No. 25-1705 / 25-1703 / 25-1754

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs/Appellees/Cross-Appellants

v.

PENINSULA TOWNSHIP

Defendant-Appellant

and

PROTECT THE PENINSULA

Intervenor-Defendant/Appellant

Appeal from the United States Trial Court
For the Eastern District of Michigan
Case No. 20-cv-01008

MICHIGAN MUNICIPAL LEAGUE (MML) LEGAL DEFENSE FUND'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PENINSULA TOWNSHIP AND PROTECT THE PENINSULA

Amicus curiae, the Michigan Municipal League (MML) Legal Defense Fund hereby respectfully requests leave of the Court to file the attached *Amicus Curiae* Brief in Support of Peninsula Township and Protect the Peninsula. In support of its motion, *Amicus* states:

1. *Amicus* Michigan Municipal League (MML) is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund (LDF). The Michigan Municipal League operates the LDF through a board of directors[1], which is broadly representative of its members. The purpose of the LDF is to represent the member cities and villages in litigation of statewide significance.

2. The primary issues in this case relate to whether the Trial Court improperly elevated Plaintiffs' commercial interests over the governmental interests of the Township and whether it incorrectly applied Michigan preemption law relating to liquor licenses.

[1] The 2024-2025 Board of Directors of the Legal Defense Fund who approved this filing are: Nick Curcio, City Attorney, South Haven; Suzanne Curry Larsen, City Attorney, Marquette; Lauren Trible-Laucht, Immediate Past President, City Attorney, Traverse City; Amy Lusk, City Attorney, Saginaw; Laurie L. Schmidt, City Attorney, St. Joseph; Rhonda Stowers, City Attorney, Davison; and Christopher J. Johnson, General Counsel, Fund Administrator.

3. *Amicus*, although not a party to this case, has a strong interest in the subject matter generally and the specific issues on appeal. What the Court does in this case will reverberate throughout the state, and *Amicus* hopes to have its voice and the voices of its members heard.

4. This Motion is filed within the time provided by the applicable court rules.

WHEREFORE, *Amicus* respectfully prays that this Court will grant this motion and accept the proposed *amicus curiae* brief for filing and consideration.

Respectfully submitted,

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PROOF OF SERVICE

I certify that on February 11, 2026, the foregoing document was served on all parties or their counsel of record through the Court's e-file system.

/s/ Thomas R. Schultz

No. 25-1705 / 25-1703 / 25-1754

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*AMICUS CURIAE* BRIEF OF
MICHIGAN MUNICIPAL LEAGUE (MML) LEGAL DEFENSE FUND
IN SUPPORT OF PENINSULA TOWNSHIP AND
PROTECT THE PENINSULA
REQUESTING REVERSAL OF THE TRIAL COURT'S DECISION

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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

Amicus adopts the Statement of Appellate Jurisdiction as set forth by Defendant/Appellant Peninsula Township.

STATEMENT OF ISSUES

I. WHETHER THE TRIAL COURT'S ANALYSIS AND DECISION-MAKING IMPROPERLY ELEVATED PLAINTIFFS' RETAIL BUSINESS INTERESTS ABOVE THE TOWNSHIP'S ZONING INTERESTS, WHICH HAD BEEN LEGISLATIVELY ENACTED BY ITS PLANNING COMMISSION AND TOWNSHIP BOARD AS A COMPROMISE TO PRESERVE THE UNIQUE AGRICULTURAL RESOURCES ON OLD MISSION PENINSULA?

Plaintiffs answer: No
Defendant answers: Yes
The US Trial Court answered: No
This Court should answer: Yes

II. WHETHER THE TRIAL COURT MISAPPLIED MICHIGAN PREEMPTION RULES WHEN IT FOUND TWO PROVISIONS OF THE TOWNSHIP'S ZONING ORDINANCE TO BE PRE-EMPTED BY THE MICHIGAN LIQUOR CONTROL CODE?

Plaintiffs answer: No
Defendant answers: Yes
The US Trial Court answered: No
This Court should answer: Yes

STATEMENT OF INTEREST

The Michigan Municipal League (MML) is a Michigan non-profit corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership comprises hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund (LDF). The Michigan Municipal League operates the LDF through a board of directors that is broadly representative of its members. The purpose of the LDF is to represent the member cities and villages in litigation of statewide significance.

The governing body of the MML has authorized and directed this office to file an *amicus curiae* brief in the within cause in support of Defendant/Appellant Peninsula Township.[1]

[1] No counsel for a party authored this Brief in whole or in part. No counsel or party made a monetary contribution to the preparation of this Brief.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Amicus adopts the Statement of Material Proceedings and Facts as set forth by Defendant/Appellant Peninsula Township.

INTRODUCTION AND SUMMARY OF ARGUMENT

A $50 million judgment in a zoning and land use case in Michigan is exceedingly rare. Likely even unprecedented. That $50 million number would be astonishing even for litigation involving, say, a data center or regional mall, or some other gargantuan money-making endeavor. So, it is remarkable that it comes in a case involving a handful of small wineries that have been operating essentially over the course of decades, under generally the same ordinance provisions, with very few formal legal disputes, and almost no requests for variances or other relief from the applicable regulations.

As notable as the Trial Court's final, emphatic stamp on this case is, though, that is not even the most remarkable thing about it. What truly stands out to *amicus*—an organization of local governments assembled to foster a better understanding of how to govern well—is just how different the Trial Court's analysis of what look like pretty anodyne land use issues (limits on events, music, hours of operation, etc.) is from other, seemingly similar, cases. Or stated differently, what actually stands out here is both the absence of a discussion of the familiar rules and concepts for

land use regulation in Michigan and the presence of some new concepts that ultimately are applied in a manner contrary to Michigan law.

There is, for example, no real discussion by the Trial Court of the presumption of constitutionality of the PTZO and the Township's various decisions under it. There is no substantive discussion by the Trial Court about how we construe statutes in Michigan liberally in favor of a zoning authority like the Township. There is no requirement by the Trial Court that the Plaintiffs comply with the variance/interpretation provisions of Michigan law that are in effect the "safety valves" of our zoning laws. In fact, the Trial Court's opinions and rulings are wholly dismissive of all that.

So instead of classic zoning challenge, this case involves a collection of what might typically be seen as second-tier arguments in a zoning case—void-for-vagueness, free speech, religious issues, dormant commerce clause, etc. In resolving those issues, the Trial Court focused laser-like on what it decided were Plaintiffs' rights to conduct their businesses free from any petty constraints that might interfere with full commercial enterprise, with little regard for traditional zoning concepts and somehow even less for the preservation of natural resources.

The Trial Court scoffs in particular at the Township's interest in the preservation of agricultural resources, the central focus the decades-old regulations at issue. Certainly, an owner's right to use property is important. But the Court's

diminishment of agricultural resources in relation to uses promoting commercial enterprise is entirely upside down in light of the "paramount public concern" for the preservation of natural resources declared by the people of the State of Michigan in Art. 4, §52 of the Michigan Constitution.

After reviewing the Trial Court's determinations with a proper commitment to applying applicable land use law, this Court should reverse the Trial Court's judgment and rule in favor of the Township.

ARGUMENT

I. The Trial Court's analysis and decision-making improperly elevated Plaintiffs' retail business interests above the Township's zoning interests in preserving the unique agricultural resources on Old Mission Peninsula. The Trial Court's analysis ignores and contravenes Art. 4, §52 of the Michigan Constitution, which declares that the preservation of natural resources is of "paramount public concern," a declaration that fully applies to the Township's zoning interests in this case.

The Township contends that the Trial Court conducted its review with the assumption that the zoning interests sought to be achieved by the Township were of relatively low importance, and that the commercial enterprise rights of Plaintiffs—the "reasonable business expectations" on the part of the Wineries to expand their commercial enterprises—were of predominant legal significance. *Amicus* agrees with the Township based on the express language of the Michigan Constitution and Michigan case law, that the Trial Court's allocation of relative importance to the rights of the parties was so far off the mark that it amounts to reversible error.

A. Background.

The adaptability of its soils, its proximity to the East and West Grand Traverse Bays, and other favorable qualities on Old Mission Peninsula created the conditions that are uniquely suited for agricultural use. This is a sharp advantage for farming the land on Old Mission Peninsula for the growth and sale of cherries, grapes, and other products.

However, the same attributes of the Peninsula are a lure for high-intensity residential development, commercial development, and for intensifying agriculturally-related uses. **In the relatively little space available, it is not feasible to have both sustained agricultural use and high-intensity residential and commercial development.** When high-end, intense residential and commercial development occurs—providing relatively high economic returns—property values increase dramatically in relation to the agricultural values, the result is that agricultural uses become economically unfeasible to maintain, particularly in terms of property taxation. Again, considering the limited area on the Peninsula, once subdivisions, apartments, and full commercial developments are in place, farming on such land is no longer feasible due to the reduced space for agricultural development, and destruction of the agricultural character of the area.

The solution to this dilemma in the eyes of the Township's duly-elected officials over the years was not to ignore commercial enterprise interests. Rather, the

decades-old land-use plan was for the Township to **balance the preservation of agricultural uses with the authorization for accessory residential and commercial usage** to provide sufficient economic incentives to promote the continuation of the agricultural uses without destroying their feasibility.[2] The parameters and regulatory boundaries on this frontier called for rare compromise.

The unique and creative methodology legislatively adopted by the Township was to provide what might be considered ***accessory*** **commercial uses—**not full principal commercial uses that would otherwise smother the agricultural uses and character, but rather something less than that.[3] The concept was to allow these accessory uses in order to provide sufficient economic incentive for the preservation and development of the special agricultural resources. This legal premise, which underpinned the Township's regulatory program to preserve agricultural resources, and the associated character of the Peninsula, is directly and expressly supported by Art. 4, § 52 of the Michigan Constitution.

B. Analysis of the Validity of the Unique and Creative Land Use Regulation that Preserved Agricultural Resources.

Local zoning ordinances are legislative enactments under state law. Similarly, administrative approvals of discretionary uses established by ordinance are primarily

[2] For example, see the Township's Master Plan, RE 142-2, PageID # 5038-5039.
[3] See, e.g., Dr. Daniels Report, RE 616, PageID # 30867; and the Master Plan, RE 142-2, PageID # 5038-5039.

governed by state law. Both legislative enactments and administrative approvals must comply with the U.S. Constitution. Indeed, "most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States," *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 750 (2010), safeguarded by the Due Process Clause of the Fourteenth Amendment. *Id.*, at 759. However, the evaluation of the contents and execution of local ordinances generally must begin with the **source of the authority for their enactment and administration**. Specifically, evaluation **starts with state law review** in order to fully understand the source and boundaries of authority and historical development.

In the absence of a state law analysis developed over more than half a century, the Trial Court embraced an evaluation that dramatically favored for Plaintiffs' business interests over the Township's regulations seeking to preserve agricultural resources. This approach contradicts the **Michigan Constitution, coupled with the Michigan Zoning Enabling Act, MCL 125.3101, *et. seq.* (MZEA), which declare that the Township's regulations seeking the preservation of natural resources, represent a matter of "paramount public concern."**

The evidence available reveals that Peninsula Township's legislative actions established and maintained a zoning arrangement aimed at allowing the principal agricultural uses to preserve the agricultural resources and character on Old Mission Peninsula, balanced with the opportunity for production and retail marketing of

winery and other products to economically enhance return from the agricultural uses. There is little in the way of a "guidebook" for regulations with this vision, given to the rarity of the circumstances present on Old Mission Peninsula in terms of base agricultural resources and the level of attractiveness and value of the area for intense development.

Under state law, zoning ordinances are presumed to be valid,[4] and their administration is likewise deemed to be valid unless there is a lack of substantial evidence for decision making. A party challenging the validity of a special land use must initiate an appeal in the state circuit court, MCR 7.122, and in order to prevail must meet the "substantial evidence" test which is provided under Art. 6, § 28 of the Michigan Constitution. Under this test, the terms and conditions of an approved special land use are reviewed based on the administrative record made at the local unit of government, and are to be upheld by the court unless the challenger demonstrates that the approval was not authorized by law, or not supported by competent, material, and substantial evidence on the whole record. *Carleton Sportsman's Club v. Exeter Township*., 217 Mich.App. 195; 550 N.W.2d 867 (1996). Here, the Trial Court demonstrated little interest in or appreciation for the unique

[4] To overcome the presumption, the plaintiff must demonstrate that the challenged provision is arbitrary and unreasonable. *Kropf v. City of Sterling Heights*, 391 Mich. 139; 215 N.W.2d 179 (1974), cited by *Kirk v. Tyrone Township,* 398 Mich. 429, 439; 247 N.W.2d 848 (1976); and *Kyser v. Kasson Township,* 486 Mich. 514, 521-522; 786 N.W.2d 543 (2010).

context and history of the zoning ordinance and its administration, or for the state law tests for their validity.

Referring to evidence presented, the Court acknowledged that Dr. Daniels, a land use planning expert, sought to explain the unique context and history:

> According to Dr. Daniels, Peninsula Township strives to balance agricultural production, agricultural processing, and the sale of agricultural products against purely commercial activity with no direct relationship to agriculture. The A-1 District contains a significant amount of farmland in active agricultural production while allowing for limited reasonable economic use of the property, as evidenced by some wineries operating their facilities as principally agricultural businesses in the A-1 District for decades.

(Bench Opinion, dated 07/07/25, ECF 623, PageID.31432.) However, in the Trial Court's view—expressed exclusively in conclusory terms—"Dr. Thomas Daniels, who was called by PTP to opine on the reasonableness of the PTZO, was not credible." Without factual explanation, the Court concluded that his testimony was impeached, and largely dispelled by Plaintiffs' rebuttal expert. "The Court has no trouble concluding that the facts at trial largely favored Plaintiffs. Instead of calling witnesses, the Township relied on government documents, some of which were decades old." ECF 623, PageID.31426.

Very much to the contrary of the Trial Court's Opinion, however, the Township's efforts at attempting over decades to formulate a balance between

preservation and business prosperity had developed and amounted to a unique and virtually unprecedented endeavor in Michigan.[5]

C. Well-Established Legal Foundation of Michigan Planning and Zoning, and the Significant Recognition in Art. 4, §52 of the Michigan Constitution for Zoning to Achieve the Preservation of Natural Resources.

In 2010, the Michigan Supreme Court provided a snapshot of the authority of local governments in the exercise of the zoning power. The Court clarified that that local governments are empowered to exercise the zoning authority to achieve the broad purposes identified in MCL 125.3201(1) and related sections of the MZEA, with the view of protecting the integrity of a community's current structure and achieving planning goals and objectives for the future. The Michigan Legislature enables and treats local legislative bodies as **full partners for the purpose of establishing and carrying out a plan for the creation and administration of land use control**:

> Zoning constitutes a legislative function. *Schwartz v. City of Flint*, 426 Mich. 295, 309, 395 N.W.2d 678 (1986). The Legislature has empowered local governments to zone for the broad purposes identified in MCL 125.3201(1).1 The State Supreme Court has long-recognized zoning as a reasonable exercise of the police power that not only protects the integrity of a community's current structure, but also plans and controls a community's future development. *Austin v. Older*, 283 Mich. 667, 674–675, 278 N.W. 727 (1938). Because local governments

[5] In its 04/24/24 Order Resolving Two Motions in Limine, ECF No. 585, the Court partially granted Plaintiffs' Motion in Limine blocking the effort to expand the evidence of additional government interests. It is also noteworthy that Dr. Daniels' Report was redacted.

> have been invested with a broad grant of power to zone, "it should not be artificially limited." *Delta Charter Twp. v. Dinolfo*, 419 Mich. 253, 260 n. 2, 351 N.W.2d 831 (1984).

Kyser v Kasson Township, 486 Mich. 514, 520; 786 N.W.2d 543 (2010).

The current version of the Zoning Enabling Act was enacted in 2006,[6] with MCL 125.3201.1, referenced by the *Kyser* Court, including express language that provides the foundation for the Township's regulations in this case. In particular, the legislature has provided in MCL 125.3201(1) that:

> "A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures
>
> [•] to meet the needs of the state's citizens for food, fiber, . .
>
> [•] natural resources, . . .
>
> [•] industry, trade, service, and other uses of land,
>
> [•] to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, . . . and to promote public health, safety, and welfare." (Emphasis supplied).

The enabling provisions of the MZEA continue in MCL 125.3203, specifying that "A zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, . . . **conserve natural resources** . . . to meet the

[6] The legislature started with separate zoning enabling acts enacted in mid-20th century for cities, villages, townships and counties, and in Act 110 of 2006 consolidated them.

needs of the state's residents for **food,** fiber, and **other natural resources, . . . industry, trade, service**, and other uses of land, . . . A zoning ordinance shall be made with reasonable consideration of the character of each district, its **peculiar suitability for particular uses**, the **conservation** of property values and **natural resources**, and the general and appropriate trend and **character** of land, building, and population development." (Emphasis supplied).

Zoning "may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974) (Justice Marshall Dissenting).

D. The Michigan Constitution Speaks to the "Parmount Public Concern" for the Establishment of Regulations to Preserve Natural Resources, and the Michigan Supreme Court's Authorization for that Concern to be Addressed by Zoning Ordinance Provisions

The Township's Master Plan, and its Future Land Use Map, serve as the basis for making zoning decisions as circumstances unfold over time. Dr. Daniels, Land Use Expert, (ECF No. 604, PageID.23880, 23882-23883). The Township's intent for future zoning and development as expressed in these land-use guides, according to Dr. Daniels, the land use expert, is to **promote the agricultural industry** over the long term, **preserve agricultural land**, and maintain rural character. *Id*., at PageID.23888.

The beauty of the area, including breathtaking views and tranquility, led to the realization that, in view of the demand for Peninsula property for much more intense housing and other development, **important regulatory steps would need to be taken in order to preserve from destruction the natural resources for farming, and the agricultural character of the Peninsula. This realization is directly supported in Art. 4 of the Michigan Constitution**:

> "The **conservation and development** of the **natural resources** of the state are hereby declared to be of **paramount public concern** in the interest of the health, safety and general welfare of the people. The legislature **shall** provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction." (Emphasis supplied).

The Michigan Supreme Court, in *Hess v West Bloomfield Township*, 439 Mich. 550, 562-565; 486 N.W.2d 628 (1992), provides the connection between Art. 4, §52 and the exercise of zoning authority for natural resource conservation purposes in this case. The *Hess* Court held that, by granting townships the authority to promote the public health, safety, and general welfare through enactment of zoning ordinances, the Legislature was complying with this constitutional mandate to protect natural resources from impairment or destruction. 439 Mich. 550, 564-565.

The Trial Court clearly failed to review the Township's regulations and special land use approvals within a context that affords them the status of carrying out the mission of Art. 4, §52. That is, the Trial Court came nowhere near viewing the

Township's regulatory framework as a means of protecting natural resources and their environment as matters of "paramount public concern," and instead effectively **presumed the unreasonableness** of the Township's regulatory measures.

Retail business use—which was envisioned by the Township to facilitate agricultural resource preservation—is relevant and important. But there is no basis for concluding that the property rights associated with Plaintiffs' retail business interests are untouchable subjects of regulation, and matters of "paramount public concern." The Township has been charged with conservation and preservation of these agricultural resources, which **are** deemed to be of paramount public concern. The execution of the charge to conserve farmland resources is expressly authorized as an expressed basis for regulating under the MZEA.

E. The Absence of Significant Recognition or Elevation of Zoning Rights for the Commercial Land Uses Afforded Special Treatment by the Trial Court.

In its Bench Opinion filed on July 7, 2025, the Trial Court highlighted what might be referred to as a statement of implicit rights on the part of Plaintiffs. ECF No. 623. Selecting some of the Trial Court's highlights, the following were deemed important enough to be incorporated into the Court's opinion:

- The Township asserted that Chateau Chantal was able to host corporate retreats, but could only do so if all participants spend the night. Given the limited space, corporate retreats and "normal sized weddings" are more or less barred under the Township zoning ordinance. Chateau Chantal has hosted food and wine pairing dinners, and tried to host certain other groups, but these

events represent a fraction of **what Chateau Chantal would like to do with their property**.

- Chateau Grand Traverse **would like to be able to host more than 75 people.**
- Hawthorne has a building that is a two-level walkout built into a hill, and **would like to expand its acreage if growing grapes becomes financially viable by having events.**
- Peninsula Cellars, whose general manager is John Kroupa, **wants his children to maintain his farm in the future, but is unsure** whether that is a viable prospect given the Township's zoning ordinance.
- Black Star takes the position that, in order to maintain their land in agriculture, "the Wineries" have to engage in value-added production and find alternate sources of revenue.

The MZEA and other related law identify a limited number of land uses that require **heightened scrutiny** of evidence to determine whether the denial of particular uses is permissible. For example, in MCL 125.3205(3), in the context of **mining**, the legislature provided that "An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources."

In *Kropf v City of Sterling Heights*, 391 Mich. 139, 154; 215 N.W.2d 179 (1974), the Court concluded that, where there is a **total exclusion of low- and moderate-income housing** by a municipality, there is a strong taint (subject to a presentation by plaintiff of factual evidence) of unlawful discrimination and denial of equal protection of the law. *Id* at 156. In *Roman Catholic Archbishop of Detroit*

v Village of Orchard Lake, 333 Mich 389, 394; 53 NW2d 308 (1952), the Court found that **churches and schools** were effectively excluded by ordinance from the entire village, and made the requisite constitutional recognition that these uses were entitled to special treatment in light of their being rooted in the Northwest Ordinance and the 1908 state constitution. And, finally, in *Charter Twp of Shelby v Papesh*, 267 Mich App 92; 704 NW2d 92 (2005), the Court confirmed the intent of the Michigan Right to Farm Act to exempt certain **agricultural land uses** from being determined to be a nuisance under specified regulatory circumstances, provided they conform to Generally Accepted Agricultural Management Practices (GAAMPS) promulgated by the state.

This analysis is not intended to provide an exhaustive list of uses entitled to special treatment under the law. **Rather, the point of this analysis is to clarify that, even in light of the clear protection for property rights emblazed in the Fifth and Fourteenth Amendments, only a limited number of uses have been identified as requiring a higher level of scrutiny.** Hotels, motels, and restaurants, and non-farm retail sales, while important, have **not** been recognized as land uses under Michigan law which have a special status for priority protection. Accordingly, there is no basis in the law for the Trial Court to have given dramatically superior treatment for the uses Plaintiffs would like to be able to conduct and expand on their properties as compared to the agricultural uses intended by Peninsula Township to

be preserved, and declared to be of "**paramount public concern**" in Art. 4, §52 of the Michigan Constitution.

F. Conclusion.

The Trial Court diminished the relevance of the very natural resource interests that the Peninsula Township Board (and Planning Commission) have sought for decades to preserve, in the form of unique agricultural resources on the Peninsula. Concurrently, without legal basis, the Trial Court elevated Plaintiffs' retail-enterprise interests above the natural resource preservation interests legislatively enacted by the Township. This unsupported transposition of rights by the Trial Court amount to material and reversible error.

II. The Trial Court's refusal to accord appropriate weight to the Township's land use authority under the MZEA also led it to misapply Michigan preemption rules when it found two provisions of the Township's zoning ordinance to be pre-empted by the Michigan Liquor Control Code.

The Trial Court's determination that two provisions of the PTZO were preempted by the Michigan Liquor Control Code ("MLCC") might seem like an odd thing to focus on out of the many issues appropriately raised by the Township on appeal. After all, these findings do not contribute to the Trial Court's astronomical damages computation, and they occur early in the litigation as a summary judgment issue, decided with little fanfare. But they are important for two reasons.

First, they emanate from the Trial Court's overall treatment of the case as one of municipal overreach, as opposed to giving the Township's exercise of zoning

authority the deference it is due under Michigan law. And second, the findings are simply wrong. If not addressed on appeal, they would create a precedent that would undermine the current (and uncontroversial) understanding of how the State's Liquor Control Commission's authority harmoniously works with the exercise of the zoning authority by local units of government.

Those two things—the state zoning authority exercised by duly-elected representatives of all of our local governments, and the Liquor Control Commission authority over the licensing decisions—run on separate tracks, but have (until now, apparently) been harmonized to achieve the very different objectives of the two regulatory schemes. The Trial Court's failure to do that needs to be addressed so that the error is not perpetuated in other cases.

A. The Two Provisions of the Liquor Control Code That the Trial Court Applies to Invalidate the Township's PTZO Provisions Do Not Say What the Trial Court Thinks They Say.

The Trial Court finds two separate provisions of the PTZO to be preempted by the Liquor Control Code. The first is Section 8.7.3(10)(u)(5)(g), which regulates amplified music played at Winery Chateaus during Guest Activity Uses: "No amplified instrumental music is allowed, however, amplified voice and background music is allowed, provided the amplification level is no greater than normal conversation at the edge of the area designated within the building for guest purposes." The Trial Court found that the following language of MCL

436.1916(11), a section of the MLCC relating to "**entertainment, dance, and topless activity permits**," preempted the Township's limitation on **all amplified** instrumental music:

> (11) The following activities are allowed without the granting of a permit under this section:
>
> (a) **The performance or playing of an orchestra, piano, or other types of musical instruments, or singing**.
>
> (b) Any publicly broadcast television transmission from a federally licensed station. (Emphasis added.)

ECF 162, PageID.5991-5992.

Obviously missing from the above-quoted language is the term "amplified." The PTZO provision in question does not preclude the performance or playing of instrumental music—it precludes the playing of ***amplified*** instrumental music. "Amplified" in this context unquestionably means something more than simply playing music—it means the use of an amplifier to boost the electrical signal through some sort of sound system, such as speakers. The Trial Court goes through a complicated discussion indicating that the Township's limitation on the **level** of amplification in the ordinance is fine, and not preempted, and that only the amplification of the instrumental music **in general** cannot be prohibited by the language in Section (11) above. *Id.* That reading is simply a *non-sequitur*; nothing in Section (11)(a) talks about amplification at all.

The Trial Court's error on the other preempted section is even more glaring. The PTZO has a provision indicating that, for Winery-Chateaus that are undertaking Guest Activity Uses, "Kitchen facilities may be used for on-site **food** service related to Guest Activity Uses but not for off-site catering." Section 8.7.3(10)(u)(5)(i). (Emphasis added.) The section of the Liquor Control Code that the Trial Court found to preempt the limitation on off-site **food** catering is MCL 436.1547, which authorizes **holders of catering permits** to "sell and deliver **beer, wine, and spirits** in the original sealed container to a person for off-premises consumption, but only if the sale is not by the glass or drink and the permit holder serves the beer, wine, or spirits." ECF 162, PageID.5992-5993. The *non-sequitur* here is that, while both of these provisions use the word "catering," the Liquor Control Code—for obvious reasons given its subject matter—is talking about catering **alcohol** ("beer, wine, and spirits") and the provision of the PTZO is only talking about off-site catering of **food**.

This Court should reverse the Trial Court on these issues without even addressing the direct preemption issue.

B. In Going Through the Unnecessary Preemption Analysis, the Trial Court Errs in Finding a Direct Conflict.

The Township and PTP have done a fine job addressing the preemption standards under *People v Lewellyn*, 401 Mich 314; 257 NW2d 102 (1977), *DeRuiter v Byron Twp*, 505 Mich 130; 949 NW2d 91 (2020), and others. *Amicus* offers the

following as an additional discussion of the extent to which a positive direct conflict must exist before preemption can be found.

In both of the issues examined above, the Trial Court found a conflict because it interpreted the Township's ordinances to prohibit something that the Liquor Control Code had expressly permitted—the amplification of music and the off-site catering of food (apparently). On each of those two issues, the Trial Court found direct preemption.

On the amplification issue, it found that ". . . "the complete prohibition of amplified instrumental music is preempted by Michigan law, which expressly allows certain licenses to have musical instrumental performances without a permit." (ECF 162, PageID.5991). For catering, the Court held that "The Township ordinances prohibit the use of Winery-Chateau kitchens for off-site catering, while Michigan law permits the use of Winery-Chateau kitchens (if they have a catering permit) for off-site catering, with limited restrictions." (ECF 162, PageID.5992.)

The "permit/prohibit" formulation used by the Trial Court is often cited in Michigan case law. The formulation in *Rental Property Owners Ass'n of Kent County v Grand Rapids*, 455 Mich 246, 262; 566 NW2d 514 (1997), is a common version:

> . . . [I]n determining whether the provisions of a municipal ordinance conflict with a statute covering the same subject, the test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits.

Id. at 262. *Lewellyn* also uses that phrasing.

But conflict preemption, by its very terms, is intended to apply where the state's interest can only be achieved by precluding local action. Thus, in *TerBeek v Wyoming*, 495 Mich 1; 846 NW2d 531 (2014), our state Supreme Court discussed the concept of a "positive conflict," where two laws "cannot consistently stand together" *Id.* at 11, or "when it is impossible to comply with both federal and state requirements . . . or when a law stands as an obstacle to the accomplishment of an execution of the full purposes and objectives of congress." *Id.* at 12. This latter formulation, according to *TerBeek*, was applied by the U.S. Supreme Court in *Wyeth v Levine*, 555 US 555 (2009), which clarified that a federal law did not preempt a state law unless there was a "direct positive conflict. . . ."

Here, the laws surrounding the issue of liquor licenses in Michigan specifically acknowledge the continuing applicability of zoning. Rule 436.1003(1) of the Michigan Administrative Code provides that: "A licensee shall comply with all state and local . . . zoning . . . laws, rules, and ordinances as determined by the state and local law enforcement officials who have jurisdiction over the licensee." Courts of the state have found that acknowledgement to be relevant. *Jott, Inc. v. Clinton Charter Twp.*, 224 Mich. App. 513, 541-543; 569 N.W.2d 841 (1997) ("this grant of authority [to the MLCC] does not preclude local communities from controlling alcoholic beverage traffic within their boundaries in

the proper exercise of their police powers."); *Oppenhuizen v. Zeeland*, 101 Mich. App. 40, 48; 300 N.W.2d 445 (1980) ("the MLCC regulation [now R. 436.1003] recognizes the authority of the municipality over those areas of local control which involve all commercial activity.").

Walsh v River Rouge, 385 Mich 623, 637; 189 NW2d 318 (1971), which is cited by *Llewlyn*, is mostly about preemption by field occupation, does contain a useful discussion of the idea of conflict between state and local legislative schemes:

> In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.

Id. at 635.

Walsh refers to what appears to have been a seminal law review article by Michael H. Feiler, entitled "Conflict Between State and Local Enactments—The Doctrine of Implied Preemption," 2 Urban Lawyer 398 (1970). Professor Feiler had the following to say about the nature of a direct conflict for preemption purposes:

> In this situation the local legislature may act upon the subject matter in question, but only insofar as their provisions do not conflict with statutory provisions. Thus, it is basic that local enactments may not permit what statutes prohibit, nor may they prohibit what the statutes permit.
>
> ***
>
> It is necessary, however, to comprehend that all of the preemption cases proceed from this basic premise that local government may not prohibit

> what is permitted by statute, and *vice versa*. **The problem lies in deciding what it is that the legislature has prohibited (including, of course, the possibility of local legislation itself), or what the legislature has permitted through its statutes**. As shall be subsequently discussed, the most difficult of these problems . . . is how a legislature goes about permitting something—**or whether there is a distinction between merely permitting and legalizing conduct not expressly included within a statutory scheme**. (Emphasis added.)

Id. at 400-401.

The main issue here, then, is deciding what it is that the state is actually "permitting" in the Liquor Control Code provisions cited by the Trial Court. More specifically, when the Liquor Control Code says at MCL 436.1916(11) that you do not need a permit from the LCC in order to play instrumental music as part of your liquor license, is the state actually **permitting** the playing of instrumental music at all licensed bars, restaurants, wineries, and breweries within the Township, regardless of the Township's potential zoning and land use regulations on that same subject? Or is it simply saying you don't need a permit from the state to do this—entirely **leaving open the question whether you need some sort of approval from the Township to do it, which the Township could otherwise prohibit as a land use/zoning regulation**.

Similarly, when the Liquor Control Code says at MCL 436.1547 that a catering permit from the LCC allows a licensee to sell and deliver **beer, wine, and spirits** for off-premises consumption, is it really permitting that as a land use related to the catering of **food** prepared by the licensed premises for consumption as food—

not even as liquor—at some other non-licensed premises? Or is it simply saying that if you have a catering license for beer, wine, and spirits, you can package up that beer, wine, and spirits and take it somewhere else for consumption **but not addressing whether that consumption "somewhere else" is permitted by a Township land use/zoning regulation?**

The Liquor Control Code is a statutory scheme that relates to alcohol consumption and/or delivery, while the Township's zoning regulations have an entirely different purpose—namely, the regulation of land use. The two statutory schemes have to be read together, and the primary objective is not to decide which applies and which is swept aside, but rather how to give effect to both:

> The Court must, first and foremost, interpret the language of a statute in a manner that is consistent with the *intent of the Legislature*. 'As far as possible, effect should be given to every phrase, clause, and word in the statute. . . . A statute must be read *in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained*.

Bush v Behrooz-Bruce Shabahang, et al, 484 Mich 156, 166-167 (2009). (Emphasis supplied; footnote references omitted.) Michigan courts have characterized the need to at least attempt a reading of common-purpose statutes together in consistent terms: "If by any reasonable construction two statutes can be reconciled and a purpose found to be served by each, both must stand . . . The duty of the courts is to reconcile statutes if possible and to enforce them. . ." *Valentine v McDonald*, 371 Mich 138, 143-145 (1963). (Emphasis supplied).

One way to reconcile the Township ordinance sections and the language of the Liquor Control Code is to acknowledge that the local ordinance provisions are at most simply more strict than the state law provisions. Regulations that are more strict are typically thought of as acting *in addition to* state regulation, or in a way that is *complementary to* a state regulation. See, e.g., *Maple BPA, Inc v Bloomfield Charter Twp.*, 302 Mich App 505, 511-515; 838 NW2d 915 (2013) (state statute allowing sale of alcoholic beverages at gas stations did not directly conflict with the township's zoning ordinance limiting the sale of alcohol at gas stations merely because the latter was more strict).

Another way is to focus on what each law seeks to accomplish. The Liquor Control Code also has a narrow purpose as applied to Winery-Chateaus: the issuance of licenses allowing the consumption of alcohol with some limitations. By contrast, the authority exercised by the Township under the MZEA is for the broad protection against harm and the promotion of quality of life. These are different—but not irreconcilable—purposes.

In exercising its authority under the MZEA, the Township is to be given wide discretion to enact appropriate regulations as explained above. In applying both of these laws, the Trial Court was obliged to treat the Township's actions under a **liberal construction mandate**:

> The provisions of this constitution **and law** concerning counties, townships, cities and villages shall be **liberally construed in their favor**. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution. (Emphasis added.)

Mich Const Art 7, §34. That construction was not given by the Trial Court.

The MZEA and the Liquor Control Code coexist. When the Liquor Control Code addresses matters of land use, it is "subject to" the MZEA and the state Constitution, and any valid police power ordinances and regulations that a municipality is authorized to adopt and enforce. The Trial Court in this case gave no value to the PTZO and made no effort to avoid a conflict between the state and local regulatory schemes. In doing so it threatens to upset a well-understood balance between them.

CONCLUSION AND RELIEF REQUESTED

Amicus respectfully requests that this Court reverse the judgment of the District Court and find in favor of Appellants.

Respectfully submitted,

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PROOF OF SERVICE

I certify that on February 11, 2026, the foregoing document was served on all parties or their counsel of record through the Court's e-file system.

/s/ Thomas R. Schultz

CERTIFICATION OF COMPLIANCE

I certify that this *Amicus Curiae* Brief complies with the type-volume limitation in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. The brief contains 6,410 words, excluding the content exempted by Rule 32(f) of the Federal Rules of Appellate Procedure. I further certify that this Brief complies with the type face requirements in Rule 32(a)(5) of the Federal Rules of Appellate Procedure. I prepared the brief in Microsoft® Word and used Times New Roman, a proportionally-spaced, 14-point font.

/s/ Thomas R. Schultz