July 2017
MPT-2 Library:
In re Zimmer Farm

EXCERPTS FROM HARTFORD COUNTY ZONING CODE

Title 15. ZONING

§ 22. Agricultural A-1 District Permitted Uses

(a) Within an A-1 district, the following uses are permitted:

(1) any agricultural use;

(2) incidental processing, packaging, storage, transportation, distribution, sale, or agricultural accessory use intended to add value to agricultural products produced on the premises or to ready such products for market;

. . .

(b) Definitions

. . .

(2) "Agricultural use" means any activities conducted for the purpose of producing an income or livelihood from one or more of the following agricultural products:

(a) crops or forage (such as corn, soybeans, fruits, vegetables, wheat, hay, alfalfa)

(b) livestock (such as cattle, swine, sheep, and goats)

(c) beehives

(d) poultry (such as chickens, geese, ducks, and turkeys)

(e) nursery plants, sod, or Christmas trees

. . .

An agricultural use does not lose its character as such because it involves noise, dust, odors, heavy equipment, spraying of chemicals, or long hours of operation.

(3) "Agricultural accessory use" means one of the following activities:

(a) a seasonal farm stand, provided that it is operated for less than six months per year and is used for the sale of one or more agricultural products produced on the premises;

(b) special events, provided that they are three or fewer per year and are directly related to the sale or marketing of one or more agricultural products produced on the premises.

EXCERPTS FROM FRANKLIN AGRICULTURE CODE
Ch. 75 Franklin Right to Farm Act

§ 2. Definitions

(a) "Farm" means the land, plants, animals, buildings, structures (including ponds used for agricultural or aquacultural activities), machinery, equipment, and other appurtenances used in the commercial production of farm products.

(b) "Farm operation" means the operation and management of a farm or an activity that occurs on a farm in connection with the commercial production, harvesting, and storage of farm products.

§ 3. Farm not nuisance

(a) A farm or farm operation shall not be found to be a public or private nuisance and shall be protected under section 4 of this Act if the farm or farm operation existed before a change in the land use or occupancy of land that borders the farmland, and if, before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

(b) A farm or farm operation that is protected under subsection (a) shall not be found to be a public or private nuisance as a result of any of the following:

(i) a change in ownership;

(ii) temporary cessation or interruption of farming;

(iii) enrollment in a governmental program; or

(iv) adoption of new technology.

§ 4. Local units of government

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 with this Act and undermines the purpose of this Act.

Effective July 1, 1983.

REPORT FROM FRANKLIN SENATE COMMITTEE ON AGRICULTURE
Pertaining to S.B. 1198, May 3, 1983

S.B. 1198 will be known as the Franklin Right to Farm Act and will protect Franklin farmland. During each of the past several years, two to three million acres of U.S. farmland have been converted to nonagricultural uses. Franklin's agricultural resources play an important role in feeding the population of Franklin, the United States, and the world. Loss of farmland imperils 2.2 million agriculture-related U.S. jobs, the habitats of 75% of our wildlife, and open spaces necessary for a healthy environment. Loss of farmland creates urban sprawl with the attendant stresses on the infrastructures of Franklin's formerly rural counties and small towns.

When land that was formerly agricultural is converted to residential land, new home dwellers, not familiar with rural life, complain of odors, noise, dust, and insects caused by animals, crops, and farm machinery. Too often these new residents file nuisance suits against their farming neighbors. Additionally, local ordinances enacted in response to residents' concerns threaten farmers with fines and/or closure if they are in noncompliance with the restrictions imposed by the ordinances. These restraints and costly lawsuits by nonfarming neighbors discourage farmers from investing in their farms and remaining on them.

S.B. 1198 protects those who farm for a living. A farming operation that was not previously a nuisance does not become one when residential development moves in next to the farmland. To qualify for this protection, farmers must show that the farm operation would not have been a nuisance at the time of the changes in the area. This protection applies to those who make their living farming, whether in an agricultural area or in a residential area, not to those with gardens for personal use. Under the common law, "coming to a nuisance," such as building a home next to a cattle operation, was ordinarily a defense for the farmer. However, courts have been reluctant to afford this defense wide applicability. This reluctance adds to the uncertainty facing farmers. S.B. 1198 codifies this common law defense and protects those who farm for a living.

Accordingly, this Committee declares that it is this state's policy to conserve, protect, and encourage the development and improvement of its agricultural land for the commercial production of food and other agricultural products, by limiting the circumstances under which a farming operation may be deemed to be a nuisance.

Shelby Township v. Beck
Franklin Court of Appeal (2005)

The issue on appeal is whether the Franklin Right to Farm Act (FRFA or "the Act") preempts a local zoning ordinance.

In 1995, the Becks purchased 1.75 acres of property in Shelby Township. The property had been used for raising chickens, and there were chicken coops on the property when the Becks purchased it. In 1995, the land use plan for the township allowed farming on this land. In 1996, the Becks began raising chickens for sale at local butcher shops. In 1998, Shelby Township passed Zoning Ordinance 7.0, which requires farms to have a minimum size of three acres. In 2000, several real estate developers began to build homes near the Becks' property. Neighbors began complaining to the Township Board about the smells and noise from the Becks' chickens. The neighbors filed a petition with the Township Board, asking it to close down the Becks' operation because it was a nuisance. In 2004, the Township Board decided that the best way to close down the Becks' farm was to enforce its ordinance regarding minimum farm size. The Township sued to enforce its ordinance, and the Becks moved to dismiss, claiming that FRFA preempts the ordinance. The trial court granted the motion, and the Township appealed.

State law can preempt a municipal ordinance in two ways. First, preemption occurs when a statute completely occupies the field that the ordinance attempts to regulate. FRFA does not "occupy the field," because the legislature has also authorized local governments to enact zoning laws concerning agricultural properties. Second, preemption occurs when an ordinance conflicts with a state statute and undermines its purpose. A conflict exists when the ordinance permits what the statute prohibits or vice versa. Determining whether there is a conflict requires a careful reading of the statute and the ordinance in light of the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives.

If Shelby Ordinance 7.0 is in effect, the Becks cannot raise chickens on their property because it is under the minimum size required for a farm. However, Section 4 of FRFA provides that a local ordinance is preempted when it conflicts with FRFA. The question then is whether there is a conflict. Section 2 of FRFA defines a "farm" as "land, plants, animals, buildings, structures . . . and other appurtenances used in the commercial production of farm products." The Act does not set a minimum acreage for farms. Here, the Becks' operation—raising chickens for sale—is protected by FRFA because it is the commercial production of farm products, even

though the operation takes place on only 1.75 acres. Thus, there is a conflict between the size requirement of the ordinance, which prohibits the Becks from raising chickens, and FRFA, which does not. Thus the ordinance and FRFA are in direct conflict, as the ordinance prohibits what is permitted by the Act. The ordinance undermines the very purpose of the Act by prohibiting this farm operation.

The Township's effort to use its size ordinance to prevent what the neighbors believe is a nuisance is the very sort of enforcement action that FRFA is designed to prevent. FRFA states that a farm shall not be found to be a nuisance if it existed before the change in land use and if, before that change, it would not have been found to be a nuisance. The Becks' operation began in 1995, before the residential development neighboring it was created. In 1995, the Becks' farm operation was a permitted use and would not have been a nuisance. Accordingly, the Becks' operation is protected by FRFA.

Our conclusion that the state law preempts the local ordinance also serves the purpose of the Act, which is to conserve land for agricultural operations and protect it from the threat of extinction by regulation from local governmental units. *See* Sen. Rpt. Comm. Agric. 1983.

Affirmed.

Wilson v. Monaco Farms
Franklin Court of Appeal (2008)

Defendant Monaco Farms (Monaco) has operated a dairy farm on its property from 1940 to the present, with changes in the ownership passing from father to son in 1970, and to granddaughter in 2000. Monaco increased the number of dairy cows on the farm from 40 to 60 in 2005, and from 60 to 200 in 2007.

Plaintiff Bill Wilson has lived in the subdivision immediately to the east of Monaco since 1990. In 2007 he filed a private nuisance action against Monaco, alleging that the flies, dust, and odors from the dairy cows interfered with his enjoyment of his property. Monaco moved to dismiss, relying on the Franklin Right to Farm Act (FRFA), which it claims continues to protect a farm operation when it expands or changes its operation. In response, Wilson argued that FRFA does not protect a farm whose expansion created a nuisance not present at the time he purchased his property. The trial court granted the motion to dismiss, and Wilson appealed. We affirm.

The present situation is the very sort of farm operation the legislature intended to protect when it enacted FRFA. Monaco has existed since 1940, and it would not have been a nuisance at that time. In 1984, the land bordering Monaco was subdivided and developed into a residential area and was zoned residential.

There were no complaints about the operation of Monaco until 2007, when it expanded from 60 to 200 cows. The question is whether FRFA continues to protect Monaco after the expansion. When it enacted FRFA, the legislature understood that circumstances could change and provided that certain changes would not affect the protections of FRFA. Section 3(b)(i) of FRFA addresses the issue of change in ownership but does not address changes in size or nature of the operation.

Wilson argues that because the legislature listed four, and only four, contemplated interruptions or changes in farm operations, those are exclusive and exhaustive. If Wilson is correct, the only changes the legislature intended to protect are the four items specified in the statute, and those four do not include expansion of farm operations.

Monaco, on the other hand, argues that where the legislature provides a list, the court must determine what is common among the items on the list and then consider whether the matter at issue is sufficiently similar to the items listed as to be included. Monaco argues that the

change in size of the operation is similar to a change in technology, which does not destroy the protections of FRFA. Both changes have as their purpose the opportunity to increase farm production and thus profitability.

Both parties assume that the court must look to § 3(b) of FRFA. A better approach is to examine § 3(a), which provides that a farm "shall not be found to be a public or private nuisance . . . if the farm or farm operation existed before a change in the land use or occupancy of land that borders the farmland . . . ." Thus, the statute provides a date for measuring whether a nuisance exists, namely the date when the use of the neighboring land changed. In this case, that date is 1984, the year that the neighboring land was subdivided and developed into a residential area. The legislature may have assumed that farms might expand. Indeed, it noted in § 3(b) the possibility of change in technology. Nevertheless, the legislature established only one date for measuring whether a nuisance exists.

The purpose of FRFA is "to conserve, protect, and encourage the development and improvement of [Franklin's] agricultural land for the commercial production of food and other agricultural products, by limiting the circumstances under which a farming operation may be deemed to be a nuisance." Sen. Rpt. Comm. Agric. 1983. Relying solely on the legislature's date for determining whether a nuisance exists serves the statutory purpose.

When he bought his home in 1990, Wilson knew that he was moving next to a dairy farm. It remains a dairy farm, albeit a larger one. Nothing in FRFA prohibits expansion of farm operations. Despite the expansion of Monaco's dairy operation, it is protected by the Act, and the trial court properly dismissed Wilson's nuisance action.

Affirmed.

Koster v. Presley's Fruit
Columbia Court of Appeal (2010)

In this case, the court is asked to determine the applicability of the Columbia Right to Farm Act (CRFA). The precise issue on appeal is whether the production of wooden pallets for use in harvesting peaches is an agricultural activity protected by the Act.

Defendant Presley's Fruit (Presley's) has grown and sold peaches at its location since 1960. In 2006, Presley's added a new building and began manufacturing wooden pallets for use in harvesting and transporting peaches.

In 1997, plaintiffs Matt and Kathleen Koster purchased residential property that abuts Presley's. They had no complaints about Presley's until 2006, when they began experiencing noise and dust associated with the manufacturing of the wooden pallets. The Kosters filed a nuisance suit against Presley's, claiming that the noise and dust is a nuisance that substantially and unreasonably interferes with their enjoyment of their property.

Presley's moved to dismiss, claiming the protections of CRFA. CRFA states that a farm operation which existed one year before the change in the area is not a nuisance if it would not have been a nuisance at the time of the change in the property. The trial court granted the motion.

On appeal, the Kosters argue that CRFA protects only farm activities and not manufacturing. Presley's claims that the pallets are needed to harvest and transport the peaches (a farm product) to market and that therefore the manufacturing of the pallets is protected by CRFA.

Resolving this question requires the court to interpret and apply the provisions of CRFA. Our role in construing a statute is to "ascertain and give effect to the legislative intent." *Brady v. Roberts Electrical Mfg., Inc.* (Columbia Sup. Ct. 1999).

We must examine the Columbia statute's text and give the words their natural and ordinary meaning in light of their statutory context. If the statutory language is clear and unambiguous, the court must apply the statute's plain language and not venture beyond the text to add words not there. However, when the statutory language is unclear, the court may refer to the purpose of the legislation and the legislative history of the statute, such as legislative committee reports, to aid us in interpreting the text.

In this case, an examination of the statutory language provides the answer. CRFA defines a farm product as "those plants and animals useful to human beings produced by agriculture 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 animals; fruits; vegetables; or any other product which incorporates the use of food, feed, or fiber." Although that is a broad definition of farm product, there is no mention of products produced from wood.

The pallets are constructed of wood and nails or staples. The wood used for the pallets originates from outside the defendant's property. The products, therefore, are not grown, raised, or bred on the farm premises, but are only assembled there from materials purchased elsewhere. The pallets do not match any of the definitions of farm products set forth in the Act, nor are they like any of those farm products defined by the statute. The manufacturing of these wooden pallets is not an activity protected by CRFA.

We reverse the trial court's order dismissing this case. If, on remand, the Kosters are successful in their nuisance action and convince the court to order Presley's to cease producing the pallets at the farm, there will be no loss of farmland. If the Kosters succeed, Presley's land will continue to be used for the production of peaches. The land will remain agricultural. Presley's would manufacture the pallets off the farm premises rather than on the premises, or purchase the pallets from some outside source. Purchasing pallets should be no more a threat to Presley's than purchasing a truck for hauling the peaches to market.

Reversed and remanded.