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Selected Zoning Court Cases Concerning the Michigan Right to Farm Act 1964-2009

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This public policy brief summarizes the important state court cases concerning the Michigan Right to Farm Act[1] and jurisdiction of local zoning ordinances for the period of 1964 to 2009.

Background

This Policy Brief is prepared from a tabular summary of court cases assembled by Dr. Patricia Norris, MSU Department of Agricultural Economics. Over the years local governments have seen less zoning authority over agricultural operations. Some of this has been a result of amendments to the Right to Farm Act (RTFA), but most has been a result of court cases attempting to apply the Act in relationship to local units of government. In part the Right to Farm Act reads:

> "A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary."
>
> – M.C.L. 286.473(1)

> "A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance."
>
> – M.C.L. 286.473(2)

Amendments to the Right to Farm Act further changed the relationship between local zoning and agricultural operations, especially as a result of P.A. 261 of 1999, which became effective March 10, 2000. Part of the amendment reads:

> "Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act."
>
> – M.C.L. 286.474(6)

It was widely believed at the time, the restriction over local zoning jurisdiction would apply only to those activities which have written and adopted Generally Accepted Agricultural Management Practices (GAAMPs), and would not have an impact on local governments ability to control which zoning districts a farm operation would be allowed, or not allowed, in.

What follows is a summary of court cases on this issue. For additional information see "Questions About Intent and Application of Michigan's Right to Farm Act" by Patricia Norris and Gary Taylor, *Planning and Zoning News*, pp5-11, March 2007. See also *Who is protected from zoning regulation under the Right to Farm Act (RTFA)* by Brad Neumann and Kurt H. Schindler for a decision tree which presents a series of questions in an attempt to determine where zoning has

[1] P.A. 93 of 1981, as amended, being M.C.L. 286.471 *et seq.*

jurisdiction over agricultural activity or not.

Expect Change

This policy brief reflects the current state of local zoning jurisdiction at the time of this writing (January 5, 2010). It is important to remember this is a moving target, and none of the cases, so far, are Michigan Supreme Court cases. So information here can change as a result of action by the Michigan Legislature, other court cases, or the Supreme Court.

Restrictions on Zoning Authority – Right to Farm Act

●1964

Court: Michigan Court of Appeals (373 Mich. App. 115; 128 N.W.2d 544 (1964))

Case Name: *Diponio v. Cockrum* (Washtenaw County)

Plaintiff seeks to enjoin defendant from selling at his farm stand (located on a 27 acre parcel in an Agricultural District) any produce not grown on that parcel, claiming it is in violation of township zoning ordinance. Defendant says ordinance is invalid and operation does not violate ordinance. Trial court said ordinance did not prohibit defendant's operations and so a ruling on the validity of the ordinance was not necessary. Supreme Court concludes that zoning ordinance is valid (issue was when and how the ordinance was adopted). Township ordinance allowed, for land in question,

> "the carrying on of gardening activities or the production of agricultural products through the direct tilling of the soil, together with facilities for the sale of the products produced thereon..."

Appeals Court concluded that defendant should be allowed to sell any produce grown by him within the Agricultural District where the farm stand is located. This meant he could no longer sell produce he grew in an adjoining county.

●1986

Court: Michigan Court of Appeals (153 Mich. App.787; 396 N.W.2d 536 (1986))

Case Name: *Village of Peck v. Hoist* (Sanilac County)

Village passed an ordinance requiring owners of buildings and dwellings within the village to use a recently constructed public sewer system. Defendants refused to comply. Trial court ordered defendants to comply. Defendants appealed based on

i) PA116[2] exempts them from any special assessment for or requirement to connect their dwelling to the sewer system and
ii) Michigan's Right to Farm Act exempts them from complying with the ordinance.

Appeals Court concluded that PA 116 exemption from special assessments excluded dwellings or nonfarm structures located on the land. Thus they are not exempted by PA 116 participation from connecting their home to a public sewer system. On the second issue, the Court concluded that the Right to Farm Act was not a protection since the Village was not characterizing defendants' farm as a nuisance but was merely requesting that they connect their dwelling to the public sewer system. Also, "because the Right to Farm Act does not affect the application of state and federal statutes', it is not a defense to this action."

●1988

Court: Michigan Court of Appeals (170 Mich. App. 446; 429 N.W.2d 185 (1988))

Case Name: *Northville Township v. Coyne* (Wayne County)

Defendant owns farmland used for commercial production of agricultural products since at least early 1970s. Use conforms with zoning. In 1984, resident farm manager (Coyne) erected a barn on the premises without first securing a building permit from township. After barn was constructed, township notified Coyne that he needed to file applications for a building permit and a zoning variance. Applications were denied, and township obtained a demolition order from the Circuit Court because the barn was a nuisance per se because it was built without a permit and in the front yard of the property. Owner admits barn was built without a permit but argues the barn was exempt from compliance with

[2]Formerly the Farmland and Open Space Preservation Act, now recodified as the Farmland and Open Space Preservation part of the Michigan Natural Resources and Environmental Protection Act, part 361 of P.A. 1994, as amended (M.C.L. 324.36101 *et seq.*).

zoning and building ordinances under the Michigan Right to Farm Act.

Appeals Court concluded that because the barn serves as a storage site for farm machinery and implements, seeds, supplies and some produce, "its construction and use appears to conform to generally accepted agricultural and management practices" and the Right to Farm Act "is a valid defense to plaintiff's nuisance suit that arises out of an alleged violation of its zoning ordinance." Court of Appeals did not address building code issues and remanded those to the trial court, but they said the appropriate remedy should be fine or imprisonment or both but not demolition of the barn.

Note: Right to Farm Act was amended in 1995 to say that RTFA was not intended to interfere with zoning and State Building Code was amended in 1999 to say that buildings incidental to agriculture did not require a building permit.

●1990

Court: Michigan Court of Appeals (184 Mich. App. 228; 457 N.W.2d 52 (1990))

Case Name: *Jerome Township v. Milchi* (Midland County)

Defendant resides on land that has been zoned residential since 1965. Prior to that it was used for farming. In 1979 defendant established a commercial apiary on the property. Retail sale of bee by-products and bait was also conducted. By 1987, defendant had registered the apiary with Michigan Department of Agriculture (MDA). In 1987, defendant replaced a split-rail fence around the property with a stockade fence. Following complaints by neighbors, township filed suit against defendants claiming the apiary was an ag use not permitted by current zoning and thus a nuisance per se, retail sale of bee by-products and bait was not permitted under current zoning, and the fence violated the zoning ordinance which prohibited structures between the front and building lines except open fences through which there is clear vision. Trial court upheld apiary and retail sales. The Court concluded the fence could be modified to meet ordinance requirements.

Court of Appeals concluded that because apiary did not exist prior to 1965, it was a change in the nature of a nonconforming use (farming) that existed at the time the ordinance was enacted. Defendants argued that Right to Farm Act protected their apiary from being enjoined as a nuisance per se. The Appeals Court concluded that apiary was a farm operation for purposes of the RTFA, but the RTFA did not apply since the apiary did not exist prior to the 1965 zoning ordinance.

●1992

Court: Michigan Court of Appeals (195 Mich. App. 210; 489 N.W.2d 504 (1992))

Case Name: *Richmond Township v. Erbes* (Osceola County)

Defendants own forty acres of farmland in Township and have a small traditional farming operation on the property. In 1978, property was zoned residential. In 1985, defendant began making wood pallets from wood grown on the farm. As operation grew, wood from neighboring farms and sawed at local mills was used in the operation. In 1987, defendant requested to build a pole barn for storage, horse stalls and pallet assembly. Zoning administrator said uses were permitted because the property was zoned agricultural and defendant received a permit to build the barn. Later that year, defendant approached zoning administrator about proposed additions to the barn. At that time, zoning administrator informed him that the pallet assembly activities on the property were in violation of the zoning ordinance. Zoning and building permits for additions to the barn were denied. Plaintiff issued a notice of zoning violation (conducting industrial operation in a nonindustrial-use zone) and brought criminal and civil charges when defendant failed to respond. Criminal charges were dismissed. Defendant claimed ordinance was invalid because it was improperly enacted and that the Right to Farm Act protected their pallet operation. Trial court enjoined pallet making except for those constructed from wood grown on their property.

Court of Appeals affirmed, saying that pallets produced with wood grown elsewhere were not farm products.

●1993

Court: Michigan Court of Appeals (200 Mich. App.179; 503 N.W.2d 675 (1993))

Case Name: *Steffens v. Keeler* (Livingston County)

Plaintiffs moved into their house Feb. 1985. At that

time, there was a vacant dairy barn and a house on the property across the street from their house. Defendants moved into that house spring of 1987 and began purchasing pigs approximately five months later. Land is zoned agricultural/residential and area has agricultural and residential uses surrounding. Trial court found that the Right to Farm Act did not protect defendants from a nuisance claim, that the land surrounding had become predominantly residential, and that farm was a nuisance. Michigan Department of Agriculture (MDA) investigated farm and found that Generally Accepted Agricultural Management Practices (GAAMPs) were not being used. Defendants developed and implemented a plan to use GAAMPs and subsequent MDA investigation found farm in compliance.

Court of Appeals concluded that farm was using GAAMPs and that land within a mile of the farm was not predominantly residential. Thus farm was immune from a nuisance complaint under Right to Farm Act.

●1996

Court: Michigan Court of Appeals (Unpublished[3] No. 172026 (1996))

Case Name: *City of Troy v. Papadelis* (*Papadelis I*) (Oakland County) vacated 454 Mich 912 (1997)

Defendants own two parcels, both zoned residential in 1956. One parcel (residential parcel) was purchased in 1974 and the other (greenhouse parcel) was purchased in 1977 or 1978. In 1991, plaintiff filed complaint seeking injunctive relief for some uses being made of the property. Issues revolved around expansion of greenhouse business on the greenhouse parcel, and expansion of some greenhouse activities, including construction of a parking lot (in1988), on the residential parcel. Trial court concluded that greenhouse operation was a nonconforming use, was protected by the Right to Farm Act (RTFA), and that the plaintiffs had waited too long to complain about the parking lot on the residential parcel.

Court of Appeals affirmed the protection of the greenhouse activity on the greenhouse parcel and concluded it was protected by the RTFA. However, expansion of the nursery business onto the residential parcel occurred after the parcel was zoned residential, so it is not protected by the RTFA.

See also *Troy v Papadelis II* case on page 4, *Troy v Papadelis III* case on page 9, *Troy v Papadelis IV* case on page 10, and *Troy v Papadelis V* case on page 12.

Court: Michigan Court of Appeals (Unpublished[4] No. 179297 (1997))

Case Name: *Almont Township v. Dome* (Lapeer County)

Defendant ran tree-farming operation. He placed a mobile home on the property without first obtaining a permit and used it as an office and storage facility. Township claimed the mobile home violated its zoning ordinance and constituted a nuisance per se. Trial court found that Right to Farm Act (RFTA) protected the farm operation. Plaintiff argued that since there are no written Generally Accepted Agricultural Management Practices (GAAMPs) for tree-farming, then trial court could not conclude that defendant's use of the mobile home was an accepted practice.

Court of Appeals disagreed:

> "From a practical standpoint, it would seem nearly impossible to list every generally accepted agricultural and management practice for every possible type of farm or farming operation in the state."

Plaintiff also argued that the 1995 amendment to the RTFA clarified that the RTFA has no effect on the application of zoning ordinances and so the defendant should not be protected by the RTFA. Court of Appeals concluded that since the 1995 amendment was **after** the case was decided by the trial court (1994), RTFA still offered protection (a la *Northville Township v. Coyne* on page 2) and declined to give the amendment retroactive effect.

●1997

Court: Michigan Court of Appeals (226 Mich. App. 90; 572 N.W.2d 246 (1997))

Case Name: *City of Troy v. Papadelis* (*Papadelis II*) (Oakland County)

This case came back to the Court of Appeals when the Supreme Court vacated the 1996 judgement (see *Troy v. Papadelis* on page 4) and remanded the case for

[3]Generally unpublished means there was not any new case law established. Unpublished opinions are not precedentially binding under the rules of *stare decisis*.

[4]See footnote number 3.

reconsideration in light of the 1995 amendment of the Right to Farm Act (RTFA). Defendants appealed to the Supreme Court the Appeals Court decision that they could not continue to use the residential parcel for parking and other nursery-related uses. Defendants claimed that, since the first filing with the Court of Appeals, the RTFA was amended to provide greater protection to farming operations.

Appeals Court again affirmed lower court's decision that nursery was a legal nonconforming use on the greenhouse parcel. Court also concluded that nursery-related activities on the residential parcel were not legal nonconforming uses. Also, activity on the residential parcel is not protected by the RTFA since the RTFA specifically states that it "does not affect the application of state statutes and federal statutes", including the zoning enabling acts, so the RTFA is not a defense against enforcement of a zoning ordinance.

Note: no substantive difference from 1996 decision, page 4. See also *Troy v Papadelis I* case on page 4, *Troy v Papadelis II* case on page 4, *Troy v Papadelis III* case on page 9, *Troy v Papadelis IV* case on page 10, and *Troy v Papadelis V* case on page 12.

●1998

Court: Michigan Court of Appeals (Unpublished[5] No. 175732 (1998))

Case Name: *Groveland Township v. Bowren* (Oakland County)

Defendant owns 16 acres of land that is zoned for agricultural use. After defendant constructed a breeding and boarding kennel, township sought an injunction against the kennel as a nuisance per se because it violated the zoning ordinance. Trial court concluded that ordinance did not violate the Right to Farm Act.

Court of Appeals agreed, concluding that the kennel is not akin to a farming operation. Also, post-1995 amendment to Right to Farm Act (RTFA), the RTFA is not a defense against enforcement of a zoning ordinance.

●1999

Court: Michigan Court of Appeals (Unpublished[6] No. 206594 (1999))

Case Name: *Macomb Township v. Michaels* (Macomb County)

Defendant owns 300 acre farm in an area zoned for agricultural use. Since 1991, defendants composted yard waste from other communities on their farm in return for tipping fees, and area residents complained about the odor. Plaintiff argued that large-scale composting operation was in violation of zoning ordinance. Trial court concluded that the composting operation was an acceptable agricultural practice and protected under the Right to Farm Act (RTFA).

Court of Appeals concluded that RTFA does not preempt the application of the zoning ordinance at issue in the case. Supreme Court denied application to appeal.

See also *Macomb v. Michaels* on page 6.

●2000

Court: Michigan Court of Appeals (241 Mich. App. 324; 615 N.W.2d 250 (2000))

Case Name: *Belvidere Township v. Heinze* (Montcalm County)

In summer of 1997, defendant purchased 35 acres for the purpose of hog farming, intending to raise 6,000-7,000 hogs at the site. At the time of the purchase, the zoning ordinance did not restrict large livestock operations. In April 1998, township passed a new zoning ordinance that required concentrated livestock operations to obtain a special use permit. Defendant was requested to stop construction of his facility until he obtained a special use permit but refused. Trial court concluded that prior activities at the site established a prior nonconforming use at the time the ordinance was enacted. Trial court also concluded that the Right to Farm Act (RTFA) did not exempt defendant from complying with the zoning ordinance.

Appeals Court concluded that defendant had not done enough material work to constitute a prior nonconforming use. Appeals Court concluded that, at time the case was filed, the RTFA was not a defense against enforcement of a zoning ordinance. However, it remanded the case for reconsideration given the 1999

[5]See footnote number 3.

[6]See footnote number 3.

amendment of the RTFA (which says that zoning ordinances cannot conflict with the RTFA or Generally Accepted Agricultural Management Practices (GAAMPs)).

Court: Michigan Court of Appeals (241 Mich. App. 417; 616 N.W.2d 243 (2000))

Case Name: *Brandon Township v. Tippett* (Oakland County)

Tippett owns 10 acres of land zoned as rural estate district. He parked and stored pieces of heavy equipment on the property. Tippett did not farm in Brandon Township, but he did farm in Marlette, Michigan (not located within Brandon Township). Tippett used the equipment to maintain his private road in Brandon Township and in a part-time excavating business. Equipment was not stored in a barn. Township filed complaint saying Tippett violated the local zoning ordinance which limited the number of such vehicles on a parcel and required that vehicles and equipment of the type involved should be stored in an enclosed building. The ordinance exempted vehicles used in "bona fide" farm operations. The zoning ordinance was enacted four years before Tippett built and occupied his house. The trial court rejected Tippett's argument that by using the equipment for a bona fide farming operation outside Brandon Township he could qualify for a zoning exception within the township.

Because ordinance did not say that vehicles were exempt if used in a bona fide farming operation specifically in Brandon Township, Appeals court concluded that Tippett's equipment were exempt. Not a Right to Farm Case.

●2002

Court: Michigan Court of Appeals (249 Mich. App. 338; 643 N.W.2d 235 (2002))

Case Name: *Travis v. Preston* (Branch County)

Defendants began operating a hog farm in 1996. Plaintiffs, who live nearby, filed action for nuisance and injunctive relief against defendants because of obnoxious and offensive odors that made their residences uninhabitable, reduced the value of the their homes and deprived them of the peaceful use and enjoyment of their homes. Plaintiffs alleged the farm violated the zoning permit and Michigan law and violated the local zoning ordinance. Ordinance said, in part, that uses should be conducted and operated so that odors etc. are not "obnoxious" beyond the lot on which the use is located. Trial court concluded that the farm violated the zoning ordinance and that a township has the authority to promulgate ordinances that restrict the effect of the Right to Farm Act (RTFA).

Court of Appeals concluded that the December 1999 amendment to the RTFA that preempted local zoning should not be applied retroactively. Initial trial was in August 1999. Appeals Court remanded issue of whether obnoxious odor was present beyond the defendant's property to reassess whether lawful zoning ordinance was violated.

●2003

Court: Michigan Court of Appeals (Unpublished[7] No. 229228 (2003))

Case Name: *Macomb Township v. Michaels* (Macomb County)

Action commenced in 1995 when plaintiff alleged that defendants were operating a commercial composting business on property that was zoned for ag use. In earlier decision (*Macomb v. Michaels* on page 5), Court of Appeals concluded that Right to Farm Act (RTFA) could not serve as a defense to an action to enforce a zoning ordinance. On remand, trial court considered amendments to the RTFA and a new ordinance governing composting operations and concluded that the local municipality could no longer enact zoning ordinances that conflicted with the RTFA without the prior approval of Michigan Department of Agriculture (MDA).

On appeal, the Court of Appeals ruled that the RTFA amendments could not be applied retroactively. (Defendants did not submit a new application to the township to operate their business. Court of Appeals concluded that if defendants submit a new application and the application is refused, then the RTFA, as amended, could be considered.) Appeals Court did not specifically address whether the composting business would, in fact, be protected by RTFA.

[7] See footnote number 3.

Court: Michigan Court of Appeals (Unpublished[8] No. 240444 (2003))

Case Name: *Milan Township v. Jaworski and Sexy Pheasant* (Monroe County)

Defendant breeds, raises and sells pheasants and quail at a hunting preserve on land zoned for agricultural use. The hunting preserve is licensed by the Michigan Department of Natural Resources (DNR). Township zoning ordinance required a special use permit to operate a hunting preserve on land that is agricultural. Special use permit was denied. Township filed a complaint and sought injunction. Township conceded that neither hunting nor the raising or selling of game birds violates its ordinances, but charging a fee to allow people to hunt rendered the preserve a commercial recreation area as defined in its ordinance. Special use permit is required for such a use in an agriculture district. Trial court granted injunction. Defendant argues that township ordinance is preempted by Michigan Natural Resources and Environmental Protection Act, (NREPA)[9] and Right to Farm Act (RTFA).

Court of Appeals concluded that the ordinance is not preempted by NREPA. However, ordinance is preempted by RTFA. Court of Appeals sought input from several sources to define the hunting preserve as an agricultural operation.

1. By definition in RTFA, the defendant's property is a farm because it is used for breeding, raising and selling game birds for commercial purposes.
2. The game birds raised on the property are farm products.
3. Hunting on the property constitutes a farm operation because it involves the harvesting of farm products.
4. That specific Generally Accepted Agricultural Management Practices (GAAMPs) for harvesting game birds aren't written down is immaterial.
5. Plus game birds are referenced in the GAAMPs related to care of animals.
6. Also, Ag. Commission recently adopted a resolution recognizing Gamebird Hunting Preserves as an agricultural activity and a value-added farm opportunity.

The township's ordinance requiring a special use permit conflicts with the RTFA to the extent that it allows the township board to preclude a protected farm operation. (Supreme Court denied leave to appeal.)

Court: Michigan Court of Appeals (Unpublished[10] No. 236458 and 236459 (2003))

Case Name: *Padgett v. Mason County* (Mason County)

Plaintiff owns a 35 acre parcel in Victory Township, where he had a hog farming operation from 1980 until 1993, at which time a diseased herd led plaintiff to declare bankruptcy and cease the hog farming operation. In 1994, the plaintiff's land was rezoned from agricultural to residential. In 2000, another businessman assumed plaintiff's mortgage and contracted to dispose of his industrial ice cream waste as feed for hogs. County required a special use permit for farmer to resume hog operation because of zoning change. Request for a special use permit was denied. Plaintiff complained that the hog farm was a prior nonconforming use and also that the zoning ordinance is invalid because of the Right to Farm Act (RTFA).

Court of Appeals concluded that the operation was not a prior nonconforming use since, after bankruptcy, the hog operation was terminated until 2000. So the requirement of and denial of a special use permit was not in error. Court of Appeals also concluded that the RTFA was not applicable in this case since the hog farming had stopped before the zoning was changed, so that zoning was not being used to prevent a prior nonconforming use. (Note the following quote in this court decision:

> "Ultimately, as set forth in Heinze, the purpose of the RTFA is to protect farmers from nuisance suits, not to make farms exempt from zoning.")

●2004

Court: Michigan Court of Appeals (Unpublished[11] No. 246596 (2004))

Case Name: *Village of Rothbury v. Double JJ Resort Ranch* (Oceana County)

Defendant owns residentially-zoned land in the Village. Plaintiff sued to enjoin agricultural and

[8] See footnote number 3.

[9] Michigan Natural Resources and Environmental Protection Act, P.A. 1994, as amended, (M.C.L. 324.101 *et seq.*)

[10] See footnote number 3.

[11] See footnote number 3.

commercial activities on the land. Trial court determined that defendant's pumpkin patch and corn harvested to feed defendant's horses were exempt from zoning because they complied with Generally Accepted Agricultural Management Practices (GAAMPs) but the use of the corn field as a maze available to the public and the rental of horses for recreational riding were not protected.

Court of Appeals concluded that a riding stable is a farm operation and horse riding is a farm product so Right to Farm Act (RTFA) exempts them from local zoning. Court of Appeals also concluded that the corn maze is a farm product under RTFA and exempt from zoning laws. Court discussed raising of corn as an agricultural product, not just for consumption but also for pleasure. Also corn was rotated with other crops. GAAMPs address raising corn and crop rotations.

> "Because an ordinance provision that only permits single family dwellings, playgrounds, and parks would prohibit farming operations, the ordinance provision conflicts with the RTFA and is unenforceable."

●2005

Court: Michigan Court of Appeals (267 Mich. App. 92; 702 N.W.2d 92 (2005))

Case Name: *Shelby Township v. Papesh* (Macomb County)

Defendants purchased just over one acre of property in Shelby Township in 1995. A farmhouse and two chicken coops were located on the property. Area surrounding the property was largely undeveloped and, at the time of purchase, farming was a permitted use. However, the local ordinance required a minimum of three acres for a farm. In 1996 defendants began raising chickens in the existing coops. By 1998, surrounding area began to be developed, large homes were built near and adjoining defendant's property, and neighbors began to complain about the poultry operation. In 2004, several neighbors filed a petition with the township requesting that it investigate the operation and suggested that odor and noise were a nuisance. Township then filed complaint with court arguing operation was a negligent public nuisance, a public nuisance in fact, and a nuisance per se (in violation of zoning ordinance). It also alleged that the operation was not in compliance with Generally Accepted Agricultural Management Practices (GAAMPs). Trial court concluded that the operation was a nuisance under the ordinance. It also concluded that the Right to Farm Act (RTFA) was inapplicable because the sales on the farm "did not rise to the level required for the RTFA to even apply until at the earliest the year 2000 and perhaps the year 2003."

Court of Appeals reversed and remanded. Court of Appeals concluded that the ordinance was preempted by the RTFA.

> "The ordinance conflicts with the RTFA to the extent that it allows plaintiff to preclude a protected farm operation by limiting the size of a farm...Any township ordinance, including a zoning ordinance, is unenforceable to the extent that it would prohibit conduct protected by the RTFA."

The remand was to determine whether the poultry operation was commercial in natural and in compliance with GAAMPs.

> "If defendants' farm is to be protected by the RTFA, it must be also engaged in breeding, raising and selling poultry for commercial purposes as well as being in compliance with the appropriate GAAMPs as determined by the [Michigan] Commission [of Agriculture]."

Court: Michigan Court of Appeals (Unpublished[12] No. 257097 (2005))

Case Name: *King of the Wind Farms v. Michigan Commission of Agriculture* (Macomb County)

Plaintiff occupies a three hundred acre parcel of agriculturally zoned land in Macomb Township. Since 1991, plaintiff has been involved in litigation with the township regarding odors emanating from composting operations conducted on the land. Michigan Department of Agriculture (MDA) investigated the township's complaints and worked with plaintiff and its operators to obtain conformance with Generally Accepted Agricultural Management Practices (GAAMPs). When these efforts failed, MDA transferred investigation of the matter to Michigan Department of Environmental Quality (DEQ). Plaintiff subsequently petitioned MDA for reassessment of its operations for GAAMPs conformance. MDA declined because of interagency Memorandum of Understanding (MOU) between MDA

[12]See footnote number 3.

and DEQ about how such situations would be handled. Plaintiff filed suit challenging MDA's authority to transfer oversight to DEQ and requesting that MDA be ordered to do the reassessment. Trial court found there was no legal duty on the part of MDA to reassess the operation once authority was transferred to DEQ for enforcement of environmental regulations. Court of appeals affirmed.

●2006

Court: Michigan Court of Appeals (Unpublished[13] No. 268920 (2006))

Case Name: *Papadelis v. Troy* (*Papadelis III*) (Oakland County)

Plaintiffs own a greenhouse and garden center in Troy. Property is zoned single family residential. Defendants argue that plaintiffs are engaging in commercial activity on their northern parcel in violation of the city's residential zoning ordinance. Plaintiffs contend the activity is protected under the Right to Farm Act (RTFA). There have been two previous actions between these parties which were concluded in favor of the City of Troy (see the two related cases on pages 5 and 6). Here, trial court found in favor of plaintiffs.

Court of appeals concluded that the activity on the parcel satisfies the definition of a farm operation because the parcel is used for storage, growing, sustaining, nurturing and wholesale of floriculture and horticulture products and defendant did not offer any evidence that the operation is not in compliance with Generally Accepted Agricultural Management Practices (GAAMPs). Defendants argue that RTFA does not apply because the operations on the parcel did not exist before the parcel was zoned for residential use in 1956. Court of Appeals concluded that sections 1 and 2 of M.C.L. 286.473 should be read separately.

> "A farm operation that conforms to generally accepted agricultural and management practices is entitled to the protection provided by the RTFA without regard to the historic use of the property in question."

Also, an ordinance limiting agricultural activity to parcels of a certain size is preempted by the RTFA. Also, a farming operation must be at least partially commercial in nature for the RTFA to apply. Also, zoning ordinances regarding building specifications are preempted by RTFA to the extent that the city is attempting to enforce them against a use protected under the RTFA. Application for appeal was made to the Michigan Supreme Court.

See also *Troy v Papadelis I* case on page 4, *Troy v Papadelis II* case on page 4, *Troy v Papadelis IV* case on page 10, and *Troy v Papadelis V* case on page 12.

Court: Michigan Court of Appeals (Unpublished[14] No. 268142 (2006))

Case Name: *Armada Township v. Marah* (Macomb County)

Defendants own a parcel of slightly less than six acres in an area zoned residential/agricultural. For several years, defendants have raised llamas on their property. Township ordinance allows keeping of animals in the district, but only for riding, show or personal use and not for remuneration or sale. And activities are limited to a parcel of 2 acres or more. An additional acre is required for each animal after the first. The restrictions don't apply to "bona fide" farms, which must be 10 acres or larger. Plaintiff initiated misdemeanor prosecution of defendant charging violation of the ordinance. Defendant maintained that he was not conducting farming operations, in order to avoid the 10 acre requirement and by arguing that llamas did not meet the specification of animal types (horses, cows, similar animals) in order to avoid the additional acre per animal requirement. Defendant was successful in claim that his was a hobby operation (so the 10 acre requirement did not apply), but not in claiming that llama were sufficiently dissimilar to horses and cows (so he did need an additional acre for each animal). On appeal to the circuit court, the court declined to consider a new argument by defendant – that the township ordinance was preempted by the the Right to Farm Act (RTFA). A second nuisance complaint was filed by the township and the defendant again raised the RTFA preemption issue. Township argued that RTFA preemption defense was precluded since earlier argument by defendant was that his was not a farm operation. Court found for defendant.

Court of Appeals concluded that defendant could not claim to be a farm after his successful outcome in

[13] See footnote number 3.

[14] See footnote number 3.

criminal court in which he claimed not to be a farm. Court did not address whether the RTFA actually preempts the township ordinance. Application for appeal, still pending, made to the Michigan Supreme Court.

●2007

Court: Michigan Supreme Court ORDER[15] (478 Mich. 934; 733 N.W.2d 397; 2007 Mich., June 29, 2007)

Case Name: *Papadelis v. City of Troy* (*Papadelis IV*) (Oakland County)

The unanimous Supreme court order indicates that because no provisions of the Right To Farm Act (M.C.L. 286.471 *et seq.* (RTFA), or any published Generally Accepted Agricultural and Management Practice (GAAMPs) address operations of greenhouses, no conflict exists between RTFA and a zoning ordinance. Thus a city can enforce zoning. Part of the court order's significance the points (1) RTFA does not contain specific regulation, and (2) there are not **published** GAAMPs.

In an order in lieu of granting leave to appeal, the court reversed in part the judgments of the trial court and the Court of Appeals to extent they held the RTFA and the State Construction Code exempted the plaintiffs from the defendant-city's ordinances "governing the permitting, size, height, bulk, floor area, construction, and location of structures used in the plaintiffs' greenhouse operations."

The court concluded assuming plaintiffs' acquisition of additional land entitled them under the city's zoning ordinance to make agricultural use of the north parcel (although the court expressed no opinion on this point), plaintiffs' structures were still "subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements under" the city's zoning ordinances. Plaintiffs' "greenhouses and pole barn are not 'incidental to the use for agricultural purposes of the land' on which they are located within the meaning of MCL 125.1502a(f)." Since no RTFA provisions or any published GAAMP "address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes," there was no conflict between the RTFA and the city's ordinances regulating such matters precluding enforcement of the ordinances under the facts of the case.

The court remanded the case to the trial court for further proceedings not inconsistent with this order. In all other respects, the applications for leave to appeal were denied because the court was not persuaded it should review the remaining questions. (Source: State Bar of Michigan *e-Journal* Number: 36466, July 6, 2007.)

The Supreme Court's order reads in its entirety:

> "On order of the Court, the motion for leave to file brief *amicus curiae* is GRANTED. The application for leave to appeal the September 19, 2006 judgment of the Court of Appeals and the application for leave to appeal as cross-appellants are considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE in part the judgments of the Oakland Circuit Court and the Court of Appeals to the extent that they hold that the Right to Farm Act, MCL 286.471 *et seq.* (RTFA), and the State Construction Code, MCL 125.1502a(f), exempt the plaintiffs from the defendant city's ordinances governing the permitting, size, height, bulk, floor area, construction, and location of structures used in the plaintiffs' greenhouse operations. Assuming that the plaintiffs' acquisition of additional land entitled them under the city's zoning ordinance to make agricultural use of the north parcel (a point on which we express no opinion, in light of the defendant city's failure to exhaust all available avenues of appeal from that ruling after the remand to the Oakland Circuit Court in the prior action, see *City of Troy v Papadelis (On Remand)*, 226 Mich App 90 (1997)), the plaintiffs' structures remain subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements under the defendant city's ordinances. The plaintiffs' greenhouses and pole barn are not "incidental to the use for agricultural purposes of the land" on which they are located within the meaning of MCL 125.1502a(f). As no provisions of the RTFA or any published generally accepted agricultural and management practice address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes, no conflict exists between the RTFA and the defendant city's ordinances regulating

[15] Order — A direction of a court made or entered in writing. One which terminates the action itself, or decides some matter litigated by the parties.

such matters that would preclude their enforcement under the facts of this case. We REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order. In all other respects, the applications are DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court."

See the Appeals case, Michigan Court of Appeals *Papadelis v. Troy*, page 9. See also *Troy v Papadelis I* case on page 4, *Troy v Papadelis II* case on page 4, and *Troy v Papadelis V* case on page 12.

Full Text Opinion:
http://www.michbar.org/opinions/supreme/2007/062907/36466.pdf

Court: Michigan Court of Appeals (Unpublished[16] No. 271082, November 13, 2007)

Case Name: *People v. Templeton* (St. Clair County)

The trial court did not abuse its discretion in denying the Templeton-defendants' motion for attorney fees and costs under the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) (MCL 286.473b) in this nuisance action. The relevant statute makes clear a prevailing farm or farm operation is not automatically entitled to attorney fees and costs. Rather, it is within the trial court's discretion whether to award them. Because defendants succeeded in obtaining a dismissal of plaintiff's nuisance action, they arguably prevailed according to the plain meaning of that term. However, the trial court did not err in denying defendants' motion.

The trial court noted the parties reached a resolution pursuant to which plaintiff agreed to dismiss the case if defendants' application for a farmland and open spaces agreement was approved. Thus, the parties agreed to resolve their dispute in lieu of trial. Contrary to defendants' argument, it did not appear the plaintiff brought this action merely to harass defendants. Plaintiff's contention the RTFA did not apply to the property appeared well founded. Although tax records listed the property as "agricultural," the designation did not necessarily mean the property was used for farming. Defendant-Nelson Templeton's income tax returns did not reflect any income or loss from farming activities until he filed an amended 2004 return after plaintiff filed suit. Further, defendants' agreement to use the property for the next 10 years pursuant to the farmland and open spaces agreement, did not suggest the land was previously used for farming. Affirmed. (Source: State Bar of Michigan *e-Journal* Number: 37610, November 16, 2007.)

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2007/111307/37610.pdf

●2008

Court: Michigan Court of Appeals (Unpublished[17] No. 275315, May 20, 2008)

Case Name: *Woodland Hills Homeowners Ass'n of Thetford Twp. v. Thetford Twp*. (Genesee County)

Since defendant-Allison's facility qualified as a commercial farming operation in compliance with Generally accepted agricultural and management practices (GAAMPS) and was afforded protections by the Michigan Right to Farm Act (RTFA)(MCL 286.471) (specifically no nuisance case could be maintained against the property) preempting the local zoning ordinance, the trial court properly granted Allison summary disposition because there was no genuine issue of material fact.

The local zoning ordinance at issue stated no farm may operate unless the farm is at least 20 acres in size. Allison's property did not meet the size threshold. Plaintiff-Woodland contended the defendant-township should be forced to apply the zoning ordinance to prevent Allison from using his property for farming purposes. The court held in *Charter Twp. of Shelby v. Papesh* (page 8) where a zoning ordinance prevents an individual from operating a farm on a parcel of land because of the small size of the parcel, the ordinance is preempted by the RTFA where the RTFA would otherwise protect the operation.

The court held Allison's farm was protected by the RTFA because it conformed to GAAMPS and the operation was commercial in nature. Thus, no nuisance cause of action could be maintained against the property. The court also held plaintiff did not have standing to bring the action where it failed to provide evidence demonstrating a resident of the subdivision had been injured by Allison's conduct or operation and did not have specific allegations regarding aspects of his farm creating a nuisance. Plaintiff failed to distinguish its residents from members of the general public who did not belong to the association. Affirmed. (Source: State Bar of Michigan *e-Journal* Number: 39418, May 29, 2008.)

[16]See footnote number 3.

[17]See footnote number 3.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2008/052008/39418.pdf

●2009

Court: Michigan Court of Appeals (Unpublished[18] No. 286136, December 15, 2009)

Case Name: *Papadelis v. City of Troy* (*Papedelis V*) (Oakland County) (Michigan Farm Bureau, *Amicus Curiae*)

The trial court properly construed the provisions of the defendant-city's zoning ordinance and did not err in concluding they were inapplicable to the plaintiffs' greenhouses, cold frames, and pole barn. Thus, the Appeals Court affirmed the trial court's order denying defendants-City of Troy's motion for an order directing the plaintiffs-Papadelis to remove the buildings and the dismissal of defendants' counterclaim in this lengthy land use dispute. (See *Troy v Papadelis I* case on page 4, *Troy v Papadelis II* case on page 4, *Troy v Papadelis III* case on page 9, and *Troy v Papadelis IV* case on page 10.)

Papadelis (plaintiffs) own two adjacent parcels of land in the city, referred to as the north and south parcels. Both parcels are zoned "single-family residential" (R-1D) under the zoning ordinance. Thus, the parcels can be used for the purposes described in §§10.00.00 - 10.20.08 of the City of Troy zoning ordinance. Section 10.20.00 describes the "principal uses permitted" and provides no building or land shall be used and no building erected except for one or more of the specified uses. "Agriculture" is specified as a permitted principal use of property zoned R-1D. The ordinance defines "agriculture" as "[f]arms and general farming, including horticulture, floriculture . . . ."

The city did not contest the floriculture and horticulture occurring on plaintiffs' property were "agriculture" and thus, a principal permitted use of the property. Rather, defendants appeared to claim while the use was permitted, the two greenhouses, pole barn, and cold frames were not permitted because they were in violation of other zoning ordinance provisions. Defendants argued they were all "accessory buildings" or "accessory supplemental buildings" under the ordinance and thus, subject to certain regulations.

The Appeals Court disagreed, concluding the buildings did not meet either definition as set forth in the ordinance. Pursuant to the definition of "accessory building" in §04.20.01, if the greenhouses, pole barn, and cold frames were not a barn, a garage, or a storage building/shed as defined by the ordinance, they were not "accessory buildings." The buildings did not meet any of those definitions. Section 04.20.03 defined an "accessory supplemental building" in a manner contemplating a residential use as the main property use by its reference to a "'building used by the occupants of the principal building for recreation or pleasure . . . .'" There was no evidence the plaintiff-Papadelis' greenhouses and cold frames were used "'for recreation or pleasure.'" Rather, the evidence showed they were used in conjunction with their horticulture and floriculture commercial business located on the south parcel.

The court opinion read:

> "Next, defendants argue that allowing plaintiffs to maintain the contested agricultural buildings violates the intent of the ordinance which is to "provide for environmentally sound areas of predominantly low density single family detached dwellings." We disagree. The intention of providing low-density, single-family dwellings actually appears to be furthered by plaintiffs' agricultural use of their property. Preserving agricultural uses compatible with limited residential development, protecting the decreasing supply of agricultural land by allowing only limited residential development and/or maintaining some rural character to the community arguably provides 'for environmentally sound areas of predominately low density single family detached dwellings.'" In any case, this argument is without merit."

And

> "Defendants also argue that the trial court's interpretation and conclusion that defendants' ordinance contains no provisions that relate to agricultural buildings 'defies common sense' and leads to an absurdity. We disagree. The wisdom of an ordinance, like a statute, is for the determination of the legislative body and must be enforced as written. See *City of Lansing v Lansing Twp*, 356 Mich 641, 648; 97 NW2d 804 (1959). Agriculture is a principal use permitted, as are one-family dwellings, accessory buildings, and others. That defendants' ordinance provides

[18] See footnote number 3.

> detailed and specific regulations with respect to some principal uses and does not include agriculture within the ambit of those regulations is the prerogative of the legislative body and we may not second-guess such wisdom. Further, plaintiffs' expert witness, Leslie Meyers, testified that as a zoning administrator in every municipality she has worked where there has been farming, agricultural buildings have been exempt from such regulation."

The Supreme Court's June 29, 2007 order (*Papadelis v City of Troy*, 478 Mich 934; 733 NW2d 397 (2007) (*Papadelis IV*, page 10)) requires that farm buildings, such as plaintiff's structures, are subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements, under local zoning. As to if City of Troy's ordinances apply to plaintiffs' greenhouses, pole barn, and cold frames was never reached or decided. Accordingly, the trial court's decision, that the particular structures do not violate any applicable zoning ordinance, does not conflict with the Supreme Court's order.

Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2009/121709/44574.pdf

Glossary

aggrieved party
one whose legal right has been invaded by the act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The interest involved is a substantial grievance, through the denial of some personal, pecuniary or property right or the imposition upon a party of a burden or obligation. It is one whose rights or interests are injuriously affected by a judgment. The party's interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment. Only aggrieved parties can appeal a particular order or judgement.

aliquot
1 a portion of a larger whole, especially a sample taken for chemical analysis or other treatment.
2 (also **aliquot part** or **portion**) *Mathematics* a quantity which can be divided into another an integral number of times.
3 Used to describe a type of property description based on a quarter of a quarter of a public survey section.
n *verb* divide (a whole) into aliquots.
ORIGIN
from French *aliquote*, from Latin *aliquot* 'some, so many', from *alius* 'one of two' + *quot* 'how many'.

amicus (in full **amicus curiae**)
n (plural **amici** , **amici curiae**) an impartial adviser to a court of law in a particular case.
ORIGIN
modern Latin, literally 'friend (of the court)'.

certiorari
n noun *Law* a writ by which a higher court reviews a case tried in a lower court.
ORIGIN
Middle English: from Law Latin, 'to be informed', a phrase originally occurring at the start of the writ, from *certiorare* 'inform', from *certior*, comparative of *certus* 'certain'.

corpus delicti
n *noun Law* the facts and circumstances constituting a crime.
ORIGIN
Latin, literally 'body of offence'.

dispositive
n *adjective* relating to or bringing about the settlement of an issue or the disposition of property.

estoppel
n *noun Law* the principle which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination.

ORIGIN
C16: from Old French *estouppail* 'bung', from *estopper*.

et seq. (also **et seqq.**)
n *adverb* and what follows (used in page references).
ORIGIN
from Latin *et sequens* 'and the following'.

hiatus
n (plural **hiatuses**) a pause or gap in continuity.
DERIVATIVES
hiatal adjective
ORIGIN
C16: from Latin, literally 'gaping'.

injunction
n *noun*
1 *Law* a judicial order restraining a person from an action, or compelling a person to carry out a certain act.
2 an authoritative warning.

inter alia
n adverb among other things.
ORIGIN
from Latin

mandamus
n *noun Law* a judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.
ORIGIN
C16: from Latin, literally 'we command'.

mens rea
n *noun Law* the intention or knowledge of wrongdoing that constitutes part of a crime. Compare with **actus reus**.
ORIGIN
Latin, literally 'guilty mind'.

pecuniary
adjective formal relating to or consisting of money.
DERIVATIVES
pecuniarily adverb
ORIGIN
C16: from Latin pecuniarius, from pecunia 'money'.

res judicata
n *noun* (*plural* **res judicatae**) *Law* a matter that has been adjudicated by a competent court and may not be pursued further by the same parties.
ORIGIN
Latin, literally 'judged matter'.

scienter
n *noun Law* the fact of an act having been done knowingly, especially as grounds for civil damages.
ORIGIN
Latin, from *scire* 'know'.

stare decisis
n *noun Law* the legal principle of determining points in litigation according to precedent.
ORIGIN
Latin, literally 'stand by things decided'.

writ
n *noun*
1 a form of written command in the name of a court or other legal authority to do or abstain from doing a specified act. (**one's writ**) one's power to enforce compliance or submission.
2 *archaic* a piece or body of writing.
ORIGIN
Old English, from the Germanic base of **write**.

For more information on legal terms, see *Handbook of Legal Terms* prepared by the produced by the Michigan Judicial Institute for Michigan Courts: http://courts.michigan.gov/mji/resources/holt/holt.htm.

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