

Nos. 25-1703/25-1705/25-1754

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

Plaintiffs – Appellees [25-1703/25-1705]/Cross-Appellants [25-1754]

v.

TOWNSHIP OF PENINSULA, MI, a Michigan Municipal Corporation

Defendant – Appellant [25-1703]/Cross-Appellee [25-1754]

PROTECT THE PENINSULA, INC.

Intervenor – Appellant. [25-1705]/Cross-Appellee [25-1754]

**FIRST BRIEF OF APPELLANT/CROSS APPELLEE
PROTECT THE PENINSULA INC.**

Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews,
PLLC
420 East Front Street
Traverse City, MI 49686
(231) 714-9402

Holly L. Hillyer (P85318)
TROPOSPHERE LEGAL, PLC
420 East Front Street
Traverse City, MI 49686
(231) 709-4709

I. CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Intervenor-Appellant/Cross-Appellee Protect the Peninsula, Inc. (PTP) certifies that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

II. TABLE OF CONTENTS

I. CORPORATE DISCLOSURE STATEMENT2

II. TABLE OF CONTENTS.....3

III. TABLE OF AUTHORITIES.....4

IV. STATEMENT IN SUPPORT OF ORAL ARGUMENT10

V. STATEMENT OF JURISDICTION11

VI. STATEMENT OF ISSUES.....11

VII. STATEMENT OF THE CASE.....14

A. Introduction14

B. Zoning and Winery History15

C. Litigation History22

VIII. SUMMARY OF THE ARGUMENT28

IX. ARGUMENT.....32

A. The First Amendment claims fail.32

B. The due process claims fail.....53

C. The dormant Commerce Clause claims fail.67

D. The preemption claims fail.....72

E. Most Plaintiffs lack standing to bring their claims.....75

F. Most Plaintiffs’ claims are time-barred.....82

**G. The court erred in preventing PTP from fully defending Plaintiffs’
 claims.87**

X. CONCLUSION92

DESIGNATION OF RELEVANT DOCUMENTS 6 Civ R. 30(g)96

III. TABLE OF AUTHORITIES

Cases

46th Circuit Trial Court v. Crawford Cty., 702 N.W.2d 588 (2005)44

600 Marshall Entm’t Concepts, LLC v. City of Memphis, 705 F.3d 576 (6th Cir. 2013).....59

Allard Enters. v. Advanced Programming Res., 249 F.3d 564 (6th Cir. 2001).....88

Am. Beverage Ass’n v. Snyder, 735 F.3d 362 (6th Cir. 2013)68

Anderson v. Bessemer City, 470 U.S. 564 (1985)..... 43, 45

Anderson v. Treadwell, 294 F.3d 453 (2nd Cir. 2002)35

Association of Cleveland Firefighters v. City of Cleveland, 502 F.3d 545 (6th Cir. 2007)..... 54, 56, 58

Bannister v. Knox County Bd. of Educ., 49 F.4th 1000 (6th Cir. 2022).....83

Bd. of Trs. v. Fox, 492 U.S. 469 (1989)34

Belle Maer Harbor v. Harrison Charter Twp., 170 F.3d 553 (6th Cir. 1999) .. 54, 59

Bloomfield Twp. v. Beardslee, 84 N.W.2d 537 (Mich. 1957)28

Brae Burn, Inc. v. City of Bloomfield Hills, 86 N.W.2d 166 (Mich. 1957)28

Bristol Myers Squibb Co. v. Sec’y United States HHS, 155 F.4th 245 (3rd Cir. 2025)52

Bronco’s Ent., Ltd. v. Chater Twp of Van Buren, 421 F.3d 440 (6th Cir. 2005).....50

Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573 (1986) ..68

Burzynski v. Cohen, 264 F.3d 611(6th Cir. 2001) 32, 54

Carter v. Mitchell, 829 F.3d 455(6th Cir. 2016) 87, 89, 91

Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y., 447 U.S. 557
 (1980)..... 32, 34, 43, 44

Sherman Bowling Center v. Roosevelt Park, 397 N.W.2d 839 (1987)74

Chambers v. Stengel, 256 F.3d 397 (6th Cir. 2001)..... 33, 35, 54

Columbia Nat. Res. v. Tatum, 58 F.3d 1101 (6th Cir. 1995)54

Connel v. Lima Twp., 970 N.W.3d 354 (Mich. App. Ct. 2021).....28

Conway v. Taylor’s Executor, 66 U.S. 603 (1862)68

Dep’t of Agric. & Rural Dev. v. Engle, 999 N.W.2d 73 (Mich. App. Ct. 2022).....66

Deruiter v. Twp. of Byron, 949 N.W.2d 91 (Mich. 2020)73

Disc. Tobacco City & Lottery, Inc. v. United States, 674 F.3d 509(6th Cir. 2012) 33,
 34, 60

Doe v. Cong. of the U.S., 891 F.3d 578 (6th Cir. 2018)51

Dusdal v. Warren, 196 N.W.2d 778 (Mich. 1972)28

E. Ky. Res. v. Fiscal Court, 127 F.3d 532 (6th Cir. 1997)..... 70, 71

Energy Mich., Inc. v. Mich. Pub. Serv. Comm’n, 126 F.4th 476 (6th Cir. 2025).....67

Ernst v. City of Chicago, 837 F.3d 788 (7th Cir. 2016)44

Fass v. City of Highland Park, 39 N.W.2d 336 (Mich. 1949) 27, 35, 68

Fednav, Ltd. v. Chester, 547 F.3d 607 (6th Cir. 2008).....75

Felix v. Young, 536 F.2d 1126 (6th Cir. 1979)74

First Choice Chiropractic, LLC v. DeWine, 969 F.3d 675 (6th Cir. 2020)..... 35, 36

Fla. Bar v. Went for It, 515 U.S. 618 (1995)..... 34, 35, 44

Glickman v. Wileman Bros. & Elliott, 521 U.S. 457 (1997).....52

Greater Bible Way Temple v. City of Jackson, 733 N.W.2d 734 (Mich. 2007)36

Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982).....61

Int’l Dairy Foods Ass’n v. Boggs, 622 F.3d 628 (6th Cir. 2010)67

Jobe v. City of Catlettsburg, 409 F.3d 261 (6th Cir. 2005)35

Johanns v. Livestock Mktg. Ass’n, 544 U.S. 550 (2005).....51

Jostock v. Mayfield Twp., 15 N.W.3d 552 (Mich. 2024).....27

Kalinoff v. Columbus Twp., 542 N.W.2d 276 (Mich. Ct. App. 1995)..... 33, 58

Kuhnle Bros. v. County of Geauga, 103 F.3d 516 (6th Cir. 1997)..... 83, 85, 86

Liberty Coins, LLC v. Goodman, 748 F.3d 682 (6th Cir. 2014) 39, 53

Lichtenstein v. Hargett, 83 F.4th 575 (6th Cir. 2023)38

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).....75

McCullen v. Coakley, 573 U.S. 464 (2014).....64

McLemore v. Gumucio, 149 F.4th 859 (6th Cir. 2025)39

Members of City Council of L.A. v. Taxpayers for Vincent, 466 U.S. 789 (1984)...39

Midwest Media Prop. v. Symmes Twp., 503 F.3d 456 (6th Cir. 2007)81

Miller v. American Heavy Lift Shipping, 231 F.3d 242 (6th Cir. 2000).....83

Moody v. NetChoice, LLC, 603 U.S. 708 (2024).....33

Nartron Corp. v. STMicroelectronics, Inc., 305 F.3d 397 (6th Cir. 2002).....86

Nat’l Amusement Co. v. Johnson, 259 N.W. 342 (Mich. 1935).....73

Nat’l Pork Producers Council v. Ross, 598 U.S. 356 (2023) 67, 68

Nat’l Pride at Work, Inc. v. Governor of Mich., 748 N.W.2d 524 (Mich. 2008).....37

Norton Shores v. Carr, 265 N.W.2d 802 (Mich. Ct. App. 1978).....28

Pagan v. Calderon, 448 F.3d 16 (1st Cir. 2006).75

Pagan v. Fruchey, 492 F.3d 766 (6th Cir. 2007)..... 41, 45

Paragon Props. Co. v. City of Novi, 550 N.W.3d 772 (Mich. 1996).....27

Penning v. Owens, 65 N.W.2d 831 (Mich. 1954) 27, 46

Phillips v. DeWine, 841 F.3d 405 (6th Cir. 2016)75

Pike v. Bruce Church, 397 U.S. 137 (1970).....72

Pittsfield v. Malcolm, 134 N.W.2d 166 (Mich. 1965).....27

Polaris Amphitheater Concerts, Inc. v. City of Westerville, 267 F.3d 503 (6th Cir. 2001).....50

Posadas de P. R. Assocs. v. Tourism Co. of Puerto Rico, 478 U.S. 328 (1986)35

Prime Media, Inc. v. City of Brentwood, 485 F.3d 343 (6th Cir. 2007)..... 75, 78

Raabe v. Walker, 383 Mich. 165 (1970)27

Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR), 547 U.S. 47 (2006).....40

Sanguine, Ltd. v. United States Department of Interior, 798 F.2d 389 (10th Cir. 1983).....90

Sanimax USA, LLC v. City of S. St. Paul, 95 F.4th 551(8th Cir. 2024)61

Schmitt v. LaRose, 933 F.3d 628 (6th Cir. 2019)49

Sevier v. Turner, 742 F.3d 262 (6th Cir. 1984).....83

Sharpe v. Cureton, 319 F.3d 259 (6th Cir. 2003).....85

Stevenson v. Bay City, 26 Mich. 44 (1872).....45

Tearpock-Martini v. Borough of Shickshinny, 756 F.3d 232 (3rd Cir. 2014).....85

Tenn. Scrap Recyclers Ass’n v. Bredsen, 556 F.3d 442 (6th Cir. 2009).....71

TikTok Inc. v. Garland, 604 U.S. 56 (2025).....48

Tolbert v. Ohio Dep’t of Transport, 172 F.3d 934 (6th Cir. 1999) 83, 85

Truesdell v. Friedlander, 80 F.4th 762 (6th Cir. 2023)..... 67, 71

Tucker v. Tennessee, 539 F.3d 526 (6th Cir. 2008)78

Turcar, LLC v. IRS, 451 F. App’x 509 (6th Cir. 2011).....77

Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n, 512 U.S. 622 (1994) (“*Turner I*”)33

Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n, 520 U.S. 180 (1997) (“*Turner II*”)..... 33, 48

United States v. City of Detroit, 7112 F.3d 925(6th Cir. 2013).....87

United States v. Michigan, 68 F.4th 1021(6th Cir. 2023)87

United States v. Moored, 38 F.3d 1419 (6th Cir. 1994)88

Village of Euclid v. Amber Realty, 272 U.S. 365 (1926).....27

Ward v. Rock Against Racism, 491 U.S. 781 (1989).....49

West Lynn Creamery, Inc. v. Healy, 512 U.S. 186 (1994).....68

White Oak Prop. Dev., LLC v Washington Twp., 606 F.3d 842 (6th Cir. 2010)54

Whitman v. Galien Twp., 808 N.W.2d 9 (2010)..... 27, 36

Wineries of the Old Mission Peninsula v. Peninsula Twp. (WOMP II), 2022
 U.S.App. LEXIS 23575, 2022 WL 22236853 (6th Cir. 2022)..... 23, 89, 92

Wineries of the Old Mission Peninsula, v. Peninsula Twp. (WOMP I), 41 F.4th 767
 (6th Cir. 2022)..... passim

Yoder v. Brown, 146 F.4th 516 (6th Cir. 2025)..... 40, 49

Statutes

28 U.S.C. § 129111

28 U.S.C. § 133111

28 U.S.C. § 136711

MCL § 125.3201 27, 36

MCL § 125.320327

MCL § 125.320828

MCL § 125.340790

MCL § 436.120173

MCL § 436.1547 13, 73, 75
MCL § 436.1916 73, 74, 75

Rules

Fed. R. Civ. P. 24.....91
Fed. R. Civ. P. 56.....78
Fed. R. Civ. P. 56.....77
Fed. R. Evid. 80344
Mich. Admin. Code, R. 436.1003 73, 74

Regulations

27 C.F.R. § 4.2517
27 C.F.R. § 9.114.....17

IV. STATEMENT IN SUPPORT OF ORAL ARGUMENT

Intervenor-Appellant PTP respectfully requests oral argument to help resolve this appeal, which involves complex and important issues concerning the scope of the First, Tenth, and Fourteenth Amendments and state preemption law, and their relation to local zoning powers.

V. STATEMENT OF JURISDICTION

Subject matter jurisdiction exists under 28 U.S.C. § 1331 over Plaintiffs' claims that parts of the Peninsula Township Zoning Ordinance (PTZO) (Ordinance, RE 1-1, Page ID ## 31-194) violate their rights protected by the First, Tenth, and Fourteenth Amendments. The District Court (court) assumed supplemental jurisdiction under 28 U.S.C. § 1367 over claims that some PTZO provisions are preempted by the Michigan Liquor Control Code (MLCC) and violate the Michigan Zoning Enabling Act (MZEA). Final judgment (RE 624) entered on July 7, 2025. PTP filed a timely notice of appeal on August 5, 2025 (RE 641). Plaintiffs' motion to amend the judgment was denied on August 14, 2025 (RE 643). This appeal is from a final order and judgment disposing of all claims. Appellate jurisdiction exists under 28 U.S.C. § 1291.

VI. STATEMENT OF ISSUES

1. Did the court err in declaring provisions that state the Township's intent in expanding the Winery-Chateau land use to authorize Guest Activity Uses (8.7.3(10)(u)(1)(b)) and limit outdoor displays during certain events (8.7.3(10)(u)(5)(h)) restrain commercial speech in violation of the First Amendment?

2. Did the court err in declaring provisions that authorize onsite retail sale of branded merchandise for Farm Processing Facilities (6.7.2(19)(b)(1)(v)) and the Remote Winery Tasting Room (8.7.3(12)(i)) restrain commercial speech in violation of the First Amendment?
3. Did the court err in declaring a provision that limits the promotion of non-wine items for sale in the Remote Winery Tasting Room (8.7.3(12)(k)) restrains commercial speech in violation of the First Amendment?
4. Did the court err in granting summary judgment to Plaintiffs on their facial claims alleging that the Guest Activity Uses section (8.7.3(10)(u)) of the Winery-Chateau land use was vague in violation of the Due Process Clause of the Fourteenth Amendment?
5. Did the court err in granting damages to Plaintiffs as compensation for lost profits associated with their inability to properly host “small events” and “large events”?
6. Does the PTZO discriminate against interstate commerce through nine provisions integrated into two winery land uses, in violation of the dormant Commerce Clause doctrine?
7. Is the provision restricting the use of Winery-Chateau kitchens for off-site catering (8.7.3(10)(u)(5)(i)) preempted by MCL § 436.1547, the Michigan

Liquor Control Code (MLCC) provision authorizing permits for caterers to distribute alcoholic beverages?

8. Is the provision restricting instrumental music amplification during Guest Activity Uses hosted by permitted Winery Chateaus (8.7.3(10)(u)(5)(g)) preempted by MCL § 436.1916(1), which provides that no MLCC permit is required for liquor licensees to host instrumental performances?
9. Did the court err in reversing post-trial its summary judgment ruling that five Winery-Chateaus (Chateau Grand Traverse, Bonobo, Bowers Harbor, Brys, Hawthorne) lacked standing to pursue as-applied challenges to 8.7.3(10)(u)?
10. Did the court err in concluding that Black Star and Bonobo, which occupy land bound by conservation easements restricting their uses to Agricultural and Open Spaces Uses, have standing to bring their claims?
11. Did the court err in concluding that Tabone, which lacks a Farm Processing Facility permit under 6.7.2(19) but has a Food Processing Plant permit under 8.5, has standing to challenge the constitutionality of 6.7.2(19) provisions?
12. Did the court err in granting summary judgment to Plaintiffs on the basis that the three-year statute of limitations for Section 1983 claims serves only to limit Plaintiffs' damages?
13. Did the court err in granting summary judgment to Plaintiffs on the basis that the affirmative defense of laches is not a defense to injunctive relief?

14. Did the court err in precluding PTP from defending Plaintiffs' dormant Commerce Clause and due process claims and the damages element of all Plaintiffs' claims?

VII. STATEMENT OF THE CASE

A. Introduction

This case is an attempt by 11 wineries to use the federal courts to force Peninsula Township to rewrite its zoning ordinance more to their liking. When ongoing discussions reached an impasse, Plaintiffs¹ constitutionalized their decades-old desire for more expansive zoning and sought judicial revisions. Recognizing strength in numbers, they pursued a constitutional class action strategy, glossing over differencing and pooling common grievances into over collectively 120 claims challenging land uses many once championed. Intervenor by right PTP remains stuck with rulings it was not permitted to defend. The court invalidated scores of PTZO provisions on summary judgment, plus five more following a bench trial, then

¹ Bowers Harbor Vineyard & Winery, Inc. (Bowers Harbor), Brys Winery, LC (Brys), Chateau Grand Traverse, Ltd. (Chateau Grand Traverse), Chateau Operations, Ltd. (Chateau Chantal), Grape Harbor, Inc.(Peninsula Cellars), Montague Development, LLC (Hawthorne), OV The Farm, LLC (Bonobo), Tabone Vineyards, LLC (Tabone), Two Lads, LLC (Two Lads), Villa Mari, LLC (Mari), Winery at Black Star Farms, LLC (Black Star), and their trade association Wineries of the Old Mission Peninsula Association (WOMP).

awarded Plaintiffs nearly \$50 million untethered to any cognizable injury. Because courts cannot enact zoning (that is left to people who answer to voters), Plaintiffs' success in invalidating provisions that authorized additional revenue-generating and promotional activities paradoxically leaves them with fewer permitted uses than before, suggesting they misunderstood zoning from the start.

B. Zoning and Winery History

Peninsula Township may be “Michigan’s most unique and scenic township.” (Master Plan, RE **611-4**, Page ID # 25308) Stretching north from Traverse City, the Old Mission Peninsula (OMP) is surrounded by the sparkling waters of Grand Traverse Bay, which creates an ideal microclimate for growing fruit. At 18 miles long but just 1-to-3 miles wide, a single north-south highway, Center Road, carries most of its traffic. With 42 miles of shoreline, the OMP offers spectacular views and recreational opportunities. During peak season, thousands of visitors flock here daily for cherry picking, beach hopping, hiking, and wine tasting. Nighttime, with dark skies and silence broken only by the sounds of nature, belongs to the residents and few overnight guests who remain after the day-trippers return to the hotels and restaurants of bustling Traverse City.

For over 50 years, Peninsula Township has used planning and zoning to protect its unique character, ensure a high quality of life for its residents, and foster

a thriving agricultural economy – including its wine industry, which has grown from nothing a few decades ago into the constellation of vineyards, wineries, tasting rooms, and chateaus now dotting its length.² The Township enacted its first zoning ordinance in 1972, designating most of the Peninsula for agricultural uses (zoned A-1) with limited residential and commercial districts. Consistent with historic OMP cherry processing plants, the original PTZO authorized the Food Processing Plant special use³ on five-acre parcels in A-1, allowing vintners to make and distribute wine from grapes grown anywhere. PTZO 8.5. The Township issued its second-ever Special Use Permit (SUP) in 1975 to Chateau Grand Traverse for such a winery. In 1987, the Township gained recognition as an American Viticultural Area, allowing Chateau Grand Traverse and future Peninsula winemakers to label their wines made with at least 85% Peninsula grapes with the “Old Mission Peninsula” appellation. 27 C.F.R. § 9.114; 27 C.F.R. § 4.25(e)(3)(ii).

Alongside planning and zoning, in 1994, Peninsula Township enacted its renowned Purchase of Development Rights (PDR) ordinance to better protect its irreplaceable agricultural and open space lands against “substantial development

² Township records document the full history and are summarized and cited in Defendants’ Joint Proposed Findings of Fact (RE **583**, Page ID ## 22791-22838; Exhibits, RE **615-8** to **615-27**).

³ Unlike by-right uses, special uses are discretionary, with procedures and standards to protect the public interest. PTZO 8.1.1.

pressure” coming from Traverse City. (PDR Ordinance, RE **615-7**, Page ID ## 28693-28713) Peninsula voters have repeatedly approved millages to acquire development rights to protect prime agricultural land. (Master Plan, RE **611-4**, Page ID #25329)

Chateau Grand Traverse remained the Peninsula’s only winery until Chateau Chantal’s founder proposed a zoning amendment that would allow a winery to host overnight guests. (Exhibits Q and R, RE **615-8**, Page ID ## 28850-28552) In 1989, the Township enacted Amendment 79 (adding PTZO **8.7.3(10)**), which established the Winery-Chateau as a special use on 50 acres allowing a winery, overnight guest rooms, and single-family residences. The winery – a facility where wine is made, stored, packaged, and sold (PTZO 3.2) – is the principal use. Winery-Chateaus could have a tasting room – a space for wine tasting and retail sales (*Id.*) – and “reasonably necessary” accessory uses related to the winery, guest rooms, and residences. Accessory uses like “facilities, meeting rooms, and food and beverage services” were only for registered guests. PTZO 8.7.3(10)(m). Wine production and tasting are practically unregulated, though 75% of the acreage must be in active cultivation. In 1990, both Chateau Chantal and Chateau Grand Traverse obtained Winery-

Chateau SUPs.⁴ (Exhibit B3, RE **615-11**, Page ID ## 28997-29003; SUP, RE **32-8**, Page ID ## 1800-1816)

In 1992, Bowers Harbor began operations with a modified Food Processing Plant SUP authorizing limited seasonal retail sales of regionally-grown agricultural products, including wine. (SUP 32, RE **32-7**, Page ID ## 1773-1781) At just 47 acres, it would not qualify as a Winery-Chateau. In 2010) At just 47 acres, it would not qualify as a Winery-Chateau. In 2010, the Township issued Bowers Harbor a unique SUP authorizing its signature outdoor dining series, “Dining in the Vines,” before ultimately granting it a variance to become a Winery-Chateau in 2019. (Exhibit S4, RE **615-13**, Page ID ## 29314-29321; Exhibit Z4, RE **615-13**, Page ID ## 29336-29337; Exhibit H5, RE **615-14**, Page ID ## 29362-29378)

In 1998, Peninsula Cellars proposed a zoning amendment to allow it to relocate its tasting room from its owners’ general store in the commercial district to a historic schoolhouse on busy Center Road in the agricultural district, independent of its distant winery.⁵ (Exhibit A10, RE **615-27**, Page ID # 30486) The Township enacted Amendment 120 (adding PTZO **8.7.3(12)**) establishing the Remote Winery

⁴ Both authorized “outdoor functions such as wine tasting parties, festivals, etc.” for up to 75 guests.

⁵ The winery SUP was approved in 1994. (Exhibit I10, RE **615-27**, Page ID # 30519)

Tasting Room special use, then approved Peninsula Cellars’s SUP under it. (Exhibit I10, RE **615-27**, Page ID ## 30515-30524)

Also in 1998, following an unsuccessful proposal to amend the PTZO and its SUP to allow expanded food service and private event hosting, Chateau Chantal sued the Township. The litigation was resolved by a consent judgment clarifying that, while accessory uses like food service and meeting facilities were limited to registered – meaning overnight – guests, the Township would create guidelines allowing additional food service and activities at Chateau Chantal, then use those as the basis for amending the Winery-Chateau land use. (Exhibit B4, RE **615-12**, Page ID ## 29226-29228) The Township adopted those guidelines in 1999. (Exhibits C4-D4, RE **615-12**, Page ID ## 29230, 29235-29236). Other zoning amendments were proposed in 1999 and rejected by the Township or its voters. (Exhibit M7, RE **615-18**, Page ID # 29910)

In 2001, Chateau Chantal tried again to expand permissible Winery-Chateau uses, proposing an amendment to allow “Contract Groups, Contract Events, and Community Events.” (Ex U10, RE **615-27**, Page ID # 30548) In 2004, following three years of community effort to balance winery interests in added revenue streams with safeguards against the commercialization of A-1, the Township enacted Amendment 141 (adding PTZO **8.7.3(10)(u)**) authorizing the Board to approve in a Winery-Chateau SUP revenue-generating, promotional “Guest Activity Uses.” (*See*

Defendants' Joint Proposed Findings of Fact, RE **583**, Page ID ## 22805-22810) Amendment 141 provided that, existing accessory use limits notwithstanding, Winery-Chateaus could host wine and food seminars, cooking classes, and meetings of local nonprofits or agricultural-related groups irrespective of whether the attendees were registered guests. Chateau Chantal promptly requested and received an amended SUP authorizing it to host Guest Activity Uses and has since successfully hosted hundreds of dining events as "wine and food seminars." (Exhibits C3-F3, RE **615-11**, Page ID ## 29005, 29013-14; Exhibits I4 and K4, RE **615-12**, Page ID ## 29251-29264)

Meanwhile, in 2002, the Township had enacted Amendment 139 (adding PTZO **6.7.2(19)**) authorizing the Farm Processing Facility by-right use. Amendment 139 allowed smaller farms to have retail wine and branded merchandise sales in the tasting room sans SUP, so long as the wine they made and sold was OMP appellation, mostly from their own grapes.

Since then, the number of wineries in Peninsula Township more than doubled. Black Star and Two Lads established themselves as Farm Processing Facilities in 2007. (Opinion, RE **623**, Page ID # 31451) Brys, Mari, and Hawthorne first established themselves as Farm Processing Facilities, then became Winery-Chateaus with Guest Activity Uses approval in 2013, 2016, and 2020, respectively. (*Id.* at 31445, 31447, 31449) Bonobo, discussed *infra*, got a Winery-Chateau SUP with

unique permissions for “meetings and special dinners” in 2013 and amended in 2014. In 2016, Tabone, discussed *infra*, established its winery and tasting room on property with an existing Food Processing Plant SUP and operates as an unpermitted Farm Processing Facility.

Under the PTZO, Plaintiffs offer guided tastings, flights, and wine by the glass and bottle for individuals and groups in their tasting rooms; serve charcuterie and other tasting accompaniments; maintain wine clubs to sustain sales during the off-season; offer tours; have free promotional activities like live music and trivia night; participate in promotional WOMP Wine Trail events like the super-popular Mac & Cheese Bake-Off; and sell branded merchandise like t-shirts and stemware; some host revenue-generating wine pairings and cooking classes; and some operate bed and breakfasts and host weddings and other private events for overnight guests. (*See* PTP Post-Trial Brief, RE **619**, Page ID ## 31204-31206)

In December 2022, the Township adopted Amendment 201, which repealed the Winery-Chateau and Farm Processing Facility uses, removed offending provisions from the Remote Winery Tasting Room, and approved new winery land uses. It is inapplicable to Plaintiffs. (Opinion, RE 623, Page ID ## 31427-31428)

C. Litigation History

As Peninsula viticulture grew, Peninsula wineries never stopped seeking expanded zoning permissions – especially for two uses the Township has steadfastly kept out of A-1: restaurants and private event hosting. Since Chateau Chantal first sued the Township in 1998, Peninsula wineries have campaigned for amendments to use their facilities as commercial wedding and event venues and to offer dining options beyond traditional wine tasting accompaniments. In 2019, five wielded a new sword – a legal memorandum asserting various PTZO sections were unlawful. (Letter, RE **29-15**) When that failed to produce the desired zoning rewrite, in 2020, all eleven Peninsula wineries and their trade association sued the Township, alleging a kitchen-sink collection of constitutional and state preemption claims.

Plaintiffs alleged that the MLCC, which regulates alcohol trafficking, preempted local zoning, so they were entitled to operate restaurants, have live music, and stay open until 2:00 a.m. by virtue of holding winemaker licenses. Plaintiffs also sought the right to use their facilities as commercial wedding and event venues and for expanded retail sales by characterizing zoning permitting Guest Activity Uses and limited retail sales as restrictions infringing on their constitutional rights. Ultimately, Plaintiffs asked the court to invalidate the very provisions the Township enacted to expand permissible uses for A-1 wineries.

PTP sought by-right intervention in February 2021, which was denied in October 2021, then granted on appeal in July 2022. *Wineries of the Old Mission Peninsula, v. Peninsula Twp. (WOMP I)*, 41 F.4th 767 (6th Cir. 2022). Meanwhile, in June 2022, the court granted Plaintiffs summary judgment on key issues. (Order, RE **162**) Its order included an apparent injunction, which the Township appealed, and this Court vacated. *Wineries of the Old Mission Peninsula v. Peninsula Twp. (WOMP II)*, 2022 U.S.App. LEXIS 23575, 2022 WL 22236853 (6th Cir. 2022).

Thereafter, the court adjourned trial, determined PTP's role, partially vacated its summary judgment order, and issued a new case management order. (Orders, RE **236, 290, 301, 343**) The court left intact its dormant Commerce Clause and due process summary judgment rulings, precluding PTP from litigating those issues. (Orders, RE **301, 319**) The court also precluded PTP from obtaining damages-related documents, later holding damages are irrelevant to PTP. (Orders, RE **345, 528, 574**) In discovery, PTP assembled decades of Township meeting minutes and nailed down Plaintiffs' claims within the confines of the court-imposed limitations.

Dispositive motions further narrowed the issues. Each party filed motions on preemption. (Briefs, RE **334, 356, 353, 365, 366, 367, 375, 473, 478**; Order, RE **525**) Plaintiffs and PTP filed motions on the remaining constitutional claims; the Township responded. (Briefs, RE **469, 485, 488, 501, 517, 519, 521, 526**; Order, RE **559**) The Township filed motions to dismiss for lack of jurisdiction; Plaintiffs

responded. (Briefs, **459, 463, 487, 499**; Order, RE **518**) Plaintiffs filed dispositive motions on most pleaded defenses; Defendants responded. (Briefs, **440, 442, 457, 466, 475, 476**; Order, RE **528**) The holdings are discussed in context below; suffice for here that the issues left for trial related to whether Plaintiffs' commercial speech challenges survived intermediate scrutiny and Plaintiffs' entitlement to damages and injunction, which was significantly limited by the court's summary judgment ruling that all Winery-Chateaus but Chateau Chantal and Mari lacked standing to pursue as-applied challenges relating to 8.7.3(10)(u). (Order, RE **559**, Page ID # 21903; Opinion, RE **623**, Page ID # 31452; *but see* Defendants' Joint Trial Brief, RE **581**, Page ID ##22666-22706) Plaintiffs also sought judicial rezoning via injunction, which Defendants opposed. (Plaintiffs' Trial Brief, RE **580**, Page ID ## 22621-2262; Defendants' Joint Trial Brief, RE **581**, Page ID ## 22691-22704)

PTP's role at trial centered on whether five provisions identified as commercial speech survived intermediate scrutiny; prior rulings benched PTP on damages – the main act. On the first day of trial, the court sustained Defendants' objection to Plaintiffs' evidence of lost “large events” profits since it had ruled that agritourism is not commercial speech but let Plaintiffs “make [their] record.” (Oosterhouse, RE **600**, Page ID ## 23090-23103) Plaintiffs' trial evidence mostly furthered this record-making exercise, with extensive testimony about their marketing messages, how events are essentially “product demonstrations” (the label

they adopted after “agritourism” failed), and how limits on event hosting stifled their ability to maximize wine sales. (*See* Plaintiffs’ Post-Trial Brief, RE **618**, Page ID ## 30983-30993) It also included days of testimony from Plaintiffs recounting frustrating interactions with the Township since their establishment – Mari was scared to book weddings; Peninsula Cellars could not host wine pairings and events; Two Lads was told social events for hire are not allowed; the Township tried to make Bowers Harbor follow its special “Dining in the Vines” rules; Chateau Chantal cannot serve Argentinian Malbec at wine pairings; they wanted more room capacity; and so on. (*Id.*, 31011-31019) Plaintiffs aired pent-up grievances but presented no evidence of unconstitutional application of challenged provisions.

In July 2025, the court issued its bench opinion consolidating its prior rulings and resolving trial issues. (Opinion, RE **623**) It declared scores of decades-old zoning provisions unconstitutional or preempted and awarded Plaintiffs \$49.2 million in damages but no injunction. Below is a summary of invalidated provisions, organized by winery type and claim, noting the year of each Plaintiff’s most recent operative permit approval:

Winery-Chateau: <i>Chateau Grand Traverse (1999), Chateau Chantal (2004), Brys (2011), Mari (2016), Bonobo (2017), Bowers Harbor (2019), Hawthorne (2020)</i>	
Commercial Speech	8.7.3(10)(u)(1)(b) (intent) 8.7.3(10)(u)(5)(h) (no outdoor displays during GAUs)
Prior Restraint	8.7.3(10)(u)(2)(b) (local 501(c)(3) meetings) 8.7.3(10)(u)(2)(c) (ag-related group meetings)
Compelled Speech	8.7.3(10)(u)(1)(b) (intent) 8.7.3(10)(u)(5)(a) (promote OMP ag during GAUs)
Due Process	8.7.3(10)(u) (allowing GAUs)
Dormant Commerce Clause	8.7.3(10)(u)(2)(e) (appellation wine) 8.7.3(10)(u)(3) (capacity tied to grow/purchase grapes) 8.7.3(10)(u)(5)(c) (onsite produced wine) 8.7.3(10)(u)(5)(d) (wine by glass)
Preemption	8.7.3(10)(u)(5)(i) (no using kitchens for catering) 8.3.3(10)(u)(5)(g) (no amplified instrumental music)
Farm Processing Facility: <i>Black Star (2007), Two Lads (2007), Tabone (unpermitted)</i>	
Commercial Speech	6.7.2(19)(b)(1)(v) (branded merchandise sales)
Dormant Commerce Clause	6.7.2(19)(a) (intent) 6.7.2(19)(b)(1)(ii) (appellation wine/grape) 6.7.2(19)(b)(1)(iii) (appellation wine/fruit) 6.7.2(19)(b)(2)(i) (majority grown onsite / appellation) 6.7.2(19)(b)(2)(v) (85% OMP fruit)
Remote Winery Tasting Room: <i>Peninsula Cellars (1998)</i>	
Commercial Speech	8.7.3(12)(i) (branded merchandise sales) 8.7.3(12)(k) (advertising)

D. Michigan Zoning Law

Zoning is a reasonable exercise of state police power to ensure the segregation of incompatible land uses, even if it diminishes property values. *Paragon Props. Co. v. City of Novi*, 550 N.W.3d 772, 774 (Mich. 1996) (citing *Village of Euclid v. Amber Realty*, 272 U.S. 365 (1926)). Michigan requires local zoning to follow a community plan, maintain uniform districts, avoid inconsistent uses, and promote public health, safety, and welfare. MCL § 125.3201; MCL § 125.3203; *Whitman v. Galien Twp.*, 808 N.W.2d 9 (2010). Spot zoning – “creating a small zone of inconsistent use within a larger zone” – is impermissible, and allegations of such are closely scrutinized by reviewing courts. *Penning v. Owens*, 65 N.W.2d 831, 836 (Mich. 1954). Zoning benefits from stability, which induces reliance and supports community investment; amending zoning involves substantial community safeguards (e.g., notices, hearings, studies, referendums) to protect against “unreasonable, capricious, needless and harmful rezoning.” *Raabe v. Walker*, 383 Mich. 165, 177 (1970).

Under Michigan law, zoning is permissive, meaning ordinances specifically identify permissible uses in each zoning district and “absence of [a] specifically stated use must be regarded as excluding that use.” *Pittsfield v. Malcolm*, 134 N.W.2d 166, 170 (Mich. 1965) (discussing *Fass v. City of Highland Park*, 39 N.W.2d 336 (Mich. 1949)); *Jostock v. Mayfield Twp.*, 15 N.W.3d 552, 560 (Mich. 2024)

(“principles central to Euclidean zoning” include that “certain uses are allowed in some zones but not in others” and “if a use is not permitted in a zoning district, then it is prohibited in that district”); PTZO 6.1.4.

Adopting and amending zoning is inherently legislative. *Connel v. Lima Twp.*, 970 N.W.3d 354, 365 (Mich. App. Ct. 2021) (collecting cases). It is also inherently local. *Brae Burn, Inc. v. City of Bloomfield Hills*, 86 N.W.2d 166, 169-170 (Mich. 1957) (“Our laws have wisely committed to the people of a community themselves the determination of their municipal destiny, the degree to which the industrial may have precedence over the residential, and the areas carved out of each to be devoted to commercial pursuits.”).

Michigan law protects vested rights in nonconforming uses – uses that were lawful when zoning is enacted or amended may continue but generally may not expand. MCL § 125.3208(1); PTZO 7.5; *Dusdal v. Warren*, 196 N.W.2d 778, 781 (Mich. 1972); *Norton Shores v. Carr*, 265 N.W.2d 802, 805 (Mich. Ct. App. 1978). The extent to which a landowner established vested rights in nonconforming uses is fact specific. *Bloomfield Twp. V. Beardslee*, 84 N.W.2d 537, 543-44 (Mich. 1957).

VIII. SUMMARY OF THE ARGUMENT

PTP appeals numerous summary judgment and post-trial decisions that swept out scores of longstanding, democratically-developed zoning provisions. The court

treated Plaintiffs like a class, glossing over foundational differences in their respective land uses that demanded individualized consideration. The court found liability on five claims pre-trial and let another that should have been tossed out on summary judgment go to trial. We start with Plaintiffs' meritless claims and end with defenses.

The First Amendment protects speech and expressive conduct, including commercial speech; this case went to trial over whether five zoning provisions unconstitutionally restricted it. Only one provision applicable to one winery addressed advertising – the rest addressed non-speech. Even if all had restricted advertising, their plain language and context demonstrated their constitutionality; the historic record of their enactment, contemporaneous witness testimony, and expert testimony provided additional support. These provisions directly advanced the Township's substantial zoning interests and were narrowly tailored to apply only in limited circumstances, and most were never applied. The court applied the wrong standards and disregarded proper evidence to find all five facially unconstitutional.

The court held two provisions that defined categories of non-speech Guest Activity Uses were facially unconstitutional prior restraints on speech. The court misread one as requiring prior approval when it plainly does not. The other provides clear standards to guide its administration.

The court held that two provisions that ensure wineries promote their agricultural products during promotional Guest Activity Uses unconstitutionally compelled speech despite all Plaintiffs' obvious non-objection to self-promotion.

On summary judgment before PTP intervened, the court found the term "Guest Activity" unconstitutionally vague in violation of the Due Process Clause, then precluded PTP from litigating this issue; the \$49.2 million judgment extends from it. The court should have rejected Plaintiffs' due process claims because the relevant "Guest Activity Uses" provisions are clear and Plaintiffs failed to plead or prove as-applied challenges, which were a necessary prerequisite to their exclusively facial claims because Guest Activity Uses do not implicate the First Amendment. The court erred in awarding damages for lost events profits for several reasons, chief among them that Plaintiffs' claims were meritless, non-Winery-Chateaus were never subject to the Guest Activity Uses provisions and, irrespective of the challenged provisions, commercial weddings and similar events are not permissible in A-1.

On summary judgment, the court held nine provisions facially discriminate against out-of-state farmers in violation of the dormant Commerce Clause. PTP was not permitted to defend this claim either. The court read the provisions out of context; the plain text of the PTZO confirms it does not discriminate against interstate commerce – Peninsula Township allows unlimited imports of winemaking produce from anywhere.

Contrary to the court's summary judgment ruling, neither the provision limiting the use of kitchens for off-site food catering nor the provision limiting instrumental music amplification are preempted by MLCC provisions authorizing the distribution of alcohol by caterers and clarifying that no MLCC permit is required to host instrumental music performances, respectively.

Most Plaintiffs lack standing, some for multiple reasons. The court correctly held on summary judgment that five Winery-Chateaus lacked standing to challenge Guest Activity Use provisions then erroneously – and prejudicially – reversed that ruling after trial. It was right the first time. Additionally, Bonobo and Black Star are located on parcels protected by taxpayer-purchased conservation easements that explicitly limit the non-agricultural uses they seek through this litigation, and Tabone was not injured by provisions it is not qualified to operate under.

Most Plaintiffs' claims were time-barred. The three-year statute of limitations ran for all but two Plaintiffs; the court erred in holding that rule applies only to limit the span of damages. The court also erred in denying PTP the opportunity to raise laches as an affirmative defense to Plaintiffs' claims on the basis it applies only to damages.

PTP was granted the right to intervene to protect its members' interests by defending against Plaintiffs' claims; the court erroneously denied PTP the

opportunity to do so fully by misreading this Court's opinions and committing to its pre-PTP summary judgment holdings.

IX. ARGUMENT

A. The First Amendment claims fail.

Plaintiffs asserted facial and as-applied First Amendment claims. On summary judgment, the court invalidated nine subsections facially without considering their application over the decades: two unconstitutionally restrained speech, two unconstitutionally compelled speech, and five restrained commercial speech. (Order, RE **559**, Page ID ## 21908-21912, 21916-21918) The order considered the five commercial speech subsections under *Central Hudson* and found the Township's interests substantial but whether the subsections served those interests a triable issue. (*Id.*, 21918-21) Following trial, the court concluded the Township had not shown the five commercial speech subsections advanced the Township's interests or were narrowly tailored so declared them unconstitutional. (Opinion, RE **623**, Page ID ## 31457-66) Plaintiffs received neither damages nor injunctive relief for their First Amendment claims.

The court's factual findings are reviewed for clear error and its legal conclusions and grant of summary judgment *de novo*. *Burzynski v. Cohen*, 264 F.3d 611, 616 (6th Cir. 2001) (citations omitted); *Chambers v. Stengel*, 256 F.3d 397, 400

(6th Cir. 2001) (citations omitted). Courts must “accord substantial deference to the predictive judgments of Congress” when reviewing statutes for constitutional concerns. *Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n*, 520 U.S. 180, 195 (1997) (“*Turner II*”) (quoting *Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 665 (1994) (“*Turner I*”). Courts must also defer to the legislature’s evaluation of the evidence informing its predictive judgments through legislative enactments. *Disc. Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 521 (6th Cir. 2012) (question is not whether legislature was objectively correct but whether its “legislative conclusion was reasonable and supported by substantial evidence in the record before [it]”) (quoting *Turner II*, 520 U.S. at 211, cleaned up). This deference applies even in First Amendment heightened-scrutiny cases. *Id.* at 521-22. Principles of statutory construction apply when construing a zoning ordinance. *Kalinoff v. Columbus Twp.*, 542 N.W.2d 276, 277 (Mich. Ct. App. 1995) (citations omitted). When ordinance language is clear and unambiguous, it must be enforced as written. *Id.* (citations omitted).

Facial challenges are disfavored and require the challenger to show “that a substantial number of the challenged law’s applications are unconstitutional relative to the law’s legitimate sweep.” *Moody v. NetChoice, LLC*, 603 U.S. 708, 723 (2024) (noting also that facial challenges “threaten to short circuit the democratic process

by preventing duly enacted laws from being implemented in constitutional ways”) (citation omitted); *see also Disc. Tobacco City*, 674 F.3d at 522.

1. Commercial Speech

Commercial speech is “speech proposing a commercial transaction.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 561-62 (1980). “Protecting commercial speech under the First Amendment is principally justified by protecting the flow of accurate information.” *Disc. Tobacco City*, 674 F.3d at 555.

For a commercial speech regulation to be constitutional, it must directly advance a substantial governmental interest and be no more extensive than necessary to serve that interest. *Cent. Hudson*, 447 U.S. at 566. This requires the government show the regulation advances its interests “in a direct and material way,” meaning the recited harms are real and the regulation will in fact alleviate them to a material degree. *Fla. Bar v. Went for It*, 515 U.S. 618, 625-26 (1995). Narrow tailoring is established by showing a “fit between the legislature’s ends and the means chosen to accomplish those ends . . . that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.” *Bd. Of Trs. V. Fox*, 492 U.S. 469, 480 (1989) (citations, quotations omitted). The direct advancement and narrow tailoring

assessments both “basically involve a consideration of the ‘fit’ between the . . . ends and the means.” *Posadas de P. R. Assocs. V. Tourism Co. of Puerto Rico*, 478 U.S. 328, 341 (1986).

The government may meet its burden “by reference to studies and anecdotes pertaining to different locales altogether” as well as “history, consensus, and simple common sense.” *Went for It*, 447 U.S. at 628 (citations, quotations omitted); *Chambers*, 256 F.3d at 404 (record contained “more than mere speculation and conjecture” that regulations advanced state interests); *Anderson v. Treadwell*, 294 F.3d 453, 462 (2nd Cir. 2002) (public hearing statements showed harm real, alleviated by regulation). In upholding an ordinance banning leaflet placement on vehicles, this Court observed:

In view of the common-sense explanations for these types of laws, they do not invariably require proof that the problem has occurred in the past (a daunting task in view of the 1952 vintage of this law and the understandable absence of information about why the law was passed) or an elaborate study of their present-day necessity (an equally daunting task in view of the difficulty of showing the empirical necessity for a law that has been in place for more than 50 years).

Jobe v. City of Catlettsburg, 409 F.3d 261, 269 (6th Cir. 2005).

The five challenged provisions must be read in the context of the whole PTZO, including the land uses they help define. *See First Choice Chiropractic, LLC v. DeWine*, 969 F.3d 675, 680 (6th Cir. 2020) (“We cannot . . . read this one sentence in isolation—we must read it in the broader context of the statute.”); *Fass*, 30 N.W.2d

at 830 (zoning ordinances “must be construed reasonably with regard both to the objects sought to be attained and to the general structure of the ordinance as a whole.”) As established in its Master Plan and PTZO, and per Michigan law, Peninsula Township’s zoning interests are broad and compelling. (Master Plan, RE **611-4**, Page ID ## 25299-25382); PTZO 2.1, 3.2, 6.7.1, 6.7.2, 8.1.1, 8.7.3(10), 8.7.3(12)); MCL § 125.3201(1); *Greater Bible Way Temple v. City of Jackson*, 733 N.W.2d 734, 751-52 (Mich. 2007) (collecting cases holding zoning interests compelling). Through scores of public meetings, at the request of wineries and with robust public input, Peninsula Township repeatedly amended the PTZO to promote Peninsula agriculture by authorizing new winery land uses – specifically, new revenue-generating activities (retail sales, limited events) that promoted OMP winemaking without potentially introducing commercial spot zoning. (Hayward, RE **615-3**, Page ID ## 28193-28196); *see Whitman*, 808 N.W.2d at 15-17. If the five subsections restricted commercial speech at all, their impact was *de minimis* and tangential to ensuring consistency with A-1 zoning. *See First Choice Chiropractic*, 969 F.3d at 684.

A threshold flaw in the court’s holding is that only one of the five challenged provisions addresses commercial speech (8.7.3(12)(k)) – the others are inoperative or address only non-expressive conduct, as discussed below. Even so, the defense presented substantial evidence – plain language, historic records, contemporaneous

and expert witness testimony, and more – demonstrating the provisions’ efficacy and narrow tailoring; that evidence is consistent, objective, verifiable, and unrebutted. Plaintiffs produced no contradictory historic records; their experts discussed supporting farmers (McDowell) and liquor licensing (Quimby), not the fit of challenged provisions. Plaintiffs’ concerns about the future of OMP grape farming absent zoning revisions shed no light on the effectiveness and proportionality of the challenged provisions. The challenged provisions, as parts of the whole PTZO,, effectively promote and support OMP agriculture as evidenced by the flourishing of OMP viticulture since the Township enacted them. (Opinion, RE **623**, Page ID ## 31445-31452)

(a) The court invalidated five provisions integral to longstanding zoning.

Subsection 8.7.3(10)(u)(1)(b), part of the non-operative intent statement for the Winery-Chateau Guest Activity Uses amendment, regulated nothing, so it could not unconstitutionally regulate commercial speech. *See Nat’l Pride at Work, Inc. v. Governor of Mich.*, 748 N.W.2d 524, 539 n. 20 (Mich. 2008) (non-operative preamble reciting legislation’s purpose does not control operative provisions) (citations omitted); Order, RE **34**, Page # ID 1870. Even if it did, it was part of the Winery-Chateau Guest Activity Uses amendment, which aimed to support and promote Peninsula agricultural production. (Exhibits I2 to U2, RE **615-10**, Page ID

28928-28973; Exhibits K8, RE **615-22**, Page ID ## 30295-30298; Minutes, RE **308-7**, Page ID ## 11316-11317; Daniels, RE **604**, Page ID ## 23913-23916) Subsection (1)(b) made clear the Township’s intent to tether revenue-generating Guest Activity Uses to agricultural production by ensuring they promote agriculture. It advanced Township zoning interests by supporting its pullulating viticulture industry with winery self-promotion and agriculturalizing potentially-non-agricultural activities; it narrowly applied to only Guest Activity Uses, and the speaker develops their own promotional message. It is not an unconstitutional restraint on commercial speech.

Subsection 8.7.3(10)(u)(5)(h), which limited outdoor displays of merchandise, equipment, or signs during Guest Activity Uses, targeted clutter. By its plain language, it meant a Farm Bureau conference could not display irrigation systems or tractors outdoors, and outdoor signs during wine and food seminars were disallowed. Any commercial speech restriction was incidental to its regulation of conduct. *See Lichtenstein v. Hargett*, 83 F.4th 575, 583-84 (6th Cir. 2023) (“[A challenged law] does not trigger rigorous free-speech scrutiny simply because it affects speech.”). There is no record it was ever applied to any Winery-Chateau – it rested latently from 2004 until Plaintiffs accused it here of being unconstitutional. Manigold testified that it aimed to prevent the Township from “look[ing] like a Copemish Flea Market” and furthered Township interests in “keeping the rural

character of the peninsula” by not having “a winery look like a garage sale.” (Manigold, RE **615-1**, Page ID ## 28138-28139; Daniels, RE **604**, Page ID ## 23917-23918) The Township’s interest in preserving community aesthetics and limiting visual clutter is well-established and substantial. *See Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 805-807 (1984). Subsection 8.7.3(10)(u)(5)(h) advanced Township zoning and aesthetic interests and applied narrowly to only limited agriculture-adjacent activities.

Subsections 6.7.2(19)(b)(1)(v) and 8.7.3(12)(i) authorized Farm Processing Facilities and the Remote Winery Tasting Room to sell branded merchandise, which helps them market their wine and generates income, though they want to sell more, and unbranded, merchandise. (Baldyga, RE **608**, Page ID ## 24928-24934, 24964-24969; Lutes, RE **602**, Page ID ## 23518-23520, 23535-23537, 23578-23580; Kroupa, RE **606**, Page ID ## 24399-24401, 24423, 24430-24434; Tabone, RE **603**, Page ID ## 23652-23656)

These branded merchandise provisions authorized limited commercial conduct and regulate no speech – advertising or otherwise. *See Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 697 (6th Cir. 2014) (no commercial speech claim when challenged statute “proscribes business conduct and economic activity, not speech”); *McLemore v. Gumucio*, 149 F.4th 859, 865-66 (6th Cir. 2025). Notwithstanding that Plaintiffs inaccurately label provisions *permitting* branded merchandise sales as

bans on unbranded merchandise sales, selling merchandise remains non-expressive conduct. See *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47, 66-67 (2006); *Yoder v. Brown*, 146 F.4th 516, 529 (6th Cir. 2025). Two Lads, Black Star, Tabone and Peninsula Cellars may not sell cleaning products in their tasting rooms because they are located in A-1, not because 6.7.2(19)(b)(1)(v) and 8.7.3(12)(i) allow them to sell branded corkscrews.

Peninsula Township enacted 6.7.2(19)(b)(1)(v) and 8.7.3(12)(i) decades ago. It did so after numerous well-attended public meetings, as part of two new land uses to support the burgeoning Peninsula wine industry with supplemental revenue streams that allowed wineries to sell stuff besides wine and to promote themselves. (Exhibits A10 to H10, RE **615-27**, Page ID ## 30485-30514; Exhibits K8 to M8, RE **615-22**, Page ID ## 30295-30310; Exhibit K2, RE-**615-10**, Page ID ## 28935-28937; Manigold, RE **615-1**, Page ID ## 28086-28089; Hayward, RE **615-3**, Page ID ## 28198-28201; Parsons, RE **615-4**, Page ID ## 28266-28275; Wunch, RE **615-2**, Page ID ## 28178-28180; Daniels, RE **604**, Page ID ## 23901-23904, 23909-23910) In so doing, the Township balanced those interests with community concerns about authorizing non-agricultural commercial uses in A-1 and nuisance activity, while endeavoring to comply with state law, recited above, requiring zoning to follow the community plan, maintain uniformity, and avoid inconsistency. There is no dispute that authorizing branded merchandise sales in winery tasting rooms

generates revenue to support Peninsula wineries and agriculture. (McDowell, RE **609**, Page ID ## 25244, 25254-25255) Although the court erroneously excluded evidence relating to other communities (Order, RE **574**, Page ID # 22433), other wine regions follow the same approach.⁶ (Daniels Report, RE **616**, Page ID ## 30809, 30825) Even the court doubted Plaintiffs' interest in turning their aesthetic wine tasting parlors into bigger gift shops. (Opinion, RE **623**, Page ID # 31474) These provisions advanced Township interests in supporting A-1 wineries without restricting their sales of non-promotional wares elsewhere.

Since 1998, 8.7.3(12)(k) nominally prevented Peninsula Cellars from promoting the non-wine wares for sale in its remote tasting room. (SUP #62, RE **615-27**, Page ID ## 30515-30523) Beneath provisions authorizing sales of wine by the bottle (8.7.3(12)(h)), logoed "non-food items" (8.7.3(12)(i)), and packaged food items (8.7.3(12)(j)), 8.7.3(12)(k) said signs and advertising may not promote or identify "any of the food or non-food items allowed for sale in the tasting room." It was intended to help Peninsula Cellars promote its winery without promoting its non-wine wares – a subject of specific public concern. (Exhibits A10 to H10, RE **615-27**, Page ID ## 30485-30514). Hayward testified 8.7.3(12)(k) prevents roadside

⁶ Given the opportunity, PTP may have presented trial evidence of Michigan zoning municipalities that authorize limited retail sales of branded merchandise at wineries. *See Pagan v. Fruchey*, 492 F.3d 766, 781 (6th Cir. 2007) (dissent) (citing other municipality ordinances).

signs promoting non-wine goods (e.g., “Mustard, \$4”)⁷ because “the purpose of the ordinance is to promote production of agriculture, it’s not to sell mustard. Selling mustard is what you go to the grocery store to buy.” (Hayward, RE **614-3**, Page ID ## 28210-28211, 28214-28218) Daniels testified it ensures signs relate to the wine available in the tasting room, in keeping with the Township’s rural character. (Daniels, RE **604**, Page ID ## 23904-23906) By including subsection (k) in 8.7.3(12), the Township defined with specificity an A-1 special use to mitigate what some characterized as improper spot zoning. (Exhibit C10, RE **615-27**, Page ID # 30494); *Whitman*, 808 N.W.2d at 16 (“MZEA’s specificity requirement encourages consistency within a zoning district and guards against undesirable ‘spot zoning’”).

Subsection (k) was quiescent until it was challenged in this case. Nothing indicates the Township ever invoked it. Signs dot Peninsula Cellars’ tasting room identifying t-shirts, hats, sweatshirts, mulling spices, wine, and more for sale; while other provisions were enforced, 8.7.3(12)(k) was not. (Kroupa, RE **606**, Page ID ## 24422-24424, 24369-24374; Photo, RE **611-135**, Page ID # 27640; Advertisement, RE **611-127**, Page ID # 27593; Letter, RE **611-128**, Page ID # 27595) Kroupa testified he believes the Township could shut down his winery for advertising Peninsula Cellars’ wine in its tasting room if the Township enforced 8.7.3(12)(k),

⁷ While some farms might produce mustard onsite as an agricultural product, that is not the apparent spirit of the example.

and that it helps neither his business nor agricultural preservation. (Kroupa, RE 606, Page ID ## 24378-24379) Nothing in the PTZO prevents Peninsula Cellars from advertising itself and its wine, which it does in its tasting room and on social and print media and on TV and in hotel rooms. (Kroupa, RE 606, Page ID # 24360) Kroupa's speculative, self-serving testimony reflects an inaccurate and counterfactual interpretation of 8.7.3(12)(k) and the PTZO. *See Anderson v. Bessemer City*, 470 U.S. 564, 575-76 (1985) (error to find testimony credible when it is implausible, internally contradictory, or contrary to extrinsic evidence). Subsection (k) advanced Township zoning and aesthetic interests while applying narrowly to non-agricultural wares at the only stand-alone tasting room in A-1.

(b) The court's Central Hudson analysis is deeply flawed.

The court concluded the defense record was deficient and held five subsections fail *Central Hudson* scrutiny. (Opinion, RE 623, Page ID ## 31416-31417, 31456-3165) After misidentifying four provisions as commercial speech regulations (only 8.7.3(12)(k) arguably regulates commercial speech), the court's *Central Hudson* analysis suffers three main errors: it misapplied the means/end test, mis-weighed the evidence, and misunderstood its role vis-à-vis legislative judgments.

First, the court misstated the ends and means subject to *Central Hudson* scrutiny. As for the ends, the court too narrowly described the government interests

as preserving agriculture (farming) and OMP's serenity (or rural character), while disregarding Peninsula Township's zoning interests in ensuring consistent, compatible land uses in A-1 per the Master Plan and state law, discussed above. As for the means, the court too broadly evaluated how "the PTZO," not the five subsections that purportedly regulate commercial speech, serve Township interests.

Second, the court disregarded proper evidence and relied on improper evidence regarding the means/end fit. The court rejected the whole historic record as decades-old "hearsay," criticized the defense for presenting no live fact witness, and found all defense witnesses who testified by deposition to be confused, conflicting, conclusory, and non-credible, with bare explanation. No precedent supports the court's *Central Hudson* evaluation; caselaw and common sense alone may suffice to defend speech regulations, and this case presents much more. *See Went for It*, 447 U.S. at 628. Township meeting minutes are non-hearsay records reflecting what was said, considered, and done. Fed. R. Evid. 803(6), 803(8)(A)(i), 803(16); *Ernst v. City of Chicago*, 837 F.3d 788, 805 (7th Cir. 2016) (minutes properly establish what was discussed in meeting). Contemporaneous meeting minutes are the superior record of Township deliberations and decisions. *See 46th Circuit Trial Court v. Crawford Cty.*, 702 N.W.2d 588, 597-98 (Mich. 2005) ("A county board speaks only through its official minutes and resolutions and their import may not be altered or supplemented by parol evidence regarding the intention

of the individual members.”), rev’d on other grounds, 719 N.W.2d 553 (Mich. 2006); *Stevenson v. Bay City*, 26 Mich. 44, 46-47 (1872).

The court’s rejection of all defense witness testimony as non-credible is particularly misplaced. No finding of fact turned on defense witnesses, who were not eyewitnesses to a crash but participants in a legislative process unassailably documented in the historic record. *See Anderson*, 470 U.S. at 575 (trial court fact findings are not insulated from review “by denominating them credibility determinations”). The court identified nothing specifically non-credible nor conflicting in the testimony of Manigold, Hayward, Parsons, and Wunsch. Former Supervisor Manigold, who was never responsible for zoning administration, interpretation, or enforcement (PTZO 4.1.2, 5.7.2) and had not read the PTZO in a decade or more (Manigold, RE **615-1**, Page ID # 28118), simply responded “I don’t know” to some queries, testified to concerns about avoiding amendments that would “turn agricultural into commercial uses,” and explained how the Township attempted to achieve that goal with the challenged provisions. Co-drafters Hayward, Parsons, and Wunsch (cited above) addressed the purpose and function of challenged provisions with specificity, consistency, and objectivity. *Cf. Pagan*, 492 F.3d at 774 (single conclusory affidavit insufficient to support sign ban).

Concomitantly, the court found credible twelve prepared Plaintiffs’ testimony that the PTZO hurt their businesses, kept some from investing in agricultural

operations and led others to consider converting farmland to subdivisions, and that the Township zoning might lead to farms not existing on OMP. Plaintiffs' post-hoc, self-serving perspective that longstanding zoning they want changed is ineffective is an unprecedented record on which to fail zoning under intermediate scrutiny. No precedent suggests lesser profitability proves regulatory ineffectiveness; no zoning could survive that test. *See Paragon Props. CO.*, 550 N.W.3d at 774; *Penning*, 65 N.W.2d at 367-68 (“Economic gain to the landowner is insufficient reason for invoking the amending power of the township board when the property is capable of full use within the limitations for which it is zoned.”). Under these provisions and the land uses they helped define, each Plaintiff established its winery operations and invested in Peninsula viticulture. Unlike a case where two stories cannot both be true, Plaintiffs' perspective may be genuine without undermining Defendants' position: Plaintiffs may be more profitable and reinvest in more farmland if zoning were different; *and* five challenged subsections may directly and materially advance compelling Township zoning interests. The latter is the ripe inquiry here.

Further, the court's expert witness assessment is inconsistent and immaterial. Daniels specifically addressed how each challenged subsection directly and materially advances township zoning interests and is also corroborated by historic records; McDowell and Quimby addressed no challenged subsections. The court found Daniels nonsensical for explaining a Master Plan that post-dated the PTZO by

several decades, then found McDowell persuasive for explaining Farm Market GAAMPs⁸ that post-dated the PTZO by an *additional* decade. (Farm Market GAAMPs, RE **611-146**) Unavailable historic Master Plans bear on the untimeliness of these challenges and are likely materially consistent with the 2011 iteration; recent GAAMPs bear on nothing relevant. The court also questioned Daniels's explanation of the Township's planning decision to limit central sewer and water to curtail development, not recognizing that farms and wineries don't depend on *central* sewer and water systems, subdivisions do. (Manigold, RE **615-1**, Page ID ## 28078-28080) Neither Master Plan vintage nor the Township's planning decision bear on Daniels' credibility. Finally, the court cites Quimby's testimony as illustrating that zoning designed to stifle commercial activity is redundant with applicable liquor regulations. This is doubly confusing: no cited liquor trafficking laws address branded merchandise sales, promotion of non-wine products, or outdoor equipment displays; and if zoning were redundant of liquor laws, then suing to change zoning makes no sense.

⁸ Generally Accepted Agricultural and Management Practices. GAAMPs are voluntary standards published by the Michigan Department of Rural and Agricultural Development (MDARD). Under the Michigan Right to Farm Act, MCL §§ 286.471, et seq., adherence to GAAMPs may provide a defense to nuisance claims related to certain farming activities.

Third, the court reweighed the evidence supporting the Township’s enactment of the winery land uses and substituted its own judgment for the Township’s about what constitutes a compatible accessory use in A-1 and where to draw the line between agricultural uses and those better suited for the commercial district. The court dismissed as a “slippery slope fallacy” Hayward’s testimony that giving an inch would degrade the Peninsula’s rural character, which was neither Hayward’s testimony nor the right question. (Hayward, RE **615-3**, Page ID ## 28193-28205, 29229-28236); *Turner II*, 520 U.S. at 211; *TikTok Inc. v. Garland*, 604 U.S. 56, 85 (2025) (Gorsuch, J., concurring) (“the question face[d] today is not the law’s wisdom, only its constitutionality”). While the court seized McDowell’s nonresponsive⁹ rebuttal about lowering farmland prices to mischaracterize Township zoning as NIMBY landowner protectionism, the minutes show the Township appropriately balanced community interests with each new winery land use in A-1 – each provision now challenged was enacted to give wineries additional promotional and revenue-generating opportunities while maintaining the Peninsula’s rural character. Even if a noise ordinance somehow sufficed to mitigate noise and traffic increases, narrow tailoring assesses whether the Township’s chosen means

⁹ Daniels observed that authorizing lucrative non-farming activities in A-1 would put upward pressure on agricultural land values, undermining the long-term sustainability of agricultural production. (Daniels, RE **604**, Page ID ## 23919-23920, 23972-23975)

were substantially overbroad, not whether the court agrees with them. *See Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989).

At bottom, the court failed five subsections under *Central Hudson* based on its judgment that the Township has not yet gone far enough in authorizing additional revenue-generating commercial activities for Peninsula wineries. The court erred in declaring that 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(5)(h), 6.7.2(19)(b)(1)(v), 8.7.3(12)(i), and 8.7.3(12)(k) restrain commercial speech in violation of the First Amendment.

2. Prior Restraint

The court held subsections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) were unconstitutional prior restraints. A “prior restraint” is a law forbidding communication issued in advance of the communication. *Schmitt v. LaRose*, 933 F.3d 628, 637 (6th Cir. 2019) (quotation, citation omitted). Its fundamental concern is the risk of government censorship. *Id.* at 638.

The court invalidated two subsections that regulate no First Amendment-protected speech, only non-expressive conduct. *See Yoder*, 146 F.4th at 529. Subsections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) define two categories of Guest Activity Uses that Winery-Chateaus may host – meetings of local nonprofits and agricultural-related groups. These are neither content-based regulations nor violative of protected association rights; hosting “agritourism” events is not protected speech.

(Order, RE **559**, Page ID ## 21903-21907, 21912-21913) Subsection 8.7.3(10)(u)(2)(b) requires neither notice nor approval before hosting a local non-profit meeting. Subsection 8.7.3(10)(u)(2)(c) requires notice so that the Zoning Administrator may give prior approval, mandates use of an eight-point list to guide the determination of whether there is a direct relationship to agricultural production, and provides for an appeal to the Board (8.7.3(10)(u)(2)(c)(iv)) or Zoning Board of Appeals (PTZO 5.7.1). These are generally applicable laws governing activities unrelated to speech and without censorship risk. *See Bronco's Ent., Ltd. V. Chater Twp. Of Van Buren*, 421 F.3d 440, 445-46 (6th Cir. 2005). To the extent that 8.7.3(10)(u)(2)(c) contemplates prior approval, it is a narrowly drawn, content-neutral provision that authorizes limited and guided official discretion. *See Polaris Amphitheater Concerts, Inc. v. City of Westerville*, 267 F.3d 503, 508-509 (6th Cir. 2001). Even without needing to, the PTZO provided procedural safeguards to prevent improper administration. *See Bronco's*, 421 F.3d at 446.

The court concluded the Township “regularly denied many events, such as Yoga in the Vines, Painting in the Vines, and snow shoeing,” erroneously assessing responses to general inquiries about activities that were not Guest Activity Uses, not the administration of 8.7.3(10)(u)(2)(b) or 8.7.3(10)(u)(2)(c). (Order, RE **559**, Page ID # 21910; Order, RE **162**, Page ID ## 6012-6013) The context of these “denials” is dubious: each Plaintiffs’ SUP is unique, so hypotheticals are unhelpful. There is

no evidence the Township denied approval of meetings under 8.7.3(10)(u)(2)(c). (See Brief, RE 488, Page ID ## 18945-18946) Informing wineries that particular activities were not Guest Activity Uses or that they could not conduct events impermissible in A-1 is not evidence of an unconstitutional prior restraint, it is simply notice.

The court erred in granting summary judgment to Plaintiffs on their claims that 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are prior restraints in violation of the First Amendment.

3. Compelled Speech

The court held subsections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compelled speech. Unconstitutionally compelled speech means “an individual is obliged personally to express a message he disagrees with, imposed by the government.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 557 (2005); *Doe v. Cong. Of the U.S.*, 891 F.3d 578, 593 (6th Cir. 2018).

The court invalidated the intent and operative subsections (8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a), respectively) that ensure Winery-Chateaus hosting a Guest Activity Use identify their own or other Peninsula-produced wine or food, distribute “Peninsula Agriculture” promotional material, or offer tours of their own or other Peninsula agricultural locations. Winery-Chateaus, necessarily part of “Peninsula

Agriculture,” comply by promoting themselves (e.g., presenting their wines, sharing favorite family recipes, offering vineyard tours); there is no evidence of any application otherwise. (*See* Brief, RE **488**, Page ID # 18947; Brief, RE **619**, Page ID ## 31240-31241)

None of the promotional messages imposed by 8.7.3(10)(u)(5)(a) is objectively or subjectively disagreeable to any Plaintiff – they all testified to their predilection for self-promotion. *See Glickman v. Wileman Bros. & Elliott*, 521 U.S. 457, 472 (1997)). No Plaintiff claimed that identifying its own wine, offering tours, or distributing self-identified promotional material was disagreeable; they and the court ignored this cornerstone of compelled speech. (*See* Brief, RE **469**, Page ID ## 16971-16972; Order, RE **162**, Page ID # 6016; Order, RE **559**, Page ID # 21911) Moreover, there is no compulsion since hosting Guest Activity Uses is voluntary. *See Bristol Myers Squibb Co. v. Sec’y United States HHS*, 155 F.4th 245, 266-67 (3rd Cir. 2025)

The First Amendment does not prevent zoning that ensures marginally-agricultural activities in A-1 include an agricultural promotional component selected by and featuring the speaker and its products. These provisions would comfortably withstand rational basis review, given their history, intent, language, and limited scope. *See Liberty Coins*, 748 F.3d at 697. The court erred in granting summary judgment to Plaintiffs on their claims that 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a)

compel speech in violation of the First Amendment and in declaring 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutional.

B. The due process claims fail.

Plaintiffs brought facial due process claims alleging that the PTZO was unconstitutionally vague because its term “Guest Activity” was unclear, so one could not know how to conform their behavior to comply with the PTZO, which “chill[ed] . . . speech and expressive association” of Township residents, including Plaintiffs. (Complaint, RE **29**, Page ID # 1121) Before PTP intervened, the court granted summary judgment to the Winery-Chateaus on these claims. (Order, RE **162**, Page ID ## 6016 n. 24, 6019) First the Township then PTP asked the court to revisit its decision, but the court denied both requests on the basis that “Guest Activity Uses” is vague “on its face.” (Order, RE **211**, Page ID ## 7812-7813; Order, RE **301**, Page ID # 10698; Order, RE **319**, Page ID # 11889) After trial, the court identified 47 PTZO subsections using “Guest Activity” and declared them unconstitutional – effectively, all of 8.7.3(10)(u). (Order, RE **623**, Page ID ## 31482-31483) The court awarded all Plaintiffs lost “small events” profits and also awarded the Winery-Chateaus lost “large events” profits because they were “subject to the vague Guest Activity Uses provisions.” (*Id.*, 1478)

The court's factual findings are reviewed for clear error and its legal conclusions and grant of summary judgment *de novo*. *Burzynski*, 264 F.3d at 616; *Chambers*, 256 F.3d at 400.

Due process requires notice. A law is unconstitutional if it forbids or requires some act in terms so vague that people of common intelligence must guess at its meaning and differ as to its application. *White Oak Prop. Dev., LLC v Washington Twp.*, 606 F.3d 842, 847 (6th Cir. 2010) (quoting *Association of Cleveland Firefighters v. City of Cleveland*, 502 F.3d 545, 551 (6th Cir. 2007)). Laws must provide explicit standards to prevent arbitrary and discriminatory enforcement but need not be a “model of clarity” to be constitutional. *Id.* at 847-848 (internal citations, quotations omitted). A vagueness challenge to a law that neither reaches a substantial amount of constitutionally protected activity nor imposes criminal penalties is “examined in light of the facts of the particular case at hand and not as to . . . [its] facial validity.” *Belle Maer Harbor v. Harrison Charter Twp.*, 170 F.3d 553, 557 (6th Cir. 1999) (cleaned up, internal citations, quotations omitted); *see also Columbia Nat. Res. V. Tatum*, 58 F.3d 1101, 1108, 1109 n. 6 (6th Cir. 1995) (plaintiff could only bring as-applied challenge to law that did not implicate the First Amendment).

Before unpacking this argument, some context: *First*, notwithstanding Plaintiffs' mischaracterization to the contrary, Amendment 141 added 8.7.3(10)(u)

to *expand*, not restrict or prohibit, uses for Winery-Chateaus. Before Amendment 141, Winery-Chateaus could use their kitchens and meeting rooms only for registered – i.e., overnight – guests.¹⁰ *Second*, Guest Activity Uses are not the only permissible activities Winery-Chateaus can host – 8.7.3(10)(m) and 8.7.3(10)(r) both broadly allow activities for registered guests;¹¹ 8.7.3(10)(r) allows outdoor activities so long as they do not disrupt neighbors; and Winery-Chateaus may have free promotional activities in their tasting rooms. *Third*, irrespective of Amendment 141, commercial private event-hosting is generally impermissible in A-1, including at Winery-Chateaus (except as permissible under 8.7.3(10)(m) and 8.7.3(10)(r).).

1. The court erred in granting summary judgment.

The court’s most fundamental error in holding “Guest Activity” vague was to neglect the PTZO text. (Order, RE **162**, Page ID ## 6016-6019) The term “Guest Activity” alone appears nowhere in the PTZO – only in Plaintiffs’ complaint, which alleged that one “cannot tell from the face of the Winery Ordinances what constitutes

¹⁰ Chateau Chantal’s 1998 lawsuit resulted in a consent judgment declaring that “registered guests” under 8.7.3(10)(m) and 8.7.3(10)(r) meant “guests that are registered to stay overnight in the guest rooms provided on the winery-chateau premises.” (Exhibit B4, RE **615-12**, Page ID ## 29226-29228)

¹¹ This is why Chateau Chantal and Chateau Grand Traverse can host weddings and retreats where all guests spend the night. (See Dalese, RE **606**, Page ID ## 24495-24496)

a ‘Guest Activity’ prohibited” thereunder. (Complaint, RE **29**, Page ID # 1121) The relevant term was “Guest Activity *Uses*,” and the relevant PTZO section – 8.7.3(10)(u) – was neither a prohibition nor vague. By enacting Amendment 141 adding 8.7.3(10)(u) to the Winery-Chateau land use, the Township authorized the Board to approve Guest Activity Uses – three specific but flexible categories of permissible promotional activities – in a Winery-Chateau SUP. *See Ass’n of Cleveland Fire Fighters*, 502 F.3d at 552. “Guest Activity Uses” is textually clear – the entirety of 8.7.3(10)(u) defines it in painstaking detail. What the court mistook for a definition – the phrase “[a]ctivities by persons who may or may not be registered guests” – was merely a clarifying parenthetical distinguishing newly-created Guest Activity Uses from already-permissible uses authorized under 8.7.3(10)(m) but limited to “registered guests.” It clarified that a guest’s status as registered or not is immaterial for Guest Activity Uses. The distinction between already-permissible uses for “registered guests” and Guest Activity Uses for everyone is reiterated in 8.7.3(10)(u)(2), which says, “Uses Allowed Notwithstanding Section 8.7.3(10)(m).”

The court found the PTZO “ambiguous as to whether” the three activities permitted under 8.7.3(10)(u)(2) were “the *only* permitted Guest Activity Uses” or “merely examples,” but there is no ambiguity. (Order, RE **162**, Page ID # 6019 (original emphasis)) Section 8.7.3(10)(u) is triple-clear that there are *only* three

categories of Guest Activity Uses. *First*, 8.7.3(10)(u)(1)(c) says “Guest Activity Uses are limited to (2) below,” cross-referencing 8.7.3(10)(u)(2). *Second*, 8.7.3(10)(u)(2) lists exactly three permissible Guest Activity Uses: wine and food seminars and cooking classes (8.7.3(10)(u)(2)(a)), meetings of 501(c)(3) non-profit groups within Grand Traverse County (8.7.3(10)(u)(2)(b)), and meetings of Agricultural Related Groups that have a direct relationship to agricultural production, for which the PTZO provides eight examples and the opportunity to appeal zoning administrator determinations to the Board (8.7.3(10)(u)(2)(c)). *Third*, 8.7.3(10)(u) expressly identified activities that are *not* Guest Activity Uses: they are *not* wine tasting, political rallies, winery tours, or free entertainment (8.7.3(10)(u)(1)(d)); they are *not* “entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass” (8.7.3(10)(u)(2)(d)). While these subsections might have been clearer that 8.7.3(10)(u)(1)(d) listed permissible activities and 8.7.3(10)(u)(2)(d) listed generally impermissible activities,¹² there can be no question that each listed activity is *not* a Guest Activity Use. Section 8.7.3(10)(u) provides clear notice to Winery-Chateaus and clear standards to guide

¹² Sections 8.7.3(10)(m) and 8.7.3(10)(r) allowed these activities for registered guests. Amendment 181, enacted in 2009, authorized wineries to sell wine by the glass. PTZO 8.7.3(10)(d)(2).

the Township's administration of the "Guest Activity Uses" provisions. *Ass'n of Cleveland Firefighters*, 502 F.3d at 551.

Because the text was clear, the court's analysis should have ended there. *Kalinoff*, 542 N.W.2d at 277. Instead, it clouded matters by considering deposition testimony from Township representatives regarding the meaning of "Guest Activity." (Order, RE **162**, Page ID ## 6017-6019) Ignoring evidence of the Winery-Chateaus' understanding and its prior conclusion that the text "ma[de] it plain" what Guest Activity Uses are, the court found dispositive "how *the Township* understands and enforces the term." (*Id.*, original emphasis) But this is wrong on the law. What matters is that the PTZO gave Plaintiffs fair notice and contained explicit enforcement standards. *See White Oak Prop. Dev.*, 606 F.3d at 847. To the extent any Township official was confused or even wrong about what "Guest Activities" are,¹³ their testimony could not render 8.7.3(10)(u) unconstitutionally vague. *600 Marshall Entm't Concepts, LLC v. City of Memphis*, 705 F.3d 576, 587 (6th Cir.

¹³ Confusing questions and lack of context almost certainly contributed to any confusion in the deposition testimony. Plaintiffs' term "guest activities" could be interpreted as "activities for guests" in the colloquial sense or as related to Guest Activity Uses depending on a winery's particular land use permissions. For example, consider what "guest activity" might mean for Chateau Grand Traverse, which has overnight guests but not Guest Activity Uses, versus Mari, which has Guest Activity Uses but not overnight guests. (*See* Brief, RE **308**, Page ID ## 11210-11212)

2013) (officials’ misunderstanding and “bungled” implementation of otherwise clear ordinance did not render it vague).

The court also applied the wrong vagueness test, treating the PTZO as if it were a criminal prohibition with First Amendment implications. While Plaintiffs grounded their due process claims in allegations that the PTZO’s vagueness chilled speech and expressive association, the activity they claimed to be confused about – commercial event-hosting – is not protected First Amendment activity.¹⁴ (Order, RE **559**, Page ID ## 21905-21906, 21912-21913) Nor does 8.7.3(10)(u) prohibit anything – it is civil zoning *permitting* Winery-Chateaus to conduct limited promotional activities not otherwise allowed in A-1. Violations carry only the possibility of a municipal civil infraction or may serve as grounds for “closing the Guest Activity Uses” after written notice, an opportunity to correct or resolve the violation, and a hearing. PTZO 4.2.1; 8.7.3(10)(u)(8)(d). Because Plaintiffs challenged civil zoning that does not implicate constitutionally protected activity, they needed to prove 8.7.3(10)(u) was unconstitutionally vague as applied to them. *Belle Maer Harbor*, 170 F.3d at 557. They did not.

¹⁴ Neither Plaintiffs’ summary judgment motion nor the court’s analysis identified any specific injury or harm. (Brief, RE **136**, Page ID ## 4747-4750; Order, RE **162**, Page ID ## 6016-6109)

The court should have rejected Plaintiffs' facial challenges because no Plaintiff alleged, argued, or proved that 8.7.3(10) had been unconstitutionally applied to it. Plaintiffs elected to pursue an exclusively facial attack dependent on their allegation that vagueness chilled protected First Amendment activity, which was doomed once the First Amendment connection was severed. *See Disc. Tobacco City*, 674 F.3d at 553-54 ("Litigation strategy is unquestionably the domain of Plaintiffs and they aver that their litigation strategy in this case is to challenge the warnings only facially. Reading an as-applied challenge into Plaintiffs' briefs is not tenable."). Plaintiffs relied primarily on the theory that the Township "admit[ted] the term 'Guest Activity' is vague" and presented no evidence that the Township unconstitutionally applied 8.7.3(10)(u) to them. (Brief, RE **136**, Page ID # 4747) Their only evidence of the Township supposedly using the "ambiguity" of "guest activities" against them pertained exclusively to the Township's efforts to enforce the terms of Bowers Harbor's unique SUP #32 years before Bowers Harbor became a Winery-Chateau potentially subject to the "Guest Activity Uses" provisions of 8.7.3(10)(u) in 2019. (Brief, RE **136**, Page ID # 4750) That evidence sheds no light on anything relevant. Moreover, even if Bowers Harbor had been a Winery-Chateau seeking to host Guest Activity Uses, communications notifying it that unpermitted events would violate its SUP are not enforcement; they are *notice* enabling compliance to *avoid* enforcement. *See Sanimax USA, LLC v. City of S. St. Paul*, 95

F.4th 551, 570-71 (8th Cir. 2024) (letter warning of violations insufficient to support void-for-vagueness challenge).

Even if 8.7.3(10)(u) had been unclear, Plaintiffs had more than adequate notice of how to conform their behavior to comply with the PTZO, including what Guest Activity Uses are and that Guest Activity Uses are *not* weddings and receptions. *See Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 503 (1982) (“principal inquiry” for facial challenge to a business regulation is “whether the law affords fair warning of what is proscribed”). Plaintiffs are businesses sufficiently sophisticated to operate at the intersection of two highly regulated industries, alcohol manufacturing and farming, so can be expected to consult the PTZO and their own permits before acting. *See id.* at 498-99. Each necessarily consulted the PTZO before establishing itself. Any confusion about what “Guest Activity Uses” means is resolvable by reviewing the PTZO or the Winery-Chateau’s own SUP or consulting with Township zoning staff.¹⁵ Purportedly unclear provisions may have been clarified upon request for interpretation to the Zoning Board of Appeals.¹⁶ PTZO § 5.7.2.

¹⁵ Chateau Grand Traverse shared a story at trial demonstrating the effectiveness of knowing one’s own SUP terms. (Opinion, RE **623**, Page ID ## 31417-31418)

¹⁶ Chateau Chantal and Mari opposed obtaining an interpretation of the meaning of Guest Activity Uses in 2016. (*See* Letters, RE **499-13**, PageID ## 19438-19442; Minutes, RE **499-14**, Page ID ## 19445-19447)

In sum, the court erred in granting the Winery-Chateaus summary judgment on their facial due process claims because “Guest Activity Uses” is clear, Plaintiffs failed to plead or prove as-applied challenges, and Plaintiffs had fair notice of how to conform their behavior to comply with the PTZO.

2. Plaintiffs are entitled to no remedy.

It is obvious error to award relief for meritless claims. Even if their facial vagueness claims were meritorious instead of meritless, no Plaintiff is entitled to relief – damages or otherwise.

In granting Plaintiffs damages, the court erroneously accepted Plaintiffs’ premise that “[t]he only barrier” to Plaintiffs hosting all the activities and events they wanted “was the now repealed PTZO.” (Order, RE **623**, Page ID ## 31474-31476) This misunderstands zoning generally and the PTZO – the absence of a prohibition does not render a use permitted; the absence of permission means the use is prohibited. *See Pittsfield*, 134 N.W.2d at 170. To illustrate: repealing a provision that authorizes small lemonade stands in a residential district does not result in larger lemonade stands, it results in no lemonade stands. The provisions Plaintiffs challenged were never the “barrier” to unlimited event hosting – their location in A-1 was and still is. With or without the Guest Activity Uses provisions, nothing in the PTZO authorizes Plaintiffs to use their facilities as commercial event venues. No

amount of confusion over Guest Activity Uses could have caused Plaintiffs to lose profits from events they could not and still cannot lawfully host. Confusion about whether a permitted lemonade stand can sell limeade in a residential district where food trucks are not allowed could not cause a would-be food truck operator to lose profits.

The court errantly awarded damages for lost profits for “small events” to non-Winery-Chateaus and for both “small events” and “large events” to all Winery-Chateaus. The terms “small events” and “large events” appear nowhere and correspond to nothing in the PTZO – Plaintiffs’ damages expert, Eric Larson, invented them. (Larson, RE **609**, Page ID # 25076) Whether to calculate damages or ascertain nonconforming uses, these categories are meaningless – they provide zero basis for assessing what events Plaintiffs could or could not or did or did not host under their respective land uses and SUPs. All Plaintiffs routinely hosted small groups for wine tastings and offered charcuterie and other food pairings in their tasting rooms, so it is unclear what, if any, “small events” any Plaintiffs refrained from having. There is also no relationship between winery land use and event size nor reason to conflate the availability of Guest Activity Uses authorization for permitted Winery-Chateaus with entitlement to “large events.” Chateau Chantal and Mari could host an 8-person cooking class as a Guest Activity Use or have 80 people to enjoy Jazz at Sunset as free tasting room entertainment. Two Lads and Black Star

could host 800 visitors during a Township-wide event like WOMP's annual Mac & Cheese Bake-Off.

There is no logical basis for awarding damages “extend[ing] from the vagueness of the Guest Activity Uses provision[s]” to non-Winery-Chateaus. (Opinion, RE **623**, Page ID # 31475) The court granted summary judgment to the *Winery-Chateaus* on the due process claims and held only *Winery-Chateaus* had standing to challenge 8.7.3(10)(u).¹⁷ (Order, RE **162**, Page ID ## 6016 n. 24; Order, RE **559**, Page ID ## 21902) After trial, the court recognized that only Winery-Chateaus were “subject to the vague Guest Activity Uses provisions.” (Order, RE **623**, Page Id # 31478) The court never explained how non-Winery-Chateaus could have damages caused by confusion about what activities Winery-Chateaus might host. The court cited *McCullen v. Coakley* for the premise that an as-applied challenge may be established by demonstrating that the law has been or is sufficiently likely to be applied to them (Order, RE **623**, Page ID # 31476), but that was a First Amendment case where the plaintiffs sought injunctive relief, not damages, and it was readily apparent that a new law creating a buffer zone around

¹⁷ The court *sua sponte* reversed its summary judgment ruling that only Winery-Chateaus that had *conducted* Guest Activity Uses (i.e., Chateau Chantal, Mari) had standing to challenge the Guest Activity Uses provisions but not its ruling that non-Winery-Chateaus lacked standing to challenge 8.7.3(10)(u). (Order, RE **559**, Page ID # 21902; Opinion, RE **623**, Page ID # 31423 n. 6) It is unclear why the summary judgment order referenced 8.7.3(10)(m).

abortion clinics would be applied to plaintiffs who routinely approached patients within the buffer zone for “sidewalk counseling.” 573 U.S. 464, 473-475 (2014). It is not readily apparent how confusion about whether Mari’s planned wedding event qualified as a wine and food seminar could cause Peninsula Cellars to lose profits. The only claims non-Winery-Chateaus prevailed on were commercial speech challenges to retail merchandise sales and signage/advertising provisions and dormant Commerce Clause challenges to grape source requirements; even if meritorious, none relates to purported vagueness in 8.7.3(10)(u) nor un-hosted “small events.”

The court further erred in awarding damages to the Winery-Chateaus for both “small events” and “large events.” As previously noted, event size is irrelevant, and the court mistakenly conflated the permissibility of Guest Activity Uses for Winery-Chateaus with entitlement to large events. The court also neglected its ruling sustaining PTP and the Township’s objection to “large events” damages evidence. (Oosterhouse, RE 600, Page ID ## 23090-23103) Moreover, irrespective of any confusion about Guest Activity Uses, commercial hosting of “large events” as Mr. Larson defined them (e.g., weddings, parties, retreats) is generally impermissible in A-1. Even accepting that Plaintiffs feared Township enforcement (a dubious proposition considering the scant evidence of actual enforcement in over 30 years of

zoning administration), refraining from hosting events *they could not lawfully host* is compliance, not injury.

Finally, the court erred in awarding any damages to Black Star and Bonobo purportedly resulting from lost profits from events they did not host. These wineries sit on land permanently restricted to “agricultural and open space uses as specifically delineated” by conservation easements purchased through the Township’s PDR program. (Exhibits A6, B6, RE **615-17**, Page ID ## 29613-29640; Exhibit X6, RE **615-23**, Page ID ## 30346-30360) Their easements limit onsite activities to “agricultural use,” which requires substantially undeveloped land be devoted to “horticultural, silvicultural and agricultural” production and specific related activities, including retail and wholesale sales of “agricultural products grown on the farm,” and agricultural buildings and structures “used solely for agricultural purposes.” (*Id.* at RE **615-17**, Page ID ## 29615-29616, 29630-29631, and **615-23**, Page ID ## 30348-30349) These easements preclude the use of their facilities for commercial events. Conservation easements serve an important public function and are fully enforceable under Michigan law. *See Dep’t of Agric. & Rural Dev. V. Engle*, 999 N.W.2d 73, 77 (Mich. App. Ct. 2022). Putting aside the many other failings in Plaintiffs’ due process claims, their conservation easements limit the scope of activities – and hence compensable lost profits – at Black Star and Bonobo, irrespective of any unconstitutional provisions.

In sum, the court erred granting Plaintiffs relief for their due process claims.

C. The dormant Commerce Clause claims fail.

Before PTP intervened and on summary judgment, the court declared nine subsections violate the dormant Commerce Clause for facially discriminating against “all out-of-state farmers,” then precluded PTP from defending this claim. (Order, RE **162**, Page ID ## 5996-6001; Order, RE **301**, Page ID # 10698; Order, RE **319**, Page ID ## 11883-11888) Plaintiffs were awarded neither damages nor injunction for this claim.

Appellate courts review a district court’s grant of summary judgment *de novo*. *Int’l Dairy Foods Ass’n v. Boggs*, 622 F.3d 628, 635 (6th Cir. 2010).

The dormant Commerce Clause prohibits laws “driven by economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (cleaned up, citations omitted); *see also Truesdell v. Friedlander*, 80 F.4th 762, 764 (6th Cir. 2023). A law can violate the antidiscrimination principle facially, purposefully, or practically. *Energy Mich., Inc. v. Mich. Pub. Serv. Comm’n*, 126 F.4th 476, 487 (6th Cir. 2025) (citation omitted).

The Supreme Court has cautioned that preventing officials from enforcing “democratically adopted” laws in the name of the dormant Commerce Clause “is a

matter of ‘extreme delicacy,’ something courts should do only ‘where the infraction is clear.’” *Nat’l Pork Producers Council*, 598 U.S. at 390 (quoting *Conway v. Taylor’s Executor*, 66 U.S. 603 (1862)). When evaluating whether a law is discriminatory, “[t]he critical consideration is the *overall effect* of the statute on both local and interstate activity.” *Am. Beverage Ass’n v. Snyder*, 735 F.3d 362, 370 (6th Cir. 2013) (emphasis added) (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986)). The individual parts of an integrated regulation should not be analyzed separately. *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201 (1994); *see also Fass*, 30 N.W.2d at 830.

In declaring nine PTZO subsections facially discriminate against out-of-state farmers, the court failed to consider the PTZO as a whole, and its conclusion contradicts the PTZO’s plain language. Peninsula wineries may import unlimited grapes or juice from anywhere, and OMP grape-farmers are assured no local market outlet. *First*, Food Processing Plants (8.5.1) are permitted in A-1 and allow the processing and production of wine with grapes from anywhere. *Second*, Winery-Chateaus (8.7.3(10)) are subject to the same standards as Food Processing Plants plus allow onsite tasting rooms, guest rooms, and residences. *Third*, Remote Winery Tasting Rooms (8.7.3(12)) permit a winery to establish a tasting room on a separate agricultural parcel. None of these A-1 land uses address the source of produce. The PTZO allows anyone to operate a winery, process grapes sourced from anywhere,

and sell their wine freely. An Oregonian may establish a Food Processing Plant in A-1, source exclusively California grapes, then sell their wine in a Remote Winery Tasting Room, a store in the commercial district (6.6.2(1)), or in Traverse City. A Frenchman may operate a Winery-Chateau in A-1 and serve wine processed exclusively from Argentinian juice. The PTZO does not discriminate.

The court invalidated four Winery-Chateau provisions related to Guest Activity Uses (discussed *supra*), where any wine served during Guest Activity Uses must be OMP Appellation (i.e., 85% peninsula grown grapes) produced onsite (8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(5)(c)-(d)), and participant capacity is based on a formula for grapes grown by the Winery-Chateau or purchased locally (8.7.3(10)(u)(3)). These provisions neither protect local farmers nor burden out-of-state farmers because a Winery-Chateau that hosts Guest Activity Uses is not obligated to *buy* any local grapes – it may meet all standards by growing their own.

The three land uses just discussed require an SUP, meaning the Township has additional review and approval authority to ensure specific applications meet the intent of and are compatible with the district and appropriate for the proposed location; approval may impose site-specific conditions. PTZO 8.1; MCL § 125.3502; *Whitman*, 808 N.W.2d at 16-17. Because the SUP process and the Winery-Chateau 50-acre parcel minimum can be burdensome, the PTZO authorized an alternative: by-right Farm Processing Facilities (6.7.2(19)). Farm Processing Facilities may be

established on 40 acres, only 20 need be contiguous, and, like Winery-Chateaus, can operate a tasting room. For this use alone, 85% of the total produce sold must be grown on the OMP and the majority grown on the winery's specific farm operation (6.7.2(19)(b)(1)(ii)-(iii), (2)(I) and (V)). The court invalidated these four Farm Processing Facility produce-sourcing subsections and its non-operative intent provision (6.7.2(19)(a)). A Farm Processing Facility is not required to buy local grapes as it may (indeed must) grow its own. The Farm Processing Facility and its integrated sourcing provisions are agnostic to the trafficking or pricing of goods or products in interstate commerce and operate to ensure that a by-right agricultural use retains a direct connection to agricultural production.

Against this backdrop, by its plain language, the PTZO is non-discriminatory – it neither benefits OMP farmers nor burdens non-OMP farmers. Local grape farmers are guaranteed no market outlet because OMP wineries may grow all the grapes they require and buy none – the PTZO mandates no local grape purchasing. Notwithstanding the challenged subsections, a grape-grower in Peninsula Township risks growing a crop that no local winemaker wants to buy. And the gates to Peninsula Township are wide open to Californian and Washington farmers alike – the PTZO tolerates unlimited imports. Under the PTZO, wineries may buy no local grapes while importing grapes from anywhere. *See E. Ky. Res. V. Fiscal Court*, 127 F.3d 532, 540-41 (6th Cir. 1997) (challenged law included in-area/out-of-area

distinction for waste capacity that was not “a discriminatory discrimination”; “it cannot be credibly argued that [out-of-state waste capacity] is being burdened”); *Truesdell*, 80 F.4th at 770 (“[A] law can be facially neutral even if it refers to a State’s borders.”). While the PTZO may suffer the lofty goal of advancing *agricultural* protectionism, *economic* protectionism is not implicated, only long-standing zoning that aims to keep A-1 land uses agricultural. *See E. Ky. Res.*, 172 F.3d at 541 (“[I]t certainly cannot be credibly argued that this facial distinction evidences an attempt . . . to isolate local economic actors from interstate competition.”).

That these provisions are non-discriminatory is supported by the court’s assessment they *harm* Plaintiffs by preventing more wine sales. (Order, RE 162, Page ID ## 6000-6001) Citing Plaintiffs’ attorney’s comments at a public meeting and Two Lads’ testimony that in some years, wineries cannot satisfy the tasting room, “let alone make as much wine as they could sell.” (*Id.*) Per the court, the source provisions burden – not out-of-state farmers – but local wineries. *See Tenn. Scrap Recyclers Ass’n v. Bredsen*, 556 F.3d 442, 448-449 (6th Cir. 2009) (“this ordinance is challenged by *in-state* parties because it disadvantages *them*. This is not the sort of protectionist local legislation that is virtually per se invalid under the dormant commerce clause.”) (citation omitted; emphasis in original).

There is no basis to find nine provisions facially discriminatory, nor that they discriminate purposefully or effectively. Therefore, strict scrutiny is inapplicable.

Where “the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970). The nine subsections have at best an incidental interstate commerce impact, and the zoning interests they help effectuate are compelling, as discussed *supra*. The PTZO and challenged provisions ensure A-1 wineries remain agricultural, easily passing *Pike*.

The court erred in granting summary judgment to Plaintiffs holding 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), 6.7.2(19)(b)(2)(v), 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) violate the dormant Commerce Clause.

D. The preemption claims fail.

On summary judgment, the court declared 8.7.3(10)(u)(5)(i) and 8.7.3(10)(u)(5)(g) are preempted by MLCC provisions but awarded neither damages nor an injunction. (Order, RE **525**, Page ID ## 21133-21134, 21136) Summary judgment and preemption issues are reviewed *de novo*. *State Farm Bank v. Reardon*, 539 F.3d 336, 340 (6th Cir. 2008).

There is no conflict between PTZO and MLCC provisions that both address “catering.” Subsection 8.7.3(10)(u)(5)(i) provides that, while Winery-Chateaus may

use their kitchen facilities for food service related to Guest Activity Uses, they may not use their kitchen facilities for off-site catering; it does not address wine distribution. MCL § 436.1547 authorizes liquor licensees to deliver and sell alcoholic beverages, not to run food catering businesses. MCL 436.1547(1)(b); MCL § 436.1201(2). Moreover, MLCC licensees must comply with local zoning. Mich. Admin. Code, R. 436.1003. If a Winery-Chateau authorized to host Guest Activity Uses under 8.7.3(10)(u) holds an MLCC caterer permit, it may distribute wine accordingly, and it may also use its kitchen to prepare food for on-site Guest Activity Uses, but not for offsite food catering.

There is no conflict between PTZO and MLCC provisions that both address instrumental music. Subsection 8.7.3(10)(u)(5)(g) limits instrumental music amplification during Guest Activity Uses. MCL § 436.1916(11) provides that no MLCC permit is required for liquor licensees to host instrumental or singing performances – it neither permits nor prohibits anything. Both the PTZO and MLCC allow Winery-Chateaus hosting Guest Activity Uses to offer musical instrumental performances; the PTZO also addresses amplification – permissible additional detail. *See Nat'l Amusement Co. v. Johnson*, 259 N.W. 342, 342 (Mich. 1935) (“Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them.”); *Deruiter v. Twp. Of Byron*, 949 N.W.2d 91, 99-100 (Mich. 2020) (local law may add to statutory conditions).

There is no conflict regarding instrumental music amplification for two additional reasons. *First*, MCL § 436.1916(11) tolerates without permitting MLCC licensees to host musical performances. MCL § 436.1916(1) through (9) require MLCC licensees to obtain entertainment, dancing, topless activity, or extended hour permits for specified activities. MCL § 436.1916(6)(c) requires a licensee to have an extended hours permit to host musical performances outside of liquor sales hours, then MCL § 436.1916(11) clarifies that no special permit is otherwise required for musical instrument performances (nor singing, orchestra, or piano performances). While the MLCC allows licensees to host musical performances during liquor sales hours without a special MLCC permit, licensees must also comply with zoning. Mich. Admin. Code, R. 436.1003(1); *Felix v. Young*, 536 F.2d 1126, 1133 (6th Cir. 1979). The court's interpretation of MCL § 436.1916(11) would expand Michigan liquor licenses to include the right also to host piano concerts, operatic performances, and orchestra performances, irrespective of zoning.

Second, 8.7.3(10)(u)(5)(g) addressed noise (music amplification) during Guest Activity Uses, irrespective of wine sales. It applies to a Tuesday morning 4-H breakfast conference and a Saturday evening food and wine seminar. It is a zoning provision addressing potentially noisy activities that may happen to involve liquor sales, but not because they involve liquor sales. *Cf. Sherman Bowling Center v. Roosevelt Park*, 397 N.W.2d 839, 842-43 (Mich. 1987).

The court erred in holding that 8.7.3(10)(u)(5)(i) and 8.7.3(10)(u)(5)(g) are preempted by MCL § 436.1547 and 436.1916(11), respectively.

E. Most Plaintiffs lack standing to bring their claims.

Standing determinations are reviewed *de novo*; any underlying factual determinations are reviewed for clear error. *Phillips v. DeWine*, 841 F.3d 405, 413 (6th Cir. 2016). Standing requires an injury in fact, causation, and likely redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). In multiparty litigation, each plaintiff must establish standing to bring each of its claims. *Fednav, Ltd. V. Chester*, 547 F.3d 607, 614 (6th Cir. 2008) (standing is plaintiff- and provision-specific); *see also Pagan v. Calderon*, 448 F.3d 16, 26 (1st Cir. 2006). Injury caused by one provision “does not magically carry over” to bestow standing to “to litigate other independent provisions . . . without a separate showing of an actual injury under those provisions.” *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 350 (6th Cir. 2007).

PTP sought summary judgment that most Plaintiffs lacked standing to bring most First Amendment and takings claims challenging 8.7.3(10)(u) because they were never subject to it, either because they were non-Winery-Chateaus (Black Star, Two Lads, Peninsula Cellars, Tabone), their SUPs lacked Guest Activity Uses authorization (Bonobo, Chateau Grand Traverse), or they had produced no evidence

that they ever attempted to host Guest Activity Uses (Bowers Harbor, Brys, Hawthorne). (Brief, RE **516**, Page ID # 20016-20033, 20038) PTP also argued that Black Star and Bonobo lack standing due to conservation easements that encumber their parcels, and Tabone is not a permitted Farm Processing Facility and thus lacks standing to challenge any provision under 6.7.2(19). (*Id.*, 20034-20038)

The court granted partial summary judgment to PTP on the basis that (1) all non-Winery-Chateaus lacked standing to challenge 8.7.3(10)(m) and 8.7.3(10)(u), and (2) the five Winery-Chateaus lacked standing to bring as-applied challenges to 8.7.3(10)(u) because they “did not demonstrate that 8.7.3(10)(u) and 8.7.3(10)(m) were unconstitutionally applied to [them].” (Order, RE **559**, Page ID ## 21902-21903) The court held the conservation easements are “not so sweeping as to preclude Black Star and Bonobo from having standing,” and Tabone’s owner testified that Tabone operates as a Farm Processing Facility, so these Plaintiffs have standing. (*Id.*, 21900-21901)

Based on the court’s summary judgment rulings, only Chateau Chantal and Mari could pursue relief for as-applied challenges to 8.7.3(10)(u) at trial. After trial, the court partly reversed itself, finding that “all the ‘Winery-Chateaus’ were subject to the vague and confusing guest activity regulations in 8.7.3(10)(u) and

8.7.3(10)(m).”¹⁸ (Order, RE **623**, Page ID # 31423) Granting summary judgment *sua sponte* is “disfavored” but permitted “provided the losing party is afforded notice and a reasonable opportunity to respond to all the issues”; failure to give notice receives harmless error review. *Turcar, LLC v. IRS*, 451 F. App’x 509, 513 (6th Cir. 2011) (quotations, citations omitted); Fed. R. Civ. P. 56(f). PTP located no case addressing *sua sponte* post-trial reversal of a grant of summary judgment resulting in judgment for the non-moving party but presumes similar notice principles apply. Here, the lack of notice was not harmless – PTP was denied the opportunity to present evidence and arguments at and following trial regarding five Winery-Chateaus’ standing to pursue as-applied challenges to 8.7.3(10)(u). Additionally, because PTP was denied any opportunity to defend Plaintiffs’ dormant Commerce Clause and due process claims as addressed above and below, PTP had no opportunity to challenge Plaintiffs’ standing to pursue them.

Winery-Chateau Chateau Grand Traverse lacks standing to pursue all claims related to 8.7.3(10)(u) because it lacks Guest Activity Uses approval in its SUPs, so is not subject to any requirements for conducting Guest Activity Uses under 8.7.3(10)(u). For example, Chateau Grand Traverse could not be injured by a requirement to serve appellation wine during Guest Activity Uses because it could

¹⁸ The referenced to 8.7.3(10)(m) appears erroneously misplaced.

not host Guest Activity Uses. *See Prime Media*, 485 F.3d at 353 (“the reader of Prime Media’s complaint is left only to wonder about how Prime Media could be harmed by the provisions of the ordinance that prohibit or allow particular types of signs entirely unrelated to its line of business.”). The court agreed then erroneously reversed itself following trial. Since Chateau Grand Traverse was obligated to present evidence of its injury on summary judgment and failed to do so, it was clear error for the court to *sua sponte* rehabilitate that deficiency after trial. Fed. R. Civ. P. 56(e); *Tucker v. Tennessee*, 539 F.3d 526, 531 (6th Cir. 2008) (citations omitted).

Like Chateau Grand Traverse, Bonobo also lacks standing to pursue all claims related to 8.7.3(10)(u) because its SUP 118 lacks Guest Activity Use authorization. (Exhibit L6, RE **615-17**, Page ID ## 29736, 27737) While the court found Bonobo “was told it was approved for Guest Activity Uses” (Order, RE **623**, Page ID # 31449), the record clearly shows otherwise. In May 2013, Bonobo received SUP 118 with permission for “meetings and special dinners” under 8.7.3(10)(m) but not Guest Activity Uses under 8.7.3(10)(u). (Exhibit H6, RE **615-17**, Page ID ## 29688-29703) In November 2014, the Township approved an amendment to SUP 118 and noted that Bonobo had not applied for Guest Activity Uses. (Exhibits K6, L6, RE **615-17**, Page ID ## 29716-29739) Amidst ongoing compliance challenges, Bonobo applied again for Guest Activity Uses, but the Township denied the application in April 2015. (Exhibit N6, RE **615-17**, Page ID # 29744) In March 2017, Bonobo and the

Township entered into a settlement agreement; Bonobo agreed to not reapply for Guest Activity Uses until it completed a Farm Plan. (Exhibit X6, RE **615-17**, Page ID ## 29805-29807) Bonobo completed the plan in September 2018 but did not apply for or obtain Township approval for authorization to host Guest Activity Uses. (Exhibit Z6, RE **615-17**, Page ID ## 29812-29857) No correspondence or conversation can alter the fact that Bonobo has no SUP approval from the Township Board for Guest Activity Uses and never lawfully hosted Guest Activity Uses. MCL § 125.3502; PTZO 8.1; *Fass*, 39 N.W.2d at 340-41 (discussing cases holding municipal agents cannot nullify legal ordinance adopted by municipality). Bonobo presented no SUP authorizing it to host Guest Activity Uses, so it cannot now challenge 8.7.3(10)(u), as the court ruled in summary judgment. It was clear error for the court to reverse course after trial.

Winery-Chateaus Bowers Harbor, Brys, and Hawthorne lack standing to pursue any as applied claims related to 8.7.3(10)(u) because, while their SUPs allow Guest Activity Uses, they neither conducted nor sought to conduct a Guest Activity Use, so the requirements for conducting Guest Activity Uses under 8.7.3(10)(u) have never been applied to them. For example, Bowers Harbor could not have been injured by a restriction on outdoor displays during Guest Activity Uses and Brys could not have been injured by a provision requiring it to identify its wine or offer

tours during Guest Activity Uses – neither ever hosted one. The court clearly erred when it reversed its summary judgment ruling post-trial.

Black Star and Bonobo also lack standing to pursue any claim seeking additional commercial activities or challenging produce-source provisions because they sit on land permanently restricted by conservation easements, as discussed above. These easements permanently restrict parcel uses to those specifically delineated. Onsite activities are limited to “agricultural use,” agricultural buildings and structures are “solely for agricultural purposes,” and processing of agricultural products is permissible “provided a majority of the agricultural products processed are grown by the Grantor’s farm operation.” (Exhibits A6, B6, RE **615-17**, Page ID ## 29615-29616, 29630-29631 and **615-23**, Page ID ## 30348-30349) Neither Black Star nor Bonobo’s claimed injuries (to the extent they have articulated any) could be redressed by invalidating any challenged subpart of 6.7.2(19) or 8.7.3(10) because their retail and wholesale sales are limited to what they grow and they cannot use their facilities for non-agricultural events. The court disregarded the plain language of their easements, finding that they allow the sale of agricultural products, which is an “inherently commercial function,” and that their desired uses could be allowed as “incident to agricultural and open space uses.” (Order, RE **559**, Page ID ## 21901) This analysis does not square with the language that “use of the land is permanently restricted to solely agricultural and open space uses.” (*Id.*, 29615, 30348) Using

agricultural facilities as commercial event venues is not incident to agricultural uses. These taxpayer-funded easements do not permit the non-agricultural activities Plaintiffs seek in this case.

Finally, Tabone lacks standing to pursue all claims because it has no Farm Processing Facility permit, 6.7.2(19) is inapplicable to it, and no challenged subsection of 6.7.2(19) has been applied to it. *See Midwest Media Prop. v. Symmes Twp.*, 503 F.3d 456, 464 (6th Cir. 2007) (plaintiff must show injury from application of each challenged provision). While the court found that Tabone operated as a Farm Processing Facility (Order, RE **559**, Page ID # 21901), the record clearly shows that Tabone is a *Food* Processing Plant, has no *Farm* Processing Facility permit, and presented no evidence that any challenged subsection of 6.7.2(19) had been applied to it. Tabone sits on property that once belonged to owners who obtained SUP 73 for a Food Processing Plant under PTZO 8.5; that winery burned down. (Exhibits L9 and M9, RE **615-25**, Page ID ## 30434-30435 to **615-26**, Page ID ## 30436-30444) In January 2016, Tabone sought a Farm Processing Permit, which would have required a setback variance. (Exhibits T9 and U9, RE **615-26**, Page ID ## 30462-30477) Tabone applied for the variance, then withdrew its application to “pursu[e] operations outlined by SUP 73.” (Exhibits V9 to X9, RE **615-26**, Page ID. ## 30478-30480) In June 2016, Tabone received a permit to rebuild the destroyed Food Processing Plant winery. (Exhibit Y9, RE **615-26**, Page ID ## 30481-30483) Tabone

has received no other permits. The court dismissed this conclusion, noting Tabone's MLCC on-premises tasting room permit as contrary evidence. (Order, RE 559, Page ID # 21901) MLCC permits are no substitute for zoning permits, obviously. Having permission from MLCC sell wine in one's tasting room does not show injury caused by non-applicable zoning provisions. The court clearly erred in holding Tabone has standing to challenge provisions under 6.7.2(19).

The court erred in reversing post-trial its summary judgment ruling that five Winery-Chateaus lacked standing to pursue as-applied challenges to 8.7.3(10)(u), in holding that Black Star and Bonobo have standing notwithstanding their conservation easements, and in concluding that Tabone has standing to challenge the constitutionality of provisions under 6.7.2(19).

F. Most Plaintiffs' claims are time-barred.

On summary judgment, the court held that the statute of limitations only serves to limit damages and that laches is no defense to injunction, only to damages, which are "irrelevant to PTP." (Order, RE 528, Page ID # 21262; Order, RE 559, Page ID # 21915)

Appellate courts review the grant of summary judgment and statute of limitations determinations *de novo*. *Miller v. American Heavy Lift Shipping*, 231 F.3d

242, 246-47 (6th Cir. 2000); *Tolbert v. Ohio Dep't of Transport*, 172 F.3d 934, 938 (6th Cir. 1999).

1. Statute of Limitations

Plaintiffs Section 1983 claims are subject to Michigan's three-year statute of limitations, which began running when each knew, had reason to know, or should have discovered through reasonable diligence, its respective injuries that are the basis of its claims. *See Sevier v. Turner*, 742 F.3d 262, 273 (6th Cir. 1984). Each winery's claims accrued when it had a complete and present cause of action. *See Bannister v. Knox County Bd. Of Educ.*, 49 F.4th 1000, 1008 (6th Cir. 2022) (accrual starts first day plaintiff may sue) (citations omitted). This considers "what event should have alerted the typical lay person to protect his or her rights." *Kuhnle Bros. v. County of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997) (quotation, citation omitted). Accrual may depend on the specific constitution right implicated. *See id.* at 521-22; *Bannister*, 49 F.4th at 1008-1009.

Plaintiffs' grievances are long-continuing ill-feelings attributable to A-1 zoning applicable when each got its respective land use permit. Each winery confirmed in discovery that its First Amendment and takings claims initiated generically upon enactment of the relevant provision. (Interrogatories, RE 457-4) Each knew of the challenged provisions when it obtained its land use permit, and

each confessed to long-held grievances and years-long efforts to change zoning. (*Id.*; Brief, RE **517**, Page ID # 20067) While prior rulings meant PTP had no opportunity for discovery on Plaintiffs' dormant Commerce Clause and due process claims, those also challenge provisions applicable and known since day one. Across the board, each winery challenged the continuing existence and applicability of distasteful zoning limitations. Each had a complete and present cause of action when it was first subject to the challenged provisions.

Each winery could have brought suit within its respective limitations period. For example, in 1998, Peninsula Cellars obtained SUP #62, making applicable the branded merchandise sales and signage limitations in 8.7.3(12), which are the basis of its First Amendment commercial speech challenge. In 2007, Two Lads opened a Farm Processing Facility subject to local produce sourcing provisions and authorizing branded merchandise sales, which form the basis of its dormant Commerce Clause and First Amendment challenges. In 2016, Mari obtained a Winery-Chateau SUP with authorization to host Guest Activity Uses under 8.7.3(10)(u), which forms the basis of all its claims. Each claim for each winery accrued when it first became subject to the challenged provisions. For all, the period ran pre-October 21, 2017, save Bowers Harbor and Hawthorne, which first became subject to 8.7.3(10)(u) in 2019 and 2020, respectively.

Plaintiffs avoided defending the timeliness of their respective claims by invoking the “continuing violations” doctrine *en masse* – all wineries, all claims – and so did the court. (Order, RE **528**, Page ID ## 21254-21255) This is an unprecedented application of the doctrine. *See Sharpe v. Cureton*, 319 F.3d 259, 266-68 (6th Cir. 2003). Even if available, it fails absent proof of a pattern of wrongful conduct continuing into the limitations period – passive inaction is insufficient. *Tolbert*, 172 F.3d at 940. Here, the purportedly wrongful conduct is that the PTZO was not replaced but remains operative – i.e., passive inaction. Plaintiffs’ complaints stem from having to comply with long-applicable zoning – continuing *consequences*, not continuing *violations*. *See id.* (“[A] continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation.”); *Tearpock-Martini v. Borough of Shickshinny*, 756 F.3d 232, 237 (3rd Cir. 2014) (“[T]o elide the distinction between *affirmative* acts and *effects* would be to extend indefinitely the date of accrual for all constitutional claims predicated upon state takings, denial of business permits, zoning decisions, and any other manner of state action carrying long-term repercussions.”) (emphasis in original).

Kuhnle, the sole cited support for Plaintiffs’ novel theory, is inapposite. (Brief, RE **442**, Page ID # 15634) *Kuhnle* found a “continuing violation” for the plaintiff-trucking company’s claim for deprivation of liberty created by the right to interstate travel where the defendant’s invalid through-traffic ban “actively deprived” the

plaintiff of its right to use the road. 103 F.3d at 521-22. The ban persisted post-invalidation. *Kuhnle* does not stand for the proposition that a plaintiff may, at any time, pursue a constitutional challenge to an applicable law.

The court erred in granting summary judgment to Plaintiffs that the statute of limitations serves only to limit Plaintiffs damages.

2. Laches

Laches is an affirmative defense that bars claims where the party invoking it shows lack of diligence by the plaintiff and prejudice. *See Nartron Corp. v. STMicroelectronics, Inc.*, 305 F.3d 397, 408 (6th Cir. 2002). Nartron sued STMicroelectronics outside the three-year statute of limitations period for trademark infringement, rendering its delay presumptively prejudicial and unreasonable. 305 F.3d at 408. Nartron argued it was nevertheless entitled to prospective injunctive relief. In response, the Court noted that, for laches to bar such relief, “a defendant must also prove elements of estoppel, which requires more than a showing of mere silence on the part of a plaintiff.” *Id.* at 413. The Court denied Nartron injunctive relief on other grounds. *Id.*

The court’s holding that laches serves only to limit damages misreads *Nartron*, which did not hold that laches is not a defense to injunctive relief; it held laches is a defense to injunctive relief where estoppel elements are also proven. Consistent with

Nartron, PTP pleaded estoppel-based affirmative defenses, and may also have proved at trial that Plaintiffs were active participants in drafting provisions they challenge, tried for years to amend the ordinance, took inconsistent litigation positions, and more. (Answer, RE **291**, Page ID ## 10333-10335) Moreover, the court misunderstood that laches bars *claims*. Irrespective of relief, PTP had no opportunity to prove prejudice resulting from Plaintiffs' delays in bringing suit. *WOMP II*, 2022 U.S.App. LEXIS 23575 at *9. At trial, PTP may have presented evidence of zoning reliance, faulty memories, missing documents, and more.

The court erred in granting summary judgment to Plaintiffs holding that laches is not a defense to injunction and so an unavailable affirmative defense for PTP to pursue.

G. The court erred in preventing PTP from fully defending Plaintiffs' claims.

Decisions regarding the timeliness of requested intervention and the scope of intervenor participation are reviewed for abuse of discretion; decisions regarding other intervention criteria are reviewed *de novo*. *United States v. City of Detroit*, 7112 F.3d 925, 932-33 (6th Cir. 2013); *United States v. Michigan*, 68 F.4th 1021, 1024-25 (6th Cir. 2023); *WOMP I*, 41 F.4th at 771. Appellate courts review *de novo* the scope of their prior remand orders. *Carter v. Mitchell*, 829 F.3d 455, 463 (6th Cir. 2016). Upon remand, the district court must proceed "in accordance with the

mandate and law of the case established on appeal” and must “implement both the letter and the spirit of the mandate, taking into account the appellate court’s opinion and the circumstances it embraces.” *Allard Enters. V. Advanced Programming Res.*, 249 F.3d 564, 569-71 (6th Cir. 2001) (quoting *United States v. Moored*, 38 F.3d 1419, 1421 (6th Cir. 1994)).

The court’s decisions to retain pre-PTP summary judgment rulings holding (1) nine provisions unconstitutional in violation of the dormant Commerce Clause and (2) “Guest Activity” is vague in violation of the Due Process Clause undermined this Court’s order granting PTP intervention by right in this case. (Orders, RE **301**, Page ID ## 10698, 10703-10704; **319**, Page ID ## 11883-11890) The court found the dormant Commerce Clause claim “does not affect PTP members’ property interests,” and the Township adequately defended it. (Order, RE **301**, Page ID # 10698) The court recognized the due process claims may implicate PTP’s interests but concluded PTP could not change the outcome because the challenged provisions were vague “on their face.” (*Id.*) While unnecessary given this Court’s holdings, PTP fully supported its members’ interests in the specific provisions implicated by the dormant Commerce Clause claim and demonstrated the inadequacy of Township advocacy. (Motion, RE **308**, Page ID ## 11204-11209; Affidavits, RE **308-1**, **308-2**, **308-3**, **308-4**, **308-5**) PTP further flagged defenses the Township neglected regarding the due process claims – e.g., Plaintiffs’ failure to bring as-applied challenges, critical

differences among Plaintiffs' authorizations and activities. (Motion, RE **308**, Page ID ## 11209-11213) The summary judgment order evinces the Township's inadequate defense of the *case* irrespective of particular claims, including testimony from Township deponents that Plaintiffs' have repeatedly wielded as concessions, confusion, or conflict. (Order, RE **162**, Page ID ## 6006-6008, 6012-6013, 6017-6021; Opinion, RE **623**, Page ID ## 31457-31462) The court's conclusions that PTP members lack interest in certain issues and the Township adequately represented PTP interests, thereby preventing PTP from litigating two claims, failed to implement the letter and spirit of this Court's opinion. *WOMP I*, 41 F.4th at 772-773, 777.

The court's decision to retain its pre-PTP summary judgment rulings also contradicts the opinion in *WOMP II*, 2022 U.S. App. LEXIS 23575. This Court recognized that "PTP's intervention . . . will fundamentally alter the district court's evaluation of its decision on summary judgment," and that "PTP's intervention changes the landscape and requires reconsideration of the district court's partial grant of summary judgment and issuance of an injunction." *Id.* at *6, *13. Nevertheless, the court refused to reconsider its dormant Commerce Clause and due process summary judgment holdings. *See Carter*, 829 F.3d at 463 (on remand, district court must consider entire opinion) (citation omitted). The practical effect of those holdings is to render scores of zoning provisions incorporated into land uses

and SUPs unenforceable, infusing uncertainty and confusion into Township zoning, including PTP members' rights to enforce the PTZO. MCL § 125.3407.

PTP is substantially harmed by the decisions retaining the pre-PTP holdings. The immediate effect was to preclude PTP from discovering the basis of Plaintiffs' theories and alleged injuries, then defending the constitutionality of the challenged provisions. PTP's intervention likely *could* have changed the outcome of these claims – the meritorious arguments and defenses PTP presents throughout this brief demonstrate how. Even the court recognized that “permitting PTP to defend against every live claim in this litigation promotes the expeditious adjudication of this case.” (Order, RE **301**, Page ID # 11882) Had the court allowed PTP to fully defend the PTZO, it is reasonably likely that PTP would have prevailed at least in part on summary judgment regarding Plaintiffs' meritless due process and dormant Commerce Clause claims and vindicated the constitutionality of those provisions, thereby preventing a lengthy trial, an astronomical and legally indefensible damages award, and significant attorneys' fees. *See Sanguine, Ltd. v. U.S. Dep't Interior*, 798 F.2d 389, 391 (10th Cir. 1983) (“[I]f the district court did not vacate its prior orders, of what value is the right of intervention we held exists in this case?”).

The court also erred in limiting the scope of PTP intervention vis-à-vis Plaintiffs' request for monetary relief. The court initially denied PTP access to the financial documents Plaintiffs had produced, citing *WOMP I* for the premise that

“PTP will not be responsible for payment of the damages in the event that the Wineries prevail.” (Order, RE **301**, Page ID ## 10703-10704, quoting *WOMP I*, 41 F.4th at 777, “The Township faces the possibility of damages. Protect the Peninsula’s members do not.”). The court subsequently denied PTP access to Plaintiffs’ damages expert’s reports, schedules, and deposition transcripts and proposed trial exhibits, which PTP sought to illuminate Plaintiffs’ claimed injuries and potential PTP defenses. (PTP Brief, RE **326**, Page ID # 11920; Order, RE **345**, Page ID ## 12555-12559) That information would have streamlined discovery, assisted PTP in evaluating Plaintiffs’ claims and potential defenses, and facilitated settlement negotiations. The court also curtailed PTP affirmative defenses and participation in trial to only non-damages issues. (Order, RE **525**, Page ID ## 21261-Order, RE **574**, Page ID ## 22434-22435)

The foundation of these rulings is a single sentence from this Court’s intervention opinion summarizing differences in PTP and the Township’s motivations. *WOMP I*, 41 F.4th at 774-777. *See Carter*, 829 F.3d at 463 (remand order should not read individual sentences out of context) (citation omitted). This Court addressed these differences in support of its conclusion that Peninsula Township inadequately represented PTP interests after *first* concluding that PTP’s interests in the “subject matter of this litigation” are substantial. *Id.* at 771-773, 774-777; *see also* Fed. R. Civ. P. 24(a) (“interest relating to the property or transaction

that is the subject of the action”). The Court recognized that the threat to the challenged provisions’ survival bears directly on PTP interests. *Id.* Language addressing factors animating inadequacy of representation is not basis to confine PTP’s substantial interests to only certain remedies.


This court erred in limiting the scope of PTP intervention on the dormant Commerce Clause, due process, and damages issues, undermining the conclusions in *WOMP I* and *WOMP II*. While PTP was substantially prejudiced by additional litigation circumstances, these particular decisions – immunizing two whole claims and one whole remedy – are particularly prejudicial, as evidenced by the scores of invalidated zoning PTP advocacy may have vindicated and \$50 million judgment PTP may have reduced.

X. CONCLUSION

For the reasons discussed, PTP respectfully requests that this Court reverse the District Court’s erroneous rulings addressed above and find that the challenged provisions are neither unconstitutional nor preempted, remanding for further proceedings as necessary.

Respectfully submitted,

Date: February 4, 2026

By:  _____

Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Co-Counsel for Appellant
420 East Front Street
Traverse City, MI 49686
(231) 714-9402
tja@tjandrews.com

Date: February 4, 2026

By:  _____

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

CERTIFICATE OF WORD COUNT PURSUANT TO FRAP 32(g)

On February 2, 2026, counsel for Intervenor-Appellant, Protect the Peninsula, filed Motion for Leave to Exceed Word Count in dockets 25-1705 and 25-1754 [31]. The court granted the Intervenor-Appellant's motion on February 4, 2026 [29]. The undersigned certifies that the Intervenor-Appellant's First Brief complies with the Court's order. The Intervenor-Appellant's First Brief consists of 17,990 words and was created using Times New Roman, 14 pt font and Microsoft Word 365.

Date: February 4, 2026


By:  _____

Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Co-Counsel for Appellant
420 East Front Street
Traverse City, MI 49686
(231) 714-9402
tja@tjandrews.com

CERTIFICATE OF SERVICE

I, Tracy Jane Andrews, hereby certify that on the 4th of February 2026, I electronically filed the foregoing documents with the CM/ECF system which will send a notification of such to all parties of record.

Date: February 4, 2026

By:  _____

Tracy Jane Andrews (P67467)
Law Office of Tracy Jane Andrews, PLLC
Co-Counsel for Appellant
420 East Front Street
Traverse City, MI 49686
(231) 714-9402
tja@tjandrews.com

DESIGNATION OF RELEVANT DOCUMENTS 6 Cir. R. 30(g)

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Complaint	1	1	30
Peninsula Township Zoning Ordinance (PTZO)	1-1	31	195
Plaintiffs' First Amended Complaint and Exhibits	29 to 29-17	1086	1571
Order Denying Motion for Preliminary Injunction	34	1867	1877
Plaintiffs Motion for Summary Judgment	135	4710	4711
Plaintiffs' Brief in Support of Plaintiffs' Motion for Partial Summary Judgment	136 to 136-28	4712	4947
Township Motion for Summary Judgment and Brief in Support and Exhibits	142 to 142-31	4961	5342
Township Response to Plaintiffs' Motion for Summary Judgment (ECF 135) and Exhibits	143 to 143-20	5343	5625
Plaintiffs' Reply to in Support of Motion for Summary Judgment	145	5627	5647
Plaintiffs' Response to Township Motion for Summary Judgment	146 to 146-9	5709	5832
Township Reply in Support of Motion for Summary Judgment	147	5833	5846
Transcript: Motion Hearing, April 22, 2022	159	5859	5978
Order Regarding Summary Judgment Motions	162	5981	6030
Order Denying Motion to Alter or Amend Judgment and Motion for a Certificate of Appealability	211	7805	7817
Sixth Circuit Opinion and Judgment on PTP Intervention (No. 21-1744)	215	8177	8193
Order Adjourning Trial	236	8538	

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Sixth Circuit Order Vacating Injunction (No. 22-1534)	251	8974	8982
PTP Motion to Set Aside June 3 Order	285	10203	10212
Order Dismissing Motion for Leave to File Amended Answer	290	10247	10250
PTP's First Amended Answer	291	10251	10336
Plaintiffs' Response to PTP Motion to Set Aside	294	10384	10402
Opinion and Order regarding PTP's motions	301	10685	10705
PTP Brief on Its Interests and Exhibits	304 to 304-5	10844	10950
PTP's Revised Motion and Revised Brief for Reconsideration of Two Aspects of Order ECF 310 and Exhibits	308 to 308-16	11199	11430
Plaintiffs' Response to PTP Brief on Its Interests	310 to 310-5	11434	11650
Plaintiffs' Response to PTP Revised Motion for Reconsideration and Exhibit	311 to 311-1	11651	11683
Order Regarding PTP's Interests and Denying PTP's Motion for Reconsideration	319	11878	11890
PTP's Motion for Access to Certain Withheld Documents	326	11915	11934
Plaintiffs' Motion for Partial Summary Judgment on Preemption	333	12013	12014
Plaintiffs' Brief in Support of Motion for Partial Summary Judgment on Preemption and Exhibits	334 to 334-26	12015	12245

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Plaintiffs' Brief in Opposition to PTP Motion for Access to Certain Withheld Documents and Exhibits	339	12467	12502
Second Amended Case Management Order	343	12546	12551
Order Denying Motion to Compel Access to Discovery Material	345	12555	12559
Peninsula Township's Amended Response to Plaintiffs' Motion for Partial Summary Judgment on Preemption	353	12897	12936
PTP Response Opposing Plaintiffs' Motion and Cross Motion for Partial Summary Judgment on Preemption	355	12938	12941
PTP's Response Opposing Plaintiff's Motion and Supporting PTP's Cross-Motion for Partial Summary Judgment on Preemption Claims and Exhibits	356 to 356-11	12942	13112
Plaintiffs' Reply to Peninsula Township's Response to Plaintiff's Motion for Partial Summary Judgment on Preemption Claims and Exhibits	365 to 365-5	13417	13479
Plaintiffs' Reply to PTP's Response to Plaintiff's Motion for Partial Summary Judgment on Preemption Claims and Response to PTP's Cross Motion for Summary Judgment and Exhibits	366 to 366-5	13480	13651
Plaintiffs' Reply to PTP's Cross Motions and Exhibits	367 to 367-5	13652	13823

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
PTP Reply to Plaintiffs' Response to PTP Cross Motion and Exhibit	375 to 375-1	14006	14042
Plaintiffs' Motion for Summary Judgment on Township Affirmative Defenses	439	15540	15541
Plaintiffs' Brief in Support of Motion for Partial Summary Judgment on Defendant Peninsula Township's Affirmative Defenses and Exhibits	440 to 440-2	15542	15616
Plaintiffs' Motion for Summary Judgment on PTP Affirmative Defenses	441	15617	15618
Plaintiffs' Brief in Support of Motion for Summary Judgment on PTP Affirmative Defenses and Exhibits	442 to 442-7	15619	15777
Defendant Peninsula Township's Motion for Summary Judgment on Preemption Claims	443	15778	15779
Township Brief in Support of Motion for Summary Judgment on Preemption and Exhibits	444 to 444-4	15780	15943
PTP Response to Plaintiffs' Motion for Summary Judgment and Exhibits	457 to 457-17	16033	16313
Township Motion to Dismiss	458	16314	16316
Township Brief in Support of Motion to Dismiss and Exhibits	459 to 459-22	16317	16484
Township Motion to Dismiss	462	16489	16491
Township Brief in Support of Motion to Dismiss and Exhibits	463 to 463-32	16492	16825

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Township Response to Plaintiffs' Motion for Summary Judgment on Affirmative Defenses and Exhibit	466 to 466-1	16830	16936
Plaintiffs' Motion for Partial Summary Judgment	468	16939	16940
Plaintiffs' Brief in Support of Motion for Partial Summary Judgment and Exhibits	469 to 469-26	16941	17237
Plaintiffs' Response to Township Motion for Summary Judgment on Preemption and Exhibits	473 to 473-14	17980	18183
Plaintiffs' Reply in Support of Its Motion for Partial Summary Judgment on PTP's Affirmative Defenses	475	18187	18206
Plaintiffs' Reply to Township Response to Motion for Summary Judgment on Affirmative Defenses	476	18325	18344
Township Reply in Support of Motion for Summary Judgment	478	18400	18417
Township Response to Plaintiffs' Motion for Partial Summary Judgment and Exhibits	485 to 485-24	18506	18728
Plaintiffs' Response to Township Motions to Dismiss and Exhibits	487 to 487-34	18731	18907
PTP Response to Plaintiffs' Motion for Summary Judgment and Exhibits	488 to 488-9	18908	19218
Township Reply in Support of Motions to Dismiss	499 to 499-14	19280	19447
Plaintiffs' Reply in Support of Motion for Partial Summary Judgment and Exhibits	501 to 501-5	19449	19566

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Plaintiffs' Reply in Support of Motion for Partial Summary Judgment and Exhibit	502 to 502-1	19567	19659
PTP's Motion for Partial Summary Judgment	516	19996	20000
PTP's Brief in Support of Motion for Partial Summary Judgment and Exhibits	517 to 517-70	20001	20725
Order Resolving Motions to Dismiss	518	20726	20740
Township Response in Support of PTP Motion for Summary Judgment and Exhibits	519 to 519-17	20741	20887
Plaintiffs' Response to PTP Motion for Summary Judgment and Exhibits	521 to 521-16	20890	21115
Opinion and Order Resolving Preemption Summary Judgment Motions	525	21120	21138
PTP Reply in Support of Motion for Summary Judgment and Exhibits	526 to 526-7	21139	21188
Opinion and Order Resolving Motions for Summary Judgment Regarding Affirmative Defenses	528	21250	21272
Opinion and Order Resolving Motions for Summary Judgment	559	21896	21922
Order Resolving Six Motions in Limine	574	22430	22438
Plaintiffs' Trial Brief, Findings of Fact, and Conclusions of Law and Exhibit	580 to 580-1	22582	22652
Defendants' Joint Trial Brief and Exhibit	581 to 581-1	22653	22758
Defendants' Joint Proposed Findings of Fact and Conclusions of Law	583	22784	22843

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Minutes of Trial Day 1	589	22911	22911
Minutes of Trial Day 2	590	22912	22912
Minutes of Trial Day 3	591	22913	22913
Minutes of Trial Day 4	592	22914	22914
Minutes of Trial Day 5 - Amended	594	22916	22916
Minutes of Trial Day 6	595	22917	22917
Minutes of Trial Day 7	596	22918	22918
Minutes of Trial Day 8	597	22919	22919
Minutes of Trial Day 9	598	22920	22920
Minutes of Trial Day 10	599	22921	22921
Trial Transcript Volume I (April 29, 2024)	600	22922	23142
Trial Transcript Volume III (May 1, 2024)	602	23369	23623
Trial Transcript Volume IV (May 2, 2024)	603	23624	23855
Trial Transcript Volume V (May 6, 2024)	604	23856	24069
Trial Transcript Volume VII (May 8, 2024)	606	24264	24561
Trial Transcript Volume IX (May 10, 2024)	608	24842	25036
Trial Transcript Volume X (May 13, 2024)	609	25037	25269
Exhibit 1 Twp Ord 6.7.2.(19)	611-1	25277	25283
Exhibit 2 Twp Ord 8.7.3 (10)	611-2	25284	25295
Exhibit 3 Twp Ord 8.7.3 (12)	611-3	25296	25298
Exhibit 4 Master Plan	611-4	25299	25382
Exhibit 5 Twp Excerpt Answers to 1st RTA	611-5	25383	25404
Exhibit 6 Twp Supp Answers to 1st RTA	611-6	25405	25409
Exhibit 7 Twp Answers Plf 2nd RTA	611-7	25410	25412

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 8 Twp Answers Plfs 1st Rogs	611-8	25413	25417
Exhibit 9 Twp Supp Answers to 1st Rogs	611-9	25418	25429
Exhibit 10 Two Lads Land Use Permit	611-10	25430	25433
Exhibit 11 Two Lads MDARD License	611-11	25434	25435
Exhibit 12 Two Lads MLCC Licenses and Permits March 2024	611-12	25436	25438
Exhibit 13 Two Lads Event Enforcement	611-13	25439	25443
Exhibit 14 Two Lads Pricing	611-14	25444	25454
Exhibit 15 Two Lads CB 3.21-7.21 Sales EOD	611-15	25455	25455
Exhibit 16 Two Lads Merch and Food Sales 181920YTD	611-16	25456	25456
Exhibit 17 Two Lads Grape Purchases	611-17	25457	25470
Exhibit 18 Two Lads Event Requests	611-18	25471	25609
Exhibit 20 Two Lads 6/13/11 Email Regarding Planner Meeting	611-19	25610	25611
Exhibit 23 Two Lads Wedding/Event Requests Rejections	611-20	25612	25620
Exhibit 25 Two Lads Winery Photographs	611-21	25621	25632
Exhibit 27 Black Star Land Use Permit	611-22	25633	25633
Exhibit 28 Black Star MLCC License and Permits	611-23	25634	25635
Exhibit 29 Black Star MDARD License	611-24	25636	25636
Exhibit 30 Black Star Farms Pricing	611-25	25637	25660

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 31 Black Star-Grape Purchases WA State 2019	611-26	25661	25661
Exhibit 32 Black Star, Suttons Bay v OMP	611-27	25662	25662
Exhibit 33 Black Star Event Requests	611-28	25663	25800
Exhibit 34 Black Star Facebook Events	611-29	25801	25815
Exhibit 35 Black Star Winery Photographs	611-30	25816	25825
Exhibit 38 Bonobo Calendar of Events	611-31	25826	25829
Exhibit 40 2015.12.11 Letter re violation of SUP 118	611-32	25830	25833
Exhibit 41 2015.12.28 Twp Letter re violation of SUP 118	611-33	25834	25835
Exhibit 42 2019.04.18 Email re Tonnage and Events	611-34	25836	25836
Exhibit 43 2019.04.18 and 2019.04.24 emails Bonobo and Sanger re Sip and Paint	611-35	25837	25839
Exhibit 44 2019.04.21 Email re Spanish Lessons	611-36	25840	25841
Exhibit 45 2019.07.11 Painting Enforcement Emails	611-37	25842	25844
Exhibit 46 2019.08.14 Email w Township re Ordinance Changes	611-38	25845	25845
Exhibit 47 2021.03.26 Email Bonobo Meihn	611-39	25846	25849
Exhibit 48 2021.04.02 Email re Wine Dinners and Lunches	611-40	25850	25852
Exhibit 50 Bonobo Contracts	611-41	25853	26132
Exhibit 51 Bonobo EOD Sales Summaries	611-42	26133	26135
Exhibit 52 Bonobo Grape Purchases	611-43	26136	26148

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 53 Bonobo Licenses and Permits	611-44	26149	26152
Exhibit 54 Bonobo Winery Pricing	611-45	26153	26185
Exhibit 55 Bonobo Calendar of Events and Reservations	611-46	26186	26191
Exhibit 56 Bonobo Event Inquiries	611-47	26192	26199
Exhibit 57 Bonobo Event Pricing with Photos	611-48	26200	26209
Exhibit 58 Bonobo Events	611-49	26210	26229
Exhibit 59 Bonobo SUP #118	611-50	26230	26246
Exhibit 61 Bonobo Winery Photos	611-51	26247	26269
Exhibit 65 2022.07.01 Incident Report from Ordinance Enforcement Officer	611-52	26270	26272
Exhibit 67 2017.07.14 Letter from Bryan Graham to Linda Stegenga re Zoning Ordinance Violations	611-53	26273	26275
Exhibit 68 2017.08.03 Letter from Bryan Graham to Linda Stegenga re Continuation of zoning ordinance violations	611-54	26276	26277
Exhibit 69 2015.12.07 Email from Michelle Reardon to Linda Stegenga	611-55	26278	26278
Exhibit 70 2014.006.19 Letter from Michelle Reardon to Linda Stegenga re Violation of Special Use Permit #32	611-56	26279	26280
Exhibit 71 History of Bower's Harbor Vineyard Amendments, Violations Correspondence created 3/6/2018 - CMD	611-57	26281	26285

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 72 2016.10.27 Letter from Linda Stegenga to Rob Manigold re Impact of Complaints Against Bowers Harbor Vineyards	611-58	26286	26286
Exhibit 73 2019.04.10 Email from David Sanger to Christina Deeren re BHV Reception for Wine Label Competition – 4/12	611-59	26287	26287
Exhibit 74 Bowers Harbor MDARD License	611-60	26288	26288
Exhibit 75 Bowers Harbor Pricing	611-61	26289	26302
Exhibit 77 Bowers Harbor Merch Data; Food Sales; Fri/Sat Sales Last 2 Hours	611-62	26303	26307
Exhibit 78 Bowers Harbor Grape Purchase Data	611-63	26308	26308
Exhibit 80 Bowers Harbor Facebook Events	611-64	26309	26330
Exhibit 81 Bowers Harbor 8.27.19, 9.6.19,10.10.19, 1.8.20, 1.14.20, 4.16.20 Emails with Township re Winery Ordinance	611-65	26331	26340
Exhibit 82 Bowers Harbor 2017.12-2018.01 SUP Amendment Emails	611-66	26341	26344
Exhibit 83 Bowers Harbor 2020-2021 Event Requests and Declines	611-67	26345	26350
Exhibit 85 Bowers Harbor Winery Photographs	611-68	26351	26366
Exhibit 95 2017 Bowers Harbor Record of Events and Activities	611-69	26367	26393

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 96 2018.02.02 Email from Kristy McClellan to Patrick Brys and Christina Deeren re Meeting 1-30-2018	611-70	26394	26395
Exhibit 97 Brys - SUP No. 115 and Amendments	611-71	26396	26491
Exhibit 98 Brys MLCC Licenses and Permits	611-72	26492	26493
Exhibit 99 Brys MDARD License	611-73	26494	26494
Exhibit 100 Brys Pricing	611-74	26495	26512
Exhibit 101 Brys Food Sales	611-75	26513	26514
Exhibit 102 Brys Retail Sales	611-76	26515	26528
Exhibit 104 Brys Event Requests	611-77	26529	26584
Exhibit 105 Brys Township Enforcement	611-78	26585	26594
Exhibit 106 Brys Facebook Events Calendar	611-79	26595	26603
Exhibit 112 Brys Winery Photographs	611-80	26604	26618
Exhibit 114 Chateau Chantal - SUP No. 21 and SUP No. 95	611-81	26619	26635
Exhibit 115 Chateau Chantal MLCC Licenses and Permits	611-82	26636	26639
Exhibit 116 Chateau Chantal MDARD License	611-83	26640	26640
Exhibit 117 Chateau Chantal Pricing	611-84	26641	26727
Exhibit 118 Chateau Chantal Grape Reports	611-85	26728	26728
Exhibit 120 Chateau Chantal Sales Data	611-86	26729	26797
Exhibit 121 Chateau Chantal Information Sheets	611-87	26798	26810
Exhibit 122 Chateau Chantal Event Requests	611-88	26811	26812

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 127 November 18, 2018 Letter re Tonnage Report; November 30, 2022 Tonnage Letter	611-89	26813	26816
Exhibit 130 Facebook Events	611-90	26817	26830
Exhibit 131 Wedding Potential Spreadsheet	611-91	26831	26844
Exhibit 135 Guest Activity Notifications to Township	611-92	26845	26855
Exhibit 136 Chateau Chantal Winery Photographs	611-93	26856	26867
Exhibit 137 Chateau Grand Traverse - SUP No. 59 and 24	611-94	26868	26931
Exhibit 138 Chateau Grand Traverse MLCC Licenses and Permits	611-95	26932	26934
Exhibit 139 Chateau Grand Traverse MDARD License	611-96	26935	26935
Exhibit 140 Chateau Grand Traverse Pricing	611-97	26936	26942
Exhibit 141 Chateau Grand Traverse Wine Sales	611-98	26943	26943
Exhibit 143 Chateau Grand Traverse Facebook Events	611-99	26944	26962
Exhibit 144 Chateau Grand Traverse Advertising and Photos	611-100	26963	26969
Exhibit 145 Chateau Grand Traverse Small Event Invoices	611-101	26970	26972
Exhibit 146 2019 Email to Planner re Ordinance Changes	611-102	26973	26975
Exhibit 147 Chateau Grand Traverse Winery Photographs	611-103	26976	26992
Exhibit 148 Hawthorne - SUP No. 135	611-104	26993	27002
Exhibit 149 Hawthorne MLCC Licenses and Permits	611-105	27003	27004

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 150 Hawthorne MDARD License	611-106	27005	27005
Exhibit 151 Hawthorne Pricing	611-107	27006	27011
Exhibit 152 Hawthorne Food Sales	611-108	27012	27083
Exhibit 153 Hawthorne Merch Sales	611-109	27084	27112
Exhibit 154 Hawthorne Event Requests	611-110	27113	27113
Exhibit 155 Hawthorne Facebook Events	611-111	27114	27125
Exhibit 156 Hawthorne Winery Photographs	611-112	27126	27129
Exhibit 157 Mari - SUP No. 126	611-113	27130	27159
Exhibit 158 Mari Event Notifications to Township	611-114	27160	27170
Exhibit 159 Mari Event Pricing	611-115	27171	27176
Exhibit 160 Mari Facebook Posts	611-116	27177	27219
Exhibit 161 Mari Enforcement by Township	611-117	27220	27255
Exhibit 162 Mari Sales Data	611-118	27256	27256
Exhibit 163 Mari MDARD License	611-119	27257	27258
Exhibit 166 Mari Mezzanine Photo	611-120	27259	27259
Exhibit 167 Mari Wine and Merch	611-121	27260	27281
Exhibit 168 Mari Event Invoices	611-122	27282	27348
Exhibit 169 Mari Event Calendar	611-123	27349	27396
Exhibit 170 Mari Event Requests	611-124	27397	27556
Exhibit 171 Mari Event Request Responses	611-125	27557	27583
Exhibit 172 Mari Winery Photographs	611-126	27584	27592

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 173 The Hog's Back Vineyard Release Party announcement	611-127	27593	27594
Exhibit 175 2001.08.13 Letter from Gordon Hayward to David and Joan Kroupa re Special Use Permit #62	611-128	27595	27595
Exhibit 176 Peninsula Cellars - SUP No. 62	611-129	27596	27604
Exhibit 177 Peninsula Cellars MLCC Licenses and Permits	611-130	27605	27608
Exhibit 178 Peninsula Cellars MDARD License	611-131	27609	27609
Exhibit 179 Peninsula Cellars Pricing	611-132	27610	27624
Exhibit 181 September 9, 2021 Enforcement Letter re Amplified Music	611-133	27625	27625
Exhibit 182 Peninsula Cellars Facebook Events	611-134	27626	27633
Exhibit 183 Peninsula Cellars Winery Photographs	611-135	27634	27641
Exhibit 184 Tabone MLCC License	611-136	27642	27642
Exhibit 185 Tabone MLCC License Search	611-137	27643	27644
Exhibit 186 Tabone MDARD License	611-138	27645	27645
Exhibit 187 Tabone MLCC Local Approval	611-139	27646	27648
Exhibit 188 Tabone MLCC Approval Order	611-140	27649	27654
Exhibit 189 Tabone Event Requests	611-141	27655	27658
Exhibit 191 Tabone Winery Photographs	611-142	27659	27668

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit 193 August 10, 2021 Expert Report	611-143	27669	27689
Exhibit 194 Supplemental Report of Eric Larson, dated July 6, 2022	611-144	27690	27698
Exhibit 199 Gary McDowell CV	611-145	27699	27701
Exhibit 201 MDARD Farm Market GAAMPs	611-146	27702	27710
Exhibit 202 Whitmer Press Release	611-147	27711	27713
Exhibit 204 David Moss CV	611-148	27714	27715
Exhibit 215 August 23, 2019 letter from Greg Meihn	611-149	27716	27734
Exhibit 226 MLCC June 20, 2017 Order rescinding declaratory ruling re Chateau Chantal	611-150	27735	28046
Exhibit 163-1 Mari MDARD License	613	28047	28047
Deposition of Robert Manigold (November 3, 2021)	615-1	28065	28142
Deposition of John Wunsch Volume I, (November 3, 2021)	615-2	28143	28180
Deposition of Gordon Hayward (November 3, 2021)	615-3	28182	28240
Deposition of Grant Parsons (November 4, 2021)	615-4	28241	28289
Exhibit A Peninsula Township Zoning Ordinance	615-7	28513	28676
Exhibit B Peninsula Township Ordinance 6.7.2(19) – Farm Processing Facility, ECF No. 142-16	615-7	28677	28682
Exhibit C Peninsula Township Ordinance 8.7.3(10) – Winery-Chateau, ECF No. 142-17	615-7	28683	28690

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit D Peninsula Township Ordinance 8.7.3(12) – Remote Winery Tasting Room, ECF No. 142-18	615-7	28691	28692
Exhibit E Peninsula Township Purchase of Development Rights Ordinance, ECF No. 519-1	615-7	28693	28713
Exhibit G Peninsula Township Master Plan, ECF No. 142-2 PART 1/2	615-7	28714	28722
Exhibit G Peninsula Township Master Plan, ECF No. 142-2 PART 2/2	615-8	28723	28797
Exhibit H-1 Report and Curriculum Vitae of Thomas L. Daniels, ECF No. 488-3 REDACTED	615-8	28798	28838
Exhibit H Report and Curriculum Vitae of Thomas L. Daniels, ECF No. 488-3 ORIGINAL	616	30797	30837
Exhibit H-1 Report and Curriculum Vitae of Thomas L. Daniels, ECF No. 488-3 REDACTED - DUPLICATE	616-1	30838	30878
Exhibit I Plaintiffs' MLCC Licenses, ECF No. 356-1	615-8	28839	28849
Exhibit Q Planning Commission Meeting Minutes from March 20, 1989	615-8	28850	28851
Exhibit R Planning Commission Meeting Minutes from May 1, 1989	615-8	28852	28852
Exhibit S Planning Commission Meeting Minutes from May 15, 1989	615-8	28853	28858

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit T Planning Commission Meeting Minutes from June 26, 1989	615-8	28859	28860
Exhibit U Planning Commission Meeting Minutes from August 21, 1989	615-8	28861	28864
Exhibit V Planning Commission Meeting Minutes from September 18, 1989	615-8	28865	28867
Exhibit W Planning Commission Meeting Minutes from October 16, 1989	615-8	28868	28872
Exhibit X Planning Commission Meeting Minutes from November 20, 1989	615-8	28873	28877
Exhibit Y Township Board Meeting Minutes from November 21, 1989, ECF No. 305-7	615-9	28878	28881
Exhibit Z Planning Commission Meeting Minutes from August 16, 1999	615-9	28882	28887
Exhibit A2 Planning Commission Meeting Minutes from September 20, 1999	615-10	28890	28894
Exhibit B2 Township Board Meeting Minutes from November 11, 1999	615-10	28895	28894
Exhibit C2 Township Board Meeting Minutes from December 7, 1999	615-10	28895	28905
Exhibit D2 Township Board Meeting Minutes from January 1, 2000	615-10	28906	28908
Exhibit E2 Township Board Meeting Minutes from February 8, 2000	615-10	28909	28916

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit F2 Township Board Meeting Minutes from March 14, 2000	615-10	28917	28920
Exhibit G2 Township Board Meeting Minutes from April 18, 2000	615-10	28921	28925
Exhibit H2 Township Board Meeting Minutes from May 18, 2000	615-10	28926	28927
Exhibit I2 Planning Commission Meeting Minutes from October 15, 2001	615-10	28928	28930
Exhibit J2 Planning Commission Meeting Minutes from November 26, 2001	615-10	28931	28934
Exhibit K2 Planning Commission Meeting Minutes from December 17, 2001	615-10	28935	28937
Exhibit L2 Planning Commission Meeting Minutes from February 19, 2002	615-10	28938	28941
Exhibit M2 Planning Commission Meeting Minutes from March 18, 2002, ECF No. 488-2	615-10	28942	28943
Exhibit N2 Planning Commission Meeting Minutes from April 23, 2002	615-10	28944	28949
Exhibit O2 Planning Commission Meeting Minutes from May 19, 2003	615-10	28950	28952
Exhibit P2 Planning Commission Meeting Minutes from June 16, 2003	615-10	28953	28957
Exhibit Q2 Planning Commission Meeting Minutes from July 14, 2003	615-10	28958	28960

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit R2 Planning Commission Meeting Minutes from September 15, 2003	615-10	28961	28966
Exhibit T2 Planning Commission Meeting Minutes from May 17, 2004	615-10	28967	28971
Exhibit U2 Planning Commission Meeting Minutes from June 21, 2004	615-10	28972	28975
Exhibit W2 Planning Commission Meeting Minutes from December 18, 1989	615-10	28976	28978
Exhibit X2 Planning Commission Meeting Minutes from January 15, 1990	615-10	28979	28982
Exhibit Y2 Township Board Meeting Minutes from February 13, 1990	615-10	28983	28986
Exhibit Z2 Township Board Meeting Minutes from March 13, 1990	615-10	28987	28989
Exhibit A3 Township Board Meeting Minutes from July 10, 1990	615-11	28992	28996
Exhibit B3 SUP #21 for Chateau Chantal, ECF No. 463-16	615-11	28997	29003
Exhibit C3 Planning Commission Meeting Minutes from September 20, 2004	615-11	29004	29007
Exhibit D3 Memorandum from Gordon Hayward to Township Board, December 8, 2004, ECF No. 463-17	615-11	29008	29008
Exhibit E3 Township Board Meeting Minutes from December 14, 2004	615-11	29009	29016

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit G3 Planning Commission Meeting Minutes from November 16, 2009	615-11	29017	29022
Exhibit H3 Planning Commission Meeting Minutes from December 21, 2009	615-11	29023	29028
Exhibit I3 SUP #114 for Chateau Chantal – Supplements SUP #95, ECF No. 463-18	615-11	29029	29034
Exhibit J3 Planning Commission Meeting Minutes from October 20, 2014	615-11	29035	29082
Exhibit K3 Township Board Meeting Minutes from November 20, 2014	615-11	29083	29126
Exhibit L3 SUP #114, 1st Amendment for Chateau Chantal, ECF No. 463-19	615-11	29127	29155
Exhibit M3 Planning Commission Meeting Minutes from March 18, 1996	615-11	29156	29159
Exhibit N3 Planning Commission Meeting Minutes from April 15, 1996	615-11	29160	29163
Exhibit O3 Planning Commission Meeting Minutes from May 20, 1996	615-11	29164	29167
Exhibit P3 Planning Commission Meeting Minutes from June 17, 1996	615-11	29168	29170
Exhibit Q3 Planning Commission Meeting Minutes from July 15, 1996	615-11	29171	29173
Exhibit R3 Planning Commission Meeting Minutes from August 19, 1996	615-11	29174	29178

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit S3 Planning Commission Meeting Minutes from February 18, 1997	615-11	29179	29182
Exhibit T3 Planning Commission Meeting Minutes from March 17, 1997	615-11	29183	29187
Exhibit U3 Planning Commission Meeting Minutes from April 21, 1997	615-11	29188	29191
Exhibit V3 Planning Commission Meeting Minutes from May 19, 1997	615-11	29192	29194
Exhibit W3 Planning Commission Meeting Minutes from June 16, 1997	615-11	29195	29200
Exhibit X3 Township Board Meeting Minutes from July 8, 1997	615-11	29201	29207
Exhibit Y3 Planning Commission Meeting Minutes from July 21, 1997	615-11	29208	29212
Exhibit Z3 Township Board Meeting Minutes from August 12, 1997	615-11	29213	29218
Exhibit A4 Township Board Meeting Minutes from September 9, 1997	615-12	29221	29225
Exhibit B4 Chateau Chantal Consent Judgment, ECF No. 63-4	615-12	29226	29228
Exhibit C4 Township Board Meeting Minutes from February 9, 1999	615-12	29229	29234
Exhibit D4 Chateau Chantal Consent Judgment Standards, ECF No. 517-12	615-12	29235	29236

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit E4 MLCC Declaratory Ruling re: Chateau Chantal, August 26, 1998, ECF No. 56-1	615-12	29237	29244
Exhibit F4 MLCC Order Denying Outdoor Service Area, December 19, 2000	615-12	29245	29246
Exhibit G4 MLCC Order Rescinding Declaratory Ruling, June 20, 2017, ECF No. 356-2	615-12	29247	29249
Exhibit H4 Chateau Chantal Schedule of Guest Activity Uses	615-12	29250	29250
Exhibit I4 Chateau Chantal 2008, 2017, 2023 Guest Activity Use Notifications	615-12	29251	29253
Exhibit K4 Chateau Chantal 2018, 2019, 2020 Guest Activity Use Notifications, ECF No. 517-14	615-12	29254	29264
Exhibit L4 Chateau Chantal Guest Activity Use Promotional Materials, ECF No. 517-17	615-12	29265	29272
Exhibit M4 Planning Commission Meeting Minutes from March 16, 1992	615-12	29273	29275
Exhibit N4 Township Board Meeting Minutes from April 14, 1992	615-12	29276	29279
Exhibit O4 SUP #32 for Bowers Harbor Vineyard, ECF No. 32-7 PART 1/2	615-12	29280	29280
Exhibit O4 SUP #32 for Bowers Harbor Vineyard, ECF No. 32-7 PART 2/2	615-13	29281	29288
Exhibit P4 SUP #32 Food Processing, Findings of Fact, April 10, 1992	615-13	29289	29299

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit Q4 SUP #32 Food Processing, April 11, 1992	615-13	29300	29307
Exhibit R4 Township Board Meeting Minutes from August 10, 2010	615-13	29308	29313
Exhibit S4 SUP #32 Amendment for Bowers Harbor Vineyard, ECF No. 463-5	615-13	29314	29321
Exhibit T4 December 16, 2015 Correspondence from Linda Stegenga, ECF No. 517-7	615-13	29322	29322
Exhibit U4 Correspondence between T. Alward and B. Graham re: SUP #32, August 2017, ECF No. 308-10	615-13	29323	29326
Exhibit V4 Planning Commission Meeting Minutes from October 2, 2018	615-13	29327	29330
Exhibit W4 October 2, 2018 Minutes from Peninsula Township Bowers Harbor Vineyard Committee	615-13	29331	29331
Exhibit X4 December 10, 2018 Minutes from Peninsula Township Bowers Harbor Vineyard Committee	615-13	29332	29332
Exhibit Y4 Planning Commission Meeting Minutes from February 25, 2019	615-13	29333	29335
Exhibit Z4 Documents regarding 2019 variance approval, ECF No. 463-7 and ECF No. 463-8	615-13	29336	29337
Exhibit A5 Township Zoning Board of Appeals Meeting Minutes for April 11, 2019	615-14	29339	29339

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit D5 May 15, 2019 Minutes from Peninsula Township Bowers Harbor Vineyard Committee	615-14	29340	29340
Exhibit E5 Planning Commission Meeting Minutes from May 20, 2019	615-14	29341	29350
Exhibit F5 Planning Commission Meeting Minutes from June 25, 2019	615-14	29351	29356
Exhibit G5 Township Board Meeting Minutes from July 23, 2019	615-14	29357	29361
Exhibit H5 SUP #132 for Bowers Harbor Vineyard, ECF No. 32-7	615-14	29362	29378
Exhibit I5 SUP #132 zoning history documents, ECF No. 308-12	615-14	29379	29402
Exhibit J5 Bowers Harbor Vineyard MLCC licensing documents, ECF No. 517-9 PART 1/2	615-14	29403	29406
Exhibit J5 Bowers Harbor Vineyard MLCC licensing documents, ECF No. 517-9 PART 2/2	615-15	29407	29407
Exhibit K5 Brys Variance Request, April 3, 2000, ECF No. 463-15	615-15	29408	29408
Exhibit M5 Township Board Meeting Minutes from February 8, 2011	615-15	29409	29414
Exhibit N5 SUP #115 for Brys Estate and Amendments, ECF No. 32-5	615-15	29415	29493
Exhibit O5 SUP #115 for Brys Estate, ECF No. 463-9	615-15	29494	29504

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit P5 Planning Commission Meeting Minutes from February 27, 2012	615-15	29505	29507
Exhibit Q5 Township Board Meeting Minutes from April 10, 2012	615-15	29508	29512
Exhibit R5 SUP #115, 1st Amendment for Brys Estate, ECF No. 457-16	615-15	29513	29524
Exhibit S5 Planning Commission Meeting Minutes from February 24, 2014	615-15	29525	29531
Exhibit T5 Township Board Meeting Minutes from April 8, 2014	615-15	29532	29550
Exhibit U5 SUP #115, 2nd Amendment for Brys Estate, ECF No. 463-11	615-15	29551	29565
Exhibit V5 Planning Commission Meeting Minutes from August 20, 2018 PART 1/2	615-15	29566	29569
Exhibit V5 Planning Commission Meeting Minutes from August 20, 2018 PART 2/2	615-16	29570	29576
Exhibit W5 SUP #115, 3rd Amendment for Brys Estate, ECF No. 463-12	615-16	29577	29592
Exhibit X5 Planning Commission Meeting Minutes from November 19, 2018	615-16	29593	29596
Exhibit Y5 SUP #115, 4th Amendment for Brys Estate, ECF No. 463-14	615-16	29597	29611
Exhibit A6 Edmundson PDR Easement, ECF No. 457-11	615-17	29613	29627
Exhibit B6 Seaberg Farms PDR Easement, ECF No. 457-12	615-17	29628	29640

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit C6 Bonobo Parcel Information, ECF No. 519-4	615-17	29641	29644
Exhibit D6 Planning Commission Meeting Minutes from February 25, 2013	615-17	29645	29650
Exhibit E6 Planning Commission Meeting Minutes from March 18, 2013	615-17	29651	29660
Exhibit F6 Township Board Meeting Minutes from April 9, 2013	615-17	29661	29666
Exhibit G6 Township Board Meeting Minutes from May 14, 2013	615-17	29667	29687
Exhibit H6 Bonobo SUP #118, ECF No. 32-6	615-17	29688	29703
Exhibit I6 Bonobo MLCC License, ECF No. 517-48	615-17	29704	29709
Exhibit J6 Bonobo MLCC Order approving Small Wine Maker License and Outdoor Service Areas May 7, 2014	615-17	29710	29715
Exhibit K6 Bonobo SUP Amendment Application, ECF No. 463-2	615-17	29716	29725
Exhibit L6 Bonobo SUP #118, 1st Amendment, ECF No. 457-13	615-17	29726	29739
Exhibit M6 Township Board Meeting Minutes from April 16, 2015, ECF No. 457-6	615-17	29740	29743
Exhibit N6 Notice of Denial of Guest Activity Use Application, April 21, 2015, ECF No. 308-14	615-17	29744	29744
Exhibit O6 Township Board Meeting Minutes from May 12, 2015	615-17	29745	29763

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit P6 Township Board Meeting Minutes from November 10, 2015	615-17	29764	29767
Exhibit Q6 Bonobo Citations, ECF No. 457-8	615-17	29768	29768
Exhibit R6 2016 Bonobo Consent Judgments, ECF No. 526-6	615-17	29769	29777
Exhibit S6 Township Board Meeting Minutes from August 9, 2016	615-17	29778	29782
Exhibit T6 Township Board Meeting Minutes from September 13, 2016	615-17	29783	29790
Exhibit V6 Township Board Meeting Minutes from November 22, 2016	615-17	29791	29797
Exhibit W6 Township Board Meeting Minutes from December 13, 2016	615-17	29798	29804
Exhibit X6 Bonobo Settlement Agreement, ECF No. 457-9	615-17	29805	29807
Exhibit Y6 Township Board Meeting Minutes from April 11, 2017	615-17	29808	29811
Exhibit Z6 2018 Bonobo Compliance Report, ECF No. 499-7	615-17	29812	29857
Exhibit A7 Memorandum from Randy Mielnik for Township Board, September 6, 2018, ECF No. 517-49	615-18	29859	29860
Exhibit B7 Township Board Meeting Minutes for September 11, 2018, ECF No. 499-6	615-18	29861	29863

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit C7 Bonobo MLCC Order Approving Catering Permit, September 1, 2022	615-18	29864	29866
Exhibit D7 Planning Commission Meeting Minutes from April 16, 1990	615-18	29867	29870
Exhibit E7 Planning Commission Meeting Minutes from June 18, 1990	615-18	29871	29876
Exhibit F7 Planning Commission Meeting Minutes from June 26, 1990	615-18	29877	29882
Exhibit H7 Planning Commission Meeting Minutes from December 15, 1997	615-18	29883	29885
Exhibit I7 Planning Commission Meeting Minutes from February 17, 1998	615-18	29886	29889
Exhibit J7 Planning Commission Meeting Minutes from March 23, 1998	615-18	29890	29893
Exhibit K7 Planning Commission Meeting Minutes from June 15, 1998	615-18	29894	29898
Exhibit L7 SUP #59 for Chateau Grand Traverse, ECF No. 463-22	615-18	29899	29908
Exhibit M7 Township Board Meeting Minutes from July 13, 1999	615-18	29909	29912
Exhibit O7 SUP #66 for Chateau Grand Traverse, ECF No. 463-23	615-18	29913	29920
Exhibit P7 Planning Commission Meeting Minutes from August 16, 2004	615-18	29921	29924
Exhibit Q7 Township Board Meeting Minutes from September 14, 2004	615-18	29925	29932

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit S7 Chateau Grand Traverse MLCC Amended Order Approving Outdoor Service Area, August 12, 2015	615-18	29933	29934
Exhibit T7 Villa Mari Farm Processing Facility Application, ECF No. 517-54	615-18	29935	29936
Exhibit V7 SUP #126 Application PART 1/2	615-18	29937	29983
Exhibit V7 SUP #126 Application PART 2/2	615-19	29984	30104
Exhibit W7 February 22, 2016 Planning Commission Meeting Minutes	615-19	30105	30132
Exhibit X7 March 15, 2016 Township Board Meeting Minutes PART 1/2	615-19	30133	30145
Exhibit X7 March 15, 2016 Township Board Meeting Minutes PART 2/2	615-20	30146	30162
Exhibit Y7 Villa Mari SUP #126, Findings of Fact, ECF No. 63-10	615-20	30163	30189
Exhibit Z7 SUP #126 for Mari	615-20	30190	30218
Exhibit A8 Villa Mari MLCC Order Approving License, ECF No. 517-55	615-21	30221	30227
Exhibit B8 Hawthorne Final Farm Processing Facility Permit #3, ECF No. 517-44	615-21	30228	30228
Exhibit C8 Hawthorne Winery-Chateau SUP Application PART 1/2	615-21	30229	30246
Exhibit C8 Hawthorne Winery-Chateau SUP Application PART 2/2	615-22	30247	30250
Exhibit D8 SUP #135 Application Emails	615-22	30251	30255

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit E8 Planning Commission Meeting Minutes from January 27, 2020	615-22	30256	30260
Exhibit F8 Planning Commission Meeting Minutes from February 24, 2020	615-22	30261	30265
Exhibit G8 Planning Commission Meeting Minutes from June 15, 2020	615-22	30266	30269
Exhibit H8 Township Board Meeting Minutes from July 14, 2020	615-22	30270	30274
Exhibit I8 SUP #135 for Hawthorne Vineyards, ECF No. 463-26	615-22	30275	30285
Exhibit J8 MLCC Order approving transfer of Small Wine Maker license to Hawthorne, October 6, 2022	615-22	30286	30294
Exhibit K8 Minutes from Joint Session of Planning Commission and Township Board from January 9, 2002	615-22	30295	30298
Exhibit L8 Planning Commission Meeting Minutes from June 17, 2002	615-22	30299	30303
Exhibit M8 Township Board Meeting Minutes from July 9, 2002	615-22	30304	30310
Exhibit N8 Planning Commission Meeting Minutes from May 18, 2009, Peninsula Township Response to PTP Req. to Prod. 482-486	615-22	30311	30315
Exhibit O8 Planning Commission Meeting Minutes from June 15, 2009	615-22	30316	30318

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit P8 Township Board Meeting Minutes from August 11, 2009	615-22	30319	30324
Exhibit Q8 Black Star Preliminary Farm Processing Permit, ECF No. 459-6	615-22	30325	30325
Exhibit R8 Black Star Farms Final Farm Processing Permit #2, ECF No. 517-30 and ECF No. 459-6	615-22	30326	30327
Exhibit S8 Black Star Farms Commercial Lease Agreement, ECF No. 517-29 PART 1/2	615-22	30328	30330
Exhibit S8 Black Star Farms Commercial Lease Agreement, ECF No. 517-29 PART 2/2	615-23	30331	30345
Exhibit T8 Underwood Orchards Conservation Easement, ECF No. 457-10	615-23	30346	30360
Exhibit U8 Black Star Farms Parcel Information Sheets, ECF No. 519-3	615-23	30361	30371
Exhibit V8 December 16, 2011 variance request correspondence, ECF No. 459-12	615-23	30372	30382
Exhibit W8 Email from L. Lutes Withdrawing Variance Request, January 26, 2012, ECF No. 459-13	615-23	30383	30383
Exhibit X8 Black Star MLCC Order Approving Outdoor Service Area, October 20, 2017 PART 1/2	615-23	30384	30385
Exhibit X8 Black Star MLCC Order Approving Outdoor Service Area, October 20, 2017 PART 2/2	615-24	30386	30387

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit Y8 Black Star 2018 Variance Request, ECF No. 459-14	615-24	30388	30393
Exhibit Z8 Black Star Letter from C. Deeren Returning Variance Application Fee to R. Mampe, June 12, 2018, ECF No. 517-33	615-24	30394	30394
Exhibit A9 Black Star MLCC Order Approving Outdoor Service Area, June 11, 2020	615-25	30396	30399
Exhibit B9 Black Star MLCC Order Approving Outdoor Service Area, July 14, 2020	615-25	30400	30403
Exhibit C9 Black Star MLCC Order Approving Outdoor Service Area, October 6, 2022	615-25	30404	30407
Exhibit D9 Black Star Farms Tasting Room hours, ECF No. 517-34	615-25	30408	30408
Exhibit E9 Black Star Hours of Operations Suttons Bay, ECF No. 488-1	615-25	30409	30410
Exhibit F9 Two Lads MLCC Wine Producer and Blender Permit, August 8, 2007, and 2008-2009 License, ECF No. 517-37	615-25	30411	30412
Exhibit H9 Two Lads Land Use Permit Materials, ECF No. 517-42	615-25	30416	30420
Exhibit I9 Two Lads Documentation Regarding Summer 2014 Events, ECF No. 517-40	615-25	30421	30425

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit J9 Two Lads MLCC Order Approving Outdoor Service Area, September 11, 2019	615-25	30426	30429
Exhibit K9 Two Lads MLCC Order Approving Outdoor Service Area, August 13, 2020, ECF No. 517-38	615-25	30430	30433
Exhibit L9 SUP No. #73, ECF 459-17 PART 1/2	615-25	30434	30435
Exhibit L9 SUP No. #73, ECF 459-17 PART 2/2	615-26	30436	30442
Exhibit M9 SUP No. #73, Township Letter and Certificate of Permit to Tabone, ECF No. 305-11	615-26	30443	30444
Exhibit N9 Tabone Small Wine Maker License Application (2014), ECF No. 526-3	615-26	30445	30448
Exhibit O9 Tabone MLCC Local Approval Forms, ECF No. 517-67	615-26	30449	30451
Exhibit P9 Letter from Township to MLCC (2016), ECF No. 526-4	615-26	30452	30452
Exhibit Q9 Tabone Outdoor Service Request to MLCC (2017), ECF No. 526-5	615-26	30453	30453
Exhibit R9 Tabone Corrected MLCC License Approval, ECF No. 517-68	615-26	30454	30459
Exhibit S9 Tabone On-Premises Tasting Room Certification, ECF No. 517-69	615-26	30460	30461
Exhibit T9 Tabone Farm Processing Facility application materials, ECF No. 517-64	615-26	30462	30475

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit U9 April 27, 2016 email from C. Schoolmaster to Tabone, ECF No. 517-64	615-26	30476	30477
Exhibit V9 ZBA Meeting Minutes from June 9, 2016, Variance Request 851 Made, ECF No. 499-8	615-26	30478	30478
Exhibit W9 June 21, 2016 email chain regarding Tabone withdrawal of variance request, ECF No. 517-65	615-26	30479	30479
Exhibit X9 ZBA Meeting Minutes from June 23, 2016, Variance Request 851 Withdrawn, ECF No. 499-8	615-26	30480	30480
Exhibit Y9 Tabone Land Use Permit to Reconstruct Food Processing Plant, ECF No. 517-66	615-26	30481	30483
Exhibit A10 Planning Commission Meeting Minutes from January 19, 1998	615-27	30485	30487
Exhibit B10 Planning Commission Meeting Minutes from April 13, 1998	615-27	30488	30492
Exhibit C10 Township Board Meeting Minutes from May 12, 1998	615-27	30493	30495
Exhibit D10 Planning Commission Meeting Minutes from May 18, 1998	615-27	30496	30499
Exhibit E10 Planning Commission Meeting Minutes from July 20, 1998	615-27	30500	30502
Exhibit F10 Planning Commission Meeting Minutes from September 21, 1998	615-27	30503	30506

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit G10 Planning Commission Meeting Minutes from October 19, 1998	615-27	30507	30511
Exhibit H10 Township Board Meeting Minutes from November 10, 1998	615-27	30512	30514
Exhibit I10 SUP #62 – Grape Harbor Inc., ECF No. 463-27	615-27	30515	30524
Exhibit J10 Peninsula Cellars MLCC Order Approving Outdoor Service Area, May 22, 2013	615-27	30525	30527
Exhibit K10 Peninsula Cellars MLCC Order Approving Outdoor Service Area, July 3, 2019	615-27	30528	30531
Exhibit M10 Peninsula Cellars Hours of Operation, ECF No. 517-21	615-27	30532	30532
Exhibit N10 Peninsula Cellars Hours of Operation, Supplemental	615-27	30533	30533
Exhibit O10 Aerial Map of Peninsula Township	615-27	30534	30534
Exhibit P10 Land Use/Zoning Map of Peninsula Township	615-27	30535	30535
Exhibit R10 Special Joint Township Board and Planning Commission Meeting Minutes from June 13, 2016, ECF 499-12	615-27	30536	30538
Exhibit S10 Special Joint Township Board and Planning Commission Meeting Minutes from June 23, 2016, ECF 499-12	615-27	30539	30542
Exhibit T10 Township Board Meeting Minutes for August 15, 1989, ECF No. 488-2	615-27	30543	30546

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Exhibit U10 Planning Commission Meeting Minutes for June 16, 2001, ECF No. 488-2	615-27	30547	30548
Exhibit Y10 Code of Professional Conduct from AICPA, Ex. 5 from Deposition of Eric Larson PART 1/4	615-27	30549	30597
Exhibit Y10 Code of Professional Conduct from AICPA, Ex. 5 from Deposition of Eric Larson PART 2/4	615-28	30598	30666
Exhibit Y10 Code of Professional Conduct from AICPA, Ex. 5 from Deposition of Eric Larson PART 3/4	615-29	30667	30737
Exhibit Y10 Code of Professional Conduct from AICPA, Ex. 5 from Deposition of Eric Larson PART 4/4	615-30	30738	30787
Exhibit Z10 Statement on Standards for Forensic Services from AICPA, Ex. 6 from Deposition of Eric Larson	615-30	30788	30791
Exhibit B11 RMA General Reports, Ex. 8 from Deposition of Eric Larson	615-31	30793	30795
Exhibit F11 Merchandise sales documents from each Plaintiff, Ex. 9 from Deposition of Eric Larson and supplemental disclosures from each Plaintiff	615-31	30796	30796
Exhibit H	616	30797	
Township Post-Trial Brief	617	30879	30937
Plaintiffs' Post Trial Brief	618	30954	31113
PTP's Post-Trial Brief	619	31199	31253
Transcript - Closing Argument	622	31306	31409

DOCUMENT	RECORD CITATION	PAGEID START	PAGEID END
Bench Opinion	623	31410	31484
Judgment	624	31485	
PTP Notice of Appeal	641	32187	32188
Order Denying [628] Motion to Alter Judgment	643	32193	32196

**RELEVANT PARTS OF PENINSULA TOWNSHIP ZONING ORDINANCE
RE 1-1(Page ID # 31-195) and Ex A (RE 615-7, Page ID 28513-28676)**

Description	Page ID Start	Page ID End
Cover page and Table of Contents	32	42
Ordinance, Preamble, Short Title, Interpretation	43	44
Art III - Definitions	44	60
Art IV - Administration and Enforcement	61	63
Art V - Board of Appeals	63	68
Art VI - Zoning Districts; 6.1 General Provisions	69	70
Art VI - Zoning Districts; 6.7 A-1 District: Agricultural	81	81
Art VI - Zoning Districts; 6.7.2 Uses Permitted by Right	81	81
Art VI - Zoning Districts; 6.7.2(19) Farm Processing Facility	84	89
Art VI - Zoning Districts; 6.7 3 Uses Permitted by Special Use Permit	89	89
Art VIII - Uses Authorized by Special Use Permit; 8.1 General Standards and Requirements	143	148
Art VIII - Uses Authorized by Special Use Permit; 8.5 Food Processing Plants	160	160
Art VIII - Uses Authorized by Special Use Permit; 8.7 Miscellaneous Special Uses	162	163
Art VIII - Uses Authorized by Special Use Permit; 8.7.3(10) Winery-Chateau	169	176
Art VIII - Uses Authorized by Special Use Permit; 8.7.3(12) Remote Winery Tasting Rooms	179	180
Art XI - Violations	185	185