STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF MASON, Plaintiff-Appellant,	UNPUBLISHED August 16, 2012
v	No. 301952 Mason Circuit Court
INDIAN SUMMER COOPERATIVE, INC., d/b/a MASON COUNTY FRUIT PACKERS COOPERATIVE, INC., d/b/a MASON COUNTY FRUIT PACKERS, INC., d/b/a MASON COUNTY FRUIT PACKERS CO-OP, INC., Defendant-Appellee.	LC No. 10-000202-CE

Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

In this abatement-of-a-nuisance action concerning whether a county ordinance and state law require an agricultural cooperative to obtain special land-use and building permits before beginning construction on both a warehouse that is to be used to store packaged processed-fruit products and an addition to a processing plant to store a snowplow and a boiler, plaintiff Mason County ("the county") appeals by right the trial court's order granting summary disposition in favor of defendant Indian Summer Cooperative, Inc. ("the cooperative"). We reverse.

I. PERTINENT FACTS

The cooperative is a grower-owned agricultural cooperative in Mason County that is organized under MCL 450.98 *et seq*. The cooperative owns over 240 acres of land made up of "multiple tax parcels . . . acquired at different times" but used as one contiguous parcel. This case involves one of the multiple tax parcels: parcel number 011-132-003-000 ("the subject parcel"). Different parts of the cooperative's land are used for agricultural production[1], agricultural processing, storage, parking, and material handling. The cooperative's processing

[1] There are apples, asparagus, and cherries grown on the cooperative's land.

plant is on the subject parcel. Farm products are not grown on the subject parcel.[2] The "main part" of the cooperative's business is making apple juice and apple sauce. The cooperative's members are farmers who own farms that are contiguous to the cooperative's property. The members are required to deliver their apples on a regular basis to the cooperative's facility for handling, processing, and distribution. Over 51 percent of the cooperative's raw product comes from the cooperative's members. The county zoned the subject parcel to be within an agricultural district. The county classified the cooperative's use of the subject parcel as "agribusiness" under a Mason County Ordinance ("the ordinance"); thus, the cooperative was required to obtain a "special land use permit" before constructing new buildings on the subject parcel.

On March 26, 2010, Roy Hackert, the cooperative's president, approached the county regarding the possible construction of a new warehouse on the subject parcel that was needed for a "labeling line" and "more warehouse space" to accommodate the storage of its "finished" product in plastic packaging containers in response to the needs of its customers.[3] Although Hackert had plans for the building construction, he attempted to obtain a building permit without going through "the special land use process." Mary Reilly, the county's zoning and building director and zoning administrator, informed Hackert that no permit would be issued without further documentation required by the ordinance. Hackert insisted that he did not have to comply with the special land-use permit process. Reilly contacted the Michigan Department of Agriculture (MDA) to determine whether the cooperative was exempt from local zoning ordinances under the Michigan Right to Farm Act (RTFA), MCL 286.471, *et seq*. The MDA informed Reilly that the cooperative was not exempt. Hackert, upset by his repeated failure to obtain a building permit, stated "I am not going to get zoning permits."

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[2] The parties dispute this fact on appeal; however, there is only record evidence that farm products are not grown on the subject parcel. Specifically, Mary Reilly testified that, although she noticed fruit trees on the cooperative's land, she did not see any "farming activity taking place" on the subject parcel. Contrary to the cooperative's argument in its appellate brief, although Roy Hackert testified that apples, asparagus, and cherries are grown on the cooperative's land, he did not testify that any of these were grown on the subject parcel. Furthermore, the cooperative's site plan for the warehouse construction on the subject parcel illustrates only "fallow" orchards, i.e., orchards that are inactive because they are left untilled or unsown; thus, the cooperative's contention on appeal that the site plan establishes the existence of "active farming operations" on the subject parcel is not supported by record evidence.

[3] In its brief in support of its motion for summary disposition, the cooperative stated that, in addition to some products that are distributed to the fresh market or processed and distributed in bulk to "other commercial users," "some apple products are finished into consumer ready packaging, labeled under the 'Indian Summer' or private labels of various retail distributors, and then shipped to retail distribution centers for distribution to the various chains of retail food stores."

On April 29, 2010, Reilly noticed that construction had begun on the subject parcel without the issuance of building and zoning permits. Hackert informed Reilly that construction had indeed begun on the new warehouse. Reilly personally served Hackert with a stop-work order on May 3, 2010, which was reissued on May 10, 2010, to correct a clerical error. The order informed Hackert that the subject parcel was in violation of the ordinance. Despite the order, the county's employees observed construction continuing through at least May 20, 2010.

On May 27, 2010, the county filed a nuisance complaint against the cooperative, alleging that the cooperative's "actions in erecting a structure on the real property without securing the requisite zoning approval" and the "offending structure" that was "created on [the cooperative's] premises by the construction' were nuisances. Thus, the county requested that the court both enjoin the cooperative's construction project pending a preliminary-injunction hearing and order the cooperative to "remove the offending structure." The court scheduled a hearing for the cooperative to "show cause why a Preliminary Injunction should not issue." On May 24, 2010, the cooperative submitted an application "under protest" for special land-use approval with the requisite filing fee. On June 1, 2010, the cooperative finally submitted a site plan for the subject parcel, which was characterized as remarkably deficient. The county scheduled a public hearing on the cooperative's special land-use application for June 15, 2010.

On June 9, 2010, the trial court conducted the preliminary-injunction hearing. Having been only recently informed of the cooperative's special land-use filing and the imminent public hearing, the court declined to rule at the hearing. Plaintiff's counsel read the following stipulation into the record:

> [1] in consideration of the various agreements contained in here, the Plaintiff's request for a Preliminary Injunction is withdrawn;
>
> [2] the Defendant may recommence construction at its earliest convenience;
>
> [3] Defendant is to submit a site plan which meets the Zoning Ordinance requirements to the Building and Zoning Department and furthermore, the Defendant shall . . . secure the appropriate building permits from Mason, the Mason County Zoning Department and [the] Mason County Building Department;
>
> [4] Defendant is to build the structure in question in accordance with paragraph three and the building permit secured thereunder. The Plaintiff is permitted to inspect the building to ensure compliance with the building permit and ensure compliance with the plans and permits issued;
>
> [5] there will be the hearing which has been discussed on June the 15th regarding the Defendant's request for special approval of the use as discussed here on the record. The Defendant agrees to see this through to conclusion or until further Order of the Court;

> [6] the Defendant shall answer the Plaintiff's complaint within 14 days of tomorrow's date;
>
> [7] given the fact that it is the, the Plaintiff bears the burden of proof as to the applicability of and the availability of a Permanent Injunction, the Plaintiff shall submit the first brief on the issue;
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> And I believe one of the affirmative defenses to be raised in the Defendant's brief will be the Right to Farm Act. And that we shall submit a brief on the Right to Farm Act within 30 days of the receipt of the answer.
>
> The Defendant shall then have an additional 30 days to submit a reply brief on Right to Farm. And that 30 days will be upon the receipt of the Plaintiff's brief.
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> [9] would be that there would be an additional simultaneous rebuttal briefs may be submitted within 14 days after the receipt of the Defendant's brief.

The Planning Commission held a public hearing, and the cooperative's site plan and special land-use application were approved, effective June 22, 2010. On about September 2, 2010, the county's employees "observed the cooperative constructing a new addition to the east side of its main processing plant," an activity not part of the approved site plan. Thus, the county issued another stop-work order on September 17, 2010. In a letter dated September 21, 2010, the cooperative indicated that it would comply with the order pending the outcome of the instant case. Yet, the county's employees again observed unpermitted construction, including the "installation of exterior windows," "painting of the exterior," and "installation of a new boiler, for which County inspection has been requested."[4] On October 12, 2010, the county issued the cooperative a citation for violating the stop-work order.

On September 24, 2010, the cooperative moved the trial court for summary disposition under both MCR 2.116(C)(8) and (C)(10). The cooperative argued that (1) its use of the subject property was as a "farm" and not an "agribusiness" and, therefore, that it was not subject to the special land-use zoning requirements; (2) its operations were exempt under the RTFA from all zoning and building requirements; and (3) it was entitled to costs and attorney fees under the RTFA. The county answered and argued that it was entitled to summary disposition under MCR 2.116(I)(2). The county asserted that (1) building permits were required for all of the cooperative's structures; (2) the cooperative was an "agribusiness" and, thus, subject to special land-use zoning requirements; (3) the cooperative was not protected by the RTFA and, even if it was, the special land-use requirements still apply; and (4) the cooperative was expressly subject to local zoning ordinances under the Michigan Agricultural Processing Act (MAPA), MCL 289.821, *et seq*. The trial court heard oral argument, during which the parties agreed that the

[4] The cooperative stated during the summary-disposition hearing that this second construction was "a two-sided addition to a building where a snowplow is being housed to get it out of the weather and a boiler was installed to provide heat to an adjoining building."

October 12, 2010, citation against the cooperative would be held in abeyance pending the court's ruling.

On December 15, 2010, the court granted the cooperative's motion for summary disposition and awarded the cooperative costs and attorney fees. The court held as follows:

> It is the determination of this Court that Defendant's new warehouse and addition on the east side also is a protected activity under the Right to Farm Act.
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> * * *
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> [The Cooperative's] argument that its performance is no different than what a private farmer can also permissibly pursue under the Right to Farm Act, the Court finds that there would be no basis to classify Defendant as an agri-business, but instead that it operates as a farming enterprise on behalf of active farmer members.
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> * * *
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> Under MCL 125.1510(8) it is the determination of the Court that the warehouse and the addition to house a boiler and snowplow is an incidental use for agricultural purposes to serve each of the active farm co-op members and as such does not constitute use for a retail trade. Further, under County Zoning Ordinance Section 2.02 the use of the warehouse does not cater exclusively to the agricultural community, but instead is specifically used on behalf of its individual cooperative members who all receive the protection of the Right to Farm Act.
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> Defendant is entitled to costs including attorney fees.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

We review de novo a trial court's summary-disposition ruling. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court did not state whether it granted defendant's motion for summary disposition under MCL 2.116(C)(8) or (C)(10). However, "because the court looked beyond the pleadings in deciding the motion, this Court reviews the motion as having been granted pursuant to MCL 2.116(C)(10)." *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 97-98; 704 NW2d 92 (2005). When reviewing a motion granted under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Dep't of Human Servs*, 286 Mich App 230, 235; 780 NW2d 586 (2009). Moreover, the interpretation of statutes and local zoning ordinances are questions of law that this Court reviews de novo. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

B. THE MASON COUNTY ZONING ORDINANCE

The county first argues that the trial court should have concluded that the cooperative was required to obtain a special land-use permit under the ordinance because the subject parcel was properly classified as an "agribusiness" under the ordinance. We agree.

"The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances." *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). If the language of an ordinance is clear and unambiguous, courts may only apply the language of the ordinance as written. *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000). "[A] reviewing court is to give deference to a municipality's interpretation of its own ordinance." *Macenas v Village of Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989).

Section 5.02 of the ordinance, which addresses permitted uses for an agricultural district, states the following in pertinent part:

> No building or structure or part thereof shall be erected, altered, or used, and no land shall be used except for one or more of the following:
>
> 1. Farming.

Section 5.03 permits "agribusiness" as a special land use upon review and approval by the planning commission. Section 2.02 defines "agribusiness" as "[b]usinesses catering exclusively to the agricultural community" and includes, but is not limited to, "the processing of farm products." The ordinance does not define "farming." Section 2.01 of the ordinance provides that "any word or term not interpreted or defined by this Ordinance shall be used with a meaning of common or standard utilization." Furthermore, the ordinance provides that undefined terms "shall have the meaning assigned to them by the Webster's Collegiate Dictionary, most recent addition." Random House Webster's Collegiate Dictionary (2001) contains the following definition of "farming": "the science or practice of agriculture[5]; the business of operating a farm." Section 2.02 of the ordinance defines "farm" and states the following: "[c]ommercial storage, processing, distribution, marketing, or shipping operations shall not be considered part of the farming operation."

We cannot conclude that the county improperly classified the use of the subject parcel as "agribusiness." Contrary to the cooperative's argument on appeal, the use of the subject parcel cannot be classified as farming under the ordinance. The record evidence in this case demonstrates that crops were not being grown on the subject parcel; instead, the subject parcel was used for processing and, with the new construction of the warehouse, for the purposes of labeling and storage of the cooperative's finished product before distribution to customers. Under the ordinance, "commercial storage, processing, distribution, marketing, or shipping

[5] The same dictionary defines "agriculture" as "the science, art, or occupation concerned with cultivating land, raising crops, and feeding, breeding, and raising livestock; farming."

operations shall not be considered part of the farming operation." Moreover, the cooperative's use of the subject parcel falls within the ordinance's definition of "agribusiness." Given that the ordinance's definition of "agribusiness" includes and is not limited to "the processing of farm products," the cooperative's processing of fruit and its storage of *processed farm products*, i.e., "finished" apple products, on the subject parcel falls within the ordinance's definition of agribusiness.

Accordingly, we conclude that the ordinance required the cooperative to obtain special land-use permits to construct the warehouse and the addition to the processing plant.

C. MICHIGAN AGRICULTURAL PROCESSING ACT

The county next argues that MAPA does not affect the ordinance's application with respect to the cooperative. We agree.

MAPA provides that "[a] processing operation shall not be found to be a public or private nuisance if the processing operation alleged to be a nuisance conforms to generally accepted fruit, vegetable, dairy product, meat, and grain processing practices as determined by the Michigan commission of agriculture." MCL 289.823(1). "'Processing operation' means the operation and management of a business engaged in processing." MCL 289.822(g). "'Processing' means the commercial processing or handling of fruit, vegetable, dairy, meat, and grain products for human food consumption . . . ." MCL 289.822(f).

Notwithstanding MAPA's protection of a processing operation from a nuisance finding, MCL 289.823(1), MAPA expressly states that "[t]his act does not affect the application of state statutes and federal statutes." MCL 289.825(1). Under MCL 289.825(2)(a), "state statutes" includes the "county zoning act, . . . MCL 125.201 to 125.240." In 2006, the Legislature consolidated the county zoning act, the township zoning act, and the city and village zoning act into the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq*. *Whitman v Galien Twp*, 288 Mich App 672, 679; 808 NW2d 9 (2010). Under the MZEA, counties may adopt local zoning ordinances that include provisions for special-use permits within a zoning district. See *id.* at 679-680; MCL 125.3202(1); MCL 125.3502; MCL 125.3504. Therefore, MAPA does not preempt the county's ordinance in this case; the ordinance applies to the cooperative notwithstanding the protections afforded to processing operations by MAPA.

D. RIGHT TO FARM ACT

The county also argues that the trial court erroneously concluded that the cooperative's construction of both the warehouse and the addition to the processing plant are protected activities under the RTFA. We agree.

The RTFA provides that "[a] farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture." MCL 286.473(1). The RTFA contains the following pertinent 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 a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products . . . .[6]
>
> (c) "Farm product" means 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, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates

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[6] Under MCL 286.472(b), a "farm operation" includes, but is not limited to, the following:

> (*i*) Marketing produce at roadside stands or farm markets.
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> * * *
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> (*iii*) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
>
> * * *
>
> (*viii*) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
>
> (*ix*) The conversion from a farm operation activity to other farm operation activities.
>
> (*x*) The employment and use of labor.

> the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture. [MCL 286.472(a)-(c).]

This Court has defined "commercial production" as "the act of producing or manufacturing an item intended to be marketed and sold at a profit." *Papesh*, 267 Mich App at 100-101. Furthermore, the RTFA contains an express preemption provision:

> 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. 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 developed under this act. [MCL 286.474(6).]

In this case, the county alleged in its complaint that both the cooperative's construction of the warehouse and the warehouse itself are nuisances; furthermore, the county argued before the trial court that the construction of the addition to the cooperative's processing plant is also a nuisance. The county did not allege that the cooperative is a nuisance. Therefore, the starting point to determine whether the cooperative's construction of the warehouse and the processing-plant addition are protected activities under the RTFA is to determine whether the cooperative's construction of these buildings or the buildings themselves are a "farm" or "farm operation" under the RTFA. See MCL 286.473(1) ("A farm or farm operation shall not be found to be a public or private nuisance *if the farm or farm operation alleged to be a nuisance* conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture.") (emphasis added).

The RTFA's definitions of "farm," "farm operation," and "farm product" are connected. See MCL 286.472(a)-(c). Specifically, a "farm operation" requires either the operation or management of a "farm" or a necessary condition or activity occurring on a "farm" in connection with the commercial production, harvesting, and storage of "farm products"; therefore, there cannot be a "farm operation" under the RTFA without a "farm." Furthermore, a "farm" requires the commercial production of "farm products"; thus, there cannot be a "farm" under the RTFA without the commercial production of a "farm product." Consequently, the dispositive question is to what extent are (1) the cooperative's construction of the warehouse and the processing-plant addition and (2) the warehouse and the processing-plant addition themselves for the "commercial production of farm products," i.e., the production and manufacture of farm products intended to be marketed and sold at a profit. See MCL 286.472(a); *Papesh*, 267 Mich App at 100-101.

The cooperative in this case constructed the addition to the east side of the processing plant to house a snowplow and a boiler to heat the "adjoining building." Furthermore, the cooperative constructed the warehouse for a "labeling line" and "more warehouse space" to accommodate the storage of its "finished" product in packaging containers. However, a snowplow is not "used in the commercial production of farm products." See MCL 286.472(a). Moreover, the cooperative's "finished" or processed product—apple juice and apple sauce—does not fall within the definition of "farm product" under MCL 286.472(c). Although "fruits"

are "farm products" under MCL 286.472(c), the cooperative's "finished" products are products that have been created by processing fruit. It is not fruit that is "intended to be marketed and sold at a profit" by the cooperative but, rather, a product created by processing fruit. See *id.*; *Papesh*, 267 Mich App at 100-101. Thus, the warehouse, the processing plant, and the addition to the processing plant are not "used in the commercial production of farm products," i.e., the production and manufacture of farm products intended to be marketed and sold at a profit. See MCL 286.472(a); *Papesh*, 267 Mich App at 100-101. As a result, the cooperative's construction of the warehouse and the processing-plant addition are not "farms" or "farm operations," and the warehouse and the processing-plant addition are not "farms" or "farm operations" under the RTFA; therefore, they cannot be afforded the protections of the RTFA. See MCL 286.472(a)-(c); MCL 286.473(1) ("A farm or farm operation shall not be found to be a public or private nuisance . . . .").

Accordingly, we hold the trial court erroneously concluded that the cooperative's construction of the warehouse and the processing-plant addition are protected activities under the RTFA. The trial court erroneously granted summary disposition in favor of the cooperative on this basis.

E. BUILDING PERMIT

The county also argues that the trial court erroneously determined that the cooperative was exempt under MCL 125.1510(8) from statutory building-permit requirements. We agree.

Under the Stille-DeRossett-Hale Single State Construction Code Act, MCL 125.1501 *et seq.*, "before construction of a building or structure, the owner, or the owner's builder, architect, engineer, or agent, shall submit an application in writing to the appropriate enforcing agency for a building permit." MCL 125.1510(1). However, there are exceptions to this requirement. See MCL 125.1510(1), (7)-(8). MCL 125.1510(8) provides that "a building permit is not required for a building incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade."[7] Under the act, "agricultural or agricultural purposes" means the following:

> of, or pertaining to, or connected with, or engaged in agriculture or tillage that is characterized by the act or business of cultivating or using land and soil for the production of crops for the use of animals or humans, and includes, but is not limited to, purposes related to agriculture[and] farming . . . . [MCL 125.1502a(1)(a).]

[7] Indeed, MCL 125.1502a(1)(f) provides that a "[b]uilding does not include a building, whether temporary or permanent, incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade." Furthermore, a "[s]tructure does not include a structure incident to the use for agricultural purposes of the land on which the structure is located . . . ." MCL 125.1502a(1)(aa).

We conclude that the cooperative is not exempt under MCL 125.1510(8) from obtaining a building permit before beginning construction of the warehouse and the processing-plant addition. Neither the warehouse nor the processing-plant addition is not "a building incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade." See MCL 125.1510(8). More specifically, the subject parcel is not used for a purpose pertaining to or connected with the cultivation or use of land for the production of crops for the use of humans. See *id.*; MCL 125.1502a(1)(a). There is no record evidence that the subject parcel—"the land on which the building is located"—is connected to the production of crops for the use of humans. Rather, the record evidence demonstrates that the subject parcel is connected to the processing of crops that have already been produced and to the storage of "finished" product for human consumption. Furthermore, neither an addition to a processing plant to store both a boiler for the adjoining building and a snowplow nor a warehouse to store the cooperative's packaged "finished" or processed fruit products is a building likely to ensue as a minor consequence of, i.e, incidental to, the use of land for the production of crops for the use of humans. See MCL 125.1510(8); MCL 125.1502a(1)(a). Rather, they are incidental to the use of land for the processing of crops for the use of humans. The processing of crops into a "finished" product—for example, the processing of apples into apple sauce or grapes into wine—is not likely to ensue as a minor consequence of the production of the crops. The cooperative's processing of crops into "finished" products for human use is not a consequence of the production of crops; rather, it is a separate undertaking.

Therefore, we hold that the cooperative is not exempt under MCL 125.1510(8) from obtaining a building permit before beginning construction of the warehouse and the processing-plant addition.

III. COSTS AND ATTORNEY FEES

The county's final argument is that the cooperative is not entitled to attorney fees and costs under the RTFA. We agree.

We review for an abuse of discretion a trial court's decision to award costs and attorney fees. *Peterson v Fertel*, 283 Mich App 232, 235; 770 NW2d 47 (2009) (quotation omitted). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* (quotation omitted).

The RTFA states as follows with respect to an award of costs and fees:

> 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. [MCL 286.473b.]

The present case does not involve a farm or farm operation that is alleged to be a nuisance. As previously discussed, the county alleges that both the cooperative's construction of the warehouse and the processing-plant addition and these buildings themselves are nuisances.

But the cooperative's construction of these buildings and the buildings themselves are not a "farm" or "farm operation" under the RTFA. Moreover, the cooperative is not the prevailing party in this action. Therefore, the cooperative is not entitled to costs and attorney fees under the RTFA. See *id.*

Accordingly, we conclude that the trial court abused its discretion by awarding costs and attorney fees to the cooperative under the RTFA.

Reversed.

/s/ Jane M. Beckering
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens