

**RESOLUTION 2017-01**

**BERGEN COUNTY AGRICULTURE DEVELOPMENT BOARD DECISIONS ON:**

**(1) A RIGHT TO FARM GRIEVANCE FILED BY THE BOROUGH OF HILLSDALE ARISING FROM DEMAREST FARM'S USE OF MUNICIPAL STREETS FOR EVENT PARKING ON WEEKENDS IN SEPTEMBER AND OCTOBER AS WELL AS COLUMBUS DAY; AND**

**(2) A DETERMINATION OF A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE (SSAMP) FILED BY DEMAREST FARM & ORCHARD, LLC DOING BUSINESS AS DEMAREST FARMS TO PREEMPT THE BOROUGH OF HILLSDALE'S ORDINANCE RESTRICTING PARKING ON MUNICIPAL STREETS DURING THE FARM'S PICK YOUR OWN AGRITOURISM WEEKENDS IN SEPTEMBER AND OCTOBER AS WELL AS COLUMBUS DAY**

**WHEREAS**, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1 and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable County Agriculture Development Board (CADB) prior to filing an action in court; and

**WHEREAS**, on January 27, 2017, the Borough of Hillsdale [the "Borough"] filed a Right to Farm Complaint against Demarest Farm & Orchard, LLC (commercial farm owner/operator) doing business as Demarest Farms [the "Farm"] which Complaint alleges that the Farm, in contravention to the State Agriculture Development Board's Agricultural Management Plan for on farm direct marketing facilities, activities and events, N.J.A.C. §2:76-2a.13, has insufficient on-site parking for the Farm's Pick Your Own agritourism events on weekends in September and October; is in violation of Borough's parking ordinance which prohibits parking on 37 streets in proximity to the Farm on Columbus Day and weekends during the months of September and October; and that the traffic and parking poses a threat to health, safety and welfare of the public; and

**WHEREAS**, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the CADB to determine if a farm operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1-9.; and

**WHEREAS**, on April 14, 2017, Demarest Farm & Orchard, LLC, located at [redacted] Hillsdale, which operates and conducts farming activity on property known as Lot 4 Block 201, Block 202 and Lot 1& 1A Block 202 in the Borough of Hillsdale and Block 2101 in the Borough of Saddle River, applied to the Bergen County Agriculture Development Board [the Board or BCADB] pursuant to N.J.A.C. 2:76-2.3 requesting a determination that the Farm qualifies as a commercial farm and for approval of its proposed parking and event management plan to be implemented on the Borough's streets for its annual Pick

Your Own operation and for authority for the Farm’s patrons to park their vehicles on the public streets surrounding the Farm on Columbus Day and certain weekends in the months of September and October asserting that the Farm’s operations are being conducted in accordance with generally accepted agricultural management practices with regard to agritourism pursuant to N.J.S.A. 4:1C-9 (c) (hereinafter referred to as the “SSAMP Request” dated April 14, 2017); and

**WHEREAS**, the Borough has asserted that the CADB is not authorized to preempt the Borough’s ordinance prohibiting street parking by Farm patrons during the PYO weekends and Columbus Day on the basis that such parking poses a direct threat to the health and safety of the public; and

**WHEREAS**, the Farm during the hearings conducted by the BCADB amended its SSAMP to reduce the amount of street parking it proposed to use as part of its event management and parking plan; and

**WHEREAS**, the Farm published and served the required notice of the Applicant’s SSAMP Application; and

**WHEREAS**, the BCADB noticed meetings at One Bergen County Plaza and Two Bergen County Plaza in Hackensack in compliance with the Open Public Meetings Act and a quorum of the Board was present to consider the Grievance and SSAMP application during the following public hearings: May 22, 2017; June 26, 2017; June 27, 2017; July 26, 3017, July 31, 2017; August 14, 2017; and August 28, 2017; and

**WHEREAS**, voting members of the Board who missed meetings signed certifications that they had read the transcript and examined the evidence; and

**WHEREAS**, the Borough of Hillsdale was represented by Mark Madaio Esq. who appeared before the Board; and

**WHEREAS**, Demarest Farm & Orchard. LLC was represented by Robert Maloof Esq. and David Marcus Esq., who appeared before the Board at the public hearings.

**WHEREAS**, the Board received, considered and admitted into evidence the Farm’s and the Borough’s Exhibits as listed in Appendices “A” and “B” which Exhibits are incorporated herein; and

**WHEREAS**, the Board took judicial notice of the:

1. Hillsdale Tax Map
2. Hillsdale Zoning Map
3. Hillsdale Master Plan
4. Hillsdale Zoning Ordinance

**WHEREAS**, the BCADB, with the assistance of staff and the Bergen County Office of County Counsel, reviewed and discussed the Borough’s Complaint and the Applicant’s SSAMP

Application and all documentation relating to the matter, with guidance from the “Right to Farm Act” (N.J.S.A. 4:1C-1 et seq.) and New Jersey Administrative Code provisions related to “Agriculture Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events” (N.J.A.C. 2:76-2A.13).

**NOW THEREFORE BE IT RESOLVED**, that the BCADB makes the following findings, conclusions and resolutions.

### **Procedural Background**

On October 13, 2015, the Hillsdale Board of Education rescinded permission for the Farm to use the Ann Blanche Smith School parking lot for farm event parking. As a result of the School Board’s actions, pedestrian activity increased in residential neighborhoods surrounding the Farm causing neighbors to complain.

In late, 2015, twenty-seven residents filed Right to Farm Act (RTFA) complaints with the Bergen County Agriculture Development Board (CADB) alleging, in part, that the parking operations of Demarest Farms were a nuisance and danger to the public’s health, safety and welfare. The residents cited among other things: (1) “Illegal U-turns”; (2) “Blocked driveways and mailboxes”; (3) “Narrowed streets”; (4) Speeding cars”; (5) “Public urination, pet waste”; (6) “Littering; (7) “Noise”; and (8) “Increased risk of crime”.

On December 9, 2015, the Board conducted a site visit (noticed in compliance with the New Jersey Statutes and the Open Public Meetings Act). Attending the site visit were BCADB Board members Evelyn Spath-Mercado, James Abma Sr., Ronald Binaghi Jr., and Daryl Secor as well as Borough Officials; and Jason DeGise and his attorney, Robert Maloof Esq.,; and

During the site visit, the attending Board and staff walked the entire farm management unit; drove through most of the streets surrounding the farm; and made observations including but not limited to the location of the orchards, the farm stand and the number of on-site parking spaces.

The resident complaints were ultimately mediated and settled pursuant to a Memorandum of Agreement executed on or about September 7, 2016, under which an existing, written Event Management Plan was modified to address their concerns (Exhibits DF 24 and 35).

The settlement did not end the dispute and the Borough of Hillsdale, which was not an official participant in the mediation, adopted Resolution 16227 on October 18, 2016, directing the Chief of Police to "take all steps necessary to protect health, safety and welfare through emergency road closures and emergency 'No Parking', as necessary, on Borough streets west of Pascack Road between the hours of 7:00 am and 6:00pm on the following weekends: October 22-23, 2016; October 29-30, 2016; and November 5-6, 2016. In short, the Borough declared the off-site parking for Farm Pick Your Own events to be an emergency situation that was dangerous to the health and safety of the public such that it necessitated the closure of the streets to parking during the remainder of the 2016 PYO weekends.

Thereafter, on January 27, 2017, the Borough of Hillsdale filed a Right to Farm Act (RTFA) Complaint against Demarest Farms with the BCADB. On April 17, 2017, the Farm applied to the Bergen County Agriculture Development Board [the Board or BCADB] for a determination that the Farm qualifies as a commercial farm and for approval of a SSAMP.

### **Demarest Farm & Orchard, LLC Qualifies as a Commercial Farm**

At its meeting on November 19, 2015, Bergen CADB found that Demarest Farms (“Farm”) qualified as a commercial farm eligible to receive RTF protection in accordance with N.J.S.A. 4:1C et seq.

The Farm’s SSAMP request indicates that all the information regarding the Commercial Farm Certification, and its supporting data, have not changed as to the documentation that the Board was provided when it heard the applicant’s original SSAMP request on November 19 of 2015. On March 9, 2016, at the initial hearing conducted in connection with the Borough’s RTFA complaint, the Farm supplemented its initial 2015 submission (DF-14) with a Certification of Jason DeGise to further support its application for commercial farm status under the RTFA (DF-15). As such, the applicant requested that this previously submitted documentation and the updated Certification with accompanying exhibits be utilized in the Board’s consideration of this new SSAMP request. The applicant has also provided the most recent copy of their filed 2017 Farmland Assessment Application; and

The BCADB finds, and the Borough and the Farm stipulated, that:

A. Demarest Farm & Orchard, LLC is a “commercial farm” as defined by the statute as “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,’ ... [ N.J.S.A.] 54:4-23.1 et seq.” N.J.S.A. 4:1C-3; see N.J.S.A. 54:4-23.1 to -23.23.

B. The Farm is not located in an area in which, as of December 31, 1997 or thereafter. The Master Plan dated March 1990 shows the Farm as farm land. The Memorizing Resolution P-15-87 which granted site plan approval in May 1988 to the Farm Stand cites its location in the R-1 zone (Page 3). It also states, on Page 6, that, "Although the use proposed by applicant for the farm stand is not permitted in the zone in question, ...the Right to Farm Act preempts the power of a municipality to exclude agricultural activities under zoning regulations."

C. The Farm was in operation as of July 2, 1998; has been engaged in farming and agriculture continuously since 1886; and is a pre-existing non-conforming use.

D. The Farm is located on [redacted], and has driveway curb cuts reconstructed when the roadway improvements on [redacted] were installed. The County of Bergen has jurisdiction over ingress and egress on this County road. The Farm also has frontage on Hillsdale Avenue which is also a County road.



## The Farm's Location and Operation

Demarest Farm's operating unit is comprised of three parcels of land that total 32.46 acres.

The first parcel, in Hillsdale (Lot 4 Block 201), contains 3.5 +/- acres and is commonly known as the farm stand or farm market located at [redacted]. This lot is bordered to the east by the southbound lanes of the Garden State Parkway, to the south by [redacted] and to the west by [redacted]. At the northern limits of the property are five single family homes fronting on the easterly side of [redacted]. The Farm Stand lot contains a farm market that sells flowers, fruits and vegetables, plants, trees, prepared foods, beverages and related retail goods. The lot also includes outdoor storage areas, greenhouses and both improved parking on paved surfaces as well as unimproved overflow parking on the northerly end of the property. The lot is separated from the second Hillsdale parcel by the aforementioned [redacted].

The second parcel in Hillsdale (Lot 1 & 1A Block 202) contains 11.57 +/- acres and is *permanently preserved* with an agricultural retention easement purchased by the State of New Jersey and Bergen County in 2005. This parcel generally parallels [redacted] to the east; [redacted] to the south; [redacted] to the West; and its northern boundary is at the southerly terminus of [redacted], [redacted] and [redacted].

The third lot located in Saddle River (Block 2101 Lot 13) consists of 17.38 +/- acres is *permanently preserved* with an agricultural retention easement purchased by the State of New Jersey and Bergen County in 2015. It is accessed from the northerly side of [redacted] via a "flag lot" stem and ends at the Saddle Brook on at its western boundary. Like the second Hillsdale lot, the Saddle River lot is bordered exclusively by residential streets but there is no access from the Saddle River streets and hence no off-site parking occurs in the Borough of Saddle River.

The actual farming operations including orchards and vegetable growing fields occur on the preserved parcels in Hillsdale and Saddle River. The farm's major production are apples and peaches with 16.38 acres devoted to the fruit orchard and 8 acres to field crops that are primarily vegetables and are planted and rotated to maintain soil health. What is not in orchard production is actively devoted to growing flowers, and a variety of vegetables including eggplants, peppers, squash and tomatoes. The farm management unit also has on-site processing and packaging of the agricultural output of the farm and provisions for the wholesale and retail marketing of the agricultural output of the farm.

## History of the Farm Stand Lot

In 1988, the Hillsdale Planning Board granted approval to permit Demarest Farms to move its retail food stand from a garage-like structure located on Lot 1 Block 202 on the west side of [redacted] to Lot 4 Block 201 a 3.5 +/- acre parcel, a.k.a. the Farm Stand, on the east side of Wierimus Road.

As part of Hillsdale's approval, the Farm installed 58 *permanent parking* spaces on an improved, paved parking lot immediately adjacent to the farm stand. The number of parking

spaces exceeded the municipal requirements for such a building and was considered sufficient to accommodate the normal or anticipated patron visitation on a daily basis.

Additionally, the Planning Board allowed the Farm to create an area for temporary overflow parking on the unpaved, unimproved northerly area of Lot 4 Block 202 to maximize onsite parking capacity whenever needed on a short-term, temporary basis. Currently, this temporary parking area has an additional capacity for *118 vehicles* with an additional *39 overflow spaces* for a total on-site parking capacity of *215 spaces* on the farm stand parcel.

### **Traffic and Parking**

In the early 2000's, yearly increases in visitors to the Farm resulted in increased parking demands during the PYO weekends in September and October and this increased demand eventually exceeded the parking capacity of the farm stand's site.

To cope with the increased parking demands, the Farm made arrangements with the Hillsdale Board of Education to use nearby parking at the Ann Blanch School on [redacted]. The School is on the east side of the Garden State Parkway and provides easy, walking access via the sidewalk on the north side of [redacted]. The School has *85 striped parking spaces* and the capacity to accommodate additional vehicles.

In 2011, the Farm also made arrangements to use a nearby vacant 7-acre lot in Hillsdale commonly known as the Higgin's Lot at the corner of [redacted] and [redacted] to create *150 temporary parking spaces*.

In addition to the Farm's onsite parking and the aforementioned off-site parking locations, pick your own customers began to park on both sides of the street in the Melville neighborhood which begins at the intersection of [redacted] Avenue and [redacted] Melville is the geographical extension of [redacted] to the west.

The Farm, recognizing that parking was becoming an issue, met with the Borough's Police Department and began to informally address parking concerns through the use of temporary signs, closing [redacted] to street traffic, and limiting parking within in the Melville neighborhood to one side of the street.

In approximately 2014, an increase in visitors to the Farm coupled with the loss of the Higgins lot, led to off-site parking on 37 municipal streets spread across four neighborhoods.

In 2015, the Farm, in consultation with the Borough's Police Dept., developed a written traffic management and parking plan in order to manage the traffic and parking flow during the PYO season.

On October 13, 2015, the Hillsdale Board of Education rescinded its permission for the Farm's use of the Ann Blanche Smith School parking lot. That prohibition remains in place to date. As a result, during the remainder of the 2015 PYO Season and nearly the entire 2016 PYO Season,

customer parking occurred on the Farm Stand site and the 37 nearest neighborhood streets until, as addressed below, the Borough adopted Resolution 16227.

On October 18, 2016, the Borough adopted Resolution 16227 and the Police Department issued an emergency parking ban for the 37 streets nearest to the Farm which restriction was subsequently codified through the adoption of Ordinance 17-9 limiting parking on the affected streets to residential permit-only parking on weekends in September and October.

The Farm was able to make arrangements to use a parking lot of the former Ridgewood Kmart on Route 17 South in Paramus on a one time basis on Sunday, October 23, 2016 and arranged to shuttle-patrons to the farm from this location.

In July of 2017, the Farm entered into a contingent contract to acquire the Tandy and Allen Lot at [REDACTED] (east of the Ann Blanche Smith School) and has represented that if the lot is rezoned by the Borough to permit agricultural use, the Farm is prepared to remediate the environmental conditions at the site to enable it to construct a parking lot on the usable portion of the site that, it anticipates would have the capacity to park 275 to 300 vehicles. This site is accessible to the Farm via sidewalk on [REDACTED]. The Farm proposes to also make shuttle bus transport service available from this location. The Farm has already met with the County to discuss what the requirements of the County would be to approve the use as [REDACTED] is a County road.

In August of 2017, the Borough awarded the Farm the right, for 95-cents, to use the Borough's parking lot and NJ Transit's lot on a non-exclusive basis on Saturdays and Sundays during the 2017 PYO season to help accommodate some of the Farm's overflow parking. The Borough has represented that there are *180 parking spots* in the Borough's lot and *70 parking spots* in the NJ Transit lot. The Farm has agreed to contract with a licensed/certified bus transport company to provide continuous shuttle bus service to transport patrons between the Farm and these off-site parking lots.

In July of 2017, the Farm met with St. John's Church on [REDACTED] to request permission for the use of approximately 80 parking spaces at the St. John's school which the Farm anticipated would also be serviced by the shuttle bus servicing the commuter lot to transport patrons parking at this facility from the commuter lot to the Farm. The Farm has since ceased efforts to secure this lot but it continues to explore the use of off-site corporate parking lots in surrounding towns for parking during the PYO season and the Borough has and continues to be prepared to assist the Farm in this effort.

Lastly, although the Farm did not present financial statements or make a case for financial hardship, Jason DeGise testified that the Farm calculates it's total parking needs as a minimum of *1,225 parking spaces* in 2017 to accommodate its patrons during the peak weekends of the PYO season; that in as much as it only has 215 on-site spaces and the non-exclusive use of 250 spaces at the municipal/NJ Transit lots it needs to park up to 680 vehicles on municipal streets in 2017; and that upon a successful acquisition and development of the Tandy and Allen lot, its parking need would be reduced to approximately 380 to 420 vehicles on municipal streets (provided that it maintains continuous access to the municipal/NJ Transit

lot or the equivalent thereof). (Amended SSAMP of the Farm, Exhibits DF 74 and 75 and testimony of Jason DeGise).

To affirmatively address the on-site parking shortage, the Farm seeks the BCADB's approval for its SSAMP, as amended, and the Event Management Plan submitted as part of the SSAMP, to manage the parking and flow of traffic and pedestrians on municipal streets nearest the Farm and proposes to address the Borough's public health, safety and welfare concerns such as sanitation, cleanup of adjacent properties and emergency vehicle access.

The Borough seeks a parking solution consistent with the N.J.S.A. 2:76-2A-13, the AMP for On Farm Direct Marketing facilities, activities and events, which contemplates that there be sufficient on-site parking to accommodate patrons visiting the Farm during the PYO weekends and Columbus Day.

### **Public Streets Surrounding the Farm**

In general, there is an absence of sidewalks on the 37 streets nearest to the Farm with the exceptions being the north side of \_\_\_\_\_; the west side of \_\_\_\_\_ and in the immediate vicinity of Demarest Farms; the easterly portion of \_\_\_\_\_ (which ends immediately east of the Ann Blanche Smith School); and \_\_\_\_\_ from \_\_\_\_\_ to its terminus at \_\_\_\_\_.

There are also sidewalks along the easterly side of \_\_\_\_\_ from Langerfield Road continuing north on \_\_\_\_\_ and to the farm property. A small portion of sidewalk exists along \_\_\_\_\_ and west of the \_\_\_\_\_ intersection but stops at the first driveway and does not extended into the residential neighborhood.

The intersection of \_\_\_\_\_ and \_\_\_\_\_ is controlled by a traffic signal with pedestrian pushbuttons to activate the traffic signal for pedestrian demand.

The Borough Code defines both a "public right-of-way" and a "street". Specifically, a public right-of-way is defined as ..."[a]ny street, avenue, boulevard, road, highway, sidewalk, alley that is leased, owned or controlled by a governmental entity". A Street is defined as highways, roads, sidewalks; foot paths and all other public highways for vehicular or pedestrian travel.

The Borough's Tax Maps depict the public right-of-way for virtually all the streets surrounding the farm property as 50 feet in width. The physical cartway width of each street is 30 feet, there is at least 10 feet beyond the curb of each street that remains as public right-of-way as sidewalk or foot path area. The Board notes that the Police Department measurement of access roads indicates the paved width of surrounding streets ranges from 28.9 feet wide to a maximum of 39 feet.

The Farm's pedestrian safety expert, Richard Blomberg of Dunlap and Associates, and the Farm's traffic safety expert, Gary Dean of Dolan and Dean Consulting Engineers, LLC, concurred

with the findings memorialized by Sergeant Daniel McLaughlin on October 13, 2015 that the pavement width of the affected roads are all at least 28 feet wide with most roads actually closer to 29 feet wide. Blomberg notes that the Borough has apparently maintained a policy of not requiring developers to include sidewalks for most streets, with the exceptions noted above, because the Borough's Site Plan Design Standard Section 310-116 provides that "sidewalks shall be provided where needed to protect the safety of pedestrians". The Ordinance does not specify the mechanism to implement sidewalks.

Lastly, the Borough Land Use Ordinance cites RSIS (Residential Site Improvement Standards) which provides guidance as to the appropriate standards for sidewalks and on street parking. Unlike the Hillsdale Borough Ordinance, RSIS defines sidewalk as, "an improved path (emphasis added)" for pedestrian use outside the cartway". Because the Borough Ordinance does not specifically mandate an improved path, the sidewalk definition in Hillsdale is more liberal.

Also under RSIS, on-street parking is permitted on one side for road cartways of 28 feet. Curbing is not required, although it has intermittently been provided on the affected streets surrounding Demarest Farms. It is noted that with parking provided on one side of a 28-foot wide road, 21 feet is available for the traveled way. Given that all the affected streets surrounding the farm are wider than 28 feet, accordingly there would be more than 21 feet of traveled way distance for vehicular use.

### **The Borough's Grievance**

The Borough's Complaint alleges that the parking lot on the Farm Stand is impassable and vehicles which cannot enter are lined up and down the street thereby impacting emergency services vehicles and that the Farm's off-site event parking and pedestrian traffic on the surrounding 37 municipal streets had become dangerous due to ever increasing traffic volume; that the Borough has the sole and exclusive control of its streets, and that it can and has rightfully prohibited parking on the 37 streets closest to the Farm in the face of ever increasing crowds which create an untenable situation. The Borough alleges that N.J.S.A. 40:67-1 contains an extensive list of matters on which municipalities are solely and exclusively empowered to enact legislation as does N.J.S.A. 40:48-2.

The Borough further alleges that BCADB has no authority over off-site parking and that the BCADB's authority is limited to activities within the "4 corners" of the farm with regard to nuisance and zoning issues.

Lastly, the Borough contends that the State's AMP requires on-farm direct marketing events to have sufficient, onsite parking to accommodate the normal or anticipated traffic volume for the commercial farm's on farm direct marketing facilities, activities and event and that same shall not be located in a road right of ways.

## **The Farm's SSAMP and Traffic Plan**

The Farm's SSAMP is based upon modifications to the event management parking plan that was in place for the years 2015 and 2016. It requests that its updated plan be used for the 2017 Pick Your Own season and represents that the plan adequately addresses the increases in volume of traffic and customers. The Pick Your Own season encompasses Saturdays and Sundays during September and October as well as Columbus Day.

The Farm subsequently submitted its amended SSAMP, which was presented at the hearing conducted on July 26, 2017 to reduce the number of streets sought to accommodate its traffic overflow and to limit the number of days of use in 2017, together with further reductions it anticipates in 2018 depending on, among other things, the completion of the acquisition of the Tandy Allen site and its implementation for parking in 2018 and thereafter (DF 74 and 75).

The Farm's proposed plan, set forth in its Exhibits, reflects consultation with experts and incorporates the agreed upon changes and measures that the Farm implemented in accordance with the settlement through mediation of 27 neighbor complaints filed against the Farm by residents of Hillsdale with the BCADB in 2015, together with certain enhancements described in the testimony presented by Mr. DeGise and the Farm's pedestrian safety and traffic experts.

Although N.J.A.C. 2:76-2A.13 approves an Agricultural Management Practice for on-farm marketing facilities, activities and events requiring on-site parking, the existence of a State AMP does not preclude a commercial farm from requesting a site-specific agricultural management practice determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4.

More particularly, N.J.A.C. 2:76-2.3 and 2.4, authorize a County Agriculture Development Board to make site-specific agricultural management practice determinations for facilities, activities, and events, provided such site specific agricultural management practice determinations are consistent with the practices set forth in the AMP.

## **The Farm's Testimony - Operations**

The Farm's SSAMP Application and Jason DeGise, a co-owner of the Demarest Farm & Orchard LLC, described the location and use of the Farm's parcels in Hillsdale on both sides of [redacted] and the parcel in Saddle River which is west of Craig Road. He testified that the Farm's property has been continuously farmed since 1886 and the surrounding area is now suburban in nature.

Mr. DeGise then described the transition of the farm from a traditional operation to one emphasizing agritourism – and that the specifics of this evolution to an on-farm direct marketing operation:



- As a seasonal business, Demarest Farms depends on the Pick Your Own (“PYO”) season for approximately 55% of its gross income just as many retailers rely on the Christmas holiday season for the bulk of their income.
- Pick your own apples began in 1989/1990 and pick your own peaches began in the early 1990s. Both PYO seasons are weather based and weather dependent.
- During the PYO season, hayrides are conducted from 10 am to 3 pm and run between [redacted] in Hillsdale to the peach orchards in July/August and the apple orchards in Saddle River in September and October.
- Beginning with the 2001 PYO apple season (approximately Labor Day to Columbus Day or shortly thereafter), customers began parking in the closest neighborhood since the Farm did not have sufficient on-site parking capacity.
- Pursuant to 1988 Planning Board approval, the Farm installed *58 permanent parking spaces* on an improved, paved parking lot immediately adjacent to the farm stand and created an additional area for temporary overflow parking on an unpaved, unimproved area to maximize onsite parking capacity whenever needed on a short-term, temporary basis. Currently, this temporary parking area has a capacity for *118 vehicles* with an additional *39 overflow spaces* which when added to the 58 permanent parking spaces yields a total on-site parking capacity of *215 spaces* on the farm stand parcel
- With the permission of the BOE, until October 13, 2015, the Farm utilized the Ann Blanche Smith School to the east with a parking lot with 86 striped spaces and additional area (including street frontage) to allow the parking of a total of 126 vehicles for overflow parking during the PYO season. As stated above, this arrangement ceased on October 13, 2015.
- In 2011, the Farm approached the owner of the vacant “Higgins” lot and received permission to use its acreage to park 150 cars – but this arrangement ceased in 2014.
- The business of Demarest Farms during the PYO Season has increased in recent years due to the closing of other nearby farms, including DePieros Farm in Montvale.
- Beginning in 2014, the Farm conferred with the Borough’s Police Dept. and the residents to create a written plan for traffic management by sorting the 37 streets closest to the Farm into four neighborhood zones. In October of 2014, direction of traffic to local streets was accomplished through the use of signs and 14 to 15 parking attendants with walkie talkies.

### **The Farm’s Testimony - Pedestrian Safety**

Richard Blomberg of Dunlap and Associates testified as to his expert opinions relevant to pedestrian safety during the Pick Your Own (PYO) season on weekends in September and October and Columbus Day. His opinion was based upon information provided to him and information



### **The Farm's Testimony – Farm Parking**

Gary Dean, the Farm's traffic expert, testified to his experiences representing two farms. First he testified that the Alstede Farm of 300 acres had 1,100 onsite parking spaces but approximately 50 of its customers were parking on local streets and or in the municipality's public library. To remedy that situation, Alstede provided additional onsite parking to increase its spaces to 1,400 vehicles and that allowed the use of public streets to be curtailed. In addition, Alstede Farm is reducing its prices during the week to encourage more traffic to come in on weekdays to lessen the weekend demand. He further noted that on-farm marketing is 100 percent affected by weather.

Second, Dean testified that the Terhune Farm, a preserved farm of 150 acres, removed approximately 2 acres of peach orchards and converted the former orchard area into temporary parking.

When queried about the application of the AMP for on-farm direct marketing and its application to Demarest Farms, he advised that he was aware of same but its application was not part of his assignment.

### **The Farm's Testimony – Greener by Design, LLC**

Frank Pinto and Ben Spinelli, principals in Greener by Design, testified as experts on land preservation, conservation, open space planning and economic development in the rural communities and rural counties of New Jersey. They collectively noted that the profitability of the Farm is dependent upon a very short period of time; that it takes in approximately 55% of its income through a fairly intensive agritourism operation; and that the Farm is a taxpayer – and has the same rights as everybody else.

Both principals testified that the State and the County, representing taxpayers, had made a policy decision in excess of \$7,000,000 to preserve the Farm and that there was a concomitant obligation to ensure that the Farm remains economically viable. In short, they advocated that the BCADB has an obligation from a public policy standpoint, to the greatest extent possible, to facilitate the continued success of the farm as an operating entity.

With regard to the conversion of orchard acreage to temporary parking they opined that a major consideration in preserving the Farm was the quality of its soils is well above normal for farms in Bergen County; that taking orchard stock out of production would affect productivity and that the SADC approval might be required to affect such a conversion by a preserved farm.

With regard to the issue of off-site parking as an actionable nuisance, they opined that even though the nuisance is not occurring on the farm in connection with the recognized methods or techniques of agricultural production every nuisance by its definition is related to an offsite effect.

Lastly, they opined that the circumstances of the Farm are unique in as much as it is a suburban farm of limited acreage and lack's a rural farm's flexibility; that the State's AMP requiring sufficient onsite parking cannot be applied to the Farm because of the limited size of the

farm; and that of the geography of its location was generating a demand which out stripped the Farm's ability to park customers.

### **The Borough's Testimony**

Chief Francaviglia testified that the Farm's attraction created a volume of visitors which caused manageability issues that rose to the level of safety issues. In particular, he noted that the Borough's Police Department cannot stop the volume from coming to the Farm and that when faced with these kinds of issues elsewhere in the Borough, the Borough had enacted parking regulations all over town, citing the closure of the street in front of the George White School on Magnolia, no parking zones on the streets nearest to Pascack Valley High School, parking restrictions in downtown Hillsdale, etc. The gist of the Chief's testimony was that constant influx of cars throughout the day differed significantly with the arrival and departure of a football crowd at the local high school. And that the ever increasing intensity of the cars attracted to the farm was overwhelming the Borough's capacity to safely handle the situation. He also cited pedestrians not paying attention to traffic and reports of children walking unattended in the roadway.

Mayor Douglas Frank testified that the governing body is responsible for safety and that safety is a quality of life issue. He noted that not everyone followed the herd and many crossed north of the intersection; that cars backed up approaching the farm; that parents made unauthorized drop-offs and pickups on West Street. Lastly the Mayor noted that the traffic congestion in the neighborhoods was out of control and negatively impacted the Borough's residents. He offered the solution that the Farm make arrangements to procure access to the unused parking lots within three or four miles of the Farm.

Lastly, the Mayor narrated a slide show of photographs that portrayed car maneuvers, jay-walking, K-turns, drop-offs, and crowds walking in the surrounding streets

### **Public Comment**

Public comment mirrored the separate nuisances brought up in the previously mediated matter. Resident's comments can be summarized as follows:

- Traffic
  - car chaos in neighborhoods
  - onslaught of traffic racing up and down the streets
  - traffic pulling into resident driveways to reverse direction
  - U-turns and K-turns in the street
  - traffic blowing past stop signs
  - cars flooding local streets
  - sense of road rage mentality among the patrons when fighting for parking
  - Farm patrons aggressiveness towards residents who ask Farm patrons not block their mailboxes and driveways
  - Misuse of public streets as an extension of the Farm's parking
  - teenage traffic parking directors directing traffic while occasionally on cell phones

- residential streets not designed to be a parking lot
  - impossible to see while attempting to back out of driveways Piles of leaves narrowed the streets
  - pedestrians walking on streets as if they were fields
  - constant fear that someone is going to get injured, that residents are not safe.
  - no ability to bike or safely walk in their neighborhoods during the most beautiful time of the year
  - local law enforcement's inability to keep up with the number of cars
  - the vulnerability of the resident's small children
- Farm's Lack of Responsibility
    - Number of patrons keeps increasing
    - A business should not keep expanding if it cannot manage and support the customers it is aggressively marketing
    - The farm needs to take responsibility for its own growth by reservations/ticketing systems.

### **Right to Farm Act**

Prior to the Right to Farm Act the general rule of law was that a municipal governing body is vested with the ultimate responsibility of establishing the essential land use character of the municipality through the adoption of zoning ordinances that divide the municipality into districts, identify the uses permitted in each district, and impose general limitations on construction.

The Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), as amended in 1998, renders its provisions *preeminent* to "any municipal or county ordinance, resolution, or regulation to the contrary," N.J.S.A. 4:1C-9. The New Jersey Supreme Court affirmed, in Twp. of Franklin v. Hollander, 172 N.J. 147 (2002), that the Farm Act's provisions are preeminent over a municipality exercising its powers under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -112...and that the Act was designed "to promote to the greatest extent practicable and feasible, the continuation of agriculture in the State of New Jersey while recognizing the potential conflicts among all lawful activities in the State." Senate Natural Res. and Agric. Comm. Statement No. 854- L. 1983, c. 31 (N.J.1998).

The Court acknowledged the difficulty and complexity of the agriculture board's assignment, observing: "The potential for conflict between farming interests and public health and safety exists. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests." It also cautioned that in the exercise of jurisdiction over agricultural practices, the county agriculture development board is limited by public health and safety concerns. These issues of health and public safety must also be given due consideration by the agricultural agencies citing the appellate court's finding that:

"We consider the statutory language in the Act which speaks to conduct that poses a '*direct threat to public health or safety*' must be considered broadly, and not as a

narrow limitation in considering complaints of an aggrieved party that local land use or other relevant ordinances are being violated by the conduct of the commercial farm operator. In sum, in exercising its authority under the Act, the CAB or SADC must afford a local agency comity in recognition that the municipality interests must be appropriately acknowledged and considered.”

Lastly, the New Jersey Supreme Court recognized that the Right to Farm Act may preempt municipal regulations, but directed the CADBs and SADC to consider relevant municipal standards and, in instances where the ordinance “has a peripheral effect on farming that does not directly conflict with farming practices,” defer to the ordinance. Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), aff’d. 172 N.J. 147, 151-152 (2002). CADBs and the SADC are also required to consider the impact of the agricultural activity on public health and safety “and temper their determinations with these standards in mind.” *Ibid*.

As a result of the Den Hollander case agriculture boards, such as the BCADB, have primary jurisdiction over municipal/farm disputes but do not have unlimited authority regarding issues that directly affect public health and safety. In other words the BCADB must give appropriate consideration to municipal concerns - including but not limited to hours of operation, lighting, traffic and parking - where they are implicated and balance the commercial agricultural operation, activity or structure which conforms to agricultural management practices against the governmental regulation and any direct threats to public health and safety. N.J.S.A. 4:1C-10.

For a farm to receive this protection, the appropriate CADB must determine that the activity at issue conforms with agricultural management practices (AMPs) adopted by the SADC pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. or that it constitutes a generally accepted agricultural operation or practice. Thus, when an agriculture board issues an AMP, on a case-by-case basis, it creates an “irrebuttable presumption” that any activity of a commercial farm that is determined by the CAB “to constitute a generally accepted agricultural operation or practice [cannot]...be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property,” provided the operation or practice “does not pose a direct threat to public health and safety.” N.J.S.A. 4:1C-10.

### **State Agriculture Management Plan Standards**

There is an irrebuttable presumption that the actions of a farm are not nuisances, as long as its actions conform to the agricultural management practices issued by the NJ State Agricultural Development Committee, and are not a danger to public health and safety. See N.J.S.A. 4:1C-10.

Therefore a threshold question arises in addressing complaints is to see whether the complained of behavior conforms to the regulations defining standard agricultural management practices. The Borough’s complained of behavior is that Demarest Farms is operating a farm market which attracts more customers than they often have parking for and that they direct overflow parking from their farm market into residential streets.



According to the Right to Farm Act, a commercial farm may, “Provide for the operation of a farm market, including the construction of building and *parking areas* in conformance with municipal standards”. N.J.S.A. 4:1C-9(c). The Right to Farm Act specifically makes farm markets subject to local parking standards. In addition, N.J.A.C. 2:76-2A.13(h)(2) provides minimum standards for parking that shall apply in the absence of local rules. Note that the default rules in N.J.A.C. 2:76-2A.13(h)(2) will only apply if there are no local rules. If there are local rules, then the State regulations will not apply. N.J.A.C. 2:76-2A.13(h)(2) states,

(h) In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

2. The following standards shall apply to all parking areas:

i. *Safe, off-road parking shall be provided.* Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;

A review of the Hillsdale Code reveals that their off-street parking rules do not have any minimum standards for farm markets. See Hillsdale Code § 310-59 Required off-street parking spaces. There being no local rules requiring a minimal number of parking spaces for a farm market, the default regulation N.J.A.C. 2:76-2A.13(h)(2) will apply. As N.J.A.C. 2:76-2A.13(h)(2) states that “the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events”, and as there are not sufficient on-site parking spaces most weekends in the Fall, the Farm’s parking for the fall PYO weekends and holidays Columbus Day is not in technical compliance with N.J.A.C. 2:76-2A.13(h)(2). Therefore, the Board concludes that as a matter of law the Farm is not entitled to an irrebuttable presumption that its parking operations during the PYO weekends and Columbus Day do not constitute a nuisance. Therefore, the Board has reviewed the Borough’s complaint to evaluate the impact of the Farm’s operations during the PYO weekends and holidays in order to evaluate the extent to which offsite parking of its patrons on municipal streets affects the quality of life of the residents as well as to evaluate whether or not the Farm’s parking operations pose a direct threat to the health and safety of the public.

### **Board Findings – Public Safety**

The Board finds that while there are potential pedestrian safety issues, the *conspicuity* of crowds and the absence of documented incidents and accidents at the Weirimus Road crossing at Hillsdale Avenue is evidence that the crossing at Hillsdale Avenue is not a direct threat to public health, safety or welfare and *does not result in any unreasonable pedestrian safety risk* to the visitors to the Farm.

The Board notes that additional precautionary risk reduction measures can and should be taken at this crossing and along the Farm’s boundary on the east side of Weirimus Road for better

crowd control; to eliminate mid-block crossings unless they are supervised by a police officer and through the creation of a safe, passenger off-road pickup and drop off zone.

The Board finds that while pedestrians walking in the streets surrounding the Farm pose safety concerns, low vehicle speeds and the adequate widths of the streets mitigate the occurrence of pedestrian crashes. Thus the absence of documented incidents and accidents is evidence that pedestrian activity is a *potential* threat to safety it is also not a *direct* threat public health, safety or welfare and *does not result in any unreasonable pedestrian safety risk* to the visitors to the Farm.

The Board notes that additional precautionary risk reduction measures need to be implemented through better traffic management plan that: eliminates unmanageable car chaos; eliminates illegal U-turns; minimizes K-turns – and that this needs the oversight by off duty police officers. To the extent that leaf piles accrue later in the pick your own season, it should be the Farm’s responsibility to reimburse the Borough for extra leaf pickup to eliminate any leaf piles on pick your own days in order to provide maximum visibility of pedestrians and maximum distance between pedestrians and passing vehicles.

With regard to young children, the Board notes that unsupervised young children, generally under age 9, have an elevated risk of a crash when they walk alone because they are impulsive and generally unaware of correct pedestrian behaviors and the traffic environment in general. In as much as children participating in pick your own events arrive and leave with adult supervision, there is little that the Board and/ or Borough can do to reduce risk further short of the construction of sidewalks on all streets. All in all, the Board finds that the absence of sidewalks in the surrounding neighborhoods with their low traffic density does not represent an unreasonable hazard.

Lastly, the Board finds that, in the absence of documented incidents providing evidence of increased response times for emergency vehicles during the PYO Season, emergency services to the affected neighborhoods is not, per se, a safety issue in as much as the street widths are adequate to accommodate emergency vehicles driven by trained and experienced drivers who are also fully aware of the days on which the PYO season occurs.

In the absence of direct threat to public health, safety and welfare the Board finds, pursuant to the authority granted in the Den Hollander case that the BCADB has *primary jurisdiction* over municipal/farm disputes. In other words the BCADB must give appropriate consideration to municipal concerns - including but not limited to traffic and parking - where they are implicated and balance the commercial agricultural activity.

### **Board Findings – Agriculture Management Plan for Event Parking**

For the 2017 Pick Your Own season, Demarest Farms proposes to park 17% of its patron’s vehicles *onsite* at the Farm Stand lot (215 onsite spaces divided by the need for 1,225 total parking spaces for on-farm direct marketing events) during the weekends and Columbus Day during the PYO season when off-site parking is used. During the weekends that off-site parking is needed, the Farm proposes to park up to 250 vehicles *off-site* in the Borough’s commuter parking, and the

balance of vehicles (760) (1,225 minus 215 minus 250) of its patron's off-site on a rotating basis on the 37 streets nearest to the farm.

In coming to a determination about what's fair for the Farm, fair for the Borough and fair for the neighbors, the BCADB has a duty to apply the Right to Farm Act and the regulations promulgated thereunder. The Board also has an obligation to do so in a way that *balances* everyone's interest, both long term and short term - so that there is reasonably sustainable harmony among all groups.

The BCADB notes that N.J.S.A. 2:76-2A.13 sets parking standards for on-farm direct marketing activities and events. In particular, the SADC's Agriculture Management Plan allows a commercial farm to park patrons of its on-farm direct marketing activities *on the farm's property* in areas:

- permanently devoted to parking,
- areas temporarily devoted to parking
- or a combination of such areas

Of further note is the fact that the AMP requires the farm to have *sufficient on-site parking spaces* to accommodate the normal or anticipated traffic volume for on-farm direct marketing activities and events. Lastly, the AMP calls for safe *off-road parking which shall not be located in a road right of way*.

The BCADB also takes notice that the AMP provides additional standards to *mitigate the impacts* (such as noise, dust, and light spillage) of its own onsite parking on adjacent properties through the use of buffers.

*The Board finds that the use of buffer standards is evidence of a State policy decision that parking should not negatively impact the neighbors even if the parking is not a direct threat to safety.* The Board further finds that the nature of the Farm's proposed use of municipal streets prevents it from mitigating the impacts of off-site parking.

While the Farm and its experts have framed off-site parking as an inconvenience to residents and the residents have framed their interaction with off-site parking as a safety issue, the Board finds that the critical underlying issue is a continuous, annual increase in traffic and pedestrian volumes which creates negative impacts through a level of chaos and unmanageability which while akin to mall parking is more chaotic and less manageable.

In short, the Board finds that there is an actionable concern over the *unmitigated, negative impacts* on the public health and welfare of the neighborhoods arising from the Farm's proposed use of municipal streets. The Board further finds that the absence of a direct threat to public safety is not an automatic pass to the issuance of a SSAMP which is substantially at variance with the State's AMP for sufficient on-farm direct marketing parking.

## Long Term Application of the State's AMP

The BCADB has wrestled with the absence of standards to grant a variance which would justify the *reversal* of the State's AMP's policies. It finds no conceptual or legal grounds to do so through a Site Specific Agriculture Management plan that would permanently override the Borough's prohibition of parking on the 37 streets nearest to the farm on the grounds that it is a suburban farm.

The BCADB therefore finds that a grant of a SSAMP for *long term*, off-site parking on municipal streets is unsustainable in light of:

- the residential nature of the nearest 37 streets,
- the frequency and scale of the farm's on-farm direct marketing activities and events from Labor Day weekend through Columbus Day weekend;
- the intensity of the pick your own crowds,
- the physical features and constraints of a commercial farm property in a suburban location and the Farm's inability to buffer residential neighborhoods from the effects of event parking.

In light of the above, the BCADB finds no lasting justification to *permanently* vary the State's AMP requirement that sufficient onsite parking be provided to accommodate the Farm's customers during the PYO weekends and holidays.

## Balancing of Interests - SSAMP

The BCADB is cognizant that the Farm's largest Hillsdale lot contains 11.57 +/- acres and is *permanently preserved* with an agricultural retention easement purchased by the State of New Jersey and Bergen County in 2005; and that its Saddle River lot contains 17.38 +/- acres and is *permanently preserved* with an agricultural retention easement purchased by the State of New Jersey and Bergen County in 2015.

The Board is also cognizant that the Farm's major production is apples and peaches with 16.38 acres devoted to the fruit orchard and 8 acres to field crops that are primarily vegetables and are planted and rotated to maintain soil health.

Although the Farm has been located in suburbia for decades, the Board recognizes the fact that the Farm's pick your own season gives a farm experience to many who would not otherwise have such an opportunity and that there was a time when everyone got along.

The Board is also keenly aware of the Borough's role in policing and the adoption of parking ordinances to manage traffic congestion but finds that N.J.S.A. 4:1C-9(h) authorizes the BCADB to override provisions of *any* municipal ordinance in granting a site specific agriculture operation or practice which does not pose a direct threat to public health and safety.

The Board, after giving appropriate consideration to; (1) the Borough's concerns about traffic and pedestrian safety on the 37 municipal streets nearest to the Farm; (2) the Borough's role in policing its streets; and (3) the Borough's adoption of parking ordinances to

manage traffic congestion, finds that the BCADB, has primary jurisdiction over municipal/farm because while there is a *potential* threat to safety there is no *direct* affect on public safety. In light of same, the Board finds that N.J.S.A. 4:1C-9(h) authorizes he BCADB to override provisions of *any* municipal ordinance, including parking ordinances, in granting a site specific agriculture operation or practice which does not pose a direct threat to public health and safety.

It is the Board's equitable decision to put the Farm, the Borough and the neighbors on a path back to a harmonious time.

In light of the above, the Board finds that under the regulations governing the issuance of a SSAMP, there are legitimate farm-based reasons for a *temporary* departure from the AMP parking standards set forth in N.J.S.A. 2:76-2A.13 provided that the departure *ceases on or before-2020* for weekend parking during the pick your own season.

To that end, the Board believes that the Farm needs to reduce the use of the streets for parking starting Saturday September 2, 2017. The Board hereby grants the following, short-term SSAMP for off-site parking relief.

#### Pick Your Own Saturdays and Sundays in September and October

1. In 2017, the Farm, subject to the Borough Police Department's approval of an updated traffic management plan, can use *up to three* neighborhoods, or as described in the Farm's parking plan, 3 zones (on a rotating basis) for parking. The Board finds that there is no need for the use of fourth neighborhood, in as much as much as the Farm has non-exclusive access to up to 250 parking spaces in the Borough's commuter lot and NJ Transit's commuter lot.
2. In 2018, the Farm, subject to the Borough Police Department's approval of an updated traffic management plan, can use *up to two* neighborhoods (on a rotating basis) for parking. The Board believes that if the Borough makes a good faith effort to rezone the Tandy and Allen lot and the Farm makes a good faith effort to acquire the lot, the addition of approximately 300 spaces eliminates the need to for the use of a third neighborhood.
3. In 2019, the Farm, subject to the Borough Police Department's approval of an updated traffic management plan, can use *one* neighborhood (on a rotating basis) for parking.
4. In 2020, the Farm is prohibited from using any neighborhoods for off-site parking.

Acceleration in Parking Reduction: In the event that the Farm acquires sufficient parking rights through a combination of the Ann Blanche Smith School lot, corporate lots in Woodcliff Lake, Montvale and elsewhere; church lots in surrounding towns; and/or other locations, the Borough's Police Dept. has *the immediate right to make a commensurate reduction in the number of neighborhoods (or portions thereof) used for temporary off-site parking.* For example, if in 2017 the Farm gains access to 250 off-site parking spaces, the Police

can immediately take an additional neighborhood out of the parking rotation. If this were to happen in 2017, then the three neighborhood rotation would be reduced to two neighborhoods. If it were to happen in 2018, then the two neighborhood rotation would be reduced to one neighborhood.

#### B. Pick Your Own – Columbus Day

It is the Board's equitable decision that Columbus Day parking presents an unavoidable conflict, namely, the Borough's commuter lot and any corporate lots are likely to be used by others. To that end, the Board finds that there are legitimate farm-based reasons for an ongoing departure from the AMP parking standards set forth in N.J.S.A. 2:76-2A.13.

1. In 2017, the Farm, subject to the Borough Police Department's approval of an updated traffic management plan, can use *up to four* neighborhoods for parking.
2. In 2018 and the years beyond, the Farm, subject to the Borough Police Department's approval of an updated traffic management plan, can use *up to three* neighborhoods (on a rotating basis) for parking.

Acceleration in Parking Reduction: In the event that the Farm acquires sufficient off-site parking rights on Columbus Day, the Borough's Police Dept. has *the immediate right to reduce the number of neighborhoods (or portions thereof) used for temporary off-site parking*. For example, if in 2017 the Farm gains access to approximately 250 off-site parking spaces, the Police can immediately take an additional neighborhood out of the parking rotation. If this were to happen in 2017, then the four neighborhood rotation would be reduced to three neighborhoods. If it were to happen in 2018, then the three neighborhood rotation would be reduced to two neighborhoods.

#### **The Event Management Traffic Plan**

The BCADB notes that the Farm and the Borough's Police Department have made continuous, good faith efforts to control traffic but it is the Board's opinion that the traffic plan needs further improvement. The Board also notes that a farm with onsite, AMP compliant parking can simply close the gate when capacity is reached but that Demarest Farms has no equivalent *gate closing* technique to restrict parking on 37 municipal streets many of which have multiple points of access and hence, no reasonable way to manage traffic congestion.

The Board, never the less, sees opportunities for an improved traffic plan and recommends, subject to approval by the Borough Police Department, that the following matters be addressed immediately if possible but no later than prior to the commencement of the 2018 PYO season and that the Farm submit a supplemental report on the status of the matters below by March 1, 2018:

- In order to prevent unauthorized mid-block crossings and/or passenger drop offs and pickups, the Farm needs to consider the construction of a sidewalk on the eastern side of \_\_\_\_\_ and erect a split rail fence along the eastern side of \_\_\_\_\_



- In order to create a safe, manageable zone for passenger drop offs or pickups, the Farm needs to explore the creation of an authorized area north of its driveway for passenger drop offs or pickups.
- To the extent that there are pedestrian queuing issues on the north side of Hillsdale Avenue at its intersection with V [redacted], the Farm needs to implement sufficient queuing areas on the northwest and northeast sides of the intersection for the orderly management of patrons as they cross the road.
- The Farm needs to hire sufficient off-duty police officers to assist with traffic management so that the intersection of Hillsdale Avenue and V [redacted] Road, the Farm's entrance/exit on V [redacted] Road, and to provide adult oversight of neighborhoods in which patrons park.
- The Farm needs to implement notification procedures, such as a sign boards at various locations informing prospective patrons that the parking areas are full and should vigorously publicize the availability of the parking lots and offer an incentive, such as a discount coupon, to patrons who use the off-site lots
- The Farm and the Borough should consider-allowing direct pedestrian entrances to the Farm from three cul-de-sacs (the southerly terminus of [redacted] ce, [redacted] and [redacted] e that experience minimal traffic and border on Farm property to minimize the distance visitors must walk on neighborhood streets and the associated concern that the walking causes for neighborhood residents.

In addition to the above, the Board, also sees opportunities for an improved event management plan that addresses reservations and software tracking. The Board hereby specifies that the Farm submit a supplemental report on these matters by March 1, 2018.

- The Board strongly recommends the Farm's exploration of the use of reservations. Reservations allow a farm to know how many patrons are coming and the time of their arrival. It is a proactive measure for everyone's benefit. The Board notes that reservations are something all consumers are accustomed to. Other ways of managing crowds are early entry discounts, the sale of tickets at the hayride departure point and the Borough's commuter lot in addition to ones sold at the Farm Stand lot.
- The Board recommends that the Farm implement software to track the number of tickets sold and the time of day in which they are sold so that comprehensive data is available for future modifications to its event management parking

### **Long Term Sustainability**

In reaching its decision, the Board noted that Demarest Farms could do what Terhune Farms, another preserved farm, did, namely: seek permission to convert a portion of the orchards adjacent to [redacted] d from peaches to farm fields which can devoted to temporary, pick your own parking and then reconverted to productive agricultural use once a farm's need for short-term additional parking ceases. Such hay fields, grass fields, pastures and other crop fields will need

vegetative or organic mulch cover so that bare ground is not parked on. Such a field would also be closest to the apple orchards in Saddle River.

The Board considers a conversion of a portion of the peach orchard to be consistent with the AMP's approval of parking areas adjacent to or near pick-your-own fields, particularly if such fields are far from the farm's pick-your-own market area. The Board also notes that the aforesaid field conversion would not, by itself, resolve the shortage of onsite parking and may require SADC approval.

Another step in moving the farm toward its own sustainable parking infrastructure involves the Farm's efforts to acquire the Tandy and Allen property on [redacted] to accommodate up to 300 vehicles. The Board therefore requests that the Borough give serious and timely consideration to the rezoning of the Tandy and Allen lot for farm use – and that it evaluate any addition locations appropriate for rezoning. If the Tandy and Allen lot is rezoned and if the Farm converts some of the peach orchard to parking it's almost halfway home to the 1,225 parking spaces that the Farm needs.

The last part of a sustainable parking equation is the use of:

- corporate lots in Woodcliff Lake and elsewhere,
- church or other lots in surrounding towns, and
- the continued use of the Borough's commuter and NJ Transit lots.

The BCADB commends the Borough for awarding a 2017 lease for 250 spaces in its commuter lots even though the Farm's meager bid of 95-cent bid aroused its ire. The Board acknowledges and appreciates the Borough's good faith efforts.

### **The Future**

The BCADB acknowledges the seriousness of the issues at hand – and the fact that neither the Board nor the Farm's experts have made first hand observations of the Farm and its surrounding neighborhoods during a pick your own season. To that end, the Board will be conducting a site visit on an upcoming Saturday or Sunday during this pick your own season and recommends that the Farm's experts make their own first hand observations.

The Board requests that that the Farm, Borough and neighbors appear before the Board at an *informational* meeting to be set by the Board late this year or early next year to review the Farm's 2017 Event Management Plan to determine if it performed as intended. The timing of this review will permit updating the Plan prior to the 2018 Pick Your Own Season.

### **Conclusions**

In deciding this matter the BCADB has weighed both agricultural and municipal interests. In accordance with N.J.S.A 4:1C-1 et seq. the BCADB has considered the relevant municipal public health and safety standards including those which might have a peripheral effect on farming but do not directly conflict with farming practices. It has also considered the concerns of the

parties, exhibits and stipulations and, after weighing the facts and circumstances, makes the following findings, determinations and resolutions:

1. Demarest Farm qualifies as a commercial farm as defined in the New Jersey Right to Farm Act (N.J.S.A. 4:1C-3) and is entitled to operate a farm stand pursuant to N.J.S.A. 4:1C-9.

2. The Board approves the institution of a SSAMP event management plan consistent with the findings, recommendations and time periods set forth herein subject to Borough's Police Department review and approval and the establishment of such conditions as the Police Department determines are reasonably necessary.

3. The testimony and proofs given by the Applicant at the aforementioned public hearing and the BCADB's finding of fact and conclusions of law as set forth above are incorporated herein by reference and form the basis of this BCADB's determination herein.

4. In the event of any material deviation or change from the testimony, representations or findings of fact the BCADB reserves the right and option to modify, alter, change or revoke the within approval.

5. If terms and conditions agreed to on the record below are omitted from this resolution, the Applicant and the Borough are nevertheless bound to abide by same pursuant to Fieramosca V. Barnegat Tp., 335 N.J. Super, 526, 533-534 (Law Div.2000)).

6. Consistent with the Board's findings and conclusions set forth above, the Farm is hereby authorized to implement an Event Management/Parking Plan that includes the use of off-site parking during the PYO weekends and holiday, when necessary, subject to such conditions as the Borough Police Department determines are reasonably necessary to protect the health and safety of the public.

7. Although the aforesaid farm-related on-street parking does not pose a direct threat to public health and safety, it does have a negative impact on the affected neighborhoods and that weekend parking during the pick your own season must cease by January 1, 2020.

8. The Board shall forward a copy of this Resolution as its written recommendation to the State Agriculture Development Committee, the Borough of Hillsdale and Demarest Farm & Orchard, LLC within thirty (30) days.

9. 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 Procedures Rules, within 45 days from receipt of this resolution and the decision of the SADC shall be considered a final administrative agency decision. If the Bergen CADB's resolution is not appealed within 45 days, the resolution is binding.

**YES:** James Alan Abma Sr., Ronald Binaghi Jr., Darryl Secor, Evelyn Spath-Mercado

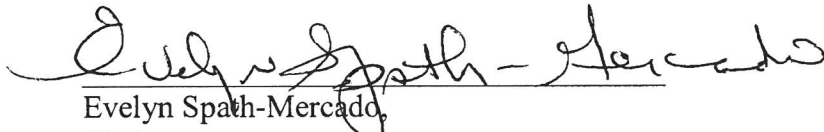
**NO:** Chris G. James

**ABSTAIN:** None

**ABSENT:** Wiggers, Valente

I certify that the foregoing is a true copy of the Resolution of the Bergen County Agriculture Development Board, duly adopted at a regular meeting of the Board on September 6, 2017.

Dated: September 6, 2017

  
\_\_\_\_\_  
Evelyn Spath-Mercado,  
Chairperson