

**Case Nos. 25-1703 / 25-1754**

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**UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, a Michigan Nonprofit Corporation (WOMP); BOWERS HARBOR VINEYARD & WINERY, INC, a Michigan Corporation; BRYNS 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/Cross-Appellants,

v.

TOWNSHIP OF PENINSULA, MI, a Michigan Municipal Corporation,  
Defendant/Appellant/Cross-Appellee,

PROTECT THE PENINSULA, INC.  
Intervenor/Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
Case No.: 1:20-cv-1008; Hon. Paul L. Maloney presiding

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**BRIEF OF AMICUS CURIAE MICHIGAN TOWNSHIPS ASSOCIATION  
IN SUPPORT OF PENINSULA TOWNSHIP AND REVERSAL**

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Date: February 20, 2026

**CORPORATE DISCLOSURE**

The Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consists of over 98% of the 1,240 townships in the State of Michigan. The MTA is not a subsidiary or affiliate of a publicly owned corporation and does not have a financial interest in the outcome of this litigation.

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**INTEREST OF AMICUS CURIAE**

The Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consists of over 98% of the 1,240 townships within the State of Michigan. MTA's mission is to provide education, information, and guidance to and among township officials to enhance the administration of township services in Michigan. The MTA was established in 1953 and is widely recognized for its years of experience and expertise regarding township issues. Through its legal defense fund, the MTA has participated as amicus curiae in numerous state and federal cases presenting issues of statewide significance to Michigan townships. This brief was authorized by the MTA.

In Michigan, the State's zoning authority has been vested in local townships, cities, villages, and counties through comprehensive land use authority provided under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101, *et seq.* Michigan's 1,240 townships cover more than 96% of Michigan's land area, and most of those townships engage in local zoning through the adoption and administration of a municipal zoning ordinance.

These townships have legislatively determined, for the benefit of their citizenry and landowners, to engage in zoning and regulate land uses within their communities, with the intent of ensuring that land uses are situated in appropriate

locations.<sup>1</sup> The creation of a master plan and zoning ordinance for a community's development takes years of detailed research, surveys, community meetings, and public hearings. The District Court's startling decisions in this case throw all these efforts into chaos, and threaten the public health, safety, and welfare of all zoned communities in Michigan.

This Honorable Court's consideration of the issues presented in this case is of paramount importance to zoning jurisprudence in Michigan. In the first instance, it is troublesome that the District Court found jurisdiction to hear this case when the Plaintiffs did not pursue well-established administrative remedies prior to filing suit. These remedies are established by Michigan law precisely to address the types of issues raised by the Plaintiffs in this case with regard to the Constitutional and as-applied claims. By failing to pursue those remedies to their finality and instead going straight to Federal Court, the various Plaintiffs have failed to ripen their claims.<sup>2</sup>

With jurisdiction wrongfully granted, the issues compounded with the District Court's erroneous determination that the definition of "Guest Activity Use" in the

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<sup>1</sup> MCL 125.3201.

<sup>2</sup> As discussed herein, under the Zoning Ordinance, the wineries operating by right needed to request appeal, interpretation, or variance from the Township's Zoning Board of Appeals, while the wineries operating as a special land use needed to go to the Planning Commission and then the Township Board to either amend or interpret their special land use permit.

Township's Zoning Ordinance was unconstitutionally vague. The errors continued to snowball into an unfathomable damage judgement of \$49.2 million.

It is not hyperbole to state that if this case is not reversed, many Townships in Michigan will need to rethink if they can afford the financial risk associated with zoning. The types of interpretive questions raised in this case are typical in the administration and enforcement of any zoning ordinance. While townships could previously rely upon administrative remedies to resolve these questions, the District Court's authorization of a "sue-first" approach may make zoning unsustainable for most municipalities.

A motion requesting leave to file this Amicus Curiae brief has been filed with the clerk of this Honorable Court concurrently with this proposed brief. Per Rule 29(a)(4)(E), MTA further states that: (i) no party's counsel authored this brief in whole or in part; (ii) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) no other person contributed money that was intended to fund preparing or submitting the brief.

**STATEMENT OF MATERIAL PROCEEDINGS AND FACTS**

MTA adopts the Statement of the Case as set forth in Peninsula Township's  
Brief on Appeal.

### **ARGUMENT SUMMARY**

The MTA concurs with the arguments submitted by Peninsula Township and the other briefs filed in support of the Township. The arguments herein are intended to not be overly duplicative of those briefs, but are believed to be essential to proper consideration by this Honorable Court. These arguments highlight issues of importance to Michigan Townships in ensuring that long established jurisprudence is sustained, and the errors of the District Court reversed. The three issues key addressed below are:

1. Lack of Jurisdiction of the District Court to hear the vagueness issue.
2. Misapplication of the standards to analyze vagueness.
3. Misapplication of the law concerning the right to a specific use.

## ARGUMENT

### I. INTRODUCTION

The astonishing \$49.2 million judgment in this case stems, naturally, from the case’s original filing in District Court. But before that filing was brought, the Plaintiffs needed to ripen their claims and establish finality in the Township’s zoning processes. The two types of wineries (by-right and special land use) had the obligation to first seek redress from the Township’s Zoning Board of Appeals and Planning Commission/Township Board, respectively. These bodies are designed to be a safety valve for the application of a zoning ordinance, and they were never given the required chance to act.

Instead, the Plaintiffs opted for a “sue-first” approach, skirting around the basic and long-established processes for addressing vague ordinance provisions. The District Court should have halted this case at the first hurdle and required the Plaintiffs to exhaust their administrative remedies and achieve finality at the Township before filing suit.

From this first misapplication of the law by the District Court, there was a cascade of erroneous determinations leading to a grossly excessive and astonishing damages award of \$49.2 million for claimed unconstitutional vagueness in the Township’s zoning ordinance language of “Guest Activity Uses.” This judgment is, as far as can be found, the largest single judgment against a municipality in the

history of the State of Michigan. And among the highest ever levied against a local government in our nation's history. \$42.9 million in damages levied against a township with a population of scarcely over 6,000 people.<sup>3</sup>

Peninsula Township's approved budget for fiscal year 2026 is approximately \$1.6 million. To pay off the judgment levied by the trial court would require Peninsula Township to dedicate the entirety of its fiscal year budget solely to repayment for more than 30 years, not including interest. If we include the required interest rate of 4.00%<sup>4</sup>, it would be impossible for the Township to pay off the debt, even dedicating the entirety of its annual budget, as interest alone would constitute almost \$2,000,000 annually. Assuming the Township could double its annual budget and dedicate the entirety of its now-doubled budget solely to repayment of the

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<sup>3</sup> U.S. Census Bureau. *Decennial Census, DEC Redistricting Data (PL 94-171), Table P1*, <https://data.census.gov/table/DECENNIALPL2020.P1?g=060XX00US2605563340>. Accessed on 17 Feb 2026.

<sup>4</sup> 28 USC 1961 provides that the interest rate for a money judgment in a civil case is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. The judgment in this case was issued on July 7, 2025. The rate for the calendar week preceding the judgment date was published on July 4, 2025 and was 4.00%. See Board of Governors of the Federal Reserve System (US), Market Yield on U.S. Treasury Securities at 1-Year Constant Maturity, Quoted on an Investment Basis [WGS1YR], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/WGS1YR>, January 26, 2026.

judgment and provide no other government services, it would take just over 25 years to repay the debt with principal and interest.

So significant a judgment must be examined with the utmost scrutiny. To establish that a municipal government with just over a dozen officials and employees<sup>5</sup> caused damages so significant that it could essentially never repay them, the alleged violation must be so staggering – so beyond the pale – that the court feels it necessary to virtually eliminate the government of Peninsula Township altogether. The factual and procedural backgrounds of this case provide surprisingly little support for the positions taken by the Plaintiffs, let alone damages in such an unprecedented amount.

The following arguments present the dispositive errors which MTA finds most egregious in establishing a basis for reversal. But as previously noted, MTA concurs with the briefing filed by Peninsula Township and other amicus briefings in support of Peninsula Township, and agrees with the numerous misapplications of law provided by those parties.

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<sup>5</sup> See Peninsula Township Staff Directory:  
<https://www.peninsulatownship.com/staff-directory.html>

II. PLAINTIFF WINERIES FAILED TO MEET THE FOUNDATIONAL REQUIREMENT OF FINALITY REGARDING THE INTERPRETATION OF “GUEST ACTIVITY USES,” RENDERING THEIR VAGUENESS CLAIMS UNRIPE.

The Plaintiff Wineries failed to undertake one of the most basic prerequisites for any case, particularly before a municipal government: exhausting administrative remedies and establishing finality. The District Court erroneously discarded the ripeness and finality requirement in favor of issuing its staggering monetary judgment. This egregious jurisdictional issue requires reversal.

This Court has previously stated that “in land regulation cases, federal courts have entertained a long-standing rule that local government entities first issue final decisions regarding the land at issue before any challenge to such decision is mature for federal review.”<sup>6</sup> Additionally, the Michigan Supreme Court has held that the concept of finality applies to as-applied challenges to a zoning ordinance alleging constitutional violations, such as Plaintiffs are alleging here.<sup>7</sup> Further, and specifically regarding a void-for-vagueness claim, the US Supreme Court has held that the availability of administrative remedies for a regulated enterprise significantly undercuts a vagueness challenge.<sup>8</sup>

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<sup>6</sup> *Insomnia Inc. v. City of Memphis*, 278 Fed Appx 609, 613 (6th Cir 2008)

<sup>7</sup> *Paragon Props Co v City of Novi*, 452 Mich 568, 576; 550 NW2d 772, 775 (1996).

<sup>8</sup> *Village of Hoffman Ests v. Flipside, Hoffman Ests, Inc*, 455 US 489, 498-99 (1982). (“Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process.”)

The Michigan Zoning Enabling Act (MZEA) provides a path for finality in zoning interpretation cases. The MZEA contemplates that local ordinances, often written by laypersons, may not always utilize the most precise terminology. For this reason, the MZEA provides for the creation of a Zoning Board of Appeals (ZBA), which “shall hear and decide questions that arise in the administration of the zoning ordinance [...]” MCL 125.3603(1).

Peninsula Township’s Zoning Ordinance, Article V, governs the duties and powers of the ZBA, which include providing “a means for competent interpretation and controlled flexibility in the application of this Ordinance.” ZO Section 5.1.1, ECF 54-16, PageID.2408. More specifically, the ZBA has the power to “[i]nterpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.” ZO Section 5.7.2, ECF 54-16, PageID.2410.

The Winery Plaintiffs were well within their rights under the MZEA and the Township Zoning Ordinance to seek an interpretation of the provisions they found challenging to understand.<sup>9</sup> Such a request would have allowed them to present information to the ZBA and obtain a binding, written interpretation upon which to base their actions. Additionally, Plaintiff Wineries with a Special Land Use permit could have sought to amend that permit through the Planning Commission and

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<sup>9</sup> Recognizing, as discussed in the next section, that the provisions are not particularly difficult to understand.

Township Board, adding the specific uses or types of uses they desired directly into their permit.<sup>10</sup>

Because the Plaintiffs did not go through the ZBA or Planning Commission/Board process and exhaust their administrative remedies, there was no final decision at the local administrative level, making review by the federal court inappropriate.

Several Federal and Michigan cases emphasize the importance of finality in zoning cases. This Honorable Court, in *Miles Christi Religious Order v Twp of Northville*, 629 F3d 533, 537 (6th Cir 2010), has previously recognized the importance of a zoning board of appeals determination before filing suit:

In the land use context, the demands of ‘a concrete factual context’ and ‘a dispute that is likely to come to pass’ converge in an instance on ‘finality,’ an insistence that the relevant administrative agency resolve the appropriate application of the zoning ordinance to the property in dispute.

The Michigan Supreme Court addressed the topic in great detail in *Paragon Props Co v City of Novi*, 452 Mich 568; 550 NW2d 772 (1996):

The finality requirement aids in the determination whether a taking has occurred by addressing the actual economic effect of a regulation on the property owner's investment-backed expectations. As noted in *Williamson [Co Regional Planning Commission v Hamilton Bank of Johnson City]*, 473 US 172, 186 (1985)], factors affecting a property

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<sup>10</sup> It should be noted that even with a special land use, a question of interpretation of a term used in a zoning ordinance (such as “Guest Activity Uses”) could still likely go to the ZBA for determination.

owner's investment-backed expectations 'simply cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question.' Investment-backed expectations are distinguishable from mere financial speculation.<sup>11</sup>

A review of the background of the *Paragon* case is instructive. In *Paragon*, Plaintiff Paragon Properties Company purchased a 75-acre parcel of land in the City of Novi in 1980.<sup>12</sup> The property was zoned for single-family residential use and was vacant, unimproved, and did not have City water or sewer services.<sup>13</sup> The surrounding properties included industrial and residential uses, as well as a mobile home development.<sup>14</sup> In 1984, Paragon requested the City of Novi to rezone the property to a mobile home district, arguing that the property had no economic potential for development under its current zoning due to adjacent industrial uses and poor drainage conditions.<sup>15</sup> The City Council denied the rezoning request and Paragon subsequently filed a lawsuit alleging that the zoning ordinance, as applied to its property, was an unconstitutional taking.<sup>16</sup>

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<sup>11</sup> *Paragon Props Co v City of Novi*, 452 Mich 568, 578-579; 550 NW2d 772, 776 (1996) (internal citation omitted.)

<sup>12</sup> *Id.* at 571.

<sup>13</sup> *Id.* at 572.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

The Oakland County Circuit Court ruled in favor of Paragon, finding the City's actions to be an unconstitutional taking.<sup>17</sup> On appeal, the Court of Appeals and Supreme Court reversed the decision of the Circuit Court, finding that the claim was not ripe because the Plaintiff could have requested a use variance and thus, there was no finality making the case ripe for review.<sup>18</sup> The court further ruled that the City's denial of Paragon's rezoning request was not a final decision "because, absent a request for a variance, there is no information regarding the potential uses of the property that might have been permitted, nor, therefore, is there information regarding the extent of the injury Paragon may have suffered as a result of the ordinance."<sup>19</sup>

While *Paragon* dealt with a variance, the legal analysis applies with the same if not stronger force in the case of an ordinance interpretation or request to amend a special land use permit. A constitutional claim cannot be ripe for judicial review if the Plaintiff has not even asked, through proper channels, if the use they desire is allowed. If the Plaintiffs had questions about the interpretation of "Guest Activity Uses," they should have requested an interpretation from the ZBA or an amendment

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 573.

<sup>19</sup> *Id.* at 580.

to their Special Land Use permit. Absent this request, it cannot be said that the Township issued a final decision ripe for review by the federal courts.

Additionally, *Paragon* observed that:

a challenge to the validity of a zoning ordinance “as applied,” whether analyzed under 42 USC 1983 as a denial of equal protection, as a deprivation of due process under the Fourteenth Amendment, or as a taking under the Just Compensation Clause of the Fifth Amendment, is subject to the rule of finality.<sup>20</sup>

During one of the District Court hearings, the Plaintiffs made the argument that because, at least for purposes of that opinion, this case was dealing with issues of preemption and that there is no requirement about exhaustion of administrative remedies and cited to *Paragon*. [ECF No. 159, PageID 5919, line 18-24]. The District Court seemingly agreed with this position without any analysis in a footnote. [ECF No. 162, PageID 5993]. Importantly, however, the damages in this case are solely based on constitutional issues, to which the principle of finality *does* apply.

Finally, it is important to note that the “futility exception” does not apply here. This Honorable Court has previously stated that the futility exception requires the possible administrative action to be an “idle and futile act” and has further held that the finality exception “only applies where a landowner has ‘submitted at least one

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<sup>20</sup> *Id.* at 576.

meaningful application for a variance.”<sup>21</sup> In this case, if there was confusion over allowed uses, the Plaintiffs should have submitted a request for a zoning ordinance interpretation. There is no argument that such an action would be futile because the ZBA is a body independent of the Township Board, and there is no way of knowing how it would have interpreted the zoning ordinance provisions at issue.<sup>22</sup> Similarly, we cannot know how the Planning Commission or Township Board would have acted on a request from the Winery Plaintiffs to amend their Special Land Use permits.

III. THE DISTRICT COURT ERRED IN FINDING THAT PENINSULA TOWNSHIP’S DEFINITION OF “GUEST ACTIVITY USES” IS UNCONSTITUTIONALLY VAGUE.

The entirety of the lower court’s \$49.2 million in damages was issued solely on the issue of Due Process and Vagueness surrounding the Township’s use of the term “Guest Activity Uses” and its impact on the wineries’ “Small Events” and “Large Events.”<sup>23</sup> Despite the lengthy discussions on other topics in the District

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<sup>21</sup> *DLX, Inc v. Kentucky*, 381 F.3d. 511, 525 (6th Cir. 2004) (quoting *Bannum, Inc v. City of Louisville*, 958 F.2d 1354, 1363 (6th Cir. 1992)).

<sup>22</sup> It should be noted that a ZBA member's independence is evidenced by the fact that they can only be removed for “misfeasance, malfeasance, and nonfeasance in office...” MCL 125.3601(9). They do not serve solely at the pleasure of the Township Board.

<sup>23</sup> See lower court judgment, ECF 623, PageID.31474-31480.

Court's several opinions, the entirety of damages comes from the allegedly unlawful restrictions on these two forms of events. There are numerous issues with the District Court's analysis and determination with respect to the Ordinance's use of the term "Guest Activity Uses" which require reversal. Principally, the term "Guest Activity Uses" as used in the Ordinance is not unconstitutionally vague.

*A. Background on Void-for-Vagueness and the Sliding Scale*

The "void-for-vagueness" doctrine, rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments, requires that laws provide sufficient clarity to ensure fair notice of prohibited conduct and to prevent arbitrary or discriminatory enforcement.<sup>24</sup> "[W]e assume that man is free to steer between lawful and unlawful conduct," but in order to do so, laws must "give the person of ordinary intelligence a reasonably opportunity to know what is prohibited so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning."<sup>25</sup>

The "void-for-vagueness" doctrine is traditionally applied more strictly to criminal statutes, where our most important rights and liberties are placed in jeopardy. Indeed, the two cases relied upon by the District Court in its judgment both

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<sup>24</sup> *Hill v. Colorado*, 530 U.S. 703, 732; 120 S.Ct. 2480 (2000); *see also United States v. Edwards*, 783 Fed Appx 540, 545 (6<sup>th</sup> Cir. 2019).

<sup>25</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

concerned criminal statutes with criminal penalties.<sup>26</sup> In these criminal cases, the void-for-vagueness doctrine is understandably applied strictly, as the costs of liberty for violating a criminal ordinance can be great.<sup>27</sup>

However, the void-for-vagueness doctrine is not a one-size-fits-all analysis.

Our Supreme Court explained the sliding scale concisely:

The degree of vagueness that the Constitution tolerates -- as well as the relative importance of fair notice and fair enforcement -- depends in part on the nature of the enactment. Thus, economic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process. The Court has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe. And the Court has recognized that a scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed.<sup>28</sup>

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<sup>26</sup> See cases cited by the District Court First Opinion, ECF 162, PageID.6017, which both concern criminal statutes: *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) (invalidating a city ordinance that made it a criminal offense for people on sidewalks to “conduct themselves in a manner annoying to persons passing by”); *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (concerning criminal offenses for noise and picketing).

<sup>27</sup> *Village of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-99 (1982).

<sup>28</sup> *Id.*

*B. Violations of the Zoning Ordinance are civil, economic regulations subject to a less stringent vagueness analysis.*

The regulation on “Guest Activity Uses” in the present case is precisely the type described by the Supreme Court as subject to a less strict vagueness test. The regulations here are more akin to an “economic regulation” with “civil rather than criminal penalties[.]”

At the time of dispute, the Zoning Ordinance provided two sections on penalties with respect to Guest Activity Uses. The first is the general “Violations and Penalties” section applicable to any violation of the Zoning Ordinance as a whole, which provides in relevant part:

Section 4.2.1 Violations and Penalties: Any person, firm, association, corporation or other entity which shall violate any provision of this Ordinance in any particular [...] shall, unless such violation has abated, ceased to exist or otherwise been remedied within fifteen (15) days after being provided with written notice of such violation from the Enforcement Officer, be deemed to be responsible for a municipal civil infraction as defined by Michigan statute, which shall be punishable by a civil fine for each violation to be determined by the Court, along with costs which may include all expenses, direct and indirect, to which the Township has been put in connection with municipal infraction. Costs of not more than \$500.00 shall be ordered. A violator of this Ordinance shall also be subject to such additional sanctions and judicial orders as are authorized under Michigan law. Each day that a violation continues to exist shall constitute a separate violation of this Ordinance. Provisions of this Ordinance may also be enforced by suit for injunctive relief.

The second penalty related to “Guest Activity Uses” is specific to such uses, described in Section 8.7.3(10)(u)(8)(d):

Any violation of the Special Use Permit issued for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for closing the Guest Activity Uses use by the Township Board. In the event any such alleged violation is made in writing to the Township Board, the Township shall give written notice of such alleged violation to the Applicant at the last address furnished to the Township by the Applicant. The notice shall state that unless the violation is corrected or resolved to the satisfaction of the Township Board within 30 days from the date of the notice, the Township Board shall require the Owner to close all Guest Activity Uses on the premises, after hearing, until such time as the Township Board removes the restriction. In the event a hearing becomes necessary, the Township Board shall establish the notice requirements and such other conditions with respect to the hearing as the Township Board shall deem appropriate.

Because the penalties for violations of the Zoning Ordinance as it relates to “Guest Activity Uses” are purely civil, they are subject to a less stringent vagueness analysis under *Village of Hoffman Estates*. Under this less stringent analysis, and indeed even under a more stringent analysis, the Township’s regulations on Guest Activity Uses were not unconstitutionally vague and provided more than adequate notice of the types of activities it permitted and prohibited.

*C. The Zoning Ordinance provisions on “Guest Activity Uses” are not unconstitutionally vague and adequately describe the types of activities permitted.*

The provision on “Guest Activity Uses” spans five pages within the Township’s Zoning Ordinance.<sup>29</sup> The District Court found that the language within these five pages was so vague and unclear that it constituted not only a violation of the Constitution but was singularly responsible for \$49.2 million in damages. The District Court drew this conclusion principally from a set of differing statements made by various Township officials as to their own personal interpretations of the Ordinance language.<sup>30</sup>

But we need not go so far – the casual beliefs of various municipal officials, some of whom had no role to play in the interpretation or enforcement of zoning ordinances, cannot take precedence over plain language.<sup>31</sup> Indeed, this Court has stated previously: “although we find it disturbing that city officials demonstrated such confusion regarding the straightforward Ordinance they were responsible for implementing, [Plaintiff] has not shown that the Ordinance itself is

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<sup>29</sup> See ECF 54-16, PageID.2516-2521. This is the version of the Ordinance attached to the Plaintiff’s Motion for Partial Summary Judgment, upon which the District Court ruled that the “Guest Activity Uses” term was unconstitutionally vague.

<sup>30</sup> The District Court’s opinion did not even provide the title of the individual when quoting their deposition testimony, only stating their name and that each person was a “Township representative[]” of some capacity. ECF 162, PageID.6017-6018.

<sup>31</sup> See e.g. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (“It is well established that when the statutory language is plain, we must enforce it according to its terms.”)

unconstitutionally vague.”) *600 Marshall Entm't Concepts, LLC v City of Memphis*, 705 F3d 576, 587 (6th Cir 2013).

For example, the District Court took issue with the competing views of two Township officials, one of whom said Guest Activities are limited to persons staying overnight, and the other of whom said that Guest Activities are permitted for persons not staying overnight. But the Court put the cart before the horse. Section 8.7.3(10)(u) describes Guest Activity Uses as “[a]ctivities by persons who may or may not be registered guests.” Section 8.7.3(10)(u)(1)(f) further specifies: “Overnight stays at the Winery-Chateau are not required for these Guest Activity Uses.” Indeed, this single example constituted virtually the entirety of the District Court’s analysis<sup>32</sup> on the issue of vagueness and yet is succinctly and completely resolved by a cursory reading of the Ordinance language.

The District Court went on to engage in slightly more analysis to opine that “[t]he Township has represented that weddings, wedding receptions, entertainment events, and family reunions are not Guest Activities for which a Winery-Chateau needs Township approval, but that wine pairings, vineyard tours, painting classes, and happy hours are Guest Activities that require prior Township approval.” [ECF 162, PageID.6018.]

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<sup>32</sup> See ECF 162, PageID.6016-6018.

Although some of those events and activities may be similar, and the lines drawn between them somewhat nuanced, such is precisely the type of legislative decision-making that Michigan has granted to its localities, and not the courts. The Michigan Supreme Court has explained in no uncertain terms:

In view of the frequency with which zoning cases are now appearing before this Court, we deem it expedient to point out again, in terms not susceptible of misconstruction, a fundamental principle: *this Court does not sit as a superzoning commission*. 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. With the wisdom or lack of wisdom of the determination we are not concerned. The people of the community, through their appropriate legislative body, and not the courts, govern its growth and its life.<sup>33</sup>

The fact that the Ordinance does not describe all possible permissible and impermissible uses and instead leaves some discretion and distinction to further review by the Township, does not render the Ordinance unconstitutionally vague. Instead, this reflects the near-universal standard for Zoning Ordinances. The types of uses to which citizens put their land are limited only by the spirit of their imaginations. Rather than attempt the impossible task of listing all those uses, Peninsula Township, like virtually all other townships in the State, provided

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<sup>33</sup> *Macenas v. Michiana*, 43 Mich. 380, 391-92; 446 N.W.2d 102 (1989) (emphasis in original) (quoting *Brae Burn, Inc v. Bloomfield Hills*, 350 Mich. 425, 430-31; 86 N.W.2d 166 (1957)).

examples and guideposts of types of activities that are permitted and unpermitted, and otherwise required that wineries seek approval from the Township. It would be practically impossible for a township of any size to list every single possible type of permitted and unpermitted use in its zoning ordinance. This is precisely why courts have consistently held that “condemned to the use of words, we can never expect mathematical certainty from our language.”<sup>34</sup>

The language of Peninsula Township’s ordinance provides fair notice of the type of uses that are permitted as “Guest Activity Uses,” and requires those with further questions or concerns to follow the standardized and straightforward administrative process to resolve any confusion. Such is the standard practice of municipalities across the State and does not warrant \$49.2 million in damages.

IV. PLAINTIFF WINERIES DO NOT HAVE A PROTECTED RIGHT TO ENGAGE IN SMALL OR LARGE EVENTS ON THEIR PROPERTIES, MAKING THEIR DAMAGES NONEXISTENT.

The claim of damages arising from the Township’s *potential* prohibition of certain activities is significantly undercut by the fact that the Township could have *explicitly* prohibited all those same activities within the bounds of the MZEA and

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<sup>34</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972); see also *Platt v. Bd of Comm’rs on Grievances & Discipline of Ohio Supreme Court*, 894 F.3d 235, 246 (6<sup>th</sup> Cir. 2018); see also *Charter Twp of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594, 632; 673 N.W.2d 111, 134 (2003).

Constitution. The Winery Plaintiffs argue in essence that the zoning regulations were unclear, which resulted in them declining to engage in certain activities which they believed may not have been permissible. Setting aside the discussion above regarding the Wineries' administrative options, their argument begins from the flawed premise that they are somehow entitled to engage in certain types of small and large events.

The very purpose of a zoning ordinance is to regulate, and in some cases restrict, the uses of land within a jurisdiction. Under Michigan law, property owners do not have an absolute right to engage in their preferred or most profitable use of their property. Michigan courts have noted that "it is well established that a municipality is not required to zone property for its most profitable use [...]."<sup>35</sup> Indeed, the US Supreme Court has stated much the same: "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."<sup>36</sup>

To challenge a zoning ordinance as an unlawful taking, "an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purposes to which it is reasonably adapted."<sup>37</sup> This

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<sup>35</sup> *Dorman v. Twp of Clinton*, 269 Mich. App. 638, 647; 714 N.W.2d 350 (2006).

<sup>36</sup> *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1991).

<sup>37</sup> *Kropf v. Sterling Heights*, 391 Mich. 169; 215 N.W.2d 179 (1974).

requires more than merely showing a reduction in property value or the inability to pursue the most profitable use, and the property owner must instead show that the property is “either unsuitable for use as zoned or unmarketable as zoned.”<sup>38</sup>

These cases affirm the well-established principle that a property owner in Michigan does not have a right to engage in any or all potential uses of their property, no matter how profitable or beneficial those uses might be. The Wineries’ alleged damages stem from their confusion over whether or to what extent they could host certain small and large events. But as these cases make clear, the Township was entirely within its authority to completely prohibit the small and large events that the Wineries sought to host. The winery properties were not rendered completely unusable or unmarketable as zoned, as evidenced by their years of continued operations before and during the pendency of this case. Although they are clearly upset that they cannot turn a maximum profit from their land, such is not a right they are afforded under Michigan zoning law.

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<sup>38</sup> *Dorman* at 647.

**CONCLUSION**

On the basis of the foregoing arguments, Amicus Curiae MTA respectfully requests that this Honorable Court reverse the District Court Order and Judgment in this case and remand for judgment in favor of Peninsula Township.

Respectfully submitted,

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Dated: February 20, 2026

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5).

The brief has been prepared in proportional typeface using times New Roman (14-point). The brief was typed using Microsoft Word, Version 2019. That program has a function that calculates the total number of words contained in a document. According to the program function, there are 6,384 words, including footnotes, in this brief, not including the parts excluded by Federal Rule of Appellate Procedure 32(f).

By: /s/ Robert E. Thall, for MTA

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2026, I electronically filed on behalf of MTA the Brief as Amicus Curiae in Support of Defendant-Appellant/Cross Appellee Peninsula Township with the Clerk of the Court of the United States Court of Appeals for the Sixth Circuit using the ECF system, which will send notification of such filing to all counsel of record.

By: /s/ Robert E. Thall