

1 STATE OF MICHIGAN
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM
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 4 _____ :
 5 WILLIAMSTOWN TOWNSHIP :
 6 Plaintiff. :
 7 -vs- : File No.
 8 JEREMIAH HUDSON. : 13-380-CZ
 9 Defendant. :
 10 _____ :

11
 12 MOTION FOR SUMMARY DISPOSITION
 13 BEFORE THE HONORABLE ROSEMARIE E. AQUILINA
 14 Lansing, Michigan - February 22, 2014
 15

16 APPEARANCES:
 17 For the Plaintiff: GARY L BENDER (F3153)
 18 4572 South Hagedorn Road
 19 Suite 1A
 20 East Lansing, MI 48823
 21 For the Defendant: DAVID G. COX (OH 0042124)
 22 4240 Kendale Road
 23 Columbus, OH 43220
 24 Reported by: Genevieve J. Hamlin, CSR-3218
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1 EXHIBITS:
 2 -None-
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2	WITNESS:	PAGE
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1 Lansing, Michigan
 2 February 22, 2014
 3 9:35 a.m.
 4 R E C O R D
 5 MR BENDER: This is docket 13-380-CZ,
 6 Williamstown Township versus Jeremiah Hudson.
 7 Counsel, your appearance for the record.
 8 MR. BENDER: Thank you, Your Honor. Gary
 9 Bender appearing on behalf of Williamstown Township,
 10 and the supervisor of the township is present and in
 11 the courtroom seated next to me
 12 THE COURT: Sir
 13 MR COX: David G. Cox, Your Honor, on
 14 behalf of the defendants. I have Mr. Jeremiah Hudson
 15 with me and his wife, Jessica Hudson, at counsel
 16 table
 17 THE COURT: All right And this is a
 18 continued hearing. Both sides wanted to present
 19 additional evidence and witnesses, and I believe we
 20 had a sequestration order; is that correct?
 21 MR BENDER: Yeah. Mr. Whitman is going to
 22 be my first witness so he can stay Jennifer, would
 23 you leave, please?
 24 UNIDENTIFIED SPEAKER: Absolutely.
 25 MR. COX: Does that apply to rebuttal

1 witnesses as well?
2 THE COURT: Well --
3 MR. BENDER: I would think that it would --
4 THE COURT: -- it would --
5 MR. BENDER: -- if he has an idea who he's
6 calling.
7 THE COURT: It should apply to all
8 witnesses. Are there any other witnesses in the
9 courtroom?
10 MR. BENDER: No.
11 THE COURT: Just witnesses -- or the
12 people, I should say, who are in the courtroom who
13 you probably don't recognize are my students.
14 MR. COX: Yeah. I don't recognize anybody
15 MR. BENDER: Okay. And, I don't know,
16 there are a few unfamiliar faces to me but (pause) --
17 THE COURT: Okay. Are there any
18 preliminary matters we need to address?
19 MR. BENDER: Your Honor, just as a
20 housekeeping matter, when I was going through the
21 letters from Wayne Whitman I noticed that I had
22 Exhibit H in my pile and I'm pretty sure that H
23 should be in this pile, which is the June 14 letter
24 that was admitted at our last hearing on October 2nd
25 THE COURT: Okay We should have --

5

1 MR. BENDER: I think we're through J at
2 this point.
3 THE COURT: Right. I was just looking at
4 my list and I have A, B, C, D, E, F, G, H, I, J
5 MR. BENDER: Correct.
6 THE COURT: Okay.
7 MR. BENDER: One other matter, as the court
8 knows -- and the court specifically asked Mr. Cox,
9 attorney for the Hudsons, at our last hearing if he
10 rested. If you'll recall -- and he indicated that he
11 was and did rest.
12 If you recall, the Lima case, which came
13 out just prior to our October 2nd hearing,
14 established that when there is a violation of a
15 township ordinance, that that constitutes a nuisance
16 per se and the court is obligated to issue injunctive
17 relief when that occurs, and in this case it is
18 undisputed that the Hudsons are maintaining a farm or
19 farm operation raising livestock within the
20 residential area, the R-1 district of Williamstown
21 Township. That's undisputed and, in fact, the
22 defendant, Jennifer Hudson, indicated in her
23 testimony that she knew that was a residential area
24 Your Honor specifically asked her that question. She
25 knew that it was a residential area before she bought

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1 the house
2 The burden of proof being on the Hudsons
3 asserting an affirmative defense under the Right to
4 Farm Act, they have to come forward with proof that
5 they are GAAMPs certified or GAAMPs compliant in
6 order to assert that there is a preemption of local
7 ordinances, and there was one witness that was
8 presented at our last hearing on October 2nd --
9 actually, two witnesses, Mr. and Mrs. Hudson, and
10 neither of them advised the court that they had
11 received GAAMPs certification from MDARD, the
12 Michigan Department of Agriculture and Rural
13 Development, and Mrs. Hudson indicated vaguely in her
14 testimony that she thought that she didn't have a
15 water runoff problem, and as the court knows with the
16 series of letters that were admitted at the last
17 hearing that were generated by the Michigan
18 Department of Agriculture and Rural Development,
19 which I'll call MDARD, indicated all sorts of
20 problems with the right to farm issue and the
21 application for GAAMP certification.
22 And at this time I would ask the court to
23 consider a motion for an involuntary dismissal of the
24 affirmative defense because they did not carry the
25 burden to prove by a preponderance of the evidence as

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1 outlined in the Lima case that they, in fact, fall
2 within the applicable defense available to them to an
3 action for a nuisance per se.
4 And I know the court is familiar with the
5 court rule, being MCR 2.516, which indicates that
6 any -- a party may move for a directed verdict at the
7 close of the evidence offered by an opponent. The
8 motion must state specific grounds in support of the
9 motion, and I just outlined for you that testimony
10 that I think is applicable and important for the
11 court to consider as grounds to grant the motion.
12 Further, in civil trials under MCR
13 2.504(B)(2), you can treat it as a motion for an
14 involuntary dismissal of the affirmative defense and
15 declare and rule that they didn't carry the burden of
16 proof as outlined and required under Lima and that
17 the affirmative defense is dismissed and we don't
18 have to go forward with any further evidence.
19 Should the court disagree with my motion or
20 deny my motion, I have two witnesses here today. I
21 have Mr. Wayne Whitman who generated those letters
22 who was involved in the right to farm application and
23 for -- for MDARD and I also have the engineer -- the
24 agricultural engineer and water engineer from the
25 Spicer group as an expert witness. Thank you, Your

8

1 Honor.

2 THE COURT: Response.

3 MR. COX: Your Honor, under the Lima

4 Township case there's no indication that it has to be

5 MDARD that certifies an entity as being in compliance

6 with the GAAMPs. All that's required under the Lima

7 case is that a party can satisfy the requirements by

8 introducing credible testimony or other evidence to

9 show their farm or fair operation complies with

10 applicable GAAMPs, so it doesn't have to be MDARD

11 making that decision.

12 In this case Jessica Hudson testified and

13 at the conclusion of the last hearing -- and I

14 specifically asked the court if the court believed

15 we've made a prima facie case to go forward with the

16 rest of the hearing and, Your Honor, you said, yes,

17 you did believe we made a prima facie case to go

18 forward with the rest of the hearing

19 Jessica Hudson testified that in order to

20 be MAEAP verified she needed to do three things Joe

21 Kelpinski from the Michigan Department of Agriculture

22 told her if you remove this one pen, if you move the

23 animals up to the top of the hill, and if you address

24 the drain in the back you would be MAEAP verified.

25 Ms. Hudson has done all of that. Technically she

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1 could be MAEAP verified today The only reason she

2 didn't is because Wayne Whitman refuses to agree that

3 the Hudsons' farming operation is in compliance with

4 the GAAMPs.

5 He hasn't even testified yet. The only

6 evidence before the court is Ms. Hudson's testimony,

7 and she testified she believes she's in compliance

8 with the GAAMPs. She believes she's done everything

9 Mr. Kelpinski has told her to do, and it's her

10 testimony she's done everything that Wayne Whitman

11 has told her to do.

12 She's also testified that Mr. Whitman

13 hasn't even been out to the property since last May

14 so his letters that go back and forth are not even

15 based in reality. Ms. Hudson has testified that the

16 conditions at the farm are completely different from

17 the way they were in May of 2013 when Mr. Whitman was

18 out there, so the un rebutted evidence at this point,

19 Your Honor, is that she's provided credible testimony

20 that their farm operation is in compliance with the

21 GAAMPs

22 THE COURT: Final word, Mr. Bender.

23 MR. BENDER: Nothing further, thank you.

24 THE COURT: I'm just going to take five

25 minutes. I'll be right back.

10

1 (At 9:45 a.m , recess taken.)

2 THE COURT: We're back on the record.

3 Between the time that we've had our break

4 the court had reviewed the file and the evidence that

5 we've had up to thus far so I am very familiar with

6 the issues. I was planning to hear the additional

7 information to see if that would sway me but I am not

8 surprised by this motion because it is similar to the

9 direction I was going, and let me just make a record,

10 because regardless of who I rule for, I anticipate an

11 appeal I've done a lot of work on this It's a

12 unique situation, and I feel for both sides

13 Pursuant to MCR 2.516, which is what I've

14 been asked to rule on, a party may move for a

15 directed verdict at the close of the evidence offered

16 by an opponent. Here we still have some evidence to

17 be heard but there was a closing, as counsel stated,

18 so it is an appropriate time

19 In regard to the Right to Farm Act, the

20 Michigan Court of Appeals found the party relying on

21 the Right to Farm Act as a defense to a nuisance

22 action has the burden of proof to show that the

23 challenged conduct is protected under the Right to

24 Farm Act; Lima Township versus Bateson, 302 Mich App

25 483, 2013 case. The Right to Farm Act is silent in

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1 regard to the applicable standard of proof.

2 The court in Lima held if a party asserts

3 the Right to Farm Act as a defense, that party bears

4 the burden to prove by a preponderance of the

5 evidence that the challenged conduct is protected

6 under the Right to Farm Act.

7 Defendant correctly states three generally

8 accepted agricultural management practices, or

9 GAAMPs, that generally apply to defendant; site

10 selection manual, manure manual, and animal care

11 manual. Therefore, to be protected by the Right to

12 Farm Act from plaintiff's nuisance claim, defendant

13 must show by a preponderance of the evidence

14 defendant is in compliance with all three applicable

15 GAAMPs.

16 The Right to Farm Act states a farm or

17 farming operation shall not be found to public or

18 private nuisance if the farm or farm operation

19 alleged to be a nuisance conforms to GAAMPs according

20 to policy determined by the Michigan Commission of

21 Agriculture. That's MCL 286.473(1)

22 The RTFA also states -- and that's the

23 Right to Farm Act -- also states a farm or farm

24 operation shall not be found to public or private

25 nuisance if the farm or farm operation existed before

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1 a change in the land use, MCL 286 473(2). The
 2 parties have previously stipulated that MCL
 3 286 473(2) does not apply to the facts of this case.
 4 Therefore, this court will only address section one.
 5 GAAMPs are created to provide uniform,
 6 state-wide standards and acceptable management
 7 practices based on sound science. Agricultural
 8 producers who voluntarily follow these practices are
 9 provided protection from public or private nuisance
 10 litigation under the Right to Farm Act; site
 11 selection manual states at section iii. The Michigan
 12 Court of Appeals found according to the plain
 13 language of the Right to Farm Act, a farm or farming
 14 operation cannot be found to be a nuisance if it is
 15 commercial in nature and conforms to the GAAMPs.
 16 That is stated in the case, Charter Township of
 17 Shelby versus Vikki Papesh, V-i-k-k-i, P-a-p-e-s-h,
 18 and Martin Papesh, Jr., 267 Mich App 92, it's a 2005
 19 case.
 20 Whether a farm conforms to the GAAMPs is
 21 decided according to policies adopted by the Michigan
 22 Commission of Agriculture as stated in Richmond
 23 Township versus Erbes, E-r-b-e-s; 195 Mich App 210,
 24 1992 case. The Right to Farm Act protects farming
 25 operations that are complying with the GAAMPs from

1 nuisance litigation as noted in Northville versus
 2 Coyne, C-o-y-n-e, 170 Mich App 446, 1988 case.
 3 This court finds Defendant's Sweet Peas
 4 Farm is a commercial farming operation as defined in
 5 the Right to Farm Act. Defendant uses the property
 6 for raising animals and agricultural activities in
 7 commercial production of farm products which meets
 8 the Right to Farm Act farm definition; MCL
 9 MCL286.472(2)(a). Defendant is engaged in a farming
 10 operation defined in the Right to Farm Act.
 11 Defendant uses Sweet Peas Farm in connection with the
 12 commercial production of farm products, including the
 13 generation of noise, odors, fumes, and other
 14 associated conditions as well as the management,
 15 storage, and utilization of manure as noted in MCL
 16 286.472(b). Defendant commercially markets the farm
 17 animals and farm products for sale on the internet
 18 and projects the farm's total sales for 2013 will be
 19 in excess of \$1600. Therefore, defendant is required
 20 by the Right to Farm Act to meet the applicable
 21 GAAMPs to receive protection from nuisance claims and
 22 preempt local zoning ordinances which conflict with
 23 the Right to Farm Act.
 24 Defendant claims GAAMPs verification is not
 25 needed if Sweet Peas Farm is verified by the Michigan

1 Agricultural Environmental Assurance Program.
 2 However, as Whitman's June 19, 2013, affidavit, which
 3 was attached to the motion for summary disposition,
 4 the affidavit explained, the Michigan Agricultural
 5 Environmental Assurance Program verification depends
 6 on conforming to all applicable GAAMPs. Defendant is
 7 not compliant with GAAMPs which will prevent Michigan
 8 Agricultural Environmental Assurance Program
 9 verification.
 10 Defendant also argues the Buchler,
 11 B-u-c-h-l-e-r, court found GAAMPs does not apply to
 12 small farming operations with less than 250 animal
 13 units; Forsyth, F-o-r-s-y-t-h, Township versus Randy
 14 Buchler, an unpublished opinion of the Marquette
 15 Circuit Court issued December 18, 2012, docket number
 16 12-50325-CZ. However, if defendants are to be
 17 protected from nuisance claims, defendant needs to
 18 comply with the applicable GAAMPs, which include the
 19 site selection manual, manure manual, and animal care
 20 manual. Defendant has not produced any evidence of
 21 defendant's compliance with all three GAAMPs.
 22 Defendant claims no GAAMPs apply to Sweet
 23 Pea Farm because there are so few animals. Defendant
 24 argues site approval and verification do not apply to
 25 their farm and, therefore, no GAAMPs apply to

1 defendant's farm. Defendant still wants to be
 2 protected from plaintiff's nuisance claim by the
 3 Right to Farm Act. Defendant points to no -- I'm
 4 sorry, defendant points to an unpublished Court of
 5 Appeals case which found the Right to Farm Act can
 6 still protect farmers when no GAAMPs apply to their
 7 operation; Milan Township, M-i-l-a-n, Township versus
 8 Jaworski, J-a-w-o-r-s-k-i, issued December 4, 2003,
 9 docket 240444, 2003 case. However, defendant is
 10 incorrect in their conclusion. Jaworski was about a
 11 farmer who breeds and raises quail to hunt. No
 12 GAAMPs address that type of operation. The Jaworski
 13 court allowed the Right to Farm Act protection
 14 because there were no GAAMPs dealing with a farm to
 15 hunt quail, but here defendant admits three GAAMPs
 16 govern their place; again, the site selection manual,
 17 the manure manual, and animal care manual.
 18 Therefore, Jaworski is not applicable, and if
 19 defendant wants the Right to Farm Act protection from
 20 nuisance claims, defendant must comply with GAAMPs.
 21 Defendant Sweet Peas Farm does not comply
 22 with GAAMPs' site selection manual. Defendant
 23 correctly states producers with less than 250 animal
 24 units are not required to complete the site review
 25 and verification process, and that is the site

1 selection manual at eight, footnote two of table
2 four. However, defendant's assertion is incomplete
3 because the site selection manual states, and I
4 quote, to be afforded nuisance protection under the
5 Right to Farm Act, producers must conform to all
6 applicable GAAMPs but are not required to complete
7 the site review and verification process if less than
8 250 animals, and that is also citing Jaworski.
9 Therefore, defendant must comply with the site
10 selection manual to be protected from nuisance claims
11 through the Right to Farm Act.

12 Defendant relies on an unpublished circuit
13 court case to substantiate the claim defendant is not
14 subject to GAAMPs; Forsyth Township versus Randy
15 Buchler, unpublished opinion of the Marquette Circuit
16 Court issued December 18, 2012. Defendant asserts
17 Buchler held GAAMPs are, at best, a policy containing
18 subjective phrases such as should not be constructed
19 in local areas where local zoning does not allow for
20 agricultural uses.

21 First, Buchler is only persuasive authority
22 which this court does not have to follow. Second,
23 the court in Buchler was correct to call GAAMPs
24 policy, but to be protected by the Right to Farm Act
25 from public or private nuisance claims, the farm

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1 operation alleged to be a nuisance conforms to GAAMPs
2 according to policy determined by the Michigan
3 Commission of Agriculture, and that is noted in MCL
4 286.473.

5 Finally, defendant claims if they comply
6 with the Michigan Agricultural Environmental
7 Assurance Program defendant will be in compliance
8 with GAAMPs but defendant has offered no evidence of
9 compliance with the Michigan Agricultural
10 Environmental Assurance Program.

11 The Buchler court held the Right to Farm
12 Act provides that individuals and local units of
13 government can submit complaints to the Michigan
14 Department of Agriculture and Rural Development
15 involving the farm or farm operation in accordance
16 with MCL 286.474(1). The statute then requires the
17 Michigan Department of Agriculture and Rural
18 Development to investigate the complaint and make a
19 determination of whether the farm operation complies
20 with GAAMPs. Plaintiff did exactly what the Buchler
21 court suggested. Plaintiff filed a complaint with
22 the Michigan Department of Agriculture and Rural
23 Development who investigated defendant and found
24 defendant was not compliant with GAAMPs

25 Defendant is correct in classifying Sweet

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1 Peas Farm operation as a category three site, sites
2 generally not appropriate for new and expanding
3 livestock facilities, because defendant's property is
4 in an area that does not allow farming For
5 Defendant's Sweet Peas Farm to be in compliance with
6 GAAMP's site selection manual the operation must be
7 250 feet from a property line setback; site selection
8 manual table four at eight. The 250 foot property
9 line setback requirement from table four is for
10 operations with 50 to 249 animal units, but the site
11 review and verification process states for production
12 facilities that have a total capacity less than 50
13 animal units may request siting verification with the
14 Michigan Department of Agriculture and Rural
15 Development. The Michigan Department of Agriculture
16 and Rural Development site review and verification
17 process will use criteria applicable to a 50 animal
18 unit facility for these requests; site selection
19 manual at 13.

20 The site selection manual defines property
21 line setback as the distance from the livestock
22 production facility to the property line measured
23 from the facility to the nearest point of the
24 facility owner's property line; site selection manual
25 at four. The defendant must meet the site selection

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1 manual's requirements to be protected by the Right to
2 Farm Act. However, defendant's property dimensions
3 make the property setback line requirement impossible
4 to meet. Defendant's property is rectangular in
5 shape with the shorter property line along the road
6 and, at most, is less than 170 feet wide measured
7 from the south property line to the north property
8 line. Therefore, wherever defendant places their
9 operation on the property, the farming operation will
10 be within 250 feet to the nearest property line.

11 Defendant also fails another site selection
12 manual requirement for farming operations in areas
13 zoned primarily residential. The site selection
14 manual states new livestock production facilities
15 shall not be constructed within 1500 feet of areas
16 zoned for residential use; site selection manual at
17 10. Defendant Sweet Peas Farm is a new livestock
18 production facility and defendant's property makes it
19 impossible to meet the 250 foot property setback
20 line. Therefore, defendant cannot meet the 1500 foot
21 requirement either.

22 Williamston High School borders defendant's
23 property. Defendant's property is abutted to the
24 north and the east by Williamston High School's
25 property line. Immediately to the north of

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1 defendant's property is a paved path to access
 2 Williamston High School and Williamston High School's
 3 athletic fields including school buildings associated
 4 with the following: Two soccer fields, a baseball
 5 diamond, and eight tennis courts Defendant's farm
 6 does not comply with GAAMPs restrictions for high
 7 public use areas GAAMPs are concerned with setback
 8 requirements in high public use areas to minimize the
 9 potential affects of a livestock production facility
 10 on the people that use these areas; site selection
 11 manual at 10. New livestock production facilities
 12 should not be constructed within 1500 feet of school
 13 buildings; site selection manual at 10
 14 GAAMPs does not define school buildings
 15 Another statute also concerned with certain
 16 activities near a school is the Liquor Control Act.
 17 The Attorney General opinion found separate
 18 structures used as a gymnasium in connection with
 19 school activities is a school building within the
 20 meaning of the Liquor Control Act, and that's the
 21 Office of the Attorney General, 1947 to 1948
 22 publication number 699, page 580 Defendant's
 23 property is within 1500 feet of several school
 24 buildings associated with Williamston High School's
 25 athletic fields. Therefore, defendant's farm is not

1 compliant with this section of GAAMPs site selection
 2 manual either
 3 Defendant also does not meet the GAAMPs
 4 manure manual requirements To receive nuisance
 5 protection under the Right to Farm Act, Sweet Peas
 6 Farm operation must comply with GAAMPs manure manual.
 7 The GAAMPs manure manual is meant to prevent
 8 groundwater pollution and excessive odor omissions by
 9 controlling manure runoff, waste water construction
 10 designs, manure management, and application of manure
 11 to land. That's located at the manure manual at one.
 12 On May 17, 2013, the Michigan Department of
 13 Agriculture and Rural Development conducted its Right
 14 to Farm Act inspection of defendant's property. The
 15 inspection raised several concerns about defendant's
 16 manure management practices and indicated there was a
 17 potential pollution problem occurring on the
 18 property. One problem Whitman found on the May 17,
 19 2013, inspection was the standing water. Also at the
 20 inspection Whitman informed defendant of manure
 21 runoff from defendant's property.
 22 Now, defendant argues standing water only
 23 accumulates after a heavy rainstorm, and we heard
 24 testimony about that, and, therefore, it should not
 25 be considered an issue because it is such a rare

1 event. However, GAAMPs manure manual requires
 2 defendant to address these problems. First, the
 3 manure manual states runoff control is required for
 4 any facility if runoff from a lot leaves the owner's
 5 own property or adversely impacts surface and/or
 6 groundwater quality. Examples includes runoff to a
 7 neighboring land, a roadside ditch, a drain ditch,
 8 stream, lake, or wetland. That's in the manure
 9 manual at three.
 10 Also, defendant must be able to control
 11 runoff to contain the direct rainfall and runoff that
 12 occur as a result of the average 25 year 24 hour
 13 rainfall event for the area. Storage basins must be
 14 constructed to reduce seepage loss to acceptable
 15 levels. That's at the manure manual page three.
 16 Therefore, even though defendant claims the
 17 standing water to be a rare event, defendant must
 18 comply with GAAMPs manure manual's requirement to
 19 plan for a 25 year 24 hour rainfall event.
 20 Defendant was repeatedly notified by
 21 Whitman of defendant's failure to address these
 22 concerns to comply with GAAMPs. In Whitman's June
 23 19, 2013, affidavit Whitman stated Defendant Sweet
 24 Peas Farm is neither Michigan Agricultural
 25 Environmental Assurance Program verified nor

1 determined to be in compliance with GAAMPs by the
 2 Michigan Department of Agricultural and Rural
 3 Development.
 4 Whitman sent at least four letters to
 5 defendant on June 3rd, June 14, July 16, and August
 6 23rd, 2013. Each letter explained defendant failed
 7 to comply with their manure management system plan
 8 and failed to comply with the applicable GAAMPs.
 9 Whitman's August 23rd, 2013, letter told defendant
 10 that the Michigan Department of Agriculture and Rural
 11 Development office had not received any documentation
 12 from defendant regarding the potential pollution by
 13 defendant.
 14 This court finds defendant has no evidence
 15 of defendant's compliance with GAAMPs manure manual
 16 and defendant is not protected from plaintiff's
 17 nuisance claims.
 18 GAAMPs animal care manual attempts to
 19 define general standards for livestock production and
 20 well-being on farms. To comply with GAAMPs animal
 21 care manual a farm must comply with GAAMPs manure
 22 manual. Defendant's farm is not compliant with
 23 GAAMPs manure manual; therefore, defendant is not
 24 compliant with GAAMPs animal care manual.
 25 This court finds defendant's farming

1 operation is not protected by the Right to Farm Act
 2 and plaintiff's zoning ordinances are not preempted.
 3 Defendant has failed to show by a preponderance of
 4 the evidence that defendant complied with the
 5 requirements of GAAMPs manure manual and GAAMPs site
 6 selection manual.
 7 Defendant's farm is in an R-1 district and
 8 in a residential neighborhood. A farm in this
 9 location does not comply with GAAMPs which prevents
 10 the Right to Farm Act from protecting defendant
 11 Defendant knowingly moved into an area zoned
 12 residential and started a farming operation. This
 13 court finds defendant's farming operation to be in
 14 violation of plaintiff's zoning ordinances and is,
 15 therefore, deemed a nuisance per se pursuant to MCL
 16 125.3407
 17 Plaintiff has stated a claim upon which
 18 relief can be granted. Defendant's motion for
 19 summary disposition pursuant to MCR 2.116 (C)(8) is
 20 denied. Defendant has failed to state a valid
 21 defense against plaintiff's claim. Defendant's
 22 farming operation is a nuisance per se pursuant to
 23 MCL 125.3407 and plaintiff's motion for summary
 24 disposition pursuant to MCR 2.116 (C)(9) is granted.
 25 There is no issue of material fact.

25

1 Plaintiff is entitled to judgment as a matter of law.
 2 Plaintiff's motion for summary disposition pursuant
 3 to 2.116 (C)(10) is granted. Plaintiff is entitled
 4 to the injunction they seek.
 5 Defendant shall cease all farming
 6 operations, and plaintiff is entitled to the
 7 permanent injunction, and the directed verdict under
 8 2.516, obviously, is granted.
 9 Is there anything that I have not
 10 addressed?
 11 MR. BENDER: No. I think you've addressed
 12 everything. I do have a judgment prepared and a
 13 permanent injunction prepared in the event that the
 14 court ruled at the conclusion of the evidence of
 15 defendant's proffer of evidence or at the conclusion
 16 of all the evidence, so I have that prepared.
 17 I would also indicate that, being the
 18 prevailing party, that we could tax our costs to this
 19 matter. We've got significant costs because of the
 20 numerous depositions that were taken by the defendant
 21 and so on and so forth so I would ask the court to
 22 grant our request to -- it's at your discretion, of
 23 course, to allow us to tax costs in this matter,
 24 which we can do within 28 days of the entry of the
 25 judgment by submitting an affidavit to the clerk.

26

1 THE COURT: As to the costs, you certainly
 2 can submit those. If there's any dispute, however,
 3 there will be a hearing pursuant to Smith versus
 4 Khouri, that's 481 Michigan 519, it's a 2008 case,
 5 and those rules will be followed
 6 Counsel, for the record.
 7 MR. COX: For the record, Your Honor, there
 8 is a lot of evidence I would like to proffer. I
 9 don't know if you want to do that now, if you want to
 10 do that at the close of the proceedings, how you
 11 want --
 12 THE COURT: You may make an offer of proof.
 13 MR. COX: An offer of proof --
 14 THE COURT: Certainly you may do that.
 15 MR. COX: And, Your Honor, I would ask you
 16 to reconsider your decision. You've ignored Jessica
 17 Hudson's testimony. What I heard from the court's
 18 findings deal with letters from May and June and
 19 August of 2013, and Ms. Hudson's testimony at the
 20 last hearing was that at the end of September she
 21 closed the grate, she put the berm in place, and
 22 planted a flower garden, all after the dates you have
 23 found as evidence in your ruling, and since she's
 24 taken those activities she hasn't had any standing
 25 water, so I would ask the court to reconsider its

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1 decision and take into account the un rebutted
 2 evidence that's before the court.
 3 There's no evidence before the court, Your
 4 Honor, of how far away the school buildings are.
 5 There's no evidence whether kids use the path. I
 6 mean, none of that evidence is before the court. The
 7 only evidence before the court, Your Honor, are Wayne
 8 Whitman's letters and Ms. Hudson's testimony. And as
 9 I indicated, Your Honor, her testimony is after the
 10 date of all of those letters and so those letters are
 11 basically worthless to the court in order to make a
 12 factual determination of whether or not her operation
 13 is in compliance with the GAAMPs, so, Your Honor, I
 14 will make an offer of proof at the appropriate time,
 15 whenever you want to do that, Your Honor, but I would
 16 ask the court to reconsider its decision.
 17 THE COURT: All right. Well, you may make
 18 an offer of proof. I'm going to let Mr. Bender
 19 respond. You can make an offer of proof. I will
 20 also do a written order and you can file a motion for
 21 reconsideration and add whatever you think I've done
 22 wrong here. Certainly there's also the Court of
 23 Appeals. But, quite honestly, sir, I don't know how
 24 a whole lot has changed here. The lay of the land is
 25 the lay of the land, and unless you've got some kind

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1 of silly putty where the land has grown, I don't know
2 how this operation could change a whole lot
3 MR. BENDER: I was just going to add, Your
4 Honor, it was his burden of proof, that is, the
5 Hudson's burden of proof to show that they're in
6 compliance. If it were me I would have brought in an
7 expert who had looked at the land and come into this
8 court and say they were in compliance of GAAMPs.
9 That didn't happen, or other people who were familiar
10 with farming operations and that topography and how
11 they could get around the issues that are manifest
12 with that topography of that land, and there was
13 nothing, so I think, obviously, Your Honor made the
14 correct ruling, but I would indicate that in terms of
15 proffering further evidence, I don't know what we're
16 going to do in terms of -- how that's going to work,
17 but I leave that to Your Honor.
18 MR. COX: Your Honor, yeah, we do have an
19 engineer as a rebuttal witness to rebut Mr. Whitman's
20 testimony. He's been out to the site. He's taken
21 elevations. He's taken measurements, and as part of
22 the offer of proof -- I mean, he's prepared to
23 testify that the berm that's in place can certainly
24 withstand the 25 year 24 hour flood event. I mean,
25 we have all this evidence, Your Honor, we were going

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1 to put in rebuttal, but as it is right now, the only
2 evidence before the court are the letters -- the
3 exhibits admitted as presented by the defendant and
4 Ms. Hudson's testimony. Her testimony is clear
5 She's in compliance with the GAAMPs. She believes
6 she's in compliance with the GAAMPs. That evidence
7 is unrebutted.
8 THE COURT: Well, sir, I guess that's -- as
9 the trier of fact it's what I believe, not what she
10 believes, so we'll see. What would you like to make
11 as your offer of proof, sir?
12 MR. COX: I guess read into the record what
13 I believe witnesses would have testified to.
14 THE COURT: Okay. Certainly if you -- is
15 your witness here?
16 MR. COX: He might be outside, Your Honor.
17 And I do have the testimony from Mr. Whitman in his
18 depositions, what he testified to as part of the
19 offer.
20 MR. BENDER: Let me just be clear about
21 what he's intending to do here. He had the
22 opportunity and the burden to bring that witness
23 forward at the appropriate time when he was to bring
24 those witnesses before Your Honor and establish that
25 they substantially complied with or complied with

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1 GAAMPs. He didn't do that. Now he wants to bring
2 forward an expert witness that has been undisclosed
3 to me -- I had no idea that they had an expert
4 witness -- and wants to proffer that evidence to Your
5 Honor and make it part of the record for the Court of
6 Appeals, I presume. I would ask that the court not
7 entertain that.
8 MR. COX: Your Honor, he's not an expert
9 He's going to testify as to his observations of the
10 site, calculations he performed and the observations
11 he made.
12 THE COURT: Okay.
13 MR. COX: And, again --
14 THE COURT: Sir, why didn't you do this in
15 your case in chief when it was your burden?
16 MR. COX: I did it through Ms. Hudson.
17 THE COURT: She's not an expert.
18 MR. COX: She doesn't need to be an expert,
19 Your Honor. That is not what Lima Township says.
20 Lima Township basically says credible evidence --
21 credible testimony or other evidence, that's all
22 that's required to meet the burden, Your Honor.
23 THE COURT: Okay. Well, I've made my
24 ruling. Why don't --
25 MR. COX: And, Your Honor, it is important

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1 to hear Mr. Whitman's testimony as he testified under
2 oath in the two depositions. He's made statements
3 that a berm would be an acceptable form of control.
4 He's made statements that there is no concern about
5 odors, there is no concern about setbacks -- I mean,
6 he's made a lot of testimony, Your Honor, in his
7 depositions which I feel --
8 LAW CLERK: Judge, he should have --
9 MR. COX: -- it's pretty important for the
10 court to hear, and I had planned on using that
11 evidence when I was cross examining Mr. Whitman.
12 MR. BENDER: Again, he had the opportunity
13 to subpoena Mr. Whitman into this court and present
14 that when he was presenting his evidence in his case
15 in chief. He did not do that.
16 I subpoenaed Mr. Whitman to appear here
17 today. God knows he's already been through six hours
18 of depositions with Mr. Cox, but I subpoenaed him to
19 be here as my witness in the event that the motion
20 isn't granted. He had an opportunity to subpoena a
21 state employee to appear here and testify and he did
22 not do that.
23 Furthermore, he cannot use the deposition
24 transcript of Mr. Whitman. Mr. Whitman is not more
25 than 90 or 100 miles away and unavailable. It's

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1 hearsay.
 2 THE COURT: Well --
 3 MR COX: Your Honor, it's not hearsay.
 4 It's sworn testimony. It's definitely not hearsay.
 5 THE COURT: Well, but we have an available
 6 witness so it doesn't comply with the court rules
 7 MR COX: Your Honor, it is part of my
 8 offer of proof. I need to get this evidence on I
 9 need to make a record. I believe we've already
 10 established -- the evidence is un rebutted, Your
 11 Honor, that Ms Hudson has done everything that Mr.
 12 Whitman has said needed to be done in his letters.
 13 That is un rebutted evidence.
 14 THE COURT: Sir, it's also un rebutted that
 15 the land is the land and no matter where you're going
 16 to place this farm it simply doesn't comply with the
 17 law. How are we going to change the topography when
 18 there's just not enough land here and it's in a
 19 residential area and they moved to it knowing it was
 20 residential not agricultural.
 21 MR COX: Your Honor, those are legal
 22 conclusions, those are not facts.
 23 THE COURT: Well, I'm a judge and I'm
 24 making a legal conclusion.
 25 MR COX: I understand that, Your Honor,

1 and I would like the record to be complete with all
 2 of the facts so that -- again, I would ask you to
 3 reconsider your decision, Your Honor
 4 THE COURT: Okay.
 5 MR. BENDER: He could file a motion for
 6 reconsideration.
 7 MR. COX: Your Honor, there is no harm in
 8 making an offer of proof. There is no harm
 9 whatsoever. You ruled.
 10 THE COURT: Okay.
 11 MR COX: You're about to issue a judgment
 12 We're going to have a final appealable order, I
 13 imagine, and that's done. The offer of proof is not
 14 going to harm anybody.
 15 THE COURT: Well, sir --
 16 MR. COX: All it's going to do is provide
 17 the Hudsons with an ability to present their -- for
 18 the court -- this court, if I file a motion to
 19 reconsider, or the Court of Appeals to have a
 20 complete record before it
 21 THE COURT: If I were to hear this
 22 testimony, what am I going to hear?
 23 MR. COX: You want me to do that now?

24 THE COURT: What's the summary of what I'm
 25 going to hear?

1 MR. COX: We have an individual, Matt
 2 Germaine He's an individual He's worked with
 3 GAAMPs before He has done storm water runoff work
 4 before. He's testified before He would testify --
 5 he's gone out to the property He's looked at it.
 6 He's seen where the animals are, and, by the way,
 7 Your Honor, the animals are in a location where Mr.
 8 Whitman has never seen them before. Mr. Whitman
 9 still believes that the animals are part way up the
 10 slope, and that's just simply not the case. This
 11 individual testified he went out with a team and shot
 12 some elevations with lasers and did that not only on
 13 the Hudson's property but also adjoining properties
 14 The Hudson's property is about 1.3 acres. He did
 15 three acres worth of elevations.
 16 Based on those elevations and the slope and
 17 the topography he would testify that the position of
 18 the berm prevents any water from running off the
 19 property and the position of the berm and the way
 20 it's constructed and its dimensions and its height is
 21 certainly capable of meeting a 25 year 24 hour storm
 22 event that's mentioned in the manure management
 23 GAAMPs.
 24 He would also testify that based on the
 25 location of the animals and the number of animals

1 there is no manure that's going to migrate down the
 2 hills and go off site. He would testify there's
 3 plenty of vegetative cover, there's plenty of flat
 4 space in the back part of the property, and that
 5 there is no concern for water -- storm water or
 6 resurface water running off the property with a
 7 nutrient load from manure. That's what my witness
 8 would have testified to.
 9 THE COURT: Okay
 10 MR COX: Now, Mr. Whitman --
 11 THE COURT: Well, sir, here's the problem
 12 I still have an issue with what you're presenting
 13 because, although it may be interesting, you didn't
 14 meet your initial burden of proof. What we have here
 15 is still a finite piece of property, and we still
 16 have the issue of the high school. We can't create
 17 the additional boundaries that you need, and you
 18 still can't meet the criteria of the GAAMPs, so while
 19 little pieces may be met, the full picture, broad
 20 scope of all of the criteria still cannot be met, and
 21 so you're not changing my mind, and I'm not going to
 22 muddy up the record when these issues were failed --
 23 you failed to bring these to me initially, and what's

24 going to happen is plaintiff has not had an
 25 opportunity now to address what you're bringing to me

1 so, Mr. Bender, this is new information; is that
 2 correct?
 3 MR. BENDER: That's correct We filed
 4 interrogatories in regard --
 5 MR. COX: That's not true, Mr Bender. You
 6 know that's not true.
 7 UNIDENTIFIED SPEAKER: Geez
 8 THE COURT: Well, Mr. Bender, even if we
 9 put the information that he has given just now in the
 10 most positive light, is what I'm saying correct, we
 11 cannot still create the additional space boundaries
 12 in the GAAMPs requirements?
 13 MR. BENDER: That's correct
 14 MR. COX: Your Honor --
 15 MR. BENDER: That's correct. As to site
 16 selection, you're correct, and as to the topography
 17 of the land, that doesn't change either.
 18 MR. COX: Your Honor, if you look at Mr.
 19 Whitman's letters, he never mentions the care of
 20 animal GAAMPs and he never mentions the site
 21 selection GAAMP. The only GAAMP he says is
 22 applicable to this property is the manure management
 23 GAAMP, so the issues about 250 feet setback
 24 requirements, 1500 feet setbacks requirements, those
 25 are not applicable requirements. If they were, Mr.

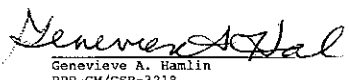
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1 Whitman would have mentioned those in his letter, so
 2 the only GAAMP we have to talk about is the manure
 3 management GAAMP, and with respect to that GAAMP, Mr.
 4 Whitman over and over said there are two things that
 5 need to be done --
 6 THE COURT: Well, sir --
 7 MR. COX: -- plug the grate and prevent
 8 runoff from leaving the property
 9 THE COURT: All right. Have a seat. I'm
 10 not an expert on this but after studying this, all
 11 these trees you people have killed and all of the
 12 records from the Supreme Court and the Court of
 13 Appeals, these various cases, even the Attorney
 14 General, my conclusion is we have to look at all of
 15 the various pieces, and if we did not, then it would
 16 be very easy, we'd look at one piece and they would
 17 be good to go, but we have the various pieces of the
 18 GAAMPs in order to protect the citizens, and so when
 19 I read all of this together, I think it all runs
 20 together, and that's what I've tried to do. That's
 21 how I read the law, and my ruling stands, so you may
 22 appeal me.
 23 I will also do a written order but my
 24 ruling stands You may file a motion for
 25 reconsideration. You may appeal me You all know

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1 how to do that, but today Williamstown Township is
 2 the winner, if that's what you want to call it That
 3 concludes the case.
 4 MR. BENDER: Thank you, Your Honor.
 5 Appreciate your time and consideration.
 6 MR. COX: Thank you, Your Honor
 7 MR. BENDER: If Your Honor is going to
 8 submit an opinion, then I'll submit a judgment, I
 9 guess, once the opinion is issued under the seven day
 10 rule or something.
 11 THE COURT: You'll have it by the end of
 12 the week.
 13 MR. BENDER: Okay. Thank you very much,
 14 Your Honor
 15 (Whereupon hearing concluded at 10:52 a.m.)
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1 STATE OF MICHIGAN)
 2) SS
 3 COUNTY OF EATON)
 4 I, GENEVIEVE A. HAMLIN Certified Shorthand
 5 Reporter and Notary Public in and for the County of
 6 Eaton. (Acting in Ingham County) State of Michigan.
 7 do hereby certify that the foregoing was taken before
 8 me at the time and place hereinbefore set forth.
 9 I FURTHER CERTIFY THAT said witness was
 10 duly sworn in said cause; that the testimony then
 11 given was reported by me stenographically;
 12 subsequently with computer-aided transcription.
 13 produced under my direction and supervision; and that
 14 the foregoing is a true and correct transcript of my
 15 original shorthand notes.
 16 IN WITNESS WHEREOF, I have hereunto set my
 17 hand and seal this 25th day of February, 2014.
 18
 19
 20 
 21 Genevieve A. Hamlin
 22 RPR-CM/CSR-3218
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