Resolution No. 2015-08-1

RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
RECOMMENDING A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE REQUEST FOR BLOCK 742, LOT 22
IN THE TOWNSHIP OF WALL

Ms. Grbelja offered the following resolution and moved its adoption:

WHEREAS, on May 4, 2014, CLC Farms, LLC (the "Applicant") applied for a Site Specific Agricultural Management Practice ("SSAMP") recommendation for the property located at 1863 Barbee Lane, in the Township of Wall, New Jersey, and known as Block 742, Lot 22 on the Township Tax Map ("Property"); and

WHEREAS, the SSAMP request asked the Monmouth County Agriculture Development Board ("MCADB" or "Board") to evaluate the following as stated in the original SSAMP application:

> "The plant materials that will be farmed are ornamental trees and shrubs that are very rare or difficult to obtain due to shortages in the industry. The farm will be operating as a wholesale farm with the majority of plant material being sold to our other companies (Chatham Landscape Contractors, C.L.C. Construction and CLC Pools). The other portion of our business will be selling to wholesale nurseries that typically do not inventory unique or one-of-kind plant material however; require these items to fulfill certain orders. We would also accommodate landscape architects and designers to purchase directly from the farm."

WHEREAS, the Applicant requested the Board to affirm that the growing of ornamental trees and shrubs, according to the above statement from the SSAMP application, is an accepted farm management practice and that the Applicant be permitted to sell the agricultural output and establish a farm market facility for consumers to purchase the output produced on the farm; and

WHEREAS, a home construction, pool construction, patio construction, or lawn maintenance business would not be protected under the Right to Farm Act; and

WHEREAS, the Property is located within the Township's RR-6 zone that permits agriculture as verified by the Wall Township Master Plan and Township land use ordinance.

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 rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and Wall Township of the application and request.

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), (d), upon receipt of a request for an SSAMP, the Board must determine whether the Applicant'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 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 June 10, 2014 and attended by a minority of board members, MCADB staff, MCADB counsel, Township counsel, Township administrator, and the owners of CLC Farms; and

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Applicant's request as well as objections presented by counsel and the public, during the Board's public meetings on July 1, September 2, and October 7, 2014 as well as January 6, February 3, March 3, May 5, June 2, August 4 and September 1, 2015; and

WHEREAS, on October 7, 2014, after deliberation at the public hearing, the MCADB found that the Applicant's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, which is memorialized in Resolution No. 2014-10-1; and

WHEREAS, the Applicant now requests approval for an SSAMP application from the Board; and

WHEREAS, the Applicant was represented by John A. Giunco, Esq., and the applicant offered testimony of Jason Fichter, P.E., P.P.; Jay Troutman, P.E., traffic engineer; and Michael LaMana, certified arborist, in support of the application; and

WHEREAS, the Township of Wall, through counsel Sean Kean, Esq., objecting neighbors through Roger McLaughlin, Esq., and Matthew Peluso, Esq., cross-examined the Applicant's witnesses thoroughly; and

WHEREAS, the Applicant filed plans titled "Site Specific Agricultural Management Plan", dated December 30, 2014, prepared by Jason Fichter, P.E. of InSite Engineering, consisting of 4 sheets ("Plans"); and

WHEREAS, the Applicant's expert witnesses testified that the operation of the farm or proposed farm market would not create any health or safety issues for adjoining property owners, related to increased traffic to the subject Property, or

otherwise; and

WHEREAS, Jason Fichter, P.E., testified that the intensity on the site had been heavy during the initial preparation and planting stages but subsided significantly once the farm was planted and farm operations were up and running. Mr. Fichter presented an exhibit "Zone and Tax Class Exhibit" which demonstrates that the Property is in the vicinity of many sites zoned for farming and receiving farmland assessment. The Property is adjacent or in close proximity to approximately ten (10) farm assessed properties to the north, south, and west of the Property. The residential subdivision zoned R-20 is adjacent to the south of the Property. Mr. Fichter explained the Plans and proposed improvements which include: (i) the construction of a "sales center" building consisting of two floors (1,500 s.f. each) and a garage (864 s.f.). The first floor will be dedicated to selling agricultural products, administrative and office activity and meeting with customers; the second floor will be used as storage for farm marketing materials; the garage will be used for additional equipment storage; (ii) addition of 15 parking spaces adjacent to the sales center; (iii) construction of a barn addition of 1,300 s.f., and a lean-to addition to the barn of 1,800 s.f. (iv) construction of one 275-gallon on-road diesel fuel tank and two275-gallon off-road diesel fuel tanks; (v) construction of concrete storage bins to store topsoil, mulch, sand and sub-soil fill for use on the farm; (vi) chipping area; (vii) permanent deer fence; (viii) 4 employee spaces at the rear of property; (ix) restoration of existing hoop houses; and other associated site improvements; and

WHEREAS, Applicant proposed to relocate the concrete storage bins approximately 62 feet away from the property line of Lot 17, in response to objections posed by owners of Lot 17, Mr. & Mrs. Irausquin. The amended location of the proposed storage bins are depicted on an exhibit titled "Proposed Bin Location Exhibit" filed with the Board on January 30, 2015; and

WHEREAS, Jason Fichter, P.E., further testified that the proposal does not require variance relief. As to the argument posed by Wall Township and Scott Taylor, Mr. Fichter opined that the proposed farm market or "sales center" is not an accessory structure, and is not in the front yard, and therefore is not subject to (or in violation of) Wall Township Ordinance Section 140-190. The proposed barn addition complies with the applicable Township Ordinance. The Applicant's proposal for the farm market and deer fence conform to adopted AMPs covered under the Right to Farm Statute and Regulations and the remaining farm operations and hours of operation conform to generally acceptable agricultural management practices; and

WHEREAS, Applicant submitted a detailed list of the trucks and equipment stored at the subject Property. Applicant submits the trucks, trailers and equipment is primarily used on the farm and in connection with agricultural activities. Further, the Applicant does not use the subject property as a "staging area" for other businesses operated by applicant; and

WHEREAS, Jay Troutman, P.E., Applicant's Traffic Engineer, testified that Barbee Lane provides safe and efficient access for trucks and trailers, and that the local access roads are designed to accommodate the weight of trucks. Mr. Troutman presented the information contained in his traffic counts and analysis, and concluded that the proposed farm and farm market would not significantly increase traffic to the site as compared to the typical residential use; and

WHEREAS, Michael LaMana, Applicant's Arborist, testified as to the existing conditions on the site and the agricultural use of the property; the intensity of the agricultural use; the machinery necessary to operate a nursery; and the need to apply pesticides; and

WHEREAS, Township of Wall Mayor Clinton C. Hoffman, Deputy Mayor George K. Newberry, neighbors represented by Counsel, unrepresented neighbors of the subject property, Wall Township's Traffic Engineer, Mark Kataryniak, and Planner, Scott Taylor, P.P., offered by Sean Kean, Esq., provided testimony and asked the Board to consider the negative impact on health and safety from this proposal due to the farm's location, the rise in the level of noise to the surrounding neighborhood, the increased intensity of traffic due to the proposed farm market, the use of the farm as a "staging area" for other businesses operated by the Applicant, the removal and replanting of buffering surrounding the perimeter of the farm, the placement of storage bins to store farm output and the improper storage of machinery and equipment not used for farm purposes; and

WHEREAS, Scott Taylor, P.P., testified that Applicant's proposed farm market requires variance relief from the Township's ordinances. Additionally, the proposed barn addition and lean-to must be reviewed by the zoning officer pursuant to the Township Ordinance; and

WHEREAS, objectors and citizens have testified that the farm operation and farm market would not be appropriate in this fully developed, residential neighborhood; that increased traffic would create health and safety issues; that traffic unfamiliar with the neighborhood would park on local streets and endanger children at play and generally infringe on the peaceful enjoyment of their homes and property; and

WHEREAS, the Board advised all parties that it does not have jurisdiction over ingress and egress on the surrounding streets and lacks the authority to prohibit travel down Barbee Lane or any other public throughway; and

WHEREAS, the following exhibits were entered into evidence during the public hearing:

<u>Applicant's Exhibits</u>:

- Exhibit A-1 (2014): Invoice and cancelled check for sale of mulch off CLC

Farms in 2014;

- Exhibit A-2 (2014): Invoice and cancelled deposit check for CLC Farm sale from April 2014;
- Exhibit A-3: Invoice and cancelled check for the sale of nursery stock from June 2014;
- Exhibit A-4: Township of Wall Schedule of Permitted and Conditional Uses for Residential Zone Districts;
- Exhibit A-5: Township of Wall 1999 Master Plan Excerpt;
- Exhibit A-6: Township of Wall September 2005 Master Plan Reexamination Report Excerpt;
- Exhibit A-7a: "CLC Farms 2014 Plant Growth Progress Report" dated August 27, 2014;
- Exhibit A-7b: "Supplemental Documentation CLC Farms 2014 Plant Growth Progress Report" revised 9/24/14 with September 29th cover letter;
- Exhibit A-1 (2015): "Aerial Exhibit" (Tab 9 of John Giunco's January 30, 2015 submission to the MCADB);
- Exhibit A-2 (2015): "Zone and Tax Class Exhibit" (Tab 8 of John Giunco's January 30, 2015 submission to the MCADB);
- Exhibit A-08: SSAMP application dated 5/4/14 revised 6/20/14;
- Exhibit A-09: Eligibility Verification Documents with July 1/2014 cover;
- Exhibit A-10: July 1, 2014 Submission from John Giunco with Exhibits A-G;
- Exhibit A-11: Email from Sondra Lohnes to Amanda Brockwell dated July 1, 2014 enclosing Bergen CADB resolution regarding Cipriano Farms and Resolution 2001-11-02 of the MCADB;
- Exhibit A-12: Letter from John Giunco to Christopher Beekman dated August 14, 2014 enclosing Elenbe Associates LP v. Township of Scotch Plains;
- Exhibit A-13: August 20, 2014 submission from John Giunco "Supplemental Filing-Status Update Since Last Meeting" with Exhibits A and B;
- Exhibit A-14: November 25, 2014 letter from John Giunco with 5 attachments including Traffic Report (also marked as O-25b), Machinery Usage at CLC Farms, and Truck Usage at CLC Farms;
- Exhibit A-15: December 31, 2014 "Amended Site Specific Agricultural Management Plan Submission" from John Giunco with Tabs 1-7 (A-G). Tab 1 includes 4 plats;
- Exhibit A-16: Farmhouse and Curtilage Exhibit;
- Exhibit A-17: Agricultural Cultivation Areas Exhibit;
- Exhibit A-18: January 30, 2015 "Supplemental Submission for February Meeting" from John Giunco with Tabs 1-9. Some of the documents in this tab have been individually marked;
- Exhibit A-19: July 9, 2015 summation brief filed by John Giunco.

<u>Objector's Exhibits:</u>

- O-1 through O-19: "Objector Photos Submitted by Roger McLaughlin, Esq." dated September 2, 2014. (each slide of the PowerPoint presentation is labeled with the corresponding exhibit number);

- O-20: "Trees and Shrubs Farmed by CLC Farms" from 6/20/14 SSAMP application materials;
- O-21: Page 34 Wall Township Tax Map;
- O-22: Picture of tree submitted via email by Matthew Peluso (Exhibit not provided by Counsel).
- Exhibit O-23: Plumbing permit (the pink permit in Tab 5 of John Giunco's January 30, 2015 submission);
- Exhibit O-24: 2005 Plan of Survey Lot 22 Block 742. Plat-sized (Part of Tab 5 of John Giunco's January 30, 2015 submission);
- Exhibit O-25a: "Site Exhibit" from Taylor Design Group;
- Exhibit O-25b: McDonough & Rea Associates traffic count chart. Tab 7 of John Giunco's January 30th submission;
- Exhibit O-26: "North American Industry Classification System- Census.gov" from Taylor Design Group;
- Exhibit O-27: "Chatham Landscape Contractors Inc. –Sales/Design Center Exhibit" from Taylor Design Group;
- Exhibit O-28: "§215-37 Schedule V: Trucks over 8,000 Pounds GVWR;"
- Exhibit O-29: "§140-190. Accessory Structures in Front Yards Restricted;"
- Exhibit O-30: "Article XXVII: Accessory Buildings and Structures;"
- Exhibit O-31: "Ordinance No. 22-2014: Chapter 164: Peace and Good Order;"
- Exhibit O-32: "Chapter 105: Farming: Article I: Right to Farm;"
- Exhibit O-33: Microsoft Word document from January 2015 containing Terrie Mahedy's photos labeled Photo A through Photo J;
- Exhibit O-34: MLS listing for 218 Atlantic Avenue, Spring Lake, NJ;
- Exhibit O-35: March 30, 2015 email from newbedford2broadlawn@gmail.com to rmclaughlin@wall-lawyers.com containing links to 8 videos;
- Exhibit O-36: Mullen bus stop video dated April 16, 2015;
- Exhibit O-37: February 19, 2014 email from Kevin Kloberg to Nora Coyne;
- Exhibit O-38: June 23, 2014 legal brief filed by Sean Kean;
- Exhibit O-39: December 1, 2014 legal brief filed by Sean Kean;
- Exhibit O-40: December 2, 2014 legal brief filed by Sean Kean;
- Exhibit O-41: January 9, 2015 legal brief filed by Sean Kean.
- Exhibit O-42: May Trucking Company tractor trailer photo;
- Exhibit O-43: July 1, 2015 summation brief filed by Matthew Peluso;
- Exhibit O-44: July 1, 2015 summation brief filed by Roger McGlaughlin;
- Exhibit O-45: June 30, 2015 summation brief filed by Sean Kean.

Board's Exhibits

- Exhibit B-1: Bill Sciarappa's Site Visit report June 10, 2014 & May 2015 supplement;
- Exhibit B-2: Elias Sarrinikolaou's Site Visit report dated 6/14/2014; and

WHEREAS, after having considered the testimony given and exhibits presented at the public hearing held on July 1, 2014; September 2, 2014; October 7,

2014; January 6, 2015; February 3, 2015; March 3, 2015; May 5, 2015 June 2, 2015, August 4, 2015, and September 1, 2015 the MCADB makes the following findings of fact and conclusions of law:

1. The facts and conclusions of law set forth in Resolution #2014-10-1 are incorporated by reference as if set forth completely herein.

2. The CLC Farms Property is located at 1863 Barbee Lane, Wall Township, New Jersey, also known as Block 742, Lot 22, on the Township Tax Map.

3. The Property is approximately 9.67 acres and located in the RR-6 Zone which permits agricultural uses and farming. The property has historically been utilized as a farm and is Farmland assessed. Other properties in the RR-6 zone are currently used for agricultural purposes and/or receive farmland assessment. A residential subdivision zoned R-20 is located to the south of the property in the area of Barbee Lane.

4. Applicant's proposed site plan improvements, as detailed in the Plans, are approved by the MCADB and subject to the terms and conditions of this approval. Applicant may apply for building permits from the Township.

5. The proposed Deer Fence according to the Plans and application is an acceptable agricultural management practice and should be installed according to the Fencing Installation AMP for Wildlife Control (N.J.A.C. 2:76-2A.9) and Rutgers' Fact Sheet FS889 controlling size and fence materials.

6. The hours of operation for the farm market (labeled as a "sales center" on the Applicant's plans)pursuant to the AMP for On-Farm Direct Marketing Facilities, Activities, and Events [N.J.A.C. 2:76-2A.13], are as follows:

    a. The farm market shall operate within the hours of 6AM to 10PM, Monday through Sunday and the hours of operation for the Sales Center may be extended to 11PM for Seasonal Events;

7. The hours of operation for the farm shall be as follows:

    a. Work on the farm shall be conducted within the hours of 5AM to 10 PM, Monday through Saturday, and 7AM to 9PM on Sundays;

    b. Deliveries to the farm shall take place within the hours of 7AM

to 5PM, Monday to Saturday, with no deliveries occurring on Sundays. This limitation is only on deliveries to and from the farm related to farm activities and does not include any private use of vehicles owned by residents that travel on and off the subject property. Further, this condition does not apply to deliveries to the residence that are associated with the residential use.

c. There will be an additional limitation on equipment with back-up beepers and vehicles that create excessive noise. Unless the noise-making features are disabled or turned off, said equipment is restricted to operation between 7AM-5PM Monday through Saturday and 9AM through 5PM on Sundays.

8. The production of ornamental nursery stock and shrubs and irrigation, pesticide and fertilizer used on said nursery stock and shrubs to assist in growing the plants are all acceptable agricultural management practices and are protected pursuant to the Right to Farm Act. It was also noted that nursery stock produces Monmouth County's (and the State of New Jersey's) largest gross annual receipts.

9. Mulch produced from the agricultural output of the farm is a protected activity under the Right to Farm Act. Mulch produced from raw materials brought on the farm to be processed is not a protected activity and falls outside the scope of the Act's protection.

10. The storage bins as depicted on the amended drawings submitted to the Board ("Proposed Bin Location Exhibit") are acceptable so long as the bins are used to store materials for agricultural use, including topsoil, mulch, sand and sub-soil fill. Materials for nonagricultural use are not protected.

11. The barn addition with proposed lean-to to provide shade for nursery stock until planted or shipped was discussed by the Board and found to be acceptable pursuant to the Right to Farm Act as a structure built for farming purposes.

12. Retail sales are customary in the nursery business, and in New Jersey the proposed building would qualify as a farm market and be subject to the adopted AMP for On-Farm Direct Marketing Facilities, Activities, and Events. The Applicant will be restricted from conducting nonagricultural business within the farm market. Further, the location of the farm market is found to be in compliance with the On-Farm Direct Marketing AMP so the Farm Market would not be subject to the Wall Township Ordinance preventing structures to be built on the front

yard of a property without a variance and this is consistent with the decision in Twp. Of Franklin v. Den Hollander, 172 N.J. 147 (2002) allowing the protection given under the Right to Farm Act to trump municipal land use law when appropriate.

13. The location and proposed renovation of the existing hoop houses per the Plans submitted by Applicant are acceptable.

14. In response to issues raised, and in coordination with the Applicant, the Applicant shall provide a buffer to neighboring properties at Lots 12 and 18, Block 742. The buffer will align with the site plan submitted with the following modifications:

    a. As to Lot 18, Applicant has a period of five (5) years to grow 75% of the buffer according to N.J.A.C. 2:76-2A.13(i)3ii and generally accepted management practices.

    b. As to Lot 18, the buffer should remain and not be sold off as nursery product once it reaches a certain size.

    c. The current buffer of 48 white pines that separates the Applicant's property from Lot 12, the Irasquins' property, shall remain. The Applicant is to erect the deer fence inside his property line and inside the existing buffer so as to not disturb or remove any of the white pines that currently exist.

    d. The 10' wide buffer of 5 to 6' evergreens with staggered centers planted in 2014, behind the white pines along Lot 12, shall be removed.

15. Barbee Lane and other avenues of ingress and egress are Municipal roads and are under the jurisdiction of Wall Township. The parking lot and number of spaces as depicted in the plans and testified to by Jason Fichter, is consistent with the retail ratio found in Wall Township's Ordinance and exceeds the general requirements of N.J.A.C. 2:76-2A.13(i)2.iv.(1), (2), (3), and thus is acceptable as proposed. Fifteen retail parking spots are proposed and four employee parking spots at the rear of the property. It should be noted that the Board recognized the intensity of travel and work on the farm reached its peak at the initial stages of operation and subsided significantly once the operation was up and running. This can be evidenced by submissions of objectors as the pictures and videos provided were from early to mid-2014.

16. Vehicles and equipment stored on the subject property must be primarily used for farming activities. Applicant is specifically

prohibited from using the farm as a "staging area" to prepare for work on other properties off the farm site. Vehicles and equipment can be brought to the farm and stored while being actively used on the farm on a temporary basis; however, as soon as the use expires and the vehicle and/or equipment is used offsite it can no longer be stored on the subject property.

17. Storage for vehicles and equipment used on the farm is permitted, including the list of equipment and vehicles submitted by Applicant in Exhibit A14; however, vehicles and equipment not primarily used on the farm are specifically prohibited.

18. Erosion control and storm water management are acceptable as proposed as long as State Regulations are met and the applicant stays in compliance with the NJ Department of Environmental Protection.

19. The lighting as proposed in the site plan conforms with N.J.A.C. 2:76-2A.13(d), and generally accepted management practices.

20. The diesel fuel storage tanks as proposed are acceptable as long as they remain within NJ DEP regulations and are used for vehicles and equipment that are primarily used for farm purposes.

21. Educational activities are permitted on the subject farm as long as they are related to the agricultural output of the commercial farm.

22. Recreational activities are permitted on the subject farm as long as they are uniquely suited to the agricultural use of the farm. The recreational activity cannot be detrimental to the agricultural output.

23. The Board specifically found that nothing with regards to the production of nursery stock has a negative effect on the health and safety of the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED that, based on the aforesaid findings of fact and conclusions of law, the Monmouth County Agriculture Development Board makes the following determinations:

1. The production and sale of ornamental trees and shrubs and the establishment of a farm market facility for selling the farm output produced on the subject property is a generally accepted farm management practice and is a permissible activity for a Commercial Farm, under the New Jersey Right to Farm Act.

2. This Board grants approval for the proposed farm market and the farm activities as outlined in the conclusions of law subject to the provisions of the existing above-referenced AMPs; and

BE IT FURTHER RESOLVED that the implementation and usage of the Farm Market with regards to production and sale/service of the agricultural output must conform to all relevant Federal and State statutes, rules and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection and the United States Department of Agriculture; and

BE IT FURTHER RESOLVED that the marketing of ornamental trees and shrubs is permissible under the New Jersey Right to Farm Act, and in connection with marketing, the farm market established on the subject property is permissible under the Right to Farm Act; and

BE IT FURTHER RESOLVED that if over time the subject farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Applicant, Municipality or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the State Agriculture Development Committee, Township of Wall, John A. Giunco, Esq. Sean T. Kean, Esq., Roger McLaughlin, Esq., Matthew Peluso, Esq., and the Applicant; 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 45 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 45 days, this resolution is binding.

Seconded by Ms. Butch and approved on roll call by the following vote:

	Yes	**No**	**Abstain**	**Absent**
Mr. Bullock			X	
Mr. Buscaglia	X			
Ms. Butch	X			
Mr. Clayton*	X			

Mr. DeFelice	X			
Mr. Dill*	X			
Mr. Foster				X (and Recused)
Mr. Giambrone	X			
Ms. Grbelja	X			
Mr. Holmes			Recused	
Mr. Potter	X			

* alternate member

I do hereby certify that the foregoing is a true copy of a resolution adopted on August 4, 2015, amended September 1, 2015 and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 6th of October, 2015.

Gary DeFelice, Secretary