MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2015-08

RIGHT TO FARM CONFLICT RESOLUTION
FINDINGS AND RECOMMENDATIONS

FLYING ALPACA FARM – EDWARD AND JULIE BALL
BLOCK 13.15, LOT 32
TOWNSHIP OF WASHINGTON, MORRIS COUNTY, NEW JERSEY

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1(a) and the State Agriculture Development Committee's Right to Farm Rules, N.J.A.C. 2:76-2.7(a), any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable county agriculture development board or the State Agriculture Development Committee ("SADC") in counties where no county board exists, prior to filing an action in court; and,

WHEREAS, on November 24, 2014 and December 4, 2014, the Morris County Agriculture Development Board ("Morris CADB") received a complaint filed by Mr. Keith Barlow against the Flying Alpaca Farm (N-1 & N-2); and

WHEREAS, the Mr. Barlow's complaint lists animal noise and manure odors stemming from the farm as the disputed activities or practices; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e), if the complaint concerns activities that are not addressed by an agricultural management practice recommended by the SADC or a site specific agricultural management practice adopted by the CADB, the CADB shall contact the farm owner to provide evidence that the operation is a commercial farm pursuant to N.J.A.C. 4:1C-3; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e)1, the CADB shall determine whether the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(a)1, the CADB shall determine whether the commercial farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9; and

WHEREAS, if the CADB determines that the operation is a commercial farm, that the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in the RTF Act, and that the commercial farm meets the eligibility criteria of the Act, then the CADB shall forward the complaint to the State Agriculture Development Committee (SADC) requesting the SADC's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice; and

WHEREAS, if the CADB determines that the dispute does not involve a commercial farm, and/or agricultural activity(ies) included in one or more of the permitted activities set forth in the RFT Act, and/or the commercial farm does not meet the eligibility criteria of the Act, then the CADB shall dismiss the complaint; and

WHEREAS, December 1, 2014, the Morris CADB contacted Mr. and Mrs. Ball asking them to provide evidence that their operation is a commercial farm (B-1); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.8(d), the State Agriculture Development Committee (SADC) and the Township of Washington were notified regarding the complaint via the same letter. Due to lack of a response from Mr. and Mrs. Ball, a subsequent request was mailed on January 12, 2015 (B-2); and

WHEREAS, on February 3, 2015, the Morris CADB received the Commercial Farm Certification Form and related documents from Mr. Ball (F-1); and

WHEREAS, the Morris CADB was unable to determine whether the Flying Alpaca Farm operation qualifies as a "commercial farm" pursuant to the RTF Act based on the information provided by the farm owner and on February 9, 2015, the Morris CADB requested additional documentation from Mr. Ball (B-3); and

WHEREAS, on February 26, 2015, the Morris CADB received additional documentation from Mr. Ball (F-2); and

WHEREAS, on March 6, 2015, Ms. Katherine Coyle drafted a Staff Report regarding the complaint (B-4), which was forwarded to Mr. Ball and Mr. Barlow on March 9, 2015 (B-5); and

WHEREAS,

WHEREAS, during the March 12, 2015 meeting, the Morris CADB reviewed exhibits N-1, N-2, F-1, F-2, and B-1 through B-6 (Exhibits); and

INDEX OF EXHIBITS

Exhibits from Keith Barlow:

November 24, 2014 complaint N-1

December 4, 2014 complaint addendum N-2

Exhibits from Edward Ball:

February 3, 2015 Commercial Farm Certification Form including: F-1

- September 25, 2014 letter from Monique Purcell, Dept. of Ag., to Edward Ball
- January 21, 2015 letter from Barbara Margolese
- Washington Township Chapter 217 Zoning Regulations
- Property tax information
- October 21, 2014 Classic Alpaca Invoice
- 2013 U.S. Income Tax Returns, Schedule F
- December 4, 2014 Keith Barlow email to Katherine Coyle with handwritten notes from Mr. Ball

- My Pet Alpaca - information regarding using manure as fertilizer

February 26, 2015 supplemental documentation including:.....F-2

- February 26, 2015 handwritten note from Edward Ball
- Invoices for supplies, sheds and animals for years 2012, 2013 and 2014
- 2013 and 2013 U.S. Income Tax Returns, Schedule F
- Handwritten list of fiber/yarn sales at farmers markets for years 2012, 2013 and 2014
- Autumn Mist Alpaca Farm & Fiber Mill receipts for fiber sales for years 2012 and 2013

Exhibits from the Morris CADB:

December 1, 2014Morris CADB request for Commercial Farm Certification B-1

January 12, 2015 Morris CADB request for Commercial Farm Certification.....B-2

February 3, 2015 Morris CADB request for additional documentation B-3

March 6, 2015 Staff Report B-4

March 9, 2015 letter to Edward Ball.....B-5

Morris County Tax Board – Property Information for Tax Year 2015.....B-6

NOW THEREFORE BE IT RESOLVED, after having considered the foregoing exhibits, the Morris CADB makes the following determinations:

Commercial Farm Eligibility:

1. Pursuant to N.J.S.A. 4:1C-3, "commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

2. Because the Flying Alpaca Farm operation consists of more than 5 acres and is not Farmland Assessed (B-6), in order to meet the Right to Farm Act's definition of a "commercial farm," it must produce agricultural or horticultural products worth $2,500 or more annually, and satisfy the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

3. In order to satisfy the eligibility criteria of the Farmland Assessment Act, the land must consist of at least 5 contiguous acres, be actively devoted to agricultural use, and has been so devoted for at least two (2) successive years immediately preceding the tax year in question, and the

gross sales of products from the land must average at least $500 per year, plus an average of $5 per acre for each acre over five (5) (N.J.S.A. 54:4-23.2).

4. According to Mr. Ball's Commercial Farm Certification F-1, the Flying Alpaca Farm produces alpaca fiber, hats, scarves, socks, sweaters, blankets, gloves, etc. According to Schedule F of IRS Form 1040 for tax year 2013, the farm income in 2013 was $3,490. However, Schedule F does not provide evidence that the income was generated from the sale of agricultural products and Mr. Ball did not provide copies of receipts as evidence that the income was generated from the sale of agricultural products. Because the Morris CADB was unable to determine whether the Flying Alpaca Farm operation qualifies as a "commercial farm" based on the information provided by the farm owner, on February 9, 2015, the Morris CADB requested additional documentation from Mr. Ball (B-3).

5. On February 26, 2015, the Morris CADB received additional documentation from Mr. Ball (F-2). Mr. Ball provided the following proofs:

- 2014 - handwritten list of fiber/yarn sales at farmers markets totaling $5,295;
- 2013 - handwritten list of fiber/yarn sales at farmers markets totaling $5,954, an Autumn Mist Alpaca Farm & Fiber Mill receipt for a fiber sale in the amount of $1,200, and 2013 U.S. Income Tax Returns, Schedule F showing farm income in the amount of $3,490;
- 2012 - handwritten list of fiber/yarn sales at farmers markets totaling $5,231, an Autumn Mist Alpaca Farm & Fiber Mill receipt for a fiber sale in the amount of $800, and 2013 U.S. Income Tax Returns, Schedule F showing farm income in the amount of $3,325, and;

6. The SADC's January 25, 2006 final decision in the case of Barbara Hertz vs. the Morris CADB provided a clarification regarding the Right to Farm Act's income requirements. The SADC determined the following:

- although federal tax forms can be used to support a landowner's claim that he or she meets the production requirements of the RTF Act, they may not be sufficient without additional documentation;
- the handwritten notes stating her income [from honey and CSA shares] "are not sufficient to establish the sales of such products" and do "not sufficiently demonstrate receipt of income without evidence to substantiate the figures written on the sheet."

7. Proof of sufficient agricultural income enabling a commercial farm's entitlement to the strong protections of the RTF Act requires reasonably sufficient and credible evidence. While Mr. Ball provided handwritten lists, which purport to show his income from the sales of fiber at farmers markets, he did not provide the source of the data listed in the notes (i.e. cash receipt book, accounting/ business ledger, profit/loss report, copies of checks received as payment, copies of bank deposits, etc.). The only receipts provided by Mr. Ball are the two receipts from Autumn Mist Alpaca Farm & Fiber Mill (one for 2012 and one for 2013).

8. In addition, the income documentation provided by Mr. Ball appears to be inconsistent. According to the 2013 handwritten list of sales at farmers markets and the 2013 receipt from Autumn Mist Alpaca Farm & Fiber Mill, Mr. Ball's farm income in 2013 totaled $7,154, but his 2013 U.S. Income Tax Returns shows farm income in the amount of $3,490. According to the 2012 handwritten list of sales at farmers markets and the 2012 receipt from Autumn Mist Alpaca Farm & Fiber Mill, Mr. Ball's farm income in 2012 totaled $6,031, but his 2013 U.S. Income Tax Returns shows farm income in the amount of $3,325. Mr. Ball did not submit his U.S. Income Tax Returns for 2014.

9. Mr. Ball has not provided reasonably sufficient and credible evidence that the Flying Alpaca Farm Based produced agricultural or horticultural products worth $2,500 or more annually.

10. Mr. Ball has not provided sufficient evidence that the Flying Alpaca Farm satisfies the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act. While Mr. Ball did provide evidence that the farm is more than five (5) acres, is actively devoted to agricultural use, and has been so devoted for at least two (2) successive years immediately preceding the tax year in question, he did not provide sufficient evidence that the gross sales of products from the land average at least $500 per year, plus an average of $5 per acre for each acre over five (5). While the two receipts from Autumn Mist Alpaca Farm & Fiber Mill (one for 2012 and one for 2013) show adequate gross sales of products from the land in 2012 and 2013, there is insufficient evidence of adequate gross sales in 2014.

11. Based on the foregoing determinations, the Morris CADB finds that Mr. Ball has not provided reasonably sufficient and credible evidence that his operation is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-3.

Agricultural Activity:

1. Pursuant to N.J.S.A. 4:1C-9, the owner or operator of a commercial farm may:

   (a) "Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System."

   (g) "Conduct on-site disposal of organic agricultural wastes."

2. According to Exhibits F-1 and F-2, the Flying Alpaca Farm produces alpaca fiber, hats, scarves, socks, sweaters, blankets, gloves, alpacas and eggs.

3. Mr. Barlow's complaint lists animal noise and manure odors stemming from the farm as the disputed activities or practices.

4. Based on the foregoing determinations, the Morris CADB finds that the production of alpaca fiber, alpacas and eggs, as well as the on-site disposal of organic agricultural wastes, are included in on or more of the permitted activities set forth in N.J.S.A. 4:1C-9 and N.J.A.C.

2:76-2B.3(e).

BE IT FURTHER RESOLVED, that the Morris CADB lacks jurisdiction over the Flying Alpaca Farm operation and dismisses the complaint. The activities occurring on the Flying Alpaca Farm property are outside the purview of the Morris CADB and remain under the jurisdiction of applicable local, state and federal authorities.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(g), certified copies of this resolution will be forwarded to the following individuals and agencies:

Keith Barlow
Edward and Julie Ball
Andrew Coppola, Washington Township Administrator
Barbara Margolese, Washington Township Zoning Officer
State Agriculture Development Committee
Morris County Board of Chosen Freeholders

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(k), any person aggrieved by the Morris CADB's decision may appeal the decision to the SADC within 10 days from the receipt of the CADB's decision. The SADC shall schedule a hearing and make a determination within 90 days of the receipt of the petition for review.

1. The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

2. Any decision of the Morris CADB that is not appealed shall be binding.

Gregory Keller, Chairman
Morris CADB

3/12/15
Date

	Yes	No	Abstain	Absent
Ms. Ashley Myers				✓
Mr. Davis	✓			
Ms. Davis	✓			
Mr. Desiderio	✓			
Mr. Keller	✓			
Mr. Ort	✓			
Mr. Wightman	✓			

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on March 12, 2015.

Attorney at Law State of New Jersey