Michigan State University Extension
Land Use Series

Selected Zoning Court Cases Concerning the Michigan Right to Farm Act

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

Background

This 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)

"Thirty seven million acres is all the Michigan we will ever have"
William G. Milliken

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

This is a fact sheet developed by experts on the topic(s) covered within MSU Extension. Its intent and use is to assist Michigan communities making public policy decisions on these issues. This work refers to university-based peer reviewed research, when available and conclusive, and based on the parameters of the law as it relates to the topic(s) in Michigan. This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for zoning or other regulation by Michigan municipalities and counties apply in other states. In most cases they do not. This is not original research or a study proposing new findings or conclusions.

> "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 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 (July 21, 2022). It is important to remember this is a moving target based on court interpretation. So, information here can change as a result of action by the Michigan Legislature, other court cases, or the Supreme Court.

Contents

Summary of Right to Farm Act Preemption

Local regulation of agriculture, farms, and agriculture activity is severely limited in Michigan:

> . . . .it is the express legislative intent that this [Right to Farm] act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this [Right to Farm] act or generally accepted agricultural and management practices [GAAMPs] 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.[2]

The statute does not prohibit local regulation of agriculture. It only prohibits local regulation of agriculture that is already addressed in the Right to Farm Act (RTFA) or in any of the GAAMPs. It is necessary to determine what can be locally regulated and what cannot. Here is a basic thought process you can use to determine how this works:

First, is the land use going to fall under the RTFA? That is, is it a farm or agriculture? Start by asking these questions:

1. Is the land use a "farm operation?" (Defined in the act: MCL 286.472(b).)
2. Is the operation producing "farm products?" (Defined in the act: MCL 286.472(c).)
3. Is it commercial?

If the answer is "yes" to each of these above[3] then it falls under the RTFA. The definitions of those terms are very broad and all inclusive. For example "commercial" can be as little as selling one egg in a year; there is no minimum threshold for "commercial."[4]

A fourth question may also apply. If this forth question applies, or not, is unsettled law.

4. Does the operation follow GAAMPs?

If the answer is "yes" to each of the four, above,[5] then the land use or activity applies under the RTFA. Note that following GAAMPs is a farmer's choice. As a result some attorneys advise against local government treating farmers that opt to follow GAAMPs differently from farmers that choose not to

[2] Brackets added, MCL 286.474(6)).

[3] The intent of the farm operation or whether it is a "hobby farm" is irrelevant. If it meets the criteria of farm operation, farm product, commercial, the Right to Farm Act applies.

[4] *Charter Township of Shelby v Papesh*, 267 Mich. App. 92, 704 N.W.2d 92 (2005)

[5] The intent of the farm operation or whether it is a "hobby farm" is irrelevant. If it meets the criteria of farm operation, farm product, commercial, the Right to Farm Act applies.

follow GAAMPs in order to avoid unequal treatment under zoning. These attorneys advise giving a "pass" to question four, or always answering it as "yes." Other attorneys do not share this concern. A local government should consult its attorney, who is experienced in municipal (planning and zoning) law as to how to handle this.

This first step determines if the land use falls under the RTFA. If it does not (one or more of the questions was answered "no"), then the RTFA does not apply, and local regulations do apply. If all three (or four) questions were answered "yes" then RTFA does apply, and certain local regulations are preempted.

Second, determine what local regulations are preempted and what local regulations are still enforceable. If the topic of the regulation is already covered in the RTFA or in any of the published GAAMPs, then local government cannot regulate it. If the topic is not in RTFA and not in any of the GAAMPs, then local regulation can still apply.

There is no easy way to review what topics are covered in GAAMPs. The RTFA is easier. Topics in RTFA, and thus off limits for local regulation are:

- Topics about a farmer's liability in a public or private nuisance law suit.[6]
- Topics about enforcement or investigation process for complaints involving agriculture.[7]
- Topic about conversion from one or more farm operation activities to other farm operation activities.[8]

However, GAAMPs cover a much broader range of topics than listed above. Efforts are made to keep GAAMPs up-to-date with the most current science-based best practices for farm operations. It is normal, each year, for advisory committees to the Michigan Commission of Agriculture and Rural Development to review each GAAMPs and update them. Early each year, the Commission adopts updated versions of the GAAMPs. Thus, local zoning authorities should expect revisions and changes to GAAMPs each year.[9]

Third, complicating things further, some GAAMPs delegate regulation authority back to the local unit of government. Examples of this (as of April 2015) include:

- Municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for urban agriculture (and designates existing agricultural operations present as non-conforming uses).
- Category 4 sites for livestock operations as determined in the Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMPs.
- Vehicle access and egress, building setbacks, parking (but not the surface of the parking lot), signs for Farm Markets as designated in the Farm Markets GAAMPs.
- Beer breweries, bonfires, camping, carnival rides, concerts, corn mazes, distilleries, fishing pond, haunted barns/trails, mud runs, play-scapes, riding stables, and winery/hard cider associated with Farm Markets as designated in the Farm Markets GAAMPs (or not considered as part of the Farm Market GAAMPs).

There are far more nuances to all this, including unsettled case law.

[6] MCL 286.473

[7] MCL 286.474

[8] MCL 286.472(b)(ix)

[9] Bookmarking/favoriting the webpage where current GAAMPs are made available and regularly checking that webpage is wise: www.michigan.gov/gaamps

Restrictions on Zoning Authority – Right to Farm Act

1964

Diponio v. Cockrum (Washtenaw County)

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

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

Village of Peck v. Hoist (Sanilac County)

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

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[10] 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."

[10] 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.*).

1988

Northville Township v. Coyne (Wayne County)

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

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 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

Jerome Township v. Milchi (Midland County)

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

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

Richmond Township v. Erbes (Osceola County)

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

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

Steffens v. Keeler (Livingston County)

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

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

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

Court: Michigan Court of Appeals (Unpublished[11] No. 172026 (1996))

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* I case on page 8, *Troy v Papadelis* II case on page 9, *Papadelis v* Troy III case on page 14, *Papadelis v Troy* IV case on page 16, and *Papadelis v Troy* V case on page 19.

Almont Township v. Dome (Lapeer County)

Court: Michigan Court of Appeals (Unpublished[12] No. 179297 (1997))

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

[11] Generally unpublished means there was not any new case law established. Unpublished opinions are not precedentially binding under the rules of *stare decisis* (MCR 7.215(c)(1). See *Dyball v Lennox*, 260 Mich. App. 698; 705 n 1 (2003)). A case is "unpublished" because there was not any new principal of law established (nothing new/different to report), or the ruling is viewed as "obvious." **An unpublished case may be a good restatement or summary of existing case law**. Unpublished cases need not be followed by any other court, except in the court issuing that opinion. But, a court may find the unpublished case persuasive and dispositive, and adopt it or its analysis. Unpublished cases often recite stated law or common law. Readers are cautioned in using or referring to unpublished cases; and should discuss their relevance with legal counsel before use.) Unpublished cases might be cited, but only for their persuasive authority, not precedential authority. One might review an unpublished case to find and useful citations of published cases found in the unpublished case.)

[12] See footnote number 3.

(1994), RTFA still offered protection (a la Northville Township v. Coyne on page 6) and declined to give the amendment retroactive effect.

1997

City of Troy v. Papadelis (Papadelis II) (Oakland County)

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

This case came back to the Court of Appeals when the Supreme Court vacated the 1996 judgement (see *Troy v. Papadelis* on page 8) and remanded the case for 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 8. See also *Troy v Papadelis* I case on page 8, *Troy v Papadelis* II case on page 9, *Papadelis v* Troy III case on page 14, *Papadelis v Troy* IV case on page 16, and *Papadelis v Troy* V case on page 19.

1998

Groveland Township v. Bowren (Oakland County)

Court: Michigan Court of Appeals (Unpublished[13] No. 175732 (1998))

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

Macomb Township v. Michaels (Macomb County)

Court: Michigan Court of Appeals (Unpublished[14] No. 206594 (1999))

[13] **Error! Main Document Only.**See footnote number 3.

[14] **Error! Main Document Only.**See footnote number 3.

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 10.

2000

Belvidere Township v. Heinze (Montcalm County)

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

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

Brandon Township v. Tippett (Oakland County)

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

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

Travis v. Preston (Branch County)

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

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

Macomb Township v. Michaels (Macomb County)

Court: Michigan Court of Appeals (Unpublished[15] No. 229228 (2003))

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 10), 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.

Milan Township v. Jaworski and Sexy Pheasant (Monroe County)

Court: Michigan Court of Appeals (Unpublished[16] No. 240444 (2003))

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

[15] **Error! Main Document Only.**See footnote number 3.

[16] See footnote number 3.

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)[17] 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.)

Padgett v. Mason County (Mason County)

Court: Michigan Court of Appeals (Unpublished[18] No. 236458 and 236459 (2003))

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:

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

[18] See footnote number 3.

> "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

Village of Rothbury v. Double JJ Resort Ranch (Oceana County)

Court: Michigan Court of Appeals (Unpublished[19] No. 246596 (2004))

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

Shelby Township v. Papesh (Macomb County)

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

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.

[19] See footnote number 3.

> "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]."

King of the Wind Farms v. Michigan Commission of Agriculture (Macomb County)

Court: Michigan Court of Appeals (Unpublished[20] No. 257097 (2005))

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 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

Papadelis v. Troy (Papadelis III) (Oakland County)

Court: Michigan Court of Appeals (Unpublished[21] No. 268920 (2006))

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 8 and 9). 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

[20] See footnote number 3.

[21] See footnote number 3.

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.

The court's ruling in this case could effectively preclude any form of zoning regulation with respect to farm operations so long as the farm conforms to GAAMPs or was in existence before the adoption of relevant zoning regulations. In doing so the court noted:

> we are aware that . . . a business could conceivably move into an established residential neighborhood and start a farm or farm operation in contravention of local zoning ordinances as long as the farm or farm operation conforms to generally accepted agricultural and management practices. Although we might personally disagree with the wisdom of the policy choice . . . we are without the authority to override the clearly expressed intent of the legislature.

Application for appeal was made to the Michigan Supreme Court (see *Papadelis v Troy* IV case on page 16).

See also *Troy v Papadelis* I case on page 8, *Troy v Papadelis* II case on page 9, *Papadelis v* Troy III case on page 14, *Papadelis v Troy* IV case on page 16, and *Papadelis v Troy* V case on page 19.

Armada Township v. Marah (Macomb County)

Court: Michigan Court of Appeals (Unpublished[22] No. 268142 (2006))

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.

[22] See footnote number 3.

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

Papadelis v. City of Troy (Papadelis IV) (Oakland County)

Court: Michigan Supreme Court ORDER[23] (478 Mich. 934; 733 N.W.2d 397; 2007 Mich., June 29, 2007)

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

[23] 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.

> 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 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 14. See also *Troy v Papadelis* I case on page 8, *Troy v Papadelis* II case on page 9, *Papadelis v* Troy III case on page 14, *Papadelis v Troy* IV case on page 16, and *Papadelis v Troy* V case on page 19.

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

People v. Templeton (St. Clair County)

Court: Michigan Court of Appeals (Unpublished[24] No. 271082, November 13, 2007)

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

[24] See footnote number 3.

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

Woodland Hills Homeowners Ass'n of Thetford Twp. v. Thetford Twp. (Genesee County)

Court: Michigan Court of Appeals (Unpublished[25] No. 275315, May 20, 2008)

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 13) 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.)

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

2009

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

Court: Michigan Court of Appeals (Unpublished[26] No. 286136, December 15, 2009)

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

[25] See footnote number 3.

[26] See footnote number 3.

in this lengthy land use dispute. (See also *Troy v Papadelis* I case on page 8, *Troy v Papadelis* II case on page 9, *Papadelis v* Troy III case on page 14, *Papadelis v Troy* IV case on page 16, and *Papadelis v Troy* V case on page 19.)

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 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 16)) 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

2011

Law review article: "When Urban Agriculture Means Michigan's Right to Farm Act: The Pig's in the Parlor"

By Patricia Norris, Gary Taylor, and Mark Wyckoff; *The Michigan State Law Review*; 2011MICH. ST. L. REV. 365.

In this article, the authors contend that judicial interpretations of the Right to Farm Act (RTFA) and the changing nature of Michigan agriculture-in particular, the rapidly-growing interest in urban agriculture-have raised several concerns and presented potential conflicts that suggest it is time, once again, to revisit the RTFA. Specifically:

1. The RTFA affords nuisance protection to those farms using generally accepted agricultural and management practices (GAAMPs); however, judicial interpretations arguably have expanded the scope of GAAMPs beyond that envisioned by the Michigan legislature. Yet, the applicability of GAAMPs for urban environments has not been explicitly considered.
2. The RTFA was originally adopted to protect farms and farmland in rural areas from encroachment by those "coming to the nuisance;" however, the RTFA now affords farms the right to bring the nuisance to town.
3. The RTFA preempts local laws that extend, revise, or conflict with its provisions; however, judicial interpretations have led to the preemption of even the most basic zoning regulations designed to minimize land use conflicts and protect the public health and safety of urban residents.

The balance of the article addresses these concerns, describes in more detail the conflicts created, and proposes potential legislative responses that could ameliorate the potential dampening effect of the RTFA on the burgeoning urban agriculture movement in Michigan.

Copy of the article: http://www.msulawreview.org/PDFS/2011-2/Norris.pdf (found at web page: http://www.msulawreview.org/Issues.aspx?ID=53)

2012

County of Mason v. Indian Summer Coop., Inc. (Mason County)

Court: Michigan Court of Appeals (Unpublished[27] No. 301952, August 16, 2012)

This abatement-of-a-nuisance action concerned whether a county zoning ordinance and state law required an agricultural cooperative to obtain special land-use zoning permit and construction code permit before beginning construction on both a warehouse that is to be used to store packaged processed-fruit products and an addition to a processing plant to store a snowplow and a boiler. The Appeals Court held, *inter alia*, that the ordinance required the defendant-cooperative to obtain special land-use permits to construct the warehouse and the addition.

Thus, the Appeals Court reversed the trial court's order granting summary disposition in favor of the cooperative.

Mr. H, the cooperative's president, approached the county as to the possible construction of a new warehouse on the parcel that was needed for a "labeling line" and "more warehouse space" to accommodate the storage of its "finished" product in plastic packaging containers in response to its customers' needs. Although H had plans for the building construction, he tried to obtain a construction code building permit without going through "the special land use process." R, the county's zoning and building director and zoning administrator, informed H that no permit would be issued without further documentation required by the county zoning ordinance. H insisted that he did not have to comply with the special land-use permit process.

R contacted the MDA to determine whether the cooperative was exempt from local zoning ordinances under the Michigan Right to Farm Act (RTFA) (MCL 286.471 *et seq.*). The Michigan Department of Agriculture (MDA) informed R that the cooperative was not exempt. The county filed a nuisance complaint against the cooperative, alleging that the cooperative's "actions in erecting a structure on the real property without securing the requisite zoning approval" and the "offending structure" that was "created on [the cooperative's] premises by the construction" were nuisances.

After the cooperative submitted an application "under protest" for special land-use approval, the Planning Commission held a public hearing, and the cooperative's site plan and special land-use application were approved. The county's employees "observed the cooperative constructing a new addition to the east side of its main processing plant," an activity not part of the approved site plan. Thus, the county issued another stop-work order and eventually a citation for violating the stop-work order.

The Appeals Court held that it could not conclude that the county improperly classified the use of the parcel as "agribusiness." Contrary to the cooperative's argument on appeal, the use of the parcel could not be classified as farming under the ordinance. The evidence showed that crops were not being grown on the parcel. Instead, the parcel "was used for processing and, with the new construction of the warehouse, for the purposes of labeling and storage of the cooperative's finished product before distribution to customers." Under the zoning ordinance, "commercial storage, processing, distribution, marketing, or shipping operations shall not be considered part of the farming operation." Also, the cooperative's use of the parcel fell within the ordinance's definition of "agribusiness."

The Appeals court held that given that the ordinance's definition of "agribusiness" included and was not limited to "the processing of farm products," the "cooperative's processing of fruit and its storage of

[27] See footnote number 3.

processed farm products" - "finished" apple products - on the parcel fell within the ordinance's definition of agribusiness. Reversed.

(Source: State Bar of Michigan *e-Journal* Number: 52464, ,August 30, 2012)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2012/081612/52464.pdf

Brown v. Summerfield Twp. (Monroe County)

Court: Michigan Court of Appeals (Unpublished[28] No. 304979, August 23, 2012)

The Appeals Court held that the trial court properly granted summary disposition on the plaintiff's Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) claim because she offered no evidence that she was engaged in a commercial operation. The trial court also did not err in granting summary disposition on her substantial due process claim because the ordinance was not unreasonable, and the trial court did not err in granting summary disposition on her equal protection claim because she provided no evidence that the defendant-township treated any other person differently.

She claimed on appeal that the RTFA preempts a township ordinance that prohibited her from keeping horses on property less than 1½ acres. The trial court granted defendant's motion based on its finding that plaintiff was not engaged in a commercial farming operation. The RTFA preempts ordinances only to the extent that they impose restrictions on commercial farming operations. Thus,

> any township ordinance, including a zoning ordinance, is unenforceable to the extent that it would prohibit conduct protected by

the RTFA, which includes ordinances requiring minimum lot sizes, which the Generally Accepted Agricultural and Management Practices (GAAMPs) do not address (*Shelby Twp v Papesh*, 267 Mich App 92, 107; 704 NW2d 92 (2005)). In other words, the RTFA does not apply to property owners who are not engaged in a commercial operation for profit.

MCL 286.472(b) defines farm operation as activity conducted "in connection with the commercial production, harvesting, and storage of farm products." Plaintiff cited to the reference in this statute, MCL286.472(b)(vii), to "the care of farm animals." However, this subsection is part of a list of possible farm activities that might be conducted in connection with commercial production, harvesting, and storage. It does not create an exception to the commercial requirement.

Plaintiff offered no evidence that she kept horses for profit, either through breeding, boarding, or horse riding. Affirmed.

(Source: State Bar of Michigan *e-Journal* Number: 52540, September 6, 2012)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2012/082312/52540.pdf

Oberly v. Dundee Twp. (Monroe County)

Court: Michigan Court of Appeals (Unpublished[29] No. 304122, September 20, 2012)

The court held, *inter alia*, that the plaintiffs did not make a sufficient showing of disparate treatment or enforcement by the defendant-Township as to similarly situated individuals. Weighing against plaintiffs' claim of disparate treatment was the indication that the Township received complaints about the

[28] See footnote number 3.

[29] See footnote number 3.

conduct of plaintiffs' auctions, but did not receive any such complaints as to the other businesses cited by plaintiffs and alleged to be similarly situated.

The case involved the propriety of ongoing auctions conducted by plaintiffs on their agriculturally zoned property allegedly in violation of the Township's ordinances. The auctions conducted on the property were primarily through Dundee Auction Services and involved the sale of personal property on a commission basis. Plaintiffs acknowledged that the property at issue is zoned for agricultural use and that they have regularly conducted auctions on the property, averaging two auctions occurring every month with about 100 to 150 people attending each event.

In 2001, the Township notified plaintiffs of an intent to preclude the ongoing conduct of auctions on their property. Plaintiffs retained counsel to negotiate with the Township on their behalf. No particular enforcement action was taken by the Township and plaintiffs' auctions continued unimpeded until 2007. The Township sent plaintiffs a letter indicating that it had received complaints as to the commercial use of the property zoned agricultural. The Township sued plaintiffs but the case was voluntarily dismissed. The plaintiffs initiated a second suit, and the defendants filed a motion for summary disposition, which the trial court granted as to all claims except the plaintiffs' claim of a violation of their rights to equal protection. The trial court later dismissed that claim also.

On appeal plaintiffs alleged, *inter alia*, that the trial court erred in dismissing their claim that defendants violated their equal protection rights and relied on an improper affidavit. Plaintiffs asserted that the Township treated them differently than it treated other individuals conducting business or commercial operations on their properties. The court disagreed where the plaintiffs failed to make the requisite showing of identical non-complying usage, rendering their constitutional argument of violation of their right to equal protection without a basis in the record.

Plaintiffs also challenged the grant of summary disposition in favor of defendants premised on the trial court's failure to apply the Michigan Right to Farm Act (RTFA), M.C.L. 286.471 *et seq*., and the Michigan Department of Agriculture's Generally Accepted Agricultural Management Principles (GAAMPs). The court reviewed the applicability of the RTFA ("farm", "farm operation", "farm product", "commercial") and GAAMPS. There appeared to be no dispute that various agricultural activities have continued unimpeded by defendants.

> Rather, the conflict centers on whether plaintiffs' conduct of auctions on their agriculturally zoned property falls under the protections proffered by the RTFA. . . . . Plaintiffs' routine conduct of commission-based auctions is not the type of activity that the RTFA was intended or designed to protect. Clearly, the statutory intent is to protect farms and farmers from facing nuisance litigation premised on activities inherent in a farming operation, which are statutorily defined as including "the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products." MCL 286.473(1)(b).

The Township did not threaten plaintiffs' right to farm their land. But plaintiffs argued to "extend the protections of the RTFA to any activity, including auctions, conducted on agricultural property as long as some portion or percentage of the items sold at the auction constitute a good or service produced by the farm." The plaintiffs argued auctions fall within the meaning of a "farm market", as defined in the Farm Market GAAMP. The court found that a commission-based auction would not include 50% or more are produced on and by the affiliated farm.

In addition, plaintiffs ignore additional language within GAAMPs' definition of a farm market recognizing that such markets "may include marketing activities and services to attract and entertain customers and facilitate retail trade business transactions" but only "when allowed by applicable local, state and federal regulations." Such language is contrary to plaintiffs' assertion that the Township ordinances serving to restrict the conduct of auctions on their farm property are preempted by the RTFA.

Affirmed.

(Source: State Bar of Michigan *e-Journal* Number: 52741, October 5, 2012)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2012/092012/52741.pdf

2013

Township of Richmond v. Rondigo, LLC (Macomb County)

Court: Michigan Court of Appeals (Unpublished[30] No. 307520, February 21, 2013)

Based on the "law of the case" doctrine, the court held that the trial court correctly granted summary disposition to the plaintiff-Richmond Township.

> This appeal arises out of Richmond's attempt to enjoin and abate Rondigo's construction, expansion, and use of two access roads on its property at 26775 32 Mile Road in Richmond Township. Among other claims, this issue was addressed in a prior opinion issued by this Court in *Twp of Richmond v Rondigo, LLC*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2010 (Docket Nos. 288625, 290054). This Court explained the facts as follows:
>
> > Rondigo owns farm property, and it intended to implement a nutrient management plan, which included extensive on-site composting, as part of an effort to naturally fertilize the farmland. Rondigo engaged in the improvement, extension, and construction of two access roads on the property to facilitate the hauling of leaves, grass, and yard waste for composting purposes. The township disapproved of and challenged Rondigo's roadwork activities, arguing that Rondigo never obtained proper township approval. In two separate complaints, the township alleged, in pertinent part, that the roadwork construction projects violated various provisions of the township zoning ordinance and violated the township's engineering standards ordinance, thus constituting nuisances per se that required abatement. The township also contended that Rondigo's composting operation violated township ordinances and constituted a nuisance. [Id., slip op p 2.]
>
> The trial court consolidated Richmond's complaints, and ruled that Rondigo's ability to conduct a composting operation on the property is protected by the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) and the Michigan Department of Agriculture's generally accepted agricultural management practices, and that these preempt any conflicting local ordinance with regard to Rondigo's composting activities.

This was the second case arising from the parties' dispute. The trial court ruled that, in the court's opinion in the first case, the court held that Rondigo was required to comply with Richmond's zoning and

[30] See footnote number 3.

engineering ordinances and that Rondigo violated the ordinances when it constructed the roads without Richmond's approval.

Because the issue was resolved in the prior case, the trial court held that Richmond was entitled to have Rondigo's use of the roads abated on remand from the court. In its prior opinion, the court observed that construction on the east access road "began after the trial court enjoined work on the west-side roadway." Further, the court unequivocally ruled that Richmond's ordinances applied to Rondigo's construction, expansion and use of both access roads and that Rondigo violated the ordinances by failing to comply with them. These legal rulings were binding on the trial court and on the Appeals Court. Also, the law of the case doctrine precluded Rondigo from claiming that Richmond had to move on remand to stop Rondigo's use of the west access road or that the ordinances did not apply to the east access road because a driveway existed on the east side of the property when Rondigo purchased the land. The doctrine also precluded the court from deciding the merits of those claims because it already ruled that Rondigo violated Richmond's ordinances by constructing, expanding, and using both access roads.

The court gave Rondigo the opportunity to raise its claims as to the west access road and Rondigo declined. Further, to the extent Rondigo's "existing driveway" theory for the east access road was addressed in the prior case, that record was before the court and it ruled that the ordinances applied to both access roads, that Rondigo was required to comply with the ordinances, and that it violated the ordinances by failing to do so. While Richmond could have sought abatement on remand, the court's ruling

> made clear that it was incumbent upon Rondigo to comply with the ordinances by seeking township review and approval before it used, improved, or expanded the access roads. Rondigo disregarded this, and resumed activities on the roads without any effort to comply with the ordinances.

After warning Rondigo to cease its use of the roads because of its noncompliance, Richmond filed this action to enjoin Rondigo's further activities. This was both necessary and logical in light of the court's prior decision and Rondigo's continuing conduct. Further, the trial court correctly ruled the uses were nuisances per se under MCL 125.3407, and the trial court was obligated under the statute to abate the nuisances.

(Source: State Bar of Michigan *e-Journal* Number: 54030, March 14, 2013)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2013/022113/54030.pdf

Lima Twp. v. Bateson (Washtenaw County)

Court: Michigan Court of Appeals (Published Nos. 306575 and 306583, 302 Mich. App. 483; 838 N.W.2d 898; 2013 Mich. App. LEXIS 1525, September 19, 2013)

The court held that the trial court erred in granting the appellee-Lima Township's motion for summary disposition because the trial court erred in applying Michigan's Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) and there were genuine factual issues as to whether appellants' activities were protected under the RTFA. The court also held that the RTFA is an affirmative defense and that the party relying on the defense has the burden of proof by a preponderance of the evidence. Further, the evidence presented by the parties required the trial court to weigh all of the evidence and articulate findings of fact to determine whether appellants proved by a preponderance of the evidence that the alleged nuisance conditions and activities arose from the commercial production of trees. It erred in failing to do so.

Appellant-Gough, appellant-Bateson's wife, purchased approximately 30 acres of land zoned AG-1 (agricultural) in Lima Township (the property). Later, Lima filed a complaint for injunctive relief against

appellants, alleging improper use of the property and improper storage of commercial vehicles, materials, and equipment on the property. Lima alleged that Bateson was using the property to conduct commercial business operations and store commercial vehicles and equipment. Lima claimed that these uses were not permitted under the Lima Township Zoning Ordinance (LTZO) and were a nuisance per se.

On the same day Lima filed its complaint, Gough filed a complaint for declaratory relief against Lima, alleging that she and Bateson were developing a tree farm on the property, activity that was permitted in the AG-1 zone. Gough alleged that she had certain materials, supplies, equipment, and vehicles delivered to the property for purposes of preparing the property for the tree farm. Gough requested an order declaring that she was permitted to maintain the equipment on the property. On appeal, appellants contended that summary disposition was inappropriately granted in favor of Lima because the trial court made credibility determinations and resolved factual disputes. The trial court held an evidentiary hearing where both parties presented evidence. It then proceeded to make findings based on that evidence by concluding that appellants' activities were prohibited under the LTZO and not protected by the RTFA. Based on those findings, the trial court granted summary disposition in favor of Lima. The court held that this amounted to error. Reversed and remanded. The court retained jurisdiction and provided an order as to the further proceedings.

In reviewing this case the Appeals Court reviewed the RTFA, and made the following points:

1. However, "[u]nder the RTFA, a farm or farming operation cannot be found to be a nuisance if it meets certain criteria. . . ." (MCL 125.3407; *Travis v Preston*, 249 Mich App 338, 351; 643 NW2d 235 (2002) at 342-343. [page 11, here])
2. "... we hold that a party relying on the RTFA as a defense in a nuisance action has the burden to prove that the challenged conduct is protected under the RTFA.
3. "In keeping with our State's jurisprudence on the applicable *standard* of proof, [because the RTFA is silent and there is no published case law addressing the issue] we hold that, where a party asserts the RTFA as a defense, the party asserting the defense bears the burden to prove by a *preponderance of the evidence* that the challenged conduct is protected under the RTFA. **[emphasis and brackets added]**
4. "it is clear that in determining whether an activity is protected under the RTFA, a two-prong analysis is required: first, the activity must constitute either a "farm" or a "farm operation," and second, the "farm" or "farm operation" must conform to the applicable generally accepted agricultural and management practices. (GAAMPs).
5. "As noted above, in order for a party to successfully assert the RTFA as a defense, that party must prove the following two elements: (1) that the challenged condition or activity constitutes a 'farm' or 'farm operation' and (2) that the farm or farm operation conforms to the relevant GAAMPs."

   "Farm" and "farm operation" means the land, plants, animals, buildings, structures, machinery, and so on which are used in the "commercial production" of "farm products" and is not limited to a longer list of activities and operations found in the RTFA (MCL 286.472.)
6. ". . . . . under "the plain language of the RTFA, a farm or farming operation cannot be found to be a nuisance if it is commercial in nature and conforms to GAAMPs . . . . (*Shelby Twp v Papesh*, 267 Mich App 92, 107; 704 NW2d 92 (2005)) at 101. [page 14, here])

7. "This Court has previously defined "commercial production" as "the act of producing or manufacturing an item intended to be marketed and sold at a profit." (*Shelby* at 101.) However, "there is no minimum level of sales that must be reached before the RTFA is applicable." (*Shelby* at 101 n 4. [page 14, here])"
8. If a party asserting an RTFA defense successfully proves that they maintain a farm or are engaged in a farm operation, then the party must also prove that the farm or farm operation complies with applicable GAAMPs "according to policy determined by the Michigan commission of agriculture." MCL 286.473(1). A party can satisfy this element by introducing credible testimony or other evidence to show that their farm or farm operation complies with applicable GAAMPs as set forth by the Michigan Commission of Agriculture.

Thus trees are "farm products", but not resolved is if the appellants' showed a preponderance of evidence of intent to produce trees for sale. Also the compliance with GAAMPS was not established in the trial court (the the appellants (the farmer) having the burden of proof). In a footnote the court said:

> If, on remand, the trial court determines that appellants are engaged in the commercial production of a farm product, then the LTZO is inapplicable. See *Travis v. Preston*, 249 Mich App at 344 [page 11, here]. However, if the trial court determines that the RTFA does not apply, before awarding injunctive relief, it should articulate findings as to whether appellants are in violation of the LTZO. See id. at 351; MCL 125.3407. (p. 10, n. 7)

For those interested in RTFA case law, this court case is worth reading in its entirety.

(Source: State Bar of Michigan *e-Journal* Number:55435, September 23, 2013.)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2013/091913/55435.pdf

Sena Scholma Trust v. Ottawa County. Road. Commission (Ottawa County)

Court: Michigan Court of Appeals (Published No 308486, 303 Mich. App. 12; 840 N.W.2d 186; 2013 Mich. App. LEXIS 1751, October 24, 2013)

The court held that the plaintiffs were not entitled to any relief under the driveways, banners, events and parades act ("the Driveway Act") (MCL 247.321 *et seq.*) or the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*), and reversed and remanded for entry of judgment in favor of defendant-Ottawa County Road Commission (Road Commission) (OCRC).

After a bench trial, the trial court entered an order requiring the Road Commission to allow the plaintiffs reasonable access to a 30-acre parcel of undeveloped land from Horizon Lane (a temporary cul-de-sac in an adjacent subdivision) for farm operations. Traditional access to the 30 acres was from 56th Avenue, but that access has been hampered from wet conditions during spring). The plaintiff-Trust owns the property and plaintiff-Morren farms it. The plaintiffs submitted a permit application to the Road Commission for a field driveway from Horizon Lane. After the Road Commission denied the permit application, plaintiffs sued.

Plaintiffs requested declaratory relief for violations of the Driveway Act and the RTFA. The Driveway Act enables city, village, and county road commissions the ability to promulgate rules for driveways, banners, events, and parades. That may be done by adopting rules formulated by the Michigan Department of Transformation or adopting local rules. In this case the Road Commission adopted its own rules. The RTFA (MCL 286.474(6) 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.

The trial court held that under the Driveway Act, the Road Commission was required to consider the RTFA and the agricultural aspects of some of the property because the statutes work "hand in hand." Further, the trial court held that the Road Commission was required to grant plaintiffs access to the property from Horizon Lane. The Road Commission appealed.

The Appeals Court disagreed where "the OCRC's denial of the permit application had a sufficient reasoned basis and evidentiary support. The decision was not a totally unreasonable exercise of power by the OCRC." Thus, plaintiffs were not entitled to any relief under the Driveway Act. The court also held that the RTFA was not implicated by defendant's actions. This case was similar to *Papadelis v. City of Troy* (478 Mich 934; 733 NW2d 397 (2007)) (*Papadelis* IV page 16 here), where the Michigan Supreme Court held that the RTFA did not exempt the plaintiffs from a zoning ordinance governing the requirements for construction of a building used for agricultural purposes. Here, "nothing in the RTFA or the GAAMPS [generally accepted agricultural and management practices] addresses the permitting or location of field driveways."

> Further, the **Legislature intended the RTFA to be used as a shield by farmers**. It enacted the RTFA to protect farmers from nuisance lawsuits. *Travis v. Preston* (On Rehearing), 249 Mich App at 342-343 (page 11 here); *Northville Twp*, 170 Mich App at 448-449 (page 6 here); *Papesh*, 267 Mich App at 99 (page 13 here). The RTFA provides a defense to farmers in order to protect their farms or farm operations when the farms or operations are claimed to be a nuisance, including for the reasons stated in MCL 286.473. *Id*. However, plaintiffs are not using the RTFA as a shield, and no one has claimed the farm to be a nuisance. Plaintiffs thus are not using the RTFA for its intended purpose of protecting a farming operation from an action by the OCRC (or anyone else). **Rather, plaintiffs are using the RTFA as a sword**, seeking to force the OCRC to grant them access to the property from Horizon Lane, because the conditions of the property, especially in early spring, make it difficult, less effective, or perhaps even sometimes impossible, to access the west side of the property from 56th Avenue. However, no provision of the RTFA requires a local unit of government to take affirmative action, and to thereby change the status quo, to allow or enable a farmer to more effectively comply with the GAAMPs.
>
> — Emphasis added

Thus, no conflict existed between the Road Commission's denial of the permit application and the RTFA and the GAAMPs. The RTFA did not preempt the Road Commission's denial of the permit application and plaintiffs were not entitled to any relief under the RTFA.

(Source: State Bar of Michigan *e-Journal* Number: 55669, October 28, 2013.)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2013/102413/55669.pdf

2014

Township of Webber v. Austin (Lake County)

Court: Michigan Court of Appeals (Unpublished[31] No. 313479, April 22, 2014)

The court held that the trial court erred in ruling for the defendant because its ruling directly contradicts the recently-decided *Lima Twp. v. Bateson* (page 26) decision.

The plaintiff-township sought to enjoin defendant him from using property he obtained for a horse rescue project, claiming it violated the commercial zoning ordinance. The trial court entered a preliminary injunction, which required defendant to cease the project. It later ruled in favor of defendant and awarded attorney fees and costs.

On appeal, the court agreed with plaintiff-township that the trial court erred by determining that defendant's horse rescue project was a valid nonconforming use of the property.

> The undisputed trial evidence demonstrates that the horse rescue project was significantly different than [defendant's-Austin's] predecessors' use of the property. The predecessors did not raise livestock on the property, nor did they offer livestock for sale.

Thus, "his horse rescue project was not a nonconforming use."

The court also agreed with plaintiff that the trial court erred by declining to receive evidence concerning compliance with the Generally Accepted Agricultural Management Practices (GAAMPs), finding that its "refusal to consider the GAAMPs in this case is directly contrary to the *Bateson* holding."

However, the court rejected plaintiff's argument that the trial court erred by determining that the horse rescue project was a commercial production within the meaning of the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*), finding there was no clear error in the trial court's determination.

> The RTFA does not define the term "commercial production." In *Shelby Charter Twp v Papesh*, 267 Mich App 92, 100-101; 704 NW2d 92 (2005) [page 13], the Court defined commercial production under the RTFA as "the act of producing or manufacturing an item intended to be marketed and sold at a profit." The *Papesh* Court noted "there is no minimum level of sales that must be reached before the RTFA is applicable." *Id.* at 101 n 4. Similarly, the *Bateson* Court determined that a farmer has the burden of proving by a preponderance of the evidence that he or she intended to produce farm products and to sell them at a profit (302 Mich App at 498).

Finally, the court concluded that, under *Vugterveen Sys., Inc. v. Olde Millpond Corp.* it was required to vacate the award of costs and attorney fees and remand with instructions to reinstate the award if defendant prevails on remand. Reversed and remanded.

(Source: State Bar of Michigan *e-Journal* Number: 56972, May 20, 2014)

Full Text Opinion: http://www.michbar.org/opinions/appeals/2014/042214/56972.pdf

[31] See footnote number 3.

2015

Township of Williamstown v. Hudson (Ingham County)

Court: Michigan Court of Appeals (311 Mich. App. 276; 874 N.W.2d 419; 2015 Mich. App. LEXIS 1344, No. 321306, May 19, 2015)

[This opinion was originally released as an unpublished opinion on May 19, 2015, now a published case.]

Holding that the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) did not protect the defendant's Hudson family farm from the plaintiff-Township's zoning ordinances in light of the trial court's determination that the farm was not in compliance with the Manure Management and Utilization Manual (Manure Manual), the court affirmed the trial court's ruling that the farm was a nuisance *per se* and enjoining defendant's farming operations.

In 2012 the defendants started the farm, with a variety of farm animals, in a zoning district where it was not disputed the zoning ordinance does not permit such animals. Defendant claimed they had RTFA protection because the farm was (1) a farm operation, (2) producing farm products, (3) which was commercial, and (4) followed generally accepted agricultural and management practices (GAAMPs). The township countered contending GAAMPs were not being followed.

The RTFA's protections constitute an affirmative defense. Thus "the party asserting RTFA protection bears the burden of proving" that:

(1) "the challenged condition or activity constitutes a 'farm' or 'farm operation'" and

(2) "the farm or farm operation conforms to the applicable GAAMPs."

Only the second element was at issue. The trial court held three GAAMPs applied to this farm, but lack of compliance existed with one of the GAAMPs concerning Manure Manual. As to the farm's manure practices, the investigation by an The Michigan Department of Agriculture and Rural Development (MDARD) Environmental Manager (W) "clearly outlined problems concerning direct discharge from a surface grate, as well as issues concerning a bare soil area, manure runoff, and necessary soil testing." Despite defendant's submission of two Manure Management System Plans (MMSPs), W indicated on August 23, 2013 that "the farm was still not compliant with the Manure Manual. Even worse, as of that date, MDARD still had not received any documentation" from defendant as to "the potential pollution on his property."

He did not contest the Manure Manual's applicability on appeal. Rather, he claimed the farm complied with it, citing his "wife's testimony that the farm complied with all applicable GAAMPs and that the necessary corrective action occurred after" W's most recent letter. However, because the substance of the trial court's ruling fell under MCR 2.504(B)(2), it was empowered "to make its own factual findings and credibility determinations, which it did." It found the wife's testimony "incredible based upon her contradictory statements regarding the number of animals on the farm and her understanding about how the property was zoned" when the family moved onto their land. It was on these grounds that the trial court apparently discounted her conclusion that their remedial measures (conducted after W's last letter) "satisfied the Manure Manual's requirements."

Finding that her testimony was "convoluted at best on these points," the court concluded that it was "in no position to disturb the trial court's decision to discount her testimony."

(Source: State Bar of Michigan *e-Journal* Number:60000, 60333; June 2, 2015, and July 7, 2015.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2015/070215/60333.pdf

2016

Charter Twp. of White Lake v. Ciurlik Enters. (Oakland County)

Court: Michigan Court of Appeals (Unpublished[32] Opinion No. 326514, May 12, 2016)

The court held, among other things, that because the defendant's large scale commercial composting operation was not a "farm" under the zoning ordinance, it was not a permitted use of AG-zoned land.

The MDEQ visited defendant's property after receiving complaints from surrounding property owners about the noxious odor emanating from the facility and discovered two violations of the Natural Resources and Environmental Protection Act (NREPA) (MCL 324.101 *et seq.*) . Plaintiff-township later notified defendant-Kiurlik Enterprises to conform to the zoning ordinance "by stopping the commercial composting operation and removing the material causing the noxious odors." Defendant failed to do so, and plaintiff filed this action.

Defendant argued that there was no zoning violation because its commercial composting operation fit the definition of a "farm" under the AG district in the zoning ordinance, as well as the definition of farm in the Right to Farm Act (RTFA). "Defendant also argued that the composting operation was entitled to immunity under the RTFA because, pursuant to MCL 286.473(1), a farming operation cannot be considered a nuisance." Further even if a commercial composting facility was not a permitted use of AG-zoned land there cannot be exclusionary zoning (MCL 125.3207) totally prohibiting the land use with a demonstrated need.

The trail court found the land use was not a farm, it was a commercial composting facility; "no issue of material fact existed that" defendant's noxious odors violated the zoning ordinance; "no issue of material fact existed that" defendant violated NREPA; that this was not a case of exclusionary zoning (composting as part of a farm operation is permitted).

On appeal, the parties disagreed on the process the court should use to define "farming" for purposes of the zoning ordinance (dictionary definition or past practice of application of the zoning ordinance). However, the same result was reached either way. Defendant "operates a commercial composting facility that does not produce plants or animals." Rather, it "accepts yard waste from offsite sources, completes the composting procedure, and sells the finished product." Its operation

> does not even closely relate to any of the listed examples of permissible activities provided by the [zoning] ordinance. Finally, the operation of a commercial composting business is not within the intent of the agricultural district: "to protect land needed for agricultural pursuits from encroachment by untimely and unplanned . . . commercial . . . development." – Brackets added

The "composting operation is commercial in nature,"

However, defendant argued that plaintiff's application of the zoning ordinance as to AG-zoned property required that its commercial composting facility be allowed. There was "no record evidence of an official decision by any zoning board regarding application of" the zoning ordinance to AG-zoned land. Defendant relied "primarily on allegations that plaintiff contracted with a commercial composting facility that was situated on AG-zoned property for the disposal of yard waste produced by its own citizens." The court found this argument was not persuasive, partly because defendant "misconstrued the record evidence."

[32] See footnote number 3.

The case is not exclusionary zoning because composting is a possible land use in light industrial zoning district, and as part of a farm operation.

The large scale composting operation is not protected under RTFA.

> The RTFA, MCL 286.471 *et seq.*, "was intended to 'protect farmers from the threat of extinction caused by nuisance suits arising out of alleged violations of local zoning ordinances and other local land use regulations as well as from the threat of private nuisance suits.'" *Lima Twp v Bateson*, 302 Mich App 483, 495; 838 NW2d 898 (2013) [page 26], quoting *Northville Twp v Coyne*, 170 Mich App 446, 449; 429 NW2d 185 (1988) [page 6]. This Court previously held that "a party relying on the RTFA as a defense to a nuisance action has the burden to prove that the challenged conduct is protected under the RTFA." *Lima Twp*, 302 Mich App at 496 [page 26].– Brackets added

To prove the conduct is protected under the RTFA one must show it is a "farm," "farm operation," producing "farm products" as defined in the RTFA. To be a farm is must be used in commercial production of farm products – which the commercial compost is. But the compost humus is not a "farm product" which is "limited to those plants and animals useful to human beings" (MCL 286.472(c)). Affirmed.

(Source: State Bar of Michigan *e-Journal* Number: 62709; June 13, 2016.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2016/051216/62709.pdf

Armada Twp. v. Hampson (Macomb County)

Court: Michigan Court of Appeals (Unpublished[33] Opinion No. 325135, August 23, 2016)

Holding that the issues raised on appeal were rendered moot by the fact the defendants had ceased their medical marijuana growing operation and that their greenhouses were no longer in violation of the plaintiff-township's ordinances, the court dismissed the township's appeal as moot.

The township contended that defendants' operation was in violation of its building and zoning ordinances and was a nuisance *per se*.

On cross-motions for summary disposition, the trial court held that the township's ordinance confining the growing of marijuana to accessory structures was preempted by MCL 333.26423(d), part of the Michigan Medical Marihuana Act (MMMA) (MCL 333.26421 *et seq.*). While the trial court also ruled that the greenhouses' construction without permits was a nuisance *per se*, it gave the defendants additional time to apply for the permits and comply with the township's building code.

On appeal, the township asked the court to conclude that the MMMA did not preempt its zoning ordinance; that a proper abatement of the nuisance *per se* was to order the removal of the greenhouses; and that the trial court erred in not definitively ruling whether the Right to Farm Act (RTFA) (MCL 286.471 *et seq.*) was a valid affirmative defense. However, these issues were now moot. Source: State Bar of Michigan *e-Journal* Number: 63436; August 30, 2016.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2016/082316/63436.pdf

[33] See footnote number 3.

2017

The Detroit Frontier: Urban Agriculture in A Legal Vacuum

Jacqueline Hand & Amanda Gregory, The Detroit Frontier: Urban Agriculture in A Legal Vacuum, 92 Chi.-Kent. L. Rev. 497 (2017).

Economic and demographic changes from the middle of the twentieth century left Detroit with a smaller population and a substantial quantity of vacant land. This void was filled by a variety of agricultural activities, which increased sharply in recent decades. Many urban farms were operating contrary to existing laws in a variety of ways, including prohibitions against trespass, violations of zoning ordinances, and self-help in acquiring needed water. These violations were generally ignored by law enforcement unless neighboring property holders complained. While many individuals engaged in urban farming in Detroit have lead the campaign for well drafted ordinances and the legitimacy they provide, decades of unfettered operation resulted in resistance to expectations that urban farmers change their practices to conform to these laws. Managing this transition is challenging because effective regulation requires buy-in from both regulated actors and the community. The experience in Detroit, both because of the size of the urban agriculture community and the extended period of unfettered action, provides a useful case study for communities dealing with similar, if smaller scale, transitions. The Detroit example is notable for two reasons. First, for the thorough research and defined methodology employed in devising what has the potential to be the most complete and encompassing ordinance of its kinds in the United States. Second, for the fact that, even in the face of such thorough work and public engagement, the exercise remains at its core, one of merely codifying existing practices, and that the larger task is creating appropriate municipal procedures and mechanisms to enforce compliance with new legal requirements.

Entire law review article:

https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=http://studentorgs.kentlaw.iit.edu/cklawreview/issues/past-issues/vol-92-issue-2/&httpsredir=1&article=4160&context=cklawreview

2018

Michigan Attorney General Opinion 7302 (March 28, 2018)

In response to a question from Gordon Wenk, Director of the Department of Agriculture and Rural Development the Michigan Attorney General issued an opinion that the Right to Farm Act, 1981 PA 93, MCL 286.471 *et seq.* (RTFA), preempts provisions in ordinances adopted by cities, villages, townships and counties that regulate farming activities when the Commission of Agriculture and Rural Development has developed generally accepted agricultural and management practices that address those farming activities.

Wenk's questions to the Attorney General were more specific. And the Attorney General found that a local government ordinance cannot regulate any of the following things due to RTFA's section 4(6):

- limit the number of livestock per acre,
- require a site plan be submitted to and approved by the local zoning administrator,
- limit manure application to fields in which the farmer owns or holds a 7-year lease
- specify manure application methods, and

- require a comprehensive nutrient management plan be submitted to and approved by the local unit of government.

There are other subjects which are preempted from local regulation in addition to what is listed here, these were just the ones the Attorney General was asked about. See "Summary of Right to Farm Act Preemption" on page five.

"There is no question regarding legislative intent [in the RTFA]—local ordinances seeking to regulate those activities are preempted." the Attorney General Opinion said [brackets added].

> 'Although the Right to Farm Act's preemption language is broad, it is "only those ordinances, regulations, and resolutions by local units of government that either purport to extend or revise or that conflict with the [Right to Farm Act] or the GAAMPs [that] are improper." *Scholma v Ottawa County Road Commission*, 303 Mich App 12, 25-27 (2013) at 23.'

Local ordinance provisions are preempted by section 4(6) of the RTFA because they extend, revise, or conflict with the RTFA or the GAAMPs adopted by the Commission of Agriculture and Rural Development under the Act.

Copy of the Attorney General Opinion:

https://content.govdelivery.com/attachments/MIAG/2018/03/29/file_attachments/981333/%25237302.pdf

Township of Williamstown v. Sandalwood Ranch, LLC (Ingham County)

Court: Michigan Court of Appeals (Published Opinion No. 337469) (This opinion was first released as an unpublished opinion)

The court concluded that MCL 286.472(b) (not MCL 286.472(a)) section of the Right to Farm Act (RTFA) was implicated here, and held that the use of the apartment as a second dwelling on the ranch property was not necessary in connection with the boarding of horses. Further, equitable estoppel and laches did not apply because defendants failed to factually support these affirmative defenses.

Thus, the court affirmed summary disposition for plaintiff-township in this action seeking injunctive relief for an ordinance violation. The defendants-Kolenda are the principal owners of defendant-Sandalwood Ranch. "The property contains a house in which the Kolendas reside, and a building that contains a barn with 26 stalls and a riding arena." The apartment was on a second floor of that building.

Defendants argued that it was part of the arena building and that any use of the building fell within the definition of farm in MCL 286.472(a).

The Appeals Court disagreed. While the building itself was protected under this provision, that did not "mean that every activity within the building is necessarily shielded from local regulation." The correct inquiry was whether the use of the apartment in connection with the horse-boarding business was a protected "farm operation" under MCL 286.472(b). The court noted the absence of any published case interpreting "the word 'necessary' as used in the RTFA." It found that the evidentiary hearing testimony showed that "the use of the apartment as a second dwelling by a tenant, who can perform the 10 p.m. check on the horses, is not necessary to defendants' horse-boarding business." While it did not accept "plaintiff's contention that 'necessary' should be read to mean 'absolutely necessary,'" it was clear here that "the rental of the apartment was intended to induce a third party to perform work that defendants had performed in the past and for which they could hire workers without providing a rental apartment.

The fact that having a person other than themselves perform the night check was of assistance in providing the Kolendas with a desirable degree of flexibility and time off does not mean that such a tenant is 'necessary' for farm operations under the RTFA."

(Source: State Bar of Michigan e-Journal Number: 68133; July 5, 2018.)

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/061918/68133.pdf

Lima Twp. v. Bateson (Washtenaw County)

Court: Michigan Court of Appeals (Unpublished Opinion No. 338934, October 11, 2018)

The court concluded that the trial court did not err when it determined that defendants failed to establish that the Right to Farm Act (RTFA) protected their storage and use of the vehicles and equipment on the property at issue, the court affirmed. The trial court enjoined defendants from using the property in violation of plaintiff's zoning ordinances.

On appeal, the court rejected their argument that the trial court erred by finding that they had not proven that they used and stored their vehicles and equipment in the operation of a farm within the meaning of the RTFA, and that it should have found that their storage and use of the vehicles and equipment complied with accepted agricultural practices.

"On the basis of the evidence that 'trucks regularly came and went from the property' and that the property was used to store 'drag lines, gravel haulers, bull dozers, road graders, semi-truck trailers, and pay loaders' as well as 'piles of dirt, steel, and asphalt millings,'" the trial court found defendants "were actually engaged in a gravel hauling" operation and not a tree farm operation, and its findings were "fully supported by the record evidence."

The trial court did not err by finding that they "did not engage in the activities about which [plaintiff] complained as part of a farm or farm operation. It follows then that it did not err when it determined that the [RTFA] did not preempt [plaintiff's] zoning ordinances." Moreover, "because the trial court did not err when it determined that [defendants] failed to establish the first element of their defense under the [RTFA], it did not err when it declined to consider the second element." Finally, the court declined to consider plaintiff's request for sanctions for filing a vexatious proceeding.

(Source: State Bar of Michigan e-Journal Number: 68841; October 19, 2018.)

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/101118/68841.pdf

2022

James Twp. V. Rice (Saginaw County)

Court: Michigan Supreme Court, *James Twp. v. Rice*, 2022 Mich. LEXIS 1179, (June 22, 2022, Filed).

The court held that MCL 286.473b of the RTFA entitles a prevailing farm or farm operation to the actual amount of costs and expenses reasonably incurred in connection with the defense of the action, together with reasonable and actual attorney fees, when so demanded. Thus, it reversed the judgment of the Court of Appeals and remanded to the trial court for it to determine the amount of actual costs and fees reasonably incurred by defendant in defending the RTFA action brought by plaintiff-township, as well as the amount of his reasonable and actual attorney fees.

Plaintiff filed a municipal civil-infraction citation against defendant alleging violations of its blight ordinance and the Michigan Residential Code because of "junk, junk cars, unpermitted construction on

an adjacent building, and improper fence height" on defendant's property. The trial court found defendant's use of the property constituted a "farm" or "farm operation" under the RTFA and that the RTFA was an affirmative defense to those portions of the citation challenging his unpermitted construction and fence-height violations. The trial court denied costs and fees. The Court of Appeals affirmed but remanded for the trial court to articulate the reasons for its discretionary decision to decline to award costs and fees.

The court granted defendant's application for leave to consider whether the statutory language in MCL 286.473b "providing that a 'farm or farm operation may recover from the plaintiff the actual amount of costs and expenses . . .' entitles a successful farm or farm operation under the statute to recover costs." It answered in the affirmative. "MCL 286.473b does not say that the court 'may award' costs, expenses, and fees but that the prevailing farm or farm operation 'may recover' them." The phrase "may recover" entitled the prevailing farm or farm operation "to recover what the statute permits: the actual amount of costs and expenses reasonably incurred in connection with the defense of the action, together with reasonable and actual attorney fees." Comparing *Bocquet* and *Aaron Rents*, the court observed that, "upon request by a prevailing farm or farm operation, an award of costs, expenses, and fees under MCL 286.473b is mandatory, not discretionary."

The phrase "may recover" entitled the prevailing farm or farm operation "to recover what the statute permits: the actual amount of costs and expenses reasonably incurred in connection with the defense of the action, together with reasonable and actual attorney fees."

Finally, although the trial court "maintains the discretion to determine the amount of costs and fees that were reasonably incurred by the prevailing farm or farm operation, as well as the amount of the prevailing farm or farm operation's reasonable and actual attorney fees . . ." it does not possess "the discretion to decline to award those actual costs and fees reasonably incurred, nor to decline the amount of reasonable and actual attorney fees incurred, when requested by the prevailing farm or farm operation."

Dissenting, Justice Welch opined that "the costs provision of the RTFA must be read as merely *authorizing* a prevailing farm or farm operation to request the award of attorney fees and that the trial court—not the defendant farm—has discretion to determine whether an award is warranted under the facts and, if so, in what amount." (Source: State Bar of Michigan e-Journal Number: 77671 ; June 24, 2022.)

Full text opinion: http://www.michbar.org/file/opinions/supreme/2022/062222/77671.pdf

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Appendix A - 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 – that is affected in a manner different from the interests of the public at large.

aliquot

1. 1a portion of a larger whole, especially a sample taken for chemical analysis or other treatment.
2. 2(also **aliquot part** or **portion**) Mathematics a quantity which can be divided into another an integral number of times.
3. 3Used 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 noun (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'.

curtilage

n noun An area of land attached to a house and forming one enclosure with it.

ORIGIN

Middle English: from Anglo-Norman French, variant of Old French *courtillage*, from *courtil* 'small court', from *cort* 'court'.

dispositive

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

En banc

"By the full court" "in the bench" or "full bench." When all the members of an appellate court hear an argument, they are sitting en banc. Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting *en banc*.

ORIGIN

French.

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'.

in camera

Refers to a hearing or inspection of documents that takes places in private, often in a judge's chambers. Depending on the circumstances, these can be either on or off the record, though they're usually recorded.

In camera hearings often take place concerning delicate evidentiary matters, to shield a jury from bias caused by certain matters, or to protect the privacy of the people involved and are common in cases of guardianships, adoptions and custody disputes alleging child abuse.

ORIGIN

Lat. *in chambers.*

in limine

To pass a motion before the trial begins. Usually requested in order to remove any evidence which has been procured by illegal means or those that are objectionable by jury or which may make the jury bias.

ORIGIN

Lat. *At the threshold* or *at the outset*

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

Judgment non obstante veredicto

also called **judgment notwithstanding the verdict**, or JNOV.

A decision by a trial judge to rule in favor of a losing party even though the jury's verdict was in favor of the other side. Usually done when the facts or law do not support the jury's verdict.

laches

n noun Law unreasonable delay in asserting a claim, which may result in its dismissal.

ORIGIN

Middle English (in the sense 'negligence'): from Old French *laschesse*, from *lasche* '*lax*', based on Latin *laxus*.

littoral

n noun Land which includes or abuts a lake or Great Lake is "littoral." When an inland lake it includes rights to access, use of the water, and certain bottomland rights. When a Great Lake it includes rights to access and use of the water. See "riparian."

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'.

obiter dictum

n noun (plural **obiter dicta**) Law a judge's expression of opinion uttered in court or in a written judgement, but not essential to the decision and therefore not legally binding as a precedent.

ORIGIN

Latin obiter 'in passing' + dictum 'something that is said'.

pecuniary

adjective formal relating to or consisting of money.

DERIVATIVES

pecuniarily adverb

ORIGIN

C16: from Latin *pecuniarius*, from *pecunia* 'money'.

per se

n adverb Law by or in itself or themselves.

ORIGIN:

Latin for 'by itself'.

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'.

riparian

n noun Land which includes or abuts a river is riparian, and includes rights to access, use of the water, and certain bottomland rights. *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). (Land which includes or abuts a lake is defined as "littoral." However, "the term 'riparian' is often used to describe both types of land," *id.*) See "littoral."

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'.

sua sponte

n noun Law to act spontaneously without prompting from another party. The term is usually applied to actions by a judge, taken without a prior motion or request from the parties.

ORIGIN

Latin for 'of one's own accord'.

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.