



# Agricultural Law Update

October 2012

## Spring/Summer 2012 Right To Farm Act Court Of Appeals Decisions

- Liza C. Moore

This spring and summer, the Michigan Court of Appeals and the Sixth Circuit Court of Appeals issued decisions regarding Michigan's Right to Farm Act. The Right to Farm Act provides that "[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."

The Act provides in part that "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 Act defines the meaning of the terms "farm," "farm operation," "farm product" and "generally accepted agricultural and management practices." The recent cases analyzing these definitions and the Act are summarized below.

In *Brown v Summerfield Twp*, unpublished opinion per curiam of the Court of Appeals, issued August 23, 2012, the plaintiff

claimed that the Right to Farm Act preempted the township ordinance that prohibited her from keeping horses on property less than one and a half acres. The defendant argued that the plaintiff was not engaged in a commercial farm operation, and the trial court granted summary disposition to the defendant on that basis. The Court of Appeals affirmed. The plaintiff "offered no evidence that she kept horses for profit, either through breeding, boarding, or horse rides." The Right to Farm Act did not apply because the plaintiff was not engaged in a commercial farm operation. Because the Act did not apply to the plaintiff, the Court did not decide whether the created a cause of action or merely a defense, or whether applied to "a new farming operation located in property already zoned residential."

In *County of Mason v Indian Summer Co-op, Inc*, unpublished opinion per curiam of the Court of Appeals, issued August 16, 2012, the defendant cooperative operated an apple juice and apple sauce processing plant on its own land. The county zoned the land agricultural and classified its use as agribusiness, which required the cooperative to obtain a special land use permit before constructing new buildings.

The cooperative's president approached the county to build a warehouse and attempted to obtain a building permit without obtaining a special land use permit. The county's zoning and building director indicated that the cooperative would

continue on page 2 | **Farm Act**

### DATES TO REMEMBER:

**October 18, 2012** | 2012 Michigan Agriculture Disaster Loan Program, Southwest Michigan Research and Extension Center, Benton Harbor, MI | [bit.ly/DisasterLoan](http://bit.ly/DisasterLoan)

**October 31, 2012** | Michigan Commission of Agriculture and Rural Development Meeting, Constitution Hall, ConCon Room, Lansing, MI | [bit.ly/MICommission](http://bit.ly/MICommission)

need to comply with the land use process. The cooperative asked the Michigan Department of Agriculture whether it was exempt from zoning ordinances and the MDA informed the defendant that it was not exempt. Nevertheless, the cooperative began building the warehouse without building or zoning permits.

After confirming that construction had started on the warehouse, the county issued a stop work order. Work continued despite the order. The county then filed a nuisance complaint against the cooperative. Prior to the preliminary injunction hearing, the cooperative submitted a special land use application "under protest." The parties agreed that the cooperative could build the structure in accordance with a site plan and that the parties could argue the application of the Right to Farm Act. Later, the planning commission held a public hearing and the site plan and special land use application were approved. However, the county observed the cooperative constructing buildings not approved by the plan. Another stop work order was issued.

The cooperative moved for summary disposition on the grounds that the Right to Farm Act preempted the local zoning requirements. The trial court granted the cooperative's motion and awarded costs and fees to the cooperative. However, the Court of Appeals reversed. The Court of Appeals wrote that the new warehouse was for storing the finished product and that the addition (not approved by the site plan) was to house a snowplow and boiler. The Court wrote "the warehouse, the processing plant, and the addition to the processing plant are not used in the commercial production of farm products, i.e., the production and manufacture of farm products intended to be marketed and sold at a profit."

The Court concluded that the Right to Farm Act did not protect the construction of the warehouse and processing plant addition. The Court also concluded that the cooperative was not exempt from obtaining a building permit under. The Court wrote that "[t]he cooperative's processing of crops into finished products for human use is not a consequence of the production of crops; rather, it is a separate undertaking." Because the Court did not consider the cooperative's construction of these buildings and the buildings themselves a farm or farm operation, and the cooperative was not the prevailing party, the Court reversed the award of fees and costs to the cooperative.

In *Guindon v Twp of Dundee*, the plaintiffs lived on a twenty acre parcel in an agricultural zoning district in the township. The plaintiffs complained to the township about a neighbor's trucking operation, which eventually resulted in the township filing suit and obtaining an injunction against the neighbor. The plaintiffs still complained to the township that the injunction was not being enforced. Later, the plaintiffs complained about the trucking operation of a different neighbor. This complaint did not result in township action. After these complaints, the plaintiffs purchased another parcel and sought a building permit to construct a house on the property. The request was denied because the request did not comply with the zoning ordinance. The zoning board of appeals affirmed the denial, which was then affirmed by the circuit court. The plaintiffs sued, alleging the township and various township officials violated the plaintiffs' constitutional rights by denying the building permit and other actions. The plaintiffs also claimed that the defendants violated the Right to Farm Act. The district court granted summary judgment to the defendants and the Sixth Circuit Court of Appeals affirmed. With regard to the Right to Farm Act claim, the plaintiffs alleged that the township violated the Right to Farm Act by "restricting the use of their property for farming purposes."

The Court observed that though the plaintiffs claimed that the defendants would not allow them to build a barn, the record only showed a request to build a house. "The record does not reflect that Plaintiffs submitted a request to build a barn or that the Township has taken any steps to prevent Plaintiffs from building one." Further, the Court wrote that the Act "was enacted to prohibit nuisance litigation against a farm or farm operation" and that "[p]laintiffs present no authority for the proposition that the Act enables them to sue the [t]ownship." The Court concluded that the Right to Farm Act claim lacked merit.

For more information about the Right to Farm Act, please feel free to contact [Liza Moore](#). ■■



**Liza C. Moore**  
Attorney

P: 571.371.8281

E: [Imoore@fosterswift.com](mailto:Imoore@fosterswift.com)

## Did You Know Funds Are Available For International Marketing Reimbursement?

- Liza C. Moore

Through the Branded Program, qualified companies may obtain reimbursement for a percentage of their international marketing expenses for Michigan agriculture and food exports. To qualify for the program, a company must have less than 500 employees, the products must contain at least 50% US ag ingredients, the product must be labeled "Product of the USA," and satisfy other requirements. Funds

may be available for expenses associated with exhibiting at trade shows, label modifications, advertisements out of the United States, and other international marketing efforts.

For more information, please contact [Jamie Zmitko-Somers](#) at 517.241.3628 ■■

### UPCOMING SPEAKING EVENTS

#### SPEAKING TO FARM BUREAU GROUPS

Scott Storey has been a featured speaker at several Oil & Gas Industry Educational Meetings organized by Michigan State University Extension. Each meeting is tailored to the leasing and exploration activities taking place in the county where the meetings are held. Scott typically addresses the rules and regulations governing the oil and gas industry and the important legal and practical issues that should be considered when negotiating or interpreting oil and gas leases. The next educational meeting is scheduled to take place in Huron County on October 11.



**Scott A. Storey**  
Attorney

P: 571.371.8159

E: [ssorey@fosterswift.com](mailto:ssorey@fosterswift.com)

#### SPEAKING AT AGRIBUSINESS CONFERENCE

Julie Fershtman will speak at the Insurance Brokers and Agents of the West Agribusiness Conference on October 22, 2012. The event will take place in Des Moines, Iowa.

For more information please visit:  
[bit.ly/IowaAgConference](http://bit.ly/IowaAgConference)



**Julie I. Fershtman**  
Attorney

P: 248.785.4731

E: [jfershtman@fosterswift.com](mailto:jfershtman@fosterswift.com)



## Agricultural Law Update

# RECOGNIZING FOSTER SWIFT ATTORNEYS NAMED BEST LAWYERS IN AMERICA®\* & MICHIGAN SUPER LAWYERS

### 2013 Best Lawyers in America\*

Attorneys earn this honor by being evaluated by their peers. Clients, other lawyers, and marketing teams are the primary sources of nominations for *Best Lawyers*, but anyone can submit a nomination. A total of Forty-seven Foster Swift attorneys, or roughly 49% of the firm, earned this designation for 2013.

#### Foster Swift Agricultural attorneys recognized:

**Charles E. Barbieri**

**Scott A. Chernich**

**Julie I. Fershtman**

**Brian G. Goodenough**

**Todd W. Hoppe**

**Charles A. Janssen**

**David M. Lick**

**Steven L. Owen**

**Jean G. Shtokal**

**Scott A. Storey**

**Deanna Swisher**

**Lynwood P. VandenBosch**

\*Woodward/White: *The Best Lawyers in America*® 2013. Copyright 2012 by Woodward/White, Inc., Aiken, SC.

### 2012 Michigan Super Lawyers

Twenty-two Foster Swift attorneys were recognized in the 2012 edition. In addition, seven attorneys were named Michigan Rising Stars.

#### Foster Swift Agricultural attorneys recognized:

**Charles E. Barbieri**

**Julie I. Fershtman**

**Charles A. Janssen**

**David M. Lick**

**Liza C. Moore** (*Rising Star*)

To see a complete list of Foster Swift attorneys named, please visit: [fosterswift.com/firm-accolades.html](http://fosterswift.com/firm-accolades.html)

#### AGRICULTURAL ATTORNEYS:

##### GROUP LEADER

**Liza C. Moore**  
517.371.8281  
lmoore@fosterswift.com

**Charles E. Barbieri** | 517.371.8155  
**Scott A. Chernich** | 517.371.8133  
**James B. Doezema** | 616.726.2205  
**Julie I. Fershtman** | 248.785.4731  
**Brian G. Goodenough** | 517.371.8147  
**Todd W. Hoppe** | 616.726.2246  
**Charles A. Janssen** | 517.371.8262  
**Ryan E. Lamb** | 616.796.2503

**David M. Lick** | 517.371.8294  
**Steve L. Owen** | 517.371.8282  
**Jean G. Shtokal** | 517.371.8276  
**Patricia J. Scott** | 517.371.8132  
**Scott A. Storey** | 517.371.8159  
**Deanna Swisher** | 517.371.8136  
**Lynwood P. VandenBosch** | 616.726.2201  
**David VanderHaagen** | 517.371.8102

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

MARQUETTE

HOLLAND

Foster Swift Collins & Smith, PC **Agricultural Law Update** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

**IRS Circular 230 Notice:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

Copyright © 2012 Foster Swift Collins & Smith, PC

Proud supporter  
of Michigan FFA

