

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN -SOUTHERN DIVISION

WINERIES OF THE OLD MISSION

PENINSULA, *et al.*,

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM

Honorable Paul L. Maloney

Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN
SUPPORT OF PENINSULA TWP.
MOTIONS TO DISMISS FOR
LACK OF SUBJECT MATTER
JURISDICTION**

****ORAL ARGUMENT REQUESTED****

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**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

****ORAL ARGUMENT REQUESTED****

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Exhibit 3 -- 4/16/2015 Township Board Minutes

Exhibit 4 -- 5/15/2015 to 4/17/2017 Township Board Minutes

Exhibit 5 -- 4/11/2017 Township Board Packet

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Exhibit 7 -- 9/11/2018 Township Board Packet

Exhibit 8 -- 6/9/16 and 6/23/16 ZBA Minutes

Exhibit 9 -- Excerpt from Rule 30(b)(6) Deposition of Peninsula Township

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I. PLAINTIFFS UTTERLY FAIL TO PRESENT ANY EVIDENCE THAT THE TOWNSHIP ARRIVED AT A FINAL DECISION BEFORE FILING SUIT.

Plaintiffs have failed to demonstrate the Township arrived at *any* final decision as to how the PTZO applies to each Wineries' property. Plaintiffs use obfuscation to avoid discussing what final decision has been reached as to each of the Wineries' properties. Instead, Plaintiffs' circular argument in response is that since the Township has Winery Ordinances, there are no administrative processes to go through. (ECF No. 487, PageID.18749). Plaintiffs argue because they are "challenging the constitutionality of the Winery Ordinances" there is nowhere for them to go other than to federal court. (ECF No. 487, PageID.18749). That argument is irrelevant to the standard the Court must apply to Plaintiffs' as-applied claims challenged by the Township's jurisdictional motion. For an as-applied challenge, the existence of a zoning ordinance does not create finality. Plaintiffs, by failing to respond to the issue directly, must concede they have no response as to *how* the particular ordinance sections contained in Counts II, III, and VII are applied to a particular piece of property.

Plaintiffs' response fails to offer any cogent argument and any evidence that they achieved finality as to the as-applied counts and takings claim. Plaintiffs make this point for the Township by lumping together various alleged enforcement activities for those operating by right under the PTZO with those operating pursuant to a SUP. These distinctions are critical and is precisely why they likely chose to file a joint response—conflating legal theories, zoning uses, and facts.

For Plaintiffs operating pursuant to an SUP, they must, depending on the circumstance and what they seek to achieve: (1) seek an amendment to their SUP from the Township Board; (2) seek a non-use variance from the application of the PTZO to the ZBA or request an interpretation of the PTZO from the ZBA; or (3) appeal a determination of the Zoning Administrator to the ZBA. Plaintiffs failed to adduce any evidence that prior to filing suit they *sought* a decision from the

Township Board (on an SUP amendment) or ZBA (on a non-use variance, request for interpretation, or appeal of a determination of the Zoning Administrator), let alone demonstrating that they actually *obtained* a final decision regarding the challenged ordinance sections. Significantly, Plaintiffs cannot even point to a single plaintiff who sought an interpretation or administrative appeal which would have clarified the PTZO as applied to the individual properties.

For Plaintiffs operating as a use by right, to achieve finality, they must seek an appeal to the ZBA to the extent they feel aggrieved by the Zoning Administrator's application of the PTZO to their property. Permits for Farm Processing Facilities are issued directly by the Zoning Administrator. The PTZO permits a direct appeal from a determination of the Zoning Administrator. Moreover, Plaintiffs may seek a non-use variance from the application of the PTZO to the ZBA, or otherwise seek an interpretation of the provisions of the PTZO. As with Plaintiffs operating under an SUP, Plaintiffs operating as a use by right failed to produce evidence that they appealed any decision of the Zoning Administrator to the ZBA, that they sought a non-use variance, or that they sought an interpretation of the provisions of the PTZO challenged in the Complaint.

II. FACTUAL MISCONCEPTIONS IN PLAINTIFFS' COMBINED RESPONSE.

Instead of presenting actual evidence that they sought a final decision from the Township, Plaintiffs instead only offer misleading and inaccurate rhetoric that is not responsive to whether Plaintiffs ever sought and obtained from the Township a final decision regarding the application of the challenged sections of the PTZO.

A. Plaintiffs' response fails to recognize the distinction between applicability of an ordinance with its actual application.

Plaintiffs conflate the *applicability* of PTZO sections establishing their land uses with *application* by the Township for purposes of showing the Township *applied* zoning provisions to

them in an unconstitutional way (i.e., achieving finality). Plaintiffs' response fails to establish that they ever *sought* a final decision and that the Township ever actually *arrived* at a final decision regarding the actual *application* of the challenged sections of the PTZO. Plaintiffs, instead, offer only vague explanations for what they assert they are able to do under their land-use approvals.

First, Plaintiffs mischaracterize Sections 6.7.2(19), 8.7.3(10), and 8.7.3(12) of the PTZO as regulating winery operations; these authorize three winery-related land uses in the A-1 District. *See* MCL 125.3201. For Farm Processing Facilities, they provide criteria for a landowner to receive a land use permit. For Winery-Chateaus and Remote Winery Tasting Rooms, they provide site development requirements for a landowner to receive a SUP. How these and other zoning subsections have actually been *applied* to Plaintiffs depends on parcel and neighborhood characteristics, representations in their permit applications, permit type, permit terms, variances, and many other factors.

B. While not ultimately relevant to whether Plaintiffs achieved finality, certain Plaintiffs substantially mischaracterize the basis for their land uses.

Bowers Harbor only became a Winery-Chateau in July 2019 when it received SUP No. 132, which authorized it to host GAUs once it satisfied SUP conditions. (ECF No. 63-6). Before that, Bowers Harbor was authorized by SUP No. 32 as a Food Processing Plant. (ECF No. 63-6, ECF No. 463-5). Amended SUP No. 32 allowed up to twenty "special open space use events" for up to fifty guests after normal business hours. (ECF No. 463-5 ¶¶ 2.13-2.16). As discussed below, Bowers Harbor was incurably non-compliant with SUP No. 32. (*See* ECF No. 487-30). Even so, when the Township approved SUP No. 132, it authorized Bowers Harbor to continue offering special events under SUP No. 32 for an interim period. (ECF No. 63-6, PageID.2854). Bowers Harbor never hosted GAUs.

In support of its claim that it has GAUs, Bonobo relies on the Township's 2013 approval of SUP No. 118 and 2019 correspondence while ignoring the events of intervening years:

- In 2014, Bonobo requested, and the Township approved, an amendment to SUP No. 118, replacing the original with an amendment to conform SUP No. 118 to the larger structure Bonobo actually built – but without GAU authorization. (Exhibit 1; Exhibit 2; ECF No. 463-2).
- In April 2015, Bonobo applied to amend SUP No. 118 to add GAU authorization under Section 8.7.3(10)(u), and was denied. (ECF No. 136-17; Exhibit 3)
- Starting in May 2015, the Township worked with Bonobo to achieve compliance with amended SUP No. 118, and Bonobo agreed to not apply again for a SUP amendment authorizing GAUs under § 8.7.3(10)(u) until it was in full compliance. (Exhibit 4; Exhibit E; ECF No. 457-8)
- In September 2018, Bonobo achieved compliance with SUP No. 118. (Exhibit 5; Exhibit 6)

Bonobo offers no evidence that it applied for a further amendment to its SUP. The Township Board never amended SUP No. 118 to authorize Bonobo to host GAUs. *See* MCL 125.3502; PTZO § 8.1. SUP 118 uniquely authorizes Bonobo to use its indoor facilities to host “special dinners” under 8.7.3(10)(m), which special approval Bonobo has never challenged. (Exhibit 2).

Tabone's uncorroborated, self-serving testimony that it operates as a Farm Processing Facility is contradicted by the record. (ECF Nos. 470-66, 470-67, 470-68; Exhibit 7; Exhibit 8). Even then, Plaintiffs offer no evidence Tabone ever sought a final decision from the Township regarding the application of the PTZO in order to achieve finality.

C. Plaintiffs misunderstand, and ultimately fail to offer evidence of, enforcement of the challenged sections of the PTZO.

Plaintiffs assert without citation that the Township contends it never enforced Winery Ordinances against the Wineries, then identifies what it calls “25 examples of enforcement against the Wineries.” (ECF No. 487, PageID.18740). But Plaintiffs “enforcement examples” are misplaced and fail to show the Township arrived at a final decision regarding the application of the PTZO to the subject properties.

Thirteen of the “enforcement examples” involve Bowers Harbor’s habitual violations of SUP No. 32, its *pre*-Winery-Chateau SUP.¹ (ECF No. 463, PageID.16505-16506). Most examples are pre-enforcement correspondence; the sole citation was issued for violations of PTZO 8.1.2(3)(f)(2), (3), 4.2.1 and SUP No. 32, none of which are challenged here. (ECF No. 487-12). None are “examples” of the Township enforcing Winery-Chateau provisions.

Bonobo is the subject of seven “examples.”² Bonobo’s SUP No. 118 does not authorize GAUs but does authorize use of Bonobo facilities for “special dinners.” (ECF No. 457-13, PageID.16256). Many “examples” are internal Township emails discussing what to do about Bonobo’s non-compliance.

The final seven “examples” involve routine zoning administration. Four are information requests.³ Here are the other three:

- In 2014, the Township advised Two Lads that its land use permit did not permit it to host scheduled events.⁴
- In 2021, the Township advised Kroupa Enterprises of noise complaints associated with amplified music in violation of SUP No. 62.⁵
- In 2022, the Township responded to an inquiry from Brys Realty that its SUP did not authorize it to use a tent to host non-lodging guests.⁶

Kroupa Enterprises and Brys Realty are not before the Court. No recipient was fined or otherwise penalized. None sought a ZBA interpretation or appeal. These incidents are insufficient for *any* Plaintiff – let alone *all* Plaintiffs – to demonstrate enforcement let alone that finality was achieved.

¹ ECF No. 29-13, PageID.1351, 1350, 1347-1349; ECF Nos. 487-9 to ECF 487-12, ECF Nos. 487-17 to ECF 487-20, ECF No. 487-26, ECF No. 487-30.

² ECF No. 29-13, PageID.1345-1346; ECF Nos. 487-21 to ECF 487-23, ECF No. 487-25, ECF No. 487-27, ECF No. 78-10. ECF No. 487-21 is an incomplete email from Marie-Chantal Dalese (Chateau Chantal) inquiring about the lawfulness of Bonobo events.

³ ECF Nos. 487-13 to ECF 487-15, ECF No. 487-24.

⁴ ECF No. 487-8.

⁵ ECF No. 487-28.

⁶ ECF No. 487-29.

Plaintiffs provided not one example of Township enforcement of challenged zoning provisions but 27 examples of opportunities to request a ZBA interpretation or appeal pre-enforcement violation notice. This is simply Township zoning administration and is not evidence of achieving finality.

D. Plaintiffs never pursued interpretation of the PTZO or appeals to the ZBA.

The amendment, interpretation, or variance each Plaintiff should have sought depends on the circumstances of each alleged application of the PTZO to which each Plaintiff now objects. Where a Plaintiff was unsatisfied with the response to an informal request for PTZO or SUP interpretation from the Zoning Administrator (*e.g.*, if hosting a book club is considered a GAU, ECF 487-15), it should have made a formal request to the ZBA. PTZO § 5.7.2. Where a Plaintiff disagreed with a Zoning Administrator determination the Plaintiff should have appealed to the ZBA. PTZO § 5.3-5.6.

In the case of Black Star's 2018 variance request, the Township did not "refuse to hear it" but spared Black Star the expense of pursuing the wrong relief.⁷ A variance requires hardship or practical difficulty that prevents PTZO compliance through no fault of the applicant's own. PTZO § 5.7.3(2). Nothing prevented Black Star from complying with the PTZO – it just wanted to enlarge the square footage limits for Farm Processing Facilities. For that, it needed amended zoning – and the Township amended the PTZO to quintuple the maximum allowable size within six months of the variance request.⁸

Plaintiffs argue the Township previously sought but ignored ZBA interpretations and support this by mischaracterizing a 2016 letter from former Township counsel. Plaintiffs'

⁷ Robert Mampe, whose trust is Black Star's landlord, requested the variance. He is not a party.

⁸ Amendment 197 at p. 25, available at, https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/ordinance_amendments_185_-_200_-_for_website.pdf.

argument is not evidence of finality. But the Township will provide context to set the record straight.

In May 2016, the Township Planner faced chronic winery compliance issues so she requested ZBA guidance and interpretation related to things Winery-Chateaus without GAU authorization could do in their tasting rooms (*i.e.*, Bonobo) and also related to activities under “special open spaces uses” (*i.e.*, Bowers Harbor). (Exhibit 9). The ZBA discussed these in May and June 2016 with input from winery representatives and citizens. (Exhibit 10). The attorney letter cited selectively by Plaintiffs, which is not referenced in the ZBA minutes, opined on zoning language and advised on the parameters for ZBA consideration. (ECF No. 487-32)

Meanwhile, also in June 2016, the Planning Commission and Township Board were hosting informational joint “agriculture round table” discussions about potential winery zoning amendments with participation by winery representatives and others. (Exhibit 11).

At the next ZBA meeting, as urged by Winery-Chateaus with GAU authorization the ZBA took no action. (Exhibit 12; Exhibit 13). Chateau Chantal opposed any change because the ordinance was sufficiently clear:

Wendling asked Marie-Chantal Dalese to express her understanding of what the difference is and what her winery has received as a result of obtaining a guest activity permit and how that differentiates from a winery that does not have such a permit.

Marie-Chantal Dalese, President and CEO of Chateau Chantal, said she does know if there is a need for further ordinance amendments to address this. There is fussiness regarding political rallies but it does seem clear the divide between what you can do with a guest use activity permit versus what can be done in the tasting room without a permit. The guest use activity permit for Chateau Chantal came about as a two sides coming to an agreement where no one was necessarily happy but that is the agreement which what we have now in the ordinance. Chateau Chantal built there model based on the ordinance. The types of guest use activities Chateau Chantal does must conform to the rules listed in the ordinance. Chateau Chantal has been successfully with the wine education component. The goal on the peninsula is to tie our wineries to agriculture. Chateau Chantal has been able to use this ordinance to promote and have successful guest use activities that use peninsula produce and follow the rules. Pass that there is the idea there are the B&B privileges. Also in the tasting room with no charge there can be things like Jazz at Sunset.

(Exhibit 14). Instead, it sent the issues to the Planning Commission to consider through the traditional zoning process.

Bonobo and Bowers Harbor's compliance issues, which triggered the 2016 interpretation requests, eventually resolved with Bonobo's 2018 Compliance Report and Bowers Harbor's 2019 Winery-Chateau SUP 132. (Exhibit 8; ECF No. 63-6). Neither appealed those outcomes.

III. PLAINTIFFS CONFLATE EXHAUSTION OF ADMINISTRATIVE REMEDIES WITH ACHIEVING FINALITY IN THE LAND-USE CONTEXT.

Plaintiffs errantly assert that there is no finality requirement. However, one of the issues with responding to Plaintiffs' arguments is the general nature in which they respond. What is even more telling is what they do not respond to. Importantly, Plaintiffs ignore finality is an established jurisdictional requirement for their as-applied regulatory takings and First Amendment claims (Counts II and III). Instead of rebutting the Township's motion related to finality, Plaintiffs conflate exhaustion of remedies with the jurisdictional doctrine of finality.

Plaintiffs claim the Township incorrectly reads *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019) as leaving the *Williamson County* rule in place. (ECF No. 487, PageID.18747). This false conclusion relies on *Pakdel v. City and County of San Francisco*, 594 U.S. ____, 141 S.Ct. 2226 (2021). But *Pakdel* did not eliminate the finality requirement for as-applied challenges like those asserted by the wineries in Counts II, III, and VII. Instead, it reaffirmed it. The *Pakdel* Court reasoned, "[w]hen a plaintiff alleges a regulatory taking in violation of the Fifth Amendment, a federal court should not consider the claim before the government has reached a 'final' decision." *Id.* at 2228. "After all, until the government makes up its mind, a court will be hard pressed to determine whether the plaintiff has suffered a constitutional violation." *Id.* The Supreme Court characterized this finality requirement as "relatively modest," holding that "[a]ll 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 (quoting *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739; 117 S.Ct. 1659 (1997)).

The Supreme Court also indicated that “a plaintiff’s failure to properly pursue administrative procedures may render a claim unripe if avenues still remain for the government to clarify or change its decision.” *Id.* at 2231. The Supreme Court, however, did not eliminate a requirement of finality. See *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 2022 WL 1697660, at *2 (2d. Cir., May 27, 2022) (rejecting plaintiff’s argument that *Pakdel* eliminated finality requirement and, instead, noted *Pakdel* “reiterated, rather, that the zoning authority must have reached a final decision on a plaintiff’s land-use application for the claims to be sufficient ripe to support a court’s exercise of jurisdiction.”). Plaintiffs’ analysis of *Pakdel* is unpersuasive. The Court merely repudiated the Ninth Circuit’s comparison of finality and administrative exhaustion. *Id.* at 2231.

Plaintiffs’ reliance on *Catholic Healthcare International, Inc. v. Genoa Charter Township*, 82 F.4th 442 (2023), is misplaced. *Catholic Healthcare* does not stand for the proposition that there is no finality requirement, which Plaintiffs’ selectively quote. The paragraph before Plaintiffs’ citation explains this:

The district court's ripeness determination, in turn, was plainly mistaken. A claim is unripe when “it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998). In land-use cases, the necessary event is simply that the government has adopted a “definitive position” as to “how the regulations at issue apply to the particular land in question.” *Pakdel v. City & County of San Fran.*, — U.S. —, 141 S. Ct. 2226, 2230, 210 L.Ed.2d 617 (2021) (cleaned up). That has manifestly happened here: the Township has uniformly insisted that the plaintiffs obtain a special land-use permit for their religious displays; the Township Board has twice refused to grant them one, even when presented with an application limited almost entirely to those displays; and the Zoning Board of Appeals denied relief. Moreover, those events have “inflicted an actual, concrete injury” on plaintiffs, *id.*, because the Township has actually forced them to remove the religious displays from their property.

Catholic Healthcare supports the Township’s position. The plaintiff in *Catholic Healthcare* sought a special use permit from Genoa Township, which application was rejected by the township board. *Id.* at 446 (“But in May 2021—again on a divided vote—the Township Board denied the application”). Here, as has been discussed at length in the Township’s principal brief, Plaintiffs failed achieve finality because they did not obtain a final decision regarding the application of the PTZO to the “particular land in question.” *Pakdel*, 141 S.Ct. at 2230. The Township, in this case, was never asked to take a formal position on Plaintiffs’ proposed land use that was then formally denied, and Plaintiffs certainly did appeal any of the decisions of the zoning administrator. This is the heart of the finality issue.

IV. DESPITE PLAINTIFFS’ DEMAND FOR MONETARY DAMAGES, AMENDMENT 201 MOOTS PLAINTIFFS’ REQUESTS FOR INJUNCTIVE AND DECLARATORY RELIEF.

Plaintiffs assert their claims for monetary damages precludes a finding of mootness to the claims for declaratory and injunctive relief. In support of this position, Plaintiffs cite to two out-of-circuit cases and ignore binding Sixth Circuit precedent. Amendment 201 moots Plaintiffs’ claims for injunctive and declaratory relief.

The Sixth Circuit is clear that a federal court “can neither declare unconstitutional nor enjoin enforcement of a provision that is no longer in effect.” *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830, 836 (6th Cir. 2004). Importantly, *Brandywine* also involved a request for monetary damages, which the Sixth Circuit distinguished as not being moot unlike the declaratory and injunctive relief requests. *Id.*; *see also, e.g., Tini Bikinis-Saginaw, LLC v. Saginaw Charter Twp.*, 836 F. Supp 2d 504 (E.D. Mich. 2011) (mooting out claims for declaratory and injunctive relief in light of amendment to zoning ordinance); *Moskovic v. City of New Buffalo*, 2022 WL 325402, *4 (W.D. Mich., Feb. 3, 2022) (observing that “[i]n response to the Court’s order to clarify what relief is still available under Counts I and II, Plaintiffs argue that the Court

can declare the Moratorium invalid and enjoin its enforcement. However, a declaration would serve no purpose at this point. It would have no practical effect. Moreover, this Court cannot enjoin the enforcement of something that no longer exists. *See Brandywine, Inc. v. City of Richmond*, 359 F.3d 830, 836 (6th Cir. 2004).”).

V. AMENDMENT 201 WAS PROPERLY ENACTED.

Plaintiffs argue that Amendment 201 was improperly enacted and, as such, should be considered void. Plaintiffs first argue that in enacting Amendment 201, the Township failed to comply with MCL 125.3308(1), which provides: “Following the required public hearing under section 306, the [Planning Commission] shall transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body of the local unit of government.” Plaintiffs claim the Township “never submitted a written summary of comments to the Township Board.” (ECF No. 487, PageID.18754). Plaintiffs’ argument, however, ignores the plain language which has no requirement for the comments to be transmitted in writing. Plaintiffs cite to no authority either. The requirements of Section 3308(1) were complied with because the Township Board and Planning Commission held a joint session. (ECF No. 473-3). As such, the Planning Commission was able to “transmit” the public comments by convening the same public hearing, and then taking action via an official recommendation of the proposed zoning ordinance to the Township Board.

Plaintiffs next argue the Township was required to “list the text of the ordinance” in the public hearing notice, specifically MCL 125.3103(4) and MCL 125.3306(3), as it relates to remote tasting rooms. (ECF No. 487, PageID.18753). The Township is not required to “list the text of the ordinance.” Instead, the Township only had to describe the “nature of the request.” MCL 125.3104(3). Moreover, the Township just needs to identify the “places and times at which the proposed text and any maps of the zoning ordinance may be examined.” MCL 125.3306(3).

Finally, the MZEA specifically considers further modifications to a proposed amendment after transmission from the Planning Commission to the Township Board. After the public hearing, at which time public comment was received, there were further iterations of the zoning ordinance amendment, which ultimately included revisions for the remote tasting rooms. This is perfectly acceptable. Once the public hearing is complete as required by MCL 125.3306(1) and the Planning Commission has transmitted the public comments to the Township Board – discussed above – the process moves to the Township Board. *See* MCL 125.3401(1). Further public hearing is not required. *See* MCL 125.3401(1) (“After receiving . . . an amendment under sections 202 and 308(1), the legislative body may hold a public hearing if it considers it necessary or if otherwise required.”). Here, no further public hearing was required after submission to the Township Board from the Planning Commission. After this, “the [Township Board] shall consider and vote upon the adoption of a zoning ordinance, with or without amendments.” MCL 125.3401(5). Any claim that the Township Board is unable to further revise the Planning Commission’s recommended amendment directly contradicts the plain language of MCL 125.3401(5): “the [Township Board] shall consider and vote upon the adoption of a zoning ordinance, with or without amendments.”

The Township satisfied its obligations and requirements under the MZEA.

VI. PLAINTIFFS’ CLAIMS THAT AMENDMENT 201 DESTROYS THEIR PROPERTY INTERESTS AND WAS ENACTED IN BAD FAITH ARE UNSUBSTANTIATED.

As Plaintiffs note, “if a zoning ordinance has been amended [after suit was filed] . . . a court will give effect to the amendment[.]” *Grand/Sakwa of Northfield, LLC v. Northfield Twp.*, 304 Mich. App. 137, 142; 851 N.W.2d 574 (2014). This general rule is subject to two “narrow” exceptions which are not applicable: “A court will not apply an amendment to a zoning ordinance where (1) the amendment would destroy a vested property interest acquired before its enactment,

or (2) the amendment was enacted in bad faith and with unjustified delay.” *Id.* (internal citation omitted).

Plaintiffs misapprehend their vested rights. They assert vested rights because, “not only did the Wineries commence construction, they finished construction and have operated their businesses for years under the prior ordinance.” (ECF No. 487, PageID.18757). But Plaintiffs do not seek to construct a winery, via this lawsuit they seek the right to engage in activities that were never permitted as uses of their properties in the A-1 District. Moreover, Plaintiffs do not – nor could they – allege that these alleged vested rights (the operation of their wineries) have been *destroyed* by Amendment 201. Plaintiffs continue to operate on a daily basis.

But Plaintiffs *do not* have a vested property interest in a prior nonconforming use where the use was not previously lawful. The Michigan Supreme Court has described a “prior nonconforming use [as] a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date.” *Heath Twp. v. Sall*, 442 Mich. 434; 502 N.W.2d 627, 629 (1993). “To be protected, the nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception does not draw such protection.” *Lyon Charter Twp. v. Petty*, 317 Mich. App. 482; 896 N.W.2d 477, 481 (2016). Plaintiffs proposed uses violated the PTZO since its inception, as such they did not acquire vested rights in the proposed uses.

Plaintiffs also assert that they “have an additional vested property interest in their permits issued” by the MLCC. (ECF No. 487, PageID.18759). But again, Plaintiffs have not alleged or presented evidence that their property interest has been destroyed

Finally, Plaintiffs assert Amendment 201 was enacted in bad faith. This is false. The Township enacted Amendment 201 following this Court’s 2022 decision finding sections of the PTZO unconstitutional. (*See* ECF No. 162). “[T]he test to determine bad faith is whether the

amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit.” *Landon Holdings, Inc. Grattan Twp.*, 257 Mich. App. 154; 667 N.W.2d 93, 98 (internal citation omitted). A court should apply a new ordinance even if “it serve[s] to strengthen [the municipality’s] litigating position.” *Grand/Sakwa*, 851 N.W.2d at 579. “The factual determination that must control is whether the *predominant* motivation for the ordinance change was improvement of the municipality’s litigation position.” *Id.* (emphasis in original).

The Township’s motivation was to enact an ordinance that complied with this Court’s ruling that the PTZO was unconstitutionally vague. Plaintiffs’ citation to the Township’s minutes does not demonstrate that an improvement of the Township’s litigation position was the predominant motivation for the amendment. “These recommendations, or proposed amendments, have developed as a result of what we have learned from the WOMP lawsuit. **I have been working very closely with our legal counsel, Bill Fahey, and his team on what the decisions that Judge Maloney brought forward mean for us and our zoning ordinance.**” (ECF No. 473-1, PageID.18023-18024).

CONCLUSION AND RELIEF REQUESTED

For the reasons stated, Defendant Peninsula Township respectfully requests that this Honorable Court grant its motions to dismiss for lack of subject matter jurisdiction.

Respectfully Submitted,

McGRAW MORRIS, P.C.
Attorneys for Defendant Peninsula Township

Dated: November 17, 2023

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 1

final site plan, located in Section 29 of Peninsula Township, and as legally described, based on the following reasoning, subject to accompanying conditions:

Reasoning:

1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination.
2. The proposed use is in compliance with the requirements of General Standards and Specific Requirements of Section 8.7.3 (10) Winery Chateau.
3. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
4. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of Grand Traverse County Soil Erosion & Sedimentation Department, Grand Traverse County Health Department and any other agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.
2. If future guest activity uses are to be applied upon the property, then the applicant must submit annual grape production and purchase numbers to the Township's staff for review.
3. Township Board to allow for the reduction of the 200 foot separation between guest accommodations and agricultural corps on the southeast side of the existing B&B and the proposed vineyard as allowed by Section 8.7.3 (10) (t).

MOTION PASSED (5-1)

Maguire dissent related to the solar panels due to unharmonious design with existing character and no information supplied related to the need for the size and scope of the solar installation.

SUP #118 1st Amendment – Bonobo Winery (Introduction, discussion and potential recommendation)

Reardon reviewed staff report for the amendment to SUP #118.

Maguire asked *Todd Oosterhouse, 7700 Peninsula Dr.*, if the increase to the main floor by 1000 sq. ft. and basement level by 700 sq. ft. has already been done. *Mr. Oosterhouse* said yes, he apologizes that he is here at this time. It is his understanding that when the County gets the plans if they are different than the SUP then the County will notify the Township. He was not aware that the County did not notify the Township. That is why we are here at this time since the

construction has already been done. **Reardon** said that was staff's understanding also but that is not the procedure. Slight modifications to site plans are not brought to the Township's attention. Staff is working to address that issue. **Maguire** said a resident (Monnie Peters) has written letter complaining about all of this. Maguire wants to concentrate on her reference to a cupola. *Mr. Oosterhouse* said we are not installing the cupola. **Leak** asked if the increase to the floor was a requirement by County. *Mr. Oosterhouse* said yes, in the original SUP there was one staircase. The County asked for a new interior staircase, exterior staircase and an elevator. **Rosi** asked if crush pad is new. *Mr. Oosterhouse* said correct. **Maguire** asked if the crush pad will be seen from M-37. *Mr. Oosterhouse* said correct. The crush pad is mainly for harvest. It is a covered porch or parking area. It is open on three sides. One side is next to the building with direct access to the building. **Maguire** asked the size of the crush pad. *Mr. Oosterhouse* said he believes it is 25' x 25'. **Rosi** asked what happens in the crush pad. *Mr. Oosterhouse* said it is where fruit is staged. It is basically to get the fruit and the workers out of the weather. **Couture** asked about use when it is not harvest season. *Mr. Oosterhouse* said it will just be an open area. **Rosi** asked why there is a reduction of three parking spaces. *Mr. Oosterhouse* said they decided to cut off the asphalt where it was. **Leak** asked if there is any way to pump the water out of the pond that the water runs into that is closest to the yellow house. *Mr. Oosterhouse* said there are a couple things happening with it. It has not been scraped which is standard practice after construction is done. That is why it is hanging on to more water than it should and not functioning as it should. Pete Bruski from Soil Erosion came out a looked at everything. Mr. Bruski's recommendation was to wait until spring to have it scraped, cleaned out and assessed. **Reardon** said the Township needs a resolution to storm water. Any approvals should be contingent upon the storm water issues being resolved. Brian Boals said the basin is holding water and there is substantial wetland type vegetation. That tells us that the basin has been holding water consistently. There is not a lot of elevation left with the grading of the berm along the back side. The elevation difference between the parking lot and the roadway is quite large. The back berm is quite low and there is not a lot of storage left over with that water that is being retained. Whether it can be improved by grading out the bottom Mr. Boals is not sure. His suggestion to resolve the situation is to re-grade the back berm to increase the amount of volume available to be more consistent with what would have been approved originally to resolve it ahead of next year. **Rosi** asked why it is not functioning. Mr. Boals said would have to look at the borings (soil). There is possible sediment from construction.

Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #118 1st Amendment, Bonobo (Winery-Chateau)
October 20, 2014

1. General Findings of Fact

3.1 Property Description-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

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PENINSULA TOWNSHIP, a Michigan Municipal
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PROTECT THE PENINSULA,
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Case No.: 1:20-cv-1008-PLM
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**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
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RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 2

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage and implementation of the site appears to be consistent with the requirements of the ordinance and is considered the highest and best utilization of the land (Exhibit 2 & 3).

This standard HAS been met.

MOTION: Weatherholt/Byron to approve Findings of Fact with condition that the service drive on the easternmost boundary shall be improved per the recommendation and inspection of Peninsula Fire Department Chief.

PASSED UNAN

3. Public Hearing SUP #118 1st Amendment - Bonobo Winery

Reardon gave introduction to request. *Todd Oosterhouse, 7700 Peninsula Dr.*, reviewed the request. Brian Boals, Township Engineer, said a couple weeks ago he received updated information regarding basin #2. The storm water basin #2 has been retaining water and he does not think the storm water storing volume is adequate. There may not be enough freeboard available to protect the neighboring property. The information was relayed to the applicant and they came back with revised plans in concept form with some solutions. The applicant is proposing a metering line storm water overflow type structure that will go through the back berm. We agree that is potentially a solution but we would need to have final engineering details put together, reviewed and potentially approved. **Avery** said he is concerned with the melt in spring. Boals said the applicant have pumped in the past and should be proactive in the spring with the pump. There is an issue with infiltration at that basin and not sure exactly of the reason. A storm water outlet in there to get the water moving back to the back part of property could be a good solution. **Rosi** said the Planning Commission talked about soil borings. Boals said the information we provided says there is granular sandy soil. He has not done any additional borings. He is taking the word of the consultant that the borings are accurate. **Rosi** said there was a lot of fill put in that area. She wonders when the borings were done. Pumping water is not the right answer. Something is amiss in terms of the engineering with that pond. Boals said he thinks what has been proposed in the latest concept will be an appropriate way to resolve it. There are details that will need to be worked out and make sure the outlet pipe is constructible with the property adjacent. **Rosi** asked where the outlet would be. Boals said to the west there is an existing drainage pathway. He is concerned with the height of the berm. It may need to be looked at as well as to make sure there is no freeboard there. He would like to see a foot of berm above the storage evaluation. **Rosi** asked if the other pond is functioning. Boals said to his knowledge it is.

Correia opened Public Hearing at 8:17 p.m.

Monnie Peters, 1425 Neah-Ta-Wanta Rd., in looking at the plans there is an increase in the size of the main floor area from the original. She wrote a letter to the Planning Commission and spoke with the Planning Commission on Monday. Having people come in and ask for forgiveness instead of permission without penalty sets the Township up for everyone to do the same. The building should have been smaller. If she was sitting in the Board's spot she would say no. However, if the Board says yes there should be a penalty.

Ed O'Keefe, 12239 Center Rd., said the crush area is not part of building and it is not even part of the Winery-Chateau. It is an agricultural function and not part of the winery. Mr. O'Keefe is concerned about the stop sign and Walt's Antique shop sign on Nelson Road. The stop sign & Walt's sign is in the way of seeing south. In regards to the drainage pond, a back hoe pulling up 2-3 feet of that and the water would disappear. There has been a lot of land movement there. He has been here 40 years and he went through a lot to get his winery. It is an evolutionary situation. It is a tough business

Walt Feiger, 2513 Nelson Rd., said the Walt's Antique shop sign been there for 48 years. There should be a warning light at top of hill.

Bob Urtel, 12120 Center Rd., said he wrote letter to Township Board that sited his concerned surrounding the operation of the winery. His concerns are guest activity uses and he will come back at the appropriate time for those issues. He is concerned about the light intensity from the parking area and lit during non-operating times. It was lit at 10:30 p.m. and lit as late as 2:00 a.m. Procedurally this SUP is back in front of the Board and gives the Board opportunity to address issues. He is concerned about the operating hours of the winery, their plans to operate as a restaurant and banquet hall and the fact the winery is on the road in a naturally beautiful area that was cited by the Township as a Class 1 view shed and now it is a parking lot. He argued against the winery two years ago and he still thinks he is right.

Brit Eaton, 1465 Neah-Ta-Wanta Rd., said we must recognize that the hill provides a dangerous intersection. The Board has been wise to provide for a speed monitor but we cannot let this go by. Someone is doing to die there.

Correia closed Public Hearing at 8:30 p.m.

Avery said he would like have to have Mr. Oosterhouse address the lighting and why he did not come back to Township when increased the size of the building. **Byron** said the applicant's Engineering Firm, Doug Mansfield, is a Township Supervisor and he knows better than to make changes without coming back to the Township. *Mr. Oosterhouse* said he was not aware he needed to come back for re-approval. He did not need a variance and was not changing the use. It was not his intent to say sorry and let it go. **Rosi** said the County and Mansfield should have said there is a procedure to follow.

Weatherholt asked about the lights being on at 2:00 a.m. *Mr. Oosterhouse* said they are on a timer and will make sure they are off. He also has no problem dimming the lights. **Reardon** said regarding the parking lot lighting requirements, the lights can be on no sooner than one hour before open and no later than one hour after close. That is once they are in operation. The lights should not be on now. Also there are provisions in the parking lot lighting section in the Dark Night Sky ordinance to mitigate the wattage. **Witkop** said she wants the applicant to be successful. There have been so many little things that make the Board sit up here and say we really have to watch these people. It feels like at minimum the applicant is bending the rules and there seems to be a blatant disregard for what the Township allows. It is unfortunate some of the choices the applicant has made and it puts a tone in this discussion

and future discussions. **Witkop** asked about the number of cars at the winery Saturday night. There is no occupancy permit. What was going on there Saturday? *Mr. Oosterhouse* said it was a training & interior construction. **Byron** said it is her understanding that applicant is marketing a Founder's opportunity for people to give money and there will be Founder's parties and activities. The applicant has an activity going on already where people are contributing money and yet no application to the Board about the kind of activities that are going to occur. **Reardon** said that is her concern as well. There are certain things the winery can do with a valid SUP permit and Certificate of Occupancy prior to getting approval for the guest activity uses. The ordinance states guest activities uses do not include wine tasting and such related promotional activities as political rallies, winery tours and free entertainment. There is also a category of additional guest uses which they cannot do because the approval has not been sought. Reardon has asked for additional information from the applicant about what they are proposing and she will tell them into which category it falls. One of those things on the table still to be determined is the Founders Club party that is currently being advertised. **Byron** said it cannot happen they are not operating. **Reardon** said right, first the applicant needs at least a temporary Certificate of Occupancy and a valid Special Use Permit. **Byron** said says they do not get their occupancy until they get the grapes planted and that is not going to happen until next spring. **Reardon** said the ordinance says not less than 75% of the site shall be used for the active production of crops that can be used for wine production. That is one of the questions on the table tonight how does the Board determine if 75% of that site is used for the active production of crops. It does not say 37.5 acres of 50 acres has to be in vines it says it has to be used for the active production. That is why Reardon asked for information about what is planted and what is going to be planted. **Weatherholt** said it is not going to happen if it is in transition. **Byron** said she disagrees. The applicant knew what the rules were on the front end. **Witkop** said they knew they were going to build a winery for a long time. **Reardon** said the ordinance says it has to be used for active production. If the Board would like to move forward she would like staff to have a realistic timeline and a plan for that information so staff can check at various periods. **Witkop** said as part of the original approval a retention basin has failed. There has been assurance that it will be solved at some point. **Wendling** said the Board can have a condition to assure that the situation is rectified. **Reardon** said there is a reasonable solution to the storm water issue and she would like a real timeline that the site is in active production.

Correia called a 5 minute recess.

Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #118 1st Amendment, Bonobo (Winery-Chateau)
October 20, 2014

1. General Findings of Fact

3.1 Property Description-

- a. The Board finds that the subject parcels are located in Section 4 of the Township and has approximately 787 feet of road frontage on Center Road.

- b. The Board finds the total acreage utilized for the Winery-Chateau site is measured at roughly 50.84 acres.

3.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use amendment approval to continue to allow the construction of a Winery-Chateau structure. (Exhibit 3)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.7.3 (10) Winery-Chateau of the Peninsula Township Zoning Ordinance. (Exhibit 2)

3.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing three (3) parcels which are considered conforming to local zoning. (Exhibit 2)
- b. The Board finds that the Bonobo Winery was approved as a Winery-Chateau under SUP #118 in 2013. (Exhibit 4)
- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the amended site plan. (Exhibits 7, 8, 9, 10, 11, 12 & 13)

3.4 Land Use Pattern- The Board finds the following land uses to be in existence per the date of this report adjacent to the amended development.

- a. **North-** The land adjacent to the north of the subject properties is zoned A-1, Agriculture and is primarily utilized for ongoing agricultural production as well as single-family residential use.
- b. **South-** The properties adjacent to the south are zoned A-1, Agriculture and are primarily utilized for ongoing agricultural production. Additionally there is an adjacent single-family home to the south of the proposed winery which requires a two hundred (200) foot setback. The Winery structure is 201 feet from this residential structure at its closest point.
- c. **East-** Property to the east is zoned A-1 and is primarily single family residential housing uses.
- d. **West-** The property located west of the subject is also zoned A-1 and is host to both farmland and single family housing.
- e. The Board finds that the future land use plan, in regards to the subject property, suggest that the adjacent and surrounding land will continue to be considered as an agricultural preservation region of the Township.

- f. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code and Michigan Liquor Control Commission.
- g. The Board finds that the proposed winery-chateau shall not utilize amplified sound measures in an effort towards minimizing sound generated from any outdoor event.
- h. The Board finds that any proposed lighting implemented onsite shall comply with the existing Ordinance found within section 7.14, added by Amendment 175A, Exterior Lighting Regulations.
- i. The Board finds that the proposed location for the winery-chateau is within an identified viewshed corridor. The Board also finds that according to the subject property's PDR easement, agricultural development of the land with structures in this area is allowed, more specifically, a winery-chateau is considered an acceptable agricultural use upon the land.
- j. The Board finds that parcel #s 28-11-004-010-03 and 28-11-004-010-04 are subject to a PDR conservation easement recorded in Liber 1182, Page 240. (Exhibit 5)
- k. The Board finds that parcel # 28-11-004-002-05 is subject to a PDR conservation easement recorded in Liber 1196, Page 085. (Exhibit 6)

2. Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)

4.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1) The board finds that the proposed winery-chateau is an agricultural use. This type of land use is specifically supported within the 2011 Master Plan as one of the goals in this district to encourage local growers to produce, process, and market agricultural products. All site design requirements are currently met. (Exhibit 1, 2, 3 & 4)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1) The Board finds that the operation of the vineyard and winery should not impact adjacent neighbors. The applicant has provided a vegetative buffer which provides screening for the neighbors adjacent to the new winery. The winery structure is outside of the required 200 foot buffer from existing residential structures. In addition further vegetative buffering has been placed between Center Road and the parking area in a manner which does not inhibit sight distance for vehicles pulling in and out of the winery off of M-37. (Exhibit 3)

This standard HAS been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

1) The Board finds that the proposed operation should not require additional essential facilities or services as onsite water and waste water treatment will be maintained onsite. (Exhibit 3)

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

1) The Board finds that the applicant's request is not anticipated to require future essential facilities or additional public services. (Exhibit 3)

This standard HAS been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1) The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibit 3)

This standard HAS been met.

4.2 Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. **The Board finds that the applicant has agreed to plant Maple or similar broad leaf species of a dwarf or a lower growing variety along M-37 as an additional buffer.**
- b. **The Board finds that any final approval shall be contingent upon the property being in compliance with the Storm Water Control Ordinance as determined by the Township Engineer of Record.**
- c. **The Board finds that the use shall not commence until the property is in compliance with Section 8.7.3 (10) (h) as confirmed by the township's planning and zoning staff.**

4.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.

1) The Board finds that the applicant is the owner/operator of the petitioned property and Winery-Chateau operation and may legally apply for said review process. (Exhibit 2, 3, 5 & 6)

This standard HAS been met.

- b. That all required information has been provided.

1) The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided final site plans with the exception of the required storm water volume calculations. The applicant is currently working with the Planning & Zoning staff and the Township Engineer of Record to submit the final documents for review and approval (Exhibit 3).

2) The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

This standard HAS been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

1) The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibit 2 & 3)

2) The Board finds that the applicant is working to comply with the Storm Water Control Ordinance standards. Any final approval shall be contingent upon the applicant being in full compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record. (Exhibit 7)

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

1) The Board finds that according to a letter dated March 13, 2013, the Michigan Department of Transportation states that the proposed location of access to the site is better suited on M-37 rather than from Nelson Road as site distance is improved off the State highway. (Exhibit 8)

2) The Board finds that because the access is off of Center Road, the Grand Traverse County Road Commission will not need to provide comment on the winery-chateau application.

3) The Board finds that at this time the Grand Traverse County Sheriff's Department has not commented on the issue.

4) The Board finds that Chief Rittenhouse has reviewed a copy of the site plan and application. In a letter dated October 13, 2014 Chief Rittenhouse states the plan is in compliance with Peninsula Township Fire Department regulations (Exhibit 9).

5) The Board finds that drain fields of this nature are reviewed by the Michigan Department of Environmental Quality. The MDEQ issued a Ground Water Discharge Permit on May 1, 2014 (Exhibit 10).

6) The Board finds that the Grand Traverse County Soil Erosion & Sedimentation Department issued a permit June 11, 2013 and extended that permit May 30, 2014. Peninsula Township Planning & Zoning staff is working to confirm that the current plans have been reviewed and approved by the Grand Traverse County Soil Erosion and Sedimentation Control office. (Exhibit 11)

7) The Board finds that a letter dated October 10, 2014 from Gourdie-Fraser requests additional storm water calculation data to ensure the onsite detention structures function adequately. (Exhibit 7)

8) The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

9) The Board finds that pursuant to a conversation on October 14, 2014 between the Director of Planning & Zoning, Michelle Reardon, and the Grand Traverse County Construction Code office the applicant has been working with Construction Code throughout the construction phase. A Certificate of Occupancy shall be obtained prior to the commencement of the Winery-Chateau use.

10) The Board finds that on July 25, 2014 the Grand Traverse County Health Department issued two (2) permits; septic and well in conjunction with this project (Exhibit 12).

11) The Board finds that the site plan conforms to all applicable zoning district regulations as outlined in the Winery-Chateau SUP #118 1st Amendment Land Use Permit (Exhibit 3 & 13).

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the commencement of the winery-chateau use.

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1) The Board finds that the applicant has removed the pre-existing orchard in only the areas necessary to allow for the permitted construction. Previously required trees and vegetative buffers have been installed and the applicant will be placing additional land into active agricultural production. (Exhibit 4)

2) The Board finds that a special use permit will not be issued until the property is in compliance with Section 8.7.3 (10) (h) as confirmed by the township's planning and zoning staff.

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1) The Board finds that there is no indication that any existing drains, floodways or flood plains exist on the site. (Exhibit 3 & 4)

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1) The Board finds that given the proposed operation, the special land use should not be detrimental to the existing soils found upon the land. (Exhibit 1, 3 & 4)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.

1) The Board finds that the Grand Traverse County Soil Erosion & Sedimentation Department issued a permit June 11, 2013 and extended that permit May 30, 2014. Peninsula Township Planning & Zoning staff is working to confirm that the current plans have been reviewed and approved by this office. (Exhibit 11)

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1) The Board finds that a letter dated October 10, 2014 from Gourdie-Fraser requests additional storm water calculation data to ensure the onsite detention structures function adequately. (Exhibit 7)

2) The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

1) The Board finds that all proposed grading onsite shall be in compliance with the appropriate County Soil and Sedimentation office and the Township's Storm Water Control Ordinance prior to the commencement of the winery-chateau use. (Exhibit 3 & 4)

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1) The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Exhibit 3 & 4)

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1) The Board finds that the construction is ongoing and is to occur in one phase. (Exhibit 3 & 4)

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

1) The Board finds that no additional services or facilities are needed or anticipated on or off site to accommodate the proposed additions to the winery. (Exhibit 3 & 4)

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.

1) The Board finds that the adequate buffering and screening was indicated on the originally approved site plan which includes significant screening for the adjacent neighbor to the southeast and the planting of Maple or other broad leaf trees of a dwarf or lower growing variety along Center Road. This plan shall continue to be followed. (Exhibit 3 & 4)

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

1) The Board finds that the site plan was developed to accommodate the anticipated usage of the site and the proposed amendments should not adversely affect the flow of traffic to or from the public roads. (Exhibit 3)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

1) The Board finds that infrastructure servicing onsite pedestrian traffic appears to be largely unchanged and should be adequate for the proposed site amendments. (Exhibit 3)

This standard HAS been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

1) The Board finds that all outdoor storage of refuse is proposed in the rear of the winery out of sight from the general public and screened in an appropriate manner. (Exhibit 4)

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage and implementation of the site appears to be consistent with the requirements of the ordinance and is considered the highest and best utilization of the land (Exhibit 2, 3 & 4).

This standard HAS been met.

5. SECTION 8.7.3 (10) WINERY – CHATEAU REGULATIONS-

The Board finds that under Section 8.7.3 (10), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. It is the intent of this section to permit construction and use of a winery, guest rooms, and single family residences as a part of a single site subject to the provisions of this ordinance. The developed site must maintain the agricultural environment, be harmonious with the character of the surrounding land and uses, and shall not create undue traffic congestion, noise, or other conflict with the surrounding properties.

1) The Board finds that the proposed site plan indicates that the special use will take place upon a roughly fifty-one (51) acre site and essentially operate as several other existing wineries have within the agricultural district of the Township. (Exhibits 3 and 4)

This standard HAS been met.

- b. The use shall be subject to all requirements of Article VII, Section 8.5, Food Processing Plants in A-1 Districts and the contents of this subsection. Data specified in Section 8.5.2, Required Information, shall be submitted as a basis for judging the suitability of the proposed plan. Each of the principal uses shall be subject to the terms and conditions of this ordinance except as specifically set forth herein.

1) The Board finds that the applicant's request is in compliance with the requirements under

section 8.5 and section 8.5.2. (Exhibit 2, 3 and 4)

This standard HAS been met.

- c. The minimum site shall be fifty (50) acres which shall be planned and developed as an integrated whole. All of the principal and accessory uses shall be set forth on the approved site plan.

1) The Board finds that the applicant's site encompasses a total of fifty-one (51) acres of land under common ownership and operation. (Exhibits 3 and 4)

This standard HAS been met.

- d. The principal use permitted upon the site shall be Winery, Guest Rooms, Manager's Residence, and Single Family Residences shall be allowed as support uses on the same property as the Winery. In addition to the principal and support uses, accessory uses for each such use shall be permitted provided, that all such accessory uses shall be no greater in extent than those reasonably necessary to serve the principal use.

1) The Board finds that it is the applicant's intent to maintain the proposed winery-chateau as the principal use onsite. The existing single family home located to the west of the proposed winery will accommodate the proposed onsite manager's residence. At this time the applicant is not proposing any new residential development or bed and breakfast operations. (Exhibits 3 and 4)

This standard HAS been met.

- e. For purpose of computation, the principal and each support use identified in sub-section (d) above shall be assigned and "area equivalent" as set forth herein. The total "area equivalent" assigned to the principal uses shall not exceed the actual area of the site.

Refer to the following assessment below.

- f. "Area equivalents" shall be calculated as follows:

Winery: five (5) acres or the actual area to be occupied by the winery including parking, whichever is greater;

1) The Board finds the area equivalent for the winery is 5 acres. (Exhibit 3 & 4)

This standard HAS been met.

Manager's Residence: five (5) acres;

1) The Board finds that the existing homestead is considered the manager's residence and measures five (5) acres in size. (Exhibit 3 & 4)

This standard HAS been met.

Single Family Residences: five (5);

1) The Board finds that no additional single family residences have been proposed at this time. (Exhibit 3 & 4)

This standard HAS been met.

Guest Rooms: five (5) acres for each 3 rooms, not to exceed a total of twelve (12) guest rooms;

1) The Board finds that the applicant is not proposing any guest rooms within the winery-chateau. (Exhibits 3 and 4)

This standard HAS been met.

- g. The number of single family residences shall not exceed six (6). The manager's residence shall not contain or be used for rental guest rooms. The number of guest rooms shall not exceed twelve (12).

1) The Board finds that the applicant is not applying to establish any additional residential units. (Exhibit 3 & 4)

This standard HAS been met.

- h. Not less than seventy-five percent (75%) of the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees.

1) The Board finds that per the previously approved site plan (dated approved by the Planning & Zoning Department on May 14, 2013) the applicant has roughly thirty (30) acres in active production. In addition to existing acreage the applicant has delineated where roughly eight (8) additional acres of crops will be planted in the future, thus providing roughly thirty-eight (38) acres of crops to supporting the operation wine production. The total site area is approximately fifty-one (51) acres, thus the total area utilized for agricultural production is roughly seventy-six (76%) percent. (Exhibits 3 and 4)

2) The Board finds that any final approval and commencement of use shall be contingent upon compliance with Section 8.7.3 (10) (h) as confirmed by the township's planning and zoning staff.

This standard HAS been met.

- i. The facility shall have at least two hundred feet (200') of frontage on a state or county road.

1) The applicant's site has roughly thirty-two hundred (3200') feet of frontage on Nelson Road and close to eight hundred (800') feet on Center Road. (Exhibits 3 and 4)

This standard HAS been met.

- j. The winery chateau shall be the principal building on the site and shall have an onsite resident manager.

1) The Board finds that the proposed winery will remain the principal building onsite and the onsite resident manager does and will remain within the existing homestead located upon the western portion of the property. (Exhibits 3 and 4)

This standard HAS been met.

- k. All guest rooms shall have floor areas greater than two hundred fifty (250) square feet. Maximum occupancy shall be limited to five (5) persons per unit. No time sharing shall be permitted.

1) The Board finds that the applicant is not proposing any guest rooms to support a bed and breakfast function. (Exhibits 3 and 4)

This standard HAS been met.

- l. No exterior lighting shall have a source of illumination or light lenses visible outside the property line of the site and shall in no way impair safe movement of traffic on any street or highway.

1) The Board finds that the all exterior lighting shall comply with the dark night sky portion of the Peninsula Township Zoning Ordinance.

2) The Board finds that Peninsula Township Planning & Zoning staff shall review and approve all exterior lighting fixtures prior to installation on site.

This standard HAS been met.

- m. Accessory uses such as facilities, meeting rooms, and food and beverage 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.

1) The Board finds that all uses permitted onsite shall take place within the principal structure meetings and special dinners shall be allowed wherein the participants are not registered guests of the chateau-winery and such meetings and special dinners are for agricultural purposes/education only as permitted under the Peninsula Township Zoning Ordinance. (Exhibits 2, 3 and 4)

This standard HAS been met.

- n. Well and septic system- Proof of evaluation of the well and septic system by the Health Department and conformance to that agency's requirements shall be supplied by the owner.

1) The Board finds that on July 25, 2014 the Grand Traverse County Health Department issued two (2) permits; septic and well in conjunction with this project (Exhibit 12).

This standard HAS been met.

- o. Fire safety-

- I. All transient lodging facilities shall conform to the Michigan State Construction Code section regulating fire safety.
- II. An onsite water supply shall be available and meet the uniform published standards of the Peninsula Township Fire Department.
- III. A floor plan drawn to an architectural scale of not less the 1/8" = 1 foot shall be on file with the Fire Department.
- IV. Each operator of a transient lodging facility shall keep a guest registry which shall be available for inspection by the Zoning Administrator and police and fire officials at any time.
- V. Master keys for all rooms shall be available at all times.

1) The Board finds that this standard does not apply to the applicant's winery-chateau. (Exhibit 3 & 4)

This standard HAS been met.

- p. Fencing or Planting Buffer- In the event that the Board determines that noise generation may be disturbing to the neighbors or that the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Board may require that fencing or a planting buffer be constructed and maintained.

1) The Board finds that the proposed landscaping efforts throughout the southeastern

portion of the approximately fifty-one (51) acre site as indicated upon the previously approved final site plan provides sufficient screening for the new winery-chateau to the extent where it mitigates the impact to adjacent neighbors. In addition, the applicant will provide further vegetative screening and buffer between the parking area and M-37 up to the extent where it does not impede sight distance for vehicles pulling in and out of the winery-chateau. Finally, the applicant shall plant Maple or similar broad-leafed deciduous trees along M-37 of a dwarf or low growing variety. The trees planted along M-37 shall not exceed thirty feet (30') in height at maturity.

This standard HAS been met.

- q. Rental of Equipment- Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment in conjunction with the operation of the establishment shall be prohibited.

1) The Board finds that rental of equipment has not been proposed by the applicant.

This standard HAS been met.

- r. Activities and Outdoor Gatherings- Activities made available to registered guests shall be on the site used for the facility or on lands under the direct control of the operator either by ownership or lease. Outdoor activities shall be permitted if conducted at such hours, and in such manner, as to not be disruptive to neighboring properties.

1) The Board finds that this standard is not applicable to the applicant's winery-chateau.

This standard HAS been met.

- s. Signs shall be in accordance with Section 7.2.2 (4) which governs signs in the A-1 Agricultural District.

1) The Board finds that there are no additional signs proposed as part of this amendment. (Exhibit 3)

This standard HAS been met.

- t. A two hundred foot (200') setback shall be maintained between guest accommodations and facilities and agricultural crops, unless it is demonstrated that a lesser setback can be maintained which will provide for an equal level of protection from agricultural activities to residents, visitors and guests of the Winery-Chateau. Upon such demonstration, the Board may permit a lesser setback.

1) The Board finds that the proposed winery-chateau has illustrated that their structure is within forty (40') feet from the agricultural crops onsite. This standard has been discussed in the past and is typical within winery operations; therefore, the Board considers the proposed setback to

be adequate to protect visitors and guest of the winery. Additionally, the Board finds that the proposed location of the winery is outside of the required two hundred (200') foot setback from a residence. (Exhibits 3 and 4)

This standard HAS been met.

- u. Guest Activities Uses- The Board may approve Guest Activity Uses (Activities by persons who may or may not be registered guests) as an additional Support Use, subject to the following: (Subsection 1-8)

1) The Board finds that the applicant is not currently applying for guest activity uses but shall be subject to the aforementioned requirements. The applicant shall be required to request approval by the Board for those uses as an additional support use as part of a future application.

This standard HAS been met.

SITE PLAN EVALUATION

1. The Board finds that regarding Layout: As indicated upon the final site plan, the existing structural features of the property are in compliance with all of the necessary setbacks required upon a parcel zoned A-1. (Exhibit 1 & 3)
2. The Board finds that regarding Vehicular Circulation: All access to and from the site has been reviewed by the MDOT and should be adequate for future usage of the site for a winery-chateau. (Exhibit 8)
3. The Board finds that regarding Parking: Parking regulations are established and enforced under section 7.6.3, Parking Space Requirements of the Ordinance. Within the existing requirements the applicant is required to provide one (1) parking space per one hundred-fifty (150) square feet of structure, referring to the tasting room, and one (1) parking space for those working at the facility. Currently, the site requires thirty-three (33) parking spaces for guests and maximum of six (6) for the employees. Three (3) bus parking spots have also been provided and it is staff's opinion that there is adequate parking area upon the existing site development to support the minimum requirements of both the Ordinance and the SUP #118. (Exhibit 14)
4. The Board finds that regarding Pedestrian Circulation: The applicant has provided a concrete pedestrian access area from the existing parking area to both the tasting room and employee parking area. Future circulation onsite should not be hindered per the proposed site development or usage. (Exhibit 4)
5. The Board finds that Street Lighting is not applicable.
6. The Board finds that regarding Landscaping, Open Space & Buffering: The parcels under consideration for the proposed development currently host several areas where mature vegetation exists via existing cherry orchard. The previously approved site plan illustrates a proposed landscape plan which should adequately provide screening for those surrounding residential land uses. (Exhibit 3 and 4)

MOTION: Weatherholt/Byron to approve SUP #118 1st Amendment including the Findings of Fact as approved by the Planning Commission with the following conditions to pay fee subject to the requirements of the ordinance, fix the retention pond subject to staff and ordinance requirements based on the Engineer's letter requirements and crops planted subject to the ordinance in spring (late May).
ROLL CALL VOTE: Rosi-no, Witkop-no, Weatherholt-yes, Byron-no, Avery-yes and Correia-no

MOTION FAILED

MOTION: Byron/Witkop to approve SUP #118 1st Amendment including the Findings of Fact as approved from the Planning Commission with the following conditions to pay fee subject to the requirements of the ordinance, fix the retention pond subject to staff and ordinance requirements based on the Engineer's letter requirements, crops planted subject to the ordinance in spring (late May) and lighting (parking lot) be amber in color, reduce light pollution on adjacent property and follow ordinance as far as operating the lighting.
ROLL CALL VOTE: Rosi-yes, Witkop-yes, Weatherholt-yes, Byron-yes, Avery-yes and Correia-yes

PASSED UNAN

4. **Park's Resolution for Lighthouse Grant Proposal**

Byron asked where the match is coming from. **Weatherholt** said the Park Commission has enough in their fund balance to cover the match. The Board has to approve the whole \$67,097.82. It will be in next year's budget but it is available. **Avery** said he cannot come to grips with spending \$30,000 to move the storage building. **Witkop** asked because it costs too much or does not need to be done. **Avery** said he does not understand \$30,000 to move it. **Byron** asked is it required to be moved per the Historical Structures Report. **Reardon** said it is recommended. **Weatherholt** asked why all the work is on the south side of Lighthouse (parking lot side). There was a grant 2-3 years ago that did not go through to fix the Lighthouse. Did any of those things get fixed? Does it still leak? **Shipman** said it does not leak. The grant application that was previously submitted is different from this one was put together. This grant application is more attuned to what the grant provider is interested in seeing. The new foundation is a high priority and moving the storage building at the same time makes sense. At the Park Commission's October 28th Special Meeting they discussed a more complete picture of the Lighthouse rehabilitation and restoration. The Park Commission is interested in getting through the items on this grant then expanding to complete beyond the south side. In regards to the moving of the storage building, all of the numbers are numbers from contractors that have expertise in lighthouse restoration. They are estimates and will have to go through the bid process. **Avery** asked if the Lighthouse is on a holding tank or septic field. **Shipman** said she believes a holding tank. **Avery** asked if they were going to change the use of the storage building. **Shipman** said no but will be adding an ADA accessible interpretative display. **Witkop** asked about the treatment of the foundation. **Shipman** said there are issues with the deteriorating mortar joints, resetting loose mortar stones, masonry surfaces cleaned and replace pillars as needed. **Avery** asked what needs to be done to the foundation of the storage building. **Shipman** said it needs to be replaced. **Witkop** asked who is going to manage this project. **Shipman** said Celia Villac would have oversight but will report to the Park Commission. **Shipman** will keep close track of the financials. **Witkop** said she has a hard time

agreeing to this when the Park Commission cannot work together and be professional. Who is going to work with the staff? **Shipman** said she will.

MOTION: Byron/Rosi to approve the resolution to obtain the grant to fix the Mission Point Lighthouse South Face project, \$67,097.82 with the matching funds to initially be paid by the Township to be reimbursed \$22,366.01 and authorize the Supervisor, Treasure and Clerk to sign.

ROLL CAL VOTE: Avery-yes, Byron-yes, Rosi-yes, Witkop-yes, Weatherholt-no and Correia-no

MOTION PASSED (4-2)

5. Bowers Harbor Park Expansion Budget Allocation

Weatherholt said the Board needs to decide where the \$108,000 will come from. His recommendation is the Tower Fund, Cable Fund or both. The Cable Fund has \$317,000 and the Tower Fund has \$374,000. Neither fund has encumbrances this year.

MOTION: Byron/Witkop to take half of the not to exceed \$109,000 out of the Cable Fund and the other half out of the Tower Fund.

ROLL CALL VOTE: Rosi-yes, Witkop-yes, Weatherholt-yes, Avery-yes, Byron-yes and Correia-yes

PASSED UNAN

6. Delinquent Sewer and Water on December Tax Bills not to exceed \$26,000

MOTION: Witkop/Avery to allow Weatherholt to move the delinquent Sewer and Water to the December Tax Bills.

MOTION PASSED

CITIZEN COMMENTS

Anne Griffiths, 14548 Bluff Rd., thanked the Board. We have made a committee to improve our method of operation. She gave her personal commitment to operate on a higher level.

Brit Eaton, 1465 Neah-Ta-Wanta Rd., thanked the Board for stepping up and providing a beautiful future park at Bowers Harbor. Congratulations to you all.

BOARD COMMENTS

Weatherholt said the Board wishes they could do what they want to do about the traffic. He appreciates the public comments. **Witkop** said it is an MDOT issue. **Avery** said the Board took the first step in getting the speed monitor.

MOTION: Byron/Witkop to adjourn at 9:58 p.m.

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for December 9, 2014.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 3

MOTION PASSED

Hoffman advised we put this on the agenda because we had to bring that it was tabled from the last meeting. However it has not been reviewed with Gil so I think we should retable it until the next meeting.

MOTION: Weatherholt/Hoffman to table the PDR monitoring contract to the May 12th meeting

MOTION PASSED

5. Bonobo Winery Guest Activity Uses (tabled from March 10, 2015 meeting)

MOTION: Weatherholt/Witkop to untable the Bonobo Winery Guest Activity Use Application

MOTION PASSED

Reardon presented information. Since the last meeting there has been another violation issued. Tonight there is communication from Mr. Tod Oosterhouse concerning the current status of this issue.

Josh Rhem 10657 Center Road representing the applicant, Bonobo Winery.

Hoffman asks if there has been an update on the resident manager house. Reardon advised that the house will be ready for occupancy in 10 days which would be April 24th. **Hoffman** asks Rhem who will be occupying that house? Rhem replies that one of the workers will be living there. **Hoffman** is he the onsite manager? Rhem he will be, yes. **Hoffman** so by the 24th the mold will be taken care of and then you will have an occupancy permit by then? Rhem the mold will be taken care of but I do not know when someone will be moving in. **Hoffman** on the site plan when they applied for this permit it was to be done then, not now.

Reardon the lighting will be changed out this weekend to amber color bulbs. We will contact Oosterhouse on Monday the 20th to schedule an inspection.

Reardon concerning the storm water, the Township Engineer has been onsite and has provided a letter stating that work should begin by the end of April and conclude by May 13th. **Hoffman** so the pond will then drain? Rhem yes.

Hoffman in November they said the plantings will be done by the end of May. Asks Rhem if they are going to plant that field. Rhem as a vineyard manager I myself, for the plant's sake, feels it isn't appropriate yet. **Hoffman** this was approved to be planted in May of 2015. Your current plantings right now are 50%, not 75% as required. You are well aware that I drive through that area quite frequently and

that area is nowhere near ready to be planted this year. It should have been ready a long time ago if it was going to be planted this year.

Hoffman asks Reardon if the lighting has been changed. Reardon this weekend, by April 20 the lighting is to be changed. Hoffman tells Rhem sorry he is taking the brunt of this, but it is not even ready and you are 25% less than you should have planted already. **Hoffman** quotes **Witkop** from a previous meeting that the applicant is bending the rules and has a blatant disregard for Township laws. Suggests that if all of this is not done by the May 12th meeting, the SUP for Bonobo needs to be pulled. Nothing here has been done. The house, the plantings, the land is not ready. I feel very strongly about this. We have other wineries, with representatives here tonight, and this is the only winery that is not following the rules and doing what is right. The other wineries are doing what they are supposed to be doing. Asked the attorney today if we can pull the SUP and he advised that we can. I do have pictures of the field that is to be planted if anyone would like to see them.

Witkop feels there is a blatant disregard for what this Board says and I don't understand it. We have been pretty firm, quite clear and blunt but for some reason there seems to be this feeling that we say something and we get just enough of an answer that get us past that conversation. The fact is this Board and staff is wasting their time on this and all of this is for the benefit of Bonobo Winery. The applicants have known all along these items needed to be addressed a long time ago, this is not news. At this point for us to continue to table something month after month when it is clear that until something drastic happens they are not going to comply. **Correia** Oosterhouse set these dates in many cases, we did not. **Hoffman** I think we need to go as far pulling their SUP. If we don't, the next person that comes in is going to say you did it for them why can't I? You did not stop them. The other wineries that are represented here tonight have always done what they were supposed to do. We did not have to write them all of the letters. They built what they were supposed to build. **Wendling** there are other options, I will spell those out for you before the next meeting. Reardon clarified that there is one SUP, as part of the SUP for a winery/chateau, the Township Board may grant approval for additional guest activities. In the application that is in front of you right now, they are saying they are ready for these guest activities. It is not a second SUP. It is simply saying to them now you have our blessing to do these additional guest activities.

Reardon based on inspection there are 5.6 acres that are presented as planted but they are weeds. They are at 52%, 23% short of the 75% required. **Byron** we have already given them a break several months ago when we let them open when they already did not have the appropriate acreage.

Weatherholt a couple of these items run past our next meeting date. Should we wait until the second meeting in May to see if they are taken care of? **Hoffman** will not support that. We have already given them since November. Rhem is now telling us that the house that should have been done when they applied is not going to be done with the mold for another ten days and does not know when anyone is going to move in.

MOTION: Witkop/Byron to deny the application for guest activity uses for Special Use Permit #118.

ROLL CALL VOTE: Rosi – yes; Witkop – yes; Weatherholt – yes; Correia – yes; Hoffman – yes; Byron – yes; Avery – yes.

PASSED UNAN

Correia asks **Wendling** concerning the dates, if they brought this before us on May 12 and those items that were to be done before the 12th we could review. Then go to the second meeting to review the items that are after the 12th. We could split them up. **Wendling** you are going to know through your staff for what constitutes material progress. Reardon will keep the board advised of enforcement. **Wendling** will give a list of options to the Township Board and we will go from there.

CITIZEN COMMENTS

Celia Villac 15554 Center Road proud that I brought \$44,000 to the Lighthouse. I do not feel that I can renew my contract. I cannot fulfil the duties that the contract implies. You are going to have to find yet another Lighthouse Manager because I do not feel like I can do the job when the in-house does not work toward the success of this wonderful program. I wish you well and I will be with you until the end of April.

Anne Griffiths 14548 Bluff Road I am not quite clear on what was just done. **Correia** nothing changes from the SUP, we just denied the list that was provided tonight. Griffiths last year we sold over 4,000 magnets. We are still not able to sell postcards, or images of the Lighthouse. I don't understand what the problem is with an operation that, according to what your own profit and loss, with quite a bit of padding in your favour, profited \$46,000. Last year 30,000 people visited the Lighthouse, 16,000 people climbed the tower. When people come to the Lighthouse they visit as families. They may want to buy images of the Lighthouse or something to keep their kids quiet. I question your understanding of the pleasure that people get when they come to the Lighthouse and your understanding of the need for people to take souvenirs home. When they come to the Lighthouse we send them to the other business. I will be resigning from the Parks Commission. I will not work with a negative group of administrators.

Monnie Peters 1445 Neah-ta-wanta Road wants to thank the Board for doing the right thing with Bonobo. Keep with it. I agree with **Hoffman** that if you let this one go the next one is right behind them doing the same thing.

BOARD COMMENTS

Byron apologizes for being late and is very sorry to not be here for the Lighthouse discussion. You have a facility in this Township that very few people have and the fact that you are not supporting the people that are working so hard for the Lighthouse is a huge disappointment in this Board.

Weatherholt is there a way before boards and our staff go through all this work and then get denied, is there not a way to tell the Park Board that this may not go thru before they go thru months of preparation? **Rosi** I was absent from the Planning Commission meeting but they did recommend this amendment go thru.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 4

2. The proposed site plan is in compliance with the required information contained within Section 8.5 Food Processing Plants in A-1 Districts.
3. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
4. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of Grand Traverse County Soil Erosion & Sedimentation Department, State of Michigan Department of Environmental Quality and any other agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.

ROLL CALL VOTE: Witkop – yes; Weatherholt – yes; Correia – yes; Hoffman – yes; Byron – yes; Avery – yes and Rosi – yes.

MOTION PASSED

2. Bonobo Winery – Review and Update

Correia advises this is an enforcement update. Reardon reviews the four items that need to be reviewed: outdoor lighting, resident manager housing, the storm water issues and 75% plantings. Reardon notes that the 75% plantings are not yet out of compliance. The first three issues are enforcement. The exterior lighting has been deemed in compliance including amber shields. On May 7th there was an appointment with Todd Oosterhouse to meet at the winery to inspect storm water and the onsite manager's residence. Brian Boals is here tonight to speak concerning the storm water. The onsite resident manager residence could not be inspected as there was a pit bull blocking the entrance. I cannot answer for sure if someone is living there. The inside is in rough shape. There is drywall missing. There was evidence of someone living there. There was a grill hooked up outside. There was not a stove inside. They did provide a job description and the name of the person living there. I cannot tell you definitively that there is someone living there. As far as the planting, that needs to be determined. We did receive an updated planting plan. Staff has indicated to the applicant that the plan is not acceptable. There has not been any increased planting since our last update.

Brian Boals, Township Engineer, Gourdie Fraser & Associates updated the Board on the storm water issues. There has been some progress with the basin. They have installed an outlet overflow system per the plans we looked at before. I would like to see some field measurements to verify that the pipe slopes are accurate for the plan. There is still some ongoing slope restoration. They were able to get the steeper slopes along the sides of the basin covered with mulch blanket so those are in good shape. They need to get some topsoil in the bottom as it is still bare. The remaining issue is regarding the drainage course beyond where the outlet goes. The plans indicated there is an existing drainage course that heads off the site to the south. After the winter we were not seeing a natural drainage course. If there were an overflow of the basin, we are not really sure if it would depart that area or if it would be an issue in the back yard of the residence. Suggested extending that outlet from the basin to the west and let it out the back side. Looked at the basin yesterday after ½ to ¾ inch of rain and there was a lot of flow going in to the basin. Stopping back there on the way

here tonight the basin did infiltrate better than it had in the past. **Correia** how long would this process take to fix what needs to be fixed approximately? Boals I would like to see something back by the 25th.

Correia asks Todd Oosterhouse to respond to the onsite manager issues posed by Reardon. Oosterhouse advised there is someone living there. I did give a description of that person's job responsibilities. We did not need to pull any permits as there was not anything done mechanically and we did not change the footprint.

Hoffman I would like to see Reardon going back there to do another inspection. She needs to review that property. Reardon asks if the window approaching from the south is being removed. Oosterhouse replied no, that window will stay. Reardon verifies that they will not building permits. There will be a return visit for an inspection within the next couple of weeks.

Correia let's review the plantings. Oosterhouse advised that they did cultivate some of the soil so they did plant some starter cover cropping. In speaking with Reardon when she did her site visit she did say sometimes there is an allowable 25% of property to be considered cold air drainage. **Correia** asks Reardon if we agree on the amount of acreage. Reardon can verify that a cover crop has been planted. We will need to bring someone in to verify. At no time has staff stated that there can be up to 25% of that required 75% that will be cold air drainage.

Hoffman asks Oosterhouse who suggested that they not plant. Oosterhouse replied that Josh Rhem and Duke Elsner from Michigan State. **Hoffman** and why do they suggest you do not plant? Oosterhouse the soils have not grown back together and there are still burn marks from where they burned the trees. The soils need to regenerate. **Hoffman** in November your SUP was approved based on the fact that you said you would plant almost 13 acres of grapes. Oosterhouse if we have to get to 75% that is what we have to do. **Hoffman** the land was prepped just 2 or 3 weeks ago.

Correia asks Wendling if some of these items are not met what is the next step? Wendling it would be an enforcement issue of Section 4.2 of the Ordinance. The Ordinance does not have in it the power to revoke or cancel a special use permit. However the same could be accomplished by a court action with a formal hearing because the district court has equitable powers over civil municipal infractions or ordinance violations including zoning or you could file a conjunctive complaint. The relief in either scenario would include basically a suspension of operations at anything on the property until they come into compliance. The only down side of a district court action is that you have one more level of appeal that is potential there because any ruling by the district court is appealable. There is always some discretion administratively in enforcing an ordinance because the goal is to obtain compliance. The Board can say that the end of May is it and authorize staff to take enforcement action through our office.

Correia the onsite manager has a deadline of 5/22; the storm water is 5/25; the 75% planting of the crops at 5/31. If all of the conditions are met, what is the next step for us? To then look to the request that they have? Wendling advised they would have to reapply as this Board has already denied that request. Bonobo would have to go back through the process through staff. We have three dates of the items that need to be completed. If that is done and they are compliant on that date then the applicant can reapply for guest activity uses. **Correia** if those are not completed to our satisfaction then we would take enforcement action at that time. **Hoffman** we want to make sure the onsite manager is there by 5/22; that the retention pond is done to the recommendation of our engineer; and that everything that was promised on the 11/20 planting is planted by May 31, 2015. Mr. Oosterhouse should understand that on June 1st if this is not all in compliance the staff is going to file for enforcement through the court which could include suspending activities.

Byron can we verify what cover crop means? **Hoffman** we approved in November 12 acres to be planted in grapes. By the end of May they should be in the ground. Oosterhouse I can plant something else if we want to, correct? Reardon the SUP says per the planting plan approved November 20, 2014.

Wendling it needs to be fruit crops at 75% as stated in the ordinance. It is not a cover crop.

Oosterhouse it has to be a fruit producing crop that needs to be used for the production of wine, correct? Wendling answered yes. **Correia** yes, but a pumpkin patch would not qualify. It has to be in the wine family.

Weatherholt we do not specify that it has to be grapes. Reardon answered no. But it does have to be used to make wine. **Hoffman** this is what was approved in the special use permit. Wendling if it is following a set of plans but does not change materially the requirements of the ordinance it is not going to make a difference.

Witkop does it have to be crops that can be used in the production of his wine? Reardon not until he wants to have guest activity uses. So you don't want to go out and put in plum trees unless you want to make plum wine.

3. Villa Mari LLC – Small Winemakers License, Winery Tasting Room

MOTION: **Byron/Weatherholt** to approve the small winemaker's license

ROLL CALL VOTE: **Witkop - yes; Weatherholt - yes; Correia - yes; Hoffman - yes; Byron - yes; Avery - yes; Rosi – yes.**

MOTION PASSED

4. Drainage Districts Braemar/Logan Hills – Discuss and Potential Action Taken

Correia this discussion is based on the process of appointing a Board of Determination and the eligibility of members on this Board. We are not here judging whether these areas need some drainage work or not. Wendling explained the procedure for the appeal process. The appeal is as follows:

- A. The Board failed to provide sufficient factual background information which would have allowed it to make a decision to impose a drainage district and the construction of the drain based upon the record contrary to the requirements in public act 40 of 56 as amended
- B. The notice requirements pertaining to the creation of the drainage district were inadequate and not timely provided to the petitioner including but not limited to the final order of necessity which was not provided per the requirement of MCL 280.72. None of the orders for either of those districts were provided to the Township. The drain commissioner through Spicer Group failed to provide a metes and bounds description of the proposed drainage district in addition to a general lack of information as to its cost and why the district and the construction of the drain is necessary as required under the act. Upon information the makeup of the Board may not have complied with the requirements of the act inclusive of 280.721. There may be discrepancies related to the petition reportedly filed to create the Board on both of those drainage areas. Upon information and belief there may be an issue involving the drain commissioner in particular in Peninsula Township because there may

MOTION: **Weatherholt/Witkop** to accept the Consent Agenda as presented.

PASSED UNAN

BUSINESS

1. Zoning Ordinance Consultants Questions and Answers

Reardon introduced the two selected planning firms for the Peninsula Township Zoning Ordinance RFP 2015. The two firms are McKenna Associates and Carlisle Wortman Associates. Each firm presented themselves to the Board and described their approach to the project. Both firms indicated that this project could be completed within a year. Discussion followed.

2. Bonobo Guest Activity Uses

Reardon reviewed with the Board what is still needed from Bonobo to complete the Guest Activities application. There are three items still needed: Site plan of the tasting room to scale; tonnage reports and proof of processing. **Hoffman** why do we have an incomplete application? Reardon we do not have a scaled site plan, so we need to verify that. There have been conversations back and forth and at some point I have to let the applicant come before you. **Witkop** does the applicant understand what is missing? Reardon it was not in those plain words that we do not have the information we need, but there were email exchanges that asked for what we needed. There also appears to be some ongoing violations with Bonobo actually offering guest activity uses. **Hoffman** advised the Board that Reardon has shared the emails with her and that Reardon did ask for the additional information. **Avery** let's sit down and deal with this all at once including the ongoing violations. I do not want to keep doing this 10% at a time. Board proceeded with dealing with the application first.

Wendling advised there are two issues. If the application is incomplete it can be denied. As far as enforcement goes for the ongoing violations, there are some options. We can issue a ticket for a Municipal Civil Infraction but the violations could continue. A formal hearing would go to the District Court Judge, but it can be appealed. The Ordinance does allow for a suit for Injunctive Relief to be heard in front of the Circuit Court. This is probably the quicker and better approach.

Hoffman asks the applicant why they submitted an incomplete application.

Todd Oosterhouse, Bonobo Winery does not understand what is needed. Does not know how far back to go with the reports because we did not have any grapes for 2014 and 2015.

Hoffman I read the emails that Reardon sent to the applicant and feels that the questions were pretty clear but the answers were not. We were here a year ago and this Board supported opening Bonobo without the plantings and a lot of other items that were not done. All last year up to May we were made promises and now we have violations.

MOTION: Hoffman/Rosi to deny the request for Guest Activity uses.

PASSED UNAN

3. “Seasonal” discussion

Reardon advised that this is Township Board guidance for the Planning Commission issue. **Witkop** advised that a roadside stand should be by the road and only opened seasonally. Reardon we have talked with the applicant about becoming a use-by-right winery and they declined. **Rosi** asked if Bowers Harbor Vineyards could go to the ZBA to allow them to have a seasonal operation? Wending advised no. **Avery** Bowers Harbor Vineyard has had 23 years of not having to comply. This is why we need enforcement. Board consensus is that seasonal is as defined in the Ordinance.

4. American Waste Contract with Compactor Station

Weatherholt advised the Board that American Waste would like to extend our contract with them for five more years. The committee will discuss and bring a recommendation to the Board in December.

5. Burnham and Flower Resolution – New Requirement for Pension Protection Act 2006

Hoffman advised the resolution was done in 2010 but is due again in 2016. The company would like to have it done a little early.

MOTION: Weatherholt/Witkop to approve the Burnham and Flower Resolution 2015-11-10.

PASSED UNAN

6. PDR Report

Reardon advised the Board that there are some errors in the PDR monitoring report. Staff will work with Uithol to get this corrected. **Hoffman** would like in the next budget year to use someone else to do the job.

MOTION: Witkop/Weatherholt to approve payment of \$4,480 to Gil Uithol for PDR monitoring contingent upon completion of corrections to the satisfaction of Reardon and Correia.

ROLL CALL VOTE: Witkop – yes; Weatherholt – yes; Hoffman – yes; Avery – yes and Rosi – yes.

PASSED UNAN

Public Comments

Monnie Peters 1425 Neah-ta-wanta spoke concerning renewal of the PDR millage.

MOTION: Byron/Weatherholt to untable School Board Resolution from March 28, 2016.

PASSED UNAN

Hoffman At the March 28th meeting there was a resolution that Wendling had prepared. You might recall that at that time the Peninsula Community Library asked that they be removed from that Resolution. We have put the Green Lake resolution in your packet. Thought that the Board could work together to prepare the Resolution. **Byron** If there is a contributor offering \$800,000.00 we need to find out what the conditions are. **Avery** read recent news report. **Weatherholt** to call School Board member Clark to get an update.

MOTION: Weatherholt/Witkop to Table Item #6 School Board Resolution to Monday April 18th (9:00am) meeting.

PASSED UNAN

Byron asked that Wendling review this and give you something in writing on the 18th. Also asked board to pay attention to the patterns that appear in the School Board information which look as though they are heading towards regional schools.

7. Bonobo Update

Reardon three citations have been issued for conducting events without a permit. The owner has requested a meeting of their attorneys, which will take place this Thursday afternoon. There may be other citations coming. *Wendling* there will have to be some changes at Bonobo to avoid future tickets and there will need to be changes in order for Bonobo to have future guest activities permits

8. Fifarek ZBA Refund Request

Discussion on the events that lead to the ZBA refund request. *Reardon* provided the history.

MOTION: Avery/Witkop to refund Mr. Fifarek the total cost of the ZBA Request.

Roll Call Vote: Avery -Yes; Byron-Yes; Hoffman-Yes; Weatherholt-Yes; Witkop-Yes; Rosi-Yes

PASSED UNAN

9. Large Event Fee

Reardon reviewed the current Large Event Fees and the discussion that led to the thought of beginning to publishing Large Events.

MOTION: Witkop/Byron to increase the Large Event Permit Fee to \$250.00 as proposed.

PASSED UNAN

10. Clarification of Conflict of Interest

Byron asked Clerk to make copies of the letter from August 10th to Peter Correia from Joe Quandt. She would like to have the board have it ahead of time so they can review and discuss. This letter was never distributed or made part of the public record tonight. She would like a conversation with Township Attorney on clarifying conflict of interest and when/how it applies. She would also like the Board to pay attention to what happened here and how to take another look at the Township Ethics statement. **Witkop** Seems to her that a Board member was singled out and she does not like it. This is a poor way of handling it. The board needs to have a discussion when something like this comes up and whether a board member should recuse themselves. **Rosi** Byron was not given the opportunity to respond as a member of the audience.

11. March 18, 2016 Minutes

Margaret Achorn, 11284 Peninsula Drive read a memo regarding notes she took at the March 28, 2016 regarding the discussion on recusing on the matter of "The 81". A copy of that memo appears at the end of these minutes.

Wendling The reason that Mr. Correia called to see if he should recuse himself is that subsequent to the August 11th meeting the Kahn issue came up. Mr. Correia then hired Joseph Quandt who is the same attorney who represented the developer on "The 81". I informed Correia that if you were coming up on a vote on an administrative portion of the Ordinance it poses a conflict of interest. Goes back to Judges Rodgers ruling that even an image of impropriety is a problem. He was not aware that Mr. Quandt's letter was

PASSED UNAN

7. 2016 Phragmites Report and Contract

Reardon presented the contract for approval. **Byron** requested that we wait until after the public hearing next month to approve it. Board agreed.

8. Bonobo Update

Reardon presented report of site visit. Bonobo Winery representative Todd Oosterhouse (applicant) and attorney Steve Fox were present at tonight's meeting. Wendling stated under Section 8.7.3 Site Development requirements for SUP, without limiting the powers of the Township Board in any other Section of this Ordinance, the Township Board shall have the authority to revoke any special use permit when, after reasonable warning, the operator of any use permitted under this Section fail to comply with any of the requirements stipulated. In addition, the Township Board may, to prevent injury or damage to adjoining properties which may impair public health, welfare or safety, require additional conditions and safeguards. Clearly you have in your ordinance the authority to revoke these types of permits. Suggests scheduling a hearing where staff and Bonobo Winery representatives can make presentations at which time the Township Board would then make the decision whether or not to revoke the Special Use Permit for winery/chateau. If the Township Board wishes to take that next step it should also pass a motion at this meeting that they are providing reasonable warning to the applicant that the Township Board will take action to revoke their permit after the subsequent hearing there is evidence that they are in violation of their Special Use Permit.

MOTION: **Byron/Weatherholt** providing notice to the applicant that there is evidence they may be in violation of their Special Use Permit in this case the lack of having 75% of the crop planted in crops that can be used for the production of wine and to hold a hearing at the September meeting. Materials from the staff and applicant submitted as evidence by either side be submitted at least one week before the public hearing.

PASSED UNAN

9. Park Commission Request to Transfer Money From Park Fund Balance for Restoration at Hessler Log Cabin

MOTION: **Witkop/Byron** to transfer \$7,882 from the Parks fund balance for a special project at the Hessler Log Cabin.

ROLL CALL VOTE: **Hoffman – yes; Byron – yes; Avery – yes; Witkop – yes; Weatherholt – yes.**

PASSED UNAN

10. Station 1 Tower Fence – Review and Accept Quote

Hoffman presented fencing quotes for the tower building at Fire Station 1. Discussion followed.

MOTION: **Witkop/Weatherholt** to approve Apple Fence Company for the fence repair.

Byron – yes; Witkop – yes; Weatherholt – yes; Hoffman – yes. Avery abstained due to Apple Fence being a client.

Nancy Davy, 14713 Shipman Rd., thanked the Board for the program. We had one of the worse infestations and now it is a beautiful open beach.

Byron said there was a letter in packet from a resident with concern about environmental impact of the treatment. *Vickie Smith* said Phragmites are treated with two different chemicals. We use an aquatic formulation so when the chemicals come in contact with water or soil they become inert. We post a 24 hour restriction for entry into the water for safety and precaution. The treatment now is so small and specifically directed at Phragmites there is very little impact on wildlife habit. **Rosi** asked about Round-Up and where are the infestations that Smith is seeing. *Smith* said Round-Up is not aquatic approved and in violation of the permit. We are only seeing small sprouts in areas that 5-6 years ago where very dense stands. We start at the City-Township line, walk the shoreline and treat Phragmites. **Manigold** asked if still treating the island. *Smith* said it was treating last year when the western shoreline was treated. **Witkop** asked about the state land at north end area. *Smith* said it was treated last year and has separate permit. **Witkop** asked if residents asking to be exempted are treating themselves or not being treated. **Reardon** said the residents asking to be exempt often do not give a reason. **Byron** said the intent was they would treat themselves. **Reardon** said ordinance does not state that. The attorney can review that portion of the ordinance. **Reardon** asked Smith to report on those exempted properties.

Manigold closed the public hearing at 7:34 pm

MOTION: Weatherholt/Witkop to approve the contract of \$2,000 as submitted and authorize the Supervisor to sign the contract.

Roll Call Vote: Rosi-yes, Witkop-yes, Weatherholt-yes, Manigold-yes, Byron-yes, Avery-yes and Westphal-yes
PASSED UNAN

2. Bonobo Winery Hearing

Wendling said at the last meeting the Township Board scheduled a hearing to make a decision on whether or not to revoke the Special Use Permit for Bonobo winery because they were not meeting the 75% planting requirement under the ordinance. In preparation for the hearing I suggested to the Planning and Zoning staff to line up an expert on farming practices. I suggested the MSU Extension. Reardon asked Todd Oosterhouse whether or not the Township would have permission to enter onto the property with the expert in preparation for the hearing. That permission was denied by an email sent to Reardon. The next option would be an administrative search warrant. Schoolmaster contacted the Extension and so apparently did Oosterhouse. Duke Elsner from MSU Extension went out to the property and issued the letter dated August 26, 2016. This made it difficult for me to recommend for the Township to proceed with a termination hearing on the SUP when reported when there is a MSU Extension expert stating the property was in compliance and normal farming practices were utilized in the planting of the property not planted in vineyard. The option the Township has now is to seek out one or two additional experts to look at the property to ensure it was properly planted. This would have to be done this fall. I recommend the Board does this regardless of any decisions the Board may make tonight. **Manigold** said he thinks it was a mistake to allow pumpkins to be planted. That is not the intent of the ordinance. I cannot vote for keeping Bonobo open when they are growing pumpkins. This is the time to order grapes for next year's planting. I could be satisfied if nine acres were ordered and contracts in place to come into compliance I would feel more comfortable. **Avery** said part of the letter from Elsner was not completely conclusive in the way it was worded. Steven Fox let the Board know he was here representing Oosterhouse. *Fox* said two members of the Board have changed therefore he resubmitted information previously submitted. The primary crux of the letter is to identify that Mr. Elsner's opinion appears to be determinative and I

understood the hearing would likely be adjourned. The evidence before the Board today demonstrates that the blocks in question were planted. I understand Mr. Manigold's concern with respect to pumpkins. It is not a valid concern the way this ordinance is written. It is a policy issue this Board should take up at some point but you cannot penalize Bonobo for that. It was approved and Oosterhouse planted the fruit to meet the 75% threshold. **Byron** and **Avery** asked how many bottle of wine were produced from the pumpkins in 2015. *Fox* said to his knowledge there are no bottles currently but it is being fermented. **Witkop** said I do not think that Mr. Elsner letter is conclusive at all. The ordinance requirement is active production of crops. I think implied in this statement is plant something in a way it will grow. We are skirting around this. This letter does not clearly state Bonobo met the ordinance. I think Mr. Elsner was put in an uncomfortable position and he is trying to satisfy what he was hired to say but is uncomfortable with it. *Fox* said let me be clear we did not hire or pay Mr. Elsner. **Byron** said what disturbs me about this the most is when Bonobo came to the Board; the Board gave conditional approval if Bonobo plants the additional acreage. We are now two years down the road and we are still playing with pumpkins. We all know the intent of the ordinance was a fruit producing crop that could be turned into wine. There is no evidence wine was produced from the previous year's pumpkins. It is time to put the crop in the ground. Deal with what the Township wants Bonobo to do and stop playing a game. *Fox* said we are not trying to play a game. **Byron** said then she would like to see some product from pumpkins. **Reardon** said she did a search on Bonobo labels and did not find pumpkin but her search was not exhaustive. **Byron** said I agree with Manigold's perspective. **Weatherholt** said the Township does not have this problem any other winery. *Fox* said the provision in the ordinance "not less than 75% of the site shall be used for active production of crops that can be used for wine production such as fruit growing on vines or trees". This Township approved pumpkins. Your counsel and Planner confirmed that pumpkins were satisfactory and met the ordinance. I understand that members of the Board may not agree with the language of the ordinance. Mr. Elsner stated that active production can mean more than simply planting grapes, apple trees, pear trees; it can also include cover crops. Mr. Oosterhouse had a discussion with staff to plant cover crops to get the soil ready and it was suggested that would not satisfy the language of the ordinance. At that point Oosterhouse planted pumpkins because it was suggested that would satisfy the language of the ordinance. **Reardon** said she wants to stop this because this is hearsay from a conversation that happened 2-3 years ago. It is not just a couple of blocks that are not in production it is 23%. I recommend publishing notice for a hearing to be held at the October meeting and allow staff to pursue an administrative search warrant. *Fox* said we submitted information to the Township in July and August and all the information confirms that pumpkins were planted in the blocks. The only possible issue is the question of density. Tonight is the date the Township set for a hearing. We are here and prepared to submit evidence. I suggest we be done with this. **Manigold** said planting takes maintenance and cultivation. It is my understanding that did not happen. If Bonobo wants to go forward with a hearing with expert witnesses I think this Board is prepared to go there. We gave Bonobo the olive branch to order the vines and put the deposit down. The Board wants Bonobo to come into compliance. *Fox* said my concern is a legal one not a practical one. I am not in the position to let my client lose his SUP that is why I am concerned about the process and about the 75% and not about how much wine has been produced because that has to do with guest activity uses not this provision in question regarding 75%. I do not think the ordinance as it is presently worded compels that result. It is clear, based on the evidence that Bonobo has complied. **Weatherholt** asked if Bonobo has any plans to plant the grapes. *Oosterhouse* said ordered two acres for next year. Five acres of topsoil was stripped back and the soil underneath was used for the parking lot. That soil is not very strong. We are planning on planting two acres up by the winery. It is not our intent to keep growing pumpkins forever. **Westphal** said when reading the ordinance and I quote "75% on the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees." Active production is more than simply putting a seed in the ground. It means you care for the seed or that plant or tree and enable it to get to the production point. Mr. Elsner's statement about cover crops they are not producing wine. They are cover crops that are capturing nitrogen and making the soil more fertile. You are fighting a battle of semantics here. The Township ordinance

is clear in its intent. It was Oosterhouse's choice to take that top soil off during construction. From my perspective Bonobo is not in compliance with the 75% in active production. I think that Mr. Manigold has offered a reasonable strategy. How Bonobo is going to bring the soil up to a state of fertility is Bonobo's problem. *Oosterhouse* said did the same practice this year planting the pumpkins as last year. In the ordinance it states winery/chateaus do not have to use what is produce. **Byron** said this Board gave Bonobo a conditional permit based on having 75% planted in active production in May 2014. It was a conditional permit. We want you to put that land in production according to the ordinance. **Manigold** said I think we should take counsel and Reardon's recommendation and start the process. *Oosterhouse* said he does not want to go down that road. I will talk with my brother. **Reardon** said could hold a hearing October 11, 2016, notice and execute an administrative search warrant. *Fox* said have both sides have experts and then appeal it to Judge Rodgers or Judge Powers. **Manigold** said I am on the same page. **Byron** said we all are.

MOTION: Byron/Witkop to seek out an expert for full review of this issue. **MOTION PASSED**

Witkop asked Oosterhouse to step back and look at the big picture.

3. Waste and Sewer Budgets/Septage Treatment Facility Payments

John Divozzo, Grand Traverse County Director of DPW, said I did speak with the administrator's office today and they are going to appoint Manigold on the DPW. Divozzo reviewed the DPW budgets. This is informational. The Township's authority lies in the rate setting in the ordinance so the Township basically applies the rules for the system. The DPW enforces the rules and maintains the operating system. The DPW also does administrative functions like permitting and billing. There are checks and balances throughout this whole process. **Manigold** said everything looks good on the budget. We will have to go head to head with the City because they are making improvements without consulting us.

MOTION: Byron/Weatherholt to approve the 2017 Water/Sewer budget as presented. **MOTION PASSED**

MOTION: Byron/Witkop to appoint Manigold to DPW Board. **MOTION PASSED**

Witkop asked about the resolution before the Board. *Divozzo* said all authority lies at the County however it is your systems. We are trying to bring changes to you before they are official. There are three minor changes. The Township Engineer indicated he is okay with the changes. There was Board consensus to approve the minor changes as stated in documentation.

4. Future of Old Mission Peninsula School Discussion Regarding Presentation on August 29, 2016

Manigold said I met with the School Board today. We need to form a team. There was an appraisal on the Old Mission School of between \$575,000 and 1.5 million. All this information is on the Township website. The School Board is anxious for us to come together with an agreement. If successful the school would be owned by Peninsula Township with a deed restriction that it would be used for a library, school or public building. Any change of that use would be subject to a vote of the people. We are looking at fund raising for the entire purchase. TCAPS would like to start with a 10 year agreement. TCAPS would pay the first two years then the Township would be responsible for the annual payment which is about \$400,000 to run the school. We are trying to negotiating this to a five year agreement. This gives the Township control of the school and stability for the library. We want to prepare a package to present to the community. There is a November 30 deadline. **Avery** asked has the student base been projected out 5-10 years. **Manigold** said he believes TCAPS has. **Avery** said that is an important number. **Manigold** said this process is very preliminary.

**PENINSULA TOWNSHIP TOWN BOARD
Regular Meeting Minutes
October 11, 2016**

Meeting called to order at 7:00 PM

PRESENT: Avery; Byron; Westphal; Weatherholt; Witkop; Rosi; Manigold- Chair. Also present were *Gordon Hayward*, Interim Director of Planning and Zoning; *Nicole Essad*, Township Attorney and *Mary Ann Abbott*, Recording Secretary

Agenda

Motion: Weatherholt/Witkop to accept the agenda.

PASSED UNAN

Citizen Comments

Nancy Kahn, address not given, commented on the lawsuit currently in litigation over the Correia Land Split, FOIA violation and open meeting act violations. To review it was a land division, which required a survey that required 20 acres. When she first came to the Town Board she thought someone would simply take a look at it. She urges the Township to talk to the attorney, talk to an independent attorney, as things are not getting any simpler. In the June depositions she urged the Township to talk with Bob Cooley and the Board about getting this resolved and was told that there was no interest in doing this. She again urges the Board to get this resolved in the interest of the Township.

Nancy R. Heller, 3091 Blue Water Road is wondering when the advertisement for the Director of Planning and Zoning is going to get published. **Manigold** they were going to talk about this tonight under Board Comments. She also urges the Board to not get financially involved in any more projects until we get what we own up to good repair- Fire Department, playground equipment, public bathrooms, refrigerator.

Vicki Shurly, 1196 Lin Dale Drive at the request of the Board of Directors of the Peninsula Community Library was asked to read an email that had been sent out to 650 database members concerning the proposal to build a new Peninsula Community Library on the property that is currently owned on the corner of Center Road and Island View in Peninsula Township. Details of this email can be received by contacting Ms. Shurly at the Peninsula Community Library.

Marc McKellar, Grand Traverse Road Commission presented a brochure that reviewed what was done with the millage revenue over the past three years as well as the 2015 road millage ballot proposal. Brochures were available to the public and the Mr. McKellar would be available for questions. **Manigold** questioned with the proposed Tar and Chipping will there be tree removal. If so the Township needs to know that.

Conflict of Interest

Manigold states that he sells grapes to one of the wineries on the agenda.

Consent Agenda

Byron asked for clarification of the Motion in the minutes of September 27, 2016 Item #4. Witkop asked to be removed from the vote because it was a Fire Department issue.

MOTION: Witkop/Avery to approve the Consent Agenda as amended.

Roll Call Vote: Avery -Yes; Byron-Yes; Westphal-Yes; Weatherholt-Yes; Witkop-Yes; Rosi-Yes; Manigold -Yes

PASSED UNAN

Township Board Business

A. Old Business:

Escrow Accounts-Proposed Developments

Hayward Amendment 190 is the latest action that the Township has taken concerning this issue. **Westphal** can this be applied to 81 and the Vineyards. **Avery** prefers Bonding and likes the security of a Bond. **Witkop** this should not be on the taxpayers back. Would like to see the status of this so we know where we stand. Consensus of the Board is to have the Township attorney opinion on this at the next Town Board Meeting.

Bonobo Winery Compliance

Manigold last month there were issues and a motion to start enforcement to enter and do a search. After the meeting representatives came and said they would like to work this out. Now they are 6 acres short and are ordering 6 acres of apple trees for cider. **Byron** totally opposed to it. It is four years that they are out of compliance. **Rosi** Purpose is to keep in

agriculture. How can you just find 6 acres? Discussion occurred with applicant explaining the process of finding the property, planting pumpkins and his assumption those apples would now be okay. **Witkop** Rob, what are you looking for on this? Would be more comfortable about this if no extra permits and a watchful eye until in ground and properly planted. Tired of playing games. Would like to see a document that says what he is allowed to do and to not do until 100% in compliance. And no permits. **Westphal** when the board requested you come into compliance it was a bad time of the year so the pumpkin idea came up. You should have been moving into your long-term plan to get yourself into compliance. Introduction of a new crop suggests a poor organization mindset in terms of what you want to do with your winery. There is the suggestion that there are planned events at the winery. There is a reason for the board to be skeptical. **Manigold** They have offered their videotapes. The Attorney is on hold to get an Administrative Search Warrant along with experts from MSU to inspect the plantings. Attorney is also prepared to draft a document of what would be allowed with the current SUP and what is not allowed. There could be language in there which would allow for the plantings are not into the ground by 2018 then the SUP will be revoked. **Manigold** Bonobo came in and they thought they might own part of the Cherry orchard. The Zoning committee came up with the 5.9 acres missing. That is why they ordered apples trees. Then the trees were not available in 2017 but they are ordered. That is what we have been doing in our office. There is enough run around. **Rosi** is willing to hold for two weeks so they can get things complete or tidied up. **Manigold** What is the pleasure of the board. *Attorney* you can do an administrative warrant to determine if it is not in compliance. You would then write a ticket and a formal hearing in District Court. **Avery** you need to realize that the conversation with Rob is not an approval from the board.

MOTION: Witkop/Byron would move to table the continued investigation until the 25th of October to give us time to consider the proposal in front of us and give the Attorney/Zoning Administrator time to put together a clarification of what is allowed and what would be considered in the future. Looking for clear guidelines as to what Bonobo can do.

Attorney Administrative search warrant would be to get onto the property, inspect the areas planted and any other violations that would be occurring.

MOTION AMENDED: Witkop/Byron to continue to investigate the violation through the Administrative Search Warrant.
PASSED UNAN

Manigold If you would volunteer those videos from Saturday.

Braemar SAD - Tabled Pending Continuing Efforts to Resolve Grand Traverse County Road Concerns and Costs/Scope

MOTION: Byron/Witkop to table for another month.

PASSED UNAN

Update on PDR compliance hire

Manigold after concerns with the contract with Mr. Uithol his contract has been modified. He is about halfway done. All of the reports will be reviewed by Township staff.

B. New Business

Accept SAD Petitions - Logan Hills and Maple Terrace

Manigold We have petitions on this. *Sally Ackerly, Township Assessor* Residents in the affected area have been working to get petitions with 65% support. We will be moving forward with pricing and Public Hearing **Manigold** we will take all of the projects and have about 1.5 million in benefits to residents and hope to obtain Bonding to begin project in March. Petitions here are just for drainage. *Ackerly* Everyone will be responsible for his or her respective share. The cost sharing was always structured to be a partnership **Avery** the residents felt they could do a better job of controlling the standards then the government could.

MOTION: Witkop/Byron to approve the Resolution to receive petition for the Logan Hills and Maple Terrace Storm Water Special Assessment District, to declare intent to create Special Assessment District and to Schedule Public Hearing

Roll Call Vote: Avery -Yes; Byron-Yes; Westphal-Yes; Weatherholt-Yes; Witkop-Yes; Rosi-Yes; Manigold -Yes
PASSED UNAN

AMENDED MOTION: Witkop/Byron to amend Motion to include public hearing date to be held on January 10, 2017.

Roll Call Vote: Avery -Yes; Byron-Yes; Westphal-Yes; Weatherholt-Yes; Witkop-Yes; Rosi-Yes; Manigold -Yes
PASSED UNAN

Report on Special Discussion meeting Regarding Five Year Review of Master Plan (Gordon)

Hayward There is a committee of the Planning Commission and the proposal of how to proceed with re-write and McKenna

- **Byron** said that if the people at GAMPS have offered to conduct an assessment and give an opinion - let's have them do that.
- **Manigold** said he's in favor of that idea. He and **Westphal** had talked about GAMPS coming in January, following the election and holidays.
- **Essad** said there is a provision in the right to farm act (MCL 286.474 subsection 6.) The Right to Farm Act (and GAMPS developed under this Act) pre-empts local ordinances that are in conflict with this act or GAMPS.

Susie Shipman from the Park Commission Board brought an update on Bowers Harbor. Committee has been meeting regularly. The second site visit was last week on site and next meeting will be morning of November 3. They had a very successful first public meeting and report based on that meeting is on the township website. They also had additional public comment added to that. The committee reviewed and consultant adjusted, so that it was more comprehensive for the public. They initially had a 3 phase proposal from planning consultants. In phase 2 the potential options were different from the beginning concept plan, but they decided they are close enough to the original concept plan that they will stick with that. When it comes to scheduling, they started with an aggressive schedule (not wanting to miss grant deadlines), but the committee believes the second public meeting should be in January, following the holidays. Thank you to the residents who have been involved. The planning itself has had 3-phase explorations, beginning with baseline improvements. They want to get park open to public and let people know that a more formal park arrangement will be in the future. They are discussing signage, delineated parking, etc. They are working on informing people that private uses need to cease. She is excited to see others out using the park.

Conflict of Interest

Manigold sells grapes to wineries and has sold to Bowers Harbor and Bonobo. In case either ends up in court, he doesn't want to have a conflict of interest. He asked to recuse himself. **Motion for Manigold to be recused by Witkop / Byron. Motion passed.**

Weatherholt asked to be recused from #2. **Motion for Weatherholt to be recused from #2 by Byron / Witkop. Motion passed.**

Westphal asked to be recused from #4 under new business for household conflict of interest. **Motion for Westphal to be recused from #4 by Byron / Witkop. Motion passed.**

Motion by Avery / Westphal to appoint Weatherholt as acting chair. Motion passed.

Old Business

1. Bonobo Winery Compliance (Hayward, Essad)

Motion by **Witkop / Rosi** to waive attorney/client privilege for item #1. **Motion passed.**

Essad shared that the township has 3 options:

- enforcement (through district court proceeding via a municipal civil infraction ticket and formal hearing, or by filing a circuit court action to abate the nuisance in the form of an inductive complaint)
- come to an agreement regarding bringing the property into compliance (through mediation or having a signed agreement between the township and Mr. Oosterhouse).
- revoke the SUP granted in 2013 (after a public hearing, where Mr. Oosterhouse was given notice of the public hearing and had the opportunity to be heard by the township board)

Weatherholt clarified whether or not you can revoke the SUP without going to court.

Essad said that you can, but it is not recommended. Her suggestion was that the township pursues one of the first two options instead of automatically revoking. Her primary suggestion would be option one.

Witkop asked about the timing of the options - if the second option is chosen, with a new board coming on in less than a month, is a motion required tonight? She doesn't want to tie the future board members' hands. Also, what if the conversations begin and an agreement can't be reached? Can you go back? **Essad** said that yes, there could be a motion tonight to choose the second option. They would then start talking more fully about it with the next board. Also, yes, if the discussions don't come to a resolution the option of going to court is still there.

Byron said that she was not supportive of going into mediation, since that's where they've been for several months - even years. They haven't been interested in coming into compliance with the ordinance. She's concerned about the length of time that will go by between the SUP's initial granting in 2013 and the time that they will be in compliance will only stretch into more and more years. The board continues to get an unsatisfactory response time after time, so her opinion is court.

Avery - to go into mediation, it takes both parties to be acting in the manner that they're attempting to meet the ordinance. Bonobo's Facebook page has an annual halloween party listed, which is not supposed to be taking place. He doesn't see that as acting in good faith. This board would have a hard time acting in this manner, too, because they have had enough.

Westphal - with the payment receipt for the apples, there's no guarantee that those apple trees will be available in the spring 2018. Everyone has been putting in orders and a fraction of the amount ordered are what's received. There's no backup for this order. There is also no specific date for "spring 2018." She thinks there are a few problems with the proposal as it is seen today. They're not seeing any stability in purchase orders of trees right now (apples, cherries, or any stone fruits).

Rosi hates putting this issue on the new board. **Avery** - this is the last meeting... are we in a position to make that decision tonight? If not, we should table it and let the next board pick it up at the next meeting. **Witkop** - what she's hearing, is that enforcement is necessary. However, the timing bothers her. She's not comfortable making that decision for the new board to pick up and run with it. Either the board table it and let the new board look at it, or we work towards an agreement. **Weatherholt** - if he was going to stay, he'd start down the legal road with the attorney since they are not in compliance, but doesn't think it should be done now. **Byron** - struggling. This current board is the group who has dealt with it and already have pushed it back to this date to decide. **Rosi** - There are a couple of steps for preparing the land, even before the new trees are planted. Those steps haven't even been started.

MOTION by **Byron / Witkop** that this board select to enforce through a ticket in district / circuit court (whichever is expeditious) and that case is presented to the court. **Byron, Witkop, Westphal, Rosi, Weatherholt - support. Avery - no. Motion passed (5-1).**

Motion by **Witkop / Byron** to bring **Manigold** back. **Motion passed.**

New Business

1.) Resolution to establish guidelines for water and sewer benefit payments
Manigold - In our township, water and sewer lines are run. The hookup is not mandatory - usually sewer is, but not water. With all of the special assessments (Logan Hills, for example), some people have paid to run pipe in and want to hook up. It's several thousand dollars in benefit fees to hook up. He is asking board to approve the option for a payment plan that could split the payments up over time so that it can be put into place for the people who want to hook up.

Byron - since this is adapted from a previous one, should we remove "poor economic times."

Motion by **Byron / Avery** to approve resolution and to strike "poor economic times."
Motion passed.

Motion by **Byron/ Witkop** to recuse **Weatherholt** from next order of business (PDR Selection Committee questions). **Motion passed.**

2.) PDR Selection Committee Questions

1. 2020 Millage Vote - "Does it possibly mean that the township board does not have to levy the full 2 mills each year?" - The township is levying the maximum millage rate as reduced by Headlee.

Achorn: question on the agreement - on page 2 under maintenance. It talks about township being responsible for maintenance in an emergency... what is the procedure to recoup costs?

Essad: Because the township has access to one of the DPW trucks, that is usually used. The cost could be rolled into SAD, but we decided against that since township has access to DPW trucks.

Manigold: There's some money left over in the contingency for that. When we compared the numbers they came up with to get a big company out there, when we have the same things with the DPW trucks, we found that we could do it much more inexpensively. You can bring it up again, though, because we're not adopting it yet.

2. Bonobo - update and recommended action (planner)

Gordon Hayward - there's a memo in your packet regarding this. There's a meeting set up next week to begin the farm plan. He'll meet with Oosterhouse in the beginning to explain the township's needs and propose an agreement so that Bonobo can come into compliance. He'll keep the board up to date.

Motion by Sanders/Westphal to place the enforcement of the Bonobo Winery Violation on hold pending staffs' communications with the property owner to develop a Farm Management Plan and the property owner's application to amend the approved SUP to implement that Farm Management Plan.

Wunsch: Is there a time stipulation? Essad: Gordon is meeting with them next week. Nikki and Todd Oosterhouse will work with Gordon to create the next steps. Then Gordon will bring the plan to the board. Roll call. **Motion passed.**

3. Ordinance amendment relating to Purchase of Development Rights Selection Committee

Gordon proposed a special amendment to PDR ordinance in regards to the selection committee. Currently, the committee expires after 8 years, so his suggestion is to reappoint members. He's not sure what the Planning Commission's role is in this. Essad will have to check to see what the Planning Commission's role is in this. No action to be taken right now.

4. Discussion of the amended AT&T tower contract

NOTE: email correspondence and detailed information attached at end of minutes

Bickle: The AT&T tower has been here at the township in May 2016, before the board again in June 2016, and then again on October 11, 2016. The new terms will allow the township to benefit from a 1% escalator on this project. The 5-year term starts in '18. In prior dialogues, he saw "comps." He called the agent and asked for realistic bill comps. There are 6 comps of actual tower space leases: Hastings St., E. David Rd., W. Silver Lake Rd., Pine St., Grand Traverse, and Front St. The average of those is about \$1900. We'll be starting with the new lease at \$2,250 a month. He also asked them to put in the contract what the monthly / yearly lease rates will be. Years from now, the treasurer and the clerk should be able to look back at what the lease was. This is basic language modified from the 6/11 meeting. If the board would like to study this further, a vote could be put towards it in January.

Westphal: In regards to the expansion of permitted use - the language in this allows them to "upgrade, replace, expand" - it's not limited to the number and types of antennas. **Bickle:** To help address your concern, after the 6/11 meeting I met with a local resident who also owns a company that installs cell towers. After the 6/11 terms were published, in a cursory review, his concern was similar to hers. This person said it's not uncommon to change a piece of the antenna. They can only work with the cylinder - plug/unplug. They can't alter beyond that. To him, it was the research of someone who does this for a living. It's like car upgrades. **Manigold:** Whatever they do, they have to come back to the board and make a request. A consultant has to get involved, distance from other antenna, etc. **Westphal:** The other concern was that new agreement allows them to sell their interest to someone else. To her, that's when we begin to lose some of the control we had with the first company. There is less accountability and less tieback to the community. **Bickle:** Are you

PENINSULA TOWNSHIP

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**Town Board Meeting
April 11, 2017, 7:00 pm
Township Hall
Regular Meeting Agenda Minutes**

1.) Call to Order

2.) Pledge

3.) Roll Call

Present were: Rob Manigold, Brad Bickle, Margaret Achorn, Maura Sanders, Warren Wahl and Isaiah Wunsch. Joanne Westphal was excused.

Others in Attendance: 7 & 4 News and over 20 residents

4.) Approve Agenda

Two changes to the agenda - remove two items from the Consent Calendar #6: Approval of the new per diem & #8 Authorization of Dave Sanger for the new Ordinance Enforcement Officer and place on the next Town Board Agenda.

5.) Brief Citizen Comments – for items not on the Agenda

Brit Eaton, 1465 Neah Ta Wanta Trail Rd - He has been coming to meetings and complaining of the intersection of Seven Hill and Bowers Harbor. There is a sign now that flags that intersection. Thank you to whoever was involved in that.

Rob Manigold - M-37 will have rumble strips put down at various intersections and the road will be striped in the near future.

6.) Conflict of Interest - Marge's husband has a relationship with a company that has a bid for #3 under Business - Township IT contract.

7.) Consent Agenda

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

- Meeting Minutes Approval—March 28, 2017 (Election Commission Meeting), March 28, 2017 (Town Board Meeting), March 30, 2017 (Town Board Special Meeting), April 3, 2017 (Town Board Special Meeting)
- Reports and Announcements (as provided in packet)
 - Officers—Clerk, Supervisor, Treasurer
 - Departmental—Assessor, Planner, Attorney, Engineer, Library, Park Commission, and Township Deputy (recommend approval)
- Correspondence (as provided in packet)
- Edit Invoice list (recommend approval)
- Approval of special event at Library Craft Show, July 22, 2017
- ~~Approval of new per diem policy as an update to the 2013 Personnel Policy Manual~~ Removed
- Approval to secure three bids for a Town Hall back-up generator
- ~~Authorize D. Sanger as the new Ordinance Enforcement Officer for the township~~ Removed

Motion Made By: Maura Sanders

Seconded By: Isaiah Wunsch

Rob: Yes Isaiah: Yes Marge: Yes Brad: Yes Maura: Yes Warren: Yes Jo: Excused

8.) Business

1. Bluff Road Tree Removal Update (Manigold)

We have been working basically seven days a week trying to work with road commission to save as many trees as possible on Bluff Rd. The issue started as a citizen-lead group and then the township entered to try and help with legal action in trying to stop the cutting of the trees. Many trees have already been cut. Brian & Gordan had flagged 153. They were able to save a small amount. Trying to save 44 using the high risk erosion reasoning. They hired an erosion expert to help in the analysis. We don't feel that the injunction would be appropriate at this time. The resident group have been working to get a Natural Beauty Road designation. The Township is trying to write a letter of understanding in working with the Road Commission. We want to work with the Road Commission to go out for grants for adding ground cover etc. to help with the erosion and beautification of the road in the future.

Katherine Hardy, 11261 Bluff Rd. – Thank you to all of you for listening to our concerns and being out there trying to do what you can. The road was repaved about 14 or 15 years ago – why remove trees now they that they didn't before. They are not widening the road they are only repaving it. The trees have helped protect us and the road from bad weather, safety etc. I don't want to give up just yet.

Lois Nienhouse, 11750 Bluff Rd. - Why weren't there letters sent out to any residents. They bulldoze her vegetation and plants that were not in the right of way. They ditched 22 ft. into our property.

2. Bayshore Marathon Information Presentation

Daniel Sideman with the TC Track Club, who puts on the Bayshore Marathon, said a few words on the Bayshore. It will be Saturday May 27th. It is the 35th year for the marathon. There is a question about who pays for what? Businesses that benefit from the event are on a list that was sent out. They pay for all emergency services and nothing comes out of the taxes. Old Mission Ladies Club bakes cookies every year and receives \$3,500 for doing that. Any profits go back into the local community. TC Track Club gave 30 scholarships to high school students for college last year. \$1.9 million comes into the area during this event. They always appreciate any feedback they can get to improve the event.

Joan – Bluff Rd. will have the biggest impact as far as runners. How will it work for those residents to get in and out of that area?

Daniel: Both ambulances are available and officials are there on bikes as well. If you know in advance you just need to let us know and we will make arrangements to get you out when you need to through the sheriff's office. Isaiah, TB member - Is there a way to track the biggest window where runners are at a given time?

Daniel: There are two areas that do have live split times.

3. Approval and selection of computer (IT) service provider for Township offices

Brad Bickle: moves to have Marge Achorn remove herself and sit in the audience for conflict of interest. **Supported By:** Isaiah Wunsch **Yeas:** 5 **Nays:** 0 **Motion Carried**

A bare bones assessment has been done on what is needed to run the offices of the township. The server we have in the township, by designation of the provider, has its useful span expired in 2017. We needed to get our equipment reassessed, which the three bids did.

- 1.) The current IT company that the township has is IT Right with a bid of \$10,000.
- 2.) Crain System Group – Replacing Server and towers in various offices \$10,000 plus or minus
- 3.) Dell Computers - \$27,000 - Placed a bid to do away with a server and manage data on the "cloud"

A brief history is that IT Right, the current provider, disconnected the monitoring system that we have on the server without the knowledge of the Supervisor, Treasurer or Clerk.

Maura – Dell Bid, why so high? Brad - It is retail pricing. They did not really listen to what we really wanted or needed.

Warren – are there new or different warranties? – Bickle - We want 7-10 yrs. of service without any issues.

Motion Made By: Maura moves to accept the bid from Crain System Group

Seconded By: Isaiah Wunsch

Rob: Yes Isaiah: Yes Marge: Yes Brad: Yes Maura: Yes Warren: Yes Joanne: Excused

Motion Made By: Wahl to have Marge Achorn return to the board.

Seconded By: Maura Sanders

Yeas: 5 **Nays:** 0 **Motion Carried**

4. Authorize supervisor to sign the Bonobo Enforcement Agreement

Gordon Hayward – We have been working with Bonobo Vineyards to come up with a proposal which would bring them into compliance with all the zoning regulations by 2018. They have come up with a specific farm plan which has specific targets and items which have to be covered. Starting with soil testing and going right on through. Has been reviewed by Township Planner and the attorney. They cannot apply for any other applications until all is in compliance first. The Oosterhouses did sign off on it as well.

Motion Made By: Maura Sanders - Motion to authorize the Supervisor to sign the Bonobo Enforcement Agreement

Seconded By: Warren Wahl

Yeas: 6 **Nays:** 0 **Motion Carried**

5. Approve a new Ordinance for the Fire Recovery Services Contract with Peninsula Fire Department

Slight modification – Brad Bickle will be working with legal staff to either amend the existing resolution that was signed a couple of years ago to allow the outside service company, Fire Recovery Services, to handle the billing, collection and reporting to the township on our Ambulance Service. The next step is to now bring our Fire Department into the same billing system. We will come back and present a Resolution to the board at the next township meeting on this matter. I was hoping to have the information for today's meeting but we want to do this right the first time so we will have something for all to see and review for the next meeting.

6. Discuss current situation with the Township mailing lists

a. Number of agendas, minutes, and contact lists, fall under filing deadlines of the Open Meetings Act requirements

b. Current burden falls on the Deputy Clerk

c. Multiple postings (for a single meeting due to amendments) creates confusion & unfavorable impression

What Joanne and I would like the board to possibly consider is to have one mailing list instead of several. You either get them all or none. Another thought was to eliminate the email list and just have it posted on the website, which it is now and you can just go there to get the information that you want.

Dave Bowman, Old Mission - vendors he has worked with have an unsubscribe button. What is email manager capable in doing in our system?

Brit – one list for everything

Nancy Heller, 3091 Bluewater Rd. - agrees with going to one list

Monnie Peters, 1425 Neah Ta Wanta Rd. – is there a way to make it a smaller file size – is that possible?

Isaiah – one list – hyperlinks instead of attachments

Wahl – inquire about those that don't want to be in opt out - want to subscribe or don't want too

Motion Made By: Warren Wahl move to have one email list provided they have the proper subscribe information at the bottom from the clerk.

Seconded By: Maura Sanders

Yeas: 6 **Nays:** 0 **Motion Carried**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 5

PENINSULA TOWNSHIP

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Town Board Meeting

April 11, 2017, 7:00 pm

Township Hall

Regular Meeting Agenda

1. **Call to Order**
2. **Pledge**
3. **Roll Call**
4. **Approve Agenda**
5. **Brief Citizen Comments – for items not on the Agenda**
6. **Conflict of Interest**
7. **Consent Agenda**

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

1. Meeting Minutes Approval—March 28, 2017 (Election Commission Meeting), March 28, 2017 (Town Board Meeting), March 30, 2017 (Town Board Special Meeting), April 3, 2017 (Town Board Special Meeting)
2. Reports and Announcements (as provided in packet)
 - A. Officers—Clerk, Supervisor, Treasurer
 - B. Departmental—Assessor, Planner, Attorney, Engineer, Library, Park Commission, and Township Deputy (recommend approval)
3. Correspondence (as provided in packet)
4. Edit Invoice list (recommend approval)
5. Approval of special event at Library Craft Show, July 22, 2017
6. Approval of new per diem policy as an update to the 2013 Personnel Policy Manual
7. Approval to secure three bids for a Town Hall back-up generator
8. Authorize D. Sanger as the new Ordinance Enforcement Officer for the township
8. **Business**
 1. Bluff Road Tree Removal Update (Manigold)
 2. Bayshore Marathon Information Presentation
 3. Approval and selection of computer (IT) service provider for Township offices
 4. Authorize supervisor to sign the Bonobo Enforcement Agreement
 5. Approve a new Ordinance for the Fire Recovery Services Contract with Peninsula Fire Department
 6. Discuss current situation with the Township mailing lists
 - a. Number of agendas, minutes, and contact lists, fall under filing deadlines of the Open Meetings Act requirements
 - b. Current burden falls on the Deputy Clerk
 - c. Multiple postings (for a single meeting due to amendments) creates confusion & unfavorable impression
 7. Resolution by the Town Board to request State support in covering the cost of new voting equipment to come online in Fall, 2017.
9. **Citizen Comments**
10. **Board Comments**
11. **Adjournment**

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

Business Item #4

Authorize Supervisor to Sign
the Bonobo Enforcement Agreement

SETTLEMENT AGREEMENT

Peninsula Township (hereinafter the "Township") and Oosterhouse Vineyards, LLC, (hereinafter the "Chateau") reach this agreement to resolve an allegation that the Chateau violated Peninsula Township Zoning Ordinance (PTZO) Section 8.7.3(10)(h) by failing to plant fruit trees or grape vines on a sufficient portion of its acreage. The Chateau disputed those allegations for several reasons, including that planting pumpkins, field crops, and other appropriate actions satisfies the zoning ordinance. Further, the Township seeks to require planting of additional fruit trees and/or grape vines to be planted on certain acreage at the Chateau. The Chateau and the Township (also collectively the "Parties") have reached this agreement to resolve their pending dispute, and for the Chateau to plant additional grape vines or fruit trees, as set forth in this Agreement.

1. The Chateau owns real property located within the Township which is described in Exhibit A (hereinafter the "Subject Property"), on which it operates a Winery –Chateau. The Chateau is licensed by the Michigan Liquor Control Commission (MLCC) as a winery. The Township has granted the Chateau a special use permit under its zoning ordinance.
2. The Parties agree the Chateau will plant additional fruit trees or grape vines on 5.95 acres pursuant to a Farm Plan, which is attached hereto as Exhibit B and incorporated by reference in this Agreement.
3. The Parties recognize that the Chateau expects to work with experts, such as the Michigan State Extension, to administer and carry out the Farm Plan. The Chateau will provide regular updates to the Township (which will generally occur on a monthly basis, starting on May 1, 2017) concerning actions taken by the Chateau under the Farm Plan, any proposed amendments to the Farm Plan, and any deviations from the Farm Plan. In addition to these regular updates, the Chateau will provide the Township with the following reports from the Northwest Michigan Horticultural Research Center, or its successor:
 - i. In Spring 2017, the status of soil testing and an update regarding crops to be planted following the meeting between

MSU Extension and the Bonobo Farm Management representatives.

- ii. In Spring 2017, a statement regarding recommended cover crops and the status of planting.
 - iii. In Summer 2017, a statement regarding recommended soil preparation and status of tilling, spoil preparation, and status of cover crops.
 - iv. In Summer 2017, a statement regarding recommended cover crops and status of planting.
 - v. In Spring 2018, a statement regarding fruit trees and vines planted, any further recommendations of MSU Extension, and the status of any soil preparation or cover crops within the 5.95 acres.
4. In consideration of these Agreements, the Township shall execute a dismissal of the pending administrative complaint, which shall be held by the Township's counsel, a copy shall be attached hereto as Exhibit C, which shall be filed with the Township upon successful completion of the Farm Plan, and also the Chateau shall not apply for any Guest Activity Uses, as stated in Section 8.7.3(10)(u), for the Subject Property, until such a time as this Agreement is completed. In the meantime, the Parties hereby agree the Township will stay any further enforcement proceeding of the zoning ordinance regarding the subject matter of the Farm Plan, or PTZO Section 8.7.3(10)(h). If the Chateau does not begin to implement the Farm Plan by May 1, 2017, or if it fails to provide regular updates required hereby, the Township may lift the stay by providing written notice to Chateau at least 15 days before doing so.
5. This Agreement shall not be deemed, nor interpreted, to prevent the Township from enforcing its zoning ordinance against the Chateau arising from an alleged violation or misconduct other than required by PTZO Section 8.7.3(10)(h) or beyond the scope of preparation of the land and planting of

vines or trees as set forth within the Farm Plan.

6. If the Chateau fails to satisfy the Farm Plan by Spring of 2018, the Township may, in its sole discretion, lift the stay and take action it deems appropriate to enforce the alleged violation, and this Agreement shall not restrict the ability of the Township to seek appropriate administrative, legal, or equitable remedies.

Entered into on this day of 2-3 day of March, 2017, by the undersigned parties.

PENINSULA TOWNSHIP

OOSTERHOUSE VINEYARDS, LLC

By: Robert Manigold
Its: Supervisor



By: Todd Oosterhouse
Its: General Manager

Exhibit B

**MICHIGAN STATE
UNIVERSITY**
December 28, 2016

Mr. Todd Oosterhouse
Bonobo Winery
12011 Center Road
Traverse City, MI 49686

Dear Todd:

Based on our discussions last week, the following document is a proposed farm management plan for your property, Bonobo Winery, located on Old Mission Peninsula, Traverse City, Michigan. This plan is designed to fit an evolving agricultural operation, and our intention is to work closely with you and your vineyard manager, Josh Rhem, to ensure the best agricultural practices are implemented on your valuable land.

First, as a result of the nationwide nursery tree and vine shortage, we are recommending a series of cover crops be applied to the available six acres, currently without an agricultural crop, with the intent to build soil to support healthy trees and vine crops that you plan to plant in the future. As you may be aware, the planting rate for modern orchard and vineyard systems is expanding exponentially across the U.S., and as a result, trees/vines are in low supply and not available for immediate purchase. At this time, many growers are placing orders two to three years in advance of planting; trees for high-density apple plantings will not be available until 2019 at the earliest. Additionally, nursery operations have faced weather-related setbacks, such as early fall frosts that have impacted availability of salable plant material. With the understanding your cider apple trees and vines are committed to be planted in 2018, we will provide support and recommendations for cover crops that will improve soil health to support long term perennial cropping systems.



**Northwest Michigan
Horticultural
Research Center**

6686 S. Center Hwy.
County Road 633
Traverse City, MI 49684

231-946-1510

Fax: 231-946-1404

email: nwmihort@msu.edu

website:

<http://agblresearch.msu.edu>

/nwmihort/

Secondly, we have approached Drs. George Bird and Marisol Quintanilla-Tornel to conduct an applied research project to build soil on the backmost acreage where the ground has been reshaped. Data have shown that perennial crops planted on reshaped ground are less vigorous and often have a lower survivorship than plants placed onto virgin sites. Therefore, we are proposing to establish a replicated cover crop trial on the reshaped sites to improve soil health. We are proposing a two-year rotation in this trial, and results will be shared with the agricultural community.

Thank you for electing to partner with Michigan State University to develop your farm plan. We look forward to working together to ensure your winery is both a healthy agricultural operation and one that is in compliance with your local township ordinances.

Sincerely,

Dr. Nikki Rothwell
MSU Extension Specialist
NWMHRC Coordinator

Proposed Farm Management Plan for Bonobo Winery

Dr. Nikki Rothwell
 Michigan State University
 Northwest Michigan Horticultural Research Center
 6686 S. Center Highway
 Traverse City, Michigan 49684

Late Winter 2017

In late winter/early spring 2017, Drs. N. Rothwell and G. Bird of Michigan State University (MSU) will meet with the Bonobo farm management team to determine a cover crop rotation strategy for the two areas where the ground has been reshaped on the property (Figure 1: Plot C). We will develop a strategy for soil building that will likely include a minimum of a two-year crop rotation. We will select appropriate plant species for the trial, which will be set up in a replicated block design using a minimum of two cover crops for each treatment. The NWMHRC staff will be responsible for collecting soil tests in all treatments in fall 2017 and 2018. Rothwell and Bird will use results to develop longer-term cover cropping strategies for reshaped ground intended for fruit crops. This information will be available to Michigan fruit growers.

Spring 2017**Soil Testing**

As soon as the soil thaws in spring 2017, soil tests should be taken on the three pieces of property where trees/vines will be planted. The Grand Traverse County Extension office provides the MSU Soil Test Mailer Kits. Although MSU typically recommends one sample per 20 acres, it is recommended that the Bonobo farm management team submit one sample per block – that is, one for each of the three distinct areas to be planted to trees/vines (Figure 1: Plots A, B, and C) due to differences in land management (ex. reshaping and cover cropping) that could have impacted the soil structure and composition in these areas. The farm management team should use a soil probe to take 15-20 subsamples to a soil depth of 8" in a crisscross fashion per each of the three fields A, B, and C (add an illustration over the Figure 1). The 15-20 subsamples per field should be placed into a clean plastic pail and mixed thoroughly; do not combine the subsamples from multiple fields in the same pail. Fill a soil sample box with the sample--if soil is wet, spread it on paper and allow to air-dry overnight. Repeat this process for each field.

As per past discussions, soil tests have been taken previously in the three blocks, but cover crops have been planted in the interim. The Bonobo farm management team and MSU will work together to measure the impacts of past cover cropping on the current soil status, and the 2017 spring tests can be used as a baseline for further influences of cover crop rotations proposed to be planted in 2017.

A nematode test in each of the three blocks is also recommended. Although nematode testing was done in the recent past, we should verify the nematode count to optimize decision-making for plant species to be used for cover cropping. Similar

T.O.

methods to the soil sampling can be used to collect soil for nematode sampling. Samples should be stored in plastic bags or some other container that retains moisture. One pint of soil should be submitted per soil sample, and if the samples need to be stored, they should be kept cool. Samples should be sent to the following diagnostics' laboratory: MSU Diagnostic Services, 578 Wilson Rd., Room 107, East Lansing, MI 48824-6469.

Cover Cropping

Once the test results come back from the MSU Soil and Plant Nutrient Laboratory and Diagnostics Services, Dr. Rothwell will meet with T. Oosterhouse and J. Rhem to discuss the results. The cover crops to be planted in spring 2017 will be based on soil test results. However, results from a cover cropping trial conducted at the Northwest Michigan Horticultural Research Center in 2012-13 have shown that sweet cherry tree trunk diameter and canopy volume was significantly higher in plots covered cropped with essex rape/pearl millet combination. The oats/peas/mustard cover crop rotation also had increased trunk diameter and canopy size compared with other treatments (oats/rye, red clover/alfalfa/hairy vetch, oats/peas/oilseed radish, and plots that did not received treatment). (Please see complete study in Appendix A). We also found that Start 101 (Morgan's Composting, Inc., Sears, MI) added to the trees at planting had significantly better growth than untreated trees. Although this work was conducted in cherry, we hypothesize that these treatments would also provide added benefit to apples and vines.

Until we have further information on the soil quality and nematode counts (to be provided by spring 2017 testing), essex rape is the currently recommended cover crop to be planted in spring 2017*. This treatment will be the first in the cover crop rotation where pearl millet to be planted in fall 2017. Essex rape should be planted at 5lbs/acre, and seeded with a drill seeder or some other appropriate seeding machine. The ground should be tilled adequately to prepare the soil for seeding. In conversations with J. Rhem, no herbicides will be used in preparation for cover cropping; although this is not standard practice in most agricultural operations, Bonobo Winery farm management has chosen to use as few synthetic pesticides as possible. In keeping with this strategy, it is recommended to plant the cover crop to the appropriate seeding density to optimize the growth of a healthy stand of essex rape.

Summer 2017

The rape should be tilled into the ground in summer 2017, and pearl millet should be planted in the plots. The seeding rate for pearl millet is 20lbs/acre. As these seeds will be planted in summer, the germination rates may be impacted by rainfall events. Bonobo Winery does not have the capacity to irrigate the plots, and if the 2017 season is dry, germination may be reduced.

*Recommendations are subject to change if soil and/or nematode tests come back with results that suggest other plant species should be selected.

T.O.

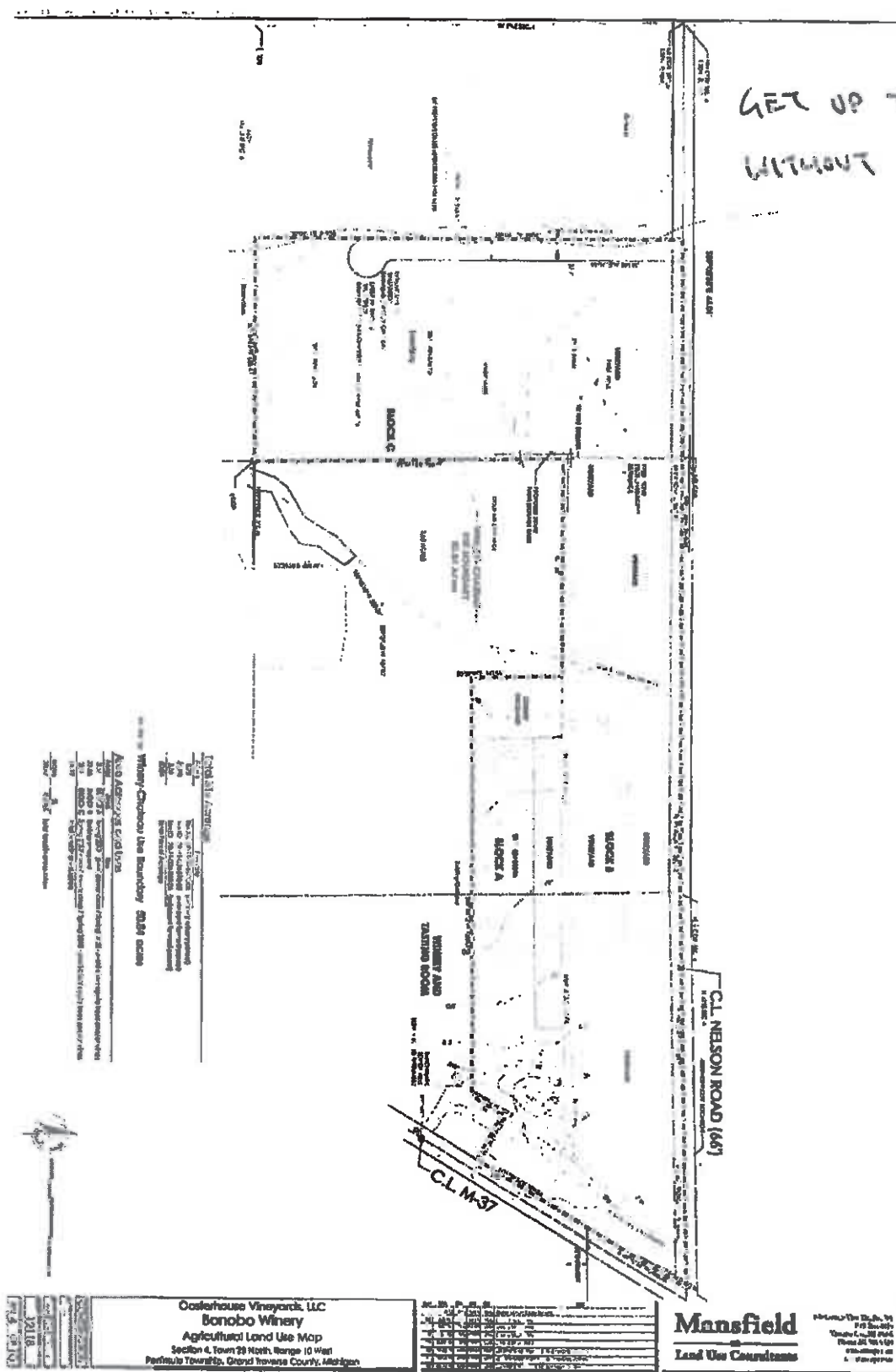


Figure 1. Property map of Bonobo Winery, Old Mission Peninsula

Appendix A

2015 Research Report Impact of Cover-Crops/Mulch/Compost on Tart Cherry Orchard Development/Productivity and Soil Health George Bird, Nikki Rothwell, Dean Baas, Bill Klein and Karen Powers

Orchard establishment and maintenance are key elements in profitable tart cherry production. While soil fumigation is still a common practice in cherry orchard establishment, it is known this has a detrimental impact on the biology necessary for optimal nutrient mineralization and overall soil health (Sanchez et al., 2003). It is also known that alternate orchard floor management practices result in greater tart cherry productivity than the current conventional system. Currently, there is a distinct need to research and demonstrate the impact of cover-crops, mulch, compost and biochar on tart cherry orchard establishment, development of bearing trees and productivity. To assist in achieving the discovery of an alternative orchard site preparation system to replace soil fumigation, two new tart cherry orchards are being established at the MSU Northwest Horticultural Research Center. Trees for Orchard No. 1 were planted in 2014 and those for Orchard No 2 were planted in 2016.

Objective: Determine and demonstrate the impact of cover-crops, mulch, compost and biochar on establishment and development of two tart cherry research orchards and their associated soil health under both soil fumigation and non-fumigation conditions.

Methodology: Six cover crop regimes were established in 2012 and maintained throughout 2013 for Orchard 1 (Table 1). Tree growth and soil health were monitored in 2014-2015.

Table 1. 2012-2013 cover crop regimes for Orchard 1.

A.	Oats/Rye
B.	Essex Rape/Pearl Millet
C.	Red Clover/Alfalfa/Hairy Vetch
D.	Oats/Peas/Mustard-Biofumigation
E.	Oats/Peas/Oilseed Radish
F.	Oats/Peas/Mustard
UTC.	Non-treated Control

In addition, a sixteen tree portion of the site was used to evaluate four other at tree planting treatments (Table 2), including Starter 101 (a Morgan Compost product designed as a medium for germinating seeds), a surface application of compost and straw mulch applied in 2014. The mulch and compost were applied again in 2015. In addition, biochar was applied in 2015 to the soil surface around eight trees.

Table 2. At tree planting inputs for 16 trees in Orchard No. 1.

1.	Planting hole Starter 101 plus surface compost and mulch
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 6

PENINSULA TOWNSHIP
Regular Town Board Meeting
September 11, 2018, 7:00 pm

Transcribed Meeting Minutes

Supervisor: I would like to call the meeting to order, please stand for the Pledge of Allegiance.

Pledge

Rob: I would also ask everybody to remain standing, for a second for a moment of 9-11 for the problem that we had several years ago in memory of those people and the first responders that died.

Silence

Rob: Okay, roll call please Joanne.

Joanne: Brad?

Brad: Yes.

Joanne: David.

David: Here.

Joanne: Isiah?

Isiah: Here.

Joanne: Marge?

Marge: Here.

Joanne: Myself, here. Rob?

Rob: Yes, Warren is excused tonight he had a court case going late and he may be here later. Mr. Meihn got called off on another case and he will not be here this evening. Citizen comments this would be an appropriate time for anyone in the audience that would like to make a statement. Please say your name and address for the record and.

Rob: We have a motion and support, any further discussion? Roll call please.

Joanne: Rob?

Rob: Yes.

Joanne: Brad?

Brad: Yes.

Joanne: Dave?

Dave: Yes.

Joanne: Isiah?

Isiah: Yes.

Joanne: Marge?

Marge: Yes.

Joanne: Myself, yes.

Brad: Thank you.

Rob: Okay, item number c, approve 2018 Bonobo compliance report., Randy.

Randy: Okay, you have in your packet a report that follows up on Bonobo Winery special use permit 118 which was the subject of a settlement agreement in 2017. A copy of which is attached to the memo I have provided. There are a number of compliance issues that were in place then and we have gone through with the help of Christina and Gordon to document compliance with them in terms of that settlement agreement which is again is exhibit E in your packet. This is documentation with respect to coordination Michigan State purchase of fruit trees there are drawings that indicate how much of the area has been planted and in developing this report I did have this reviewed by our Attorney who approved it and offer it to you for your review and for your consideration.

Rob: Todd did you have anything to say or?

Todd: Sure.

Laughter

Rob: I don't mean to put you on the spot. It looks like you're working very well with what we agreed to and you're in total compliance with what we agreed to.

Todd Oosterhouse, 7700 Peninsula Drive, I just wanted to say thanks for having the opportunity to work with me and get this up where we needed it to be. I know it has been a long haul to get there but we did and I appreciate all the effort by everybody. Thank you.

Rob: I think the appropriate thing to do would be a motion to receive the settlement agreement the document to receive and file it.

Isiah: So, moved.

Brad: I second.

Rob: We have a motion and support, further discussion? Roll call please, Joanne.

Joanne: Dave?

Dave: Yes.

Joanne: Marge?

Marge: Yes.

Joanne: Isiah?

Isiah: Yes.

Joanne: Rob?

Rob: Yes.

Joanne: Brad?

Brad: Yes.

Joanne: Myself, yes.

Rob: Okay, continue discussion of the personnel policy handbook.

Brad: Should we consider citizen comments before we go into this because this could be quite a long dialog on the handbook and stuff.

Rob: I don't know how long it's going to be I thought we were going to just set a date.

Board members chatter unclear who is speaking and what is being said.

Joanne: You had specific questions, Marge had specific questions, and Brad had specific questions and I sent them to Chelsey Ditz who is um.

Rob: I wondered I didn't see them in the packet so.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
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RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 7

2018 BONOBO COMPLIANCE REPORT

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

To: Peninsula Township Board

From: Randy Mielnik, AICP

Date: September 6, 2018

Re: Bonobo Winery Special Use Permit 118

RECEIVED

SEP 11 2018

am gmt

CLERK

Peninsula Township reached an agreement with Oosterhouse Vineyards, LLC to resolve a dispute related to compliance with special use permit provisions contained in Peninsula Township's Zoning Ordinance and Bonobo Winery. This agreement was approved by the Township Board on April 11, 2018 and it required additional plantings of fruit trees or grape vines. Since then, a number of steps have been taken and are documented below:

- On June 21, 2018 Christina Deeren and Gordon Hayward met with Dr. Nikkie Rothwell and Todd Oosterhouse on site to observe the plantings of vines and cider trees planted as proposed in the Settlement Agreement.
- Following the site visit Gordon Hayward asked Mr. Oosterhouse to provide a site plan prepared by a surveyor showing the actual location and acreage of the new planting areas.
- A letter dated June 22, 2018 was received from Dr. Rothwell regarding the site visit and confirming the plantings.
- A site plan dated August 9, 2018 has been provided from Michigan Geomatics showing the areas and acreage planted. This site plan showed a total of 7.95 acres of new plantings.
- The percentage of the area planted with crops that can be made into wine within the boundaries of Special Use Permit 118 are calculated as follows:

<u>Winery-Chateau Use Boundary Area</u>	<u>50.00 acres</u>	(Mansfield Site Plan 10-04-16)
Existing Planted Areas	31.56 acres	(Mansfield Site Plan 10-04-16)
New Planted Areas	7.95 acres	(Michigan Geomatics 8-9-18)
<u>Total Acres Planted</u>	<u>39.50 acres</u>	
Percentage of Use Boundary Area Planted	79%	

Based on the above documentation, it appears that the terms of the settlement agreement have been met. Please see attached copies of documentation.

Exhibits

- A. Order for 600 cider trees from Summit Tree Sales – October 6, 2016
- B. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Todd Oosterhouse and attached Proposed Farm Management Plan for Bonobo Winery – December 28, 2016
- C. Email from Nicole Essad to Steve Fox regarding proposed settlement agreement containing the necessary planting acreage (5.95) – March 20, 2017
- D. Township Board Meeting Agenda and Minutes Approving Settlement Agreement.– April 11, 2017
- E. Signed Settlement Agreement
- F. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Rob Manigold providing an update on the Farm Plan – January 24, 2018
- G. Letter from Dr. Nikki Rothwell Northwest Michigan Horticultural Research Center Coordinator to Gordon Hayward confirming site visit and plantings - June 22, 2018
- H. Letter from Michigan Geomatics regarding area calculations for planting - August 9, 2018

EXHIBIT - A



SUMMIT TREE SALES
REPRESENTING THE COUNTRY'S FINEST NURSERIES

Customer Order Notification

Sold To: BONOW!
TODD OOSTERHOUSE
BONOBO WINERY
12011 CENTER RD
TRAVERSE CITY, MI 49686

Ship To Via: BEST WAY
TODD OOSTERHOUSE
BONOBO WINERY
12011 CENTER RD
TRAVERSE CITY, MI 49686

Sales Person: Matt Schuld
Supplier: HERITAGE CIDER SUPPLY
Cell Phone 1 (231) 383-5118
Cell Phone 2
Cell Phone 3
Email Address todd@bonobowinery.com

Order Nbr: 14084
Order Date: 10/6/2016
Crop Year: 2018
Req Ship Date:
Deposit: \$4.00 per tree

Qty	Size Preferred	Size Sub Category	Variety	Rootstock	Order Type	Variety Royalty	Est Price	Estimated Extended Price
200	5/8		Roxbury Russet	Geneva® 41		\$0.000	\$13.50	\$2,700.00
200	5/8		Dabinett	Geneva® 935		\$0.000	\$13.50	\$2,700.00
200	5/8		Kingston Black	Geneva® 41		\$0.000	\$13.50	\$2,700.00
Estimated Total Order Amount								\$8,100.00

Price noted is based on the current price list and is for reference only. Actual price will be determined by quantity and size shipped and at the price list in effect at time of shipment. All pricing is FOB PUYALLUP WA. A deposit of \$4.00 per tree is required to confirm this order. Please remit to HERITAGE CIDER SUPPLY upon their request.

Price noted is based on the most current price list and is for reference only. Actual price will be determined by quantity and size shipped and at the price list in effect at time of shipment. All pricing is FOB the supplying nursery.
Contract Orders will be grown under the terms and conditions of the supplying nursery's growing agreement and pricing.
A Deposit will be required upon acknowledgment by the supplying nursery. Please remit directly to the supplying nursery at that time.

55826 60th Avenue, Lawrence, MI 49064 * Phone: (800) 424-2765 + (269) 674-8866 * Fax: (269) 674-3758

s u m m i t t r e e s a l e s . c o m


HERITAGE CIDER
Secure payments by
Payment Receipt
Transaction time
Receipt ID
Total

We'll send a confirmation email to todd@bonobowinery.com. This transaction will appear on your statement as PayPal
*HERITAGECID.

Paid to
Heritage Cider Supply

Shipped to
todd oosterhouse
7700 Peninsula drive
traverse city, MI 49686
United States

Your shopping cart

Description	Price	Quantity	Amount
Payment to Heritage Cider Supply for Invoice 0002	\$2,400.00	1	\$2,400.00
		Item total	\$2,400.00
		Total	\$2,400.00 USD

EXHIBIT - B

**MICHIGAN STATE
UNIVERSITY**
December 28, 2016

Mr. Todd Oosterhouse
Bonobo Winery
12011 Center Road
Traverse City, MI 49686

Dear Todd:

Based on our discussions last week, the following document is a proposed farm management plan for your property, Bonobo Winery, located on Old Mission Peninsula, Traverse City, Michigan. This plan is designed to fit an evolving agricultural operation, and our intention is to work closely with you and your vineyard manager, Josh Rhem, to ensure the best agricultural practices are implemented on your valuable land.

First, as a result of the nationwide nursery tree and vine shortage, we are recommending a series of cover crops be applied to the available six acres, currently without an agricultural crop, with the intent to build soil to support healthy trees and vine crops that you plan to plant in the future. As you may be aware, the planting rate for modern orchard and vineyard systems is expanding exponentially across the U.S., and as a result, trees/vines are in low supply and not available for immediate purchase. At this time, many growers are placing orders two to three years in advance of planting; trees for high-density apple plantings will not be available until 2019 at the earliest. Additionally, nursery operations have faced weather-related setbacks, such as early fall frosts that have impacted availability of salable plant material. With the understanding your cider apple trees and vines are committed to be planted in 2018, we will provide support and recommendations for cover crops that will improve soil health to support long term perennial cropping systems.



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Thank you for electing to partner with Michigan State University to develop your farm plan. We look forward to working together to ensure your winery is both a healthy agricultural operation and one that is in compliance with your local township ordinances.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Rothwell".

Dr. Nikki Rothwell
MSU Extension Specialist
NWMHRC Coordinator

Proposed Farm Management Plan for Bonobo Winery

Dr. Nikki Rothwell

Michigan State University

Northwest Michigan Horticultural Research Center

6686 S. Center Highway

Traverse City, Michigan 49684

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methods to the soil sampling can be used to collect soil for nematode sampling. Samples should be stored in plastic bags or some other container that retains moisture. One pint of soil should be submitted per soil sample, and if the samples need to be stored, they should be kept cool. Samples should be sent to the following diagnostics' laboratory: MSU Diagnostic Services, 578 Wilson Rd., Room 107, East Lansing, MI 48824-6469.

Cover Cropping

Once the test results come back from the MSU Soil and Plant Nutrient Laboratory and Diagnostics Services, Dr. Rothwell will meet with T. Oosterhouse and J. Rhem to discuss the results. The cover crops to be planted in spring 2017 will be based on soil test results. However, results from a cover cropping trial conducted at the Northwest Michigan Horticultural Research Center in 2012-13 have shown that sweet cherry tree trunk diameter and canopy volume was significantly higher in plots covered cropped with essex rape/pearl millet combination. The oats/peas/mustard cover crop rotation also had increased trunk diameter and canopy size compared with other treatments (oats/rye, red clover/alfalfa/hairy vetch, oats/peas/oilseed radish, and plots that did not received treatment). (Please see complete study in Appendix A). We also found that Start 101 (Morgan's Composting, Inc., Sears, MI) added to the trees at planting had significantly better growth than untreated trees. Although this work was conducted in cherry, we hypothesize that these treatments would also provide added benefit to apples and vines.

Until we have further information on the soil quality and nematode counts (to be provided by spring 2017 testing), essex rape is the currently recommended cover crop to be planted in spring 2017*. This treatment will be the first in the cover crop rotation where pearl millet to be planted in fall 2017. Essex rape should be planted at 5lbs/acre, and seeded with a drill seeder or some other appropriate seeding machine. The ground should be tilled adequately to prepare the soil for seeding. In conversations with J. Rhem, no herbicides will be used in preparation for cover cropping; although this is not standard practice in most agricultural operations, Bonobo Winery farm management has chosen to use as few synthetic pesticides as possible. In keeping with this strategy, it is recommended to plant the cover crop to the appropriate seeding density to optimize the growth of a healthy stand of essex rape.

Summer 2017

The rape should be tilled into the ground in summer 2017, and pearl millet should be planted in the plots. The seeding rate for pearl millet is 20lbs/acre. As these seeds will be planted in summer, the germination rates may be impacted by rainfall events. Bonobo Winery does not have the capacity to irrigate the plots, and if the 2017 season is dry, germination may be reduced.

*Recommendations are subject to change if soil and/or nematode tests come back with results that suggest other plant species should be selected.

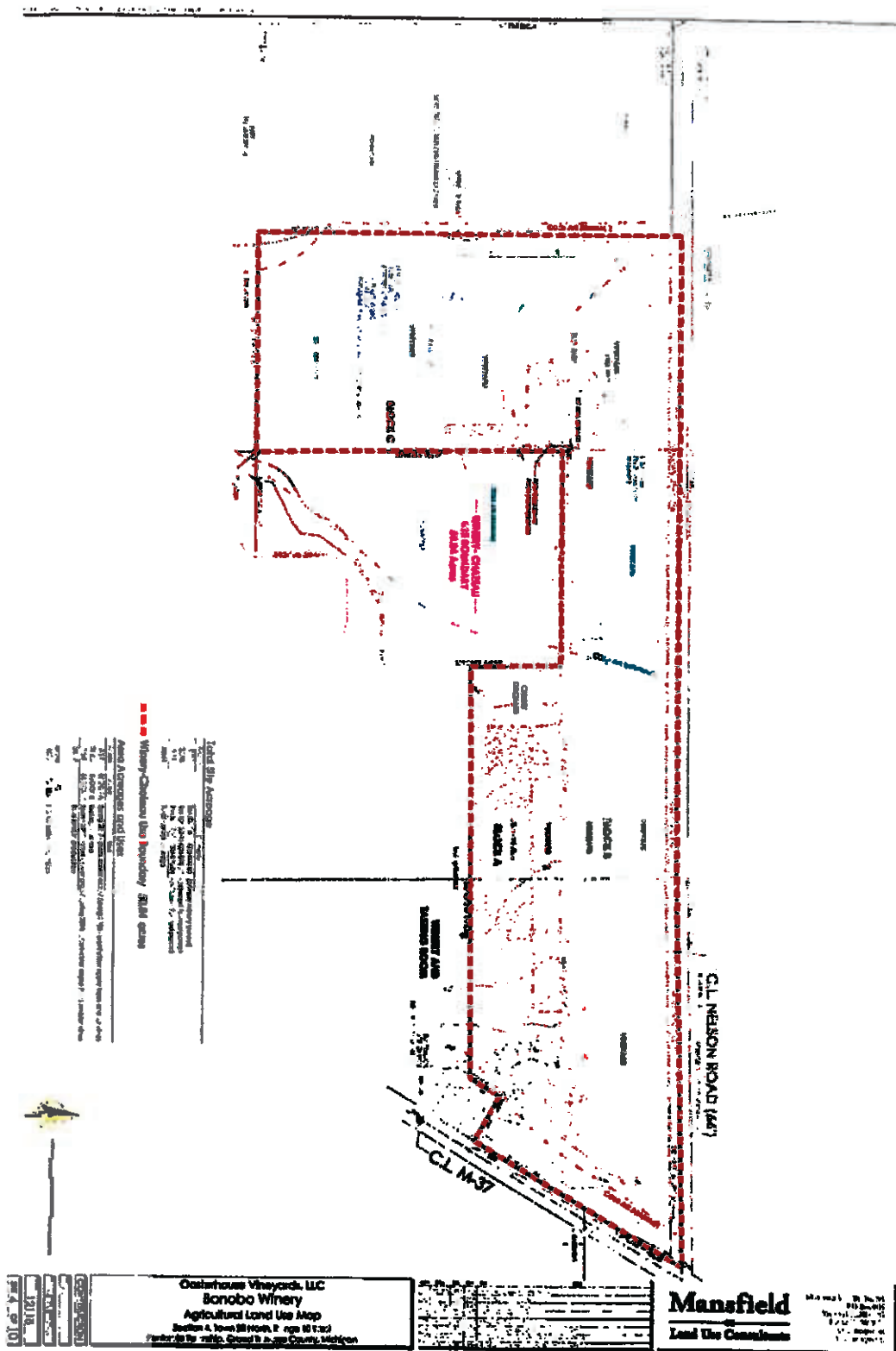


Figure 1. Property map of Bonobo Winery, Old Mission Peninsula

Appendix A

2015 Research Report Impact of Cover-Crops/Mulch/Compost on Tart Cherry Orchard Development/Productivity and Soil Health George Bird, Nikki Rothwell, Dean Baas, Bill Klein and Karen Powers

Orchard establishment and maintenance are key elements in profitable tart cherry production. While soil fumigation is still a common practice in cherry orchard establishment, it is known this has a detrimental impact on the biology necessary for optimal nutrient mineralization and overall soil health (Sanchez et al., 2003). It is also known that alternate orchard floor management practices result in greater tart cherry productivity than the current conventional system. Currently, there is a distinct need to research and demonstrate the impact of cover-crops, mulch, compost and biochar on tart cherry orchard establishment, development of bearing trees and productivity. To assist in achieving the discovery of an alternative orchard site preparation system to replace soil fumigation, two new tart cherry orchards are being established at the MSU Northwest Horticultural Research Center. Trees for Orchard No. 1 were planted in 2014 and those for Orchard No 2 were planted in 2016.

Objective: Determine and demonstrate the impact of cover-crops, mulch, compost and biochar on establishment and development of two tart cherry research orchards and their associated soil health under both soil fumigation and non-fumigation conditions.

Methodology: Six cover crop regimes were established in 2012 and maintained throughout 2013 for Orchard 1 (Table 1). Tree growth and soil health were monitored in 2014-2015.

Table 1. 2012-2013 cover crop regimes for Orchard 1.

A.	Oats/Rye
B.	Essex Rape/Pearl Millet
C.	Red Clover/Alfalfa/Hairy Vetch
D.	Oats/Peas/Mustard-Biofumigation
E.	Oats/Peas/Oilseed Radish
F.	Oats/Peas/Mustard
UTC.	Non-treated Control

In addition, a sixteen tree portion of the site was used to evaluate four other at tree planting treatments (Table 2), including Starter 101 (a Morgan Compost product designed as a medium for germinating seeds), a surface application of compost and straw mulch applied in 2014. The mulch and compost were applied again in 2015. In addition, biochar was applied in 2015 to the soil surface around eight trees.

Table 2. At tree planting inputs for 16 trees in Orchard No. 1.

1.	Planting hole Starter 101 plus surface compost and mulch
----	--

2.	Planting hole Starter 101 and surface compost
3.	Planting hole Starter 101 and surface much
4.	Surface Compost and mulch

Four cover crop regimes associated were established and maintained throughout 2014-2015 for Orchard 2 (Table 3). Each regime was replicated four times. The orchard planted in 2016.

Table 3. 2014-2015 cover crop regimes for Orchard 2.

1.	Oats/rye/soil fumigation (conventional control)
2.	Essex rape/pearl millet (dagger/root-lesion nematode control)
3.	Hairy vetch (nitrogen)
4.	Mustard/oilseed radish (general soil health enhancement)

Results: Tree trunk diameter and canopy volume measured on August 7, 2015, was significantly greater for the trees associated with the Essex Rape/Pearl Millet and Oats/Peas/Mustard cover crop regimes than those associated with the other cover crop regimes or the non-treated control (Figs. 1 and 2). Tree limb growth on this date was significantly greater for the trees associated with the Oats/Rye, Essex Rape/Pearl Millet and Oats/Peas/Mustard than for the other cover crop regimes or the non-treated control (Figure 3).

The greatest trunk diameters and canopy volumes on August 7, 2015, were associated with trees where Starter 101 was added to the planting hole (Figs. 1 & 2). This had a greater positive impact on growth and development than surface applied compost and mulch. All of the four at-planting treatments resulted in greater trunk diameters and canopy volumes than those associated with the cover crop regimes or the non-treated control. The greatest tree limb growth on the above date was associated with trees having Starter 101, compost and mulch at-planting (Figure 3).

While specific information on soil health analysis will be presented at the 2015 EXPO Tree Fruit Session and at the 2016 Orchard and Vineyard Show in Acme, an overview of covercrops is included in Appendix A, summary of tart cherry soil health in Appendix B and a cover crop glossary in Appendix C.

Summary: Cover crop regimes and at-planting compost/mulch treatments had positive impacts on tree growth in Orchard 1 in 2014 and 2015. Additional research in regards to the impacts of compost blends on soil health needs to be done. It appears that it should be possible to develop cover crop regimes that not only replace soil fumigation, but bring healthy/vigorous trees into bearing a year earlier than under conventional practices. Confirmation of this hypothesis mandates that the research in the two NWHRC research orchards be continued through the first three to five years of tart cherry bearing. Soil health and cover crop research is currently in its pioneering stage. Much remains to be learned.

Figure 1. Mean tree trunk diameter on August 7, 2015, associated with six 2012-2013 cover crop regimnes (A-F, Table 1), a non-treated control (UTC) and four 2014 compost/mulch treatments (1-4, Table 2).

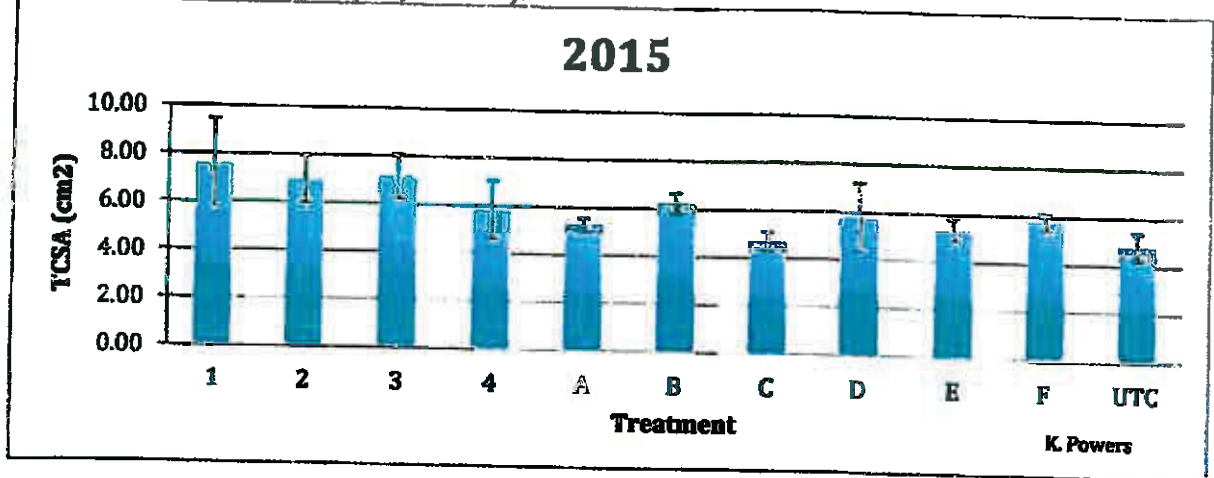


Figure 2. Mean tree canopy volume on August 7, 2015, associated with six 2012-2013 cover crop regimnes (A-F, Table 1), a non-treated control (UTC) and four 2014 compost/mulch treatments (1-4, Table 2).

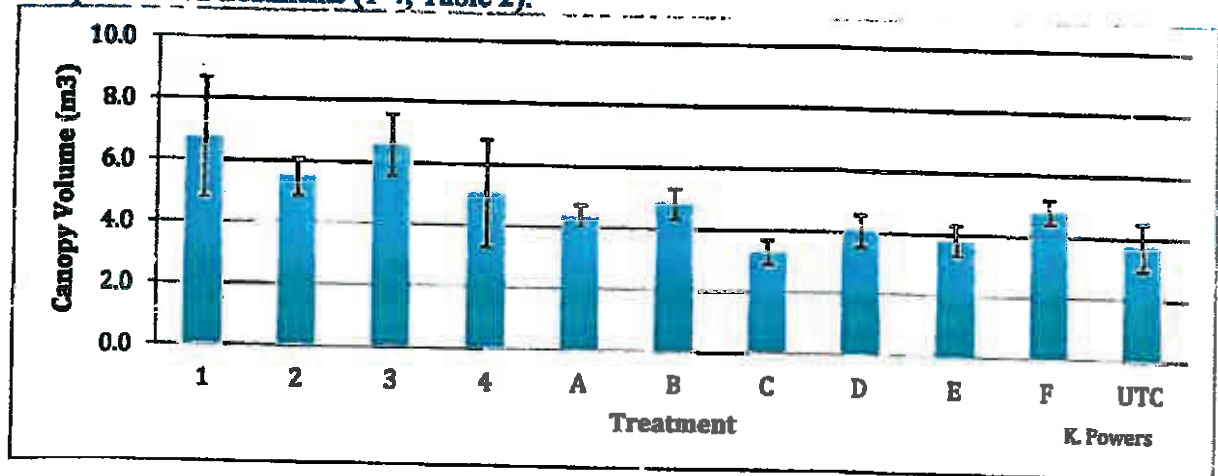
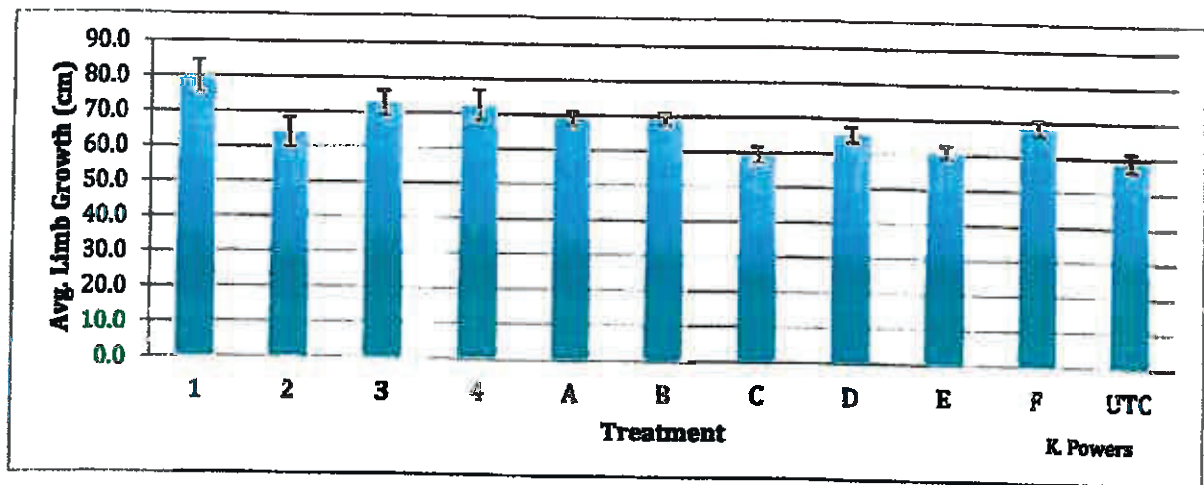


Figure 3. Mean tree limb growth on August 7, 2015 associated with six 2012-2013 cover crop regimnes (A-F, Table 1)), a non-treated control (UTC) and four 2014 comopost/mulch treatments (1-4, Table 2).



Cover Crops: With Special Reference to Radish

Definition: A cover crop is a plant grown to maintain or enhance soil health (the ability to resist degradation and respond to management in a predictable manner). Cover crops may be grown between cash crop rotations or monoculture plantings, inter-seeded with cash crops, as cash crops, as forage or for grazing.

Cover Cropping Objectives: There are at least 14 different reasons (objectives) for use of cover crops. These include: 1) Soil builders, 2) Soil hardness reducers, 3) Soil water conservers, 4) Erosion fighters, 5) Nutrient sources (nitrogen and about 20 other elements when biologically mineralized), 6) Hay crops, 7) Silage crops, 8) Seed crops, 9) Livestock grazers and Pest Managers such as 10) Weed fighters, 11) Friend feeders, 12) Pest starvers, 13) Pest trappers and 14) Pest gassers (bio-fumigation).

Laws for Successful Cover Cropping: There are Three Laws for Successful Cover Cropping. These include: 1) Clearly identify the specific objective(s) for use of a cover crop or mixture (blend) of cover crops, 2) Select the proper cover crop cultivar (variety) for achieving the objective and 3) Manage the cover crop in a manner specifically designed to attain the objective.

Cover Crop Types: There are four basic kinds of cover crops. These include: 1) Grasses, 2) Legumes, 3) Brassicas and 4) Other Broad Leaf Plants.

Objective: The primary objective of Appendix A. is to clarify what is currently known about radishes for use as cover crops in Mid-West agriculture.

Radish Taxonomy and Development: Radishes are classified in the plant species *Raphanus sativus*, as described by Carl Linnaeus in 1758 in *Systems Naturae*. Throughout the years there have been many synonyms, subspecies and taxonomic varieties proposed. Some of these may be valid and others may have caused confusion. The radish may have originated in China, with one or more populations moving east and others moving west. As a result of natural and human-managed selected, there are currently a vast array of different types of radish, each with different names (e.g.

Daikon), specific biological characteristics and potential uses. Since this micro-essay is about cover-cropping, a system of Functional Types will be used to describe the attributes of radishes. It also may be helpful to discuss the word *variety*. This word can be used to: 1) indicate diversity, 2) indicate a formal taxonomic subspecies category or 3) identify a plant cultivar that is usually marketed under the name of a specific variety, some of which may have Registered Trade Marks such as GroundHog™, Driller™ or Tillage Radish®.

Functional Types: There are at least five functional types of radish. These include:

1. Agronomic Cover Crop Radish Varieties,
2. Beet Cyst Nematode Management Radish Varieties,
3. Seed Oil Radish Varieties,
4. Common Backyard Garden Radish Varieties and
5. Eastern Culinary Radish Varieties.

Agronomic Cover Crop Radish Characteristics:

Beneficial

1. Excellent Nitrogen Scavenger,
2. Excellent Subsurface Hardness Reducer,
3. Good Topsoil Hardness Reducer,
4. Assists in Reducing Wind and Water-Based Soil Erosion,
5. Provides Some Organic Residue,
6. Good Weed Fighter,
7. Good Grazing-Forage Values and
8. Demonstrated Crop Yield Increases-Profitability

Potentially Detrimental

1. Increase risk to Beet Cyst Nematode (*Heterodera schachtii*) damage,
2. Increase risk to Northern Root-Knot Nematode (*Meloidogyne hapla*) damage,
3. Increase risk to Root-Lesion Nematode (*Pratylenchus penetrans*) damage,
4. Increase risk to Southern Root-Knot Nematode (*Meloidogyne incognita*) damage, and
5. Highly attractive to Flea Beetles (*Alticini* spp.).
6. Contrary to what is said in the Midwest Cover Crop Council Field Guide (p. 112), the jury is still out in regards to Soybean Cyst Nematode (*Heterodera glycines*).

Recommendation

Each agronomic cover crop radish variety needs to be evaluated under local conditions by one or more highly respected growers, having a significant interest in soil health.

Beet Cyst Nematode Management Radish Varieties

Plant breeders have developed several oil seed radish varieties that are trap crops for the Beet Cyst Nematode (*Heterodera schachtii*).

Which Ones?

Defender, Adagio and Colonel are BCN trap crop varieties.

How Do They Work?

The germinating young oil seed radish plant attracts the second-stage juveniles to its roots. The juvenile penetrates the root-system and moves to its potential feeding site in vascular parenchyma tissue. The nematode chemically signals to the plant to produce nurse cells as a source of food for egg production. In these BCN trap crop varieties, the plant fails (refuses) to form the nurse cells and the females are unable to produce eggs for the next generation of nematodes.

Selected References

Bailey, L. H. *Manual of Cultivated Plants*. Macmillan Co. N.Y. 1116 pp.
Fernald, M. L. *Grays Manual of Botany*. American Book Co. N.Y. 1632 pp.
Midwest Cover Crops: Field Guide. www.mccc.msu.edu. 136 pp.
Managing Cover Crops Profitably (3rd ed.). USDA/SARE. 244 pp.
Plants USDA.gov

Soil Health: Five Questions.

Soil Health: What is it?

Healthy soils:

- Possess the biological, chemical and physical properties necessary for optimal plant growth and development for their specific geographic location.
- Resist degradation, respond to proper management in a predictable manner and are regenerative in nature.

How does soil health affect my tart cherry orchard?

Soil health impacts:

- Tree development, fruit yield and fruit quality.
- Soil organic matter and moisture potential.
- Nutrient mineralization potential.
- Biological diversity.
- Pest outbreak risk.
- Favorable response to management.
- External input costs.
- Short-term and long-term orchard profitability.

How do I know if my coarse-textured tart cherry orchard soil is healthy?

A coarse-textured tart cherry soil is healthy if:

- High percentage of water stable aggregates (>45%).
- Good soil moisture potential (>0.175 g/g).
- Low surface hardness (<150 psi).
- Low subsurface hardness (<300 psi).
- Soil organic matter similar or greater than site's native biome (usually >3.5%).
- Good level of active carbon for nutrient mineralization (>450 ppm).
- High nitrogen mineralization potential (>10 µgN/g dw soil/week),
- pH (>6.2 and <7.6)
- Appropriate levels of all other chemical elements for crop growth and development.

- P (5-25 ppm).
- K (45-75 ppm).
- Mg (> 33 ppm).
- Fe (< 25 ppm).
- Mn (<50 ppm).
- Zn (<25 ppm).
- The tart cherry yield and quality goals are attained in a profitable manner.
- There is sustained vine development.
- Few pest/disease issues.

Where can I get a soil health analysis?

- Cornell University Soil Health Laboratory
 - Geneva, New York
 - Cornell Soil Health Test
 - <http://soilhealth.cals.cornell.edu>
- Ward Laboratories Inc.
 - Haney Soil Health Test (USDA/ARS)
 - Kearney, NE
 - (800) 887-7645
- Nutrilink Biosystems LLC
 - R. J. Rant
 - Grand Haven, Michigan
 - rjrant@nutrilinkbiosystems.com
- Woods End Laboratories
 - Solvita Test Kit
 - Mt. Vernon ME
 - (207) 291-2457
- BioSystems
 - BioTest (Reams)
 - Marlette, MI
 - (989) 635-2864

How can I enhance/maintain my tart cherry orchard soil health?

- Compost application
- Mulch application
- Reduced tillage
- Reduced biologically-toxic chemical inputs

Glossary of Cover Crop Terms for Nematode Management.

1. Nematode Population Density Terms.

- a. **P_i :** Population density of a specific nematode species at the beginning of a growing season or after a period of seasonal inactivity.
- b. **P_m :** Population density of a specific nematode species at mid-season.
- c. **P_f :** Population density of a specific nematode at-harvest or at the end of a period of seasonal activity.
- d. **R-value:** P_f/P_i (Reproductive factor)

2. Plant Host Status.

- a. **Good Host:** a specific plant variety where the population density of a specific nematode species increases at least two-fold during the growing season ($P_f > 2.0\text{-fold } P_i$).
- b. **Moderate Host:** a specific plant cultivar where the population density of a specific nematode increases up to twice the at-planting population density ($P_f > 0.10\text{-fold } P_i$, but $< 2X P_i$).
- c. **Poor Host** = a specific variety of a plant that maintains the population density of a specific nematode species, but keeps the population density at 10% or less than the initial population density keeps the initial population standing (in fact hardly no reproduction or reduction)
- d. **Non Host:** Specific nematode species will not feed or reproduce on non-hosts. The associated nematode population dynamics will vary depending on the nematode species. In some cases, such as cyst, foliar seeding and seed gall nematodes, the population density will remain relatively constant for a significant number of years. With others, the population density will decline.

3. Crop Response Status.

- a. **Trap Crops:** Nematode trap crops are plants varieties that attract sedentary endoparasitic nematode species. After the nematode penetrates the trap crop and signals for the plant to produce nurse cells, the plant fail to respond to the signal and the nematode dies without producing a next generation. The R-value (reproductive factor) range from about 0.01 to 0.10.
- b. **Resistant Crops:** Nematode resistant crops are varieties that yield well under initial population densities greater than the action threshold for nematode management and result in final population densities significantly lower than the associated initial population densities.

- c. **Tolerant Crops:** Nematode tolerant crops are varieties that yield well under initial population densities greater than the action threshold for nematode management. The resulting final population density, however, is significantly greater than the initial population density.
 - d. **Susceptible Crops:** Nematode susceptible crops are varieties that suffer significant yield losses under initial population densities greater than the action threshold, with the final population density being significantly higher than the initial population density.
 - e. **Cyst Nematode Trap Crops:** A crop that stimulates egg hatch, emergence from the cyst, attraction to its root system and then fails to form the nurse cells essential for female development, resulting in a decline in nematode population density.
4. **Names and uses of radish, mustard and arugula species.**

Common Name	Latin name	Use
Garden Radish	<i>Raphanus sativus sativus</i>	Vegetable
Oilseed Radish	<i>Raphanus sativus oleiferus</i>	Oil, Cover Crop, Beet Cyst Nema. Trap Crop
Daikon Radish	<i>Raphanus sativus longipinnatus</i>	Cover Crop, Vegetable
Wild Radish	<i>Raphanus raphanistrum</i>	Weed
Horse Radish	<i>Raphanus sativus niger</i>	Vegetable
Wild Mustard	<i>Sinapis arvensis</i>	Weed
White/Yellow mustard	<i>Sinapis alba/ Brassica hirta</i>	Cover, Nematode Reducing Crop
Ethiopian Mustard	<i>Brassica carinata</i>	Cover crop
Brown, Oriental, Indian Mustard	<i>Brassica juncea</i>	Cover crop
Black Mustard	<i>Brassica nigra</i>	Weed
Arugula	<i>Eruca sativa</i>	Cover crop, Vegetable

5. Beet Cyst Nematode Oil Seed Radish Trap Crop Varieties for use in Mich.**a. *Raphanus sativus oleiferus***

- i. Cv. Adagio
- ii. Cv. Colonel
- iii. Cv. Defender

6. Names and uses of radish, mustard and arugula species.

Common Name	Latin name	Tested at MSU for SCN or BCN
Oilseed Radish	<i>Raphanus sativus oleiferus</i>	Defender, Adagio, Colonel
Daikon Radish	<i>Raphanus sativus longipinnatus</i>	Ground Hog, Pile Driver, Soil Buster
White Mustard	<i>Sinapis alba/ Brassica hirta</i>	Accent
Yellow Mustard	<i>Sinapis alba/ Brassica hirta</i>	Ida Gold
Ethiopian Mustard	<i>Brassica carinata</i>	Cappuccino
Brown Mustard	<i>Brassica juncea</i>	Kodiac
Arugula	<i>Eruca sativa</i>	Trio

EXHIBIT - C

Brian VanDenBrand

From: Nicole E. Essad <nessad@upnorthlaw.com>
Sent: Monday, March 20, 2017 2:31 PM
To: Steve Fox
Cc: Rob Manigold; Brian VanDenBrand
Subject: Bonobo Settlement Agreement
Attachments: Revised Settlement Agreement 03-20-17.pdf

Steve,

Attached is the latest revision to the settlement agreement. To address your concerns, I spoke with Gordon and Rob and they stated that the acreage that needed to be planted was 5.95 acres. Further, you are correct that the Farm Plan needs to be complied with.

Lastly, the Township does not want Mr. Oosterhouse to apply for any additional activities until after the agreement is completed. These activities include the Guest Activity Uses as stated in Section 8.7.3(10)(u).

I have added this language to the agreement. I believe this alleviates your concerns about the agreement. I have copied the Rob and Brian VanDenBrand on this email so that they may review the agreement as well. The attached is subject to the Township's approval.

Please review and let me know what your thoughts are.

Thank you,

Nicole E. Essad
Young, Graham & Wendling, P.C.
231.533.8635

This email message and any attached file is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please notify the sender of this message and delete all copies of the original message.

EXHIBIT - D

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

Town Board Meeting

April 11, 2017, 7:00 pm

Township Hall

Regular Meeting Agenda

1. **Call to Order**
2. **Pledge**
3. **Roll Call**
4. **Approve Agenda**
5. **Brief Citizen Comments – for items not on the Agenda**
6. **Conflict of Interest**
7. **Consent Agenda**

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

1. Meeting Minutes Approval—March 28, 2017 (Election Commission Meeting), March 28, 2017 (Town Board Meeting), March 30, 2017 (Town Board Special Meeting), April 3, 2017 (Town Board Special Meeting)
2. Reports and Announcements (as provided in packet)
 - A. Officers—Clerk, Supervisor, Treasurer
 - B. Departmental—Assessor, Planner, Attorney, Engineer, Library, Park Commission, and Township Deputy (recommend approval)
3. Correspondence (as provided in packet)
4. Edit Invoice list (recommend approval)
5. Approval of special event at Library Craft Show, July 22, 2017
6. Approval of new per diem policy as an update to the 2013 Personnel Policy Manual
7. Approval to secure three bids for a Town Hall back-up generator
8. Authorize D. Sanger as the new Ordinance Enforcement Officer for the township
8. **Business**
 1. Bluff Road Tree Removal Update (Manigold)
 2. Bayshore Marathon Information Presentation
 3. Approval and selection of computer (IT) service provider for Township offices
 4. Authorize supervisor to sign the Bonobo Enforcement Agreement
 5. Approve a new Ordinance for the Fire Recovery Services Contract with Peninsula Fire Department
 6. Discuss current situation with the Township mailing lists
 - a. Number of agendas, minutes, and contact lists, fall under filing deadlines of the Open Meetings Act requirements
 - b. Current burden falls on the Deputy Clerk
 - c. Multiple postings (for a single meeting due to amendments) creates confusion & unfavorable impression
 7. Resolution by the Town Board to request State support in covering the cost of new voting equipment to come online in Fall, 2017.
9. **Citizen Comments**
10. **Board Comments**
11. **Adjournment**

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

**Town Board Meeting
April 11, 2017, 7:00 pm
Township Hall**

Regular Meeting Agenda Minutes

1.) Call to Order

2.) Pledge

3.) Roll Call

Present were: Rob Manigold, Brad Bickle, Margaret Achom, Maura Sanders, Warren Wahl and Isaiah Wunsch. Joanne Westphal was excused.

Others in Attendance: 7 & 4 News and over 20 residents

4.) Approve Agenda

Two changes to the agenda - remove two items from the Consent Calendar #6: Approval of the new per diem & #8 Authorization of Dave Sanger for the new Ordinance Enforcement Officer and place on the next Town Board Agenda.

5.) Brief Citizen Comments – for items not on the Agenda

Brit Eaton, 1465 Neah Ta Wanta Trail Rd - He has been coming to meetings and complaining of the intersection of Seven Hill and Bowers Harbor. There is a sign now that flags that intersection. Thank you to whoever was involved in that.

Rob Manigold - M-37 will have rumble strips put down at various intersections and the road will be striped in the near future.

6.) Conflict of Interest - Marge's husband has a relationship with a company that has a bid for #3 under Business - Township IT contract.

7.) Consent Agenda

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

- Meeting Minutes Approval—March 28, 2017 (Election Commission Meeting), March 28, 2017 (Town Board Meeting), March 30, 2017 (Town Board Special Meeting), April 3, 2017 (Town Board Special Meeting)
 - Reports and Announcements (as provided in packet)
 - Officers—Clerk, Supervisor, Treasurer
 - Departmental—Assessor, Planner, Attorney, Engineer, Library, Park Commission, and Township Deputy (recommend approval)
 - Correspondence (as provided in packet)
 - Edit Invoice list (recommend approval)
 - Approval of special event at Library Craft Show, July 22, 2017
 - ~~Approval of new per diem policy as an update to the 2013 Personnel Policy Manual~~ Removed
 - Approval to secure three bids for a Town Hall back-up generator
 - ~~Authorize D. Sanger as the new Ordinance Enforcement Officer for the township~~ Removed
- Motion Made By: Maura Sanders**
Seconded By: Isaiah Wunsch
Rob: Yes Isaiah: Yes Marge: Yes Brad: Yes Maura: Yes Warren: Yes Jo: Excused

8.) Business

1. Bluff Road Tree Removal Update (Manigold)

We have been working basically seven days a week trying to work with road commission to save as many trees as possible on Bluff Rd. The issue started as a citizen-lead group and then the township entered to try and help with legal action in trying to stop the cutting of the trees. Many trees have already been cut. Brian & Gordan had flagged 163. They were able to save a small amount. Trying to save 44 using the high risk erosion reasoning. They hired an erosion expert to help in the analysis. We don't feel that the injunction would be appropriate at this time. The resident group have been working to get a Natural Beauty Road designation. The Township is trying to write a letter of understanding in working with the Road Commission. We want to work with the Road Commission to go out for grants for adding ground cover etc. to help with the erosion and beautification of the road in the future.

Katherine Hardy, 11261 Bluff Rd. -- Thank you to all of you for listening to our concerns and being out there trying to do what you can. The road was repaved about 14 or 15 years ago -- why remove trees now they that they didn't before. They are not widening the road they are only repaving it. The trees have helped protect us and the road from bad weather, safety etc. I don't want to give up just yet.

Lois Nienhouse, 11750 Bluff Rd. - Why weren't there letters sent out to any residents. They bulldoze her vegetation and plants that were not in the right of way. They ditched 22 ft. into our property.

2. Bayshore Marathon Information Presentation

Daniel Sideman with the TC Track Club, who puts on the Bayshore Marathon, said a few words on the Bayshore. It will be Saturday May 27th. It is the 35th year for the marathon. There is a question about who pays for what? Businesses that benefit from the event are on a list that was sent out. They pay for all emergency services and nothing comes out of the taxes. Old Mission Ladies Club bakes cookies every year and receives \$3,500 for doing that. Any profits go back into the local community. TC Track Club gave 30 scholarships to high school students for college last year. \$1.9 million comes into the area during this event. They always appreciate any feedback they can get to improve the event.

Joan -- Bluff Rd. will have the biggest impact as far as runners. How will it work for those residents to get in and out of that area?

Daniel: Both ambulances are available and officials are there on bikes as well. If you know in advance you just need to let us know and we will make arrangements to get you out when you need to through the sheriff's office. Isaiah, TB member - Is there a way to track the biggest window where runners are at a given time?

Daniel: There are two areas that do have live split times.

3. Approval and selection of computer (IT) service provider for Township offices

Brad Bickle: moves to have Marge Achorn remove herself and sit in the audience for conflict of interest. **Supported By: Isaiah Wunsch Yeas: 5 Nays: 0 Motion Carried**

A bare bones assessment has been done on what is needed to run the offices of the township. The server we have in the township, by designation of the provider, has its useful span expired in 2017. We needed to get our equipment reassessed, which the three bids did.

- 1.) The current IT company that the township has is IT Right with a bid of \$10,000.
- 2.) Crain System Group -- Replacing Server and towers in various offices \$10,000 plus or minus
- 3.) Dell Computers - \$27,000 - Placed a bid to do away with a server and manage data on the "cloud"

A brief history is that IT Right, the current provider, disconnected the monitoring system that we have on the server without the knowledge of the Supervisor, Treasurer or Clerk.

Maura -- Dell Bid, why so high? Brad - It is retail pricing. They did not really listen to what we really wanted or needed.

Warren -- are there new or different warranties? -- Bickle - We want 7-10 yrs. of service without any issues.

Motion Made By: Maura moves to accept the bid from Crain System Group

Seconded By: Isaiah Wunsch

Rob: Yes Isaiah: Yes Marge: Yes Brad: Yes Maura: Yes Warren: Yes Joanne: Excused

Motion Made By: Wahl to have Marge Achorn return to the board.

Seconded By: Maura Sanders

Yeas: 5 Nays: 0 Motion Carried

4. Authorize supervisor to sign the Bonobo Enforcement Agreement

Gordon Hayward – We have been working with Bonobo Vineyards to come up with a proposal which would bring them into compliance with all the zoning regulations by 2018. They have come up with a specific farm plan which has specific targets and items which have to be covered. Starting with soil testing and going right on through. Has been reviewed by Township Planner and the attorney. They cannot apply for any other applications until all is in compliance first. The Oosterhouses did sign off on it as well.

Motion Made By: Maura Sanders - Motion to authorize the Supervisor to sign the Bonobo Enforcement Agreement

Seconded By: Warren Wahl

Yeas: 6 Nays: 0 Motion Carried

5. Approve a new Ordinance for the Fire Recovery Services Contract with Peninsula Fire Department

Slight modification – Brad Bickle will be working with legal staff to either amend the existing resolution that was signed a couple of years ago to allow the outside service company, Fire Recovery Services, to handle the billing, collection and reporting to the township on our Ambulance Service. The next step is to now bring our Fire Department into the same billing system. We will come back and present a Resolution to the board at the next township meeting on this matter. I was hoping to have the information for today's meeting but we want to do this right the first time so we will have something for all to see and review for the next meeting.

6. Discuss current situation with the Township mailing lists

a. Number of agendas, minutes, and contact lists, fall under filing deadlines of the Open Meetings Act requirements

b. Current burden falls on the Deputy Clerk

c. Multiple postings (for a single meeting due to amendments) creates confusion & unfavorable impression

What Joanne and I would like the board to possibly consider is to have one mailing list instead of several. You either get them all or none. Another thought was to eliminate the email list and just have it posted on the website, which it is now and you can just go there to get the information that you want.

Dave Bowman, Old Mission - vendors he has worked with have an unsubscribe button. What is email manager capable in doing in our system?

Brit – one list for everything

Nancy Heller, 3091 Bluewater Rd. - agrees with going to one list

Monnie Peters, 1425 Neah Ta Wanta Rd. – Is there a way to make it a smaller file size – is that possible?

Isaiah – one list – hyperlinks instead of attachments

Wahl – inquire about those that don't want to be in opt out - want to subscribe or don't want too

Motion Made By: Warren Wahl move to have one email list provided they have the proper subscribe information at the bottom from the clerk.

Seconded By: Maura Sanders

Yeas: 6 Nays: 0 Motion Carried

7. Resolution by the Town Board to request State support in covering the cost of new voting equipment to come online in Fall, 2017.

This is just a housekeeping item. This is a state wide thing for townships getting new voting equipment. If we pass this resolution it allows us to apply to get grant money from the state to help in paying for the equipment. The township should receive one tabulator for each precinct and one for the AVCB as well as. The township needs to pass this resolution in order to be able to apply for the state grants.

Motion Made By: Isaiah Wunsch

Seconded By: Warren Wahl

Rob: Yes Isaiah: Yes Marge: Yes Brad: Yes Maura: Yes Warren: Yes Joanne: Excused

9.) Citizen Comments

Nancy Heller, 3091 Bluewater Rd. - Who is responsible for get a recording secretary for the meetings? Rob Manigold - the Clerk. Ms. Heller - Can we expedite the recording secretary hiring. Possibly put the advertisements on other sites.

Cindy Lutcka, 7444 Maple Terrace Ave. - Special Assessment Districts - are there start dates and timelines yet?

Brad Bickel - Do not have a start date yet. Before construction starts, the township will let the residents know ahead of time.

Mark Noss, 2935 Keewaydin Trl. - We use to have video so the residents can also see what is going on as well.

Dave Bowman - Want to talk about Bluff Rd. They did this on Peninsula Rd. now with Bluff Rd. Smokey Hollow, several others are ones we need to take a look at and be proactive to preserve these other roads.

Rob Manigold - Bluff Rd. has been on the list for 5 years to have work done on it and upgraded.

Randy Rittenhouse, Interim Peninsula Township Fire Department - Questions about dogs or Coyotes maybe trapping can be done. Animals are being attacked, chickens disappearing, others being cornered. Rob Manigold - We will need to check with the DNR or a company to deal with it. We will see about putting something in the township newsletter.

Jim Floraday, 13617 Bluff Rd. - We got to see our Board and what they would do for us.

Gordon spent a great deal of time and I personally would like to thank the Board for all their hard work.

10.) Board Comments

Brad Bickle- Randy Rittenhouse has stepped up as the interim Fire Chief. I would like the board to come and give for the next meeting a designation or recognition to Randy for all his hard work and the commendable job he has done.

Isaiah Wunsch - would like to thank the staff for all the work on the Bluff Rd. project.

Marge - Jim Floraday came with the Natural Beauty designation idea and pulled the community together. We need the help of all to continue to move forward with this.

11.) Adjournment

Motion By: Maura Sanders

Seconded By: Warren Wahl

Yeas: 6 Nays: 0 Motion Carried

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

EXHIBIT - E

SETTLEMENT AGREEMENT

Peninsula Township (hereinafter the "Township") and Oosterhouse Vineyards, LLC, (hereinafter the "Chateau") reach this agreement to resolve an allegation that the Chateau violated Peninsula Township Zoning Ordinance (PTZO) Section 8.7.3(10)(h) by failing to plant fruit trees or grape vines on a sufficient portion of its acreage. The Chateau disputed those allegations for several reasons, including that planting pumpkins, field crops, and other appropriate actions satisfies the zoning ordinance. Further, the Township seeks to require planting of additional fruit trees and/or grape vines to be planted on certain acreage at the Chateau. The Chateau and the Township (also collectively the "Parties") have reached this agreement to resolve their pending dispute, and for the Chateau to plant additional grape vines or fruit trees, as set forth in this Agreement.

1. The Chateau owns real property located within the Township which is described in Exhibit A (hereinafter the "Subject Property"), on which it operates a Winery –Chateau. The Chateau is licensed by the Michigan Liquor Control Commission (MLCC) as a winery. The Township has granted the Chateau a special use permit under its zoning ordinance.
2. The Parties agree the Chateau will plant additional fruit trees or grape vines on 5.95 acres pursuant to a Farm Plan, which is attached hereto as Exhibit B and incorporated by reference in this Agreement.
3. The Parties recognize that the Chateau expects to work with experts, such as the Michigan State Extension, to administer and carry out the Farm Plan. The Chateau will provide regular updates to the Township (which will generally occur on a monthly basis, starting on May 1, 2017) concerning actions taken by the Chateau under the Farm Plan, any proposed amendments to the Farm Plan, and any deviations from the Farm Plan. In addition to these regular updates, the Chateau will provide the Township with the following reports from the Northwest Michigan Horticultural Research Center, or its successor:
 - I. In Spring 2017, the status of soil testing and an update regarding crops to be planted following the meeting between

- MSU Extension and the Bonobo Farm Management representatives.
- ii. In Spring 2017, a statement regarding recommended cover crops and the status of planting.
 - iii. In Summer 2017, a statement regarding recommended soil preparation and status of tilling, spoil preparation, and status of cover crops.
 - iv. In Summer 2017, a statement regarding recommended cover crops and status of planting.
 - v. In Spring 2018, a statement regarding fruit trees and vines planted, any further recommendations of MSU Extension, and the status of any soil preparation or cover crops within the 5.95 acres.
4. In consideration of these Agreements, the Township shall execute a dismissal of the pending administrative complaint, which shall be held by the Township's counsel, a copy shall be attached hereto as Exhibit C, which shall be filed with the Township upon successful completion of the Farm Plan, and also the Chateau shall not apply for any Guest Activity Uses, as stated in Section 8.7.3(10)(u), for the Subject Property, until such a time as this Agreement is completed. In the meantime, the Parties hereby agree the Township will stay any further enforcement proceeding of the zoning ordinance regarding the subject matter of the Farm Plan, or PTZO Section 8.7.3(10)(h). If the Chateau does not begin to implement the Farm Plan by May 1, 2017, or if it fails to provide regular updates required hereby, the Township may lift the stay by providing written notice to Chateau at least 15 days before doing so.
5. This Agreement shall not be deemed, nor interpreted, to prevent the Township from enforcing its zoning ordinance against the Chateau arising from an alleged violation or misconduct other than required by PTZO Section 8.7.3(10)(h) or beyond the scope of preparation of the land and planting of

- vines or trees as set forth within the Farm Plan.
6. If the Chateau fails to satisfy the Farm Plan by Spring of 2018, the Township may, in its sole discretion, lift the stay and take action it deems appropriate to enforce the alleged violation, and this Agreement shall not restrict the ability of the Township to seek appropriate administrative, legal, or equitable remedies.

Entered into on this day of 23 day of March, 2017, by the undersigned parties.

PENINSULA TOWNSHIP

OOSTERHOUSE VINEYARDS, LLC


By: Robert Manigold
Its: Supervisor


By: Todd Oosterhouse
Its: General Manager

Exhibit B pg 1

**MICHIGAN STATE
UNIVERSITY**

December 28, 2016

Mr. Todd Osterhouse
Bonobo Winery
12011 Center Road
Traverse City, MI 49686

Dear Todd:

Based on our discussions last week, the following document is a proposed farm management plan for your property, Bonobo Winery, located on Old Mission Peninsula, Traverse City, Michigan. This plan is designed to fit an evolving agricultural operation, and our intention is to work closely with you and your vineyard manager, Josh Rhem, to ensure the best agricultural practices are implemented on your valuable land.

First, as a result of the nationwide nursery tree and vine shortage, we are recommending a series of cover crops be applied to the available six acres, currently without an agricultural crop, with the intent to build soil to support healthy trees and vine crops that you plan to plant in the future. As you may be aware, the planting rate for modern orchard and vineyard systems is expanding exponentially across the U.S., and as a result, trees/vines are in low supply and not available for immediate purchase. At this time, many growers are placing orders two to three years in advance of planting; trees for high-density apple plantings will not be available until 2019 at the earliest. Additionally, nursery operations have faced weather-related setbacks, such as early fall frosts that have impacted availability of viable plant material. With the understanding your cider apple trees and vines are committed to be planted in 2018, we will provide support and recommendations for cover crops that will improve soil health to support long term perennial cropping systems.



**Northwest Michigan
Horticultural
Research Center**

6685 S. Center Hwy.
County Road 633
Traverse City, MI 49684

231-946-1510

Fax: 231-946-1404

email: nwmhort@msu.edu

website:

<http://agbioresearch.msu.edu>

[/nwmhort/](http://nwmhort/)

Secondly, we have approached Drs. George Bird and Marisol Quintanilla-Torneo to conduct an applied research project to build soil on the backmost acreage where the ground has been reshaped. Data have shown that perennial crops planted on reshaped ground are less vigorous and often have a lower survivorship than plants placed onto virgin sites. Therefore, we are proposing to establish a replicated cover crop trial on the reshaped sites to improve soil health. We are proposing a two-year rotation in this trial, and results will be shared with the agricultural community.

Thank you for electing to partner with Michigan State University to develop your farm plan. We look forward to working together to ensure your winery is both a healthy agricultural operation and one that is in compliance with your local township ordinances.

Sincerely,

Dr. Nikki Rothwell
MSU Extension Specialist
NWMHRC Coordinator

B pg 2

Proposed Farm Management Plan for Bonobo Winery
Dr. Nikki Rothwell
Michigan State University
Northwest Michigan Horticultural Research Center
6686 S. Center Highway
Traverse City, Michigan 49684

Late Winter 2017

In late winter/early spring 2017, Drs. N. Rothwell and G. Bird of Michigan State University (MSU) will meet with the Bonobo farm management team to determine a cover crop rotation strategy for the two areas where the ground has been reshaped on the property (Figure 1: Plot C). We will develop a strategy for soil building that will likely include a minimum of a two-year crop rotation. We will select appropriate plant species for the trial, which will be set up in a replicated block design using a minimum of two cover crops for each treatment. The NWMHRC staff will be responsible for collecting soil tests in all treatments in fall 2017 and 2018. Rothwell and Bird will use results to develop longer-term cover cropping strategies for reshaped ground intended for fruit crops. This information will be available to Michigan fruit growers.

Spring 2017

Soil Testing

As soon as the soil thaws in spring 2017, soil tests should be taken on the three pieces of property where trees/vines will be planted. The Grand Traverse County Extension office provides the MSU Soil Test Mailer Kits. Although MSU typically recommends one sample per 20 acres, it is recommended that the Bonobo farm management team submit one sample per block - that is, one for each of the three distinct areas to be planted to trees/vines (Figure 1: Plots A, B, and C) due to differences in land management (ex. reshaping and cover cropping) that could have impacted the soil structure and composition in these areas. The farm management team should use a soil probe to take 15-20 subsamples to a soil depth of 8" in a crisscross fashion per each of the three fields A, B, and C (add an illustration over the Figure 1). The 15-20 subsamples per field should be placed into a clean plastic pail and mixed thoroughly; do not combine the subsamples from multiple fields in the same pail. Fill a soil sample box with the sample--if soil is wet, spread it on paper and allow to air-dry overnight. Repeat this process for each field.

As per past discussions, soil tests have been taken previously in the three blocks, but cover crops have been planted in the interim. The Bonobo farm management team and MSU will work together to measure the impacts of past cover cropping on the current soil status, and the 2017 spring tests can be used as a baseline for further influences of cover crop rotations proposed to be planted in 2017.

A nematode test in each of the three blocks is also recommended. Although nematode testing was done in the recent past, we should verify the nematode count to optimize decision-making for plant species to be used for cover cropping. Similar

T. D.

"B" B 3

methods to the soil sampling can be used to collect soil for nematode sampling. Samples should be stored in plastic bags or some other container that retains moisture. One pint of soil should be submitted per soil sample, and if the samples need to be stored, they should be kept cool. Samples should be sent to the following diagnostics' laboratory: MSU Diagnostic Services, 578 Wilson Rd., Room 107, East Lansing, MI 48824-6469.

Cover Cropping

Once the test results come back from the MSU Soil and Plant Nutrient Laboratory and Diagnostics Services, Dr. Rothwell will meet with T. Oosterhouse and J. Rhem to discuss the results. The cover crops to be planted in spring 2017 will be based on soil test results. However, results from a cover cropping trial conducted at the Northwest Michigan Horticultural Research Center in 2012-13 have shown that sweet cherry tree trunk diameter and canopy volume was significantly higher in plots covered cropped with essex rape/pearl millet combination. The oats/peas/mustard cover crop rotation also had increased trunk diameter and canopy size compared with other treatments (oats/rye, red clover/alfalfa/hairy vetch, oats/peas/oilseed radish, and plots that did not received treatment). (Please see complete study in Appendix A). We also found that Start 101 (Morgan's Composting, Inc., Sears, MI) added to the trees at planting had significantly better growth than untreated trees. Although this work was conducted in cherry, we hypothesize that these treatments would also provide added benefit to apples and vines.

Until we have further information on the soil quality and nematode counts (to be provided by spring 2017 testing), essex rape is the currently recommended cover crop to be planted in spring 2017*. This treatment will be the first in the cover crop rotation where pearl millet to be planted in fall 2017. Essex rape should be planted at 5lbs/acre, and seeded with a drill seeder or some other appropriate seeding machine. The ground should be tilled adequately to prepare the soil for seeding. In conversations with J. Rhem, no herbicides will be used in preparation for cover cropping; although this is not standard practice in most agricultural operations, Bonobo Winery farm management has chosen to use as few synthetic pesticides as possible. In keeping with this strategy, it is recommended to plant the cover crop to the appropriate seeding density to optimize the growth of a healthy stand of essex rape.

Summer 2017

The rape should be tilled into the ground in summer 2017, and pearl millet should be planted in the plots. The seeding rate for pearl millet is 20lbs/acre. As these seeds will be planted in summer, the germination rates may be impacted by rainfall events. Bonobo Winery does not have the capacity to irrigate the plots, and if the 2017 season is dry, germination may be reduced.

*Recommendations are subject to change if soil and/or nematode tests come back with results that suggest other plant species should be selected.

T.O.

"B" pg 4

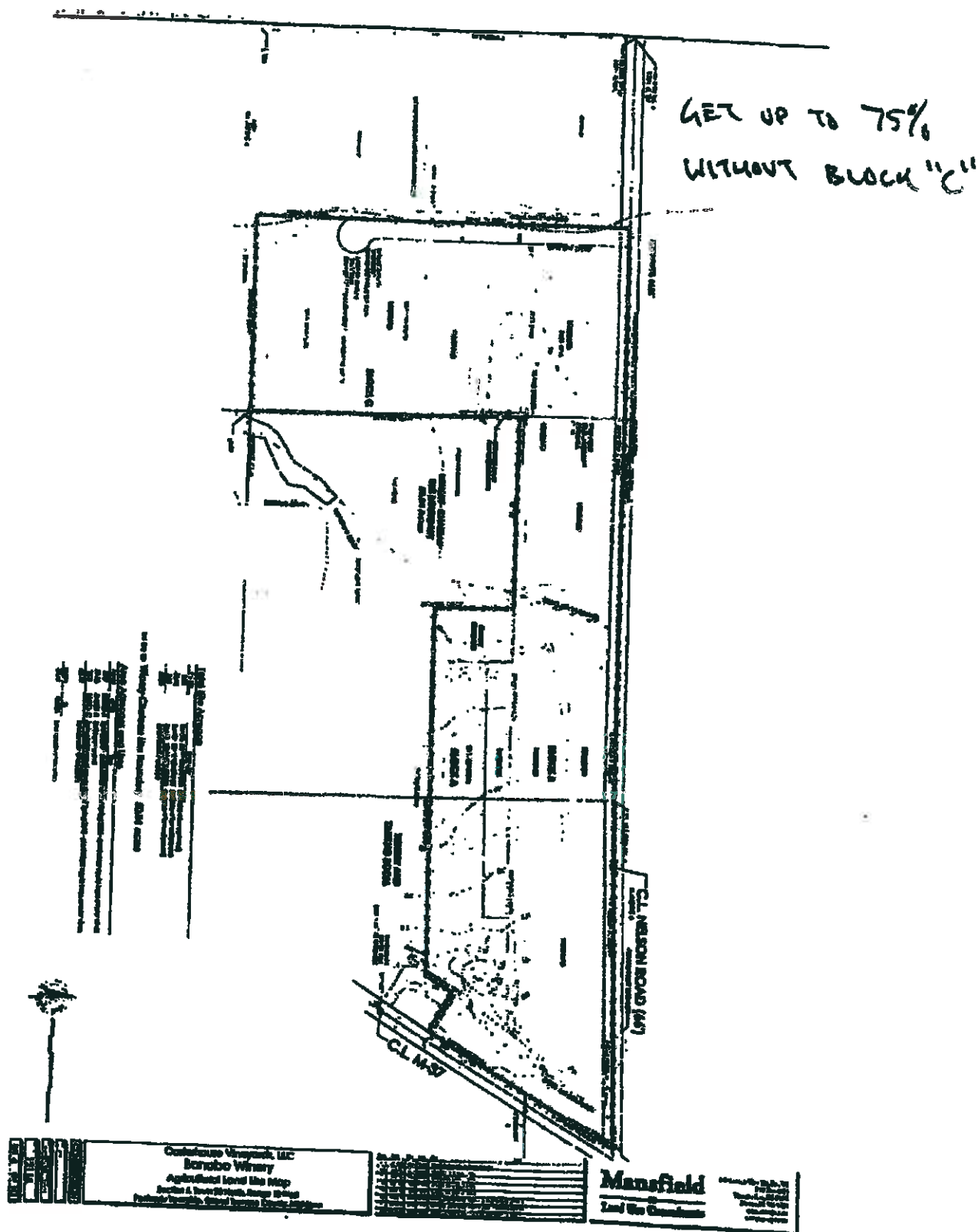


Figure 1. Property map of Bonobo Winery, Old Mission Peninsula

T.O.

"B" p 25

Appendix A

**2015 Research Report
Impact of Cover-Crops/Mulch/Compost on Tart Cherry
Orchard Development/Productivity and Soil Health
George Bird, Nikki Rothwell, Dean Baas, Bill Klein and Karen Powers**

Orchard establishment and maintenance are key elements in profitable tart cherry production. While soil fumigation is still a common practice in cherry orchard establishment, it is known this has a detrimental impact on the biology necessary for optimal nutrient mineralization and overall soil health (Sanchez et al., 2003). It is also known that alternate orchard floor management practices result in greater tart cherry productivity than the current conventional system. Currently, there is a distinct need to research and demonstrate the impact of cover-crops, mulch, compost and biochar on tart cherry orchard establishment, development of bearing trees and productivity. To assist in achieving the discovery of an alternative orchard site preparation system to replace soil fumigation, two new tart cherry orchards are being established at the MSU Northwest Horticultural Research Center. Trees for Orchard No. 1 were planted in 2014 and those for Orchard No 2 were planted in 2016.

Objective: Determine and demonstrate the impact of cover-crops, mulch, compost and biochar on establishment and development of two tart cherry research orchards and their associated soil health under both soil fumigation and non-fumigation conditions.

Methodology: Six cover crop regimes were established in 2012 and maintained throughout 2013 for Orchard 1 (Table 1). Tree growth and soil health were monitored in 2014-2015.

Table 1. 2012-2013 cover crop regimes for Orchard 1.

A.	Oats/Rye
B.	Essex Rape/Pearl Millet
C.	Red Clover/Alfalfa/Hairy Vetch
D.	Oats/Peas/Mustard-Biofumigation
E.	Oats/Peas/Oilseed Radish
F.	Oats/Peas/Mustard
UTC.	Non-treated Control

In addition, a sixteen tree portion of the site was used to evaluate four other at tree planting treatments (Table 2), including Starter 101 (a Morgan Compost product designed as a medium for germinating seeds), a surface application of compost and straw mulch applied in 2014. The mulch and compost were applied again in 2015. In addition, biochar was applied in 2015 to the soil surface around eight trees.

Table 2. At tree planting inputs for 16 trees in Orchard No. 1.

1.	Planting hole Starter 101 plus surface compost and mulch
----	--

EXHIBIT - F

**MICHIGAN STATE
UNIVERSITY**

Extension

January 24, 2018

**Mr. Rob Manigold
Peninsula Township
13235 Center Road
Traverse City, MI 49686**

Dear Mr. Manigold:

This letter is in response to the farm plan the staff at the Northwest Michigan Horticultural Research Center, Michigan State University (MSU), generated for the Bonobo Winery in late winter/early spring 2017. After meeting with Todd Oosterhouse and Josh Rehm, the vineyard manager, we established a specific approach for the Bonobo operations to comply with Peninsula Township's regulations.



MSU EXTENSION

**NW Michigan Horticultural
Research Center
6686 S. Center Highway
Traverse City, MI 49684**

231-946-1510

Fax: 231-946-1404

email: nwmhort@msu.edu

website:

<http://agblresearch.msu.edu>

/nwmhort

Based on discussions with Mr. Oosterhouse during the last week of December 2017, he communicated that his company had made progress to implement the goals of the farm plan. Bonobo Winery was to take proper soil tests in spring 2017 where trees/vines were to be planted in the future. We also recommended a nematode test. Cover crops were to be planted, tilled, and rotated throughout the 2017 growing season. At this time, I cannot confirm that the farm plan recommendations were initiated due to the current amount of snow in the fields. In spring, we when the snow melts, we can visit the farm to corroborate this December discussion. However, according to Mr. Oosterhouse, the Bonobo Winery has made efforts to follow the recommendations MSU provided.

Please contact me in the spring in order to follow-up on these communications. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Rothwell".

**Dr. Nikki Rothwell
Michigan State University Extension Specialist
Northwest Michigan Horticultural Research Center Coordinator**

EXHIBIT - G

**MICHIGAN STATE
UNIVERSITY**

June 22, 2018

Mr. Gordon Hayward
Peninsula Township Assistant Planner
13235 Center Road
Traverse City, MI 49686

Dear Gordon:

Thank you for inviting me to visit Bonobo Winery yesterday. From our drive around the winery property, it is evident that Mr. Oosterhouse has added trees and cover crops to the existing acreage. He has planted cider apple varieties that can be used in future hard cider production. Mr. Oosterhouse was unsure of the particular cider varieties or rootstocks, and this information is needed to implement adequate management strategies for these trees. Tree pruning and training must start immediately as these horticultural techniques will be critical for establishing trees that will produce high quality cider fruit to be used in cider production.



**Northwest Michigan
Horticultural
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6686 S. Center Hwy.
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[/nwmihort/](http://nwmihort/)

We understand that Mr. Oosterhouse is intending to manage the new trees, as well as the established vines, with minimal synthetic inputs. However, new plantings need to be managed properly to ensure tree survival. Weed control is vital in new plantings; weeds compete with the small root systems of newly established trees and can easily outcompete small trees. We recommend weed control for all newly planted trees as soon as possible.

Secondly, water is a critical component of plant establishment, and these trees will need augmented water, particularly during dry periods of the 2018 growing season and beyond. Trees will also need an acceptable fertilization program. Michigan State University (MSU) has an older but still relevant bulletin, *Fertilizing Fruit Crops, Extension Bulletin E-852*, that we recommend for fertilizer guidance at planting as well as into the early years of the orchard. Trees will need to be managed for insects and disease. In the non-bearing years, insect control will be less intensive. However, managing trees for a key disease, apple scab (*Venturia inaequalis*), will need to begin immediately.

The cover crop that is planted directly behind the winery looks healthy, and the intention is to plant wine grapes in that location in 2019. Because of the slope of the property, we suggest that Mr. Oosterhouse place two

temperature data loggers on the east and west end of the cover cropped area from September 2018-April 2019. The data loggers will provide the estimated maximum low temperatures on this site and this information will guide decision-making on wine grape varieties for the 2019 planting.

Mr. Oosterhouse has planted areas of the farm that were not currently cropped since my last visit in 2017. I cannot confirm the precise acreage of the new plantings but can attest that apple trees and cover crops are in the ground. We recommend that an up-to-date orchard management program should be implemented directly to ensure orchard success.

Please do not hesitate to call with further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Rothwell", written in a cursive style.

Dr. Nikki Rothwell
MSU Extension Specialist
NWMHRC Coordinator

EXHIBIT - H



Michigan Geomatics
Land Surveying / Civil Engineering

5422 Goodrick Road
Traverse City, MI 49684
(231) 325-2655

www.MichiganGeomatics.com

August 9, 2018

Bonobo Winery
12011 Center Road
Traverse City, MI 49686

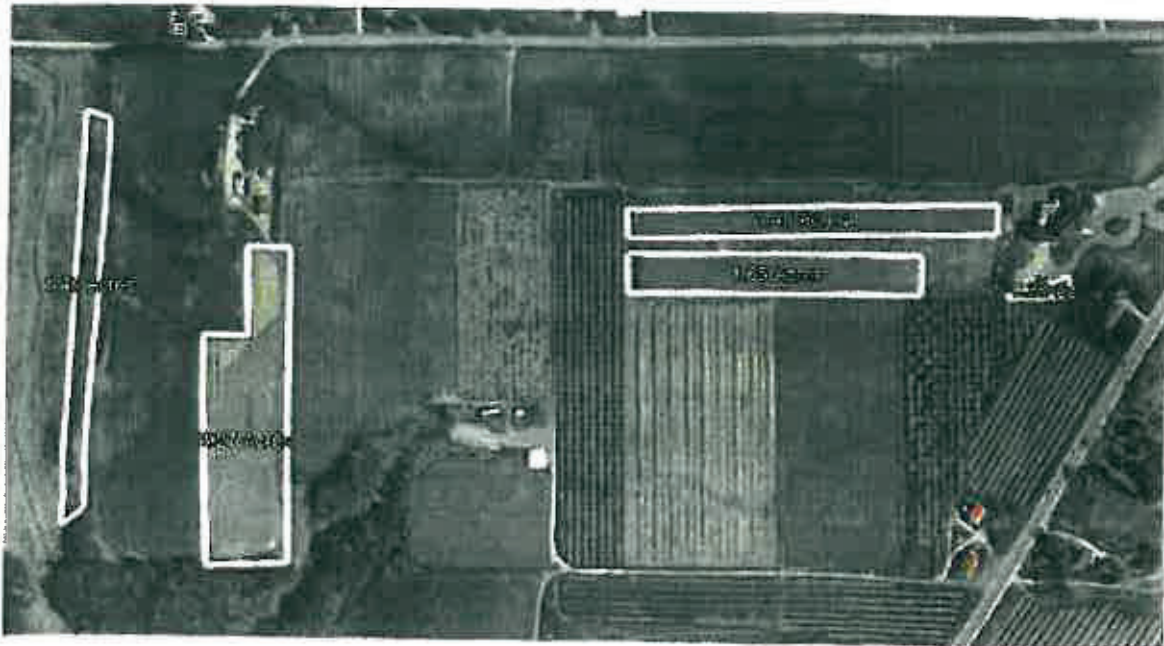
RE: Acreage of New Plantings.

This letter is in regards to your request for calculating the acreages of your new plantings. On July 26th, 2018 we used high accuracy GPS surveying equipment to locate the boundaries of the five new area.

They are: $1.45 + 3.27 + 1.49 + 1.65 + 0.09 = 7.95$ Total.

A Google Earth picture is included below to help see how they are mapped.
Please call or email any questions.

Scott D. McLain
Professional Surveyor



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 8

Date

Vice Chairperson

Secretary

F. Request No. 851, Zoning A-1

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684
Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170
Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

Schoolmaster presented the staff report on this request. There was discussion that this original property had a permit as a food processing plant but was now requesting a farm processing facility. Board consensus was that the issue was not the fact that the building had burned but that there was not an 11'2" variance due to the loading dock.

Maria Tabone, 14998 Peninsula Drive was present. Tabone presented background on previous approval given to the structure. Contractor Scott Wright, 2206 Cass also present to discuss current plan and the belief that a tasting room was always the intent of this site.

Discussion continued by the Board with the consensus that it maybe worthwhile to look at the history of this property and that the history could be relevant to the current situation. Discussion also was held on the lot line variance and the fact that if there was the ability to purchase the additional 11'2" that the variance would not be necessary.

Staff to look into history of this property. Applicant to speak with adjoining property owner.

Vida asks for Public Comment For and Against Request No. 851. No Comments. Public Hearing closed at 9:16 P.M.

MOTION: Wunsch/Soutar to adjourn Request No. 851 to the June 23, 2016 meeting.
PASSED UNAN

Approval of Minutes

A. May 12, 2016 Regular Meeting

Typographical error noted in the spelling of Cowall last name.

MOTION: Cowall/Wunsch to approve minutes of May 12, 2016 as amended.
PASSED UNAN

New Business

A. Township Board Report (Witkop)

Witkop reported that the Town Board has been working with the Planning Commission on the Zoning Ordinance re-write.

B. Planning Commission Report (Wunsch)

Wunsch reported that Planning Commission is also working on Zoning Ordinance re-write.

MOTION: Cowall/Wunsch to adjourn at 9:19 P.M.

Respectfully submitted by Mary Ann Abbott, Recording Secretary

**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
SPECIAL MEETING
June 23, 2016**

Meeting called to order at 7:00 pm

Present: **Wunsch; Soutar; Vida-Chair; Cowall; Witkop.** Also present were Claire Schoolmaster, Planning and Zoning Administrator; Michelle Reardon, Director of Planning and Zoning ,Peter Wendling, Township Attorney and Mary Ann Abbott, Recording Secretary.

Absent: None

Approval of Agenda

Reardon requests that Public Hearing Request No. 851 be removed from the agenda as the applicant has withdrawn.

MOTION: Soutar/Wunsch to approve the agenda as amended.

PASSED UNAN

Conflict of Interest

None

Communication Received

None

Brief Citizens Comments – for items not on the Agenda

None

Scheduled Public Hearings

A. Request No. 851, Zoning A-1 (Adjourned from June 23, 2016)

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684 Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170

Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

Applicant has withdrawn Request No. 851

B. Request No. 847, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Reardon this request is a Zoning Administration request for an interpretation of our ordinance. All of the language surrounding Winery-Chateau has been given to the Zoning Board.

The Zoning administration is looking for an interpretation for what can occur in a tasting room of a winery/chateau outside of that guest activity use.

Section 8.7.3(10)(u) 1(d) states “ 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.

Wendling one of the biggest issues is the wording “ which no fee or donation of any kind is received”. What are the restrictions of that compensation? This is the biggest issue before us. What Wendling would like to see from the ZBA tonight is: What

Peninsula Township
Zoning Board of Appeals

June 23, 2016

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 9

JENNIFER CRAM
Wineries of the Old Mission vs Peninsula Township

July 21, 2023

85-88

<p style="text-align: right;">Page 85</p> <p>1 reconstruct a food processing plant structure for SUP number</p> <p>2 73.</p> <p>3 Q And referring back to ECF 32-2, page ID 1636. Can you tell</p> <p>4 me if these refer to the same parcel?</p> <p>5 A It is referring to the same parcel, yes.</p> <p>6 Q Okay. And so --</p> <p>7 A And same address.</p> <p>8 Q Okay. So SUP 73 was for the construction of a food</p> <p>9 processing plant; correct?</p> <p>10 MR. INFANTE: Object to form, foundation.</p> <p>11 MR. RAJSIC: Go ahead.</p> <p>12 A That is correct, as noted previously it's stated on the</p> <p>13 document.</p> <p>14 Q And this land use permit that's marked Exhibit 113 is for</p> <p>15 the reconstruction of a food processing plant; right?</p> <p>16 MR. INFANTE: Objection; form, foundation.</p> <p>17 A That is correct.</p> <p>18 Q And what is your understanding of the relationship between</p> <p>19 these two documents?</p> <p>20 MR. INFANTE: Objection; form, foundation.</p> <p>21 MR. RAJSIC: I'll join. Go ahead if you can.</p> <p>22 A My understanding -- again this goes back to something that</p> <p>23 we talked about previously where special use permits run</p> <p>24 with the land. And so I know that SUP number 73 was issued</p> <p>25 to a different owner, that owner transferred the property</p>	<p style="text-align: right;">Page 87</p> <p>1 73.</p> <p>2 Q Okay. And is the township aware of any appeal or judicial</p> <p>3 challenge that Tabone has pursued with respect to any zoning</p> <p>4 decisions related to SUP 73?</p> <p>5 MR. INFANTE: Objection; form, foundation, vague,</p> <p>6 calls for a legal conclusion.</p> <p>7 A None that I am aware of.</p> <p>8 Q Turning away from the wineries now for just a minute. Is</p> <p>9 the township aware of any other requests for an</p> <p>10 interpretation of the zoning ordinance that relate to winery</p> <p>11 chateaus, farm processing facilities or remote winery</p> <p>12 tasting rooms that have gone to the zoning board of appeals?</p> <p>13 MR. RAJSIC: Objection; form, foundation,</p> <p>14 potentially exceeding the Rule 30(b)(6) Deposition Notice.</p> <p>15 Go ahead if you can.</p> <p>16 MR. INFANTE: I will join and add vague.</p> <p>17 A I do know that staff, Gordon Hayward, requested -- as staff</p> <p>18 requested an interpretation from the zoning board of</p> <p>19 appeals.</p> <p>20 Q Do you know what that was about?</p> <p>21 A I believe it was around registered guests. I think</p> <p>22 something with guests.</p> <p>23 Q Do you know roughly when that was?</p> <p>24 A I do not recall.</p> <p>25 MS. HILLYER: Let me check my notes.</p>
<p style="text-align: right;">Page 86</p> <p>1 and SUP approval to Tabone and so then it is my</p> <p>2 understanding that when Tabone purchased the property there</p> <p>3 was an existing food processing facility that subsequently</p> <p>4 burned and so they applied for a land use permit to</p> <p>5 reconstruct it.</p> <p>6 MR. INFANTE: Can I ask for a clarification for</p> <p>7 the record? You say "Tabone," can you use the full name of</p> <p>8 the Tabones on there?</p> <p>9 THE WITNESS: Sure. Mary Ann and Mario Tabone.</p> <p>10 MR. INFANTE: Thank you.</p> <p>11 A So this land use permit authorized Mary Ann and Mario Tabone</p> <p>12 to reconstruct a food processing plant structure that</p> <p>13 burned.</p> <p>14 Q Okay. Are you aware of any applications for amendments or</p> <p>15 changes to that original SUP 73?</p> <p>16 A There were no amendments to SUP number 73, but I do know</p> <p>17 that there was an application submitted for a farm</p> <p>18 processing facility.</p> <p>19 Q Do you know the status of that application?</p> <p>20 A that application was never approved.</p> <p>21 Q Okay. And are you aware of any applications or requests for</p> <p>22 a variance or an interpretation from the zoning board of</p> <p>23 appeals with respect to SUP 73?</p> <p>24 MR. INFANTE: Objection; form, foundation.</p> <p>25 A There were not variance requests associated with SUP number</p>	<p style="text-align: right;">Page 88</p> <p>1 (Off the record)</p> <p>2 Q I have just a couple quick questions. You mentioned the</p> <p>3 request from Gordon Hayward for an interpretation from the</p> <p>4 zoning board of appeals. Do you -- you said you didn't</p> <p>5 remember when that was, did you review any documents related</p> <p>6 to that request?</p> <p>7 A Yes.</p> <p>8 Q Do you know if the township produced those documents?</p> <p>9 A I can't recall. I assume they were part of the public</p> <p>10 record or I may have reviewed that as part of my role as the</p> <p>11 director of planning and zoning.</p> <p>12 Q When you say "the public record," what do you mean by that?</p> <p>13 A The public record -- well, so there's the public record as</p> <p>14 part of this lawsuit and then there's the public record</p> <p>15 because all of our agendas, minutes and packets are part of</p> <p>16 the public record. So anything that's submitted is part of</p> <p>17 an application or that -- you know, so --</p> <p>18 Q So are you talking about you having reviewed the documents</p> <p>19 that the township produced in this case?</p> <p>20 MR. RAJSIC: I'm just going to place an objection.</p> <p>21 The question regarding what was produced as part of this</p> <p>22 litigation was not a category or topic of the Rule 30(b)(6)</p> <p>23 Deposition Notice. To the extent you can answer the</p> <p>24 question go ahead if you can.</p> <p>25 MS. HILLYER: She testified earlier that she</p>

UNITED STATES DISTRICT COURT
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And

PROTECT THE PENINSULA,
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**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 10

To: Peninsula Township Zoning Board of Appeals

From: Michelle Reardon, Planning & Zoning Department

Re: Request No. 847, Interpretation – Section 8.7.3 (10) (u)

Date: May 5, 2016

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to **what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?**

Section 8.7.3(10)(u)1(d) states “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.”

This section of the Ordinance is the section used to clarify what is allowed in the tasting room and outside of the confines of the “Guest Activity Uses”.

Staff interpretation of this is:

A tasting room of a Winery-Chateau may host free entertainment, winery tours and promotional activities. A promotional activity is defined as those activities relating to the publicizing of a product, organization, or venture so as to increase sales or public awareness. These activities shall be related to the wines and wine tasting offered by the Winery-Chateau.

Staff is requesting confirmation and/or clarification of this interpretation for enforcement purposes.

*Below is the section of the Ordinance which defines what a “Guest Activity Use” is; a separate supporting use of a Winery-Chateau. Please note Guest Activity Uses are a supporting use for a Winery-Chateau that **may be permitted by the Township Board should the standards be met; but is not an automatically approved supporting use.***

Section 8.7.3(10)(u)2 defines the uses allowed as part of Guest Activity Uses as:

- (a) Wine and food seminars and cooking classes that are scheduled at least thirty days in advance with notice provided to the Zoning Administrator. Attendees may consume food prepared in the class.
- (b) Meetings of 501- (C)(3) non-profit groups within Grand Traverse County. These activities are not intended to be or resemble a bar or restaurant use and therefore full course meals are not allowed, however light lunch or buffet may be served.
- (c) Meetings of Agricultural Related Groups that have a direct relationship to agriculture production, provided that:

- i. The meetings are scheduled at least one month in advance with the Zoning Administrator given adequate advance notice of the scheduling so that the Zoning Administrator can give prior approval;
 - ii. The Zoning Administrator shall use the following types of Agricultural Related Groups as a guide for determining "direct relationship to agricultural production";
 - (a) Food/wine educational demonstrations;
 - (b) Cooking show showcasing Peninsula produce and wine;
 - (c) Farmer's conferences;
 - (d) Regional farm producers
 - (e) Cherry Marketing Institute and Wine Industry Conference;
 - (f) Farm Bureau Conference
 - (g) Future Farmers of America and 4-H;
 - (h) Michigan State University/agricultural industry seminars.
 - iii. These meetings may include full course meals to demonstrate connections between wine and other foods.
 - iv. An appeal of the Zoning Administrator's determination can be made to the Township Board.
- (d) Guest Activity Uses do not include entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass.
- (e) No food service other than as allowed above or as allowed for wine tasting may be provided by the Winery-Chateau. If wine is served, it shall only be served with food and shall be limited to Old Mission Peninsula appellation wine produced at the Winery, except as allowed by Section 6 below.

To: Peninsula Township Zoning Board of Appeals

From: Michelle Reardon,  Planning & Zoning Department

Re: Request No. 848, Interpretation – Section 8.7.2 (3) and 8.7.3 (3), Special Open Space Uses

Date: May 5, 2016, *edited June 16, 2016*

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

Section 8.7.2 (3) permits “Special Open Space uses, such as public beaches, bath houses, recreational camps, and other open space uses operated for profit within any agricultural zone district” as a use permitted by Special Use Permit.

*This definition suggests that acceptable uses would be uses that occur **principally** outside of a structure. In fact the ordinance defines “open space” in Article III as “an area that is open to the sky exclusive of roads, parking lots and building envelopes”*

Section 8.7.3 (3) regulates the use:

Special Open Space Uses:

- (a) The proposed site shall be at least two (2) acres in area.
- (b) The proposed site shall have at least one (1) property line abutting a major or secondary thoroughfare. All ingress and egress to the site shall be directly from said thoroughfares.
- (c) All buildings and structure shall be set back at least two hundred (200) feet from any property or street line. Whenever the installation abuts upon property within a residential district, this two hundred (200) foot setback shall be landscaped with trees, grass, and structural screens of a type approved by the Township Board to effectively screen the installation from surrounding residential properties.
- (d) No more than twenty-five (25%) percent of the gross site shall be covered by buildings.

The definition of Special Open Space uses offers as suggestion of acceptable uses but does not provide definitive language that specifically excludes activities such as events or “party barns”. Staff is requesting clarification and definition of the activities and uses that are permitted by a Special Open Space Uses permit. Specifically, staff requests definitive decision as to whether a “party barn” or event venue is permitted under this use.

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TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 11

**Peninsula Township Zoning Board of Appeals
Regular Meeting
May 12, 2016**

Meeting called to order at 7:02 p.m.

Present: **Witkop; Cowall; Vida – Chair; Snow(Alternate); Wunsch**

Also present were *Michelle Reardon*, Director of Zoning and Planning, *Claire Schoolmaster*, Zoning and Planning Coordinator and *Mary Ann Abbott*, Recording Secretary.

Absent: Souter (excused)

Approval of Agenda

MOTION: Wunsch/Snow to approve agenda. **PASSED UNAN**

Conflict of Interest

None

Communication Received

Two letters in support of the Stainforth Request

Public Input

David Taft, 952 Nehtawanta spoke to thank Reardon and the Planning commission for the momentum of the Zoning Ordinance and the difficult work of the ZBA with appeals and variances and their role to interpret the Zoning Ordinance. Staff has requested an interpretation of Section 8.7.3 (10) (u). Taft urges the Zoning Board not to come up with the interpretation at this time but to let the Planning Commission and their subcommittees to come up with the good rewrite of Section 8.7.3 (10) (u) before it is interpreted. We know it is flawed, let the Planning Commission come up with the rewrite then interpret it.

Scheduled Public Hearings

A. Request No. 846, Zoning R-1B

Applicant: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Owner: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Property Address: 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686

Request: (1) a variance of 4 feet (4') from the required 30 foot (30') front yard setback to allow for the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure; and (2) a variance of 9% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

Parcel Code Nos. 28-11-127-030-00 & 28-11-127-031-00

Schoolmaster presents the Request #846 to the Zoning Board.

Applicant presents a history of the two lots on Bluff Road and the proposal to combine the two lots, remove some outbuildings and the proposed addition. Applicant expressed his desire to reside full time and the concern of inadequate kitchen area, proposed garage and concern of putting in an improved waste water system, which led to the request of this variance. Applicant submitted that it is a reasonable request, consistent with the intent of the Zoning Ordinance and beneficial to the Bluff Road neighborhood.

Vida asked for comments of the Zoning Board. Concerns expressed by the Board included efforts of the ZBA to reduce the legal non-conforming lots, changes in design to allow conformity, configuration of driveway to allow forward exit to Bluff road, lot coverage, other options with building envelope.

Vida opens up Public Hearing on request No. 846. No comments for or against.

Applicant requests adjournment at this time.

MOTION: Wunsch/Snow to adjourn applicants request # 846 and adjourn the related Public Hearing until the June meeting.
PASSED UNAN

Wunsch urges applicant to come up with a stronger case as to why this request is different from any other small lot. **Cowall** We need good sound justification.

B. Request No. 847, Interpretation

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Staff provides an introduction. Asking what is allowed and the Ordinance now states in of Section 8.7.3 (10) (u) 1 (d) what guest activities do not include. We are having enforcement issues related to Winery/ Tasting rooms that do not have permissions for guest activity uses. The ZBA may want to talk with the Township Attorney on this one. They would like more clarification. Staff sees it as wine tasting; perhaps food tasting that would enhance the wine, free music. **Vida** it is the list that never ends. Would like input from the attorney. **Reardon** We are currently trying to shape the ordinance by getting input into the intent of this section. Would like to shape by “here is what is acceptable”.

Witkop if it is happening today and we interpret how does this affect the new ordinance since it is already going on. **Reardon** do not have a “grandfather” issue because it is never permitted. Coming to the Board to get validation that it is not allowed. Hope to strengthen and inform the new ordinance. We do not want to lose the intent.

Vida opens Public Hearing on Request #847 at 8:06 p.m.

Mark Nadolski, 10 McKinley and President of Protect the Peninsula why do we need interpretation of an ordinance that has been in effect for 20 years. Need to slow down. Condition of Guest Activities is spelled out now. Nadowski has two letters he would like to read. One from Grant Parsons who worked on the Ordinance expressing concern that Ag ancillary sales and events will have a significant impact. What is proposed is a fundamental change in the nature of our township. Nadowski also had comments from John Wunsch that is concerned about proposed changes to our current ordinance. Nadowski says that you cannot make changes to accommodate a few who are not happy with the ordinance. The ZBA is here to accommodate the entire Peninsula. Nadowski passed out letters to the Zoning Board.

Monnie Peters, 1425 Neahtawanta Road comments that what she hears from the community is concern over the fine line of when the tasting rooms begin to look like bars and restaurants. You know when it is not right, but how does the Planning Commission write it and the Town Board pass it. She feels it has to do with the introduction of food. We want to support AG land. We have a wine bar going on out here and it does not feel right.

Marilyn Elliott, 18811 Whispering Trail feels that Michelle is asking for direction in how she can enforce this right now. She needs your help.

MOTION: Vida/Cowell to adjourn Request # 847 until the next meeting when the attorney is present.

Discussion on motion:

Witkop Up until not that long ago we thought of people who came into apply for a winery as a Use by Right or a Winery/Chateau. As a special use they could have other things they could do. Those activities were called guest activities. We recently saw that someone could apply for a Winery/Chateau without the ability to have guests. So if you are a winery/chateau and you cannot have guests, what does that leave that Chateau to do in that wine tasting room.

Reardon There are standards for Winery/Chateau. If they cannot meet thresholds what can they do in their tasting room? We are looking at this from an enforcement point of view. We are not looking to permit anything new. We are looking to define intent.

Witkop They might choose not to meet additional tonnage then what does that leave them?

Reardon can supply more suggestions for the ZBA at the next meeting. Staff is asking for more specificity on the intent of the Ordinance. Without clarity we are finding it hard to enforce.

Wunsch suggestion is to take the most conservative approach at the ZBA level to give the staff the tools they need to enforce. If too conservative we can always amend at the Planning Commission.

Vote on above motion to adjourn. PASSED UNAN

C. Request No. 848, Interpretation

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

Reardon has recently discovered that this might offer opportunities for Party Barns. Events here are tied to agriculture. We do have one Open Space use, which is “Dining in the Vines”. This regulation of Open Space does have definition of structures. Staff can bring more direction and wanted to hear from others what the intent was. We need to talk to the attorney.

Vida opens the Public Hearing on Request #848 at 8:38 p.m. No Comments.

MOTION: Vida/Wunsch to adjourn request until the next meeting where the attorney will be present.

PASSED UNAN

Approval of Minutes

MOTION: Cowall/Wunsch to approve the minutes of March 10, 2016 regular Meeting.

MOTION PASSED 3/0 Snow & Vida abstain

New Business

None

Reardon Currently have 3 applications for June, plus the one that was held over plus two interpretations. Your agenda is full and we will need to look on a second meeting in June. **Wunsch** would prefer interpretations to be at the regularly scheduled meeting.

MOTION: Cowall/Snow to adjourn at 8:44 p.m.

PASSED UNAN

Respectfully submitted by Mary Ann Abbott, Recording Secretary.

B. Request No. 847, Interpretation (Adjourned from May 12, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

**Staff requests No. 847 be adjourned to Thursday, June 23, 2016 at 7:00pm.*

MOTION: Witkop/Cowall to move Request No. 847 to the June 23, 2016 meeting.

PASSED UNAN

C. Request No. 848, Interpretation (Adjourned from May 12, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

**Staff requests No. 848 be adjourned to Thursday, June 23, 2016 at 7:00pm.*

MOTION: Cowall/Wunsch to move Request No. 848 to the June 23, 2016 meeting.

PASSED UNAN

MOTION: Cowall/Wunsch to excuse Snow and invite Soutar back to the Board.

PASSED UNAN

Alternate Snow steps down and Soutar is seated.

D. Request No. 849, Zoning A-1

Applicant: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686 Owner: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686 Property Address: 10621 Craig Rd., Traverse City, MI 49686 Request: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel “A” and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel and (3) a variance from the depth to width requirement (Section 6 (d) of the Peninsula Township Land Division Ordinance #49 of 2012) to allow for a lot line adjustment.

Parcel Code Nos. 28-11-008-003-00 and 28-11-008-016-55

Reardon presents Staff Report.

Nathan Schultz, 10621 Craig Road spoke as the applicant of this request #849. He provided a background of the parcel ownership and the desire to obtain the variances and lot line adjustments. He felt that the property that is not well suited to Ag could be under pressure to be developed and that his solution to obtain the variances and lot line adjustments would provide the solution which would allow him to sell 5 acres and finalize conservation easement on a portion of this property.

Vida asks for Public Comment For and Against Request No. 849. No Comments. Public Hearing closed at 7:58 P.M.

Further discussion by the board resulted in the following decision.

Peninsula Township Planning & Zoning Department

FINDINGS OF FACT

ZBA Request #849 – 10621 Craig Rd.

June 9, 2016

DECISION AND ORDER

Applicant: Nathan Schultz & Stephanie Woodfin, property owners

Peninsula Township
Zoning Board of Appeals

June 9, 2016

**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
SPECIAL MEETING
June 23, 2016**

Meeting called to order at 7:00 pm

Present: **Wunsch; Soutar; Vida-Chair; Cowall; Witkop.** Also present were Claire Schoolmaster, Planning and Zoning Administrator; Michelle Reardon, Director of Planning and Zoning ,Peter Wendling, Township Attorney and Mary Ann Abbott, Recording Secretary.

Absent: None

Approval of Agenda

Reardon requests that Public Hearing Request No. 851 be removed from the agenda as the applicant has withdrawn.

MOTION: Soutar/Wunsch to approve the agenda as amended.

PASSED UNAN

Conflict of Interest

None

Communication Received

None

Brief Citizens Comments – for items not on the Agenda

None

Scheduled Public Hearings

A. Request No. 851, Zoning A-1 (Adjourned from June 23, 2016)

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684 Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170

Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

Applicant has withdrawn Request No. 851

B. Request No. 847, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Reardon this request is a Zoning Administration request for an interpretation of our ordinance. All of the language surrounding Winery-Chateau has been given to the Zoning Board.

The Zoning administration is looking for an interpretation for what can occur in a tasting room of a winery/chateau outside of that guest activity use.

Section 8.7.3(10)(u) 1(d) states “ 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.

Wendling one of the biggest issues is the wording “ which no fee or donation of any kind is received”. What are the restrictions of that compensation? This is the biggest issue before us. What Wendling would like to see from the ZBA tonight is: What

Peninsula Township
Zoning Board of Appeals

June 23, 2016

constitutes a donation or fee that keeps it out of being a guest activity and keeps it within the realm of what is allowed as of an accessory for winery/chateau?

Further discussion occurred by the Zoning Board including comments of the limiting wineries as an event space; compensation received by winery for an event; functions of winery or B&B; focus needing to be related to wine tasting; intentions to promote agricultural use of Old Mission Peninsula; not allowing use of a facility to take donations; not meant to be an event space; all spaces open to public.

Public Hearing opened at 7:36 pm.

Donald Coe, 211 Midtown has had a winery on Old Mission Peninsula, served on the Grape and Winery Counsel and the Michigan Agricultural Commission spoke of the issues of wineries always on the agenda. Offered some primary issues to consider: different classes of wineries; remembering that there are other agencies that regulate wineries and other authorities may already be enforcing and licensing; and the fact that it is a small number of wineries and that tasting rooms are essential to the economic health of the winery. Mr. Coe offered assistance to the Zoning Administrator.

Mark Nadolski, 10 McKinley, President of Protect the Peninsula was heavily involved with the wineries ordinances going back over a decade. Old Mission Peninsula is unique so we cannot be treated like other wineries. Events were a battle. The whole intention was to promote the agriculture of the peninsula. It was not to have parties or weddings; it was created to promote agriculture. Wine by the glass was introduced to avoid people drinking free wine without buying anything. Wine and cheese was offered to temper the effects of the wine. Agrees that there should not be a charge for events. Appreciates the efforts of the Zoning Board tonight.

No further comments from the public. Public Hearing closed at 8:18 pm.

Wendling In the provision under D "no fee or donation of any kind is received", is that only in respect to the winery or does "fee and donation of any kind" mean any organization that is attending the event at the winery or the winery itself.

Wunsch could Wendling draft up two or three alternative motions so that we are sure our language is precise?

Reardon is there a consensus by the Zoning Board that the fees or donations mentioned are not just the winery but also the group that is gathering at the winery. There was a consensus by the Zoning Board that they agreed with this.

Reardon would also like to bring up the idea of closing off portions of the tasting room. Consensus of the Zoning Board that all portions of the tasting room will be open to the Public.

Suggestion is that we now direct the Attorney to draft the motions. **Wunsch** no charges other than the normal use of the tasting room. The tasting room open to the public. No upcharges.

MOTION: Wunsch/Cowall to table Request No. 847.

PASSED UNAN

C. Request No. 848, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

Reardon Staff is looking to the ZBA for interpretation not to set policy. Section 8.7.2 (3) permits "Special Open Space uses, such as public beaches, bath houses, recreational camps and other open space uses operated for profit within any agricultural zone district" as a use permitted by Special Use Permit.

This suggests that open space is outside of a structure.

Section 8.7.3 (3) regulates Special Open Space Uses:

(a) The proposed site shall be at least two (2) acres in area.

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(b) The proposed site shall have at least one (1) property line abutting a major or secondary thoroughfare. All ingress and egress to the site shall be directly from said thoroughfares.

(c) All buildings and structure shall be set back at least two hundred (200) feet from any property or street line. Whenever the installation abuts upon property within a residential district, this two hundred (200) foot setback shall be landscaped with trees, grass and structural screens of a type approved by the Township Board to effectively screen the installation from surrounding residential properties.

(d) No more than twenty-five (25%) percent of the gross site shall be covered by buildings.

Reardon An application that was later withdrawn brought to light that this ordinance might be interpreted differently.

Wendling In clarification the term building envelope talks about the setback area. The building envelope is not the building but the area in which a building could be placed without violating any setbacks.

Wunsch Can we deal with this in a zoning ordinance rewrite? He would rather take a restrictive approach?

Wendling Question is what direction is the Township going. Is the open space concentrated in the outside area or is it primarily being utilized by the structures. It may be a policy issue and a clean up of the language, included accessory structures allowed. If the ZBA does not like this language it can request that it is tightens down the use of accessory structures.

Reardon states that if there were an interpretation it would be that specific. Is this a use that occurs principally outside and structures can be used only to accessory to the outside event.

Public Hearing on Request No. 848 opened at 8:54 pm

Marie Dalese, 527th Second, CEO of Chateau Chantal reminds ZBA that Guest Use activities of Winery /Chateau not being allowed to have wedding or tent and tied to produce of Old Mission Peninsula. Just reiterating the discrepancy between the two. It is a problem but not your intent. Should not discriminate who is attending events. There are limitations on impact.

Marilyn Elliott, 18811 Whispering Trail is failing to understand why it is not possible for you to make the interpretation now to say it has to be principally outside of the structure and say no party barns or event venues. Simple request that could be simply done.

Todd Oosterhouse, 7700 Peninsula Drive wonders about open space - so if I have two acres I can have an event or wedding and how does this tie back to Master Plan for protecting agricultural. Whereas those that have wineries or fruit stands have to have vast amounts of acreage just to sell our goods.

No further public comments. Closed at 8:58 pm.

Witkop I think we are missing something. I think this was intended for perpetual uses not an occasional event.

Wunsch respond to public comment. It is worthwhile to have a policy body review the ordinance. This is not a policy board but we should interpret and report back to the PC or the Board to take a look at cleaning it up

MOTION: Wunsch/Soutar that the buildings as defined in subsection C and D of section 8.7.3(3) of our Ordinance refers to accessory buildings to the primary use.

PASSED UNAN

Approval of Minutes

A. June 9, 2016 Regular Meeting

Vida on page 22 numbering sequence is off. Page 24 Motion should read; Wunsch/Soutar Special condition #3

MOTION: Soutar/Wunsch to accept June 9, 2016 minutes as amended.

PASSED UNAN

Peninsula Township
Zoning Board of Appeals

June 23, 2016

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 12

Peninsula Township
Special Joint Township & Planning Commission Meeting
June 13, 2016
10:00 a.m.

Meeting called to order at 10:00 a.m.

Present:

Township Board: Avery; Hoffman, Correia, Chair; Weatherholt; Rosi; Witkop

Planning Commission: Leak, Chair; Hornberger, Serocki, Peters; Wunsch; Rosi

Also Present: Michelle Reardon, Director of Planning and Zoning

Absent:

Township Board: Jill Byron

Planning Commission: Alan Couture

Approve Agenda

Township Board MOTION: Hoffman/Avery to approve agenda. **MOTION PASSED**

Planning Commission MOTION: Peters/Wunsch to approve agenda. **MOTION PASSED**

Brief Citizen Comments - for items not on the agenda

Nancy Heller asked for clarification of the intent of the meeting and whether or not it would be an informal discussion will all in attendance participating. Reardon: Yes, it is an information gathering meeting and all can participate.

Conflict of Interest

Township Board: None

Planning Commission: None

Consent Agenda

1. Meeting Minutes - Special Joint TB/PC

a) April 18, 2016

b) April 26, 2016

c) May 3, 2016

Peters asked that the word "Zoning" be added to April 26, 2016, page 2, item D: Hoists. This was agreed to.

Also in the May 3, 2016 minutes, page 3, "Winery Use by Right, change Amendment 123 to Amendment 128. Agreed to.

Township Board to approve the Consent agenda: Hoffman/Witkop. **MOTION PASSED**

Planning Commission to approve the Consent Agenda: Hornberger/Wunsch. **MOTION PASSED**

Business- Agriculture Round Table Discussion

Reardon said that we are discussing language for the following zoning ordinances: 1) Food Processing Plant; 2) Local Food Production Facility(new item); and 3) Winery/Chateau. The goal is to strengthen what we already have.

Hoffman suggested that we take each item one at a time rather than discuss all of them at the same time.

Starting with Food Processing Plant language, the major changes are that setbacks are increased and standards of source of production.

Heller asked if pre-existing structures do not meet the standards would the owner need to ask for a variance. Reardon: No.

If "majority" means over 51% , should we add the definition of "majority"?

Wunsch asked for an explanation of Food Processing Plant. Reardon: It has no retail operation but may be wholesale. It would cover both food and MLCC products.

Witkop asked why the proposed setbacks were placed. Do we need to increase setbacks? Do we need to increase product used to "majority"? Reardon: there could be noise and/or odor problem and shipping could cause the need for increased setbacks. The subcommittee thought we needed some buffering. Mark Nadolski: Then address the noise and odor problems. Rosi: With more active use of the land there will be trucks and other kinds of things. Reardon: Perhaps setbacks can remain the same but the noise and odor problems can be addressed. Wunsch: Even the new setbacks are reasonable. Cristin Hosmer: Do we have a diagram or table for setbacks. What are the frontage requirements? Farms, as opposed to residential, already have 330' frontage and 5 acres. Peters: There is a 50' side setback and a 15' accessory building setback. Reardon: We could look at 50' instead of 100' setback on side. Witkop: Perhaps require buffering. Reardon: Confirmed that Food Processing Plant is a special use. If this becomes a Use by Right, then we need to make standards clear. Wunsch: Witkop has a good point. Perhaps setback could be based on building size. Reardon: A sliding scale could be a problem if someone wants to enlarge. A Food Processing Plant is pretty impactful. A Special Use Permit is needed because of this. Hoffman: What do we mean by "pre-existing"? Reardon: Perhaps 20 years? We will put a definition of this in the ordinance. She also summarized what we had discussed so far: setbacks, noise/odor, special use permit. She asked, should we regulate the source of produce. Hoffman: I have a concern with hauling produce from elsewhere to produce here. Wunsch: There is a problem with containers bringing in undesirable things. Nadolski: We should have a logical way of enforcing our rules. Hoffman: We are not talking about a roadside stand in this ordinance. Reardon: There is a natural disaster clause in this proposed ordinance. Witkop: Should we eliminate Food Processing Plant altogether? Reardon: No, we already have it. Wunsch: So 3 tiers would work: 1) Small scale, 2) Mid-scale with retail, 3) SUP for large scale. Reardon: That is what we have. Leak: Would hops fit into a Food Processing Plant ordinance? Peters: Then are your processing Old Mission grown crops? Bern Kroupa: Good idea to move "use by right" to 139. Setbacks and their reduction to 15' make him nervous. Keep the ag setbacks the way they are. Witkop: 15' is the current ordinance. How do we do that? Reardon: Quite a bit of township property is zoned ag but used as residential. Hoffman and Reardon: If 15' setback is in the ordinance now and we increase it to 50', what do we do about pre-existing structures. If we change one thing, are we creating another problem? Heller: if we have 15' setbacks and use vegetative buffers, we might have a problem with invasive species.

Moved on to discussion of Local Food Production Facility. This is a new category. It will not include making of alcohol products. It would be for small scale operations such as growing strawberries and making jam. It would include retail. It would be the same type of thing as a use by right winery is right now. There was a discussion of building and retail size. 2,000 square feet; 500 square feet for retail? Joan Westphal: That is way too small. We should not exclude

farm products when wineries are getting so big. We need equity among any products. Reardon: a food processing facility is still in the ordinance. Westphal: We need retail. Reardon: That is in the ordinance. Then a discussion of the size of the facility, the retail space, and size in general was held. A discussion of closing time was held. Reardon: This does not allow a farm market. Then she said there had been some interest in a farm market on the Peninsula. Reardon: Staff will research size. Hoffman: Some homes are bigger than what we are discussing. Maybe have a sliding scale tied to acreage. Reardon: a higher category than Food Production Facility exists. It is what we refer to winery but does not have to be a winery. Hosmer: Material used in the facility must be stored inside. A larger facility would be needed for that. She said that a 9:30 p.m. closing would be appropriate. Kroupa: Ordinance 139 is not just a winery ordinance. It addresses all agriculture. Correia: A 6:00 p.m. closing is quite restrictive. Witkop: What we currently have in Ordinance 139 is a farm processing facility. What we are discussing blends in to smaller parcels and smaller structures. Reardon: Remove winery wording to expand the ordinance to what it is today. Heller: I want to remind the Boards that these are not hobbies. They are businesses. Keep that in mind when making reasonable guidelines. Kroupa: in creating 139, we were working for other issues too. Wunsch: How does the public feel about our addressing these issues. I am hearing a lot of push back. Hosmer: The ordinance is broken and needs to be fixed. Westphal: I disagree. The horse that draws the wagon is the Master Plan. Also do we want activities to go on after 6:00 p.m.? Peters: I want to hear more from the whole community. David Taft: I wish this could be a round table. There are a lot of strong personalities in this community. Unfortunately we got into a lot of detail. How is this ordinance working. What is the function of the wineries. What about the number of then. Do we want to expand that number. Do we want more tasting rooms. It is an issue of traffic and safety. Do we want mini-restaurants and mini-bars? What about selling wine by the bottle to drink on site: Brit Eaton: 65% of sales need to be to the consumer. How many wineries do we allow to get into the market. It will come down to safety. Todd Oosterhouse: It all has to work together. For example, cherry trees. If people do not see them, they will not buy the cherries. Reardon: In answer to Wunsch, staff needs enforcement assurances.

Witkop: The set up for our next meeting needs to be conducive to more interaction. Wunsch: We need a white board and sticky notes. Our next meeting will be at 10 a.m. on June 23 (the ZBA meets that evening).

Motion to adjourn:

Township Board: Witkop/Hoffman moved to adjourn the meeting at 12 noon. **MOTION PASSED**

Planning Commission: Wunsch/Serocki moved to adjourn the meeting at 12 noon. **MOTION PASSED**

Respectfully submitted,

Donna Hornberger, Secretary
Planning Commission

Peninsula Township
Special Joint Township & Planning Commission Meeting
June 23, 2016
10:00 a.m.

Meeting called to order at 10:00 a.m.

Present:

Township Board: Hoffman, Correia, Chair; Weatherholt; Rosi; Byron

Planning Commission: Leak, Chair; Hornberger, Serocki, Peters; Wunsch; Rosi

Also Present: Michelle Reardon, Director of Planning and Zoning and Claire Schoolmaster,
Planning and Zoning Coordinator

Absent:

Township Board: Mark Avery, Witkop

Planning Commission: Alan Couture

Approve Agenda

Township Board MOTION: Weatherholt/Hoffman to approve agenda. **MOTION PASSED**

Planning Commission MOTION: Peters/Rosi to approve agenda. **MOTION PASSED**

Brief Citizen Comments - for items not on the agenda

Andy Valmanis thanked the boards for conducting the round table discussions and asked for another one for property owners with waterfront property since the zoning ordinance is being updated.

Conflict of Interest

Township Board: None

Planning Commission: None

Consent Agenda

Minutes of the June 13, 2016 Joint Township and Planning Commission meeting

Township Board to approve the Consent agenda: Hoffman/Weatherholt. **MOTION PASSED**

Planning Commission to approve the Consent Agenda: Hornberger/Peters. **MOTION PASSED**

Agriculture Round Table Discussion

Pete Correia: There is a hanging microphone in the middle of the circle of chairs and it should be enough to catch voices so we do not need to pass a mike around as people speak. Sticky notes are also available. Michelle Reardon: The tier system proposed for wineries in the zoning ordinance has been abandoned and the goal in updating the ordinance is to make it more enforceable. The ordinance may be onerous but it is workable except for difficulty in enforcement, especially for winery/chateaux. The chart which is in the packet may make discussion easier. The ordinance is a living document. Staff is looking for a way to enforce the intent of the ordinance. ZBA, at its meeting tonight will be discussing chateaux and tasting rooms, and what is allowed in them. Laura Serocki: She was on the 2012 committee that talked about use of tiers and what they were meant to accomplish. David Taft: It is a pretty good zoning ordinance. A business model unique to the Peninsula was created. How many wineries do we want and what are their functions Paso

Robles, California is having the difficulty with so many wineries. Do we want that here? Isaiah Wunsch: I am concerned about the loosening of definition of agricultural use. Stretching the definition of ag will make it hard for the ag person who does not engage in other activities defined in the ordinance. Nancy Heller: Where does the law come in on free enterprise? Reardon: There is no max cap on numbers now and it is limited to at least 30 acres and use-by-right of 20 acres. Heller: Can you limit numbers through ordinance? Reardon: We should ask our lawyer but probably not. Wunsch: We cannot change the ordinance to limit number of wineries. Taft: As land value goes up, it makes it more difficult. How many wineries can the Peninsula support? Wunsch: You cannot use the ordinance to achieve that goal [of limiting number of wineries]. Reardon: MDOT must approve every driveway for new wineries. Soil erosion must be evaluated. Correia: Spoke about this and clarified it. Lannie Leak: When first considered, the ordinance put in place to make ag land more viable. 85% of the product must be grown on OMP. Things have gotten more liberal because part of the right-of-way can be used in calculating acreage. There is no benefit to include this in the calculation. The ordinance as it reads now uses timber in calculating arable land. That means trees will not be removed. Reardon: That is proposed in an attempt to not create deforestation. We will discuss that later.

Jill Byron: What does the Master Plan say about wineries? Belief is that citizens do not want so many. Our ordinances need to be structured to support what the Master Plan and the citizens want. It is important to keep this community the way it is. Monnie Peters: Adding to what Jill said, what is it that makes those beautiful California communities into something unpleasant? We can help ag: help with crops, value added, and storage areas. Limit extra things that make these places commercial establishments. We are a peninsula. We do not want more roads or to enlarge Center Road. Wunsch: We are out of balance, Reardon: We as staff are not getting enough clarity on current ordinances. We need to hear what people are saying the ordinances need to do. Wunsch: We have stretched the definition of what agriculture is. Valmanis: Without Purchase of Development Rights (PDR) our township would look a lot different. Jim Krupka: We act like we have PDR now but my farm has been on that list for years and has not been accepted into the program. Penny Rosi: We have two acres of grapes and we have a different model. We sell our grapes to Left Foot Charlie's. They have moved off the Peninsula and into town. Krupka: I grow grapes but I do not have a winery. I sell my grapes. We need to set the bar high enough to have a class act for wineries. Rosi: I am impressed with wine growers working together. Our commitment is to ag. Apple and cherry growers have to haul their produce off the Peninsula. Cristin Hosmer: I asked what is the goal 20 years from now. I do not see a lot of farms staying in the same family. More people nationally are looking at us. Are our minimums for planting too big? People cannot afford our minimums when they are starting out. A lot of roundabouts are planned between here and Grawn. That is a problem for trucking. I offered to take the township and planning commission boards on a bus trip to visit wineries on the Peninsula. It still stands. Wunsch: The wine industry has lobbied more forcefully than cherry and apple growers. There are not young growers because of policy choices that this board has made. Should lodging opportunities for grape and apple growers be offered? Taft: What are the incentives to keep land in agriculture? We need to focus on that. Reardon: In response to Wunsch's comments, lodging opportunities for cherry and apple growers could be done. To summarize, we are an agricultural community. These ordinances are meant to enhance that. We want to take out the subcommittee language in the ordinance and keep the existing language. You will see a lot less red in the proposal in the future [Red means the wording is changed.] The

ZBA will be looking at what can be done in tasting rooms. This is section 8.7.3 in the ordinance. It is not very clear. Per our lawyer's request, the ZBA will look at this. Margaret Achorn: They should look at the whole zoning ordinance. Reardon: The language in that section is ambiguous and they are the correct body to clarify as directed by enabling legislation. Staff and our attorney will be there tonight. Their clarification will help with enforcement issues. Rosi: Donation of Development Rights (DDR) can be used to keep land as ag. It could also be a benefit to the owner. Reardon: There might be large property owners who could benefit from DDR. Monica Hoffman: We want to keep our farm as ag but cannot afford to donate development rights. We need to help young farmers. She has heard old farmers say they wish the first development had never come in. Wunsch: DDR only allows the owner to receive 35% of the land's value as a tax credit. Achorn: We need sources to fund the PDR program. Can we draw on expertise of people we contact all over the country to help. Serochi: Tier 4 was originally discussed as 80 acres. We never discussed if 80 acres is good. Krupka: It is important to allow leased acreage to be counted. There is a huge incentive to include leased land. Wunsch: That is consistent with ag practice as a lot of land is leased. Krupka's idea is good. Reardon: A fundamental idea is that wineries need to bring in more tonnage to increase usage. There is a big incentive for wineries to connect with people with small acreages. Krupka: My farm is under a long term lease to a winery/chateau. Real estate taxes are high because the land is developable. Reardon: PDR now extends to 2022, at which time the millage expires. We have the funds for the next purchase. Todd Oosterhouse: Are guest activities tied to tonnage of grapes only? Reardon: Yes. Hosmer: Apples and cherries too? Reardon: Yes. Sarah Taft: Can we extend the PDR beyond 2022? Byron: We backed off putting an extension on the ballot because of the poor economy. Hoffman: We thought a millage would fail. Chris Baldig: One restrictor of number of tasting rooms could be the licenses issued. Owning a winery is not a highly profitable business. It is a 25 year payback model. Let's not paint all events as big, noisy, and late. They could be small numbers of people at a table in the vines. Events mean a lot to small wineries. They can be a difference maker. Owning a winery can be cost prohibitive but wineries increase the value of the land. Bern Kroupa: Remember the "Winery Wars" when this ordinance was first enacted. Leelanau is wide open and has no problems. They encourage that business. Dave Weatherholt: In the mid-80s owning a cherry farm was not very good. Value added means more traffic. A lot of people do not know what it means to grow and sell cherries.

Marie Dalese: There has to be a way to mitigate the impact from events. Wineries can fulfill the rules and limitations on who can attend. Why not weddings? The event coordinator for Chateau Chantal is here today. Marty Lagina: A major change to the ordinance has not been mentioned: the by-right 330' frontage has added to it "on a public road." This is a huge change. Was that intended? Reardon: The intent was to go back to the original language in the ordinance. You are right, the intent was not to change language dramatically. Peters: Difference between leased land and an harvest agreement. Have we incorporated all the ways farmers and wineries can get products and use them? Is there a difference in control. The intent is to keep land in agricultural usage. Mark Nadolski: We need to remember that OMP is not California. We are unique and California wineries have more roads and more options. We are in trouble if we try to emulate them. OMP is not designed to be what some people want it to be. There are limits. If we think we need more customers and events we need to beware of the consequences. Sit down with the people who created the ordinance. Baldig: How many wineries were on OMP in '81? Who is creating the formulary? Krupka: Amendment 141 was worked on in the last decade. The social

responsibilities that were contemplated then are still there. Lexi Mohny (Events Coordinator at Chateau Chantal): Everything works together. We are concerned with keeping property in ag but we are not bringing in ag people. We need to reach out to people in ag who are not in ag here now. We need to show them the reason to do this. There is more traffic on Center Road that is not just cars. Trucks and tractors during season. We need to bring in people to see how things are working. The only way to do this is to have events. Chateau Chantal has requests to do weddings all the time. Heather Reamer: A 6th generation cherry farmer whose child plans to take over the farm eventually. Growth will happen. Look at the awards wineries have been given. She has had requests for people to use her family's barn for weddings. Her grandfather's farm was the first farm to get a PDR, 300 contiguous acres protected. There is a struggle for farmers. For example, complaints from neighbors about spraying on Saturday morning. We want to be good caretakers. Brit Eaton, representing John Wunsch: Read a statement: We need to stop this process. It is off track. It needs to be done in a way that is fair to everyone. Marilyn Elliot: How many wineries are we going to have and what can they do? We are one of the few places where cherries can be grown. How can we increase that?

Donna Hornberger: The goal is to fix a few key points now. Hosmer: Go on a trip to visit the wineries. Maybe MDOT needs to evaluate our roads. We need another meeting with MDOT and look at Center Road again. We are a seasonal community and road usage reflects that. We are not asking for more customers; we want more money from those we do have.

Correia: Do you like this format? Does it work? We had 30 people in attendance and 26 of those spoke.

Citizen/Board Comments: NONE

Motion to adjourn:

Township Board: Byron/Weatherholt moved to adjourn the meeting at 12:20. **MOTION PASSED**

Planning Commission: Hornberger/Wunsch moved to adjourn the meeting at 12:20. **MOTION PASSED**

Respectfully submitted,

Donna Hornberger, Secretary
Planning Commission

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 13

July 14, 2016

To Members of the Zoning Board Of Appeals

I am unable to attend the meeting tonight and ask that this letter be read out loud into the record and not just filed away.

I am writing about your resolution with regard to section 8.7.3 (10) (u) 1.d.

I am totally against the recommended change on several grounds.

Rush to push through amendments ahead of total package of zoning changes

Once again the zoning administrator is pushing forward her own ideas asking for changes to things that do not need to be changed. There is no actual or perceived harm being done to anyone by leaving the current situation in place. I find it troubling that the board of appeals seems to be led by the administrator rather than the board leading and the board doing so only when needed by a problem that impacts the safety health or welfare of the citizens.

This haphazard way of dealing with the long range plan of changing the entire zoning ordinance set out some time ago strikes me as an attempt by the administrator to rush through amendments she favors before the next election.

What's the hurry? What's the rush? What's the identified problem?

Leave well enough alone.

This also strikes me as an attempt by the administrator to expand her job. Can you imagine the policing of for example the requirement that a group that comes in to your winery must not be isolated from the public. So if I want to celebrate my birthday with a group of friends and we are standing off in a corner does that mean Michelle will be coming to the winery and insisting that I not stand off in a corner unless I had the winery get a guest permit? Come on folks these changes are nothing more than a blatant attempt to expand the power of the administrator and hassle the wineries.

Do you really want the wineries to have to request a guest activity permit every time they want to have a music activity say on their deck or does this mean I need a permit if I want to use a room for a private celebration of my birthday. Why Why Why why do you want to complicate life. do you really want me to have to request the winery to get a permit to offer a different menu item than is on the regular menu. Why Why Why where is the health safety or welfare impacted by my wanting something different. I can not think of any reason why you would want to create more red tape and tie the hands of the wineries in such a fashion.

A permit must be requested 30 days in advance. What if I decide I want to take some friends there on a spur of the moment celebration so much for spontaneity.

Again do you really want to burden the wineries to have to go and request a permit every time they want to do an activity that you are trying to restrict. And that they should know about it 30 days in advance.

The statement that these amendments have been fully discussed is untrue

Some of these proposals as written were not fully discussed at the last meeting. They were put in writing only yesterday for the public to see and comment. The impact of these is well beyond what was discussed at the meeting as far as I can tell from the minutes.

These proposals are draconian and are a blatant attempt to prohibit the wineries from offering many options for residents and visitors alike to enjoy the winery experience.

Why should I not enjoy a glass of wine on the deck or outside sitting area of the winery. What's the problem? Of course there isn't one since most wineries do it. These rules belie common sense. What is wrong with me having an event in the winery and wanting to stand or sit in a separate area. What is accomplished with this! Why should music not be allowed outside of the tasting room? Again what's the problem why are you being so restrictive.

I could go on and on the point is there is no problem it seems you are just making up rules on a whim.

Look if you don't want wineries to succeed and people to enjoy them why not just put a sign at the end of the peninsula that says we don't want the wineries to succeed so please don't visit them and don't expect to sit outside and enjoy the scenery with a glass of wine. And please do not even think of having a party with your friends you needed to notify us 30 days in advance and we would most likely say no!

All these hurried changes should await the outcome of the next election.

I think that these changes are so restrictive and foolish that everything should be put on hold until after the next election. There is no overriding problem that has been identified and this rush to pass things as quickly as possible seems very mean spirited.


Louis Santucci

I



8175 Center Rd.
Traverse City, MI 49686
Telephone: (231)938-6166

August 8, 2016

Dear Ms. Reardon,

We are writing on behalf of Villa Mari LLC (DBA Mari Vineyards). We have recently obtained an SUP to operate as a winery-chateau pursuant to the current Peninsula Township Zoning Ordinance. We have become aware that the ZBA has been asked to "interpret" a certain section of the Peninsula Township Zoning Ordinance. Specifically, the interpretation is of section 8.7.3(10)(u)1.(d) of the Ordinance. We have attached a copy of the ZBA's proposed interpretation of that section.

We object to this "interpretation." The referenced section of the ordinance doesn't say anything like the conclusions reached in the attached document. Rather, this so-called interpretation is an attempt to insert additional ordinance provisions and standards without going through the proper procedure to amend the zoning ordinance.

Additionally, 8.7.3(10)(u)1.(d) is literally one sentence. It is inconceivable that an interpretation of one sentence would require a full page and a half of new language. The interpretation is essentially an attempt to enact many new standards, procedures, and requirements for winery-chateaus. Furthermore, the interpretation itself is extremely confusing, using a permissive preamble to somehow forbid all kinds of activities. To reiterate, this is an amendment to the zoning ordinance. To attempt to achieve such an amendment in this way, by "interpretation," is simply wrong. There is a clear procedure for amending the zoning ordinance, and this interpretation is an improper attempt to circumvent it.

The proper procedure for making such changes has been established. We respectfully request that you do not continue with this attempt to bypass it. Furthermore, our SUP (under which we operate) provides us certain vested rights according to the existing language of the ordinance. We will not acquiesce to this attempt on the part of the ZBA to amend the zoning ordinance without going through proper procedure.

If the people of Peninsula Township wish to enact new standards for operations of new winery-chateaus then the township board, after proper notice, hearings, and procedure, may enact said measures. What the ZBA is trying to do here is not in accord with the Zoning Enabling Act. Please refrain from doing this. If necessary, we intend to take whatever legal action necessary to protect our rights, and to stop this improper manipulation of zoning.

We object to this resolution entirely, however, we have been informed that it will not affect us at all. At the minimum, if this resolution passes, we would like it clearly stated that it does not apply to our SUP in any way, directly or indirectly.

Sincerely,

Martin G. Lagina

Alexander H. Lagina

**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
RESOLUTION FOR ZBA INTERPRETATION**

Resolution No. ____ of 2016

At a regular meeting of the Peninsula Township Zoning Board of Appeals, Grand Traverse County, Michigan held in the Peninsula Township Hall, located in Peninsula Township, Michigan on _____, 2016.

PRESENT: _____

ABSENT: _____

The following resolution was made by _____ and seconded by _____, to-wit:

Recitals

WHEREAS, the Zoning Administrator has requested that this Board review and interpret the language contained in Section 8.7.3(10)(u)1.(d) regarding what activities a winery-chateau can engage in with respect to groups, guests and members of the public without a Guest Activity Permit; and

WHEREAS, the Zoning Board of Appeals has fully discussed this matter at a meeting held on June 23, 2016 and the Zoning Board of Appeals having reviewed the language of the Peninsula Township Zoning Ordinance and having held a public hearing on the matter.

Resolution

NOW, THEREFORE, BE IT RESOLVED that:

1. Section 8.7.3(10)(u)1.(d) of the Peninsula Township Zoning Ordinance states that a winery-chateau may, without a Guest Activity Permit, do the following:
 - A. Have wine tasting either free of charge or for a fee, including food pairings with the wine tasting, whether such food is free of charge or for a fee, but only within the tasting room.
 - B. May engage in promotional activities, including the ability to have groups on site in the tasting room only, such as political rallies or

other groups, so long as the group activity specifically promotes and focuses on the winery and agriculture with the township.

- C. Groups, guests and general members of the public visiting the winery cannot consume wine or food outside of the tasting room and no fee for any group may be charged on premises or by the winery with respect to the visit by any group to the winery. No advertisement stating that such a fee will be charged by the group or by the winery for attendance at the winery is permitted.
- D. Whether it be a group, guests or members of the public visiting the winery during the hours that it is open, any charges for wine or food consumed on the premises in the tasting room must be based upon prices on the item or on the menu with no up charge for the same related to any event. Further, the winery-chateau cannot have a special menu item, whether it be for wine or food which is strictly offered to any group that is different or priced differently than what is available for other guests or members of public who visit the winery.
- E. Any items sold by the winery-chateau outside of food and wine must also be sold only within the tasting room.
- F. Entertainment may be provided by the winery-chateau, but shall only be allowed in the tasting room and no charge will be levied by any group or the winery-chateau such that guests or members of the public visiting the winery-chateau do not pay for the entertainment.
- G. All groups visiting the winery-chateau must congregate in the tasting room only and no group may be isolated either in the tasting room or anywhere else at the winery-chateau such that would prevent other guests and members of the public from having full and free access to the same area in the tasting room where the group may be congregating.

YES: _____

NO: _____

RESOLUTION DECLARED ADOPTED.

PENINSULA TOWNSHIP

By: _____
Pete Correia, Supervisor

I, the undersigned, the Clerk of the Township of Peninsula, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by said municipality at its regular meeting held on _____, 201, relative to adoption of the resolution therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Dated: _____
Monica A. Hoffman, Clerk

August 10, 2016

Peninsula Township
13235 Center Rd.
Traverse City, MI 49686

Dear Ms. Reardon,

This letter is in response to the final issuance of the proposed ZBA interpretation regarding allowable activities in a winery-chateau tasting room without a Guest Activity Permit.

While Chateau Chantal does have a valid Guest Activity Permit and performs many pre-approved activities throughout the year, the proposed interpretation regarding activities in our tasting room is concerning.

Specifically, items that add additional restrictions that are not ordinance based and difficult to enforce include:

1. Attempts to regulate item pricing. As a business, our items fluctuate on what can be a daily basis and are dependent on the labor model needed to build different offerings.
2. Language that could be misinterpreted as contrary to the ability of a tasting room to offer reserved tours of their winery. While the tour offerings at Chateau Chantal are available to the public for reservation at any time, these reserved tours of the winery could be misconstrued to be in offense of the proposed language in item C, "no fee for any group may be charged on premises."
3. Enforcement of where guests can and cannot stand in our tasting room as discussed in G. On a busy day, the demand in the tasting room often means people are in line to taste wine. There may be several groups of public guests using various sections of the tasting room seating. Those people have the right to sit there until they leave, in effect making it inaccessible to other members of the public.

It is clear to me the intent of this interpretation. A winery-chateau without a guest use permit should not be hosting paid events until they meet the requirements. What is not clear to me are the virtually unenforceable additional restrictions being introduced above via interpretation rather than the ordinance process.

We have built our business model to meet the guest use permit requirements for sourcing 1.25 tons/person at an activity from other OMP vineyards than those dedicated to our own SUP. While onerous, this has accomplished tying these additional privileges to ag on the Peninsula and should be properly enforced.

Sincerely,



Marie-Chantal Dalese, President & CEO
mcdalese@chateauchantal.com
231-223-4110 ext. 140

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan Municipal
Corporation,

Defendant,

And

PROTECT THE PENINSULA,
Intervenor-Defendant.

Case No.: 1:20-cv-1008-PLM
Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

**COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANT PENINSULA
TOWNSHIP'S MOTIONS TO DISMISS PLAINTIFFS' CLAIMS PURSUANT TO
RULES 12(B)(1) AND 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION**

EXHIBIT 14

PENINSULA TOWNSHIP
Zoning Board of Appeals
August 11, 2016

Meeting called to order at 7:00 p.m.

Roll Call

Present: Vida, Cowall, Wunsch, Soutar and Witkop

Absent: None

Also Present: **Michelle Reardon**, Director of Planning and Zoning; **Claire Schoolmaster**, Planning and Zoning Coordinator; **Peter Wendling**, Township Attorney and **Deb Hamilton**, Recording Secretary

Approve Agenda

Request No. 853 has been removed by applicant. Site plan provided by applicant is not correct.

MOTION: Cowall/Soutar to approve the agenda as amended. **MOTION PASSED**

Conflict of Interest

None

Communication Received

Additions were provided to the Commission and are on the Township website.

Brief Citizens Comments – for items not on the agenda

Louis Santucci, 12602 Center Rd., he submitted letter on an item on the agenda. It came to his attention that his letter and a letter submitted Mari Vineyards were given to the Board at 4:00 pm. He believes this is not a good way for the Commission to be able to read and understand. He also asked what an interpretation versus Zoning Ordinance amendment is. **Reardon** said the Board received the information yesterday.

Scheduled Public Hearings

A. Request No. 853, Zoning R-1C

Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Owner: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Property Address: 7002 Peninsula Drive, Traverse City, MI 49686

Requests: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage.

Parcel Code No. 28-11-325-085-00

Removed from agenda

B. Request No. 854, Zoning R-1B

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Owner: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance requests #1-5 be **APPROVED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Approval of Minutes

June 23, 2016 Special Meeting

MOTION: Vida /Cowan to accept the June 23, 2016 minutes as presented. **MOTION PASSED**

Old Business

Request No. 847, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) - What constitutes a "guest activity use" as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Wendling said there was question on the authority of the Zoning Board of Appeals to engage in interpretation. Section 5.7.2 (1) – "The Board of Appeals shall have the power to interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance." Usually requests for interpretation are rare and the only reason they are done without seeking clarification through zoning amendment is when there is a more exigent circumstance arising that needs to be dealt with immediately. Opposed to waiting for a change in

the ordinance which may address the problem. In this case there were enforcement problems. Wendling believes those circumstances at least related guest activity are not that important today as perhaps they were thought to be back in May and June due to other facts that have come to light. Wendling recommended not to adopt the resolution but to have this matter addressed through the zoning amendment process. This goes back to Article VIII 10 d – “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.” Underneath it, it states about uses allowed when a Guest Activity permit is issued. We are trying to figure out if it is a paid event and the winery does not have a guest activity permit is the winery allowed to engage in that activity. Marie-Chantal Dalese, President and CEO of Chateau Chantal, stated in a letter “it is clear to me the intent of this interpretation. A winery-chateau without a guest use permit should not be hosting paid events until they have meet the requirements.” How do you have solid language that prevents that from occurring when a fee can be taken in so many different ways? Perhaps that language already cited is the main problem as opposed to what is outlined as being allowed with a Guest Activity Use. Some of the other wineries and members of the public have concerns about what is going on at a certain winery. That does need to be worked on regardless but a better route at this point is to allow a zoning amendment to work. Some of these businesses including some of the winery/chateaus have looked at this resolution and said it is not quite what we believe it to be as far as the activities they engage in. One thing that could be done is if you do not have a guest activity uses permit maybe hosting events could be something that the zoning ordinance is meant to prohibit. It would be a standard that is clear and easily understandable. The points raised by the letters from the wineries are well founded and the exigent circumstance requesting the interpretation has passed as there are other issues to address involving the winery in the township.

Wendling asked Marie-Chantal Dalese to express her understanding of what the difference is and what her winery has received as a result of obtaining a guest activity permit and how that differentiates from a winery that does not have such a permit.

Marie-Chantal Dalese, President and CEO of Chateau Chantal, said she does know if there is a need for further ordinance amendments to address this. There is fussiness regarding political rallies but it does seem clear the divide between what you can do with a guest use activity permit versus what can be done in the tasting room without a permit. The guest use activity permit for Chateau Chantal came about as a two sides coming to an agreement where no one was necessarily happy but that is the agreement which what we have now in the ordinance. Chateau Chantal built there model based on the ordinance. The types of guest use activities Chateau Chantal does must conform to the rules listed in the ordinance. Chateau Chantal has been successfully with the wine education component. The goal on the peninsula is to tie our wineries to agriculture. Chateau Chantal has been able to use this ordinance to promote and have successful guest use activities that use peninsula produce and follow the rules. Pass that there is the idea there are the B&B privileges. Also in the tasting room with no charge there can be things like Jazz at Sunset.

Reardon said the discussions the Zoning Board of Appeals has already had regarding this issue. After those discussions language was crafted to summarize the ZBA conclusions. When that resolution went out we heard from other winery/chateaus. This resolution may impact their business model which is

fully in compliance with the ordinance. What the conversation has done is point us to the direction of the Planning Commission so they can solidify this through the new ordinance or an amendment.

Cowall asked where does this leave staff with enforcement. **Reardon** said the conditions surrounding the issue are not as dire as they once were. It does not mean the problem has gone away completely but it means that several things have lead staff to believe perhaps this does warrant more of an amendment process rather than an interpretation. **Cowall** said he is comfortable to take no action tonight.

New Business

Township Board Report (Witkop)

Planning Commission Report (Wunsch) said he was unable to attend the July Planning Commission meeting.

Adjournment

MOTION: Wunsch/Witkop to adjourn at 8:22p.m. **MOTION PASSED**

Respectfully submitted by Deb Hamilton, Recording Secretary