

Packet Addition

October 11, 2022

**Regular Township Board and Joint Special
Township Board and Planning Commission Meeting**



MEMORANDUM

TO: Peninsula Township Board and Peninsula Township Planning Commission
FROM: Joseph M. Infante
RE: Proposed Amendments to Winery Ordinances
DATE: August 8, 2022

My firm represents the Wineries of Old Mission Peninsula Association and Bonobo Winery. I have reviewed the proposed amendments to the Winery Ordinances and listened to the planning session on July 26, 2022. Based on the proposed amendments and the comments made at the planning session, I am submitting this memorandum on behalf of my clients as an addition to the packet for the August 9, 2022 Township Board meeting. It appears that the Township has not reviewed Judge Maloney's rulings and is flagrantly disregarding them with these proposed amendments. It also has been made clear through repeated statements from various trustees and other Township officials that these proposed amendments target the Wineries only. This memorandum is intended to alert the Township Board that many of the amendments under consideration are either unconstitutional or preempted by Michigan law. The following list is not exhaustive as there are many more issues with the proposed amendments.

Raw Produce Limitation. Sections 6.7.2 and 6.7.3 propose to limit processing to "raw produce" only. For example:

- 6.7.2(19)(b)(2)(i): "Processing is limited to raw produce. For example, apples may be processed into apple juice or applesauce."

- 6.7.3(10)(b)(2)(a): “Processing is limited to raw produce. For example, an apple may be processed into apple juice or applesauce.”

This “raw produce” limitation is preempted by both federal guidelines defining winemaking and by the Michigan Liquor Control Code.

Federal winemaking regulations allow winemakers and small winemakers to purchase bonded wine for finishing by the winemaker or small winemaker. This allows winemakers and small winemakers to apply to process this bonded wine, often by blending it with other juice or wine, and then affixing label to the newly processed wine to sell it under their branding. This is an extremely common practice in the wine industry. Similarly, winemakers and small winemakers often purchase juice made from grapes or other fruit and then ferment that juice on premises to process it into alcoholic wine. Again, this is a common, federally recognized practice.

Similarly, the Liquor Control code defines “wine” as a “product manufactured” to certain specifications. MCL 436.1113(9). “Manufacture” means “to distill, rectify, ferment, brew, make, produce, filter, mix, concoct, process, or blend an alcoholic liquor or to complete a portion of 1 or more of these activities.” MCL 436.1109(1). Because Sections 6.7.2(19)(b)(2)(i) and 6.7.3(10)(b)(2)(a) prohibit the Wineries from distilling, rectifying, fermenting, brewing, making, producing, filtering, mixing, concocting, or blending bonded wine or juice into finished wine, these sections conflict with the Michigan Liquor Control Code. In other words, Peninsula Township has no legal basis upon which it may impose a “raw produce” requirement on any Winery.

Sources of Produce. Sections 6.7.2 and 6.7.3 imposes limitations on sources of produce in violation of the Dormant Commerce Clause.

- 6.7.2(19)(b)(2)(ii): “Not less than seventy percent (70%) of all the agricultural produce sold fresh or processed shall be grown on land owned or leased for the specific farm

operation by the same party owning and operating the Wholesale Farm Processing Facility.”

- 6.7.2(19)(b)(12)(I): “The owner of the Wholesale Farm Processing Facility shall annually provide data and records to the Director of Planning showing that a minimum of 70 percent of the raw products processed are grown on the land owned or leased for the specific farm operation by the same party owning and operating the Wholesale Farm Processing Facility.”
- 6.7.3(10)(a): “The majority of the produce sold fresh or processed shall be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the retail farm processing facility.”
- 6.7.3(10)(b)(2)(b): “Not less than seventy percent (70%) of all agricultural produce sold fresh or processed from raw produce shall be grown on land owned or leased for the specific farm operation that is operating the retail farm processing facility.”
- 6.7.3(10)(b)(2)(C): “The verification of such conditions shall be presented to the Township Board by a public organization representing the fruit growers of northwest Michigan that is duly recognized by the Township Board. Processed products received in such year shall not exceed the highest volume produced in any of the preceding five years.”
- 6.7.3(10)(b)(12)(a): “The owner/operator of the retail farm processing facility shall annually provide data and records to the Director of Planning showing that a minimum of 70 percent of the raw produce processed within the retail farm processing facility is grown on the land owned or leased for the specific farm operation by the same party owning or operating the retail farm processing facility.”

These restrictions serve one purpose—to limit the influx of produce from outside of Peninsula Township into Peninsula Township. They are nearly identical to the sections of the existing Winery Ordinances that Judge Maloney ruled unconstitutional on June 3, 2022. The only differences are a reduction in percentage (from 85% to 70%) and a change in the origin of the produce (from Old Mission Peninsula writ large to land owned or leased by the farm processing facility). These differences will not save the proposed amendments. They still amount to facial discrimination against produce originating outside of Peninsula Township, which means that these proposed amendments “face a virtually *per se* rule of invalidity.” *Granholm v. Heald*, 544 U.S. 460, 476 (2005). That’s why, for at least the last 130 years, the Supreme Court has struck down local processing requirements like these as facially unconstitutional. *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994) (Township waste processing ordinance); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Nat. Res.*, 504 U.S. 353, 355 (1992) (Michigan’s Solid Waste Management Act imposing solid waste limits); *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (Oklahoma fishing limits); *Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349 (1951) (City of Madison, Wisconsin’s local milk processing requirements); *Brimmer v. Rebman*, 138 U.S. 78, 81 (1891) (Virginia meat inspection statute). No processing limits can survive this constitutional scrutiny. These proposed amendments should be rejected.

Indoor Processing Requirements. Multiple proposed amendments would limit farm processing to indoor activities only. For example:

- Definition of Farm Processing Facility: “Processing shall be conducted within an entirely enclosed building(s).”
- 6.7.2(19)(b)(1)(i): “All processing shall be conducted indoors.”
- 6.7.3(10)(b)(1)(i): “All processing and retail sales shall be conducted indoors.”

- 6.7.3(11)(b)(7)(a)-(b): “The outdoor seating area shall be limited to 750 square feet” and “the maximum occupancy of the outdoor seating area shall be 50 persons at all times.”

The Michigan Right to Farm Act expressly preempts these provisions. “[A] local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.” MCL 286.474(6). GAAMPs generally define a “farm operation” as “the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products[.]” This definition incorporates many examples, including “the operation of machinery and equipment necessary for a farm,” and “the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.” Similarly, the 2022 Farm Market GAAMPs issued by the Michigan Commission of Agriculture & Rural Development define “Processed” as “A farm product or commodity that has been converted into a product for direct sales. Processing may include, but is not limited to, packing, washing, cleaning, grading, sorting, pitting, pressing, fermenting, distilling, packaging, cutting, cooling, storage, canning, drying, freezing, or otherwise preparing the product for sale.”

By forcing the Wineries to conduct all processing operations indoors, the Township would be telling the Wineries how to farm in violation of GAAMPs. For example, crushing, pressing, drying, and aging of fruit often take place outside. It is unclear why the Township wants to limit these to indoor activities in violation of GAAMPs. If the Township Board truly is “pro farming” as it so often says, it will reject these proposed amendments because they are preempted by GAAMPs and defy common sense.

Additionally, Michigan Liquor Control Rule 436.1419 states that MLCC may issue an outdoor service permit to a winery and states the requirements for receipt of such a permit. Because outdoor service is allowed under the Liquor Control Code, the Township cannot bar it.

Takings and Due Process Violations. The proposed ordinance imposes stricter standards than are currently allowed and constitute a taking under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The following limitations are not present in the current zoning ordinance and, to the extent they are ever enforced against the Wineries, would constitute a taking. For example:

- 8.7.3(10)(b)(1)(i): “All processing and retail sales shall be conducted indoors.”
- 8.7.3(10)(b)(1)(ii): “The consumption of processed products on premises is permitted indoors only.”
- 8.7.3(10)(b)(1)(iv): “Free entertainment may be provided within a retail sales/tasting room indoors only.”
- 8.7.3(10)(b)(1)(v): “The hours of operation for retail sales, including a tasting room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.”
- 8.7.3(10)(b)(1)(vii): “Food items not processed within the retail farm processing facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No commercial kitchens shall be permitted as part of a retail farm processing facility.”
- 8.7.3(10)(b)(4)(a): “Front Yard Setback: 50 feet.”
- 8.7.3(10)(b)(4)(a): “Side and Rear Yard Setback: 350 feet.”

- 8.7.3(10)(b)(5)(a): “The total floor area of the retail farm processing facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific retail farm processing operation but may not exceed 30,000 square feet of total floor area above finished grade.”
- 8.7.3(10)(b)(5)(b): “The retail farm processing facility may consist of more than one building; however, all buildings associated with the retail farm processing facility shall be located on the 20-acre minimum parcel that contains the retail farm processing facility.”¹
- 8.7.3(10)(b)(5)(c): “Underground floor area may be allowed in addition to the maximum permitted square footage of floor area above finished grade provided it is entirely below pre-existing ground level and has no more than one loading dock exposed.”
- 8.7.3(10)(b)(5)(d): “Retail sales space may be a separate room within a retail farm processing facility and shall not exceed 1,500 square feet in area.”
- 8.7.3(10)(b)(5)(e): “A tasting room shall be included in the allowable square footage area for retail sales.”
- 8.7.3(11)(b)(2)(i): “All processing and retail sales shall be conducted indoors.”²
- 8.7.3(11)(b)(2)(iv): “Free entertainment may be provided within a retail sales/tasting room indoors only.”

¹ Parcel size requirements are also preempted by the Michigan Right to Farm Act and GAAMPs. *See* Charter Twp. of Shelby v. Papesh, 267 Mich. App. 92, 106 (2005) (“[I]f defendants' farm is commercial in nature and in compliance with the GAAMPs, it is a farm operation protected by the RTFA. The ordinance conflicts with the RTFA to the extent that it allows plaintiff to preclude a protected farm operation by limiting the size of a farm.”).

² The numbering in this section begins at 2. It looks like a typographical error.

- 8.7.3(11)(b)(2)(v): “The hours of operation for retail sales, including a tasting room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m.”
- 8.7.3(11)(b)(2)(vi): The hours of operation for an approved outdoor seating area shall be limited to an opening time of no earlier than 9:00 a.m. and closing time of 8:00 p.m.”
- 8.7.3(11)(b)(2)(viii): “The retail farm processing facilities that hold a liquor license may sell limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the retail farm processing facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No commercial kitchens shall be permitted as part of a retail farm processing facility.”
- 8.7.3(11)(b)(3)(a): A total of eighty (80) acres of contiguous land is required to be devoted to the operation of a retail farm processing facility with indoor retail sales and an outdoor searing area for consumption only.
- 6.7.2(19)(b)(1)(i): “All processing shall be conducted indoors.”
- 6.7.2(19)(b)(1)(ii): “No retail sales or consumption of processed products on the premises is permitted.”³
- 6.7.2(19)(b)(3)(VII): “There shall be no more than one single-family dwelling on the 20-acre parcel containing the Wholesale Farm Processing Facility and no more than one single-family dwelling on the remaining 20 acres.”

³ This is also clearly preempted by the Michigan Liquor Control Code. MCL 436.1113(10) states that a winery may sell wine to consumers “at retail on the licensed winery premises.”

- 6.7.2(19)(b)(3)(X): “If property is leased, the lease shall be for a minimum of five (5) years, and the lease shall be recorded with the Grand Traverse County Register of Deeds.”
- 6.7.2(19)(b)(3)(XI): “There shall be a minimum of ten (10) acres in active crop production on the same parcel as the Wholesale Farm Processing Facility.”
- 6.7.2(19)(b)(3)(XII): “There shall be an additional fifteen (15) acres of land in active crop production of the minimum 40-acre minimum, such that a minimum of sixty-five percent (65%) of the total land associated with the Wholesale Farm Processing Facility is in active crop production.”
- 6.7.2(19)(b)(5): “A Wholesale Farm Processing Facility shall not include retail space. The total floor area of a Wholesale Farm Processing Facility above finished grade shall equal 250 square feet per acre of land owned or leased for the specific farm operation but may not exceed a maximum of 30,000 square feet of total floor area above finished grade. The Wholesale Farm Processing Facility may consist of more than one building; however, all buildings associated with the farm processing operation shall be located on the 20-acre minimum parcel. Underground floor area may be allowed in addition to the permitted square footage of floor area above finished grade provided it is entirely below the pre-existing ground level and has no more than one loading dock exposed.”

To date, the Wineries have the ability to use their outdoor space. They have outdoor sales permits from the Michigan Liquor Control Commission. They have invested in outdoor spaces to host events. They are allowed, as Judge Maloney ruled, to stay open past 9:30 p.m. because nothing in the current ordinance requires them to close at that time. They are allowed to have commercial kitchens. They are allowed to offer paid entertainment. These proposed amendments are obviously targeted at these vested rights and are clearly intended to harm the Wineries in retaliation

for challenging the existing ordinance.

These restrictions also go further than what was previously imposed. The Wineries have property rights in their liquor licenses as issued by the Michigan Liquor Control Commission. *Wojcik v. City of Romulus*, 257 F.3d 600, 609 (6th Cir. 2001) (“Michigan courts have held that the *holder* of a liquor license has a constitutionally protected interest[.]”); *Bisco's, Inc. v. Michigan Liquor Control Comm’n*, 395 Mich. 706, 716 (1976). Any attempt to chip away at these restrictions constitutes a taking. Under both federal and state due process analyses, state actions attempting to promote the health, safety, and welfare of the general public must be reasonable to be enforceable. *E.g., Goldblatt v. Town of Hempstead, N. Y.*, 369 U.S. 590, 594 (1962); *Bonner v. City of Brighton*, 495 Mich. 209, 227 (2014). It makes no sense to suggest that what the Township thought was reasonable before Judge Maloney’s opinion somehow needs to be made stricter after that opinion. These restrictions constitute nothing more than an “arbitrary exercise of governmental power” designed to punish the Wineries. *Bonner*, 495 Mich. at 224.

Vested Interests. Section 6.7.3 references the intent to strip vested rights from existing uses.

- 6.7.3(10)(a): “Since a retail farm processing facility is essentially an industrial and commercial use, it is not the intent to grant any vested interest in non-agricultural uses of any structure used or constructed for a retail farm processing facility.”
- 6.7.3(10)(b)(7): “There shall be no vested interest in non-agricultural uses of the structures.”
- 6.7.3(11)(a): “Since a retail farm processing facility is essentially an industrial and commercial use, it is not the intent to grant any vested interest in non-agricultural uses of any structure used or constructed for a retail farm processing facility.”

- 6.7.3(8)(a): “There shall be no vested interest in non-agricultural uses of the structures.”

To the extent this language is intended to strip the existing Wineries of a to be vested non-conforming use, this language contradicts prior holdings from the Michigan Supreme Court. “A prior nonconforming use is a vested right to continue the lawful use of real estate in the manner it was used prior to the adoption of a zoning ordinance. Though the ordinance be reasonable, it cannot operate to oust the property owner of his vested right.” *Dusdal v. City of Warren*, 387 Mich. 354, 359–60 (1972). “Once a nonconforming use is established, a subsequently enacted zoning restriction, although reasonable, will not divest the property owner of the vested right.” *Heath Twp. v. Sall*, 442 Mich. 434, 439 (1993). It is unclear for what purpose this language is included other than to specifically target the Wineries. This language should be rejected.

CONCLUSION

These proposed amendments have serious flaws that undoubtedly will result in another legal challenge whether that is brought by the Wineries, a winery in planning or a farmer. Each has a viable legal challenge. It is unsurprising, however, that these amendments have made it this far. They were proposed by the Citizens Agricultural Advisory Committee. On that issue, I need to correct the record for the citizens of Old Mission Peninsula.

The Citizens Agricultural Advisory Committee began as a “negotiating committee” following the October 6, 2021, meeting at St. Joseph’s Church. The Township Board attempted to delegate its responsibility and authority to a committee of unelected citizens. When Judge Maloney was made aware of this committee, he asked “They [the Committee] can’t speak on behalf of the Township in this Court, can they?”⁴ Judge Maloney continued: “I don’t care who it is. How does the Township board delegate this responsibility to somebody else?” Given that

⁴ Transcript of December 2, 2021 hearing.

background, there was no way the Wineries would or should negotiate with an entity that did not have the power to reach a settlement.

Additionally, the committee was structured in a way to give three seats to the Wineries. In that scenario, the Wineries would have been negotiating with themselves. That made no sense at the time. However, this “negotiating committee” morphed into the Citizens Agricultural Advisory Committee. It is disingenuous to keep characterizing the committee as belonging to farmers when the farmers continually were voted down and there was no realistic way any Winery member would or should have joined in the first place. To put it bluntly—these proposed amendments were not written by farmers. They were written by a self-interested group of people who, in the words of their attorney, are the “political enemy” of the Wineries.

Given the way these proposed amendments came about and their blatantly unconstitutional nature, I strongly suggest that the Township Board reject them. Adoption of these proposed amendments in their current form would be nothing more than outright retaliation against the Wineries for filing their lawsuit and prevailing at summary judgment.

Founded in 1852
by Sidney Davy Miller



Joseph M. Infante
TEL +1.616.776.6333
FAX +1.616.776.6322
E-MAIL infante@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.
99 Monroe Avenue NW, Suite 1200
Grand Rapids, Michigan 49503
TEL (616) 454-8656
FAX (616) 776-6322
millercanfield.com

MICHIGAN
ILLINOIS
NEW YORK
OHIO
WASHINGTON, D.C.
CALIFORNIA
CANADA
CHINA
MEXICO
POLAND
QATAR

September 8, 2022

Peninsula Township Board and Peninsula Township Planning Commission

RE: Proposed Amendments to Winery Ordinances

Dear Township Board:

My firm represents the Wineries of Old Mission Peninsula Association and Bonobo Winery. I have reviewed the proposed amendments to the Winery Ordinances and listened to the planning session on July 26, 2022. Based on the proposed amendments and the comments made at the planning session, I submitted a longer memorandum before the August 9, 2022 Township Board meeting. That memorandum was not made a part of the packet, although I understand it was circulated to the entire Township Board and Planning Commission. I encourage the Township Board to make the longer memorandum part of this meeting's packet so the public can see it.

It appears that the Township has not reviewed Judge Maloney's rulings and is flagrantly disregarding them with these proposed amendments. It also has been made clear through repeated statements from various trustees and other Township officials that these proposed amendments target the Wineries directly. This memorandum is intended to alert the Township Board that many of the amendments under consideration are either unconstitutional or preempted by Michigan law. The following list is not exhaustive as there are many more issues with the proposed amendments.

Raw Produce Limitation. Proposed Sections 6.7.2(19)(b)(2)(i) and 6.7.3(10)(b)(2)(a) limit processing to raw produce. This limitation conflicts with federal winemaking regulations, which allow winemakers and small winemakers to purchase bonded wine for finishing by the winemaker or small winemaker. This is an extremely common practice in the wine industry. Similarly, winemakers and small winemakers often purchase juice made from grapes or other fruit and then ferment that juice on premises to process it into alcoholic wine.

Similarly, the Michigan Liquor Control code defines "wine" as a "product manufactured" to certain specifications. MCL 436.1113(9). "Manufacture" means "to distill, rectify, ferment, brew, make, produce, filter, mix, concoct, process, or blend an alcoholic liquor or to complete a portion of 1 or more of these activities." MCL 436.1109(1). Because Sections 6.7.2(19)(b)(2)(i) and 6.7.3(10)(b)(2)(a) prohibit the Wineries from distilling, rectifying, fermenting, brewing, making, producing, filtering, mixing, concocting, or blending bonded wine or juice into finished wine, these sections conflict with the Michigan Liquor Control Code. In other words, Peninsula Township has no legal basis to impose a "raw produce" requirement on any Winery.

Sources of Produce. Proposed Sections 6.7.2(19)(b)(2)(ii), 6.7.2(19)(b)(12)(I), 6.7.3(10)(a), 6.7.3(10)(b)(2)(b), 6.7.3(10)(b)(2)(C), and 6.7.3(10)(b)(12)(a) all serve one purpose—to limit the influx of produce from outside of Peninsula Township into Peninsula Township. They are nearly identical to the sections of the existing Winery Ordinances that Judge Maloney ruled unconstitutional on June 3, 2022. They still amount to facial discrimination against produce originating outside of Peninsula Township, which means that these proposed amendments “face a virtually *per se* rule of invalidity.” *Granholm v. Heald*, 544 U.S. 460, 476 (2005). That’s why, for at least the last 130 years, the Supreme Court has struck down local processing requirements like these as facially unconstitutional. *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Nat. Res.*, 504 U.S. 353, 355 (1992); *Hughes v. Oklahoma*, 441 U.S. 322 (1979); *Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349 (1951); *Brimmer v. Rebman*, 138 U.S. 78, 81 (1891). No processing limits can survive this constitutional scrutiny. These proposed amendments should be rejected.

Indoor Processing Requirements. Multiple proposed amendments, including the definition of “Farm Processing Facility,” 6.7.2(19)(b)(1)(i), 6.7.3(10)(b)(1)(i), 6.7.3(11)(b)(7)(a)-(b), would force the Wineries to conduct all processing operations indoors. Crushing, pressing, drying, and aging of fruit often take place outside. In effect, the Township would be telling the Wineries how to farm in violation of GAAMPs. The Michigan Right to Farm Act expressly preempts these provisions. *See* MCL 286.474(6). If the Township Board truly is “pro farming” as it so often says, it will reject these proposed amendments because they are preempted by the Right to Farm Act and defy common sense.

Additionally, Michigan Liquor Control Rule 436.1419 states that MLCC may issue an outdoor service permit to a winery and states the requirements for receipt of such a permit. Because outdoor service is allowed under the Liquor Control Code, the Township cannot bar it.

Takings and Due Process Violations. The following limitations are not present in the current zoning ordinance and, to the extent they are ever enforced against the Wineries, would constitute a taking under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. For example: 8.7.3(10)(b)(1)(i)-(ii), (iv)-(vii); 8.7.3(10)(b)(4)(a), 8.7.3(10)(b)(5)(a)-(e);¹ 8.7.3(11)(b)(2)(i), (iv)-(viii); 8.7.3(11)(b)(3)(a); 6.7.2(19)(b)(1)(i)-(ii);² 6.7.2(19)(b)(3)(VII), (X), (XI)-(XII); 6.7.2(19)(b)(5). These restrictions also go further than what was previously imposed. It makes no sense to suggest that what the Township thought was reasonable before Judge Maloney’s opinion somehow needs to be made stricter after that opinion. These restrictions constitute nothing more than an “arbitrary exercise of governmental power” designed to punish the Wineries. *See Bonner v. City of Brighton*, 495 Mich. 209, 224 (2014).

¹ Parcel size requirements are also preempted by the Michigan Right to Farm Act and GAAMPs. *See* Charter Twp. of Shelby v. Papesh, 267 Mich. App. 92, 106 (2005) (“[I]f defendants’ farm is commercial in nature and in compliance with the GAAMPs, it is a farm operation protected by the RTFA. The ordinance conflicts with the RTFA to the extent that it allows plaintiff to preclude a protected farm operation by limiting the size of a farm.”).

² MCL 436.1113(10) states that a winery may sell wine to consumers “at retail on the licensed winery premises.”

September 8, 2022

Vested Interests. Proposed sections 6.7.3(10)(a), 6.7.3(10)(b)(7), 6.7.3(11)(a), 6.7.3(8)(a) would strip vested interests from the Wineries in violation of Michigan law. “A prior nonconforming use is a vested right to continue the lawful use of real estate in the manner it was used prior to the adoption of a zoning ordinance. Though the ordinance be reasonable, it cannot operate to oust the property owner of his vested right.” *Dusdal v. City of Warren*, 387 Mich. 354, 359–60 (1972). This language targets the Wineries and should be rejected.

Citizens Agricultural Committee. It is unsurprising that these amendments have made it this far. They were proposed by the Citizens Agricultural Advisory Committee. On that issue, I need to correct the record for the citizens of Peninsula Township.

The Citizens Agricultural Advisory Committee began as a “negotiating committee” following the October 6, 2021, meeting at St. Joseph’s Church. The Township Board attempted to delegate its responsibility and authority to a committee of unelected citizens. When Judge Maloney was made aware of this committee, he asked “They [the Committee] can’t speak on behalf of the Township in this Court, can they?” Judge Maloney continued: “I don’t care who it is. How does the Township board delegate this responsibility to somebody else?” Given that background, there was no way the Wineries would or should negotiate with an entity that did not have the power to reach a settlement.

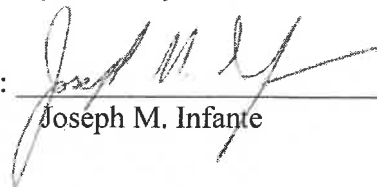
Additionally, the committee was structured in a way to give three seats to the Wineries. In that scenario, the Wineries would have been negotiating with themselves. That made no sense at the time. However, this “negotiating committee” morphed into the Citizens Agricultural Advisory Committee. It is disingenuous to keep characterizing the committee as belonging to farmers when the farmers continually were voted down and there was no realistic way any Winery member would or should have joined in the first place. To put it bluntly—these proposed amendments were not written by farmers. They were written by a self-interested group of people who, in the words of their attorney, are the “political enemy” of the Wineries.

Given the way these proposed amendments came about and their blatantly unconstitutional nature, I strongly suggest that the Township Board reject them. Adoption of these proposed amendments in their current form would be nothing more than outright retaliation against the Wineries for filing their lawsuit and prevailing at summary judgment.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By:



Joseph M. Infante

JMI/mag

To whom it may concern:

October 3, 2022

We live on Old Mission Peninsula nearby Mari Vineyards. We recognize that the winery brings a lot of positives to Old Mission Peninsula. However, we are also aware of the negatives, including the lawsuit by the wineries against the township. We are specifically concerned about the wineries fighting to host large events with amplified music. Mari Vineyards website states, "Unfortunately, at this time our local township government does not allow our winery to host any wedding ceremonies or receptions". This is something they would clearly like to do. We are unable to attend the township meeting on October 11th but wanted to put our opposition in writing, specifically regarding the wineries hosting large events with amplified music.

One such event was held at Mari Vineyards on September 3, 2022. It caused a significant noise disturbance well into the night. We were aware that the winery would be closed that weekend for a private event, however we were not aware of the level of noise that it would cause or how late into the night it would go. Mari Vineyards sits on a hill overlooking many homes and neighborhoods. During the summer months, we often hear music coming from the winery however it is never late into the night and is not so loud to cause a significant disturbance. We have never complained about it until now. During this specific event, we could hear every word of every song loud and clear. It was club level music until almost midnight. We contacted the sheriff to report a noise disturbance but were told that nothing could be done because the vineyard had obtained a permit for the event until midnight. We contacted Mari Vineyards by phone and email. We received a reply later that week acknowledging the event but no apology for the disturbance it caused.

If Mari Vineyards were permitted to host events such as weddings with amplified music, it would absolutely ruin the peace and quiet of the peninsula for many residents who live in this area. This is not a downtown area where restaurants and bars are open late, and events are held late at night. This is a quiet residential neighborhood. We have small children. Many of our neighbors have small children or are elderly. There are people, including my husband, who get up very early to go to work, even on weekends. Permitting the wineries to host such events would absolutely ruin the peninsula. It is of utmost importance to us that the township enforce the noise ordinance, specifically not allowing any amplified music. If there is anything worth fighting for, it is this. Thank you for your time. Please reach out to us with any questions or comments. We may be reached at moascione@gmail.com or 734-649-3198.

Sincerely,

Maureen and Michael Ascione

A handwritten signature in cursive script, appearing to read "MAscione".

October 6, 2022

Township Board of Trustees
Peninsula Township
13235 Center Road
Traverse City, MI 49686

Re: Request for Waiver from Moratorium

Dear Township Board:

On behalf of the landowner of the property at 15259 Smokey Hollow Road, located in the A-1 Agricultural District of Peninsula Township, we have requested that the Township Board grant us a waiver from the existing or any future moratorium that may be enacted relating to SUP applications. This letter supplements my earlier correspondence in requesting the waiver.

My earlier correspondence describes the reasons why Family Orchards is entitled to the waiver, as the moratorium violates federal and state law, deprives me of my due process and equal protection rights under federal law, and, therefore, is not valid. Moreover, Family Orchards would suffer immediate and irreparable harm under the moratorium, if enforced against it.

I am writing at this time to inform the Township Board that Family Orchards is filing a lawsuit in Federal Court against the Township on the grounds that the moratorium, as applied to Family Orchards, violates its due process rights as well as the Michigan Zoning Enabling Act. If our waiver requested is granted and our SUP application is processed, we would not proceed with the lawsuit.


Please note that I am not informing you of such a lawsuit as "threat", but I am simply extending to the Township Board the courtesy of this notification so that we won't later be accused of not disclosing this important information and costing the Township more money in legal fees. As I have been emphasizing, we have been looking forward to working collaboratively with the Township in proceeding with our SUP application. We still hope the Township Board will want to do the same.

Again, in submitting this letter and request for a waiver, I do not admit or stipulate to the Township's authority to deny acceptance of my SUP application and continue to reserve all rights available to me at law and equity.

Thank you for your consideration.

Kind Regards,

FAMILY ORCHARDS, LLC

By: 
Dr. Walter Knysz, III, Manager

Peninsula Township Planning

From: Marty Lagina <Marty@RockMI.com>
Sent: Sunday, October 9, 2022 6:06 PM
To: Peninsula Township Planning; zoning@peninsulatownship.com; Rob Manigold
Cc: Alex Lagina; 'Mglagina'; madeline.lagina@gmail.com
Subject: Fwd: PENINSULA
Attachments: [Untitled].pdf

All: I am advised that this next Tuesday, a combined meeting of the planning commission and the town board plans to enact drastic changes to the PTZO regarding wineries and winery chateaus.

If Peninsula township had followed the rules regarding changes to a ZO I would have no objection

You didn't do that.

A "moratorium" was enacted almost a year ago. The moratorium had none of the legal requisites required by the courts. Worse, it is obvious to me that this was all premeditated. The decision to revoke the winery chateau provisions I believe was done contemporaneously with the first moratorium. That is simply not legal in my reasoned opinion.

Then, out of the blue in July a second "moratorium" was put on a long standing USE BY RIGHT to a winery.

This is unconscionable. A citizen has an absolute right to rely on a ZO until it is replaced by an amendment pursuant to a long and detailed procedure - with ample opportunity for public input. Peninsula township flagrantly thumbed its collective nose at the law and due process.

Surely, even a child can see that if moratoriums are used while the law is rewritten then there is no due process whatsoever. The law gets changed in one day. WHICH IS EXACTLY WHAT IS OCCURRING HERE.

Please see the attached map.

Over the course of many many years, I have invested in peninsula township lands. I have suffered the cruel abuse of being taxed based on "highest and best use" for decades. Now those uses are being summarily taken away without even a modicum of due process. Is there intent to refund those taxes ??

My family and I had accumulated lands for at least 4 wineries and as many as four chateaus.

It takes a long time to prep the land and begin to raise proper vines. In every one of those tracts, that process has begun. Removing of orchards. Years of prepping the soil. Recontouring of the land. Planting of cover crops and, of course, installation of vineyards themselves. As to winery chateau number 4 in particular \$millions have been spent to establish a cohesive winery chateau in conjunction with commercial lands adjacent. It would have been beautiful.

And... lest the pompous do-Gooders at PTP collectively exclaim "glad we stopped that"

Please be aware that our intent was to do all of this under the umbrella of Mari Vineyards in a sensible and low impact way PRESERVING AGRICULTURAL LAND. Our tract record speaks for itself. Peninsula township has benefitted from our stewardship of the land. Now you attempt to dash our plans on the reef of your illegal moratorium.

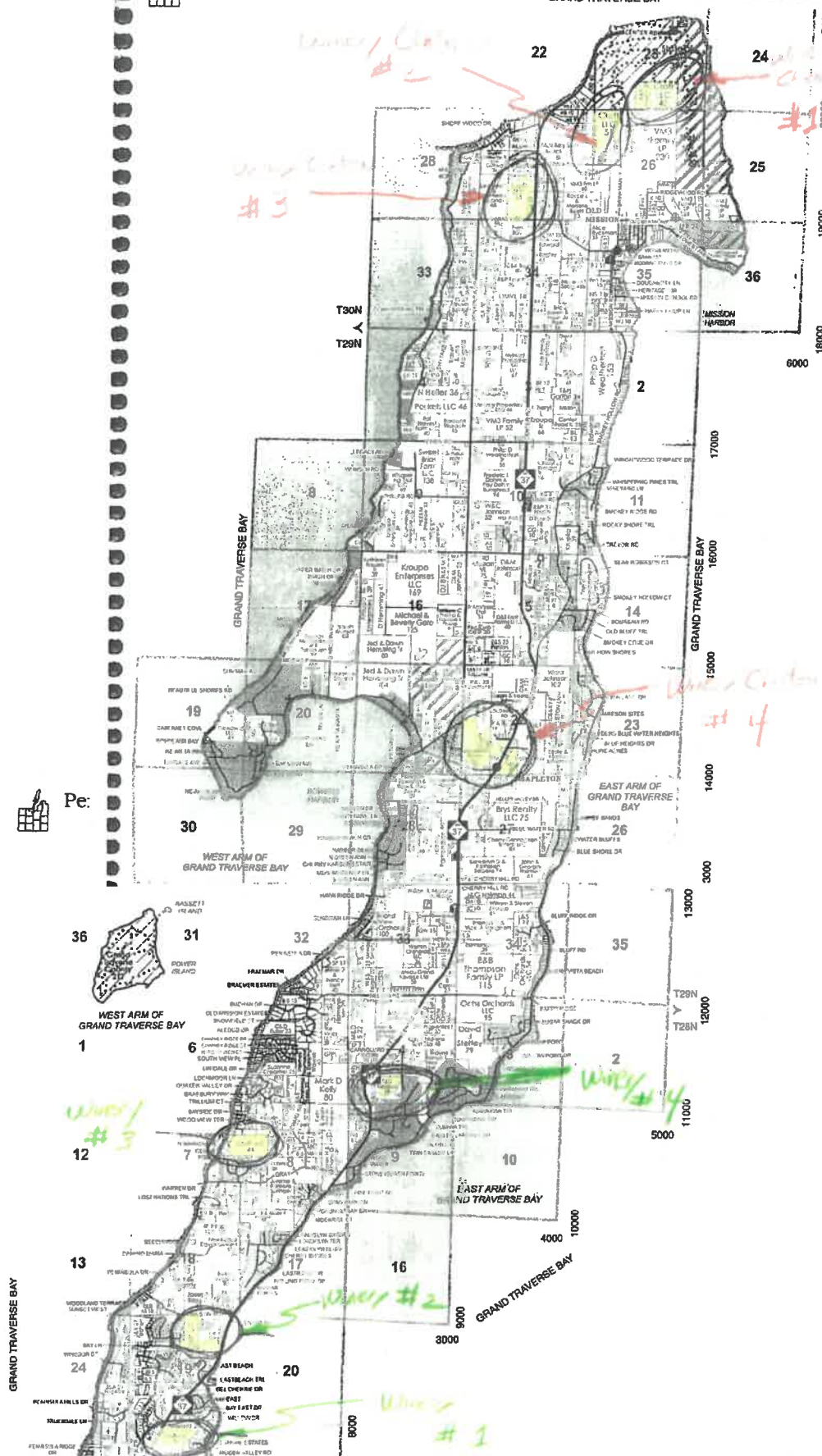
Please be aware of two things

1) I do not intend to have rights illegally taken from me and intend to seek redress (unfortunately - because it didn't need to come to this) through the courts

2) the law of unintended consequences has not been repealed. If you follow through and manage to destroy our plans (and likely many others) to keep so many tracts in beneficial agriculture, - well ... those taxes need to be paid somehow. The land divided into as many homesites as possible is what you will likely get

M Lagina

Sent from my iPhone



Rebecca Chown

From: Rose Skurski <skurskir@gmail.com>
Sent: Sunday, October 9, 2022 10:04 PM
To: Rebecca Chown; supervisor@peninsulatownship.com;
rudy.peninsulatrustee@gmail.com; armen.peninsulatrustee@gmail.com;
dave.peninsulatrustee@gmail.com; warren.peninsulatrustee@gmail.com;
treasurer@peninsulatownship.com; Susie Shipman
Subject: Winery Ordinance meeting 10/11/22

To Peninsula Township Board and Planning Commission

Please consider the following addition to the Proposed Amendment 201 in order to preserve the residential character of our neighborhoods and stave off needless threats of lawsuits.

Winery access

New winery entrances, including service entrances, will not have access through residential neighborhoods.

Thank you for your consideration.

Rose Skurski
14696 Mallard Drive
Traverse City MI

Sent from my iPhone
Rose=

Let's look at what the board is doing to affect the township.

Proposed and passed the PDR tax for another twenty years

Proposed changes to the ordinance outlawing room rentals in all districts

Proposing to take away farmers use by right for ag processing

Requiring 50 and 80 acres of land for ag processing

Ignoring Federal Court orders by including sections in the ordinance in direct contravention of the court decree

Now let's look at the consequences of these changes both individually and together.

30% percent of the township land has no development rights. Under the new PDR that number could easily exceed 50%. Thank you taxpayers for ensuring my property with development rights will increase in value. Sorry middle class people who would love to live on the Peninsula but you will be priced out of the market. We are becoming the Malibu of Michigan. That is fine with so many as long as the working class can commute from Kingsley to take care of our lawns and fix our plumbing.

Michigan travel bureau extols the beauty of our peninsula. Thousands of tourists come here to see the lighthouse. On the way to or from they visit our wineries and buy produce from our farm stands. Heaven forbid we give them a place to stay like an Air BnB room or let them rent a house on the bay for a week. We don't want any down state or out of state riff raff spoiling our Shangri-la.

Fifty years ago even before my time here we had five large cherry processors operating on the Peninsula. Now we have one and it handles significantly fewer cherries than were handled in the past. The thought that we are going to be overrun with ag processing operations is ludicrous. And yet to make sure we treat farmers the same as wineries and give them all the "benefits" the wineries have, we require them to have 50 acres or 80 acres if they have a few picnic tables for their customers to utilize while they are visiting. So once again the farmer is sacrificed at the altar of protecting the peninsula.

To top all this off you are giving the finger to Judge Maloney by passing this revised food processing ordinance. He has enjoined you from enforcing a significant portion of the old ordinance related to wineries. The new ordinance is even more restrictive than the old one. Good luck explaining that to Judge

Maloney. I am not sure your insurance carrier will cover you when you blatantly ignore his orders. I hope for your sake he does not take these things personally.

In conclusion you are well on your way to creating a homogeneous community of wealthy old people who don't want to share what this beautiful peninsula has to offer. At this point only the State or the courts will have the ability to make this a more heterogeneous and welcoming community like it was when I first bought my farm here.

Thank you

Marc Santucci

Is there anyone on either the planning commission or the Township Board with common sense and a basic understanding of farm and farm processing economics. Was there any attempt when setting up the so called agricultural committee to look for people with knowledge of farming and farm processing. From the looks of what you came back with the answer is either no or those people were ignored.

I am going to focus my time not on the wineries, the judge is doing that, but on the farm processing ordinances. First of all why would you take away something that was allowed by right in Ag zoning. Are we being overrun with new farm processing facilities. As far as I know nothing of any consequence has been added.

Why do you require 40, 50, and 80 acres for any type of farm processing facility. I looked at several similar townships in Leelanau, Grand Traverse, and Emmet County. Most of them only required ten acres and one required 20 acres. Your numbers are arbitrary and capricious and most of all ridiculous.

We had 5 large cherry processing plants here 50 years ago. None of them were required to grow 50% or more of the cherries they processed. In fact their reason for being was to help out other farmers. What reason would you have to require a processor to grow 50% or more of what he processed. The economics would be upside down and there would be no benefit to other neighboring farms. If you want to limit the number of processors then don't limit who they can buy from.

There is a lot more I can say about the farm ordinance, but given the limited time I have I will end with this. If you really are serious about helping farmers here, then you need to throw away this disaster waiting to happen and start anew with people with common sense and a working knowledge of agricultural economics and agro-tourism. I offered my help in the past and was politely ignored. Being shameless I offer it again.

Thank you

Marc Santucci