

STATE OF MICHIGAN

IN THE 8TH DISTRICT COURT – CROSSTOWN LOCATION

PEOPLE OF RICHLAND TOWNSHIP,

PLAINTIFF,

VS.

FILE NUMBER 14 RT 3180A ON
FILE NUMBER 14 RT 3181A ON

JIM NIEUWENHUIS,

DEFENDANT.

OPINION AND ORDER

These cases were consolidated for a formal hearing on June 30, 2014. At that hearing Counsel stipulated to the admission into evidence of a great many documents. No testimony was taken. The formal hearing was continued on August 6, 2014 with oral arguments.

Defendant owns property in Richland Township. On May 12, 2014 he was cited for a zoning ordinance violation in Case 14 RT 3180A ON. Specifically, his property is located within an agricultural residential zoned area (A-1). Livestock (e.g. goats) may be raised in an A-1 zoning district if the property is more than five acres in size. Defendant's property is 3.3 acres in size.

On May 20, 2014 Defendant was cited for a zoning violation. Specifically, Plaintiff argues Defendant has erected an accessory building and is larger than allowed on a 3.3 acre parcel.

CASE 14 RT 3180A ON

Defendant does not deny he is raising goats on a 3.3 acre parcel. He does not deny the Township zoning ordinance requires a 5-acre parcel. Defendant's defense is that he is

operating a farm in compliance with the Michigan Right to Farm Act and the Township is thus preempted from bringing this action under its zoning ordinance. To qualify for protection under the RTFA, Defendant must satisfy two requirements:

1. That he is operating a “farm”.
2. That he operates it in conformance with “generally accepted agricultural and management practices according to policy determined by the Michigan Commission of Agriculture” (“GAAMPS”).

There is no dispute that Defendant is operating a “farm”. Section 2 of the RTFA defines a “farm” as “the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products”. Defendant raises crops and goats on his property. He does so for commercial purposes as he sells his crops and goat meat to a number of businesses in the southwest Michigan area.

The issue then becomes whether the farm conforms to the GAAMPS. Defendant has been assessed by the Michigan Department of Agriculture and Rural Development (“DARD”) under the Michigan Agriculture Environment Assurance Program (“MAEAP”) and on May 20, 2013 received a Cropping System Verification under the MAEAP. However, Defendant has not presented any evidence that his livestock operation has been assessed by the DARD for MAEAP verification. In fact, Defendant’s exhibits include a Livestock System Verification Cover Page dated 3-26-14. That cover page lists a number of items to complete which includes the following:

“If you expand your livestock operation to retain your farm status as verified

you must be verified through the Right to Farm site selection and order control

GAAMPS for new and expanding livestock facilities”.

Defendant has provided an Order from the Marquette County Circuit Court issued in Forsyth Township v. Randy and Libby Buchter, File No. 12-50325 CZ. The Order holds that, “GAAMPS do not carry the rule and force of law”. That Order is not binding on this Court. Further, that holding is inconsistent with MCL § 286.473 which requires the farm to conform to the applicable GAAMPS. This Court is required to apply the statute rather than the Marquette Circuit Court Order.

Defendant has not provided any documentation that his livestock operation has been assessed for MAEAP verification or that it is in compliance with the applicable GAAMP. As Defendant has not provided any proof of compliance, he has not established the affirmative defense under the RTFA and is therefore in violation of the ordinance.

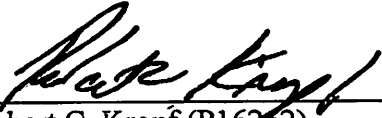
CASE 14 RT 3181A ON

The “hoop house” is a temporary structure erected during the growing season to protect some crops from wind, rain and hail damage. The structure comes within the definition of “farm” as it is “used in the commercial production of farm products”. Here too, to establish the affirmative defense of preemption by the RFTA, Defendant must satisfy the GAAMPS requirement. Defendant’s cropping system has been verified under the MAEAP on May 20, 2013. A letter from the DARD referring to that verification includes the following: “We understand that you intend to manage your cropping operation as reviewed and follow the applicable generally accepted agricultural and management practices (GAAMP)”. That language is referred to in the email communications between Attorney Kaufman and Steven

Mahoney of the DARD. According to Mr. Mahoney: "But MAEAP verification does not equate GAAMPs conformance". As Defendant has failed to provide evidence of GAAMPs conformance, he has not established the RTFA affirmative defense and he is responsible for the ordinance violation.

It is so ordered.

Dated: August 15, 2014



Robert C. Kropf (P16262)
District Judge