

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

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

Plaintiffs,

v.

Case No. 24-20984-CZ

Hon. Robert D. Springstead

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.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

27th CIRCUIT COURT
NEWAYGO COUNTY
2024 MAR 21 AM 11:21

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**FIRST AMENDED 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, in June 2023, 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. In January 2024, the Quakenbushes filed this lawsuit challenging the Cemetery Ordinance. In response, the Township amended its zoning code to also ban cemeteries (the "Zoning Amendments"). This amended complaint now challenges both the Cemetery Ordinance and the Zoning Amendments.

3. 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 and Zoning Amendments are not based on reasonable concerns about public health, safety, or welfare. They were enacted based on unfounded stereotypes about cemeteries and aimed specifically at stopping the Quakenbushes from opening their conservation burial ground.

4. 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.

5. 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.

6. The Township now bans cemeteries by two means: the Cemetery Ordinance bans them, and the zoning code also bans them. The Cemetery Ordinance and the Zoning Amendments (to the extent that they ban cemeteries in the Township), on their face and as applied to Plaintiffs, violate Michigan's 1963 Constitution and should be declared unconstitutional and enjoined from further enforcement.

JURISDICTION AND VENUE

7. 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.

8. 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

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

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

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

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

13. Defendant Brooks Township Board is the primary legislative body of Brooks Township and enacted the Cemetery Ordinance and Zoning Amendments challenged here.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Defendant Phil Knappe 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

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

28. 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

29. 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.

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

31. 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.

32. 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.

33. 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>.

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

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

36. As of December 13, 2023, there were an estimated 443 green burial cemeteries in the United States and Canada. As of the same date, there were 60 hybrid cemeteries (conventional cemeteries with a designated green burial section) and 31 green cemeteries (cemeteries that exclusively offer green burial, typically in a landscaped or mowed setting) certified by the Green Burial Council.

37. Some of these 443 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.

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

39. 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.

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

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

The Quakenbushes' dream of operating a conservation burial ground

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

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

44. 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.

45. Peter obtained his PhD in biology in March 2024. He specializes in the study of tropical plants.

46. 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.

47. 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.

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

49. 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.

50. 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.

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

The Quakenbushes found the perfect property

52. 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.

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

54. 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.

55. 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.

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

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

58. 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.

59. 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.

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

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

62. 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.

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

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

65. 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.

66. 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

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

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

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

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

76. 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.

77. 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.

78. 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.

79. 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

80. 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.

81. 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. When Plaintiffs filed this lawsuit in January 2024, the waitlist had 245 people on it. Since then, that number has increased to 311 people.

82. 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.

83. 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.

84. The Quakenbushes have not decided whether to operate West Michigan Burial Forest as a nonprofit or for-profit business. West Michigan Burial Forest will be able to comply with state and federal laws regarding whichever status they choose.

85. 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.

86. 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 as required by the law in existence when they purchased the Property

87. At the time the Quakenbushes purchased the Property, the Township's zoning ordinance allowed cemeteries with a special land use permit.

88. 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.

89. The Property is zoned for medium density residential use (R-2). Under the Township's former zoning code (before the Zoning Amendments), cemeteries were an "institutional or public" use. Former Brooks Twp Zoning Ordinance, § 2.10.

90. Since West Michigan Burial Forest is a cemetery and at the time the Quakenbushes began working with the Township, a cemetery was an "institutional or public use," the Quakenbushes needed a special land use permit to operate West Michigan Burial Forest in their R-2 zone. Former Brooks Twp Zoning Ordinance, § 4.09.

91. 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).

92. 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.*

93. The Township’s zoning code allows some commercial uses in the R-2 residential zone. These include (but are not limited to) home occupations, day-care and foster facilities, nursing homes, bed and breakfasts, campgrounds/RV camps, farms, mineral extraction, golf courses, hospitals, and kennels. Brooks Twp Zoning Ordinance, § 4.09.

94. 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.

95. 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.

96. 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.

97. The Quakenbushes also investigated state requirements for cemeteries. Under Michigan state law, cemeteries (including conservation burial grounds) 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.

98. 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.

99. 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.

100. 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.

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

102. 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.

103. 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.

104. 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.

105. "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.

106. 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

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

112. 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.

113. 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.

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

115. 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.

116. Unsurprisingly, the Cemetery Ordinance’s definition of “cemetery” specifically includes “conservation cemetery,” “burial forest,” and “forest cemetery.” Ex D at 1. This language comes directly from West Michigan Burial Forest’s website.

117. 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.

118. 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.

119. 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

120. The Cemetery Ordinance was enacted based on unfounded stereotypes about cemeteries. Some of the Quakenbushes' neighbors near the Property support West Michigan Burial Forest. Ten current residents of Brooks Township and at least 16 residents of Newaygo County have put themselves on the waitlist for West Michigan Burial Forest.

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

122. 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.

123. 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.

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

125. 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.

126. 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.

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

128. 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.

129. 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.

130. West Michigan Burial Forest will not contaminate any groundwater.

131. West Michigan Burial Forest will not contaminate any wells.

132. West Michigan Burial Forest will not contaminate any rivers.

133. West Michigan Burial Forest will not contaminate any part of the Township's or Newaygo City's water supply.

134. 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.

135. 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.

136. 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.

137. 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.

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

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

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

141. 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.

142. 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 311 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.

143. 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.

144. 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. Cemeteries (including conservation

burial grounds) are regulated by the State of Michigan, which (among many other things) requires them to maintain an endowment and perpetual care trust agreement. MCR 456.1201(f). The Quakenbushes will comply with the state's requirements 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.

145. 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.

The Township responds to Plaintiffs' lawsuit by doubling down on its ban on cemeteries

146. After Plaintiffs filed this lawsuit on January 11, 2024, the Township amended its zoning ordinance to incorporate a ban on cemeteries (the "Zoning Amendments").

147. On February 19, 2024, the Planning Commission held a public meeting regarding the Zoning Amendments.

148. The Quakenbushes, their attorney at the Institute for Justice, and seven members of the public testified against the Zoning Amendments at the Planning Commission meeting.

149. The Planning Commission received written testimony from the Quakenbushes opposing the Zoning Amendments, attached as Exhibit F.

150. The Planning Commission received written testimony from the Institute for Justice opposing the Zoning Amendments, attached as Exhibit G.

151. On information and belief, the Planning Commission received 59 emails opposing the Zoning Amendments.

152. On information and belief, the Planning Commission also received signatures of 505 members of the public who support West Michigan Burial Forest; an online petition started by a Brooks Township resident with 352 signatures in support of West Michigan Burial Forest; a written petition with 61 signatures in favor of West Michigan Burial Forest; and a letter from the Green Burial Council supporting West Michigan Burial Forest.

153. Eight members of the public testified in favor of the Zoning Amendments at the Planning Commission hearing. Despite the Township attorney's insistence that the cemetery ban was not targeted at the Quakenbushes, all testimony was about West Michigan Burial Forest.

154. The members of the public who testified in favor of the Zoning Amendments did so based on misconceptions about West Michigan Burial Forest, such as that it would contain 20,000 bodies, contaminate the water supply, and change the residential character of the neighborhood. West Michigan Burial Forest will do none of those things.

155. On information and belief, the Planning Commission received a petition with 39 signatures in favor of the Zoning Amendments.

156. At the February 19, 2024 Planning Commission meeting, Defendants Schultz, Guzniczak, Frederiksen, Baker, and Knape voted in favor of the Zoning Amendments. Defendant Pitzer voted against the Zoning Amendments because he was not in favor of a complete ban on cemeteries. Mr. Pitzer stated, "I think banning the cemeteries is a big mistake."

157. The Township Board approved the Zoning Amendments without changes on February 20, 2024. Defendants Nelson, Miller, Hummel, and Schultz voted in favor of the Zoning Amendments. Defendant Badgero was absent or abstained.

158. The Zoning Amendments (Ordinance No 2024-102) went into effect March 6, 2024 (seven days after publication in the Newaygo Times Indicator) and are attached to this complaint as Exhibit H.

159. The original Cemetery Ordinance remains in effect.

160. The Zoning Amendments “are intended to make the relevant provisions of the Brooks Township Zoning Ordinance consistent and complementary with” the Cemetery Ordinance and to “clarify certain matters regarding institutional or public uses.” Ex H at Article 1(a).

161. Article 1(b) of the Zoning Amendments discusses some of the same concerns listed in the Cemetery Ordinance, such as cemeteries “tak[ing] up significant amounts of sometimes otherwise productive land,” concerns about “[c]emetery landscaping, grass cutting, monument repair and upkeep costs,” and “problems associated with abandoned or ‘orphan’ cemeteries.” Ex H at Article 1(b).

162. Like the Cemetery Ordinance, Article 1(b) of the Zoning Amendments states that “there is sufficient space and vacant plots available in existing cemeteries within a 50-mile radius of Brooks Township to satisfy any demand for burials.” Ex H at Article 1(b).

163. Like the Cemetery Ordinance, the Zoning Amendments target the Quakenbushes and West Michigan Burial Forest: “The prior long-existing language in the Brooks Township Zoning Ordinance has envisioned cemeteries only in terms of government or long-standing church cemeteries and widely recognized institutional non-

profit firms, not private cemeteries (particularly for profit). As for green cemeteries, they are a relatively new and novel concept in Michigan (and nation-wide), and particularly in West Michigan. The Township Board is concerned about negative impacts on groundwater should a green cemetery with hundreds (or even thousands) of human remains occur. There appears to be very little regulation of or oversight involving private green cemeteries at either the state or county levels. It is not clear who, if anyone, would be responsible for managing, closing or relocating a private green cemetery should it fail. There are too many uncertainties and potentially negative impacts regarding private green cemeteries.” Ex H at Article 1(b).

164. The Zoning Amendments add a new and additional Section 1.06 to the Township’s zoning ordinance regarding interpretation: “Any use, building, structure, fixture or activity that is not expressly permitted or allowed within this Ordinance is not permitted and is unlawful. No use, structure, building, fixture or activity is allowed within a specific zoning district unless expressly permitted or expressly allowed with special land use approved and only if specified [sic] listed or stated in that zoning district.” Ex H at Article 2.

165. The Zoning Amendments add a new and additional Section 3.28 to the Township’s zoning ordinance prohibiting cemeteries: “Cemeteries (including private cemeteries, public cemeteries, green cemeteries, conservation cemeteries, forest cemeteries and burial forests) are prohibited 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. No existing lawful cemetery shall be expanded or enlarged.” Ex H at Article 3.

166. The Zoning Amendments amend Section 2.10 of the Township's zoning ordinance (the definition of "Institutional or Public Use") to state: "Government buildings, churches, schools (teaching academic subjects), hospitals, parks, museums, civic centers, libraries, and other public or nonprofit quasi-public uses. Cemeteries are not included in this definition and are prohibited." Ex H at Article 4.

INJURIES TO PLAINTIFFS

167. 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 and the Zoning Amendments, the Quakenbushes' dream of supporting their family by operating a conservation burial ground on their own property is impossible.

168. The Cemetery Ordinance and the Zoning Amendments target the Quakenbushes personally. The specific purpose of the ordinance and the amendments was to stop them from operating West Michigan Burial Forest.

169. 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 and the Zoning Amendments, Plaintiffs are unable to apply for a special land use permit to operate West Michigan Burial Forest.

170. 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.

171. 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.

172. Immediately after Plaintiffs filed this lawsuit, the Township doubled down on its ban on cemeteries by passing the Zoning Amendments.

173. West Michigan Burial Forest has a waitlist with 311 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 and the Zoning Amendments, anyone on the waitlist who passes away will not be buried in West Michigan Burial Forest according to their wishes.

174. 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.

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

176. Plaintiffs can and will comply with all county rules or regulations regulating cemeteries.

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

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

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

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

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

182. 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 and the Zoning Amendments, Plaintiffs are unable to use their property in a safe, reasonable, and productive manner. Because of the Cemetery Ordinance and the Zoning Amendments, Plaintiffs are unable to operate a business that does not harm the public.

183. On its face and as interpreted by Defendants, the Cemetery Ordinance and the Zoning Amendments ban Plaintiffs from operating West Michigan Burial Forest within Brooks Township. 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. The Zoning Amendments state that "[c]emeteries (including private cemeteries, public cemeteries, green cemeteries, conservation cemeteries, forest cemeteries and burial forests) are prohibited within Brooks Township." Ex H at Article 3 (new Section 3.28 of Brooks Township Zoning Ordinance).

184. Cemeteries were allowed by the Township's former zoning code as an "institutional or public" use. But for the Cemetery Ordinance's complete ban on cemeteries and the Zoning Amendments' revision of the definition of "institutional or public use" to remove 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.

185. 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 and the Zoning Amendments against anyone and any entity that violates them.

186. 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.

187. 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 and the Zoning Amendments.

188. 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

189. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 188 of this Complaint, as if fully stated herein.

190. 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.

191. 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.

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

193. The Township's ban on cemeteries (through the Cemetery Ordinance and the Zoning Amendments), on its face and as applied to Plaintiffs, violates Plaintiffs' due-process rights under Article 1, § 17, of Michigan's 1963 Constitution.

194. The Township's ban on cemeteries 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 ban on cemeteries are arbitrary, capricious, and unfounded.

195. 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.

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

197. As a direct and proximate result of the Township's ban on cemeteries, 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.

198. Unless the Township's ban on cemeteries is declared invalid, and unless Defendants are enjoined from enforcing its ban on cemeteries, 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

199. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 188 of this Complaint, as if fully stated herein.

200. 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.

201. The Township's ban on cemeteries (through the Cemetery Ordinance and the Zoning Amendments), on its face and as applied to Plaintiffs, violates Plaintiffs' rights under Article 1, § 23, of Michigan's 1963 Constitution.

202. As a direct and proximate result of the Township's ban on cemeteries, 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.

203. Unless the Township's ban on cemeteries is declared invalid, and unless Defendants are enjoined from enforcing its ban on cemeteries, 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. Entry of judgment declaring that the Zoning Amendments, to the extent that they ban cemeteries in the Township, are unconstitutional on their face and as applied to Plaintiffs under Article 1, § 17, of Michigan's 1963 Constitution;

E. Entry of judgment declaring that the Zoning Amendments, to the extent that they ban cemeteries in the Township, are unconstitutional on their face and as applied to Plaintiffs under Article 1, § 23, of Michigan's 1963 Constitution;

F. Entry of a permanent injunction preventing Defendants from enforcing the Zoning Amendments, to the extent that they ban cemeteries in the Township, against Plaintiffs or anyone else;

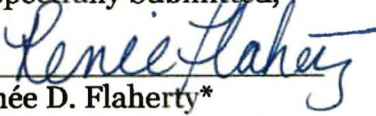
G. Nominal damages of \$1 to each Plaintiff based on Defendants' violations of Plaintiffs' constitutional rights;

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

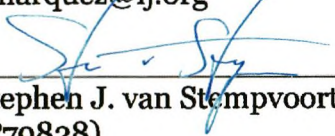
I. All further legal or equitable relief as the Court may deem appropriate.

Date: March 21, 2024

Respectfully Submitted,

By: 
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Attorneys for Plaintiffs

**Admitted pro hac vice*

EXHIBIT A

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

PARCEL 022
BRINKERT
DAVID A

PARCEL 036
WIGHTMAN
JASON AND
JENNIFER

40' FROM
PROPERTY LINE

PARCEL 037
JIBSON
NICHOLAS
ET UX

92' FROM
PROPERTY LINE

PARCEL 029
VANDYKE
ROBERT N ET
UX TAMMY R

N LINE SW 1/4 SE 14

N 89°42'47" W 657.98'(M)

N 89°59'22" W 659.41'

715

720

725

730

PARCEL 057
ISAACSON JAMES &
CHARLOTTE

PARCEL 013
BUMSTEAD JON C

PROPOSED BURIAL PLOT GRID

PLOT SETBACKS:

- WEST - 15'
- EAST - 23'
- SOUTH - 15' (PLUS 33' FROM RIGHT-OF-WAY)
- NORTH - 17'



**PROPERTY OWNERS,
APPLICANTS, AND
PLAN PREPARERS:**
J. PETER & ANNICA V.
QUAKENBUSH
336 VISSER PL SE
GRAND RAPIDS, MI
49506

**PARCEL
IDENTIFICATION
NUMBER:**
62-19-16-400-018

LEGAL DESCRIPTION:
THE SOUTHWEST 1/4
OF THE SOUTHEAST 1/4
EXCEPT THE WEST 1/4
THEREOF. ALSO EXCEPT
THE EAST 1/4 THEREOF.
LOCATED IN SECTION
16, TOWN 12 NORTH,
RANGE 12 WEST,
BROOKS TOWNSHIP,
NEWAYGO COUNTY,
STATE OF MICHIGAN.
(SW 1/4 SE 1/4 EXC W
1/4 ALSO EXC E 1/4.
20A M/L SEC. 16,
T12NR12W)

**ZONING OF ALL
PROPERTIES
WITHIN 300':**
R2 (MEDIUM DENSITY
RESIDENTIAL)

N 00°39'49" E 1324.94'(M)

N 00°36'11" E 1321.75'

N 00°41'41" E

1322.91'

180' FROM
PROPERTY LINE

240' FROM
PROPERTY LINE

125' FROM
PROPERTY LINE

PARCEL 033
NORBURG LARRY

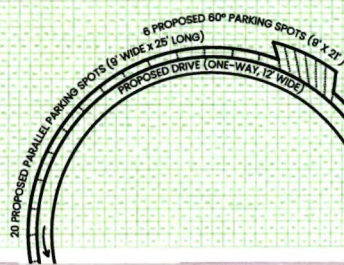
715

10' x 12' - ONE STORY SHED

PROPOSED WELL

10' x 20' - ONE STORY SHED (PROPOSED FIELD OFFICE)

SHEDS ARE 10' 4" APART
237' FROM SOUTH
243' FROM EAST
390' FROM WEST
1065' FROM NORTH



E 72ND ST 33' RIGHT-OF-WAY (66' ROAD)

N 89°53'23" W 657.28'

S LINE SECTION

PARCEL 003
CITY OF
NEWAYGO

PARCEL 005
RAINEY DOUGLAS S ET
UX JENNIFER D

PARCEL 006
GEORGE FAMILY 2005
DECLARATION TRST

PARCEL 003
CITY OF
NEWAYGO

200' FROM
PROPERTY LINE

195' FROM
PROPERTY LINE

**REGIONAL
LOCATION SKETCH:**
MAJOR LANDMARKS
WITHIN 1/2 MILE

SKETCH A:
NORTHERN AREA

SKETCH B:
SOUTHERN AREA

GREY AREA:
PROPERTY LOCATION

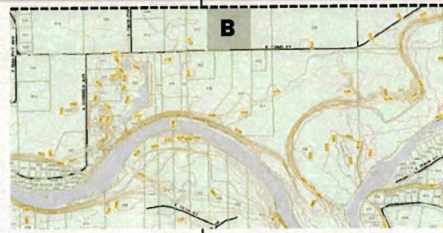
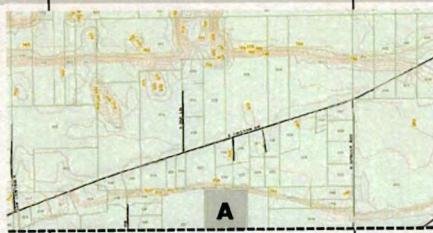


EXHIBIT B

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.



**District Health
Department #10**
Healthy People, Healthy Communities



February 17th, 2023

Peter Quackenbush
[REDACTED]

**Re: Proposed Cemetery Located at E 72nd Street (Parcel ID #: 62-19-16-400-018),
Section 16, Brooks Township, Newaygo County**

Subject: APPROVAL REPOST FOR ESTABLISHMENT OF NEW CEMETERY

Dear Mr. Quackenbush,

This serves to inform you that our agency has received and reviewed the materials submitted by yourself, outlining the establishment and construction of a new cemetery at the above referenced location.

Based upon our review of these materials and a soil evaluation conducted by field staff of July 26th, 2022, the proposed cemetery has been hereby approved.

Please be advised that the responsibility for maintenance and operation of cemeteries rests with the board of trustees for the municipality or private corporation that owns the cemetery and not with District Health Department #10.

If you have questions concerning this correspondence, please contact our office at: (231) 355-7557.

Sincerely,

John Ringler
Environmental Health Sanitarian
District Health Department #10
306 S North Street, P.O. Box 850
White Cloud, MI 49349

CRAWFORD COUNTY
501 Norway Street
Grayling, MI 49738
(989) 348-7800

KALKASKA COUNTY
625 Courthouse Drive
Kalkaska, MI 49645
(231) 258-8669

LAKE COUNTY
5681 S. M-37
Baldwin, MI 49304
(231) 745-4663

MANISTEE COUNTY
385 Third Street
Manistee, MI 49660
(231) 723-3595

MASON COUNTY
916 Diana Street
Ludington, MI 49431
(231) 845-7381

MECOSTA COUNTY
14485 Northland Drive
Big Rapids, MI 49307

MISSAUKEE COUNTY
5180 W. Sanborn Road
Lake City, MI 49651

NEWAYGO COUNTY
1049 Newell Street
White Cloud, MI 49349

OCEANA COUNTY
3986 N. Oceana Drive
Hart, MI 49420

WEXFORD COUNTY
521 Cobb Street
Cadillac, MI 49601

www.dhd10.org



EXHIBIT C

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

From: Cliff H. Bloom <cliff@bloomsluggett.com>
Sent: Monday, February 14, 2022 10:10:46 AM
To: Joe Selzer <jselzer@brookstownship.org>
Cc: Cory Nelson <cnelson@brookstownship.org>; Jennifer Badgero <jbadgero@brookstownship.org>
Subject: FW: Brooks Township-new private cemeteries and private property burials

Joe-

It our my understanding that a citizen has asked what the regulations are of Brooks Township regarding private cemeteries and “green burials.” At the current time, neither private cemeteries nor green human burials are allowed within the Township outside of lawful government or church cemeteries under the Brooks Township Zoning Ordinance or elsewhere. And, it is our general recommendation that new private cemeteries not be allowed within the Township except under certain very limited circumstances.

For the Township, the problematic issue is not so much whether or not a burial is “green” or natural, but the creation of new private cemeteries or burials on private properties. It is difficult (and often expensive) enough to maintain government cemeteries (such as those owned by a township, city, village or county within Michigan) and religious or widely-recognized nonprofit or charitable organizations (such as the Shriners organization) cemeteries as it is. To allow new small or informal private cemeteries on private properties would likely create significant problems throughout the Township and potential property purchasers in the future.

First, to allow deceased individuals to be buried on private properties would entail the Township drafting, adopting and implementing a new regulatory framework for such burials. The Township would have to draft and enact a non-zoning police power ordinance as well as amend the Zoning Ordinance to allow such private burials. The cost to the Township to do so would likely be in the \$2,000 to \$3,000 range, at least in attorney fees, publication costs, etc.

Second, does the Township really want to enforce such ordinance provisions and police the same in the future? It is highly likely that state or health department officials would not do so, at least significantly.

Third, the burial of deceased individuals on private properties would create a significant “cloud on title” for the properties in the future. Almost certainly, at some time in the future (whether in a few decades or the distance future), the family members of the deceased individuals will no longer own the parcel involved. What happens to the burials then? In all likelihood, it would devalue the property and make it unmarketable or difficult to sell. If the burial area was able to be created as a separate parcel of its own (with no buildings thereon), someday, it would likely become an “orphan parcel” that goes up for sale, no one wants the parcel or some other unusual or undesirable situation.

Even some municipalities are encountering similar problems in city, township and village cemeteries. For example, an expensive large family mausoleum may have been constructed a century ago but is now in disrepair. It could cost hundreds of thousands of dollars (or even more) to repair the mausoleum or to remove it and re-inter the bodies elsewhere. Simply letting the mausoleum collapse (potentially with the dead bodies spilling out) would be intolerable. However, in many cases, there are no living family members left to foot the bill or, if they are alive, they

may not want to spend the money. Municipalities do not have the funds available and, in any event, it would likely be a poor use of public funds.

Some might point out that there are private burials and private cemeteries throughout Michigan. That is true. However, most of them are quite old, many of them are dormant and some have become "orphan cemeteries" (there are no new burials, the grounds are becoming run down and no one wants to own the property where the private cemetery is located).

If the Township desires to allow "green" burials in an existing Township or church cemetery, that is a different issue. Even in that case, however, there likely would have to be a regulatory ordinance adopted to comply with state and county health department codes, requirements and suggestions.

Based on all the above, it is our strong recommendation that the Township not allow any new private cemeteries or the burial of deceased persons on private properties. If the Township is inclined to allow the same, then the Township may desire to collect the necessary funds from the proponents of a new private cemetery or the burial of deceased persons on private property in order to create the necessary Township ordinance framework. -Cliff Bloom

Bloom Sluggett, PC
Counselors & Attorneys

Our firm has moved! Effective August 1, 2020, our offices are now located in Suite 400 of the Waters Center Building in downtown Grand Rapids.

161 Ottawa Ave. NW, Suite 400

Grand Rapids, MI 49503

cliff@bloomsluggett.com

O (616) 965-9342

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Peter Quakenbush

Annica Quakenbush

Peter and Annica Quakenbush

West Michigan Burial Forest & Preserve

MI Burial, LLC

miburial.com

(616) 466-4456



EXHIBIT D

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

Township Cemetery Ordinance

BROOKS TOWNSHIP NEWAYGO COUNTY, MICHIGAN (Ordinance No. 2023-100)

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE BY PROHIBITING CEMETERIES; TO PROVIDE PENALTIES FOR THE VIOLATION OF SAID ORDINANCE; AND TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

THE TOWNSHIP OF BROOKS (“Township”), COUNTY OF NEWAYGO, MICHIGAN, ORDAINS:

Section 1. Title.

This Ordinance shall be known and may be cited as the “Brooks Township Cemetery Ordinance.”

Section 2. Purpose and Intent.

The 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 “orphan” cemeteries has increased throughout Michigan, and citizens look to the local municipal government (townships, cities or villages) to take over abandoned or 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 demand for burials.

Section 3. Definition.

For purposes of this Ordinance, the following word shall mean as follows:

Cemetery – Shall mean 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 the 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. This definition shall not include the noncommercial burial of a dead pet animal owned by the owner(s) of the property involved.

Section 4. Prohibition on New Cemeteries.

Cemeteries 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.

Section 5. Penalties.

A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100) for the first offense and not less than two hundred dollars (\$200) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense. A violation of this Ordinance is also a nuisance *per se*. In addition to or in lieu of issuing a municipal civil infraction, the Township may pursue a declaratory judgment, nuisance or abatement lawsuit regarding or to abate any violation of this Ordinance in the Newaygo County Circuit Court or successor court.

Section 6. Township Officials Who Can Enforce this Ordinance.

Unless otherwise specified by the Township Board by Resolution, the following officials or officers shall have the authority to enforce this Ordinance and to issue municipal civil infraction citations/tickets pursuant to this Ordinance:

- Township Supervisor
- Township Clerk
- Township Zoning Administrator
- Township Ordinance Enforcement Officer
- Any deputy of the Newaygo County Sheriff's department
- Any State Police officer

Section 7. Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision, section or part thereof be declared to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall only affect the particular provision, section or part thereof involved in such decision and shall not affect or invalidate the remainder of this Ordinance, which shall continue in full force and effect.

Section 8. Effective Date; Conflicts.

This Ordinance shall become effective upon the expiration of thirty (30) days after a copy of this Ordinance (or a summary thereof) appears in the newspaper. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above Ordinance was offered for adoption by Township Board Member Nelson and was seconded by Township Board Member Schultz, the vote being as follows:

YEAS: Nelson, Badgero, Miller, Schultz, Hummel _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby declare that the above is a true copy of an ordinance adopted by the Brooks Township Board at a regular meeting held on June 20, 2023, at the Brooks Township Hall, pursuant to the required statutory procedures.

Respectfully submitted,

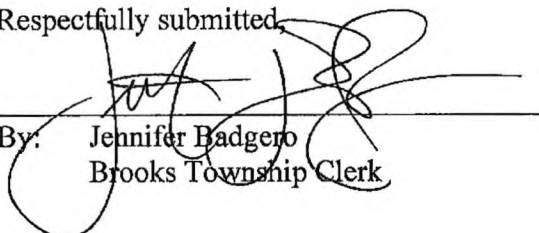
By:  _____
Jennifer Badgero
Brooks Township Clerk

EXHIBIT E

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

Bloom Sluggett, PC

COUNSELORS & ATTORNEYS

Clifford H. Bloom
Direct Dial (616) 965-9342
Direct Fax (616) 965-9350
cliff@bloomsluggett.com

June 22, 2023

Annica and Peter Quackenbush


**Re: Brooks Township
Prohibition on Cemeteries
West Michigan Burial Forest & Preserve**

Dear Mr. and Mrs. Quackenbush:

As you know from our earlier opinion email of February 14, 2022 regarding your private cemetery or “burial forest” questions, we are legal counsel for Brooks Township (the “Township”) in Newaygo County, Michigan. This letter pertains to the parcel that you or your family owns within the Township on 72nd Street (between Twin Pine Road and Spruce Avenue) and commonly known as Permanent Parcel No. 62-19-16-400-018 (the “Parcel”). As you know from our earlier email of February 14, 2022 and the Brooks Township Planning Commission meeting during that same month, the private or “green” cemetery, “conservation cemetery,” burial forest or burial arrangement that you have proposed would be unlawful under the Brooks Township Zoning Ordinance (the “Zoning Ordinance”).

Recently, Township officials saw both the news reports (wherein both of you were interviewed) as well as your website at www.miburial.com. Unfortunately, it appears that both the news report and your website contain some false or erroneous statements or assumptions. First, you have long known that your proposed green cemetery, “conservation cemetery,” or “burial forest” would be unlawful under the Zoning Ordinance. Nothing has changed since February of 2022. Second, the Township has not given you any encouragement since February of 2022 regarding this matter. You certainly have not been “working with” the Planning Commission or Township officials for well over a year.

To the extent that you have been making representations to third parties that the green cemetery, conservation cemetery or burial forest could lawfully be created or you have taken any subscriptions, entered into any burial contracts, etc. regarding the proposed green cemetery in the Township, that would be unfortunate.

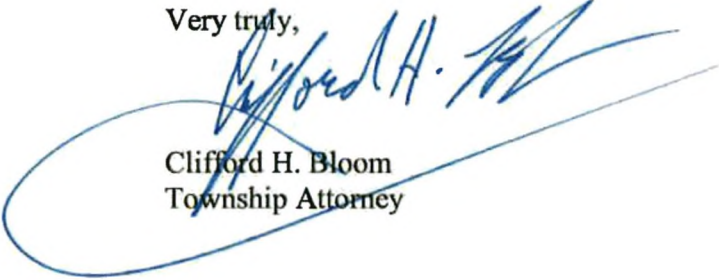
Should you attempt to proceed with the green cemetery or burial forest, Brooks Township will take appropriate legal action. Township officials hope that will not be necessary.

Finally, when you inquired about installing a shed on the Parcel last year, you were expressly informed by the Township that you could not use the shed for habitation or even

Annica and Peter Quackenbush
Page 2
June 22, 2023

overnight sleeping. There appear to be indications that you or your family may be sleeping overnight within the shed, which would be unlawful.

Very truly,



Clifford H. Bloom
Township Attorney

cc: Township Supervisor
Township Clerk
Zoning Administrator
Chair of the Township Planning Commission
Newaygo County Health Department

EXHIBIT F

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

Written Testimony on Proposed Amendments to Brooks Township Zoning Ordinance
Brooks Township Planning Commission
February 19, 2024

Members of the Planning Commission,

Our names are John Peter and Annica Quakenbush, and we own property in Brooks Township. Thank you for allowing us the opportunity to submit written testimony in opposition to the proposed amendments to the township's zoning ordinance. We also plan to testify orally at the Planning Commission's public hearing on February 19, 2024.

We strongly oppose the amendments. They are a direct response to a constitutional lawsuit filed by us and our business (MI Burial, LLC) challenging the township's ordinance banning cemeteries. We are disappointed that, instead of repealing the ordinance, the township is doubling down on its previous mistake by incorporating the ban on cemeteries into the zoning code. Earlier this month, we sent the township a public records request related to the proposed amendments, but we have not received responsive documents.

The township's ban on cemeteries violates our rights under the Michigan Constitution to use our private property and to operate a business that does not harm the public. In January, we partnered with the Institute for Justice, a national nonprofit public-interest law firm, to challenge the township's cemetery ordinance in court. Shortly after we filed the lawsuit, we discovered the township's plan to amend the zoning ordinance to incorporate a ban on cemeteries. We plan to continue with the lawsuit unless the township declines to pass the proposed zoning amendments and repeals the original ordinance banning cemeteries.

In June 2023, the township passed an ordinance banning cemeteries to stop us from achieving our dream of operating a conservation burial ground on our property. The township's actions took us by surprise because we had done everything to start our business in full accordance with the law. Over the course of the past year, we had worked with township zoning officials and carried out their instructions. We researched all state requirements for cemeteries and found that we could comply with them once the township gave us permission to start our business. We obtained health department approval, created a site plan, and found a conservation organization willing to partner with us to care for the land in perpetuity. We were ready to proceed with obtaining a special use permit from the Planning Commission.

Then, the township blindsided us and banned cemeteries. That made it impossible for us to open Michigan's first conservation burial ground. That inexplicable decision was an affront to our commitment to the environment, our property rights, our economic liberty, and our entrepreneurship. It was an affront to the township's mission statement posted on your website: "To serve the Township's residents while protecting the environment." How is shutting down an innovative local business dedicated to environmental preservation a "service" to residents and the environment?

We wish only to provide the public with more choices for one of the most important decisions they will ever make: where and how to be buried. We have tremendous community

support, including from some people who are in the final stages of life. This is more than just a business to us. It's about helping people connect to nature and honor the dead in an environmentally sustainable, meaningful way.

We also want to make sure our business thrives with the support of the community. We've incorporated ample onsite parking into our site plan to accommodate for any additional traffic. We've researched and acted accordingly to follow all state and local laws related to health and safety and to adhere to the guidelines of the Green Burial Council, which certifies green cemeteries nationwide. Our property is, and will remain, a safe, quiet, and peaceful place. That's the whole point.

We urge the Planning Commission not to adopt the proposed amendments.

Thank you for your consideration,

John Peter and Annica Quakenbush

EXHIBIT G

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.



INSTITUTE FOR JUSTICE

INSTITUTE FOR JUSTICE TESTIMONY
Brooks Township Planning Commission Hearing, February 19, 2024

My name is Katrin Marquez, and I'm an attorney with the Institute for Justice. I represent Peter and Annica Quakenbush and their business, MI Burial, in *Quakenbush et al. v. Brooks Township et al.* Thank you for allowing me the opportunity to testify in opposition to the proposed amendments to the Township's zoning ordinance. The Institute for Justice strongly opposes the amendments.

About the Institute for Justice

The Institute for Justice, also known as "IJ," is a national nonprofit organization that protects constitutional rights. Two of our areas of expertise are property rights and economic liberty, including advising municipalities on the constitutionality of zoning ordinances.

We have worked nationwide to help pass laws that give people more freedom to use their property in a way that would help them support themselves and their families, without negatively affecting their neighbors—exactly what Peter and Annica seek to do. We have a particular interest in ensuring municipalities don't use zoning to exclude safe, legitimate, and socially-beneficial businesses. We have also brought several successful lawsuits against abusive zoning ordinances that violate people's property rights.

You can see our work covered in media outlets across the country, including in the *New York Times*, *Wall Street Journal*, *Washington Post*, *Detroit Free Press*, *Grand Rapids Press*, and Michigan local news.

IJ Strongly Opposes the Proposed Amendments

The issue before the Planning Commission is not just a question of zoning policy. It also has constitutional implications. Like the Cemetery Ordinance that preceded them, the proposed amendments violate the Michigan Constitution. Enacting the proposed amendments would be doubling down on an unconstitutional policy, in violation of property owners' rights. I'm here to discuss two main problems with the amendments.

First, the Michigan Constitution does not allow a municipality to ban a safe land use just because it's unique or misunderstood. And that is precisely what these amendments do. Michigan law is clear that a municipality may not use zoning to completely exclude an otherwise appropriate land use, especially when there is no legitimate public health or safety reason to do so. And the Township's attempts to exclude cemeteries from the category of institutional uses through these amendments doesn't alter that principle. It's clear the Township enacted the Cemetery Ordinance and seeks to implement the proposed amendments due to an unfounded aversion to green cemeteries. But that is not a legitimate legislative purpose. The Michigan Constitution does not permit a municipality to make zoning determinations based on presumptions.

Second, the Michigan Constitution protects Peter and Annica' rights to use their property as they see fit and to pursue an occupation that doesn't harm the public. The Township cannot ban Peter and Annica from operating a business on their own property when—as here—there are no legitimate concerns about public health, safety, or welfare. Cemeteries are a necessity of life and using property to operate them is a safe, productive, and legitimate way to earn a living. And green burial is a safe, popular, and environmentally friendly way to care for the dead. The Michigan Constitution does not allow municipalities to do exactly what the Cemetery Ordinance and these proposed amendments seek to do—use targeted zoning to ban people from engaging in a safe, productive, and otherwise appropriate occupation.

Put simply, IJ opposes these amendments because they violate the Michigan Constitution. If enacted, they won't cleanse the Township's ban on cemeteries of its unconstitutionality; they'll only make it worse.

Thank you for the opportunity to testify.

Katrin Marquez
Attorney
INSTITUTE FOR JUSTICE

EXHIBIT H

Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief

John Peter and Annica Quakenbush, et al.,

v.

Brooks Township, Michigan, et al.

**BROOKS TOWNSHIP
NEWAYGO COUNTY, MICHIGAN
(Ordinance No. 2024-102)**

At a regular meeting of the Township Board for Brooks Township held at the Township Hall within the Township on February 20, 2024, at 7:00 p.m., the following Ordinance/ordinance amendment was offered for adoption by Township Board Member Hummel and was seconded by Township Board Member Schultz:

**AN ORDINANCE TO AMEND THE BROOKS TOWNSHIP
ZONING ORDINANCE REGARDING CEMETERIES,
LISTED OR PERMITTED USES AND SIMILAR MATTERS.**

THE TOWNSHIP OF BROOKS (the "Township") ORDAINS:

Article 1. Purpose, Intent and Findings.

(a) Articles 3 and 4 of this Ordinance/ordinance amendment are intended to make the relevant provisions of the Brooks Township Zoning Ordinance consistent and complementary with the non-zoning regulatory ordinance adopted by Brooks Township called the "Brooks Township Cemetery Ordinance" on June 20, 2023 (Ordinance No. 2023-100) regarding cemeteries. This Ordinance/ordinance amendment is also intended to clarify certain matters regarding institutional or public uses. In the past, the Township has understood that a private cemetery does not constitute an institutional, public or quasi-public use, which this proposed Zoning Ordinance amendment will clarify and reaffirm. Although the Township does not believe that the prior zoning regulations were ambiguous, this amendment should remove any concerns. Finally, Article 2 of this Ordinance/ordinance amendment reflects recent Michigan appellate case law regarding allowed uses.

(b) The Township Board also finds that this Ordinance is essential for the health, safety

and welfare of Brooks Township property owners, residents and visitors. With regard to cemeteries, in the past, cemeteries elsewhere have taken up significant 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 "orphan" cemeteries has increased throughout Michigan, and citizens look to the local municipal government (townships, cities or villages) to take over abandoned or orphan cemeteries. There currently are no known modern era 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 demand for burials. The concept of a private cemetery of any size and scope is particularly troubling to the Township Board given the issues of long-term stability and viability, potential under-funding, governance and upkeep matters. The prior long-existing language in the Brooks Township Zoning Ordinance has envisioned cemeteries only in terms of government or long-standing church cemeteries and widely recognized institutional non-profit firms, not private cemeteries (particularly for profit). As for green cemeteries, they are a relatively new and novel concept in Michigan (and nation-wide), and particularly in West Michigan. The Township Board is concerned about negative impacts on groundwater should a green cemetery with hundreds (or even thousands) of human remains occur. There appears to be very little regulation of or oversight involving private green cemeteries at either the state or county levels. It is not clear who, if anyone, would be responsible for managing, closing or relocating a private green cemetery should it fail. There are too many uncertainties and potentially negative impacts regarding private green cemeteries.

Article 2. A new and additional Section 1.06 is hereby added to the Brooks Township Zoning Ordinance as follows:

Section 1.05 – Interpretation

Any use, building, structure, fixture or activity that is not expressly permitted or allowed within this Ordinance is not permitted and is unlawful. No use, structure, building, fixture or activity is allowed within a specific zoning district unless expressly permitted or expressly allowed with special land use approved and only if specified listed or stated in that zoning district.

Article 3. A new and additional Section 3.28 is hereby added to the Brooks Township Zoning Ordinance as follows:

3.28 – Prohibition on Cemeteries.

Cemeteries (including private cemeteries, public cemeteries, green cemeteries, conservation cemeteries, forest cemeteries and burial forests) are prohibited 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. No existing lawful cemetery shall be expanded or enlarged.

Article 4. Subsection 2.10 of the Brooks Township Zoning Ordinance is hereby amended to state in full as follows:

2.10 – INSTITUTIONAL OR PUBLIC USE

Government buildings, churches, schools (teaching academic subjects), hospitals, parks, museums, civic centers, libraries, and other public or nonprofit quasi-public uses. Cemeteries are not included in this definition and are prohibited.

Article 5. The Remainder of the Brooks Township Zoning Ordinance is Unaffected. Except as expressly amended by this Ordinance/ordinance amendment, the rest of the Brooks Township Zoning Ordinance remains unchanged and in full force and effect.

Article 6. Severability. Should a court of competent jurisdiction determine that any portion of this Ordinance/ordinance amendment (or any portion thereof) is invalid or unconstitutional, that shall not affect the balance of this Ordinance/ordinance amendment, which shall remain in full force and effect.

Article 7. Effective Date. This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment or a summary thereof appears in the newspaper as provided by law.

The vote to adopt this Ordinance/ordinance amendment was as follows:

YEAS: Nelson, Miller, Hummel, Schultz _____

NAYS: _____

ABSENT/ABSTAIN: Badgero _____

THIS ORDINANCE/ORDINANCE AMENDMENT IS DECLARED DULY ADOPTED.

CERTIFICATION

I hereby certify the above is a true copy of the Ordinance/ordinance amendment adopted by the Township Board for Brooks Township as of the date, time and place as specified above, pursuant to the required statutory procedures.

Respectfully submitted,

By  _____
Jennifer Badgero
Brooks Township Clerk