

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO**

JOHN PETER QUAKENBUSH,
ANNICA QUAKENBUSH, and
MI BURIAL, LLC,

Case No. 24- 20984 -CZ

Plaintiffs,

v.

BROOKS TOWNSHIP, MICHIGAN;
BROOKS TOWNSHIP BOARD; JENNIFER
BADGERO, in her official capacity as Clerk
of the Brooks Township Board; CORY
NELSON, in his official capacity as
Supervisor of the Brooks Township Board;
VIVIAN MILLER, in her official capacity as
Treasurer of the Brooks Township Board;
DANIELLE HUMMEL, in her official
capacity as a Trustee of the Brooks
Township Board; RYAN SHULTZ, in his
official capacity as a Trustee of the Brooks
Township Board; BROOKS TOWNSHIP
PLANNING COMMISSION; MARK
GUZNICZAK, in his official capacity as
Chairperson of the Brooks Township
Planning Commission; PHIL KNAPE, in his
official capacity as Vice Chairman of the
Brooks Township Planning Commission;
PAT BAKER, in her official capacity as
Secretary of the Brooks Township Planning
Commission; MARK PITZER, in his official
capacity as a Trustee of the Brooks
Township Planning Commission; KARL
FREDERIKSEN, in his official capacity as a
Trustee of the Brooks Township Planning
Commission; CHRIS WREN, in his official
capacity as a Trustee of the Brooks
Township Planning Commission; JOSEPH
SELZER, in his official capacity as a Zoning
Official for Brooks Township; and JERRY
TUIN, in his official capacity as a Zoning
Official for Brooks Township,

Defendants.

27th CIRCUIT COURT
NEWAYGO COUNTY
2024 JAN 11 PM 2:56

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Plaintiffs John Peter Quakenbush, Annica Quakenbush, and MI Burial, LLC, hereby sue Defendants Brooks Township, Brooks Township Board, Jennifer Badgero, Cory Nelson, Vivian Miller, Danielle Hummel, Ryan Shultz, Brooks Township Planning Commission, Mark Guzniczak, Phil Knape, Pat Baker, Mark Pitzer, Karl Frederiksen, Chris Wren, Joseph Selzer, and Jerry Tuin, as follows:

INTRODUCTION

1. Plaintiffs John Peter and Annica Quakenbush seek to operate a conservation burial ground and nature preserve on their forested, 20-acre property in Brooks Township, Michigan. The burial ground is more than just a business for the Quakenbushes. It is about honoring the last wishes of people who value environmental sustainability and connection with nature. Many Americans share this philosophy. In fact, hundreds of people are already interested in the Quakenbushes' burial ground, and so starting last year, the family began taking the steps necessary to start the business according to the law. The Quakenbushes got approval from the local health department and began working with the Township's zoning administrator to obtain a special land use permit. Then, despite the Quakenbushes' compliance with all laws and official

instructions, the Township passed an ordinance that banned all new cemeteries within the Township's borders (the "Cemetery Ordinance").

2. Michigan's 1963 Constitution protects Plaintiffs' rights to use private property and to engage in any business that does not harm the public, subject only to regulations which have a reasonable relationship to public health, safety, or welfare. The Cemetery Ordinance is not based on reasonable concerns about public health, safety, or welfare. It was enacted based on unfounded stereotypes about cemeteries and aimed specifically at stopping the Quakenbushes from opening their conservation burial ground.

3. Caring for the dead is a fundamental and unavoidable human need. As long as people have buried the dead, they have lived and worked alongside cemeteries. Cemeteries are a necessity of life and operating them is a safe, productive, and legitimate way to earn a living. The Quakenbushes' conservation burial ground will not harm the public; instead, it will give Michiganders more choices. It will provide a means to honor the dead in a natural, environmentally sustainable way while preserving a native forest.

4. Plaintiffs bring this suit to vindicate their constitutional rights. The Township cannot arbitrarily ban the Quakenbushes from operating a business on their own property when there are no legitimate concerns regarding public health, safety, or welfare. Article 1, § 17, of Michigan's 1963 Constitution protects the rights to use one's private property and to engage in any business that does not harm the public. Article 1, § 23, of Michigan's 1963 Constitution also protects these rights. The Cemetery Ordinance, on its face and as applied to Plaintiffs, violates these provisions of Michigan's 1963 Constitution and should be declared unconstitutional and enjoined from further enforcement.

JURISDICTION AND VENUE

5. This civil rights action arises under Article 1, §§ 17 (Due Process) and 23 (Enumeration of Rights Not to Deny Others) of Michigan's 1963 Constitution, and MCR 2.605(A) (Declaratory Judgments). Accordingly, this Court has subject matter jurisdiction pursuant to Article 6, § 13, of Michigan's 1963 Constitution; MCL 600.601; and MCL 600.605.

6. Venue is appropriate in this Court pursuant to MCL 600.1615 because this is an action against a government unit that exercises its authority within Newaygo County.

PARTIES

7. Plaintiff John Peter Quakenbush (who goes by Peter) is a United States citizen and a resident of Grand Rapids, Michigan.

8. Plaintiff Annica Quakenbush is a United States citizen and a resident of Grand Rapids, Michigan.

9. Plaintiff MI Burial, LLC, is a limited liability corporation registered with the State of Michigan. Peter is the registered agent of MI Burial, LLC.

10. Defendant Brooks Township is a township organized under the laws of the State of Michigan and located in Newaygo County, Michigan.

11. Defendant Brooks Township Board is the primary legislative body of Brooks Township and enacted the ordinance challenged here.

12. Defendant Jennifer Badgero is the Clerk of the Brooks Township Board and, on information and belief, a Michigan resident. The challenged ordinance explicitly gives the Township Clerk authority to enforce it. She is sued in her official capacity.

13. Defendant Cory Nelson is the Supervisor of the Brooks Township Board and, on information and belief, a Michigan resident. The challenged ordinance explicitly gives the Township Supervisor authority to enforce it. He is sued in his official capacity.

14. Defendant Vivian Miller is the Treasurer of the Brooks Township Board and, on information and belief, a Michigan resident. She is sued in her official capacity.

15. Defendant Danielle Hummel is a Trustee of the Brooks Township Board and, on information and belief, a Michigan resident. She is sued in her official capacity.

16. Defendant Ryan Shultz is a Trustee of the Brooks Township Board, an Ex-Officio Member of the Brooks Township Planning Commission, and, on information and belief, a Michigan resident. He is sued in his official capacity.

17. Defendant Brooks Township Planning Commission is the governmental body of Brooks Township tasked with creating and approving a master plan to guide development and land use in Brooks Township.

18. Defendant Mark Guzniczak is the Chairperson of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. He is sued in his official capacity.

19. Defendant Phil Knape is the Vice Chairman of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. He is sued in his official capacity.

20. Defendant Pat Baker is the Secretary of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. She is sued in her official capacity.

21. Defendant Mark Pitzer is a Trustee of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. He is sued in his official capacity.

22. Defendant Karl Frederiksen is a Trustee of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. He is sued in his official capacity.

23. Defendant Chris Wren is a Trustee of the Brooks Township Planning Commission and, on information and belief, a Michigan resident. He is sued in his official capacity.

24. Defendant Joseph Selzer is a Zoning Official for Brooks Township and, on information and belief, a Michigan resident. The challenged ordinance explicitly gives the Township Zoning Administrator authority to enforce it. He is sued in his official capacity.

25. Defendant Jerry Tuin is a Zoning Official for Brooks Township and, on information and belief, a Michigan resident. The challenged ordinance explicitly gives the Township Zoning Administrator authority to enforce it. He is sued in his official capacity.

26. The Defendants are responsible for the relevant laws, policies, and government decisions challenged in this complaint, whether through their adoption, enforcement, or both. All Defendants are also bound to follow Michigan's 1963 Constitution.

FACTUAL ALLEGATIONS

Green burial is an increasingly popular, environmentally conscious way to honor the dead

27. Americans want more choices when it comes to one of the most important decisions they will ever make: where to be buried. The Quakenbushes want to provide Michiganders with more choices.

28. Americans who want a simple, less expensive, and environmentally responsible way to care for their dead are increasingly turning to green burial.

29. In a green burial, bodies are buried directly in the earth with organic materials and without embalming using synthetic chemicals. Bodies may be buried in a wooden or wicker casket, a cotton or linen shroud, or in no container at all. Green burials do not use vaults, which are stone or concrete containers that surround a casket in traditional burials.

30. The equivalent of green burials were the norm in the United States until the Civil War, when embalming began to be used for the first time to enable deceased soldiers to be returned home with their remains intact.

31. As of 2023, 60% of Americans would be interested in exploring green burial options, up from 55.7% in 2021. See <https://nfda.org/news/statistics>.

32. Some religions, such as Judaism and Islam, practice the equivalent of green burial as a rule and do not embalm bodies.

33. The Green Burial Council is a private organization that certifies and sets best practice standards for green cemeteries.

34. As of September 29, 2023, there were an estimated 420 green burial cemeteries in the United States and Canada. As of the same date, there were 56 hybrid

cemeteries (conventional cemeteries with a designated green burial section) and 34 green cemeteries (cemeteries that exclusively offer green burial, typically in a landscaped or mowed setting) certified by the Green Burial Council.

35. Some of these 420 green burial cemeteries are in the middle of large cities. For example, Congressional Cemetery, which opened on Capitol Hill in Washington, D.C., in 1807 and interred some early members of Congress, has always allowed green burials. It recently hosted the dedication of a 60-foot circle that highlights green burials. Congressional Cemetery is certified as a hybrid cemetery by the Green Burial Council.

36. In Michigan, there are two hybrid cemeteries and two green burial grounds certified by the Green Burial Council.

37. A conservation burial ground is a type of green cemetery that is established in partnership with a conservation organization and includes a conservation plan that provides for perpetual protection of the land according to a conservation easement or deed restriction.

38. The first conservation burial ground opened in the United States in 1998, and there are currently 11 certified by the Green Burial Council.

39. There are no conservation burial grounds in Michigan. The Quakenbushes want to open the first.

The Quakenbushes' dream of operating a conservation burial ground

40. Peter and Annica Quakenbush live in Grand Rapids, Michigan, with their two small children.

41. Annica was born and raised in Grand Rapids, and Peter moved to the area to attend college.

42. Annica is a birth doula, photographer, and designer. She has also taken some classes to learn to be a death doula, which is someone who assists families in caring for loved ones at the ends of their lives.

43. Peter is pursuing a PhD in biology. He specializes in the study of tropical plants.

44. Peter's love of plants and nature led him to discover green burials. Ten years ago, Peter read a book on green burials and found that they align with his personal philosophy of sustainability and closeness to nature.

45. Peter began to think about operating a conservation burial ground in Michigan. As he learned how to care for forests, he dreamed of finding one of his own to preserve and nurture as his life's work.

46. For the past ten years, the Quakenbushes have been developing a plan to operate a conservation burial ground to support their family.

47. The Quakenbushes are both entrepreneurs. They value the flexibility inherent in owning one's own business and working for oneself. They prioritize spending time with their children and balancing work with a healthy and thriving personal life. Operating a conservation burial ground would give the Quakenbushes the flexibility and independence they need.

48. Operating a conservation burial ground would also further the Quakenbushes' most deeply held values: environmental sustainability, connection with nature, and confronting death as part of a cycle of life.

49. The Quakenbushes want their conservation burial ground to be the main means of support for their family.

The Quakenbushes found the perfect property

50. Peter began looking for property in Western Michigan for a conservation burial ground. Instead of taking his regular walks, he would find new properties to explore. Peter was looking for a property with five qualities.

51. First, the property had to be affordable for the Quakenbushes, who are of modest means.

52. Second, the property had to be within an hour of Grand Rapids. The Quakenbushes wanted the property to be easily accessible for them and close enough to a metropolitan area that many people would be able to consider using the burial ground.

53. Third, the property needed to be accessible in winter. Many of the properties Peter found were on two-track roads that would not be passable during the harsh Michigan winter.

54. Fourth, the property needed to have the appropriate terrain: high, dry, and forested.

55. Fifth, the property needed to be large enough (a minimum of 20 acres) to be certified by the Green Burial Council.

56. In early 2022, Peter was invited to speak over Zoom about green burial at a church in Grand Rapids. The talk was well attended, and many people were interested in the Quakenbushes' plan to operate a conservation burial ground.

57. Soon thereafter, in January 2022, Peter found a property that checked all his boxes. The property is Parcel No. 621916400018, located at 2115 E. 72nd Street, Newaygo, MI 49337 ("the Property"). The Property is within the borders of Brooks Township and about 1.5 miles from Newaygo, the nearest town. Even though the

Property's address is in Newaygo County, it is not located within the City of Newaygo. The Property is about an hour north of Grand Rapids.

58. The Quakenbushes paid \$106,500 for the Property, which was within their budget. Peter and Annica Quakenbush own the Property together.

59. The Property is accessible from a road that is passable in winter.

60. The Property has the appropriate terrain for a conservation burial ground: It is high, dry, and forested. Specifically, the Property is a white-oak and white-pine forest that is over 100 years old. The Property contains the types of trees, vegetation, and animals that were native to its location before it was logged extensively in the 19th century.

61. The Property is 20 acres, which is large enough for certification as a green cemetery by the Green Burial Council.

62. The Property is located among other large lots, some of which have houses on them that are set back far from the road.

63. The Quakenbushes had to search for years to find a property that met all of their criteria, and so they jumped to purchase the Property within 24 hours of it going on the market for sale.

64. Since purchasing the Property, the Quakenbushes have fallen in love with it. Peter has worked to care for and restore the native plants on the Property.

The Quakenbushes created a plan for West Michigan Burial Forest

65. The Quakenbushes have carefully and deliberately created their plan for the conservation burial ground over the course of years.

66. The Quakenbushes plan to call their conservation burial ground West Michigan Burial Forest.

67. West Michigan Burial Forest will be a non-sectarian green cemetery that is open to the general public. It will welcome those of all faiths or no faith.

68. The Green Burial Council sets standards and best practices for green cemeteries. See https://www.greenburialcouncil.org/our_standards.html. West Michigan Burial Forest will follow the Green Burial Council's standards and become certified by the organization.

69. The Property will remain undeveloped and protected as a forest of native plants in perpetuity. West Michigan Burial Forest will use operational and burial practices that cause no long-term degradation of soil health, plant diversity, water quality, or ecological habitat. Peter will use his expertise in botany to care for the forest and to preserve its native plants.

70. The 20-acre Property is large enough to accommodate the full-sized remains of 2,000–3,000 people. There is also room for the cremated remains of many more people, which may be buried or scattered. West Michigan Burial Forest will also accept the remains of pets.

71. West Michigan Burial Forest will not allow the burial of remains that have been embalmed, unless by natural embalming chemicals approved by the Green Burial Council.

72. West Michigan Burial Forest will require burial in caskets, shrouds, or urns made of readily biodegradable material such as untreated cardboard or wood, or natural fabrics such as cotton, linen, silk, or bamboo. The caskets may not have metal hardware, and no artificial flowers may be placed on graves. Finally, there will be no vaults; the casket, shroud, or urn will be interred directly in the soil.

73. No Michigan law requires a casket, vault, or any other type of container for burial.

74. In West Michigan Burial Forest, each person will be buried near a tree as a marker. West Michigan Burial Forest will maintain a detailed map of the location of each grave within the Property.

75. Small markers made from natural glacial stones found on or near the property could also be engraved and used as grave markers. Those markers would blend in with the environment.

76. The soil is a layer of topsoil over sand. Each person will be buried three to four feet underground. The topsoil will be carefully removed and then replaced over the body, preserving the organisms and soil structure needed to break the body down naturally.

77. A plot in West Michigan Burial Forest will cost \$2,500, plus an additional \$500 to \$1,000 to open and close the grave. This is close to what nearby cemeteries charge. Part of the \$2,500 will go toward the perpetual care of the cemetery.

West Michigan Burial Forest received overwhelming interest from the community

78. The Quakenbushes eventually created a website for West Michigan Burial Forest: <https://www.miburial.com/>. The website contained a survey asking whether people are interested in green burial and why. The response was overwhelming. Over 200 people filled out the survey and expressed an interest in green burial.

79. The Quakenbushes opened a waitlist where people could pledge to purchase a plot in West Michigan Burial Forest, should it ever open to the public. As of December 2023, there are 245 people on the waitlist for West Michigan Burial Forest.

80. The Quakenbushes have not sold any plots or made any promises about West Michigan Burial Forest being able to operate. The Quakenbushes and their website are very clear that West Michigan Burial Forest is not yet operational and that they do not have permission to operate it.

81. MI Burial, LLC, has received small donations, some modest revenue from merchandise sold on the website, and some small payments from Peter's speaking engagements on green burial.

82. Many local organizations have continued to invite the Quakenbushes to speak about green burial. There has even been some positive local news coverage of West Michigan Burial Forest.

83. Hundreds of people from all over Michigan want a conservation burial ground in Western Michigan. The Quakenbushes dream of opening West Michigan Burial Forest to meet that growing demand.

The Quakenbushes began working with the Township to obtain a special land use permit

84. After they purchased the Property, the Quakenbushes immediately began taking the steps necessary to operate West Michigan Burial Forest legally. First, the Quakenbushes sought permission from Brooks Township to operate West Michigan Burial Forest.

85. The Property is zoned for medium density residential use (R-2). Under the Township's zoning code, cemeteries are categorized as an "institutional or public" use. Brooks Twp Zoning Ordinance, § 2.10.

86. Since West Michigan Burial Forest is a cemetery and a cemetery is an "institutional or public use," the Quakenbushes needed a special land use permit to

operate West Michigan Burial Forest in their R-2 zone. Brooks Twp Zoning Ordinance, § 4.09.

87. The Township’s zoning ordinance requires an application for a special land use permit to be “made through the Zoning Administrator to the Township Planning Commission.” Brooks Twp Zoning Ordinance, § 14.03(A). The application must be accompanied by a site plan and subject to a public hearing. *Id.*, § 14.03(B), (E). “The Township Planning Commission may also require that the applicant provide additional information about the proposed use.” *Id.*, § 14.03(C).

88. The Brooks Township Planning Commission has the power to approve or deny applications for special land use permits. Brooks Twp Zoning Ordinance, § 14.02. “A special land use permit application meeting the requirements of [the Township’s zoning ordinance] shall be approved.” *Id.* In February 2022, the Quakenbushes approached the Township’s zoning administration to find out what they needed to do to get permission to operate West Michigan Burial Forest. In May 2022, Defendant Zoning Official Joseph Selzer asked them to do three things: develop a site plan, provide copies of any permits obtained from the State of Michigan, and obtain an agreement with a land conservation organization.

89. In August 2022, the Quakenbushes developed an initial site plan. Over the next few months, the Quakenbushes adjusted the plan. They finalized the site plan in February 2023. A copy of the site plan is attached to this Complaint as Exhibit A. The site plan includes a circle driveway with 26 parking spots. The site plan also shows 15- to 23-foot setbacks from the surrounding lots (per Defendant Selzer’s recommendation), so that any prospective gravesite will be at least 15 to 23 feet from someone else’s property line.

90. The Quakenbushes shared the draft site plan with Defendant Selzer. The Quakenbushes were open to whatever revisions he suggested, but he did not suggest any revisions.

91. The Quakenbushes also investigated state requirements for cemeteries. Under Michigan state law, cemeteries must register with the state, keep records, submit annual reports, and maintain an irrevocable endowment and perpetual care trust fund. MCL 456.532 to MCL 456.536.

92. Since West Michigan Burial Forest is not yet permitted to operate as a cemetery by the Township, the Quakenbushes informed Defendant Selzer that they cannot register it with the State of Michigan. The Quakenbushes will register West Michigan Burial Forest with the State and comply with all state statutes and regulations regarding cemeteries once they are no longer legally barred from operating by the Township.

93. Finally, the Quakenbushes approached a conservation organization about a partnership to preserve the Property. A representative from the organization visited the Property in July 2023, and on September 28, 2023, the organization sent the Quakenbushes a letter as proof of their interest in the project.

94. The conservation organization will partner with the Quakenbushes to donate a conservation easement on the Property. To that end, the Quakenbushes and the organization are now in the process of drafting the conservation easement. However, the Quakenbushes do not intend to finalize and formally execute the conservation easement until they receive legal permission to operate West Michigan Burial Forest.

95. The Quakenbushes went above and beyond the three things that Defendant Selzer asked them to do.

96. For example, Michigan law requires health department approval for cemeteries. See MCL 333.2458. So, the Quakenbushes asked District Health Department #10 for approval to establish a new cemetery in the Township. Based on a soil evaluation conducted by field staff on July 26, 2022, the Health Department approved the cemetery in a letter dated February 17, 2023. A copy of the letter is attached to this Complaint as Exhibit B.

97. The Township's requirements for a special land use permit ensure that a permitted use will not alter the appearance and character of the area, nor cause pollution or disruptions for neighbors. See Brooks Twp Zoning Ordinance, § 14.05.

98. Preserving the Property as an undeveloped forest will not materially alter its present appearance or character. West Michigan Burial Forest, according to its site plan with onsite parking and setbacks from neighboring properties, will not cause disruption or pollution to neighbors.

99. "A special land use permit application meeting the requirements of [the Township's zoning ordinance] shall be approved." Brooks Twp Zoning Ordinance, § 14.02. Therefore, assuming the Township acted in good faith, it would have granted West Michigan Burial Forest a special land use permit.

100. But the Township did not act in good faith.

The Township banned all cemeteries specifically to stop the Quakenbushes from operating their conservation burial ground

101. The Quakenbushes were thrilled about the public's overwhelming support for West Michigan Burial Forest. They worked diligently to get the cemetery up and running, and after following the zoning administrator's instructions, they were ready to apply for a special land use permit from the Township.

102. In early 2022, the Township’s lawyer advised Township officials not to allow West Michigan Burial Forest to operate. In a February 14, 2022 email to Township officials, including Defendants Badgero, Nelson, and Selzer, the Township’s lawyer stated that “it is our general recommendation that new private cemeteries not be allowed within the Township except under certain very limited circumstances.” A copy of the February 14, 2022 email is attached to this Complaint as Exhibit C.

103. The Township’s lawyer speculated about the cost of “a new regulatory framework” for cemeteries, cemetery properties becoming “unmarketable or difficult to sell,” and the “difficult[y]” of maintaining cemeteries. Ex C.

104. In June 2023, the Township Board unanimously passed the Cemetery Ordinance. Ord No 2023-100. A copy of the Cemetery Ordinance is attached to this Complaint as Exhibit D.

105. On June 22, 2023, the Township’s lawyer sent the Quakenbushes a letter warning them that “[s]hould [they] attempt to proceed with the green cemetery or burial forest, Brooks Township will take appropriate legal action.” A copy of that letter is attached to this Complaint as Exhibit E.

106. The Cemetery Ordinance states that “[t]he Township Board finds that this Ordinance is essential for the health, safety and welfare of Brooks Township property owners, residents and visitors. In the past, cemeteries elsewhere have taken up large amounts of sometimes otherwise productive land. Cemetery landscaping, grass cutting, monument repair and upkeep costs have increased dramatically over time. The problems associated with abandoned or ‘orphaned’ cemeteries ha[ve] increased throughout Michigan, and citizens look to the local municipal government (townships, cities or villages) to take over abandoned and orphan cemeteries. There currently are no known

cemeteries in Brooks Township. The Township Board also finds that there is sufficient space and vacant plots available in existing cemeteries within a 50-mile radius of Brooks Township to satisfy any demands for burials.” Ex D at 1.

107. Although the Cemetery Ordinance states that “[t]here currently are no known cemeteries in Brooks Township,” there is at least one cemetery within the bounds of the Township. It is called Surrerar Cemetery and is located at 97VW+XW, Newaygo, MI 49337. Upon information and belief, Surrerar Cemetery is not operational.

108. Upon information and belief, there are at least 24 known ancient burial mounds in the Township.

109. The Cemetery Ordinance defines “cemetery” as “a burial ground or graveyard for dead people or pets, or a place where dead people or cremains are buried or interred. A cemetery can also be a designated place or area where remains of people or pets who have died are buried or laid to rest. A cemetery shall include, but not necessarily be limited to, any conventional cemetery, green cemetery, conservation cemetery, burial forest or forest cemetery.” Ex D at 1.

110. Unsurprisingly, the Cemetery Ordinance’s definition of “cemetery” specifically includes “conservation cemetery,” “burial forest,” and “forest cemetery.” Ex D at 1.

111. The Cemetery Ordinance states that “[c]emeteries are expressly prohibited and banned within Brooks Township. No person shall construct, create or promote any cemetery within Brooks Township. No cemetery shall be created or utilized within Brooks Township.” Ex D at 2.

112. Violation of the Cemetery Ordinance is a municipal civil infraction resulting in fines of at least \$100 per day for the first offense and at least \$200 per day for

subsequent offenses. The Township may also pursue a declaratory judgment action or nuisance action against violators. Ex D at 2.

113. The Township Supervisor, Township Clerk, Township Zoning Administrator, Township Ordinance Enforcement Officer, any deputy of the Newaygo County Sheriff's department, and any state police officer can enforce the Cemetery Ordinance. Ex D at 2.

The Cemetery Ordinance is not based on reasonable concerns about public health, safety, or welfare

114. The Cemetery Ordinance was enacted based on unfounded stereotypes about cemeteries. Some of the Quakenbushes' neighbors near the Property support West Michigan Burial Forest. Nine current residents of Brooks Township have put themselves on the waitlist for West Michigan Burial Forest.

115. However, other neighbors do not support the Quakenbushes' plans.

116. One of those neighbors was upset by an event that the Quakenbushes held on the Property. In August 2023, the Quakenbushes co-hosted an event with the Newaygo County Environmental Coalition, advertised as "forest bathing." This is based on the Japanese practice of Shinrin-yoku and involved a few hours of quiet, contemplative activities in the forest. Since the Property does not currently have parking on it, the event resulted in about 18 cars being legally parked along East 72nd Street in front of the Property. One of the Quakenbushes' neighbors expressed disapproval.

117. The Quakenbushes understand that having too many cars parked along the road is not ideal. To eliminate this problem, the Quakenbushes included a circle drive with 26 parking spots on the Property in their site plan. See Ex A. If West Michigan Burial Forest opens, there will be plenty of parking available well off 72nd Street for all funerals

or events held on the Property. The Property has room for more than 26 parking spots if necessary.

118. At a Brooks Township Planning Commission meeting on June 19, 2023, another neighbor complained about West Michigan Burial Forest.

119. The neighbor was concerned about West Michigan Burial Forest allegedly being located within 100 feet of the Newaygo City water supply and within 1,000 feet of the Muskegon River. The neighbor was wrong. All gravesites would be over 1,100 feet from the Muskegon River. The closest Newaygo city wells are across East 72nd Street and more than 250 feet from any prospective gravesite.

120. The Cemetery Ordinance states nothing about cemeteries' proximity to water sources. This is unsurprising, since green cemeteries such as West Michigan Burial Forest, if they follow state regulations, health department guidance, and best practices, present no danger of contaminating water sources.

121. West Michigan Burial Forest will comply with all state and local laws and regulations involving health, safety, or welfare.

122. For example, Michigan law requires wells to be a minimum of 50 to 200 feet away from cemeteries or graves. See State of Michigan Water Well Manual at 24, <https://tinyurl.com/2sfnxwnh>. The nearest wells are more than 250 feet from any prospective gravesite in West Michigan Burial Forest. Moreover, nearby wells are over 300 feet deep.

123. Additionally, Michigan law requires health department approval for cemeteries. See MCL 333.2458. Accordingly, West Michigan Burial Forest has already received approval from District Health Department #10. See Ex B.

124. Green burial represents a natural, efficient, and safe disposition option when best practices are followed. Green cemeteries have operated safely in the United States for over two decades.

125. The Township's concerns as stated in the Cemetery Ordinance about "productive" use of land, costs of maintaining cemeteries, fears about "orphaned properties," and the lack of need for cemeteries are not reasonable concerns about public health, safety, or welfare. These concerns do not justify banning any kind of cemetery, much less a conservation burial ground such as West Michigan Burial Forest.

126. The concerns described in the Cemetery Ordinance are especially inapplicable to a conservation burial ground such as West Michigan Burial Forest. Conservation burial grounds do not present any unique challenges or dangers.

127. The Cemetery Ordinance asserts that "[i]n the past, cemeteries elsewhere have taken up large amounts of sometimes otherwise productive land." Ex D at 1. A conservation burial ground such as West Michigan Burial Forest is a productive use of property.

128. Operating a business that does not harm the public is a productive use of property.

129. Providing a place where people can bury the dead in a natural, environmentally sustainable way is a productive use of property.

130. Preserving a native forest is a productive use of property.

131. By any measure, West Michigan Burial Forest is a more productive use of the Property than legal alternatives. The Quakenbushes could put a conservation easement on the Property without a cemetery, having the same effect on the productivity of the Property. The Quakenbushes could build one small dwelling (minimum 864 square

feet) on the Property and nothing else. Brooks Twp Zoning Ordinance, § 3.05c(A). It is perfectly lawful to leave the Property in a natural state that generates no income.

132. The Cemetery Ordinance asserts that no more cemeteries are needed in Brooks Township. Ex D at 1. This is obviously untrue. There are not “sufficient space and vacant plots available in existing cemeteries within a 50-mile radius of Brooks Township to satisfy any demand” for burial in a conservation burial forest. Ex D at 1. There are no conservation burial forests in Michigan, and so Michiganders who wish to be buried this way have no choices in their home state. West Michigan Burial Forest has a waitlist of 245 people who wish to be buried there. Hundreds of people from all over Michigan are interested in the Quakenbushes’ business. West Michigan Burial Forest is needed.

133. The Cemetery Ordinance describes the alleged costs of maintaining cemeteries. Ex D at 1. But West Michigan Burial Forest will have no “landscaping, grass cutting, monument repair and upkeep costs.” Ex D at 1. It will have no landscaping, non-natural grass, or monuments beyond simple engraved stones that are allowed and expected to gross moss and lichen and become a feature of the landscape. The Property will be preserved in perpetuity as a wild forest.

134. The Cemetery Ordinance describes “[t]he problems associated with abandoned or ‘orphaned’ cemeteries.” Ex D at 1. There is no danger of West Michigan Burial Forest becoming an “orphaned” property. The State of Michigan requires cemeteries to maintain an endowment and perpetual care trust agreement. MCR 456.1201(f). The Quakenbushes will comply with the state’s requirement and partner with a conservation organization to maintain a conservation easement on the Property. That easement will protect the Property in perpetuity and preserve it forever as a forest. The Township will never have to “take over” West Michigan Burial Forest.

135. Even though none of the Township's concerns about cemeteries apply to West Michigan Burial Forest, the Township still banned cemeteries shortly after it learned of the Quakenbushes' plans.

INJURIES TO PLAINTIFFS

136. The Quakenbushes' longtime dream is to open and operate West Michigan Burial Forest. They purchased the Property solely to operate West Michigan Burial Forest on it. They want West Michigan Burial Forest to be the main means of support for their family. Because of the Cemetery Ordinance, the Quakenbushes' dream of supporting their family by operating a conservation burial ground on their own property is impossible.

137. The Cemetery Ordinance targets the Quakenbushes personally. The specific purpose of the ordinance was to stop them from operating West Michigan Burial Forest.

138. As demonstrated by their cooperation with the Township's zoning administrator and health department, Plaintiffs wish to operate West Michigan Burial Forest according to the law. Plaintiffs were ready and able to apply for a special land use permit to operate West Michigan Burial Forest when the Township enacted the Cemetery Ordinance. Now, because of the Cemetery Ordinance, Plaintiffs are unable to apply for a special land use permit to operate West Michigan Burial Forest.

139. Plaintiffs are entitled to apply for a special land use permit and have that application neutrally evaluated. West Michigan Burial Forest satisfies the Township's requirements for a special land use permit.

140. Because West Michigan Burial Forest would have satisfied the requirements for a special land use permit, the Township banned cemeteries so that it would not have to allow West Michigan Burial Forest to operate.

141. West Michigan Burial Forest has a waitlist with 245 people on it. Some of the people on the waitlist have late-stage cancers and will probably pass away within a few months or years. Because of the Cemetery Ordinance, anyone on the waitlist who passes away will not be buried in West Michigan Burial Forest according to their wishes.

142. If Plaintiffs had permission from the Township to operate West Michigan Burial Forest, they would immediately open West Michigan Burial Forest after taking the following steps: Plaintiffs would register as a cemetery with the State, comply with all state statutes and regulations and local health department rules regarding cemeteries, obtain a conservation easement, and become certified by the Green Burial Council.

143. Plaintiffs can and will comply with all state laws and regulations regulating cemeteries.

144. Plaintiffs can and will comply with all local health department rules regarding cemeteries.

145. Plaintiffs can and will obtain a conservation easement to protect the Property.

146. Plaintiffs can and will comply with the Green Burial Council's best practices for green burial grounds.

147. Plaintiffs can and will obtain certification from the Green Burial Council for West Michigan Burial Forest.

148. Plaintiffs have constitutionally protected rights to use their property and to engage in any business that does not harm the public.

149. West Michigan Burial Forest will be located on the Quakenbushes' own property. West Michigan Burial Forest is a business that does not harm the public. Because of the cemetery ordinance, Plaintiffs are unable to use their property in a safe,

reasonable, and productive manner. Because of the Cemetery Ordinance, Plaintiffs are unable to operate a business that does not harm the public.

150. On its face and as interpreted by Defendants, the Cemetery Ordinance bans Plaintiffs from operating West Michigan Burial Forest within Brooks Township because it states that “[c]emeteries are expressly prohibited and banned within Brooks Township. No person shall construct, create or promote any cemetery within Brooks Township. No cemetery shall be created or utilized within Brooks Township.” Ex D at 2.

151. Cemeteries are allowed by the Township’s zoning code as an “institutional or public” use. But for the Cemetery Ordinance’s complete ban on cemeteries, Plaintiffs could and would apply for a special land use permit under the Township’s zoning code to operate West Michigan Burial Forest on their R-2 zoned Property.

152. On information and belief, Defendants Brooks Township, Brooks Township Board, Jennifer Badgero, Cory Nelson, Vivian Miller, Danielle Hummel, Ryan Shultz, Brooks Township Planning Commission, Mark Guzniczak, Phil Knape, Pat Baker, Mark Pitzer, Karl Frederiksen, Chris Wren, Joseph Selzer, and Jerry Tuin actively enforce the Cemetery Ordinance against anyone and any entity that violates the Cemetery Ordinance.

153. If Plaintiffs began to operate West Michigan Burial Forest on the Property within Brooks Township, Defendants would take immediate steps under the law to force Plaintiffs to stop that specific conduct. Defendant Brooks Township’s counsel has already told Plaintiffs that “[s]hould [they] attempt to proceed with the green cemetery or burial forest, Brooks Township will take appropriate legal action.” See Ex E.

154. Plaintiffs and others like them are irreparably harmed insofar as they cannot open West Michigan Burial Forest or any other cemetery on their property located within Brooks Township because of the Cemetery Ordinance.

155. Through the arbitrary actions of Defendants as listed above, Plaintiffs and others like them are injured irreparably by the past, present, and future deprivations of their constitutional rights to use their property and to engage in any business that does not harm the public.

CAUSES OF ACTION

Count 1: Due Process

Article 1, § 17, of Michigan's 1963 Constitution

156. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 155 of this Complaint, as if fully stated herein.

157. Article 1, § 17, of Michigan's 1963 Constitution states that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." This provision protects the rights to use property and to engage in business that does not harm the public.

158. Totally excluding a legitimate use of property is valid only if the total exclusion has a reasonable relationship to the health, safety, or general welfare of the community.

159. Additionally, Defendants cannot exclude a legitimate land use if their reasons are arbitrary, capricious, or unfounded.

160. The Cemetery Ordinance, on its face and as applied to Plaintiffs, violates Plaintiffs' due-process rights under Article 1, § 17, of Michigan's 1963 Constitution.

161. The Cemetery Ordinance is not based on reasonable concerns related to health, safety, or welfare. A general aversion to cemeteries based on presumptions or stereotypes is not a valid basis for banning cemeteries. Neither is the specific desire to stop West Michigan Burial Forest from operating. Defendants' reasons for enacting the Cemetery Ordinance are arbitrary, capricious, and unfounded.

162. Michigan's 1963 Constitution guarantees to citizens the general right to engage in any business that does not harm the public. There must be a real and substantial relationship between the exercise of government powers in a particular manner in a given case and public health, safety, morals, or the general welfare.

163. There is no real and substantial relationship between banning cemeteries and public health, safety, morals, or the general welfare.

164. As a direct and proximate result of the Cemetery Ordinance, on its face and as applied to Plaintiffs, Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent the permanent deprivation of their constitutional rights.

165. Unless the Cemetery Ordinance is declared invalid, and unless Defendants are enjoined from enforcing the Cemetery Ordinance, Plaintiffs and others like them will continue to suffer great and irreparable harm.

Count 2: Enumeration of Rights Not to Deny Others

Article 1, § 23, of Michigan's 1963 Constitution

166. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 155 of this Complaint, as if fully stated herein.

167. Article 1, § 23, of Michigan's 1963 Constitution states that "[t]he enumeration of certain rights shall not be construed to deny or disparage others retained by the people." This provision protects rights beyond those specifically enumerated in

Article 1 of Michigan's 1963 Constitution. The rights to use property and to engage in any business that does not harm the public are among the fundamental rights protected by Article 1, § 23.

168. The Cemetery Ordinance, on its face and as applied to Plaintiffs, violates Plaintiffs' rights under Article 1, § 23, of Michigan's 1963 Constitution.

169. As a direct and proximate result of the Cemetery Ordinance, on its face and as applied to Plaintiffs, Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent the permanent deprivation of their constitutional rights.

170. Unless the Cemetery Ordinance is declared invalid, and unless Defendants are enjoined from enforcing the Cemetery Ordinance, Plaintiffs and others like them will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request the following relief:

A. Entry of judgment declaring that the Cemetery Ordinance is unconstitutional on its face and as applied to Plaintiffs under Article 1, § 17, of Michigan's 1963 Constitution;

B. Entry of judgment declaring that the Cemetery Ordinance is unconstitutional on its face and as applied to Plaintiffs under Article 1, § 23, of Michigan's 1963 Constitution;

C. Entry of a permanent injunction preventing Defendants from enforcing the Cemetery Ordinance against Plaintiffs or anyone else;


D. Nominal damages of \$1 to each Plaintiff based on Defendants' violations of Plaintiffs' constitutional rights;

E. An award of attorneys' fees, costs, and expenses reasonably incurred by Plaintiffs in pursuing this action; and

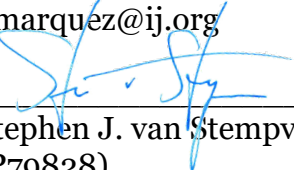
F. All further legal or equitable relief as the Court may deem appropriate.

Date: January 11, 2024

Respectfully Submitted,

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**Motions for Temporary Admission
forthcoming*