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MICHIGAN STATE UNIVERSITY | Extension

Raise a Glass: Zoning and Land Use Law for Your Farm Brewery

Great Lakes Hop & Barley Conference
March 14, 2018



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This session will cover:

- Michigan Right to Farm Act
 - Local Jurisdiction
 - Farm Markets GAAMPs
- Zoning



Defining Agriculture



Jill O'Donnell

Value-added, processing, packaging, retail, wholesale, marketing, agri-tourism, direct marketing/sales, associated events, internet sales and more



Farm Breweries



commons.wikimedia.org

- “Grow,” produce, and serve beer on agricultural land, much like wineries
- Sourcing raw materials directly from the property – grains, hops, fruit, and other ingredients



Regulatory Context

- Federal
- State
 - Brewer or Micro Brewer License
 - Michigan Liquor Control Commission
 - Food Establishment License
 - Michigan Dep't of Agriculture & Rural Development
- Local
 - Zoning Ordinances
 - Building Codes*
 - Sanitation and Health



Anytown Municipality
ZONING - LAND USE PERMIT APPLICATION

_____ (applicant)	FOR OFFICE USE ONLY: Case number _____ Date Rec'd. _____ Fee Rec'd. _____ Receipt number _____ (attach inspection report sheets)
_____ (address)	
_____ (city, state, zip code)	
_____ (telephone, home and business)	

Kurt Schindler



Michigan Right to Farm Act



Michigan Right to Farm Act (RTFA)

- P.A. 93 of 1981, as amended
 - MCL 286.471 et seq.
- Defines “farm,” “farm operation,” and “farm product”
- Does **not** affect application of other state or federal laws



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RTFA – Two Purposes

- Provides affirmative defense to nuisance lawsuits against farmers
 - But does not prevent lawsuits
- Provides conditional preemption of certain local land use ordinances
 - MDARD does not interpret or enforce local zoning ordinances



RTFA – Amendment 1987

- Defines GAAMPs
 - Practices developed by MDARD in consultation with other agencies and organizations
 - Voluntary – NOT rules or regulations



Kurt Schindler



GAAMPs

- Manure management and utilization, 1988
- Pesticide utilization and pest control, 1991
- Nutrient utilization, 1993
- Care of farm animals, 1995
- Cranberry production, 1996
- Site selection and odor control for new and expanding livestock production facilities, 2000
- Irrigation water use, 2003
- Farm markets, 2010



Local Jurisdiction

P.A. 261 of 1999 – Amendment to RTFA

MCL 286.474(6)

“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.

”

. . .



Local Jurisdiction

MCL 286.474(6) (continued)

“ . . . 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 [GAAMPs] developed under this act.”



Local Jurisdiction

- Intent that RTFA preempts any local ordinance, regulation, or resolution
- Cannot extend or revise provisions of RTFA, GAAMPs
- Local government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts with RTFA, GAAMPs



Local Jurisdiction

- Exception – Can regulate if local ordinance is submitted to and approved by Commission on Agriculture & Rural Development



Bob Kennedy
Chair



Trever Meachum
Vice Chair



Brian Pridgeon
Secretary



Diane Hanson



Dru Montri



Local Jurisdiction

Otherwise: A **three part** thought process:

- **FIRST**: Establish jurisdiction
- **SECOND**: Determine what is covered in RTFA & GAAMPs
 - Cannot regulate locally
 - But if not in RTFA & GAAMPs fair game
- **THIRD**: “GAAMP delegate back”



FIRST: Four Part Jurisdiction Test

- Is the activity a farm or “**farm operation**”?
- Is it producing a “**farm product**”?
- Is it engaged in “**commercial production**”?
- Is it complying with **GAAMPs**? (Maybe unsettled law)
- Party asserting RTFA as defense bears burden of showing challenged conduct is protected under RTFA.
 - *Lima Twp. v. Bateson* 302 Mich. App. 483 (2013)



SECOND: What subjects are off limits for local regulation?

- If the subject of the regulation is covered in **RTFA**, off limits for local regulation
 - nuisance immunity
 - enforcement
 - investigation



SECOND: What subjects are off limits for local regulation?

- If the subject of the regulation is covered in a **GAAMP**, off limits for local regulation
 - type of farm
 - farm markets
 - manure
 - pesticide
 - care of animals
 - acres per animal

AND much,
much more.



SECOND: What subjects are off limits for local regulation?

- But if the subject is **NOT** in RTFA or a GAAMP, fair game to regulate
 - RTFA is a “shield” not a “sword” for the farmer.
 - *Sena Scholma Trust v. Ottawa Cnty. Rd. Comm'n*, 303 Mich. App. 12 (2013)



THIRD: “Delegate Back”

- GAAMPs have delegated certain authority back to local government
 - 100,000 population rule
 - Category 4 siting for livestock operations
 - Vehicle access, setbacks, parking, signs for Farm Markets
 - Beer breweries, bonfires, camping, carnival rides, concerts, corn mazes, etc.



GAAMPs – Farm Markets

- Place or area where transactions between a farm market operator and customers take place
- Includes roadside stands but is not necessarily a physical structure (building)
- May operate seasonally or year-round
- May include marketing activities to attract customers and facilitate retail trade business transactions



Jill O'Donnell

GAAMPs – Farm Markets

- 50%+ of products marketed and offered for sale must be produced on and by affiliated farm
 - Measured as average of up to 5-year period
- Primary measure will be
 - 50% of retail floor space used for display
 - During the marketing season
 - If not feasible, then percent of gross sales dollars will be used

GAAMPs – Farm Markets

- Farm product may be processed into a value-added form more marketable for direct sales
 - Following state, federal, and municipal law
- At least 50% of the processed products' main 'namesake' ingredient must be produced on and by the affiliated farm
 - Apples used in apple pie, maple sap in maple syrup, strawberries in strawberry jam, etc.

GAAMPs – Farm Markets

Processing

- packing
- washing
- cleaning
- grading
- sorting
- pitting
- pressing
- fermenting
- distilling
- packaging
- cooling
- storage
- canning
- drying
- freezing
- or otherwise preparing the product for sale



Jim Sluyter

GAAMPs – Farm Markets

- Farm market operators often conduct other activities and services designed to attract and entertain customers and broaden goods and services offered for public sale
- The list of such activities beyond the scope of the GAAMPs that may be regulated by other governmental bodies include:
 - **Beer Breweries**

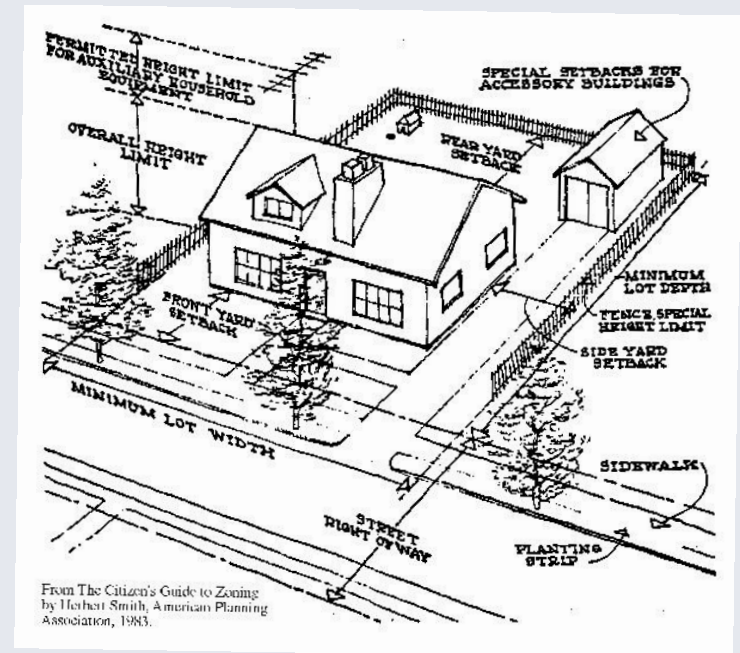


Zoning for Farm Breweries



What is Zoning?

- Regulation of land use
- Divides community into zoning districts
- Shown on zoning map
- Regulations in text
 - Land use
 - Parcel size
 - Building placement
 - Building size
 - Building form



Permitted Use



Brad Neumann

Any use authorized or permitted alone or in conjunction with another use in a specific district and subject to the limitations of the regulations of such use district.



Accessory Use, Structure

- Same lot as the principal use, accessory and subordinate
- Allowed in the district, but must be located with a principal use, structure.

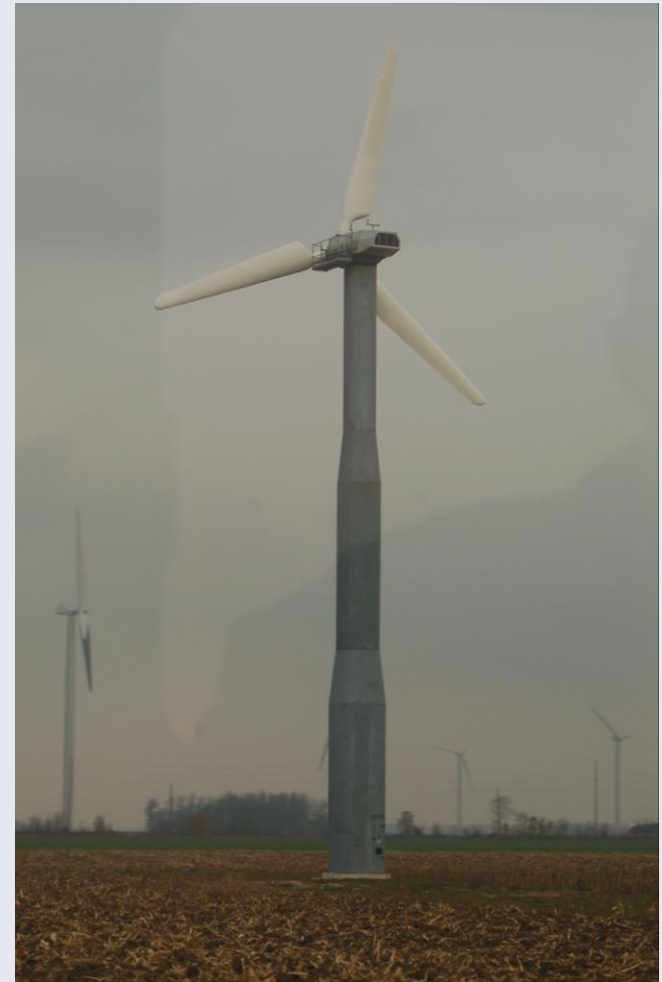


Jim Sluyter



Special Land Use

- Generally compatible with other uses in a zoning district, but may not be appropriate in every location
- Permitted when ordinance standards are met



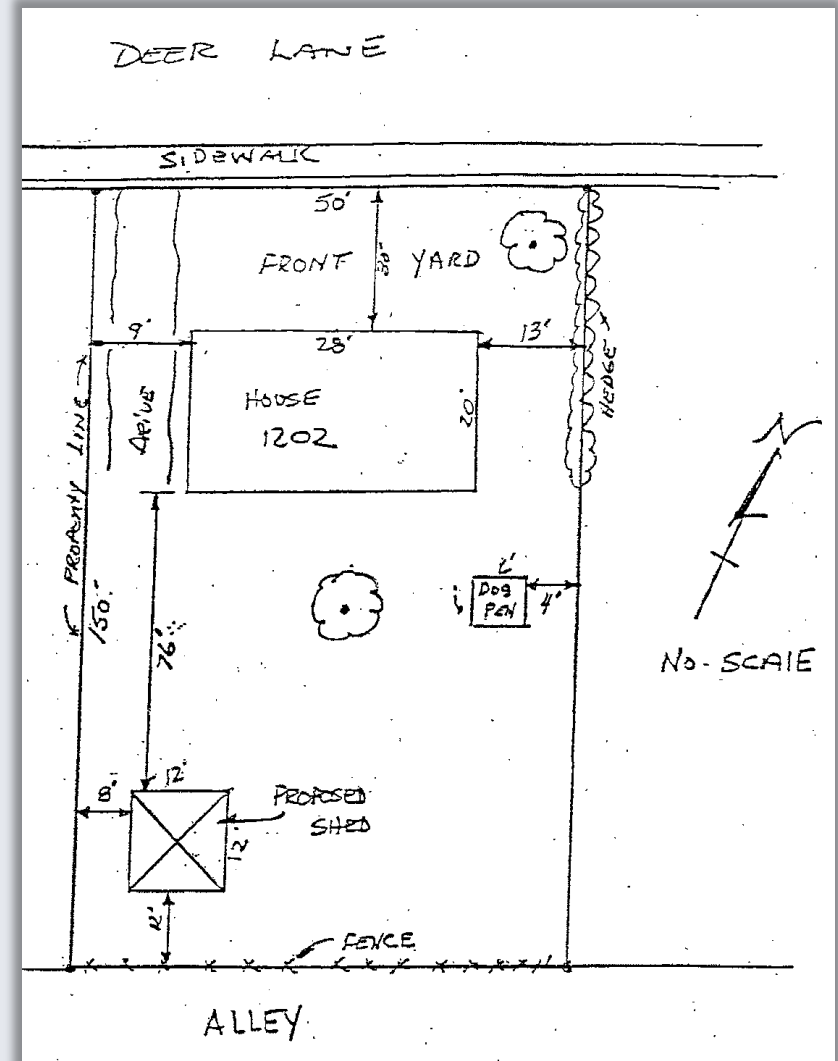
Kurt Schindler



Site Plan Review

A site plan or plot plan may be required

- Graphical depiction of existing and proposed land use
- Shows everything required by the zoning ordinance
- A requirement of all special land uses



Brewery Definitions and Districts

- Brewery and microbrewery
 - Usually follows state law definitions
- Zoning District(s)
 - Agriculture
 - Agritourism
 - Commercial
 - Industrial

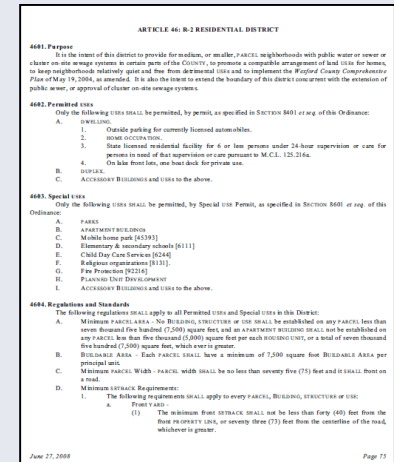


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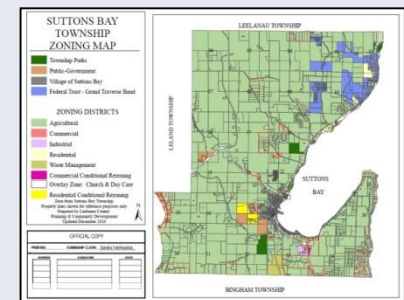


Ordinance Amendments

- **TEXT:** Change zoning ordinance text
 - Add use to list of permitted or special uses
- **MAP:** Change the zoning map
 - a/k/a rezoning
 - Specific area on map changed from one district to another
- An amendment may include both



generic zoning text



Suttons Bay Township Zoning Map



Breweries: Sample Parcel Requirements

- Minimum parcel acreage in active production of a fruit, grain, vegetable or other principal ingredient of the beverage
- Or % of fruit or other crops used to make beverage grown by owner or operator
- May include parcel owned or operated by owner or operator of brewery



Breweries: Sample Placement Restrictions

- Maximum lot coverage (%) for buildings and structures used for beverage processing, storage, tasting, and sales
- Setbacks
- Parking spaces
 - Per floor area or maximum occupancy
- Signs



Brewery – Activities

- Consumption
- Retail
- Special Events
- May see restrictions on
 - Number of patrons
 - Hours
 - Outdoor activity



Jim Sluyter



Consumption – Sample Provisions

- Alcohol consumed or sold must be produced by farm
- Accessory to beverage production
 - % of floor area or total square footage
 - Limited to tasting room quantities
 - Limited food service – “snacks” only
- Require all licenses and approvals from state and federal agencies



Retail Sales – Sample Provisions

- Subordinate to production
 - % floor area or total square footage
- Related merchandise
 - Beverages
 - Glassware, bottle openers, etc.
 - Promotional items
- Unrelated merchandise
 - Items produced on farm
 - Other food or non-food items



Jill O'Donnell



Special Events – Sample Provisions



Jim Sluyter

- To minimize adverse impacts
 - Noise – including music
 - Traffic
 - Lighting
- Site plan requirement
 - Temporary structures
 - Location and removal
 - Temporary parking
 - Location and setbacks



Your community's vision for agriculture

- Communities set the direction for the agricultural economy in their master plans
- The vision for thriving agriculture must include a diverse notion of what agriculture is presently
- The master plan must support the local regulatory approach
- **Public engagement is key to shaping your community's vision for agriculture!**



Additional Resources



Sample Regulations

MSU Extension *Land Use Series*: Sample zoning for agriculture-like and urban agriculture

http://msue.anr.msu.edu/resources/sample_zoning_for_agriculture_like_and_urban_agriculture

MICHIGAN STATE UNIVERSITY Extension

Michigan State University Extension
Land Use Series

Sample zoning for agriculture-like and urban agriculture

Original version: April 28, 2015
Last revised: September 1, 2016

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Resources

- 2018 Farm Markets GAAMPs (and others)
<http://www.michigan.gov/gaamps>
- *Land Use Series*: What sorts of local regulations are preempted by the Right to Farm Act (RTFA)
http://msue.anr.msu.edu/resources/who_is_protected_from_zoning_regulation_under_the_right_to_farm_act_rtfa

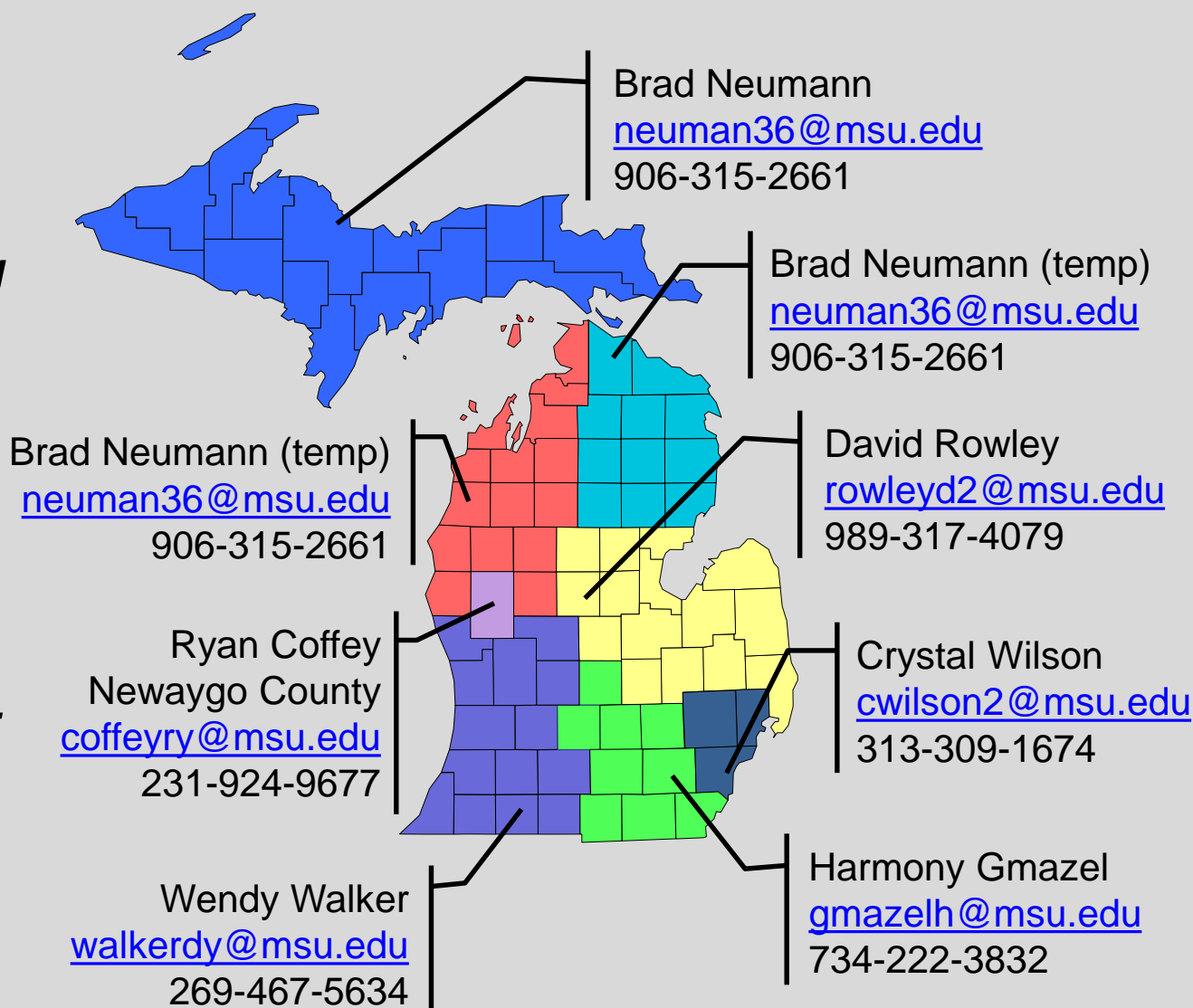


Questions?



Land Use Educators

Contact the MSU Extension land use educator closest to you with your planning and zoning questions.



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