STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

GRAND TRAVERSE FARMS, INC.
Michigan Corporation, and
NORTHERN OPPORTUNITIES, INC.,
a Michigan Corporation,

Apellants,

Files No(s) 93-11658-AV
And 94-11871-AV
HON. THOMAS G. POWER

PARADISE TOWNSHIP, a Municipal
Corporation,
Appellee.

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OPINION

The Appellants Grand Traverse Farms, Inc. and Northern Opportunities, Inc. have brought two appeals from the Paradise Township Board of Zoning Appeals. The appeals were consolidated for oral argument. The Court granted the Michigan United Conservation Clubs (MUCC) and the Michigan Townships Association leave to file amicus curiae briefs.

The Appellants are the owners of approximately 200 acres of land in Paradise Township. The land is zoned agricultural and the uses permitted are provided by Sections 15.10 and 15.11 of the Paradise Township Zoning Ordinance, as follows:

SECTION 15.10 - USES PERMITTED: No building or structure l. or any part thereof, shall be erected, altered or used, or land or premises used, in whole or in part, for other than one or more of the following specified uses:

A. Any use permitted and as regulated in the R-1 Residential District.

B. General farming and agricultural uses.

C. Nurseries, greenhouses, and tree plantations.

D. Animal hospital, veterinary clinics and kennels, and structures used to house livestock, provided, however, i that any buildings, pens or runs used for livestock shall be at least two hundred fifty (250) feet distant from any other lot.

E. Roadside stands for sale of agricultural products.

F. Gun and skeet clubs, hunting preserves, dude ranches and riding stables.
Section 15.10 (D) and (F) bold-faced text DELETED by Amendment #83-17, Adopted 6/13/84.

SECTION 15.11 - USES PERMITTED WHEN AUTHORIZED BY SPECIAL USE PERMIT AS SET FORTH IN SECTION 9.18 AND 9.19 OF THIS ORDINANCE:

A. Churches and religious institutions.

B. Private schools.

C. Public and private parks and campgrounds.

D. Commercial nurseries and greenhouses.

E. Animal hospitals, vet clinics, and kennels.

F. Riding stables and dude ranches.

G. Golf courses, country clubs, public or private.

H. School bus garages.
Section 15.11 Amended by Amendments #83-13 and #83-18 Adopted 6/13/84.
Section 15.11 (H) Added by Amendment #84-1, Adopted 11/12/84.
Section 15.11 Amended by Amendment 87-10, Adopted 09/09/87

In Appeal No. 11658, the Appellants seek review of denial of |their request for a special use permit to operate a private school and a country club on their property. In Appeal No. 11871, review of Defendant's interpretation of the zoning ordinance that DNR-licensed game bird farms and hunting preserves are not within the meaning of the phrase "general farming and agricultural" and are

therefore not permitted uses in the agricultural zoning district.

The standard of review to be applied in appeals from a township zoning board of appeals is provided by MCL 125.293a; MSA 5.2963 (23a), as follows:
held:

(1) The decision of the board of appeals rendered pursuant to section 23 shall be final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal the circuit court shall review the record and decision of the board of appeals to insure that the decision:

(a) Complies with the constitution and laws of the state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the board of appeals.

(2) If the court finds the record of the board of appeals inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the board of appeals, the court shall order further proceedings before the board of appeals on conditions which the court considers proper. The board of appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the court.

(3) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the board of appeals.

In Szluha v Avon Twp, 128 Mich App 402, 410 (1983), the Court
Decisions by a zoning board of appeals of the type involved in this matter are largely discretionary. While the circuit court reviews these decisions de novo on the

record, considerable weight is accorded the findings of fact of the board of appeals. Abrahamson v Wendell, 72 Mich App 80, 83-84; 249 NW2d 302 (1976). The primary reason for this deference to the findings of the board of appeals is obvious--its members are local residents who reside in the township and who possess a much more thorough knowledge of local conditions, current land uses, and the manner of future development desirable for those who reside in the township.

The Appellants' involvement with the Paradise Township zoning process began in April of 1993, when they filed an application for a special use permit seeking to conduct a game bird hunting preserve, game bird farm and sporting clays range on the subject property. This application was denied after review by the Township Planning Commission, Township Board, and Township Zoning Board of Appeals. The Appellants then sought a special use permit to establish a country club and private school on their property. Following a denial of the country club and private school special use permit by the Township Board and denial on appeal to the Zoning Board of Appeals, Appellants brought their first appeal, case no. 11658.

Appellants initially contend that the Township engaged in exclusionary zoning in denying their special use permit. MCL 125.297a; MSA 5.2963(27a) provides that:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful.

The Court finds, as did the Township Board of Zoning Appeals, that the Appellants' proposed uses of the land for a private school and/or country club was but a different approach to the proposed operation of a game bird farm and hunting preserve. The minutes of the Township Zoning Board of Appeals reflect that "the game bird preserve will be a key operation. It is clear that the Township s denial properly focused on the uses and activities Appellants proposed to be conducted on the lands. In addition to references in the record, counsel for Appellants in oral argument stated that Appellants operate game bird farms or game bird hunting preserves in two townships adjoining Paradise Township.

This Court finds, on the basis of the record and counsel's statement at oral argument, that there has been no showing of a demonstrated need for the proposed land uses within the Township and that the same or similar uses are permitted and occurring in adjoining townships. The actions of the Township Zoning Board of Appeals do not constitute exclusionary zoning.

The Appellants next contend that the denial of the special use permit to operate a private school and/or country club was not supported by competent; material, and substantial evidence on the record. This contention must be considered together with the statutory requirement of whether the decision represents the reasonable exercise of discretion granted by law to the Board of Appeals.

Initially, the Court finds, as set forth above, that the Township Zoning Board properly considered the gun-shooting activities which were to be primary activities of the proposed school and/or country club in exercising the discretion granted to it.

Relating specifically to the proposed "country club," the Court finds that the record supports the denial as the proposed use was not a country club as contemplated by the ordinance. The specific ordinance language which provides that: "Golf Courses, Country Clubs, Public or Private" may be permitted uses when authorized by special use permit. In Amberlev Swim & Country Club v Zoning Board of Appeals of Amberley Village, Ohio, 191 NE2d 364 (1963), the Court upheld the decision of the zoning board that a privately-owned subscription swim club was not a "country club" as contemplated within the specific ordinance. That Court held that:

Appellant claims that the proposed swim club and related facilities is a country club under this provision. No precise definition of a "country club" is available; however, there is no doubt that the phrase as generally met in common usage, and particularly as used in the Ordinance, contemplates a golf course as a principal if not a necessary adjunct. On the other hand, common knowledge again would indicate that it is entirely possible to have a golf course without the additional services and facilities ordinarily associated with the term "country club."

While it is also true that a golf course is not subject

to precise definition, there is again no doubt that it contemplates in its normal context a comparatively large unobstructed acreage involving enough room over which to walk or ride, point to point, over a generally prescribed course, and to strive to send a ball long distances with variable accuracy, all without unreasonably endangering other players or intruding upon them. Regardless of what may or may not be the exact definition either of a country club or a golf course, it is obvious that Appellant cannot, merely by the adoption of a corporate title, make a country club of itself as that Phrase is ordinarily understood. It is equally obvious that land, the primary use of which is devoted to a swimming pool and shelter house, does not constitute a country club as intended by the Ordinance." (Emphasis added.) 191 NW2d at 366.

This Court finds, as did the Zoning Board of Appeals and the Township Board, that Appellants' proposed "country club" does not come within the special use permitted by the ordinance. The Appellants did not propose the building of a golf course and country club as those terms are used in the ordinary sense.

Appellants' proposal for a school presented a unique concept. However, the conclusion is supported by competent, material, and substantial evidence that gun shooting and hunting would be a principal activity of the school. The Court finds no abuse of discretion by the Zoning Board of Appeals in denying a special use permit for the establishment of a private school upon Appellants' lands.

Although private schools are not specifically defined by the ordinance, the Township Board and the Zoning Board of Appeals must have the discretion to approve or deny special use permits for schools taking into consideration the school's proposed curriculum and activities. The Court notes that the Paradise Township Zoning Ordinance provides that private schools may be permitted uses |through a special use permit in the R-1 and R-2 residential districts, also. Without the ability to take into consideration the proposed curriculum and activities, which in this case included various firearm shooting activities, the Township Board would not

be able to appropriately exercise its discretion.

Finally, this Court finds from a review of the record that the Township Board and the Zoning Board of Appeals, in the exercise of

their discretion, gave substantial consideration to the opposition expressed by neighboring property owners and township residents. Recently, in the case of A&B Enterprises v Madison Two, 197 Mich App 160 (1992), the Court held:

The purpose of the Township Rural Zoning Act would be defeated if a township board could not consider public opposition to a proposed rezoning classification. MCL 125.271 et seq.; MSA 5.2963(1) et seq. The act requires a public hearing and notice to affected and neighboring property owners on any proposal for rezoning. MCL 125.284; MSA 5.2963(14); MCL 125.279; MSA 5.2963(9).

This Court finds that the Township Board and Township Board of Zoning Appeals did not abuse their discretion in denying the Appellants' application for a special use permit. Further, the Court finds that the decisions were supported by competent, material, and substantial evidence.

The second appeal, case no. 11871, arises from the Zoning Board of Appeals' determination that a DNR-licensed game bird farm and hunting preserve does not constitute general farming and agricultural use as allowed by the Paradise Township Zoning Ordinance.

Before addressing the specific issue on appeal, the Court notes that the Appellants have, at all times, sought to conduct a game bird farm and hunting preserve. Appellants have not simply |sought to conduct a farming operation limited to the raising of game birds. The record indicates that the operation of a hunting preserve which would include the planned placement or release of lithe game birds for guided hunting was always combined with the raising of the game birds. The minutes of meetings specifically reflect that board members recognized that the raising of game birds would be considered general farming or agricultural use. It was only when the game bird farm was tied to a hunting preserve that the Appellants' proposed uses were found to not come within the general farming and agricultural use.

The Court finds that the Zoning Board of Appeals did not err in its interpretation of the zoning ordinance when it determined that Appellants' proposed uses were not included in the permitted uses of general farming and agricultural use.

Appellants contend that the Zoning Board of Appeals interpretation of general farming and agricultural use is contrary

to the Michigan Right to Farm Act, MCL 286.471, et sea.; MSA 12.122(1), et sea. The Court finds that had the Appellants' proposed use been limited to raising game birds, a different issue would be presented. However, Appellants' proposed uses were not so limited. As noted above, Appellants at all times tied the game bird farming together with a hunting preserve. In addressing the Right to Farm Act, the Court in Richmond Twp v Erbes, 195 Mich App 210, 220-222 (1992) stated:

The Right to Farm Act was enacted by our Legislature in 1981 to protect farms from being declared a nuisance. Northville Twp V Coyne, 170 Mich App 446, 448-449; 429 NW2d 185 (1988). The act prohibits a farm or farm operation from being declared a public or private nuisance where the farm or farm operation conforms to "generally accepted agricultural and management practices." MCL 286.473(1); MSA 12.122(3)(1). Whether the farm or farm operation conforms to such practices is determined according to policies articulated by the state agricultural commission. Id.

Section 2 of the Right to Farm Act provides in pertinent part:
(c) "Farm product" means those plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(d) "Generally accepted agricultural and management practices" means those practices as defined by the commission of agriculture. The commission shall give due consideration to available Michigan department of agriculture information and written recommendations from the Michigan state university college of agriculture and natural resources cooperative extension service and the agricultural experiment station in cooperation with the United States department of agriculture soil

and conservation service and the agricultural stabilization and conservation service, the department of natural resources and other professional and industry organizations. [MCL 286.472; MSA 12.122(2).]

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. Lorencz v Ford Motor Co, 187 Mich App 63, 68-69; 466 NW2d 346 (1991), lv qtd 437 Mich 1036 (1991). The legislative intent can be ascertained by examining the language of the act, the subject matter under consideration, the scope and purpose of the act, and preceding statutes. Girard v Wagenmaker, 437 Mich 231, 238-239; 470 NW2d 372 (1991). In enacting the Right to Farm Act, the Legislature was concerned with the regulation of land use imposed upon farms by local government as well as private sources, and the impact of such regulation upon farming operations. Northville Twp, supra, p 448.

The record does not support the contention that operating a hunting preserve is protected by the Right to Farm Act. Appellants contend that the operation of a hunting preserve is but a means of "harvesting." However, the "harvesting" by hunting has not been supported as being a “generally accepted agricultural and management practice as defined by the Act. Further, the Township Boards concluded that the purpose of operating a hunting preserve is not the collection or harvesting of agricultural products (the game birds) but is rather the sale to the customer of the hunting experience. This Court agrees.

The Court finds that the decisions of the Zoning Board of Appeals are based upon competent, material, and substantial evidence, and do not represent an abuse of discretion nor are they l contrary to law.

Finally, it has been asserted that the state, through statutes and regulations, has preempted the authority of the townships regarding game bird farming and hunting preserves. The issue before this Court is not the validity or enforceability of the restrictions and requirements contained in the Township's amendments to its zoning ordinance allowing, through special use permit, hunting preserves upon lands zoned Forest/Recreation District. The Appellants' lands are zoned Agricultural.

The Court has fully reviewed the authorities presented in support of the preemption arguments. Although certain statutes and regulations of the state may preempt the Township from regulating some of the activities which the Appellants have proposed to conduct upon their property, the Court finds no authority for the proposition that the state has preempted the authority of a Township to regulate land use through zoning which would limit the location of private hunting preserves or shooting ranges. It is the Appellants' proposed operation of a private hunting preserve and/or shooting range which presents the major controversy in these appeals. This Court having found that there is no support for the proposition that the Township's authority has been preempted, the Court finds no error or basis for reversal.

The decisions of the Paradise Township Board of Zoning Appeals are affirmed.

HON.; THOMAS G. POWER
Circuit Judge

DATED: 6/21/94