

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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**DEFENDANT'S RULE 26(a)(2)(B) DISCLOSURE
RE: MOTION FOR PRELIMINARY INJUNCTION**

NOW COMES Defendant, by and through their attorneys, Straub, Seaman & Allen, P.C., and state for their Rule 26(a)(2)(B) Disclosure in accordance with Federal Rules of Civil Procedure and the Court's Order (ECF No.40), as follows:

The enclosed report of Mr. Patrick Gagliardi is disclosed, and it is anticipated that if Mr. Patrick Gagliardi is called to testify then his testimony will largely align with the opinions contained within the report, however, this is wholly subject to Plaintiffs' evidence, arguments, and presentation of testimony at the April 23, 2026, hearing and in response to Plaintiff's Motion for Preliminary Injunction.

Defendant reserves the right to supplement this disclosure with Mr. Gagliardi's Supplemental and/or Amended Report subject to Motion and/or leave of the Court.

Dated: April 15, 2026

STRAUB, SEAMAN & ALLEN, P.C.

/s/ James T. McGovern

James T. McGovern (P79410)
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 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/ Lauren N. Baker

Lauren N. Baker

PRELIMINARY EXPERT REPORT OF PATRICK GAGLIARDI

Dated: April 15, 2026

Mr. James McGovern
Straub, Seaman & Allen, P.C.
1014 Main Street
St. Joseph, Michigan 49085

Re: OV the Farm, LLC, Bowers Harbor Vineyard & Winery, Inc., and Wineries of the Old Mission Peninsula v Peninsula Township (1:25-cv-01588)

Dear Mr. McGovern:

You have retained me as an expert witness in this matter to evaluate the claims raised by the Plaintiffs and opine on the interplay between the Michigan Liquor Control Commission and local zoning regulations. I submit the following report in accordance with Federal Rule of Civil Procedure 26(a)(2)(B).

The opinions I have formed as of the date of this report based on my training, education, and experience are as follows:

1. The mission of the Michigan Liquor Control Commission (“MLCC” or the “Commission”) is to make alcoholic beverages available for consumption while protecting the consumer and the general public through the regulation of those involved in the sale, distribution, and importation of alcohol and alcohol products. The MLCC accomplishes this mission, in part, through collaboration with local governments.
2. The regulation of alcohol occurs through a well-established partnership between the state and local units of government.
3. The Tasting Room Statute, MCL 436.1536(7)(h), is permissive rather than mandatory, and does not require or automatically authorize a “restaurant” as it is defined in the Michigan Liquor Control Code via the Food Law.

What follows is an overview of my qualifications, a list of the information I reviewed to form my opinions, and a summary of each opinion I have formed to date.

I. Professional Background

I am currently the president of Gagliardi Associates, a consulting firm that provides, in part, consultation and expert advice relating to liquor policy and regulation. I am charging the Township \$450 per hour for my work related to this case.

Starting in 1983, I served for 16 years in the Michigan House of Representatives, where I was directly involved in crafting several liquor-related statutes. Among other legislative

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accomplishments, I was involved in updating Michigan's Dram Shop Act in the 1980s and in the enactment of PA 440 of 1996, which privatized the state's liquor distribution system.

After my time in the Legislature, I was appointed to the Michigan Liquor Control Commission ("MLCC" or the "Commission") by Governor Granholm in 2003 and served as one of the three Administrative Commissioners until 2011. In 2019, I had the honor of being reappointed to the MLCC as Chairman by Governor Whitmer. I served as Chairman for four years, ending in 2023. During my combined tenure on the MLCC, I participated in all aspects of liquor regulation, including licensing, enforcement, rulemaking, and adjudicating appeals of departmental judgments. On the business side of the MLCC, we administered the wholesale function over all distilled spirits in the state, which included the management of Commission staff and directing the budget, policy, and audit of the Commission.

I have authored the following professional publications:

The Need For State Alcohol Regulatory Funding: Fighting Deregulation by Defunding (2013); and

10 Years Later, The Need For State Alcohol Regulatory Funding: Fighting Deregulation by Defunding (2024).

I am currently researching and preparing a detailed history of the first 27 years of Michigan's Authorized Distribution Agents System in preparation of a future publication.

II. Documents Considered and Relied Upon

In forming the opinions expressed in this report, I have considered and relied upon the following documents and sources:

- a) Plaintiff's List of Witnesses for Preliminary Injunction Hearing (ECF 39);
- b) Trial Testimony of Teri Quimby from *Wineries of the Old Mission Peninsula v Peninsula Township*, Case No. 1:20-cv-1008 (W.D. Mich.);
- c) Plaintiff's First Amended Complaint (ECF 14);
- d) Plaintiff's Brief in Support of Motion for Preliminary Injunction (ECF 16);
- e) MCL 436.1536(7)(h);
- f) MCL 436.1111(5);
- g) MCL 289.1107(t);
- h) MCL 436.2113;
- i) MCL 436.1501(2);
- j) Michigan Administrative Code, R 436.1003(1);
- k) Article IV, Section 40 of the Michigan Constitution;
- l) OV the Farm's MLCC Licenses and Permits; and

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m) November 21, 2025 Township letter to OV the Farm, LLC.

III. Opinions

Opinion #1: The mission of the Michigan Liquor Control Commission (“MLCC” or the “Commission”) is to make alcoholic beverages available for consumption while protecting the consumer and the general public through the regulation of those involved in the sale, distribution, and importation of alcohol and alcohol products. The MLCC accomplishes this mission, in part, through collaboration with local governments.

As clearly stated in the above mission statement, the MLCC’s role is to regulate alcohol within the state of Michigan.

Article IV, Section 40 of the Michigan Constitution provides that “the legislature may by law establish a liquor control commission, which subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof.” Shortly after the 21st Amendment was ratified in 1933, the Michigan Legislature passed the Michigan Liquor Control Act, imbuing the Commission with great authority over the traffic and sale of alcohol. However, the Legislature also subjected the Commission’s power to several statutory limitations. In doing so, the Legislature clearly provided for local participation and decision-making.

Since the MLCC’s inception, it has allowed local units of government the ability to determine whether alcohol can be sold and distributed within their boundaries. If a local community allows state licenses within their boundaries, the MLCC affords them a role in determining how alcohol can be sold and distributed in their communities. (There are still local communities in Michigan that do not allow state alcohol licenses of any type within their boundaries.)

For example, in MCL 436.1501(2), the legislature limited the Commission’s Power over granting licenses, making the issuance of a license subject to approval by local municipalities. The same statute also provides local municipalities with the ability to object to license renewals and seek revocation. Other sections allow municipalities to create social districts and counties to prohibit the sale of alcohol on Sunday mornings.

While the Constitution stipulates that the Commission has complete control over the traffic and sale of alcohol, there are several instances where the Legislature places limitations on the Commission’s power by granting authority to local governments, or otherwise leaving space for local governments to maintain regulations that may impact the traffic and sale of alcohol but focus on other areas, such as building codes and zoning.

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Opinion #2: The regulation of alcohol occurs through a well-established partnership between the state and local units of government.

EVERY ALCOHOL LICENSE OR PERMIT IN MICHIGAN BEARS THE FOLLOWING LEGEND:

This is to certify that a License is hereby Granted to the person(s) named with the stipulation that the licensee is in compliance with Commission Rule R436.1003, Which states that The licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules and ordinances as determined by the state local enforcement officials who have jurisdiction over the licensee. Approval of this application by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee must obtain all state and local licenses, permits and approvals for this business before using this license for the sale of alcoholic liquor on the licensed premises.

The MLCC expressly recognizes a municipality's zoning authority over licenses and there is no inherent conflict between local zoning powers and the Michigan Liquor Control Code or administrative rules promulgated by the Commission. There are many aspects of a modern licensee's business that do not directly involve the traffic and sale of alcohol. Decisions regarding the siting of a licensee's business, the full extent of services offered, operating hours, and other non-alcohol related matters, while subject to some statutory provisions, provide ample room for participation and co-regulation by local governments.

In my experience, the MLCC does not view its rules and the Liquor Control Code as being the only regulation of alcohol. There is room for local regulation since the MLCC is focused on traffic and sales. Outside of prohibitions on being located within 500 feet of a church or school, the Commission does not dictate where a licensee is entitled to be located within a community. The State relies on the citizenry, through local governments, to dictate appropriate locations for licenses to operate. Such decisions are best left to the people who know the community most. The same is true for the activities allowed on the licensee's property not involving the sale of alcohol or directly preempted by state law. The local community knows best whether a licensee's concert venue, restaurant, or nightclub, will have detrimental effects on the surrounding community.

Former Commissioner Teri Quimby is misguided. The question of whether a licensee may operate a restaurant on a particular site is outside the scope of the Michigan Liquor Code. The MLCC regulates whether and how alcohol may be sold; local zoning regulates whether a particular parcel can host a restaurant with the attendant impacts on the surrounding community. **These are distinct regulatory functions, and both can exist harmoniously.** Nothing in the Liquor Control Code suggests the Legislature intended to strip local governments of authority over these land-use impacts simply because the business in question also holds a liquor license.

Commissioner Quimby's own testimony supports this conclusion. On cross-examination, she confirmed that every license approval order she signed—including orders for wineries that are

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plaintiffs in this case—contained the language of Administrative Rule 436.1003, requiring the licensee to “comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules and ordinances.” She acknowledged that the word “shall” in that context is mandatory. She further agreed that a township can restrict the location of a Meijer store or a manufacturing facility.

In this case, the Township is not prohibiting the sale of alcohol; it is regulating the land-use impacts of restaurant operations within an agricultural zoning district. Commissioner Quimby also acknowledged that she is not an expert in land use planning or zoning. The Act was not designed to exclude local involvement. Community impacts are a local question, not a liquor regulation question. That is a question for the local community and its elected officials, not the MLCC.

Opinion #3: The Tasting Room Statute, MCL 436.1536(7)(h), is permissive rather than mandatory, and does not require or automatically authorize a “restaurant” as it is defined in the Michigan Liquor Control Code via the Food Law.

Generally, in statutory construction, words like “may” or “can” are understood to be permissive while words like “must” or “shall” are understood to be mandatory. This usage mirrors the common understanding of these qualifying terms. Based on this understanding, the use of “may” in MCL 436.1536(7) must not be construed as mandatory that licensees with tasting room permits be automatically allowed to operate a restaurant.

To my knowledge and experience, the Commission has never viewed MCL 436.1536(7) as preempting local zoning regulations concerning the location of restaurants or the allowable food services a licensee can engage in. I am not aware of any statute mandating that licensees with tasting rooms be automatically allowed to operate restaurants merely because they obtain a liquor license.

It also appears that the definition of “restaurant” that Liquor Control Code incorporates from the Food Law is quite broad, including establishments like nightclubs and movie theaters. Based on my understanding and experience, MCL 436.1536(7) does not grant the Commission sole regulatory authority over the operation of a night club or movie theater in a particular area.

Plaintiffs’ position could lead to any winery holding a tasting room permit being able to open a nightclub, drive-in movie theater, cocktail lounge, or industrial feeding operation in an A-1 agricultural zone, and a local unit would be powerless to prevent it through zoning.

III. Conclusion

While the MLCC is granted control over the traffic and sale of alcohol, its control is subject to statutory limitations imposed by the Legislature. Moreover, there are many aspects of a licensee’s business that do not directly involve the traffic and sale of alcohol. Local zoning regulations play an important role in ensuring that a licensee’s business is located in an appropriate area and that negative impacts on the local community are minimized. To my knowledge, the Commission has

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never understood mere statutory permission to operate a restaurant as preempting local regulations on the extent of food services that can be offered or the location of restaurants.

The opinions expressed in this report are based on information known to me as of the date of this report and on the documents and materials I have reviewed to date. I reserve the right to supplement or revise these opinions should additional information, documents, or testimony become available. Additional opinions and analysis can be added to this report should more time be provided and upon your request.

The above opinions are prepared and submitted by:

/s/ Patrick Gagliardi
Patrick Gagliardi, President
Gagliardi Associates