Packet
11-06-25
Township Board Special Meeting

Consent

Correspondence

Becky Chown

To: Maura Sanders
Subject: RE: Fwd:

From: Tom Ackles <tom.ackles@gmail.com>
Sent: Monday, October 20, 2025 2:52:24 PM
To: Maura Sanders <supervisor@peninsulatownship.com>
Subject: Fwd:

Looks like a lack of crop diversification is a greater risk than local land use ordinances. Please share.

---------- Forwarded message ---------
From: **Tom Ackles** <tom.ackles@gmail.com>
Date: Mon, Oct 20, 2025 at 2:33 PM
Subject:
To: Tom Ackles <tom.ackles@gmail.com>

Looks like lack of crop diversification is a greater risk than adherence to local land use ordinances. Please share.

https://www.msn.com/en-us/money/personalfinance/california-farmer-watches-in-pain-as-local-winery-dumps-his-grapes-truckloads-worth-10k-15k-all-left-to-rot-why-his-only-customer-rejected-them/ar-AA1OMfDF?ocid=msedgdhp&pc=U531&cvid=68f6748d5d95463ea31b7aa1e438a582&ei=39

Becky Chown

To: Julie Alexander
Subject: RE: Ron Lawrence 18421 Mission ROAD

---------- Forwarded message ---------
From: **julerooni@aol.com** <julerooni@aol.com>
Date: Sat, Nov 1, 2025 at 11:53 AM
Subject: Ron Lawrence 18421 Mission ROAD
To: jualexanptpc@gmail.com <jualexanptpc@gmail.com>

Thank you for allowing me to "spoil" your morning walk back in Sept.
Perhaps I like Mr. Raphael's opinion piece because it mirrors the uninformed and imprecise analysis I shared with you on our walk to your Leffingwell home.
RE: Jim Raphael analysis:
This is the most cogent and thoughtful analysis of the Judge Maloney's ruling on monetary damages I have read.
Mr. Raphael's statement -
"The lost profit claims seem to be less about hosting activities ancillary to agricultural production than pushing their objective of turning OMP wineries into multi-purpose event centers." - is highly plausible and the fact that WOMP is proposing a separate settlement on the zoning issues while refusing to discuss monetary damages seems to confirm this fact. The implication of these ideas is that any negotiated settlement between WOMP/Township and PTP must be global not just a settlement on the zoning issues. There is no quick fix. Achieving a reasonable and equitable settlement of all these issues will be an expensive and arduous process
Persevere!
Pining for Old Mission,
Ron Lawrence
(C) 212 928-8209

Becky Chown

From: John Jacobs <jjacobs@jjacobs.com>
Sent: Monday, November 3, 2025 3:38 PM
To: Becky Chown
Subject: Letter For Nov. 6 Township Board Meeting

To: Peninsula Township Board Members

I'll be out of town on Nov. 6, and therefore unable to attend the Township Board meeting in person, but I would like to comment on the meeting topic.

I am heartened by the fact that the wineries are finally willing to talk settlement. It would be a welcome relief for everyone in our Township if a reasonable compromise can be reached, balancing the needs of business owners and residents while preserving the rural character that makes our Township so special. Only you, Board Members, have the wide perspective to see all points of view in efforts to resolve the lawsuit. You were elected because residents have confidence in your abilities and judgment. Recent times have been very difficult for the Township, with people at each other's throats over the winery lawsuit and other contentious issues. Although there are always people ready to throw stones, I believe this board has done an exemplary job of navigating those issues to the benefit of **all** constituencies, and I am confident you will continue to do so. Thank you for your stewardship.

John Jacobs

5290 Forest Ave.

Becky Chown

From: Jim Raphael <jhraphael68@gmail.com>
Sent: Tuesday, November 4, 2025 3:40 PM
To: Maura Sanders
Cc: Becky Chown; Elena Dritsas; jp.peninsulatrustee@gmail.com; jualexanptpc@gmail.com; Isaiah Wunsch; Dave Sanger
Subject: WOMP's Proposed Lawsuit Settlement

November 4, 2025

Dear Supervisor Sanders:

I found it amusing and revealing that WOMP's press release of October 30 announcing a proposed settlement to its on-going lawsuit with Peninsula Township states the proposal was submitted "after the wineries waited months for meaningful engagement." Of course they waited months. That's because WOMP's Pied Piper, Attorney Joe Infante, instructed winery owners, after the district court verdict was issued in July, not to talk to the township. What other outcome did they expect, given Infante's instructions?

It is difficult at this point not to view WOMP's settlement overture in the same skeptical light: Little more than a public relations ploy to change the narrative of what is going on, so the wineries will look like good guys kindly willing to sit down and negotiate a settlement to end the suit. And if the township refuses to play by Infante's rules, well, they're the bad guys again. The wineries started the lawsuit years ago to pursue interests and an agenda outside the scope of the Special Use Permits under which they operate. But somehow, WOMP and its camp followers have manipulated the narrative to make it sound like it's the township's fault or PTP's fault that we are where we are. After all, we're being told, the wineries just want to be good OMP neighbors—that is, provided they get what they want.

I urge township board members to hold to your principles and proceed with wary caution as you consider the proposed settlement. WOMP wants you to concede to its demands to change existing zoning ordinances to their liking, and then they claim, they would be open to negotiating the damages awarded by the district court. This order of events needs to be reversed. Do not negotiate anything until the compensation issue is resolved and off the table. It is highly unlikely the original court verdict will survive the appeals process, as I have recently written (Old Mission Gazette, October 31), because of fatal flaws in the way damages were calculated and the total lack of factual evidence to back WOMP's claims, among other problems with the Bench Opinion. I'm guessing WOMP realizes this, and it is a

major reason for this most recent initiative. If WOMP refuses to address this precondition for talks to follow, go no further until the compensation issue plays out in the appeal process.

Second, as several of you have made clear, any negotiation over the wineries' proposed terms needs to be public, transparent, and fair to all (especially to the other farmers on the Peninsula). Why do Infante and WOMP insist on keeping their 14-page letter of demands "confidential" (i.e., secret)? What are they hiding that they don't want the residents of the township to see? Any concessions the township makes to WOMP will have to be incorporated into the winery ordinance(s). This requires public notices and hearings on proposed changes. You would put yourself in an untenable position by agreeing beforehand to publicly undisclosed ordinance changes WOMP wants without going through established processes, included vetting them with the public. Infante's secretive approach is a non-starter.

So, where do we go from here? I know many residents, like me, are frustrated because we have been kept in the dark for years about the lawsuit and what is going on behind the scenes. While we taxpayers might be on the hook for the outlandish damages awarded by the district court, we don't have standing in court to express our views, nor do we have a seat at the negotiating table.

Let me suggest an alternative course that brings township residents into the process. I propose that any recommended changes to the existing winery ordinance(s) coming out of the lawsuit or outside negotiations be brought before the public for a vote at the next primary or general election, much as we would do with millage proposals, possible change in the legal status of the township, and other issues that impact us all. To give WOMP a full voice in the process, I propose that its members draft a proposed winery ordinance that incorporates all the terms and conditions they seek. This would become Ballot Initiative #1. The Township board, working with its Planning Commission and other appropriate citizen committees, would draft its proposed winery ordinance with any changes in the current document it wishes to incorporate, presented as Ballot Initiative #2. Let the voters decide between the two ballot initiatives which one better serves the various interests on the Peninsula and promotes the greater public good. The initiative that receives a majority vote would become the ordinance of record, on which any future modifications would be made. Enough is enough. It's time for the voice of the people to be heard.

James Raphael

14826 Mallard Drive

Traverse City, MI 49686

Business

WOMP's Brief Filed August 15, 2025, Seeking to Hold Peninsula Township in Contempt of Court for Withholding a Third Insurance Policy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

v.

PENINSULA TOWNSHIP, Michigan Municipal Corporation,

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

ORAL ARGUMENT REQUESTED

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY PENINSULA TOWNSHIP SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR WITHHOLDING A THIRD INSURANCE POLICY

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INTRODUCTION

Peninsula Township has yet again failed to produce relevant insurance policies to the Wineries. Just days ago—more than a year after trial and a month after judgment was entered—the Wineries learned that Peninsula Township still had not turned over all of its insurance policies. The source of this information was a quote from the Township Supervisor in a local newspaper, referring to the Township having three relevant insurers, when previously the Township had only identified two relevant insurers, and even then, only after the Wineries had to fight for even that information. There is no excuse for withholding the policies issued by this third insurer after the Township was ordered to produce its policies four years ago and was sanctioned two years ago for withholding a different insurance policy. Sanctions are more than warranted.

FACTUAL BACKGROUND

This Court is familiar with the factual background of this issue as its August 18, 2023, Order Granting in Part Motion for Sanctions succinctly sets forth the facts leading up to this motion:

> In March 2021, the Township served its initial disclosures, in which it stated, "To date, [the Township] is not aware of any applicable insurance policies to disclose at this time" (ECF No. 336-4 at PageID.12380). On June 22, 2021, the Wineries served their second set of requests for production of documents, and in Request for Production Number 22, they asked the Township to provide "a copy of any insurance policy covering Peninsula Township's litigation expenses in this Lawsuit" (ECF No. 336-1 at PageID.12279). The Township objected to that request, arguing that "The documents sought by this request are, in part, inadmissible under Fed. R. Evid. 411 and associated caselaw. Furthermore, the documents sought by this request are not relevant to any party's claim or defense in this matter. Without waiving said objections and subject to the same, the Township has requested a copy of any potentially applicable policy." (ECF No. 336-2 at PageID.12286).
>
> On August 17, 2021, the Wineries' sent then-counsel for the Township a letter detailing the deficiencies in the Township's objection (ECF No. 336-3 at PageID.12366). After receiving no response, the Wineries filed a motion to compel (ECF No. 83). On September 28, 2021, Judge Kent granted the Wineries' motion with respect to the production of the Township's insurance policies and directed

> the Township to "produce any policy of insurance responsive to Request to Produce No. 22" (ECF No. 94). On October 12, 2021, Peninsula Township produced an insurance policy between the Township and Argonaut Insurance Company with a policy period commencing on July 1, 2014 (ECF No. 336-9). It did not produce any other policies.
>
> Over a year and a half later, in April 2023, the Township filed a motion to stay this case to allow the Michigan Township Participating Plan ("MTPP") to intervene and disqualify the Wineries' counsel because the MTPP purportedly provided an insurance policy to the Township (the U.S. Specialty Insurance policy), and the MTPP was also represented by the Wineries' counsels' law firm (ECF Nos. 328, 329). Ironically, this motion brought to light the Township's violation of Judge Kent's previous order compelling the Township to produce all applicable insurance policies (see ECF No. 342 at PageID.12541).

(ECF No. 429, PageID.15476-78.) While the Township eventually produced the U.S. Specialty insurance policy and argued that sanctions were not warranted, this Court disagreed:

> The Township's eventual untimely production of the U.S. Specialty Insurance policy does not mean the Wineries' motion was not necessary, nor does it mean that the Wineries are not entitled to their attorney fees and costs for bringing the motion. Notably, the Township was ordered to produce copies of applicable insurance policies in September of 2021, and it did not produce all applicable policies until August of 2023. There is no legitimate way for the Township to justify this delay.

Id. at PageID.15479.

Despite being sanctioned two years ago for failing to produce all its insurance policies, the Wineries learned on August 11, 2025, that the Township has yet another insurance policy, from yet another insurer, that it did not produce. Following a recent lawsuit that U.S. Specialty filed against Peninsula Township and the other parties to this case, Township Supervisor Muara Sanders publicly stated to the press that U.S. Specialty "is one of *three* that insured the township during the period in which the wineries and trade group are seeking damages." Exhibit 1: Crain's 8/11/25 (emphasis added). Given that Peninsula Township has only ever disclosed U.S. Specialty and Argonaut as its insurers, the Wineries, on August 12, 2025, demanded production of this unknown, third insurance policy by 10:00 a.m. the next day. Exhibit 2: 8/12/25 Letter.

The following morning, Peninsula Township produced five insurance policies issued by Employers Mutual Casualty Company ("EMC"), covering the years 2019-2024, as well as four additional insurance policies issued by Argonaut which had never been produced. The production also contained a cover letter containing the following explanation of the different insurers:

> there are three separate insurers with different policy periods that span the timeframe in which we believe your clients sought damages. Those insurers are, in order of policy period: U.S. Specialty Insurance Company, Argonaut, and EMC. Each insurer has taken a different stance on your client's claims and their duty to defend and indemnify. The "third" policy to which you refer is the EMC policy, which issued a denial of any duty to defend and indemnify in November 2020.

Exhibit 3: 8/13/25 Letter. Counsel for the Township then sought to pass blame for the production failure to prior Township counsel:

> As you know, neither the undersigned firm [Fahey Schultz] nor McGraw Morris represented Peninsula Township when the Rule 26 disclosures were made, including those in subsection 26(a)(1)(A)(iv). This makes providing you an explanation difficult and, at best, speculative as to what prior counsel may have been thinking. Therefore, we are unable to provide a clear explanation why Mr. Meihn chose not to produce a copy of any policy from EMC. The only thing we can speculate is that perhaps EMC's November 2020 denial letter led Mr. Meihn to believe that EMC's policy was not one that "may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment."

Id. Counsel continued: "While you may not be satisfied with this explanation, we again remind you that neither we nor McGraw Morris were counsel when Mr. Meihn responded to Request to Produce 22 and, therefore, can only speculate why he did what he did." *Id.*

Of course, the letter does not identify when the Township's current counsel became aware that the Township's prior counsel had violated Federal Rule of Civil Procedure 26 and this Court's prior order, or why it took a demand from the undersigned to finally obtain the new policies given that the Township's current counsel were counsel of record when this Court issued the sanction order discussed above.

ARGUMENT

Under Federal Rule of Civil Procedure 37(b)(2)(A), "a district court may sanction parties who fail to comply with its orders in a variety of ways." *Bass v. Jostens, Inc.*, 71 F.3d 237, 241 (6th Cir. 1995). "Such sanctions may include limiting the disobedient party's proofs or testimony, striking pleadings, monetary sanctions, and dismissing an action when it is the plaintiff who has failed to comply." *O'Dell v. Kelly Services, Inc.*, 334 F.R.D. 486, 490 (E.D. Mich. 2020).

The Court's charge on an application for sanctions under Rule 37 is to determine whether the failure to adhere to discovery obligations was "substantially justified." *See Design Strategy, Inc. v. Davis*, 469 F.3d 284, 296 (2d Cir. 2006) (holding that "[s]ince Rule 37(c)(1) by its terms does not require a showing of bad faith… such requirement should not be read into the Rule."); *Gittins v. Gateway Clipper, Inc.*, 2021 WL 1232421, at *13 (W.D. Pa. Mar. 12, 2021) (citing same). The 1993 amendments to Rule 37, which incorporated the "without substantial justification" standard, were "designed to strengthen the incentive to be forthcoming in the disclosures mandated by Rule 26 by penalizing those who fail to comply with the requirements." *Husaini v. The Paul Revere Life Ins. Co.*, 2016 WL 6948401, at *5 (W.D. Pa. Nov. 28, 2016).

"Every violation of the Rules has consequences; the question is who will bear them. Too often the consequences are borne only by the innocent party, who must live with the violation ... or else pay to brief and argue a motion to compel the offending party to do what the Rules required it to do all along." *R.C. Olmstead, Inc. v. CU Interface, LLC*, 606 F.3d 262, 277–78 (6th Cir. 2010) (concurring opinion). Here, the Wineries are the innocent party and have thus far borne the consequences for Peninsula Township's refusal to comply with its discovery obligations and this Court's orders.

1. Peninsula Township's Conduct was not Substantially Justified.

There is simply no justification for the Township failing to produce multiple insurance policies from a third insurance company when it was sanctioned two years ago for failing to produce an insurance policy from a second insurance company. While the letter casts blame upon predecessor counsel, Greg Meihn, this ignores that the Township's current counsel became counsel of record two years ago and was counsel when the Township was sanctioned over this same issue. Nor does the letter explain when counsel learned of the third insurance policy. Did it learn of the policy when the Wineries learned of it, or has counsel been aware of the EMC insurance policy since substituting into this case? The answer to this question should guide the Court as to the appropriate sanction. Still, there is no question that Peninsula Township has been aware of the EMC insurance policy for years. The declination letter produced this week by Peninsula Township is dated November 24, 2020 and addressed to former Township Supervisor Rob Manigold. Exhibit 4. The Township produced EMC insurance policies from 2019 to 2024, so EMC has been the Township's insurance carrier throughout this entire case. Given that the Wineries sought damages for the period 2017 and continuing thereafter, there is no question that the EMC policies were relevant, even if EMC is taking the position it will not provide coverage. (And EMC does not get the final say on this issue—neither the Township nor the Wineries are required to accept EMC's denial of coverage and possible breach of its duty to defend the Township.)

There is simply no "substantial justification" for the Township's failure, and federal courts around the country have not hesitated to sanction defendants and/or their counsel who refuse to produce insurance information mandated by Rule 26. *See, e.g., Sun River Energy, Inc. v. Nelson*, 800 F.3d 1219 (10th Cir. 2015) (affirming award of sanctions against counsel for failing to disclose the company's D&O insurance policy in its initial disclosures on the grounds that defendants' counsel never "took a serious look at whether there was applicable insurance" and "exhibited

deliberate indifference to the obligation of providing relevant insurance information under Rule 26"); *Palacino v. Beech Mountain Resport*, 2015 WL 8731779, at * 2 (W.D.N.C. Dec. 11, 2015) (sanctioning defendant and counsel for failing to properly disclose applicable insurance policies and noting that a violation of Rule 26 had occurred because "[d]efendant was legally obligated to disclose both policies in its Initial Disclosures, and its failure to do so violated its obligations under the Federal Rules of Civil Procedure and the Court's Pretrial Order"); *Hopkins AG Supply LLC v. First Mountain Bancorp*, 2017 WL 2937713, at *2 (W.D. Okla. July 10, 2017) (sanctioning defendant and granting plaintiff's request for attorneys' fees because the non-disclosure of an E&O policy was "not substantially justified" and the "lack of full discovery [into insurance] rendered the [settlement] conference a sham"); *Eshelman v. Puma Biotechnology, Inc.*, 2019 WL 1779572 (E.D.N.C. Apr. 23, 2019) (sanctioning defendant for refusing to turn over excess insurance policies); *Webster v. Psychiatric Medical Care, LLC*, 386 F. Supp. 3d 1358, 1366 (D. Mon. 2019) (awarding costs and fees as sanction for party to "unquestionably failed to fulfill its discovery obligations" by withholding insurance policy for 10 months).

Presumably, Peninsula Township will take the position that because EMC declined coverage in November 2020, the Township was not required to produce the policy. Setting aside that a declination letter does not decide the issue of coverage and does not insulate the insurance policies from disclosure under Rule 26, that position was also taken nearly five years ago and this case has changed significantly over that period. Previously, Peninsula Township argued that the U.S. Specialty policy is not relevant to this case, given that this Court found that the Wineries cannot seek damages stemming from the period during which the Township was covered by the U.S. Specialty policy. ECF No. 426 at PageID.15310. This position is completely inconsistent with its position related to EMC, given that this Court awarded the Wineries damages for the period

during which EMC insured the Township. Even so, the production required under Rule 26 is absolute and does not require any showing of relevance. *Williams International Co., LLC v. Zurich Am. Ins. Co.*, 2022 WL 678458, at *1 (E.D. Mich. March 7, 2022) (citing *The Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.*, 2013 WL 9894215 (N.D. Ohio Feb. 5, 2013); 6 Moore's Federal Practice, § 26.22[d]). Courts from around the country again agree. *U.S. Fire Ins. Co. v. Bunge N. Am., Inc.*, 244 F.R.D. 638, 641 (D. Kan. 2007) ("The rule is absolute ... and does not require any showing of relevance."); *Alves v. Riverside County,* 339 F.R.D. 556, 560 (C.D. Cal. 2021) ("disclosure under Rule 26(a)(1)(A)(iv) is absolute and does not need a showing of relevance"); *Suffolk Fed. Credit Union v. Cumis Ins. Soc., Inc.*, 270 F.R.D. 141, 142 (E.D.N.Y., Oct. 19, 2010) (Rule 26(a)(1)(A)(iv) is "absolute" and "does not require any showing of relevance."). "There is no allowance for a party to pick and choose which policies it discloses." *Greer v. Waste Connections of Tennessee, Inc.*, 2022 WL 1444469, at *2 (W.D. Tenn. May 6, 2022).

In *Government Benefits Analysts Inc. v. Gradient Insurance Brokerage, Inc.*, 2012 WL 3292850, at *2 (D. Kan. Aug. 13, 2012), a party objected to producing an insurance policy because "it had determined that none of their insurance agreements provide [coverage]." The court rejected the argument as a violation of Rule 26:

> Based on its review of the parties' arguments and the relevant case law, the Court finds Defendants' argument unpersuasive. Rule 26(a)(1)(A)(iv) and the Advisory Committee Notes following it make it clear that the Rule is to be interpreted broadly, with an emphasis on disclosure. Under this interpretation, the phrase 'may be liable' is crucial. The Rule does not require that the insurer in fact be liable to satisfy any part of the judgment or to indemnify for payments made in satisfaction of the judgment. The Rule only requires that the insurer may be liable. Defendants' argument therefore runs contrary to Rule 26(a)(1)(A)(iv) and its stated purpose. Plaintiffs are entitled to review Defendants' insurance agreements in order to make their own determination regarding Defendants' coverage. The Court is not prepared to let Defendants make the assertion that their insurance agreements provide "no coverage for this litigation," and then refuse to produce information to support their assertions.

Id. Simply put, Peninsula Township and its counsel have no excuse for not producing this third insurance policy as its disclosure was mandatory under Rule 26.

2. Peninsula Township Must be Sanctioned.

Peninsula Township's bad faith disregard of its disclosure and discovery obligations and the orders of this Court has created an unnecessary consumption of time and expense for the parties and this Court. The Wineries and Peninsula Township engaged in more than 25 hours of mediation and numerous settlement conferences with Magistrate Judge Kent. Now it appears the Wineries were handicapped in preparing for these sessions by not knowing the full scope of the Township's insurance coverage.

This Court has the "inherent authority to sanction" bad faith conduct, derived from its "equitable power to control the litigants before it and to guarantee the integrity of the court and its proceedings." *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512 (6th Cir. 2002) (citing *Chambers v. Nasco*, 501 U.S. 32 (1991)). Fed. R. Civ. P. 37(b)(2)(C) provides that in addition to any other sanctions that may be imposed,

> the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

See also PML N. America, LLC v. Hartford Underwriters Ins. Co., 2006 WL 3759914, at *6 (E.D. Mich. 2006). Sanctions are particularly appropriate when, as here, a refusal to turn over insurance information affected plaintiff's ability to "properly assess litigation strategy, to properly value [defendant's] ability to pay any potential judgment, and to properly determine [his] mediation strategy." *Palacino*, 2015 WL 8731779, at *3.

3. Counsel for Peninsula Township Should Also be Sanctioned.

When a party fails to obey a discovery order, "the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstance make an award of expenses unjust." Fed. R. Civ. P. 37 (b)(2)(C). All attorneys of record for Peninsula Township should bear the sanction as all had the opportunity to remedy the violation of Rule 26, Judge Kent's Order and this Court's sanction order but none chose to do so.

Sanctions are further warranted under Fed. R. Civ. P. 26(g). When Peninsula Township served its Initial Disclosures, its counsel was required to certify that the information contained within the disclosures was "complete and correct as of the time it is made." Fed. R. Civ. P. 26(g)(1)(A). "If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation." Fed. R. Civ. P. 26(g)(3); *see also Aecon Bldgs., Inc. v. Zurich N. Amer.*, 2008 WL 3927797, *5 (W.D. Wash., August 21, 2008) (finding sanctions under Rule 26(g) appropriate where "counsel's certification falls below an objective standard of reasonableness [and] counsel should have disclosed the policies."). Peninsula Township served its Initial Disclosures on March 17, 2021, wherein it represented that it was not aware of any applicable insurance policies. (ECF No. 422-4, PageID.15152.) This representation was clearly false. On October 21, 2021, Peninsula Township served a supplemental Rule 26 Disclosure which represented that it had produced a potentially applicable insurance policy. Again, this certification was false as the records noted above show that Peninsula Township was aware at the time of three insurance companies that had issued insurance policies to Peninsula Township: Argonaut, U.S. Specialty and EMC.

CONCLUSION

The Wineries are aware that an appropriate sanction post-judgment may be difficult. The attorneys' fees incurred in drafting this motion will not be sufficient to punish Peninsula Township and its counsel. The Wineries leave it up to this Court's discretion under its inherent authority to determine the appropriate punishment. But, given the egregiousness of the conduct, and given the historical games the Township has played with its insurance coverage in this case, the Wineries and their counsel felt compelled to bring this issue to the Court's attention.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante
Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: August 15, 2025

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(b)(i)

This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 3,275 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2025, I filed the foregoing via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante

WOMP's Motion to Dismiss PTP from Sixth Circuit Court Appeals Process Filed September 17, 2025

Case No. 25-1703, 25-1705, 25-1754

United States Court of Appeals for the Sixth Circuit

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, et al,
Plaintiffs-Appellees/Cross-Appellants,

v.

TOWNSHIP OF PENINSULA, MI,
Defendant-Appellant/Cross-Appellee (25-1703/25-1754),

and

PROTECT THE PENINSULA, INC.,
Intervenor Defendant-Appellant/Cross-Appellee (25-1705/25-1754).

On Appeal from the United States District Court
for the Western District of Michigan

APPELLEES' MOTION TO DISMISS CASE NO. 25-1705 FOR LACK OF JURISDICTION

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Plaintiffs-Appellees (the "Wineries") move to dismiss Protect the Peninsula, Inc.'s ("PTP") appeal (Case No. 25-1705) under Federal Rule of Appellate Procedure 27 and 6 Cir. R. 27(d) for lack of standing. As explained below, the District Court's Bench Opinion [RE 623] and Judgment [RE 624] do not impose any "detriment" upon PTP to give it Article III standing to appeal.

BACKGROUND

The Wineries filed the underlying case to challenge Peninsula Township's zoning ordinances related to winery regulation. *See Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 770 (6th Cir. 2022) ("*WOMP*"). The Wineries requested declaratory and injunctive relief against the continued enforcement of unconstitutional ordinances and damages for past constitutional violations while those ordinances were in effect. *Id.*

PTP sought to intervene by arguing that it wanted to defend its members' interests in the existing zoning scheme. The District Court ruled that PTP did not meet the requirements for intervention by right or by permission. [RE 108] This Court reversed, holding that PTP met the test for intervention by right. *WOMP*, 41 F.4th at 769.

This Court's opinion rested on several bases. First, that PTP had a substantial legal interest in the litigation through potential indirect effects on its property—the right to pursue a nuisance per se claim "*if* the ordinances survive this litigation." *Id.*

at 772–73 (emphasis in original). Second, that PTP's legal interests would be impaired if it could not intervene because the District Court could enjoin the existing ordinances. *Id.* at 774. Third, that PTP's interests diverged from Peninsula Township's in both monetary and other ways. This Court explained that Peninsula Township had an interest in "protecting the fisc" and that the possibility of money damages means the Township "could decide to settle if the terms turn to its liking." *Id.* PTP, meanwhile, "is not subject to money damages" and had no interest in that aspect of the case. *Id.* at 775.[1] Instead, PTP had more targeted interests in its members' specific properties rather than that of Peninsula Township's citizenry at large. "Unlike the Township—which represents everyone who resides on Old Mission Peninsula, including the Wineries—Protect the Peninsula is comprised of members who are focused on the effects that this litigation will have on their properties. Whatever else they may think about the state of public finances, these members are primarily concerned with safeguarding their land values, ensuring the quiet enjoyment of their homes, and preserving the viability of their farms." *Id.* (internal record citation omitted).

Less than six months after this Court allowed PTP to intervene, Peninsula Township amended its zoning scheme (the "PTZO"). In December 2022, the

[1] Based on this reasoning, the District Court recognized that PTP and its members were not liable for monetary damages and had no interest in that portion of the case. [Opinion and Order, RE 301, Page ID # 10703.]

Township passed Amendment 201, which repealed every section of the winery ordinances at issue. [*See* Bench Opinion, RE 623, Page ID ## 31427–28.]

Following another year-and-a-half of discovery and dispositive motion briefing, the case went to a 10-day bench trial in late April 2024. In their joint pre-trial brief, Peninsula Township and PTP argued that Amendment 201's passage mooted the Wineries' requests for injunctive relief: "In December 2022, Peninsula Township adopted Amendment 201 to the PTZO, which had the effect of repealing those sections of the PTZO at issue in this trial. [Defendants' Joint Trial Brief, RE 581, Page ID # 22691; *see also id.* at Page ID ## 22671, 22673, 22681.] PTP argued similarly in its post-trial brief. [PTP's Post-Trial Brief, Page ID # 31248 ("Plaintiffs' request to enjoin enforcement of unconstitutional and other provisions would be meaningless after Amendment 201, which repealed all challenged sections.").]

On July 7, 2025, the District Court issued a bench opinion and final judgment. [Bench Opinion, RE 623; Judgment, RE 624.] The District Court ruled that the Wineries were entitled to damages for the period from October 2017 through the date of Amendment 201's passage. The District Court refused to award damages after Amendment 201's passage because the offending ordinances were no longer in effect. Finally, the District Court refused to grant the Wineries injunctive relief because there was nothing left to enjoin: "The court declines to issue an injunction under Federal Rule of Civil Procedure 65" because "the Township repealed the

operative PTZO" and "[t]he current version of the PTZO, Amendment 201, is not the subject of this action." [RE 623, Page ID ## 31480–81.]

This resulted in a monetary damages award in the Wineries' favor against Peninsula Township. That award has no effect on PTP. And PTP has no ongoing interest in the prior zoning scheme because the Township voluntarily repealed it.

PTP confirmed as much in post-judgment briefing regarding attorneys' fees. It argued that "the Wineries obtained no effective judicial remedy vis-à-vis PTP" because the Wineries received monetary damages without injunctive relief. [PTP's Response to Plaintiffs' Fee Petition, RE 649, Page ID # 32297.] It reiterated that argument later in the same brief: "The Wineries obtained money damages without injunctive relief. It was determined that the Wineries' money damages request is irrelevant to PTP, so PTP was denied access to all damages-related discovery and the opportunity to engage on damages." [*Id.*, Page ID # 32316.]

PTP's civil appeal statement suggests PTP will raise "numerous and complex" challenges to the District Court's opinion. [Dkt. 11.] Although unclear from the face of the statement, PTP apparently intends to raise four main issues with potentially upwards of 36 discrete issues. Yet as PTP has openly admitted, it is not impacted by the District Court's opinion in any way. Because the Bench Opinion causes no legal detriment to or obligation on PTP, PTP lacks standing to appeal. The Wineries, therefore, move to dismiss PTP's appeal for lack of standing.

ANALYSIS

Article III standing is a "bedrock constitutional requirement" that requires a litigant to have a "'personal stake' in the dispute." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (quoting *United States v. Texas*, 559 U.S. 670, 675 (2023) and *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)). "Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475–76 (1982). A standing analysis asks whether the plaintiff has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

Standing in the district court is separate from standing on appeal. "Standing may be a bar to an appeal even though a litigant had standing before the district court." *City of Cleveland v. Ohio*, 508 F.3d 827, 836 (6th Cir. 2007) (quoting *United States v. Van,* 931 F.2d 384, 387 (6th Cir. 1991)). "[A]n appealable order may not be challenged by the world at large or even by every party to the suit in which it is entered." *Vanguards of Cleveland v. City of Cleveland*, 753 F.2d 479, 484 (6th Cir. 1985), *aff'd sub nom. Loc. No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986). Instead, a "party has standing to appeal if the party is 'aggrieved by the judgment or order from which the appeal is taken.'"

Pedreira v. Sunrise Child.'s Servs., Inc., 802 F.3d 865, 869 (6th Cir. 2015) (quoting *City of Cleveland*, 508 F.3d at 836). *See also Libby, McNeill, & Libby v. City Nat'l Bank*, 592 F.2d 504, 511 (9th Cir. 1978) ("It follows that a party may only appeal to protect its own interests, and not those of a coparty.").

It does not matter whether an intervenor had standing below. "Permission to intervene in a district court action does not automatically confer standing to appeal." *Ass'n of Banks in Ins., Inc. v. Duryee*, 270 F.3d 397, 402 (6th Cir. 2001) (citing *Diamond v. Charles*, 476 U.S. 54 (1986)). "When considering whether the intervenor-defendants have standing to appeal, our focus is on the injury caused by the judgment rather than the injury caused by the underlying facts." *Id.* at 402–03. This Court recognizes standing to appeal "if the appellant can show an adverse effect of the judgment" and denies standing "if no adverse effect can be shown." *Id.* at 403.

Generally, defendants have standing to appeal injunctive relief or a consent decree. In a direct example, a dismissal order incorporated a settlement agreement between plaintiffs and the State of Kentucky. *Pedreira*, 802 F.3d at 869. The settlement agreement singled out another defendant—Sunrise Children's Services—for ongoing monitoring. *Id.* Kentucky agreed "to change the terms on which it offers contracts to Sunrise and singles Sunrise out for extra scrutiny by the ACLU and Americans United." Therefore, "the district court's order imposes some detriment on Sunrise, and Sunrise has standing to appeal it." *Id.*

In another example, a district court permanently enjoined the Ohio Superintendent of Insurance from enforcing Ohio insurance licensure provisions. *Duryee*, 270 F.3d at 402. Insurance trade organizations, which had intervened as defendants below, had standing to appeal because the injunction would cause them "economic injury should the Ohio statutory provisions not be enforced." *Id.* at 403. Again, there was a connection between the injunction and the harm to the appellant.

In a recent case, an intervening defendant had standing to appeal a damages award because it would be liable to pay the full award. *Gillispie v. Miami Twp., Ohio*, No. 23-3999, 2025 WL 1276900, at *6 (6th Cir. May 2, 2025). The plaintiff was wrongfully convicted of sexual assault and imprisoned for decades. *Id.* at *2. He sued, alleging constitutional claims under § 1983 against the detective that investigated the case and Miami Township. *Id.* The district court dismissed the claims against Miami Township, and the Township subsequently moved to intervene for the sole issue of seeking a declaratory judgment as to whether it had to indemnify the detective. *Id.* The jury awarded $45 million in damages against the detective and the district court ruled that Miami Township had to indemnify the detective for the full amount. *Id.* at *3. On appeal, the plaintiff argued that Miami Township lacked standing to appeal the damages award. *Id.* at *6. This Court held that Miami Township had standing to appeal because "the Township is now liable for tens of millions of dollars in damages due to the district court's judgment" and "[t]here is

perhaps no better example of a party aggrieved by a district court's judgment than a party subject to such large damages." *Id.*

But where a final judgment does not injure a defendant or intervenor, they lack standing to appeal. For instance, in *Libby*, defendant-suppliers obtained a money judgment against the plaintiff. *Libby*, 592 F.2d at 511. The plaintiff obtained a judgment of offset against City National Bank ("CNB"). *Id.* "CNB attempt[ed] to appeal from the suppliers' judgments against Libby as well as Libby's judgment of offset against CNB." *Id.* The Ninth Circuit ruled that CNB lacked standing to appeal the suppliers' judgment against the plaintiff because CNB has no direct interest in the counterclaims of the suppliers. *Id.* at 511. It did, however, allow CNB to appeal the judgment of offset between it and the plaintiff. *Id.* at 511–12. In other words, the suppliers' judgment imposed no direct detriment on CNB, so CNB could not appeal it. *See also Bos. Tow Boat Co. v. United States*, 321 U.S. 632, 633 (1944) (dismissing intervenor's appeal because it lacked an "independent right which is violated" by the underlying merits decision); *Ensco Offshore Co. v. Salazar*, 478 F. App'x 113, 115-16 (5th Cir. 2012) (dismissing appeal where intervenor-defendant was not injured from judgment below).

With those principles in mind, PTP lacks standing to appeal for two main reasons.

First, the final judgment does nothing to PTP. It is an award of monetary damages against Peninsula Township. This Court ruled that PTP has no obligation to pay any damages award. *WOMP*, 41 F.4th at 774–75. So did the District Court. [Opinion and Order, RE 301, Page ID # 10703.] And PTP itself openly admits the Judgment imposes no obligations upon it. [RE 649, Page ID # 32297 ("the Wineries obtained no effective judicial remedy vis-à-vis PTP").] There is no "adverse effect of the judgment" on PTP and, regardless of what this Court may or may not do on appeal, PTP will not be injured. *Duryee*, 270 F.3d at 403. This case is unlike *Gillispie* because PTP is not responsible to indemnify Peninsula Township. Stated another way, PTP was not part of the damages claim. *Cf. St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply*, 409 F.3d 73, 83 (2d Cir. 2005) ("Given St. Paul's lack of standing to sue the third-party defendants directly, we surely see no reason to depart from the general principle that one lacks standing to challenge a judgment adjudicating a claim to which it was not a party.").

At most, PTP's members may be liable to indirectly pay their share of the money judgment because they are taxpayers, like thousands of other Peninsula Township residents. But the *Libby* court already rejected that passthrough standing argument. *Libby*, 592 F.2d at 511. And even if the District Court were to award

attorneys' fees against PTP in a later judgment,[2] that would still not be sufficient grounds for standing to appeal the merits of the Bench Opinion:

> Any liability for fees is, of course, a consequence of Diamond's decision to intervene, but it cannot fairly be traced to the Illinois Abortion Law. The fee award is wholly unrelated to the subject matter of the litigation, and bears no relation to the statute whose constitutionality is at issue here. It is true that, were the Court to resolve the case on the merits against appellees, appellees would no longer be 'prevailing parties' entitled to an award of fees under 42 U.S.C. § 1988. But the mere fact that continued adjudication would provide a remedy for an injury that is only a byproduct of the suit itself does not mean that the injury is cognizable under Art. III.

Diamond, 476 U.S. at 70–71.

Second, PTP intervened to protect its members' existing property interests in the then-current zoning scheme. *WOMP*, 41 F.4th at 772–74. But the District Court did not enjoin enforcement of the old zoning scheme; Peninsula Township repealed it through Amendment 201. Accordingly, there is nothing left for PTP to defend. Perhaps someone will someday file suit over Amendment 201 and, if that happens, perhaps PTP will having standing to defend it. But for now, PTP has no standing to defend an ordinance that is no longer on the books. Because no injunctive relief or consent decree was entered, this case is unlike *Duryee* or *Pedreira*, and PTP's appeal should be dismissed.

[2] As of the filing of this motion, the attorneys' fee petition is still pending below.

CONCLUSION

For these reasons, the Wineries request that this Court dismiss PTP's appeal (Case No. 25-1705) for lack of standing and award the Wineries their costs and fees incurred in bringing this motion.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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Dated: September 17, 2025

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing upon all ECF filing participants.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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Dated: September 17, 2025

PTP's Response to WOMP's Motion to Dismiss PTP from the Sixth Circuit Court's Appeals Process Filed September 29, 2025

Case No. 25-1705

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs - Appellees

v.

TOWNSHIP OF PENINSULA, MI, a Michigan Municipal Corporation [25-1703]

Defendant - Appellant

And

PROTECT THE PENINSULA, INC. [25-1705]

Intervenor - Appellant

INTERVENOR-APPELLANT PROTECT THE PENINSULA INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS-APPELLEES' MOTION TO DISMISS CASE NO. 25-1705 FOR LACK OF JURISDICTION

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Intervenor-Appellant Protect the Peninsula, Inc. (PTP) opposes the motion to dismiss Case No. 25-1705 for lack of jurisdiction filed by Plaintiffs-Appellees, the 11 wineries of Peninsula Township and their trade organization (collectively, the Wineries). The Court should deny the motion because PTP has standing to appeal the judgment, and the Court has jurisdiction over this appeal.

I. INTRODUCTION

The Wineries sued Peninsula Township to change zoning they believe unlawfully limits their commercial activities – operating hours, merchandise sales, hosting events, and more. This Court granted PTP the right to intervene to vindicate that zoning because it protects PTP's members' property interests, including the opportunity to enforce zoning violations through state litigation if necessary. *Wineries of Old Mission Peninsula Ass'n v. Peninsula Twp.*, 41 F.4th 767, 772-73 (6th Cir. 2022) (*WOMP I*). PTP thus became a party before the district court, participating thereafter in discovery, summary judgment, and trial. *WOMP v. Peninsula Twp.*, No. 22-1534, 2022 U.S. App. LEXIS 23575 at *13 (Aug. 23, 2022) (*WOMP II*) ("We reversed the denial of intervention in *WOMP [I]*; the mandate in that case has since issued. Thus, PTP is an interested party in this appeal, and the issuance of the mandate ensures that it is also such a party before the district court.").

There is no serious question that PTP suffers "some detriment" from the judgment declaring 54 zoning provisions unconstitutional, unenforceable, or preempted by state law under 4 legal theories. The district court rejected many PTP defenses that should prevent most Wineries from obtaining any relief (*e.g.*, standing, laches, limitations). The district court awarded compensatory damages to each Winery, collectively totaling $49,263,007.68 resulting from one successful claim, but no injunction. Regardless of compensatory or injunctive remedies, the preclusive effect of the judgment declaring zoning invalid is a detriment to PTP as it impairs its members' ability to enforce those provisions. PTP also achieved significant litigation successes through rulings rejecting the Wineries' efforts to authorize late hours, restaurants, and event centers, which the Wineries challenge through cross-appeal. PTP has standing to challenge its losses and defend its wins on appeal.

The Wineries first argue that PTP is unaggrieved by the judgment because it grants no injunction and the township pays the damages. They focus myopically and illogically – and without supporting precedent – on PTP interests in remedies while ignoring PTP interests in the case and judgment. Their second argument is that zoning changes enacted after PTP intervened leave nothing for PTP to defend. This misunderstands Michigan zoning, specifically the concept of nonconforming uses, as well as PTP interests. The motion is meritless and should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

The eleven wineries of Old Mission Peninsula are still bruised over PTP intervention and want a second bite at the apple. Their motion cherry-picks partial sentences out of context from PTP filings and judicial opinions to mis-frame the factual and legal context. They ask this Court to ignore their sweeping challenges to decades-old reciprocal zoning provisions and pretend this is just a financial dispute between two private parties. This section attempts a concise reframing.

Each Winery established its business at a different time, under different zoning provisions, applied to each based on its unique circumstances (location, size, geography, business plans, etc.). Bench Opinion, RE 623, Page ID # 31420-31452. Zoning on the peninsula is largely unrestricted for all wineries in the A-1 Agricultural district when it comes to winemaking and sales – wineries may entice a virtually unlimited number of patrons to sample, buy, and drink their wine. But zoning for wineries in A-1 does not authorize facility rentals for private events like wedding receptions and music performances nor restaurants nor unlimited shops. The Wineries are competitors unified by their preference for more permissive zoning. They banded together to assert multiple constitutional claims, both facial and as-applied, plus state preemption claims. First Amended Complaint, RE 29, Page ID ## 1116-1129. They requested declarative, injunctive, and compensatory relief. They even threw in the kitchen sink (they want to use winery kitchens for

offsite catering businesses). Bench Opinion, RE 623, Page ID # 31484. Approaching trial, they expanded their requested relief to include a declaration authorizing more permissive zoning, including "hosting small and large activities," selling merchandise, operating restaurants, and more. Wineries Pretrial Brief, RE 580, Page ID ## 22625-22626; Wineries Post Trial Brief, RE 618, Page ID ## 31088-31094.

On appeal from the district court's denial of PTP intervention, in July 2022, this Court granted PTP the right to intervene to vindicate zoning that protects its members' property interests, including to abate nuisance zoning violations in state court if necessary. *WOMP I,* 41 F.4th at 772-73; *see Sakurako's v. Lyon Charter Twp.,* _ Mich. App. __; __ N.W. 2d __, 2023 Mich. App. LEXIS 8430 (2023) (Docket No. 362192), leave denied, 2024 Mich. LEXIS 1686 (Mich., Sept. 11, 2024). This Court recognized those interests to be substantial, found the Wineries' potential success invalidating zoning may limit PTP members' ability to protect those interests, and acknowledged the township and PTP may be motivated by different underlying incentives for litigating this case, so the township inadequately represents PTP. *Id.* at 772-76. PTP thus became a party before the district court.

Pre-PTP intervention, the township put on a lame defense and lost many claims in summary judgment in June 2022. Summary Judgment Opinion, RE 162, Page ID ## 5985-6029. The township appealed the resulting injunction, and this Court vacated it in August 2022 because "PTP's intervention changes the landscape

and requires reconsideration of the district court's partial grant of summary judgment and issuance of an injunction." *Wineries of Old Mission Peninsula Ass'n v. Peninsual Twp.*, 2022 U.S. App. LEXIS 23575 (*WOMP II)* *13. PTP moved in district court to vacate the original summary judgment order; its motion was partially granted but denied on two claims: the district court retained its original rulings that (a) nine zoning subsections related to local grape sourcing are unconstitutional under the dormant Commerce Clause, and (b) a whole section authorizing "Guest Activity Uses" by special use permit approval at Winery-Chateaus is unconstitutionally vague "on its face," in violation of due process. Order on Motion to Set Aside Summary Judgment Order, RE 301, Page ID ## 10964-10699; Order on Motion for Reconsiderations, RE 319, Page ID ## 11883-11889.

Following a lightning round of discovery then summary judgment motions, the district court narrowed the Wineries' original summary judgment wins but found zoning provisions preempted, unconstitutional, or both. Preemption Summary Judgment Opinion, RE 525, Page ID ## 21133-21134; Constitutional Claims Summary Judgment Opinion, RE 559, Page ID ## 21903-21922. The district court also granted summary judgment to the Wineries on many PTP defenses, including standing, laches, and statute of limitations. Affirmative Defenses Summary Judgment Opinion, RE 528, Page ID ## 21260-21271; Constitutional Claims Summary Judgment Opinion, RE 559, Page ID ## 21899-21903, 21915. Following

trial, the district court found for the Wineries on the remaining constitutional grounds. Bench Opinion, RE 623, Page ID ## 31454-31466. In total, the Wineries succeeded on the merits of four claims: dormant Commerce Clause, vagueness, First Amendment speech, and state law preemption; their First Amendment wins span three sub-claims: prior restraints, compelled speech, and commercial speech.

The Wineries were awarded $49.3 million collectively for damages extending from the "vagueness" claim. Bench Opinion, RE 623, Page ID ## 31475, 31479-80. The district court agreed with PTP on summary judgment that five Wineries lacked standing to pursue as-applied challenges stemming from the Guest Activity Uses provisions but reversed course at trial. Constitutional Claims Summary Judgment Opinion, RE 559, Page ID ## 21902-21903; Bench Opinion, RE 623, Page ID # 31475-31480. Four non-Winery-Chateau Wineries were also awarded money damages from the "vague" Winery-Chateau provision. *Id.*

In December 2022, the township adopted Amendment 201, which amended the zoning ordinance to repeal and replace offending winery provisions. After trial, the district court declined to issue injunctive relief on the basis that it cannot enjoin repealed zoning. Bench Opinion, RE 623, Page ID # 31480-31481. But Amendment 201 applies prospectively to new or amended land uses, not existing nonconforming uses. *See* Wineries' Reply on Preemption Summary Judgment, RE 365, Page ID # 13433 ("It is unclear how Amendment 201 has any role in this litigation. The

Wineries are now apparently nonconforming uses."); MCL 125.3208(1) (use of building or land lawful at time of zoning amendment may continue although the use does not conform with zoning). As the Wineries argued below, "[t]he SUPs [special use permits] parrot the language of the ordinance in stating what restrictions are placed on the Wineries." Wineries' Response to Motion to Dismiss, RE 487, Page ID ## 18755-18756. The district court concurred. Order Resolving Motion to Dismiss, RE 518, Page ID # 20738 ("the 'repealed' ordiances [*sic*] are still in effect through the individual SUPs"); Order Resolving Preemption Summary Judgment Motions, RE 535, Page ID # 21126 (same). The district court left unaddressed the status of the residual "unlawful" zoning provisions incorporated in each Winery's nonconforming use.

The district court neglected the Wineries' request for a declaration authorizing them to host "small and large activities," sell merchandise, operate restaurants, and more. The final opinion intimated that repealing the challenged provisions removed "the only barrier" to hosting small and large events. Bench Opinion, RE 623, Page ID ## 31474, 31478. But the Wineries are not subject to Amendment 201, which also does not authorize such events. *See Pittsfield Twp. v. Malcolm*, 375 Mich 135, 142; 134 N.W.2d 166 (1965) (where zoning sets forth permissible uses in each district, absence of specifically stated use means the use is excluded).

PTP appeals to this Court because PTP is harmed by what the judgment – including all orders that merged into it – resolved and left unresolved. *See Cattin v. Gen. Motors Corp.*, 955 F.2d 416, 428 (6th Cir. 1992). The township also appeals. The Wineries cross-appeal on claims related to operating hours, restaurants, and events. Wineries' Civil Appeal Statement, Case No. 25-1754. The three appeals are consolidated.

III. LEGAL STANDARD

"To have appellate standing, 'a party must be aggrieved by the judicial action from which it appeals.'" *City of Cleveland v. Ohio*, 508 F.3d 827, 836 (6th Cir. 2007) (quoting *Vogel v. City of Cincinnati*, 959 F.2d 594, 599 (6th Cir. 1992) (further citations omitted). A party is aggrieved when the judicial action it appeals would impose "some detriment" on it. *Vanguards of Cleveland v. Cleveland*, 753 F.2d 479, 484 (6th Cir. 1985) (emphasis removed). *Vanguards* instructs what "some detriment" means. The Vanguards, a minority firefighters association, sued Cleveland to challenge a discriminatory promotions policy. As settlement negotiations began, the district court granted intervention by right to Local 93, a firefighters' union. The Vanguards and Cleveland reached an agreement without Local 93 for a consent decree including an affirmative action plan, which the district court adopted over Local 93's objections. When Local 93 appealed, Cleveland

argued that it lacked standing because the consent decree neither interfered "with any legal relationship between Local 93 and the settling parties" nor bound Local 93 "in any way." *Id.* at 483. The Court acknowledged that "an appealable order may not be challenged by the world at large or even by every party to the suit in which it is entered" but rejected that a party needs to be "formally bound or restricted" to have standing. *Id.* at 484. The Court concluded that, for standing purposes, "regardless of . . . how modest the detriment placed upon" Local 93's non-minority members, "there will be *some* detriment" to them, so Local 93 was "sufficiently aggrieved" to have standing. *Id.* (original emphasis).

Intervenors may have appellate standing to vindicate a law that might impact their interests, even when the government abandons the defense. In *Bryant v. Yellen,* the Supreme Court upheld the Ninth Circuit's decision finding a group of farmworkers, who had participated in the district court proceeding as *amici*, had appellate standing. 447 U.S. 352, 367 (1980). The case involved the applicability of federal reclamation laws that prohibited supplying irrigation water to certain landowners. The district court ruled against the United States, which did not appeal, so the farmworkers intervened to appeal on their own behalf. The Supreme Court agreed with the Ninth Circuit that the farmworkers had appellate standing, even where they could not establish "with certainty" that the outcome of the case would impact their ability to purchase impacted lands. *Id.* at 367. The Supreme Court

explained that, because it was "unlikely" that endowed landowners would sell land at below market prices unless the law applied, and "likely" that excess lands would become available at below market prices if the law applied, the farmworkers "had a sufficient stake in the outcome of the controversy to afford them standing to appeal." *Id.* at 368; *see City of Cleveland*, 508 F.3d at 837 (*Bryant* farmworkers' "interest in seeing the United States's position vindicated" supported appellate standing). *Association of Banks in Insurance v. Duryee* is consistent. 270 F.3d 397, 402 (6th Cir. 2001). Interveners representing independent insurance agents appealed a judgment invalidating and enjoining enforcement of state insurance licensing provisions applicable to national banks, thus effectively "easing restrictions on the entry of national banks" into the state insurance arena. *Id.* at 403. The state acquiesced to the adverse ruling. The interveners were "potential competitors" of national banks and faced "threat of economic injury" should the provisions go unenforced, which was sufficient to confer appellate standing to challenge the district court judgment. *Id. See also Jackson v. Sok,* 65 Fed. Appx. 46, 48-49 (6th Cir. 2003) (intervening defendant had standing to appeal ruling that threatened indirect economic injury) (citing *Jet Courier Services, Inc. v. Federal Reserve Bank,* 713 F.2d 1221 (6th Cir. 1983)); *Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 428-30 (6th Cir. 2008).

Appellate standing is not limited by the appellant's status in the district court. *See Bryant,* 447 U.S. at 368. In *City of Cleveland,* the Plaintiff City of Cleveland had standing to appeal the judgment in a third-party complaint, though the city was neither a party nor intervener in the third-party claim. 508 F.3d at 836-37. That case involved federal funding administered by a state agency for a local public works project; the federal agency withheld funds due to the city's local hiring preference. The city sued the state agency; the state agency filed a third-party complaint against the federal agency. The district court found for the federal agency in the state-federal claim and against the city in the city-state claim. The Sixth Circuit found the city had standing to bring its district court claim due to its injury and appellate standing to appeal the judgment for the third-party defendant because the city was aggrieved by it. *Id.*

An appellant may be aggrieved by a judgment without being bound by it. "To be aggrieved" for appellate standing purposes, "a party need not be 'formally bound or restricted by' the judgment it appeals from" but "can appeal any final judgment—including a consent decree—that imposes 'some detriment' on the party." *Pedreira v. Sunrise Children's Servs*, 802 F.3d 865, 869 (6th Cir. 2015) (quoting *Vanguards*, 753 F.2d at 483). In *Pedreira*, Sunrise was a necessary defendant but not a party to the settlement incorporated into a dismissal order. The Sixth Circuit found Sunrise

nevertheless had appellate standing because the agreement included terms specific to Sunrise. *Id.* at 869.

The Wineries invoke nine cases finding appellants had standing to appeal a judgment when aggrieved by it or lacked standing to appeal when unaggrieved by it. The Sixth Circuit in *City of Cleveland, Vanguards, Pedreira,* and *Duryee,* discussed above, concluded the intervener[1] *was* sufficiently aggrieved by the judgment to appeal it. *Gillispie v. Miami Township* is consistent. 2025 U.S. App. LEXIS 10733, *21; 2025 WL 1276900 (6th Cir. May 2, 2025). In that § 1983 wrongful conviction case against a police officer, the Sixth Circuit found the intervening township had standing to appeal an adverse money judgment because the township was responsible to indemnify the named defendant. *Diamond v. Charles* inquired into the intervener's injury but found none. 476 U.S. 54 (1986). An intervening pediatrician with conscientious objections to abortion attempted, alone on appeal, to defend the constitutionality of a law that criminalized certain abortion procedures; the state lost below and did not appeal. *Id.* at 56. The Supreme Court dismissed the appeal because "a private party whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute's defense." *Id.* at 56. Likewise, the Boston Tow Boat Company had no real interest in the outcome of Cornell Steamboat Company's regulatory status

[1] The *Pedreira* appellant was a necessary defendant, not an intervener.

dispute to support an appeal. *Boston Tow Boat Co. v. United States*, 321 U.S. 632, 633 (1944) (no record that Boston "had any financial interest in Cornell, or was engaged in competition with Cornell, or that its interests would be adversely affected by a decision against Cornell except insofar as that decision might establish a precedent holding tugboats subject to [ICC jurisdiction]."). *See also ENSCO Offshore Co. v. Salazar,* 478 F. Appx. 113, 115-16 (5th Cir. 2012) (intervener environmental organizations unharmed by order requiring agency to act on six specific pending permit applications within thirty days where no member claimed harm from six applications and order had no impact on organizations' potential future advocacy positions). Finally, *Libby, McNeill, & Libby v. City National Bank* is complicated but consistent. 592 F.2d 504, 511 (9th Cir. 1978). *Libby* was a transactional dispute involving a contract between Libby and Shanghai Instant Foods; Shanghai, which was bankrupt; Shanghai's suppliers, who were owed money by Shanghai; and Shanghai's bank (CNB), which held interests in Shanghai's receivables. There was an interpleader claim involving Libby, the suppliers, and CNB, and a counterclaim involving Libby and the suppliers. On the counterclaim, Libby was found liable to the suppliers and did not appeal. The Ninth Circuit found CNB had standing to appeal the adverse interpleader judgment to which it was a party but lacked interest in the Libby-suppliers litigation to appeal the counterclaim

judgment because it involved "transactions solely between Libby and [the suppliers]." *Id.* at 511.

Applied to this case, this precedent establishes that PTP has standing to appeal the judgment because its members are bound and aggrieved by it.

IV. ARGUMENT

A. The judgment is more than a damages award and harms PTP.

The Wineries argue that the "final judgment does nothing to PTP" because "it is an award of monetary damages against Peninsula Township," which PTP has no obligation to pay. This is a misleadingly simplistic and artificially narrow interpretation of the judgment and PTP's interests.

The judgment is more than a $49.3 million award. It and the incorporated rulings found 54 zoning provisions unconstitutional or preempted under 6 theories. As a litigating defendant in district court, the judgment binds PTP. The preclusive and precedential effects, should the judgment survive appeal intact, directly impair PTP members' ability to enforce invalidated provisions. *See WOMP I,* 41 F.4th at 774 ("It seems clear that a judgment which declares a zoning order to be void would bind adjoining property owners to the extent of taking away their statutory right to an independent action based on the order.") (quoting *Joseph Skillken & Co. v. City of Toledo*, 528 F.2d 867, 873-75 (6th Cir. 1975), vacated on other grounds, 429 U.S.

1068 (1977)). Rulings denying PTP an opportunity to defend two claims compound PTP's grievances.

PTP is further harmed by the judgement's scope. The district court denied PTP defenses challenging some Wineries' standing and some claims as time-barred. Had the district court granted those defenses, some Wineries would not benefit from the judgment. One example is Peninsula Cellars, the lone winery subject to zoning provisions the township enacted at its request in April 1998 and incorporated in its SUP in November 1998. Bench Opinion, RE 623, Page ID ## 31440-31443. The judgment rules two provisions (8.7.3(12)(i), (k)) unconstitutionally restrain commercial speech in violation of the First Amendment. *Id.* at ## 31454-31466. PTP is aggrieved by a judgment invalidating zoning that has limited Peninsula Cellars' commercial activities for nearly thirty years. *See WOMP I*, 41 F.4th at 773 ("this litigation, which will establish the validity or invalidity of the zoning ordinances, necessarily bears directly on the property interests [PTP] members seek to preserve") (cleaned up, quoting *Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 869 (8th Cir. 1977)).

The Wineries minimize PTP's interests. This Court found the property interests of PTP members "could be affected by the Wineries' litigation" in various ways that are "more than just possible annoyances" since this lawsuit challenges the validity of zoning that also protects PTP members' property interests. *WOMP I,* 41

F.4th at 771-74. The district court agreed PTP members' property interests extend to all live claims. Order on PTP Motion to Set Aside Summary Judgment, RE 301, Page ID ## 10694-10703; Order on PTP Interests, RE 319, Page ID ## 11879-11882 ("Now that PTP is a party in this litigation, logically, it makes sense to allow PTP to participate in this case with respect to all the claims that are ripe for trial.").

In summarizing this Court's intervention opinion, the Wineries erroneously suggest it concluded PTP "had no interest" in the money damages "aspect of this case." Motion to Dismiss, page 2 (citing *WOMP I*, 41 F.4th at 775). They quote selectively from the summary of PTP's argument that the township inadequately represents PTP under Rule 24(a)(2) because they are animated by different concerns:

> Because the Township faces the possibility of monetary damages in this lawsuit, it could decide to settle if the terms turn to its liking, and it has continued to engage in settlement talks. *See, e.g.*, R. 180 (07/05/22 Minutes) (Page ID #5854). Conversely, Protect the Peninsula is not subject to money damages. Protect the Peninsula is also more selective in its membership. Unlike the Township—which represents everyone who resides on Old Mission Peninsula, including the Wineries—Protect the Peninsula is comprised of members who are focused on the effects that this litigation will have on their properties. *See, e.g.*, R. 41-2 (Nadolski Aff.) (Page ID #2066-76). Whatever else they may think about the state of public finances, these members are primarily concerned with safeguarding their land values, ensuring the quiet enjoyment of their homes, and preserving the viability of their farms. Combined, concludes Protect the Peninsula, these differences show that the Township lacks the same drive that

> motivates Protect the Peninsula to focus solely on defending the zoning ordinances.

WOMP I, 41 F.4th at 774-75. The opinion continued by noting that the "possibility of damages looms large in this case" and "other circuits have recognized that when the specter of monetary damages looms large, even stout resistance might wither over time." *Id.* at 776 (citations omitted). The opinion addressed money damages as evidence of PTP and the township's potentially divergent litigation incentives, supporting the conclusion that the township potentially inadequately represents PTP interests. *Id.* at 777. This part of the opinion did not define or limit PTP interests, which it found to be broad and weighty. *Id.* at 771-74. The opinion is no basis to restrict PTP intervention below or standing on appeal.

The Wineries mischaracterize the district court ruling on PTP's interest in the money damages "portion of the case." Motion to Dismiss, page 2, note 1 (citing Order on PTP Motion to Set Aside Summary Judgment, RE 301, Page ID # 10703). At the cited page, the district court addressed the scope of post-PTP-discovery and found that "permitting PTP to access the Wineries' financial documentation is inappropriate, given that PTP will not be responsible for the payment of damages in the event that the Wineries prevail." PTP was denied access to the Wineries' damages report, which remained for "Attorney Eyes Only" until trial. Order on Motion for Access, RE 345, Page ID ## 12557-12559; Damages Report, RE 611-

144, Page ID ## 27692-27698. The ruling aggrieved PTP by impeding its access to evidence of the Wineries' asserted injuries.

The Wineries also mischaracterize PTP's position regarding the judgment's effect on PTP. They cite PTP's brief (RE 649) opposing the Wineries' motion to impose joint and several liability on PTP for $2.35 million in attorney fees under 42 U.S.C. § 1988. When it comes to responsibility for attorney fees, well-established precedent distinguishes between "blameless" and "blameworthy" interveners. *See Freed v. Thomas,* 137 F.4d 552, 559-60 (6th Cir. 2025) (citations omitted). PTP argued it is "blameless" and pointed out the Wineries' mixed bag of relief to counter the Wineries' assertion that its intervention was frivolous. The judgment does not formally bind PTP to pay damages, being formally bound is not a prerequisite to appellate standing, and the judgment binds and aggrieves PTP in other important ways.

Whether PTP is liable for the damages award says nothing about whether PTP is aggrieved by the judgment. The Wineries' motion rests on the unprecedented premise that appellate standing turns on the specific relief granted rather than the parties' interests in the controversy. *See Bryant,* 447 U.S. at 367; *City of Cleveland,* 508 F.3d at 837. By the Wineries' logic, Peninsula Township may appeal only the damages award since the township was uninjured by the denial of injunctive relief,

and only the "vagueness" claim since that is the only ruling that resulted in money damages. This is clearly absurd.

The Wineries cite no caselaw supporting their relief-based theory of appellate standing. First, they inaptly invoke *Duryee,* where the Sixth Circuit found even the threat of an indirect injury enough for appellate standing. 270 F.3d at 403. They next cite *Gillispie* only to distinguish it – the intervening township had standing to appeal an adverse judgment where it was responsible for awarded damages. 2025 U.S. App. LEXIS 10733 at *21. Nothing in *Gillispie* suggests a party *must* be liable for damages to appeal an adverse judgment. Next, they quote *St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply,* where the Second Circuit denied standing to a plaintiff to appeal the dismissal of a third-party complaint against the defendant. 409 F.3d 73, 83 (2d Cir. 2005). This is not that case – PTP is a party to all claims and the judgment adjudicating them. The Wineries cite *Libby* as rejecting "passthrough standing," but that's not its holding: *Libby* rejected CNB's appeal of a judgment in a counterclaim between Libby and the suppliers (CNB was creditor to neither) but allowed CNB to "stand in the shoes of Shanghai" and appeal the judgment impacting Libby's liability to Shanghai/CNB. 592 F.2d at 511-13. There is no counterclaim wrapped up in the judgment that PTP appeals, only claims that impact PTP members' substantial interests. Finally, the Wineries quote *Diamond's*

holding that any injury resulting from the intervener's fee liability[2] was separate and insufficient to support his appeal of the decision invalidating challenged laws. 476 U.S. at 70-71. PTP does not rest on the future outcome of the pending fee motion to support this appeal. Should PTP be held responsible for fees, then PTP may also appeal that judgment.

To be clear, PTP disputes the premise that PTP is unaggrieved by the damages award because the township must pay it. PTP members, who are township property owners interested in protecting their property interests, will pay a proportionate share of the judgment and suffer the consequences of austerity measures the township is contemplating in anticipation of collection. Township Motion to Stay Bond, RE 637, Page ID ## 32164-32166; Wineries' Response to Motion to Stay Bond, RE 647, Page ID ## 32210-32212. In this very real and practical way, PTP members are harmed by a monetary judgment against the township. Obviously, other township property owners will also suffer this injury if the damages award survives appeal. That does not mean PTP members are unharmed by the judgment, it means the judgment harms many people. *See WOMP I,* 41 F.4th at 776 (citing *Berger v. N. Carolina State Conf. of the NAACP,* 142 S. Ct. 2191 (2022) to reject "floodgate argument against intervention as of right").

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[2] *Independent Federation of Flight Attendants v. Zipes* subsequently limited intervener fee liability in civil rights cases. 491 U.S. 754 (1989).

B. Irrespective of Amendment 201, the judgment invalidates zoning that otherwise still binds the Wineries and protects PTP members.

The Wineries argue that Amendment 201 repealed the challenged provisions so there is nothing left for PTP to defend. This sounds like an argument that Amendment 201 mooted all but the damages, but the Wineries acknowledged they have nonconforming uses under pre-Amendment 201 zoning, cited above. *See Dusdal v. Warren*, 387 Mich. 354, 359; 196 N.W.2d 778 (1972) ("In an action based upon a prior nonconforming use the reasonableness of the zoning amendment is not in issue. 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."). Amendment 201 is a red herring here.

While Amendment 201 does not harm PTP, the judgment does. But for the judgment invalidating provisions incorporated in each Winery's nonconforming uses, PTP members would retain their right to abate violations in state court. *See WOMP I,* 41 F.4th at 773. The judgment invalidates operative sections governing the Wineries' land uses without addressing the impact on each Winery's vested non-conforming uses. This is no formulaic task:

> We cannot state a comprehensive formula. Each case must stand on its own facts. It is recognized that every zoning regulation involves some impairment of rights. Whether the rights have attained a status so sacred, so inviolate, that they rise above the

> legislative command, i.e., that the owner has a "vested" right in some particular use, involves a balancing of factors, a determination as to whether the owner's interest is so substantial that its destruction cannot reasonably be justified in the light of the accomplishment of the objectives of the ordinance. It is not a matter susceptible to precise quantitative measurement, so many feet excavated, so many trucks ordered, or so many men hired.

Bloomfield Twp v. Beardslee, 349 Mich. 296, 307-308; 84 N.W.2d 537 (1957). The district court's failure to undertake this complex task may reflect the Wineries' insufficient proofs – they pursued *en masse* litigation. Wineries' Pretrial Brief, RE 580, Page ID ## 22621-22626; Defendants' Pretrial Brief, RE 581, Page ID ## 22696-22700. The Defendants' Pretrial Brief illustrated the thorny challenges of "redlining" each Winery's land use authorizations. *Id.* The judgment's failure to address this nascent issue creates harmful ambiguity. PTP appeals to vindicate the validity of zoning provisions that remain operative through eleven Wineries' nonconforming uses.

C. This Court has jurisdiction.

For the reasons discussed in the preceding sections, PTP has Article III and appellate standing. Alternatively, because the township appeals, this Court has jurisdiction, and PTP has the right to appeal the judgment. *See Cherry Hill Vineyards*, 553 F.3d at 428.

V. CONCLUSION

The Court should deny the motion to dismiss for lack of jurisdiction because it is meritless.

Date: September 29, 2025 By: 

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Law Office of Tracy Jane Andrews, PLLC
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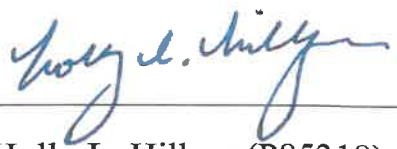
Date: September 29, 2025 By: 

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CERTIFICATE OF COMPLIANCE REGARDING WORD COUNT

This Response complies with FRAP 27(d)(2)(A). This response was written using Microsoft Word 365 and has a word count of 5,171 words.

Date: September 29, 2025 By: _____

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Date: September 29, 2025 By: _____

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews, hereby certify that on the 29th of September 2025, I electronically filed the foregoing documents with the CM/ECF system which will send a notification of such to all parties of record.

Date: September 29, 2025 By: 

Tracy Jane Andrews (P67467)
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MLive Inquiry regarding WOMP's Settlement Offer

Outlook

Re: MLive Inquiry: WOMP settlement

From Lindsay Moore <LMoore@mlive.com>
Date Thu 10/30/2025 3:29 PM
To Maura Sanders <supervisor@peninsulatownship.com>

Thank you for your transparency and patience today.

My editor and I have discussed it and the story will still go up today. I will put up high in the story that you received the letter today and the board and legal counsel will be reviewing the settlement proposal before you comment on it.

Lindsay Moore | Michigan Travel and Economy Reporter
She/her
269.330.3698 | lmoore@mlive.com

From: Maura Sanders <supervisor@peninsulatownship.com>
Sent: Thursday, October 30, 2025 3:16 PM
To: Lindsay Moore <LMoore@mlive.com>
Subject: Re: MLive Inquiry: WOMP settlement

Hi Lindsay,

I have been tied up in meetings all day. Our attorney forwarded me the email they received from WOMP at 2:01 PM Eastern Standard Time (WOMP must have had Central Standard Time on the computer it was being sent from). I was called by the WOMP president at 2:26 PM. I will not be able to provide a statement today and there is not enough time to read, consult with legal and/or meet with the Township Board without violating FOIA and OMA. I have tentatively scheduled a special meeting for a week from today to go into closed session with the Town Board to discuss the proposal.

We'll connect after that meeting!

Sincerely,

Maura Sanders
Peninsula Township Supervisor
13235 Center Road
Traverse City MI 49686
phone - 231-223-7323

fax - 231-223-7117
supervisor@peninsulatownship.com
Office Hours: Mondays 7:30 am to 6:30 pm, Tuesdays – Thursdays 7:30 am to 5 pm and closed Friday – Sunday and Holidays.

From: Lindsay Moore <LMoore@mlive.com>
Sent: Thursday, October 30, 2025 3:06 PM
To: Maura Sanders <supervisor@peninsulatownship.com>
Subject: Re: MLive Inquiry: WOMP settlement

Hi Maura,

Circling back on this after having a conversation with WOMP. They assured me the letter was sent between their lawyers and township attorneys today.

Have you received and read the letter now? If so, would you like to respond for today's story?

Thank you,
Lindsay Moore | Michigan Travel and Economy Reporter
She/her
269.330.3698 | lmoore@mlive.com

From: Maura Sanders <supervisor@peninsulatownship.com>
Sent: Thursday, October 30, 2025 1:11 PM
To: Lindsay Moore <LMoore@mlive.com>
Subject: Re: MLive Inquiry: WOMP settlement

Hi Lindsay,

We have NOT received anything at the Peninsula Township office as of right now. If you have been given a copy it would be greatly appreciated if you could share.

Maura Sanders, Supervisor
Peninsula Township
13235 Center Road
Traverse City, MI 49686
(231) 223-7323

From: Lindsay Moore <LMoore@mlive.com>
Sent: Thursday, October 30, 2025 12:58:42 PM
To: Maura Sanders <supervisor@peninsulatownship.com>
Subject: Re: MLive Inquiry: WOMP settlement

Hello Maura,

Nice to virtually meet you. As Rose mentioned, she is handing off coverage of the Old Mission Peninsula winery legal dispute to me as I take on more economic coverage in Northern Michigan in addition to my travel coverage in the area.

I understand you just received this letter from WOMP today. I do plan to have a story up on the settlement proposal this afternoon. I would greatly appreciate if you could respond by 3 p.m.

Thank you,

Lindsay Moore | Michigan Travel and Economy Reporter
She/her
269.330.3698 | lmoore@mlive.com

From: Rose White <RWhite@mlive.com>
Sent: Thursday, October 30, 2025 8:35 AM
To: Maura Sanders <supervisor@peninsulatownship.com>
Cc: Lindsay Moore <LMoore@mlive.com>
Subject: Re: MLive Inquiry: WOMP settlement

Adding in Lindsay.

Rose

From: Rose White
Sent: Thursday, October 30, 2025 8:35 AM
To: Maura Sanders <supervisor@peninsulatownship.com>
Subject: MLive Inquiry: WOMP settlement

Hi Maura,

Hope your fall is going well.

I'm reaching out to see if Peninsula Township has a response to the proposed settlement that WOMP shared with the township on Oct. 23?

I also cc-ed my colleague Lindsay Moore who will be doing the reporting on this case moving forward. Please let us know if you have a response you'd like to share or if it'd be best to speak over the phone.

Thank you!

Rose White

Letter from Township's Insurance Counsel to WOMP's Counsel Dated October 31, 2025

MCGRAW MORRIS P.C.

THOMAS J. MCGRAW
G. GUS MORRIS
CRAIG R. NOLAND
STACY J. BELISLE
KEVIN K. KILBY
CHARLES E. LOVELL
THOMAS D. LANDA
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TROY, MICHIGAN 48084
TELEPHONE: (248) 502-4000
FACSIMILE: (248) 502-4001

October 31, 2025

Joe Infante
infante@millercanfield.com

Re: Settlement Demand and Draft Consent Judgment

Dear Mr. Infante

While the Township remains willing to discuss and negotiate all terms of a proposed settlement, all terms and discussion must be transparent and public. The Peninsula Township residents obviously have a significant interest in the outcome of this litigation. They have the right, therefore, to be aware of what is being negotiated with respect to their dollars, their rights, and their property. Demanding that we keep any settlement terms or discussion confidential, is a non-starter.

Your email yesterday, which I received at 2:01pm (EST), goes to great lengths to demand confidentiality of your letter and the draft consent. At the same time, however, your team has disclosed your settlement demand and the precise terms to the local newspaper. https://www.mlive.com/life/2025/10/old-mission-wineries-consider-lowering-50m-settlement-if-township-changes-noise-event-rules.html

Your team was discussing your settlement proposal with the reporters prior to me receiving your email. Coincidentally, you sent your email and draft consent to me just minutes after the Township informed the reporter that we hadn't received any settlement demand from Plaintiffs. The Mlive story appeared about one hour later. Demanding confidentiality, while you and/or your team are in discussions with local reporters, disclosing all terms of your settlement demand is odd to say the least. And it clearly waives any rights, to the extent they existed, to confidentiality.

The Township does not intend to apply FOIA to any settlement proposals. Only the Township can exercise its rights under FOIA. The Township does not believe that the Plaintiffs' settlement demand and proposed consent, or any settlement offer that we may produce in response, should be withheld from the public pursuant to FOIA, especially considering the public interest and potential liability in this case.

With respect to Sixth Circuit Rule 33, we are not currently involved in any Sixth Circuit mediation and that rule simply does not apply.

The Township is willing to convene a committee as you suggest, and participate in settlement discussions, with absolutely no promises of any confidentiality whatsoever. Currently, PTP remains a party to the case. The Township believes, therefore, that absent a court ruling removing them from the case, PTP should be involved in all settlement discussions.

If Plaintiffs insist on confidentiality of the draft consent judgment, despite it already being disclosed to Mlive, please advise immediately. The Township will allow Plaintiffs to withdraw the settlement demand and draft consent judgment prior to any public disclosure by the Township, other that what is publicly available through the Mlive story. If it is not withdrawn, we will assume that Plaintiffs would like to proceed with negotiations and allow full public disclosure of those negotiations, including the draft consent judgment. Any written settlement offer by the Township would also be subject to full public disclosure.

Please advise today if you would like to withdraw your "confidential" settlement demand or if you wish to proceed with non-confidential settlement discussions, that are subject to full public disclosure.

Thank You,

Thomas J. McGraw
McGraw Morris PC

Sonoma County, California, Zoning Regulations for Wineries

EXHIBIT "B"
CHAPTER 26. SONOMA COUNTY ZONING REGULATIONS
ARTICLE 18. AGRICULTURE AND RESOURCE-BASED USE STANDARDS

26-18-260 – Winery Definitions and Standards

A. Purpose. This Section 26-18-260 provides a greater level of detail for the desired character of development in areas zoned LIA - Land Intensive Agriculture, LEA - Land Extensive Agriculture, and DA - Diverse Agriculture. For the areas zoned LIA, LEA, and DA, this Section 26-18-260 identifies procedures and criteria applicable to new or modified use permit applications for winery visitor serving activities and winery events. The Standards in this division shall be referred to as "Winery Definitions and Standards."

B. Applicable Areas. The provisions of this section apply to parcels zoned LIA – Land Intensive Agriculture, LEA-Land Extensive Agriculture, and DA -Diverse Agriculture. For split-zoned parcels, the provisions of this section apply to the portion of the parcel zoned for any of the agricultural zoning districts listed above.

C. Local Advisory Guidelines. Citizen advisory councils/commissions established by the Board of Supervisors review projects subject to this section in accordance with their adopted local advisory guidelines, and make advisory recommendations to the Permit and Resource Management Department, Board of Zoning Adjustments, Planning Commission, and Board of Supervisors.

D. Terms and phrases used in this section are defined as follows:
   1. **Restaurant** is a retail business selling ready-to-eat food for consumption on or off the premises, as defined by Sec. 26-26-140 of the Zoning Code.
   2. **Winery** means an agricultural processing facility that converts fruit into wine. Wineries may include crush areas, production rooms, case goods and barrel storage, tank rooms, warehouses, bottling lines, laboratories, administrative offices, tasting rooms, event space, commercial kitchen, and catering kitchen.
   3. **Winery Events** means events held at wineries and tasting rooms for the purpose of promoting and marketing agricultural products grown or processed in the County. Winery events are secondary and incidental to agricultural production activities occurring onsite and/or in the area and are consistent with General Plan Policy AR-6d. There are two types of winery events: Agricultural Promotional Events and Industry-Wide Events.
   4. **Agricultural Promotional Events** beyond defined activities during standard daily operations that are directly related to public education, sales and promotion of agricultural products to consumers, including but not limited to: winemaker lunches, dinners, release parties, and wine club parties and similar events.
   5. **Industry-Wide Events** are promotional activities sponsored by a recognized wine industry association that may involve multiple wineries and/or tasting rooms. Industry-wide events are held within a specified geographic area, during regular tasting room hours, and may last up to 3 consecutive days.

6. **Wine Trade Partners** means distributors, wine trade buyers, restaurant owners and their representatives, winery or tasting room owner(s), winery employees, and tasting room employees.
7. **Winery Visitor Serving Activities** means visitor serving activities that are part of standard daily winery and wine tasting room operations. Standard daily operations do not include events or use of overflow parking. There are two types of winery visitor-serving activities: Sales Activities and Wine Trade Activities.
8. **Sales Activities** are wine tasting, food and wine pairing, tours, seminars and other hospitality related activities that support the promotion of wine sales, excluding winery events. Sales Activities occur during the approved tasting room hours of operation specified in the use permit.
9. **Wine Trade Activities** are by-invitation meetings, seminars, employee harvest parties and similar activities, excluding events. Wine Trade Activities are attended only by wine trade partners and are not advertised to the consumer.

E. Operating Standards.

1. Winery Visitor Serving Activities. Winery visitor serving activities are considered part of normal winery and tasting room business operations. All winery visitor serving activities must be consistent with the hours of operation, maximum number of guests allowed, building occupancy limits, and operational requirements specified in the use permit.

2. Winery Events. Winery events must be consistent with the hours of operation, maximum number of event days, maximum number of guests allowed, building occupancy limits, and operational requirements specified in the use permit.

3. Sizing of winery visitor serving activities and winery events, and maximum number of event days is based upon a variety of factors specific to the site and surrounding uses, including, but not limited to, septic capacity, available water supply, emergency access, availability of on-site parking, noise attenuation, increased risk of harm to people or property as a result of hazards, and the potential for negative cumulative effects related to noise, traffic, and water supplies.

4. Hours of Operation. The maximum hours of operation for winery visitor serving activities and winery events are specified below, unless further limited by the use permit.

   a. Tasting Rooms. Regular business hours for tasting rooms are 10 am - 5 pm.

   b. Winery Visitor Serving Activities. The maximum hours of operation for winery visitor-serving activities are specified below by activity type.

      (1) Sales Activities: 10 am – 5 pm.
      (2) Wine Trade Activities: 8 am – 10 pm.

   c. Winery Events. The maximum hours of operation for events are specified below by event type.

(1) Agricultural Promotional Events may occur during the hours of 10 am – 10 pm, with all cleanup occurring no later than between 9:30 pm – 10 pm.
(2) Industry-wide Events may occur during the hours of 10 am – 5 pm.

5. Wineries and tasting rooms shall not be rented out to third parties for events.

6. On-Site Parking. The following on-site parking is required for wineries and tasting rooms:

   a. 1 parking space per 2.5 guests and 1 space per employee. The parking standard may be reduced in accordance with Article 86. - Parking Regulations Sec. 26-86-010 (i).

   b. Use of on-site unimproved overflow parking areas or shuttling may be allowed to accommodate winery events, if specified in the use permit.

   c. Overflow parking and shuttling shall not be used to accommodate parking for winery visitor serving activities.

   d. No parking is permitted along any public or private roadways or on shared vineyard roads.

7. Food Service. Food service is allowed as specified below.

   a. All food service must be designed to promote and enhance marketing of wine. Food service shall be secondary and incidental to agricultural production, wine sales and education.

   b. Operating the food service area as a restaurant, café, delicatessen or any food service offering cooked-to-order food is prohibited.

   c. Food and wine pairings featuring local foods and food products is allowed in conjunction with winery visitor serving activities and winery events.

   d. Prepared meals featuring local foods and food products is allowed in conjunction with wine trade activities and winery events.

   e. Retail sales of pre-packaged food in conjunction with wine tasting is allowed subject to the following limitations:

      (1) Retail sale of pre-packaged food featuring local foods and food products is allowed during the regular business hours identified in the use permit.
      (2) Retail sale of pre-packaged food is allowed for on-site consumption only. Outdoor seating areas may be allowed for use as outdoor picnic areas.
      (3) Indoor seating area or table service in conjunction with retail sales of pre-packaged food is prohibited.
      (4) Off-site signs advertising retail sales of pre-packaged food are prohibited.

8. Traffic Management. Traffic management and parking plans are required to address the maximum number of people visiting during winery visitor serving activities and winery events. For events exceeding 100 participants and for events that require use of overflow parking, the traffic management plan shall include the following:
   (1) Provisions for event coordination to avoid local traffic delays.
   (2) Parking attendants for each day of the event.
   (3) A shuttle plan, if shuttling is requested, to support each day of the event. A convenient and secure "park and ride" area must be provided.
   (4) A plan for on-site parking requirements and queuing of traffic.
   (5) Enforcement of the on-street parking restrictions.
   (6) Subsequent changes to the approved Traffic Management Plan shall be submitted in advance to the Permit and Resource Management Department.

9. Noise Attenuation Setbacks. Noise is attenuated by distance from the noise source. To ensure compliance with the Sonoma County General Plan Noise Element thresholds for maximum allowable exterior noise exposure levels, winery visitor serving activities and winery events shall meet the required setbacks provided in Table 18-2 below:

Table 18-2: Required Noise Attenuation Setbacks

Noise generating land use	**Setback measured from the exterior property line of any adjacent noise sensitive land use**
Parking lots	450 feet
Outdoor areas involving groups of people or non-amplified music (i.e. acoustic)	625 feet
Outdoor areas involving amplified music, or loud instruments such as brass instruments, horns, or drums	1,600 feet

Exceptions to the setbacks listed in Table 18-2 above may be allowed when a project-specific noise study prepared in accordance with the Permit and Resource Management Department Guidelines for the Preparation of Noise Analysis determines the project will comply with the Sonoma County General Plan Noise Element due to intervening structures or natural features, available open land on noise sensitive parcels, or by incorporating noise mitigation measures.