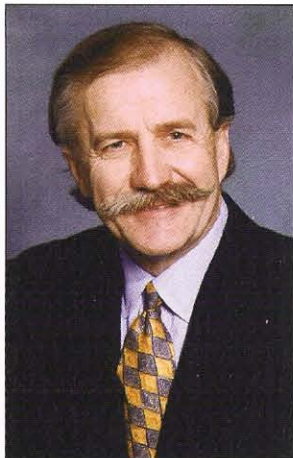


# the right to farm



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**H**ORSE TRAINER SMITH OPERATES A TRAINING FACILITY ON LAND HIS FAMILY HAS farmed and raised cattle on for generations. Last year a developer built 59 new houses next to the family farm. The new development was named Equine Estates in recognition of the beauty and serenity of the nearby farm. Smith's neighbors enjoyed the view of open fields and horses grazing in the pasture. When summer arrived some of the nearby neighbors started complaining about the horsey odors, especially the neighbors downwind from the manure pile. Several of them got together and hired a lawyer to file a lawsuit to keep Smith from interfering with the enjoyment of their new homes.

At the same time, Smith applies to the local government for a permit to build a new barn. He wants to build the barn 25 feet from his property line, but the local ordinance requires a setback of 100 feet. He applies for a variance, but his neighbors protest and the local zoning officer is reluctant to grant the variance.

Do the neighbors have a valid nuisance claim? Does the local government have the right to tell Smith where to build his barn?

In most parts of the country, particularly those areas that are being rapidly developed, disputes between farmers and their new neighbors are on the rise. Also on the rise are conflicts between farmers and their local governing bodies. As a result, many states have enacted statutes known as the "Right To Farm" laws.

These laws protect farmers from both public and private nuisance lawsuits and against unreasonable restrictions and regulations that hinder farming. Generally, if a farmer can establish that he satisfies the eligibility criteria of the statute he will enjoy a presumption that his farming practices or operations do not constitute a nuisance. In addition, very often the agricultural activities will preempt local regulations.

So, who wins? The answer is—it depends. First, while there may be some debate as to what constitutes farming, most commercial horse operations would qualify. Second, most of these laws require that the farming operation must have been in effect for a specified period of time prior to the time of the conflicting use.

Also, the manner and use of the activity must not have materially changed and the operation must be conducted in a reasonable and agriculturally accepted fashion. As to the local government's action, most state laws limit the right of local governments to impose zoning or other land use restrictions in such a manner as to effectively shut down the farming operation. Even those states that do not have such a prohibition, the doctrine of nonconforming use generally applies. As long as the land use was lawful when started and has not substantially changed, it will be protected from subsequent inconsistent zoning and other unreasonable requirements.

In addition, many states have more recently enacted "Farmland Preservation" laws. Typically the state will purchase any development rights a farmer may have in exchange for maintaining the rural character of the land. The farmland will then be kept as farmland forever. An additional benefit to the farmer will be that he will be protected from these nuisance lawsuits and local zoning problems.

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