

March 11, 2024

Local Leaders Recommend Roadmap for Settlement of Wineries' Dispute

The Wineries of Old Mission Peninsula (WOMP) and Peninsula Township have a court-ordered settlement conference beginning March 13, 2024. If those talks are not successful, a trial will begin April 29, and is scheduled for 3 weeks duration.

Two local leaders with experience in Economic Development and Agriculture—one of whom operated a winery— submitted the following letter to the Township and WOMP, recommending a roadmap the parties might follow toward finding a resolution of the dispute that has caused a major rift among Peninsula Township residents and businesses. A copy of the letter was shared with the Gazette and is reprinted here for our readers. The Gazette invites readers to let us know how they feel about this suggestion, at jane@oldmission.net

March 11, 2024

To: Wineries of Old Mission Peninsula, Peninsula Township, and their respective attorneys— see list at end of letter

Ladies & Gentlemen;

Re: Potential Roadmap for Needed Settlement in Wineries Dispute

Acclaimed common man/ social commentator Will Rogers once said
“When you find yourself in a hole, first you stop digging”.

The addressees of this letter are the parties in the wineries lawsuit—Peninsula Township elected officials, Protect the Peninsula and the Wineries of Old Mission Peninsula (WOMP), and their legal representatives. All would do well to take Mr. Rogers’ advice. After 3 + years of Federal Court litigation/well over \$1 million in attorneys fees/*and creating a divided community* — looks to many like you are in a hole of your own making. The court-ordered settlement conference for March 13, with a 3 week trial scheduled to kick off April 29, is a good opportunity to lay down the shovels, dust off your dispute resolution skills, look around, and redirect energy toward crafting a settlement. *We respectfully suggest the following potential roadmap, which has been in plain view for years.*

The playing field for your dispute is well-marked. Wineries —makers of alcoholic beverages—are highly regulated at the Federal, State and Local level—each with its own “lane”, but also overlapping. In our opinion, progress can be made if we understand and accept those lanes, the overlaps, and respect how they interact. While some like to shout “overregulation” and “constitutional rights”, our society decided long, long ago that alcohol, and the behaviors it stimulates, deserves special, careful, and **balanced** treatment. Wise men and women ignore that at their peril. We can all learn more here <https://www.nabca.org/structure-of-us-alcohol-regulation>.

*This letter summarizes major Federal, State and Local regulation, and suggests **Roadmap Markers to follow toward a common ground settlement.** It is up to you to fill out the details.*

Federal Law: The Alcohol and Tobacco Tax and Trade Bureau (TTB)

TTB mandates production and processing requirements, and standards of identity for wine—a wine product guarantee, if you will. TTB enforces safety under the FDA and collection of federal tax under the IRS. TTB issues required federal licenses depending on what is actually being produced.

Roadmap Marker: *Perhaps it is unnecessary for State Law/Local Zoning to wade anew into these Federally regulated areas—simply require a winery to be federally licensed?*

State Law: The Michigan Liquor Control Act established the Michigan Liquor Control Commission (MLCC) to control alcohol product movement, sales and responsible service (including hours for service-shared with local government) through its issue of winery, tasting room and restaurant licenses.

Roadmap Marker: *Perhaps simply requiring wineries to also be state licensed, and follow MLCC regulations, can get us all further down the road?*

State Law: Michigan Right To Farm Act (MRFA)

Agriculture is a business — not a view shed— and owners of agricultural land have state-protected uses by right. Agriculture as regulated/licensed by the Federal and State government consists of “PPR”-

- Production (growing grapes)
- Processing (value-added activities turning grape juice into wine)
- Retailing (selling wine through tasting rooms and related activities)

Roadmap Marker: *Supporting structures for all three components of Agricultural PPR are a use by right. Large scale event/meeting space is not Agriculture PPR.*

State Law: The Michigan Department of Agriculture and Rural Development (MDARD) exercises the State’s authority to regulate agriculture, including licenses for farms and wineries and developing “Generally Accepted Agricultural

Management Practices”. GAAMPs are “written standards providing uniform science-based standards and acceptable management practices”. Following a GAAMP protects against nuisance claims.

No GAAMP protects a large scale Event Center/Meeting Space.

Roadmap Marker. *Accept/follow the MDARD & GAAMP structure and practices.*

State & Local Law: MDARD Farm Market GAAMP

This GAAMP operates as a guide for value-added Agriculture retail activities of Agricultural PPR— it addresses sourcing, buildings, parking and signage either as a use by right, through special use permits, or applicable codes. Special use permits can address significant local health, welfare and safety concerns such as size, hours of operation, traffic and noise.

Roadmap Marker: *Follow the Farm Market GAAMP for retail activities.*

State & Local Law. Michigan Zoning Enabling Act

Local zoning powers exist as a delegation of police power by the State to a Local political subdivision. Zoning addresses “health, welfare, safety, neighborhood character, and avoiding nuisance”. Zoning affects property rights and is all about **BALANCE.**

Agriculture is the largest zoned classification in Peninsula Township, and accordingly, Agriculture-PPR is the primary neighborhood character in Peninsula Township’s A-1 district. Property uses that are primarily Residential, or primarily Commercial, are not a good fit in “Agriculture-PPR” zones. *The one existing Event Center in Peninsula Township is in a Commercial Zone—The Peninsula Room.*

Good zoning also would account for Agriculture/wineries’ need to compete with other Michigan wineries, as well as wineries in other states and countries.

A well-intentioned Local zoning regulation can become a barrier to a winery's ability to compete.

At the same time, a well-intentioned absence of Local regulation can enable conditions that interfere with other property owners' rights to quiet enjoyment, etc. And risk damaging the natural beauty, and attractive environmental conditions—"neighborhood character" in Zoning language—that local governments can address and which —intelligently shaped—also can help create competitive advantage for a winery.

Roadmap Marker: Dialogue/listening/working off 2011 Master Plan

State & Local Law: Peninsula Township Master Plan.

An important part of the Zoning Enabling Act is authorizing a community's Master Plan, which is developed through extensive research and community dialogue, and adopted only after public hearing with citizen input. The Master Plan final product is "a policy document that expresses intent, and guides the physical development of a community". According to the State's Zoning Enabling Act, "*good zoning is based on a plan*".

Roadmap Marker: *Read the Master Plan (2011) and the draft of proposed 2023 Master Plan Update, with particular focus on History and Land Use sections. The Master Plan clearly identifies the issues underpinning the WOMP dispute, and suggests solutions, including the value of clustering activities that are primarily Commercial —like Farm Markets— at a single central location offering consolidated infrastructure benefits. Same for an event center?*

Conclusion: Endless litigation and risk of penalties do not serve the interests of any of the stakeholders-the Township, its residents, its businesses- incl. its wineries. Only the opposing attorneys are benefitting now - everyone else loses. We recommend you *lock up the shovels/get in a room/ lock the doors/negotiate*

*in good faith/bring in mediators/ADR experts if needed/and compromise—
perhaps the right Balance can emerge from respecting the roles already laid out
for federal, state and local regulation.*

In any dispute, each party arrives at a resolution conference with a toolkit. It helps if their tool kit includes good listening skills, flexibility, empathy and creativity— all of which are necessary to *find the signal - amid the noise* - of litigation.

Carpe diem. If you are not part of the solution, then you are part of the problem.

Sincerely,

Don Coe

Fmr Commissioner, MDARD (2 terms)

Fmr co-owner Black Star Farms Winery

Fmr President, Leelanau County Economic Development Corporation

Fmr President, Grand Traverse Chamber of Commerce

Tel: 231 392 5567

Dennis Arouca

President, Friends of Old Mission Peninsula friendsofoldmissionpeninsula.org

Former Board member, Grand Traverse Economic Development Corp.

Member, Purchase of Development Rights Committee, Peninsula Township

Tel: 847 682 6835

ADDRESSEES: Wineries of Old Mission Peninsula, Peninsula Township, and their respective attorneys

clerk@peninsulatownship.com

supervisor@peninsulatownship.com
rudy.peninsulatruster@peninsulatownship.com
dave.peninsulatruster@peninsulatownship.com
maura.peninsulatwptrustee@peninsulatownship.com
armen.peninsulatruster@peninsulatownship.com
info@brysestate.com
info@cgtwines.com
bill@hawthornevinyards.com
info@tabonevinyards.com
info@bowersharbor.com
info@2Lwinery.com
info@bonobowinery.com
wine@chateauchantal.com
wine@marivinyards.com
info@blackstarfarms.com
john@peninsulacellars.com

ragatzki@millercanfield.com
infante@millercanfield.com
wfahey@fsbrlaw.com
cpatterson@fsbrlaw.com

tjandrews@envlaw.com
info@preserveoldmission.org