

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

OV THE FARM, LLC, BOWERS
HARBOR VINEYARD & WINERY, INC.
WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION,

Case No. 1:25-cv-01588
Hon. Paul L. Maloney

Plaintiffs,

v.

PENINSULA TOWNSHIP,

Defendant.

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ANSWER TO FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

NOW COMES Defendant Peninsula Township, by and through counsel, Straub, Seaman & Allen, P.C., and for its answer to Plaintiff's First Amended Complaint states:

1. The Wineries bring this action because Peninsula Township refuses to accept this Court's judgment entered in *Wineries of the Old Mission Peninsula Association, et al. v. Peninsula Township*, Case No. 1:20-cv-1008 (W.D. Mich.) (the .WOMP Case.). Peninsula Township is again attempting to infringe upon its residents' constitutional rights by pretending the WOMP Case never happened. Plaintiffs, therefore, seek declaratory and injunctive relief to prohibit the Township

from enforcing restrictions this Court already ruled were not enforceable. Plaintiffs also seek relief from a noise ordinance the Township is now enforcing against at least one of the Wineries even though the Township's Ordinance Enforcement Officer has publicly and repeatedly stated that noise ordinance is unenforceable. Without that relief, Peninsula Township is threatening to shut down at least one Winery entirely and is likely to threaten others.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' assertion as to their collective motivation for bringing this lawsuit. To the extent an answer is required, Defendant denies.

PARTIES AND JURISDICTION

2. Plaintiff OV the Farm, LLC is a Michigan limited liability company which operates a winery under the trade name Bonobo Winery ("Bonobo") with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan.

ANSWER: On information and belief, Defendant admits.

3. Plaintiff Bowers Harbor Vineyard & Winery, Inc. ("Bowers Harbor") is a Michigan corporation with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan.

ANSWER: On information and belief, Defendant admits.

4. Plaintiff Wineries of the Old Mission Peninsula (WOMP) Association ("WOMP") is a Michigan nonprofit corporation with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan.

ANSWER: On information and belief, Defendant admits.

5. WOMP is a voluntary membership trade association of licensed winery operations located on Peninsula Township's Old Mission Peninsula.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 5.

6. WOMP represents the unique interests of its members Bowers Harbor, Brys Estate Vineyard & Winery, Chateau Chantal, Chateau Grand Traverse, Hawthorne Vineyards, Mari Vineyards, Winery at Black Star Farms, Two Lads, Tabone Vineyards, and Peninsula Cellars.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 6.

7. Old Mission Peninsula's wine industry is a specialized segment of Michigan's larger economic community.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 7.

8. WOMP's purpose is to protect and promote the Old Mission Peninsula wine industry.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 8.

9. To that end, WOMP provides services to its members, such as advertising its members services and products and organizing events at its members' locations to increase tourist traffic for its members and for Old Mission Peninsula as a whole.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 9.

10. Bonobo, Bowers Harbor, and all of the other WOMP members, and WOMP itself were plaintiffs in the WOMP Case.

ANSWER: On information and belief, Defendant admits.

11. WOMP has associational standing to protect its members' interests because (1) its members would otherwise have standing to sue in their own right, (2) the interests WOMP seeks to protect are germane to its organizational purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See Friends of Tims Ford v. Tenn. Valley Authority*, 585 F.3d 955, 967 (6th Cir. 2009) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

ANSWER: Defendant, noting that Para. No. 11 contains a conclusion of law and not fact, while making a legal conclusion and, thus, no response is required. Should a response be required, Defendant denies the assertion that WOMP has associational standing.

12. Defendant Peninsula Township is a general law Township organized and existing under the laws of the State of Michigan with its offices located at 13235 Center Rd., Traverse City, Michigan.

ANSWER: Admit.

13. This action arises under the United States Constitution and 42 U.S.C. § 1983.

ANSWER: Defendant admits, on information and belief, that the plaintiffs bring this action under the United States Constitution and 42 U.S.C. § 1983; Defendant denies any intimation that it violated any of the plaintiffs' rights under the United States Constitution.

14. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

ANSWER: Defendant, noting that Para. No. 14 contains a conclusion of law and, thus, no response is required. Should a response be required, Defendant denies and holds the plaintiffs to their strict proofs.

15. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

ANSWER: Denied.

16. This Court has the authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

ANSWER: Defendant, noting that Para. No. 16 contains a conclusion of law and, thus, no response is required. Should a response be required, Defendant denies and holds the plaintiffs to their strict proofs.

17. This Court has the authority to grant declaratory and injunctive relief under Federal Rules of Civil Procedure 57 and 65, respectively.

ANSWER: Defendant, noting that Para. No. 17 contains a conclusion of law and, thus, no response is required. Should a response be required, Defendant denies and holds the plaintiffs to their strict proofs.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b) because (i) Peninsula Township is located in Grand Traverse County which is in this judicial district and Defendant Sanders resides in this judicial district, and (ii) the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

ANSWER: Denied.

19. Plaintiffs' claim for attorneys' fees and costs is authorized by 42 U.S.C. § 1988.

ANSWER: Defendant, noting that Para. No. 19 contains a conclusion of law and, thus, no response is required. Should a response be required, Defendant denies.

FACTUAL ALLEGATIONS

20. On July 7, 2025, this Court “concluded that the Township has repeatedly and pervasively violated the Wineries’ constitutional rights” and awarded the plaintiffs in the WOMP Case nearly \$50 million in damages caused by Peninsula Township’s unconstitutional enforcement of its winery ordinances.

ANSWER: Defendant admits that this Court made a ruling in the WOMP Case but denies the limited interpretation of that ruling as asserted in Para. No. 20, answers that the subject ruling speaks for itself as written, and that Plaintiffs and Defendant have appealed the Court’s ruling in the WOMP Case.

21. This Court made findings of fact with respect to Bonobo, including:

On May 14, 2013, the Board approved a Winery-Chateau SUP, designated SUP #118, for Bonobo. SUP #118 included Board approval for Guest Activity Uses. Bonobo called Todd Oosterhouse, its owner and General Manager. Bonobo planted its first vines in 2010 and opened to the public in 2014. Bonobo’s winery property consists of 50 acres, with 23 acres of vines. Bonobo harvests 45-80 tons of grapes annually. Bonobo leases its property from a related entity, Oosterhouse Vineyards, LLC. Bonobo was a Winery-Chateau and holds licenses and permits from the MLCC.

At trial, the Township focused on whether Bonobo qualified for “Guest Activity Uses.” The Township questioned whether Bonobo planted sufficient acreage to comply with the Winery-Chateau Ordinance. There initially was a dispute between the parties on this issue, but it was resolved by a settlement agreement requiring Bonobo to plant an additional 5.95 acres of vines. Bonobo then planted a further 7.95 acres

With this issue resolved, David Sanger, the Township’s enforcement officer, told Bonobo it could have Guest Activity Uses if Bonobo submitted grape tonnage reports. Bonobo provided its tonnage reports, (ECF No. 611-34 at PageID.25836); (ECF No. 600 at PageID.23025), and was told it was approved for Guest Activity Uses.

(WOMP Case, ECF No. 623, PageID.31448, PageID.31449.)

ANSWER: Defendant states that the Court's findings of fact in ECF No. 623 speak for themselves, and further denies the limited interpretation of the referenced finding of fact as asserted in Para. No. 21 and, further, answers that the excerpted reference is lacking on findings related to any amendments to Bonobo's SUP, fails to account for Bonobo's site plan, and David Sanger, as Township's enforcement officer, is without authority under the Township's zoning ordinance to authorize activities or uses not consistent with the PTZO.

22. With those findings of fact, this Court found that Bonobo was approved for Guest Activity Uses.

ANSWER: Defendant answers that the subject Court ruling speaks for itself as written. Answering further, Defendant denies that the Court made such a finding. As Paragraph 21 reads, the Court identified that guest activity uses were available by approval of the Board, and noted that David Sanger told Bonobo about Guest Activity Uses, but there were not findings on the amended SUP and site plans. Plaintiffs and Defendant have appealed the Court's decisions in the WOMP case.

23. After finding that Bonobo was approved for Guest Activity Uses, this Court awarded Bonobo \$555,942.40 and \$6,393,837.50 for the Township's unconstitutional enforcement of its ordinances which prevented Bonobo from hosting small and large events, respectively.

(WOMP Case, ECF No. 623, PageID.31479.)

ANSWER: Defendant answers that the subject Finding of Fact in ECF No. 623, PageID.3147 speaks for itself as written, and denies that the Court clearly found that Bonobo was approved by Guest Activity Uses based on the

controlling approvals and with an approval from a public body or official with authorization to make such a finding. Plaintiffs and Defendant have appealed the Court's decisions in the WOMP case.

24. This Court similarly awarded every WOMP member damages resulting from Peninsula Township's unconstitutional prohibition on hosting events on winery properties. (*Id.*)

ANSWER: Defendant admits only that this Court made numerous rulings and findings in the WOMP Case but denies the limited interpretation of the referenced finding of fact as asserted in Para. No. 24 and, further, answers that the subject Finding of Fact in ECF No. 623, PageID.3147 speaks for itself as written. Plaintiffs and Defendant have appealed the Court's decisions in the WOMP case.

25. The impact of this Court's judgment was to recognize that Bonobo and every WOMP member were lawfully allowed to host events on their properties.

ANSWER: Defendant notes that Para. No. 25 contains a conclusion of law, and denies "the impact" of the Court's judgment, as it made no findings as under which principal or accessory use of each WOMP member, as well as in which portions of every WOMP members' approved site plans permitted "events" and to what extent.

26. Following this Court's judgment in the WOMP Case, Peninsula Township has waged a public relations and land use war against wineries within Peninsula Township.

ANSWER: Denied.

27. Peninsula Township officials have repeatedly made public statements indicating that they disagree with this Court's judgment and that they do not intend to follow it.

ANSWER: Denied. Answering further, even Plaintiffs have appealed the Court's decisions.

28. On August 12, 2025, Township Clerk Becky Chown stated that the WOMP Case was effectively lost when the township was sanctioned in 2021, creating prejudice in federal court[.]” (Exhibit 1: August 12, 2025 Meeting Minutes at 8.)

ANSWER: Defendant answers that the referenced Meeting Minutes speak for themselves as written and the Township's Official recordings of what occurred at the August 12, 2025 Township Board Hearing and no answer is required; Defendant denies any intimation that a statement from an individual Board Member represented, or represents, the official position of the Township.

29. Although not reflected in the actual meeting minutes, Clerk Chown also stated:

We have inherited a mess and we're doing our best to get out of it. I said this before, but the day Judge Maloney sanctioned Peninsula Township in the fall of 2021, we lost the case in federal court, we had to get through the case. We had to get through oral arguments. We had to get through the trial. We had to endure the verdict and judgment that was handed down knowing that we were going to lose. And we did. It was expected because when a judge sanctions you in federal court, the prejudice is so great that you just don't stand a chance.

ANSWER: Defendant admits only that the subject meeting minutes do not contain such purported statement; to further answer, Defendant denies that this purported quote is correct as written as it is only part of a larger statement, discussion, and offered without full context; further, any intimation that a statement from an individual Board Member represented, or represents, the official position of the Township.

30. Clerk Chown also stated:

If those wineries want to collect that judgment, come and get it. Bring it on. If they want that judgment from the residents of Peninsula Township, they should serve us

with that order and take it and we will do what we have to do. ... I can't fathom collecting on that judgment. And I want to believe that the wineries would never ever do that. I hope that they wouldn't. And I believe we will prevail in the Sixth Circuit Court of Appeals. I believe it with all my heart. and having read the 75-page judgment, I've never felt more confident in our position.

ANSWER: Defendant denies that this purported quote is correct as written as it is only part of a larger statement, discussion, and offered without full context; further, any intimation that a statement from an individual Board Member represented, or represents, the official position of the Township.

31. Clerk Chown's comments in paragraphs 28-30 reflect Peninsula Township's position following the judgment in the WOMP Case.

ANSWER: Denied.

32. The Township has ignored this court's findings and damages award and has instead threatened to shut down Bonobo.

ANSWER: Denied.

33. On November 21, 2025, the Township, through its attorney, sent a letter to Bonobo's attorney with the caption "Re: Violations of SUP # 118 occurring at 12011 Center Road, Traverse City, MI 49686." (**Exhibit 2: 11/21/25 Letter**) (the "November 21, 2025 Letter").

ANSWER: Defendant answers that the referenced letter speaks for itself as written and no answer is required.

34. The Township asserted that Bonobo violated the Township's noise ordinance when it played music. (*Id.* at 2.)

ANSWER: Denied.

35. A copy of Peninsula Township's then-effective noise ordinance (the "Old Noise Ordinance") is attached as **Exhibit 3: Old Noise Ordinance No. 40, Amendment #1.**

ANSWER: Defendant answers that the referenced Old Noise Ordinance speaks for itself as written and no answer is required.

36. The Township also asserted that Bonobo held, or was planning to hold, private events, including holiday parties, rehearsal dinners and weddings, and a “Tuscan lunch.” (Exhibit 2: 11/21/25 Letter at 1.)

ANSWER: Defendant answers that the referenced letter speaks for itself as written and no answer is required.

37. The Township asserted that those “events are not permitted by any section of the zoning ordinance for the A-1 Agricultural Zoning District, and we have no record that Bonobo was ever granted guest activity use approval via the Township.” (*Id.* at 2.)

ANSWER: Defendant answers that the referenced letter speaks for itself as written and no answer is required.

38. Through its November 21, 2025 Letter, the Township threatened to revoke Bonobo’s special use permit and, effectively, shut Bonobo down. (*Id.* at 5.)

ANSWER: Defendant answers that the referenced letter speaks for itself as written and no answer is required; to the extent an answer is required, the defendant denies the intimation that its intention was to threaten or shut down Bonobo, and Defendant only seeks compliance with its ordinances and approvals.

39. The November 21, 2025 Letter represents Peninsula Township’s official and final position that “events are not permitted by any section of the zoning ordinance for the A-1 Agricultural Zoning District” with respect to Bonobo and every WOMP member.

ANSWER: Denied.

40. The November 21, 2025 Letter was not a mere request for “voluntary compliance” but instead an overt threat to Bonobo.

ANSWER: Denied.

41. Given the Township’s long history of arbitrary enforcement against Bonobo, as outlined in the testimony of Todd Oosterhouse during the WOMP Case, Bonobo, Bowers Harbor and the other WOMP members have no reason to believe that the Township’s request for “voluntary compliance” would lead to anything other than official enforcement and revocation of the ability to operate.

ANSWER: Denied.

42. Even the Township’s attorneys treated the November 21, 2025 Letter as an enforcement activity. The attorneys billed the Township for “2025 BONOBO ENFORCEMENT” as listed in the invoices for the Township Board’s January 27, 2026 meeting packet. (**Exhibit 4: Fahey Schultz Invoice Amount.**)

ANSWER: Defendant denies the assertion that it considered the November 21, 2025 Letter as an enforcement activity and denies that its attorneys were authorized to treat it as an enforcement activity and denies any intimation that its attorneys conducted any enforcement activity.

43. After Plaintiffs filed their initial complaint in this matter, Peninsula Township repealed its prior noise ordinance and replaced it with a new noise ordinance (the “New Noise Ordinance”). (**Exhibit 5: New Noise Ordinance, Ordinance No. 62 of 2025.**)

ANSWER: Defendant answers that the referenced Ordinance speaks for itself as written and no answer is required; to the extent an answer is required, the defendant admits that the noise ordinance referenced in the November 21, 2025 Letter is

no longer pending, controlling, or viable and that Ordinance No. 62 of 2025 is the current noise ordinance that was not viable at the time of the letter.

**COUNT I – FIRST AMENDMENT RETALIATION AGAINST BONOBO
(42 U.S.C. § 1983)**

44. Plaintiffs incorporate the preceding paragraphs as though fully restated herein.

ANSWER: Defendant incorporates its answers to Paras. No. 1-43 as if stated herein.

45. The First Amendment of the United States Constitution, through the Due Process Clause of the Fourteenth Amendment, is applicable to local units of government like Peninsula Township.

ANSWER: Defendant, noting that Para. No. 45 is premised on a conclusion of law and not fact and, thus, no response is required.

46. Bonobo has a First Amendment right to petition the Courts for redress of grievances against the government, including Peninsula Township.

ANSWER: Defendant, noting that Para. No. 46 is premised on a conclusion of law and not fact and, thus, no response is required; Defendant denies any intimation that it violated Bonobo's First Amendment Rights.

47. Bonobo has a First Amendment right to engage in free speech, including the playing of music on its property.

ANSWER: Defendant, noting that Para. No. 47 is premised on a conclusion of law and not fact and, thus, no response is required; Defendant denies any intimation that it violated Bonobo's First Amendment Rights.

48. Bonobo has a First Amendment right to host customers on its property.

ANSWER: Defendant, noting that Para. No. 48 is premised on a conclusion of law and not fact and, thus, no response is required; Defendant denies any intimation that

it violated Bonobo’s First Amendment Rights, or that Bonobo has a “right to host customers” under the First Amendment.

49. By filing the WOMP Case as a plaintiff, Bonobo engaged in conduct protected by the First Amendment.

ANSWER: Defendant, noting that Para. No. 49 is premised on a conclusion of law and not fact and, thus, no response is required; Defendant denies any intimation that it violated Bonobo’s First Amendment Rights, or that all of Bonobo’s alleged actions are protected by the First Amendment.

50. By playing music and hosting customers and events on its property, Bonobo engaged in conduct protected by the First Amendment.

ANSWER: Defendant, noting that Para. No. 50 is premised on a conclusion of law and not fact and, thus, no response is required; Defendant denies any intimation that it violated Bonobo’s First Amendment Rights, or that as pled, they are all protected by the First Amendment.

51. Peninsula Township’s November 21, 2025 Letter included the overt threat that Peninsula Township would revoke Bonobo’s special use permit and shut Bonobo down if it did not comply with Peninsula Township’s demands to cease playing music, hosting customers, holding events, and serving food.

ANSWER: Denied.

52. Also implicit in the November 21, 2025 Letter was Peninsula Township’s threat that it would continue similar enforcement activity against Bonobo if Bonobo did not abandon its damages award against Peninsula Township from the WOMP Case.

ANSWER: Denied.

53. Peninsula Township's decision to send the November 21, 2025 Letter was motivated at least in part as a response to Bonobo's exercise of its First Amendment rights, including filing the WOMP Case and exercising the operational rights clarified in the WOMP Case.

ANSWER: Denied.

54. Upon information and belief, Peninsula Township's decision to send the November 21, 2025 Letter was motivated at least in part to obtain leverage over Bonobo as part of settlement discussions related to the WOMP Case.

ANSWER: Denied.

55. Peninsula Township's overt and implicit threats against Bonobo would chill a person of ordinary firmness from continuing to engage in the rights won in the WOMP Case and from continuing to prosecute the WOMP Case against the Township.

ANSWER: Denied.

56. Bonobo has suffered damage as a result of Peninsula Township's retaliation.

ANSWER: Defendant Peninsula Township denies that it retaliated against Bonobo in any way, or that it suffered damages, and, thus, denies Para. No. 56.

**COUNT II – OLD NOISE ORDINANCE VIOLATES DUE PROCESS AND THE FIRST AMENDMENT AGAINST BONOBO
(42 U.S.C. § 1983)**

57-86. Count II, and Paragraphs 57-86 within, was dismissed subject to Court Order (ECF No. 49) and, thus, no answer is required.

**COUNT III – NEW NOISE ORDINANCE VIOLATES DUE PROCESS AND THE FIRST AMENDMENT – ALL PLAINTIFFS
(42 U.S.C. § 1983)**

87. Plaintiffs incorporate the preceding paragraphs as though fully restated herein.

ANSWER: Defendant incorporates its answers to Paras. No. 1-86 as if stated herein.

88. Plaintiffs have a First Amendment right to play music on their property.

ANSWER: Defendant, noting that Para. No. 88 is premised on a conclusion of law and not fact and, thus, no response is required; to the extent an answer may be required, Defendant admits that Plaintiffs have a First Amendment Right to play music on their property but denies any intimation that the Township’s act was in any way a violation of a First Amendment Right of any plaintiff or the plaintiffs.

89. Plaintiffs regularly play music on their property as a form of speech to entice guests to come to their properties and purchase their products as well as to entertain their guests.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 89 and, therefore, denies and leaves Plaintiffs to their strict proofs.

90. Bonobo, Bowers Harbor and all of WOMP’s members are subject to and regulated by the New Noise Ordinance.

ANSWER: Defendant admits that all referenced entities are subject to the New Noise Ordinance.

91. Peninsula Township’s New Noise Ordinance defines “plainly audible” as “any sound that can be detected by a person using his or her unaided hearing faculties.” (Exhibit 5: New Noise Ordinance, § 2(A).)

ANSWER: Defendant answers that the referenced section and subsection of the New Noise Ordinance speaks for itself as written and no answer is required.

92. The New Noise Ordinance’s definition of “plainly audible” means any sound above 0 dB.

ANSWER: Denied.

93. Peninsula Township’s New Noise Ordinance defines a “noise disturbance” as “any sound that unreasonably annoys or disturbs a person of normal sensitivities, endangers or injures the safety or health of humans or animals, unreasonably disrupts the reasonable conduct of basic human activities such as conversing or sleeping, or endangers or injures real or personal property.”

(Id., § 2(B).)

ANSWER: Defendant answers that the referenced section and subsection of the New Noise Ordinance speaks for itself as written and no answer is required.

94. The New Noise Ordinance penalizes all of the following:

Section 3: Anti-Noise Regulations

- A. **General Regulation:** No person, firm, or corporation shall cause, create, continue, or assist in creating any noise disturbance; or as an owner, lessee, or occupant of the property on which the activity is located, permit the continuation of any noise disturbance if said noise disturbance is within their control.
- B. **Specific Violations:** The following noises and disturbances are hereby declared to be a violation of this ordinance but are not thereby to be construed to exclude other violations of this ordinance not specifically enumerated.
 - 1. **Amplified Sounds and Musical Instruments:** The playing of any radio, television, speaker, loudspeaker, stereo system, media player, phonograph, or other electronic or mechanical sound-producing device, including any musical instrument, in such a manner or with such a volume as to create a noise disturbance. A noise disturbance shall be presumed where the [sic] any radio, television, speaker, loudspeaker, stereo system, media player, phonograph, or other electronic or mechanical sound-producing device, including any musical instrument, is operated between the hours of 10:00 p.m. and 7:00 a.m. and is plainly audible on property other than that from which the sound is being emitted.
 - 2. **Yelling and Vocal Noises:** Yelling, shouting, hooting, whistling, singing, or creating other vocal noises in such a manner or with such a volume as to create a noise disturbance.
 - 3. **Animals:** The keeping of any animal, bird, or fowl that emanates frequent or extended noise so as to create a noise disturbance, such as allowing or permitting

any dog to bark repeatedly in an area where such barking is plainly audible on property other than that from which the sound is being emitted.

4. **Construction:** The construction, excavation, demolition, alteration, or repair of any building or premises, earth moving, tree cutting, or chipping operations in any part of the township, including the streets and highways, in such a manner as to create a noise disturbance, other than between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday and between the hours of 8:00 a.m. and 6:00 p.m. on Saturday and Sunday, except in cases of urgent necessity in the interests of public health and safety. In such case, a permit shall be obtained from the township supervisor or person authorized by the supervisor that shall limit the periods that the activity may continue.
5. **Loading or Unloading:** The loading or unloading [of] any vehicle or trailer or the opening and destruction of bales, boxes, crates, and containers in such a manner to create a noise disturbance.
6. **Motor Vehicle:** The operation of any automobile, motorcycle, snowmobile, or other vehicle as to result in loud grating, grinding, rattling, screeching, exhaust, or other noise that would create a noise disturbance.
7. **Machinery, Equipment, or Mechanical Devices:** The operation of any machinery, equipment, or mechanical device so as to emit noise that because of volume, frequency, or duration would create a noise disturbance.

(Id., § 3.)

ANSWER: Defendant answers that the referenced section and subsections of the New Noise Ordinance speaks for itself as written and no answer is required; further, Defendant denies the intimation that the referenced section automatically applies penalties.

95. Violations of the New Noise Ordinance are treated as municipal civil infractions.

(Id., § 5(B).)

ANSWER: Defendant answers that the referenced section and subsection of the New Noise Ordinance speaks for itself as written and no answer is required.

96. Peninsula Township also treats violations of the New Noise Ordinance as a basis to revoke permits, including special use permits, from Plaintiffs.

ANSWER: Denied.

97. The New Noise Ordinance, including the definition of “noise disturbance,” is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment because it does not provide fair notice of the type of conduct prohibited. *See Tanner v. City of Virginia Beach*, 277 Va. 432, 440–41 (2009) (“The references in the ordinance to “reasonable persons,” and to persons of “reasonable sensitivity,” do not provide a degree of definiteness sufficient to save the ordinance from the present vagueness challenge. Such terms, considered in their context, delegate to a police officer the subjective determination whether persons whom the police officer considers to be of reasonable sensitivity would find the noise detrimental to their life or health. Likewise, these terms leave to a police officer the determination whether persons the police officer considers to be reasonable would be disturbed or annoyed in their comfort or repose by the particular noise at issue. Determinations of this nature invite arbitrary enforcement.”).

ANSWER: Denied.

98. The New Noise Ordinance, including the definition of “noise disturbance,” is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment because it encourages subjective and discriminatory application by delegating to those empowered to enforce the ordinance the unfettered discretion to determine whether the New Noise Ordinance has been violated. *See Dupres v. City of Newport, R.I.*, 978 F. Supp. 429, 435 (D.R.I. 1997) (references to “annoying” or “unnecessary” sounds “invite law enforcement and others to make a determination as to whether the ordinance has been violated on purely subjective, content-based criteria”).

ANSWER: Denied.

99. The New Noise Ordinance is also unconstitutionally vague because it is overbroad in violation of the First Amendment.

ANSWER: Denied.

100. For example, § 3(B)(1) automatically penalizes any noise emanating from any of Plaintiffs’ properties that is “plainly audible” from sound-producing devices and musical instruments between the hours of 10:00 p.m. and 7:00 a.m.

ANSWER: Denied.

101. One WOMP member, Chateau Chantal, has traditionally hosted “Jazz at Sunset” on its property during the summer for more than three decades to entice customers to come to its property and purchase wine.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 101.

102. Another WOMP member, Villa Mari, has traditionally hosted a Summer Solstice event for its wine club members to view sunrise—which occurs before 4:30 a.m. at that time—from the Mari Vineyards caves. Villa Mari’s Summer Solstice event can involve music.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 102.

103. Bonobo, Bowers Harbor and WOMP’s other members similarly would like to play music for their guests past 10:00 p.m. or before 7:00 a.m.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 103.

104. The owner of another WOMP member has a young child that is often present at his winery either late at night or early in the morning, and the owner often plays music or television to soothe the young child.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 104.

105. If any noise from “Jazz at Sunset,” the Summer Solstice event, soothing the young child, or other similar events could be heard on any neighboring property—regardless of whether that noise actually bothered anyone—the Township could issue Chateau Chantal, Villa Mari, or any of the other Plaintiffs a violation under § 3(B)(1) and shut down that winery even though the winery is engaging in conduct protected by the First Amendment.

ANSWER: Defendant denies Para. No. 105. Plaintiffs’ are incorrect as to the New Noise Ordinance’s application to activities within the Township.

106. The unconstitutionality of the New Noise Ordinance extends beyond just Plaintiffs. For example, a family living in a Peninsula Township subdivision where houses are placed close together might face enforcement should their baby wake up crying in the middle of the night and the family plays a lullaby near an open window to soothe the child.

ANSWER: Denied.

107. A group of friends sitting around a campfire with an acoustic guitar after 10:00 p.m. would also cause a violation of the New Noise Ordinance.

ANSWER: Defendant denies Para. No. 107. Plaintiffs’ are incorrect as to the New Noise Ordinance’s application to activities within the Township.

108. Bonobo, Bowers Harbor, and WOMP’s other members also employ many workers in their tasting rooms, production areas, and vineyards.

ANSWER: On information and belief, admitted.

109. Because Peninsula Township lacks any public transportation, these workers travel to the various wineries by car.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 109.

110. These workers often stay past 10:00 p.m. or arrive before 7:00 a.m., depending on the season.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 110.

111. If these workers play music, listen to the news, or listen to podcasts in their car on their way to or from work, sound generated from their car stereo systems is likely audible at the property line when those workers enter or leave the property and would constitute a prima facie violation under § 3(B)(1) because those workers could be deemed to be within the wineries' control.

ANSWER: Defendant denies Para. No. 111. Plaintiffs' are incorrect as to the New Noise Ordinance's application to activities within the Township.

112. The Township has also been warned, during public meetings before the adoption of the New Noise Ordinance, that the New Noise Ordinance will be criminalizing children jumping on a trampoline at night, waterfront owners sitting around the fire and listening to music at night, and dogs barking when their owner lets them outside to use the bathroom.

ANSWER: Defendant denies Para. No. 112 as inaccurate as stated and denies any intimation that the Township would interpret its ordinance as related to this hypothetical situation in a manner so alleged.

113. Absent evidence that noise is actually disturbing someone else, Peninsula Township has no basis to impose a violation for noise that is “plainly audible.” *See, e.g., Duffy v. City of Mobile*, 709 So. 2d 77, 81 (Ala. Crim. App. 1997) (striking down a noise ordinance which provided “that if the sound is merely ‘plainly audible’ at a distance of 50 feet, it is prima facie evidence of a violation of the ordinance” because it “seems to remove or negate the requirement that anyone be annoyed or disturbed by the noise”).

ANSWER: Defendant, noting that Para. No. 113 contains a conclusion of law and not an allegation of fact, while making a legal conclusion based on plaintiffs’ interpretation of case law and, thus, no response is required.

114. The New Noise Ordinance is overbroad because it bans more protected First Amendment conduct than is necessary to achieve its goals.

ANSWER: Denied.

115. Bonobo, Bowers Harbor and WOMP’s other members fear Peninsula Township’s arbitrary and unconstitutional enforcement of the New Noise Ordinance against them.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 115 because it is premised on the asserted subjective beliefs of certain plaintiffs and, thus, deny and hold those referenced plaintiffs to their strict proofs.

116. Bonobo, Bowers Harbor, and WOMP’s other members have declined to engage in activities protected by the First Amendment for fear of violating the New Noise Ordinance and have therefore suffered harm through a chilling effect from Peninsula Township’s threatened enforcement of its New Noise Ordinance.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Para. No. 116 and, thus, deny and hold those referenced to their strict proofs.

**COUNT IV – INTERFERENCE WITH DUE PROCESS LIBERTY INTEREST
(42 U.S.C. § 1983) – ALL PLAINTIFFS**

117. Plaintiffs incorporate the preceding paragraphs as though fully restated herein.

ANSWER: Defendant incorporates its answers to Paras. No. 1-116 as if stated herein.

118. Bonobo, Bowers Harbor, and every other WOMP member have a liberty interest, via the Due Process Clause of the Fourteenth Amendment, in operating their respective business free from arbitrary governmental interference. *See, e.g., Sanderson v. Village of Greenhills*, 726 F.2d 284 (6th Cir. 1984); *Chalmers v. City of Los Angeles*, 762 F.2d 753 (9th Cir. 1985); *United States v. Tropiano*, 418 F.2d 1069, 1076 (2d Cir. 1969); *Small v. United States*, 333 F.2d 702, 704 (3d Cir. 1964).

ANSWER: Defendant, noting that Para. No. 118 contains a conclusion of law and not an allegation of fact, while making a legal conclusion based on plaintiffs' interpretation of case law and, thus, no response is required. Should a response be required, Defendant denies the intimation that it violated the liberty interests via the Due Process Clause of the Fourteenth Amendment in any way as to any plaintiff.

119. A government acts arbitrarily when it enforces restrictions that do not exist.

ANSWER: Defendant, noting that Para. No. 119 contains a conclusion of law and not an allegation of fact and, thus, no response is required. Should a response be required, Defendant denies the intimation that it arbitrarily acted in relation to the enforcement of a restriction that did not exist as to any plaintiff.

120. A government acts arbitrarily when it refuses to follow lawful court orders.

ANSWER: Defendant denies that it refused to follow a court order.

121. Peninsula Township has threatened to revoke Bonobo's special use permit and shut it down if it does not cease hosting events and providing food service.

ANSWER: Denied.

122. Peninsula Township's position is based, in part, on its argument that it has "no record that Bonobo was ever granted guest activity use approval via the Township." (**Exhibit 2: 11/21/25 Letter at 2.**)

ANSWER: Denied.

123. In entering judgment in favor of Bonobo, among others, this Court already found that the Township approved Bonobo for guest activity uses. (*See* WOMP Case, ECF No. 623, PageID.31448–PageID.31449.)

ANSWER: Defendant answers that the referenced Judgment in the WOMP Case ECF. NO. 623 speaks for itself as written, and further denies that the Court clearly identified the basis of guest activity uses after Bonobo amended its SUP and otherwise has no such indication on its site plan or other authorized zoning permits or approvals.

124. Therefore, the Township is barred by res judicata and/or collateral estoppel from relitigating the issue of whether the Township approved Bonobo for guest activity uses.

ANSWER: Denied.

125. The Township's position that Bonobo was not approved for guest activity uses is arbitrary and therefore violates the Due Process Clause of the Fourteenth Amendment.

ANSWER: Denied.

126. The Township also asserts that Bonobo has no vested right in hosting events even though this Court already ruled that Bonobo was damaged from the Township's refusal to allow Bonobo to host events in the past. (**Exhibit 2: 11/21/25 Letter at 3.**)

ANSWER: Denied as the Plaintiffs' interpretation of the letter, and in turn the Township's purported assertion, is inaccurate.

127. At trial, Bonobo presented evidence that it had hosted events over the years and that some of these events complied with the Township's unconstitutional ordinances while others were in violation of the unconstitutional ordinances.

ANSWER: Defendant denies that there has been a trial in this case, leaves Plaintiffs to their proofs, and, thus, denies the allegations in Para. No. 127.

128. Therefore, the Township is barred by res judicata and/or collateral estoppel from relitigating the issue of whether Bonobo is allowed to host events.

ANSWER: Denied.

129. After the Township repealed the offending ordinances, Bonobo became a vested nonconforming use with the full ability to host events, and nothing has changed in Bonobo's ability to host events.

ANSWER: Denied. Plaintiffs' mischaracterize the meaning of "host events" in relation to their pled allegations on "guest activity uses," and since Bonobo lacked approval for guest activity uses, and it cannot maintain a vested right in such uses.

130. The Township also asserts that Bonobo cannot serve food. (**Exhibit 2: 11/21/25 Letter at 5.**)

ANSWER: The claims related to the allegations in Para. No. 130 were dismissed subject to Court Order (ECF No. 49) and, thus, no answer is required.

131. In making that assertion, the Township ignores Bonobo’s special use permit, which states in relevant part that “The Township Board finds that all uses permitted onsite shall take place within the principal structure meetings and special dinners shall be allowed wherein the participants are not registered guests of the chateau-winery and such meetings and special dinners are for agricultural purposes/education only as permitted under the Peninsula Township Zoning Ordinance.”

ANSWER: The claims related to the allegations in Para. No. 131 were dismissed subject to Court Order (ECF No. 49) and, thus, no answer is required.

132. The Township also asserts that Bonobo cannot engage in “facility rentals.”

ANSWER: Denied as stated due to it being overly broad and misstating the Township’s position.

133. The Township is conflating “facility rentals” with events to try and circumvent this Court’s rulings on events from the WOMP Case.

ANSWER: Denied.

134. Bowers Harbor and the other WOMP members are similarly situated to Bonobo both in the proofs provided in the WOMP trial and the Court’s ruling.

ANSWER: Denied.

135. Absent a declaration from this Court, Bonobo, Bowers Harbor, and WOMP’s other members will be harmed by Peninsula Township’s arbitrary and unlawful interpretation of ordinance restrictions following the WOMP Case.

ANSWER: Denied.

COUNT V – STATE LAW PREEMPTION

136-147. Count V, and Paragraphs 136-147 within, was dismissed subject to Court Order (ECF No. 49) and, thus, no answer is required.

WHEREFORE, Defendant, Peninsula Township, moves this Honorable Court to enter a judgment of no cause of action in favor of this Defendant and against the Plaintiffs together with costs and attorney fees to be taxed.

Respectfully submitted,

STRAUB, SEAMAN & ALLEN, P.C.

Dated: June 1, 2026

/s/ James T. McGovern

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AFFIRMATIVE DEFENSES

Defendant, Peninsula Township, by and through its attorneys, Straub, Seaman & Allen, P.C., for affirmative defenses as to the claims of the Plaintiffs says as follows:

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred in whole or in part as a result of the expiration of the applicable statute of limitations.

3. Plaintiffs have failed, neglected and/or refused to properly and adequately mitigate the damages they claim to have suffered.

4. Some or all of Plaintiffs' claims are barred because of their failure to exhaust administrative or other remedies or to satisfy jurisdictional requirements.

5. Plaintiffs have failed to address any, or all, of its claims or issues with the appropriate jurisdiction or public body and, thus, have failed to ripen their claims prior to the filing of this lawsuit.

6. Some or all of Plaintiffs' claims are preempted by applicable state or federal law.

7. Plaintiffs' claims may be barred by immunity conferred by law.

8. Plaintiffs have prayed for damages that are not awardable under controlling law.

9. Plaintiffs' claims may be barred by the doctrine of unclean hands, given potential violations by one or more Plaintiff wineries of the terms of their special use permits, site plans, and zoning requirements.

10. To the extent Plaintiffs mischaracterize the Township's letter from legal counsel as being a legal opinion or final position of the Township, such position is inadmissible and improper as a basis for suit due to no subsequent action occurring from the Township regarding the matter.

11. To the extent Plaintiffs mischaracterize the Township's letter from legal counsel as being a legal opinion or final position of the Township, the Defendant has not made any admissions or otherwise bound itself by Township counsel's letter to invite Plaintiff Bonobo to discuss the scope and rights of its zoning use and approvals (or lack thereof).

12. Plaintiffs have failed to identify the damage claims for violation of the First and Fourteenth Amendments in which they vaguely assert caused damage due to the alleged unconstitutional acts of the Defendant.

13. Plaintiffs have failed to identify any provision of Defendant's zoning ordinance or noise ordinance that compel or suppress their speech in violation of the First or Fourteenth Amendments.

14. Plaintiffs have failed to identify any provision of the Defendant's current, and applicable, zoning ordinance that constitute either prior restraints of Free Speech and/or are a current basis of a reasonable fear of future restraint of Free Speech.

15. Defendant provided Plaintiff Bonobo with adequate due process for any valid property rights held by Plaintiff, and did not deny the Plaintiff any of its due process or ability to address any potential ordinance violations with respect to the claims made in this matter. Defendant has not sent any correspondence or taken any action against the other Plaintiffs.

16. Plaintiffs unreasonably failed to take advantage of preventative and corrective opportunities provided.

17. Defendant acted at all times pertinent herein, within the bounds of the law and good faith.

18. Any violations of the law by Defendant, which are denied, were inadvertent and not willful or intentional.

19. Plaintiffs' claims may be barred by the doctrine of laches.

20. Plaintiffs' claims are barred by equitable estoppel and/or waiver due to Plaintiffs themselves pursuing the zoning ordinance provisions at issue, and further seeking special use or zoning approvals under such regulations prior to now challenging those zoning provisions.

21. All or some of Plaintiffs' claims are barred by collateral estoppel and/or res judicata, due to prior litigation, prior adjudications, and prior resolutions involving one or more of Plaintiffs. This includes, without limit, the 1998 litigation by Chateau Operations Ltd and Bob Begin against

Peninsula Township and violations alleged by Peninsula Township against Plaintiff Bonobo in 2016 and 2017.

22. Plaintiffs' claims are barred by their own voluntary acknowledgement and agreement in special use permits with the Defendant.

23. To the extent the Township applied Plaintiffs' SUPs and zoning approvals to each of them, they did not appeal the Township's decisions regarding their applications in the manner or within the time required by law.

24. Plaintiffs' claims are barred by basic principles of contract law.

25. Plaintiffs' claims may be barred by the doctrine of abstention.

26. Plaintiffs have waived their ability to challenge the zoning conditions placed upon, and so agreed upon, in their special use permits.

27. Plaintiffs lack standing because they have not alleged an injury that can be fairly traced to the Township's conduct as alleged.

28. Some of the Plaintiffs, including Plaintiff Bonobo, lack standing because they have not alleged an injury that can be redressed by this Court because they are operating on land subject to conservation easements that restrict engaging in commercial activities.

29. Plaintiffs' claims are unripe to the extent they have failed to apply for SUPs, site plan review, variances, appeals of the Township zoning administrator, and/or zoning permits for the uses they seek to undertake or pursue as alleged in the Complaint.

30. Plaintiffs seek declaratory and injunctive relief to prohibit the Township from enforcing restrictions this Court already ruled were not enforceable and, to that extent, Defendant asserts that such declaratory relief is not proper in that the plaintiffs will not be able to meet the criteria necessary for such relief.

31. Plaintiffs seek declaratory and injunctive relief to prohibit the Township from enforcing restrictions this Court already ruled were not enforceable and, to that extent, Defendant asserts that Plaintiffs have failed to identify irreparable injury such that their claim for injunctive relief is proper.

32. Plaintiffs seek declaratory and injunctive relief to prohibit the Township from enforcing restrictions this Court already ruled were not enforceable and, to that extent, Defendant asserts that Plaintiffs do not have a strong likelihood of success on the merits of their claims for injunctive relief is proper.

33. Defendant asserts that there will be substantial harm to other citizens within the Township and to the plaintiffs' respective neighbors and that harm to the public interest weigh against Plaintiff's claims for injunctive relief.

34. Defendant reserves the right to file further affirmative defenses and to amend its affirmative defenses upon the completion of discovery.

35. That this Defendant reserves the right to add such other and additional affirmative defenses as may come to light.

Respectfully submitted,

STRAUB, SEAMAN & ALLEN, P.C.

Dated: June 1, 2026

/s/ James T. McGovern

James T. McGovern (P79410)

Ross A. Holec (P79489)

Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2026, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: **None**

/s/ Denise A. Van Hoven
Denise A. Van Hoven
Legal Assistant to James T. McGovern