

STATE OF MICHIGAN
IN THE COURT OF APPEALS

TOWNSHIP OF RICHLAND,
Plaintiff/Appellee,

Court of Appeals Case No.

vs.

JIM NIEUWENHUIS,
Defendant/Appellant.

Kalamazoo County Circuit Court
Case No. 2014-0507-AV
Hon. Gary C. Giguere, Jr.

Transferred from 8th District Court
Other Court Case Nos. 14RT3180A
14RT3181A

**APPLICATION FOR LEAVE TO
APPEAL**

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APPLICATION FOR LEAVE TO APPEAL

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ALLEGATIONS OF ERROR AND RELIEF SOUGHT

The circuit court and district court's opinions and orders related to defendant failing to prove (or for that matter to present evidence) that defendant's farm conformed with the Michigan Department of Agriculture and Rural Development ("MDARD")'s generally accepted agricultural and management practices ("GAAMPs") are erroneous and are based on a misunderstanding of how the GAAMPs and related provisions of Michigan's Right to Farm Act ("RTFA"), MCL 286.471 *et. seq.* (relevant RTFA provisions are attached as Tab F) work.

Both of the lower courts properly found that defendant was operating a farm as defined under the RTFA. The circuit court explained on page 5 of its opinion (attached as Exhibit 1): "[t]his Court finds that the record supports the lower court's finding that there is no dispute that [defendant] was operating a farm, and that he was doing so for commercial purposes. Thus, [the lower court's] finding that the first prong of the RTFA is met is not erroneous and must stand." Defendant obviously agrees with the lower courts' finding in this regard. But then the circuit court (affirming the same error that the district court made) improperly and erroneously states that the district court was "not presented with any evidence *whatsoever* that the farm was in GAAMPs compliance, and so [the lower court's] ruling for the Township cannot be said to be erroneous: and it shall be left undisturbed." Exhibit 1 at pages 5-6 (emphasis added). The district court made the same error in concluding that defendant failed to provide evidence of conformity with the GAAMPs. Exhibit 3 at page 4 (the court did not number the pages to its opinion, so counsel has handwritten page numbers on the document).

There are several related errors regarding the lower courts' decisions related to defendant failing to present evidence that the farm conformed to the applicable GAAMPs, including:

1. Defendant did present evidence that the farm was complying with the applicable GAAMPs, including a May 29, 2013 MDARD letter to Ben Martin (attached as Exhibit 15).

Martin is the nephew of the property/farm owner, defendant Jim Nieuwenhuis and Martin runs the crop production, including the hoop house, at the farm. Martin is a Western Michigan University graduate and his local food/produce business was featured in the WMU magazine (attached as Exhibit 14 including photos of Martin working the soil and planting tomato plants in the hoop house). The May 29, 2013 letter (the circuit court on page 5 of its opinion refers to a May 6, 2013 MDARD letter but no letter with that date was submitted as an exhibit to the lower courts) indicates that MDARD performed a Michigan Agriculture Environmental Assurance Program (MAEAP) verification at the farm and MDARD certified that the farm met the MAEAP cropping system verification. In addition, the MDARD letter further explained that MDARD understood that Martin and Nieuwenhuis intended to manage the farm in accordance with the applicable GAAMPs (Exhibit 15). In addition, defendant submitted into evidence a May 6, 2014 MDARD letter to Nieuwenhuis and in that letter MDARD confirmed that the farm received additional MAEAP verification and again indicated that it was MDARD's understanding that Martin and Nieuwenhuis intended to manage the farm in accordance with the applicable GAAMPs (Exhibit 10). So, the lower courts erred when they concluded that defendant failed to present any evidence *whatsoever* (circuit court's word – emphasis added) that the farm complied with the applicable GAAMPs. To the contrary, defendant presented significant evidence that the farm complied with the applicable GAAMPs.

2. Immediately after (on August 7, 2014) the August 6 hearing before the district court, defendant filed a supplemental brief (attached as Exhibit 16) with that court attaching to the brief a copy of the Marquette Circuit Court's decision in *Forsyth Township v. Buchler*, Unpublished opinion of the Marquette County Circuit Court, issued Dec. 18, 2012 (Docket No. 12-50325 (attached as Tab C). In defendant's supplemental brief and in the *Forsyth* opinion,

there is explanation about how things work at MDARD with respect to reviewing a farm for GAAMP conformance. On pages 6-7 of the *Forsyth* decision, that court explained that the farmer (Buchler – that farm is located in the UP) could not get MDARD to schedule a GAAMPs inspection, so the farmer applied for MAEAP certification. Following a site visit and inspection by MDARD, the farm was certified under the MAEAPs. Wayne Whitman with MDARD testified in the *Forsyth* case with respect to the relationship between the MAEAPs and GAAMPs as follows: “[i]t is consistent that in order for a farm to achieve verification under the MAEAP program, they need to meet the Right to Farm GAAMPs that apply to their farm operation.” Whitman in his testimony went on to indicate that a farm that has received MAEAP verification by definition then meets the requirements of the applicable GAAMPs. Neither of the lower courts acknowledged what the Court in *Forsyth* did – namely that it is and would be nearly impossible for MDARD to in advance of an issue being raised by a municipality or a private citizen/neighbor to perform a GAAMPs inspection of every farm in Michigan. Of course, the RTFA does not contemplate that MDARD will pre-inspect all farms to determine which farms are or are not conforming to the applicable GAAMPs. Instead, MCL 286.474 (attached as part of Tab F) provides that complaints can be made by municipalities or others and those complaints will be investigated by MDARD. So, the Township in this case had a right (and perhaps a responsibility) under the RTFA statute prior to issuing the citations in May 2014 (the citations are attached as Exhibits 8 and 9) that resulted in this case to ask MDARD to investigate whether the defendant’s farm conformed with applicable GAAMPs. Unfortunately, the Township failed to make such a request to MDARD. If the Township would have done so, then part of MDARD’s investigation would have involved a determination whether the defendant’s farm conformed with the applicable GAAMPs. Instead of doing that, the Township simply issued the

citations and alleged that the farm was operating in violation of the Township's zoning ordinance (the relevant portions of the Township zoning ordinance are attached as Exhibit 7).

3. As the record before the lower courts reveals, ultimately in September and October of 2014, Nieuwenhuis received written confirmation from MDARD that the farm did conform to the applicable GAAMPs (the MDARD letters dated September 12, 2014 and October 2, 2014 are attached as Exhibits 11 and 12). Those letters merely confirmed that the farm practices and operations that were in place in 2013 and in May 2014 when the Township issued its citations to the farm related to raising goats and putting up a hoop house (as part of the farm's crop production) conformed to the GAAMPs. Nothing in terms of the farm's practices or operations changed between May 2013 or May 2014 when the farm received the MAEAP verification letters from MDARD (Exhibits 10 and 15). The lower courts failed to recognize what the court in *Forsyth* properly acknowledged – namely that it is going to be very unusual for a farm/farmer in advance of allegations being made against the farm that it does not conform with GAAMPs to have actual written proof from MDARD that the farm complies with the GAAMPs. The facts and circumstances in this case and in the *Forsyth* case support that. MDARD lacks the resources and manpower to perform GAAMPs inspections on every farm in Michigan. The RTFA provides a mechanism for a township or others to request MDARD to perform a GAAMPs inspection. The Township for reasons only they know and failed to explain to either lower court did not make a request to MDARD for an inspection prior to issuing the citations in May 2014. So, for defendant to prove (actual written verification from MDARD) that the farm conformed with the GAAMPs, defendant had to arrange for MDARD to perform the GAAMPs inspection. That inspection occurred in August 2014 (August 27 as indicated in

the September 12 letter – attached as Exhibit 11) and MDARD verified in writing that the farm conformed to the GAAMPs.

Defendant requests that this Court reverse the portion of the lower courts' opinions and orders that defendant failed to present evidence and prove that the farm conformed with the applicable GAAMPs. As to those portions of the lower courts' rulings, defendant requests that this Court find based on the evidence, including Exhibits 10, 11, 12, 15 and 17, that defendant proved conformance with the GAAMPs. Furthermore, this Court should reverse the lower courts' decisions and should nullify the judgments entered against defendant. Alternatively, defendant requests that this Court reverse the lower courts' rulings and remand this matter to the lower courts to consider and take additional testimony if necessary as to the impact of the MDARD letters (Exhibits 11 and 12) and whether those letters and related evidence/testimony establish that the farm conformed to the GAAMPs at the time that the Township issued the citations in May 2014.

STATEMENT OF JURISDICTION

Defendant files this Application for Leave to Appeal pursuant to MCR 7.205 within 21 days of the entry of the March 16, 2015 Order. This Court has jurisdiction to grant leave to appeal under MCL 600.308(2)(a)(ii) and 600.8342(3).

STATEMENT OF ORDER APPEALED

Judge Gary C. Giguere, Jr of the Kalamazoo County Circuit Court issued an Opinion on March 16, 2015, attached as Exhibit 1, which affirmed the District Court's Opinion and Order issued on August 15, 2014, attached as Exhibit 3 and District Court Orders of September 5, 2014, attached as Exhibit 4-1; September 10, 2014, attached as Exhibit 4-2; and September 23, 2014, attached as Exhibit 4-3.

STATEMENT REGARDING TRANSCRIPT

In compliance with MCR 7.205(B)(4)(b), the transcript of the June 30, 2014 District Court hearing is attached as Exhibit 5 and of August 6, 2014 District Court hearing is attached as Exhibit 6. The transcript from the Circuit Court's February 11, 2015 hearing is attached as Exhibit 2.

STATEMENT OF QUESTIONS INVOLVED

1. Did the lower courts err when they found that defendant failed to present any evidence *whatsoever* that defendant's farm conforms with the applicable GAAMPs when, in fact, defendant presented significant evidence as set forth in the Allegations of Error and Relief Sought portion and other portions of this application?

Defendant's answer:	Yes
Plaintiff's answer:	No
Lower courts' answer:	No

2. Did the lower courts err when they found contrary to other court decisions, including the *Forsyth* decision, and the RTFA, MCL 286.474, that defendant needed to prove with actual written documentation from MDARD at the time in May 2014 when the Township issued citations to defendant that defendant's farm conformed to the GAAMPs?

Defendant's answer:	Yes
Plaintiff's answer:	No
Lower courts' answer:	No

INTRODUCTION AND STATEMENT OF FACTS

The Nieuwenhuis farm where Jim Nieuwenhuis raises goats and where his nephew, Ben Martin, raises crops including some under a hoop house is located a couple of miles south of the Village of Richland, Michigan. The farm property is located in an agricultural/residential zoned district in Richland Township. Nieuwenhuis sells the goat meat in his store, Richland Meat Center, in the Village of Richland (see photos of goat meat for sale in Exhibit 13). Martin sells his locally grown produce in various locations around Richland and Kalamazoo. As the name Richland suggests the community has a long farming tradition. There are farms located all around the Nieuwenhuis farm, including the very large farming operation south of Richland that is now owned and run by Zoetis, Inc., the world's largest producer of medicine and vaccinations for pets and livestock.

The Nieuwenhuis farm consists of 3.3 acres. Exhibit 1 at page 1. In May 2014, Richland Township issued two citations to Nieuwenhuis – one for the unlawful raising of goats at the farm and the other for illegally putting up a hoop house at the farm. Exhibit 1 at page 1; Exhibits 8-9. The two citations/cases were consolidated for a formal hearing before the district court in June 2014. At that hearing, the district court was not prepared to take any testimony from witnesses, but the court accepted into evidence exhibits from the parties. Exhibit 1 at page 2; Exhibits 3 and 5. The district court continued the hearing in August 2014 and again did not take any testimony from witnesses. The witnesses, including Nieuwenhuis and Martin, were present at both the June and August hearings, so if the court had questions about the farm operation and compliance with the GAAMPs, then the court had the opportunity to ask questions of Nieuwenhuis and/or Martin, but never did so. Exhibit 1 at page 2; Exhibits 5-6.

The district court issued its opinion and order in August 2014. The court properly found that defendant was operating a farm and was doing so for commercial purposes. Exhibit 1 at

page 5; Exhibit 3 at page 2. The court then erroneously found that defendant failed the present evidence to prove that the farm conformed to the applicable GAAMPs and therefore the defendant could not establish an RTFA defense and that Nieuwenhuis was responsible for paying the citations issued to him by the Township. Exhibit 3 at pages 3-4; Exhibit 1 at pages 5-6. Defendant filed several motions for reconsideration in an attempt to have the district court reconsider the evidence and related authorities (including Exhibits 10 and 15 and Tab C) that were presented regarding defendant's conformance with the GAAMPs. Exhibit 1 at page 2. With the final motion for reconsideration, defendant also attached the September 12, 2014 MDARD letter which verified in writing what had been true in practice throughout 2013 and 2014 that the farm conformed to the GAAMPs. Exhibit 11. Without any consideration of the new evidence submitted by Nieuwenhuis and seemingly without any acknowledgement that the district court had discretion to consider the new evidence and/or take additional testimony, the district court summarily denied all of the motions for reconsideration. Exhibits 4-1, 4-2 and 4-3; Exhibit 1 at page 2.

Nieuwenhuis appealed the district court's decisions to the circuit court. The circuit court conducted oral argument in February 2015. Exhibit 2. The court issued its opinion and order in March 2015. Exhibit 1. As set forth above in the Allegations of Error section of this application, the circuit court with respect to the GAAMPs conformance issue made the same errors that the district court did.

STANDARD OF REVIEW

This Court reviews a lower court's decision on a motion for reconsideration for an abuse of discretion and that standard is applicable in this case based on the district court's unwillingness to consider new evidence (MDARD's September 12, 2014 letter attached as Exhibit 11). *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 303 Mich App

441, 451; 844 NW2d 727 (2013). An abuse of discretion occurs “when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). This Court reviews questions of law *de novo*. *People v. Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998). Whether a state statute (in this case the RTFA) preempts a local ordinance (the Township’s zoning ordinance) is a question of statutory interpretation, which is a question of law. *Michigan Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003). A lower court’s findings of fact are reviewed for clear error. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

ARGUMENT

I. The Lower Courts Erred When They Found that Defendant Failed to Present any Evidence whatsoever that his Farm Conforms with Applicable GAAMPs When, in Fact, Defendant Presented Significant Evidence to Establish Conformance with the GAAMPs

The circuit court and district court’s opinions and orders related to defendant failing to prove (or for that matter to present any evidence *whatsoever*) that defendant’s farm conformed with the GAAMPs are erroneous and are based on a misunderstanding of how the GAAMPs and related provisions of the RTFA, MCL 286.471 *et. seq.* (relevant RTFA provisions are attached as Tab F) work.

Both of the lower courts properly found that defendant was operating a farm as defined under the RTFA. The circuit court explained on page 5 of its opinion (attached as Exhibit 1): “[t]his Court finds that the record supports the lower court’s finding that there is no dispute that [defendant] was operating a farm, and that he was doing so for commercial purposes. Thus, [the lower court’s] finding that the first prong of the RTFA is met is not erroneous and must stand.” Defendant obviously agrees with the lower courts’ finding in this regard. But then the circuit court (affirming the same error that the district court made) improperly and erroneously states

that the district court was “not presented with any evidence *whatsoever* that the farm was in GAAMPs compliance, and so [the lower court’s] ruling for the Township cannot be said to be erroneous: and it shall be left undisturbed.” Exhibit 1 at pages 5-6 (emphasis added). The district court made the same error in concluding that defendant failed to provide evidence of conformity with the GAAMPs. Exhibit 3 at page 4.

In fact, defendant presented evidence that the farm was complying with the applicable GAAMPs, including a May 29, 2013 MDARD letter to Ben Martin (attached as Exhibit 15). Martin runs the crop production, including the hoop house, at the farm. The May 29 letter indicates that MDARD performed a MAEAP verification at the farm and MDARD certified that the farm met the MAEAP cropping system verification. In addition, the MDARD letter further explained that MDARD understood that Martin and Nieuwenhuis intended to manage the farm in accordance with the applicable GAAMPs (Exhibit 15). In addition, defendant submitted into evidence a May 6, 2014 MDARD letter to Nieuwenhuis and in that letter MDARD confirmed that the farm received additional MAEAP verification and again indicated that it was MDARD’s understanding that Martin and Nieuwenhuis intended to manage the farm in accordance with the applicable GAAMPs (Exhibit 10). The lower courts erred when they concluded that defendant failed to present any evidence *whatsoever* that the farm complied with the applicable GAAMPs. To the contrary, defendant presented significant evidence that the farm complied with the applicable GAAMPs. And when you consider as set forth in section II of this Argument below that later in 2014 after MDARD performed its GAAMPs inspection at the farm that MDARD confirmed in writing (MDARD letters attached as Exhibits 11-12) that the farm conformed with the GAAMPs that is further substantial proof that the farm also conformed with the GAAMPs in May 2014 at the time the Township issued the citations to the defendant.

II. The Lower Courts Erred When They Found Contrary to Other Precedent and the RTFA that Defendant Needed to Prove with Actual Written Documentation from MDARD at the Time in May 2014 When the Township Issued Citations to Defendant this his Farm Conformed to the GAAMPs

The day after the district court held the August 6, 2014 hearing defendant filed a supplemental brief (attached as Exhibit 17) with that court attaching to the brief a copy of the Marquette Circuit Court's decision in *Forsyth Township v. Buchler*, No. 12-50325 (Dec. 18, 2012) (unpublished) (attached as Tab C). In defendant's supplemental brief and in the *Forsyth* opinion, there is explanation about how things work at MDARD with respect to reviewing a farm for GAAMP conformance. On pages 6-7 of the *Forsyth* decision, that court explained that the farmer (Buchler – that farm is located in the UP) could not get MDARD to schedule a GAAMPs inspection, so the farmer applied for MAEAP certification. Following a site visit and inspection by MDARD, the farm was certified under the MAEAPs. Wayne Whitman with MDARD testified in the *Forsyth* case with respect to the relationship between the MAEAPs and GAAMPs as follows: “[i]t is consistent that in order for a farm to achieve verification under the MAEAP program, they need to meet the Right to Farm GAAMPs that apply to their farm operation.” Whitman in his testimony went on to indicate that a farm that has received MAEAP verification by definition then meets the requirements of the applicable GAAMPs. Neither of the lower courts acknowledged what the Court in *Forsyth* did – namely that it is and would be nearly impossible for MDARD to in advance of an issue being raised by a municipality or a private citizen/neighbor to perform a GAAMPs inspection of every farm in Michigan. Of course, the RTFA does not contemplate that MDARD will pre-inspect all farms to determine which farms are or are not conforming to the applicable GAAMPs. Instead, MCL 286.474 (attached as part of Tab F) provides that complaints can be made by municipalities or others and those complaints will be investigated by MDARD. So, the Township in this case had a right (and perhaps a

responsibility) under the RTFA statute prior to issuing the citations in May 2014 (the citations are attached as Exhibits 8 and 9) that resulted in this case to ask MDARD to investigate whether the defendant's farm conformed with applicable GAAMPs. Unfortunately, the Township failed to make such a request to MDARD. If the Township would have done so, then part of MDARD's investigation would have involved a determination whether the defendant's farm conformed with the applicable GAAMPs. Instead of doing that, the Township simply issued the citations and alleged that the farm was operating in violation of the Township's zoning ordinance (the relevant portions of the Township zoning ordinance are attached as Exhibit 7).

As the record before the lower courts reveals, ultimately in September and October of 2014, Nieuwenhuis received written confirmation from MDARD that the farm did conform to the applicable GAAMPs (the MDARD letters dated September 12, 2014 and October 2, 2014 are attached as Exhibits 11 and 12). Those letters merely confirmed that the farm practices and operations that were in place in 2013 and in May 2014 when the Township issued its citations to the farm related to raising goats and putting up a hoop house (as part of the farm's crop production) conformed to the GAAMPs. Nothing in terms of the farm's practices or operations changed between May 2013 or May 2014 when the farm received the MAEAP verification letters from MDARD (Exhibits 10 and 15) and September/October 2014 when MDARD verified in writing that the farm conformed to the GAAMPs. The lower courts failed to recognize what the court in *Forsyth* properly acknowledged – namely that it is going to be very unusual for a farm/farmer in advance of allegations being made against the farm that it does not conform with GAAMPs to have actual written proof from MDARD that the farm complies with the GAAMPs. The facts and circumstances in this case and in the *Forsyth* case support that. MDARD lacks the resources and manpower to perform GAAMPs inspections on every farm in Michigan. The

RTFA provides a mechanism for a township or others to request MDARD to perform a GAAMPs inspection. The Township for reasons only they know and failed to explain to either lower court did not make a request to MDARD for an inspection prior to issuing the citations in May 2014. So, for defendant to prove (actual written verification from MDARD) that the farm conformed with the GAAMPs, defendant had to arrange for MDARD to perform the GAAMPs inspection. That inspection occurred in August 2014 (August 27 as indicated in the September 12 letter – attached as Exhibit 11) and MDARD verified in writing that the farm conformed to the GAAMPs.

III. RTFA Preempts the Township's Enforcement of its Zoning Ordinance

The Township's zoning ordinance (relevant portion attached as Exhibit 7) conflicts with the RTFA. Section 300.404 requires a minimum lot area of five (5) acres for raising livestock. The Nieuwenhuis farm is less than 5 acres and he raises goat at the farm. The RTFA does not provide for a minimum lot size. Accordingly, the RTFA preempts. As indicate above, the lower courts have properly ruled that the farm is a commercial operation. There is no dispute about that. So, the remaining issue is whether the farm conforms with the GAAMPs and for the reasons set forth above in sections I and II of this Argument that has been established.

The RTFA was enacted to protect farmers from nuisance lawsuits, including from zoning ordinance violations or citations issued by local municipalities. *Belvidere Twp v Heinze*, 241 Mich App 324, 331; 615 NW2d 250 (2000). With respect to the livestock (goats) being raised on the farm after MDARD provided written confirmation in September/October 2014 (Exhibits 11-12), there is no argument (at least any credible argument) that the Township can make as to whether the farm conforms to the GAAMPs and is entitled to RTFA protection related to raising livestock as long as the farm continues to operate in accordance with the applicable GAAMPs. Exhibit 1 at page 6, footnote 1.

This Court should reach the same conclusion with respect to the Township's citation involving the hoop house at the farm. In its argument before the circuit court, the Township misconstrued and improperly represented to that court what the *Papadelis v. City of Troy*, 478 Mich 934, 733 NW2d 397 (2007) (attached as Tab A) stands for. As set forth in this Court's decision, *Papadelis v. City of Troy*, 2006 WL 2683385 (Sept 19, 2006)(Unpublished opinion of the Michigan Court of Appeals (attached as Exhibit B), the following are distinguishing facts from the underlying circumstances in *Papadelis* versus the facts and circumstances involved in this case:

1. The operation in *Papadelis* had nothing to do with livestock nor did it involve a hoop house that assisted with growing a crop. Instead, that case involved a nursery (two permanent greenhouses) for storing, growing, sustaining, nurturing and selling of floriculture and horticulture products.
2. The operation in *Papadelis* involved at least in part customers coming to the greenhouses to select and purchase nursery products. In this case, none of the goat meat or crops were or are sold at the farm and no customer business took or takes place at the farm. The commercial activity (sales) related to the goats and crops all took and takes place at another location(s).

Even though the Michigan Supreme Court's decision in *Papadelis* is brief, it is evident that the facts involved in that case shaped the Court's determination and those facts differ significantly from the facts and circumstances before this Court. Based on the facts related to the nursery operation and use of the greenhouses in *Papadelis*, the Court determined that the greenhouses were not "incidental to the use for agricultural purposes of the land" within the meaning of MCL 125.1502a(f) (that statute has been amended so the relevant statute subsection is now MCL 125.1502a(g) and it is attached as Tab D and the related provision in MCL 125.1510(8) is attached as Tab E). MCL 125.1502a(g) states that:

"Building" means a combination of materials, whether portable or fixed, forming a structure affording a facility or shelter for use or occupancy by individuals, animals, or property. Building does not include a building, whether temporary or

permanent, incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade.

Unlike the situation in *Papadelis* where the nursery was using its buildings (greenhouses) in the business of retail trade, those facts are not present in this case. Nieuwenhuis and Martin do not use their farm buildings (the hoop house or small building that the goats use) for anything involving retail trade. So, the building (hoop house) at issue in this case is “incidental to the use for agricultural purposes” The *Collins English Dictionary* (2003) defines “incidental” as “happening in connection with or resulting from something more important.” And that describes exactly what the hoop house building is for the Nieuwenhuis/Martin farm. The more important thing/activity at the farm is the farming operation (growing of crops). The incidental thing is the hoop house itself. Without the hoop house the farm could still grow crops, but the crops would not grow as well. MDARD has confirmed in its letters (Exhibits 11-12) that the farm, including the crop production aspects of the farm operation which includes the hoop house, conform to the applicable GAAMPs.

CONCLUSION

This application provides this Court with an opportunity to correct the errors made by the lower courts. Those errors include factual errors in that the lower courts improperly concluded that defendant failed to present any evidence *whatsoever* to prove that the defendant’s farm conformed to applicable GAAMPs when, in fact, defendant provided significant evidence to establish GAAMPs conformance. The lower courts’ errors also involved a legal misapplication and misunderstanding of the GAAMPs conformity requirements of the RTFA and specifically the timing of when a farmer needs to have written documentation from MDARD to establish GAAMPs conformance. The lower courts’ rulings in that regard would improperly force all Michigan farmers to try to schedule a GAAMPs inspection with MDARD in advance of the

farm/farmer ever having an allegation made against the farm/farmer that the farm fails to comply with the GAAMPs. Of course, this approach is not realistic and is not what is contemplated by RTFA or other court rulings.

For the reasons set forth in this application, defendant respectfully requests that this Court grant his application for leave to appeal and reverse the lower courts' rulings with respect to the GAAMPs conformance issue and find that defendant has established that his farm conforms to the applicable GAAMPs. Alternatively, defendant requests that this Court grant this application, reverse the lower courts' decisions regarding the GAAMPs issue and remand that issue to the lower courts with guidance to the lower courts that they consider the import of the MDARD letters regarding GAAMPs compliance issued in September and October 2014 and if necessary take additional testimony from the parties to determine whether those letters in combination with other evidence and testimony establish that the farm conformed with the GAAMPs at the time in May 2014 when the Township issued the citations to defendant. In addition, this Court directly or through direction to the lower courts should pursuant to MCL 286.473b (attached as part of Tab F) require the Township to pay defendant for all fees and expenses incurred to defend against the Township's citations.

Respectfully submitted,

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