

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

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

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal
corporation,

Defendant,

and

PROTECT THE PENINSULA, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-01008

HON. PAUL L. MALONEY
MAG. JUDGE RAY S. KENT

**INTERVENER PROTECT THE
PENINSULA'S REPLY
TO PLAINTIFFS' RESPONSE [521]
TO MOTION FOR PARTIAL
SUMMARY JUDGMENT [517]**

Joseph M. Infante (P68719)
Christopher J. Gartman (P83286)
Stephen Michael Ragatzki (P81952)
Miller, Canfield, Paddock
Attorneys for Plaintiffs
99 Monroe Ave., NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333
infante@millercanfield.com
gartman@millercanfield.com
ragatzki@millercanfield.com

Barry Kaltenbach
Miller, Canfield, Paddock
Attorneys for Plaintiffs
227 Monroe Street, Ste 3600
Chicago, IL 60606
(312) 460-4200
kaltenbach@millercanfield.com

Scott Robert Eldridge (P66452)
Miller, Canfield, Paddock
Attorneys for Plaintiffs
One E. Michigan Avenue, Ste 900
Lansing, MI 48933
(517) 487-2070
eldridge@millercanfield.com

Thomas J. McGraw (P48817)
Bogomir Rajsic, III (P79191)
McGraw Morris, P.C.
Attorneys for Defendant
2075 W. Big Beaver Road, Ste 750
Troy, MI 48084
(248) 502-4000
tmcgraw@mcgrawmorris.com
brajsic@mcgrawmorris.com

William K. Fahey (P27745)
John S. Brennan (P55431)
Christopher S. Patterson (P74350)
Fahey Schultz Burzych Rhodes PLC
Co-Counsel for Defendant
4151 Okemos Road
Okemos, MI 48864
(517) 381-0100
wfahey@fsbirlaw.com
jbrennan@fsbirlaw.com
cpatterson@fsbirlaw.com

Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Attorneys for Intervenor-Defendant
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
tjandrews@envlaw.com

Holly L. Hillyer (P85318)
Troposphere Legal, PLC
Co-Counsel for Intervenor-Defendant
420 East Front Street
Traverse City, MI 49686
(231) 709-4709
holly@tropospherelegal.com

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TO PLAINTIFFS’ RESPONSE [521]
TO MOTION FOR PARTIAL SUMMARY JUDGMENT [517]**

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Ex 1 Table of Winery Uses and Asserted “Enforcement” History

Ex 2 WOMP Postcard to Township Residents

Ex 3 June 2014 Tabone Small Wine Maker license application

Ex 4 October 2016 Tabone letter from Township to MLCC

Ex 5 February 2017 Tabone outdoor service request

Ex 6 2016 Bonobo Consent Judgments

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- *Moskovic v. City of New Buffalo*, 2023 U.S. App. LEXIS 33273 (6th Cir. Dec. 14, 2023)

I. INTRODUCTION

PTP intervened to defend longstanding zoning against Plaintiffs' sweeping attacks. (ECF 215) To that end, PTP's motion provides record evidence and precedential caselaw supporting its request to dismiss meritless claims and claimless or claim-expired Plaintiffs. Though Plaintiffs had four months to identify specific evidence and relevant caselaw opposing PTP's motion before filing their response, their response is a mishmash of unsupported and misleading generalities.¹ They failed to demonstrate genuine issues of material fact, now their First Amendment and regulatory takings claims must be dismissed.

Plaintiffs' pervasive replies to the Township response (ECF 519) should be disregarded: they fail to rebut PTP arguments, raise no genuine issues of material fact, and constitute improper reply unpermitted by rule or court order.² W.D. Mich. LCivR 7.2(c); ECF 515.

Plaintiffs repeatedly reference the prior summary judgment ruling that "guest activity use" (GAU) is unconstitutionally vague, raising it to support standing, First Amendment and takings claims, claim timeliness, and more. PTP maintains the term is not unconstitutionally vague. (ECF 308, 319) Regardless, that ruling is non-determinative of any issue in PTP's motion, which are all issues that either PTP raised for the first time (standing, takings, limitations) or were decided then vacated. *See Doe v. Univ. of Mich.*, 78 F.4th 929, 940 (6th Cir. 2023) (law of the case may govern "same issues" that were "squarely decided" in "same case"; it applies "only loosely" when courts reconsider their own decisions) (citations omitted).

¹ PTP could only address Plaintiffs' most egregious misrepresentations within word count limits but waives nothing.

² Plaintiffs' threat to slap PTP with attorney fees is frivolous. *Indep. Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754 (1989); *Heald v. Granholm*, 457 F.2d 790, 791-93 (E.D. Mich. 2006).

II. LEGAL STANDARD

Plaintiffs recite half the summary judgment standard – movant’s initial burden – but omit nonmovant’s response obligation to counter factual assertions with specific, affirmative, and significantly probative record evidence. Fed. R. Civ. P. 56(c)(a), (e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 252, 257 (1986). Summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *Id.* at 323-24.

III. FACTUAL BACKGROUND

Plaintiffs fail to rebut PTP’s substantial record evidence showing each Winery’s land uses and activities. Except Bonobo, they cite precisely two pages devoid of factual citation (PageID.4974-4975) from a stale Township brief, together with legal conclusions from a mostly-vacated order informed by that brief. By identifying literally no contrary facts, Plaintiffs concede PTP’s presentation of ten Wineries’ land uses is accurate. (**Ex 1**)

Given the evidence PTP presented on Bonobo’s land uses, including credible historic Township documents and Bonobo’s 30(b)(6) testimony, it appears Plaintiffs are intentionally misleading the Court. Uncontested facts establish Bonobo lacks an SUP authorizing GAUs:

- SUP 118 was operational only during construction, from May 2013 to November 2014;
- In November 2014, SUP 118 was amended at Bonobo’s request;
- First Amended SUP 118 didn’t authorize GAUs because Bonobo didn’t request GAUs;
- In 2015, Bonobo tried but failed to amend First Amended SUP 118 to authorize GAUs;

- In 2017, Bonobo agreed to *not* apply for GAU authorization until conditions were met;
- Bonobo testified it never since requested an SUP amendment to authorize GAUs; and
- The Township never amended First Amended SUP 118 to authorize GAUs.

(ECF 517, PageID.20028-20030; ECF 457, PageID.16067-16068; ECF 499, PageID.19288)

Bonobo produced prior consistent judgments in discovery. (Ex 6) Plaintiffs quote the since-amended 2013 SUP then 2019 *emails* suggesting Township staff were mistaken about Bonobo authorizations.³ Only Bonobo’s approved SUP “shall constitute the land use authorization for the property,” and only the Township Board can amend SUPs. PTZO 8.1.2(3), (6); *Moskovic v. New Buffalo*, 23 U.S. App. LEXIS 33273 n. 4 (6th Cir. Dec. 14, 2023) (disregarding municipal staff testimony contravening ordinance text). There is no genuine issue of material fact that Bonobo lacks GAU authorization.

Plaintiffs vacuously assert that the Township enforces zoning. Cross-referencing the Court’s reference to Plaintiffs’ so-called “enforcement” list in an order addressing finality and mootness is non-probative and unresponsive to PTP’s motion. *See Doe, supra*.

IV. ARGUMENT

A. The Michigan Right to Farm Act (RTFA) proves nothing relevant.

PTP acknowledges the PTZO allows commercial activity associated with traditional agriculture in A-1, like winemaking and tasting rooms. Plaintiffs invent PTP’s anti-commercial position then invoke the RTFA and regulations to refute it. This case is not about hayrides or farm markets or game breeding, and Plaintiffs identify nothing in the RTFA or Farm Market GAAMPs refuting anything PTP actually asserted.

³ Mistakenly *allowing* non-authorized activities doesn’t injure Bonobo.

The personal beliefs of PTP members, winery owners, and Township staff about what commercial activity should be allowed in A-1 versus the commercial district are irrelevant as the PTZO speaks for itself and identifies permissible land uses in each district. *Dezman v. Bloomfield Charter Twp.*, __ Mich. __, 997 N.W.2d 42 (2023); *Moskovic, supra*.

PTP defends the PTZO to maintain the status quo, which reflects the delicate balance of interests of local residents, farmers, wineries, visitors, and others achieved through planning, zoning, and democratic processes over three decades. Plaintiffs, not PTP, now ask the Court to change the PTZO to their liking. (*See Ex 2*, Wineries collectively asked Township for ordinance changes since 2008)

B. Many Plaintiffs lack standing.

Plaintiffs misrepresent standing law. At summary judgment, *plaintiffs* must establish there exists no genuine issue of material fact as to standing. *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 329 (1999). After years of allegations, Plaintiffs must now prove facts.

Plaintiffs invoke parts of two prior orders: one non-relevant, one vacated in relevant part, neither establishing standing. First is ECF 319. Pre-discovery, in requesting reconsideration of the decision to not vacate parts of the prior summary judgment order on Commerce Clause claims, PTP flagged standing problems for some Plaintiffs not subject to local produce restrictions as an example of a defense it would raise that the Township hadn't. (ECF 308, PageID.11208-11209) The Court concluded that Bonobo, Grand Traverse, and Tabone had standing to pursue Commerce Clause claims based on the legal standard for reconsideration, Plaintiffs' response, and the under-developed record before it. (ECF 319, PageID.11888)

Second is ECF 162. In its prior summary judgment order, the Court declared which Plaintiffs had standing to assert claims based solely on complaint allegations. (ECF 162, PageID.5984 n. 4-6, PageID.5985 n. 7, citing ECF 29). The Court subsequently vacated the parts of that order related to First Amendment claims. (ECF 301, PageID.10698; ECF 319, PageID.11882) The Court never previously considered any Plaintiff's standing to assert regulatory takings claims. (ECF 162, PageID.6025-6027) Neither order establishes genuine issues of material fact as to standing.

1. Plaintiffs misrepresent the Bonobo and Black Star conservation easements.

Plaintiffs begin their conservation easement argument by citing the wrong law. The Black Star and Bonobo easements are part of the Township's Purchase of Development Rights (PDR) program and ordinance, not Michigan's Farmland and Open Space Preservation Program at MCL 324.36101 *et seq.* (ECF 519-1; ECF 457-10, 11, 12)

Plaintiffs then misstate PTP's position and argue the wrong points. PTP does not suggest the easements prohibit all commercial activity or agricultural enterprise – they plainly contemplate limited commercial activities closely related to farming, like selling farm-grown fruit and making wine “provided a majority of [grapes] processed are grown by the Grantor's farm operation.” (ECF 457-11, PageID.16221; ECF 457-10, PageID.16205-16206) It is Plaintiffs who misunderstand their easement terms, which “specifically delineate” “permitted activities.” (ECF 457-10, 11, 12) It matters not what PTP, Plaintiffs, state agencies, GAAMPs, or even the PTZO consider principal, accessory, commercial, or acceptable uses; it matters what the easements say. Plaintiffs identify no easement language allowing commercial weddings, limitless retail, bars, restaurants, caterers, and similar uses.

Plaintiffs rely on inapplicable cases addressing negative restrictive covenants and deed restrictions then misstate their holdings: those restrictions, like easements, are construed by their terms, with ambiguity favoring the *grantee* against the *grantor*. *See, e.g., Boston-Edison Protective Assoc. v. Paulist Fathers, Inc.*, 306 Mich. 253, 258; 10 N.W.2d 847 (1943); *Flajole v. Gallaher*, 354 Mich. 606, 610; 93 N.W.2d 249 (1958); *Blackhawk Dev. Corp. v. Dexter Village*, 473 Mich. 33, 41-42; 700 N.W.2d 364 (2005) (easement grantee rights are “paramount to those of the owner of the soil”) (citations omitted).

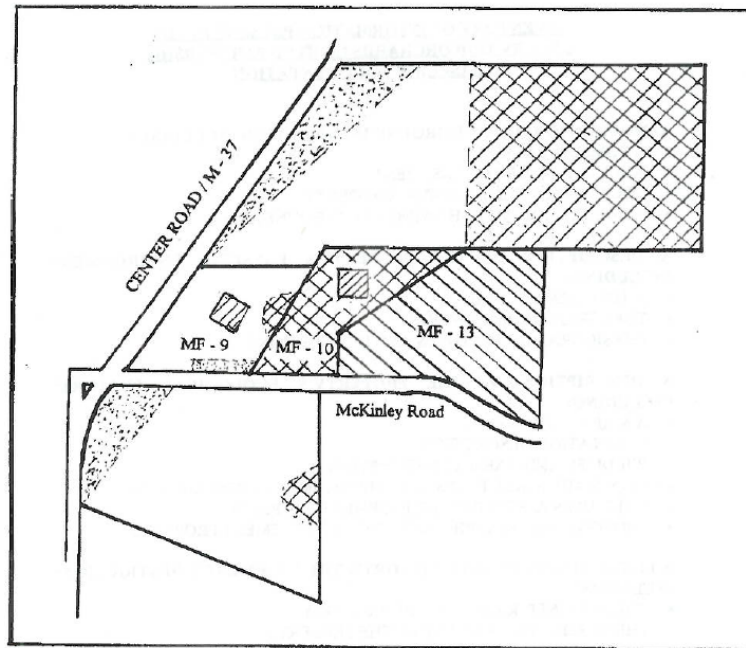
Plaintiffs offer no evidence creating a genuine issue of material fact with respect to the presence and effect of conservation easements on the Black Star and Bonobo properties. That the Township Board found a Winery-Chateau to be an agricultural use in approving Bonobo’s original SUP is irrelevant to whether the *expanded* activities Bonobo and Black Star seek through this litigation would be permitted under their easements for redressability purposes. By the easements’ plain terms, they would not.

Plaintiffs misstate Black Star’s Land Use Permit, which did *not* permit “Retail sales/Tasting” (ECF 517-30):

<u>Retail sales / Tasting</u>	
NONE	<i>ASU</i>
Gordon L. Uecker	Date
Peninsula Township Zoning Administrator	

Plaintiffs mislead the Court about Black Star’s winery building being subject to the easement. Beyond the easement, which speaks for itself, Lee Lutes volunteered that he knew “there is an easement on the [Black Star] land.” (ECF 517-27, dep 13) He then referred to Black Star being on “easement protected land” with “an existing building that was essentially set up for fruit

processing.” (*Id.*, dep 26) Plaintiffs quote Mr. Lutes discussing this map (ECF 457-10, PageID.16216):



to cast doubt on the easement location but omit his testimony confirming, after reviewing this map (ECF 519-3):



that the “winery processing building” is on parcel 11-030-006-35 – a parcel subject to the easement. (*Id.*, dep 31-33; ECF 457-10; ECF 519-3)

2. Tabone remains a Food Processing Plant.

Mario Tabone’s self-serving and uncorroborated testimony that Tabone operates a Farm Processing Facility proves nothing. *See Mitchell v. Toledo Hospital*, 964 F.2d 577, 584 (6th Cir. 1992) (“conclusory allegations and subjective beliefs . . . are wholly insufficient evidence” for summary judgment); *Evans v. Technologies Applications & Service Co.*, 80 F.3d 954, 962 (4th Cir. 1996) (“self-serving opinions without objective corroboration [are] not significantly probative”). A by-right Farm Processing Facility doesn’t require a SUP but expressly requires a land use permit. PTZO 4.1.3(1); 6.7.2(19)(b)(14)(IV), (V) (permits required). Tabone knows this and applied for one and for a variance needed to obtain that permit, then withdrew its variance

application and told the Township it would operate under Food Processing Plant SUP 73. (*See* ECF 517-64, 517-65)

It is demonstrably false that the Township “approved Tabone for an on-premises tasting room to allow Tabone to serve wine” and that “the Township notified the MLCC that it had approved Tabone for on-premises tasting of wine.” (ECF 521, PageID.20914) Tabone’s Small Wine Maker license application approved by the Township contains no mention of on-premises tasting. (ECF 517-67; **Ex 3**). In an October 2016 letter to the MLCC clarifying Tabone’s address, the Township noted how its September 2016 approval corresponded with Tabone’s SUP, which does not include tasting. (**Ex 4**; ECF 32-2) Tabone asked the MLCC for outdoor service in February 2017 (**Ex 5**) and an On-Premises Tasting Room permit in January 2019 (ECF 517-69) but provides no evidence the *Township* was notified of these requests. Tabone has never sought or obtained zoning approval for tasting or outdoor service on its property.

Township briefing in ECF 142 and 143 is neither binding “judicial admissions” nor basis to disregard substantial, credible evidence that Tabone lacks a Farm Processing Facility permit. Those briefs were neither stipulation nor pleading, PTP wasn’t a party, and Tabone’s status was uncontested. *See Brown v. Tenn. Gas Pipeline Co.*, 623 F.2d 450, 454 (6th Cir. 1980); *MacDonald v. GMC*, 110 F.3d 337, 340 (6th Cir. 1997) (judicial admissions require “deliberate voluntary waivers”); *PPX Enters. v. Audiofidelity, Inc.*, 746 F.2d 120, 123 (2nd Cir. 1984) (“[T]he parties may not create a case by stipulating to facts which do not really exist. A district court is entitled to disregard a stipulation if to accept it would be manifestly unjust or if the evidence contrary to the stipulation is substantial.”) (internal quotation, citation omitted).

3. Most Plaintiffs present no proof they were subjected to challenged provisions.

After criticizing PTP for a “superficial” standing argument,⁴ Plaintiffs fail even to articulate which has standing to challenge each provision. Plaintiffs present no facts rebutting PTP’s evidence that only two Winery-Chateaus (Chantal, Mari) were ever subjected to 8.7.3(10)(u), although all claim injury from it. (ECF 457-4; **Ex 1**)

Plaintiffs misplace reliance on their finality evidence. If, *e.g.*, Farm Processor Two Lads achieved finality, that’s not proof of standing to challenge Winery-Chateau provisions. (ECF 518, PageID.20735; ECF 457-4, PageID.16129)

Plaintiffs invoke cases where plaintiffs had standing to challenge the constitutionality of *threatened* government censure. *See, e.g., MacDonald v. Safir*, 206 F.3d 183, 189 (2d Cir. 2000) (unnecessary to request discretionary parade permit before challenging its constitutionality). The threat was injury enough. But Plaintiffs challenge provisions that don’t threaten them because they aren’t subject to them. The existence of 8.7.3(10)(u) threatens no more injury to Grand Traverse or Peninsula Cellars than 8.7.2(1) (incinerators, sanitary fills), yet both allege injury from 8.7.3(10)(u). (ECF 457-4, PageID.16084-16085, 16118-16119)

Plaintiffs say they challenge “the entire scheme requiring them to apply for and receive approval for guest activity uses,” but that’s not their case. They pursued invalidation of specific provisions governing *how* GAUs may be conducted by those authorized to host them. It is undisputed that only Winery-Chateaus can obtain SUPs authorizing GAUs, only five Winery-Chateaus did so, and only two actually conducted GAUs under their SUPs.⁵ (**Ex 1**)

⁴ PTP supported its concise standing argument with 17 pages summarizing over 60 exhibits.

⁵ The Township apparently let Bonobo conduct some GAUs but Amended SUP 118 doesn’t authorize them. (ECF 457-13)

Contrary to Plaintiffs' assertion, the two Winery-Chateaus with GAU authorization in their SUPs understood what "guest activity uses" meant back in 2016, when they opposed a request for the Zoning Board of Appeals to interpret it:

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 their 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 successful 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.

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 Response to PTP Req. to Prod. 004426

(ECF 499-13, 499-14)

Plaintiffs' reply to the Township's redressability argument is improper and futile. Invalidating 8.7.3(10)(u) redresses nothing as Plaintiffs' grievances arise from their A-1 zoning

location, not provisions authorizing additional activities. Plaintiffs' latest theory that their proposed activities are accessory farming uses is premature before first presenting it for Township consideration, and they provide neither precedent nor reason supporting that weddings-for-hire and commercial events venues are customarily incidental to farming. PTZO 3.2, 5.7.2(3).

C. Plaintiffs fail to sustain their First Amendment claims with evidence and precedent.

1. Plaintiffs show no speech impairment.

Plaintiffs pretend PTP opposes "[a] farm [being] allowed to sell the products it grows," then offer irrelevant observations about principal and accessory uses. (ECF 521, PageID.20918) If Plaintiffs were content to process and sell what they grow, as the PTZO has long allowed, they would not have brought this lawsuit. Plaintiffs seek to sell what they do *not* grow – event space and services, restaurant-style meals, generic non-agricultural merchandise, and wine made from grapes outside the Old Mission Peninsula American Viticultural Area.

PTP doesn't concede that the PTZO would fail *Central Hudson* scrutiny and provided 18 pages refuting Plaintiffs' meritless arguments to the contrary in response to Plaintiffs' summary judgment motion. (ECF 488, PageID.18922-18940) *Central Hudson* applies to restrictions on protected speech; it has no place in a motion seeking dismissal of claims involving no speech.

Plaintiffs cite cases distinguishing between commercial speech and other forms of speech but **not one** supporting their novel theory that commercial *activity* – *i.e.*, agritourism⁶ – is commercial speech. Here is a sample: *Jordan v. Jewel Food Stores, Inc.* 743 F.3d 509, 511 (7th Cir. 2014) (print advertisement is commercial speech), *Conn. Bar Ass'n v. U.S.*, 620 F.3d 81, 94-95 (2nd Cir. 2010) (advertising and mandatory disclosures are commercial speech); *First Resort*,

⁶ Characterizing commercial weddings as agritourism is unavailing. (ECF 488, PageID.18924-18930)

Inc. v. Herrera, 860 F.3d 1263, 1271-74 (9th Cir. 2017) (false and misleading advertising is commercial speech).

The case Plaintiffs cite for their assertion that speech need not involve words supports PTP's position, rejecting a free speech claim for lack of evidence that the regulated conduct was expressive. *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 161 (3rd Cir. 2002). The case they cite for the proposition that amplified music is commercial speech concerned application of an anti-peddling ordinance to *ice cream trucks* playing music to advertise and announce their arrival. *Anabell's Ice Cream Corp. v. Town of Glocester*, 925 F.Supp. 920 (D.R.I. 1996). Plaintiffs complain about PTZO provisions unrelated to advertisements – musical or other.

Plaintiffs reference *Alive Church of Nazarene, Inc. v. Prince William County* for the proposition that agritourism supports agriculture, but that does not make agritourism speech. 59 F.4th 92 (4th Cir. 2023). Plaintiffs then try to distinguish PTP cases and invoke MDARD policy encouraging agritourism. But Plaintiffs still don't identify a single case to support their radical theory that any commercial activity intended to increase sales is protected by the First Amendment.

Plaintiffs rehash their content-based restrictions, prior restraint, and compelling speech arguments from their summary judgment motion, which PTP thoroughly rebutted (ECF 488), and continue to rely on their misinterpretation of 8.7.3(10)(u)⁷ and misrepresented and inconsequential deposition testimony from Township staff.⁸ They falsely claim PTP presented no evidence of events the Township permitted, when PTP presented documents and deposition testimony from each Plaintiff detailing countless examples including live music at many wineries and hundreds of GAUs at Chateau Chantal and Mari. (See, e.g., ECF 517-10 dep 28, 29-32; ECF 517-13 to 517-

⁷ Addressed at ECF 488, PageID.18944-18946.

⁸ Addressed at ECF 488, PageID.18917-18919, PageID.18948.

16; ECF 517-46; ECF 517-53 dep 54-57, 93-98; ECF 517-56) They introduce an unconstitutional conditions argument regarding compelling speech but fail to support it with evidence that any Plaintiff refrained from seeking or conducting GAUs because it did not want to promote itself.

2. Plaintiffs abandoned their Freedom of Religion claim.

PTP is now entitled to summary judgment on each Plaintiff's claim with prejudice.

3. Plaintiffs' free association is unimpaired by challenged zoning.

It is undisputed that zoning imposes no limits on who Wineries may host in tasting rooms, including political rallies and religious organizations. Plaintiffs hypothesize that two PTZO subsections could prevent Winery-Chateaus from privately hosting certain groups – potentially protected classes, citing speculations by a PTP member and Winery owner. They provided no evidence in discovery nor their response of historic enforcement connecting speculation to reality. *See Anderson, supra*, at 249-50 (non-movant must present “significantly probative” evidence to stave off summary judgment). They identify no caselaw indicating the First Amendment guarantees businesses the right to host any type of commercial gathering and fail to counter the substantial caselaw confirming commercial association may be limited. They even concede their claim is superfluous. The Court should dismiss this claim.

D. Without vested property rights and evidence of damages, Plaintiffs' regulatory takings claims fail.

After PTP intervened, Plaintiffs pivoted from regulatory takings claims based on traditional real property devaluation to ones based on lost profits from liquor-license-related activities. (ECF 146, PageID.5747-5748; ECF 457-4) They might have shifted because they are non-landowners

or to monetize their preemption claims. (ECF 323, PageID.11908; ECF 469, PageID.16949 n. 1) Their response to PTP’s motion confirms their theory is novel and unsupported, even frivolous.

The “property rights” supposedly taken are neither real property nor MLCC wine-making licenses. Instead, Plaintiffs assert wine-making licenses “contain the right” to late hours, commercial kitchens for catering and restaurants, and music amplification, citing MLCC statutes and rules. Their newly-invented takings theory requires this Court to take multiple unsupported leaps: first, that state wine-making licenses also “contain the right” to activities the Liquor Commission tolerates but doesn’t license (*e.g.*, licensees hosting music, operating restaurants, serving liquor until 2 a.m.); and second, that these activities are “vested property rights.” *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 455; 952 N.W.2d 434 (2020) (to assert taking of personal intangible property, “claimant must first establish a vested property right under state law”) (citation omitted); *Moskovic, supra*, at 13; *Long v. Liquor Control Comm.*, 322 Mich. App. 60, 68-69; 910 N.W.2d 674 (2017). Plaintiffs cite two cases recognizing rudimentary procedural due process protects holders of liquor licenses. *Wojcik v. Romulus*, 257 F.3d 600 (6th Cir. 2001); *Bisco’s Inc. v. MLCC*, 395 Mich 706, 238 N.W.2d 155 (1976). But they cite none recognizing vested property rights in other things licensees might do. *See Wojcik, supra* at 609-611 (no property interest in expectation of MLCC entertainment permit); *Long, supra*.

Plaintiffs’ liquor licenses do not guarantee late operations. (ECF 525, PageID.21129-21133) Winemakers lack entitlement to restaurant or food-catering permits, which must be issued by the local health department. MCL 436.1536(7)(h); MCL 436.1111(5); MCL 289.1101 *et seq.* Plaintiffs identify no property right in music *amplification*, which is allowed in tasting rooms. *Cf.* ECF 525, PageID.21133. Zoning doesn’t prevent licensees from having MLCC catering permits

to distribute wine offsite; Bonobo has one unimpaired by zoning. (ECF 334, PageID.12021-12022) Plaintiffs lack vested property rights in these activities.

Plaintiffs resist summary judgment by invoking evidence they refused to disclose to PTP. Pre-discovery, PTP sought access to Plaintiffs' expert report documenting each Winery's "lost profits," which Plaintiffs opposed and the Court denied. (ECF 326, 339, 345) Now, Plaintiffs cite their secret expert report to defend their takings claims. (ECF 521, PageID.20937, n. 9) Plaintiffs' secret "lost profit" evidence is inadequate to prove substantially diminished property values with appropriate certainty. *See Andrus v. Allard*, 444 U.S. 51, 66-67 (1979). It is doubly useless without comparative evidence of retained profits from authorized activities, which is also secret. *See Murr v. Wisconsin*, 582 U.S. 383, 394 (2017) (regulatory takings test requires comparing value taken with value remaining) (citations omitted).

Plaintiffs were always on notice their winemaker's licenses required compliance with zoning, a long-standing background state law principle, further undermining the property interests they now assert. ECF 356-1; *Andrews v. City of Mentor*, 11 F.4th 462, 472 (6th Cir. 2021) (citations omitted).

The Court should decline Plaintiffs' invitation to invent new Michigan property rights then find them substantially devalued based on disfavored "lost profits" evidence that they kept secret.

E. Nine Wineries⁹ sat on their rights so their claims are time-barred.

PTP's argument that Count II (as-applied free speech claims) is untimely isn't "mooted" by Plaintiffs' declaration they are limiting damages to post-October 2017. Plaintiffs cite no law

⁹ PTP requested summary judgment on all except Bowers and Hawthorne. Plaintiffs' attempt to also save Tabone fails because its Small Winemaker license issued March 8, 2017. (ECF 517-68)

suggesting otherwise-untimely First Amendment claims under Section 1983 become unbarred if the plaintiff self-imposes such a limitation. It is undisputed nine Plaintiffs knew of their supposed injuries long before October 2017. (**Exs 1, 2**)

Plaintiffs' claims are different than in *Kuhnle Brothers, Inc. v. Geauga County*, where a road restriction continued to deprive the plaintiff of liberty to travel within the limitations period. 103 F.3d 516, 521-22 (6th Cir. 1997) *Kuhnle* never invoked First Amendment rights, and Peninsula Township never restrained Plaintiffs' liberty.

Plaintiffs don't dispute their First Amendment claims accrued when the challenged provisions were first applied to them. Their retort is continued Township "enforcement" of challenged provisions saves their claims, invoking the "continuing violations" doctrine. PTP cited multiple cases rejecting this narrow doctrine in First Amendment cases, and Plaintiffs cite zero cases applying "continuing violations" to save tardy free speech claims. *3570 E. Foothill Blvd, Inc. v. Pasadena* is inapposite here. 912 F. Sup. 1268 (C.D. Cal 1995) (facial First Amendment challenge did not accrue upon ordinance passage; challenge brought within one year after long-standing rule first applied to plaintiff wasn't untimely).

Plaintiffs vaguely assert they submitted "dozens of examples of enforcement," but their response identifies none. Nor did they identify *any* facts supporting the timeliness of their claims through enforcement or otherwise in discovery. (ECF 457-4) Plaintiffs have never identified specific record evidence proving new injuries nor affirmative Township conduct violating each of these nine Plaintiffs' First Amendment rights post-October 2017. Their case is that their claims stay timely so long as the provisions remain "in force" (*i.e.*, not *sua sponte* repealed).

Plaintiffs sweepingly dismiss cases rejecting continuing violations as involving “discrete harms” or acts with “a singular effect,” but all involved pre-limitations acts with continuing post-limitations effects – precisely as Plaintiffs assert here.

Applying the statute of limitations to bar nine Plaintiffs’ First Amendment claims does not “forever immunize[]” challenged provisions from judicial review. Bowers and Hawthorne remain free to challenge these provisions because they first applied to these Plaintiffs in SUPs 132 and 135 respectively, thus their claims accrued in the limitations period. (Ex 1) Bowers and Hawthorne are like gun owners challenging laws first enacted in 1905 but not applied to them until 2017 (*New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 16 (2022)), or black students first subjected to discriminatory school policy within the limitations period. *Palmer v. Board of Education*, 46 F.3d 682, 685 (7th Cir. 1995) (class action challenging school closures timely since some class members “suffered their initial injuries” within the limitations period). Like *Bruen* and *Palmer*, new application of the ordinances injured new plaintiffs, starting a new period to sue. But unlike *Palmer*, this is no class action; Hawthorne’s timely claims don’t save Mari’s.

Plaintiffs’ gymnastics to redeem the timeliness of their creative takings claims are unavailing. Any injury zoning inflicted on the nine time-barred Plaintiffs’ non-existent vested property rights was complete and actionable pre-October 2017.

Because nine Plaintiffs waited too long to redress their constitutional injuries, their untimely claims must be dismissed.

IV. CONCLUSION

For the reasons discussed above and its motion, PTP respectfully requests the Court grant summary judgment in its favor.

Respectfully submitted,

Date: March 4, 2024

By: /s/ Tracy Jane Andrews
Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Attorneys for Intervener
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
tjandrews@envlaw.com

Date: March 4, 2024

By: /s/ Holly L. Hillyer
Holly L. Hillyer (P85318)
Troposphere Legal, PLC
Co-Counsel for Intervenor-Defendant
420 East Front Street
Traverse City, MI 49686
(231) 709-4709
holly@tropospherelegal.com

CERTIFICATE OF SERVICE

I, Tracy Jane Andrews/Holly Hillyer, hereby certify that on the 4th day of March, 2024, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

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

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(c)

This Brief complies with the word count limit of W.D. Mich. LCivR 7.2(c). This brief was written using Microsoft Word version 2016 and has a word count of 4,285 words.

Respectfully submitted,

Date: March 4, 2024 By: /s/ Tracy Jane Andrews
Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Attorney for Intervener
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
tjandrews@envlaw.com

Date: March 4, 2024 By: /s/ Holly L. Hillyer
Holly L. Hillyer (P85318)
Troposphere Legal, PLC
Co-Counsel for Intervener
420 East Front Street
Traverse City, MI 49686
(231) 709-4709
holly@tropospherelegal.com

WINERY SUMMARY TABLE

EXHIBIT 1
Page 1 of 1

Winery	Permits	Special limits and permissions	Guest Activity Uses	"Enforcement" history
Chateau Grand Traverse (W-C)	SUP 24 - 1990 SUP 66 - 1999 SUP 94 - 2004	Outdoor functions until 10:30 p.m. with up to 75 attendees; more with special permit	No	None
Chateau Chantal (W-C)	SUP 21 - 1990 SUP 95 - 2004 SUP 114 - 2010 SUP 114 1st Am - 2014	Weddings and events for overnight B&B guests. PTZO 8.7.3(10)(m)	Yes (SUP 95 - 2004) - hosts regularly	None
Bowers Harbor (W-C)	SUP 32 - 1992 ("Food Processing Plant/Winery") SUP 32 1st Am - 2010 ("Special Open Space Use") SUP 132 - July 2019 (W-C)	SUP 32 1st Am - "Dining in the Vines" SUP 132 - Variance from 50-acre requirement	Maybe (SUP 132 - 2019; unclear if/when conditions met for SUP 132 to take effect)	None Numerous incidents (2014-2019) relate to non-challenged SUP 32 / PTZO 8.7.2(3). (ECF 488, PageID.18945-18946; ECF 499, PageID.19289)
Peninsula Cellars (RWTR)	SUP 62 - 1998		N/A	One letter (2021) grounded in lack of authorization for amplified music in SUP 62. (ECF 499, PageID.19289)
Brys (W-C)	FPF - 2005 SUP 115 - 2011 SUP 115 1st Am - 2012 SUP 115 2nd Am - 2014 SUP 115 3rd Am - 2018 SUP 115 4th Am - 2018	Weddings and events for overnight B&B guests. PTZO 8.7.3(10)(m)	Yes (SUP 115 - 2011) - has never hosted	One exchange (2019) relates to tonnage under 8.7.3(10)(u)(3) (ECF 487-13); one exchange (2022) relates to non-challenged attendee limits and lack of tent authorization in SUP 115 (ECF 487-29; ECF 499, PageID.19289; ECF 517, PageID.20023)
Black Star (FPF)	FPF permit - 2007	Conservation easement; variance from 6,000 square foot limit allowing 12,000 square foot winery	N/A	None
Two Lads (FPF)	FPF permit - 2007		N/A	Two exchanges (2014) involving events (ECF 488, PageID.18946; ECF 517, PageID.20027)
Hawthorne (W-C)	FPF - 2013 SUP 135 - 2020		Yes (SUP 135 - 2020) - has never hosted	None
Bonobo (W-C)	SUP 118 - 2013 SUP 118 1st Am - 2014	Conservation easement; SUP modifies application of 8.7.3(10)(m) to allow meetings and special dinners for non-registered guests	No (Denied, ECF 457-6 PageID.16195)	Three citations (2016) for hosting unauthorized GAUs (ECF 457-8); four exchanges (2019) involving informal interpretations of "entertainment" under 8.7.3(10)(u)(1)(d) (ECF 487-16, 487-22, 487-23, 487-25); one exchange (2020) related to non-challenged service of spirits in violation of SUP (ECF 487-27); one exchange (2021) relate to non-challenged construction of unauthorized structure (ECF 78-10)
Mari (W-C)	FPF - 2014 SUP 126 - 2016	All GAUs must be indoors and limited to 50 attendees	Yes (SUP 126 - 2016) - hosts regularly	One exchange (2019) related to non-challenged number of attendees for GAU (ECF 487-14); one exchange (2019) about using Oregon wines to promote Peninsula agriculture under 8.7.3(10)(u)(1)(b) (ECF 487-24); one exchange (2019) involving informal interpretation of "entertainment" under 8.7.3(10)(u)(1)(d) (ECF 487-15)
Tabone (Food Processing Plant w/ unauthorized tasting room)	SUP 73 - predates Tabone		N/A	None

FPF - Farm Processing Facility
GAU - Guest Activity Use
RWTR - Remote Winery Tasting Room
SUP - Special Use Permit
W-C - Winery-Chateau

EXHIBIT 2
Page 1 of 2



**OLD MISSION
PENINSULA**
Wine trail

15900 Rue de Vin, Traverse City, MI 49686

PRSRT MKT
ECRWSS
U.S. POSTAGE
PAID
TRAVERSE CITY, MI
PERMIT NO. 335

**For over 50 years, wineries have had a
positive impact on Old Mission Peninsula...**

Local Postal Customer

EXHIBIT 2
Page 2 of 2

The Old Mission Peninsula Wineries...

Farm 1540 acres of pristine Old Mission farmland, preserving our agricultural heritage

Contribute over \$650,000 annually in property and personal property tax

Employ hundreds of people, utilizing local businesses and fellow farms as vendors and partners

Since 2008, the wineries have collectively asked our township officials for a clear winery ordinance that all can understand, and which mitigates noise, traffic and other impacts to our shared township. A great rift amongst neighbors now exists due to a lack of understanding about what wineries are seeking in a lawsuit against Peninsula Township.

The wineries seek...



Fairness

We seek a clear and practical resolution without influence from private interest groups.



Conclusion

We want a conclusion that preserves our legal and constitutional rights.



Preservation

Allowing agritourism to thrive preserving precious farmland for generations.



Be informed, get the facts of the case

by visiting ompwinetrail.com/lawsuit-info

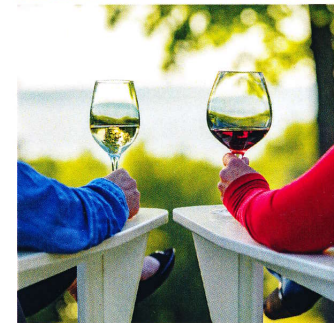


EXHIBIT 3
Page 1 of 4

Print Form



Michigan Department of Licensing and Regulatory Affairs
LIQUOR CONTROL COMMISSION (MLCC)
7150 Harris Drive, P.O. Box 30005 - Lansing, Michigan 48909-7505

FOR MLCC USE ONLY

APPLICATION FOR NEW LICENSES, OR APPLICATION OF BUYERS FOR TRANSFER OF OWNERSHIP OR INTEREST IN LICENSE

Instructions: This application must be completed and returned with a \$70.00 inspection fee for each license before it can be considered. All answers must be typed or printed. Sign the completed form in ink and return it to the Commission with the inspection fee. MAKE ALL CHECKS OR MONEY ORDERS PAYABLE TO "STATE OF MICHIGAN".

4036-19683180-1 061614 - \$70.00

1. Applicant Identification - all applicants		
Name of individual, partnership, corporation or limited liability company who will hold the license: Tabone Vineyards, LLC		Contact Person Name: Mario A. Tabone
Business Street Address: 15000 Peninsula Dr		Street Address: [REDACTED]
City / State / Zip Code: Traverse City, MI 49686		City / State / Zip Code: Plymouth, MI 48170
Township: Peninsula Township	County: Grand Traverse	Business Phone No. +1 (734) 354-7271 Home Phone No. +1 (734) [REDACTED]
<input checked="" type="checkbox"/> New License <input type="checkbox"/> Transfer of Ownership - NAME of current Licensee: _____ <input type="checkbox"/> New Permit <input type="checkbox"/> Transfer Location From ADDRESS: _____ TOWNSHIP and COUNTY: _____ <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Add Partner <input type="checkbox"/> Drop Partner <input type="checkbox"/> Add Space <input type="checkbox"/> Stock Transfer </div> <div style="width: 30%;"> <input type="checkbox"/> Transfer Status from Individual or <input type="checkbox"/> Limited Partnership to a Corporation <input type="checkbox"/> Drop Space <input type="checkbox"/> Other : _____ </div> <div style="width: 30%;"> <input type="checkbox"/> Transfer Classification <input type="checkbox"/> Tavern to Class C <input type="checkbox"/> Class C to Tavern <input type="checkbox"/> B-Hotel to Class C <input type="checkbox"/> Class C to B-Hotel </div> </div>		
3. Retail Applicants - (All existing permits will be included with a transferred license unless cancelled in writing)		
3a. Check Type of License		3b. Check Type of Permits
<input type="checkbox"/> SDM	<input type="checkbox"/> SDD	<input type="checkbox"/> Sunday Sales Before or After Hours For: _____
<input type="checkbox"/> Class C	<input type="checkbox"/> Resort Class C	<input type="checkbox"/> Add Bar
<input type="checkbox"/> A-Hotel	<input type="checkbox"/> Resort A-Hotel	<input type="checkbox"/> Dance
<input type="checkbox"/> B-Hotel	<input type="checkbox"/> Resort B-Hotel	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Tavern	<input type="checkbox"/> Resort Tavern	<input type="checkbox"/> Direct Connection <input type="checkbox"/> Outdoor Service <input type="checkbox"/> Topless Activity
<input type="checkbox"/> Club	<input type="checkbox"/> Resort G-1	<input type="checkbox"/> Living Quarters
<input type="checkbox"/> G-1	<input type="checkbox"/> Resort G-2	
<input type="checkbox"/> G-2	<input type="checkbox"/> Other: _____	
4. New Manufacturer or Wholesale Applicants (Check one)		
<input type="checkbox"/> Wholesaler	<input type="checkbox"/> Brewer	<input type="checkbox"/> Manufacturer of Mixed Spirit Drinks
<input type="checkbox"/> Wine Maker	<input type="checkbox"/> Manufacturer of Spirits	<input type="checkbox"/> Outstate Seller of Mixed Spirit Drinks
<input checked="" type="checkbox"/> Small Wine Maker	<input type="checkbox"/> Industrial Manufacturer	<input type="checkbox"/> Outstate Seller of Wine
<input type="checkbox"/> Wine Maker Wine Tasting Room	<input type="checkbox"/> Warehouse	<input type="checkbox"/> Outstate Seller of Beer
<input type="checkbox"/> Micro Brewer	<input type="checkbox"/> Brewpub	<input type="checkbox"/> Other: _____
5. Names of Current Licensees: _____		
6. Current Licensed Address: _____		
7. Proposed Licensed Address: 15000 Peninsula Dr., Traverse City, MI 49686		
8. Briefly describe this business, for instance - Drug Store, Restaurant, Party Store, Wholesaler, Wine Maker, Etc.		
small wine maker		

PTP0003354

EXHIBIT 3
Page 2 of 4**9. This proposed licensed business will be owned by: (check one)**

- ☐ Me as the individual owner ☐ The named corporation ☒ The named Liability company
- ☐ The following partners (indicate limited partners with an "L" before their name)

Partnership Information: (attach additional sheet if necessary)

Name of Partners	Home Address	Phone Number

* All general partners must complete & submit an LC 621, "Individual, General Partner, Stockholder or Member Questionnaire."
All limited partners must complete & submit an LC 38, "Limited Partner, Stockholder or Member Statement."

10. Personal Information - Individual Applicants and Partnership Members OnlySex ☒ M Height Weight Hair Color brown Eye Color brownDate of Birth Place of Birth Social Security No. If you are not a US Citizen - Are you a registered alien? ☐ Yes ☐ No Or, Do you have a Visa? ☐ Yes ☐ NoFull name of spouse: Have you ever legally changed your name? ☐ Yes ☒ No If Yes, FROM TO Have you been known by other names? ☐ Yes ☒ No List names: Have you ever been arrested? ☐ Yes ☒ No If Yes, list all arrests, excluding minor traffic offenses (include alcohol arrests):

DATE	PLACE	CHARGE	DISPOSITION

List your former occupations for the past 3 years:

* attach additional sheet if necessary

From-To DATES mm-dd-yyyy format	OCCUPATION	EMPLOYER NAME AND ADDRESS
12/07/2009 to <input type="text"/>	Patent Attorney	Plastipak Packaging, Inc
06/04/2007 to 12/06/2009	Attorney	Plastipak Packaging, Inc
to <input type="text"/>		

I or my spouse previously held or now hold interest in the following licenses for sale of alcoholic beverages as sole licensee, partner or corporation:

NAME OF LICENSEE	TYPE OF LICENSE	LOCATION	DATE

Do you or your spouse hold any law enforcement powers including powers of arrest? ☐ Yes ☒ No**11. Limited Partnerships**-is the limited partnership authorized to do business under the laws of Michigan?Yes ☐ No ☐ Date authorized: **12. Corporate & Limited Liability Company Applicants Only** - stockholders/members must complete a separate survey

Note: Attach copy of filed/proposed Articles of Incorporation, last annual report/statement filed & attach copy of stock options.

Corporate/LLC Name: Tabone Vineyards, LLC	Incorporated/Organized in what State? Michigan
--	---

Person(s) authorized to sign the application and any documents required by the MLCC: Mario A. Tabone

PTP0003355

(Page 2 of 4)

EXHIBIT 3
Page 3 of 4

(Check one of each) <input checked="" type="radio"/> Profit or <input type="radio"/> Non-profit Corporation		<input type="radio"/> Public or <input checked="" type="radio"/> Private Corporation	
Date last annual report / statement filed with Michigan Corporation & Securities: _____			
Corporate Officers:			
	NAME	ADDRESS	PHONE NUMBER
President	_____	_____	_____
Vice-President	_____	_____	_____
Secretary	_____	_____	_____
Treasurer	_____	_____	_____

13. Corporations and Limited Liability Companies - List all persons, companies and other entities who hold or will hold stock interest or membership interest in applicant entity.

	NAME	ADDRESS	PHONE #	% INTEREST
1.	Mario A. Tabone	██████████ Plymouth, MI 48170	(734) ████████	100
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

*Note: All persons, companies and other entities holding 10% interest or more must complete and submit an "Individual, General Partner, Stockholder or Member Questionnaire" (LC-621). All persons, companies and other entities holding less than 10% interest, must complete and submit a "Limited Partners, Stockholders or Members Statement" (LC-38).

14. Financial Details - All Applicants

(A) Source of funds used to establish business, or which will be used to purchase this business, list name address and amount of all money lenders. Money lenders to fill out special "Statement of Money Lender" form enclosed.

Name	Address	Amount
Mario A. Tabone	██████████ Plymouth, MI 48170	\$ 20,000
_____	_____	\$ _____
_____	_____	\$ _____

(B) Attorney or representative

Benjamin J. Herbert	648 Monroe NW Suite 106, Grand Rapids, MI 49503	(616) 301-7177
Name	Address	Phone Number

(C) Real estate is owned by

Mary Ann Tabone	██████████ Traverse City, MI 49686	_____
Name	Address	Phone Number
Mario A. Tabone	██████████ Plymouth, MI 48170	(734) ████████
Name	Address	Phone Number

(D) Realtor/Broker

_____	_____	_____
Name	Address	Phone Number

(E) Accountant or Bookkeeper

James Taylor, CPA	DG&N, PO Box 947, Traverse City, MI 49685-0947	(231) 946-1722
Name	Address	Phone Number

EXHIBIT 3
Page 4 of 4**15. Transaction Details - All Applicants**

- Note • Any balance owed on the business selling price must be secured by a non-title retaining instrument such as a promissory note, security agreement, etc.
- Land contracts are not acceptable as security for any unpaid balance to be owed on the business portion of the sale.
 - Business, fixtures and equipment cannot be listed on land contracts or real estate mortgages.
 - All alcoholic beverage inventory must be paid for in cash at the time of transfer and not by installment payments.
 - Acceptable lease agreements must be provided if ownership of real estate is not in the names of applicants.
 - Purchasers of "ON-PREMISES" licensed establishments are required to have 10% of the purchase price for the licensed business, excluding real estate, in their own funds.

Business/Fixtures/Equipment	\$ _____	Land	\$ _____
Goodwill (if applicable)	\$ _____	Building(s)	\$ _____
Covenant not to compete (if applicable)	\$ _____	Other	\$ _____
Alcoholic beverages (estimate)	\$ _____	TOTAL REAL ESTATE COSTS	\$ <u> </u>
Other inventory (estimate)	\$ _____	Down Payment	\$ <u> </u>
TOTAL COST OF BUSINESS	\$ <u> </u>	BALANCE OWED	\$ <u> </u>
Down Payment	\$ <u> </u>	Secured by	\$ <u> </u>
BALANCE OWED	\$ <u> </u>		

For balance owed - explain:

• Terms:

For balance owed - explain:

• Terms:

• Collateral:

• Collateral:

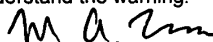
The Commission wishes to warn all applicants for licenses not to invest any money or to commit themselves by any binding agreements in the expectation of being issued a license for sale of alcoholic beverages until officially notified by the Commission that their application has been approved.

WARNING! Section 436.2003 of the Liquor Code provides:

"A person who makes a false or fraudulent statement to the commission, orally or in writing, for the purpose of inducing the commission to act or refrain from taking action, or for the purpose of enabling or assisting a person to evade the provisions of this act is guilty of a violation of this act and is punishable in the manner provided for in section 909. Further, the rules and regulations of the Commission entitled "General Rules" provide: "A licensee shall not obtain a license for the use or benefit of another person whose name does not appear on the license nor shall a licensee allow a person whose name does not appear on the license to use or benefit from the license," and, "A licensee shall not sell or transfer an interest in a business licensed by the Commission without the prior written approval of the Commission."

I hereby authorize investigators of the Michigan Liquor Control Commission to obtain all documents, accounts, books, records and tax returns pertaining to myself and this business. I hereby swear that I have read all of the above answers and that they are true and further that I have read and understand the warning.

06/11/2014



Mario A. Tabone, Sole Member

Application Date
(MM/DD/YYYY)Signature of Applicant
(if applicant is a corporation, include title of signor)

Name of person completing this form if not the applicant

LC-687 (Rev. 04/11)
AUTHORITY: MAC R436.1103
COMPLETION: Mandatory
PENALTY: No license granted

LARA is an equal opportunity employer/program.
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

(Page 4 of 4)

PTP0003357

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

October 13, 2016

Michigan Liquor Control Commission
PO Box 30005
Lansing, MI 48909

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

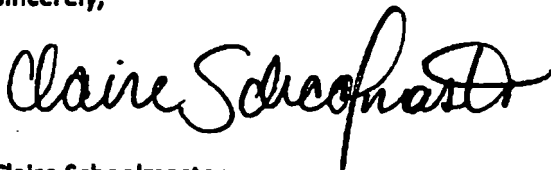
2016 OCT 17 PM 1:49
MLCC LICENSING

To whom it may concern:

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

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

Sincerely,



Claire Schoolmaster
Planning & Zoning Coordinator

February 10, 2017

To: MLCC

Tabone Vineyards, LLC requests to apply for (1) outdoor service permit at the location 14916 Peninsula Dr., Traverse City, MI 49686, per request #762772.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mario A. Tabone", followed by a long horizontal flourish.

Mario A. Tabone, Owner

Tabone Vineyards, LLC

379 Red Ryder Dr.

Plymouth, MI 48170

734-354-7271

STATE OF MICHIGAN
IN THE 86th DISTRICT COURT FOR THE COUNTY OF GRAND TRAVERSE

PENINSULA TOWNSHIP,

Plaintiff,

File No. 16-PEN1008-ON-1
Ticket No. 1008

v

Hon. Thomas J. Phillips

OOSTERHOUSE VINEYARDS LLC, a
Michigan limited liability company,

Defendant.

YOUNG, GRAHAM, ELSENHEIMER
& WENDLING, PC
By: Peter R. Wendling (P48784)
Attorneys for Plaintiff
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635

BISHOP & HEINTZ, PC
By: Steven R. Fox (P52390)
Attorneys for Oosterhouse Vineyards, LLC
440 W. Front @ Oak, P.O. Box 707
Traverse City MI 49685-0707
(231) 946-4100

CONSENT JUDGMENT

At a hearing held in the District Court
for the County of Grand Traverse
before the Honorable
on Wednesday, April 20, 2016 at 1:30 p.m.

The parties having met and having come to an agreement with respect to the
above captioned matter,

NOW THEREFORE IT IS ORDERED:

1. Defendant, Oosterhouse Vineyards, LLC, is responsible for violating Section 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.
2. Defendant, Oosterhouse Vineyards, LLC, will henceforth comply with the Peninsula Township Zoning Ordinance as a whole.
3. Defendant, Oosterhouse Vineyards, LLC, is fined \$200.00 to be paid within seven (7) days of the entry of this Order.
4. Defendant, Oosterhouse Vineyards, LLC, will pay court costs of \$100
_____ to be paid within seven (7) days of the entry of this Order.

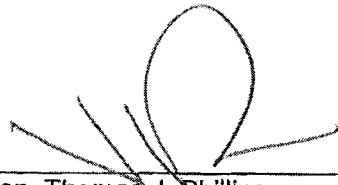
FILED
86TH DISTRICT COURT

APR 19 2016

BY: _____

WOMP013823


Date: 4/19/14



Hon. Thomas J. Phillips

Approved as to form and content.

Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff



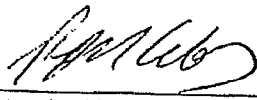
Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant

WOMP013824

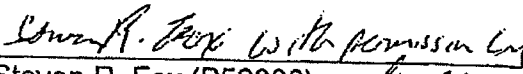
Date: _____

Hon. Thomas J. Phillips

Approved as to form and content.



Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff



Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant

WOMP013825

STATE OF MICHIGAN
IN THE 86th DISTRICT COURT FOR THE COUNTY OF GRAND TRAVERSE

PENINSULA TOWNSHIP,

Plaintiff,

File No. 16-PEN1009-ON-1
Ticket No. 1009

v

Hon. Thomas J. Phillips

OOSTERHOUSE VINEYARDS LLC, a
Michigan limited liability company,

Defendant.

YOUNG, GRAHAM, ELSENHEIMER
& WENDLING, PC
By: Peter R. Wendling (P48784)
Attorneys for Plaintiff
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635

BISHOP & HEINTZ, PC
By: Steven R. Fox (P52390)
Attorneys for Oosterhouse Vineyards, LLC
440 W. Front @ Oak, P.O. Box 707
Traverse City MI 49685-0707
(231) 946-4100

CONSENT JUDGMENT

At a hearing held in the District Court
for the County of Grand Traverse
before the Honorable
on Wednesday, April 20, 2016 at 1:30 p.m.

The parties having met and having come to an agreement with respect to the
above captioned matter,

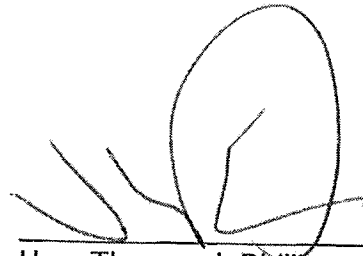
NOW THEREFORE IT IS ORDERED:

1. Defendant, Oosterhouse Vineyards, LLC, is responsible for violating Section 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.
2. Defendant, Oosterhouse Vineyards, LLC, will henceforth comply with the Peninsula Township Zoning Ordinance as a whole.
3. Defendant, Oosterhouse Vineyards, LLC, is fined \$200.00 to be paid within seven (7) days of the entry of this Order.
4. Defendant, Oosterhouse Vineyards, LLC, will pay court costs of \$100.00 to be paid within seven (7) days of the entry of this Order.

FILED
86TH DISTRICT COURT
APR 19 2016
BY: _____

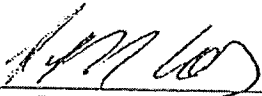
WOMP013826

Date: 4/19/14

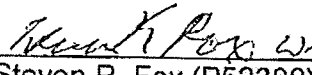


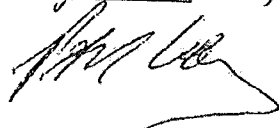
Hon. Thomas J. Phillips

Approved as to form and content.



Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff



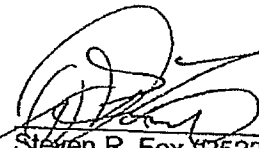
Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant 

Date: _____

Hon. Thomas J. Phillips

Approved as to form and content.

Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff



Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant

STATE OF MICHIGAN
IN THE 86th DISTRICT COURT FOR THE COUNTY OF GRAND TRAVERSE

PENINSULA TOWNSHIP,

Plaintiff,

File No. 16-PEN1010-ON-1
Ticket No. 1010

v

Hon. Thomas J. Phillips

OOSTERHOUSE VINEYARDS LLC, a
Michigan limited liability company,

Defendant.

YOUNG, GRAHAM, ELSENHEIMER
& WENDLING, PC
By: Peter R. Wendling (P48784)
Attorneys for Plaintiff
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635

BISHOP & HEINTZ, PC
By: Steven R. Fox (P52390)
Attorneys for Oosterhouse Vineyards, LLC
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Traverse City MI 49685-0707
(231) 946-4100

CONSENT JUDGMENT

At a hearing held in the District Court
for the County of Grand Traverse
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on Wednesday, April 20, 2016 at 1:30 p.m.

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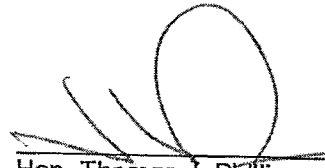
NOW THEREFORE IT IS ORDERED:

1. Defendant, Oosterhouse Vineyards, LLC, is responsible for violating Section 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.
2. Defendant, Oosterhouse Vineyards, LLC, will henceforth comply with the Peninsula Township Zoning Ordinance.
3. Defendant, Oosterhouse Vineyards, LLC, is fined \$200.00 to be paid within seven (7) days of the entry of this Order.
4. Defendant, Oosterhouse Vineyards, LLC, will pay court costs of 111.00 to be paid within seven (7) days of the entry of this Order.


FILED
86TH DISTRICT COURT
APR 19 2016
BY:

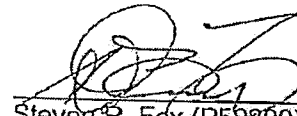
WOMP013829

Date: 4/19/14


Hon. Thomas J. Phillips

Approved as to form and content.

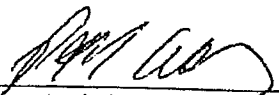

Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff


Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant

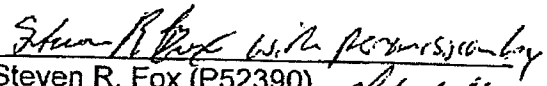
Date: _____

Hon. Thomas J. Phillips

Approved as to form and content.



Peter R. Wendling (P48784)
YOUNG GRAHAM ELSENHEIMER
& WENDLING PC
Attorneys for Plaintiff



Steven R. Fox (P52390)
BISHOP & HEINTZ, PC
Attorneys for Defendant

WOMP013831