MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2013-07
REQUEST FOR A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE
WILLIAM AND MARJORIE FORD
BOONTON TOWNSHIP, MORRIS COUNTY, NEW JERSEY

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the State Agriculture Development Committee's ("SADC") Right to Farm Rules, N.J.A.C. 2:76-2.1, et seq., a commercial farm owner or operator may make a request to the County Agriculture Development Board to determine if his or her operation constitutes a generally accepted agricultural operation or practice; and

WHEREAS, on March 22, 2013, the Morris County Agriculture Development Board ("Morris CADB") received a written request from David Frank, Esq., on behalf of his clients, Mr. and Mrs. William and Marjorie Ford ("Applicant"), for a site-specific agricultural management practice ("SSAMP") for their agricultural operation located in the Township Boonton (F-1); and

WHEREAS, Mr. Frank's March 22, 2013 letter stated that his clients are seeking Right to Farm protection for the beehives they intend to operate in the bee yard on their farm. The bee yard is currently operated by Mrs. Landi Simone; and

WHEREAS, on March 27, 2013, W. Randall Bush, Esq., First Assistant County Counsel, informed Mr. Frank about the Morris CADB's April 11, 2013 agenda and required that Mr. Frank provide to the Morris CADB his clients' receipts verifying proof of income (B-1); and

WHEREAS, on April 3, 2013, pursuant to N.J.A.C. 2:76-2.3(c), Ms. Katherine Coyle informed the SADC and Boonton Township regarding the Applicant's request (B-2); and

WHEREAS, on April 3, 2013, in a letter to Ms. Susan Payne, Executive Director of the SADC, Mr. Frank stated that his clients' request was not for the development of a SSAMP, but for a determination whether their farm is a commercial farm and whether it complies with the standards of the adopted AMP for apiary operations (F-2); and

WHEREAS, On April 4, 2013, Mr. Frank submitted copies of his clients' receipts for years 2012, 2011 and 2010 (F-3); and

WHEREAS, on February 12, 2013, Mr. Douglas Cabana submitted a letter to the Morris CADB in opposition to the operation of Mrs. Landi Simone's apiary located on the Ford property, stating that the operation posed a threat to his health and safety in light of his allergy to bee stings (C-1); and

WHEREAS, on April 8, 2013, Mr. Cabana submitted an email to the Morris CADB regarding a fence that Mrs. Simone erected to partially surround her apiary (C-2); and

WHEREAS, on April 11, 2013, Mr. Cabana submitted an email to the Morris CADB, attaching a copy of his Epipen prescription (C-3); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b), upon the receipt of a request for a SSAMP, the Morris CADB must determine whether an Applicant's agricultural operation is a "commercial farm" as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.1 and 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.); and

WHEREAS, the Morris CADB considered the Applicant's SSAMP request during the Morris CADB's April 11, 2013 meeting with Mr. Ford, Mrs. Ford, Mr. Frank, and Mrs. Simone, present; and

WHEREAS, during the April 11, 2013 meeting, the Morris CADB, Mr. Frank and the Applicant reviewed a Staff Report drafted by Ms. Coyle, dated April 8, 2013 (B-3); and

WHEREAS, during the April 11, 2013 meeting, the Morris CADB, Mr. Frank and the Applicant reviewed exhibit F-1, F-2, F-3, C-1, C-2, and C-3; and

WHEREAS, during the April 11, 2013 meeting, the Morris CADB heard the presentation of Mr. Frank and the Applicant; and

WHEREAS, during the April 11, 2013 meeting, the Morris CADB determined that the Applicant's farm is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-9, et seq. and the SADC's Right to Farm Rules, N.J.A.C. 2:76-2.1, et seq.; and

WHEREAS, on May 1, 2013, the Morris CADB received a copy of an April 23, 2013 letter from Ms. Susan Payne to Mr. Frank stating that his clients' application is considered a request for a SSAMP (S-1); and

WHEREAS, during the Morris CADB's May 9, 2013 meeting, the Ford application was carried to the June 13, 2013 meeting per the Applicant's request; and

WHEREAS, in determining whether a commercial farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the CADB must determine that the farm:

- is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or that the commercial farm was in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.);

- conforms to agricultural management practices adopted by the SADC or has been determined by the CADB to constitute a generally accepted agricultural operation or practice;

- conforms to all relevant federal or State statutes or rules and regulations; and

- does not pose a direct threat to public health and safety.

WHEREAS, the Morris CADB further considered the Applicant's request during the Morris CADB's June 13, 2013 meeting with Mr. Ford, Mrs. Ford, Mr. Frank, Mrs. Simone, Mr. Paul Simone and Mr. Grant Stiles present; and

WHEREAS, during the June 13, 2013 meeting, the Morris CADB heard the presentation of Mr. Frank who introduced exhibits F-4, F-5, F-6, F-7, F-8 and F-9; and

WHEREAS, during the June 13, 2013 meeting, the Morris CADB heard the expert testimony of Mr. Grant Stiles (Applicant's expert), and presentations by Mrs. Simone and the Applicant; and

WHEREAS, Mr. Stiles and Mrs. Simone testified that the Applicant's proposed apiary, currently operated by Mrs. Simone, is in compliance with the Apiary Agricultural Management Practice, N.J.A.C. 2:76-2A.2 (F-4)and that the operation does not pose a direct threat to public health and safety; and

WHEREAS, during the Morris CADB's July 11, 2013 meeting, the Ford application was tabled until the August 8, 2013 meeting to allow the Morris CADB to consult with an apiary expert and to schedule a site visit to the Applicant's farm; and

WHEREAS, because the Applicant was not available for a August 8, 2013 meeting and proposed site visit, the matter was carried until September 12, 2013; and

WHEREAS, on September 12, 2013, the Morris CADB conducted a site visit to the Applicant's farm with Dr. Deborah Delaney (County's expert), Mr. Ford, Mrs. Ford, Mr. Frank and Mrs. Simone present; and

WHEREAS, during the site visit, the Morris CADB marked exhibit B-4, an aerial photograph of the Applicant's farm; and

WHEREAS, the Morris CADB further considered the Applicant's request during the Morris CADB's September 12, 2013 meeting with Dr. Deborah Delaney, Mr. Ford, Mrs. Ford, Mr. Frank, Mrs. Simone and Mr. Simone present; and

WHEREAS, during the September 12, 2013 meeting, the Morris CADB heard the expert testimony of Dr. Delaney and presentations by Mr. Frank, Mrs. Simone and the Applicant; and

WHEREAS, Dr. Delaney testified that the Applicants' proposed apiary, currently operated by Mrs.

Simone, is in compliance with the Apiary Agricultural Management Practice, N.J.A.C. 2:76-2A.2 and that the operation does not pose a direct threat to public health and safety; and

WHEREAS, during the September 12, 2013 meeting, the Morris CADB, Mr. Frank and the Applicant reviewed a September 10, 2013 Staff Report drafted by Ms. Coyle (B-5), Dr. Delaney's curriculum vitae and Expert Report (B-6), and Boonton Township Resolution 13-129 dated August 12, 2013 (T-1); and

WHEREAS, the Ford application was continued until the October 10, 2013 meeting to allow Mr. Frank to submit additional exhibits and a letter brief; and

WHEREAS, on September 30, 2013, Mr. Frank submitted to the Morris CADB a letter brief with several exhibits (F-10a); and

WHEREAS, the Morris CADB further considered the Applicant's request during the Morris CADB's October 10, 2013 meeting with Mr. Ford, Mrs. Ford, Mr. Frank, Mrs. Simone, and Mr. Simone present; and

WHEREAS, during the October 10, 2013 meeting, the Morris CADB heard the presentation of the Mr. Frank and marked Mr. Frank's September 30, 2013 letter brief and exhibits as F-10, F-10a, F-11, F-12, F-13, F-14, F-15, F-16, F-17, and F-18; and

WHEREAS, during the October 10, 2013 meeting, the Morris CADB heard the presentations of the Applicant, Mrs. Simone and Mr. Kelcey Burguess (Applicant's expert); and

WHEREAS, Mr. Burguess testified that Mrs. Simone's electric bear fence is in compliance with generally accepted agricultural management standards for bear fencing and does not pose a direct threat to public health and safety; and

WHEREAS, during the October 10, 2013 meeting, the Morris CADB, Mr. Frank and the Applicant reviewed an October 9, 2013 Staff Report drafted by Ms. Coyle (B-7); and

INDEX OF EXHIBITS

Exhibits from the Applicant:

March 22, 2013 letter from David Frank to the Morris CADB (including Commercial Farm Certification Form, Boonton Township Notice of Property Assessment for 2013, Schedule F of IRS Form 1040 for tax years 2012, 2011 and 2010, and Applications for Farmland Assessment for tax years 2011, 2010 and 2009) F-1

April 3, 2013 letter from David Frank to Susan Payne F-2

April 4, 2013 letter from David Frank to the Morris CADB (including copies of receipts For years 2012, 2011 and 2010) F-3

N.J.A.C. 2:76-2A.2: Apiary Agricultural Management Practice F-4

Hand-drawn map of the Ford Farm F-5

Photograph of the Simone apiary F-6

Photograph of the Simone apiary F-7

Photograph of the Simone apiary F-8

NJ Department of Agriculture: "Guidelines for Keeping Bees in Populated Areas" F-9

April 5, 1999 State Agriculture Development Committee (SADC) Rule Proposal: PRN 1999-101 (31 N.J.R. 816(a)) F-10

September 30, 2013 letter from David Frank to Gregory Keller F-10a

Documents related to the adoption of Boonton Township Resolution 13-129 ..... F-11

N.J.A.C. 2:76-2A.9 Fencing Installation Agricultural Management Practice for Wildlife Control, and Rutgers Cooperative Extension (RCE) publication entitled "Vertical Seven-Wire Deer Control Fence," FS 151 ..... F-12

Boonton Township Ordinance Chapter 112 "Peace and Good Order" F-13

Chapter 2, New Jersey Local Government Desk Book, NJ Law Journal Books, 2008 ..... F-14

September 9, 2013 information regarding Parmak electric fence charger F-15

August 22, 2013 letter from Anthony McBride, NJDEP Division of Fish and Wildlife regarding bear fencing (including referenced web page) F-16

RCE Snyder Research Farm web page regarding farming practices for crop protection against bear depredation F-17

Curriculum Vitae of Kelcey Burguess F-18

<u>Exhibits from the Morris CADB</u>:

March 27, 2013 letter from W. Randall Bush to David Frank B-1

April 3, 2013 letter from Katherine Coyle to Susan Payne B-2

April 8, 2013 Staff Report drafted by Katherine Coyle (with exhibits).....B-3

Aerial photograph of the Ford Farm B-4

September 10, 2013 Staff Report drafted by Katherine Coyle (with exhibits).....B-5

Curriculum Vitae of Dr. Deborah Delaney & Expert Report B-6

October 9, 2013 Staff Report drafted by Katherine Coyle (with exhibits) B-7

Additional Exhibits:

February 12, 2013 letter from Douglas Cabana to Katherine Coyle (with attachments).....C-1

April 8, 2013 email from Douglas Cabana to Katherine Coyle (with attachments).....C-2

April 11, 2013 email from Douglas Cabana to Katherine Coyle (with attachment).....C-3

April 23, 2013 letter from Susan Payne to David Frank.....S-1

August 12, 2013 Township Committee of the Township of Boonton resolution 13-129.....T-1

NOW THEREFORE BE IT RESOLVED, after having considered the presentations submitted by the Applicant, Mrs. Simone, Mr. Frank, Mr. Stiles, Dr. Delaney and Mr. Burguess, and exhibits F-1 through F-18, B-1 through B-7, and C-1 through C-3, S-1, and T-1, the Morris CADB makes the following determinations:

1. The Applicant's farm is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-9, et seq. and the SADC's Right to Farm Rules, N.J.A.C. 2:76-2.1, et seq.; and

2. The Applicant's farm meets the eligibility criteria of the Right to Farm Act; and

3. The Applicant's proposed apiary, currently operated by Mrs. Simone, is in compliance with the Apiary Agricultural Management Practice, N.J.A.C. 2:76-2A.2; and

4. The Applicant's proposed apiary, currently operated by Mrs. Simone, does not pose a direct threat to public health and safety; and

5. Mrs. Simone's electric bear fence is in compliance with generally accepted management standards for electric bear fencing; and

6. Mrs. Simone's electric bear fence does not pose a direct threat to public health and safety.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.3(e), within 30 days of its adoption, certified copies of this resolution will be forwarded to the following individuals and agencies:

William and Marjorie Ford
David Frank, Esq.
Douglas Cabana
State Agriculture Development Committee
Township of Boonton
Morris County Board of Chosen Freeholders

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.3(f), any person aggrieved by this resolution may appeal the resolution 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 receipt of this resolution.

1. The decision of the SADC shall be considered a final administrative agency decision.

2. If the Morris CADB's resolution is not appealed within 45 days, the resolution is binding.

Gregory Keller, Chairman
Morris CADB

11-14-13
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 November 14, 2013.

PATRICIA M. REID
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 27, 2017