

## Overview:

The captions (“Wineries Crush Township”) and some local opinions (“how many silly ordinances will be stripped away”) are cute, but they are inaccurate. Let’s look at the true status of the WOMP v Peninsula Township lawsuit.

Shortly before trial, the opposing parties in a lawsuit file “pretrial motions”. These are not anything like a final decision. “Pretrial motions” are called “evidentiary” motions, because the judge is asked to rule on evidence and arguments a party can or cannot use at trial. Pretrial motions are important, but they are a “side show” to the trial on the merits.

In this case all the parties filed pretrial motions. WOMP has the burden of proving its claims, and the Township and PTP have the burden of proving their Affirmative Defenses. (The word “affirmative” means simply that – the party claiming an affirmative defense has the burden of proving it, just like a party filing the suit has the burden of proving its claims.

On February 29, the Court issued an Opinion and then on March 7 the Court issued another opinion. These Opinions decided some evidence issues, and clarified claims. Mainly, the Court said, “...the Court believes it would be better to leave the more fact intensive questions for trial.” In other words, WOMP, the Township, and PTP are headed for trial.

The rulings on February 29 and March 7 neither crushed the Township, nor crushed WOMP. The Court crushed some low-hanging fruit, and set the case for trial. But most importantly, the Court made this key point: **WOMP’s argument that the Winery Ordinance is preempted by Michigan’s Liquor Control Rules is absolutely not true. Peninsula Township can regulate wineries by zoning.**

Multiple times in his Opinions, Judge Maloney said WOMP failed to show sufficient evidence to support its arguments. He wrote, “...the Court believes it would be better to leave the more fact intensive questions for trial.”

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### **Here is a Summary of the February 29 Opinion:**

**Hours of Operation:** This is a big win for neighbors of wineries and a small win for the Township. WOMP lost its demand to stay open until 2:00 a.m. Wineries must close according to the time limit set by the Township – currently 9:30 p.m.

**Amplified outdoor music:** This is a big win for neighbors of wineries. WOMP lost its demand to be allowed to have unrestricted outdoor amplified music. Wineries’ amplified music is limited to “no greater than normal conversation at the edge of the area designated within the building for guest purposes.”

**Catering kitchens:** This is a big win for neighbors of wineries. WOMP didn't get what they demanded – unlimited restaurants. The Judge found a limited right for wineries who host “guest activities” to use their kitchens for off-site catering.

**Damages:** This was a big win for Township taxpayers, because it reduced WOMP's damage claim by tens of millions of dollars. WOMP still has possible claims for damages far less than it demanded at the beginning of its lawsuit.

**Township authority to zone:** The judge ruled the Township cannot totally prohibit activities that the Michigan Liquor Control Commission allows, but the Township can limit the activities by zoning. This is a fundamental win for the Township, because WOMP's claim that local zoning is irrelevant under Liquor Control Rules is dead.

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**This is a Summary of the March 12 Opinion:**

**These are the Rulings on the Township's 18 Affirmative Defenses:**

- a. **Township's Affirmative Defense B** – statute of limitations (SOL) is partly granted and partly denied. It cannot be used to limit the Township's liability, but the SOL can be used to limit WOMP's damages.
- b. **Twp's Aff Def Y** – “laches” (WOMP's delay in bringing its claims after the Township adopted the zoning rules @ 20 years ago.) It is partly granted and partly denied. The laches defense can be used to reduce WOMP's damages claim, but it cannot be used to defeat WOMP's claim for future injunctive relief.
- c. **Twp's Aff Def D** – “exhaustion” is granted in part and denied in part. WOMP's failure to “exhaust” other means of relief before filing suit, such as appealing to the Zoning Board of Appeals is not applicable because a) there's no exhaustion requirement, and b) the Township is continuing to enforce zoning rules against the wineries, so there may be a continuing violation.  
**(Interestingly, the Court also ruled that the prior zoning code was “still in effect by virtue of the Wineries' special use permits.” This means each winery's SUP terms are relevant.)**
- d. **Twp's Aff Defs I and J:** The Court ruled the pre-filing statements of the then-Township attorney Meihn are “evidentiary” issues, and denied the Township's motion for summary disposition. The Court ruled it will “leave the questions of admissibility issue for another day ...”

- e. **Twp's Aff Def C:** The Court denied WOMP's motion to strike the "mitigation" defense. This defense is based on the fact issue that wineries failed to limit their damages.
- f. **Twp's Aff Def. H:** The Court granted WOMP's motion to strike the Township's argument that ("[WOMP] failed to follow the statutorily required process of amending the township zoning ordinance") because "the Township failed to demonstrate that there is (sic) specific issue for trial stemming from defense H." This ruling is somewhat opaque.
- g. **Twp's Aff def BB:** The Court said the Township's "abstention" defense (asking the Court to abstain from interpreting Michigan law) is "extremely vague". The Court ruled the Township may offer this defense "after the Wineries present their proofs at trial." In other words, it is a factual question for trial.
- h. **Twp's Aff Def. CC:** The Court denied WOMP's motion to dismiss the Township's use of the wineries' Special Use Permits (SUP) as evidence. Each winery operates under a Special Use Permit with very specific terms. Although the Court has said the SUP is not a contract, it now has made clear that the SUPs are relevant as a defense based on zoning, not contract. (Those are two very different legal principles.) The Court said each winery has a different SUP, and each will have to face its SUP.

**These Rulings on PTP's 22 Affirmative Defenses:**

- a. **PTP's Aff Def Generally:** The Court ruled an intervening party, such as PTP, can raise its own Aff Defs, in addition to those already raised by the main party (the Township). The Court denied WOMP's motion to dismiss PTP's separate defenses. This is a fundamental win for PTP.
- b. **PTP's Aff. Def. C, G, T:** The Court ruled PTP's defenses related to damages are irrelevant to PTP's case struck from PTP's damages defense. The Township's defenses to damages are not affected or limited by this ruling.
- c. **PTP's Aff Def. B:** The Court makes the same statute of limitations ruling as it held against WOMP.
- d. **PTP's Aff Def. II, ZZ, AAA, BBB, CCC and DDD:** (Laches) The Court made the same ruling as for the Township's SOL defense. PTP cannot defend damages, so these defenses are irrelevant to PTP's case.
- e. **PTP's Aff Def. VV, WW, XX:** The Court denied WOMP's motion to dismiss PTP's argument on "standing." PTP may bring argue this defense at trial.
- f. **PTP's Aff Def. D and YY:** The Court ruled WOMP's claim are final and ripe, so dismissed PTP's defense on those theories.

- g. **PTP's Aff Def QQ and KK:** PTP voluntarily dropped these defenses, and they are dismissed
- h. **PTP Aff Def JJ:** The Court ruled the winery SUPs are NOT Contracts. But a legal "contract" is different than a zoning SUP, so PTP can argue its defense based on the wineries' SUP restrictions at trial.
- i. **PTP's Aff Def NN:** (The wineries agreed to the terms of the SUP requirements when they started operating.) The Court denied WOMP's request to strike the SUP requirements. PTP can present the SUP restrictions at trial.
- j. **PTP's Aff Def BBB and DDD:** The Court denied WOMP's motion to strike the PTP's defenses based on the arguments that WOMP delayed too long in bringing their claim instead of challenging the zoning code when it was enacted almost 20 years ago. PTP is allowed to present its facts at trial.
- k. **PTP's Aff Def. III and JJJ:** The Court granted WOMP's motion to dismiss PTP's nuisance defenses.
- l. **PTP's Aff Def I, J, K and L:** The Court says the memorandum of Greg Meihn cannot be rejected as an affirmative defense, but its admissibility may be challenged on other grounds at the time of trial. The Court denied WOMP's motion to strike Aff Def. J (that Meihn did not have authority to negotiate on behalf of the Township when he negotiated) and Aff Def K (That Meihn did not have authority to negotiate zoning amendments when he did so.) PTP can present these arguments at trial.
- m. **PTP's Aff Def O, OOO, PP, and QQ:** These defenses were voluntarily dropped by PTP, so the Court struck them.
- n. **PTP's Aff Def. GGG and HHH:** The Court struck these Aff Defs because GGG (collateral estoppel and judicial estoppel based on prior litigation) is not supported by sufficient facts.
- o. **PTP's Aff Defs H and N:** The Court struck Aff Def H (that WOMP failed to seek amendment of the zoning ordinance) and Aff def N (zoning amendment would be subject to referendum). In regard to Aff Def. H, the Court said the facts do not support the defenses. The decision regarding Aff Def is not separately explained.
- p. **PTP's Aff Def LL:** The Court denied WOMP's motion to strike the PTP's defense based on "abstention" (this Federal Court should decline to decide Michigan zoning law issues because State Courts know best.) The Court ruled WOMP did not meet the burden of proof. PTP can present this argument at trial.

- q. **PTP Aff Def. LLL:** The Court struck PTP's open-ended statement it would add later Aff Defs, because it requires a separate motion.

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**Conclusion:**

Nothing in the Court's two Opinion was "crushing" to any party. The Court made evidentiary rulings. What is important is the Court recognized Peninsula Township can reasonably regulate WOMP wineries by zoning. The question remains – what, if any, damages can WOMP prove; what are the SUP requirements for each WOMP winery; how would Michigan Courts decide the zoning issues presented in this case.

The big win for PTP and the Township is this: WOMP's claim that Liquor Control Commission rules are the only rules that apply for wineries – **is FALSE.**