

October 25, 2018

Michigan Commission of Agriculture & Rural Development
PO Box 30017
Lansing, MI 48909

Dear Commission Members:

The Michigan Townships Association (MTA) understands that the Michigan Commission of Agriculture and Rural Development is considering eliminating zoning considerations from the Generally Accepted Agricultural Management Practices (GAAMPS) required by the Right to Farm Act for Site Selection and Odor Control for New and Expanding Livestock Facilities.

MTA opposes the elimination of existing zoning considerations from the Site Selection GAAMPs and corresponding Michigan Department of Agriculture and Rural Development (MDARD) procedures for site selection approval and strongly urges the Commission to not eliminate local land uses and plans from site selection criteria.

When the Right to Farm Act preempted local zoning ordinances that conflict with the RTFA and GAAMPs, it substituted the voluntary and sometimes arbitrary GAAMPs for the mandatory legal safeguards and due process provided for property owners and communities through planning and zoning. While the viability of farming and agricultural sustainability are crucial to Michigan's economy and the fabric of many Michigan communities, the RTFA is intended as "a shield, not a sword" and its implementation by MDARD should continue to be mindful of how local regulations balance the property rights of all.

The Problem:

By their nature and MDARD implementation, the GAAMPs fall short of providing the legal standards, procedures and due process provided for property owners, stakeholders and community leaders by master planning and zoning regulations:

- **Zoning:** Zoning regulations and decisions have been subject to state and federal law and constitutional standards for almost 100 years, including comprehensive master planning that must include stakeholder input and mandated procedures to provide due process to protect property interests and avoid arbitrary decisions.
- **GAAMPS:** The GAAMPS for Site Selection and Odor Control for New and Expanding Livestock Facilities state that they are based on "sound science," but the numbers of animal units, non-farm residences density and distance, and setback distances on which the siting categories are based are arbitrarily selected and have not been subject to scientific review or testing since they were first established in 2000.

- **Zoning:** Zoning ordinances are adopted and amended through public notice, hearings, decision-making, the option for public referendum, and appeals as provided by law.
 - **GAAMPS:** The agency standards for hearing an appeal by neighboring property owners of a siting decision have only begun to be developed in 2018, 18 years after the RTFA preempted local zoning due process for livestock siting.
- **Zoning:** Where zoning has been adopted, compliance is enforced by law.
 - **GAAMPS:** Farm operations are not required to comply with any of the GAAMPS. Compliance with the Site Selection GAAMPS is “prospective,” based on plans to comply. Once constructed, a livestock operation is not required to comply with any GAAMPS, and the only recourse for property owners or municipalities is a little-known complaint process that does not itself mandate compliance.

The current GAAMPS have always taken zoning into consideration:

Recognizing the need to balance interests and reduce the potential for nuisance issues for all parties, MDARD policy has, from day one, included considerations of zoning in the site selection process because it benefits farm operations as well as property owners and communities:

“The GAAMPS for site selection and odor control for new and expanding livestock facilities are intended to fulfill three primary objectives: 1) Environmental Protection 2) Social Considerations (neighbor relations) 3) Economic Viability. When all three of these objectives are met, the ability of a farm operation to achieve agricultural sustainability is greatly increased.”

...

“The decision to site a livestock production facility or livestock facility can be based on several objectives including: preserving water quality, minimizing odor, working within existing land ownership constraints, future land development patterns, maximizing convenience for the operator, maintaining esthetic character, minimizing conflicts with adjacent land uses, and complying with other applicable local ordinances.”

The Site Selection GAAMPS states internal MDARD policy that local zoning must be considered in various ways when making siting decisions, including the following:

- New and expanding livestock facilities should only be constructed in areas where local zoning allows for agricultural uses.
- Local land use zoning maps will be considered by MDARD in granting setback reductions
- New livestock production facilities should not be constructed within 1,500 feet of hospitals, churches, licensed commercial elder care facilities, licensed commercial childcare facilities, school buildings, commercial zones, parks, or campgrounds.
- Proximity to Residential zones—Agriculturally-zoned areas in close proximity to areas that are residential and do not allow agricultural uses by right will generally have housing at a density that necessitates setback distances for livestock production facilities to prevent conflicts. New

livestock production facilities shall not be constructed within 1,500 feet of areas zoned for residential use where agricultural uses are excluded. Existing livestock production facilities may be expanded within 1,500 feet of areas zoned for residential use with approval from the local unit of government.

- A Site Plan is a comprehensive layout for a livestock production facility, and includes:
 - ...
 - Existing land uses for contiguous land.
 - ...
 - Location and distance to the nearest residentially zoned area.

- For purposes of the Siting GAAMPs, an environmental complaint or proactive request for a GAAMPs determination by a landowner will result in a program review of zoning for the location in question. If the site is primarily residential and zoning does not allow agricultural uses, then the site will be identified as Category 4 and not acceptable for a livestock facility under the Siting GAAMPs. However, if zoning identifies an agricultural use or a mixed use that includes agricultural use as its zoning designation (e.g., many locations use an agriculture/residential zoning designation), MDARD will evaluate whether the site complies with the other requirements of the Siting GAAMPs.”

The Site Selection Task Force has recommended against removing zoning considerations:

The Right to Farm Site Selection Task Force was created as mandated by the RTFA as an advisory committee to annually review the Site Selection GAAMPs and make recommendations to the commission.

Based on MDARD policy established in 2000, the Site Selection GAAMPs and the site selection application and checklist have always included considerations of local zoning in the site selection process that must be followed for the farm operation to have RTFA protection.

During the task force’s 2018 review process, the task force was presented with an extensive draft overhaul of the 2019 Site Selection GAAMPs developed by MDARD staff that, among other things, removed all references to zoning.

James Johnson, director of the MDARD Environmental Stewardship Division, which oversees the Right to Farm Act and the GAAMPs, sent a letter to the task force explaining that the removal of zoning references in the Site Selection GAAMPs was done purposefully as part of a policy decision, compelled by Attorney General Opinion 7302 of 2018, stating “It is now explicitly clear that the zoning requirement references are contrary to the law and not helpful in creating clarity around the relationship between local zoning and the RTF authorities.”

However, Attorney General Opinion 7302 did not make such a broad statement, and actually confirmed that:

“Although courts have held that local zoning cannot prohibit farming activities that are otherwise protected by the Right to Farm Act and addressed by the GAAMPs, they have not held that every activity on a farm is outside of local regulation or that local units of government are

required to take affirmative action to assist farms in their operations. For example, courts have held that where the GAAMPs and Right to Farm Act do not provide other standards, local ordinances that address the permitting, size, height, bulk, floor area, construction and location of buildings on a farm can be enforced. Further, the Right to Farm Act cannot be used as a sword to force a township to grant a general permit, even if that permit may assist the farmer in the conduct of their farming activities. 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.”

The opinion further states:

“[t]he Right to Farm Act preempts *provisions in ordinances* adopted by local units of government 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.” *[Emphasis added]*

And neither Attorney General Opinion 7302 nor the RTFA prohibit MDARD from including considerations of zoning in the GAAMPs.

The Site Selection Task Force voted to take no action to adopt the 2019 draft revision or to remove zoning references from the 2019 Site Selection GAAMPs and responded to Director Johnson’s references to Attorney General Opinion 7302:

“Attorney General Schuette’s opinion described some of the history of the Right-to-Farm Act and reviews cases concerning its application as it related to the conditional preemption of local zoning ordinances that would regulate farming activities when there are already GAAMPs adopted that address those farming activities. However, this opinion does not appear to suggest that the Right-to-Farm-Act, MDARD, or the Michigan Commission of Agriculture and Rural Development lack the authority to reference land use zoning in the Site Selection GAAMPs that are developed and adopted pursuant to the Act. In fact, as noted in your letter, land use zoning has been a condition regarding the suitability of proposed sites to place or keep livestock in Michigan since the Site Selection GAAMPs were first adopted by the Michigan Commission of Agriculture and Rural Development nearly two decades ago.”

MTA opposes removing zoning considerations from the GAAMPs and MDARD policy:

The dramatic shift in MDARD policy that would result from the proposed removal of zoning references from the Site Selection GAAMPs and siting process is an unnecessary “answer” to a non-existent problem.

Ignoring community decisions and broader community interests—without giving them even the minimal consideration now provided in the GAAMPs when siting new, and in many cases enormous livestock farm operations—will not improve agricultural sustainability or economic viability and could increase the potential for siting appeals and complaints in a process that no longer seeks to include farm operations as good neighbors.

The RTFA does not preempt all zoning for the property of a farm operation—and does not preempt zoning on neighboring properties. The presence of a farm operation does not remove or invalidate the zoning or the future land use planning for the community as a whole. The comprehensive development of master plans and land use regulations representing numerous existing and future community interests and stakeholders should not simply be ignored.

Thank you for your consideration of MTA's concerns.

Sincerely,

A handwritten signature in cursive script that reads "G. Lawrence Merrill". The signature is written in black ink and is positioned above the typed name.

G. Lawrence Merrill
Executive Director