



Board of Chosen Freeholders County of Burlington New Jersey



Department of: **RESOURCE CONSERVATION**

MARY PAT ROBBIE
Director of Resource Conservation

Phone: (856) 642-3850
Fax: (609) 261-7271

BURLINGTON CADB RESOLUTION # 2018-4

Physical Address:
50 Rancocas Road
Mount Holly, New Jersey 08060

Mailing Address:
P.O. Box 6000
Mount Holly, New Jersey 08060

Right to Farm Complaint Under The New Jersey Right to Farm Act

Block 55, Lots 1, 1.01 & 2 Evesham Township
November 15, 2018

WHEREAS, On May 16, 2018 Mr. Darral VanIstendal ("Complainant") of Evesham Township, submitted a Complaint (hereinafter, the "Complaint") to the Burlington County Agricultural Development Board ("Board"), pursuant to the NJ Right to Farm Act ("Act") N.J.S.A. 4:1C-10.1a and N.J.A.C 2:76-2.7a pertaining to a specific activity occurring on the property referenced above; and

WHEREAS, according to the Evesham Township tax records, Block 55, Lots 1 & 1.01 are owned by VAN DAL Partners I L.P.; and

WHEREAS, according to the Evesham Township tax records, Block 55, Lot 2 is owned by VAN DAL Partners II L.P.; and

WHEREAS, according to the Complaint, and as per the Agreements of Limited Partnership for VAN DAL PARTNERS I (as amended) and VAN DAL PARTNERS II (as amended), Denney Van Istendal is the General Partner of both entities; and

WHEREAS, Denney VanIstendal is the owner / operator of Big Timber Tree Service LLC; and

WHEREAS, Denney VanIstendal lives in the residence on Block 55, Lot 1 and operates Big Timber Tree Service from the same location; and

WHEREAS, Denney Van Istendal serves as the farm operator of the property; and

WHEREAS, according to Evesham Township tax records, the property is currently receiving agricultural assessment for property tax purposes and is 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); and

WHEREAS, the Complaint alleges the operation of a "...commercial business Big Timber Tree Service being operated on a farm in a residential area against local zoning law" (Exhibit A); and

WHEREAS, the Complaint includes pictures of various vehicles and ancillary equipment that are consistent with a tree service business; and

WHEREAS, pursuant to N.J.A.C 2:76-2.8(d)1, via a letter dated May 18, 2018, Board staff informed the municipality, the landowner, and the NJ State Agriculture Development Committee of the Complaint; and

WHEREAS, on May 21, 2018, Board staff provided a copy of the Complaint to Denney VanIstendal's attorney, Mr. Michael J. McKenna Esq.; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(b), the board shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3; and

WHEREAS, since May 21, 2018, Board staff has had multiple contacts via email and phone calls with Mr. Michael J. McKenna Esq. reviewing the Right to Farm process and the allegations contained in the Complaint; and

WHEREAS, pursuant to N.J.A.C 2:76-2.7(c), if appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act; and

WHEREAS on June 20, 2018, Board staff members Brian Wilson and Tim Willmott met with Mr. McKenna and Mr. Denney VanIstendal on the subject property to obtain pictures and to review the Right to Farm eligibility requirements; and

WHEREAS, during that meeting, Mr. McKenna and Mr. Denney VanIstendal stated that they would provide the necessary documentation to support the Act's requirement of a minimum of \$2,500.00 per year in agricultural or horticultural product sales; and

WHEREAS, on June 21, 2018, Board staff transmitted an email to Mr. McKenna and to Mr. Denney VanIstendal reminding them of the requirement to submit the necessary documentation, and directing them to submit that documentation by June 27, 2018; and

WHEREAS, as of June 29, 2018, Board staff had not received the required documentation; and

WHEREAS, on June 29, 2018, Mr. McKenna contacted Board staff and stated that he would submit the necessary documentation by July 3, 2018;

WHEREAS, as of July 3, 2018, the necessary documentation had still not been submitted; and

WHEREAS, on July 6, 2018 Mr. McKenna submitted a memo with attachments allegedly supporting various sales of agricultural items in excess of \$2,500 (Exhibit B); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(c)1 the board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.; and

WHEREAS, the Board was originally scheduled to make a determination of RTF eligibility at its July meeting, but due to lack of quorum the matter was moved to the September meeting; and

WHEREAS, the landowner's attorney could not attend the September meeting, so the Board agreed to move the RTF eligibility determination to the November meeting; and

WHEREAS, at its November meeting the Board reviewed the memo and the attachments related to income submitted by Mr. McKenna, and determined that:

- 1) the documentation overall included only 1 receipt totaling \$1,500 for the sale of "two ponies" on June 20, 2017, and
- 2) documentation concerning the sale of "Woodchips," "Firewood," and "Firewood processing" could not be verified to be products grown on site, and

3) during the site inspection on June 20, 2018, Burlington County staff observed no evidence that a significant number of trees had been harvested on the subject property to support the claims of “firewood” and “woodchip” sales, and

4) claims of bamboo sales were not supported by receipts nor did they appear to be in active agricultural production; and

WHEREAS, the Board determined that the proof of income was insufficient to meet the income requirement necessary to qualify as a commercial farm; and

WHEREAS, the production of trees and forest products is considered a permitted activity set forth in N.J.S.A. 4:1C-9; and

WHEREAS, there is no agricultural management practice (AMP) adopted by the SADC addressing the disputed activity;

WHEREAS, the protections afforded in the Act may only be applied to Commercial Farms as determined by the County Agriculture Development Board that pursuant to N.J.S.A. 4:1C-9, which are in conformance with all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and not pose a direct threat to public health and safety; and; and

WHEREAS, by letter dated 10/5/18 from the Pinelands Commission (Exhibit C) states that Forestry appears to have been done on this lot since 2004 without an approved Forest Stewardship Plan or Certificate of Filing for forestry from their office; and

WHEREAS, by letter dated 10/17/18 from the Pinelands Commission (Exhibit D) to the landowner states that there is an outstanding violation of the Pinelands Comprehensive Plan (CMP) for clearing within a wetlands buffer area; and

WHEREAS, Board staff contacted Evesham Township which confirmed that the wetlands protection standards adopted by Evesham are the same as the NJDEP wetlands standards and that they do not exceed those standards; and

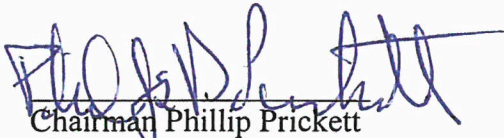
WHEREAS, the Board determined that the outstanding violation of the Pinelands Comprehensive plan is related to the agricultural activity in question of storing vehicles on the property for forest management purposes; and

NOW THEREFORE, BE IT RESOLVED by the Board after reviewing the allegations in the Complaint, and the evidence that was submitted by and on behalf of Denney VanIstendal, and after considering the observations of Board staff, the Board makes the following findings:

1. The Complaint filed in this matter was duly filed and was considered by the Board.
2. The farm management unit designated as Block 55, Lots 1, 1.01 & 2 on the tax map of Evesham Township, Burlington County, is not a “commercial farm”, as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because the farm operator presented insufficient evidence to the Board to prove that the property meets the statutory or the regulatory definition of a “commercial farm.”
3. The farm management unit is not in conformance with relevant State statutes or rules and regulations; and
4. A copy of this Resolution shall be transmitted to Mr. Darral VanIstendal, to the Township of Evesham, to the owners of the subject property, and to Mr. Denney VanIstendal and his counsel.
5. The Board lacks jurisdiction over the activities occurring on the property and dismisses the complaint. The activities occurring on the property are outside the purview of the Board and remain under the jurisdiction of applicable municipal, state or federal agencies.
6. Pursuant to N.J.A.C. 2:76-2.7(k), any person aggrieved by the Board’s decision may appeal the decision to the SADC within 10 days from the receipt of the Board’s decision. The SADC shall schedule a hearing and make a determination within 90 days of the receipt of the petition for review.

Roll Call VOTE

Member	Yes	No	Abstain	Absent
Chairman Phillip Prickett	✓			
Vice-Chairman Daniel Kennedy	✓			
Robert T. Eckert	✓			
John M. Hlubik	✓			
Peter Johnson	✓			
Lawrence Kuser				✓
Timothy Lutz	✓			
Lisa Post	✓			
Dennis Roohr	✓			
Paul Shinn	✓			
Richard Toone	✓			
D. Todd Wilkinson				✓


 Chairman Phillip Prickett
 Burlington CADB

11/15/18
 Date

Exhibit A

Burlington County Agricultural Development Board

Right to Farm Complaint Form

Complainant: Doreal Varristhaniel
Mailing Address: _____
Telephone Numbers: 609-724-5377

Identification of Farm Property and Operation to be Investigated:

Municipality	Block	Lot	Location	Product/Operation Under Complaint
<u>Elizabeth</u>	<u>55</u>	<u>2</u>	<u>23 Hruswelled</u>	<u>employee parking: residential</u>
<u>Elizabeth</u>	<u>55</u>	<u>1</u>	<u>Orion</u>	<u>truck employee parking and operation on a farm.</u>

Use additional sheet if necessary.

Describe in detail the specific activity that you are aggrieved by and want the Burlington County Agriculture Development Board to investigate. Please be as specific as possible so that your concerns are fully addressed.

There is a Commercial Business Big Timber Tree Service LLC being operated on a farm in a residential area against local zoning law.

Please return this Request with the following suggested documentation (check if attached):

- Tax map showing location of products and activities for review
- Photos

I would like to use a mediator to resolve this conflict, please send me a Request for Voluntary Mediation Form

Dated: 5/26/18

[Signature]
Signature of Complainant

Exhibit "B"

"Woodchip sales Sept 2017." Sold \$500 worth of wood chips to George van Istendal

"Pony sales Jan 2017". Mom sold these to baby ponies and January 2017 . She sold them for \$500 apiece.

"Firewood sales June 2017."We were able to help the people of this event by selling them firewood for their father son week camping trip at the YMCA.Brought in over \$700 in firewood Sales at this event. We were the only company that Was able to help them at short notice and also was able to deliver it.

"Bamboo 2017". no message in body of email

"Bamboo loaded on a trailer" Message: These dated pictures prove The bamboo sale operation of February 2017

"Bamboo sales 2017" Mike every Winter I sell bamboo because it is dormant. I dig up trailer loads and take them to the street and put a sign on them and sell them for \$50 a clump. 2017 I made \$1800.

"Exotic Geese sold by Daryl". Message: Daryl sold these geese in Feb 2017 \$250

"2017 firewood processing". No message

"Firewood processing" This is a picture of my mom and my employee processing

"Firewood processing" This shows my splitting operation for the past 2 years including my brand new firewood processor.

"Pony sales June 2017" This is the receipt for the 2 adult ponies that darral sold

Exhibit "C"



PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

PO Box 359

NEW LISBON, NJ 08064

(609) 894-7300

www.nj.gov/pinelands



SEAN W. EARLEN
Chairman
NANCY WITTENBERG
Executive Director

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

October 5, 2018

Ron Farr (via email)
Farr Forestry Services

Re: Application # 1989-0107.003
Evesham Township Block 55, Lots 1 and 1.01
Medford Township Block 5502, Lots 2.01 and 2.02

Dear Mr. Farr:

Thank you for your September 15, 2018 letter concerning development of a Forest Stewardship Management Plan for the above referenced parcel.

Your letter indicates that you do not propose any soil disturbance as part of the forestry. If there will be no ground disturbance penetrating more than a minimal depth below the surface on the entire parcel, a cultural resource survey is not necessary. If the plan is amended to include ground disturbance penetrating more than a minimal depth below the surface, please notify our office so that we may reassess the situation. At the request of the applicant, the Commission would assume the responsibility for any survey that may be required.

The submitted information included a letter from the Natural Heritage Program, dated September 6, 2018, which details records for rare wildlife species or wildlife habitat on the above referenced lot and within a quarter of a mile of the parcel. Based on review of this letter and information available to the Commission staff, Barred owl, Timber rattlesnake and Pine Barrens treefrog needs to be addressed in any submitted plan for proposed forestry activities.

In reviewing the files for the above referenced application, an outstanding violation of the Pinelands Comprehensive Management Plan (CMP) and the local land use ordinances exists on the parcel. Specifically, a four acre clearing in wetlands buffers has occurred on Evesham Block 55/Lot 1.01 and contiguous Medford Block 5502/Lot 2.02 since 2004 and no agricultural use has been established in the cleared area. To resolve the violation, the Forestry Plan must propose to revegetate the area with native Pitch pine trees or tree seedlings, OR the applicant must submit a farm management plan demonstrating that crops were grown in the cleared area since 2004.



Forestry appears to have been done on this lot since 2004 without an approved Forest Stewardship Plan or Certificate of Filing for forestry from our office. This must be addressed in the forestry plan.

If you have any questions, please contact our staff.

Sincerely,

A handwritten signature in black ink that reads "Jean Montgomerie". The signature is written in a cursive, flowing style.

Jean Montgomerie
Environmental Specialist

Exhibit "D"



PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
THE PINELANDS COMMISSION
PO Box 359
NEW LISBON, NJ 08064
(609) 894-7300
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SEAN W. EARLEN
Chairman
NANCY WITTENBERG
Executive Director

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

October 17, 2018

Vandal Partners, LLP
305 Hopewell Rd.
Marlton, NJ 08053-9744

Re: Application # 1989-0107.002
Medford Township Block 5502, Lots 2.01 and 2.02
Evesham Township Block 55, Lots 1 and 1.01

Dear Property Owner:

Based upon available information, approximately 4 acres of Block 55, Lot 1.01 in Evesham Township and contiguous Block 5502, Lot 2.02 in Medford Township were cleared between 2004 and 2006. The clearing occurred in the required buffer to wetlands. This clearing constitutes a violation of the wetlands protection standards of the Medford Township land use ordinance, the Evesham Township land use ordinance and the Pinelands Comprehensive Management Plan (CMP).

To address the violation, within 30 days of the date of this letter, please submit a restoration plan and schedule proposing revegetation of the concerned 4 acres to previously undisturbed conditions. A restoration plan could be a written proposal accompanied by a hand drawn sketch depicting the approximate location of the clearing and the type, quantity, size, and location of native Pinelands vegetation to be replanted. The CMP, including a list of native Pinelands plants, is available online at www.nj.gov/pinelands/cmp. Please note that suitably sized seedlings (at least 3 to 4 inches) spaced no greater than 10 feet apart are acceptable to the Commission. The plan should include provisions for the replanting of vegetation that does not survive and for the elimination of non-native invasive species which may become established in the disturbed area. The restoration plan must also specify a time frame for replanting, including a date by which planting will be completed. No restoration should begin until you have received a written response from the Commission staff indicating agreement with the proposed restoration plan.

By copy of this letter, we are notifying Township officials regarding this matter.



If you have any questions, please contact Kelly Christopher of our staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. M. Horner', with a long horizontal flourish extending to the right.

Charles M. Horner, P.P.

Director of Regulatory Programs

- c: Secretary, Evesham Township Planning Board (via email)
- Evesham Township Administrator (via email)
- Evesham Township Zoning Officer (via email)
- Evesham Township Construction Code Official (via email)
- Evesham Township Environmental Commission (via email)
- Kimberly Gerber, Planning Board Secretary, Medford Township (via email)
- Katherine Burger, Clerk/Administrator, Medford Township (via email)
- Beth A. Portocalis, Zoning Officer, Medford Township (via email)
- Richard Falasco, Construction Official, Medford Township (via email)
- Chairman, Environmental Commission, Medford Township (via email)