



AGRICULTURAL DEVELOPMENT REVIEW BOARD
OF THE COUNTY OF CAPE MAY

RIGHT TO FARM ACT DISPUTE

In the Matter of

NATALI VINEYARD, LLC
Block 4.01, Lot 37
Middle Township, Cape May County, N.J.

Complainant: Lawrence Ziemba
Address: e
08210

NOTICE OF DECISION

The Agricultural Development Review Board of the County of Cape May (the "CMCADB" or the "Board"), having heard the dispute in the aforementioned matter on April 22, 2013, and having deliberated as to these matters on May 20, 2013, hereby renders the following decision in accordance with the provisions of N.J.S.A. 4:1C-10.1.

PROCEDURAL HISTORY

The Complainant, Lawrence Ziemba ("Complainant" or "Ziemba") filed the within Right to Farm Dispute on or about August 7, 2012 (Exhibit Ziemba-1). The complaint alleges that Natali Vineyard, LLC (the "Farmer") did permit or create loud noise from events hosted on the property, including the use of bands, disc jockeys, and microphones. The complaint also alleges that the events in question are for a

primarily non-agricultural purpose and that none of the conduct in question is regarded as general farm operations.

The complaint was first addressed through the Agricultural Mediation Program of the New Jersey State Agricultural Development Committee ("SADC"). Once that process had concluded unsuccessfully, the Board retained the services of a sound engineer, Russell Acoustics LLC of Bulter, New Jersey, to conduct surveys of noise in and around the farm and Complainant's properties during an event of the type and nature outlined in the complaint. The report of the sound engineer's findings was provided to the parties in advance of the formal hearing on this complaint.

On April 22, 2013, at a special meeting duly noticed and conducted in accordance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. and Policy P-2 promulgated by the SADC entitled "Conflict Resolution Public Hearing Guidelines for CADBs", the Board conducted a public hearing on the complaint, taking the sworn testimony of Lawrence Ziemba and Alfred Natali on behalf of the Farmer and receiving into evidence the documents and other submissions sponsored by the parties, including:

- a. **Exhibit Ziemba - 1**, the Right to Farm Application for Hearing;
- b. **Exhibit Ziemba - 2**, advertisements and news clippings compiled by Mr. Ziemba relating to alleged non-agricultural events at Natali Vineyard;
- c. **Exhibit Ziemba - 3**, excerpt from the New Jersey Alcoholic Beverage Commission handbook referenced during Mr. Ziemba's testimony;
- d. **Exhibit Ziemba - 4**, proposed rules issued by the New Jersey State Agricultural Development Committee titled "Agricultural Management Practice (AMP) for On-Farm Direct Marketing Facilities, Activities, and Events; Right to Farm Management Practices and Procedures"; and
- e. **Exhibit Ziemba - 5**, Hearing Officer's Findings and Recommendations of the State Agricultural Development Committee, I/M/O Hopewell Valley Vineyards, Hopewell Township, Mercer County, SADC ID # 786.

- f. **Exhibit Natali - 1**, a petition in support of the operations of Natali Vineyards by Cardinal Drive neighbors;
- g. **Exhibit Natali - 2**, a Cape May County Department of Health Complaint Investigation Report of noise levels at Natali Vineyards;
- h. **Exhibit Natali - 3**, Cape May County CADB Resolution 6-09, "Resolution Certifying Commercial Farm Operation and Recommending Site Specific Agriculture Management Practice" for Natali Vineyards LLC; and
- i. **Exhibit Natali - 4**, the October 24, 2012 report of Russell Acoustics documenting calibrated and certified noise readings at Natali Vineyards.

Copies of these Exhibits are attached hereto and incorporated herein by this reference. The Board also received testimony and comment from Gary Schempp and David Van Vorst, members of the public, at the hearing of April 22, 2013. Lastly, the Board also arranged for the services of a certified court reporter for the purposes of creating a verbatim record of the hearing of April 22, 2013. A copy of that transcript is similarly attached hereto and incorporated herein.

The record closed on April 22, 2013, and the parties submitted written summations to the Board, through its counsel. Each party submitted written summations, copies of which are attached hereto. These submissions, along with the transcript of the proceedings of April 22, 2013 and the exhibits introduced into evidence by the parties, were reviewed by the Board at a regular meeting on May 20, 2013, at which time the Board made specific findings of fact and conclusions of law in order to dispose of the complaint.

BOARD MEMBERS PRESENT

George Brewer, Jr., Chair
James Hazlett¹
Leslie Rea
Sue Anne Wheeler
Warren Stiles
Jenny Carleo, Ag Agent
Will Morey, Freeholder Liason

¹ Present for the hearing, not for the deliberation.

Also Present:

Leslie Gimeno, AICP/PP, Director, Cape May County Planning Dept.

Brigitte Sherman, Cape May County Planning Dept.

James B. Arsenault, Jr., Esq., Ass't County Counsel/Board Solicitor

APPEARANCES

Lawrence Ziemba, for the Complainant

Alfred Natali, for the Farmer Natali Vineyards, LLC

FINDINGS OF FACT

Based upon the testimony and evidence received during the hearing of April 22, 2013, and further based upon the written summations submitted by the parties, the Board makes the following findings of fact relative to this matter:

The Farm hold a site specific agricultural management practice ("SSAMP") as embodied in this Board's Resolution 6-09, adopted September 28, 2009. Accordingly as of that date, the Farm was a commercial farm entitled to the protections of the Right to Farm Act.

1. Pursuant to the SSAMP, the Board determined that "the harvesting of wine grapes and production of wines, farm market/tasting bar, barrel room demonstrations and barrel sampling, hosting educational meetings and speakers, vineyard tours, farm-based recreational festivals and events featuring live music, food vendors paired with production wines, and local artisans, including Beach Plum jellies, jams and plants, where the primary purpose is the consumption or sale of the agricultural output of the farm itself is approved and the operation of the winery is approved as a site specific agricultural management practice." Exhibit Natali-3, page 2.
2. The Board finds from the totality of Mr. Natali's testimony and the evidence presented in support of the Farm that the Farm remains a commercial farm entitled to the full protections of the Right to Farm Act.
3. As a commercial farm holding an SSAMP issued by the Board, the Farm is subject to the jurisdiction of the CMCADB as to the allegations presented in the complaint.

4. The Board finds that the farm events described by Mr. Ziemba and acknowledged by Mr. Natali are of the type and nature as described in the SSAMP and constitute accepted agricultural practices.
5. The Board finds that, based upon the report of Russell Acoustics, LLC, Exhibit Natali-4, the sound emanating from the Farm during an event which is typical of and consistent with the events sponsored by the Farm as ancillary to the consumption or sale of the agricultural output of the Farm is not excessive or in any manner violating of any applicable municipal or state code or standard.
6. The Board finds no evidence in the record to conclude that the Farm operates in violation of any local, state or federal ordinance, statute, law or regulation.
7. The Complainant has provided no evidence to contradict the expert report demonstrating that during the October 2012 event examined by Russell Acoustics LLC that the sound generated by the Farm was excessive or violative of any controlling code or standard.
8. The Complainant has alleged that the purpose of the events conducted at the Farm is not related to the agricultural production or output of the Farm, and that the primary purpose of those activities is entertainment or some other non-agricultural purpose. This is disputed by the Farm.
9. The Complainant has provided no credible evidence to suggest that the primary purpose of the events hosted by the Farm is not related to the agricultural production or output of the Farm.

The Board can find no evidence on the record to rebut the presumption that Farms conducting events and operations consistent with generally accepted agricultural management practices and/or consistent with a SSAMP are entitled to absolute protection under the Right to Farm Act, or that the Farm operation creates a nuisance, a trespass, or otherwise amounted to activities that pose a direct threat to the public.

CONCLUSIONS OF LAW

Based upon the testimony and evidence received during the hearing of April 22, 2013, and further based upon the written summations submitted by the parties, the Board makes the following findings of fact relative to this matter:

1. The Farm hold a site specific agricultural management practice ("SSAMP") as embodied in this Board's Resolution 6-09, adopted September 28, 2009.
2. The Farm was and remains entitled to the full range of immunities and protections pursuant to the New Jersey Right to Farm Act.

N.J.S.A. 4:1C-10 provides that entities holding an SSAMP are entitled to the irrebutable presumption that its activities and operations constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety, shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

3. There is no evidence in the record of this matter to overcome the irrebutable presumption created by operation of law immunizing the activities described by the Complainant.
4. The events described by the Complainant and acknowledged by the Farm are in accordance with the SSAMP. Pursuant to N.J.S.A. 4:1C-10, the Farm is immune from the claims outlined in the complaint.

Even without the benefit of the irrebutable presumption afforded by the Right to Farm Act, the noise generated by the sample event observed by the expert retained by the County is not excessive or violative of any applicable code or standard.

BOARD DISCUSSION AND RESOLUTION

The Board adopts the foregoing findings of fact and conclusions of law recited above. Specifically, the Board finds that the activities described in the complaint are consistent with the SSAMP outlined in CADB Resolution 6-09. Even in absence of the SSAMP, the Board finds that the activities described in the complaint are consistent with generally accepted agricultural practice. Accordingly, the Board finds that the activities described in the complaint are protected by the irrebutal presumption outlined at N.J.S.A. 4:1C-10.

Motion By: Mr. Rea

Second By: Ms. Wheeler

MEMBER	YEA	NAY	ABSENT	ABSTAIN
G. Brewer (Chair)	X			
J. Hazlett			X	
L. Rea	X			
S. A. Wheeler	X			
J. Hand			X	
W. Stiles	X			
J. Carleo, Ag. Agent				

The foregoing Memorializing Resolution was adopted by the Agricultural Development Review Board of the County of Cape May at its meeting on the 22nd day of July, 2013.



GEORGE B. BREWER, JR.
 Chairman, Cape May County
 Agricultural Development Review
 Board

Prepared by: James B. Arsenault, Jr., Esquire Assistant County Counsel County of Cape May
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