



Michigan Association of Planning
A Chapter of the American Planning Association

Right to Farm Act
Policy Platform
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Background

Agriculture is the second largest industry in the State of Michigan. In many parts of the state, agriculture is the engine driving the local economy. As more and more people value the benefits of fresh, locally grown foods, the industry is creatively stepping in to meet market demand and provide specialty products. At the same time, there is increasing pressure to develop previously undeveloped and/or agricultural lands to meet market demand for low density housing in serene and pastoral settings. Accommodating these two market forces requires a balanced approach.

The Michigan Association of Planning adopted an Agriculture Land Preservation Policy in 2006 that provides general policy statements for agricultural preservation. However, recent court decisions affecting local government's ability to regulate agricultural land uses necessitate a policy that emphasizes the effects of the court interpretations on local governments' ability to regulate land use.

The Michigan Right to Farm Act (RTFA) was passed in 1981 (and amended several times since, most recently in 1999) to give farmers protection from nuisance suits. All states have some form of RTFA. In most states, these laws codify the "coming to the nuisance defense," which means that nuisance immunity is provided if the farm existed prior to changes in surrounding land uses. However, these laws also specify that the protection does not apply if the nuisance results from negligent or improper operation of the farm or if the farm fails to use generally accepted agricultural and management practices (GAAMPs).

MAP acknowledges that farms generate noise, odors, and dust in their normal operation and these aspects of rural character must be recognized by new residents.

Michigan Association of Planning holds that the use of GAAMPs is intended to protect farm operations which may have preceded a residential use at a less intense level of operations, whose level of operations after the residential use is established was enhanced, expanded, or intensified, by making sure impacts from the changing farm operations to the land and other neighboring uses are as minimal as possible.

There is confusion about what RTFA does, and does not, do. This policy seeks to establish reasonable approaches that MAP supports. Additional resources about RTFA and a fact sheet can be found on the Michigan Department of Agriculture's web page ([link to site](#)).

The RTFA includes definitions for farms and farm operations, and the definitions used in the Act are also used for purposes of this policy. In Michigan, a farm or a farm operation is given immunity from nuisance suits if:

1. It conforms to GAAMPs.
2. It existed before a change in the land use or occupancy of land within one 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.
3. It conforms to GAAMPs and changes in ownership or size, temporarily ceases operations, enrolls in governmental programs, adopts new technology, or changes the type of farm product being produced.

Summary of Recent Court Decisions

Following is a summary of the impact of several Court of Appeals cases.

- The Court has concluded that the legislature did not require that both parts one and two of Section 3 of the RTFA (numbers 1 and 2 above) be satisfied to receive nuisance protection. This decision gives farm operations the right to move into areas, including residential areas, and qualify for nuisance protection under RTFA by using GAAMPs. The implication is that there is no connection between parts one and two, which takes away the important protection provided to neighboring landowners in exchange for their lost ability to bring private rights of action (this protection exists in most states). (Padadelis v. City of Troy and Charter Township of Shelby v. Papes)
- The Court decisions also seem to indicate that expansions of livestock operations pre-dating land use changes will enjoy RTFA protection even if the GAAMPs for Site Selection and Odor Control for New and Expanding Livestock Facilities are not used. Therefore, adopting GAAMPs as part of a local ordinance would be seen as conflicting with state law.
- The Court considers the preemption of local zoning a “clearly expressed intent” of the legislature. The Court decisions suggest that farms that qualify

for nuisance immunity may be undertaken in any location, even in areas designated solely residential. And, recall that to qualify for protection, farms need to use GAAMPs or pre-date land use changes, not both. (Padadelis v. City of Troy and Charter Township of Shelby v. Papesh)

It is unlikely that the legislature expected that the Court of Appeals would sanction farming in residential areas or not use GAAMPs if they pre-dated surrounding land use changes. It is more likely that the legislature intended in 1981, and with every amendment since, that GAAMPs would be used by all agricultural landowners to protect environmental quality and minimize negative impacts on surrounding land uses. MAP holds that the recent court interpretations were made erroneously, and that adequate environmental protections are at risk unless amendments to the RTFA are advanced that clarify the intent.

Implications

Although RTFA does not preempt environmental regulations, there may be some concern that farms in existence prior to changes in surrounding land uses are protected by RTFA without regard to GAAMPs. This removes the legal incentive to follow GAAMPs, leaving landowners who decide to “come to the nuisance” unprotected from farm operations that do not employ responsible management practices.

In addition to providing nuisance immunity to certain farm operations, the court cases exempt them from local zoning regulations. In growing rural areas, this undermines planning, negatively affects property values, sanctions land use conflicts for which compensation is no longer possible, and may polarize some communities.

Issues

The Michigan Association of Planning is dedicated to promoting responsible land use policy. In the case of RTFA, the challenge is to protect prime farmland while accommodating the market demand for housing and other land uses.

Taken together, the following policies provide a framework for the conditions under which agricultural and other land uses might reside in close proximity.

1. Communities have the right and the responsibility for determining the appropriate placement of land uses within their borders.
2. The use of GAAMPs is supported whether or not an agricultural use is in close proximity to other potentially conflicting uses.

3. Agricultural operations using GAAMPS should be protected from nuisance lawsuits by people or business operators who have chosen to locate within designated agricultural areas or near existing agricultural operations. At the same time, since they have no ability to file a private lawsuit, people or businesses located in close proximity to established agricultural uses protected under RTFA should have assurances that GAAMPS will be used. Incentives for these older agricultural operations to use GAAMPS should be made available at the state and possibly local level as well.

Policies

1. The Michigan Association of Planning supports the basic tenet of the Right to Farm Act that farms that existed prior to a change in surrounding land use and that employ generally accepted agricultural and management practices (GAAMPS) should be provided nuisance protection.
2. The Michigan Association of Planning supports the right of communities to determine land use through local zoning regulations subject to the exclusionary provisions outlined in the Michigan Zoning Enabling Act. Recent appellate court decisions have interpreted RTFA to preempt local zoning. MAP believes the Right to Farm Act should NOT preempt local zoning.
3. MAP strongly encourages the Michigan legislature to amend RTFA to specify that:
 - a. farms must meet both 1 and 2 under subsection 3 of the RTFA in order to enjoy nuisance protection (not 1 or 2).
 - b. local zoning is not preempted by RTFA. This should be done by clarifying the difference between nuisance protection and zoning preemption.
4. The Michigan Association of Planning supports the use of GAAMPs by all agricultural operations to protect environmental quality and minimize negative impacts on surrounding properties. Over time operations may change and evolve, and if they do, new operations should adhere to GAAMPs.
5. The Michigan Association of Planning supports protecting agricultural landowners using GAAMPs and operating in established agricultural areas.

6. MAP supports the RTFA's nuisance protection to the farm or farm operations only if they conform to GAAMPs.
7. MAP supports increasing the understanding of RTFA and GAAMPs through educating and informing planners, local elected and appointed officials, state agencies, developers, residents and farmers.
8. MAP supports engaging other stakeholders to discuss policy options that continue to encourage the development of urban agriculture activities as part of local food initiatives, but not to necessarily extend Right to Farm Act protection to those activities, and to ensure that local zoning applies to such activities.