

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

ORAL ARGUMENT REQUESTED

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFFS' COMBINED RESPONSE IN OPPOSITION TO PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(b)(1) AND 12 (h)(3) FOR LACK OF SUBJECT MATTER JURISDICTION
(ECF NO. 458, 459, 462, AND 463.)**

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I. INTRODUCTION

Peninsula Township filed two motions for summary judgment on the Wineries' constitutional claims. ECF Nos. 458 and 459 relate to the Farm Processing Facilities, while ECF Nos. 462 and 463 address the Winery Chateaus and Remote Winery Tasting Room. Both motions argue mootness and ripeness. The Wineries answer both in this consolidated response.

II. FACTUAL BACKGROUND

A. The Winery Ordinances regulate each Winery.

On June 5, 1972, Peninsula Township adopted its Zoning Ordinance. (Peninsula Township's Answer to First Amended Complaint, ECF No. 35, PageID.1888, ¶ 42.) The Zoning Ordinance has been amended over time to add various provisions related to wineries. (*Id.* ¶ 43.) Three specific provisions related to the licenses are at issue here: Section 6.2.7(19) Use by Right – Farm Processing Facility; Section 8.7.3(10) Winery-Chateau; and Section 8.7.3(12) Remote Winery Tasting Room. Collectively, the Wineries refer to these as the “Winery Ordinances.” The Wineries, Peninsula Township, and this Court all agree that one of the three sections of the Winery Ordinances applies to each of the Wineries and regulate their operations.

1. Villa Mari

The Township agrees that the Chateau Ordinance applies to Villa Mari. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

2. Brys Winery

The Township agrees that the Chateau Ordinance applies to Brys. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

3. Black Star Farms

The Township agrees that the Farm Processing Ordinance applies to Black Star. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 4.)

4. Chateau Operations

The Township agrees that the Chateau Ordinance applies to Chateau Operations. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

5. Chateau Grand Traverse

The Township agrees that the Chateau Ordinance applies to Chateau Grand Traverse. (ECF No. 142, PageID.4974-4975; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

6. Bowers Harbor

The Township agrees that the Chateau Ordinance applies to Bowers Harbor. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

7. Montague Development

The Township agrees that the Chateau Ordinance applies to Montague Development. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

8. Peninsula Cellars

The Township agrees that the Remote Winery Tasting Room Ordinance applies to Peninsula Cellars. (ECF No. 142, PageID.4975; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 6.)

9. 2 Lads

The Township agrees that the Farm Processing Ordinance applies to 2 Lads. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 4.)

10. Bonobo

The Township agrees that the Chateau Ordinance applies to Bonobo. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, fn. 5.)

The Township alleges that Bonobo was never approved for guest activities, but that is not true. In reality, the only condition placed upon Bonobo by its SUP before it could have guest activities was that it needed to “submit annual grape production and purchase numbers to the Township staff for review.” (ECF No. 32-6, PageID.1770.) Bonobo did this. For example, on April 3, 2019, the Township sent Bonobo an email reminding it that Bonobo needed to submit its tonnage report “to qualify Bonobo for ‘Guest Activities’ under the Zoning Ordinance.” (Exhibit 1.) That same email warned Bonobo that if it went forward with an advertised event, “the penalties include issuance of a Civil Infraction Citation, plus the Township Board may hold a hearing that could result in the closure of all Guest Activities.”¹ (*Id.*) The next day, Bonobo provided the requested information. (Exhibit 2: April 4, 2019, email.) In a June 6, 2019, internal email, the Township concluded that Bonobo’s tonnage report “would qualify Bonobo for 61 attendees at a Guest Activity.” (Exhibit 3.) The next day, the Township emailed Bonobo and advised that “the Zoning Administrator has approved the Guest Activity uses detailed in your email...” (Exhibit 4: June 7, 2019 email; *see also* Exhibit 5: June 18, 2019, email: “[Bonobo] qualified for Guest

¹ As discussed below, Bonobo canceled its event.

Activities (I wrote a letter to him) and this pairing activity is allowed.”)

11. Tabone Vineyards

The Township previously agreed that the Farm Processing Ordinance applies to Tabone. (ECF No. 142, PageID.4974; ECF No. 143, PageID.5351.) This Court has also made this same determination. (ECF No. 162, PageID.5984, n.4.)

Now the Township has changed its tune and suggests that Tabone may not be properly permitted. (ECF No. 459, PageID.16323, n.1; PageID.16330-16331.) Tabone has operated as a use-by-right farm processing facility for the better part of a decade and does not require a special use permit. Mario Tabone, testifying as Tabone’s Rule 30(b)(6) witness, explained that “we’re operating under a . . . farm processing facility.” (ECF No. 459-16, PageID.16423.) On May 23, 2016, Peninsula Township approved Tabone for an on-premises tasting room to allow Tabone to serve wine to its customers at its winery location. (Exhibit 6.) On October 13, 2016, the Township notified the Michigan Liquor Control Commission that it had approved Tabone for on-premises tasting of wine. (Exhibit 7.) The Township should not be allowed to change its position on the facts at the eleventh hour.

B. The Township enforces the Winery Ordinances.

As one of the key components of its ripeness argument, the Township contends it has never enforced the Winery Ordinances against the Wineries. In direction contradiction to the Township’s assertion, here are 25 examples of enforcement against the Wineries:²

- June 19, 2014: Township sent Bowers Harbor a violation letter regarding a planned wedding reception and weekly live music. (ECF No. 29-13, PageID.1351.)
- June 19, 2014: Township sent ordinance violation letter to 2 Lads for two planned

² Some of these were referenced in the Wineries’ First Amended Complaint. See ECF No. 29, PageID.1110,

events. (Exhibit 8.)

- May 5, 2016: Township advised Bowers Harbor it could not have outdoor food service. (ECF No. 29-13, PageID.1350.)
- July 14, 2017: Township advised Bowers Harbor it was not allowed amplified music or outdoor food service and that zoning violations had been issued. (ECF No. 29-13, PageID.1347-1349.)
- August 3, 2017: Township sent letter threatening court action for an event with more than 50 people. (Exhibit 9.)
- August 16, 2017: Township sent a violation letter to Bowers Harbor for having an event with more than 50 people. (Exhibit 10.)
- May 31, 2018: Township sent letter to Bowers Harbor stating, “be advised that your SUP does not permit any additional ‘guest activity’ and that the scheduled ‘Floral Education Series’ and ‘Yoga in the Vines’ will be subject to enforcement activity by the Township” which includes “District Court [filings] for observed Violations.” (Exhibit 11.)
 - Notably, that same email advised: “[A]s with all entities who have received a SUP in Peninsula Township, we will continue to monitor activities and events at Bowers Harbor Vineyard to ensure compliance with Special Use Permit 32, as amended in 2010. Citations for Civil Infractions will be filed with the District Court for observed Violations.” *Id.*
- June 9, 2018: Township issued a civil infraction against the former owner of Bowers Harbor for not complying with the ordinances. (Exhibit 12.)
- March 20, 2019: Township forced Brys to cancel and event for Big Brothers and Big Sisters. (Exhibit 13.)
- March 28, 2019: Township advised Mari Vineyard that it did not have approval to host an event for Big Brothers and Big Sisters and “holding the event without prior approval will be a Violation of the Zoning Ordinance and the conditions of the approved SUP for Mari. This could result in the issuance of a Citation.” (Exhibit 14 (emphasis in original).)
- April 3, 2019: Township advised Mari Vineyard that a book club event is a guest activity for which the winery must qualify by purchasing grapes. (Exhibit 15.)
- April 4, 2019: Township forced Bonobo to cancel an event marketed as “Wellness + Wine.” (ECF No. 29-13, PageID.1345-1346.) Internally, the Township discussed that “[i]f he holds this event, we should issue a Citation. He argues that

this is entertainment; is not. No relationship with agriculture.” (Exhibit 16.)

- On April 17, 2019, the Township advised Bowers Harbor that its SUP did not allow “food service.” (Exhibit 17.)
- April 18, 2019: Internal Township email: “To repeat, the illegal activities of the past cannot be allowed to continue if not allowed in a [Winery Chateau].” (Exhibit 18.)
- April 18, 2019: Internal email discussing how the Township can control Winery Chateaus even though the MLCC allows the activities the wineries were engaging in. (Exhibit 19.)
- April 19, 2019: Internal Township email stating, “I suggest we review the Winery-Chateau section of the Ordinance line-by-line, to be sure that everyone fully understands the Winery-Chateau section. This should clear-up any questions related to allowed uses, activities and reporting requirements for Guest Activities.” (Exhibit 20.)
- April 22, 2019: Township advised Chateau Chantal that painting events were not allowed because they did not relate to agriculture. (Exhibit 21.)
- April 24, 2019: Township forced Bonobo to cancel a painting event warning that if the event went forward it “will be a Violation of Bonobo’s SUP” because the event does not “have a direct relationship to agricultural production.” (Exhibit 22.)
- May 8, 2019: Township prohibited Bonobo from having an event which included Spanish lessons. (Exhibit 23.)
- June 6, 2019: Township took enforcement action against Mari Vineyard related to a cycling event and dinner. (Exhibit 24.)
- July 9, 2019: Township took enforcement action against Bonobo for an event where an artist was showing her work because “this is an advertised event that has no connection with agriculture; it is merely a way to attract customers, for the winery and the artist.” (Exhibit 25.)
- September 30, 2019: Township took enforcement action against Bowers Harbor for having more than 50 people at an event. (Exhibit 26.)
- December 7, 2020: Email between Township and its counsel regarding Bonobo serving food with counsel advising, “I would like, as a strategy, to keep silent for the next two weeks. Then we can move.” (Exhibit 27.)
- March 26, 2021: The Township attorney forced the owner of Bonobo Winery to step down as a member of the Township Planning Commission because his wineries’ “continue[d] violations create ethical issues regarding your status as a

member of the Planning Commission.” ECF No. 78-10, PageID.3299-3302.

- September 9, 2021: Township sent a letter to Peninsula Cellars threatening a civil infraction citation if it continued to have amplified music. (Exhibit 28.)
- July 12, 2022, letter from Peninsula Township to Brys prohibiting Brys from hosting a political fundraiser because guest activity ordinance limited attendance to 111 guests. (Exhibit 29.)
- Peninsula Township has maintained a four-page spreadsheet detailing alleged ordinance violations by Bowers Harbor between 2014 and 2018. (Exhibit 30.)

This is consistent with the deposition testimony of Peninsula Township’s former Zoning Administrator that the Township was enforcing all of the Winery Ordinances against the Wineries. (See ECF No. 469, PageID.16950; ECF No. 469-2, PageID.16994-17013.)

C. The Township could not or would not provide more interpretation.

The Township also takes the position that the Wineries should have sought amendments to their SUPs, sought interpretations of or a variance from the ordinances, and/or appealed a determination of the Zoning Board of Appeals. The Township’s position is nonsensical. First, the Township does not state what sort of variance the Wineries should have sought as the PTZO’s variance provision, Section 5.7.3, seems to restrict variances to “such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements.”³ The PTZO does not appear to allow the Wineries to seek a variance from requirements which are unconstitutional and/or preempted. And, at least in one instance, a Winery sought a variance and the Township refused to hear it: On June 12, 2018, after Black Star sought variance under the Farm Processing Ordinance, the Township refused to

³ The Farm Processing section of the PTZO appears to limit variances to setbacks. See 6.7.2(19)(b)(7).

allow the variance request to go before the ZBA and, instead, Black Star was told to seek a zoning amendment. (Exhibit 31.)

As for seeking appeals or interpretations from the ZBA, the Township had previously sought its own interpretations but then ignored them. In 2016, then-counsel for the Township was asked by the ZBA to interpret the meaning of the term “guest activity” in the Winery Ordinance. (Exhibit 32.) The attorney first advised the ZBA that the term is “rather confusing . . . related to what constitutes and does not constitute a guest activity use.” (*Id.*) He continued, “it is clear that a winery without a guest activity permit would appear to be allowed to provide wine tasting and to have events such as political activities, winery tours and free entertainment so long as it is limited to the tasting room and no money is received for these events.” (*Id.*) But, the added the caveat that it was unclear what the ordinance meant by no money. (*Id.*) He continued, “sales of wine by the glass in the tasting room is allowed along with sales of food for on-premises consumption.” (*Id.*) Further, “[i]t would appear under the language of the ordinance that if no fee is charged, promoted activities which are not limited but are provided by example under section 8.7.3(10)(u)1.(d) are allowed.” (*Id.*) He concluded by suggesting that the ZBA create a list of “what constitutes a guest activity use and what constitutes an accessory use otherwise allowed by a winery-chateau.” (*Id.*) On August 2, 2017, the Township Zoning Administrator asked the Township’s counsel to “define what an ‘Event’ is.”

Finally, the Township’s insinuation that the Wineries filed this lawsuit without first attempting to gain resolution from the Township is simply not correct. The Wineries attempted for over a year to obtain an amicable resolution with the Township to no avail. More than a year before filing this lawsuit, counsel for the Wineries sent the Township a detailed memorandum outlining the various provisions of the Winery Ordinances which were either preempted or

unconstitutional. (ECF No. 29-15.) Counsel for the Township responded with his own memorandum wherein he agreed that portions of the Winery Ordinances were preempted and/or unconstitutional. (ECF No. 29-16.) He later followed up on his memorandum with a letter to the Township Supervisor advising him of the same conclusions. (ECF No. 78-6, PageID.3254-3284.)

Thereafter, the Township formed a committee to review the Winery Ordinances. The committee was created after “[r]ecent conversations with several wineries led to the understanding that we would look at the winery regulations, address conflicts and work toward solutions. We all acknowledge that the existing zoning ordinance with regarding to farm processing wineries, winery-chateaus and remote tasting rooms need improvement in terms of clarity and shifts in policy.” ECF No. 78-7, PageID.3288. That committee then created a chart outlining proposed changes to the Winery Ordinances. ECF No. 78-7, PageID.3289. But, as is always the case with Peninsula Township, instead of revising the Winery Ordinances to address the unconstitutional and preempted sections as advised by its own counsel, the result of the Township’s committee was a proposed ordinance redraft which actually made the Winery Ordinances less legal and with the Wineries having less rights. ECF No. 29-17, PageID.1042-1570. On September 1, 2020, the Township published a proposed redraft of the Winery Ordinances. ECF No. 29-17, PageID.1042-1570. This redraft maintained the prior offending provisions but then also included a revised provision which now stated that wine tastings, winery tours, political rallies and guest activities were now Guest Activities subject to control by the Township. Compare *Id.* at PageID.1491 and ECF No. 29-1, PageID.1271 (proposed provision (T)(1)(c) states “Winery guest activity uses include wine tasting and related...” whereas the original ordinance provision 8.7.3(10)(u)(1)(d) states “Guest Activity Uses do not include wine tasting and such related...”)

Despite the conclusions from Township counsel and the Township's recognition that its Winery Ordinances needed to be amended after conversations with the Wineries, the Township did not amend any of the SUP's, amend the Winery Ordinances, grant any variances, put out new interpretations or any other action other than to continue enforcing the Winery Ordinances against the Wineries. Instead, the Township attempted to revise its Winery Ordinances to take away more rights from the Wineries and exert more control over the Wineries.

III. ARGUMENT

The Township moves for summary judgment under Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3), asserting that the Wineries' claims are either unripe or moot. Motions under Rule 12(b)(1) are either facial or factual attacks. *Gentek Bldg. Prod., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). Here, the Township is making a factual attack. (ECF No. 459, PageID.16333 ("The Township's challenge to subject matter jurisdiction is factual in nature."); ECF No. 463, PageID.16511 (same).) When reviewing a factual attack, "the district court must weigh the conflicting evidence to arrive at the factual predicate that subject-matter does or does not exist." *Gentek*, 491 F.3d at 330. This evidence may include "affidavits, documents, and even a limited evidentiary hearing to resolve jurisdictional facts." *Id.*

A. The Township's finality argument is based on bad law.

The Township first argues that the Wineries' claims for takings and as-applied challenges are not ripe because the Wineries "failed to obtain a final decision from the Township regarding of the PTZO to their respective properties regarding the claims alleged in the lawsuit." (ECF No. 459, PageID.16334; ECF No. 463, PageID.16513.)

The Township's entire argument regarding finality rests upon cases that have been overruled and are no longer good law. The Township primarily relies on *Williamson County Reg. Planning Com. v. Hamilton Bank of Johnson County*, 473 U.S. 172 (1985), and cases following

that decision. But that case was based on the Supreme “Court’s since-disavowed prudential rule that certain takings actions are not ‘ripe’ for federal resolution until the plaintiff ‘seek[s] compensation through the procedures the State has provided for doing so.’” *Pakdel v. City and County of San Francisco, California*, 141 S. Ct. 2226, 2229 (2021). Upholding this rule “would conflict with [t]he general rule . . . that plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit.” *Id.* (internal quotation omitted.) Understanding this, the Township pivots to claim that when the Supreme Court rejected the *Williamson County* rule in *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), it left in place a finality requirement. (ECF No. 466, PageID.16849.) This is also incorrect.

In *Pakdel*, 141 S. Ct. at 2229-2230 the Supreme Court discussed that the lower court had erred when it held that “*Knick* left untouched *Williamson County*’s alternative holding that plaintiffs may challenge only ‘final’ government decisions” and that “petitioners’ regulatory takings claim remain[ed] unripe.” *Id.* (internal quotations omitted.) Instead, “[t]he finality requirement is relatively modest. All a plaintiff must show is that there [is] no question ... about how the regulations at issue apply to the particular land in question.” *Id.* at 2230. (internal quotation omitted.) “The rationales for the finality requirement underscore that nothing more than *de facto* finality is necessary. This requirement ensures that a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm.” *Id.* (internal quotation omitted.) “Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution.” *Id.*

An approach “that a conclusive decision is not ‘final’ unless the plaintiff also complied with administrative processes in obtaining that decision—is inconsistent with the ordinary operation of civil-rights suits. Petitioners brought their takings claim under § 1983, which

‘guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials.’” *Id.*; quoting *Knick*, 139 S.Ct., at 2167. “That guarantee includes ‘the settled rule’ that ‘exhaustion of state remedies is not a prerequisite to an action under ... § 1983.’” *Id.* “In fact, one of the reasons *Knick* gave for rejecting *Williamson County*’s state-compensation requirement is that this rule had ‘effectively established an exhaustion requirement for § 1983 takings claims.’” *Id.* A “demand that a plaintiff seek “an exemption through the prescribed [state] procedures [] plainly requires exhaustion.” *Id.* (internal citation omitted). The *Pakdel* holding is clear that “once the government has adopted its final position,” a § 1983 claim becomes ripe and “ordinary finality is sufficient.” *Id.* at 2231.

The Sixth Circuit recently issued its opinion in *Catholic Healthcare International, Inc. v. Genoa Charter Township, Michigan*, 82 F.4th 442 (2023) wherein it reversed a district court which adopted the position argued by the Township. The court noted:

“The district court’s mistake was to conflate ripeness (sometimes called “finality” in this context) and exhaustion. Specifically, the court reasoned that “only if the local regulatory process was exhausted will a court know precisely how a regulation will be applied to a particular parcel or use.” *Op.* at ——. That was the same mistake the Ninth Circuit made in *Pakdel*. Ripeness, in the land-use context, requires only a “relatively modest” showing that the “government is committed to a position” as to the strictures its zoning ordinance imposes on a plaintiff’s proposed land use. 141 S. Ct. at 2230. Ripeness does not require a showing that “the plaintiff also complied with administrative process in obtaining that decision.” *Id.* Yet that was the showing the district court demanded here.

*Id.*⁴ Here, Peninsula Township is certainly committed to the position that the Winery Ordinances apply to each Winery and that the restrictions imposed in those ordinances should be enforced against the Wineries. Peninsula Township has explicitly taken the position before this Court that

⁴ The court also noted that the government’s reliance on *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 553 (6th Cir. 2010) was misplaced as the plaintiff had not even applied for a land use permit before filing suit. *Id.* The Township similarly cited to this pre-*Knick* and pre-*Pakdel* decision.

one of the three Winery Ordinances applies to each of the Wineries and this Court made that same conclusion. (ECF No. 142, PageID.4974-75; ECF No. 143, PageID.5351; ECF No. 162, PageID.5984, n.4-6.)

Because the Township has taken the position that the Winery Ordinances apply to the Wineries' land uses, there is no other administrative process for the Wineries to go through. The Wineries are challenging the constitutionality of the Winery Ordinances, and, under Michigan law, a government agency cannot rule on constitutional claims. *Houdini Props., LLC v. Romulus*, 743 N.W.2d 198 (Mich. 2008) ("The zoning board of appeals did not have jurisdiction to decide the plaintiff's substantive due process and takings claims."). Even if the Wineries did bring their grievances to the ZBA and appealed an adverse decision to the local circuit court, that court would also be without jurisdiction to hear the constitutional issues because it sits as a court of appeals and is limited to deciding issues which the ZBA had jurisdiction. *See Jon Jon's Inc. v. City of Warren*, 534 Fed. Appx. 541, 544 (6th Cir. 2013) ("The Michigan Supreme Court held that a ZBA lacks jurisdiction to consider constitutional claims, and that because a circuit court reviewing a ZBA's decision is confined to the record and decision of the ZBA, the circuit court is similarly barred from ruling on constitutional issues presented in an appeal from a ZBA's decision.")⁵ (citing *Houdini Props.*, 743 N.W.2d at 1022-23).

Finally, the Township's reliance on *Insomnia Inc. v. City of Memphis Tennessee*, 278 Fed. App. 609 (6th Cir. 2008) is also misplaced as that case was decided before the Supreme Court issued its decisions in *Knick* and *Pakdel*. In fact, the *Insomnia* court's entire ripeness decision rested on its application of the disavowed rules set out in *Williamson County* and other cases that

⁵ In addition, because the Circuit Court did not have jurisdiction to hear any constitutional issue, "res judicata does not apply to a plaintiff's constitutional claims arising from the same facts."

were overruled by *Knick*. *Id.* at 612-616. Regardless, the application of *Insomnia* is likely limited to First Amendment retaliation cases. *See Lockridge Outdoor Advertising, LLC v. Lexington-Fayette Urban County Government*, 2022 WL 2400045, *3 (E.D. Ky. July 1, 2022.) (It is “uncertain whether the Sixth Circuit would further extend the finality requirement [as discussed in *Insomnia*] in the First Amendment context unrelated to retaliation.” *Id.*

Lamar Co., LLC v. Lexington-Fayette Urban Cty. Gov’t, 2021 WL 2697127 (E.D. Ky. June 30, 2021) is similar. There, the government argued that an ordinance challenge was not ripe because the plaintiff could have sought a text amendment. *Id.* at *5. The *Lamar* court disagreed and rejected the government’s framing of the case as a “land use dispute.” *Id.* Instead, “at its core, this lawsuit is not a regulatory takings challenge involving other, incidental constitutional claims—it is a direct challenge of the constitutionality of the ordinance under the First and Fourteenth Amendments [and the cases cited by the government] challenged the procedure or application of a law, not the law’s substance.” *Id.* (distinguishing *Insomnia*). The court continued, “Lamar has not brought these types of ‘constitutional claims arising out of land use disputes,’ so the finality requirement [from *Insomnia*] is inapplicable here.” *Id.* Thus, the court determined the claims “ripe for review” even though the plaintiff could have sought a text amendment. Here, Peninsula Township does not have a text amendment process and does not even allege what administrative process the Wineries should have gone through.

Ultimately, the Township’s “argument suggests there is an exhaustion-of-remedies requirement to § 1983 claims, which Supreme Court precedent has expressly rejected.” *Kanuszewski v. Michigan Department of Health and Human Services*, 927 F.3d 396, 409 fn. 5 (6th Cir. 2019). “The federal remedy [under § 1983] is supplementary to [any] state remed[ies], and the latter need not be first sought and refused before the federal one is invoked.” *Monroe v. Pape*,

365 U.S. 167, 183 (1961). The Township issued permits to each of the Wineries under the Winery Ordinances and has taken the definitive position that the Winery Ordinances apply to the Wineries. Under *Pakdel*, the claims are ripe and there is no further finality requirement.

B. Plaintiffs’ declaratory and injunctive relief claims are not mooted by Amendment #201.

The Township also argues that the Wineries’ claims for declaratory and injunctive relief are moot following the passage of Amendment #201. (ECF No. 459, PageID.16345-46; ECF No. 463, PageID.16525.)

Generally, when a local government is faced with an unconstitutional or preempted ordinance it moves quickly to repeal the offending provisions and put in their place ordinances which, while maintaining the allowed use, remove the unconstitutional and preempted provisions. That is not what Peninsula Township did. Instead, the Township tried to manufacture a defense by repealing the Winery Ordinances and replacing them with Amendment #201 which contains the very same unconstitutional and preempted provisions this Court already struck down once. Further, Peninsula Township argues that Amendment #201 means the Wineries are no longer allowed to engage in any activities on their licensed premises. To drive this point home, on November 14, 2023, the Township plans to enact a new ordinance which states that if there is no ordinance specifically allowing a use, that use is prohibited within Peninsula Township: “Uses not specified as being allowed by right, with conditions or by approval of a special use permit shall be considered prohibited within the subject zone district.” (Exhibit 33.)

But, unfortunately for Peninsula Township, the rights the Wineries claim in this case do not come from Peninsula Township, so it is simply irrelevant what ordinances are in place or what preclusions the Township seeks to impose in the future. The Wineries are asking this Court to declare that they may engage in certain conduct authorized under Michigan law and the United

States Constitution. *See Schwartz v. City of Flint*, 395 N.W.2d 678, 692–93 (Mich. 1986) (“After a zoning ordinance has been declared unconstitutional, in addition to that declaration, a judge may provide relief in the form of a declaration that the plaintiff’s proposed use is reasonable, assuming the plaintiff’s burden has been met, and an injunction preventing the defendant from interfering with that use.”). Peninsula Township’s restriction of those rights, whether that be by enacted ordinance, repealed ordinance, to-come ordinance, special use permit, or general practice, is unlawful. This Court should reject the Township’s mootness argument because (1) the Wineries are still requesting damages for which this Court must determine the constitutionality of the Winery Ordinances regardless of what Amendment #201 says; (2) Amendment #201 was unlawfully enacted, so the Winery Ordinances are still in effect; (3) the Winery Ordinances are still reflected in the Wineries’ SUPs; and (4) Amendment #201 was passed in bad faith to manufacture a defense to this lawsuit.

1. The Wineries’ request for damages negates any mootness argument.

While, as discussed below the Wineries claims are not moot, this Court does not even need to entertain the argument because “when a plaintiff requests damages, as opposed to only declaratory or injunctive relief, changes to or repeal of the challenged ordinance may not necessarily moot the plaintiff’s constitutional challenge to that ordinance.” *Crown Media, LLC v. Gwinnett County, Ga.*, 380 F.3d 1317, 1325 (11th Cir. 2004) (citing *Granite State Outdoor Adver., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1119 (11th Cir. 2003)). In *Granite State*, the government similarly argued that a case was moot because it has revised the offending law, but the court disagreed: “Because Granite State has requested damages, however, the changes made to the ordinance do not make this case moot.” *Id.* (citing *Firefighter’s Local Union No. 1784 v. Stotts*, 467 U.S. 561, 571 (1984); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 (1982); *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)). This was because the court “must

rule on the constitutionality of the provision under which Granite State may be entitled to damages.” *Id.*

Here, the Wineries have requested damages from the years of enforcement of the Winery Ordinances. This Court has already declared the Winery Ordinances unconstitutional for two reasons with the issue of the Wineries’ damages left for trial. Because the Wineries seek damages, this Court will still need to rule on the remaining constitutional and preemption claims brought by the Wineries before it can determine the extent of their damages.

2. Amendment #201 was unlawfully enacted.

Amendment #201 is unlawful because it was not passed in compliance with the MZEA. When a township passes a zoning ordinance or amendment that does not “fully comply with the mandatory proceedings” set forth in its zoning authorization statute, that zoning ordinance is “void.” *Krajenke Buick Sales v. Kopkowski*, 33 N.W.2d 781, 783 (Mich. 1948). *See also Save Our Downtown v. City of Traverse City*, 2022 WL 7724317, at *6 (Mich. Ct. App. Oct. 13, 2022) (“An initiative that purports to enact or amend a zoning ordinance is invalid unless it complied with the procedural requirements found in the Michigan zoning enabling act.”), *appeal denied*, 993 N.W.2d 829 (Mich. 2023); *Little Mack Entertainment II, Inc. v. Marengo Tp.*, 2006 WL 1914105, *3 (W.D. Mich. July 11, 2006) (new ordinance did not render case moot when “M II asserts that the original ordinance is still in play because the amendment was not properly adopted. This is an issue properly before the Court. If LM II is correct, the original ordinance will once again be in issue.”).

Before Peninsula Township may amend its zoning ordinance, the Planning Commission must provide written notice describing the proposed amendments and hold a public hearing. *See* MCL 125.3202(1); 125.3202(2); 125.3103(4). The hearing must happen before any action may be taken. MCL 125.3306. The notice must list the text of the ordinance to be discussed. MCL

125.3306(3). Following the hearing, the Commission must transmit a written summary of the comments to the Township Board. MCL 125.3308. The Township Board may only adopt an ordinance after receiving comments from the Planning Commission. MCL 125.3401(1).

Here, Peninsula Township failed to comply with this process in two ways. First, the Planning Commission never submitted a written summary of comments to the Township Board. Instead, a planning commissioner stated, “can we pass it the way it is now and then have Jenn [Cram, Peninsula Township Planner] make her tweaks and have that changed?” (ECF No. 473-3, PageID.18054.) The Planning Commission moved and approved “that the planning commission recommend Amendment 201 to the zoning ordinance to the township board with the recommendations seen this evening.” (*Id.*) The Planning Commission and Township Board ignored this summary requirement despite objections from two residents. (*Id.*, PageID.18032, 18054-18055.) The failure to “fully comply” with the requirement to provide written comments, as required by MCL 125.3308(1), renders the entirety of Amendment #201 void. *See Kopkowski*, 33 N.W.2d at 783.

Peninsula Township also failed to comply with the public notice provisions in MCL 125.3103(4) (requiring the public hearing notice to “Describe the nature of the request.”) and § 125.306(3) (requiring the Township to make the “proposed text” available to the public at the hearing). In its public notice, Peninsula Township provided notice of its intent to “remov[e] the winery-chateau use” and “updat[e] the farm processing facility as a use by right.” (ECF No. 473-3, PageID.18036.) Neither the public notice nor the draft ordinance re-write mentioned Remote Winery Tasting Room ordinance. (*See* ECF No. 473-2, PageID.18027; ECF No. 473-4.) There were no public comments regarding the Remote Winery Tasting Room ordinance during the public hearing. Only after the public hearing—and after the Planning Commission gave Planner Cram

unfettered authority to re-write proposed Amendment #201—did proposed changes to the Remote Winery Tasting Room section appear. (ECF No. 473-6, PageID.18109.) The public was never notified of those changes and was never given a chance to comment on them. The Planning Commission made no comments about it and did not transmit a summary of the comments received regarding that section because there were none. The Township’s failure to describe the action it intended to take renders Amendment #201 void.

3. Peninsula Township does not explain how Amendment #201 applies to each Winery, and the Wineries’ SUPs incorporate the standards from the Winery Ordinances.

Amendment #201 creates three new classifications of potential wineries with differing rights. Some may have tasting rooms indoors only; others may offer tastings outside; others may not offer tasting at all. Each classification comes with different acreage requirements. (See ECF No. 444-2.) The Township, however, does not say which Plaintiffs are in which classification. Instead, the Township has taken the position that Amendment #201 does not apply at all. (ECF No. 478, PageID.18405.)

Now the Township says the Wineries are regulated only by the SUPs. (*Id.*) Those SUPs, however, incorporate by reference the same provisions of the Winery Ordinances at issue in this lawsuit. (See, e.g., ECF No. 63-10, PageID.3003 (Mari’s SUP 126 reflecting Winery-Chateau provisions); ECF No. 63-13, PageID.3053 (Peninsula Cellars’ SUP 62 reflecting Remote Winery Tasting Room standards).) Because the Wineries’ SUPs parrot the restrictions contained within the challenged ordinances, the claims for declaratory and injunctive relief are not moot. See *Crown Media, LLC v. Gwinnett County, Ga.*, 380 F.3d 1317 (11th Cir. 2004.) In *Crown Media*, the plaintiff was issued a permit based on an ordinance. After the plaintiff challenged the constitutionality of the ordinance, the ordinance was altered “to address constitutional concerns.”

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

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

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

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

(ECF No. 473-9, PageID.18141 (emphasis added).)

4. Amendment #201 was enacted in bad faith and the Wineries have vested property interests.

Even if Amendment #201 was lawfully enacted, this Court should not apply it because it was passed in bad faith and to manufacture a defense.

The “general rule” is that “if a zoning ordinance has been amended after suit was filed, a court will give effect to the amendment” does not apply (1) if “the amendment would destroy a vested property interest acquired before its enactment;” or (2) if “the amendment was enacted in bad faith and with unjustified delay.” *Grand/Sakwa of Northfield, LLC v. Northfield Twp.*, 851 N.W.2d 574, 578 (Mich. Ct. App. 2014) (citation omitted, cleaned up)).

Here, giving effect to Amendment #201 would destroy a vested property interest of the Wineries. “Whether a person has a property interest is traditionally a question of state law.” *Tollbrook, LLC v. City of Troy*, 774 Fed. Appx. 929, 934 (6th Cir. 2019) (citing *EJS Props., LLC v. City of Toledo*, 698 F.3d 845 (6th Cir. 2012)). “Federal constitutional law, however, ‘determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause.’” *Id.* (quoting *EJS Props.*, 698 F.3d at 855-56 and *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 757 (2005)). “A property owner may have a property interest in the existing zoning classification of his or her property or in a discretionary benefit after it has been conferred.” *Id.* (citing *EJS Props.*, 698 F.3d at 856). “Similarly, a landowner may have a property interest in a previously approved building permit where the city does not retain discretion to modify its terms.” *Id.* (citing *Chandler v. Vill. of Chagrin Falls*, 296 F. App’x 463, 469 (6th Cir. 2008)); *see also Pittsfield Development, LLC v. City of Chicago*, 2017 WL 5891223, *5 (N.D. Ill. Nov. 28, 2017) (“[O]ur reviewing court’s sister circuits suggest definitively that a Fifth Amendment property interest attaches to an already-issued building permit.”). This is consistent with Michigan law, which only requires that a landowner has “done anything of substantial character toward the construction of the building” to obtain a vested interest in the prior zoning regulation. *City of Lansing v. Dawley*, 247 Mich. 394 (1929). *See also Trever v. City of Sterling Heights*, 218 N.W.2d 810, 812 (Mich. Ct. App. 1974) (in order to acquire a vested interest in a zoning classification the landowner “would have to ... undertake[] acts ... in reliance on the zoning ... of such a nature that a rezoning ... would be to his substantial detriment.”). Here, not only did the Wineries commence construction, they finished construction and have operated their businesses for years under the prior ordinance.

Other Sixth Circuit decisions acknowledge the existence of a property owner's vested property right in an existing regulation. *Braun v. Ann Arbor Charter Twp.*, 519 F.3d 564, 573 (6th Cir. 2008) (stating "[a] property owner arguably has a property right where the government rezones an existing property"), *Buckeye Cmty. Hope Found v. City of Cuyahoga Falls*, 263 F.3d 627, 642 (6th Cir. 2001) (a property interest exists where the zoning permit complied with existing zoning regulations and the site plan had already been approved). Unlike the cases cited by the Township, the Wineries "are not seeking to change a reasonable zoning restriction, instead they are challenging ... whether they themselves are allowed to enjoy the rights created by an already-existing zoning scheme." *Buckeye Cmty. Hope Found. v. City of Cuyahoga Falls*, 970 F. Supp. 1289, 1314 (N.D. Ohio 1997), reversed on other grounds *City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation*, 538 U.S. 188 (2003).

Similarly, in *Wheeler. City of Pleasant Grove*, 664 F.3d 99, 100 (5th Cir. 1981), after a building permit was issued for an apartment complex, due to public backlash, an ordinance amendment was passed which forbade new apartment complexes. The amendment was seen for what it was, "a bald attempt to revoke an already authorized building permit" which was "a regulatory undertaking [] confiscatory in nature ... a taking." *Id.* See also *Scott v. Greenville County*, 716 F.2d 1409, 1421 (4th Cir. 1983) ("Where a previously valid permit has issued and construction begun, a subsequent rezoning that effectively revokes permission to build is a confiscatory taking of the permit itself.") The *Wheeler* court further determined that the "city's purpose in enacting the measure was not rational. A developer has its right to be free of arbitrary or irrational zoning standards." *Id.* (citing *Arlington Heights v. Metropolitan Housing Development*, 429 U.S. 252, 263 (1977)). Given this, the court determined that applying the new

ordinance to the plaintiffs would be unconstitutional. *Id.* Here, any current or future application of Amendment #201 to the Wineries would similarly be unconstitutional.

The Wineries have an additional vested property interest in their permits issued by the Michigan Liquor Control Commission. A Michigan liquor license is a property right. *Bisco's, Inc. v. Michigan Liquor Control Comm'n*, 238 N.W.2d 166, 171 (Mich. 1976). This Court already determined that the Wineries possessed these permits before the Township passed Amendment #201. (ECF No. 162, PageID.5987.)

Additionally, Amendment #201 was passed in bad faith and was designed to manufacture a defense to this lawsuit. “The factual determination that must control is whether the predominant motivation for the ordinance change was improvement of the municipality's litigation position.” *Grand/Sakwa*, 851 N.W.2d at 579. There is no dispute that the predominant reason Peninsula Township passed Amendment #201 was to manufacture a defense. The Township Planner, Jenn Cram, repeatedly said as much during multiple meetings. (ECF No. 473-7, PageID.18113 (“At a closed session on November 10, the board met with legal counsel to discuss a legal opinion in order to make some changes to the zoning ordinance so that it would be more easily defensible with regard to commerce clause claims that have been raised in the WOMP lawsuit.”); ECF No. 473-5, PageID.18083 (“There are two primary goals for the proposed amendments to the zoning ordinance. The first goal is to draft an ordinance that is legally defensible based on the issues raised in the WOMP lawsuit.”).) Therefore, the bad faith exception also precludes the application of Amendment #201 because the Township’s “predominant motivation” was to manufacture a defense.

5. Amendment #201 contains the same illegal ordinance provisions.

Even if Amendment #201 did apply, the same restrictions are still at issue. Amendment #201 reinstates—or in many cases, makes more explicit—the ordinance sections that are

preempted by the Michigan Liquor Control Code and in violation of the Dormant Commerce Clause. The chart below shows how similar the new and old restrictions are:

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

	<p>hours of operation.” (ECF No. 444-2, PageID.15907.)</p> <p>§ 8.7.3(10)(b)(1)(v): “Free entertainment may be provided within a retail sales/Tasting Room indoors only.”</p> <p>§ 8.7.3(11)(b)(1)(v): “Free entertainment may be provided within a retail sales/Tasting Room indoors only.” (ECF No. 444-2, PageID.15923.)</p>
Grape Source Requirements	
<p>§ 6.7.2(19)(a): “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.”</p> <p>§ 6.7.2(19)(b)(1)(ii): “Grape wine that is processed, tasted and sold in a Farm Processing Facility under this section is limited to ‘Old Mission Peninsula’ appellation wine meaning 85% of the juice is from fruit grown on Old Mission Peninsula.”</p> <p>§ 6.7.2(19)(b)(2)(i): “Not less than 85 percent of all of the agricultural produce sold fresh or processed shall be grown on Old Mission Peninsula and a majority shall be grown on the land owned or leased for the specific farm operation by the same party owning and operating the specific Farm Processing Facility.”</p>	<p>§ 6.7.2(19)(a) / § 8.7.3(10)(a) / § 8.7.3(11)(a): “At least sixty-five percent (65%) of the Raw Produce sold fresh or processed shall be grown on land that is exclusively operated and controlled by the specific Farm operation that operates and controls the accessory [Wholesale Farm Processing Facility / Retail Farm Processing Facility].” (<i>Id.</i>, PageID.15909, 15916, 15922.)</p> <p>§ 6.7.2(19)(b)(1)(ii) / § 8.7.3(10)(b)(1)(ii) / § 8.7.3(11)(b)(1)(ii): “At least 50% of the ingredients as measured by weight of any processed products sold at the [Wholesale Farm Processing Facility / Retail Farm Processing Facility] shall be derived from Raw Produce grown on land that is exclusively operated and controlled by the specific Farm Operation that operates and controls the [Wholesale Farm Processing Facility / Retail Farm Processing Facility].” (<i>Id.</i>, PageID.15910, 15917, 15923.)</p> <p>§ 6.7.2(19)(b)(2)(ii) / § 8.7.3(10)(b)(2)(ii) / § 8.7.3(11)(b)(2)(ii): “Not less than sixty-five percent (65%) of the Raw Produce sold fresh or processed by the [Wholesale Farm Processing Facility / Retail Farm Processing Facility] shall be grown on land that is controlled and operated by the specific Farm Operation that operates the accessory</p>

<p>§ 6.7.2(19)(b)(2)(v): “Dried fruit, a minimum of 85% by weight which is grown on Old Mission Peninsula and a minimum of 50% by weight which is grown on the farm, may be dried off premises and sold in the Farm Processing Facility retail room, provided no more than the amount of fruit sent out for this processing is returned for retail sale.”</p>	<p>[Wholesale Farm Processing Facility / Retail Farm Processing Facility].” <i>(Id., PageID.15910, 15918, 15924.)</i></p> <p>§ 6.7.2(19)(b)(15)(i) / 8.7.3(10)(b)(16)(i) / § 8.7.3(11)(b)(17)(i): “The Farm Operation operating the [Wholesale Farm Processing Facility / Retail Farm Processing Facility] shall annually by April 15 of each year provide data and records from the previous calendar year to the Director of Planning demonstrating that (a) a minimum of sixty-five (65%) of the Raw Produce processed as measured by weight is grown on land exclusively controlled and operated by the Farm Operation, (b) a minimum of fifty percent (50%) of the ingredients as measured by weight of any processed products sold was derived from Raw Produce grown on land that is exclusively operated and controlled by that Farm Operation and (c) all land within the Township controlled and operated by the Farm Operation meets the dedicated acreage requirements.” <i>((Id., PageID.15913, 15920, 15927.)</i></p>
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“It is well settled that a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *Aladdin’s Castle*, 455 U.S. at 289. “Mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave the defendant free to return to his old ways.” *Id.* at 289 n.10 (cleaned up).

The party asserting mootness bears a “heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to stand up again.” *U.S. v. Dairy Farmers of America, Inc.*, 426 F.3d 850, 857 (6th Cir. 2005) (citation and quotation marks omitted); *Desert Outdoor Advertising v. City of Oakland*, 2005 WL 147582, *2 (N.D. Cal. Jan 20, 2005) (“party moving for dismissal on mootness grounds bears a heavy burden ‘of showing that it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur.’”) (quoting *Jacobus*

v. State of Alaska, 338 F.3d 1095, 1103 (9th Cir. 2003)). The reasoning behind this “heavy burden” is simple: courts want to “protect a party from an opponent who seeks to defeat judicial review by temporarily altering its behavior.” *U.S. v. City of Detroit*, 401 F.3d 448, 451 n.1 (6th Cir. 2005) (citing *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001)). Otherwise, “the courts would be compelled to leave ‘[t]he defendant ... free to return to his old ways.’” *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *Aladdin’s Castle*, 455 U.S. at 289 n.10).

In *Desert Outdoor*, the court refused to find a constitutional challenge to sign ordinance mooted when the offending ordinance was repealed and replaced by a different ordinance. Similar to this case, “authorities met after oral argument on the cross-motions for summary judgment and expressly sought to correct potential constitutional infirmities in the statutory scheme.” *Id.* The court found the city had not met its heavy burden that the restrictions would not be put back in place and also was guided by the fact that “the case has not gone through many years of protracted litigation through the appeals process only to potentially be dismissed based on voluntary cessation.” *Id.*

In *Aladdin’s Castle*, the Supreme Court refused to dismiss an appeal as moot where a city revised a challenged ordinance but was reasonably expected to reenact offending provisions because it had announced its intention to do so. 455 U.S. 283, 289 & n.11. In *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville*, the Court similarly refused to dismiss an appeal as moot after a city had entirely repealed and replaced a challenged ordinance because the replacement ordinance disadvantaged plaintiffs only “to a lesser degree” than the original one. 508 U.S. 656, 662–63 (1993). The *Jacksonville* court pointed out

that “[t]here is no mere risk that Jacksonville will repeat its allegedly wrongful conduct; it has already done so.” *Id.* at 662.

Here, the Township Planner said that the “zoning ordinance is intended to be a living document” that can be “changed.” (ECF No. 473-7, PageID.18114.) The Township is signaling that it will pass an additional ordinance on these activities (hours, restaurants, music, catering, etc.). (*See id.*)

Additionally, currently pending before the Township Board is a draft zoning amendment which would prohibit any use in Peninsula Township unless that use is explicitly authorized by the PTZO. (Exhibit 33.) It has long been the position of the Township and PTP that any use the Wineries wish to make of their property needs to be specifically authorized by the PTZO and if the PTZO does not specifically state that the Wineries can engage in a specific activity, then that activity is prohibited. (*See* ECF No. 304, PageID.10849-50, ECF No. 457, PageID.16071.) Peninsula Township now sees fit to codify this position in its ordinances. Of course, this will only have the effect of triggering additional litigation regarding whether the ordinance amendment restricts principle uses, accessory uses and/or support uses. As drafted, the ordinance amendment is woefully vague.

Thus, the declaratory and injunctive relief claims are not moot given that the Township has reinstated the prior unconstitutional restrictions.

IV. CONCLUSION

The Wineries request that this Court deny Peninsula Township’s motions in ECF Nos. 458, 459, 462, and 463.

Respectfully submitted,

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

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: November 3, 2023

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

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.2(b)(i) because this Brief contains 8,911 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2023, I filed the foregoing Combined Response in Opposition to Peninsula Township's Motions to Dismiss Plaintiffs' Claims Pursuant to Rules 12(b)(1) and 12 (h)(3) For Lack Of Subject Matter Jurisdiction (ECF No. 458, 459, 462, and 463.) via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante

Exhibit 1

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Wednesday, April 3, 2019 9:02 AM
To: Todd Oosterhouse
Cc: Christina Deeren; Randy Mielnik
Subject: Re:

Todd,

This is a follow-up on this matter. The Zoning Office has not received your report of Old Mission appellation grapes (growing on the Winery Chateau SUP property) or purchased from other growers, for 2018. If you have submitted the report, please send me a copy (as Christina is out of the Office this week).

The report is required to qualify Bonobo for "Guest Activities" under the Zoning Ordinance.

I understand that tickets for the the "Sip + Paint" event is still being advertised on social media for April 27. . Holding this event, without the required approval from the Zoning Administrator for Guest Activities, will be a Violation of your SUP. As you know, the penalties include issuance of a Civil Infraction Citation, plus the Township Board may hold a Hearing that could result in the closure of all Guest Activities.

I trust that you will comply.

Please let me know if we can provide additional assistance.

Dave

On Thu, Mar 21, 2019 at 7:40 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Todd,

Thanks, I want to get this resolved for you.

FYI, am working with Brys on a similar problem regarding a charity event (after Tasting Room hours) in April.

Dave

On Thu, Mar 21, 2019 at 7:33 AM Todd Oosterhouse <todd@bonobowinery.com> wrote:
Dave

I will be getting that information to you soon.

Todd Oosterhouse
Owner/General Manager
Bonobowinery.com
231-383-5118

> On Mar 20, 2019, at 9:48 AM, David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

>

> Todd,

>

> We discussed the "Sip + Paint" event advertised for 4/27 and the requirement to comply with the Guest Activities section for a Winery-Chateau use.

>

> I understood that you were going to prepare a report for Christina, showing that Bonobo is qualified to hold Guest Activity events in 2019, based on purchases of OMP grapes in 2018.

>

> This is just a follow-up to be sure that this is being done.

>

> Also, the Ordinance requires that Bobobo give the Zoning Administrator 30 days written notice of each event, in addition to sufficient information to show that the event complies with the Guest Activities requirements.

>

> Based on the advertisement, I question if this event has a "direct relationship to agricultural production" -- words in the Ordinance. You will need to state how this event complies with that requirement.

>

> Please review this matter to be sure that there are no compliance issues. My concern is that the event is still being advertised and reservations are being taken by the ticket agency.

>

> Please let me know the status.

>

> Dave

>

>

>

>

>

>

> --

> David K. Sanger
> Ordinance Enforcement Officer
> Peninsula Township Zoning Office
> 13235 Center Road
> Traverse City, MI 49686

>

> 231-223-7318
> 231-216-1212 direct line

--
David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

--
David K. Sanger

Exhibit 2

Zoning

From: Todd Oosterhouse <todd@bonobowinery.com>
Sent: Thursday, April 4, 2019 11:18 AM
To: enforcement.peninsulazoning@gmail.com; zoning@peninsulatownship.com
Subject: Bonobo tonnage

All

We received 25 tons from devils dive
And 51 tons from Tabone vineyards.

I will be forwarding you events that we have scheduled as well. According to my calculations we can have 60 people at an event. Let me know if that is not correct.

Thanks

Todd Oosterhouse
Owner/General Manager
Bonobowinery.com
231-383-5118=

Exhibit 3

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thursday, June 6, 2019 1:57 PM
To: Christina Deeren
Subject: Fwd: Info

Christina,

Todd told us in an email that they purchased 25T from Devils Dive and 51T from Tabone; no further details. This would qualify Bonobo for 61 attendees at a Guest Activity.

Todd needs to tell us, in writing, how each activity qualifies under Guest Activities (food and wine seminar, meetings of 501c3 groups or meetings of ag groups). Thus far, he has given us no details. It is not our job to help him "classify" a planned activity into these allowed categories.

I suggest that we meet with him, and ask him to be prepared to present his plans to us.

Dave

----- Forwarded message -----

From: Oosterhouse, Todd <todd@bonobowinery.com>
Date: Wed, Jun 5, 2019 at 12:33 PM
Subject: Info
To: Christina Deeren <zoning@peninsulatownship.com>, David Sanger <enforcement.peninsulazoning@gmail.com>

Christina and David,

I was looking to see where you guys were on my request that I sent in last week.
Thanks

Enjoy the day!

Todd Oosterhouse
Owner/General Manager
231-383-5118 cell
bonobowinery.com

--

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318

Exhibit 4

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Friday, June 7, 2019 9:15 AM
To: Oosterhouse, Todd; Randy Mielnik
Cc: Christina Deeren
Subject: Re: guest activity

Todd,

You previously submitted a report of grapes grown on the Old Mission Peninsula and not on your SUP property for calendar year 2018. That report stated that Bonobo purchased 51 tons from Tabone and 25 tons from Devils Dive properties. This total, 76 T /1.25, qualifies Bonobo for a maximum of 61 attendees at any Guest Activity use ("activity") in 2019 (section 8.7.3 (10) (u)).

Your email dated 5/29/19 requests permission to hold "food and wine seminars and cooking classes" as permitted under subsection (u) 2 (a) and "meetings of agricultural related groups" as permitted under subsection (u) 2 (c), with 30 days notice provided on 5/29/19, and the Guest Activity use continuing through October 31, 2019.

Based on the submission of the required information regarding the use of OMP grapes, in addition to the harvest from grape vines on Bonobo SUP property, the Zoning Administrator has approved the Guest Activity uses detailed in your email of 5/29/19 for the period June 29, 2019 through October 31, 2019.

This approval is conditioned on the adherence to all requirements in the Zoning Ordinance pertaining to Guest Activities, including but not limited to no use of tents or temporary structures, the serving only of wine produced from Old Mission Peninsula grapes (Old Mission appellation) and a maximum number of attendees per event of 61 persons. The approval is also conditioned on the continued compliance with the SUP issued under the Zoning Ordinance, plus the continued compliance with all terms of the negotiated settlement regarding previous issues with compliance with the SUP for the Bonobo Winery-Chateau.

Please contact me or Christina if you have any questions.

Dave

On Wed, May 29, 2019 at 1:54 PM Oosterhouse, Todd <todd@bonobowinery.com> wrote:
Dave and Christina,

I would like to have lunches 7 days a week, 12 and 1:30 sittings. These would be for 24 people each sitting. They would take place in the vineyard. No tents or music. They will involve a wine facility and vineyard tour. The wine will be paired with local fair. There will be a charge for the sitting. This activity would start in 30 days and continue as weather permits through October.

I would also like to do a dinner sitting 7 days a week at 6 and 7:30. These will take place on the winery grounds. We will do a tour and tasting with paired food. There will be a charge for the sitting. This activity will start in 30 days and continue into October. Expecting 60 people for each sitting. If weather permits in may be in the vineyard or in a room off of the tasting room.

We are also looking at doing a cooking class, that would have a sitting of 20 people. This would take place in July.

Let me know what you think or if you have any questions.

Thanks.

Enjoy the day!

Todd Oosterhouse
Owner/General Manager
231-383-5118 cell
bonobowinery.com

--

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

Exhibit 5

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Tuesday, June 18, 2019 10:50 AM
To: Zoning
Subject: Re: Bonobo

Christina,

He qualified for Guest Activities (I wrote a letter to him) and this pairing activity is allowed. The ZO does not limit the number of Guest Activities daily or else wise.

Dave

On Tue, Jun 18, 2019 at 8:02 AM Zoning <Zoning@peninsulatownship.com> wrote:

6/18/2019

Dave,

I just received this from Susan. She found it on facebook so it is out there for everyone to see!

I know that you had been working with Todd on these things so I thought I would forward it to you.

Thank you.

Christina Deeren

Peninsula Township Office

13235 Center Road

Traverse City MI 49686

phone - 231-223-7318

fax - 231-223-7117

zoning@peninsulatownship.com

Please note that this email message and any attachments may contain privileged or confidential information that is protected against use or disclosure under federal and state law. If you have received this in error, please advise by immediate reply. Any transmission to persons other than the intended recipient shall not constitute a waiver of any applicable privileges. Any unauthorized use, disclosure, copying or dissemination is strictly prohibited.

Exhibit 6



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll Free: 866-813-0011 • www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC use only)

Local Government Approval
(Authorized by MCL 436.1501)

Instructions for Applicants:

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

Instructions for Local Legislative Body:

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a 2nd Regular meeting of the Township council/board
(regular or special) (township, city, village)

called to order by Peter Correia, Supervisor on May 23, 2016 at 9:00 AM
(date) (time)

the following resolution was offered:

Moved by David Weatherholt, Treasurer and supported by Wendy Witkop, Trustee

that the application from Tabone Vineyards, LLC
(name of applicant)

for the following license(s): Small Wine Maker
(list specific licenses requested)

to be located at: 14998 Peninsula Dr., Traverse City, MI 49686

and the following permit, if applied for:

☐ Banquet Facility Permit Address of Banquet Facility: n/a

It is the consensus of this body that it recommends this application be considered for
(recommends/does not recommend)
approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are n/a

Vote

Yeas: 7

Nays: 0

Absent: 0

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the Township
council/board at a 2nd Regular meeting held on May 23, 2016
(regular or special) (date) (township, city, village)

Monica A. Hoffman

Print Name of Clerk

Monica A. Hoffman
Signature of Clerk

5/23/16
Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059

Exhibit 7

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

October 13, 2016

Michigan Liquor Control Commission
PO Box 30005
Lansing, MI 48909

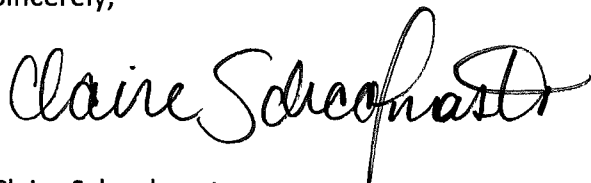
RE: Tabone Vineyards LLC Small Wine Maker Application (#762772)
14916 Peninsula Dr., Traverse City, MI
Parcel ID #: 28-11-122-010-00

To whom it may concern:

Please note that the correct address for Tabone Vineyards, LLC, which has applied for a small wine maker license with the MLCC, is **14916 Peninsula Dr., Traverse City, MI 49686**. This is the updated commercial address for the same parcel which corresponds with the Township's Special Use Permit and which the Township Board has approved via Form LCC-106 on September 13, 2016.

Please contact this office should you have any questions. My direct line is (231) 223-7318, or my email address is zoning@peninsulatownship.com.

Sincerely,

A handwritten signature in black ink that reads "Claire Schoolmaster". The signature is written in a cursive, flowing style.

Claire Schoolmaster
Planning & Zoning Coordinator

Exhibit 8

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

June 19, 2014

BOQ LLC & Two Lads Winery
18000 Smokey Hollow Rd.
Traverse City, MI 49686

RE: Scheduled Events at Two Lads Winery
16895 Smokey Hollow Road Traverse City, MI 49686
Parcel ID #28-11-110-001-10

To Whom It May Concern,

Please be advised that on Thursday, June 19, 2014 Peninsula Township Planning & Zoning Staff was made aware of several events scheduled at the Two Lads Winery during the summer of 2014; Summer Solstice Party, 2nd Annual BBQ, and Bubbly BBQ/Pig Roast.

Please be advised that these events may be in violation of the Land Use Permit issued May 11, 2007. Please contact us immediately to discuss the scheduled events so that staff can make a determination as to whether or not these uses are permitted by Section 6.7.2 (19) of the Zoning Ordinance.

We urge you to cease reservations for these events until this matter is resolved. Thank you for your cooperation in this matter.

Sincerely,



Michelle Reardon
Director of Planning & Zoning

- social function for wine.*
- what's an *event*?
 - can we put in a schedule

Response (copy) emailed to Michelle on 6/25/14

2 Lads Winery — 16985 Smokey Hollow Rd — T.C. MI 49686
231.223.7722-ph — 2LWinery.com



June 25, 2014

Peninsula Township
Attn: Planning and Zoning
13235 Center Rd
Traverse City, MI 49686

Re: Scheduled events at 2Lads Winery
16985 Smokey Hollow Rd, TC, MI 49686
Parcel # 28-11-110-001-10

To Michelle Reardon, Dir. Of Planning and Zoning-

We received your letter regarding upcoming outdoor events at our facility for summer 2014. After our discussion in your office on the 24th of June I now have a better understanding of the 139 ordinance as it pertains to 'social events for hire' at a farm processing facility. We have indeed cancelled both of the open to the public events we had planned for July 5th and the 'BBQ and Bubbly' event we had planned in late August.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Baldyga', written in a cursive style.

Chris Baldyga
Owner and General Manager

Exhibit 9

YOUNG, GRAHAM & WENDLING, P.C.

Attorneys at Law
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635
Facsimile (231) 533-6225
www.upnorthlaw.com

Bryan E. Graham
Peter R. Wendling
Nicole E. Essad

Eugene W. Smith
James G. Young, *Of Counsel*

August 3, 2017

Ms. Linda Stegenga
2896 Bowers Harbor Road
Traverse City, Michigan 49686

SUBJECT: Continuation of zoning ordinance violations

Dear Ms. Stegenga:

In a letter to July 14, 2017 I outlined a number of zoning ordinance violations related to Special Use Permit No. 32 on your property. I have again been contacted by the township zoning administrator related to continuing violations of the special use permit. Specifically, on July 25, 2017 an event was held on your property that exceeded the 50 person limitation. In addition, this event was the third event in a single week. The special use permit only allows two events per week. Finally, a tent was used in conjunction with this event.

In addition to the violations that occurred related to the July 25 event, the zoning administrator informed me that a total of 48 events have already occurred this year and that an additional 27 events are scheduled. The special use permit allows a total of 20 events per calendar year. Clearly, your actions and anticipated actions demonstrate an intentional disregard for the requirements of the special use permit. These violations will not be tolerated.

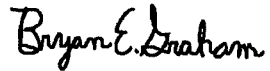
The township desires to resolve this matter without any court involvement. However, please understand that if you do not take immediate actions to bring your property into compliance with the requirements of the special use permit, the township is prepared to take enforcement action against you in court.

In an effort to resolve this matter, please contact the township zoning administrator, Christina Deeren, to schedule an appointment to meet with her and other township officials. The purpose of this meeting is to discuss the steps necessary for you to bring your property into compliance with the special use permit. If this meeting is not scheduled within seven days from the date of this letter, I will assume you do not wish to resolve the matter. I will then advise the township to take court enforcement action against you.

Linda Stegenga
August 3, 2017
Page 2

By a copy of this letter, I am requesting that the zoning administrator contact me to let me know whether the meeting has been scheduled.

Yours truly,

A handwritten signature in black ink that reads "Bryan E. Graham". The signature is written in a cursive, slightly slanted style.

Bryan E. Graham

BEG

cc: Christina Deeren , Zoning Administrator (via email)
Brian VanDenBrand, Planner (via email)
Rob Manigold, Supervisor (via email)

Exhibit 10

YOUNG, GRAHAM & WENDLING, P.C.

Attorneys at Law
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635
Facsimile (231) 533-6225
www.upnorthlaw.com

Bryan E. Graham
Peter R. Wendling
Nicole E. Essad

Eugene W. Smith
James G. Young, *Of Counsel*

August 16, 2017

Thomas R. Alward, Esq.
Alward, Fisher, Rice, Rowe & Graf, PLC
202 E. State Street, Suite 100
Traverse City, MI 49684

VIA EMAIL

SUBJECT: Bowers Harbor Vineyard

Dear Tom:

Thank you for your letter dated August 11, 2017. I have now had the opportunity to review your letter and the documents from the township related to the approval of the amendment to Special Use Permit No. 32. Your letter outlined three alleged violations of the amended special use permit, specifically: (1) exceeding the 50 person limitation for events, (2) exceeding the 20 event and the 2 event per week limitation, and (3) the use of a tent in conjunction with an event. Your letter, however, did not address the violation I noted in my July 14, 2017 letter that the events are not occurring in the area depicted on the site plan (within the vines).

You indicated in your letter that you have addressed the 50 person limitation for events with your clients and that the limitation will be observed for future events. The township appreciates your client's willingness to correct this violation.

Concerning the number of events, after reviewing the documents from the township I am satisfied that only those outdoor events that are occurring after 6:30 p.m. should be counted as official events under the amended Special Use Permit No. 32. It is further my understanding that given this interpretation of events, that there is no violation of the 20 event/2 event per week limitation.

Because the last two alleged violations are interrelated, let me address them together. The site plan that was approved in conjunction with the amended Special Use Permit No. 32 clearly shows that the events were to be held using tables for the dining located in the vines east of the tasting room. In addition, the approved site plan does not show the use of any tents in conjunction with the events. The Planning Commission minutes state, "Tables will be placed in the area per drawing." (PC July 19, 2010 minutes, p. 3)

Thomas R. Alward, Esq.
August 16, 2017
Page 2

The Exhibit A attached to your letter indicated that the events were being held in the Pavilion, Tent, and Tasting Room. As a result, the use of these alternative locations and the use of tents not included on the site plan constitute violations of the approved site plan.

Concerning the tent, then township planner Dan Leonard made it clear at the Planning Commission meeting on July 19, 2010 that "tents would not be allowed per current zoning ordinance." (PC July 19, 2010 minutes, p. 2) Dan then stated at the August 10, 2010 Township Board meeting that formally approved the amended Special Use Permit, "they cannot have a tent." (TB August 10, 2010 minutes, p. 3).

In 2015 your client sought a further amendment to Special Use Permit No. 32. In the staff report related to this amendment dated October 19, 2015 the report stated:

The petition is to allow outdoor agricultural dining events for up to 50 persons. The tables are located in rows 4 & 5 and 5 & 6 within the existing vineyard with the chefs table south of the vines as indicated on the site plan. **The applicant has requested the use of temporary tents in the event of inclement weather during these events.** Staff suggests the Commission discuss the use of the tents in relation to similar uses in the Township and determine the appropriate use of these structures through a condition of approval. (Emphasis added.)

While the township never approved the use of the temporary tents, the mere fact that your client requested the use of the temporary tents in 2015 establishes strong evidence that your client knew that the temporary tents were not authorized as part of the 2010 amendment. Otherwise, why would the request in 2015 be made?


Therefore, based on the documents provided, a tent was not authorized in conjunction with the events approved in the 2010 amendment. As a result, the continued use of the tent in conjunction with the amended Special Use Permit No. 32 would constitute a violation of the zoning ordinance.

It is my understanding that your client has another amendment to the Special Use Permit currently pending. It is my further understanding that the township is waiting for the application material to be completed prior to having the Planning Commission consider the amendment. Assuming that your client proceeds in a reasonably prudent manner to complete the application material for the pending amendment, I am willing to advise the township to reserve action on any enforcement proceeding pending the completion of the current amendment.

Thomas R. Alward, Esq.
August 16, 2017
Page 3

If you have questions or would like to discuss this matter, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink that reads "Bryan E. Graham". The signature is written in a cursive, slightly slanted style.

Bryan E. Graham

BEG

cc: Christina Deeren , Zoning Administrator (via email)
Brian VanDenBrand, Planner (via email)
Rob Manigold, Supervisor (via email)

Exhibit 11

May 31, 2018

Bowers Harbor Vineyard & Winery, Inc.
Attn: Linda Stegenga
2896 Bowers Harbor Rd
Traverse City, MI 49686

Re: Special Use Permit Amendment Request – April 2018

Dear Ms. Stegenga,

This is in reference to your request for an amendment to you existing Special Use Permit #32.

I have reviewed the application and make the following comments designed to assist you in this process. You have requested amendment to three current uses on the premises: Tasting room with retail sales, Food Processing Plant and Dining in the Vines.

Your request requires two Special Use Permit applications which, upon receipt, will be submitted to the Planning Commission:

First SUP: Application for 2nd Amendment to Special Use Permit 32 will address:

- Employees – no limit on number of employees, which varies by season
- Hours of operation: 9am to 10pm
- Proposed tasting room addition; building plans attached
- Approval of existing arbor structure adjacent to existing tasting room
- Tasting room to be used for community non-profit organizations
- Signage – Permanent and temporary signs along Bowers Harbor Rd shown on the site plan to be located outside of right-of-way , on Bowers Harbor Vineyard property
- Parking – shown on the site plan
 - Designated parking and shuttle bus parking is denoted on site plan. Overflow parking provisions provided and shown on site plan
 - Shuttle bus routes defined on site plan and instructions provided to tour groups
- Lighting
 - Path lights (specifications included) and locations shown on site plan
 - To meet Peninsula Township Exterior Lighting regulations
 - Any additional lighting will be temporarily installed under tent canopy for events
- Merchandise for sale in tasting room: wine related items only.

Second SUP. Application for new Special Use Permit No 129 Dining in the Vines

- Proposed Easement on 11-128-001-12 (Spencer Stegenga parcel) for outdoor event space
- Proposed use of tents
- Tents will be removed within 48 hours of the event
- Increase allowed number of guests to 150
- Hours: 6pm to 10pm

- Area is permitted by MLCC for alcohol serving and consumption
- Additional wayfinding, educational, and event signage to be allowed as deed and placed within parcel boundary away from right-of-way
- Definition of event and an activity (as defined by previous legal counsel)
 - An event is something that takes place after business hours and is registered with the township.
 - An activity is something that takes place during normal business hours and is part of our daily practice
- All events to comply with Peninsula Township Noise Ordinance No. 40.

Please make submit the applications immediately so that we may meet your needs and timely address these requests.

Please be also be advised, as with all entities who have received a SUP in Peninsula Township, will continue to monitor activities and events at Bowers Harbor Vineyard to ensure compliance with Special Use Permit 32, as amended in 2010. Citations for Civil Infractions will be filed with the District Court for observed Violations.

Of immediate concern to us is that we have reviewed the Bowers Harbor Vineyard website showing activities and events that are scheduled for June through September. The schedule includes several "Dining in the Vines" events in July, August and September; you are reminded that these events must be held after the Tasting Room is closed, must be located in the area of the vines specified on the approved Site Plan, and that a tent cannot be used. In no case, can the event be held in the Pavilion and attendance is limited to 50 persons or less.

An event titled "Spirit Cider Picnic" is scheduled for June 23 at 7:00PM; this event is subject to the same restrictions as the "dining in the vines" events. The advertisement states that the event will be held in the "vines, pavilion and lawn". This event must be held in the location specified in the Site Plan, and cannot be held in the pavilion or lawn area.

The schedule also shows that you are planning several activities during hours when the tasting room is open. These activities have an entry fee and offer some type of activity that is primary to wine tasting. In particular, these activities are advertised as "Floral Education Series" and "Yoga in the Vines". Special Use Permit, as amended, authorizes only one type of event and that is the "dining in the vines" event. Please be advised that your SUP does not permit any additional "guest activity" and that the scheduled "Floral Education Series" and "Yoga in the Vines" will be subject to enforcement activity by the Township.

We want to work with you and find a way to ensure you are able to represent your business in the community while at the same time comply with the SUP requirements. We intend to enforce all SUP requirements for all business entities in Peninsula Township. This enforcement is necessary for fair play and the safety of the community.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

Gordon L. Hayward

Township Planner

Exhibit 12

H.C.I.	State of Michigan Uniform Municipal Civil Infraction Citation		No	0080	Dept. No.
MIS.			Complaint No.	Offense Code	
JUV.			18-76		
People of: <input type="checkbox"/> the State of Michigan <input checked="" type="checkbox"/> Township <input type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> County of: <u>PERVINSULA</u>					
At approximately <input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M. Date Month Day Year SAYS THAT ON: <u>6</u> <u>9</u> <u>18</u> <u>12</u> <u>15</u>					
State Driver's License Number Social Security No.					
Sex Hair Weight Height Eyes Occupation/Employer					
Name (First, Middle, Last) <u>LINDA L. STEGENGA</u>					
Street <u>2896 BOWERS HARBOR RD</u>					
City State Zip Code <u>TRAVERSE CITY MI 49686</u>					
Vehicle Plate No. Year State Vehicle Description (Year, Make, Color) Type <u>4JJ077 19 MI LEXUS 350 WHITE PA</u>					
THE PERSON NAMED ABOVE, in violation of § <u>8-1-2(3) F 2+3 AND</u>					
ON <u>2896 BOWERS HARBOR RD</u>					
FOR OR NEAR					
WITHIN <input type="checkbox"/> CITY <input type="checkbox"/> VILLAGE <input checked="" type="checkbox"/> TOWNSHIP OF <u>PERVINSULA</u> COUNTY OF <u>GRAND TRAVERSE</u> DID THE FOLLOWING:					
Nuisance Ordinance <input type="checkbox"/> Building Code Licenses Ordinance <input type="checkbox"/> Plumbing Code Zoning Ordinance <input type="checkbox"/> Electrical Code Sign, Lighting & Display Ordinance <input type="checkbox"/> Mechanical Code Animal & Fowl Ordinance <input type="checkbox"/> Other					
Describe: <u>FAILURE TO COMPLY WITH CONDITIONS</u> <u>IMPOSED BY TOWNSHIP BOARD ON SPECIAL</u> <u>USE PERMIT 32 AS BOTTLED</u>					
Person in Active Military Service <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
THIS VIOLATION IS A CIVIL INFRACTION and is your _____ violation. The fine for this violation is \$ _____ and must be paid at the violations bureau by 5:00 p.m. on _____ unless you contact the violations bureau before this time. NOTE: This is a copy of the Notice of Violation served on the defendant. State that the above notice of violation was served on the defendant. The defendant failed to pay the fine specified above or failed to contact the violations bureau on the date and time specified above. Therefore, this civil infraction citation is being issued.					
TO THE DEFENDANT: You are required to appear as follows to answer this citation. SEE DATE BELOW. SEE BACK OF CITATION FOR EXPLANATION AND INSTRUCTIONS					
Appearance Date: on or before <u>WITHIN 10 DAYS</u> Hearing Date (if applicable) on _____ <input type="checkbox"/> Contact Court A formal hearing may be requested by either party.					
At the <u>86th DISTRICT</u> Court of <u>GRAND TRAVERSE</u> <u>COUNTY</u> Court address & phone number <u>350 WASHINGTON ST 231-922 4580</u> <u>TRAVERSE CITY, MI 49686</u>					
I have served a copy of this complaint upon the defendant by first class mail at the defendant's last known address and filed a copy of this complaint with the court. I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.					
Complainant's signature: <u>[Signature]</u> Month <u>6</u> Day <u>12</u> Year <u>18</u>					
Officer's Name (printed): <u>DAVID R SANGER</u> Officer's ID No.					
Agency ORI: _____ Agency Name: <u>PERVINSULA TOWNSHIP</u>					

☐ C.I.
☐ MIS.
☐ JUV.

 Ticket No.
 No

 Name
 0080

Case No.

Exhibit 13

----- Forwarded message -----

From: **David Sanger** <enforcement.peninsulazoning@gmail.com>
Date: Tue, Mar 26, 2019 at 2:03 PM
Subject: Re: Winemakers Reception Event - April 12
To: Patrick Brys <patrick@brysestate.com>

Thanks, I will check there.

Dave

On Tue, Mar 26, 2019 at 1:39 PM Patrick Brys <patrick@brysestate.com> wrote:
I am only aware of what is published on their website - which details the locations of each event: <https://www.tcbigswineauction.org/events>

Thanks,
Patrick

On Tue, Mar 26, 2019 at 9:33 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Thanks, Patrick. Do you know if the other wineries will have guests at their winery, or at the partner restaurant?

I am trying to be fair to all involved in the event.

Thanks,

Dave

On Tue, Mar 26, 2019 at 11:16 AM Patrick Brys <patrick@brysestate.com> wrote:
Brys Estate is participating in the Bigs event which is now being held at the Boathouse Restaurant. The event is not being held at the winery.

Thanks,
Patrick

On Tue, Mar 26, 2019 at 7:20 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Patrick,

Please confirm that Brys is not participating in the Bigs wine event on Friday, April 12. I have received mixed info on the radio this morning and on the Bigs website regarding Brys participation.

Thanks,

Dave

On Sun, Mar 24, 2019 at 12:20 PM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Patrick,

The Winery-Chateau section provides for the Township Board to adjust the requirement following a year when the harvest is adversely affected by weather (u (6)) page 133 in the Ordinance.

Thanks,

Dave

On Sat, Mar 23, 2019 at 10:25 AM Patrick Brys <patrick@brysestate.com> wrote:

Thanks Dave for the information. We will look this over and get our calculations to Christina sometime this spring. As it is a yearly report and guest count allowed is based solely on tonnages (not acres in the ground or land set aside for ag), if the crop is light due to mother nature - how have you handled this in the past? Is an average yield considered? Over the past 10 years (off essentially the same acreage) we have seen yields of anywhere from 30 tons to over 200 tons.

Thanks,
Patrick

On Fri, Mar 22, 2019 at 6:01 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Patrick,

Thank you for your response. Yes, I became aware that Eileen had surgery again, and after I sent the note to your Dad realized that he may not be receiving his emails.

Thank you for taking action that will avoid an issue with this event.

The "Guest Activities" use in the Winery Chateau section of the Zoning Ordinance, was added in 2004 (Amendment 141) to enable holders of a Winery Chateau (W-C) Special Use Permit (SUP) to hold activities and events for non-registered guests (not staying at the overnight rooms). These uses were allowed in addition to the normal wine tasting, provided that the W-C grows or purchases OMP grows additional grapes (over and above the minimum 37.5 acres for the SUP) in the ratio of 1.25 additional tons for each participant at the Guest Activity event.

This is a simplification; I am attaching the W-C Section 8.7.3 (10) pertaining to the W-C use. Please refer to subsection (u) for details.

The qualification is annually, based on the previous year's crop production. A report must be submitted annually to the Zoning Administrator; there is no set format at this time. Some Guest Activities require 30- days prior notice to the Zoning Administrator (see the Ordinance).,

Here's what you need to furnish to the Zoning Administrator for the 2018 crop year, to qualify for participants in Guest Activities in 2019:

1. Determine your total harvest for 2018 in tons. As a W-C you must have a minimum of 50A and 75% of that minimum in grape cultivation. Thus, the minimum is $50 \times 0.75 = 37.4$ A. I know that Brys has over 50 A, and I recall that a map on your most recent amendment stated that you have 44.1 A in vines. Thus, you have an "excess" of 6.6 A that counts toward your Guest Activities. Next, determine your yield per acre for 2018. If it was 2.5 T per acre, then you can report "excess" yield of 6.6 times 2.5 = 16.5 T. With the formula of person = 1.25 T, then you have a right to have $16.5 / 1.25 = 13.2$ or 13 people at each Guest Event. If you purchased OMP grapes from other growers, then add that tonnage to your own.

2. The result is the number of people allowed, per event in 2019, at each event that is allowed in the W-C Guest Activities section of the Ordinance, limited to 111 people per event during the calendar year. There is no cap on the number of events, or the total number of participants -- just the maximum total number of people at any one event.

Please review the Ordinance, and feel free to contact me. Christina and I are available to meet with you if it would be helpful.

I am working closely with the wineries that are allowed under the W-C SUP; only these wineries can qualify for Guest Activities. Other wineries, who operated under the "Use by Right" section (Farm Processing) cannot qualify for Guest Activities. This Guest Activities section is being used by Chateau Chantal to qualify for agricultural-related food events during 2019, including nighttime dinners and daytime lunches in the summer.

I encourage you to provide the grape growing information to Christina, so you will be able to hold Guest Activities if you prefer.

Please extend my wishes to your Mom for a speedy recovery and safe return trip home.

Dave

On Thu, Mar 21, 2019 at 8:27 PM Patrick Brys <patrick@brysestate.com> wrote:
Dave,

Received your email from yesterday and today. My Dad is currently in California and was at the hospital all day with my Mom who was having cancer surgery - this is why he did not get back to you same day.

I have been in touch with the event organizers and have confirmed that the fundraiser has been relocated and will no longer be held at Brys Estate.

We do grow several acres of grapes outside of the 75% acreage set aside for the SUP. For future reference, could you provide details on what information is needed so we can supply this report to the township? We would like to understand the number of allowed guests we can currently accommodate for our guest activity uses. Who is the best person to discuss questions with so we fully understand the allowed guest activity uses under our SUP?

Thanks,
Patrick Brys

On Thu, Mar 21, 2019 at 4:29 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Patrick,

I sent this to your Dad yesterday, with no response. Assuming that he might be travelling, I am sending to you and request that you take action.

Please reply so we can move this forward.

Thanks,

Dave

----- Forwarded message -----

From: **David Sanger** <enforcement.peninsulazoning@gmail.com>

Date: Wed, Mar 20, 2019 at 9:14 AM

Subject: Winemakers Reception Event - April 12

To: Walter Brys <walterbrys@hotmail.com>

Cc: Christina Deeren <zoning@peninsulatownship.com>

Walter,

I am investigating the advertised Winemakers VIP Reception Event on Friday, April 12 from 6:00PM to 8:00PM. This is advertised as a benefit event for Big Brothers and Big Sisters.

Based on my preliminary investigation, this event appears to be allowed under the Guest Activities section of the Winery-Chateau Ordinance section only, and not as a normal Winery-Chateau Tasting Room activity.

Factors to be considered include:

1. fixed price for entry, rather than sale of wine by the glass (Guest Activity)
2. tasting room will not be open to the public (Guest Activity)
3. meeting of a non-profit group wherein a full course meal is not being served (Guest Activity)
4. Grape production/purchase report must be submitted to Zoning Administrator to determine the maximum number of people allowed per event. (Guest Activity)

It appears that this event would be allowed as a Guest Activity use, requiring that you can furnish proof that Brys Estate grew or purchased Old Mission Appellation grapes last year, in excess of the grapes grown on the minimum 75% acreage for the SUP. The requirement is to grow or buy 1.25 tons additional tons for each person allowed to attend the Guest Activity event.

Christina and I have reviewed this advertised event and request that you work with us to ensure that the event is in compliance with the Ordinance and your SUP.

I suggest that we meet as soon as possible to discuss this advertised event.

Thank you in advance for your cooperation.

Dave

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

--

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231-216-1212 direct line

Exhibit 14

Case 1:20-cv-01008-PLM-RSK ECF No. 487-14, PageID.18806 Filed 11/03/23 Page 2 of 6

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thu, 28 Mar 2019 13:46:55 -0400
Subject: Fwd: Contact
To: Jenna Veiga <jenna@marivineyards.com>
Cc: Christina Deeren <zoning@peninsulatownship.com>
[Winery-Chateau Ordinance Section -- 032819.pdf](#)

Jenna,
I want to make contact with you regarding the event planned for Friday, April 12, at the Mari Winery between the hours of 6:30PM and 8:00PM.

I am familiar with this event, as I have have been working with another Old Mission Peninsula winery on participating in this event. As discussed in your meeting with Christina and Randy, this type event is only permitted for a holder of a Winery-Chateau Special Use Permit, after the winery has qualified for a specific number of guests at an event and after providing advance notice to the Zoning Administrator.

Several elements of the planned Big Brothers Big Sisters event differentiate this event from the normal "wine tasting": 1) the event is a "ticketed event" and is not open to the public, 2) the event is being held after normal hours for the Tasting Room, 3) this event is different from the normal wine tasting activities that occur during regular business hours.

I am attaching the section of the Zoning Ordinance pertaining to Winery-Chateau operations (the SUP for Mari was approved under this section). Please review the section pertaining to Guest Activities. The planned event on April 12 must be qualified, by your submission of data supporting the number of attendees for the event. There are details in the Ordinance describing the submission of qualification data.

I will reiterate the determination of Christina regarding this event: Mari does not have approval for the event and holding the event without prior approval will be a Violation of the Zoning Ordinance and the conditions of the approved SUP for Mari. This could result in the issuance of a Citation.

I encourage you to review the Ordinance (attached). I am available to meet with you to further explain the requirements. My direct line is 231-216-1212 Please let me know if I can assist you.

Thank you,

Dave Sanger

----- Forwarded message -----

From: **Zoning** <Zoning@peninsulatownship.com>
Date: Thu, Mar 28, 2019 at 12:03 PM
Subject: RE: Contact
To: Jenna Veiga <jenna@marivineyards.com>, planner <planner@peninsulatownship.com>, Dave Sanger <enforcement.peninsulazoning@gmail.com>

3/28/2019

Jenna,

Our Code Enforcement Officer, Dave Sanger will be getting in touch with you regarding this issue either later today or tomorrow.

Thank you for your time.

Christina

From: Jenna Veiga <jenna@marivineyards.com>
Sent: Thursday, March 28, 2019 9:57 AM
To: Gordon Hayward <planner@peninsulatownship.com>
Cc: Christina <zoning@peninsulatownship.com>
Subject: Re: Contact

Great, thank you Randy!

I'd also like to take this opportunity to give official notice for the April 12 Big Brothers/Big Sisters wine tasting. I understand that 30 days is the requested notice period and apologize for coming in under that mark, and will make sure to have all requests & notices in according to that timeline.

Thanks again for all the helpful information!

Best,

On Wed, Mar 27, 2019 at 4:59 PM <planner@peninsulatownship.com> wrote:

Hi Jenna –

As mentioned, attached is a copy of the approved SUP for Mari Vineyards. Please let us know if you require additional information or if you have questions.

Randy A. Mielnik, AICP

Director of Planning
Peninsula Township

13235 Center Road

Traverse City MI, 49686
Phone - 231-223-7314

Fax – 231-223-7117
planner@peninsulatownship.com

From: Jenna Veiga <jenna@marivineyards.com>
Sent: Wednesday, March 27, 2019 12:10 PM
To: Gordon Hayward <planner@peninsulatownship.com>

Hi Randy & Christina,

Thank you again for taking the time to meet with me this morning, I appreciate both of you helping explain our special use permit to me in more detail.

I have attached the requested tonnage report from 2016 to 2018. Please let me know if this needs to be in a different format, or if this information will suffice.

Thank you,

On Tue, Mar 26, 2019 at 5:03 PM <planner@peninsulatownship.com> wrote:

Yes, the best time to stop by would be about 9:30 or so. See you tomorrow.

Randy A. Mielnik, AICP

Director of Planning
Peninsula Township

13235 Center Road

Traverse City MI, 49686
Phone - 231-223-7314

Fax – 231-223-7117
planner@peninsulatownship.com

From: Jenna Veiga <jenna@marivineyards.com>
Sent: Tuesday, March 26, 2019 3:15 PM
To: Gordon Hayward <planner@peninsulatownship.com>
Cc: Christina <zoning@peninsulatownship.com>
Subject: Re: Contact

Hi all,

Thank you for the response. I'd love to stop by to chat. Are you available Wednesday morning?

On Mon, Mar 25, 2019 at 4:09 PM <planner@peninsulatownship.com> wrote:

Jenna – We would be glad to talk about this and review your SUP and the ordinance. There are important limitations to selling food at wineries. Maybe you could stop in and review this with us at your convenience. Just shoot us an email concerning when you might stop in, so we are sure to be around.

Thanks

Randy

Randy A. Mielnik, AICP

Director of Planning
Peninsula Township

13235 Center Road

Traverse City MI, 49686
Phone - 231-223-7314

Fax – 231-223-7117
planner@peninsulatownship.com

From: Jenna Veiga <jenna@marivineyards.com>

Sent: Monday, March 25, 2019 3:25 PM

Cc: Randy <planner@peninsulatownship.com>; Christina <zoning@peninsulatownship.com>

Subject: Re: Contact

Hi Randy & Christina,

I was hoping to reach out to discuss some of our permit abilities. One thing we were curious about was utilizing a food truck as a catering vendor. What are our abilities & restrictions surrounding this?

I'm sure I'll have many more questions for you guys in the future as well, so I appreciate your time!

Thank you,

On Mon, Mar 25, 2019 at 8:15 AM Susan Piehl <officemanager@peninsulatownship.com> wrote:

Jenna,

You will want to talk to our Planner Randy Mielnik (planner@peninsulatownship.com or 231-223-7314) and our Zoning Administrator Christina Deeren (zoning@peninsulatownship.com or 231-7318) about your special use permits. I have copied them in this reply. Please let me know if I maybe of any additional assistance.

Regards,

Susan Piehl
Peninsula Township Office Manager

Office Hours: Mondays 7:30 am to 6:30 pm, Tuesdays – Thursdays 7:30 am to 5 pm and closed Friday – Sunday and Holidays.

From: Jenna Veiga <jenna@marivineyards.com>
Sent: Friday, March 22, 2019 1:07 PM
To: officemanager@peninsulatownship.com
Subject: Contact

Good afternoon,

My name is Jenna, and I handle the marketing & events at Mari Vineyards. I am hoping to establish contact with whomever I would need to speak with about what our special use permits allow under the township. Could you point me in the right direction?

Thank you,

--

Jenna Veiga

Marketing & Events Manager

MARI VINEYARDS

8175 Center Rd.

Traverse City, MI 49686

Office: (231) 938-6116 x 106

Cell: (231) 944-5337

marivineyards.com

Exhibit 15

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Wednesday, April 3, 2019 8:47 AM
To: Alex Lagina
Cc: Christina Deeren; Randy Mielnik; Jenna Veiga
Subject: Re: Mari Vineyard 2018 Harvest Tonnage

Alex,

You have questioned if a meeting of a "book club" is a principal use under your Winery Chateau SUP, and is exempt from the requirements for a Guest Activity under the exclusion for "free entertainment (Example - Jazz at Sunset)".

The Ordinance states that "accessory uses" are for registered guests only. Uses for non-registered guests are allowed under the Guest Activities section of the Ordinance. While I agree that "free entertainment" such as music is excluded from a Guest Activity use, the overriding element is the question of the "principal use" or activity.

In the case of "free entertainment", the primary use (or reason for someone to come to the winery) is to taste wine; the free entertainment is secondary.

In the case of a meeting of a "book club", the primary reason to come to the winery is to discuss and review a book; the matter of tasting wine is secondary.

Thus, a meeting of a book club is a use only allowed under the Guest Activity section, and the winery must qualify on the basis of additional use of Old Mission Peninsula grapes plus meet the requirements for promotion of Peninsula Agriculture, with the required reports to the Zoning Administrator in advance of the event.

Please let me know if you would like to discuss this further.

Thank you,

Dave

On Mon, Apr 1, 2019 at 11:09 AM Alex Lagina <alex@marivineyards.com> wrote:

Hi Dave,

Thanks for your email. Yes, this represents entirely Old Mission Peninsula production. We will certainly comply with all notice requirements of events. However for the book "club", as this is free, open to the public (there is no membership requirement) and occurs only in the tasting room during business hours would this not fall under the category of "free entertainment" under 8.7.3 (10) (u) 1. (d)? To me it seems more like a happy hour / jazz at sunset type thing but I welcome your guidance.

As always, thanks for your continuing help and understanding as we grow into the Guest Activity Uses we didn't have the time/manpower to focus on when we first opened.

I'm out of the office today, but I'll give you a call later this week to set up a time when we can meet in person.

Thanks again!

Alex

On Sat, Mar 30, 2019 at 9:15 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Alex,

Please confirm that this report includes harvest data for Old Mission Peninsula properties only.

Assuming that the answer is "yes", then you are permitted to conduct Guest Activities during 2019 for a maximum of 85 guests per event.

Please abide by the noticing requirements in the Ordinance; that can be a simple email to Christina and me with the date, time, and brief description of the event.

Based on info on your website, the Bigs event, plus the book "club" meetings should be on your report.

Thanks for your cooperation; I am working with all Winery Chateau proprietors this year to be sure that we are fair to each one in complying with the Ordinance.

Please feel free to call on us; I will stop in and would like to meet yoy.

Dave

On Fri, Mar 29, 2019 at 3:21 PM Alex Lagina <alex@marivineyards.com> wrote:

Hi Dave, here's our 2018 harvest report (also sent to Christina, although I understand she's out next week). There was just under a ton of juice in our records that seemed to be erroneously attributed to the wrong vineyard so I'm just omitting that.

Looking forward to meeting you in person next week, have a great weekend!

Mari Vineyards 2018 Harvest Tonnage Report	
Vineyard	Tonnage (T)
Bella Vista	7.695
Grishaw	23.2155
Irish	25.7395
Jamieson	38.0815
McKian	3.122
Neeson	7.9115
Winery-Chateau Property	0 / EXCLUDED
TOTAL	105.765
Guest Activity Use Occupancy (Total/1.25):	85

--

Alex Lagina

General Manager

MARI VINEYARDS
8175 Center Rd.
Traverse City, MI 49686

Exhibit 16

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thursday, April 4, 2019 9:44 AM
To: Christina Deeren; Randy Mielnik; Greg Meihn
Subject: Re: Wine + Wellness - Zoning Violation Notice

Christina,

Per the Facebook posting this morning, the Wellness + Wine event scheduled tonight at Bonobo has been cancelled.

Dave

On Wed, Apr 3, 2019 at 4:19 PM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Todd called me to discuss the Wellness + Wine (4/4) and Sip + Paint (4/27) events.

He believes that these uses (events) are not Guest Activities, but "entertainment" and the W-C section of the Ordinance states that "free entertainment" is not a Guest Activity (page 130).

He states that "entertainment" is not defined; he believes that it can be anything that a person might like to see, hear or do. Thus, he believes that he could open a card room (euchere) where one could sip wine as part of his "tasting room" SUP. As long as it is entertainment, anything goes!

We can discuss on Monday. I told Todd that both events would be a violation unless they are properly qualified as Guest Activities, and that the decision to hold these events as advertised is his decision, subject to enforcement action.

Dave

----- Forwarded message -----

From: Oosterhouse, Todd <todd@bonobowinery.com>
Date: Wed, Apr 3, 2019 at 2:10 PM
Subject: Re: Wine + Wellness - Zoning Violation Notice
To: David Sanger <enforcement.peninsulazoning@gmail.com>
Cc: Christina Deeren <zoning@peninsulatownship.com>, Randy Mielnik <planner@peninsulatownship.com>, Greg Meihn <gmeihn@foleymansfield.com>

Dave,

First of all thanks for working with me and trying to figure out a solution. I brought in 76 tons of fruit from old mission peninsula for the 2018 vintage.

Addressing the wellness get together for tomorrow night. I do have some issues with how this all relates but will address them in a separate email.

The people that are coming in are buying wine from me. There is no charge besides the wine for the people coming in. If they want to tell people that they are coming here that is their choice. If a bus of people told their friends to meet them at Bonobo and talk about what ever, then that would be ok. We are not shutting down the place for them. We are open to the public just as we always would be. We have our normal working hours and set ups.

This does not fall under guest activities as it is not an event. This is considered a support use as it brings in customers. They support our business of wine. A support use as listed in the ordinance is something that supports the

principle use. Principle use is a winery. We need to sell wine to exist. The action of people coming in to talk to others in the community is a support use not a guest activity. As well being a support use, accessory uses as stated in the ordinance as well are permitted and not related to guest activities. This also could fall under accessory use as it serves the principle use which is to sell and serve wine, but it is not greater than the principle use as the ordinance suggest it cannot be.

I am happy to discuss further.

Thanks

Enjoy the day!

Todd Oosterhouse
Owner/General Manager
231-383-5118 cell
bonobowinery.com

On Wed, Apr 3, 2019 at 9:57 AM David Sanger <enforcement.peninsulazoning@gmail.com> wrote:
Todd,

Please review the attached letter regarding the advertised event for Thursday, April 4, 2019 at Bonobo.

I believe that this event is a Violation of your SUP.

Please take corrective action.

Thanks,

Dave

--

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

--

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

Exhibit 17

From: Zoning <Zoning@peninsulatownship.com>
Sent: Wednesday, April 17, 2019 1:33 PM
To: 'Sarah Keever' <sarah@northview22.com>; Linda Stegenga <linda@bowersharbor.com>; Spencer Stegenga <spencer@bowersharbor.com>; Kristy McClellan <info@bowersharbor.com>
Cc: Dave Sanger <enforcement.peninsulazoning@gmail.com>; planner <planner@peninsulatownship.com>
Subject: RE: SUP prep- BHV

4/17/2019

Sarah,

The key to this is that this will no longer be an outdoor venue as they will host these (Dining in the vines) in the pavilion. The pavilion is considered a structure even with the side covers lifted.

Anything that is considered an outdoor event will not be able to have food services.

I hope that this helps answer your question.

If not please feel free to contact Randy or I.

Thank you,

Christina

From: Sarah Keever <sarah@northview22.com>
Sent: Wednesday, April 17, 2019 11:29 AM
To: planner <planner@peninsulatownship.com>; Zoning <Zoning@peninsulatownship.com>
Cc: Kristy McClellan <info@bowersharbor.com>; Linda Stegenga <linda@bowersharbor.com>
Subject: SUP prep- BHV

As always, we appreciate the help you've been to all of us and looking once more for guidance as we prepare for the SUP W-C.

Exhibit 18

planner@peninsulatownship.com

From: David Sanger <dave.peninsulatruster@gmail.com>
Sent: Thursday, April 18, 2019 1:53 PM
To: Randy Mielnik
Subject: Re: SUP prep- BHV

Randy,

Let's take 15 minutes and walk them thru the Winery-Chateau section of the ZO. Kristy needs to understand what they can and cannot do; I cover that. That fact that they have been doing illegal activities over the years does not mean that these can continue if they violate the ZO. In fact, they have been selling apparel, gift items and other non-wine related items in their tasting room in violation.

I am concerned about the tasting room area that they weaseled thru the Board in 2010 as part of the Special Open Space amendment. I will review the ZO to determine if we allow outside tasting rooms at all. I will also check LCC website to find out what they have allowed for BHV.

I suggest that we ask BHV to bring along their LCC Licenses, so can see what they have been given by LCC.

To repeat, the illegal activities of the past cannot be allowed to continue if not allowed in a WC. Kristi's marketing plan must be derived from the ZO, not the reverse.

See you Monday at 1.

Have a great weekend.

Dave

On Thu, Apr 18, 2019 at 1:14 PM <planner@peninsulatownship.com> wrote:

Kristy - let us suggest we have a quick meeting next week to make sure we get this right. We can meet ...

Monday 1 to 2:30 (4/22)

anytime Tuesday Afternoon – after 1PM. (4/23)

Christina may be out on Monday – but we can conference her in (and anyone else who can't make it in person)

Thanks

Randy

Exhibit 19

planner@peninsulatownship.com

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thursday, April 18, 2019 4:55 PM
To: Randy Mielnik
Subject: Re: Tasting Room - Definition

Randy,

Yes, we need to be sure that our Ordinance is updated to reflect that we now have Tasting Rooms outside, and that we need to recognize that outdoor activities have an impact on the neighbors and inside activities do not.

Also, the WC only allows outdoor activities for registered guests; but, LCC allows at least outdoor tasting and food service. What else can a winery do outside under the name of "tasting". Can there be entertainment? Guitar player? Juggling act?

This where BHV is going -- outdoor tasting room with no hold barred.

Have a great weekend.

Dave

On Thu, Apr 18, 2019 at 4:36 PM <planner@peninsulatownship.com> wrote:

Thanks Dave – I see what you mean. Sounds like this has been a long-term issue. It seems like most wineries have indoor tasting rooms –but the spaces extend into outdoor areas. You do your tastings indoors – but you may outside on a patio or deck to have a full glass. Another example is Mari.

Randy A. Mielnik, AICP

Director of Planning
Peninsula Township

13235 Center Road

Traverse City MI, 49686
Phone - 231-223-7314

Fax – 231-223-7117
planner@peninsulatownship.com

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thursday, April 18, 2019 3:02 PM

To: Randy Mielnik <planner@peninsulatownship.com>

Subject: Tasting Room - Definition

Randy,

I am concerned about our wineries and their outdoor tasting facilities.

Chateau Chantal, Brys, Bonobo, Chateau Grand Traverse, Bowers Harbor (and maybe a few more) have outdoor areas (patios, decks, grassy areas, etc) where they serve wine. I am aware that Bowers, and maybe others, have amended their LCC License to change/modify the original "tasting room" that was part of a structure/building.

Bowers, as we have been told, redefined their tasting room to include a large grassy area, now with table and chairs. It was more than a coincidence that the "pavilion" was in that new tasting area.

In the ZO (old and new), a Tasting Room is room in conjunction with a licensed winery premise. That means a place inside a building, as I read it.

By amending their licenses to include outside areas, the LCC permit is in disagreement with the ZO. The wineries have forced out hand.

If outside areas are now open for tasting (and food service), we need to address issues of sound, lighting, sanitation, etc that were handled by the Building and Health Codes for structures; there are no rules for outside tasting. Noise and sanitation are 2 big issues. If Bowers can have an unlimited number of people outside for tasting and eating, think of the impact on the neighbors, including the park? This unlimited size tasting room was not anticipated in the parking requirements.

Let's talk with Bowers about the area for their Tasting Room -- actually 1-2 acres of lands with 2 buildings.

As I said, I believe that LCC is leading the wineries to violate the ZO; tents will be next.

Dave

--

David K. Sanger

Ordinance Enforcement Officer

Peninsula Township Zoning Office

13235 Center Road

Traverse City, MI 49686

231-223-7318

231-216-1212 direct line

--

David K. Sanger

Ordinance Enforcement Officer

Peninsula Township Zoning Office

13235 Center Road

Traverse City, MI 49686

231-223-7318

231-216-1212 direct line

Exhibit 20

Zoning

From: David Sanger <dave.peninsulatrustee@gmail.com>
Sent: Friday, April 19, 2019 2:01 PM
To: Kristy McClellan
Cc: planner@peninsulatownship.com; Zoning; Sarah Keever; Linda Stegenga; Spencer Stegenga; Dave Sanger; Infante, Joseph M.; Gregory M. Meihn
Subject: Re: SUP prep- BHV

1:30 Tuesday 4/23 is OK with me. I suggest that we review the Winery-Chateau section of the Ordinance line-by-line, to be sure that everyone fully understands the Winery-Chateau section. That should clear-up any questions related to allowed uses, activities and reporting requirements for Guest Activities.

Dave

On Fri, Apr 19, 2019 at 12:21 PM Kristy McClellan <info@bowersharbor.com> wrote:

Thank you for your suggestion. We appreciate you help and willingness to meet with us and work with us.

Let's meet Tuesday, April 23rd at 1:30 pm please.

We will see you at the township then and bring any other questions we have.

Thank you again. Have a great Easter weekend.

Cheers,

Kristy McClellan

Director of Operations

Bowers Harbor Vineyards

231-223-7615

www.bowersharbor.com

Exhibit 21

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Wednesday, May 1, 2019 1:06 PM
To: Marie-Chantal Dalese
Cc: Christina Deeren
Subject: Re: Winery-Chateau

Marie-Chantal,

Yes, would be pleased to meet with you next week; I prefer early afternoon meetings (1:00 or 1:30). I would like to include Christina also, plus Randy, our new Planner. Please suggest a few days/times and I will coordinate.

I can tell you that we have developed definitions or events, activities and entertainment -- in response to the changing marketing approaches in our wineries. I agree that the lack of definitions has presented some issues for both the wineries and the Township. These three words are used throughout the Zoning Ordinance, sometimes with confusion. We will share that information with you. Our dialogue will be helpful as the Planning Commission is nearing the competition of the re-organization of the Ordinance.

I can tell you that the Sip + Paint event at Bonobo was cancelled, as a result of a letter from the Zoning Office advising the winery that such a use would be a Violation of the Winery-Chateau SUP. As required in the Guest Activities section, we could not identify the required identification and promotion of OMP agriculture in the planned event.

I will look for your reply. We have established a goal of open and better communication with our winery operators, and we look forward to meeting with you.

Thanks,

Dave

On Wed, May 1, 2019 at 10:28 AM Marie-Chantal Dalese <MCDalese@chateauchantal.com> wrote:

Hello Mr. Sanger,

I'd like to request a meeting with you to understand the current interpretation of winery-chateau rules as they pertain to specific events. I have not received any response from the emails sent below.

When would a good time be to meet?

Thanks,

Marie-Chantal Dalese
Certified Sommelier

President & CEO
Chateau Chantal
15900 Rue de Vin
Traverse City, MI 49686
231-223-4110 ext. 140

From: Marie-Chantal Dalese
Sent: Wednesday, April 24, 2019 2:14 PM
To: 'Zoning' <Zoning@peninsulatownship.com>
Cc: Ralph Kridner (rkridner@chateauchantal.com) <rkridner@chateauchantal.com>
Subject: RE: April News + Events

Hi Christina,

Should this be sent elsewhere? Please let me know the best party to pose my questions – Planner? Enforcer?

Thanks,

Marie-Chantal

From: Marie-Chantal Dalese
Sent: Monday, April 22, 2019 8:55 AM
To: Zoning <Zoning@peninsulatownship.com>
Subject: FW: April News + Events

Hi Christina,

Could I please receive clarification about events such as the painting event below at a winery-chateau? We've operated off the premise these aren't allowed as they are not specifically food and wine education. Also, magic shows with food and wine?

Thanks for the clarification,

Marie-Chantal

Exhibit 22

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Wednesday, April 24, 2019 5:43 PM
To: Christina Deeren
Subject: Bonobo Sip _+ Paint

Christina,

Todd has cancelled this event planned for this Saturday night. It was a ticket event, with painting something with a well know artist.

He was cooperative;
Dave

--

David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

Zoning

From: Todd Oosterhouse <todd@bonobowinery.com>
Sent: Thursday, April 18, 2019 1:12 PM
To: David Sanger
Cc: Christina Deeren; Greg Meihn
Subject: Re: paint and sip

Dave,

Please confirm that it is the legal position of the Township that providing winery guests with painting supplies while they drink wine is a guest activity and not entertainment. Given that you have copied the Township attorney on your email I assume that this is a correct assumption on my part but want to confirm. Given this legal conclusion, I am requesting from you a definition for the following: "Guest Activity", "Entertainment" and "Accessory Use." The zoning ordinance does not contain a definition for any of these terms and I cannot run my business without know what is allowed and what is not allowed. Given the Township's determination, I am concerned that providing things as simple as board games or cards for my customers will be considered a guest activity and result in a violation. Please provide me with a definition so that I can ensure that I am acting in compliance with the ordinance. Please also provide me with a list of all "guest activities" the Township has approved in the past three years, all determinations on what is "entertainment" for the past three years and all determination of what is an "accessory use" for the past three years.

Please inform me when a reasonable time for me to expect these questions answered. With the busy season is upon us I need to conduct my business in what I was approved to do 5 years ago with out subjective interpretation.

Thanks

Todd Oosterhouse
Owner/General Manager
Bonobowinery.com
231-383-5118

On Apr 18, 2019, at 10:12 AM, David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

Todd,

You previously reported grape production off of Bonono Winery-Chateau SUP 118 property for the 2018 harvest at 76 tons. Based on the formula in the Winery-Chateau section of the Zoning Ordinance, Bonobo is allowed 61 people in attendance at a Guest Activity during calendar year 2019.

In my letters of February 19, 2019 and March 5, 2019, I stated that the advertised "Sip + Paint" would only be allowed under your SUP if it qualified as a "Guest Activity". To qualify, you must submit to the Zoning Administrator prior to the activity:

1. grape production (off Bonobo property) for 2018; that has been done. A maximum of 61 guests are allowed at any one guest activity in 2019.

2. Qualify the guest activity under on of the allowed uses in the Ordinance (8.7.2. (10). (u). 2. This has not been done.

Thus, "Sip + Wine" advertised activity on April 27 is not allowed.

You have argued the case, both on the telephone and in your email of April 15, that you believe that this advertised and ticketed activity is "entertainment" and is allowed as an "accessory use". I advised you that the "Wine + Sip" activity is not "entertainment" and would only be allowed as a Guest Activity. I have reviewed this decision with the Zoning Administrator and the decision stands.

Please be advised that the advertised "Sip + Paint" will be a Violation of Bonobo's SUP unless you provide to Zoning Administrator, in writing, advance notice and supporting documentation that the planned activity complies with the requirements of the Ordinance. In particular, the activity must have a direct relationship to agricultural production.

I have been trying to work with you since February 19th, Todd, but the time remaining to resolve this matter is nearing an end. I ask for your immediate attention to avoid a Violation.

Dave

On Mon, Apr 15, 2019 at 12:18 PM Oosterhouse, Todd <todd@bonobowinery.com> wrote:

Hi David and Christina,

We at Bonobo Winery are having a paint and sip on 4-27-19. We will have 30 guests. This entertainment is free. The participants pay for the wine they drink and the tour. All other supplies are given to them free of charge. As stated on our facebook invite.

I am writing to let you know what categories it falls under:

Entertainment which is allowed under the ordinance. Entertainment takes on many forms and is subjective and is not defined in the ordinance just an example is given.

Accessory use as this is incidental and subordinate to the principle use which is wine tasting, which they are doing.

Guest activity as we have submitted the tonnage from last year and this is less then the allowable people that can attend an event. We are show casing the wine and facility. As it states in my SUP they do not need to be registered guest to attend.

The winery is open to the public as well, it is not happening after hours and the winery is not closing down for this. If people wanted to come into the painting and partake in the entertainment that is also acceptable. We are holding this in the tasting room floor area.

Let me know if you have any questions.

Thanks

Enjoy the day!

Todd Oosterhouse
Owner/General Manager
231-383-5118 cell
bonobowinery.com

--

David K. Sanger

Exhibit 23

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Wednesday, May 8, 2019 11:23 AM
To: Zoning
Subject: Re: FW: On Nextdoor - Bonobo

Christina,

Yes, Linda gave me the info from Next Door also. I forgot to show it to you this morning. I will call Todd this afternoon.

Dave

On Wed, May 8, 2019 at 11:16 AM Zoning <Zoning@peninsulatownship.com> wrote:

5/8/2019

Dave,

Susan forwarded me this information. Apparently Mr. Oosterhouse still does not understand what he can and cannot do!

Spanish lessons??

Keep me posted if you contact him.

Maybe we need to sit down with Todd as well and have a meeting of allowable activities.

Thank you,

Christina

From: Susan Piehl <officemanager@peninsulatownship.com>
Sent: Wednesday, May 8, 2019 10:51 AM
To: Christina <zoning@peninsulatownship.com>
Subject: On Nextdoor - Bonobo

Sondra Hardy, Old Mission

Beginning Spanish lessons

Carolyn Oosterhouse is available for class lessons at Bonobo. Anyone interested?

23h ago · [11 neighborhoods](#) in General



Thank



Reply



3



11



Susan Kotila, Old Mission Peninsula North · 21h ago

Yes I certainly would... please keep me informed as to when they begin.



Lynn Stephenson, Old Mission Peninsula North · 21h ago

Interested, sent private message....



Sandra Pittman, Old Mission Base · 20h ago

Perhaps, depending on schedule.



Linda Raetz, Old Mission Peninsula North · 20h ago

Yes, I would be interested.



Sondra Hardy, Old Mission · 20h ago

Hello Linda. We now have three of us and so if you send me your email address, we can get together with Caroline and set something up. Mine is sondrashawhardy@gmail.com.



Karen DeCook, Old Mission · 19h ago

I'm very interested in beginning spanish



Karen DeCook, Old Mission · 19h ago

My email is kdluv@bellsouth.net





Christine Lawton, Old Mission · 18h ago

I would be interested. Please keep me updated. Lawton68@yahoo.com



Molly Stretten, Old Mission Peninsula North · 15h ago

Yes! I'd be interested



Renee Trevorow, Old Mission · 13h ago

I am also interested in beginning Spanish



Barbara Dilisio, Old Mission · 57m ago

I would be interested



Add a reply...

Regards,

Susan Piehl

Peninsula Township Office Manager

13235 Center Road

Traverse City MI 49686

phone - 231-223-7322 ext. 1

fax - 231-223-7117

officemanager@peninsulatownship.com

Office Hours: Mondays 7:30 am to 6:30 pm, Tuesdays – Thursdays 7:30 am to 5 pm and closed Friday – Sunday and Holidays.

--
David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road

Exhibit 24

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Tue, 14 May 2019 09:09:51 -0400
Subject: Fete d'ette Event June 6, 2019
To: Alex Lagina <alex@marivineyards.com>
Cc: Christina Deeren <zoning@peninsulatownship.com>
[Mari Fette d'Ette June 6 201905142019.pdf](#)

Alex,
Mari Vineyard is advertising that it will participate in the Fete d'Ette cycling and dinner event on Thursday, June 6, with the Boathouse Restaurant furnishing food with wine pairing from Anne Amie Vineyards in Oregon. A copy of the advertising is attached.

Mari operates under a SUP; the SUP allows participation in Guest Activities within specific parameters:

1. Qualification, based on previous crop year tonnage of OMP grapes purchased/grown. Mari has met this requirement for 2019 Guest Activities.
2. Guest Activities are intended to promote Peninsula agriculture. Please explain how the pairing of food with wine from Oregon meets that requirement.

Please respond to this email, explaining how this advertised, fee for entry event, prompting Oregon-produced wine, is in compliance with the SUP for Mari Vineyards. I would ask for your response quickly, enabling the Zoning Department to evaluate your response prior to further advertisement of this event.

Thank you in advance for your response.

Dave Sanger

--
David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

Exhibit 25

Zoning

From: Gregory M. Meihn <gmeihn@foleymansfield.com>
Sent: Thursday, July 11, 2019 3:52 PM
To: David Sanger; Rob; Randy Mielnik; Christina Deeren
Subject: RE: Portrait Painter - Event 7/12

I agree.

From: David Sanger [mailto:enforcement.peninsulazoning@gmail.com]
Sent: Thursday, July 11, 2019 2:19 PM
To: Rob; Gregory M. Meihn; Randy Mielnik; Christina Deeren
Subject: Fwd: Portrait Painter - Event 7/12

Rob, Greg and Randy,

Bonobo has an event scheduled for tomorrow night, 7/12; Carol Nichols. Portrait Artist will be present. The advertisement says "meet and greet Carol Nichols, Portrait Painter. She will show a collection of her portrait art; save \$200 on a portrait comission during July and August."

Christina asked me to send a letter to Todd, advising that this is not a qualified event under the "Guest Activity Uses". I sent Todd the attached letter; his reply is also below. In summary, he believes that this is a tasting room activity and he has the right to hold it.

He states that this is not a guest event, as the Tasting Room will still be open and there is no charge to view the artists's work on display.


Christina and I see this as an advertised event that has no connection with agriculture; it is merely a way to attract customers, for the winery and the artist, as one can save \$200 on commissioning a portrait during July and August.

Greg, I ask for your comments and guidance. Is this a valid activity under the SUP for Bonobo? If not, are we prepared to write a Citation and/or have the Town Board schedule a Public Hearing as permitted in the Guest Activities section of the ZO?

Thanks,

Dave



Gregory M. Meihn | Partner | T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

Chicago | Denver | **Detroit** | Edwardsville | Indianapolis | Kansas City | Los Angeles | Miami
Minneapolis | New Orleans | New York | Portland | St. Louis | Seattle | Tampa Bay | Walnut Creek

NOTICE: Important disclaimers and limitations apply to this email. Please click [HERE](#) to view these disclaimers and limitations.

----- Forwarded message -----

From: **Todd Oosterhouse** <todd@bonobowinery.com>
Date: Thu, Jul 11, 2019 at 1:34 PM
Subject: Re: Portrait Painter - Event 7/12
To: David Sanger <enforcement.peninsulazoning@gmail.com>
Cc: Rob <supervisor@peninsulatownship.com>

David

I did receive the letter. This is not an event as it pertains to guest activity, we are not closing for this, there is no ticket sales or reservations, the tasting room is open to the public. If you look at the post it says meet the artist, taste wine and get a wine education from our servers.

This has never been an issue in the past, please let me know if you have any questions.

Thanks

Todd Oosterhouse
Owner/General Manager
Bonobowinery.com
231-383-5118

> On Jul 11, 2019, at 1:21 PM, David Sanger <enforcement.peninsulazoning@gmail.com> wrote:

>

> Todd,

>

> I sent you a letter, as requested by Christina, regarding the advertised event for tomorrow night from 6:30 to 9:00 with Carol Nichols.

>

> Have you received my letter? Any questions?

>

> Do you plan to comply with the Ordinance limitations and cancel this event?

>

> I have written you previously stating that Bonobo qualifies for Guest Activity Uses for 2019, based on the grape purchase data you furnished. For Guest Activities, the Ordinance requires notification to the Township, in advance, for seminars and food classes and meetings of ag-related groups. Only meetings of 501c3 groups do not require advance notification to Christina.

>

> I do not recall receiving any scheduling notices from you? Have I missed something? Christina did not receive a notice on the 7/12 event with Carol Nichols.

>

> Thanks,

>

> Dave

>

> --

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

July 9, 2019

Mr. Todd Oosterhouse
Bonobo Winery
12011 Center Road
Traverse City, MI 499686

Dear Todd:

I am aware that you are advertising an event at Bonobo titled "We are Northern Michigan" for Friday, July 12, 2019 from 6:30pm to 8:00PM. The advertisement states "meet and greet our new artist, Carol Nichols Portrait Artist; save \$200 on portrait commissions during July and August".

In the case of this advertised event, the primary use (or reason for someone to come to the winery) is to "meet and greet an artist and save \$200.00 on portrait commissions"; the event is not the principal use (tasting of wine) as required in the SUP for Bonobo.

The advertised event is not allowed under the Special Use Permit for Bonobo, unless the event is qualified by Bonobo as a "Guest Activity" as provided in the Winery-Chateau section of the Ordinance. To qualify, Bonobo must provide proof to the Township that it has grown, or purchased, 1.25 tons of grapes grown in Peninsula Township for the previous growing season for each person allowed to participate in the Guest Activity. You have qualified for Guest Activities in 2019.

However, you have not complied with the documentation and noticing requirements as specified in Zoning Ordinance section 8.7.3. (10) (u) 2 and 8.7.3 (u) 3. In particular, you have not provided advance notice to the Zoning Department nor have you provided the required relationship with Agricultural Production Promotion. Please refer to Zoning Ordinance section 8.7.3 (u) attached.

Please be advised that holding the advertised event on July 12 will be a violation of your SUP, with enforcement actions that could include issuance of a Citation for a Civil Infraction and Township Board action that could affect your SUP. I ask for your cooperation.

Sincerely,



David K. Sanger
Peninsula Township Ordinance Enforcement Officer

Exhibit 26

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Monday, September 30, 2019 3:07 PM
To: Christina Deeren
Subject: Fwd: Fw: Upcoming Wine and Cider Events

Christina,

FYI. Is this DIV event on the approved list (for 10/4)?

Note that the ad says that they will take 60 guests -- should be no more than 50.

I have placed a call to Kristi to explain.

Dave

----- Forwarded message -----

From: Dave Sanger <dksanger542@yahoo.com>
Date: Mon, Sep 30, 2019 at 3:05 PM
Subject: Fw: Upcoming Wine and Cider Events
To: Dave Sanger <enforcement.peninsulazoning@gmail.com>

Dave Sanger 231-342-2152

----- Forwarded Message -----

From: Linda Sanger <lmsanger329@yahoo.com>
To: Dave Sanger <dksanger542@yahoo.com>
Sent: Monday, September 30, 2019, 12:41:24 PM EDT
Subject: Fw: Upcoming Wine and Cider Events

----- Forwarded Message -----

From: Bowers Harbor Vineyards <alaina@bowersharbor.com>
To: Linda Sanger <lmsanger329@yahoo.com>
Sent: Monday, September 30, 2019, 12:07:26 PM EDT
Subject: Upcoming Wine and Cider Events



Exhibit 27

Zoning

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Monday, December 7, 2020 2:56 PM
To: Gregory M. Meihn
Cc: Zoning
Subject: Re: Bonono -- Selling Spirits

Greg and Christina,

I agree -- no on-site visits or enforcement.

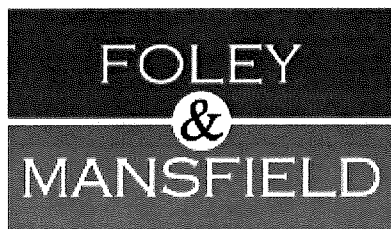
FYI - they have a very active following on Facebook. Please review attached that I pulled off Facebook (meals to go, without any wine; gin, whiskey and vodka; they say that they have a new "partner", Mammoth Distillery -- with food and spirits on site in TC, Bay Harbor, Boyne).


I encourage you to check their Facebook postings. Plus, Kristy McCullen (spelling?) is now at Bonodo -- she was the events director at Bowers Harbor, as you recall.

Dave

On Mon, Dec 7, 2020 at 10:35 AM Gregory M. Meihn <gmeihn@foleymansfield.com> wrote:

I would like, as a strategy, to keep silent for the next two weeks. Then we can move



Gregory M. Meihn | Partner | T: 248-721-8183 | F: 248-721-4201
130 East Nine Mile | Ferndale, MI 48220 | foleymansfield.com 

Chicago | Denver | **Detroit** | Edwardsville | Indianapolis | Kansas City | Los Angeles | Miami
Minneapolis | New Orleans | New York | Portland | St. Louis | Seattle | Tampa Bay | Walnut Creek

NOTICE: Important disclaimers and limitations apply to this email. Please click [HERE](#) to view these disclaimers and limitations.

From: Zoning [<mailto:Zoning@peninsulatownship.com>]
Sent: Monday, December 07, 2020 9:54 AM
To: 'David Sanger'
Cc: Gregory M. Meihn
Subject: RE: Bonono -- Selling Spirits

Dave,

Thank you for the information. I believe their liquor license allows them to produce wine and liquor however the township ordinance doesn't state they can as it specifically designated to wine.

I am concerned with the full take out and pickup food menu as that would be in violation of the ordinance as well.

I am copying Greg on this email so that he is also aware of these issues as we move forward to a court hearing.

Thanks again.

Christina

From: David Sanger <enforcement.peninsulazoning@gmail.com>

Sent: Monday, December 7, 2020 9:34 AM

To: Christina Deeren <zoning@peninsulatownship.com>

Subject: Bonono -- Selling Spirits

Christina,

I know that Bonobo has been advertising that they are serving their house-made gin and other spirits. Wonder how you can make gin from cherries?

They are also advertising a full take-out and pickup food menu, I am told. Nothing on their website.

Jusy FYI; I know that we must be careful with an enforcement action during this COVID situation, and the law suit.

Dave

--

David K. Sanger

Ordinance Enforcement Officer

Peninsula Township Zoning Office

13235 Center Road

Traverse City, MI 49686

231-223-7318

231-216-1212 direct line

--

David K. Sanger

Ordinance Enforcement Officer

Peninsula Township Zoning Office

13235 Center Road

Traverse City, MI 49686

231-223-7318

231-216-1212 direct line

Exhibit 28

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

ROBERT K. MANIGOLD
SUPERVISOR

BECKY CHOWN
CLERK

BRAD BICKLE
TREASURER

MARGARET ACHORN
TRUSTEE

DAVID SANGER
TRUSTEE

WARREN WAHL
TRUSTEE

ISAIAH WUNSCH
TRUSTEE

September 9, 2021

Kroupa Enterprises LLC
c/o: Joan & John Kroupa
2324 Kroupa Rd.,
Traverse City, MI 49686

Re: Amplified music

Parcel No. 28-11-004-015-00 – 11480 Center Rd., Traverse City, MI 49686

Dear Mr. Kroupa,

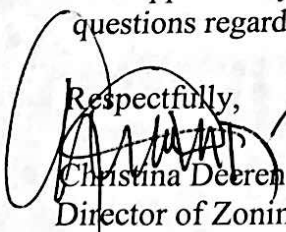
This letter is in regard to a complaint that I received on September 2, 2021, regarding amplified music at the afore mentioned location. Since your property is surrounded by residentially established parcels the amplified music is impactful and disruptive to the surrounding residences.

Please be advised that per your Special Use Permit No. 62 amplified music is not an allowable use per this special use permit. Therefore, any continuation of amplified music will be a violation of this special use permit.

Failure to comply will result in a civil infraction citation being issued for each day the violation continues and could also include your special use permit being revoked by the Peninsula Township Board of Trustees.

I would appreciate your prompt action in complying with these regulations.

I appreciate your time in this matter. Please feel free to contact me if you have any further questions regarding this information.

Respectfully,

Christina Deeren
Director of Zoning
Zoning Administrator

WOMP013774

Exhibit 29

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

www.peninsulatownship.com

ISAIAH S. WUNSCH
SUPERVISOR

REBECCA CHOWN
CLERK

MARGARET ACHORN
TREASURER

W. WILLIAM RUDOLPH
TRUSTEE

DAVID K. SANGER
TRUSTEE

ARMEN SHANAFELT
TRUSTEE

WARREN WAHL
TRUSTEE

July 12, 2022

Brys Realty LLC
C/O: Patrick Brys
3309 Blue Water Rd.,
Traverse City, MI 49686

Re: Request for Private Fundraiser on August 15, 2022.

Dear Mr. Brys,


This letter is in response to your request to hold a gathering including the use of a tent for an event for approximately 100-125 attendees who are not registered guests using your lodging facilities on your property.

Your property holds a Special Use Permit to operate a Winery-Chateau under Section 8.7.3(10) of the Peninsula Township Zoning Ordinance. The use you have proposed is not permitted by your Special Use Permit nor by any section(s) of the zoning ordinance for a Winery-Chateau in the A-1, Agricultural Zoning District.

Although the federal court recently enjoined some portions of the zoning ordinance, the Township is not aware of any ruling that would authorize a tent and a gathering of this size as a permitted use under a Winery-Chateau Special Use Permit. Therefore, please be advised that you are not authorized to install a tent or conduct a gathering of approximately 100-125 attendees who are not registered guests on your property. If you are aware of a court ruling, ordinance provision, or special use permit provision that you believe authorizes this use, please identify it with specificity.

Please contact me at (231) 223-7318 if you have any additional questions regarding this information.

Sincerely,



Christina Deeren

Director of Zoning

Zoning Administrator

(231) 223-7318

Exhibit 30

History of Bower's Harbor Vineyard
Amendments, Violations Correspondence

Date:	Event:
10/21/1992	Letter from Hayward to Stegenga regarding corrections for parking, banner and signs
10/25/1993	Letter from Hayward to Stegenga regarding request to revise signs & parking
11/25/1995	Letter from Hayward to Stegenga regarding violation of selling gift products
11/29/1995	Letter from Hayward to Stegenga regarding violation of tasting /retail sales.
2/7/1996	Letter to Jack and Linda Stegenga regarding SUP Violations of retail sales
9/2/2009	Letter from Gordy uecker to Linda Stegenga violation of SUP for Dining in the vines advertised in Record Eagle 8/31/2009
8/3/2010	PC amendment to SUP#32
5/13/2014	Email from Linda Stegenga to Elise Crafts fro Dining in the Vines Events for 2014
6/19/2014	Letter to Linda Stegenga from Michelle Reardon regarding violations of SUP (wedding reception/live music/summer solstice patio
6/27/2014	Email from Linda Stegenga to Elise Crafts regarding list for Dining in the Vines Events for 2014
7/1/2014	Email to Elise Crafts from Linda Stegenga regarding Dining in the Vines event list and possible violation
7/10/2014	Email to Linda Stegenga from Elise Crafts regarding correcting violations of SUP
7/10/2014	Letter received from Linda Stegenga to Michelle Reardon regarding 3 violations of SUP
4/23/2015	Letter to Elise Crafts per Linda Stegenga requesting amendment to SUP adding extended hours, employees and new construction
4/29/2015	Email from Elise Crafts to Linda Stegenga regarding letter dated 4/23/2015 & SUP 32 Amendment
5/6/2015	Received letter from Linda Stegenga to Elise Crafts regarding questions on SUP
5/28/2015	Email to Elise Crafts from Michelle Reardon regarding BHV Timeline
7/28/2015	Michelle Reardon spoke to Linda Stegenga regarding Yoga in the vines and told Linda this was not allowed (memo)
10/7/2015	Letter from Linda Stegenga to PC regarding hours of operation and enforcement - Possible Amendment to SUP (not processed)
10/19/2015	PC Board Meeting - Amendment to SUP #32 (schedule public hearing: additional employees, hours of operation & 70x5 addition
12/7/2015	Email to Linda Stegenga from Michelle Reardon outlining violations of SUP new structure
12/16/2015	Letter received from Linda Stegenga to Michelle Reardon responding to Michelles letter dated December 7, 2015
1/12/2016	Email received from Linda Stegenga to Michelle Reardon regarding Wine Label Art Competition
1/13/2016	Email to Linda Stegenga from Michelle Reardon giving permission for BHV to hold Wine Label Art Competition - Fundraiser
4/21/2016	Letter to Township Board from Michelle Reardon update
5/5/2016	Letter to Linda Stegenga from Michelle Reardon of pending violations of SUP for Hosting Goodwill Industries Derby Party on 5/7/2016
5/25/2016	Letter received from Linda Stegenga to Michelle Reardon responding to Michelle's letter dated 5/5/2016.
8/24/2016	Email to Linda Stegenga from Michelle Reardon regarding amendments to SUP (employees, hrs of operation & Dining in the Vines).
9/27/2016	Email to Peter Wendling regarding complaint received by Gordon Hayward & operating beyond days allowed in SUP.
9/29/2016	Letter to Gordon Hayward from Attorney Peter Wendling regarding BHV SUP 32 and GAAMPS
10/27/2016	Letter to Manigold from Linda Stegenga Mtg w/Sheriff and Fire Chief & Kristy, Spencer, Tom Petzold for parking issues. Dave
10/27/2016	Edmondson video taping BHV from Park property.

History of Bower's Harbor Vineyard
Amendments, Violations Correspondence

11/21/2016	Email from Deputy Hamilton to Manigold outlining parking issues & deterring people from parking in the park.
11/14/2016	Memo received from Nicole Essad regarding GAAMPS & BHV SUP
12/28/2016	Email sent to Rob per Randy Rittenhouse & Deputy Hamilton site visit (10/26/2016) to discuss things to change in case of emergency
1/26/2017	Email to Lindg Stegenga from Hayward regarding issuing a land use for bldg and patio
1/26/2017	Email from Linda Stegena to Hayward wanting to know if the Twp needs anything further from them
4/25/2017	Letter from Linda Stegena stating that they will be moving the deck that was placed too close to the property line
4/26/2017	Email from Brian to Zoning regrading permit for land use permit
4/26/2017	Email from Linda to Brad - add letter to file request
5/18/2017	Email from Linda Stegenga to Brian for Dining in the Vine dates for 2017
6/27/2017	Letter from Department of AG to Spencer Stegenga - Nutrient Management plan and pesticide utilization record
7/3/2017	Email from Linda Stegenga to Christina regarding Department of AG letter to bring into compliance
7/5/2017	Email to Deeren from Sanger regarding update on complaint & Dining in the Vines
7/14/2017	Letter sent to Linda Stegenga from Briam Graham - Zoning Ordinance Violations
7/17/2017	Received email from Sanger regarding Yoga in the Vines for BHV
7/18/2017	Received email from Linda Stegenga requesting appointment with Sanger
7/19/2017	Received email from Sanger regarding how to handle issues with BHV and SUP compliance
7/20/2017	Received email from Linda Stegenga that Dining in Vines will be moved to approved site in original SUP & no tent will be used.
7/21/2017	Email from Manigold to Twp Board forwarding BHV Dining in the Vines schedule with no tent
7/23/2017	Email from Sanger conducted on site inspection of lobster boil report
7/24/2017	Email from Brian to Sanger thanking him for report from 7/23/2017
7/25/2017	Email from Sanger reporting observing tent on Spencers property
7/26/2017	Email to Sanger from Deeren regarding tent for Dining in the Vines and violation of SUP
7/27/2017	Email from Sanger with follow up to call from Dave Edmondson & complaint on using tent for Dining in the Vines
8/2/2017	Email from Deeren to Graham for BHV Event list
8/3/2017	Letter sent to Linda Stegenga from Briam Graham - Continuation of zoning ordinance violations
8/3/2017	Email from Graham to Deeren with copy of letter to Linda Stegenga regarding violations
8/9/2017	Email to Bickle from Brian attaching letter from Graham.
8/10/2017	Meeting with BHV & Rob, Brad, Brian and Christina to go over activities and events
8/11/2017	Letter received from BHV Attorney, Alward
8/12/2017	Email from Kristy to Brian, Christina, Brad and Rob outlining BHV list of Activities and Vines Events
8/14/2017	Email from Bickle to Graham an Essad regarding activities and events for BHV
8/16/2017	Email from Bickle to Kristy and Linda for a meeting time at 1pm on this date
8/23/2017	Email received from Kristy for schedule of events - Dining in the Vines
8/24/2017	Email from Kristy updating schedule of events

History of Bower's Harbor Vineyard
Amendments, Violations Correspondence

9/8/2017	Email from Kristy to Deeren letter of notification of letter to Police and Fire for continued safety concerns
9/13/2017	Email from Kristy to Shuttle Companies and Drivers
9/16/2017	Event at BHV. Usage of tent sign and parking violation issues with buses parking in vines. Sanger witnessed event over weekend.
9/20/2017	Sanger brought in photo of tent sign re-directing traffic at BHV. Sign was still up on 9/20/2017
9/20/2017	Brian, Gordon and Christina went to BHV and met with Kristy to address tent sign and violation of SUP w/signage and parking
9/20/2017	Email from Kristy with attachment of shuttle driver routes for parking in the vines
9/20/2017	Forwarded email from Treasurer to ZA from Linda Stegenga regarding buses parking in the vineyard.
9/21/2017	Follow-up letter to Linda pertaining to buses parked in the vineyard. -CMD
9/21/2017	Email to Kristy from Christina sending map as to approved site plan for parking approved in SUP
9/21/2017	Email from Kristy to Christina confirming receipt of email
9/22/2017	Email from Kristy to Christina pertaining to email sent to Linda on 9/21/2017 and no helicopters allowed
9/22/2017	Email from Sanger to Christina parking issues with BHV and helicopter tours
10/20/2017	Email from Kristy to Christina registering 17th event for the 20 allowed per year.
10/27/2017	Email from Linda Stegenga to Bickle requesting meeting with Brad, Rob and Don Coe
10/31/2017	Email from Bickle to Stegenga setting time and date for meeting request with Don Coe
10/31/2017	Email from Kristy to Bickle with meeting time and date confirmation
10/31/2017	Email from Bickle to Kristy confirming date and time for meeting
11/8/2017	Email from Kristy to Christina registering 18th event for the 20 allowed per year.
11/15/2017	Email from Kristy to Brian wanting suggestions to regarding proposed SUP amendment
11/20/2017	Email from Brian to Kristy acknowledgement of email dated 11/15/2017
11/21/2017	Email to Brian from Kristy SUP Edits
11/27/2017	Email from Brian to Kristy wanting a word document to create the SUP narrative.
11/28/2017	Email from Kristy to Brian SUP Edits
11/29/2017	Email from Kristy to Brian wanting to know when they would hear from him
12/5/2017	Email from Kristy to Brian looking for date to go over editing SUP proposal
12/5/2017	Email from Brian to Kristy meeting to go over SUP amendments with PC members
12/6/2017	Email from Kristy to Brian regarding SUP amendment
12/15/2017	Email from Brian to Kristy - For your information.
12/15/2017	Email from Kristy to Brian wanting to know why they didn't have another meeting before scheduled on PC agenda
12/16/2017	Email from Spencer to Brian requesting another mtg before SUP goes on agenda (found out Fri that would be on Mon agenda).
12/18/2017	Email from Brian to Kristy removing SUP from the agenda on this date for the PC meeting
12/18/2017	Email from Kristy to Brian requesting a meeting time.
12/18/2017	Email to Christina from Kristy shocked that they were on the PC agenda and not notified

History of Bower's Harbor Vineyard
Amendments, Violations Correspondence

12/20/2017	Meeting with Brad, Brian and Christina spoke about SUP amendment and complaints from one resident
12/20/2017	Email from Brian to Linda & Spencer outlining meetin on 12/20/2017 and options for amending SUP
12/28/2017	Received Agreement for Amendment and Confirmation of Easement between BHV & Park parcel from Dave Edmondson
1/23/2018	Received email from Linda Stegenga to Brian VanDenBrand regarding summary of 12/20/2017 meeting & complaint from one resident
1/23/2018	Received email from Linda Stegenga to Brian VanDenBrand regarding summary of 12/20/2017 meeting & complaint from one resident
1/23/2018	Received written complaint from Dave Edmondson regarding Bower's Harbor Vineyards
1/23/2018	Drove around and collected signs for snowshoeing event late afternoon 4:30 ish - CMD
1/24/2018	Collected remainder of signs in the park for the snow shoeing event. -CMD
1/24/2018	Manigold and Deeren went to Brys, Jolly Pumpkin and Bower's Harbor Vineyards to explain possible violation with the signage
1/24/2018	Manigold and Deeren delivered complaint to BHV (Linda and Kristy) from Dave Edmondson
1/24/2018	Email to Linda and Kristy scheduling meeting for January 30th with Jolly Pumpkin and Brys & BHV
1/25/2018	Email from Kristy to Christina regarding first email after our Oct. meeting
1/25/2018	Email from Kristy to Brian second email follow up
1/25/2018	Email from Kristy to Christina - Resent SUP requests via word so Brian could edit with his thoughts.
1/25/2018	Email from Kristy to Christina regarding PC Packet
1/25/2018	Email from Kristy to Christina regarding options for amendments to SUP & Dining in the Vines
1/25/2018	Received email from Kristy - sixth follow up regarding SUP edits.
1/27/2018	Received email from Monnie Peters regarding possible parking violations with Pooches and Pints - 3 videos were taken at this time
1/27/2018	JoAnne went down to BHV per phone call from Monnie Peters and concerns of violations w/parking - No violations were observed
1/28/2018	Email from Sanger to Deeren regarding Monnie Peters complaint of large event at BHV Pooches and Pints
1/30/2018	Meeting with Rob, Christina, Brys, Jolly Pumpkin and BHV regarding snow shoeing activity and signage
1/30/2018	Meeting with BHV (Linda, Spencer & Kristy) and Attorneys & Twp staff (Rob, Christina and Brian)
2/1/2018	Email from Brys confirming stakes can go up instead of signs
2/2/2018	Email from Kristy to Christina regarding meting on 1-30-2018
2/5/2018	Dave Edmondson was in office 2 times copied response from Lindat Stegenna to him at 10:21 am
2/5/2018	Email from Kristy to Christina confirming meeting time at 1pm on 2-6-2017
2/5/2018	Email to Kristy from Christina outlining time for meeting.
2/5/2018	Email from Kristy to Christina looking for meeting date and time & requesting help with SUP amendment
2/6/2018	Email from Kristy to Christina- Brief meeting
2/7/2018	Dave in office around 10:00 am to go over letter from Linda and question further items and issues
2/7/2018	Received phone call from Dave Edmondson - Message "He wants a call back today" - Message taken by Susan 4:37 pm
2/7/2018	Returned phone call to Dave Edmondson - call was regarding Bower's Harbor Vineyard and report to complaint -CMD
2/8/2018	Dave Edmondson met with Attorney Greg Meihn for a private meeting for approx. 15-20 minutes
2/8/2018	ZA meeting with Attorney to go over potential violations with Bower's Harbor Vineyards and address Edmondsons complaint

created: 3/6/2018 - CMD

Exhibit 31

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

ROBERT K. MANIGOLD
SUPERVISOR

JOANNE WESTPHAL
CLERK

BRAD BICKLE
TREASURER

MARGARET ACHORN
TRUSTEE

DAVID SANGER
TRUSTEE

WARREN WAHL
TRUSTEE

ISAIAH WUNSCH
TRUSTEE

June 12, 2018

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

Re: Zoning Board of Appeals request for Variance

Parcel No. 11-030-006-35

Dear Mr. Mampe,

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

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

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

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

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

Respectfully,

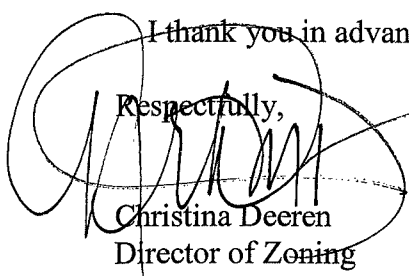

Christina Deeren
Director of Zoning

Exhibit 32

YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.

Attorneys at Law
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635
Facsimile (231) 533-6225

Bryan E. Graham
Peter R. Wendling
Eugene W. Smith

James G. Young, *Of Counsel*

June 21, 2016

Via EMAIL

Zoning Board of Appeals
Peninsula Township
13235 Center Road
Traverse City, Michigan 49686

SUBJECT: Supplement to staff report ZBA interpretation regarding guest activity use section 8.7.3(10)(u)1.(d) and 8.7.3(10)(u)2.

Dear ZBA Members:

The Peninsula Township Zoning Ordinance has rather confusing language related to what constitutes and does not constitute a guest activity use. Subsection 8.7.3(10)(u) allows the township to approve guest activity uses as an additional support use for a winery-chateau. Under (10)(u)2, the ordinance goes on to state, "Uses Allowed Notwithstanding Section 8.7.3 (10) (m); The following Guest Activity Uses may be approved with a Special Use Permit by the Township Board." The list under this subsection clearly shows activities that are allowed with a guest activity permit. What is interesting is that section 8.7.3(10)(u)2, "Uses Allowed," also lists areas that are not considered to be guest activity uses. Specifically, (10)(u)2.(d) states "Guest Activities Uses do not include entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass."

Section 8.7.3(10)(u)1.(d) of the ordinance states that:

Guest Activity Uses do not include wine tasting and such related promotional activities as political rallies, winery tours and free entertainment (Example - "Jazz at Sunset") which are limited to the tasting room and for which no fee or donation of any kind is received.

Given this disclaimer, it is clear that a winery without a guest activity permit would appear to be allowed to provide wine tasting and to have events such as political activities, winery tours and free entertainment so long as it is limited to the tasting room and no money is received for these events. The first issue is received by whom? Is it no money received by the winery? Is it no money received by the person or group putting together the political rally or bringing in a winery tour? Or is it no money to be received either by the winery or any of these groups?

Section 8.7.3(10)(u)1.(e) notes that guest activity uses are "...in addition to accessory uses for registered guests that are otherwise allowed." This gets back to what appears

Zoning Board of Appeals
June 21, 2106
Page 2

to be the issue of what is allowed without a guest activity permit under 8.7.3(10) for a winery-chateau. Section (10)(d)2 clearly allows without a guest activity permit,

Sales of wine by the glass in the tasting room is allowed pursuant to the minimum requirements of Michigan Liquor Control Commission rules and related Michigan Department of Agriculture permits regarding the sales of food for on-premises consumption. The Liquor Control Commission and the Michigan Department of Agriculture shall control licenses and compliance.

Therefore, it would appear given those requirements, that sales of wine by the glass in the tasting room is allowed along with sales of food for on-premises consumption. In this case it does not matter whether there is a registered guest consuming this or not. When it comes to registered guests, 8.7.3(10)(m) states that,

Accessory uses such as facilities, meeting rooms, and food and beverages services shall be for registered guests only. These uses shall be located on the same site as the principal use to which they are accessory and are included on the approved Site Plan. Facilities for accessory uses shall not be greater in size or number than those reasonably required for the use of registered guests.

Given that language it is quite apparent that, without a guest activity permit, registered guests are entitled to use the facilities, including facilities outside of the tasting room, for meetings, food and beverage services. Further, registered guests under 8.7.3(10)(r) can engage in outdoor activities without the necessity of having a guest activity use.

Attached are the Michigan Liquor Control Commission minimum requirement rules for the tasting room and Michigan Department of Agriculture permits for the sale of wine by the glass and food for on-premises consumption.

The issues that zoning enforcement have had involve promotions for non-registered guests to pay a fee to come to an event at a winery-chateau that does not have a guest activity permit. It would appear under the language of the ordinance that if no fee is charged, promoted activities which are not limited but are provided by example under section 8.7.3(10)(u)1.(d) are allowed. In addition, in conjunction with the language in the ordinance and the Michigan Liquor Control Commission rules, is there a dividing line regarding charging for providing wine by the glass as well as food required to be served, as opposed to operating a restaurant.

As the board can see, the issue is relatively complex. The best way to handle this would be to list in separate columns what constitutes a guest activity use and what

Zoning Board of Appeals
June 21, 2106
Page 3

constitutes an accessory use otherwise allowed by a winery-chateau. In your analysis you should have language pulled from the zoning ordinance which supports the ZBA's determination. Support can also be provided by the documents from the Michigan Liquor Control Commission and any related Michigan Department of Agriculture permits regarding the sale of wine by the glass and the sale of food for on-premises consumption with the wine.

Sincerely,

Peter R. Wendling

Peter R. Wendling

PRW/lab

Exhibit 33

**PENINSULA TOWNSHIP
GRAND TRAVERSE COUNTY, MICHIGAN
ZONING ORDINANCE AMENDMENT NO. 204**

Section 1. Amendment of Section 3.2, Definitions: The Peninsula Township Zoning Ordinance, Section 3.2, shall be amended as specified below:

Section 3.2 Definitions:

Basement: A story having part, but not more than one-half (1/2) of its height below finished grade. A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and ~~the average level of the adjoining ground~~ finished grade below is more than five (5) feet, or if used for business or dwelling purposes. **(REVISED BY AMENDMENT 204)**

Building, Height of: The vertical distance measured from the mean elevation of ~~the natural grade and~~ finished grade ~~line of the ground about the front~~ of the building to the highest point of the roof. **(REVISED BY AMENDMENT 204)**

Half Story: Finished living space under a gable, hip, or gambrel roof, where the wall plates of the exterior walls are no more than three (3) feet above the floor of such half story. **(ADDED BY AMENDMENT 204)**

Section 2. Amendment of Subsection 6.1.5, Categories within Zone Districts: The Peninsula Township Zoning Ordinance, Subsection 6.1.5, shall be amended to add (4) to read as follows:

Section 6.1.5 Categories within Zone Districts: **(REVISED BY AMENDMENT 204)**

- (4) Uses not specified as being allowed by right, with conditions or by approval of a special use permit shall be considered prohibited within the subject zone district.