Resolution No. 2016-03-3

RESOLUTION OF THE MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD REGARDING COMMERCIAL FARM ELIGIBILITY FOR A RIGHT TO FARM COMPLAINT FOR BLOCK 43, LOTS 15.012 AND 15.013 IN THE TOWNSHIP OF MILLSTONE

Mr. Bullock offered the following resolution and moved its adoption:

WHEREAS, on November 17, 2015, Millstone Township (the "Complainant") filed a Right to Farm Complaint Form ("Complaint") alleging illegal recycling operations and related activities occurring at Block 43, Lot 15.013 in the Township of Millstone; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's (the "Committee") rules; and

WHEREAS, the Board advised the Committee and the Landowner of the Complaint; and

WHEREAS, pursuant to 4:1C-10.1 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court; and

WHEREAS, in the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint; and

WHEREAS, initially the Board must determine whether the Landowner's agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, the MCADB requested proof of agricultural production income in order to make a determination regarding "commercial farm" eligibility related to the income threshold requirement for 2015; and

WHEREAS, the Landowner submitted documentation attesting that Block 43 Lot 15.012 and 15.013 are part of his Farm Management Unit; and

WHEREAS, these lots are owned by M.Ville LLC whose principal is Don Vona (the "Landowner"); and

WHEREAS, the Landowner submitted the following as proof of agricultural production income for 2015 as exhibits at the hearing and totaling $2,600.00:

1. Letter from Thomas Dancer to the Millstone Tax Assessor alleging $600.00 of income from harvesting wheat and $2,000.00 of income from harvesting Timothy hay;

2. Copies of Tax Map printouts to show the location of the property in question;

3. Supplemental Farmland Assessment Gross Sales Form for Lot 15.012 indicating 2 acres of farmed land producing $600.00 of income and Supplemental Farmland Assessment Gross Sales Form for Lot 15.013 indicating 5 acres of farmed land producing $2,000.00 of income;

4. Right to Farm Conflict Resolution Commercial Farm Form submitted by the Landowner;

5. Township of Millstone Right to Farm Certification Form signed and notarized on September 20, 2013; and

WHEREAS, the Complaint asks the Monmouth County Agriculture Development Board ("MCADB" or "Board") to evaluate the following:

> "Defendant is conducting recycling operations not permitted in Millstone's R-130 zoning whereby he stockpiles logs, brush and debris imported onto the site from Defendant's offsite tree cutting business, some of which he mulches. He also has imported soils onto the site without a permit in violation of ordinance 13-10 s3, deposited same onto the roadway in violation of 03-39 and obstructed a conservation easement by stockpiling brush and debris thereon in violation of 10-12, all under the guise of 'Right to Farm.' " and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on February 23, 2016 and attended by a minority of board members, MCADB staff, MCADB counsel, Counsel for the landowner and the owners of the property; and

WHEREAS, notice of the complaint and date of the public hearing was provided to neighbors within 200' of the Farm Management Unit; and

WHEREAS, the MCADB reviewed submissions and exhibits, and considered the Landowner's testimony as well as objections presented by the Township of Millstone and the public during the Board's public meeting on March 1, 2016; and

WHEREAS, the Landowner was represented by Fernando M. Pinguelo, Esq., and offered testimony of Don Vona, in support of the proving Commercial Farm Eligibility;

and

WHEREAS, a representative of the Township of Millstone spoke about the reasons the Township filed the complaint; and

WHEREAS, the Board carefully considered the testimony of the Landowner and concerns of the public and Township in making their determination; and

WHEREAS, the Board analyzed the tillable acreage on Lot 15.012 shown in aerial maps prepared by MCADB staff and examined in person during the February 23, 2016 site visit as compared to the documents submitted by the Landowner; and

WHEREAS, the income proofs did not include any actual receipts for field crops allegedly grown on the property; and

WHEREAS, the Board requested any additional site mapping or survey work that would clarify the amount of tillable acreage on lot 15.012, in order to confirm the Supplemental Farmland Assessment Gross Sales Form for Lot 15.012 that alleged 2 acres of farmed land produced $600.00 of income; and

WHEREAS, after considering the commercial farm eligibility information provided, the Board makes the following findings of fact:

1. The property is a Farm Management Unit.

2. The Farm Management Unit is comprised of Block 43, Lot 15.012 and 15.013 in the Township of Millstone and is greater than five acres.

3. The Farm Management Unit satisfies the eligibility criteria for, and receives, differential property taxation pursuant to the Farm Land Assessment Act, N.J.S.A. 54:4-23.1 et seq. from the Township of Millstone.

4. The property is located within the R-130 zone that permits agriculture as verified by the Millstone Township Master Plan and township land use ordinance.

5. The Farm Management Unit did not provide sufficient proof of having produced agricultural or horticultural products worth more than $2,500.00 and as such does not meet the requirements of a Commercial Farm pursuant to the Right to Farm Act.

NOW, THEREFORE, BE IT RESOLVED, based on exhibits presented, testimony given and the aforesaid findings of fact, the Monmouth County Agriculture Development Board concludes that the property subject to the Right to Farm Complaint is a Farm Management Unit; however, the property does not satisfy the eligibility criteria, fails to meet the statutory requirements of N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, and is not a "Commercial Farm" as defined by the Right to Farm Act; and

BE IT FURTHER RESOLVED that because the operation does not qualify as a "commercial farm" under the Right to Farm Act, the MCADB does not have jurisdiction over the matter; and

BE IT FURTHER RESOLVED, for lack jurisdiction, the MCADB cannot proceed with the remainder of the complaint and cannot review the farm operations; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the State Agriculture Development Committee, the Township of Millstone, and the Landowner; and

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 10 days, this resolution is binding.

Seconded by Mr. Foster and adopted on roll call by the following vote:

	Yes	**No**	**Abstain**	**Absent**
Mr. Bullock	X			
Mr. Buscaglia	X			
Ms. Butch			Recused	
Mr. Clayton*	X			
Mr. DeFelice	X			
Mr. Dill*				X
Mr. Foster	X			
Mr. Giambrone				X
Ms. Grbelja				X (Recused)
Mr. Holmes	X			
Mr. Potter	X			

* Alternate members in 2016

I do hereby certify that the foregoing is a true copy of a resolution adopted by the Monmouth County Agriculture Development Board at a meeting on the 1st of March, 2016 and memorialized on April 5, 2016.

Gary DeFelice, Secretary