yup.</p> <p>5 Q. And my question for you, sir, is what government 6 interest, and there's those four that I wrote down 7 earlier, which one of those governmental interests is 8 furthered by 12(i)?</p> <p>9 A. Well, 12(i) --</p> <p>10 MR. MEIHN: Hang on for a moment. I'm just 11 placing an objection. There are four governmental 12 interests, plus the governmental interest that's set 13 forth in the zoning ordinance that lays out the 14 purpose of the zoning, and it's a rather long 15 paragraph.</p> <p>16 So I object to the limitation you were 17 trying to make on that.</p> <p>18 But, subject to that, Mr. Parsons, please 19 answer.</p> <p>20 MR. INFANTE: All right, and I'm going to, 21 Mr. Meihn, object to your speaking objections. You 22 are not testifying today. If you don't believe that 23 my recitation is accurate, then you are -- you have 24 time to question Mr. Parsons yourself.</p> <p>25 MR. MEIHN: Well, okay. I'm just following</p> <p style="text-align: right;">scheduling@fortzlegal.com fortzlegal.com</p>	<p style="text-align: right;">Page 49</p> <p>1 And then, more broadly, the -- these are, 2 these are helpful steps, in my view, that were to 3 allow vertical sales, vertical sales of ag products 4 with very minor ancillary items, non-ag items, like 5 corkscrews, wine glasses, gift boxes, T-shirts, that 6 would neither inflame the public to come out against 7 this remote wine tasting winery or prevent the winery 8 owner, in this case Dave Kroupa with the remote 9 tasting room, prevent him from being able to 10 reasonably carry out his vision of vertical ag sales.</p> <p>11 It's a balancing act. Everything in this 12 ordinance, the genius of it is every paragraph or 13 section, basically, is a balancing act. And it 14 worked, you know, for the last, you know, however 15 decades.</p> <p>16 Q. Well, Mr. Parsons, what is the, what is the harm of a 17 winery -- what is the harm to Peninsula Township, what 18 is the harm of a winery selling a hat?</p> <p>19 A. A hat, I can't imagine that being harmful. A thousand 20 hats, that is -- what's the harm to a downtown like 21 Traverse City, where good, productive stores turn into 22 T-shirt shops, what's the harm of that? There is a 23 harm. It's a culture.</p> <p>24 Q. We're not talking about Traverse City. We're talking 25 about Peninsula Township. Let me ask it a different</p>

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<p style="text-align: right;">Page 50</p> <p>1 way.</p> <p>2 So 12(i) requires that, it allows for a</p> <p>3 T-shirt to be sold but requires that the T-shirt have</p> <p>4 a logo.</p> <p>5 So what is the harm in a Peninsula Township</p> <p>6 remote winery tasting room selling a T-shirt without a</p> <p>7 logo on it? What's the harm to the government?</p> <p>8 A. I'm going to answer you with a question that I'm going</p> <p>9 to, I think I'm going to turn into a statement.</p> <p>10 What's the difference between a T-shirt with a winery</p> <p>11 logo and a T-shirt shop? It is a very limited sales.</p> <p>12 It's a sales specific to that winery, and there are</p> <p>13 only so many, you know -- I mean, it just limits the</p> <p>14 commercialization of the winery again.</p> <p>15 It always goes back to that. I'm sorry to</p> <p>16 repeat that so many times, but that's what it goes</p> <p>17 back to.</p> <p>18 Q. I understand, but I'm asking, what is the harm?</p> <p>19 A. Well, the harm is you've got -- if you let wineries</p> <p>20 turn into commercial stores, you've got the purpose of</p> <p>21 it. That's what they'll be.</p> <p>22 Farming and winery, I believe, is a labor</p> <p>23 of love, and it's a unique labor. You've gotta want</p> <p>24 to do it. You know, farmers joke, "We're going to</p> <p>25 keep farming until the money runs out. That's not</p>	<p style="text-align: right;">Page 52</p> <p>1 at 58 cents of services required for every dollar of</p> <p>2 property tax delivered, as compared to about a dollar</p> <p>3 26 services required for every residential property</p> <p>4 tax dollar delivered in townships under 25,000.</p> <p>5 And the result of that study was that in</p> <p>6 townships under 25,000, which Peninsula Township is,</p> <p>7 that the transformation from agriculture to</p> <p>8 residential costs way more money than the revenue the</p> <p>9 development supports, and, therefore, just, if I</p> <p>10 can -- I won't go back to this, but if I can finish,</p> <p>11 therefore, that's what all of us conservative township</p> <p>12 residents and farmers caught on to. It was gonna cost</p> <p>13 more to make that transformation.</p> <p>14 And, therefore, every strategy that we've</p> <p>15 come up with always hinges -- some of it's economic,</p> <p>16 character, everything, but one of the, one of the</p> <p>17 many, many elements it goes into is that it's way more</p> <p>18 tax efficient to maintain agriculture.</p> <p>19 Q. Okay. But you just told me that the study said that</p> <p>20 you don't want -- you were talking ag to residential.</p> <p>21 A. Correct.</p> <p>22 Q. My question was -- you're not talking commercial. You</p> <p>23 were saying ag to residential. My question was, do</p> <p>24 you have a study that shows that if wineries are</p> <p>25 allowed to sell non-logoed merchandise, that they</p>
<p style="text-align: right;">Page 51</p> <p>1 exactly true of the wineries. Wineries are really</p> <p>2 prospering, because they have this unique, unique</p> <p>3 place. They're borrowing the character of the</p> <p>4 peninsula that everybody has paid taxes to protect.</p> <p>5 They're borrowing the orchard's views. They're</p> <p>6 borrowing from the community and we're lending back,</p> <p>7 and we're saying, "The only deal on your part is</p> <p>8 you've gotta fit into the community and you can't</p> <p>9 destroy the community by turning into just a T-shirt</p> <p>10 shop, or something like that."</p> <p>11 Q. Do you have a, do you have a study, do you have a</p> <p>12 report, do you have research that shows that if</p> <p>13 wineries are allowed to sell non-logoed merchandise,</p> <p>14 that they will turn into T-shirt shops?</p> <p>15 A. Effectively, yes, I do.</p> <p>16 Q. Where is that study?</p> <p>17 A. It's the American Farmland Trust Study, showing --</p> <p>18 they did comparative net property tax revenue, they</p> <p>19 compared commercial to agriculture to residential, and</p> <p>20 they found that commercial, because it requires more</p> <p>21 traffic, more police, more water, more sewer, more</p> <p>22 schools, more this, more that, commercial, I think --</p> <p>23 okay, I want to just protect this, if I can say the</p> <p>24 American Farmland Trust Study showed that the relative</p> <p>25 property tax net revenue compared to agriculture, say,</p>	<p style="text-align: right;">Page 53</p> <p>1 become, you know, like you said, T-shirt shops?</p> <p>2 A. Okay, yes. I'm going to tell you yes, and I'm going</p> <p>3 to tell you, I don't have it in my possession, but</p> <p>4 what we did back then, we used two exemplars. As we</p> <p>5 were talking about winery ordinances on the Old</p> <p>6 Mission Peninsula, we held out two like terribles, two</p> <p>7 exemplar, terrible exemplars. One was Dorr County, I</p> <p>8 think the other was Fairfax County, and then we talked</p> <p>9 about Hudson Valley.</p> <p>10 And people -- you were asking for studies.</p> <p>11 I'm positive there are studies about the deterioration</p> <p>12 of those agricultural communities when they went</p> <p>13 commercial. I don't have them. I don't have it with</p> <p>14 me. I'll tell you what, you pay me, I'll do the</p> <p>15 research, for sure.</p> <p>16 Q. Well, no-no-no.</p> <p>17 A. I'm kidding.</p> <p>18 Q. Are these studies that you have or Peninsula Township</p> <p>19 has?</p> <p>20 A. I don't know that, sorry.</p> <p>21 Q. Okay. How about this. When you were drafting 12(i),</p> <p>22 did you consider any less-restrictive means to</p> <p>23 effectuate the government interest?</p> <p>24 A. Okay, first of all, could I just -- I don't want to be</p> <p>25 falsely modest, but I keep saying that I helped draft</p>

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<p style="text-align: right;">Page 54</p> <p>1 it, and I don't want to make -- if you come back and</p> <p>2 tell somebody that I said that I drafted, okay, that</p> <p>3 will be embarrassing for me, okay?</p> <p>4 Now, the bulk of your question is whether</p> <p>5 we considered less-restrictive means?</p> <p>6 Q. Correct.</p> <p>7 A. I think this ordinance is probably -- no, we -- well,</p> <p>8 man, that's an interesting question. This ordinance</p> <p>9 is such a balance, we had to consider means. We were</p> <p>10 all over the map on considering -- we were taking in,</p> <p>11 everybody was taking in and giving input, but</p> <p>12 less-restrictive means, like what?</p> <p>13 Q. I don't know. That's for you to tell me.</p> <p>14 A. Well, insofar as everybody's input was considered, I'm</p> <p>15 sure the winery came in with a longer list of</p> <p>16 allowable sales than this. Right now I can't remember</p> <p>17 what that is. But the Township -- look it, the</p> <p>18 Township treated everybody with respect. So if you're</p> <p>19 asking me, did the Township consider less-restrictive</p> <p>20 means? Yeah, absolutely.</p> <p>21 Q. Okay, so what were they?</p> <p>22 A. Again, what I just said, I think the wineries came</p> <p>23 in -- this winery came in with different -- and</p> <p>24 wineries were always involved in every new part of the</p> <p>25 winery ordinance. I'm sure the wineries came in with</p>	<p style="text-align: right;">Page 56</p> <p>1 T-shirt, what's the harm in a cooler, but, you know,</p> <p>2 we spent lot of time talking about that stuff, we</p> <p>3 really did.</p> <p>4 So what it came down to, the harm was that</p> <p>5 taking the aggregate of non-produce sales, you know,</p> <p>6 raw or produce process, you take the aggregate of the</p> <p>7 farm sales, of the real produce, and then the</p> <p>8 aggregate of the non-produce sales, and you wind up --</p> <p>9 what we tried to wind up with is an equal balance, an</p> <p>10 equal --</p> <p>11 Q. Well, let me ask you --</p> <p>12 A. I'll give you a really funny example of that. There's</p> <p>13 the Gougeon brothers down in southern Michigan. I</p> <p>14 don't know if you've ever heard of these guys. One</p> <p>15 was a pretty good legislator. They made wind turbines</p> <p>16 and they made an epoxy, the WEST SYSTEM, and one of</p> <p>17 those Gougeon boys had on his -- on his wall, they</p> <p>18 had -- the motto of their law firm was G over F equals</p> <p>19 Q, and it says when grief, when the ratio of grief to</p> <p>20 fun is greater than one, you quit.</p> <p>21 And we, in a general way, when the ratio of</p> <p>22 agriculture to commercial sales was less than one,</p> <p>23 we'd say quit, and that's where we -- this is a very,</p> <p>24 very balanced issue about what ancillary sales, I</p> <p>25 think we called it at the time.</p>
<p style="text-align: right;">Page 55</p> <p>1 a much broader expanded list of non-ag goods that</p> <p>2 might be sold under the rubric of a winery, and --</p> <p>3 Q. Can you give me one example?</p> <p>4 A. You know what, I think one of them might have been --</p> <p>5 I remember talking about picnic hampers, you know,</p> <p>6 those straw boxes you put your picnic stuff in, the</p> <p>7 Shishi people, and, I mean, napkins, and the</p> <p>8 general -- those stand out, picnic hampers. Maybe</p> <p>9 coolers. I think coolers. Coolers I think may have</p> <p>10 been a big deal, as a matter of fact, you know,</p> <p>11 because people want to take wine coolers, you know,</p> <p>12 put white wine in coolers.</p> <p>13 Q. What would be the harm in a wine cooler?</p> <p>14 A. Commercialization, and then square footage. I mean,</p> <p>15 again, you go back into those discussions, I can't</p> <p>16 remember all the square footage. There was a lot of</p> <p>17 talk about what percentage of square footage can you</p> <p>18 use for non-wine sales, you know. It was -- again,</p> <p>19 when I say -- look it, Joe, I say this was all a</p> <p>20 balancing test, and it really was, it really was,</p> <p>21 where it was a totality understanding of what they</p> <p>22 were trying to produce.</p> <p>23 Your questions are not as absurd as I might</p> <p>24 think they were if I hadn't been involved in this, you</p> <p>25 know, what's the harm in a hat, what's the harm in a</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. All right, let me ask you this question.</p> <p>2 A. Sure.</p> <p>3 Q. I'm going to jump over and talk about winery-chateaus</p> <p>4 for a minute. But winery-chateaus do not have the</p> <p>5 same limitations on the type of merchandise they can</p> <p>6 sell, do you agree with me?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. So what is so much more harmful about a remote</p> <p>9 tasting room selling merchandise than a winery-chateau</p> <p>10 selling merchandise?</p> <p>11 MS. ANDREWS: Objection, foundation.</p> <p>12 BY MR. INFANTE:</p> <p>13 Q. Why is it so much more harmful?</p> <p>14 MS. ANDREWS: Objection, misstates his</p> <p>15 testimony and lack of foundation.</p> <p>16 A. I think because the remote tasting room is so much</p> <p>17 more smaller than a winery-chateau. I mean, a</p> <p>18 winery-chateau is way bigger. It's 50 acres. And</p> <p>19 then, of course, there's the farm processing section</p> <p>20 of the ordinance. I think it's 40 acres; 20 acres</p> <p>21 that's owned and 20 that's leased nearby but is in the</p> <p>22 same business.</p> <p>23 So it had a lot to do, if you're asking</p> <p>24 about the right to do certain things or sales, conduct</p> <p>25 sales on an individual's property, a lot to do with</p>

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<p style="text-align: right;">Page 58</p> <p>1 the amount of ag they were preserving, and --</p> <p>2 BY MR. INFANTE:</p> <p>3 Q. You're telling me that in order to sell a hat, you</p> <p>4 needed to have 50 acres to sell a hat?</p> <p>5 A. Something like that.</p> <p>6 MS. ANDREWS: Objection, foundation,</p> <p>7 misstates his testimony.</p> <p>8 BY MR. INFANTE:</p> <p>9 Q. All right. Are you telling me that selling a hat on</p> <p>10 five acres is harmful to the interest of Peninsula</p> <p>11 Township, but selling a hat on 50 acres is not harmful</p> <p>12 to the interest of Peninsula Township?</p> <p>13 MS. ANDREWS: Objection, form, misstates</p> <p>14 his testimony, lack of foundation.</p> <p>15 BY MR. INFANTE:</p> <p>16 Q. Sir, is that what you're saying?</p> <p>17 A. I didn't say it, obviously. You're saying is that</p> <p>18 what I'm meaning to say, and I'd rather stand on my</p> <p>19 own two words, myself.</p> <p>20 Q. Well, so then you can say, no, that's not what you're</p> <p>21 saying, or you can say, yes, it is what you're saying.</p> <p>22 A. Okay, go back to what it is you're talking about, now,</p> <p>23 just for clarity.</p> <p>24 Q. All right. Are you saying that it is harmful to sell</p> <p>25 a hat if you have five acres of property and it is</p>	<p style="text-align: right;">Page 60</p> <p>1 you're not accomplishing what we hoped to, which is ag</p> <p>2 preservation.</p> <p>3 You're carving up a little bitty chunk and</p> <p>4 you're using it as a, I hate to derogatorily say, I</p> <p>5 don't mean to be derogatory, a convenience store.</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. But, sir, under the ordinance, a remote winery tasting</p> <p>8 room is actually required to preserve more land, 155</p> <p>9 acres, than a winery-chateau, who's only required to</p> <p>10 preserve 50, isn't that right?</p> <p>11 A. You know, it says that in (e).</p> <p>12 Q. It does. In order to be a remote winery tasting room,</p> <p>13 you have to have 150 acres somewhere out in the</p> <p>14 peninsula, right?</p> <p>15 A. Ownership, it says. So that's different than the</p> <p>16 ownership/lease combination, right?</p> <p>17 Q. They actually have to own 150 acres.</p> <p>18 A. Right.</p> <p>19 Q. So you would agree with me that a remote winery</p> <p>20 tasting room actually preserves more ag land than a</p> <p>21 chateau does?</p> <p>22 MS. ANDREWS: Objection, foundation.</p> <p>23 A. It may be, I don't -- it may be, I don't know.</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Okay, but you --</p>
<p style="text-align: right;">Page 59</p> <p>1 not harmful to sell a hat if you have 50 acres of</p> <p>2 property?</p> <p>3 A. No. I'm saying there is a different balancing of</p> <p>4 interest in that case, there is, you know, because --</p> <p>5 Q. What's the difference in harm? Why does one have no</p> <p>6 harm and one has harm?</p> <p>7 MS. ANDREWS: Objection, foundation.</p> <p>8 A. I'll tell you, what we tried to do was give more</p> <p>9 rights in exchange for preserving more ag, and the</p> <p>10 less ag you preserved, the less rights you got,</p> <p>11 really, but --</p> <p>12 Q. But that is not --</p> <p>13 A. -- I think we tried --</p> <p>14 COURT REPORTER: Excuse me, excuse me,</p> <p>15 please don't talk over each other.</p> <p>16 A. I don't want that answer to stand in isolation. I</p> <p>17 want to say we tried to be fair, and I keep harping on</p> <p>18 this issue, we tried to make every winery, remote or</p> <p>19 farm processing or winery-chateau, sustainable, okay,</p> <p>20 but at the same time, as we're taxing ourselves for</p> <p>21 PDR and we are protecting that balance of interest, if</p> <p>22 you set up a very small operation and you want to sell</p> <p>23 hats or you want to, you want to sell corkscrews or</p> <p>24 coolers or pennants or sweatshirts, we say, you know</p> <p>25 what, the trade-off there, you're not accomplishing,</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I mean, now that you're looking at it, that's what it</p> <p>2 seems to say. That's Amendment 121, apparently.</p> <p>3 Q. Yeah. And you just said earlier that the more ag land</p> <p>4 you preserve, the more rights you get. So why does a</p> <p>5 remote winery tasting room that preserves more ag</p> <p>6 land, why does that winery have less rights than a</p> <p>7 chateau?</p> <p>8 MS. ANDREWS: Objection, compound.</p> <p>9 A. I've gotta go through the two ordinances, I really do.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. We can sit here and wait for you to read them. Go</p> <p>12 ahead.</p> <p>13 A. There are obviously differences in the way of, the</p> <p>14 concept of a winery-chateau, there really are, and I</p> <p>15 don't know -- well, I'll read it, hang on just a</p> <p>16 second. Let me go through some more of this ...</p> <p>17 You may have me on the hat issue, I don't</p> <p>18 know.</p> <p>19 Q. Okay. Well, I'm going to give you the chance to</p> <p>20 change your answer, because your answer before was,</p> <p>21 the more ag land you preserve, the more rights you get</p> <p>22 because I believe you said the interest of the</p> <p>23 Township was in preserving agricultural land. That</p> <p>24 does not appear to be true, is it?</p> <p>25 A. That's not true about hats. You were asking me about</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. All right. Is it your, your opinion that</p> <p>2 winery-chateaus are not allowed to sell logoed</p> <p>3 T-shirts?</p> <p>4 A. Not by the ordinance, no, I don't -- you know, listen,</p> <p>5 I've gotta say I don't know, because it's not in that</p> <p>6 ordinance. I would say, no, it isn't.</p> <p>7 Q. But you don't know, but you don't know, correct?</p> <p>8 A. Well --</p> <p>9 Q. You have not been hired to provide an expert opinion</p> <p>10 interpreting the winery-chateau ordinance or any part</p> <p>11 of this ordinance, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So the answer is you don't know, correct?</p> <p>14 MS. ANDREWS: Answer to what?</p> <p>15 A. Yeah.</p> <p>16 BY MR. INFANTE:</p> <p>17 Q. To whether a winery-chateau is allowed to sell</p> <p>18 merchandise.</p> <p>19 A. I know they're allowed to sell some merchandise, I</p> <p>20 just don't know what, and it doesn't appear in the</p> <p>21 ordinance, and at the time I don't think we intended</p> <p>22 them to be able to.</p> <p>23 Q. But there's no -- you would agree with me, there is no</p> <p>24 explicit prohibition in the ordinance?</p> <p>25 A. Well, look, 10(a) tells you the intent, it is the</p>	<p style="text-align: right;">Page 68</p> <p>1 So my first question to you is, what, in</p> <p>2 your opinion, is included by "et cetera"?</p> <p>3 A. It would be obviously items that are closely related</p> <p>4 to mustard, vinegar, and non-carbonated beverages.</p> <p>5 Those would be produced on-site.</p> <p>6 Q. Can you give me some examples?</p> <p>7 COURT REPORTER: I'm sorry?</p> <p>8 MR. INFANTE: I'm sorry, can you give me</p> <p>9 some examples.</p> <p>10 A. Coffee -- wait, well, packaged food items? No, I</p> <p>11 can't. This is, this is -- you know what, this</p> <p>12 language is intended to set close examples and scale</p> <p>13 and type of, type of goods, it really is, so ...</p> <p>14 See, everybody's known what this -- here's</p> <p>15 what the damndest thing is. Everybody has known what</p> <p>16 this has been for the last decades, and it's been</p> <p>17 pretty much observed. There have been a few</p> <p>18 exceptions, but it's been pretty much observed. It's</p> <p>19 like Blackman said, you know, "I can't define</p> <p>20 obscenity but I know what it is."</p> <p>21 And these people -- everybody knew -- well,</p> <p>22 Dave Kroupa knew.</p> <p>23 BY MR. INFANTE:</p> <p>24 Q. Okay, but I'm asking today, what is included in</p> <p>25 "et cetera"? And it sounds like you can't tell me.</p>
<p style="text-align: right;">Page 67</p> <p>1 intent of this section to permit construction and use</p> <p>2 of a winery, guest rooms, and single-family residences</p> <p>3 as a part of a single site subject to the provisions</p> <p>4 of this ordinance.</p> <p>5 Q. Okay.</p> <p>6 A. And then it has a general prohibition after that, what</p> <p>7 you can't do, and I know that we talked -- as I've</p> <p>8 said, we talked extensively about stuff like hats.</p> <p>9 Q. My question was still, there is no explicit</p> <p>10 prohibition in the winery-chateau ordinance on the</p> <p>11 sale of merchandise, correct?</p> <p>12 A. I don't see it in the ordinance, you are correct.</p> <p>13 Q. Thank you, okay. Let's go back to 12(j). I'm just</p> <p>14 going to read it out loud. 12(j) says: Retail sale</p> <p>15 of packaged food items allowed in addition to bottled</p> <p>16 wine are those which contain wine or fruit produced in</p> <p>17 Peninsula Township.</p> <p>18 I'm going to skip the next sentence -- or,</p> <p>19 sorry: Such food items shall be produced in a</p> <p>20 licensed food establishment and properly labeled</p> <p>21 including the winery logo as the dominant logo. Such</p> <p>22 food items shall be intended for off-premise</p> <p>23 consumption. Such allowed packaged food items may</p> <p>24 include mustard, vinegar, non-carbonated beverages,</p> <p>25 et cetera.</p>	<p style="text-align: right;">Page 69</p> <p>1 A. No, I can't define that, I really can't.</p> <p>2 Q. All right, thank you.</p> <p>3 So the very beginning of (j) says: Retail</p> <p>4 sale of packaged food items allowed in addition to</p> <p>5 bottled wine are those items which contain wine or</p> <p>6 fruit produced in Peninsula Township.</p> <p>7 What does this mean?</p> <p>8 A. Well, I don't know how much more specific I can be.</p> <p>9 The driving force here is if you make and package food</p> <p>10 items other than bottled wine, that they -- but those</p> <p>11 items contain wine or fruit produced in Peninsula</p> <p>12 Township, probably like a quart of cherries or a bag</p> <p>13 of Honeycrisp apples.</p> <p>14 Again, agricultural production, local.</p> <p>15 Q. So, but can I ask you, what does "produced" mean?</p> <p>16 A. It means, it means grown.</p> <p>17 Q. Well, grown means grown, because --</p> <p>18 A. And produced means produced. I mean, if you want a</p> <p>19 synonym, I can come up with synonyms, but I'm telling</p> <p>20 you -- produced on-site, in other words.</p> <p>21 Q. Well, you mentioned coffee --</p> <p>22 A. Or Peninsula Township.</p> <p>23 Q. I mean, you know, I mean, how about, let's take an</p> <p>24 example, let's take an example of -- well, I mean,</p> <p>25 coffee is not a bad example. Coffee is not grown in</p>

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<p style="text-align: right;">Page 70</p> <p>1 Peninsula Township, right?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. Do you know of anyone growing coffee beans in</p> <p>4 Peninsula Township?</p> <p>5 A. Nope.</p> <p>6 Q. Okay. Well, but if I took some coffee beans and I</p> <p>7 roasted them in a food-processing facility in</p> <p>8 Peninsula Township, did I produce coffee?</p> <p>9 A. If you open a coffee shop in a winery, you're</p> <p>10 violating the code.</p> <p>11 Q. I'm just asking about produced, and maybe coffee is</p> <p>12 not an example, but produced is different than grown.</p> <p>13 Because the ordinance uses with word "grown." The</p> <p>14 ordinances use the word "grown" several times. Then</p> <p>15 produced has to be something different, don't you</p> <p>16 agree?</p> <p>17 MS. ANDREWS: Objection, foundation,</p> <p>18 leading.</p> <p>19 A. No. Wine or fruit produced in Leelanau Township</p> <p>20 [sic]. That's what we're trying to do.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. Okay. So is it your opinion that the word "produced"</p> <p>23 is the same as the word, has the same meaning as the</p> <p>24 word "grown"?</p> <p>25 A. I don't know. You'd have to give me context because</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay, but we just established that the word "produced"</p> <p>2 doesn't mean "grown."</p> <p>3 A. Well, and I'm telling you that the way you're taking</p> <p>4 this ordinance apart, word-by-word and</p> <p>5 phrase-by-phrase, I'm having trouble following your</p> <p>6 context, it's just like hats, because I forgot we were</p> <p>7 relating back to the retail sale of packaged food</p> <p>8 items that have to be those which contain wine or</p> <p>9 fruit produced, right?</p> <p>10 Q. I don't know, because I don't know what produced</p> <p>11 means, so I'm asking you.</p> <p>12 A. They originate in Peninsula Township. In other words,</p> <p>13 you're not bringing in, you know -- what do they call</p> <p>14 those crazy cakes at Christmas? You're not importing</p> <p>15 stuff, packaged food items that were not produced in</p> <p>16 Peninsula Township. You're not bringing in other</p> <p>17 things. You're growing it, you're making it, and</p> <p>18 you're producing it in Peninsula Township, like a farm</p> <p>19 stand would.</p> <p>20 Q. Okay. Are you saying that a winery, a remote winery</p> <p>21 tasting room couldn't bring in tomatoes from downstate</p> <p>22 Michigan and make salsa and package it and sell it?</p> <p>23 A. I really would have to flyspeck the ordinance more and</p> <p>24 see how that fits in with wineries. It doesn't seem</p> <p>25 so. I mean, again, you're not opening a convenience</p>
<p style="text-align: right;">Page 71</p> <p>1 obviously wine has to be made into, you know -- grapes</p> <p>2 have to be made into wine.</p> <p>3 Q. Because you don't grow wine, right?</p> <p>4 A. I'm not sure. No. You don't grow bottles, for sure.</p> <p>5 Q. You don't grow wine, either, because wine needs to be</p> <p>6 fermented, correct?</p> <p>7 A. I guess, yes.</p> <p>8 Q. Okay. Getting back to my question, is it your</p> <p>9 testimony that the word "produced" means "grown"?</p> <p>10 A. It can't simply mean that.</p> <p>11 Q. Thank you. If we turn to the -- continuing with (j),</p> <p>12 the food items that are, that are sold, it says they</p> <p>13 include -- including the winery --</p> <p>14 A. Well, wait a second. Let me go back to that (j)</p> <p>15 thing. See, we get off track here. Retail sale of</p> <p>16 packaged food items allowed in addition to bottled</p> <p>17 wine are those which contain wine or fruit produced in</p> <p>18 Peninsula Township. And they've gotta be created in</p> <p>19 Peninsula Township, right? We're talking about retail</p> <p>20 sale of packaged food items.</p> <p>21 So I'm talking about Honeycrisp apples in a</p> <p>22 bag or cherries in a quart little box. Those are in</p> <p>23 addition to bottled wine. And those additions to</p> <p>24 bottled wine have to either contain wine or fruit</p> <p>25 produced in Peninsula Township.</p>	<p style="text-align: right;">Page 73</p> <p>1 store. You're not opening a grocery store on ag land.</p> <p>2 Those are not -- that's exactly what's not supposed to</p> <p>3 happen here. You're supposed to be selling, you're</p> <p>4 supposed to be selling food. You're supposed to be</p> <p>5 selling products of the peninsula agriculture.</p> <p>6 Q. Let me --</p> <p>7 A. That's what we're trying to accomplish.</p> <p>8 Q. Okay. Well, let me ask this a different way, and</p> <p>9 maybe we can nip this in the bud and move on.</p> <p>10 Is it your testimony that the intent of the</p> <p>11 ordinance is for -- is to promote the sale of or to</p> <p>12 require the sale of peninsula agricultural,</p> <p>13 peninsula-grown agriculture and prohibit the sale of</p> <p>14 agriculture grown outside of Peninsula Township?</p> <p>15 A. No.</p> <p>16 Q. Okay. So then the remote winery tasting room can</p> <p>17 purchase tomatoes from downstate and make salsa and</p> <p>18 sell it?</p> <p>19 MS. ANDREWS: Objection, foundation. That</p> <p>20 wasn't the testimony.</p> <p>21 A. It can produce wine with 15 percent out-of-state</p> <p>22 grapes, and it can produce --</p> <p>23 BY MR. INFANTE:</p> <p>24 Q. We're talking food. We're on 12(j). We're talking</p> <p>25 packaged food.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. Now, you would agree with me -- do you agree that it</p> <p>2 is good alcohol service management to serve food with</p> <p>3 alcohol?</p> <p>4 A. I think that's a --</p> <p>5 MS. ANDREWS: Objection to foundation.</p> <p>6 A. I think that's, I think that's absolutely a myth. I</p> <p>7 think the fact that somebody is going to come in and</p> <p>8 sit and taste a sip of wine, as they're supposed to,</p> <p>9 and then leave with a souvenir bottle or two of wine</p> <p>10 is way less likely to present a drinking problem than</p> <p>11 somebody who's going to come out, sit for four hours</p> <p>12 and have two bottles of wine and have a couple of</p> <p>13 dishes of Nouvelle, whatever, I'm sorry, but I just</p> <p>14 don't buy that whole idea.</p> <p>15 BY MR. INFANTE:</p> <p>16 Q. Well, do you think that these wineries are restricted</p> <p>17 to doing tastings and selling bottles of wine to go?</p> <p>18 A. They're restricted to small plates, at most.</p> <p>19 Q. That's not my question. Do you believe that they are</p> <p>20 restricted to doing tastings of wine samples and</p> <p>21 bottled sales to go?</p> <p>22 MS. ANDREWS: Objection, are you talking</p> <p>23 about at the time --</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. Is that your understanding?</p> <p style="text-align: right;">WINERIES OF OLD MISSION PENINSULA vs PENINSULA TOWNSHIP PARSONS, GRANT 11/04/2021</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Have you ever read any portion of the Michigan Liquor</p> <p>2 Code?</p> <p>3 A. Oh, sure.</p> <p>4 Q. Okay. And you're an attorney, right?</p> <p>5 A. Yes, I am.</p> <p>6 Q. Are you familiar with the idea of preemption?</p> <p>7 A. Yes.</p> <p>8 Q. What is preemption?</p> <p>9 MS. ANDREWS: Objection, calls for a legal</p> <p>10 opinion.</p> <p>11 MR. MEIHN: Are we qualifying him as an</p> <p>12 expert so you can save me the time of doing that, Joe,</p> <p>13 because if you're asking him a legal question, then I</p> <p>14 guess he's going to be a legal expert on the issues of</p> <p>15 preemption and all other things involved.</p> <p>16 So go for it, ask him that question, and</p> <p>17 he's now an expert.</p> <p>18 MR. INFANTE: Well, Mr. Meihn, you know</p> <p>19 that's not how it works. I'm not qualifying him as an</p> <p>20 expert.</p> <p>21 MR. MEIHN: Quite the contrary, sir. When</p> <p>22 you ask a lawyer to give legal [audio distortion]</p> <p>23 advice, you are now, you are now the best source of</p> <p>24 expertise.</p> <p>25 So I'll be quiet.</p>
<p style="text-align: right;">Page 127</p> <p>1 MS. ANDREWS: Are you talking about at the</p> <p>2 time of the ordinance or presently [audio distortion]?</p> <p>3 MR. INFANTE: Presently.</p> <p>4 A. You know, I don't -- I can't tell you that. I don't</p> <p>5 know if I'm tired at this point or I'm just not</p> <p>6 recalling. I know, I mean, you're talking about --</p> <p>7 chateaus are very different from ...</p> <p>8 BY MR. INFANTE:</p> <p>9 Q. I'm really talking about anyone.</p> <p>10 A. Okay, and what's the question again?</p> <p>11 Q. Do you believe that any winery in Peninsula Township,</p> <p>12 state of Michigan, is limited to doing tastings and</p> <p>13 samples of wine and bottled sales to go?</p> <p>14 A. I don't know that.</p> <p>15 Q. Okay. Are you aware that they're allowed to sell full</p> <p>16 glasses of wine?</p> <p>17 A. Anywhere?</p> <p>18 Q. Any wine.</p> <p>19 A. At the current time, I --</p> <p>20 MS. ANDREWS: Foundation.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. At the current time.</p> <p>23 A. At the current time, I don't know.</p> <p>24 Q. Have you ever read the Michigan Liquor Code?</p> <p>25 A. No, I haven't.</p> <p style="text-align: right;">scheduling@fortzlegal.com fortzlegal.com</p>	<p style="text-align: right;">Page 129</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. All right. Let's go to, still in 19(a), it's the</p> <p>3 third-to-last sentence. It starts with "activities."</p> <p>4 Do you see that?</p> <p>5 A. Mmm-hmm, "such as weddings."</p> <p>6 Q. Yes. Activities such as weddings, receptions and</p> <p>7 other social functions for hire are not allowed.</p> <p>8 What is the governmental interest that is</p> <p>9 promoted by that prohibition?</p> <p>10 A. Health, safety and welfare.</p> <p>11 Q. And how is that promoting health, safety and welfare?</p> <p>12 A. Because those, those -- in numerous ways. Those</p> <p>13 functions, which, as you know, are consuming Northern</p> <p>14 Michigan farmland in some places, they, they</p> <p>15 supersede -- you want to talk about preemption of</p> <p>16 another kind, that's when one commercial enterprise,</p> <p>17 such as weddings, can charge ten or twenty thousand</p> <p>18 dollars a day, while a farmer doesn't make a fraction</p> <p>19 of that.</p> <p>20 And what happens is that the -- as you know</p> <p>21 from listening to cherry farmers who are talking at</p> <p>22 recent meetings, they are saying you turn these</p> <p>23 wineries into a wedding event place, and they are</p> <p>24 going to make it impossible for us to farm, because we</p> <p>25 cannot conduct our normal farm practices, such as</p> <p style="text-align: right;">Toll Free: 844.730.4066</p>

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<p style="text-align: right;">Page 130</p> <p>1 spraying and agriculture, and they, they're going to</p> <p>2 drive the price of land sky high. A traditional</p> <p>3 farmer will never be able to compete with the land</p> <p>4 prices an events operator can afford to pay, because</p> <p>5 it's just too overpowering.</p> <p>6 And, finally, you get into the, you get</p> <p>7 into the quiet use and enjoyment of the land, which is</p> <p>8 about the limits of my property knowledge, but where</p> <p>9 you have events, and I don't know if you watched all</p> <p>10 the uproar in other townships, about -- like Frank</p> <p>11 Noverr's event thing out in Leelanau Township,</p> <p>12 Leelanau County, where the lights, the music, the</p> <p>13 traffic, the parking, everything that goes with those</p> <p>14 events has been extraordinarily detrimental to</p> <p>15 agriculture and to rural culture, to quality of life</p> <p>16 in small rural townships, so ...</p> <p>17 Q. All right. Do you have a study that shows that if a</p> <p>18 winery has a wedding, a farmer can't farm his land?</p> <p>19 MS. ANDREWS: Objection, foundation,</p> <p>20 misstates the testimony.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. Do you have a study that shows that?</p> <p>23 A. I will tell you, I have a personal study from going</p> <p>24 to, I don't know, a hundred or two hundred meetings</p> <p>25 out in Peninsula Township, where farmers have talked</p>	<p style="text-align: right;">Page 132</p> <p>1 MS. ANDREWS: Objection, compound,</p> <p>2 foundation, misstates his testimony.</p> <p>3 A. And you know what happens when your land becomes more</p> <p>4 valuable? You pay more taxes, and then you know when</p> <p>5 you want to expand that apple orchard or that cherry</p> <p>6 orchard, you can't afford to do that, and you're going</p> <p>7 to go out of business.</p> <p>8 And that is what we are absolutely,</p> <p>9 absolutely, as in Section 19(a) says: It is the</p> <p>10 intent of this subsection to promote a thriving local</p> <p>11 agricultural production industry and preservation of</p> <p>12 rural character by allowing construction and use of a</p> <p>13 farm processing facility.</p> <p>14 That's what we're trying to promote. We</p> <p>15 are trying to promote these facilities, because people</p> <p>16 want a different kind of farming and a different kind</p> <p>17 of way to do direct sales. And that's great, but we</p> <p>18 are not trying to promote weddings and turning</p> <p>19 wineries and agricultural ground into events and</p> <p>20 locales.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. So let me make sure I'm clear here. Peninsula</p> <p>23 Township has an interest in keeping the value of land</p> <p>24 down --</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 131</p> <p>1 about this, and they say uniformly, if you allow</p> <p>2 wineries to become event centers, we're not going to</p> <p>3 be able to spray cherries.</p> <p>4 Q. Do you have a study that says that?</p> <p>5 A. No, I don't.</p> <p>6 Q. Okay. You also made a comment that if there are</p> <p>7 weddings and receptions, these other social functions,</p> <p>8 that land prices will go up. Are you saying that's a</p> <p>9 bad thing?</p> <p>10 A. I'm saying it's a bad thing if it -- what I went on to</p> <p>11 say is it would prevent dry farmers, traditional</p> <p>12 farmers, out of agriculture.</p> <p>13 Q. But if land prices go up, doesn't the value of the</p> <p>14 farmer's land also go up?</p> <p>15 MS. ANDREWS: Objection, foundation.</p> <p>16 A. Yeah, but do you know how many farmers are in it for</p> <p>17 the value of the land? They're in it for farming.</p> <p>18 You're talking the Wunsch family or Edmondson family,</p> <p>19 these other families out there, it's a way of life,</p> <p>20 man.</p> <p>21 BY MR. INFANTE:</p> <p>22 Q. Okay, but if the value of the farmer's land goes up</p> <p>23 and farmer's in it for farming, what effect does that</p> <p>24 have on the farmer? He just owns more valuable land</p> <p>25 than if he continues to farm.</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. -- right?</p> <p>2 A. No.</p> <p>3 MS. ANDREWS: Objection, form.</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. Is it the interest of Peninsula Township to keep the</p> <p>6 value of land down?</p> <p>7 A. No. Wait, wait, let me modify that. It is to keep</p> <p>8 land from becoming so expensive that the only people</p> <p>9 that can afford it are Napa Valley type second homes</p> <p>10 and that kind of stuff.</p> <p>11 MS. ANDREWS: I need a three-minute break,</p> <p>12 please.</p> <p>13 MR. INFANTE: What was that?</p> <p>14 MS. ANDREWS: I need a break. I need to</p> <p>15 step away and use the restroom for a minute.</p> <p>16 MR. INFANTE: I have one last question.</p> <p>17 MS. ANDREWS: Okay.</p> <p>18 BY MR. INFANTE:</p> <p>19 Q. Is, is it an interest of Peninsula Township to pick</p> <p>20 winners and losers between its different businesses</p> <p>21 located within the township, whether they are farmers</p> <p>22 or anyone else?</p> <p>23 A. No.</p> <p>24 Q. All right.</p> <p>25 MR. INFANTE: We can take a break. Five</p>

PTP Response Opposing Plaintiffs' Motion for Partial Summary Judgment

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOSEPH M. INFANTE</p> <p>4 Miller Canfield Paddock and Stone PLC</p> <p>5 99 Monroe Avenue, N.W.</p> <p>6 Suite 1200</p> <p>7 Grand Rapids, Michigan 49503</p> <p>8 616.776.6333</p> <p>9 infante@millercanfield.com</p> <p>10 Appearing on behalf of the Plaintiffs.</p> <p>11</p> <p>12</p> <p>13 MATTHEW T. WISE</p> <p>14 Foley & Mansfield PLLP</p> <p>15 139 East 9 Mile Road</p> <p>16 Ferndale, Michigan 48220</p> <p>17 248.721.4200</p> <p>18 mwise@foleymansfield.com</p> <p>19 Appearing Remotely Via Videoconference on behalf of</p> <p>20 the Defendant.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JOHN WUNSCH</p> <p>5</p> <p>6 EXAMINATION BY MR. INFANTE 5</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 EXHIBIT PAGE</p> <p>13 (Exhibits not offered.)</p> <p>14</p> <p>15 EXHIBITS REFERENCED:</p> <p>16 DEPOSITION EXHIBIT 2 35</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 TRACY JANE ANDREWS</p> <p>2 Law Office of Tracy Jane Andrews PLLC</p> <p>3 619 Webster Street</p> <p>4 Traverse City, Michigan 49686</p> <p>5 231.714.9402</p> <p>6 tjandrews@envlaw.com</p> <p>7 Appearing on behalf of the Witness.</p> <p>8</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 Rebecca Chown - Peninsula Township</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Traverse City, Michigan</p> <p>2 Wednesday, November 3, 2021</p> <p>3 4:45 p.m.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 JOHN WUNSCH,</p> <p>8 was thereupon called as a witness herein, and after</p> <p>9 having first been duly sworn to testify to the truth,</p> <p>10 the whole truth and nothing but the truth, was</p> <p>11 examined and testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. INFANTE:</p> <p>14 Q. All right, would you please state your name, for the</p> <p>15 record?</p> <p>16 A. John, middle initial A, Wunsch, W-U-N-S-C-H.</p> <p>17 Q. And, Mr. Wunsch, my name is Joe Infante. I'm an</p> <p>18 attorney for the plaintiff wineries in this case.</p> <p>19 Have you ever been deposed before?</p> <p>20 A. No.</p> <p>21 Q. Okay, I'm going to give you some ground rules. They</p> <p>22 are mostly for our court reporter here so she can take</p> <p>23 everything down. As you know, she writes down</p> <p>24 everything that we say.</p> <p>25 So I'm going to ask you a series of</p>

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<p style="text-align: right;">Page 18</p> <p>1 memory, but I'm not aware of what you're asking for.</p> <p>2 Try to explain it to me again.</p> <p>3 BY MR. INFANTE:</p> <p>4 Q. Your testimony, as you sit here today, is that you</p> <p>5 have never seen any of the settlement demands made by</p> <p>6 the wineries after the start of the lawsuit?</p> <p>7 MS. ANDREWS: I'm going to object, also,</p> <p>8 for the additional reason that, as you know,</p> <p>9 Mr. Wunsch participated in a confidential settlement</p> <p>10 mediation which you were part of.</p> <p>11 So if you're referring to that, I think</p> <p>12 that would be a confidential conversation covered by</p> <p>13 the --</p> <p>14 MR. INFANTE: I'm talking about a document.</p> <p>15 BY MR. INFANTE:</p> <p>16 Q. It's your testimony you have never seen a settlement</p> <p>17 document drafted by the wineries since this lawsuit</p> <p>18 started?</p> <p>19 A. Okay, I saw a proposed ordinance that they turned</p> <p>20 in --</p> <p>21 Q. Okay.</p> <p>22 A. -- and it is posted on the web. I have seen the</p> <p>23 proposed ordinance that was brought in the fall of</p> <p>24 2020 after the lawsuit was filed, yes.</p> <p>25 Q. Where was that posted?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Mmm-hmm.</p> <p>2 Q. So in the lawsuit we asked the Township, the wineries</p> <p>3 asked the Township to tell us what is the governmental</p> <p>4 interest that you are trying to put forth related to</p> <p>5 the enactment of these winery ordinances, okay?</p> <p>6 A. Mmm-hmm.</p> <p>7 Q. The Court -- Judge Kent was our magistrate judge --</p> <p>8 ordered the, ordered Peninsula Township to set forth</p> <p>9 the governmental interests they believe were being</p> <p>10 protected, and I have those four and I'll read them to</p> <p>11 you from their discovery responses following this</p> <p>12 order at issue, and then he also ordered the Township</p> <p>13 to identify the witnesses who were most capable of</p> <p>14 testifying to how each ordinance section relates to</p> <p>15 that interest.</p> <p>16 You are one of witnesses that they've</p> <p>17 identified.</p> <p>18 A. Mmm-hmm.</p> <p>19 Q. So that is the area that you've been identified to</p> <p>20 testify regarding, and those are the questions I want</p> <p>21 to ask you.</p> <p>22 A. Mmm-hmm.</p> <p>23 Q. Are you aware of that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So I'm going to read to you what are proffered</p>
<p style="text-align: right;">Page 19</p> <p>1 A. It is currently posted on the Protect the Peninsula</p> <p>2 website.</p> <p>3 Q. And where did Protect the Peninsula get it from?</p> <p>4 A. Okay, this is -- I saw it secondhand, and, actually, I</p> <p>5 did not get it directly from the Township. I do</p> <p>6 believe that that came to me from perhaps Grant</p> <p>7 Parsons.</p> <p>8 Someone had that, it was one of the things</p> <p>9 I saw in January of '21, maybe. I do not know where</p> <p>10 it came from, but I did not get that directly from the</p> <p>11 township, unless I asked for a clean copy. I may have</p> <p>12 asked for a clean copy of it from Randy.</p> <p>13 And so now that you're zeroing in on the</p> <p>14 proposed ordinance that the winery people brought to</p> <p>15 the township, yes, that is, but that's, to my</p> <p>16 knowledge, not a part of negotiations. That was a</p> <p>17 document they brought to the Township and turned over</p> <p>18 to the Township after the lawsuit, when they met. So,</p> <p>19 yes.</p> <p>20 Q. So let me circle back to what I understand is the</p> <p>21 reason that you are providing testimony today.</p> <p>22 A. Mmm-hmm.</p> <p>23 Q. And I'll try to explain it to you, and that may help</p> <p>24 us focus our discussion today, because we have a</p> <p>25 limited time period.</p>	<p style="text-align: right;">Page 21</p> <p>1 governmental interests that the Township set forth,</p> <p>2 and then I want to talk about the ordinances.</p> <p>3 A. Mmm-hmm.</p> <p>4 Q. The first one is preserving the agricultural industry</p> <p>5 and providing permanent land for the same.</p> <p>6 Do you know what that means?</p> <p>7 A. Yes, in my mind, I have a clear understanding of what</p> <p>8 I believe that means.</p> <p>9 Q. And what do you believe that means?</p> <p>10 A. In order to keep an agricultural industry viable,</p> <p>11 there are a number of things that need to be there,</p> <p>12 and one is, of course, the availability of the land.</p> <p>13 A second is the lack of fragmentation of</p> <p>14 the land.</p> <p>15 The third is a lack of extra incursion of</p> <p>16 human presence that would make it difficult to</p> <p>17 continue to do the standard things we do, which is</p> <p>18 spray, mow, things that make noise, things that causes</p> <p>19 smell.</p> <p>20 So one of the things that is being</p> <p>21 carefully done is to try to preserve land so that it's</p> <p>22 available. And another thing that's been done is to</p> <p>23 try to avoid breaking down the small parcels, which</p> <p>24 make it very difficult to farm in the traditional</p> <p>25 sense.</p>

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<p style="text-align: right;">Page 22</p> <p>1 So, in my mind, to my understanding, it's a</p> <p>2 process of avoiding things like commercial activities</p> <p>3 that are going to bring in people that are going to</p> <p>4 complain, avoiding breaking into small parcels and</p> <p>5 subdividing within the farm areas, which is why we</p> <p>6 have a preservation program, to avoid that.</p> <p>7 Q. Yeah. And so part of this interest number 1 that</p> <p>8 would include the PDR program that you're a part of, I</p> <p>9 assume that was to help with this governmental</p> <p>10 interest, right?</p> <p>11 A. Why don't you read that governmental interest for me</p> <p>12 again, please.</p> <p>13 Q. Preserving the agricultural industry and providing</p> <p>14 permanent land for the same.</p> <p>15 A. Mmm-hmm.</p> <p>16 Q. So would you agree that the PDR program is directed</p> <p>17 toward that interest?</p> <p>18 A. I'd say yes.</p> <p>19 Q. Okay. The second one is maintain the township's</p> <p>20 character.</p> <p>21 A. Mmm-hmm.</p> <p>22 Q. What does that mean?</p> <p>23 A. The township has had a character of agriculture. The</p> <p>24 township has had a character of being rural. If you</p> <p>25 go back to the original master plans in the late,</p>	<p style="text-align: right;">Page 24</p> <p>1 economically-feasible public sewer and water systems</p> <p>2 to serve future populations.</p> <p>3 What does that mean.</p> <p>4 A. Well, I think it's a combination of not -- in the</p> <p>5 south area, where you have high density, you're going</p> <p>6 to need actual sewer. As you go north, if you're</p> <p>7 aware of the topography and don't create too much</p> <p>8 density, then septs can healthfully, along with</p> <p>9 individual wells, take care of that.</p> <p>10 So if you, if you avoid that</p> <p>11 overdevelopment, if you avoid bringing in uses that</p> <p>12 are beyond what their septs and wells can handle,</p> <p>13 then you serve that interest.</p> <p>14 Q. Okay. But, I mean, the sewer and water systems end, I</p> <p>15 think, at McKinley Road, somewhere in that area?</p> <p>16 A. It's in the south end somewhere. Actually, I think it</p> <p>17 may go beyond that. I think it goes to serve the</p> <p>18 immediate subdivision past that, probably.</p> <p>19 Q. But not very far north.</p> <p>20 A. Correct.</p> <p>21 Q. Okay. But it doesn't reach the areas where the farms</p> <p>22 and the wineries are, right?</p> <p>23 A. No.</p> <p>24 Q. Okay. The last one, and this one's long so bear with</p> <p>25 me, and I'll read it slow, I apologize: Establishing</p>
<p style="text-align: right;">Page 23</p> <p>1 developed in the late sixties, passed in the early</p> <p>2 seventies, revised in the late seventies, revised</p> <p>3 again in the eighties, and the current one, all of</p> <p>4 them identify rural character as being of prime</p> <p>5 interest for the residents.</p> <p>6 And so keeping the land in farming and</p> <p>7 staying with what the Township has always decided</p> <p>8 every time it came up, not adding to commercial zoning</p> <p>9 so that we would be able to retain a balanced blend</p> <p>10 with some residents and a primary use and experience</p> <p>11 of an agricultural area, which means planted crops.</p> <p>12 Q. But again, the PDR program is part of maintaining that</p> <p>13 interest?</p> <p>14 A. The PDR program is one of the ways. But by having an</p> <p>15 ordinance that is very clear about keeping</p> <p>16 commercialization out, it is very clear about the</p> <p>17 purpose being for farming.</p> <p>18 It doesn't just exist by the PDR. It</p> <p>19 exists by the master plan. It exists by the</p> <p>20 statements at the beginning of the agricultural</p> <p>21 section of the ordinance. It ties into the top</p> <p>22 purposes of the ordinance, to avoid nuisance, to</p> <p>23 consider the interests of the residents as well as</p> <p>24 farmers.</p> <p>25 Q. All right. The third is providing</p>	<p style="text-align: right;">Page 25</p> <p>1 a complete buildout population scenario and permitting</p> <p>2 the vertical integration of agricultural production</p> <p>3 without changing the agriculturally-zoned lands of the</p> <p>4 township to commercial property inconsistent with the</p> <p>5 use of those respective districts.</p> <p>6</p> <p>7 A. Say that again.</p> <p>8 Q. Again?</p> <p>9 A. Yes, please.</p> <p>10 Q. All right. Establishing a complete buildout</p> <p>11 population scenario and permitting the vertical</p> <p>12 integration of agricultural production without</p> <p>13 changing the agriculturally-zoned lands of the</p> <p>14 township to commercial property inconsistent with the</p> <p>15 use of those respective districts.</p> <p>16 A. Okay. Other than being --</p> <p>17 Q. What does that mean?</p> <p>18 A. Okay. Other than being not exactly clear what they</p> <p>19 mean by the vertical integration, what it means is if</p> <p>20 you foresee in the future that you're going to want</p> <p>21 these areas to be farms, then you're not going to</p> <p>22 increase density. If you're going to want to be able</p> <p>23 to keep having those farms, then you're not going to</p> <p>24 increase the amount of commercial zoning, which is</p> <p>25 what the Township has done all along.</p>

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<p style="text-align: right;">Page 26</p> <p>1 So I believe it means minimizing</p> <p>2 development, minimizing commercial activity, because</p> <p>3 those are the things that would interfere with being</p> <p>4 able to retain that agricultural character and</p> <p>5 viability as an industry.</p> <p>6 Q. And which farms are you referring to?</p> <p>7 A. Any farms.</p> <p>8 Q. Any farm, cherry farmers?</p> <p>9 A. Any farms that are focused on agricultural production</p> <p>10 and not attempting to change their use to a commercial</p> <p>11 use are going to fit this. Once they're changing</p> <p>12 their use to a commercial use, it no longer will fit</p> <p>13 the intent and it will result eventually in the harms</p> <p>14 that the Township is responsible to avoid.</p> <p>15 Q. What's a commercial use?</p> <p>16 A. A commercial use would be something that has to do</p> <p>17 with retail completely unrelated to agricultural. A</p> <p>18 commercial use would be something that is an event</p> <p>19 center and something that is there for a different</p> <p>20 use. That is a not an agricultural use.</p> <p>21 So that would be commercialization, event</p> <p>22 centers, retail of products that are not related to</p> <p>23 the industry, those things -- and, frankly,</p> <p>24 restaurants. Restaurants, our restaurants are</p> <p>25 specifically on commercial land.</p>	<p style="text-align: right;">Page 28</p> <p>1 zoning as opposed to agriculture, which is not -- it</p> <p>2 may -- everything that we do as human beings -- when I</p> <p>3 go to the store, that's commerce, I'm buying</p> <p>4 something.</p> <p>5 So everything we do as human beings has to</p> <p>6 do with commerce, but there are definitions of words</p> <p>7 in their context for land use that are different than</p> <p>8 that.</p> <p>9 Q. So, in your mind, so long as you're selling your</p> <p>10 product outside of Peninsula Township, like you do,</p> <p>11 that's not commercial?</p> <p>12 MS. ANDREWS: Objection, putting words in</p> <p>13 his mouth.</p> <p>14 A. I didn't say that, no.</p> <p>15 BY MR. INFANTE:</p> <p>16 Q. Does your farm engage in commerce?</p> <p>17 A. Okay, again, let's be clear. I don't actively have</p> <p>18 any participation in farming. I have land that is</p> <p>19 being farmed by someone else.</p> <p>20 Q. All right. The person who farms your -- do you get</p> <p>21 paid for that?</p> <p>22 A. Not really, no. It's just an arrangement that I like</p> <p>23 to see the land in farming, and I didn't want to see</p> <p>24 it lay fallow, and I didn't have the energy or the</p> <p>25 investment, so I turned it over to the family to use</p>
<p style="text-align: right;">Page 27</p> <p>1 So being a restaurant, being an event</p> <p>2 center, being a wedding chapel, being a retail outlet</p> <p>3 of a wide variety of clothing and other accessories</p> <p>4 that people might want, those things are not</p> <p>5 agricultural, they're commercial.</p> <p>6 Q. Is commerce commercial?</p> <p>7 MS. ANDREWS: Objection, form.</p> <p>8 A. That's really -- you're mixing, in my mind, two</p> <p>9 different levels of a meaning of words. So I think</p> <p>10 that it's not really a question I can answer for you.</p> <p>11 BY MR. INFANTE:</p> <p>12 Q. Well, if I say is commerce commercial, you can't</p> <p>13 answer that?</p> <p>14 A. Commerce may be commercial. There's a difference</p> <p>15 between commerce which is the commerce of individuals,</p> <p>16 commerce of farms that are going to be selling that</p> <p>17 product to some distributor at a distance, and</p> <p>18 commerce where you're becoming a retail operation,</p> <p>19 you're bringing people into your operation.</p> <p>20 The reason we have a limited amount of</p> <p>21 commercial property is to avoid that kind of excessive</p> <p>22 incursion of added individuals who are coming into the</p> <p>23 township just for that purpose. And at that point,</p> <p>24 you're turning it into the kind of commercial</p> <p>25 operation that we defined as belonging in commercial</p>	<p style="text-align: right;">Page 29</p> <p>1 that area where they planted it. So, quite honestly,</p> <p>2 no, I have not.</p> <p>3 Q. But the family engages in commerce when they sell</p> <p>4 your, sell the cherries from your land?</p> <p>5 A. As I laid out, commerce on different levels -- when I</p> <p>6 go to a store and buy something, that's commerce.</p> <p>7 Yes, they participate in commerce. However,</p> <p>8 commercialization has a completely different context,</p> <p>9 and that's the level on which I'm saying the Township</p> <p>10 is very careful.</p> <p>11 We have very limited commercial zoning. We</p> <p>12 have made the decision numerous times not to add any</p> <p>13 commercial zoning because we want to limit that kind</p> <p>14 of activity which is at odds to the successful</p> <p>15 operation of a traditional farm, which must have the</p> <p>16 ability without the interference of people moving</p> <p>17 through property.</p> <p>18 If you've got an operation right here next</p> <p>19 to a farm that has 50, a hundred, 250, or in some</p> <p>20 cases thousands of people milling around, you can't</p> <p>21 spray. When you need to spray, you've got a limited</p> <p>22 six-hour window to get that bug, and if you don't get</p> <p>23 it then, you may not get it, you'll lose your whole</p> <p>24 crop.</p> <p>25 So that type of commercialization is what</p>

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<p style="text-align: right;">Page 30</p> <p>1 the Township has tried to avoid so we can stay on our</p> <p>2 path that we have defined for decades as being an area</p> <p>3 that is dedicated to traditional agriculture with a</p> <p>4 mix of some residential use.</p> <p>5 Q. Does the Township not use buffer zones?</p> <p>6 A. The buffer zones you're talking about, the size buffer</p> <p>7 you need to not get the kind of complaints -- the</p> <p>8 noise that a sprayer makes, you'll get complaints from</p> <p>9 a mile away.</p> <p>10 So a 50-foot buffer, that's nice, but</p> <p>11 that's not going to keep you from getting complaints.</p> <p>12 We have cases where people come into the township,</p> <p>13 hear the noise of the sprayer, call sheriff's</p> <p>14 department, "They're keeping me awake, I can't stand</p> <p>15 this." The sheriff has to come out and the farmer has</p> <p>16 to stop what he's doing, explain that, "I have the</p> <p>17 right to do this with the Right to Farm Act." It's a</p> <p>18 total hassle.</p> <p>19 So those 50-foot buffers are not enough.</p> <p>20 Plus, if you've got a wind going from north to south,</p> <p>21 and this farm south or this land south of that is for</p> <p>22 commercial use and you're spraying, that spray is</p> <p>23 going to go for half a mile, and you'll have</p> <p>24 complaints of the smell of the spray. You'll have</p> <p>25 complaints about the health hazards, which is</p>	<p style="text-align: right;">Page 32</p> <p>1 activity, such as an event center, a store of all</p> <p>2 kinds of other objects.</p> <p>3 Q. So it depends on what's being sold, is that what</p> <p>4 you're saying?</p> <p>5 A. It depends on if it's a product directly of the farms.</p> <p>6 Q. So if it's a product of the farm, you're okay with</p> <p>7 that?</p> <p>8 A. If it is a direct product grown on the farm, something</p> <p>9 that is actually grown on the farm, that's fine, yes.</p> <p>10 I don't think you grow weddings on farms, nor do you</p> <p>11 grow conventions on farms.</p> <p>12 Q. If it's not grown on the farm, then no?</p> <p>13 A. If you learn -- if you study our ordinance, for</p> <p>14 example, in the wineries, the idea of appellation is</p> <p>15 involved, which ensures that you have a certain amount</p> <p>16 of that grown on the farm. Certainly the intent is</p> <p>17 not to be bringing it in from somewhere else; the</p> <p>18 intent is to be growing it on the farm, but there is</p> <p>19 some flexibility. So that 15 percent, that is</p> <p>20 allowed.</p> <p>21 So it is really are you primarily growing</p> <p>22 on that farm, is your sale a direct support of what</p> <p>23 that farm is about, which is grapes or cherries.</p> <p>24 We do not have a provision for cherries to</p> <p>25 bring in from outside. We did, as we developed the</p>
<p style="text-align: right;">Page 31</p> <p>1 primarily why it's very important that we not change</p> <p>2 to having commercial activities in our agricultural</p> <p>3 zone.</p> <p>4 Q. Your family farm -- you said you have a farm stand?</p> <p>5 A. They have a farm -- they have opened a farm stand</p> <p>6 towards the south end of the peninsula.</p> <p>7 Q. Does it have retail sales?</p> <p>8 A. A limited amount of retail sales, basically</p> <p>9 inconsequential.</p> <p>10 Q. So your farm is allowed to engage in commercial</p> <p>11 activity through retail sales, you family farm?</p> <p>12 A. Again, I have defined quite clearly the various types</p> <p>13 of commerce that are involved. Yes, there is</p> <p>14 commerce, absolutely, but there's a big difference</p> <p>15 between a commerce which is completely unrelated, such</p> <p>16 as turning it into an event center, which really is a</p> <p>17 commercial activity, or turning it into a retail of</p> <p>18 all kinds of objects that have nothing to do with</p> <p>19 farming.</p> <p>20 This is retail of a specific farm product,</p> <p>21 direct sales to the consumer of a farm product.</p> <p>22 Direct sales of a consumer of a farm product, such as</p> <p>23 fresh cherries or wine, those are direct products of</p> <p>24 the land, direct retail sales of that. It is quite</p> <p>25 different from bringing in a completely different</p>	<p style="text-align: right;">Page 33</p> <p>1 wine ordinance, in an attempt to work with the</p> <p>2 wineries, as they brought to us proposals, you know,</p> <p>3 the appellation was something they developed, then we</p> <p>4 went along and said, "Okay, you're still primarily</p> <p>5 going to be growing it here." It's about what you</p> <p>6 grow. It's not about something you don't grow.</p> <p>7 And so as far as there being some allowance</p> <p>8 for some use of grapes from outside the area, yes,</p> <p>9 there is, but that's still a product that is directly</p> <p>10 related to what the farm is there for, and that is to</p> <p>11 grow and sell grapes or wine or cherries.</p> <p>12 Q. Do you know what an appellation is?</p> <p>13 A. Yes, I do. The appellation is 85 percent -- an</p> <p>14 appellation is based upon the soil types, the climate,</p> <p>15 the things that make a particular growing area unique.</p> <p>16 Starting from 650 feet north of Bryant Park</p> <p>17 to the end of our peninsula is an appellation. I'm</p> <p>18 very well aware of what an appellation is, yes.</p> <p>19 Q. Okay, but do you believe an appellation dictates what</p> <p>20 you can grow on your vineyard?</p> <p>21 A. No, it does not dictate what you can grow. Anything</p> <p>22 you grow on your vineyard is going to be of your</p> <p>23 appellation because it's having been grown in this</p> <p>24 area.</p> <p>25 Q. But does it dictate what kind of wine you can make?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. In our ordinance --</p> <p>2 Q. No-no-no, I'm talking about an appellation. I mean,</p> <p>3 you know what an appellation is, right?</p> <p>4 A. An appellation is you're using grapes that are grown</p> <p>5 in that area.</p> <p>6 Q. But it's a federal --</p> <p>7 A. Yes.</p> <p>8 Q. -- regulation, set of federal regulations, right?</p> <p>9 A. Mmm-hmm.</p> <p>10 Q. Okay, but if you -- but you realize it's only a</p> <p>11 labeling designation, right? Do you understand it's a</p> <p>12 labeling designation?</p> <p>13 A. Yes, you can't label it, and you can't label it as</p> <p>14 that unless 85 percent came from that area.</p> <p>15 Q. Okay. But it doesn't mean you can't sell other wine</p> <p>16 not labeled as part of the appellation, right?</p> <p>17 MS. ANDREWS: Objection, form. You're</p> <p>18 asking -- comparing two different things there.</p> <p>19 A. So let's --</p> <p>20 BY MR. INFANTE:</p> <p>21 Q. I'm not asking -- sir, you need to let me ask my</p> <p>22 questions. I'm asking about a federal appellation.</p> <p>23 A. A federal appellation -- if you're not asking about</p> <p>24 our ordinances, our ordinances very specifically do</p> <p>25 limit it. A federal appellation does not. A federal</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. So I want you to look at the second sentence</p> <p>2 that starts "the farm processing"; do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Please don't mark the exhibits. Our court</p> <p>5 reporter needs to keep that. If you want a separate</p> <p>6 one, I can give you one to mark. That one is for our</p> <p>7 court reporter, and we can't have any marking on it.</p> <p>8 Okay, and just follow along me: The farm</p> <p>9 processing facility use includes retail and wholesale</p> <p>10 sales of fresh and processed agricultural produce but</p> <p>11 is not intended to allow a bar or restaurant on the</p> <p>12 agricultural properties, and the Township shall not</p> <p>13 approve such a license.</p> <p>14 A. Mmm-hmm.</p> <p>15 Q. Okay. I want to focus in on "restaurant." So in</p> <p>16 reading this ordinance, it appears to be that a</p> <p>17 restaurant is not allowed on a farm processing</p> <p>18 facility. Is that your interpretation?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Which of the four governmental interests that</p> <p>21 we talked about is furthered by not allowing a</p> <p>22 restaurant on a farm processing facility?</p> <p>23 A. If you want me to address those four specifically,</p> <p>24 read them to me again, please.</p> <p>25 Q. All right. Preserving the agriculture industry and</p>
<p style="text-align: right;">Page 35</p> <p>1 appellation just defines the area. If you want to</p> <p>2 label it as that, you need to grow 85 percent in that</p> <p>3 area. What's in your wine has to be 85 percent from</p> <p>4 that area, whether you grew it or someone else grew</p> <p>5 it.</p> <p>6 A federal appellation -- federal law does</p> <p>7 not keep you from selling anything else, but our</p> <p>8 ordinances do.</p> <p>9 Q. We'll talk about --</p> <p>10 A. Our ordinance very specifically does.</p> <p>11 Q. We'll talk about your ordinances, okay. Let's talk</p> <p>12 about the ordinances. I'm going to hand you</p> <p>13 Exhibit 2. I have an extra copy.</p> <p>14 Okay, I'm just going to give you a little</p> <p>15 bit of the roadmap, because it will hopefully help us</p> <p>16 move through this a little quicker. I'm going to ask</p> <p>17 you about certain portions of the ordinance. I'm not</p> <p>18 going to ask you about every single sentence in here,</p> <p>19 okay?</p> <p>20 All right, do you recognize Exhibit 2?</p> <p>21 A. Yes, I certainly do.</p> <p>22 Q. Okay, and what is Exhibit 2?</p> <p>23 A. Exhibit 2 is our farm processing facility developed</p> <p>24 between 2000 and 2001 and developed in collaboration</p> <p>25 with the winery industry.</p>	<p style="text-align: right;">Page 37</p> <p>1 providing permanent land for the same;</p> <p>2 Maintain the township's character;</p> <p>3 Providing economically-feasible public</p> <p>4 sewer and water systems to serve future populations;</p> <p>5 And the fourth one: Establishing a</p> <p>6 complete buildout population scenario and permitting</p> <p>7 the vertical integration of agricultural production</p> <p>8 without changing the agriculturally-zoned lands of the</p> <p>9 township to commercial property inconsistent with the</p> <p>10 use of those respective districts.</p> <p>11 So which of those governmental interests is</p> <p>12 furthered by restricting restaurants?</p> <p>13 A. By restricting restaurants you are definitely helping</p> <p>14 to keep the agricultural land, you are maintaining the</p> <p>15 character, and you are also avoiding changing zoning.</p> <p>16 I think the last -- read your last point,</p> <p>17 please.</p> <p>18 Q. Establishing a complete buildout population scenario</p> <p>19 and permitting the vertical integration of</p> <p>20 agricultural production without changing the</p> <p>21 agriculturally-zoned lands of the township to</p> <p>22 commercial property inconsistent with the use of those</p> <p>23 respective districts.</p> <p>24 A. Mmm-hmm. I would maintain that absolutely a</p> <p>25 restaurant is inconsistent with the uses of the</p>

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<p style="text-align: right;">Page 38</p> <p>1 agricultural district.</p> <p>2 Q. How does a, how does a restaurant change agricultural</p> <p>3 land?</p> <p>4 A. It interferes with the ability to maintain farming and</p> <p>5 to carry out the standard practices, and if you can't</p> <p>6 farm, then you really are interfering with keeping the</p> <p>7 character, which is based on agriculture. If the</p> <p>8 farms cannot be farmed, they will eventually be sold</p> <p>9 off and used for residential use, which is not</p> <p>10 farming.</p> <p>11 Q. But how does a restaurant prevent you from farming?</p> <p>12 A. A restaurant brings in people who are going to be</p> <p>13 getting in and out of their cars, walking back and</p> <p>14 forth. If that's the hours you need to be spraying,</p> <p>15 they're going to be complaining. It's going to be an</p> <p>16 interference. If, as with most restaurants, they end</p> <p>17 up with their patio areas, that would be in direct</p> <p>18 conflict with the ability to do the standard</p> <p>19 operations of farming.</p> <p>20 I would say that what you're leaving out</p> <p>21 when you talk about harms is the harm to the ordinance</p> <p>22 itself, the harm to the purposes of the ordinances.</p> <p>23 And so on a higher level, if you look at</p> <p>24 the purposes stated in the master plans and in the</p> <p>25 start of the agricultural section, if you drill down</p>	<p style="text-align: right;">Page 40</p> <p>1 But do be aware that within the winery-chateau</p> <p>2 ordinance, there are opportunities for their guests to</p> <p>3 have meals, and there are opportunities for light</p> <p>4 lunches and buffets for non-profits. There are</p> <p>5 opportunities for situations when an</p> <p>6 agriculturally-oriented group is there for them to</p> <p>7 serve some food service.</p> <p>8 So it's not true that there's no allowance</p> <p>9 by the wineries.</p> <p>10 BY MR. INFANTE:</p> <p>11 Q. All right.</p> <p>12 A. In this particular farm processing, no, it does not</p> <p>13 allow it.</p> <p>14 Q. Okay. So some wineries can have restaurants and food</p> <p>15 service, right?</p> <p>16 A. Not restaurants, no. They can only have food, as far</p> <p>17 as an actual restaurant-type meal, for their own</p> <p>18 guests if they have the guest rooms, they're allowed</p> <p>19 to have that. But there are opportunities to serve</p> <p>20 food in limited, very clear guardrails.</p> <p>21 The thing that's beautiful about these</p> <p>22 ordinances is that there was a collaboration. The</p> <p>23 winery owners came to the Township and wanted to be</p> <p>24 able to do certain things. For example, when you</p> <p>25 get to --</p>
<p style="text-align: right;">Page 39</p> <p>1 to the fact that if you don't enforce what your</p> <p>2 ordinance is, you're losing your entire ordinance.</p> <p>3 So as well as clearly interfering with the</p> <p>4 ability to retain the agricultural uses, I think it's</p> <p>5 also a danger to the entire ordinance.</p> <p>6 Q. Well, so what's the harm that Peninsula Township is</p> <p>7 trying to prevent by not allowing restaurants?</p> <p>8 A. The harm that it's trying --</p> <p>9 MS. ANDREWS: Objection, form.</p> <p>10 A. Restate your question, please.</p> <p>11 BY MR. INFANTE:</p> <p>12 Q. What is the harm Peninsula Township is trying to</p> <p>13 prevent by not allowing restaurants?</p> <p>14 MS. ANDREWS: Objection, Peninsula Township</p> <p>15 doesn't not allow restaurants.</p> <p>16 A. We have restaurants.</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. Does not allow wineries to have restaurants.</p> <p>19 MS. ANDREWS: Objection. Are you talking</p> <p>20 specifically about the farm processing facility, are</p> <p>21 we talking about Exhibit 2 still?</p> <p>22 MR. INFANTE: Yes.</p> <p>23 A. Be aware that there are -- you're making a broad</p> <p>24 statement. This particular farm processing, this</p> <p>25 particular type of winery is clearly not to have that.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. So --</p> <p>2 A. No, are you going to ask me to answer the question, or</p> <p>3 not?</p> <p>4 Q. Here's the thing. You're not really answering my</p> <p>5 question. You have already answered my question.</p> <p>6 This deposition is going to take ten hours. If you</p> <p>7 can answer my question, we can get out of here --</p> <p>8 A. I believe I answered your question already.</p> <p>9 Q. You did answer my question, but then you kept going.</p> <p>10 A. Well, I apologize. Sorry, Joe.</p> <p>11 Q. So my question is, okay, so some wineries can serve</p> <p>12 food to guests?</p> <p>13 A. In certain limited situations.</p> <p>14 Q. Okay. So what is it about farm processing facilities</p> <p>15 that is so harmful that these wineries cannot have</p> <p>16 restaurants?</p> <p>17 MS. ANDREWS: Objection, form. He didn't</p> <p>18 say it was "so harmful."</p> <p>19 BY MR. INFANTE:</p> <p>20 Q. How about this. What harm do these farm processing</p> <p>21 wineries cause by having a restaurant that the other</p> <p>22 wineries don't by serving food?</p> <p>23 A. Within the guardrails that the winery-chateaus have</p> <p>24 upon them, they're limited in ways that --</p> <p>25 Q. Sir, I'm asking, what harm do farm processing wineries</p>

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<p style="text-align: right;">Page 54</p> <p>1 cheese and breads and cooking up a meal, it's not the</p> <p>2 same.</p> <p>3 Q. Well, this says all food items are for on-premises</p> <p>4 consumption only.</p> <p>5 A. Yes, that's what I'm saying, it's for on-premises</p> <p>6 consumption.</p> <p>7 Q. But what if it was grown on-site?</p> <p>8 A. If it's grown on-site and developed on-site, I guess</p> <p>9 that would be a new question that's never been asked.</p> <p>10 But it clearly states here that it's for on-premise</p> <p>11 only.</p> <p>12 Q. Okay, but what's the harm in allowing food for</p> <p>13 off-premises consumption?</p> <p>14 A. Where you're going here, again, is to the area of</p> <p>15 retail that is, in effect, becoming commercial, and</p> <p>16 this is clearly an ability to limit it to auxiliary</p> <p>17 uses that serve the sale of the wine.</p> <p>18 Having some food there to go with the -- to</p> <p>19 clean the pallet is clearly serving the purpose of</p> <p>20 promoting and selling the wine. That's what the</p> <p>21 purpose of this ordinance is.</p> <p>22 Q. But my question is, but what's the harm, what is the</p> <p>23 harm?</p> <p>24 A. The harm is as you start to develop into a commercial</p> <p>25 activity that is not farming, that is not merely sales</p>	<p style="text-align: right;">Page 56</p> <p>1 opposed to coming in to support the agriculture.</p> <p>2 Q. How do you know that? Do you have a study, did you do</p> <p>3 a study that says if a winery offers sandwiches,</p> <p>4 people are going to come to the winery just for</p> <p>5 sandwiches?</p> <p>6 MS. ANDREWS: Objection, form.</p> <p>7 BY MR. INFANTE:</p> <p>8 Q. Did you do a study?</p> <p>9 A. I've not done a study, but it is clearly logical that</p> <p>10 once you can do more than come taste wine, once it</p> <p>11 becomes a takeout center, you're going to be bringing</p> <p>12 in more business. That's the reason they want to do</p> <p>13 it, is to bring in more business.</p> <p>14 Q. But you don't have a study that says that, right?</p> <p>15 A. No, I do not.</p> <p>16 Q. This is your opinion.</p> <p>17 MS. ANDREWS: Objection, form.</p> <p>18 A. I think it's a very carefully-measured, thought-out,</p> <p>19 observational conclusion.</p> <p>20 BY MR. INFANTE:</p> <p>21 Q. But there's no study, you know, no researcher has said</p> <p>22 this? You haven't hired any consulting company that</p> <p>23 said this?</p> <p>24 A. I have not. I don't know if any researcher has said</p> <p>25 that.</p>
<p style="text-align: right;">Page 55</p> <p>1 of your produce, then you're starting to deteriorate</p> <p>2 the integrity of the ordinance and you're starting to</p> <p>3 move toward de facto rezoning as commercialization.</p> <p>4 Q. But what's the harm if I walk into a winery, have a</p> <p>5 tasting and get a sandwich to go? What's the harm to</p> <p>6 the government?</p> <p>7 A. The harm to the government is the government is not</p> <p>8 enforcing its obligation to the residents to protect</p> <p>9 them from deterioration of the zoning.</p> <p>10 Q. Okay. But is that the only harm for me taking a</p> <p>11 sandwich away, is a deterioration of the zoning?</p> <p>12 A. You have to also look at -- we have set ourselves on</p> <p>13 to a path of bringing more people in for the purpose</p> <p>14 of directly supporting the promotion and sales of our</p> <p>15 products.</p> <p>16 And so as you start to sell other things</p> <p>17 that do not have to do with the direct production of</p> <p>18 your products, then you now are bringing more traffic</p> <p>19 and more use without getting the balance of directly</p> <p>20 supporting the growth, promotion and sales of the</p> <p>21 products of our agricultural lands.</p> <p>22 Q. So if I take a sandwich to go, I'm destroying the</p> <p>23 agricultural economy of Peninsula Township?</p> <p>24 A. If you open up to doing that as a regular part of</p> <p>25 business, you will bring more people in for that as</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. You just think it to be true?</p> <p>2 MS. ANDREWS: Objection, form.</p> <p>3 A. As I said, very carefully observed, carefully thought</p> <p>4 out, many years of experience, that is my opinion</p> <p>5 based upon that, not just I thought it up, but I have</p> <p>6 thought through it carefully.</p> <p>7 BY MR. INFANTE:</p> <p>8 Q. How many days a week are you sitting outside of the</p> <p>9 wineries counting the people who come in for wine or</p> <p>10 come in for food?</p> <p>11 A. I'm not.</p> <p>12 MS. ANDREWS: Objection, form.</p> <p>13 A. I'm not.</p> <p>14 BY MR. INFANTE:</p> <p>15 Q. You don't do that, right?</p> <p>16 A. I have good knowledge of the number of visitors they</p> <p>17 have.</p> <p>18 Q. How do you know that?</p> <p>19 A. People who work at the wineries have told me the</p> <p>20 number they serve on a given day.</p> <p>21 Q. And how many is that?</p> <p>22 A. Over 2,000.</p> <p>23 Q. Okay. So is your point that you don't want the</p> <p>24 wineries to be successful?</p> <p>25 A. No, that is not my point at all. I have worked quite</p>

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<p style="text-align: right;">Page 58</p> <p>1 hard over the years to make sure they had</p> <p>2 opportunities. I'm the person who worked from 2017</p> <p>3 through 2019 to expand their production facilities.</p> <p>4 I'm the person who dedicated over a year to</p> <p>5 working with them because they had nothing, they had</p> <p>6 nothing in 2000. I worked very hard to make sure they</p> <p>7 got this ordinance that they participated in, that</p> <p>8 they agreed upon.</p> <p>9 So I want them to succeed as agricultural</p> <p>10 operations serving food for tasting. I do not believe</p> <p>11 it is necessary or appropriate for the community for</p> <p>12 them to be event centers, restaurants, and general</p> <p>13 retail outlets.</p> <p>14 Q. You just -- okay, you want them to succeed, but you</p> <p>15 don't want them to have guests, is that right?</p> <p>16 MS. ANDREWS: Objection, form.</p> <p>17 A. No, they have to bring people out.</p> <p>18 BY MR. INFANTE:</p> <p>19 Q. You want them to have a certain number of guests?</p> <p>20 MS. ANDREWS: Objection, form.</p> <p>21 A. No, I have no specific number. I want us to have an</p> <p>22 ordinance that puts good guardrails up that would lead</p> <p>23 to reasonable outcomes without taking down the</p> <p>24 guardrails that the wineries have agreed, the</p> <p>25 guardrails that we carefully put in place.</p>	<p style="text-align: right;">Page 60</p> <p>1 reasonable. We have to be reasonable, accept that,</p> <p>2 and keep it within the guardrails we have set up and</p> <p>3 accept what happens.</p> <p>4 But to take down the guardrails is not</p> <p>5 reasonable for the community. The community has an</p> <p>6 agreement with the wineries. They agreed to work</p> <p>7 under these rules, and they need to be maintained.</p> <p>8 Q. Let me ask you a question. Okay, 3,000 people go into</p> <p>9 a winery to taste wine. Okay?</p> <p>10 A. Yup.</p> <p>11 Q. Okay. 2,000 people go into a winery to taste wine and</p> <p>12 1,000 people go into a winery to have food. Not okay?</p> <p>13 A. You are putting together numbers that sound like</p> <p>14 you're trying to parse out how many are doing what. I</p> <p>15 don't care what the numbers are. We have accepted</p> <p>16 that if they are coming out for the specific purpose</p> <p>17 of what we have laid out in our ordinances and what is</p> <p>18 clearly directly supportive of the production and sale</p> <p>19 of the lands, the fruit of the lands, then we will</p> <p>20 accept whatever that number is.</p> <p>21 But to change the use to uses that are not</p> <p>22 originally intended to uses that are, in effect,</p> <p>23 commercial restaurants, that is not a direct use of</p> <p>24 their product, and, therefore, if those numbers are</p> <p>25 higher, it's not good. It's a harm. The numbers will</p>
<p style="text-align: right;">Page 59</p> <p>1 I do not have a number in mind. I am aware</p> <p>2 of why we have what we have and how it has allowed</p> <p>3 them to succeed.</p> <p>4 BY MR. INFANTE:</p> <p>5 Q. You just told me that you don't want increased</p> <p>6 guests --</p> <p>7 A. If it does not --</p> <p>8 Q. -- at the wineries.</p> <p>9 A. -- if it does not support directly the agricultural</p> <p>10 product being promoted and sold, then I think it's</p> <p>11 unreasonable for the community, given the nuisance and</p> <p>12 stress it would cause, it is unreasonable for the</p> <p>13 community to take it beyond things that promote and</p> <p>14 allow the sale of what they produce.</p> <p>15 Q. What is the nuisance and stress you're talking about?</p> <p>16 A. The traffic, the noise.</p> <p>17 Q. Well, let's take those apart. Traffic, do you have a</p> <p>18 traffic study?</p> <p>19 A. Not personally, no, I do not. However, personally, at</p> <p>20 this point, living 15 miles out of the peninsula, I</p> <p>21 can sit for ten minutes before I get out of my</p> <p>22 driveway. I've observed over decades the increase.</p> <p>23 And I'm fine with the increase that we need</p> <p>24 and that we are going to experience for the purposes</p> <p>25 of tasting rooms that sell their products. That's</p>	<p style="text-align: right;">Page 61</p> <p>1 dictate what they are by the uses allowed.</p> <p>2 Q. But you don't care about the number of people going</p> <p>3 into a winery and the number of cars driving to a</p> <p>4 winery so long as they're only going there to taste</p> <p>5 wine?</p> <p>6 MS. ANDREWS: Objection, form.</p> <p>7 BY MR. INFANTE:</p> <p>8 Q. Is that your answer?</p> <p>9 A. I would have to say that the increased traffic is not</p> <p>10 a pleasant thing, it's not great. If it's going to be</p> <p>11 there, it needs to serve the purpose of the Township,</p> <p>12 which is to continue agricultural use of the land. It</p> <p>13 has to serve that directly, and then it's okay.</p> <p>14 Q. So as long as it's -- so the number of cars, as long</p> <p>15 as it serves ag, is okay?</p> <p>16 A. As long as it serves the purpose of the community and</p> <p>17 the Township, which is the continuance of active</p> <p>18 agriculture, the continuance of keeping the land in</p> <p>19 active agriculture. If it serves those purposes, then</p> <p>20 it is okay.</p> <p>21 Q. Okay. I just want to confirm, you've never done a</p> <p>22 traffic study, right?</p> <p>23 A. No, I have not done a traffic study. I, however,</p> <p>24 lived in the township and observed the traffic and</p> <p>25 observed the changes that particularly have grown with</p>

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<p style="text-align: right;">Page 62</p> <p>1 the increase of wineries. I think there is a</p> <p>2 relationship there. But, no, I have not done a</p> <p>3 traffic study.</p> <p>4 Q. Wait a minute, you just said that the increased</p> <p>5 traffic is because of --</p> <p>6 A. I did not say it's because of, but I have observed</p> <p>7 that it has been -- at the same time as the wineries</p> <p>8 have increased, the traffic has increased.</p> <p>9 Q. Okay, but you --</p> <p>10 A. I can't tell you it's cause-and-effect, but</p> <p>11 observationally it seems to be related. Is it a</p> <p>12 correlation or cause-and-effect? I cannot say that,</p> <p>13 but I can tell you that there is a correlation.</p> <p>14 Q. But there also in the last two decades has been an</p> <p>15 explosion of population in Peninsula Township --</p> <p>16 MS. ANDREWS: Objection, form.</p> <p>17 BY MR. INFANTE:</p> <p>18 Q. -- right?</p> <p>19 A. The township -- I would not call it an explosion. The</p> <p>20 residents have increased, primarily in the south end.</p> <p>21 It doesn't bring traffic to the north end.</p> <p>22 Q. But the population has increased by 2,000 people in</p> <p>23 the last two decades?</p> <p>24 MS. ANDREWS: Objection, form.</p> <p>25 A. Again --</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. And there's a light at the end of that road, right?</p> <p>3 There's a traffic light?</p> <p>4 A. Yes, there is.</p> <p>5 Q. Okay. There's actually a couple of traffic lights</p> <p>6 down at the end of the peninsula, right?</p> <p>7 A. Yes, there are.</p> <p>8 Q. Do you know, has the Township put in any stop signs,</p> <p>9 any passing lanes, expanded, you know, widened the</p> <p>10 road to deal with traffic?</p> <p>11 MS. ANDREWS: Objection, form.</p> <p>12 A. The road is actually a state road, and, therefore, I</p> <p>13 don't think the Township has the opportunity to do</p> <p>14 anything with it. But there have been some turning</p> <p>15 flares added, and that light at the base of the</p> <p>16 peninsula was only added somewhere in the last ten</p> <p>17 years. It's relatively new. So some things have been</p> <p>18 done.</p> <p>19 BY MR. INFANTE:</p> <p>20 Q. To help the traffic, right?</p> <p>21 A. Of course.</p> <p>22 Q. All right. One more question -- we'll cover one more</p> <p>23 topic, how about that? It will just take a minute.</p> <p>24 Let's look at 19(b)(v).</p> <p>25 A. 19(b)(1)(v)?</p>
<p style="text-align: right;">Page 63</p> <p>1 BY MR. INFANTE:</p> <p>2 Q. Well, here's --</p> <p>3 A. -- I don't know exactly, but I can tell you this.</p> <p>4 Primarily the growth has been in the south end, and</p> <p>5 that's not going to be bringing the traffic out into</p> <p>6 the farms, and that's your primary difference.</p> <p>7 Q. Where is the traffic issue, is it at the south end or</p> <p>8 is it at your farm?</p> <p>9 MS. ANDREWS: Objection to form.</p> <p>10 A. There are traffic issues all over.</p> <p>11 BY MR. INFANTE:</p> <p>12 Q. Where's the major problem with traffic?</p> <p>13 MS. ANDREWS: Objection, form.</p> <p>14 A. So there are different levels of issues of traffic.</p> <p>15 There is the safety and nuisance and danger level when</p> <p>16 you have one small road at the end of the peninsula of</p> <p>17 the ability for individuals or emergency services to</p> <p>18 get in and out, so that's a particular traffic issue.</p> <p>19 The added traffic of extensive use</p> <p>20 throughout the township is not necessarily that kind</p> <p>21 of problem. The traffic in and of itself is a</p> <p>22 nuisance, but it's not of the level of danger you have</p> <p>23 when it all funnels down through that one road at the</p> <p>24 end of the peninsula.</p> <p>25</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. (B)(1)(v), yeah. Sorry, this is a very hard ordinance</p> <p>2 to track. Where it says "logo merchandise may be sold</p> <p>3 provided," do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Follow along: Logo merchandise may be sold</p> <p>6 provided: The logo merchandise is directly related to</p> <p>7 the consumption and use of the fresh and/or processed</p> <p>8 agricultural produce sold at retail.</p> <p>9 What does that mean?</p> <p>10 A. That, along with the second bullet, permanently</p> <p>11 affixed, prominently displayed, that means that your</p> <p>12 retail that is going on there is clearly directly</p> <p>13 related to the purpose of that farm to promote itself</p> <p>14 and to support the use in their wines.</p> <p>15 Q. But if you look at 4, it says: Specifically not</p> <p>16 allowed are unrelated ancillary merchandise such as</p> <p>17 clothing, coffee cups, bumper stickers.</p> <p>18 A. Correct.</p> <p>19 Q. So in your interpretation, would a farm processing</p> <p>20 facility be precluded from selling a T-shirt with its</p> <p>21 logo on it?</p> <p>22 A. As currently worded, I think yes.</p> <p>23 Q. Okay. What governmental interest does precluding a</p> <p>24 winery from using its trademark serve?</p> <p>25 MS. ANDREWS: Objection, form.</p>

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<p style="text-align: right;">Page 66</p> <p>1 A. This goes back to the same discussion we've had about</p> <p>2 retail and commercial use. Do you want me to go</p> <p>3 through it all again, or can you take from the last</p> <p>4 four or five topics that were directly related to</p> <p>5 this?</p> <p>6 BY MR. INFANTE:</p> <p>7 Q. Give it to me again.</p> <p>8 A. Okay. So we have a township that has always avoided</p> <p>9 adding commercial zoning, and once you break away from</p> <p>10 things that are directly related to the use of the</p> <p>11 product, you are not only violating the ordinance, but</p> <p>12 you are opening the door to gradually eroding that, to</p> <p>13 the point that perhaps someone could have, in effect,</p> <p>14 have changed their zoning and could perhaps legally</p> <p>15 sue for that.</p> <p>16 But when it's clearly defined by this kind</p> <p>17 of wording that ties it directly to the produce of the</p> <p>18 premises and uses that have to do with consuming that</p> <p>19 produce, you're tying it with great guardrails that</p> <p>20 anyone can understand. There's a logic. They're</p> <p>21 reasonable.</p> <p>22 That's why the farm community that</p> <p>23 participated, the grape growers that participated</p> <p>24 agreed to this, because it was a reasonable guardrail</p> <p>25 that allowed them to have ancillary sales that</p>	<p style="text-align: right;">Page 68</p> <p>1 winery-chateaus do. I believe it is an oversight, and</p> <p>2 it comes from the fact that when the winery-chateau</p> <p>3 was developed, everyone wanted, similar to the</p> <p>4 appellation, everyone wanted to use appellation.</p> <p>5 There's no thought that someone wouldn't</p> <p>6 want to, until the late nineties when the new</p> <p>7 proposals were brought in to say, "No, we want to be</p> <p>8 on five acres, and we don't want to have to bring any</p> <p>9 kind of grape in."</p> <p>10 Q. Let me --</p> <p>11 A. Therefore, therefore, that's why when this was</p> <p>12 developed, it was clear that it was a problem, and it</p> <p>13 was structured so that would not happen. This is a</p> <p>14 newer ordinance with a better structure and a better</p> <p>15 purpose.</p> <p>16 Q. Okay. But my question is, what is the harm caused by</p> <p>17 a farm processing winery that's not caused by a</p> <p>18 chateau winery selling a logoed T-shirt?</p> <p>19 MS. ANDREWS: Objection, form, asked and</p> <p>20 answered.</p> <p>21 A. I will expand upon my first response, which was to</p> <p>22 some degree, there's a danger that is also a harm.</p> <p>23 However --</p> <p>24 BY MR. INFANTE:</p> <p>25 Q. That's not my question.</p>
<p style="text-align: right;">Page 67</p> <p>1 directly had to do with what they were selling and</p> <p>2 allowed them some degree of promotional activity.</p> <p>3 Q. What's the harm in a farm processing winery selling a</p> <p>4 T-shirt?</p> <p>5 A. Again, you are moving into something that is not</p> <p>6 directly related to the use of the land, to the</p> <p>7 product of the land, and, therefore, you are, in</p> <p>8 effect, moving to another type of commercial retail</p> <p>9 outlet, which the Township has carefully not allowed</p> <p>10 by not increasing the amount of commercial zoning we</p> <p>11 have.</p> <p>12 That answer -- question has been faced many</p> <p>13 times over the decades. The answer has always been,</p> <p>14 no, we don't want to start being more commercial. We</p> <p>15 want to limit that to the areas that are already zoned</p> <p>16 commercially. The rest of the area will be for direct</p> <p>17 agricultural use.</p> <p>18 Q. All right. Well, how about this. You're aware that a</p> <p>19 winery-chateau can sell a T-shirt with its logo on it,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. So my question is, what harm do farm processing</p> <p>23 wineries cause by selling a logoed T-shirt that</p> <p>24 winery-chateaus don't?</p> <p>25 A. I believe that it's already a harm when the</p>	<p style="text-align: right;">Page 69</p> <p>1 A. -- however, without being able to do a takings, that</p> <p>2 right was there. And the other thing to keep in mind</p> <p>3 is, you're on a much larger parcel. And so the</p> <p>4 likelihood of bringing more traffic in and more people</p> <p>5 in on a smaller parcel makes it more of an issue.</p> <p>6 Q. Because people are coming in to buy T-shirts?</p> <p>7 A. Again, it's once you start to break out of that</p> <p>8 restriction of it not being commercial, it's the</p> <p>9 camel's nose under the tent. It's the start of the</p> <p>10 difference.</p> <p>11 Q. Okay. Have you done a study or are you aware of</p> <p>12 Peninsula Township doing a study of the number of</p> <p>13 people who go to a Peninsula Township winery to just</p> <p>14 buy merchandise and not taste or buy wine?</p> <p>15 A. No, it has not, and this brings to mind another</p> <p>16 feature that -- no, I think I'll leave it at that.</p> <p>17 Q. But you're not aware of any study, correct?</p> <p>18 A. That's correct.</p> <p>19 MR. INFANTE: All right, let's stop there.</p> <p>20 We'll continue at eight a.m. tomorrow.</p> <p>21 (The deposition was concluded at 6:03 p.m.</p> <p>22 Signature of the witness was not requested by</p> <p>23 counsel for the respective parties hereto.)</p> <p>24</p> <p>25</p>



SUN, FEB 12, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



SAT, FEB 11, 2017

Valentine's Wine Dinner

Bowers Harbor Vineyards - Boathouse Traverse City



FRI, FEB 10, 2017

A Taste of Chocolate & Wine

Bowers Harbor Vineyards - Bowers Harbor Vineyards



SUN, FEB 5, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



SAT, FEB 4, 2017

Michigan Wild Game Dinner

Bowers Harbor Vineyards - Boathouse Traverse City



SUN, JAN 29, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



SAT, JAN 28, 2017

SOLD OUT- 2017 Wine Not?

Bowers Harbor Vineyards - Radisson Plaza Hotel at Kalamazoo Center (100 West Michigan Avenue, Kalamazoo, MI)



SAT, JAN 28, 2017

TART Trail Fundraiser at Bowers Harbor Vineyards

Bowers Harbor Vineyards - Bowers Harbor Vineyards



SAT, JAN 28, 2017

Wine and the Winter Landscape: A Collaborative Event

Bowers Harbor Vineyards - Bowers Harbor Vineyards



SUN, JAN 22, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



FRI, JAN 20, 2017

Lavendar Chill Yoga/Live Music/Wine Tasting

Bowers Harbor Vineyards - Yen Yoga & Fitness



FRI, JAN 20, 2017

VIP Wine & Spa Weekend with Grand Traverse Resort & Spa

Bowers Harbor Vineyards - Grand Traverse Resort and Spa



SUN, JAN 15, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



SAT, JAN 14, 2017

WOMP Winter Warm Up

Bowers Harbor Vineyards - Bowers Harbor Vineyards



Bowers Harbor...

Shop on Website

Like

Message



SUN, JAN 8, 2017

Snowshoe Wine & Brew

Bowers Harbor Vineyards - Jolly Pumpkin - Old Mission Peninsula (Traverse City)



SAT, DEC 31, 2016

New Years Eve Dinner at Mission Table

Bowers Harbor Vineyards - Mission Table



THU, DEC 1, 2016

Holiday Wine Tasting At The Boathouse

Bowers Harbor Vineyards

See more

WOMP0010692