



# Farm Labor Housing Zoned Out of Existence

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# “Right to Farm”?

- Michigan’s “Right to Farm Act” does not cover employment related housing
- Designed to provide farmers with “nuisance” protection
- Seeks “environmental protection of natural resources” through “GAAMPS”
- Conformance to GAAMPs provides umbrella protection from nuisance litigation

# Federal Fair Housing Act

- Prohibits state and local land use and **zoning laws, policies, and practices** that discriminate based on a characteristic protected under the Act
  - Race, color, religion, sex, disability, familial status, or national origin
  - Established by the Supremacy Clause of the U.S. Constitution

# Zoning – Local Control

- The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by other state or federal laws such as the Fair Housing Act

# DOJ Violative Zoning Practices

- Denying multifamily housing for concerns residents are of a protected class
- Restrictions on housing because of alleged public safety concerns
- Unequal enforcement

# No Intent to Discriminate?

- **State or local governments** may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic DOJ

# MICHIGAN ZONING ENABLING ACT

- Sec. 207. A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

# MI Zoning Act - Group Housing

MCL 125.3206 “the following is a residential use of property for the purposes of zoning and a **permitted use in all residential zones** and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone”

- Residential facility
- Adult foster care
- Group child care home



# What Has and Is Happening?

## *Frens – “Consistent Applicable Provisions”*

- *“The approval of plans or the issuance of a permit pursuant to this code which involves the construction, alteration, or renovation of a building, structure, or premises, the use of a site, or the installation or alteration of equipment **does not relieve the person receiving the approval or permit from complying with all consistent applicable provisions of building and construction laws, zoning requirements, and other state and local statutes, charters, ordinances, rules, regulations, and orders.**” MCL 333.1203*
- *“Although the rules do not contain a provision that parallels the location limitation in the zoning ordinance, this rule demonstrates that **local control of agricultural labor camps is still permitted.**” Court decision*

# What Has and Is Happening?

- Court relied on:

"[t]hese rules apply to all agricultural labor camps. A provision in these rules shall not take precedence over a requirement in an applicable local rule, ordinance, or code when such requirement is more stringent than the provision in these rules." MCL 325.3605(1)

- “[W]e find that no conflict exists here because the state regulations do not address the subject of the zoning ordinance—the location of a use of land within the township.”

# Application of *Frens*

- Many local municipalities have/are using case to exclude “migrant” housing through restrictions not placed on other housing
- Court ruled on if “the state regulatory scheme for migrant housing *totally preempts* local zoning ordinances”
- Court did not rule on “*partial preemption*”

# Impact

- Many municipalities have used *Frens* to adopt very restrictive ordinances
- “Ordinance consultants” have/are using cut & paste procedures without ordinance review
- Even heavy ag municipalities have adopted restrictions

# Application of *Putney*

- Village of Elberta was deemed to have excluded housing:

*“the Village of Elberta has no constitutional authority, in fact, it would offend the constitution of the state of Michigan and the United States to put a condition on that agricultural workers cannot live in apartments in the Village of Elberta.”*

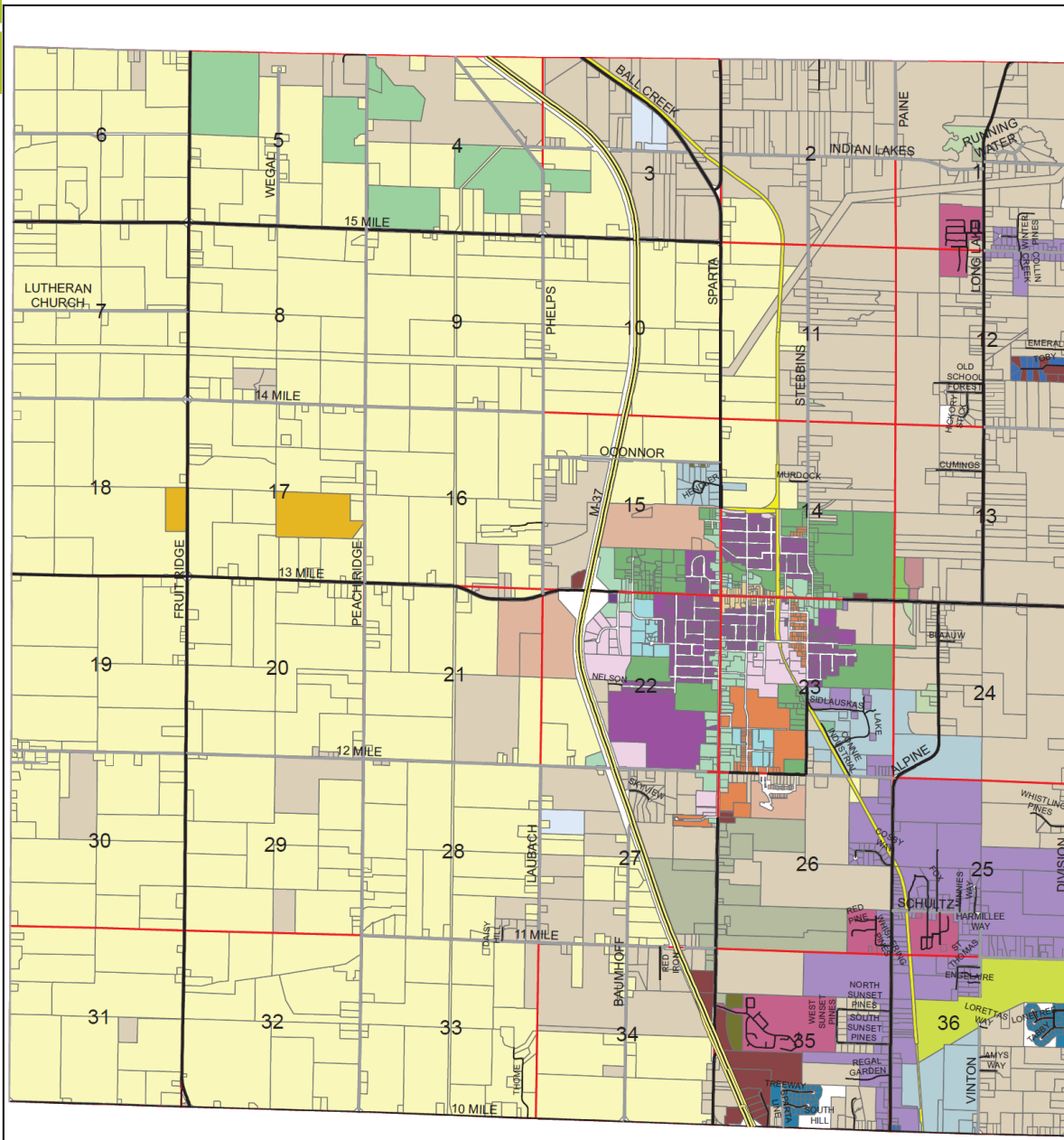
# Application of *Putney*

*“...and conditions the village imposes on a special use permit for apartments have to be lawful. You can’t have exclusionary zoning that says implicitly that the village considers certain kinds of workers, certain kinds of laborers, as somehow less desirable than other kinds of people who work and want to live in the village.”*

# Sparta Township – Initial Language

- Migrant housing is allowed only as an accessory use **in agricultural zoning districts**
- May only occupy April 1 to November 1
- Must work for the camp operator
- Must be 500' from property line or existing residence Ordinance 8.13

## Zoning Districts



**Legend**

A1*	AG1	C-2 CONDITIONAL	GC	R1	R4	VCBD	VPUD	VR3
A2	AG2	C1	I1	R2	RR	VGC	VR1	VR4



# 40 Acre Parcel

$$1,320 \text{ ft} \times 500 \text{ ft} \times 2 = 1,320,000 \text{ ft}^2$$

$$320 \text{ ft} \times 500 \text{ ft} \times 2 = \underline{320,000 \text{ ft}^2}$$

$$\text{Setback area} = 1,640,000 \text{ ft}^2$$

$$\text{Buildable area} = 102,400 \text{ ft}^2 (320' \text{ sq})$$

$$\text{- WPS setback } 100' = \underline{88,000 \text{ ft}^2}$$

$$\text{Total Buildable} = 14,400 \text{ ft}^2 (120' \text{ sq})$$

$$\text{- Building sep } 30' = \underline{3,600 \text{ ft}^2 (120' \text{ sq})}$$

$$\text{Total 2 building area} = 10,800 \text{ ft}^2 (103' \text{ sq})$$

**Must be on ¼ Acre**

# Mayfield Township

Agricultural labor housing and/or migrant housing

- a) Minimum parcel size is 20 acres.
- b) Migrant Farm Worker Residents of housing must be **employed in the farm operation** with evidence provided in the form of **pay stubs, time sheets**, etc. Upon request of the zoning administrator, **the land owner must furnish the names, contact information, citizenship records, and duration of stay (arrival and departure) of inhabitants of all migrant housing.**
- c) Setback one hundred (100) feet from parcel lines and public and private roads.
- d) Screened from existing residential structures.
- e) Setback two hundred (200) feet from the principal dwelling. Ordinance 4.29

# Danby Township Proposed

- Farm labor housing shall be located on the same property as an active farming operation
- Lot shall be at least 5 acres
- Only 1 dwelling per acre
- 100 ft setback
- Residents/family only, must be employed by the farming operation

# Danby Township Ordinance

Allowed only in Ag District by Special Land Use:

*“Migratory labor housing associated with agricultural enterprises and constructed in conformance with applicable State and Federal Regulations”*

No other Zoning Districts allow “migratory labor housing”

# Sullivan Township

## Proposed – then modified

- Located on the same property as the principal use
- Minimum 10 acres
- Occupied only April 15th to November 15<sup>th</sup>
- Must be employed by that farming operation
- 100' side/300' from road setbacks
- “Special conditions” to “protect” property value
- 125% “destruction bond”
- If not used, must be destroyed after 2<sup>nd</sup> season
- Annual special permit renewal
- Special Permit revocation in 15 days for any violation of township, county, state or federal laws

# MI ELLIOTT-LARSEN CIVIL RIGHTS ACT

Sec. 102. (1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

# MI ELLIOTT-LARSEN CIVIL RIGHTS ACT

(g) “Person” means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, **the state or a political subdivision of the state or an agency of the state**, or any other legal or commercial entity.

(h) “Political subdivision” means a **county, city, village, township**, school district, or special district or authority of the state.

# Challenges

- Comingling of issues
- Aversion to local/state/federal inter-agency questioning
- Lack of financial backing for employer or employee based legal action
- Inconsistent messaging to municipalities