

**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; BRYS 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

**DEFENDANTS' JOINT  
PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

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](mailto:infante@millercanfield.com)  
[gartman@millercanfield.com](mailto:gartman@millercanfield.com)  
[ragatzki@millercanfield.com](mailto: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](mailto: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](mailto:eldridge@millercanfield.com)

Thomas J. McGraw (P48817)  
Bogomir Rajsic, III (P79191)  
*McGraw Morris, P.C.*  
Attorneys for Defendant  
44 Cesar E. Chavez Ave. SW  
Suite 200  
Grand Rapids, MI 49503  
(616) 288-3700  
[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)  
[brajsic@mcgrawmorris.com](mailto: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](mailto:wfahey@fsbirlaw.com)  
[jbrennan@fsbirlaw.com](mailto:jbrennan@fsbirlaw.com)  
[cpatterson@fsbirlaw.com](mailto: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  
[tja@tjandrews.com](mailto:tja@tjandrews.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](mailto:holly@tropospherelegal.com)

---

**DEFENDANTS' JOINT PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

**FINDING OF FACTS TABLE OF CONTENTS**

**I. Background** ..... 1

**II. The Peninsula Township Master Plan**..... 2

**III. The Relationship between the Peninsula Township Zoning Ordinance and Master Plan**  
5

**IV. Commercial Speech: The Township’s Tailoring of §§ 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), 8.7.3(12)(k), and 6.7.2(19)(b)(1)(v) to Further its Substantial Governmental Interests.**..... 6

A. The Township’s governmental interests in the challenged provisions, which are five subparts of zoning amendments establishing three winery-related uses permissible in the A-1 District, are set forth throughout the Peninsula Township Zoning Ordinance..... 6

B. The Township crafted the Winery-Chateau special use to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, and preserving farmland in the A-1 District. .... 8

C. The Township approved SUP #21 for Chateau Chantal under Amendment 79 with limits on accessory uses that the Township would later expand by creating support uses to allow additional opportunities for wineries to promote themselves. .... 10

D. The Township began considering additional zoning amendments to expand Winery-Chateau accessory uses to include events, meeting facilities, and food service for non-registered guests as early as 1996 and consistently rejected proposals with an insufficient nexus to agricultural production..... 10

E. Chateau Chantal sued the Township in an attempt to obtain expanded accessory uses for Winery-Chateaus like events, meeting facilities, and food service for non-registered guests, and the parties entered into a Consent Judgment that became the foundation for Guest Activity Uses in Amendment 141. .... 13

F. In 1999, the Township considered and rejected another request from Chateau Chantal for a zoning amendment to expand accessory uses for Winery-Chateaus. .... 15

G. Following a request for a zoning amendment to allow “Contract Groups, Contract Events, and Community Events” at Winery-Chateaus, the Township spent nearly three years working to ensure that the zoning amendment that ultimately became Amendment 141 and created Guest Activity Uses sufficiently tied opportunities for additional activities at Winery-Chateaus to agricultural production and farmland preservation. .... 15

H. The Township continued to revise Amendment 141 to achieve a reasonable balance between allowing additional promotional opportunities for Winery-Chateaus and ensuring that uses in the A-1 District are tied to agricultural production and farmland preservation. .... 18

I. A version of Amendment 141 that was less restrictive than the enacted version Plaintiffs challenge in this lawsuit was determined to be inconsistent with the Township’s Master Plan.

J. The Township approved Amendment 141 only after it had determined that the additional allowed uses would be sufficiently tied to agricultural production and farmland preservation. 19

K. The Winery-Chateau provisions that Plaintiffs challenge as regulations of commercial speech were integral parts of Amendment 141, the entirety of which was tailored to balance the Winery-Chateaus’ desire for additional promotional opportunities with the Township’s substantial governmental interests in zoning and agricultural preservation. .... 20

L. The Township crafted the Remote Winery Tasting Room special use to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, preserving farmland, and preventing commercial spot zoning in the A-1 District. .... 21

M. The Township also tailored the sole Remote Winery Tasting Room SUP under Amendment 120 to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by addressing the community’s concerns about an unprecedented retail use in the A-1 District. .... 23

N. The Remote Winery Tasting Room provisions that Peninsula Cellars challenges were integral subparts of Amendment 120, the entirety of which was tailored to further both the interests of Peninsula Cellars in its unique land use and the Township’s substantial governmental interests in zoning to ensure compatible land uses, agricultural promotion, and farmland preservation, and to avoid commercial spot zoning, in the A-1 District. .... 25

O. The Township crafted the Farm Processing Facility use by right to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, and preserving farmland in the A-1 District..... 26

P. The challenged Farm Processing Facility provision was an integral subpart of Amendment 139, the entirety of which was tailored to further both the interests of wineries in having an administratively simple use by right with retail and tasting permissions and the Township’s substantial governmental interests in zoning to ensure compatible land uses, agricultural promotion, and farmland preservation in the A-1 District..... 28

**V. Chateau Chantal** ..... 29

A. Additional SUP History ..... 29

B. Chateau Chantal has conducted hundreds of Guest Activity Uses. .... 30

C. Chateau Chantal has no damages caused by §§ 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), or 8.7.3(10)(u)(5)(d) under a dormant Commerce Clause theory..... 30

D. Chateau Chantal has no damages caused by any prior restraint imposed by §§ 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c). .... 31

E. Chateau Chantal has no damages caused by any speech compelled by §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(a). .... 32

F. Chateau Chantal has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(h). .... 32

G. Chateau Chantal has no damages caused by § 8.7.3(10)(u) or any subpart thereof under its Due Process claim and underlying vagueness theory..... 33

**VI. Mari**..... 33

A. SUP History ..... 33

B. Mari has regularly conducted Guest Activity Uses..... 33

C. Mari has no damages caused by §§ 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), or 8.7.3(10)(u)(5)(d) under a dormant Commerce Clause theory. .... 33

D. Mari has no damages caused by any prior restraint imposed by §§ 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c). .... 34

E. Mari has no damages caused by any speech compelled by §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(a). .... 34

F. Mari has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(h). .... 35

G. Mari has no damages caused by § 8.7.3(10)(u) or any subpart thereof under its Due Process claim and underlying vagueness theory. .... 35

H. Unique factors would limit any injunctive relief to which Mari might be entitled. .... 36

**VII. Chateau Grand Traverse**..... 36

A. SUP History ..... 36

B. Chateau Grand Traverse has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue. .... 36

C. Unique factors would limit any injunctive relief to which Chateau Grand Traverse might be entitled. .... 37

**VIII. Brys**..... 37

A. SUP History ..... 37

B. Brys has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue..... 38

C. Unique factors would limit any injunctive relief to which Brys might be entitled..... 38

**IX. Bonobo** ..... 38

A. SUP History ..... 38

B. Bonobo has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue..... 39

C. Unique factors would limit any injunctive relief to which Bonobo might be entitled. .... 40

**X. Bowers Harbor**..... 40

A. SUP History ..... 40

B. Bowers Harbor has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue..... 41

C. Unique factors would limit any injunctive relief to which Bowers Harbor might be entitled..... 41

**XI. Hawthorne**..... 42

A. SUP History ..... 42

B. Hawthorne has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue..... 42

C. Unique factors would limit any injunctive relief to which Hawthorne might be entitled. 42

**XII. Peninsula Cellars**..... 43

A. Additional SUP History ..... 43

B. Peninsula Cellars has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(12)(i) or 8.7.3(12)(k)..... 43

C. Unique factors would limit any injunctive relief to which Peninsula Cellars might be entitled..... 43

**XIII. Black Star**..... 44

A. Land Use History ..... 44

B. Black Star has no damages caused by § 6.7.2(19)(b)(1)(v) for any alleged regulation of its commercial speech. .... 44

C. Black Star has no damages caused by §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), or 6.7.2(19)(b)(2)(V) under a dormant Commerce Clause theory..... 44

D. Unique factors would limit any injunctive relief to which Black Star might be entitled. 44

**XIV. Two Lads**..... 45

A. Land Use History ..... 45

B. Two Lads has no damages caused by § 6.7.2(19)(b)(1)(v) for any alleged regulation of its commercial speech. .... 45

420. Two Lads has not been damaged by being allowed to sell logo merchandise related to agriculture and could have only benefited from the availability of an additional revenue stream. .... 45

C. Two Lads has no damages caused by §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), or 6.7.2(19)(b)(2)(V) under a dormant Commerce Clause theory..... 45

D. Unique factors would limit any injunctive relief to which Two Lads might be entitled. . 45

**XV. Tabone**..... 46

A. Land Use History ..... 46

B. Tabone has never been subject to § 6.7.2(19) or any subpart thereof and thus has no damages caused by any challenged Farm Processing Facility provision for which damages remain a live trial issue..... 47

C. Unique factors would limit any injunctive relief to which Tabone might be entitled. .... 48

**CONCLUSION OF LAW TABLE CONTENTS**

**I. FIRST AMENDMENT**..... 48

**A. Commercial Speech** ..... 48

**B. Prior Restraint** ..... 49

**C. Compelled Speech** ..... 50

**D. Compelled Speech** ..... 50

**II. DUE PROCESS (VAGUENESS)**..... 50

**III. DORMANT COMMERCE CLAUSE**..... 50

**IV. LACHES**..... 51

**VI. STANDING**..... 52

**DEFENDANTS' JOINT PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Pursuant to the Court's Case Management Order and directions, Defendant Peninsula Township and Intervening Defendant Protect the Peninsula, Inc. (PTP) submit *Defendants' Joint Proposed Findings of Fact and Conclusions of Law*.

**DEFENDANTS' JOINT PROPOSED FINDINGS OF FACT**

**I. Background**

1. The Uncontroverted Facts identify each of the fourteen parties in this proceeding. (ECF 573, PageID.22089-22094)
2. On October 21, 2020, Plaintiffs sued Defendant Peninsula Township asserting nine Counts and requesting preliminary and permanent injunction, monetary damages, and attorney fees. (ECF 1)
3. Peninsula Township enacted Amendment 201 of the Peninsula Township Zoning Ordinance (PTZO) on December 13, 2022, which had the effect of repealing the Winery-Chateau land use (former Section 8.7.3(10)). **(Ex F)**
4. Peninsula Township's enactment of Amendment 201 of the PTZO on December 13, 2022, replaced the former Farm Processing Facility land use (Subsection 6.7.2(19)) in its entirety with a newly recognized land use in the A-1 Agricultural District, the Wholesale Farm Processing Facility, Section 6.7.2(19). **(Ex. F)**
5. Peninsula Township's enactment of Amendment 201 of the PTZO on December 13, 2022, authorized new winery land uses in the A-1 District, including Retail Farm Processing Facilities (Section 6.7.3(22)), Retail Farm Processing Facility (Indoors Only) (Section 8.7.3(10)), and Retail Farm Processing Facility (With Outdoor Seating) (Section 8.7.3(11)). **(Ex F)**
6. Peninsula Township's enactment of Amendment 201 of the PTZO on December 13, 2022, replaced former the Remote Winery Tasting Room land use (Section 8.7.3(12)) with the revised Remote Tasting Rooms land use. **(Ex F)**
7. Each subsection of former Sections 6.7.2(19), 8.7.3(10), and 8.7.2(12) challenged by Plaintiffs in this lawsuit was repealed or substantially revised by Amendment 201 of the PTZO. **(Ex F)**



8. The Special Use Permits, Land Use Permits, and amendments thereto issued to Plaintiffs that authorized their winery land uses were issued under the PTZO prior to enactment of Amendment 201. (Ex F)

## II. The Peninsula Township Master Plan

9. Peninsula Township approved its first Master Plan in 1968, which was amended in 1974, 1983, and in the 1990s. The amendments provided added direction for preserving agriculture, scenic views, and natural resources for the future. In 2002, all existing Master Plan amendments and other materials were compiled and organized into one document approved as the Peninsula Township Master Plan on February 23, 2004. (Ex H, pp. 7-8)
10. Peninsula Township staff were unable to locate copies of Township Master Plans preceding the 2011 Master Plan.
11. Peninsula Township has not revised its Master Plan since it adopted the 2011 Master Plan, through the process is underway.
12. The Peninsula Township Master Plan forms the foundation upon which zoning decisions are made. (Ex H, p. 7; *see also* M.C.L. § 125.3203(1))
13. The Peninsula Township Master Plan describes the Community Setting as follows:

Peninsula Township has a strategic resource in its permanent agricultural base and high scenic quality of the views and shoreline. The Township's primary economic base is shared between its agricultural production, tourism and home based businesses. The long-term economic viability of the Township depends on maintaining its economic base and also providing a high quality of life for its residents.

(Ex G, p. 10)

14. The Township Master Plan describes the Peninsula Character as follows:

The character of Peninsula Township is defined by its history and current land uses. For much of its history the predominant land use in Peninsula Township was fruit-based agriculture and shoreline residences. The deep waters surrounding the peninsula moderate temperatures creating microclimates especially suitable for growing fruits. Prime agricultural soils exist throughout the peninsula, making agriculture a productive and viable land base. There are extensive cherry and apple orchards and vineyards running the length of the peninsula. In addition, it has been designated as an American Viticultural Area (AVA), referred to as the Old Mission Peninsula Appellation, because of the ability to grow wine grapes.

(Ex G, pp. 10-11)

15. Following a 1986 request by Edward O’Keefe of Chateau Grand Traverse, the Old Mission Peninsula became an American Viticultural Area (AVA), or appellation, known for its distinctive wines in 1987. (27 C.F.R. § 9.114; 52 Fed.Reg. 21515, June 8, 1987; Ex. QQQQQQQQQQ (Qx10), pp. 2-3)

16. The Township Master Plan describes Peninsula Township agriculture in part as follows:

In recent years a number of landowners planted grapes for wine production, a growing industry on the peninsula. Industries that support agriculture have also developed. While there has traditionally been little heavy industry on the peninsula, the Township is currently home to many agriculturally based businesses such as road side stands, wineries and a fruit processing plant.

(Ex G, pp. 11-12)

17. The Township Master Plan, which identifies each zoning district, describes the intent and purpose of the A-1 Agricultural district as follows:

The agricultural district identifies those parcels within the township where the land’s unique ecological and physical attributes allow viable agricultural operations and farming practices to exist. The regulations of this district are designed to preserve, enhance, and stabilize existing areas within Peninsula Township where agriculture is the predominant use of the land. Additionally, this district recognizes that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses deemed compatible with agricultural and open space uses to occur.

(Ex G, p. 20)

18. The Township Master Plan defines Agricultural Land Use in Peninsula Township as follows:

Land found within the agricultural use category is both substantially undeveloped and devoted to the production of plants and animals useful to people. Items produced within said land use class may include but are not limited to fruits, flowers, nuts, vegetables, greenhouse plants, Christmas trees, forages, sod crops, grains and feed crops, dairy and dairy products, livestock including breeding and grazing and other similar uses and activities. Furthermore, migrant housing and sales of agricultural products are considered accessory uses permitted within the agricultural land use category. Other related activities such as greenhouses, nurseries, food processing plants, wineries, renewable energy generation and bed and breakfast establishments are also allowed in this land use category under special consideration by township officials. These related activities should generally be located in areas of the agricultural community where prime and unique soils are not prevalent. Residential densities within said category are historically limited to one (1) dwelling unit per five (5) acres of land.

(Ex G, p. 30)

19. The Township Master Plan establishes the following Agricultural Land Use Policy for Peninsula Township:

It is the policy of Peninsula Township to protect, preserve and promote agricultural and open space lands. To promote policy within the agricultural land use category the Township has the option to divide the existing single agricultural designation into two (2) land use categories, each possessing more specific impacts upon the land. It is the intent of Peninsula Township to continue to preserve prime agricultural land while directing development to more suitable areas of the township. By promoting the use of Planned Unit Developments (PUD) and cluster developments on lands that are not subject to conservation easements, the township can facilitate development while maintaining primary agricultural lands. These policies and regulations can be effective in providing long- term protection of farmland and open space where agriculture takes precedence over residential uses.

(Ex G, p. 31)

20. The Township Master Plan presents the Future Land Use policies, including for Agricultural Land Uses, and describes the Rural Agricultural Land Use as follows:

The primary objective of the Rural Agricultural land use category is to preserve the important natural resources of Peninsula Township, while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. These lands include, but are not limited to: steep slopes, primary ridgelines, wildlife corridors, wetlands, lakes, streams, riparian areas and rural areas not designated for Agricultural Preserve uses. The Rural Agricultural classification is also intended to serve as a buffer between the Agricultural Production and the Residential land use classifications. Since the inception of zoning in Peninsula Township, it was common practice to allow many uses not covered by other zoning districts to be allowed in the agriculture zoning district. With the adoption of the Purchase of Development Rights program and agricultural preserve areas, Peninsula Township has informally created a more strictly defined agricultural zoning district. There is a need to establish a rural agricultural district to accommodate rural land uses that have been allowed in the former multi-purpose agricultural zoning district.

(Ex G, p. 32)

21. The Township Master Plan identifies Examples of Acceptable Uses for the Rural Agricultural Land Use to include: Public & Private Parks; Recreational Areas & Facilities; Hunting & Fishing Areas; Nurseries; Farming; and it identifies Examples of Related Activities to include: Microbreweries; Family Day Care; Group Day Care; Warehousing; Food Processing Plants; Wineries; Renewable Energy Conversion Systems; Bed & Breakfast Establishments. (Ex G, p. 32)

### **III. The Relationship between the Peninsula Township Zoning Ordinance and Master Plan**

22. The Peninsula Township Zoning Ordinance serves to implement the Township Master Plan and promote the public health, safety, and welfare by separating conflicting land uses, setting development standards, ensuring consistent application of standards across zoning districts, and creating dispute resolution and enforcement mechanisms. (Dr. Daniels; **Ex H**, p. 5)
23. It is a common practice for local governments through agricultural zoning to restrict the size of winery tasting rooms and gift shops at wineries so that the accessory uses do not overtake the principal use of agricultural production. (Dr. Daniels; **Ex H**, pp. 9-10, 12-13)
24. Starting in 1994 and continuing still, Peninsula Township has complemented agricultural zoning with a voter-supported agricultural preservation program that invested more than \$15 million of local tax dollars and preserved 5,181 acres of agricultural land, indicating the importance of the Township's agricultural industry and character to its residents and reflecting the popularity of the Township's policies to maintain farmland and agriculture on Old Mission Peninsula. Peninsula Township created the most successful farmland preservation program in Michigan and one of the most successful among local governments in the United States. (Dr. Daniels; **Ex H**, pp. 9, 15, 18)
25. Peninsula Township zoning provisions limiting retail sales to logo merchandise and wine-related items allow wineries to be profitable without changing them to commercial uses on agricultural land, furthering the Township's governmental interests as stated in the Zoning Ordinance, the Master Plan, and in the course of this litigation; limitations on the sale of wine-related merchandise is also common practice in major wine producing areas. (Dr. Daniels; **Ex H**, pp. 24-25, 29, 31-32)
26. Peninsula Township zoning provisions limiting activities or events to those that promote local agriculture, including the wine that Peninsula Township wineries produce onsite, offer wineries opportunities to increase sales and profitability without allowing accessory activity and event uses to overtake the principal winery use of wine production. Requiring notice or approval for certain activities and events is a reasonable way to regulate ancillary activities that are not normally permitted at a winery part of agricultural processing. These provisions are favorable to the wineries by creating a process to allow meetings and food service that otherwise would not be permitted. (Dr. Daniels; **Ex H**, pp. 28-20)
27. Peninsula Township, through land use and related programs, strives to balance agricultural production, agricultural processing, and the sale of agricultural products against purely commercial activity with no direct relationship to agriculture. In setting this balance, Peninsula Township designed a zoning ordinance of by-right and special uses that is similar to those found in other leading grape and wine-producing areas in the United States. The balance is delicate but presently working. The A-1 District contains a significant amount of farmland in active agricultural production while allowing for the reasonable economic use of the property, as evidenced by some wineries operating their facilities as principally agricultural businesses in the A-1 District for decades. (Dr. Daniels; **Ex H**, p. 31)

28. Peninsula Township maintains records of meetings of the Township Board, Planning Commission, Zoning Board of Appeals, and Township committees and typically compiles and distributes packets of materials ahead of meetings of these Township bodies, which typically include drafts of zoning amendments under consideration, zoning applications, staff memos, correspondence, resources, and more.
29. Peninsula Township staff located the minutes of some but not all meetings and some but not all packets of materials compiled ahead and distributed to members for meetings of the Township Board, Planning Commission, Zoning Board of Appeals, and Planning Commission committees where winery ordinances and winery land use permit applications and amendments were considered dating back to at least 1989.

**IV. Commercial Speech: The Township’s Tailoring of §§ 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), 8.7.3(12)(k), and 6.7.2(19)(b)(1)(v) to Further its Substantial Governmental Interests.**

A. The Township’s governmental interests in the challenged provisions, which are five subparts of zoning amendments establishing three winery-related uses permissible in the A-1 District, are set forth throughout the Peninsula Township Zoning Ordinance.

30. The Peninsula Township Zoning Ordinance (PTZO) first became effective on June 5, 1972. (Ex. A, p. 1)

31. The Township’s purposes for the PTZO are:

[T]o protect the public health, safety, morals and general welfare of the inhabitants of the Township; to provide for adequate light, air and convenience of access to secure safety from fire and other dangers; to avoid undue concentration of population by regulating minimum open spaces and by regulating and limiting types and locations of buildings and regulating the location of trades, industries, and buildings designated for specific uses; to provide for the orderly development of the Township; to encourage the use of lands and resources of the Township in accordance with their character and adaptability; to provide for safety in traffic, adequacy of parking and reduce hazards to life and property; to facilitate the development of adequate systems of fire protection, education, recreation, water supplies and sanitary facilities; and to conserve life, property, natural resources and the use of public funds for public services and improvements to conform with the most advantageous use of lands, resources and properties.

(PTZO § 2.1; Ex. A, p. 12)

32. The PTZO provides for Peninsula Township to be zoned into districts “defined and established as shown” on the Township’s zoning map. (PTZO § 6.1.2; Ex. A, p. 38)

33. The PTZO has established 10 districts, including the C-1 Commercial district and A-1 Agricultural district. (PTZO § 6.1.1; Ex. A, p. 38)

34. The Township's "Intent and Purpose" for the A-1 District is:

[T]o recognize the unique ecological character of the Peninsula and to preserve, enhance, and stabilizing [sic] existing areas within the Township which are presently being used predominately for farming purposes, yet recognize that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses which are deemed to be compatible with agricultural and open space uses.

(PTZO § 6.7.1; **Ex. A**, p. 50)

35. The PTZO sets forth "Uses Permitted by Right" (*i.e.*, uses by right) and "Uses Permitted by Special Use Permit" (*i.e.*, special uses) in the A-1 District. (PTZO §§ 6.7.2, 6.7.3; **Ex. A**, pp. 50, 58)

36. The PTZO defines a winery as a "state licensed facility where agricultural fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility. The site and buildings are used principally for the production of wine." (PTZO § 3.2; **Ex. A**, p. 28)

37. The PTZO defines a tasting room as:

A room in conjunction with a licensed winery premises, including a remote wine tasting room, where the following takes place; a) tasting of fresh and/or processed agricultural produce such as wine, fruit wines, and non-alcoholic fruit juices; b) retail sales of winery products by the bottle for off-premises consumption; and c) sales of wine by the glass for on-premises consumption.

(PTZO § 3.2; **Ex A**, p. 27)

38. A Farm Processing Facility was the sole winery-related use by right in the A-1 District. (PTZO § 6.7.2(19); **Ex. A**, p. 53)

39. The PTZO defined a Farm Processing Facility as:

[A] building or buildings containing an area for processing equipment where agricultural produce is processed or packaged and prepared for wholesale and/or retail sales. In addition to processing, the building(s) may also include a retail sales area for direct sales to customers and a tasting room for the tasting of fresh or processed agricultural produce including wine. The facility also includes necessary parking, lighting and access to a public road.

(PTZO § 3.2; **Ex. A**, p. 17)

40. The Township's intent for the Farm Processing Facility use was "to promote a thriving local agricultural production industry and preservation of rural character." (PTZO § 6.7.2(19)(a); **Ex. A**, p. 53)

41. The PTZO provided for three winery-related special uses in the A-1 District: the Food Processing Plant, Winery-Chateau, and Remote Winery Tasting Room. (PTZO §§ 6.7.3(4), 6.7.3(22), 8.5, 8.7.2(11), 8.7.2(13), 8.7.3(10), and 8.7.3(12); **Ex. A**, pp. 58, 59, 129, 131, 132, 138-145, and 148-149)
42. The Township’s “Intent and Purpose” for allowing special uses is as follows:

Rather than permitting all of the many and varied land use activities within individual and limited zoning districts, it is the intent of this Ordinance to provide a set of procedures and standards for specific uses of land or structures that will allow, on one hand practical latitude for the investor or developer, but that will at the same time, maintain sound provisions for the protection of the health, safety, convenience, and general welfare of Township inhabitants. In order to provide controllable and reasonable flexibility, this Article permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics may be authorized within certain zone districts by the issuance of a special use permit. By such a procedure, safeguards upon each use which are deemed necessary for the protection of the public welfare, may be reviewed and the standards set forth within the Ordinance shall be considered and determined by the Township Board upon recommendation by the Planning Commission before issuing such special use permits.

(PTZO § 8.1.1; **Ex. A**, p. 112)

43. The PTZO defined a Winery-Chateau as:

A state licensed facility whereat (1) commercial fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility and (2) a limited number of guest rooms with meals are offered to the public.

(PTZO § 3.2; **Ex. A**, p. 28)

44. The Township’s intent for the Winery-Chateau use was “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” and that “[t]he 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.” (PTZO § 8.7.3(10)(a); **Ex. A**, p. 138)
45. The Township’s intent for the Remote Winery Tasting Room was “to allow wine tasting in a tasting room that is not on the same property as the winery with which is associated.” (PTZO § 8.7.3(12)(a); **Ex. A**, p. 148).

B. The Township crafted the Winery-Chateau special use to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, and preserving farmland in the A-1 District.

46. On November 21, 1989, following eight months of consideration, the Township Board established the Winery-Chateau as a special use permissible in the A-1 District by approving Amendment 79. (**Ex. Y**, pp. 1, 3)
47. Amendment 79 arose from a March 20, 1989 Planning Commission meeting during which Bob Begin, founder of Chateau Chantal, requested “a text amendment to the [PTZO] to allow Winery-Chateau sleeping rooms” as a special use in the A-1 District (**Ex. Q**, pp. 1, 2; **Ex. R**, p. 1)
48. The Planning Commission designated a committee to draft Amendment 79 for Mr. Begin and held a special meeting to consider the amendment before holding a public hearing on it. (**Ex. Q**, pp. 1, 2; **Ex. R**, p. 1)
49. On June 26, 1989, the Planning Commission held a public hearing on Amendment 79, heard comments expressing support for the proposal as a way to keep land in agricultural production as well as concerns about the Township’s capacity to accommodate large numbers of visitors, and voted to recommend that the Board approve the amendment. (**Ex. T**, p. 1-2)
50. At a special meeting on August 15, 1989, some Board members noted concerns about whether Amendment 79 was consistent with the Township’s comprehensive plan, allowing commercial uses in an agricultural district, and spot zoning. Others expressed support for the amendment because it would help farmers and prevent conversion of farms to residential development by creating additional revenue streams for them. (**Ex. TTTTTTTTTT** (Tx10), pp. 1-3)
51. The Board returned Amendment 79 to the Planning Commission for further consideration. (**Ex. TTTTTTTTTT** (Tx10), p. 3)
52. On August 21, 1989, the Planning Commission voted to refer Amendment 79 to a committee for review and preparation of a report. (**Ex. U**, pp. 1, 3)
53. On October 16, 1989, the Planning Commission held another public hearing on Amendment 79, after which a motion to recommend approval failed. (**Ex. W**, p. 1-2)
54. Despite the failed motion, the Planning Commission forwarded Amendment 79 to the Board for consideration at Mr. Begin’s request. (**Ex. W**, p. 2)
55. On November 20, 1989, the Planning Commission discussed whether adoption of Amendment 79 should be preceded by a study and amendment of the Township’s Master Plan “to get a handle on the number of potential wineries” on the Peninsula and identify suitable land for them. (**Ex. X**, p. 1)
56. A Planning Commission member noted that there were “only two people growing grapes on the peninsula” at the time and suggested consideration of concerns about the location and number of future wineries wait until the next revision of the Master Plan. (**Ex. X**, p. 1)
57. A motion to revise the Master Plan before adoption of Amendment 79 failed. (**Ex. X**, p. 2)



58. On November 21, 1989, the Board voted to approve Amendment 79. (**Ex. Y**, pp. 1, 3).

C. The Township approved SUP #21 for Chateau Chantal under Amendment 79 with limits on accessory uses that the Township would later expand by creating support uses to allow additional opportunities for wineries to promote themselves.

59. Following the enactment of Amendment 79, Mr. Begin applied for an SUP under it.

60. On December 18, 1989, the Planning Commission held a public hearing at which Mr. Begin described his proposal, which included an owner's or manager's residence, 12 guest rooms, a winery, and six condominium lots for single-family residences. (**Ex. WW** (Wx2), p. 1)

61. The Planning Commission approved a motion to send Mr. Begin's proposal to its "SUP committee" for review and recommendations. (**Ex. WW** (Wx2), p. 2)

62. On January 15, 1990, the Planning Commission discussed Mr. Begin's proposal and voted to recommend the Board approve it. (**Ex. XX** (Xx2), pp. 1-2)

63. On February 13, 1990, the Board discussed Mr. Begin's SUP application but did not reach a conclusion on it. (**Ex. YY** (Yx2), pp. 1, 3-4)

64. On March 13, 1990, the Board held a public hearing and voted to approve a revised version of the proposed SUP, designated SUP #21, that excluded requested accessory uses of a swimming pool and tennis courts. (**Ex. ZZ** (Zx2), pp. 1-3)

65. On July 10, 1990, the Board approved a slightly revised version of SUP #21. (**Ex. AAA** (Ax3), pp. 1, 3)

66. SUP #21 stated, *inter alia*, that Chateau Chantal could provide "[f]ood service (except wine tasting)" only to registered guests of its Inn. (**Ex. BBB** (Bx3), pp. 1, 6)

D. The Township began considering additional zoning amendments to expand Winery-Chateau accessory uses to include events, meeting facilities, and food service for non-registered guests as early as 1996 and consistently rejected proposals with an insufficient nexus to agricultural production.

67. At a Planning Commission meeting on March 18, 1996, Mr. Begin requested a revision to SUP #21 and possible zoning amendment to "clarify[] or broaden[] the definition of a registered guest under subsection (m) or (r) of the Winery-Chateau [amendment] to include scheduled or private events." (**Ex. MMM** (Mx3), pp. 1-3)

68. Mr. Begin also sought to expand Chateau Chantal by adding more guest rooms and "a space used for a conference center, seminars, and weddings." (**Ex. MMM** (Mx3), p. 3)

69. The Planning Commission established a committee to consider Mr. Begin's request. (**Ex. MMM** (Mx3), p. 3)

70. On April 15, 1996, Mr. Begin again presented his requests for zoning and SUP amendments, expressed the desire to "be able to serve food and beverages to non

- registered guests,” and requested a public hearing, which the Planning Commission scheduled. (Ex. NNN (Nx3), pp. 1, 4)
71. On May 20, 1996, the Planning Commission held a public hearing on Mr. Begin’s requested zoning and SUP amendments. (Ex. OOO (Ox3), pp. 1, 2)
  72. Most comments during the public hearing expressed opposition to the proposed amendments, citing concerns about noise, traffic, and the potential for uses like restaurants, bars, and convention centers. (Ex. OOO (Ox3), pp. 2-4)
  73. The Planning Commission voted to return Mr. Begin’s proposal to its “Ag Committee” for a report. (Ex. OOO (Ox3), p. 4)
  74. On June 17, 1996, the Planning Commission heard the “Review Committee Report,” which reflected the Committee’s opinion that, *inter alia*, “the meeting room should be for overnight guest[s] only.” (Ex. PPP (Px3), pp. 1, 3)
  75. The Planning Commission returned the proposal to the Committee for a recommendation. (Ex. PPP (Px3), p. 3)
  76. On August 19, 1996, the Planning Commission held a public hearing on Mr. Begin’s proposed amendment to the PTZO, designated Amendment 112. (Ex. RRR (Rx3), pp. 1, 2)
  77. Most comments during the public hearing expressed opposition to the proposal, citing concern about commercial uses like convention centers and resorts. (Ex. RRR (Rx3) 2-4)
  78. The Planning Commission voted to return Amendment 112 to the Committee for modification. (Ex. RRR (Rx3), p. 4)
  79. On February 18, 1997, the Planning Commission reviewed a report from the Committee, declined a request from Mr. Begin’s counsel to refer Amendment 112 to the Board, determined that the concerns from the August 19, 1996 public hearing had not been addressed, and returned the matter to committee for further review and a recommendation. (Ex. SSS (Sx3), pp. 1, 2)
  80. At a Planning Commission meeting on March 17, 1997, Township Planner Gordon Hayward reviewed revisions to Amendment 112, which included clarification that a “registered guest” is one who “stays overnight.” (Ex. TTT (Tx3), pp. 1, 3)
  81. Mr. Hayward noted that the Planning Commission had retained draft language requiring facilities for accessory uses to be no “greater in size or number than . . . reasonably required for the use of registered guests”; allowing kitchen use for on-site service but not off-site catering; disallowing “exterior amplified music”; requiring outdoor activities to end by 10:00 p.m.; and disallowing food service except for food served to registered guests and free tasting accompaniments like cheese and crackers provided to wine tasters. (Ex. TTT (Tx3), pp. 3-4)

82. The Planning Commission voted to add language clarifying the Township's intent for the Winery-Chateau use to "not . . . allow a bar or restaurant in any form," and to hold a public hearing on Amendment 112. (Ex. TTT (Tx3), p. 4)
83. On April 21, 1997, the Planning Commission held a public hearing on Amendment 112 and voted to send it to the Board. (Ex. UUU (Ux3), pp. 1, 2)
84. At that same meeting, Mr. Begin requested an amendment to SUP #21 to allow Chateau Chantal to have outdoor music until 10:00 p.m., the ability to "serve food, wine and beverages to contracted guests," a new warehouse, an outdoor swimming pool, and entrance flags. (Ex. UUU (Ux3), p. 4)
85. The Planning Commission referred Mr. Begin's request to committee for a recommendation. (Ex. UUU (Ux3), p. 4)
86. At a Planning Commission meeting on May 19, 1997, Mr. Begin reviewed his request for an amendment to SUP #21 to allow Chateau Chantal to have "private contract gatherings such as weddings and corporate gatherings for 200 people" with food service. (Ex. VVV (Vx3), p. 1)
87. There was "consensus" to amend SUP #21 to require outdoor activities to end at 10:00 p.m., disallow "any outdoor amplified sound," disallow "any restaurant or bar, where food or alcohol by the glass is served to the general public," allow "[f]ood, wine and beverage activity" for "registered (overnight) guests only as an accessory use to the primary Winery Chateau use," permit the new warehouse facility, permit one flag, and allow indoor music so long as there was no cover charge or fee and "no disturbance beyond the property line." (Ex. VVV (Vx3), pp. 1-2)
88. The Planning Commission voted to hold a public hearing on the proposed amendment. (Ex. VVV (Vx3), p. 2)
89. On June 16, 1997, the Planning Commission held a public hearing on Mr. Begin's proposed amendment to SUP #21, designated SUP #56. (Ex. WWW (Wx3), pp. 1, 2)
90. The Planning Commission noted it had received 33 letters regarding the requested amendment, most of which favored granting it. (Ex. WWW (Wx3), p. 2)
91. The Planning Commission heard comments from dozens of individuals, which reflected a mix of support and concern about the appropriate balance of agricultural versus commercial uses. (Ex. WWW (Wx3), pp. 2-5)
92. The Planning Commission noted unresolved concerns and returned the proposal to committee for revision and a recommendation. ((Ex. WWW (Wx3), p. 5)
93. On July 8, 1997, the Board held a public hearing on Amendment 112. (Ex. XXX (Xx3), pp. 1, 5)
94. Mr. Hayward explained that Amendment 112 would change the original Winery-Chateau amendment at § 8.7.3(10) to define who is a "registered guest," prohibit the use of kitchen facilities for off-site catering, limit food service to registered guests,

- expand what food could be served for free to accompany wine tasting, and clarify that no bar or restaurant use was intended. (Ex. XXX (Xx3), p. 5)
95. The Board voted to table action on Amendment 112. ((Ex. XXX (Xx3), p. 6)
96. On July 21, 1997, the Planning Commission reviewed its committee's recommendations regarding Chateau Chantal, which included denying the requested pool as "not an accessory use to the principle [sic] use which [wa]s the winery"; denying "temporary structures such as tents" for "Private accessory uses" as "need[ing] to be accessory to the winery, not the inn"; limiting food service to registered guests only; allowing "Public Accessory uses" "so long as there is no charge or fee"; and noting that "[a]ll accessory uses need[ed] to be accessory to the winery, not the Inn." (Ex. YYY (Yx3), pp. 1, 4)
97. The Planning Commission voted to send the committee's recommendations to the Board. (Ex. YYY (Yx3), p. 4)
98. On August 12, 1997, the Board held a public hearing on Chateau Chantal's requested SUP amendment. (Ex. ZZZ (Zx3), pp. 1, 2)
99. The Board heard public comments, which included both support and concerns about commercial uses overtaking agricultural uses, noise from outdoor activities, degradation of the Township's rural character, and setting a precedent for future uses. (Ex. ZZZ (Zx3), pp. 2-6)
100. The Board noted it had received many letters from the public, both supporting and opposing the amendment. (Ex. ZZZ (Zx3), pp. 5-6)
101. The Board reviewed unresolved concerns about the amendment and voted to table action on it. (Ex. ZZZ (Zx3), p. 6)
102. On September 9, 1997, the Board discussed the proposed amendment to Chateau Chantal's SUP #21, potential violations of SUP #21, concerns from residents about noise from outdoor activities, and concerns about bar and restaurant uses in the A-1 District. (Ex. AAAA (Ax4), pp. 1, 3)
103. The Board voted to mostly accept the Planning Commission's recommendations regarding the amendment and form a committee to establish draft guidelines for special events. (Ex. AAAA (Ax4), p. 3)
- E. Chateau Chantal sued the Township in an attempt to obtain expanded accessory uses for Winery-Chateaus like events, meeting facilities, and food service for non-registered guests, and the parties entered into a Consent Judgment that became the foundation for Guest Activity Uses in Amendment 141.
104. At some point during the Township's consideration of Mr. Begin's requests for zoning and SUP amendments authorizing expanded accessory uses, Mr. Begin and Chateau Chantal sued the Township in Grand Traverse County Circuit Court, File No. 98-17195-CZ.

105. On November 5, 1998, Mr. Begin, Chateau Chantal, and the Township resolved the lawsuit by entering into a Consent Judgment which ordered, *inter alia*, the following:
- a. “Registered guests” as used in PTZO § 8.7.3(10)(m) and (r) and SUP #21 “means guests that are registered to stay overnight in the guest rooms provided on the winery-chateau premises”;
  - b. Chateau Chantal would not sell wine by the glass<sup>1</sup> or “directly or indirectly sell or provide food or other beverages to persons who are not ‘registered guests’ unless specifically approved by a resolution or motion” of the Board;
  - c. The Board would pass a resolution or motion following a public hearing to establish guidelines to “set[] the conditions under which it will approve, if at all, of the serving of food and beverages to persons on the Chateau Chantal premises who are not ‘registered guests’ and “for the issuance of special permits for any outdoor functions on the Chateau Chantal premises.” (Ex. BBBB (Bx4), pp. 1-2)
106. The Consent Judgment further ordered that the guidelines the Township established for Chateau Chantal would “be the basis for an amendment to” § 8.7.3(10). (Ex. BBBB (Bx4), p. 2)
107. On February 9, 1999, the Board held a public hearing to establish guidelines for Chateau Chantal and adopted such guidelines pursuant to the Consent Judgment. (Ex. CCCC (Cx4), pp. 1, 2)
108. The Standards for Chateau Chantal adopted on February 9, 1999, stated their intent that “[t]he uses are not to be construed as a restaurant or bar operation,” “[f]ood is not to be served to persons who are not registered guests of Chateau Chantal,” with exceptions for registered guests and the resident manager, “[n]o alcoholic beverages are allowed on the premises except for free wine tasting and the sale of wine by the bottle that is produced on the premises for off premises consumption,” and that the uses would “[p]romote agricultural production on Old Mission Peninsula through the retail sale of wine by the bottle for off-premises consumption.” (Ex. DDDD (Dx4), p. 1)
109. The Standards permitted Chateau Chantal to have free indoor wine tasting with free cheese, fruit, bread, and crackers; “Educational Tours of the winery and vineyard, provided no food or beverages [we]re served”; “[o]ne private annual shareholder’s meeting” indoors; “[o]ne private annual Employee’s party” indoors; and to serve “[f]ood and [b]everages including wine produced on the premises” to registered guests “but not within the Tasting Room during regular tasting hours.” (Ex. DDDD (Dx4), p. 1)
110. The Standards also allowed Chateau Chantal to have “Outside Wine Tasting” “for up to two days during Blossom Days,” provided that food and beverage service was limited to what would be permitted for indoor tasting, all outdoor activities ended by

---

<sup>1</sup> The Township has since enacted Amendment 181 to reflect changes in state law regarding sale of wine by the glass. (See Ex. A, p. 160)

9:00 p.m., there was no “amplified outside music,” and any temporary structures like tents or canopies were “specifically approved” by the Board. (Ex. DDDD (Dx4), p. 1)

111. The Standards provided that, for outdoor wine tasting, the Board could approve “[s]pecial advertising signs” and “may require special sanitary facilities and security personnel” if warranted by the anticipated number of attendees. (Ex. DDDD (Dx4), p. 1)

112. The Standards established a process for Chateau Chantal to obtain a permit for “Outside Wine Tasting,” which included an application at least one month in advance with information about the date, anticipated number of attendees, a site plan showing any temporary structures, proposed special sanitary and security measures, and any special advertising signs. (Ex. DDDD (Dx4), p. 2)

113. The Standards further provided that Chateau Chantal could have outdoor activities for registered guests so long as they ended by 9:00 p.m., there was no “amplified outside music,” no temporary structures were used without specific approval from the Board, and an application was made to the Board at least one month in advance with information about the date and any proposed temporary structures or special advertising signs. (Ex. DDDD (Dx4), p. 2)

114. The Standards noted that “any activity involving food service to persons who are not registered guests” would require zoning and SUP amendments. (Ex. DDDD (Dx4), p. 2)

F. In 1999, the Township considered and rejected another request from Chateau Chantal for a zoning amendment to expand accessory uses for Winery-Chateaus.

115. On July 13, 1999, the Board held a public hearing on proposed Amendment 127, which Mr. Begin requested. (Ex. MMMMMMM (Mx7), pp. 1, 2)

116. Mr. Begin “stated that the business is not just growing grapes or producing wine, that it is agricultural/tourism” and that “we need to redefine farming” and allow “[p]romotional activity . . . to bring in customers, and create an ambiance for the peninsula which will in turn help to sell the product.” (Ex. MMMMMMM (Mx7), p. 2)

117. The Board heard public comments expressing concern that the proposed uses would not be appropriate for an agricultural district. (Ex. MMMMMMM (Mx7), p. 2)

118. The Board discussed the proposed amendment and one member “commented that the commercial uses belong in the commercial zone.” (Ex. MMMMMMM (Mx7), p. 2)

119. The Board voted to deny the proposed amendment as presented. (Ex. MMMMMMM (Mx7), p. 2)

G. Following a request for a zoning amendment to allow “Contract Groups, Contract Events, and Community Events” at Winery-Chateaus, the Township spent nearly three years working to ensure that the zoning amendment that ultimately became Amendment 141 and created Guest

Activity Uses sufficiently tied opportunities for additional activities at Winery-Chateaus to agricultural production and farmland preservation.

120. On July 16, 2001, the Planning Commission considered a request from Chateau Chantal for a zoning amendment to create “three new categories of uses at the Chateau: Contract Groups, Contract Events, and Community Events, in addition to current allowed uses,” and noted that Mr. Hayward and Mr. Begin had met to start the drafting process. (Ex. UUUUUUUUUU (Ux10), pp. 1, 2)
121. On October 15, 2001, the Planning Commission heard the committee report on Chateau Chantal’s proposed zoning amendment and discussed it. (Ex. II (Ix2), pp. 1, 3)
122. During the discussion, Planning Commission members expressed support for “agri-tourism” but also expressed a desire to tie “agricultural enterprises to preservation” and voiced concerns that “weddings and other celebratory events” were commercial and could require rezoning and that the amendment “d[id]n’t seem to preserve ag land.” (Ex. II (Ix2), p.3)
123. The Planning Commission decided that the committee would work with Mr. Hayward to draft amendment language for the Board to review. (Ex. II (Ix2), p.3)
124. On November 26, 2001, the Planning Commission reviewed and discussed the draft amendment language. (Ex. JJ (Jx2), pp. 1, 3)
125. The discussion covered concerns about whether banquets should be allowed and whether they were “directly related to the operation of a farm”; questions about whether “maintaining production agriculture” would be a “better term” than “preserve” and whether the definition of “restaurant” needed improvement; clarification that the proposed amendment was for a “marketing use, established in order to allow the winery to sell more product on site at retail prices”; a question about whether a similar use should be allowed on other types of farms like shoreline orchards; a concern about wedding receptions and family reunions creating competition with “restaurants and rental halls,” whether 28 acres was enough acreage for preservation purposes; and a suggestion for the committee to “fine-tun[e] some of the allowed activities and how they relate to the sale of wine.” (Ex. JJ (Jx2), pp. 3-4)
126. The Planning Commission agreed that the committee would “re-group” and return for the next Planning Commission meeting. (Ex. JJ (Jx2), p. 4)
127. At a Planning Commission meeting on December 17, 2001, Mr. Hayward reviewed a new draft of the proposed amendment.
128. Mr. Hayward informed the Planning Commission that the committee was “striving to document the direct relationship between additional uses in the form of guest activities and the winery chateau and the actual production of crops on the Peninsula,” and that its “new formula” for the amendment was “based on acreage rather than production.” (Ex. KK (Kx2), pp. 1, 2)

129. Planning Commission members expressed concerns about sale of wine by the glass, language clarity, “promotional materials for sale (t-shirts, hats, etc.),” and the Township’s ability to “monitor certain uses.” (Ex. **KK** (Kx2), p. 2)
130. The Planning Commission also discussed “prohibiting the sale of non-Peninsula wines.” (Ex. **KK** (Kx2), p. 2)
131. The Planning Commission voted to “fine-tune the language in committee” for consideration at a future meeting. (Ex. **KK** (Kx2), p. 2)
132. On January 9, 2002, the Board and Planning Commission held a special joint meeting to discuss the “Winery Chateau Activities Amendment,” as well as the recently introduced Farm Processing Facility amendment and its Open Space Conservation District Transfer of Development Rights (TDR) program. (Ex. **KKKKKKKK** (Kx8), pp. 1-4)
133. Committee members reviewed the original Winery-Chateau amendment and explained that Mr. Begin was now “asking for a meeting hall for things such as business organizations coming to [Traverse City], and that he be allowed to provide meals.” (Ex. **KKKKKKKK** (Kx8), p. 2)
134. It was explained that the committee had “come up with a formula to preserve additional farm land” and that “for each activity allowed there would be additional land preserved.” The committee was “still working on it,” but “[b]asically” the idea was “to allow additional uses in exchange for more preserved farmland.” (Ex. **KKKKKKKK** (Kx8), p. 2)
135. There was discussion of guest activities and requests received from groups wanting to have boxed lunches, fundraisers, and the like. (Ex. **KKKKKKKK** (Kx8), p. 2)
136. There was discussion of definitions used in the amendment; that attendees “may or may not be registered guests”; that the uses would be “subordinate to [the] principal use[:] winery”; that “[a]ctivities [were] not intended to be or resemble a restaurant,” would accommodate “no one without a reservation,” and serve “no food unless contracted”; that “[a]llowed guest activities w[ould] promote [P]eninsula agriculture”; that “no fee [would be] charged” for community and promotional events; that the tasting room would remain open; that no food would be served “other than what’s already allowed”; “[c]ommunity lunch” would be prohibited by boxed lunches allowed; a “[c]ontract event” would be “one that is scheduled at least 30 days in advance” and could include “corp[orate] seminars, wedding receptions,” and family reunions with a limit of 12 per year or 2 per month; wine seminars and cooking classes with food provided would be allowed, and wine by the glass; wine “must be Peninsula appellation”; food could be provided by Chateau Chantal or catered; and hours would be no later than 9:30 p.m. (Ex. **KKKKKKKK** (Kx8), pp. 2-3)
137. Planning Commission members discussed whether the Township wanted these kinds of events and their relationship to farmland preservation, with one member urging the Township to “tie new uses to preserve additional land,” another noting a “[n]eed to demonstrate a clear link to preservation/production,” and one explaining that “another intent of the committee [wa]s to insure uniqueness of the winery chateau be preserved



and not [become] strictly commercial” or “end up being some kind of rental hall.” (Ex. KKKKKKKK (Kx8), p. 3)

138. On February 19, 2002, the Planning Commission reviewed a draft of the proposed amendment, the “intent” of which was “to allow some reasonable activities, in exchange for a guarantee of fruit production on the Peninsula, as well as Old Mission Peninsula wine being tasted and used in the activities. (Ex. LL (Lx2), pp. 1, 2)
  139. The Planning Commission held a “public information meeting” about the proposed amendment, then voted to “send issues and comments regarding [the] Winery-Chateau Activities Amendment back to committee to structure in ordinance form; then bring back for the Planning Commission to review.” (Ex. LL (Lx2), p. 2)
  140. At a Planning Commission meeting on March 18, 2002, Mr. Hayward reviewed the draft amendment and noted its “intent . . . to allow some reasonable activities in exchange for a guarantee of fruit production on the Peninsula, as well as Old Mission Peninsula wine being tasted and used in the activities.” (Ex. MM (Mx2), pp. 1, 2)
  141. The Planning Commission voted to set a public hearing on the amendment. (Ex. MM (Mx2), p. 2)
  142. On April 23, 2002, the Planning Commission held a public hearing on the proposed “Winery-Chateau Activities” amendment, designated Amendment 141. (Ex. NN (Nx2), pp. 1, 3)
  143. The Planning Commission heard comments expressing requests for clarification, support for off-site catering, concern about “amplified instruments allowed in temporary structures,” concern about how “this issue keeps coming up year after year,” and views on whether the activities were too resort-like. (Ex. NN (Nx2), pp. 3-4)
  144. The Planning Commission discussed a motion to recommend the Board approve Amendment 141, with one member noting his belief that “it supports agricultural production tied to marketing of appellation wine”; others noting that it would be “a good thing for agricultural land on the Peninsula” and is “value-added agriculture”; and one expressing the belief that creating a “C-2 zone . . . would be a more rational approach because there’s no limit on how big this might grow” and a C-2 zone “would provide for different taxing abilities” if a need for additional infrastructure arose, and also expressing a preference for expanded food service. (Ex. NN (Nx2), p. 4)
  145. The Planning Commission voted to recommend the Board approve Amendment 141. (Ex. NN (Nx2), p. 4)
  146. The Board did not approve Amendment 141.
- H. The Township continued to revise Amendment 141 to achieve a reasonable balance between allowing additional promotional opportunities for Winery-Chateaus and ensuring that uses in the A-1 District are tied to agricultural production and farmland preservation.

147. At a Planning Commission on May 19, 2003, Mr. Hayward “reported on the status” of Amendment 141, which had been returned to the Planning Commission for review and another public hearing. (Ex. OO (Ox2), pp. 1, 2)
148. One Planning Commission member expressed concern that a Master Plan amendment would be required because the amendment “entail[ed] additional uses not related to agriculture.” (Ex. OO (Ox2), p. 2)
149. The Planning Commission voted to send Amendment 141 to its “PUD/Open Space Committee” for review. (Ex. OO (Ox2), p. 2)
150. At a meeting on June 16, 2003, the Planning Commission discussed Amendment 141 and voted to schedule a public hearing on it. (Ex. PP (Px2), pp. 1, 3)
151. On July 14, 2003, the Planning Commission held a public hearing on Amendment 141 and heard comments expressing concerns about noise; traffic; “conflicts with the Comprehensive Plan”; granting “special privileges to one specific niche of agriculture”; allowing “contract groups”; allowing a “commercial application in an agricultural zone”; the impact on “parks and other township amenities”; and a need for clarification “regarding guests, activities, tents, hours, etc.” (Ex. QQ (Qx2), pp. 1, 2)
152. During the Planning Commission’s discussion, some members expressed support for the amendment and others raised concerns that it was “too specific and written mainly for Chateau Chantal,” that it would be difficult to enforce, and that it would “turn Chateau Chantal into a commercial hall.” (Ex. QQ (Qx2), p. 2)
153. The Planning Commission voted to recommend the Board approve Amendment 141, “excluding ‘wedding receptions’ and ‘family reunions.’” (Ex. QQ (Qx2), p. 2)
- I. A version of Amendment 141 that was less restrictive than the enacted version Plaintiffs challenge in this lawsuit was determined to be inconsistent with the Township’s Master Plan.
154. On September 15, 2003, the Planning Commission received a report that “the Township Board had returned [Amendment 141] to the Planning Commission because of the [Grand Traverse] County Planning Commission’s decision to recommend denial of this amendment.” (Ex. RR (Rx2), pp. 1, 5)
155. Mr. Hayward “stated that the County Planning Commission recommended denial based on the Policy section of the Master Plan that deals with allowed uses on Agricultural land, specifically that allowed uses should be limited to those directly related to the operation of a farm and not extend commercial use.” (Ex. RR (Rx2), p. 5; Ex. SS (Sx2))
156. The Planning Commission discussed the County Planning Commission’s opinion and voted to table Amendment 141. (Ex. RR (Rx2), p. 5)
- J. The Township approved Amendment 141 only after it had determined that the additional allowed uses would be sufficiently tied to agricultural production and farmland preservation.

157. On May 17, 2004, the Planning Commission heard a committee report on Amendment 141, which indicated that the committee had met “to clarify guest activity uses and make the language more consistent.” (Ex. TT (Tx2), pp. 1, 4)
158. The Planning Commission discussed “the definition of ‘Peninsula’ wine” and related language, noted changes to the draft language, and voted to set a public hearing on Amendment 141. (Ex. TT (Tx2), p. 4)
159. On June 21, 2004, the Planning Commission held a public hearing on Amendment 141. (Ex. UU (Ux2), pp. 1, 2)
160. Mr. Hayward “gave an overview of the specific standards, procedures, and requirements for events that can and cannot take place under [the] proposed [Amendment 141],” and noted that it “clarifie[d] a number of current activities, i.e. wine/food seminars, cooking classes, ag-related events, etc.” and that “[a] number of activities [would be] allowed, but with specific standards and requirements.” (Ex. UU (Ux2), p. 2)
161. The Planning Commission voted to recommend the Board approve Amendment 141. (Ex. UU (Ux2), p. 2)
162. On August 10, 2004, the Board held a public hearing on Amendment 141. (Ex. VV (Vx2), pp. 1, 5)
163. Mr. Hayward “explained the purpose of . . . Amendment 141 [wa]s to add additional use under Winery/Chateau guest activity uses” and that “[t]here would be a direct tie with guest activities and [the] amount of grapes grown on the Peninsula.” (Ex. VV (Vx2), p. 5)
164. Mr. Hayward explained that there would be “1.25 tons of grapes purchased/processed for each person allowed,” with a maximum of 111 attendees or 1 per 15 square feet”; no alcohol other than tasting; no temporary structures; “no discernable sounds allowed at the property line” and “no amplified music”; and no outdoor displays. (Ex. VV (Vx2), p. 5)
165. In response to a question about tying attendee numbers to “tonnage rather than acreage and space,” Mr. Hayward said the Township had “considered that” but felt tonnage would be “better and easier to enforce because” tonnage documentation is “required by other agencies.” (Ex. VV (Vx2), p. 5)
166. Following discussion, the Board voted to approve Amendment 141. (Ex. VV (Vx2), pp. 5-6)
- K. The Winery-Chateau provisions that Plaintiffs challenge as regulations of commercial speech were integral parts of Amendment 141, the entirety of which was tailored to balance the Winery-Chateaus’ desire for additional promotional opportunities with the Township’s substantial governmental interests in zoning and agricultural preservation.
167. Amendment 141 added subsection (u) to the existing Winery-Chateau section at § 8.7.3(10), which had been added by Amendment 79. (Ex. A, p. 158)

168. Guest Activity Uses were support uses that the Board could approve in a Winery-Chateau's SUP, and which allowed Winery-Chateaus to host and serve food at wine and food seminars, cooking classes, meetings of Grand Traverse County 501(c)(3) nonprofit organizations, and meetings of agricultural related groups notwithstanding the generally applicable limitation that accessory uses like meeting facilities and food service are for registered (*i.e.*, overnight) guests only. (Ex. A, p. 140-141 (§§ 8.7.3(10)(m), 8.7.3(10)(u), and 8.7.3(10)(u)(2)(b))
169. Subsection 8.7.3(10)(u)(1)(b) expressed the Township's intent that Guest Activity Uses "help in the promotion of Peninsula agriculture by: a) identifying 'Peninsula Produced' food or beverage for consumption by the attendees; b) providing 'Peninsula Agriculture' promotional brochures, maps and awards; and/or c) including tours through the winery and/or other Peninsula agriculture locations." (Ex. A, p. 141)
170. Subsection 8.7.3(10)(u)(1)(b) furthers both the Winery-Chateaus' interest in having additional opportunities to promote themselves, which was the purpose of the requests that prompted the Township's enactment of Amendment 141, and the Township's substantial governmental interest in promoting agriculture.
171. Subsection 8.7.3(10)(u)(1)(b) stated the Township's intent in allowing Guest Activity Uses and neither required nor prohibited anything. (Ex. A, p. 141)
172. Subsection 8.7.3(10)(u)(5)(h) stated that "[n]o outdoor displays of merchandise, equipment or signs[we]re allowed" during Guest Activity Uses. (Ex. A, p. 144)
173. Subsection 8.7.3(10)(u)(5)(h) furthers the Township's substantial governmental interest in zoning to, *inter alia*, "allow, on one hand practical latitude" for Winery-Chateaus but, "at the same time, maintain sound provisions for the protection of the health, safety, convenience, and general welfare of Township inhabitants." (Ex. A, p. 112 (§ 8.1.1 (intent and purpose of special uses)).
174. Throughout the development of Amendment 141, the Township heard and sought to address concerns from the public about the impact of Guest Activity Uses on neighbors by implementing standards for conducting Guest Activity Uses that would minimize disruption from outdoor activities, including the prohibition on outdoor displays.
175. Subsection 8.7.3(10)(u)(5)(h) is a reasonable way to achieve the Township's goals and leaves ample opportunity for Winery-Chateaus and their guests to communicate as they may have unlimited indoor displays during Guest Activity Uses and signage in accordance with their individual site plans, SUPs, and signage provisions at PTZO § 7.11.
- L. The Township crafted the Remote Winery Tasting Room special use to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, preserving farmland, and preventing commercial spot zoning in the A-1 District.
176. On January 19, 1998, the Planning Commission considered a request by Dave and Joan Kroupa and Lee Lutes on behalf of Peninsula Cellars, who "propos[ed] to move

- their current wine tasting from the store in Old Mission to the old school house on the corner of Center and Carroll Roads.” (Ex. AAAAAAAAAA (Ax10), pp. 1, 2)
177. Mr. Hayward noted that the proposal would require a zoning amendment or rezoning the parcel. (Ex. AAAAAAAAAA (Ax10), p. 2)
178. The Planning Commission discussed the proposal and referred it to its “Ag/Commercial Committee.” (Ex. AAAAAAAAAA (Ax10), p. 2)
179. On February 17, 1998, the Planning Commission heard a committee report on the proposal, designated Amendment 120; discussed concerns about property ownership and whether the proposal would allow a “commercial use on an agricultural parcel”; and voted to set a public hearing on it. (Ex. IIIIII (Ix7), pp. 1, 3)
180. On March 23, 1998, the Planning Commission discussed Amendment 120 and decided to hold a public information meeting on it. (Ex. JJJJJJJ (Jx7), pp. 1, 4)
181. On April 13, 1998, the Planning Commission held a public hearing on the proposed amendment relating to Peninsula Cellars’ request, designated Amendment 120. (Ex. BBBBBBBBBB (Bx10), pp. 1, 2)
182. During public comment, there was discussion of the reasoning for the minimum 150-acre requirement, concerns that locating a tasting room on a parcel separate from its winery was too commercial, and questions about whether neighboring Leelanau County had remote tasting rooms. (Ex. BBBBBBBBBB (Bx10), pp. 2-3)
183. Mr. Kroupa noted that he “already ha[d] a tasting room in a commercial district and [wa]s asking to move it to a different location.” (Ex. BBBBBBBBBB (Bx10), p. 3)
184. The Planning Commission discussed necessary revisions to the amendment and one member expressed concern about the “fine line between ag and commercial.” (Ex. BBBBBBBBBB (Bx10), p. 3)
185. The Planning Commission voted to send the amendment to the Board with a recommendation for approval. (Ex. BBBBBBBBBB (Bx10), p. 3)
186. On May 12, 1998, the Board held a public hearing on Amendment 120. (Ex. CCCCCCCCCC (Cx10), pp. 1, 2)
187. The Board heard public comment expressing concern about the details of the tasting room operation and its impact on neighbors. (Ex. CCCCCCCCCC (Cx10), p. 2)
188. The Board read letters into the record, including one from Ed O’Keefe of Chateau Grand Traverse expressing his belief that “remote tasting rooms should be located on commercial property” and that the amendment was “a form of spot zoning,” and one from John Wunsch supporting the amendment with a suggested revision. (Ex. CCCCCCCCCC (Cx10), p. 2)
189. The Board discussed the amendment, with members noting that it would “make it easier” for a winery operator to market their products in a “workable location,” and

opining that it “encourage[d] ag production by requiring that at least 50% of the associated property must be in active production.” (Ex. CCCCCCCCCC (Cx10), p. 2)

190. The Board approved Amendment 120 with minor revisions. (Ex. CCCCCCCCCC (Cx10), p. 3)

M. The Township also tailored the sole Remote Winery Tasting Room SUP under Amendment 120 to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by addressing the community’s concerns about an unprecedented retail use in the A-1 District.

191. At a Planning Commission meeting on May 18, 1998, Dave Kroupa presented a request for an SUP under newly enacted Amendment 120 to move his existing tasting room from Old Mission to the old Maple Grove School building. (Ex. DDDDDDDDDD (Dx10), pp. 1, 2)

192. The Planning Commission voted to send the request to its “Ag Committee” and directed the committee to schedule a site visit with Mr. Kroupa. (Ex. DDDDDDDDDD (Dx10), p. 2)

193. The Planning Commission also voted to set a public hearing on a necessary revision to Amendment 120, later designated Amendment 121. (Exs. A, p. 156; DDDDDDDDDD (Dx10), p. 3)

194. On June 15, 1998, the Planning Commission held a public hearing on Amendment 121 and voted to pass it on to the Board, which approved it on July 14, 1998. (Exs. A, p. 156; KKKKKKKK (Kx7), pp. 1, 4)

195. At a Planning Commission meeting on July 20, 1998, Dave and Joan Kroupa presented their proposal to use the old Maple Grove School for their wine tasting room, designated SUP #62. (Ex. EEEEEEEEEEE (Ex10), pp. 1, 2)

196. In response to questions, Ms. Kroupa indicated that the tasting room would close by 7:00 p.m. at the latest, have no music, and have no weddings. (Ex. EEEEEEEEEEE (Ex10), p. 2)

197. The Planning Commission voted to schedule a public hearing on the proposal pending receipt of certain requested information and scheduled a site visit to the property. (Ex. EEEEEEEEEEE (Ex10), p. 3)

198. On September 21, 1998, the Planning Commission held a public hearing on SUP #62. (Ex. FFFFFFFFFF (Fx10), pp. 1, 2)

199. Ms. Kroupa indicated that the tasting room could be open as late as 8:00 p.m. (Ex. FFFFFFFFFF (Fx10), p. 2)

200. During public comment, people expressed concern about additional traffic; setback requirements; lighting; retail sales; whether the proposal met the needs of residents or just tourists; the character of the neighborhood; the appropriateness of such a use

outside the commercial district in Mapleton; the potential for danger from people parking on the roads and the narrowness of Carroll Road; noise; light pollution; signage; safety on Center Road; and visitors turning around in neighbors' driveways. (Ex. FFFFFFFF (Fx10), pp. 2-3)

201. The Planning Commission voted to table the request until the committee could meet with the Kroupas to address the public's concerns. (Ex. FFFFFFFF (Fx10), p. 3)
202. At a Planning Commission meeting on October 19, 1998, a new "Winery/tasting Room Zoning Ordinance Amendment" was introduced, with the reading of a 1992 committee report that discussed the "[c]umulative effect of wineries" on the Peninsula and "anticipated that 5 or less wineries would be built on the Peninsula since wine tasting would be restricted to wines from fruit grown on the Peninsula." The report recommended that, "[i]f in the future it becomes apparent that more than five wineries is likely and amendment to the township master plan and zoning ordinance should be considered, to address possible adverse effects due to wine tour traffic, excessive consumption of alcohol, or other problems." (Ex. GGGGGGGGGG (Gx10), p. 1)
203. A Planning Commission member noted an additional concern "raised by the same committee" relating to "wine tasting and retail sales that take place at a location separate from the winery" – *i.e.*, Amendment 120 and the Kroupa's proposed SUP – and that the committee "felt that this was retail in nature and should only be allowed in a commercial zone." (Ex. GGGGGGGGGG (Gx10), p. 1)
204. The Planning Commission then reviewed the proposed SUP #62, including a request from Ms. Kroupa for "more retail space than what the committee ha[d] suggested[,] possibly 5 to 10%." (Ex. GGGGGGGGGG (Gx10), pp. 1-2)
205. The Planning Commission accepted public comment although it was not a public hearing. Comments expressed concern about traffic, parking, and the required tree buffer around the property. (Ex. GGGGGGGGGG (Gx10), p. 2)
206. A Planning Commission member expressed support for the proposal because the retail use was tied to "giving up a substantial development right by preserving . . . ag land." ((Ex. GGGGGGGGGG (Gx10), pp. 2-3)
207. The Planning Commission and the Kroupas discussed the percentage of floor area space that could be used for retail sales and reached "consensus . . . that the area be 3% which [wa]s 54 square feet." (Ex. GGGGGGGGGG (Gx10), p. 3)
208. The Planning Commission voted to recommend the Board approve the proposed SUP, designated SUP #62, "along with the committee recommendations for signage, lighting, and buffering," and terms indicating that the retail space would be "no greater than 3% of the floor area" and requiring the Kroupas to implement dust control measures along Carroll Road. (Ex. GGGGGGGGGG (Gx10), p. 3)
209. On November 10, 1998, the Board held a public hearing on SUP #62. (Ex. HHHHHHHHHH (Hx10), pp. 1, 2)

210. During public comment, people expressed concern that the use was “commercial, not agricultural in nature, and should not be allowed in [the agricultural] zone,” that it would change the character of the neighborhood by “putting traffic and noise on an otherwise generally quiet road,” that it would not be “harmonious and appropriate” in its proposed location and belonged in a commercial zone, that it was not compatible with nearby residential uses, and that the proposed parking lot would not be in keeping with the character of the area. Others expressed support for how the proposal would “support farmland preservation and agriculture,” noted that no land was being taken out of production for wine tasting, and believed the proposed use would be an improvement over previous uses in the area. (Ex. HHHHHHHHHHH (Hx10), pp. 2-3)

211. Following discussion, the Board voted to approve SUP #62 with certain conditions relating to property ownership requirements, licensing requirements, parking, and buffering. (Ex. HHHHHHHHHHH (Hx10), p. 3; Ex. IIIIIIIII (Ix10))

N. The Remote Winery Tasting Room provisions that Peninsula Cellars challenges were integral subparts of Amendment 120, the entirety of which was tailored to further both the interests of Peninsula Cellars in its unique land use and the Township’s substantial governmental interests in zoning to ensure compatible land uses, agricultural promotion, and farmland preservation, and to avoid commercial spot zoning, in the A-1 District.

212. Amendment 120 added Section 8.7.3(12) to the PTZO. (Ex A, p. 156)

213. Subsection 8.7.3(12)(h), which Peninsula Cellars does not challenge, broadly permitted the retail sale of Peninsula Cellars wine at its remote tasting room, located on a parcel separate from the Peninsula Cellars winery.

214. Peninsula Cellars may sell its wine by the bottle for off-premises consumption and by the glass in accordance with state law and regulations. (PTZO § 8.7.3(12)(h); Ex. A, p. 148).

215. In addition to retail wine sales allowed by § 8.7.3(12)(h), challenged provision § 8.7.3(12)(i) allowed limited retail sales of promotional merchandise as follows:

Retail sale of non-food items which promote the winery or Peninsula agriculture and has the logo of the winery permanently affixed to the item by silk screening, embroidery, monogramming, decals or other means of permanence. Such logo shall be a least twice as large as any other advertising on the item. No generic or non-logo items may be sold. Promotional items allowed may include corkscrews, wine glasses, gift boxes, t-shirts, bumper stickers, etc.

(Ex. A, p. 148)

216. Allowing retail sales of winery or agricultural promotional merchandise in the A-1 District is a reasonable way to promote agriculture and preserve farmland by helping farmers market themselves and their products and by creating an additional revenue stream for them.



217. Limiting retail sales of merchandise that promotes the Remote Winery Tasting Room or Peninsula agriculture by bearing the Remote Winery Tasting Room logo is a reasonable way to ensure that the Remote Winery Tasting Room does not sell generic souvenirs and convenience store items.
218. Requiring the logo to be permanently affixed and of a certain size prevents the use of stickers or stamps on generic souvenirs and convenience store items to expand retail sales beyond allowed promotional merchandise.
219. Nothing in § 8.7.3(12)(i) prevents a Remote Winery Tasting Room from selling non-logo merchandise on property located outside the A-1 District, such as in the C-1 commercial district or downtown Traverse City, or through the Remote Winery Tasting Room’s website.
220. Challenged provision § 8.7.3(12)(k) also reasonably helps to ensure that retail sales in the A-1 District remain related to agricultural production by limiting promotion of items other than wine for sale at the Remote Winery Tasting Room as follows: “Signs and other advertising may not promote, list or in any way identify any of the food or non-food items allowed for sale in the tasting room.”
221. Nothing in § 8.7.3(12)(k) prevents a Remote Winery Tasting Room from advertising or otherwise promoting its wine, tasting room entertainment, or anything else it desires apart from food and non-food (*i.e.*, merchandise) allowed for sale in the tasting room.
222. Subsection 8.7.3(12)(k) is a reasonable way to achieve the Township’s goals and leaves ample opportunity for a Remote Winery Tasting Room to communicate as it may have unlimited advertising apart from food and merchandise.
- O. The Township crafted the Farm Processing Facility use by right to further its governmental interests in zoning to protect the health, safety, and general welfare of its inhabitants, particularly by ensuring the compatibility of land uses, promoting agriculture, and preserving farmland in the A-1 District.
223. At a Planning Commission meeting on December 17, 2001, the Farm Processing Facility Amendment, designated Amendment 139, was introduced and described as having been “designed to allow farmers to process and sell what they grow.” (Ex. **KK** (Kx2), pp. 1, 2)
224. The Board and Planning Commission held a special joint meeting on January 9, 2002, to discuss Amendment 139, as well as Amendment 141 (Winery-Chateau Guest Activity Uses) and its Open Space Conservation District Transfer of Development Rights (TDR) program. Ex. **KKKKKKKK** (Kx8), pp. 1-4)
225. Bern Kroupa and John Wunsch gave a presentation, with Mr. Wunsch explaining that, after the failure of Amendment 128, there had been “[t]wo years of study to identify key issues” and “extreme efforts” had been made to “communicate with both sides.” (Ex. **KKKKKKKK** (Kx8), p. 1)

226. Amendment 128 was an amendment that was less restrictive than Amendment 139 and would have created a new “Winery with Tasting Room” special use in the A-1 District, allowing a winery with tasting and retail sales on just 10 acres with a minimum of 5 acres in fruit production. (*See* **Ex. BB** (Bx2), p. 3)
227. Throughout the public hearing process leading to the adoption of Amendment 128, people raised concerns about preferential treatment for grape farmers over other kinds of farmers, the small amount of acreage required to be maintained in agricultural production, the intensity of the proposed use, the potential facility size, retail sales of items unrelated to agricultural production like hats and t-shirts, the appropriateness of retail sales on PDR land, the potential proliferation of wineries on the Peninsula, traffic, safety, and the deterioration of the character of the Peninsula. (**Exs. AA** (Ax2), pp. 1-2; **BB** (Bx2), pp. 3-5; **CC** (Cx2), pp. 3-4; **EE** (Ex2), pp. 3-8)
228. The Board approved Amendment 128 by a 3-2 vote on February 8, 2000, but Amendment 128 was repealed by referendum a few months later. (**Exs. EE** (Ex2), pp. 1, 8; **HH** (Hx2), p. 1; **KKKKKKKK** (Kx8), p. 1))
229. Regarding Amendment 139, Mr. Wunsch provided “details of specific restrictions” relating to appellation wine and retail sales and noted that a “key feature” was that the Farm Processing Facility would be a “use by right,” meaning that “[t]he community can know in advance what the farmer will be able to do, as well as his limits.” (**Ex. KKKKKKKK** (Kx8), p. 1)
230. Mr. Wunsch also discussed a “key issue” relating to wine tasting on land protected by a Purchase of Development Rights (PDR) easement, noting that it could “fit” on PDR property “[w]hen carefully structured.” (**Ex. KKKKKKKK** (Kx8), p. 1)
231. Mr. Kroupa noted that the work on Amendment 139 was “not only for the wine makers, but for value-added agriculture as a whole” and reviewed then-pending state legislation relating to small wineries that the committee had looked to in drafting Amendment 139. (**Ex. KKKKKKKK** (Kx8), p. 1)
232. Mr. Wunsch explained that a Farm Processing Facility would require 40 acres in “active agriculture” with not more than one house per 20 acres. (**Ex. KKKKKKKK** (Kx8), p. 1)
233. Mr. Wunsch explained that the amendment would not “replace farm stand rules” and not affect food processing but was “something in between to benefit the individual farm.” (**Ex. KKKKKKKK** (Kx8), p. 1)
234. There was further discussion about the state legislation, which Mr. Kroupa explained in more detail. (**Ex. KKKKKKKK** (Kx8), p. 1)
235. Concerns were raised related to viewshed protection, leasing, the majority of fruit being grown on the property, enforcement, setbacks, road access, the use by right, PDR versus non-PDR land, and the distinction between produce and products. (**Ex. KKKKKKKK** (Kx8), p. 2)

236. On February 19, 2002, the Planning Commission held a public information meeting about Amendment 139. (Ex. LL (Lx2), pp. 1, 2)
237. On June 17, 2002, the Planning Commission held a public hearing on Amendment 139. (Ex. LLLLLLLL (Lx8), pp. 1, 2)
238. Before the public hearing opened, Mr. Kroupa explained the history of the work to establish a “use-by-right amendment” and how [t]he philosophy of the ad hoc committee was that “if you grow it, you can process it and sell it.” Mr. Kroupa then “detailed limitations on ancillary sales, specific provisions, and acreage requirements.” (Ex. LLLLLLLL (Lx8), p. 2)
239. During the public hearing, some people expressed concern about leased land, the difference between fruit and produce, and whether the use should require an SUP, but many supported it.
240. The Planning Commission voted to approve and forward Amendment 139 to the Board with recommendations and notations of “differences between this ordinance and Amendment 128 for informational purposes.” (Ex. LLLLLLLL (Lx8), p. 3)
241. On July 9, 2002, the Board held a public hearing on Amendment 139. (Ex. MMMMMMMM (Mx8), pp. 1, 3)
242. Mr. Kroupa, Mr. Wunsch, and Mr. Hayward reviewed the amendment, “[e]xplained [the] premis[e] that ‘if you grow it and process/package it, you can sell it,’” and explained how making it a use by right would “help the owner/grower to understand the specific regulations from the start.” (Ex. MMMMMMMM (Mx8), p. 3)
243. Many members of the community, including representatives from PTP and individual wineries spoke in support of the amendment. (Ex. MMMMMMMM (Mx8), p. 3)
244. The Board engaged in a lengthy discussion and ultimately voted to approve Amendment 139 with minor revisions. (Ex. MMMMMMMM (Mx8), pp. 3-5)
- P. The challenged Farm Processing Facility provision was an integral subpart of Amendment 139, the entirety of which was tailored to further both the interests of wineries in having an administratively simple use by right with retail and tasting permissions and the Township’s substantial governmental interests in zoning to ensure compatible land uses, agricultural promotion, and farmland preservation in the A-1 District.
245. Amendment 139 added Section 6.7.2(19) to the PTZO. (Ex. A, p. 157)
246. The underlying principle of the Farm Processing Facility is that a farm may sell what it grows and processes.
247. Accordingly, Section 6.7.2(19) broadly permitted farms to have tasting and retail sales of wine made from grapes or other fruit grown on the farm and processed in the farm’s winery.

248. In addition to retail wine sales, challenged provision § 6.7.2(19)(b)(1)(v) allowed limited retail sales of winery logo merchandise as follows:

Logo merchandise may be sold provided:

1. The logo merchandise is directly related to the consumption and use of the fresh and/or processed agricultural produce sold at retail;
2. The logo is prominently displayed and permanently affixed to the merchandise;
3. Specifically allowed are: a) gift boxes/packaging containing the approved products for the specific farm operation; b) Wine Glasses; c) Corkscrews; d) Cherry Pitter; and e) Apple Peeler; and
4. Specifically not allowed are unrelated ancillary merchandise such as: a) Clothing; b) Coffee Cups; c) Bumper Stickers

(Ex. A, pp. 53-54)

249. Allowing retail sales of winery promotional merchandise in the A-1 District is a reasonable way to promote agriculture and preserve farmland by helping farmers market themselves and their products and by creating an additional revenue stream for them.

250. Limiting retail sales of merchandise other than wine to that which promotes the Farm Processing Facility by bearing its logo is a reasonable way to ensure that the Farm Processing Facility does not sell generic souvenirs and convenience store items.

251. Requiring the logo to be prominently displayed and permanently affixed prevents the use of stickers or stamps on generic souvenirs and convenience store items to expand retail sales beyond allowed promotional merchandise.

252. Nothing in § 6.7.2(19)(b)(1)(v) prevents a Farm Processing Facility from selling non-logo merchandise on property located outside the A-1 District, such as in the C-1 commercial district or downtown Traverse City, or through the Farm Processing Facility's website.

## V. Chateau Chantal

253. Defendants incorporate by reference proposed findings of fact 46 – 175 regarding Chateau Chantal's SUP history above.

### A. Additional SUP History

254. On or about December 14, 2004, the Board approved Guest Activity Uses in Chateau Chantal's SUP, designated SUP #95. (Exs. CCC (Cx3), pp. 1, 2; DDD (Dx3); EEE (Ex3), pp. 1, 5-6; FFF (Fx3), p. 4)

255. On or about January 12, 2010, the Board approved a request from Chateau Chantal for a supplemental SUP, designated SUP #114, which did not constitute a change in use from SUP #95 but increased the permitted size of Chateau Chantal's wine cellar, tasting room, and seasonal outdoor tasting area. (**Exs. GGG** (Gx3), pp. 1, 5; **HHH** (Hx3), pp. 1, 3-4, **III** (Ix3))
256. On November 20, 2014, the Board approved an amendment to SUP #114 allowing solar panels for electric generation on the Chateau Chantal property. (**Ex. KKK** (Kx3), pp. 1-17)
257. Chateau Chantal did not appeal the Board's decision approving the November 20, 2014 amendment to SUP #114 nor any prior SUP or amendment.
258. Chateau Chantal has not obtained another SUP or SUP amendment since November 20, 2014.

B. Chateau Chantal has conducted hundreds of Guest Activity Uses.

259. Since the Board approved Guest Activity Uses in Chateau Chantal's SUP #95, Chateau Chantal has conducted hundreds of Guest Activity Uses, including:
- a. "Wine and Food Seminars including Tasting Blindly Lunch Pairings and Wine and Food Seminar Education Dinners and Cooking Classes" in 2023 (**Ex. III** (Ix4), p. 1)
  - b. "Tauck Tours Wine Education Dinners," "Wine and Food pairing tours," "Wine Education Dinners," "Daily Educational Tour[s]," "[a] surprise wedding proposal . . . followed by a wine and food education tour," a "Private Wine Education Dinner," a "wedding proposal followed by a private wine reception," "Cooking Classes," and a "Private Wine Dinner for Wedding Rehearsal" in 2020 (**Ex. KKKK** (Kx4), pp. 5-11)
  - c. "Cooking Classes," "Wine and food education tours," "Wine Boot Camp," "Wine education dinners," "Ice Wine Celebration Weekend," "Pinot Fete," "Tauck Tours Wine Education Dinners," and a "wine education event" for an "MSU Alumni Meeting" in 2019 (**Ex. KKKK** (Kx4), pp. 1, 3-4)
  - d. "Wine and Food Pairing tours titled 'Quaff and Nosh,'" "Daily Educational Tour[s]," and "Wine education dinners" in 2018 (**Ex. KKKK** (Kx4), p. 2)
  - e. "Wine and Food Pairing Tours," "Daily Educational Tours," "Enhanced Tastings," and "Wine education dinners" in 2017 (**Ex. III** (Ix4), p. 2)
  - f. A "Wine Education Series: Tapas Tours" in 2008 ((**Ex. III** (Ix4), p. 3)

C. Chateau Chantal has no damages caused by §§ 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), or 8.7.3(10)(u)(5)(d) under a dormant Commerce Clause theory.

260. Neither § 8.7.3(10)(u)(2)(e) nor § 8.7.3(10)(u)(3) nor § 8.7.3(10)(u)(5)(c) nor § 8.7.3(10)(u)(5)(d) limits Chateau Chantal's ability to purchase grapes from outside

- Peninsula Township, use those grapes to produce wine in its winery, or sell the wine it makes from those grapes.
261. Chateau Chantal may produce wine in its winery using grapes acquired from outside Peninsula Township and sell that wine for profit. (PTZO § 8.7.3(10)(u)(1)(a) (“The current Winery-Chateau section of the ordinance requires 75% of the site to be used for the active production of crops that can be used for wine production such as fruit growing on vines or trees, but does not require that any of the wine produced on the site be made from wine fruit grown on Old Mission Peninsula.”); **Ex. A**, p. 141)
262. Subsections 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d) require that any wine Chateau Chantal serves during Guest Activity Uses be its own Old Mission Peninsula appellation wine. (**Ex. A**, pp. 142-144)
263. Subsection 8.7.3(10)(u)(3) established a formula for determining the number of attendees allowed to participate in Guest Activity Uses based on the amount of Old Mission Peninsula grapes grown or purchased beyond the grapes grown to meet a Winery-Chateau’s minimum active crop production requirement. (**Ex. A**, p. 142-143)
264. Subsection 8.7.3(10)(u)(3) reflects the intent of Amendment 141 and the Winery-Chateau section “[t]o assure that, in addition to the minimum parcel size required for a Winery-Chateau, there is additional farm land in wine fruit production in Peninsula Township if Guest Activity Uses are allowed to take place at a Winery-Chateau facility.” (PTZO § 8.7.3(10)(u)(1)(a); **Ex. A**, p. 141)
265. Chateau Chantal has not been damaged by serving its own Old Mission Peninsula appellation wine to Guest Activity Use attendees or by being permitted to have a number of Guest Activity Use attendees determined by the extent to which it supports keeping additional farmland in wine fruit production by growing grapes on more than the minimum required acreage for a Winery-Chateau or purchasing grapes from other Peninsula Township farms.
- D. Chateau Chantal has no damages caused by any prior restraint imposed by §§ 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c).
266. Since at least 2008, Chateau Chantal has routinely sent the Township notification forms describing the Guest Activity Uses it intends to conduct, the expected number of attendees, and dates. (**Exs. IIII** (Ix4), **KKKK** (Kx4))
267. The Township has never denied Chateau Chantal permission to proceed with a planned Guest Activity Use after receiving notice.
268. Chateau Chantal has never asked the Township for permission to host a meeting of a Grand Traverse County 501(c)(3) nonprofit organization under § 8.7.3(10)(u)(2)(b).
269. The Township has never denied Chateau Chantal permission to host a meeting of a Grand Traverse County 501(c)(3) nonprofit organization under § 8.7.3(10)(u)(2)(b).
270. Chateau Chantal knows it does not need Township permission to host meetings of Grand Traverse County 501(c)(3) nonprofit organizations under § 8.7.3(10)(u)(2)(b)

- because its notification form states that these Guest Activity Uses “Only Require[] Notification to the ZA [Zoning Administrator].” (Exs. IIII (Ix4), KKKK (Kx4))
271. Chateau Chantal hosts meetings of groups other than Grand Traverse County 501(c)(3) organizations and agricultural related groups, such as the 2019 “MSU Alumni Meeting,” as “Wine & Food Seminar[s]” permitted under § 8.7.3(10)(u)(2)(a). (Ex. KKKK (Kx4), p. 4)
272. Chateau Chantal has never asked the Township to hold a meeting of an agricultural related group under § 8.7.3(10)(u)(2)(c).
273. Having never received a request, the Township has never denied Chateau Chantal permission to hold a meeting of an agricultural-related group under § 8.7.3(10)(u)(2)(c).
274. Chateau Chantal has not been damaged by being permitted to host meetings of Grand Traverse County 501(c)(3) nonprofit organizations under § 8.7.3(10)(u)(2)(b) and meetings of agricultural related groups under § 8.7.3(10)(u)(2)(c).
- E. Chateau Chantal has no damages caused by any speech compelled by §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(a).
275. Subsection 8.7.3(10)(u)(1)(b) was an intent provision that is not operative.
276. To comply with the requirement to promote Peninsula agriculture at § 8.7.3(10)(u)(5)(a), Chateau Chantal provides menus identifying the wine it serves at food and wine pairings and sometimes recipes from a Begin family member’s book, “Feed My Lambs, Feed My Sheep.” (Ex. LLLL (Lx4))
277. Chateau Chantal also provides winery tours for Guest Activity Use attendees.
278. Chateau Chantal does not object to any message contained in its menus, recipes, or tours.
279. Chateau Chantal has not been damaged by identifying the wine it serves Guest Activity Use attendees, distributing recipes, or providing tours.
- F. Chateau Chantal has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(h).
280. Subsection 8.7.3(10)(u)(1)(b) was an intent provision that is not operative.
281. The expression of the Township’s intent that Guest Activity Uses promote Peninsula agriculture in § 8.7.3(10)(u)(1)(b) has not caused Chateau Chantal damages.
282. Subsection 8.7.3(10)(u)(5)(h) prohibits outdoor displays during Guest Activity Uses. (Ex. A, p. 144)
283. Chateau Chantal has not sought to have any outdoor display during Guest Activity Uses.

284. Chateau Chantal has not been damaged by not being allowed to have outdoor displays during Guest Activity Uses.

G. Chateau Chantal has no damages caused by § 8.7.3(10)(u) or any subpart thereof under its Due Process claim and underlying vagueness theory.

285. Defendants incorporate by reference their proposed findings of fact 259 – 284 regarding Chateau Chantal’s lack of damages under specific subparts of § 8.7.3(10)(u).

286. Chateau Chantal has no damages caused by § 8.7.3(10)(u) or any subpart thereof.

287. Section 8.7.3(10)(u) authorized the Board to approve as support uses in Chateau Chantal’s SUP Guest Activity Uses so that Chateau Chantal could have uses otherwise not permitted in the A-1 District – *i.e.*, the use of its facilities for meetings and food service for non-registered guests. (PTZO § 8.7.3(10)(u); **Ex. A**, pp. 140-141)

288. Permitted activities under § 8.7.3(10)(u) include wine and food seminars, cooking classes, meetings of Grand Traverse County 501(c)(3) organizations, and meetings of agricultural related groups, and food service to non-registered guests during those activities. (PTZO §§ 8.7.3(10)(u)(2)(a)-(c); **Ex. A.**, pp. 141-142)

289. Chateau Chantal has not been damaged by being allowed to host and serve food during wine and food seminars, cooking classes, meetings of Grand Traverse County 501(c)(3) organizations, or agricultural related groups.

## VI. Mari

### A. SUP History

290. On March 15, 2016, the Board approved a Winery-Chateau SUP, designated SUP #126, for Mari. (**Exs. XXXXXXXX** (Xx7), pp. 1-27; **YYYYYYYY** (Yx7); **ZZZZZZZ** (Zx7))

291. SUP #126 included Board approval for Guest Activity Uses. (**Exs. XXXXXXXX** (Xx7), p. 24; **YYYYYYYY** (Yx7), pp. 19-20; **ZZZZZZZ** (Zx7), p.21)

292. Mari did not appeal the Board’s March 15, 2016 decision approving SUP #126.

293. Mari has not obtained another SUP or SUP amendment since March 15, 2016.

### B. Mari has regularly conducted Guest Activity Uses

294. Since obtaining SUP #126, Mari has regularly conducted Guest Activity Uses.

### C. Mari has no damages caused by §§ 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), or 8.7.3(10)(u)(5)(d) under a dormant Commerce Clause theory.

295. Neither § 8.7.3(10)(u)(2)(e) nor § 8.7.3(10)(u)(3) nor § 8.7.3(10)(u)(5)(c) nor § 8.7.3(10)(u)(5)(d) limits Mari’s ability to purchase grapes from outside Peninsula



- Township, use those grapes to produce wine in its winery, or sell the wine it makes from those grapes.
296. Mari may produce wine in its winery using grapes acquired from outside Peninsula Township and sell that wine for profit. (PTZO § 8.7.3(10)(u)(1)(a) (“The current Winery-Chateau section of the ordinance requires 75% of the site to be used for the active production of crops that can be used for wine production such as fruit growing on vines or trees, but does not require that any of the wine produced on the site be made from wine fruit grown on Old Mission Peninsula.”); **Ex. A**, p. 141)
297. Subsections 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d) require that any wine Mari serves during Guest Activity Uses be its own Old Mission Peninsula appellation wine. (**Ex. A**, pp. 142-144)
298. Subsection 8.7.3(10)(u)(3) established a formula for determining the number of attendees allowed to participate in Guest Activity Uses based on the amount of Old Mission Peninsula grapes grown or purchased beyond the grapes grown to meet a Winery-Chateau’s minimum active crop production requirement. (**Ex. A**, p. 142-143)
299. Subsection 8.7.3(10)(u)(3) reflects the intent of Amendment 141 and the Winery-Chateau section “[t]o assure that, in addition to the minimum parcel size required for a Winery-Chateau, there is additional farm land in wine fruit production in Peninsula Township if Guest Activity Uses are allowed to take place at a Winery-Chateau facility.” (PTZO § 8.7.3(10)(u)(1)(a); **Ex. A**, p. 141)
300. Mari has not been damaged by serving its own Old Mission Peninsula appellation wine to Guest Activity Use attendees or by being permitted to have a number of Guest Activity Use attendees determined by the extent to which it supports keeping additional farm land in wine fruit production by growing grapes on more than the minimum required acreage for a Winery-Chateau or purchasing grapes from other Peninsula Township farms.
- D. Mari has no damages caused by any prior restraint imposed by §§ 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c).
301. Mari has hosted meetings of Grand Traverse County 501(c)(3) nonprofit organizations § 8.7.3(10)(u)(2)(b).
302. Mari has hosted meetings of agricultural related groups § 8.7.3(10)(u)(2)(c).
303. Mari has not been damaged by being permitted to host meetings of Grand Traverse County 501(c)(3) nonprofit organizations under § 8.7.3(10)(u)(2)(b) or meetings of agricultural related groups under § 8.7.3(10)(u)(2)(c).
- E. Mari has no damages caused by any speech compelled by §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(a).
304. Subsection 8.7.3(10)(u)(1)(b) was an intent provision that is not operative.

305. To comply with the requirement to promote Peninsula agriculture at § 8.7.3(10)(u)(5)(a), Mari provided wine labeled with the Old Mission Peninsula AVA.

306. Mari does not object to any message included on its wine labels.

307. Mari has not been damaged by providing Guest Activity Use attendees wine labeled with the Old Mission Peninsula AVA.

F. Mari has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(10)(u)(1)(b) or 8.7.3(10)(u)(5)(h).

308. Subsection 8.7.3(10)(u)(1)(b) is an intent provision that is not operative.

309. The Township's expression of its intent that Guest Activity Uses promote Peninsula agriculture in § 8.7.3(10)(u)(1)(b) has not caused Mari damages.

310. Subsection 8.7.3(10)(u)(5)(h) prohibits outdoor displays during Guest Activity Uses.

311. SUP #126 does not include permission to conduct Guest Activity Uses outdoors. (Ex. **ZZZZZZZ** (Zx7), p. 24 ("The Board finds that there is sufficient buffering from adjacent neighbors to allow the maximum of 50 attendees per guest activity use. Further all guest activity uses shall occur indoors."))

312. Mari has not sought to have any outdoor display during Guest Activity Uses.

313. Mari has not been damaged by not being allowed to have outdoor displays during Guest Activity Uses.

G. Mari has no damages caused by § 8.7.3(10)(u) or any subpart thereof under its Due Process claim and underlying vagueness theory.

314. Defendants incorporate by reference their proposed findings of fact 294 – 313 regarding Mari's lack of damages under specific subparts of § 8.7.3(10)(u).

315. Mari has no damages caused by § 8.7.3(10)(u) or any subpart thereof.

316. Section 8.7.3(10)(u) authorized the Board to approve as support uses in Mari's SUP Guest Activity Uses so that Mari could have uses otherwise not permitted in the A-1 District – *i.e.*, the use of its facilities for meetings and food service for non-registered guests. (PTZO § 8.7.3(10)(u); Ex. A, pp. 140-141)

317. Permitted activities under § 8.7.3(10)(u) include wine and food seminars, cooking classes, meetings of Grand Traverse County 501(c)(3) organizations, and meetings of agricultural related groups, and food service to non-registered guests during those activities. (PTZO §§ 8.7.3(10)(u)(2)(a)-(c); Ex. A., pp. 141-142)

318. Mari has not been damaged by being allowed to host and serve food during wine and food seminars, cooking classes, meetings of Grand Traverse County 501(c)(3) organizations, or agricultural related groups.

H. Unique factors would limit any injunctive relief to which Mari might be entitled.

319. SUP #126 prohibits amplified sound outdoors (Ex. ZZZZZZZ (Zx7), p. 3)
320. SUP #126 permits only indoor Guest Activity Uses and limits Guest Activity Uses to 50 attendees based on the Board’s findings with respect to “possible adverse impacts on adjacent properties.” (Ex. ZZZZZZZ (Zx7), p. 24)
321. In approving SUP #126, the Board found that Mari would plant an additional 4.14 acres in vineyards in 2018 to meet wine crop production requirements and that Mari was to be in compliance with those requirements “prior to commencement of Guest Activity Uses on site,” but those vineyards remain unplanted. (Ex. ZZZZZZZ (Zx7), p. 26)

VII. **Chateau Grand Traverse**

A. SUP History

322. On July 10, 1990, the Board approved a Winery-Chateau SUP, designated SUP #24, for Chateau Grand Traverse. (Exs. AAA (Ax3), pp. 1, 5; GGGGGGG (Gx7))
323. Chateau Grand Traverse obtained two subsequent SUPs – SUP #59 and SUP #64 – before the Board approved its current operative SUP, designated SUP #66, on July 13, 1999. (Exs. LLLLLLL (Lx7), MMMMMMM (Mx7), pp. 1, 3; NNNNNNN (Nx7))
324. SUP #66 replaced SUP #24, SUP #59, and SUP #64. (Ex. NNNNNNN (Nx7), p. 1)
325. The Board approved a supplemental SUP for Chateau Grand Traverse, designated SUP #94, on September 14, 2004. (Ex. QQQQQQQ (Qx7), pp. 1, 4)
326. SUP #94 permitted Chateau Grand Traverse to construct additions to its winery building for office space and storage. (Exs. PPPPPPP (Px7), pp. 1, 2)
327. SUP #94 entailed a site plan amendment but there were “no changes in the use” and no changes to the findings for SUP #66; the new SUP number was solely for tracking purposes. (Ex. QQQQQQQ (Qx7), p. 4)
328. On June 12, 2007, the Board approved a request from Chateau Grand Traverse for another building addition as an amendment to the site plan under SUP #94. (Ex. RRRRRRR (Rx7), pp. 1-2)
329. Chateau Grand Traverse did not appeal the Board’s decision approving the June 12, 2007 amendment to SUP #94 nor any prior SUP or amendment.
330. Chateau Grand Traverse has not obtained another SUP or SUP amendment since June 12, 2007.

B. Chateau Grand Traverse has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue.

331. The only challenged Winery-Chateau provisions for which damages remain a live trial issue are subparts of § 8.7.3(10)(u):
- a. Dormant Commerce Clause – §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d)
  - b. Due process / vagueness – § 8.7.3(10)(u) and all its subparts
  - c. Prior restraint - §§ 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c)
  - d. Compelled speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)
  - e. Commercial speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)

332. Chateau Grand Traverse has never been subject to any of the challenged Winery-Chateau provisions for which damages remain a live trial issue. (See ECF No. 559, PageID.21903)

333. Chateau Grand Traverse has not been damaged by provisions to which it has never been subject.

C. Unique factors would limit any injunctive relief to which Chateau Grand Traverse might be entitled.

334. SUP #66 provides that Chateau Grand Traverse will have “[n]o amplified outside music . . . except low volume mood music . . . that does not exceed the level of a whisper at the property boundaries.” (Ex. NNNNNN (Nx7), p. 15)

## VIII. Brys

### A. SUP History

335. On February 8, 2011, the Board approved a Winery-Chateau SUP, designated SUP #115, for Brys. (Exs. NNNNN (Nx5), pp. 1-17; OOOOO (Ox5))

336. SUP #115 included Board approval for Guest Activity Uses. (Exs. NNNNN (Nx5), p. 11; OOOOO (Ox5), p. 10)

337. On April 10, 2012, the Board approved the first amendment to SUP #115 to allow Brys to “physically expand the existing Winery-Chateau.” (Exs. NNNNN (Nx5), pp. 20-32; QQQQQ (Qx5), pp. 1, 2; RRRRR (Rx5))

338. On April 8, 2014, the Board approved a second amendment to SUP #115 to allow Brys to build an addition. (Exs. NNNNN (Nx5), pp. 33-47; TTTTT (Tx5), pp. 1-17; UUUUU (Ux5))

339. On September 25, 2018, the Board approved a third amendment to SUP #115 to allow Brys to revise the “Chateau Use Boundary,” add guest rooms, and build a new manager’s residence. (Exs. NNNNN (Nx5), pp. 48-63; WWWWW (Wx5))

340. On December 11, 2018, the Board approved a fourth amendment to SUP #115 to allow Brys to expand a deck. (Exs. NNNNN (Nx5), pp. 64-79; YYYYY (Yx5))
341. Brys did not appeal the Board's decision approving the December 11, 2018 amendment to SUP #115 nor any prior SUP or amendment.
342. Brys has not obtained another SUP or SUP amendment since December 11, 2018.

B. Brys has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue.

343. The only challenged Winery-Chateau provisions for which damages remain a live trial issue are subparts of § 8.7.3(10)(u):
- a. Dormant Commerce Clause – §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d)
  - b. Due process / vagueness – § 8.7.3(10)(u) and all its subparts
  - c. Prior restraint - §§ 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c)
  - d. Compelled speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)
  - e. Commercial speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)
344. Brys has never been subject to any of the challenged Winery-Chateau provisions for which damages remain a live trial issue. (See ECF No. 559, PageID.21903)
345. Brys has not been damaged by provisions to which it has never been subject.

C. Unique factors would limit any injunctive relief to which Brys might be entitled.

346. Brys – *i.e.*, Plaintiff Brys Winery, LC – leases the land where its winery sits from non-party landowner Brys Realty, LLC. (Ex. ZZZZZ (Zx5))
347. Brys does not own the land to which SUP #115 applies.

## IX. Bonobo

### A. SUP History

348. On May 14, 2013, the Board approved a Winery-Chateau SUP, designated SUP #118, for Bonobo. (Exs. GGGGGG (Gx6); HHHHHH (Hx6))
349. SUP #118 included Board approval for Guest Activity Uses. (Ex. GGGGGG (Gx6), p. 19; HHHHHH (Hx6), p. 14)

350. In an application dated October 6, 2014, Bonobo requested an amendment to SUP #118 to accommodate deviations from its approved site plan made during the construction of its winery without prior notice to the Township. (Ex. KKKKKK (Kx6))
351. On November 20, 2014, the Board approved an amendment to SUP #118. (Ex. LLLLLL (Lx6))
352. The amended SUP #118 did not include approval for Guest Activity Uses and noted that Bonobo would be “required to request approval by the Board for those uses as an additional support use as part of a future application.” (Ex. LLLLLL (Lx6), p. 12)
353. On April 16, 2015, the Board considered an application from Bonobo to approve Guest Activity Uses in SUP #118. (Ex. MMMMMM (Mx6))
354. The Board reviewed Bonobo’s history of zoning violations, including that only 50% of its acreage was planted when 75% active crop production was required, and voted to deny Bonobo’s application for Guest Activity Uses for SUP #118. (Exs. MMMMMM (Mx6), pp. 2-4); NNNNNN (Nx6))
355. Bonobo did not appeal the Board’s April 16, 2015, decision denying Guest Activity Uses for SUP #118.
356. Bonobo has not obtained another SUP or SUP amendment authorizing Guest Activity Uses since April 16, 2015.

B. Bonobo has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue.

357. The only challenged Winery-Chateau provisions for which damages remain a live trial issue are subparts of § 8.7.3(10)(u):
- a. Dormant Commerce Clause – §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d)
  - b. Due process / vagueness – § 8.7.3(10)(u) and all its subparts
  - c. Prior restraint - §§ 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c)
  - d. Compelled speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)
  - e. Commercial speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)
358. Bonobo has never been subject to any of the challenged Winery-Chateau provisions for which damages remain a live trial issue.
359. Bonobo has not been damaged by provisions to which it has never been subject.
360. The land upon which Bonobo’s winery sits is protected by a conservation easement that requires a majority of products processed are grown by Bonobo’s farm operations, and it may only sell agricultural products grown on the farm. (Exs. AAAAAAA (Ax6), p. 3, 4, BBBBBB (Bx6), p. 3, 4)

361. Alternatively or in addition to finding of fact 359, any damages to Bonobo that might have been caused by limits on its processing or sale of wine made from grapes from outside Old Mission Peninsula were not caused by §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d).

C. Unique factors would limit any injunctive relief to which Bonobo might be entitled.

362. Bonobo – *i.e.*, Plaintiff OV the Farm, LLC – leases the land where its winery sits from non-party landowner Oosterhouse Vineyards, LLC. (Ex. CCCCCC (Cx6))

363. Bonobo does not own the land to which SUP #118 applies.

364. The land where Bonobo’s winery sits is protected by two conservation easements that permanently restrict the use of the land to “agricultural and open space uses as specifically delineated” in the easements. (Exs. AAAAAA (Ax6);BBBBBB (Bx6); CCCCCC (Cx6))

**X. Bowers Harbor**

A. SUP History

365. On July 23, 2019, the Board approved a Winery-Chateau SUP, designated SUP #132, for Bowers Harbor. (Exs. GGGGG (Gx5), pp. 1-4; HHHHH (Hx5))

366. The date of issuance for SUP #132 was October 28, 2019. (Ex. HHHHH (Hx5), p. 1)

367. Before receiving SUP #132, Bowers Harbor held a unique SUP, designated SUP #32, under § 8.5 and § 8.7.3(3), which govern Food Processing Plants and Special Open Space Uses, respectively, and which Bowers Harbor does not challenge in this lawsuit. (Exs. QQQQ (Qx4); SSSS (Sx4))

368. The Board approved the original SUP #32 under § 8.5 on April 14, 1992. (Exs. NNNN (Ex. N), pp. 1-2); OOOO (Ox4); QQQQ (Qx4))

369. The Board approved a request from Bowers Harbor to amend SUP #32 under § 8.7.3(3) to have up to 20 outdoor dining events on August 10, 2010. (Ex. RRRR (Rx4), pp. 1, 3-4; Ex. SSSS (Sx4))

370. SUP #132 contains conditions and safeguards including “Immediate action items” deemed “necessary to fulfill SUP conditions [to] operate as a Winery-Chateau). (Ex. HHHHH (Hx5), p. 16)

371. The immediate action items included driveway modification for emergency vehicle access; consultation with the Township Engineer regarding grading, sight lines, parking, turnaround, and stormwater management; provision of 153 parking spaces; and compliance with lighting regulations. (Ex. HHHHH (Hx5), p. 16)

372. The conditions and safeguards for SUP #132 also included “Near-Term Action Items” deemed “[n]ecessary to continue with an established SUP indefinitely.” (Ex. HHHHH (Hx5), p. 16)
373. One near-term action item required planting 1.2 acres of grapes or fruit trees by July 1, 2020. (Ex. HHHHH (Hx5), p. 16)
374. SUP #132 included Board approval for Guest Activity Uses. (Ex. HHHHH (Hx5), p. 14).
375. SUP #132 provided that, until Bowers Harbor completed the immediate action items, it could “continue wine tasting and related activities allowed under SUP #32” and Township Board action, including “dining in the vines” –*i.e.*, the outdoor dining events approved in SUP #32. (Ex. HHHHH (Hx5), p. 16)
376. SUP #132 provided that, upon completion of the immediate action items, Bowers Harbor could conduct Guest Activity Uses and SUP #32 would be rescinded. (Ex. HHHHH (Hx5), p. 16)
377. Bowers Harbor did not appeal the Board’s July 23, 2019, decision approving SUP #132 nor any prior SUP or amendment.
378. Bowers Harbor has not obtained another SUP or SUP amendment since July 23, 2019.

B. Bowers Harbor has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue.

379. The only challenged Winery-Chateau provisions for which damages remain a live trial issue are subparts of § 8.7.3(10)(u):
- a. Dormant Commerce Clause – §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d)
  - b. Due process / vagueness – § 8.7.3(10)(u) and all its subparts
  - c. Prior restraint - §§ 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c)
  - d. Compelled speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)
  - e. Commercial speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)
380. Bowers Harbor has never been subject to any of the challenged Winery-Chateau provisions for which damages remain a live trial issue.
381. Bowers Harbor has not been damaged by provisions to which it has never been subject.

C. Unique factors would limit any injunctive relief to which Bowers Harbor might be entitled.



382. Bowers Harbor – *i.e.*, Plaintiff Bowers Harbor Vineyard & Winery, Inc. – leases the land where its winery sits from non-party landowners Schoenherr Vineyards, LLC and Langley Vineyards, LLC. (ECF 573, PageID.22364)

383. Bowers Harbor does not own the land to which SUP #132 applies.

## **XI. Hawthorne**

### **A. SUP History**

384. On July 14, 2020, the Board approved a Winery-Chateau, designated SUP #135, for Hawthorne. (Exs. HHHHHHHH (Hx8), pp. 1, 3-4; IIIIIIII (Ix8))

385. SUP #115 included Board approval for Guest Activity Uses. (Ex. IIIIIIII (Ix8), p. 10)

386. Hawthorne did not appeal the Board's July 14, 2020, decision approving SUP #135.

387. Hawthorne has not obtained another SUP or SUP amendment since July 14, 2020.

### **B. Hawthorne has no damages caused by any challenged Winery-Chateau provision for which damages remain a live trial issue.**

388. The only challenged Winery-Chateau provisions for which damages remain a live trial issue are subparts of § 8.7.3(10)(u):

- a. Dormant Commerce Clause – §§ 8.7.2(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d)
- b. Due process / vagueness – § 8.7.3(10)(u) and all its subparts
- c. Prior restraint - §§ 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c)
- d. Compelled speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)
- e. Commercial speech - §§ 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(h)

389. Hawthorne has never been subject to any of the challenged Winery-Chateau provisions for which damages remain a live trial issue. (ECF 559, Page ID.)

390. Hawthorne has not been damaged by provisions to which it has never been subject.

### **C. Unique factors would limit any injunctive relief to which Hawthorne might be entitled.**

391. Hawthorne lacks an MLCC license or permit upon which to base any claim for relief under its preemption theory.

392. The MLCC license for the Hawthorne winery and tasting room was transferred on October 6, 2022, from Chateau Chantal to non-party Hawthorne Vineyards, LLC, not Hawthorne – *i.e.*, Plaintiff Montague Development, LLC. (Ex. JJJJJJJJ (Jx8))

## XII. Peninsula Cellars

393. Defendants incorporate by reference proposed findings of fact 176 – 222 regarding Peninsula Cellars’ SUP history above.

### A. Additional SUP History

394. Peninsula Cellars did not appeal the Board’s decision approving its SUP #62 on November 10, 1998.

395. Peninsula Cellars has not obtained another SUP or SUP amendment since November 10, 1998.

### B. Peninsula Cellars has no damages caused by any alleged regulation of its commercial speech under §§ 8.7.3(12)(i) or 8.7.3(12)(k).

396. Subsection § 8.7.3(12)(i) allows Peninsula Cellars to sell promotional merchandise bearing its logo in addition to wine.

397. But for the permission in § 8.7.3(12)(i), A-1 zoning would preclude Peninsula Cellars from having any retail sales in the A-1 District for items other than its wine or as permitted for farm stands.

398. Peninsula Cellars has not been damaged by being allowed to sell logo merchandise and could have only benefited from the availability of an additional revenue stream.

399. Subsection § 8.7.3(12)(k) prohibits signs or other advertising at Peninsula Cellars from promoting items for sale other than wine.

400. Peninsula Cellars promotes itself through social media and print advertising and has signs as permitted in its site plan for SUP #62.

401. Peninsula Cellars presented no evidence that it desires to promote the items it sells besides wine or that it has been unable to do so.

402. Peninsula Cellars has not been damaged by being unable to promote the items it sells besides wine.

### C. Unique factors would limit any injunctive relief to which Peninsula Cellars might be entitled.

403. Peninsula Cellars – *i.e.*, Plaintiff Grape Harbor, Inc. – leases the land where its tasting room sits from non-party landowners David D. and Joan M. Kroupa. (Ex. LLLLLLLLLL (Lx10))

404. Peninsula Cellars does not own the land to which SUP #62 applies.

### XIII. Black Star

#### A. Land Use History

405. On September 27, 2007, the Township issued Final Farm Processing Facility Permit #2 to Black Star authorizing “[t]he processing of agricultural produce” but not “Retail sales / Tasting.” (Ex. RRRRRRRR (Rx8))

#### B. Black Star has no damages caused by § 6.7.2(19)(b)(1)(v) for any alleged regulation of its commercial speech.

406. Subsection § 6.7.2(19)(b)(1)(v) allows Black Star to sell promotional merchandise bearing its logo and related to agriculture in addition to wine.

407. But for the permission in § 6.7.2(19)(b)(1)(v), A-1 zoning would preclude Black Star from having any retail sales in the A-1 District for items other than its wine or as permitted for farm stands.

408. Black Star has not been damaged by being allowed to sell logo merchandise related to agriculture and could have only benefited from the availability of an additional revenue stream.

#### C. Black Star has no damages caused by §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), or 6.7.2(19)(b)(2)(V) under a dormant Commerce Clause theory.

409. Subsections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), and 6.7.2(19)(b)(2)(i), and 6.7.2(19)(b)(2)(V) allow Black Star to process, serve, and sell at retail and wholesale Old Mission Appellation wine made primarily from grapes grown by its Peninsula Township farming operation as a use by right in the A-1 District. (Ex. A, pp. 53, 54)

410. Black Star has not been damaged by being permitted to process, serve, and sell its own Old Mission Appellation wine.

411. The land upon which Black Star’s winery sits is protected by a conservation easement that requires a majority of products processed be grown by Black Star’s Old Mission Peninsula farm operation, and Black Star may only sell agricultural products grown on the farm. (Exs. TTTTTTTT (Tx8), p. 3, 4; UUUUUUUU (Ux8))

412. Alternatively or in addition to finding of fact 410, any damages to Black Star that might have been caused by limits on its processing or sale of wine made from grapes from outside Old Mission Peninsula were not caused by §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), or 6.7.2(19)(b)(2)(V).

#### D. Unique factors would limit any injunctive relief to which Black Star might be entitled.

413. Black Star – *i.e.*, Plaintiff Winery at Black Star Farms, LLC – leases the land upon which its winery sits from non-party landowner Robert N. Mampe Revocable Living Trust. (Ex. SSSSSSSS (Sx8))

414. Black Star does not own the land to which its Farm Processing Facility land use permit applies.
415. The land upon which Black Star's winery sits is protected by a conservation easement that permanently restricts the use of the land to "agricultural and open space uses as specifically delineated" in the easement. (Exs. TTTTTTTT (Tx8), UUUUUUUU (Ux8))

#### **XIV. Two Lads**

##### **A. Land Use History**

416. On October 18, 2007, the Township issued Two Lads Final Farm Processing Facility Permit #3 authorizing "[t]he processing of agricultural produce" but no "Retail sales / Tasting." (Ex. HHHHHHHHHH (Hx9), p. 4)
417. On April 17, 2008, the Township added approval for "Retail sales / Tasting" to Final Farm Processing Permit #3. (Ex. HHHHHHHHHH (Hx9), p. 5)

##### **B. Two Lads has no damages caused by § 6.7.2(19)(b)(1)(v) for any alleged regulation of its commercial speech.**

418. Subsection § 6.7.2(19)(b)(1)(v) allows Two Lads to sell promotional merchandise bearing its logo and related to agriculture in addition to wine.
419. But for the permission in § 6.7.2(19)(b)(1)(v), A-1 zoning would preclude Two Lads from having any retail sales in the A-1 District for items other than its wine or as permitted for farm stands.
420. Two Lads has not been damaged by being allowed to sell logo merchandise related to agriculture and could have only benefited from the availability of an additional revenue stream.

##### **C. Two Lads has no damages caused by §§ 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), or 6.7.2(19)(b)(2)(V) under a dormant Commerce Clause theory.**

421. Subsections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), and 6.7.2(19)(b)(2)(V) allow Two Lads to process, serve, and sell at retail and wholesale Old Mission Appellation wine made primarily from grapes grown by its Peninsula Township farming operation as a use by right in the A-1 District. (Ex. A, pp. 53, 54\_
422. Two Lads has not been damaged by being permitted to process, serve, and sell its own Old Mission Appellation wine.

##### **D. Unique factors would limit any injunctive relief to which Two Lads might be entitled.**

423. Two Lads leases the land where its winery sits from non-party landowner BOQ, LLC. (Ex. GGGGGGGGG (Gx9))
424. Two Lads does not own the land to which its Farm Processing Facility land use permit applies.

## XV. Tabone

### A. Land Use History

425. The Board approved a Food Processing Plant SUP, designated SUP #73, under § 8.5, which Tabone does not challenge in this lawsuit, for the prior owners of the Tabone property, Jack and Paula Seguin and Josef Vineyards, Inc., on April 18, 2000. (Ex. LLLLLLLLLL (Lx9))
426. SUP #73 allows processing of agricultural produce but not tasting or retail sales. (Ex. LLLLLLLLLL (Lx9))
427. On February 24, 2004, Mr. Hayward sent Mario Tabone a letter explaining that “Special Use Permits are issued to the property, not to an individual,” enclosing a certificate indicating that SUP #73 had been transferred to “Tabone Orchards – Tabone Vineyards,” and noting that “[t]he only uses allowed on the property are those uses listed in” the SUP. (Ex. MMMMMMMMMM (Mx9))
428. On June 11, 2014, Tabone Vineyards, LLC, applied to the MLCC for a new Small Wine Maker license. (Ex. NNNNNNNNNN (Nx9))
429. On or about January 1, 2016, Mario A. Tabone of 14998 Peninsula Drive applied for a “Winery Farm Processing & Tasting Room” land use permit for 14916 Peninsula Drive. (Ex. TTTTTTTTTT (Tx9), p. 1)
430. On or about January 24, 2016, Tabone Vineyards, LLC, applied for a Farm Processing Facility at 14916 Peninsula Drive. (Ex. TTTTTTTTTT (Tx9), p. 2)
431. On April 27, 2016, Peninsula Township Planning & Zoning Coordinator Claire Schoolmaster sent Scott Wright of Burkholder Construction, the agent for Mario and Mary Ann Tabone with respect to “securing all permits for construction of a Winery Processing building,” an email indicating that a setback variance would be needed to have a Farm Processing Facility on the Tabone property. (Exs. TTTTTTTTTT (Tx9), p. 14; UUUUUUUUU (Ux9))
432. On May 23, 2016, the Board adopted a resolution recommending that the application of Tabone Vineyards, LLC, for a Small Wine Maker license to be located at 14998 Peninsula Drive, be considered for approval” by the MLCC. (Ex. OOOOOOOOO (Ox9), p. 1)
433. On June 9, 2016, the Zoning Board of Appeals discussed variance request #851 for a setback variance for the Tabone property. (Ex. VVVVVVVVVV (Vx9))

434. On June 21, 2016, “Mario A. Tabone, Owner” sent Ms. Schoolmaster an email withdrawing variance request #851 “in light of us pursuing operations outlined by SUP 73.” (Ex. WWWWWWWWWW (Wx9))
435. On June 23, 2016, the Zoning Board of Appeals recognized that request #851 for a “variance . . . to allow for the construction of a farm processing facility structure” had been withdrawn. (Ex. XXXXXXXXXXXX (Xx9))
436. On June 30, 2016, the Township issued Mary Ann and Mario Tabone a land use permit authorizing “Reconstruction of a Food Processing Plan Structure for SUP 73.” (Ex. YYYYYYYYYY (Yx9))
437. On September 13, 2016, the Board adopted a resolution recommending the application of Tabone Vineyards, LLC, for a Small Wine Maker license to be located at 14916 Peninsula Drive, “be considered for approval” by the MLCC. (Ex. OOOOOOOOOO (Ox9), pp. 2-3)
438. On October 13, 2016, Ms. Schoolmaster sent the MLCC a letter explaining that the correct address for Tabone Vineyards, LLC, was 14916 Peninsula Drive, as it was the “updated commercial address for the same parcel which corresponds with the Township’s Special Use Permit” and which the Board referenced in its September 13, 2016 resolution. (Ex. PPPPPPPPP (Px9))
439. On February 10, 2017, “Mario A. Tabone, Owner” sent the MLCC a letter requesting on behalf of Tabone Vineyards, LLC, to apply for an outdoor service permit at 14916 Peninsula Drive. (Ex. QQQQQQQQQQ (Qx9))
440. On March 8, 2017, the MLCC issued a corrected order approving the new Small Wine Maker license for Tabone Vineyards, LLC, to be located at 14916 Peninsula Drive. (Ex. RRRRRRRRRR (Rx9))
441. On or about January 15, 2019, “Mario A. Tabone, Owner” requested an On-Premises Tasting Room permit for Tabone Vineyards, LLC, via a certification form the MLCC sent to holders of manufacturer licenses following a change in state law. (Ex. SSSSSSSSS (Sx9))
442. The Township’s May 23 and September 13, 2016, recommendations that the MLCC consider for approval the application of Tabone Vineyards, LLC, for a Small Wine Maker license were limited to the manufacture license that Tabone had applied for at those times and did not extend to outdoor service or on-premises tasting room permits that Tabone did not request from the MLCC until 2017 and 2019, respectively.
443. Tabone has not sought, and the Township has not granted, zoning approval for tasting or retail sales at the Food Processing Plant Tabone operates under SUP #73.

B. Tabone has never been subject to § 6.7.2(19) or any subpart thereof and thus has no damages caused by any challenged Farm Processing Facility provision for which damages remain a live trial issue.

444. Because Tabone operates a Food Processing Plant under SUP #73 and does not have a land use permit for a Farm Processing Facility, it has never been subject to § 6.7.2(19) or any subpart thereof.

445. To the extent Tabone has operated as if it were a Farm Processing Facility despite the lack of a land use permit for a Farm Processing Facility, it has never been subject to any particular § 6.7.2(19) or any subpart thereof.

446. Because Tabone has never been subject to § 6.7.2(19) or any subpart thereof, Tabone has not been subject to any of the challenged Farm Processing Facility provisions for which damages remain a live trial issue.

447. Tabone has not been damaged by provisions to which it has never been subject.

C. Unique factors would limit any injunctive relief to which Tabone might be entitled.

448. Tabone – *i.e.*, Plaintiff Tabone Vineyards, LLC – leases the land upon which its winery sits from non-party landowner Mary Ann Tabone. (Ex. ~~ZZZZZZZZZZ~~ (Zx9))

449. Tabone does not own the land to which SUP #73 applies.

450. The Township has never issued a Farm Processing Facility Permit or approved a Winery-Chateau SUP or Remote Winery Tasting Room SUP for the land where Tabone's winery sits.

**DEFENDANTS JOINT PROPOSED CONCLUSIONS OF LAW**

**I. First Amendment**

**A. Commercial Speech**

1. Defendants have established that § 8.7.3(10)(u)(1)(b) was narrowly drawn and directly and materially advances Peninsula Township's substantial governmental interests. *Fla. Bar v. Went for It*, 515 U.S. 618, 624 (1995) (internal quotation omitted, citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).
2. Defendants have established that § 8.7.3(10)(u)(5)(h) was narrowly drawn and directly and materially advances Peninsula Township's substantial governmental interests. *Fla. Bar v. Went for It*, 515 U.S. 618, 624 (1995) (internal quotation omitted, citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).
3. Defendants have established that § 8.7.3(12)(i) was narrowly drawn and directly and materially advances Peninsula Township's substantial governmental interests. *Fla. Bar v. Went for It*, 515 U.S. 618, 624 (1995) (internal quotation omitted, citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).
4. Defendants have established that § 8.7.3(12)(k) was narrowly drawn and directly and materially advances Peninsula Township's substantial governmental interests. *Fla. Bar v.*

*Went for It*, 515 U.S. 618, 624 (1995) (internal quotation omitted, citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).

5. Defendants have established that § 6.7.2(19)(b)(1)(v) was narrowly drawn and directly and materially advances Peninsula Township's substantial governmental interests. *Fla. Bar v. Went for It*, 515 U.S. 618, 624 (1995) (internal quotation omitted, citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).
6. All Winery-Chateau Plaintiffs failed to meet their burden of proof to establish that § 8.7.3(10)(u)(1)(b) imposes an unconstitutional restriction on their commercial speech.
7. All Winery-Chateau Plaintiffs failed to meet their burden of proof to establish that § 8.7.3(10)(u)(5)(h) imposes an unconstitutional restriction on their commercial speech.
8. Plaintiff Peninsula Cellars failed to meet its burden of proof to establish that § 8.7.3(12)(i) imposes an unconstitutional restriction on its commercial speech.
9. Plaintiff Peninsula Cellars failed to meet its burden of proof to establish that § 8.7.3(12)(k) imposes an unconstitutional restriction on its commercial speech.
10. Plaintiffs Black Star, Two Lads, and Tabone failed to meet their burden of proof to establish that § 6.7.2(19)(b)(1)(v) imposes an unconstitutional restriction on their commercial speech.
11. All Plaintiffs failed to meet their burden of proof to establish entitlement to damages for any alleged First Amendment violation grounded in their commercial speech theory.
12. Additionally, because no part of § 8.7.3(10)(u) has been applied to them, Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne failed to meet their burden of proof to establish entitlement to damages for any alleged First Amendment violation grounded in their commercial speech theory.
13. All Plaintiffs failed to meet their burden of proof to establish entitlement to injunctive relief for any alleged First Amendment violation grounded in their commercial speech theory.

## **B. Prior Restraint**

14. Because no part of § 8.7.3(10)(u) has been applied to them, Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne, are not entitled to damages for their First Amendment prior restraint claims relating to § 8.7.3(10)(u)(2)(b) and § 8.7.3(10)(u)(2)(c).
15. Because Plaintiffs Chateau Chantal and Mari failed to demonstrate that they were required to obtain Township permission to engage in any conduct or speech protected by the First Amendment, they failed to meet their burden of proof to establish that § 8.7.3(10)(u)(2)(b) and § 8.7.3(10)(u)(2)(c) are unconstitutional prior restraints.
16. Plaintiffs Chateau Chantal and Mari failed to meet their burden of proof to establish entitlement to damages for their First Amendment prior restraint claims relating to § 8.7.3(10)(u)(2)(b) and § 8.7.3(10)(u)(2)(c).



17. All Plaintiffs failed to meet their burden of proof to establish entitlement to injunctive relief for any alleged First Amendment violation grounded in their prior restraint theory relating to § 8.7.3(10)(u)(2)(b) and § 8.7.3(10)(u)(2)(c).

### **C. Compelled Speech**

18. Because no part of § 8.7.3(10)(u) has been applied to them, Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne, are not entitled to damages for their First Amendment compelled speech claims relating to § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a).
19. Because Plaintiffs Chateau Chantal and Mari failed to demonstrate that they object to any message compelled by § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a), they failed meet their burden of proof to establish that § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a) unconstitutionally compel speech.
20. Plaintiffs Chateau Chantal and Mari failed to meet their burden of proof to establish entitlement to damages for their First Amendment compelled speech claims § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a).
21. All Plaintiffs failed to meet their burden of proof to establish entitlement to injunctive relief for any alleged First Amendment violation grounded in their compelled speech theory relating to § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a).

### **D. Compelled Speech**

22. No Plaintiff asserted in discovery that § 8.7.3(10)(u)(1)(b) and § 8.7.3(10)(u)(5)(a) are content-based restrictions on speech and these are not content-based restrictions. (ECF 162, PageID.6008-6010; ECF 559, PageID.21908)

## **II. Due Process (Vagueness)**

23. Because no part of § 8.7.3(10)(u) has been applied to them, Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne, are not entitled to damages for their Due Process claims relating to § 8.7.3(10)(u).
24. Plaintiffs Chateau Chantal and Mari failed to meet their burden of proof to establish entitlement to damages for their Due Process claims relating to § 8.7.3(10)(u).
25. All Plaintiffs failed to meet their burden of proof to establish entitlement to injunctive relief for their Due Process claims relating to § 8.7.3(10)(u).

## **III. Dormant Commerce Clause**

26. Because no part of § 8.7.3(10)(u) has been applied to them, Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne, are not entitled to damages for their dormant Commerce Clause claims relating to § 8.7.3(10)(u)(2)(e), § 8.7.3(10)(u)(3), § 8.7.3(10)(u)(5)(c), and § 8.7.3(10)(u)(5)(d).

27. Plaintiffs Chateau Chantal and Mari failed to meet their burden of proof to establish entitlement to damages for their dormant Commerce Clause claims relating to § 8.7.3(10)(u)(2)(e), § 8.7.3(10)(u)(3), § 8.7.3(10)(u)(5)(c), and § 8.7.3(10)(u)(5)(d).
28. Plaintiffs Black Star, Two Lads, and Tabone failed to meet their burden of proof to establish entitlement to damages for their dormant Commerce Clause claims relating to § 6.7.2(19)(a), § 6.7.2(19)(b)(1)(ii), § 6.7.2(19)(b)(1)(iii), § 6.7.2(19)(b)(2)(i), and § 6.7.2(19)(b)(2)(V).
29. All Plaintiffs failed to meet their burden of proof to establish entitlement to injunctive relief for their dormant Commerce Clause claims relating to § 6.7.2(19)(a), § 6.7.2(19)(b)(1)(ii), § 6.7.2(19)(b)(1)(iii), § 6.7.2(19)(b)(2)(i), and § 6.7.2(19)(b)(2)(V).

#### **IV. Laches**

30. With the exception of Bowers Harbor and Hawthorne, each Plaintiff failed to exercise reasonable diligence in bringing their claims and thereby prejudiced the Township and others and their claims for damages must be denied accordingly. *Nartron Corp. v. STMMicroelectronics, Inc.*, 305 F.3d 397, 408 (6th Cir. 2002)

#### **V. Injunction**

31. All Plaintiffs failed to meet their burden of proving that they have suffered an irreparable injury attributable to the challenged zoning provisions. *eBay Inc v MercExchange, LLC*, 547 US 388, 391 (2006) (citations omitted).
32. All Plaintiffs failed to meet their burden of proving entitlement to damages caused by any challenged provision and therefore failed to meet their burden of proving that remedies available at law are inadequate to compensate for their claimed injuries. *eBay Inc v MercExchange, LLC*, 547 US 388, 391 (2006) (citations omitted).
33. All Plaintiffs failed to meet their burden of proving that, considering the balance of hardships between Plaintiffs and Defendants, an equitable remedy would be warranted. *eBay Inc v MercExchange, LLC*, 547 US 388, 391; 126 S Ct 1837; 164 L Ed 2d 641, 645-46 (2006) (citations omitted).
34. All Plaintiffs failed to meet their burden of proving the public interest would not be disserved by a permanent injunction. *eBay Inc v MercExchange, LLC*, 547 US 388, 391 (2006) (citations omitted).
35. With the exception of Bowers Harbor and Hawthorne, laches bars injunctive relief for all Plaintiffs because they induced the Township to enact the zoning amendments and issue the SUPs and land use permits they now challenge. *Nartron Corp. v. STMMicroelectronics, Inc.*, 305 F.3d 397, 412 (6th Cir. 2002)
36. With the exception of Bowers Harbor and Hawthorne, laches bars injunctive relief for all Plaintiffs because their course of conduct preceding and following the Township's approval of their respective SUPs and land use permits misled the Township and its residents into continued reliance on the PTZO.

37. No Plaintiff is entitled to injunctive relief that would expand its vested rights – if any – in any nonconforming use.
38. Because the PTZO specifically sets forth permissible land uses for each Township zoning district and therefore necessarily implies the exclusion of non-listed uses, no Plaintiff is entitled to injunctive relief that would authorize any use in the A-1 District that the PTZO does not set forth as permissible in the A-1 District. *Dezman v. Charter Twp. of Bloomfield*, 997 N.W.2d 42 (Mich. 2023); *Independence Twp. v. Shibowski*, 136 Mich. App. 178; 355 N.W.2d 903 (1984); *Pittsfield Twp v. Malcolm*, 375 Mich 135, 142; 134 N.W.2d 166 (1965).
39. The grape source requirements for Farm Processing Facilities in § 6.7.2(19) cannot be severed without impairing other provisions.
40. The term “Guest Activity Use” for Winery Chateaus in § 8.7.3(10)(u) cannot be severed without impairing other provisions.

## VI. Standing

41. Plaintiffs Bonobo, Bowers Harbor, Brys, Chateau Grand Traverse, and Hawthorne failed to meet their burden of proof to establish standing to bring their Dormant Commerce Clause and Due Process (vagueness) challenges to § 8.7.3(10)(u) and its subparts because neither § 8.7.3(10)(u) nor any subpart thereof has been applied to them and an injury in fact is a threshold requirement for standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

Respectfully submitted,

Date: April 23, 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  
[tja@tjandrews.com](mailto:tja@tjandrews.com)

Date: April 23, 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](mailto:holly@tropospherelegal.com)

Date: April 23, 2024

By: /s/ Thomas J. McGraw  
Thomas J. McGraw (P48817)  
*McGraw Morris, P.C.*  
Attorneys for Defendant  
44 Cesar E. Chavez Ave. SW  
Suite 200  
Grand Rapids, MI 49503  
(616) 288-3700  
[tmcgraw@mcgrawmorris.com](mailto:tmcgraw@mcgrawmorris.com)

Date: April 23, 2024

By: /s/ Bogomir Rajsic III  
Bogomir Rajsic, III (P79191)  
*McGraw Morris, P.C.*  
Attorneys for Defendant  
44 Cesar E. Chavez Ave. SW  
Suite 200  
Grand Rapids, MI 49503  
(616) 288-3700  
[brajsic@mcgrawmorris.com](mailto:brajsic@mcgrawmorris.com)