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Celebrating 30 Years of Preserving Farmland
and
Protecting the Right to Farm

October 21, 2014

Hon. Frank Leanza, JMC
Washington Township
43 Schooley's Mountain Road
Long Valley, NJ 07853

Re: State (Washington Township) v. Wajswol/Valley Shepherd, LLC
Summons No. SC-002839

Dear Judge Leanza:

The State Agriculture Development Committee (SADC) is in receipt of a copy of a consent order dated July 24, 2014 forwarding the above summons to the SADC "for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice pursuant to N.J.S.A. 4:1C-10.1(c)." We respectfully decline to make such a determination at this time.

The Right to Farm Act, N.J.S.A. 4:1C-1, et seq. (RTFA) sets forth procedures for the disposition of complaints against commercial farms. N.J.S.A. 4:1C-10.1(a) states that all complaints must be filed with the county agriculture development board (CADB) or, if no CADB exists, with the SADC. N.J.S.A. 4:1C-10.1(c) provides that if the complaint involves an activity not addressed in an agricultural management practice recommended in regulations promulgated by the SADC, then the CADB is to forward the complaint to the SADC. There is no provision in the RTFA granting authority to municipal courts to forward complaints to the SADC.

The summons alleges that Valley Shepherd, LLC ("Valley Shepherd" or "defendant") violated the New Jersey Public Health Nuisance law, N.J.S.A.

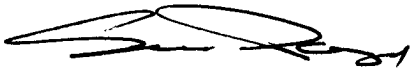
26:3-69.1, et seq., a state law administered by Washington Township through the municipality's public health nuisance code. The SADC is also aware that the defendant has failed to comply with New Jersey Department of Agriculture (NJDA) requirements set forth in its animal waste management rules, N.J.A.C. 2:91-1.1, et seq., and that the NJDA issued a penalty assessment to Valley Shepherd on October 17, 2014. Finally, the New JerseyDepartment of Environmental Protection (DEP) issued notices to defendant dated September 5, 2013 and June 13, 2014, alleging violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1, et seq. The SADC is aware that DEP notices establish a claim, rather than a final legal determination, that a violation has occurred. However, issuance of a notice does express the DEP's intent to take further enforcement action if needed corrective measures addressing the claim(s) are not undertaken.

The RTFA insulates eligible commercial farmers from unreasonable local ordinances and provides an irrebuttable presumption that the farm's operations do not constitute a public or private nuisance provided, among other things, the farm conforms to "relevant federal or State statutes or rules and regulations adopted pursuant thereto. . ." N.J.S.A. 4:1C-9 and 10.

In light of the foregoing, we decline to accept the case because the evidence before us indicates the property is not in compliance with relevant state statutes and regulations, and as such, is not entitled to RTF protection. This is consistent with a similar case that occurred in2006 in which the SADC declined to hear a case forwarded by the Middlesex County Agriculture Development Board involving a farm operation subject to DEP violation notices, advising the farmer that "the [RTFA] does not protect farms that are in violation of state laws and regulations. N.J.S.A. 4:1C-9. We will keep the file open... and reconsider the matter once these violations have been resolved."

Accordingly, the SADC will not accept transfer of Summons SC-002839 and will not make the determination described in the consent order.

Sincerely,



Susan E. Payne
Executive Director

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