

Opening Statement

For almost as long as the Peninsula Township Zoning Ordinance has been in effect, Protect the Peninsula has served as a watchdog over the Township government to ensure the preservation of all that makes the Old Mission Peninsula special – its farms, its neighborhoods, its local businesses, its parks, its shorelines, its character.

Since 1979, PTP has been at the table whenever important land use decisions were made, from community master planning to adopting zoning amendments, to approving and amending special use permits, to issuing or denying variances, to litigation – including this case.

Peninsula Township is unique when it comes to land use issues – like a quiet island connected to a busy city by a bridge, its character is unto itself. It has spectacular vistas with 50 miles of shoreline along the turquoise waters of Grand Traverse Bay, miles of hiking trails and world-class public beaches, and thousands of acres of active farms growing tree fruits, grapes, flowers, and more. Roads are important in every community, but they are critical here. There is one main road bisecting the entire peninsula – the aptly named Center Road – and one way on and off for farmers to move their produce and residents to get to town for work, school, other business. It's a special place to live. And to visit. And to farm.

Land use decisions in Peninsula Township are not easy or simple decisions – they require balancing the interests of all the stakeholders on the Peninsula – residents, farmers, business owners, and visitors. That's what the Peninsula Township government does, through its Board, staff, Planning Commission, its agriculture committee, and ad hoc committees – it balances the interests of its constituents to further the general purpose of zoning, which is to protect the public health, safety, and welfare, and to meet the specific land use planning goals of the community as expressed through its master plan, Zoning Ordinance, Agricultural Preservation (or PDR) program, and other policies.

That balancing of interests is what the Township did for the winery land uses at issue in this case – the Winery-Chateau, the Remote Winery Tasting Room, and the Farm Processing Facility. That balancing is what the Township did in making every decision about the zoning provisions Plaintiffs challenge, and every decision about the individual special use permits, amendments, and variances Plaintiffs requested and received from 1989 through 2020 when Plaintiffs filed this lawsuit. That balancing is what the Township has done while this case has been pending. And it is what the Township will continue to do after this case is resolved.

What is needed to resolve this case?

To resolve this case, which started with 12 Plaintiffs asserting 10 counts challenging dozens of Zoning Ordinance provisions, there are just 3 things left for the Court to decide.

- First, whether 5 subsections of the Zoning Ordinance were narrowly tailored to satisfy *Central Hudson* scrutiny for regulations of commercial speech;
- Second, whether and to what extent Plaintiffs are entitled to money damages – which PTP will continue to refrain from litigating, given this Court's prior rulings; and
- Third, whether and to what extent injunctive relief is warranted

Central Hudson Tailoring

The Court found 5 zoning provisions implicate commercial speech: Two parts of the Remote Winery Tasting Room section of the Zoning Ordinance, one part of the Farm Processing Facility section, and two parts of the Winery-Chateau section.

Defendants will demonstrate that when the Township adopted the zoning amendments containing these 5 provisions, it narrowly tailored those amendments – including all their subparts – to directly and materially advance its governmental interests. The Township did not invent these provisions – every winery land use Plaintiffs challenge was initiated by a winery owner. Simply put, every time the Township was asked to establish or approve a new winery land use in the A-1 agricultural district, it found a way to say yes. But that “yes” had to come with limits. To get to “yes,” the Township had to draw lines – lines between uses that were appropriate and compatible with other uses in an agricultural district and uses that were more appropriate elsewhere, such as in a commercial district.

Of course there are commercial aspects to agriculture – one of the original winery-related land uses on the Peninsula was the food processing plant, which allows the processing of grapes into wine for sale. Roadside stands have long been permitted so farmers could sell their produce directly to customers. But there is a difference between agricultural production facilities – which is what wineries are – and commercial uses unrelated to agricultural production like convenience stores, bars and restaurants, and convention centers. The Township drew the necessary line in a reasonable place every time it enacted a zoning amendment creating a new land use.

Defendants will jointly present the minutes of approximately 50 meetings and public hearings between 1989 and 2004 in which the Board and Planning Commission considered requests for new land uses and balanced the interests of all the Township’s constituents in drafting the amendments it ultimately adopted. Defendants have presented a detailed history of what happened during those meetings in their proposed findings of fact, conclusions of law, and trial brief. I will briefly summarize some of that history now.

First, the minutes will show 15 years of legislative effort to strike the right balance between supporting grape farmers and wine-makers in creating new revenue streams while maintaining the agricultural character of the A-1 District and ensuring compatibility with neighboring land uses – people’s homes and farms. They will show that when presented with a new land use request, Township staff worked with Plaintiffs’ representatives to draft zoning amendments, held many public hearings and meetings, heard public comment both supporting and opposing Plaintiffs’ requests, heard concerns from the public about the impact of proposed new land uses, established committees of winery representatives and other citizens to make recommendations and reports, and took all of that information into consideration when deciding not just whether to say yes to new winery land uses but *how*. The Township figured out where to draw the necessary lines deliberately, publicly, and with consideration of the very real concerns expressed by the neighbors who would be impacted by these decisions, in order to accommodate the wineries and support their success at agricultural production without sacrificing the interests of their neighbors and the Township’s land use planning goals.

Second, the minutes will tell the story of how the challenged subparts of the Remote Winery Tasting Room came to be. In 1998, Joan and David Kroupa asked the Township for zoning permission to renovate an old schoolhouse on Center Road and use it as a tasting room and retail shop miles away from their grape farm and its associated winery – which, again, for zoning purposes, is a facility where wine is made, not the place where wine is tasted or sold to the public, although we use the word “winery” colloquially to encompass all those concepts. The Township had long allowed wine making at food processing facilities in A-1, but had never allowed a tasting room or retail sales on a parcel separate from the farm and winery those uses were associated with.

Many members of the Peninsula Township community – including at least one other winery operator – worried that the Kroupas, who already operated a convenience store in the commercial district, would sell snacks and camping supplies and souvenirs to tourists heading up Center Road on their way to enjoy the Peninsula’s beautiful beaches. They opposed the proposed zoning amendment as allowing commercial spot zoning in an agricultural district. But others, including PTP member John Wunsch, supported the proposal as a way to support agricultural production by giving farmers with an off-the-beaten-path winery a better way to connect with potential customers. The minutes will show that after nearly a year of meetings, committee work, and public hearings, the Township crafted the Remote Winery Tasting Room to do two things – first, to support agricultural production by allowing the Kroupas to have a tasting room and retail sales right on busy Center Road, and second, to address legitimate concerns about spot zoning and the possibility of a convenience store where it didn’t belong by putting modest limits on retail sales and signage in subparts 8.7.3(12)(i) and (k).

The minutes will also tell the story of Amendment 139, which created the Farm Processing Facility use. Amendment 139 was the result of cooperation and compromise among parties presently on opposite sides of this litigation following the failure of Amendment 128, which had created a special use to allow wineries with tasting rooms and retail sales on as little as 10 acres, and which was overturned by referendum. After the referendum, representatives of PTP and the Wineries worked together to draft Amendment 139, which created the Farm Processing Facility as use by right based on the premise that “if you grow it, you can process it and sell it.” The use by right gave aspiring wine makers an administratively simple way to get started, compared to the public hearing process for special uses, and allowed for tasting and retail sales on PDR land because those uses would be closely tied to local agricultural production. Allowing retail sales of logo merchandise to promote the winery but not generic retail items in 6.7.2(19)(b)(1)(v) is part of how those uses were tied to agricultural production.

Finally, the minutes will also show how Guest Activity Uses and their challenged subparts came to be. From 1996 through the 2004 adoption of Amendment 141, which created Guest Activity Uses, Chateau Chantal had tried to get the Township to amend its Zoning Ordinance to allow weddings, corporate events, conferences, and similar events. The Winery-Chateau special use, which Chateau Chantal had also initiated, had allowed for a winery owner to have a bed and breakfast operation in conjunction with a winery - the agricultural production facility, and the principal use on a Winery-Chateau site. Accessory uses for the Chateau, like meeting rooms and food service, were limited to what was reasonably required for guests staying at the Chateau.

But Chateau Chantal wanted more. It wanted uses even further removed from the winery – it wanted uses beyond what it needed for its bed and breakfast operation. And the Township found a way to grant as much of Chateau Chantal’s request as possible without losing the connection to agricultural production. The Township created Guest Activity Uses with the understanding that they would be appropriate in the agricultural district if they promoted the principal agricultural production use at a Winery-Chateau, hence the intent provision expressing the intent that Guest Activity Uses promote Peninsula agriculture. And, to limit the impact of Guest Activity Uses on neighbors, who had expressed concerns over years of public hearings about noise, traffic, and other disruption, the Township prohibited outdoor displays during Guest Activity Uses.

Beyond the minutes relating to the three amendments containing the five challenged provisions, Defendants will also present minutes of dozens of meetings and public hearings in which the Board and Planning Commission considered applications for special use permits and SUP amendments from individual wineries through July 2020.

Those minutes will show that the Township has narrowly tailored Plaintiffs’ unique individual land uses to achieve the right balance based on their proposed site plans, requested uses, and particular locations and parcel characteristics. Before approving any special use permit or amendment, the Township held at least two public hearings to hear concerns and consider the particular application before it, made specific findings as to whether that application met the standards for a special use permit, and imposed particular conditions and safeguards it deemed necessary after deliberation to serve the public interest.

In addition to the minutes, PTP will present a land use expert, Dr. Thomas Daniels, who will testify regarding the planning and zoning principles underpinning the Township’s land use decision-making and the overall reasonableness of the fit of the measures the Township chose to ensure that commercial activity in the A-1 District remain closely tied to agricultural production and farmland preservation. Dr. Daniels holds a Ph.D. in Agricultural and Resource Economics and writes extensively on land use planning, agricultural zoning, and farmland preservation. He will review the five provisions still at issue in the context of the winery land uses they are part of and explain how they advance the Township’s governmental interests.

Relief

With respect to relief, PTP will not address damages because the Court has determined it may not. But Defendants will demonstrate that Plaintiffs have failed to meet their burden of proving that any basis exists for the sweeping equitable relief they request – namely, that the Court declare that their desired land uses of weddings, events and more should become permissible land uses in the A-1 District. To the contrary, Defendants will demonstrate that granting Plaintiffs’ request would not be in the public interest. First and foremost, the public interest is represented by the Township’s substantial governmental interests in zoning and agricultural preservation as already found in this case. The public interest is also in reserving legislative decisions to the legislative body required by state law to make such decisions – in this case, state law declares that Peninsula Township decides whether to recognize new land uses in the Township and in the A-1 District, consistent with its master plan and the zoning ordinance.

Before new land uses can be recognized in Peninsula Township, under the Michigan Zoning Enabling Act, there's a lot of process that comes in – from consistency with planning to public hearings to evidence about site plans and standards to fire department and health department input and much more. What the record will show is that Plaintiffs have presented the court with a wish list, not legitimate zoning amendment proposals or land use applications. These decisions necessarily impact their neighbors, including the PTP members who for years or decades have exercised their rights to participate and speak up and voice concerns.

The evidence will show the Plaintiffs are not entitled to any injunctive relief that would involve this court creating or declaring new land uses in the Peninsula Township A-1 District because to do so would be harmful to others and contrary to the public interest.