

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686
www.peninsulatownship.com

TOWNSHIP BOARD SPECIAL INFORMATIONAL MEETING MINUTES

October 6, 2021, 7:00 p.m.

St. Joseph Catholic Church Conference Room
12675 Center Road, Traverse City, MI

Additional correspondence received prior to the start of the meeting added to the end of minutes and to the meeting packet.

1. Call to Order: 7:10 p.m. by Manigold

2. Pledge

3. Roll Call: Present: Sanger, Bickle, Manigold, Chown, Achorn, Wahl, Wunsch

4. Approve Agenda: No motion was made

5. Conflict of Interest:

6. Consent Agenda:

A. Minutes from September 14, 2021, regular township board meeting

B. Correspondence

1. Fred Glass

Moved by Bickle to approve the [consent] agenda as presented, seconded by Wahl.

Roll call:

passed unan

7. Business:

1. Presentation on the amended complaint brought by the Wineries of Old Mission Peninsula (WOMP) against Peninsula Township

Greg Meihn: introduced Attorney Joseph Enfante, WOMP's counsel. Gave a PowerPoint presentation summarizing and explaining each count of the amended complaint. Gave a timeline of the legal events associated with the lawsuit filed on 10/21/2020. Explained that the plaintiffs have filed for summary judgment, the township has asked for summary judgment, and a decision has not yet been made. Protect the Peninsula has filed two motions: to intervene in the lawsuit (this likewise has not been decided) and to have the state claims removed to the Grand Traverse County Circuit Court and leave the federal claims in federal court. Said the ongoing discussions/facilitation are covered by the 408 rule and cannot be discussed by board members. Said the plaintiffs filed an early motion consisting of a preliminary injunction against enforcing the zoning ordinances and the court ruled there was not enough evidence. Explained damages and summarized the process of facilitation/mediation; said the parties have engaged vigorously in mediation. Said that, moving forward, updates will be provided monthly at Peninsula Township board meetings.

2. Citizen comments (comments will be limited to three minutes each)

Joseph Enfante, the attorney representing the wineries: has read the letters and e-mails from the public. Said the wineries are not looking for nightclubs, bars, or liquor licenses. Said the wineries want to use Old Mission Peninsula fruit and are not asking for five-acre wineries. There have been approximately twenty-five hours of mediation to date. Has a settlement agreement signed by WOMP and is ready to move forward.

Township Board Minutes

October 6, 2021

Beth Chan, Recording Secretary

Pier Cohl, 9466 Rolling Ridge, Peninsula Township: is concerned about the legal procedures. The lawsuit tries to modify the winery and zoning ordinances. Some of the complaints sound reasonable but is concerned about the heart of the proposed changes; believes there is a need to adhere to the statutory requirements to amend the ordinances. Since the court has not ruled on the summary judgment motion or on Protect the Peninsula's motion to intervene, urges the township to wait and not sign the settlement agreement.

Jim Grove, 15919 Upper Birch, Peninsula Township: it is important to avoid second-guessing what the attorneys have already accomplished. The town board and wineries have participated in mediation. The people have entrusted the town board to listen to their attorney just as the wineries have listened to their attorney.

Susan Linden, 4918 Forest Avenue, Peninsula Township: how much will taxes increase in response to the additional services that will result from an increase in events? Second, how much will traffic increase? Can an unbiased assessment and figure be provided?

Emily Gest, 1443 Linwood Ave, Peninsula Township: Protect the Peninsula does not want to shut down or undermine the wineries; it is concerned about the process that occurs when zoning changes are made. The wineries knew the rules from the beginning. Summarized the differences between the wineries in Leelanau County and Peninsula Township in terms of restaurants, catering, events, hours, and the number of wineries (wineries are allowed in only two of 11 townships in Leelanau Co.). Feels it will be a disaster to our quality of life if WOMP prevails.

Monnie Peters, 1425 Neatawanta Road, Peninsula Township: the township board has a draft of the master plan that contains a description of the peninsula as an island and a bridge. Spoke about the traffic problem. In addition to the number of houses, the township has to look at commercial activity with an understanding of the traffic issue.

Tom Delluge, 18654 Center Road, Peninsula Township: spoke about a friend who opened a winery in California and the problems that Pasa Robles, California, has encountered. Today, Pasa Robles has 350 wineries. Summarizes how the wine groups in California push for the wineries. Asked that Peninsula Township and the wineries draft an agreement that precludes any future lawsuits. Suggested implementing a per drink or corkage fee to supplement the PDR program.

Michael Dettmer, South Mathison Road, Peninsula Township: serves on the Protect the Peninsula board. Commented on the settlement process and the role of judges. The mediator should not ask that the meeting be held confidentially. A public board should not be put in this position. Summarized rule 408. Protect the Peninsula wants to be part of creating a successful settlement. This matter should move forward in a public process.

Mark Santucci, 11789 Center Road, Peninsula Township: believes the peninsula has become a wealthy retirement community and that cherry farms will continue to decline. Vineyards have replaced cherry farms. Wineries do not make as much money as people think. The future of the peninsula is agro-tourism. Developments might expand if agro-tourism does not expand.

Township Board Minutes

October 6, 2021

Beth Chan, Recording Secretary

Jim Floraday, 13517 Bluff Road, Peninsula Township: spoke about the hours wineries are open. It is fortunate we do not have more accidents with intoxicated drivers. His best friend, his brother, who was killed by a drunk driver. Shared statistics from a graph.

Eric Dreier, 12434 Peninsula Drive, Peninsula Township: the decision before the board is pivotal and will change the township forever. Briefly reviewed the PDR ordinance supported by the township citizens to tax themselves to preserve agriculture and preserve open space. Urged the board to preserve the township as it is.

David Taft, 952 Nehtawanta Road, Peninsula Township: the residents have said no to the WOMP lawsuit. The citizens have the right to govern themselves. The wineries accepted the terms of their SUPs when they applied for them. Asked that the mediation be opened up to the citizens. Spoke about the PDR program. Emphasized that residents want a rural agricultural community.

Mark Nadolski, 10 W. McKinley Road, Peninsula Township: is president of Protect the Peninsula. Gave a brief history of Protect the Peninsula and Peninsula Township's quest to preserve agricultural properties. Protect the Peninsula does not want commercial property to eat up agricultural lands. Changing the character of the peninsula is not what the citizens want, and they rely on the township government to maintain that character.

Jo Westphal, 12414 Center Road, Peninsula Township: showed the new *Oxford World Atlas* with a photo of the Grand Traverse region and specifically Old Mission Peninsula on the cover. This photo should remind the citizens of what is at stake and the fate of the peninsula. Our future needs citizens to protect the quality of life and the resource base. Commented on the attributes of good governing bodies and active citizens in discussing issues.

Wendy O'Brian, 10783 Woodview Terrace, Peninsula Township: winery patrons will stay longer if the wineries serve food. The Jolly Pumpkin is an example of a wedding venue, restaurant, and tasting room. Does not feel winery expansion will disturb our quality of life.

Brit Eaton, 1465 Nehtawanta Road, Peninsula Township: is disappointed by the overreaching demands of WOMP, which circumvented the zoning process with a lawsuit. The agricultural, residential, and township board should be in on the decision. Gave an example of activity with wineries in Sonoma County, California. A set of guidelines were developed with a citizen advisory committee. In any negotiation settlement, the township should hold out until WOMP agrees to a citizen advisory committee. Through this, the township residents can be involved.

Jeremy Day, 13286 Center Road, Peninsula Township: his farm revenue is very low. He is a farmer and would like restrictions loosened for all farmers, not just the wineries. His farm may fail due to all the rules. If it does, he says his farm will become houses.

Jim Curruthers, 14114 Bayview, Peninsula Township: the increased traffic is a bottleneck by Garfield. Traverse City cannot do anything about the traffic. The city will slow the traffic speeds in the prime neighborhood at the base of the peninsula. Spoke about the regional drinking problem; said our region needs to decide how much alcohol is too much.

Township Board Minutes

October 6, 2021

Beth Chan, Recording Secretary

Grant Parsons, 6936 Mission Ridge, Peninsula Township: spoke about the unique balance between agriculture, residents, and the best quality of life. Asked that the process and mediation be made public. The process should be delayed and opened up; asked the township to not respond to threats.

Lou Santucci, 12602 Center Road, Peninsula Township: does not agree with the views of Protect the Peninsula. Residents use cars that add to traffic. He has not heard noise from the wineries; instead, rumble strips make noise. Wineries should provide food and an education; dinner is not the answer.

Tim Prescott, 515 S. Lynn, Champaign, IL, owns property in Peninsula Township: spoke about the special nature of the peninsula. The use of the word "government," to him, refers to we the people. He wants to protect the peninsula.

Paul Conlen, 2381 Carrol Road, Peninsula Township: lives close to Peninsula Cellars; has not had issues. Is opposed to the establishment of more commercial activity.

Bob Calt, 6269 Summit Court, Peninsula Township: moved here for the quality of life. Feels it has been maintained and credits the PDR program. Wineries are corporations; they are good at not paying taxes or taking responsibility for their acts and omissions. The town board has the responsibility to let the citizens know what its members are negotiating.

John Wunsch, 17881 Center Road, Peninsula Township: supports farm processing and the fair balance the current ordinances allow. Believes there is room to negotiate. Wineries diversify the crop base and expand farm labor. Wants the matter and process to come back to the public.

Jill Terralavoro, 1317 Veterans Drive, Traverse City: is a current winery employee. Working at a winery is not dreamy; it is hard work. The wineries are family-owned small businesses. She sees potential for the Traverse City area. The wineries want to provide career opportunities for the employees.

Anna A., 3347 Swaney Road, Peninsula Township: works as a farmer on the peninsula. Sees gatekeeping and not a lot of young people in the audience. Feels progress needs to be allowed. Says wineries do not want to throw parties.

Elise Holman, 4309 Grant Street, Traverse City: a lot of people do not know what goes into an agricultural operation. Often farmers have to have second jobs. There needs to be room for agricultural properties to stay alive and make revenue. Farmers need the same rights the wineries are pursuing.

John Jacobs, 5290 Forest Avenue, Peninsula Township: is a Protect the Peninsula board member. Is concerned that the peninsula will be altered forever. Noise travels on the peninsula; he often hears noise from the two wineries near his home. Is concerned that the peace and quiet will be taken away.

Harold David Edmondson, 12414 Center Road, Peninsula Township: participated in meetings with the planning commission and the wineries and feels nothing was accomplished; feels that is the reason for the lawsuit. Says things are not getting done in the township and blames lack of leadership. Cited a Networks Northwest study. Talked about the PDR program.

Township Board Minutes

October 6, 2021

Beth Chan, Recording Secretary

Robin Dailey, 13914 Bayview Avenue, Peninsula Township: commented on the noise issue. It is a problem because sound travels over water and can be very bothersome. The wineries understood the rules by which they were to operate when they began.

Jaime L. Hall, 4872 Center Road, Peninsula Township: is not against the wineries, but Center Road is only one road. Traffic has grown; how much can the road handle? Commented on tourism and the Pure Michigan culture that is advertised. Has had seven auto accidents in her front yard including one death.

T.J. Andrews, 619 Webster Street, Traverse City: is the attorney representing Protect the Peninsula. Commented on precedents in the winery lawsuit. Since 1935, the law has changed; townships routinely set hours. The wineries want to write the zoning ordinances outside the zoning process and have sued the township; they want to rewrite zoning under private mediation and this is dangerous. WOMP's attorney has threatened to sue individual board members. Is trying to bully the township. Asked the town board to share the agreement with the public and embrace a public process.

3. Closed session per MCL 15.268(e) to discuss the proposed settlement agreement that was created as a result of numerous meetings between a representative from WOMP and Peninsula Township and to review written document prepared by the attorney

Moved by Wahl to go into closed session to discuss the proposed settlement agreement that was created as a result of numerous meetings between representatives from WOMP and Peninsula Township and to review the written document prepared by the township attorney, seconded by Bickle.

Roll call: passed unan

4. Return to open session per MCL 15.261 to vote on the settlement agreement

Moved by Bickle to return to open session, seconded by Chown.

Roll call: passed unan

Moved by Bickle to reject the settlement proposal as presented due to the fact it is an all or nothing proposal. Further directs the negotiating committee to approach the plaintiffs to form a citizens' committee to work through the issues raised by WOMP in a public process that will end the lawsuit as a community decision, seconded by Wunsch.

Roll call: passed unan

8. Citizen Comments:

Lew Siebold, 3195 Cherry Hill Road, Peninsula Township: grows cherries, blueberries, and cut flowers. Wishes the discussion could be reset and framed another way. This generation and the future generation need to preserve a working landscape. If we don't retain a working landscape, we will become an agricultural theme park. Special regulations should not be carved out for the wineries. All forms of agriculture should have the same regulations in the same zone.

9. Adjournment:

Moved by Bickle to adjourn, seconded by Wahl. passed unan

Adjournment at 9:45 p.m.

Dear Township Board Members,

To you, and my friends, neighbors, and fellow farmers:

First and foremost, I have to apologize for not being able to present this to you in person tonight. I would have loved to be there with all of you and in the midst of this developing conversation, but due to COVID concerns I cannot physically be present tonight. That being said, I would like to address you on an issue that is important to me, to WOMP, and to the future of the OMP.

I know that you have heard a lot of negativity and propaganda against WOMP and I would urge you to set aside judgement for a moment and hear out an alternative perspective.

Let me first give you some historical context for what has come to pass and brought us where we are today. Back in the 90's I, and a few others, were the original authors of the winery ordinance on the peninsula and found out through George McManus that there's something called the Right to Farm Act of 1981, Act #93. Through this act, as long as one follows the outlined general agricultural practices, their rights to farm are protected. During that time agriculture was coming under increasing pressure from suburban growth, pushing the farmers that had historically been there out, and paving way for more housing developments. The Right to Farm Act was supposed to protect us, and the agricultural industry at large. During that time they came up with GAMP (Generally Accepted Management Practices), and again, as long as those rules were adhered to, you and your agrarian livelihood were to be protected under the Right to Farm Act.

I feel it necessary to clarify here that wineries fall into the accepted practices of the farm community, the Right to Farm Act, and GAMP, the very legislation that was designed to protect agriculture. What is more, agrotourism is clearly protected under the Right to Farm Act. Which is exactly why we passed the wine ordinance for the peninsula back in the late 90's. I will be the first to tell you that that ordinance was immediately overturned by PTP, and I cannot mince words in telling you that that was the direct result of their spewing half-truths and innuendos, much like the smear campaign we are experiencing today.

Once the original document was overturned, a second document was proposed, has stood for the better part of the last 20 years, and is what we are attempting to operate under today. However, the existing document overtly inhibits the very livelihood of the wineries on the OMP, and in a dwindling agrarian community those wineries have become the very lifeblood of the OMP and offer an overwhelming majority of the jobs in this area. Our growth, and continued existence, are in direct jeopardy from this existing ordinance and are threatened by these legal impositions and misrepresentations of the Right to Farm Act.

I would like to take a moment here to call attention to the fact that I too have called the OMP home for 30 years, would like to see it preserved, and am emotionally and financially invested in both its history and its future. I like all of you, love it here and am willing to fight for its continued vitality. That is why I took it upon myself to purchase Phase 2 of Underwood Farms and have used my own money to protect the gateway view of the base of the peninsula. I have invested in this community, created jobs, literally and figuratively cultivated the soil, and come to you today to ask to not only be able to continue to do so, but to pave the way for the next generation of farmers on the OMP.

I write to you today on behalf of myself, all the wineries on the Old Mission Peninsula, and our community as a whole. All that we are asking for is that we continue to be allowed to exist, flourish, and grow on the Old Mission Peninsula. We are here to preserve the agricultural legacy on the Old Mission Peninsula and the families that have lived off of it for generations. What many of you seem to not understand here is that WOMP is not only trying to protect ourselves, but also our agrarian neighbors and heritage. The restrictive nature of this township board of 150 square feet for a farm market is also in direct violation of, and not in adherence to, the Right to Farm Act. I am also here to tell you that Value Added Farming is the only way that we're going to be able to survive out here, both the wineries and the farm stands and markets. We are trying to support an otherwise dying way of life in the 21st century, alongside our suburban neighbors, and we are just as invested as all of you in keeping drunk driving and delinquent behavior from undermining our homes and way life, if not more so. For you it is homestead, but for the overwhelming majority of us it is our homestead and our way of life that are at stake.

If you read through the complaints currently being lodged against the wineries, you will see that much of the underlying opposition is based off of the OMP's lack of infrastructure rather than the wineries existence or alleged negligence. Grand Traverse county as a whole has experienced tremendous growth and increased tourism over the last 10 years, and it is beyond shortsighted and single-minded to singularly blame the wineries for the increased noise, traffic, and "beer cans in the lake." I'll be the first to admit that I am often frustrated by some of the same things, but this is not the fault of the wineries. Rather it is symptomatic of the unprecedented growth this area has seen as a whole. It is wrong in every sense of the word to blame this on WOMP, to make us responsible for the governing bodies of this areas inability to manage and regulate the influx of tourism, and to penalize us for existing in a traditionally agrarian space.

I do not see or hear anyone contacting the many outfits that promote tourism in the area and telling them to stop campaigning for people to come here or asking the myriad of festivals that are hosted here to cease to exist. PTP and PDR are singling out wineries as the culprit and in doing so undermining what could be a thriving community. The wineries are not open early in the morning or late at night, and therefore inherently cannot be contributing to much of the noise and traffic being complained about here. They also are never in violation of sound ordinances at they're never even open and in operation during designated quiet times.

What I am getting at here is that it is unjust, and inaccurate to solely blame increased traffic and pollution on WOMP – there are many attributing factors and all that we will achieve in undercutting and stifling WOMP is the destruction of a local economy that creates a multitude of jobs for the people that live here and helps preserve the legacy of agriculture into the future. Do not allow short-sighted thinking and a basic lack of understanding of the many variables that contribute to the issues outlined here to kill one of our last remaining local economies and agrarian efforts.

At the beginning of this letter, I asked you to set aside your preconceived notions and to hear out an alternative perspective, and that alternative perspective is this: undermining WOMP and damaging the already dwindling agrarian community on the OMP is not only a disservice to the members of WOMP, but to the peninsula as a whole. It is missing an opportunity to come together as a community, agrarian and suburban, to find a way to work cohesively together, and not against each other for the first time, to preserve the community and ecology of our home, the OMP. We have a rare opportunity to unite seemingly rival factions in a common goal – the preservation of a way of life that is increasingly coming

under the gun in the modern world. I urge you to not allow a basic lack of understanding of the situation as a whole to misguide you into erroneous judgements of what could be all of our saving grace: thriving farm wineries, markets, and stands, living alongside homesteads, and all the natural splendor that this area has to offer.

In closing, if you cannot find it in your minds, or hearts to comprehend the magnitude of the detriment that you are not only doing to the wineries of Old Mission Peninsula, but also the community at large, then I have another perspective to offer. Either allow us to make money on our farms that we've spent our lives building and protecting, or allow us to purchase our development rights back. But I would warn you that should you choose to go the later route you are not only doing great harm to the OMP's legacy of agriculture, but also undermining generations to comes' right to the preservation of, and access to, the agrarian lifestyle that built the very fabric of this community and economy of this area.

Respectfully,

Robert Mampe

363 E. McKinley Rd

Traverse City MI, 49686

Rebecca Chown

From: Jack Knol <aead@sbcglobal.net>
Sent: Wednesday, October 6, 2021 5:39 PM
To: Becky Chown
Cc: Jack Knol; Beth Knol
Subject: WOMP lawsuit

Dear Becky Chown:

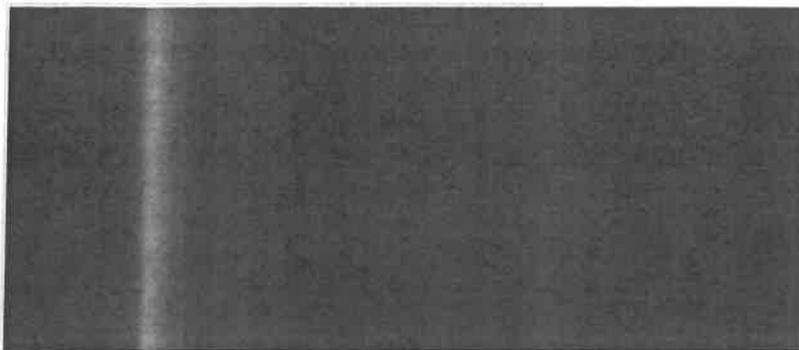
We feel the WOMP lawsuit is a travesty of justice for the following reasons,

Beth and Jack Knol @ 7042 Peninsula Drive [October 6, 2021 At 5:33 pm](#)

We hope to be able to make it to the meeting at St. Joseph's church to hear about WOMP's wining about their huge problems of not being able to ruin the quiet nature of our Old Mission Peninsula. Maybe they should get more cheese to go along with all their wining. I am sure they would make the OMP much more hectic and even dangerous serving wine to much larger groups and then also serving wine later into the night as they don't seem to limit the wine consumption in the interest of the almighty dollar which is most of their problem in that they think they have lost thousands of dollars in revenue and feel persecuted in that so much of their tourists are going elsewhere for their drinking and partying.

We have personally witnessed bridal parties leaving these establishments where the attendees have trouble walking to the buses that are carting them around to the wineries. We have also witnessed two vehicle accidents along Peninsula Drive very near to our home where the drivers went off the road and totaled their cars. One person drove right through a garage and landed on the bay side off the road. The other one sheared off a power pole and landed almost in the bay. We know of one women that was killed further out on Peninsula Drive. And just recently a car went off the road and sheared off the mailboxes on the East side of Peninsula Drive after leaving the road and losing control of their automobile.

All of these incidents or most were due to DUI drivers. If the wineries get their changes it would increase the danger of having buzzed drivers along the only two main roads stretching the length of the Peninsula. Already we have most drivers exceeding the speed limit of 35 mph on Peninsula Drive in front of our home. And I can predict that M-37 at 55 mph would be more dangerous with buzzed drivers at night and during the winter months. Please don't be worried about the 44 page lawsuit as it is just a bunch of wining by owners already making plenty of money and they are just being greedy in the face of safety to our roads in wanting larger and larger groups and longer hours into the the night time. The zoning ordinances are to protect the residents living on OMP and not to help the wineries make more money.



**Winery Lawsuit - Read WOMP's
Amended Complai...**

The Peninsula Township Board has
scheduled a special informational meeting
for residents to voice their thoughts...

- Thank You,
Jack Knol
7042 Peninsula Drive
Traverse City, MI 49686
Cell 231.631.8629
aead@sbcglobal.net

Rebecca Chown

From: Brian Craig <bkcraig2326@gmail.com>
Sent: Wednesday, October 6, 2021 5:43 PM
To: clerk@peninsulatownship.com
Cc: Vickie Craig; info@protectthepeninsula.com
Subject: Input on Winery Lawsuit for Community Meeting

Dear Clerk Chown and Peninsula Township Board,

Thank you for this opportunity to write in opposition to the demands of the wineries in their lawsuit against the Township (and thereby against its citizens).

We are recent new year-round township residents, having purchased a home on Dawn Circle in the Horizon Hills subdivision, where we are in the process of renovating our 1970's ranch-style house. We have been taxpayers in the Township for over 20 years, owning a slip at Bowers Harbor Yacht Club.

We have two primary concerns regarding the wineries' demands:

1. The taking of our property rights by the noise of extended hours and amplified music, and
2. The increased danger on our already busy roads due to alcohol-impaired drivers.

Unwanted amplified music takes away our right to enjoy our property, our home and neighborhood in peace. It does so without our permission. The peace and quiet and dark night sky of the peninsula are treasures that are represented both by enjoyment and by the value of residential properties. We live in eyesight of Mari Vineyards, and if you can see a thing you can hear it. Amplified music extends that by going far beyond line of sight. As an architect and educator, I have taught acoustics, as well as design and planning. Based on that expertise, I submit that here are no distances large enough or forests dense enough on the peninsula to buffer neighbors from amplified music. The sounds of high-horsepower boats provide ample proof of that.

Both as drivers and bicyclists, we are already concerned about the safety of our roads. Vineyard "tasting" rooms are crowded, with interior spaces and parking lots often overflowing. We and others have so far been fortunate regarding impaired driving, but at 55 mph there is no room for error. The duty of public safety and welfare is too important for the Township to abrogate. As citizens and businesses the wineries bear significant responsibility.

We are disappointed that Township resources must be used in the defense of this indefensible lawsuit. Having said that, please do defend against it vigorously.

Thank you again for this opportunity. I cannot attend this evening, but am glad to make myself available as a resource in support of our neighbors and community.

Sincerely,

Brian K. Craig, FAIA
Architect

and

Mary V. Craig

Rebecca Chown

From: [REDACTED]
Sent: Wednesday, October 6, 2021 5:46 PM
To: supervisor@peninsulatownship.com
Cc: clerk@peninsulatownship.com
Subject: wineries on the peninsula

Hello,

I'd like to be anonymous since I worked in the wine industry for 15 years on the peninsula, in many positions, not just in the tasting room.

I want to voice my opposition to what the wineries "want" to do. They are wineries (well, most of them), by definition a place to make wine. They have wine tasting rooms, a place to TASTE wine. They are not bars and should not be considered as such. They are not event centers, and should not be considered as such. There are limitations to how much fruit from off the peninsula they can put in their wines. And there is only so much land on old mission with which to grow grapes. They will be limited. A thought that should have occurred before opening a winery on old mission. They are being greedy. They claim they employ many people, however, not all of us want all the traffic coming and going on our limited North-South roads, especially into the evening and night when sound carries farther. There is so much wrong about what they are trying to do, and its just the start. Once wineries aren't destination weddings anymore (and there WILL come a time), then they'll want to be able to do whatever the next bandwagon is. I know a few of the owners and they don't respect you. They want to do what they want and plan to unless there are consequences. I do hope you do the right thing and don't allow what they are asking. You can't go back once this is done, but you can always slowly make changes.

Looking forward to hearing the result of the meeting tonight.

Thank you

10/06/2021

Dear Council,

We are steadfastly against any expansion of the Old Mission winery's hours and scope of drinking (parties, events, weddings ect) at their Old Mission facilities. They knew the rules of the township when they opted to get into the wine business. They accepted it. Now they must abide by it.

I must admit, I don't know the legal definition of agricultural vs commercial property, but an event center is not a agricultural enterprise. Like everyone else, if they need to expand their earnings and profit centers, they should get their sales force out and sell more wine.

We live on Peninsula Drive and enough cars end up in our front yard (we live on a decreasing radius curve) or they get stuck on the beach side of the of our property as it is. This happens 4 or 5 times a year. Note, this rarely happens under the cover of night. It happens around the time the tasting rooms close. Ninety percent of the time the cars are able to drive away under their own power. A couple cars have hit trees and driven off. Hence no police reports. I always call dispatch but with no license number, just the car description. This is not a lot of information for the Sheriff's department to go on. Luckily nobody has been seriously injured. My concern is with more drunken traffic hitting the roads later at night, that the run of non-fatal and non-injurious accidents in our front yard will end.

Sincerely,

Pete and Lisa Erickson

9040 Peninsula Drive

Peteerickson@gmail.com

Peninsula Township Public Hearing October 6, 2021

Comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

I am a board member of Protect The Peninsula. I am a lawyer and have practiced in the federal court in the WD of Michigan for nearly 50 years, 7 of those as the district's chief federal prosecutor. I have tried more than a 100 criminal and civil jury and judge trials in state and federal courts since 1971. Since 2001, I have also mediated approximately 200 litigation disputes in the state courts of Michigan.

Judges chide litigants to resolve disputes – that is an integral part of their job.

When Judge Maloney and Judge Kent banter with Mr. Infante and Mr. Meihn to settle this case, each judge is doing his job.

BUT, he is not telling you how to settle the case.

He is not telling you who can sit at the negotiation table.

He is not demanding or asking you to spend in excess of 25 hours in secret mediation discussions outside the public eye or the public's knowledge.

He is not demanding or asking you to meet confidentially. And this mediator should not ask you to meet confidentially either. He should not put you in that position.

Yes, what is said within the 4 walls of mediation is confidential but I have serious concerns that you do not understand the limits of confidentiality. Simply, if you cannot resolve this litigation and you go to trial, FRE 408 states you cannot introduce into evidence conduct or an oral or written statement before the judge hearing the matter at trial that was generated during the mediation process - the best example being written offers or demands cannot be offered into evidence.

Protect The Peninsula has respectfully attempted to be part of the negotiation process and part of this case since April of this year. We want to be part of creating a successful settlement but we have been rejected by WOMP.

WOMP needs to understand it will not resolve this case without the public's input. It needs to understand that fact.

I would ask the township board to bring any proposal or counter-proposal that is on the table to the public before any vote. You have that duty as a public elected official.

WOMP created this situation by suing officials who were elected to serve the public. WOMP is demanding the township make legislative changes behind closed doors. They have no right to expect you to keep the terms of the settlement confidential if that settlement would rewrite the zoning ordinance.

I would ask that we negotiate in public, in a public process.
The residents of our township deserve no less.

Peninsula Township Public Hearing October 6, 2021

Exhibits to comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

Exhibit 1

Discussion between PTP's Counsel and WOMP Counsel regarding request for
concurrence

From:
To:
Subject: RE: Request for Concurrence for PTP to file supplement to motion to intervene
Date: Friday, April 23, 2021 10:49:00 AM

Mr. Infante,

Thank you for giving some consideration to our request. Since you raised standing, and since I appear to have your attention, why don't we continue this conversation. Whether the state claims are heard by a local court (where they properly belong) or Judge Maloney, and even if the claims had any legal merit (they don't), the judicial outcome on this claim is still unlikely to satisfy what your clients appear to really want here, which is a host of zoning changes. Surely if a winery neighbor proposed a zoning change to allow an industrial rendering plant next door to their tasting room, your client would have a right to be heard about their concerns. At some point, there should be dialogue between affected people. I would be happy to discuss with you a mutually agreeable process for a working subcommittee on the winery provisions.

Have a good weekend.

~tj

From: Infante, Joseph M. <infante@millercanfield.com>
Sent: Thursday, April 22, 2021 8:18 PM
To: Gregory M. Meihn <gmeihn@foleymansfield.com>; Matthew T. Wise <mwise@foleymansfield.com>; Gartman, Christopher J. <Gartman@millercanfield.com>; TJ Andrews <tjandrews@envlaw.com>
Cc: mike@dettmerlaw.com
Subject: Re: Request for Concurrence for PTP to file supplement to motion to intervene

We oppose your request. Your client has no standing to file any motions in this case. If you proceed to file your motion anyway, we will seek sanctions.

Sent from my Verizon, Samsung Galaxy smartphone
Get

From: TJ Andrews < >
Sent: Thursday, April 22, 2021 8:03:25 PM
To: Infante, Joseph M. < >; Gregory M. Meihn < >; Matthew T. Wise < >; Gartman, Christopher J. < >
Cc: < >
Subject: Request for Concurrence for PTP to file supplement to motion to intervene

CAUTION EXTERNAL EMAIL: DO NOT open attachments or click links from unknown or unexpected emails.

Mr. Infante and gentlemen,

As you know, on behalf of Protect the Peninsula Inc (PTP), I filed a motion to intervene in the *WOMP et al v. Peninsula Township* lawsuit, which remains pending a decision by the Court. I am writing

pursuant to Local Rule 7.1(d) to seek your concurrence for PTP to supplement its motion to intervene. In particular, PTP would seek leave to supplement the pending motion to intervene with a proposed motion to dismiss the state law claims (conflict preemption and violation of MZEA) in Plaintiffs' First Amended Complaint. The proposed motion to dismiss the state law claims would be based both on lack of subject matter jurisdiction (FRCP 12(b)(1)) and failure to state a claim for relief (FRCP 12(b)(6)).

I would be happy to discuss this request with you. Please let me know as soon as possible whether your clients will oppose our request. Thank you for your consideration.

Respectfully,

~Tracy (TJ) Andrews

Tracy Jane (TJ) Andrews
Law Office of Tracy Jane Andrews, PLLC
619 Webster Street
Traverse City, MI 49686
231.946.0044 (office)
231.714.9402 (cel)

Peninsula Township Public Hearing October 6, 2021

Exhibits to comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

Exhibit 2

Request for meeting, Michael Dettmer to WOMP counsel Joseph Infante

From: mike@dettmerlaw.com
Sent: Monday, July 12, 2021 4:32 PM
To: 'infante@millercanfield.com'
Subject: Protect The Peninsula

Joseph:

We have not met but I write you in my role as a board member of Protect The Peninsula. I want to clear up any misperception you hold about our role and intent in seeking intervention in the WOMP – PT litigation. Your representation to Magistrate Kent in the transcript of the discovery motion hearing (ECF # 68 Page ID 3128-29) that we are “hindering settlement” and “have thrown a wrench into things” is simply incorrect though I understand how you might think that. To set the record straight, I and/or other board members would be happy to meet with you to open a dialogue on our mutual concerns. We would like to understand exactly what WOMP demands and what it would accept in compromise. Obviously, PTP does not and cannot speak for the township but we certainly can attempt to clear up any misunderstanding you may have with our role in this matter. Alternatively or additionally, I do not see any hinderance to such a meeting including our legal counsel and counsel for the township. And obviously, if you wanted this meeting conducted pursuant to FRE 408, that would be your choice. Lastly, if you chose not to meet and pursue discussions, I would ask you to refrain from making unfounded representations regarding PTP to the court. I look forward to hearing from you.

Cordially,
Mike Dettmer
231.590.5560

Peninsula Township Public Hearing October 6, 2021

Exhibits to comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

Exhibit 3

PTP counsel TJ Andrews exchange with WOMP counsel Infante regarding a request to meet, waiver of any ethical concern re a meeting between attorney Dettmer and attorney Infante

From: TJ Andrews <tjandrews@envlaw.com>
Sent: Tuesday, July 13, 2021 12:03 PM
To: Infante, Joseph M.
Cc: mike@dettmerlaw.com
Subject: RE: Protect The Peninsula

Joe,

Please call me TJ. Thank you for reaching out to me. I appreciate a cautious approach when it comes to engagement between represented people and organizations. Mike is a seasoned attorney, as well, so he also understands these ethics rules. Please know that Mike and I discussed his email to you ahead of time, and I fully approved and even encouraged him to reach out to you directly. If further clarity is need, I consent to discussions between you and him, with or without my presence.

As Mike noted, PTP is concerned about WOMP's perception (as reflected in the comments to Magistrate Kent) that PTP is hindering settlement. As such, Mike and I believe there would be value to opening dialogue between our groups. More specifically, we'd like to meet or talk with you (or Mike could sit down you without me) and try to understand what WOMP needs in order to dismiss or resolve this litigation and move forward productively. We'd be open to including Greg, but don't need to if a smaller conversation would be more useful to start.

Thank you again for your consideration, we look forward to continued dialogue.

Respectfully,

~tj

Tracy Jane (TJ) Andrews
Law Office of Tracy Jane Andrews, PLLC
619 Webster Street
Traverse City, MI 49686
231.946.0044 (office)
231.714.9402 (cel)

From: Infante, Joseph M. <infante@millercanfield.com>
Sent: Monday, July 12, 2021 5:18 PM
To: TJ Andrews <tjandrews@envlaw.com>
Subject: FW: Protect The Peninsula

Ms. Andrews

I received the below email from your client. While I disagree that PTP has standing to intervene and become a party to the pending lawsuit, your motion is currently pending and he is a member of a potential party which is represented by counsel. As a represented party, I do not intend to respond to his email.

Joe

Miller Canfield
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503 (USA)
T +1.616.776.6333 | F +1.616.776.6322 | Mobile +1.231.740.8199
| View Profile + VCard
LinkedIn | Twitter | Facebook | YouTube

From: < >
Sent: Monday, July 12, 2021 4:32 PM
To: Infante, Joseph M. < >
Subject: Protect The Peninsula

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Joseph:

We have not met but I write you in my role as a board member of Protect The Peninsula. I want to clear up any misperception you hold about our role and intent in seeking intervention in the WOMP – PT litigation. Your representation to Magistrate Kent in the transcript of the discovery motion hearing (ECF # 68 Page ID 3128-29) that we are “hindering settlement” and “have thrown a wrench into things” is simply incorrect though I understand how you might think that. To set the record straight, I and/or other board members would be happy to meet with you to open a dialogue on our mutual concerns. We would like to understand exactly what WOMP demands and what it would accept in compromise. Obviously, PTP does not and cannot speak for the township but we certainly can attempt to clear up any misunderstanding you may have with our role in this matter. Alternatively or additionally, I do not see any hinderance to such a meeting including our legal counsel and counsel for the township. And obviously, if you wanted this meeting conducted pursuant to FRE 408, that would be your choice. Lastly, if you chose not to meet and pursue discussions, I would ask you to refrain from making unfounded representations regarding PTP to the court. I look forward to hearing from you.

Cordially,
Mike Dettmer
231.590.5560

Peninsula Township Public Hearing October 6, 2021

Exhibits to comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

Exhibit 4

Excerpt of May 17, 2021 hearing transcript before the Honorable Ray Kent

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WINERIES OF OLD MISSION PENINSULA
ASSOCIATION, ET AL.,

Plaintiffs,

v.

File No. 1:20-cv-01008

TOWNSHIP OF PENINSULA,

Defendant.

Hearing

Before

THE HONORABLE RAY KENT
United States Magistrate Judge
May 17, 2021

APPEARANCES

For the Plaintiff: Joseph Mikhail Infante
Christopher James Gartman
Miller, Canfield, Paddock & Stone, P.L.C.
(Grand Rapids)
99 Monroe Avenue, N.W., Ste. 1200
Grand Rapids, MI 49503
(616) 776-6333
Infante@millercanfield.com
Gartman@millercanfield.com

For the Defendant: John Stephen Gilliam
Foley & Mansfield, P.L.L.P.
130 E. Nine Mile Road
Ferndale, MI 48220
(248) 721-4200
Jgilliam@foleymansfield.com

Recorded By: Digitally Recorded

Courtroom Deputy: S. Carpenter

Transcribed By: Bonnie L. Rozema, CER 5571

1 powers clause, first amendment, but then the township sort
2 of dragged its feet for year. We filed the lawsuit hoping
3 to, you know, get some traction. We did try to sit down
4 once right when the lawsuit was filed and then we actually
5 mediated a month ago.

6 THE COURT: Who was your mediator?

7 MR. INFANTE: Joe Quandt.

8 THE COURT: I don't know him.

9 MR. INFANTE: Up in, he's in Traverse City at
10 Kuhn Rogers, I think --

11 THE COURT: Yeah.

12 MR. INFANTE: -- is his firm.

13 THE COURT: Well, good. I'm sure a local guy is
14 probably --

15 MR. INFANTE: We have some --

16 THE COURT: -- more palatable.

17 MR. INFANTE: ~~_____~~ The parties, we have an issue that
18 is hindering settlement. There is an intervener that is --
19 potential intervener that's thrown a wrench in things.

20 THE COURT: Who is that?

21 MR. INFANTE: It's a group called Protect the
22 Peninsula. They have a current -- they're a citizen
23 activist group.

24 THE COURT: Okay.

25 MR. INFANTE: They have a pending motion to

1 intervene which we have objected to. We're waiting for a
2 ruling. It's slowing things down.

3 THE COURT: Right.

4 MR. INFANTE: I think that's a fair statement.

5 THE COURT: I just, well, I think Mr. Gilliam is
6 clearly capable of speaking his mind, so -- and he's
7 welcome to do that anytime. I mean this just -- it sounds
8 if -- if you continue down the litigation path, I don't --
9 I mean somebody is going to be crunched by the result, I
10 suspect. Whereas, you know, in a settlement, and I'm just
11 preach -- I'm just talking. You guys know this --

12 MR. GILLIAM: Uh-huh.

13 THE COURT: -- well, better than I do. I mean
14 if you can control your client's destiny in a -- in a
15 settlement, in some kind of compromised resolution here
16 where, you know, the needs of both sides are honored and
17 respected to some extent and, you know, but both sides give
18 a little, they get a little, and everybody can move on. I
19 mean this way you're just going to spend, I mean each
20 side's just going to keep spending money, right? Money,
21 money, and I suspect that, I don't know this, but I suspect
22 the township will feel the pain before the wineries do. So
23 we've got 30, what are we on now 40?

24 MR. INFANTE: We were on --

25 THE COURT: Forty --

Peninsula Township Public Hearing October 6, 2021

Exhibits to comments of Michael Dettmer
7003 Leorie Dr. Peninsula Township

Exhibit 4

Excerpts of WD Local Rule 16 and the Federal Rule of Evidence 408

Excerpt: WD of Mich Local Civil Rule 16. Civil pretrial conferences; Alternative Dispute Resolution

16.2 Alternative Dispute Resolution: General provisions

1. ADR favored - The judges of this district favor alternative dispute resolution (ADR) methods in those cases where the parties and the court agree that ADR may help resolve the case. The ADR methods approved by these rules include Voluntary Facilitative Mediation (); Early Neutral Evaluation (); Case Evaluation (); and Settlement Conferences (). In addition, the court will consider other ADR methods proposed by the parties (e.g., Summary Trials).

-  4. Confidentiality - All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408.
5. Status of discovery, motions and trial during the ADR process - Any case referred to ADR continues to be subject to management by the judge to whom it is assigned. Parties may file motions and engage in discovery. Selection of a case for ADR has no effect on the normal progress of the case toward trial. Referral of a case to ADR is not grounds to avoid or postpone any deadline or obligation imposed by the case management order unless so ordered by the court.

LII > Federal Rules of Evidence > **Rule 408. Compromise Offers and Negotiations**

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

NOTES

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1933; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

As a matter of general agreement, evidence of an offer-to compromise a claim is not receivable in evidence as an admission of, as the case may be, the validity or invalidity of the claim. As with evidence of subsequent remedial measures, dealt with in Rule 407, exclusion may be based on two grounds. (1) The evidence is irrelevant, because the offer may be motivated by a desire for peace rather than from any

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compromise, it is apparent that a similar attitude must be taken with respect to completed compromises when offered against a party thereto. This latter situation will not, of course, ordinarily occur except when a party to the present litigation has compromised with a third person.

The same policy underlies the provision of Rule 68 of the Federal Rules of Civil Procedure that evidence of an unaccepted offer of judgment is not admissible except in a proceeding to determine costs.

The practical value of the common law rule has been greatly diminished by its inapplicability to admissions of fact, even though made in the course of compromise negotiations, unless hypothetical, stated to be "without prejudice," or so connected with the offer as to be inseparable from it. McCormick §251, pp. 540–541. An inevitable effect is to inhibit freedom of communication with respect to compromise, even among lawyers. Another effect is the generation of controversy over whether a given statement falls within or without the protected area. These considerations account for the expansion of the rule herewith to include evidence of conduct or statements made in compromise negotiations, as well as the offer or completed compromise itself. For similar provisions see California Evidence Code §§1152, 1154.

The policy considerations which underlie the rule do not come into play when the effort is to induce a creditor to settle an admittedly due amount for a lesser sum. McCormick §251, p. 540. Hence the rule requires that the claim be disputed as to either validity or amount.

The final sentence of the rule serves to point out some limitations upon its applicability. Since the rule excludes only when the purpose is proving the validity or invalidity of the claim or its amount, an offer for another purpose is not within the rule. The illustrative situations mentioned in the rule are supported by the authorities. As to proving bias or prejudice of a witness, see Annot., 161 A.L.R. 395, *contra*, *Fenberg v. Rosenthal*, 348 Ill. App. 510, 109 N.E.2d 402 (1952), and negating a contention of lack of due diligence in presenting a claim, 4 Wigmore §1061. An effort to "buy off" the prosecution or a prosecuting witness in a criminal case is not within the policy of the rule of exclusion. McCormick §251, p. 542.

For other rules of similar import, see Uniform Rules 52 and 53; California Evidence Code §1152, 1154; Kansas Code of Civil Procedure §§60–452, 60–453; New Jersey Evidence Rules 52 and 53.

▼ **NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 93–650**

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agencies of government expressed the view that the Court formulation was likely to impede rather than assist efforts to achieve settlement of disputes. For one thing, it is not always easy to tell when compromise negotiations begin, and informal dealings end. Also, parties dealing with government agencies would be reluctant to furnish factual information at preliminary meetings; they would wait until "compromise negotiations" began and thus hopefully effect an immunity for themselves with respect to the evidence supplied. In light of these considerations, the Committee recast the Rule so that admissions of liability or opinions given during compromise negotiations continue inadmissible, but evidence of unqualified factual assertions is admissible. The latter aspect of the Rule is drafted, however, so as to preserve other possible objections to the introduction of such evidence. The Committee intends no modification of current law whereby a party may protect himself from future use of his statements by couching them in hypothetical conditional form.

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 93-1277

This rule as reported makes evidence of settlement or attempted settlement of a disputed claim inadmissible when offered as an admission of liability or the amount of liability. The purpose of this rule is to encourage settlements which would be discouraged if such evidence were admissible.

Under present law, in most jurisdictions, statements of fact made during settlement negotiations, however, are excepted from this ban and are admissible. The only escape from admissibility of statements of fact made in a settlement negotiation is if the declarant or his representative expressly states that the statement is hypothetical in nature or is made without prejudice. Rule 408 as submitted by the Court reversed the traditional rule. It would have brought statements of fact within the ban and made them, as well as an offer of settlement, inadmissible.

The House amended the rule and would continue to make evidence of facts disclosed during compromise negotiations admissible. It thus reverted to the traditional rule. The House committee report states that the committee intends to preserve current law under which a party may protect himself by couching his statements in hypothetical form [See House Report No. 93-650 above]. The real impact of this amendment, however, is to deprive the rule of much of its salutary effect. The exception for factual admissions was believed by the Advisory Committee to hamper free communication between parties and thus to constitute an unjustifiable restraint upon efforts to negotiate settlements—the encouragement of which is the purpose of the rule. Further, by protecting hypothetically phrased statements, it

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made in compromise negotiations. [Nev. Rev. Stats. §48.105; N. Mex. Stats. Anno. (1973 Supp.) §20-4-408; West's Wis. Stats. Anno. (1973 Supp.) §904.08].

For these reasons, the committee has deleted the House amendment and restored the rule to the version submitted by the Supreme Court with one additional amendment. This amendment adds a sentence to insure that evidence, such as documents, is not rendered inadmissible merely because it is presented in the course of compromise negotiations if the evidence is otherwise discoverable. A party should not be able to immunize from admissibility documents otherwise discoverable merely by offering them in a compromise negotiation.

NOTES OF CONFERENCE COMMITTEE, HOUSE REPORT NO. 93-1597

The House bill provides that evidence of admissions of liability or opinions given during compromise negotiations is not admissible, but that evidence of facts disclosed during compromise negotiations is not inadmissible by virtue of having been first disclosed in the compromise negotiations. The Senate amendment provides that evidence of conduct or statements made in compromise negotiations is not admissible. The Senate amendment also provides that the rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

The House bill was drafted to meet the objection of executive agencies that under the rule as proposed by the Supreme Court, a party could present a fact during compromise negotiations and thereby prevent an opposing party from offering evidence of that fact at trial even though such evidence was obtained from independent sources. The Senate amendment expressly precludes this result.

The Conference adopts the Senate amendment.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

Rule 408 has been amended to settle some questions in the courts about the scope of the Rule, and to make it easier to read. First, the amendment provides that Rule 408 does not prohibit the introduction in a criminal case of statements or conduct during compromise negotiations regarding a civil dispute by a government regulatory, investigative, or enforcement agency. *See, e.g., United States v. Prewitt*, 34 F.3d 436, 439 (7th Cir. 1994) (admissions of fault made in compromise of a civil securities enforcement action were admissible against the accused in a subsequent criminal action for mail fraud). Where an individual makes a statement in the presence of government agents, its subsequent admission in a criminal case should not be

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Statements made in compromise negotiations of a claim by a government agency may be excluded in criminal cases where the circumstances so warrant under Rule 403. For example, if an individual was unrepresented at the time the statement was made in a civil enforcement proceeding, its probative value in a subsequent criminal case may be minimal. But there is no absolute exclusion imposed by Rule 408.

In contrast, statements made during compromise negotiations of other disputed claims are not admissible in subsequent criminal litigation, when offered to prove liability for, invalidity of, or amount of those claims. When private parties enter into compromise negotiations they cannot protect against the subsequent use of statements in criminal cases by way of private ordering. The inability to guarantee protection against subsequent use could lead to parties refusing to admit fault, even if by doing so they could favorably settle the private matter. Such a chill on settlement negotiations would be contrary to the policy of Rule 408.

The amendment distinguishes statements and conduct (such as a direct admission of fault) made in compromise negotiations of a civil claim by a government agency from an offer or acceptance of a compromise of such a claim. An offer or acceptance of a compromise of any civil claim is excluded under the Rule if offered against the defendant as an admission of fault. In that case, the predicate for the evidence would be that the defendant, by compromising with the government agency, has admitted the validity and amount of the civil claim, and that this admission has sufficient probative value to be considered as evidence of guilt. But unlike a direct statement of fault, an offer or acceptance of a compromise is not very probative of the defendant's guilt. Moreover, admitting such an offer or acceptance could deter a defendant from settling a civil regulatory action, for fear of evidentiary use in a subsequent criminal action. *See, e.g., Fishman, Jones on Evidence, Civil and Criminal*, §22:16 at 199, n.83 (7th ed. 2000) ("A target of a potential criminal investigation may be unwilling to settle civil claims against him if by doing so he increases the risk of prosecution and conviction.").

The amendment retains the language of the original rule that bars compromise evidence only when offered as evidence of the "validity," "invalidity," or "amount" of the disputed claim. The intent is to retain the extensive case law finding Rule 408 inapplicable when compromise evidence is offered for a purpose other than to prove the validity, invalidity, or amount of a disputed claim. *See, e.g., Athey v. Farmers Ins. Exchange*, 234 F.3d 357 (8th Cir. 2000) (evidence of settlement offer by insurer was properly admitted to prove insurer's bad faith); *Coakley & Williams v. Structural*

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fact of settlement as opposed to the validity or amount of the underlying claim); *Uforma/Shelby Bus. Forms, Inc. v. NLRB*, 111 F.3d 1284 (6th Cir. 1997) (threats made in settlement negotiations were admissible; Rule 408 is inapplicable when the claim is based upon a wrong that is committed during the course of settlement negotiations). So for example, Rule 408 is inapplicable if offered to show that a party made fraudulent statements in order to settle a litigation.

The amendment does not affect the case law providing that Rule 408 is inapplicable when evidence of the compromise is offered to prove notice. *See, e.g., United States v. Austin*, 54 F.3d 394 (7th Cir. 1995) (no error to admit evidence of the defendant's settlement with the FTC, because it was offered to prove that the defendant was on notice that subsequent similar conduct was wrongful); *Spell v. McDaniel*, 824 F.2d 1380 (4th Cir. 1987) (in a civil rights action alleging that an officer used excessive force, a prior settlement by the City of another brutality claim was properly admitted to prove that the City was on notice of aggressive behavior by police officers).

The amendment prohibits the use of statements made in settlement negotiations when offered to impeach by prior inconsistent statement or through contradiction. Such broad impeachment would tend to swallow the exclusionary rule and would impair the public policy of promoting settlements. *See McCormick on Evidence* at 186 (5th ed. 1999) ("Use of statements made in compromise negotiations to impeach the testimony of a party, which is not specifically treated in Rule 408, is fraught with danger of misuse of the statements to prove liability, threatens frank interchange of information during negotiations, and generally should not be permitted."). *See also EEOC v. Gear Petroleum, Inc.*, 948 F.2d 1542 (10th Cir. 1991) (letter sent as part of settlement negotiation cannot be used to impeach defense witnesses by way of contradiction or prior inconsistent statement; such broad impeachment would undermine the policy of encouraging uninhibited settlement negotiations).

The amendment makes clear that Rule 408 excludes compromise evidence even when a party seeks to admit its own settlement offer or statements made in settlement negotiations. If a party were to reveal its own statement or offer, this could itself reveal the fact that the adversary entered into settlement negotiations. The protections of Rule 408 cannot be waived unilaterally because the Rule, by definition, protects both parties from having the fact of negotiation disclosed to the jury. Moreover, proof of statements and offers made in settlement would often have to be made through the testimony of attorneys, leading to the risks and costs of disqualification. *See generally Pierce v. F.R. Tripler & Co.*, 955 F.2d 820, 828 (2d Cir.

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The sentence of the Rule referring to evidence "otherwise discoverable" has been deleted as superfluous. See, e.g., Advisory Committee Note to Maine Rule of Evidence 408 (refusing to include the sentence in the Maine version of Rule 408 and noting that the sentence "seems to state what the law would be if it were omitted"); Advisory Committee Note to Wyoming Rule of Evidence 408 (refusing to include the sentence in Wyoming Rule 408 on the ground that it was "superfluous"). The intent of the sentence was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. See *Ramada Development Co. v. Rauch*, 644 F.2d 1097 (5th Cir. 1981). But even without the sentence, the Rule cannot be read to protect pre-existing information simply because it was presented to the adversary in compromise negotiations.

Changes Made After Publication and Comments. In response to public comment, the proposed amendment was changed to provide that statements and conduct during settlement negotiations are to be admissible in subsequent criminal litigation only when made during settlement discussions of a claim brought by a government regulatory agency. Stylistic changes were made in accordance with suggestions from the Style Subcommittee of the Standing Committee. The Committee Note was altered to accord with the change in the text, and also to clarify that fraudulent statements made during settlement negotiations are not protected by the Rule.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 408 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

✓ Rule 407. Subsequent Remedial Measures up Rule 409. Offers to Pay Medical and

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Margaret Achorn

From: Neal Johnson <njohnson1971@yahoo.com>
Sent: Wednesday, October 06, 2021 3:11 PM
To: maapc@acegroup.cc
Subject: WOMP Winery lawsuit

Dear Trustees,

We are unable to attend the meeting this evening at the church regarding the winery lawsuit on Old Mission Peninsula. I wanted to let you know that we are opposed to any settlement whatsoever with the wineries on any of their issues. It is our belief that the Judge should decide the merits of this case.

My wife and I purchased a home at 6405 Peninsula Drive approximately 7 years ago and just recently became permanent residents. We plan to stay here permanently. It is an incredibly beautiful place. However, we are concerned with the expansion of the wineries and their business models.

Peninsula drive has become a very dangerous road for pedestrians and cyclists. Even though the speed limit is 35 mph in front of our house, the cars are routinely travelling well in excess of the speed limit. This excessive speed endangers all the residents of the township. If you add alcohol to that mix by allowing wineries to stay open late and have big events, you will surely increase the dangers to the children and others who use Peninsula Drive.

If wineries are allowed to have large scale events and stay open to all hours, the traffic getting on and off the peninsula will no doubt increase. When I drive my daughter to swim practice at 4pm there is a line of 30 cars sometimes waiting at the light to get into Traverse City. One can only imagine the huge traffic tie ups that would ensue on a Friday or Saturday night during "wedding seasons" on Old Mission if the wineries are allowed to hold large gatherings until all hours.

My wife and I wanted to let you know that we love the wineries! However, allowing the wineries to operate until all hours of the night and with huge events endangers the safety of all residents of the Peninsula.

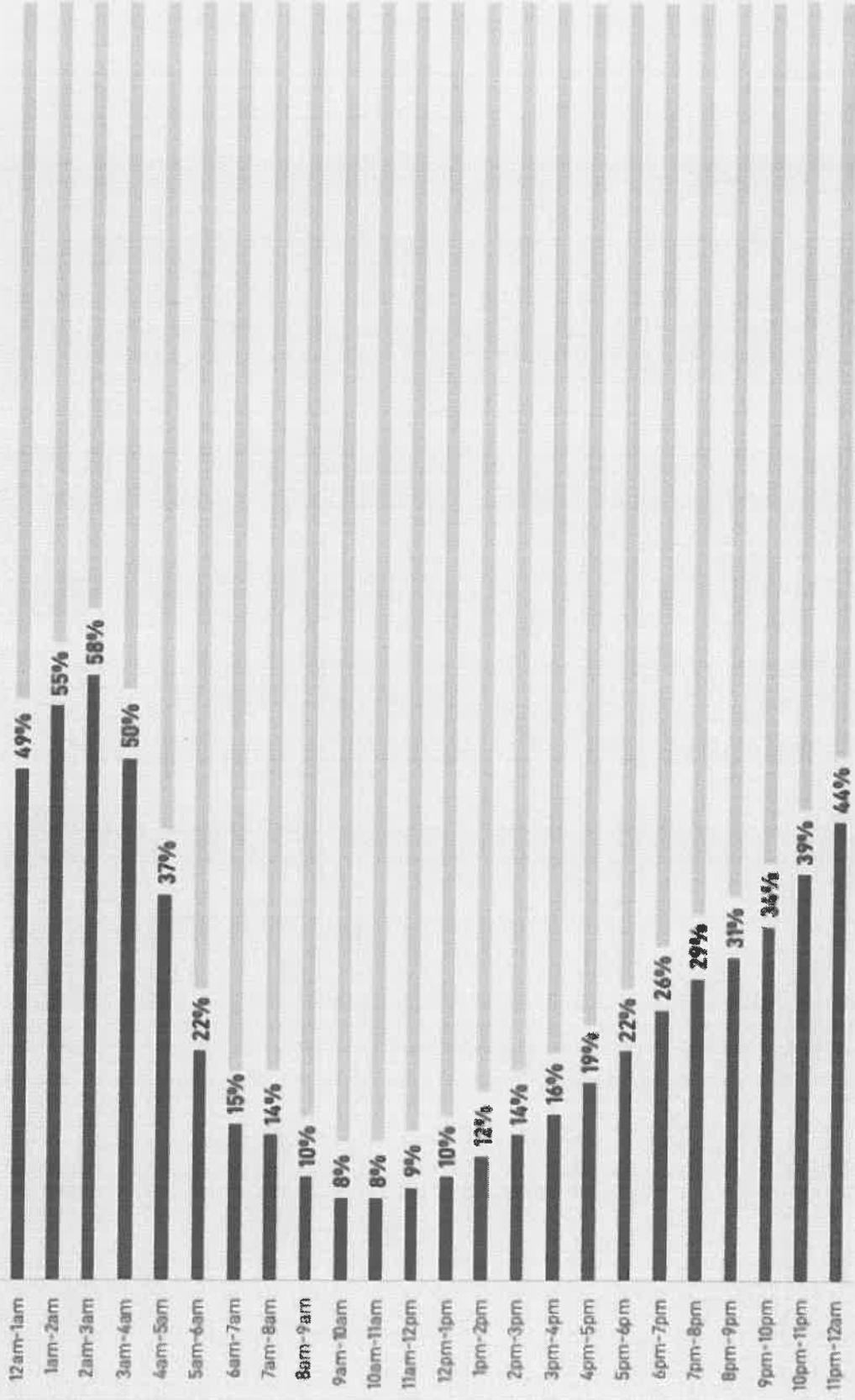
Thank you for your time and we appreciate your service.

Neal and Stephanie Johnson
6405 Peninsula Drive

Sent from [Mail](#) for Windows

The Hours of the Day When Drunk Drivers are Most Likely to Kill

Alcohol related crash fatalities as percentage of all fatal collisions



Alcohol-Impaired Driving Data

Michigan

National

Alcohol-Impaired Driving Fatalities to Total Fatalities:	27.4%	28.8%
Alcohol-Impaired Driving Fatalities per 100K population:	2.7%	3.2%
2009-2018 Change in Alcohol-Impaired Driving Fatalities per 100,000 pop:	8.8%	- 8.4%
Percent of Drivers in Fatal Crashes Involving Repeat Offenders: Blood Alcohol Content .08 - .14:	38.5	25.4
2018 total arrest for driving under the influence:	26,130	

10/06/2021

Dear Peninsula Resident:

This is the cover of the latest edition of the *Oxford World Atlas*, published in London, and recently released in the U.S. It is slated for distribution around the world. I picked my copy up at Horizon Books last Saturday, in Traverse City. I was awestruck by the beauty of the cover image...and in the same breath, fearful of the ramifications that such a photo is likely to generate worldwide.

A special meeting of the Peninsula Town Board is scheduled for October 6, 2021, to discuss the on-going litigation between the wineries, their Special Use Permits (SUPs), and the township. This photo should remind us, as residents, what is at stake in this discussion. It should stun us to action as a community.

Three major citizen groups will be present at this meeting. It is likely that they will determine the fate of this peninsula in terms of land use for generations to come--the wineries, other farmers & large landowners, and the residential block of voters on this peninsula.

Our future depends on a united and cooperative front of citizens, focused on the practical issues of preserving quality of life on the Peninsula, while protecting the very resource base upon which we all depend.

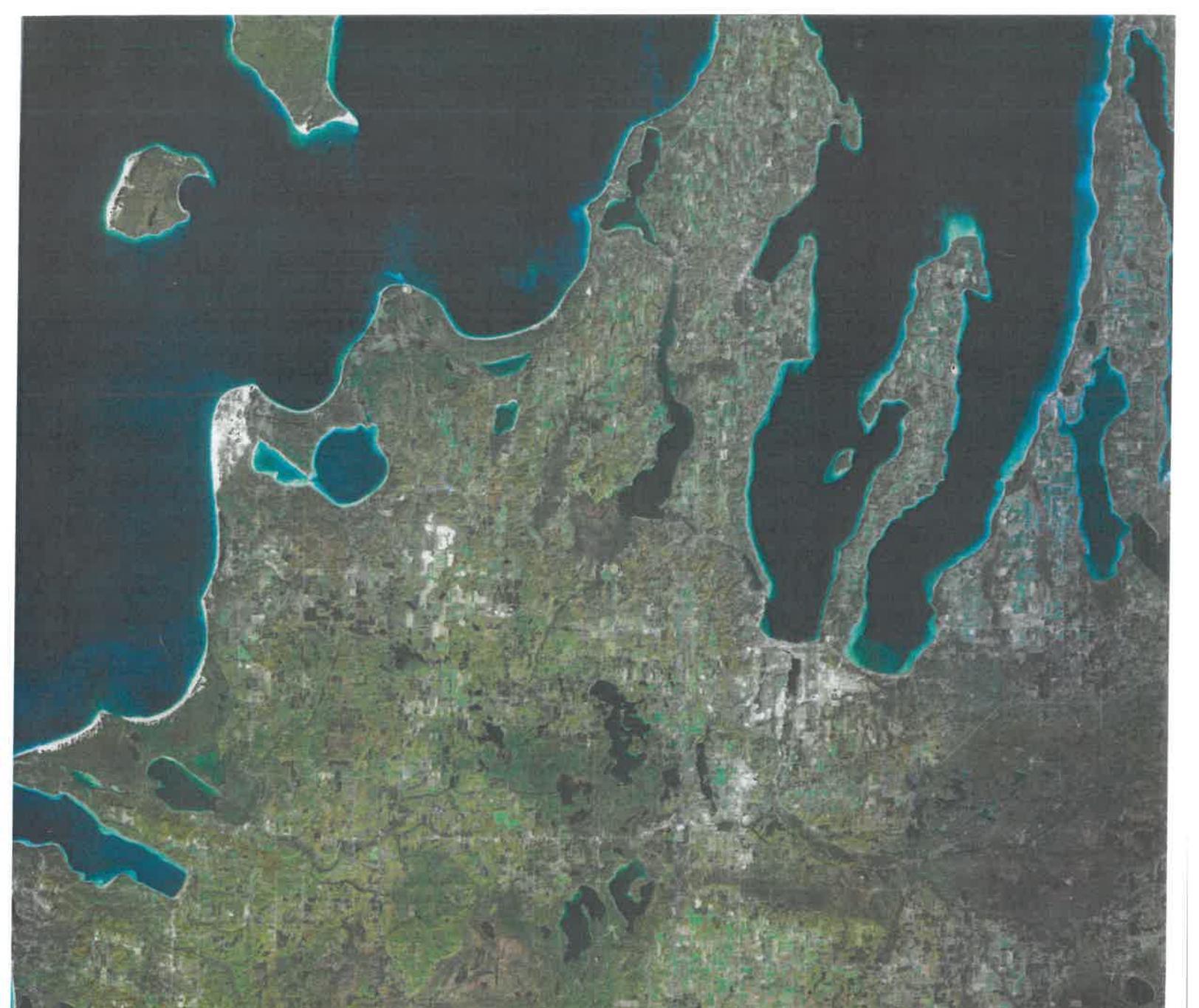
This will take an agile and responsive local government that is composed of well-informed, talented, and unbiased officials. It will take the best professional staff whose first interest is serving the residents of this community as a whole. And it will take you, fellow resident, and your involvement as an alert, informed, and engaged member of the community. The township must broaden its decision-making capabilities in terms of sustainable land used decisions, and you will need to be a part of the discussion.

Shortly, the world will see the land and water resources of this place, which are breathtaking to behold in this simple aerial photograph of NW Lower Peninsula, Michigan. Can we afford to not cooperate with one another to protect and enhance this beautiful peninsula known as the Old Mission? Think about the resources that you have at your fingertips--your personal knowledge, professional expertise, time and energy. Please join forces to resolve the present differences among citizen groups, so we may advance future possibilities for those who will follow us.

Best wishes.

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Cover Image: *Oxford Essential World Atlas*. 8th Edition. Oxford University Press USA: New York, NY.
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