# STATE OF MICHIGAN

# COURT OF APPEALS

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| TOWNSHIP OF RICHMOND,<br><br>Plaintiff-Appellant,<br><br>v<br><br>RONDIGO, LLC,<br><br>Defendant-Appellee. | UNPUBLISHED<br>April 20, 2010<br><br>No. 288625<br>Macomb Circuit Court<br>LC Nos. 2006-001054-CZ<br>2006-004429-CZ |
| TOWNSHIP OF RICHMOND,<br><br>Plaintiff-Appellee,<br><br>v<br><br>RONDIGO, LLC,<br><br>Defendant-Appellant. | No. 290054<br>Macomb Circuit Court<br>LC Nos. 2006-004429-CZ<br>2006-004429-CZ |

Before: MURPHY, C.J., and JANSEN and ZAHRA, JJ.

PER CURIAM.

This case involves the improvement, extension, and construction of two access roads on farm property owned by defendant Rondigo, LLC (Rondigo), for purposes of carrying out a composting operation, which activities were claimed by plaintiff Richmond Township (township) to be in violation of the law, including various township zoning ordinances. In Docket No. 288625, the township appeals as of right the trial court's ruling that two of the township's ordinances at issue are unconstitutional. In Docket No. 290054, Rondigo appeals as of right the trial court's ruling denying it an award of costs, expenses, and attorney fees. We hold that the ordinances are constitutionally sound and that the trial court erred in ruling against the township in regard to the access roads; therefore, reversal is mandated. Further, with respect to the trial court's ruling on costs, expenses, and attorney fees, we reverse and remand, but only in part, allowing the court an opportunity to exercise its discretion to make an award solely in connection with the litigation of the township's failed ordinance-based nuisance claims concerning composting activities on the property.

Rondigo owns farm property, and it intended to implement a nutrient management plan, which included extensive on-site composting, as part of an effort to naturally fertilize the farmland. Rondigo engaged in the improvement, extension, and construction of two access roads on the property to facilitate the hauling of leaves, grass, and yard waste for composting purposes. The township disapproved of and challenged Rondigo's roadwork activities, arguing that Rondigo never obtained proper township approval. In two separate complaints,[1] the township alleged, in pertinent part, that the roadwork construction projects violated various provisions of the township zoning ordinance and violated the township's engineering standards ordinance, thus constituting nuisances per se that required abatement. The township also contended that Rondigo's composting operation violated township ordinances and constituted a nuisance. Additional causes of action were alleged, but they are not relevant to this appeal.

The trial court declined to grant summary disposition to Rondigo or the township with respect to the complaint that concerned the west-side access road, leaving in place a preliminary injunction that had been entered earlier by the court.[2] The trial court ruled, contrary to Rondigo's arguments, that the Michigan Right to Farm Act (RTFA), MCL 286.471 *et seq*., and the Michigan Department of Agriculture's generally accepted agricultural management practices (GAAMPs), which are incorporated into the RTFA, did not protect Rondigo's work on the roadways.[3] Therefore, according to the trial court, the roadwork was subject to any controlling township ordinances; however, issues of fact existed regarding ordinance applicability and compliance. The trial court later entered a temporary restraining order in regard to the complaint that addressed the construction work on the east-side access road. In a pretrial ruling, the court did determine that the RTFA and GAAMPs protected Rondigo's ability to pursue a composting operation, preempting any conflicting ordinance. The trial court denied additional motions for partial summary disposition filed by both parties, which partly encompassed issues concerning whether the township's zoning ordinance and engineering standards ordinance were unconstitutional.

The two complaints were consolidated, and a bench trial was conducted. We note that shortly before trial, the township's planning commission denied Rondigo's site plan application that had sought approval of the roadwork on the west-side access road. At trial, Rondigo indicated that it had decided to focus solely on the west-side access road, but the township asserted that the court still needed to address the east-side access road, given the township's claims that both roads violated the ordinances and constituted nuisances. The township

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[1] The first complaint addressed the access road on the west side of the property, which was the roadway that Rondigo initially directed its construction efforts toward, and the second complaint addressed subsequent work on an access road located on the east side of the property, which construction began after the trial court enjoined work on the west-side roadway.

[2] The trial court later agreed to temporarily lift the preliminary injunction in order to allow some additional construction on the west-side access road as was necessary to facilitate the removal of some leaves on the property and the state's review of the composting operation.

[3] Rondigo has not appealed this ruling; therefore, it remains intact without need for further discussion.

presented testimony from a civil engineer and a community planner, and Rondigo put on the stand its own civil engineer. The witnesses addressed the nature of the access roads, the construction and roadwork, the language in the ordinances and their applicability, the site plan and application concerning the west-side access road, and the township's denial of the application.

In a written opinion and order based on the bench trial, the trial court determined that § 4.12(A)[4] of the township ordinance, which governs approval of non-residential driveways, is unconstitutionally vague, lacking standards and guidance as to the determination of whether an application should be approved or disapproved. The trial court also found that § IV-1(I)(2) of the township's engineering standards ordinance violates the title-object clause of Const 1963, art 4, § 24, in its application to non-residential driveways, i.e., the two access roads at issue. The trial court also found that § 3.02 of the township ordinance, which speaks to the issue of site plans, did not require the submission of a site plan relative to the two access roads. The trial court concluded:

> It would be a simple thing for the township to draft an ordinance clearly providing that nonresidential driveways are subject to site plan approval, and to set forth what those standards for consideration by the planning commission are. Until then, however, the [c]ourt, after trial, is left with the strong impression that the zoning ordinance and engineering ordinance do not provide notice of the necessity of the site plan or what it should contain, and that the zoning ordinance leaves the township with unfettered discretion to approve or deny a nonresidential driveway. The [c]ourt therefore concludes that plaintiff has not met its burden to show that defendant's east and west drives are a nuisance per se. In light of this ruling, the Court need not reach [Rondigo's] argument that the . . . denial of its application for the west access road was arbitrary and capricious.

Following trial, the court ruled that Rondigo was not entitled to costs, expenses, and attorney fees under the RTFA, reasoning that the trial concerned the two access roads and the application of the township's ordinances to the roadways, not a farm or farm operation.

In Docket No. 288625, the township appeals as of right the trial court's rulings that the township zoning ordinance and the township engineering standards ordinance are unconstitutional. In Docket No. 290054, Rondigo appeals as of right the trial court's ruling denying it an award of costs, expenses, and attorney fees.

This Court reviews de novo issues concerning constitutional law, *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004), questions of statutory interpretation, *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006), and the proper interpretation and application of township zoning ordinances, *Yankee Springs Twp v Fox*, 264 Mich App 604, 605-606; 692 NW2d 728 (2004). Nuisance-abatement proceedings are generally equitable in nature,

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[4] The language in this ordinance and the engineering standards ordinance shall be quoted below in our analysis.

and equitable rulings are reviewed de novo, but we review for clear error any underlying factual findings rendered by a court in support of its decision. *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 270; 761 NW2d 761 (2008). Whether an act or condition constitutes a nuisance per se is a question of law. *Id.* at 269.

In determining whether an ordinance is void for vagueness, a court should give the words of the ordinance their ordinary meaning while examining the entire text of the ordinance. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 342-343; 675 NW2d 271 (2003); *West Bloomfield Charter Twp v Karchon*, 209 Mich App 43, 51; 530 NW2d 99 (1995).

All ordinances are given a strong presumption of constitutionality, and courts have a duty to construe an ordinance as being constitutionally sound unless it is clearly apparent that the ordinance is unconstitutional. *Shepherd Montessori*, 259 Mich App at 341-342. A reviewing court should find an act constitutionally invalid only when there is no reasonable construction that will sustain the act. *State Treasurer v Wilson*, 423 Mich 138, 146; 377 NW2d 703 (1985). "'Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.'" *Phillips v Mirac, Inc*, 470 Mich 415, 423; 685 NW2d 174 (2004), quoting *Cady v Detroit*, 289 Mich 499, 505; 286 NW 805 (1939). The party challenging the constitutional validity of an ordinance has the burden to establish that the ordinance is clearly unconstitutional. *Shepherd Montessori*, 259 Mich App at 342.

In *West Bloomfield*, 209 Mich App at 53-56, this Court addressed a constitutional challenge to a zoning ordinance, stating:

> With regard to defendants' allegation that the ordinances contain inadequate standards, we conclude that the ordinances, as written, lack standards necessary to govern their enforcement, thus giving unstructured and unlimited discretion to those charged with its administration. This is constitutionally impermissible. . . .
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> In order to withstand a challenge to its constitutionality, a zoning ordinance must contain standards to guide those who are charged with its administration.
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> There are no standards that guide the township authorities in their determination of which areas of the township constitute a woodland or woodland edge. Further, the ordinances lack the criteria to guide the decision whether to grant a permit, deny a permit, grant an exception, or deny an exception. In short, the ordinances completely lack standards by which the actions of the authorities can be measured. The ordinances grant to the Woodlands Review Board untrammeled authority. Such unstructured, unlimited, and arbitrary discretion to determine whether to grant or deny a permit is constitutionally repugnant. [Citations omitted.]

A zoning ordinance cannot permit officials to grant or deny permits without the guidance of a standard, and while the exercise of discretion is necessary to some degree for the proper administration of zoning ordinances, there must be a fixed standard or basis against which the exercise of discretion is measured and judged. *Osius v St Clair Shores*, 344 Mich 693, 700; 75 NW2d 25 (1956). A zoning ordinance that is vague and indefinite is invalid. *Id.* The *Osius* Court further observed:

> Without definite standards an ordinance becomes an open door to favoritism and discrimination, a ready tool for the suppression of competition through the granting of authority to one and the withholding from another. Such charges, in fact, were made in the case before us, another service station having been permitted on a nearby property. We need not pass upon them. The ordinance, as the trial court found, is unconstitutional and void, in the particular provisions with respect to which complaint is made, since it fixes no standard for the grant (or refusal) of the certificate prayed. A zoning ordinance cannot permit administrative officers or boards to pick and choose the recipients of their favors. [*Id.* at 700-701.]

In testing a township ordinance for vagueness, it is critical for courts to remember that common sense is not set aside, nor is the township required to define every concept in minute detail; rather, the language of the ordinance need only be reasonably precise. *Shepherd Montessori*, 259 Mich App at 343.

We shall first examine § 4.12(A) of the township's zoning ordinance, which provides as follows:

> Non-residential driveways, entrances and exits shall be subject to approval by the Macomb County Road Commission, the Michigan Department of Transportation, where applicable, and by the Planning Commission after considering the effects on the surrounding property, pedestrian and vehicular traffic and the movement of emergency vehicles.

Subsection (B) of § 4.12 provides that "[a]ll non-residential sites may be permitted one (1) access drive onto the abutting public thoroughfare." Subsection (B) continues by indicating that "[a]dditional driveways may be permitted subject to special land use approval by the planning commission," and it then proceeds to outline requirements and criteria relative to a request for and approval of an additional driveway.

We hold that § 4.12(A) sets forth constitutionally sufficient standards and criteria with respect to guiding a determination whether to approve a non-residential driveway. The strong presumption of constitutionality was not overcome as Rondigo did not meet its burden to show that the ordinance was clearly unconstitutional. The language of the ordinance is reasonably precise given the subject matter. The ordinance mandates that consideration be given to three factors and three factors alone, i.e., the effects on the surrounding property, the effects on pedestrian and vehicular traffic, and the effects on the movement of emergency vehicles. The township's planning commission, the county road commission, and, if applicable, the Department of Transportation are not at liberty to exercise unstructured, unlimited, and arbitrary

discretion, where these bodies are required to contemplate and weigh all three of the recited factors in making a decision.

We acknowledge that § 4.12(A) does not expressly specify how the three factors should be weighed relative to rendering a decision on an application, nor does it detail the parameters of the factors. We find, however, that the factors are sufficiently descriptive, such that an ordinarily intelligent person would keenly be aware of what facts are relevant in the decision-making process; minute detail is unnecessary. Given the wide array of logically pertinent facts that could be encompassed by the three factors and thus subject to consideration, it would make little sense for the ordinance's standards to be drawn in more narrow and detailed terms. Moreover, from the context of the ordinance, it is reasonable to imply that, if a proposed driveway would have a negative, adverse, or harmful effect on surrounding property, pedestrian and vehicular traffic, or on the movement of emergency vehicles, it would weigh against approval of the driveway and support a rejection of an application. It would be nonsensical to conclude that, simply because the ordinance does not expressly provide that a harmful or adverse effect supports denial of an application, the township would properly be exercising its discretion in denying an application where there were no adverse effects. Remember, in analyzing a void for vagueness challenge, we do not set aside common sense. *Shepherd Montessori*, 259 Mich App at 343.

If the facts established that a proposed driveway would not interfere with vehicular and pedestrian traffic, would not create problems with respect to responses by emergency vehicles, and would not harm surrounding property, the governmental bodies could not soundly deny approval of an application to construct a driveway. Facts to the contrary would dictate that a driveway application be denied. Further, there could certainly be situations in which the facts presented indicate that one factor favors rejection or approval of an application while the other factors favor an opposing conclusion. But the ordinance does not fail merely because it does not provide a mathematical formula to utilize when faced with such circumstances, considering that a wide range of facts in any given case could be relevant and important, militating against the use of any precise formulaic approach in weighing and balancing the factors for purposes of making a decision.

Rondigo and the dissent claim that § 4.12(A) is unconstitutional because it fails to specify the acceptable size, shape, thickness, composition, or grading of a permissible non-residential driveway. We find that these particular attributes of a driveway may very well be relevant in examining the effects on surrounding property, on pedestrian and vehicular traffic, or on the movement of emergency vehicles. And a decision by the governmental body that takes into consideration such features or characteristics as the size, shape, and composition of a driveway must reflect that consideration of the characteristics was pertinent to the analysis of the three factors contained in § 4.12(A), otherwise these driveway features are beyond the scope of the ordinance. Rondigo and the dissent appear to be of the position that the ordinance must cover every conceivable aspect of driveway construction to be constitutional, but this cannot be correct. If a driveway characteristic referred to above is not relevant to the decision-making process as confined to the three factors in the ordinance, it would be improper for the governmental body to consider the characteristic in rendering a decision on an application because the characteristic is not set forth in the ordinance. For example, if the planning commission denied an application for a non-residential driveway on the basis that its planned design was too wide, but the commission did not connect the width issue to the effects on the

surrounding property, pedestrian and vehicular traffic, or on the movement of emergency vehicles, the denial would be improper and subject to challenge.[5] The failure to include criteria concerning acceptable size, shape, thickness, composition, and grading does not render the ordinance unconstitutional, given that other guiding standards are present in the ordinance. Rather, the failure to include such criteria simply narrows the scope of issues that can be considered and weighed by the township in reviewing an application.

In sum, considering the strong presumption of constitutionality, the need to show a clear constitutional violation, and the requirement that there exists no reasonable construction that would sustain the ordinance, we hold that § 4.12(A) does not give unstructured, unlimited, and arbitrary discretion to the relevant governmental bodies and that the ordinance contains constitutionally sufficient standards and criteria by which to guide the decision-making process in reviewing an application.

The dissent concludes that § 4.12(A) may not be applicable because the access roads did not provide access to a building or buildings. The dissent relies on the definition of "driveway" as found in § 18.01 of the zoning ordinance, which provides that a "driveway" is a "[a] private access from a public road to a building or buildings." However, the term "non-residential driveway" is not defined in the ordinance.

Rondigo makes no claim on appeal, nor even hints at a claim, that § 4.12(A) is inapplicable on the basis that the roads do not provide access to a building or buildings. Indeed, Rondigo's appellate brief is written in a fashion that reflects an implicit acceptance that the access roads constitute non-residential driveways. In its opinion, and within the context of a discussion regarding whether § 4.12(A) is unconstitutionally vague, the trial court stated:

> First, "non-residential" driveway is not defined. It could refer to a driveway leading to a non-residential building as distinct from a residential building, as [Rondigo] suggests, or, as plaintiff suggests, it could refer to any driveway not leading to a residence. The distinction is that the drives in question here are access roads that do not abut either residential or non-residential structure[s], but provide access to the property.
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> The issue of the definition of "non-residential" driveway aside, the Court is disturbed more by the fact that the ordinance fails to provide standards of guidance . . . .

First, it may be arguable whether it is proper to rely solely on a definition of "driveway" for purposes of defining "non-residential driveways," given the addition of the adjective "non-

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[5] We also note that the language in § 4.12(B) regarding additional non-residential driveways requires consideration of traffic studies and the necessity for more than one driveway. With respect to necessity, the ordinance dictates that the planning commission consider the location of driveways on adjacent sites and across the street, turning movements, and traffic volumes. Again, there are sufficient standards and criteria to guide the decision-making process.

residential." Regardless, assuming that Rondigo even adequately raised the issue below that is now being espoused by the dissent, the trial court did not rule on the issue one way or the other. Yet, as indicated above, Rondigo does not challenge on appeal the court's failure to decide the issue, nor is any argument presented on the matter. Rondigo apparently has no qualms with the trial court's handling of the issue. We are not prepared to rule in favor of Rondigo on a ground that Rondigo itself finds unworthy of exploring.[6]

Also at issue is § IV-1(I)(2) of the township's engineering standards ordinance, which provides:

> The number of non-residential driveways to a major or secondary road shall be limited to the minimum necessary. Shared commercial and industrial driveways are encouraged, subject to the approval of a reciprocal access easement and maintenance agreement between all property owners. The number of driveways allowed shall be determined by the Planning Commission as part of site plan review based on the use of the site and circulation patterns.

We initially hold that the trial court erred in ruling that this provision violated the title-object clause of Const 1963, art 4, § 24. See *Melconian v Grand Rapids*, 218 Mich 397, 412; 188 NW 521 (1922) ("'constitutional provisions relating to the title of laws passed by the legislature do not apply to ordinances'").[7] Further, we disagree with Rondigo and the dissent that § IV-1(I)(2) of the township's engineering standards ordinance is unconstitutionally vague. The ordinance does not provide unfettered, unstructured, unlimited, and arbitrary discretion to the planning commission. The commission is mandated to set the number of non-residential driveways at an amount that is minimally necessary to service a particular parcel of real property, which requires contemplation of the planned activities to be carried out on the property. Broadly speaking, necessity is the gauge that governs the planning commission's decision-making process under the ordinance. Consideration of circulation patterns and the use of the site, which are factors expressly referenced in the ordinance, is part of the site plan review and goes to the heart of the necessity analysis that is employed when reviewing an application. By its very

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[6] In the context of the vagueness issue, we are not willing to find the ordinance unconstitutional solely on the ground that there was a question regarding the definition of a "non-residential driveway." First, it was not the primary focus of the trial court's reasoning in striking down the ordinance. Second, while the township, in challenging the court's vagueness ruling, presents a detailed appellate argument in support of its position that a non-residential driveway is a driveway that does not service a residence or structure, Rondigo fails to even acknowledge the issue, let alone set forth a contrary view and analysis, relative to the question whether the ordinance is unconstitutionally vague.

[7] Although *Melconian* was decided before the adoption of Const 1963, art 4, § 24, the title-object constitutional provision applicable in *Melconian*, Const 1908, art 5, § 21, was identical to the current constitutional provision. Further, Rondigo's reliance on *Independence Twp v Roy*, 12 Mich App 107, 110; 162 NW2d 339 (1968), is misplaced, where that Court specifically declined to address the question whether the title-object clause applied to municipal ordinances, having found no violation assuming applicability.

nature, the question of driveway necessity is a fact-driven inquiry that focuses on the use and characteristics of a site and circulation patterns which will vary from case to case, strongly militating against the use of any specific or detailed standards or criteria by which to measure or weigh necessity. The planning commission is not free to arbitrarily deny permission for the construction of a non-residential driveway, where a driveway is shown to be necessary given a site's usage and circulation patterns. In that same vein, the planning commission cannot arbitrarily approve the construction of multiple driveways if only one is necessary to adequately service a site given the site's usage and circulation patterns. Section IV-1(I)(2) of the township's engineering standards ordinance can be objectively measured, and it does not grant the township the power to arbitrarily determine the number of permissible non-residential driveways in any situation. While there may be differing opinions on whether a driveway is necessary considering a site's usage and circulation patterns, this is ultimately a question of judgment and entails the exercise of discretion for which the ordinance provides sufficient standards.

In sum, considering the strong presumption of constitutionality, the need to show a clear constitutional violation, and the requirement that there exists no reasonable construction that would sustain the ordinance, we hold that § IV-1(I)(2) of the township's engineering standards ordinance does not give unstructured, unlimited, and arbitrary discretion to the township and that the ordinance contains constitutionally sufficient standards and criteria by which to guide the decision-making process in reviewing an application.

On the issue of costs, expenses, and attorney fees, MCL 286.473b, which is part of the RTFA, provides as follows:

> In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

Because MCL 286.473b uses the term "may," an award of costs, expenses, and attorney fees is left to the trial court's discretion. See *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 657; 708 NW2d 740 (2005), aff'd 479 Mich 554 (2007) ("[T]he statutory language includes the term 'may,' which has historically been interpreted to be discretionary, as opposed to the term 'shall,' which is universally recognized as requiring mandatory adherence").

In light of our analysis above, Rondigo was required to comply with § 4.12(A) of the township's zoning ordinance and with § IV-1(I)(2) of the township's engineering standards ordinance with respect to construction of the access roads. Rondigo violated the ordinances when it engaged in construction on the access roads without first seeking township approval. The township asserted that the ordinance violations constituted nuisances per se. Consistent with our ruling that the ordinances are constitutional and applicable and that Rondigo failed to comply with the ordinances, and even assuming that the nuisances relative to the access roads pertained to "a farm or farm operation" for purposes of implicating MCL 286.473b, Rondigo is not entitled to any fee or cost recovery as to litigation over the roadways. This is because Rondigo cannot be properly designated as the prevailing party under MCL 286.473b, given the failure to seek

approval of its construction plans under § 4.12(A) before starting the roadway project and the failure to timely submit a site plan application under § IV-1(I)(2) before commencing the work.

We recognize that very late into the litigation Rondigo had unsuccessfully submitted a site plan covering the west-side access road and failed to gain approval of its construction and planned construction activities. And we recognize that the trial court, given its rulings on the constitutionality of the ordinances, concluded that it was unnecessary to determine whether the township's denial of the site plan application was arbitrary and capricious. Although it is appropriate to remand the case to the trial court on that issue, assuming that the issue was properly before the court in the first place from a procedural standpoint, it cannot be said that Rondigo is now entitled to costs, expenses, and attorney fees under MCL 286.473b in relation to the completed roadway litigation. This is because the nuisance claims focused on Rondigo's undisputed failure to seek approval under the ordinances before commencing road construction. And, as outlined above, Rondigo should not have prevailed on said claims.

As argued by Rondigo on appeal, and notwithstanding our analysis above in regard to construction of the access roads, the township's lawsuit also pertained to composting activities on the property and efforts by the township to halt any composting operation. The township claimed in part that the composting activities violated the zoning ordinance and thus constituted a nuisance. In an earlier ruling prior to trial, the trial court found that the RTFA and GAAMPs controlled over any township ordinances as to the issue of composting activities and that the township could not stop a composting operation under its ordinance scheme. This ruling has not been appealed by the township. Clearly, composting fits the definition of a "farm operation." MCL 286.472(b)(*iv*)(field preparation), (*v*)(application of organic materials), and (*viii*)(storage and utilization of farm by-products, including agricultural wastes). Further, regardless of compliance with the RTFA and GAAMPs with respect to composting, Rondigo prevailed on the allegations that the composting operation, i.e., a farm operation, violated the zoning ordinance and thus constituted a nuisance. Accordingly, under the clear language of MCL 286.473b, the trial court could exercise its discretion and award costs, expenses, and attorney fees, *but only as to that portion of the litigation addressing composting activities and the alleged ordinance-based nuisance claims.* We remand the case to allow the court an opportunity to exercise that discretion.[8]

In summation, we reverse the trial court's rulings on the constitutionality of the ordinances and remand the case for consideration of the issue whether the denial of the site plan application covering construction work on the west-side access road was arbitrary and

[8] To the extent that the township's claims included a nuisance action based on failure to comply with the RTFA and GAAMPs relative to a composting operation, the record reflects that the issue was never truly resolved in the litigation. The trial court noted at the hearing on costs and attorney fees that neither party "really got to the point where we took any evidence . . . to determine . . . compliance with those GAAMP[s]." On the same subject of compliance with the RTFA and GAAMPs, the court later stated that "it was never clearly addressed by any of us." Given the circumstances, it cannot be said that Rondigo prevailed on the issue for purposes of MCL 286.473b.

capricious, allowing for any argument that the matter was never properly before the court. Further, with respect to the trial court's ruling on costs, expenses, and attorney fees, we reverse and remand, but only in part, allowing the court an opportunity to exercise its discretion to make an award solely in connection with the litigation of the township's failed ordinance-based nuisance claims concerning composting activities on the property.

Affirmed in part and reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs are ordered under MCR 7.219, as neither party prevailed in full.

/s/ William B. Murphy
/s/ Brian K. Zahra