

PENINSULA TOWNSHIP

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

Citizens' Committee to Address Winery Lawsuit Meeting Minutes November 2, 2021, 10:00 a.m. Township Hall

1. **Call to Order:** 10:05 a.m. by Manigold

2. **Pledge**

3. **Roll Call:** Present: Venegoni, Rudolph, Gartland, J. Wunsch, Manigold, Eaton, I. Wunsch, Jacobs

4. **Brief Public Comments:** none

5. **Approve Agenda:**

Manigold: these are the additions to the agenda: the summary of citizens' concerns relating to the WOMP lawsuit and demands (see attachment), minutes from the last meeting, and a letter from Mr. David Taft (see attachment).

Moved by I. Wunsch to approve agenda as amended, seconded by Rudolph

Roll call:

Passed unan

6. **Conflict of Interest:** none

7. **Consent Agenda:**

Moved by Rudolph to accept consent agenda, as presented, seconded by I. Wunsch

Roll call:

Passed unan

8. **Business:**

1. Review claims in lawsuit.

Manigold: gave summary of the last meeting of the citizens' committee. Read the motion from the township board special meeting on October 6, 2021: "Moved by Bickle to reject the settlement proposal as presented, due to the fact it is an all or nothing proposal. Further direct the negotiating committee to approach 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, passed unanimously. The meeting today will focus on the eight points related to the WOMP lawsuit. Manigold, I. Wunsch, and Chown were in the negotiations. Community input will be considered in the negotiations. Following this discussion, the group formed will become a planning commission committee to work to change the ordinances that allow more agricultural uses. The agricultural community and WOMP will be asked for input.

Rudolph: presented handout with a summary of citizens' comments relating to the lawsuit and demands.

Manigold: asked for a consensus to go to the planning commission. Noted that, in addition to the wineries, agriculture includes cut flowers and lavender.

Jacobs: reviewed the summary. Remarked that there is overwhelming citizen support to oppose the winery lawsuit.

Discussion of the 2:00 a.m. closing time proposed by the winery lawsuit.

Manigold: most wineries are closed by five, six, or seven; Bonobo is open until 9:30 p.m.
Questioned the reasoning behind the 2:00 a.m. closing request.

J. Wunsch: This relates to weddings and events.

Rudolph: this might have come from the Michigan Liquor Control rules that state they may stay open until as late as 2:00 a.m.

Discussion of how many grapes from the peninsula are used in wine produced on the peninsula.

J. Wunsch: the community needs to see more land in agriculture.

Gartland: if the weather is bad (for the season) can outside grapes be brought in?

J. Wunsch: if there is a bad year, outside grapes can be brought in; it is in the ordinance.

For guest activities, local grapes (appellation) must be used. The community benefits.

I. Wunsch: according to state law, a small business can label wine.

Rudolph: appellation should be put on the bottle.

J. Wunsch: eighty-five percent is the percentage for appellation.

Discussion of the evolution/history of appellation, initially brought forth by the wineries, which established Old Mission Peninsula as a growing region.

J. Wunsch: everything has been brought in by the winery owners; farm processing came from the backlash. Reviewed the history of farm processing and appellation.

Manigold: remarked on the history of the wineries on the peninsula. Discussed use by right, designed to open it up for everyone; said the wineries are currently experience growing pains.

J. Wunsch: the size of production facilities became too restrictive; an expansion of production facilities was passed in amendment 139.

I. Wunsch: the square footage of the processing area is already unlimited. Traditional zoning will prevail, and the lawsuit prevents local policymakers from looking for creative solutions. The state laws would be much more restrictive. When it goes to the planning commission, the process will be more productive.

Discussion of hours of operation

Venegoni: hours of operation up to 2:00 a.m. are in the wineries' licenses. The intention not to hold these hours is not guaranteed.

Eaton: up to 9:30 p.m. is acceptable; not beyond that.

Jacobs: Bingham and Leland townships have ordinances that provide limitations to hours of operation – some close at 10:00 p.m. – and state that indoor and outdoor activities have rules around them.

J. Wunsch: gave examples of cooking classes for agricultural groups, brunches for non-profits. If indoors, okay. But bending the rules, such as running restaurants, creates danger on the roads. The rework will provide a clearer document that is easy to enforce. Objects to a 2:00 a.m. closing time.

Jacobs: when read through the citizen letters, the number one objection was hours of operation. Does not support 2:00 a.m.

Gartland: said 2:00 a.m. is not appropriate. 9:30 p.m. is the ordinance;, why are they not open until 9:30 p.m.?

I. Wunsch: the consensus is to not give in or give in very little on this issue.

Discussion

Venegoni: clarified that these events need to be inside the premises.

Manigold: SUPs are given for things like dining in the vines; many wineries have patios.

I. Wunsch: moved discussion to point two, the unlimited use of outside grape suppliers.

Venegoni: concerned they price the grapes.

J. Wunsch: using it for the purpose of agricultural interstate commerce. If you are bringing stress on the infrastructure and the community, the key natural values are to then encourage additional agricultural use of the land, not the pricing of grapes.

I. Wunsch: there is an oversupply of grapes in California so it is a lot less expensive to bring juice/wine in.

J. Wunsch: this reduces the need to keep land in/available to agriculture.

Jacobs: to allow wineries to get outside juice in a soft year is acceptable, but in a regular year it is bad for competition.

J. Wunsch: this is fueled by sneaking events and restaurants. The model cannot be sustained by local grapes. Events with large events will require grapes from outside the area.

Discussion of wineries uses of local versus outside grape juice.

Manigold: believes the topics of events, what constitutes a small plate, and amplified music are the main topics.

Gartland: these can't be done under agriculture.

Rudolph: Leelanau County has a section of special events independent of the wineries in their ordinance with restrictions on the event.

Manigold: lavender, cut flowers, or farm stands can have festivals as well. Discussed township-wide events that have occurred in the past such as Blessing of the Blossoms and others.

J. Wunsch: for point three, the WOMP proposal of no restrictions on meetings and events: look at Leelanau County townships or a state of Virginia township ordinances where the uses/events are carefully limited and reasonably worked out. Discussed guest use from the previous ordinance.

Venegoni: how were the "who" (groups) determined that could participate in the meeting/event?

J. Wunsch: natural guardrails are up when choosing non-profits for meetings. Agricultural groups support agriculture; this limits both impact and conflicts with standard agriculture practices. It also expanded awareness of the brand and avoided natural conflicts such as spraying.

Manigold: summarized limit on commercial use in the agricultural district. That is a central thread; wineries were an extension of that.

Eaton: the main point of focus is the unlimited events.

Gartland: they want all of this under agriculture. Do they actually want commercial zoning?

I. Wunsch: there has never been a request for commercial rezoning.

Jacobs: referenced Michigan Liquor Control. There are boxes on the application for events or a restaurant, but that does not carry a requirement for a local ordinance to be allowed.

Venegoni: an example would be a farm stand; there is a need to coordinate licenses from the state with local ordinances.

Jacobs: there are only four class C liquor licenses in the township. Small wineries cannot operate as such.

I. Wunsch: class C overrides a large amount of local zoning control and pre-empts a lot of local control. The legal question is whether preemption to class C holders also applies to small wineries/brewers.

Manigold: inside use may be acceptable; outside use can disturb neighbors close by. Residential neighbors must be taken into account.

Discussion of larger space and the ordinance.

Manigold: summarized merchandise under the current ordinance.

Rudolph: there are natural limitations from the fire department and the health department for public safety. Brought up an increase in traffic from large events.

J. Wunsch: commercial taxes are on the building only.

Discussion of catering, restaurants, food trucks, and commercial kitchens relating to weddings and receptions.

Venegoni: Leelanau County, Bingham, and other townships have a set number for events held through a SUP process.

J. Wunsch: this can be accomplished through enforcement and fees for each event.

Manigold: referenced the marathon held in Peninsula Township as a safe environment through the use of a SUP.

J. Wunsch: the next point to consider is that the majority of the produce for the farm processing facility must be grown on the specific owned and operated farm operation. Fairfax, Virginia, gives an initial start-up period for production. In [Wunsch's] opinion, when restricted to OMP appellation, that period can be filled with other grapes from Old Mission. They now need to grow a majority in the initial years. Acreage is needed for the viability of agriculture. More discussion should take place on this topic.

Discussion of acreage.

Venegoni: would the amount of land be changed?

Manigold: right now it's fifty acres for a chateau, forty acres for use by right, and twenty acres for farm processing.

Chown: They want to bring the requirement down to five acres.

I. Wunsch: that was included in the complaint.

Manigold: is it easier for the group to look at a new ordinance or change the old one? All use by right SUPs are different. Commented on trip generation, considered years ago on the peninsula. It was decided that no more commercial expansion was the answer. Gave examples of lawn services and delivery trucks. When looking at the presence of alcohol in a winery tasting room, the wineries have trained staff. In addition to wineries, farm stands, lavender, and cut flowers are agricultural uses that need to be considered.

J. Wunsch: the committee has given enough information for this matter to move to a planning commission sub-committee. Hold the line with the legal negotiations.

Venegoni: commented on agricultural spraying and its effect on nearby homes and buildings. By this, events need to be indoors.

2. Discuss how to address claims and provide proposal

I. Wunsch: this committee can be folded into a planning commission sub-committee to look at the winery ordinance, agricultural zones, use by right, farm stands, and nurseries.

Discussion.

9. Citizen Comments:

David Merrell, 2046 Phelps Road: appellation should be used appropriately. A special use fee of seven to ten thousand dollars should be charged per event. Questioned the assertion by the OMP wineries that they do not make enough money.

Grant Parsons, 6936 Mission Ridge: Minnesota is a case where the lawsuit occurred in a different circuit court that is not binding on ours; the appellation there is for the entire state. That's different from Old Mission Peninsula. Viniculture/appellation is in the code of the federal register and refers specifically and exclusively to the peninsula. Regarding the hours, if we give a zoning concession for winery owners, it would apply to all; this is a worst possible risk. What would be created with new wording would have to go through a court test. Finally, regarding outside operations and keeping guests indoors, the consideration is buses, lighting, and cars for example.

David Taft, Nehtawanta Road: referred to the last slide of his submitted PowerPoint. A zoning ordinance can be written with the existing regulations.

Chown: corrected the wording of points six, seven, and eight under "B" of the summary provided to the committee. Noted that these points are encompassed in the other issues that residents are extremely opposed to even though these points weren't specifically articulated. Noted that it isn't just a few citizens who are opposed to these items; many are, just like the other points.

J. Wunsch: agrees. Points six, seven, and eight are points that prevent explosive growth. While not that many comments referenced points six, seven, and eight, the previous points are managed by these points, so they are very important.

Deeren: several wineries are in the works for the township and the farmers have committed to planning with the rules in place. The success of the wineries does not carry over to the farms; they need to stay in agricultural use.

Julie Alexander, 4956 Forest Avenue: questioned the set of ordinances that the lawsuit covered.

J. Wunsch: there was no change in the wineries section.

Manigold: the wineries and short-term rentals were left out of the rewrite.

I. Wunsch: this citizens' advisory committee will reform as a planning commission subcommittee. The purpose is to add a few more seats and more opportunities for public input.

10. Next Meeting Date: TBD

11. Adjournment:

Moved by **I. Wunsch** to adjourn, seconded by **Eaton**.

Passed unan

Adjournment at 11:58 a.m.

DRAFT

Summary of citizen's concerns relating to WOMP lawsuit and demands

This committee is established to reach a consensus between the citizens and the wineries relating to this conflict. As such it is important to keep in mind both the wineries demands and the expressed demands of the other citizens of the Township.

Committee members John Jacobs and William Rudolph, independently reviewed citizen comments from the open meetings on this subject and came up with the following results:

Support for the Township opposing the demands of the wineries	75-80%
Supporting the wineries in their demands	13-17%
Wanting to put other farmers on and equal footing with wineries	5%
No opinion but frustrated by the process	2%

A. Citizen expressed general concerns in order of frequency:

1. Concern about negative affect on the rural/residential nature of the community, in general an increase in congestion. A quality of Life issue.
2. Concerned with increasing traffic problems in general as a result of wineries expanding operations.
3. Concerns about the increase in noise pollution as a result of expanding winery operations. A health and safety issue.
4. Concern about an increase in inebriated drivers. A health and safety issue.
5. Concern about an increase in demands on emergency services and infrastructure, including law enforcement needs. A health and safety issue.
6. Concern that frequent, large scale events will lead to too much congestion and busyness. A quality of life issue.
7. Concern that wineries would compete with existing restaurants and bars to their detriment. A fairness issue since they had to apply for a class C liquor license of which there are only four available.
8. A concern that wineries would gain at the expense of the rest of the citizens of the township. A fairness issue.
9. Concern that winery operations will pose a threat to the viability of other agricultural operations on the peninsula. A fairness issue.
10. A concern that the expanded winery operations will be a threat to future PDR efforts. A quality of life issue.

B. Concerns expressly aimed at the demands as stated by the WOMP lawsuit, again in frequency of expression:

1. Many opposed to expanded hours of operation, up to 2:00 am from 9:30 pm for winery-Chateau and no current limits for tasting rooms (per proposed ordinance).
2. Many opposed to hosting frequent, large events.
3. Many opposed to acting as restaurants and caterers.
4. Many opposed to amplified music.
5. Some opposed to expanded merchandising.
6. Few opposed to reductions in acreage requirements.
7. Few opposed to expanded overnight accommodations.
8. Few opposed to reduction in percent of local grape content.

C. Citizen comments worth noting:

1. Wineries knew the ordinance and agreed when they established their businesses.
2. Wineries, as agricultural enterprises, should not compete directly with other legitimate, licensed businesses.
3. The WOMP lawsuit is coercive in nature and circumvents public participation in rule changes.
4. The WOMP demands far exceed agriculturally related activities and if successful Township should consider changing zoning to commercial or industrial.
5. There are broader implications to local community planning and zoning ordinances across the country, if the WOMP lawsuit is successful.
6. There are already too many wineries in a small restricted area to operate without restrictions.

November 2, 2021

Rebecca Chown

From: David D Taft <ddtaft@mac.com>
Sent: Thursday, October 28, 2021 2:31 PM
To: Rebecca Chown
Subject: Comments - Per your request
Attachments: PeninsulaTownship.Winery.Presentation.10.25.2021.pptx

At the meeting on Wednesday, you/Rob asked that any suggestions/comments from residents should be forwarded to you by Monday to be available to Citizens Committee for review.

I had asked for in my earlier letter in response to seeking volunteers to be able to speak to this committee for an hour. As I live elsewhere in winter, I could not volunteer to serve on this committee. Selfish of me to ask for an hour—in view of the valuable time spent by this committee on this issue.

I did comment to Rob that I can give my presentation in 10 minutes—and may take longer if questions arise from the committee.

I have attached a PowerPoint stack of 6 slides that addresses the zoning ordinance re-write issue.

As I said in public comment at the meeting on Wednesday, I believe the committee must address “What Matters Most” on this zoning issue to the residents—as commented on recently at the October 6 Public Meeting and what has been updated in the Draft Master Plan. Once, understanding what is important to the residents, the committee can examine the winery ZO sections and determine areas of possible negotiation/compromise rather than address issue-by-issue the winery demand list. I think the two lawyers who commented at public comment more eloquently than I did said it well. The focus of the committee should be on what the residents want and how to address the winery ZO and not be threatened by the lawsuit and the demand issue list with potential court related deadlines as presented by the Township Attorney.

My hope is the committee can work independently on What Matters Most to the residents to determine how to modify the current ZO and potentially reach some compromise on issues.

I have spent hours and days on this issue in the last year and have condensed my suggestions in the attached slides. I also have developed a “Strawman” re-draft of the existing winery ZO sections as a starting suggestion to encourage this approach towards compromise.

Most importantly, I want to commend the volunteers and the Township Supervisor and Trustee for their willingness to serve on this important and unique committee. And to the Township staff that will assist this committee in their meetings. I inherently believe that a grounds up—citizens/residents— approach to trying to resolve this issue will lead to potential resolution-- outside of the confidential negotiation conducted by the two attorneys and township staff from which the residents have been excluded to-date.

Again, thank you!

David Taft

Peninsula Township Zoning Ordinance: Wineries

Three Sections:

- Winery/Farm Processing Facilities
- Winery, Remote Tasting Rooms
- Winery Chateaus

Historically, three sections introduced by three early wineries:

Conflicts & inconsistencies across 3 section → Confusion

Performance measurements -- difficult & time-consuming to measure

Consultant hired to help -- dodged re-write of winery ordinance

Peninsula Township Zoning Ordinance: Wineries

Beliefs:

- **Residents** – Want a rural community and enjoy ambiance of peninsula.
- **Farmers/Growers** – Want to grow crops, successfully harvest them and sell them on and off the peninsula.
- **Wineries** – Want to grow new opportunities that their present SUPS restrict them from doing.

Symbiotic relationship hoped for in ZO:

- Working together:

Grapes grown by peninsula farmers, processed by peninsula wineries and sold at wineries/tasting rooms on the peninsula and to individuals, wholesalers, retail outlets off the peninsula.

Peninsula Township Zoning Ordinance: Wineries

Wineries:

- Expand their SUPs
- 5 acre wineries
- More events:
 - weddings
 - office parties, etc.
 - dinners
- Restaurants/Catering
- Wines + mixed drinks
- Expanded hours-Later nights
- Amplified music
- Process grapes from outside
- Expand retail sales

A DILEMMA

Residents:

- Oppose expansion
- Maintain rural quality
- Follow Master Plan
- Reduce traffic
- Safety concerns: DUIs
- No weddings, parties
- No amplified music
- Keep current hours
- Keep current acreage standards
- Wineries not bars

Peninsula Township Zoning Ordinance: Wineries

Challenges:

- Compromise - Existing wineries are our neighbors with SUP rights. Are there areas of compromise and negotiation to resolve the dilemma?
- Simplify - Re-write and modify existing Wineries ZO to remove conflicts, inconsistencies and confusion.
- Measure - Replace difficult to measure performance with easier reporting requirements and easier to follow by the township.
- Common Sense - Add activities not allowed by present ZO but practiced by the wineries---i.e.---small plates.

Peninsula Township Zoning Ordinance: Wineries

Suggestions:

1. Rewrite existing sections –Difficult to start over and preserve all allowable practices of existing ZO.
2. Parallel sections – Remove conflicts, inconsistencies and confusion in existing ZO winery sections.
3. Simple measurements – Simple measurements for wineries to do and township office to monitor.
4. Emphasize cooperation – Farmers grow quality grapes and wineries buy them to make wine. Good for both!
5. Use capacity - Once local production absorbed, wineries should be able to produce wine from grapes outside the peninsula. No resale of imported wines and shiners/labeled and sold on peninsula.
6. Common sense – Recognize practices now conducted – Small plates, bottles for on-site consumption.
7. Retail sales – Let wineries sell what they want: Logo caps, T-shirts etc., photos, etc. but not services— massages, manicures, lingerie, cosmetics, etc. These are wineries, not department stores.
8. Sell and promote OMP wines—Not mixed drinks and other products. SUPs for wineries, not bars.
9. Amplified music—OK inside but not outside. No amplified or speakers outside.
10. Restaurants - Wineries are wineries not restaurants. Small plates and wine themed event dinners.
Food service is subordinate to the sale of wine.
11. Events -- Wineries are not event centers. No weddings, large office parties, major events.
12. Catering -- Can wineries cater to private owner-present resident weddings? But, not VRBO, Airbnb parties!
13. Acreage – Maintain current acreage requirements. OMP cannot handle more traffic, congestion, noise.

Peninsula Township Zoning Ordinance: Wineries

- Paso Robles Anecdote:

How many wineries in Paso Robles, California in 1990?

How many wineries today?

- “Strawman” – A re-write draft

Highest priority – Acreage. We are a peninsula with limited access.

Wineries are wineries—Not restaurants, bars, event centers, department stores.

Control traffic, noise and events.

Rural ambiance – the Master Plan.