



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 12000-13

AGENCY DKT. NO. SADC NO. 1354

LAWRENCE ZIEMBA,

Petitioner,

v.

**CAPE MAY COUNTY AGRICULTURE
DEVELOPMENT BOARD AND NATALI
VINEYARDS, LLC,**

Respondent.

Lawrence Ziemba, pro se, for petitioner

**James B. Arsenault, Jr., Esq., for respondent, Cape May County Agriculture
Board**

Alfred Natali, pro se, for respondent, Natali Vineyards, LLC

Record Closed: January 14, 2014

Decided: February 28, 2014

BEFORE **DAMON G. TYNER, ALJ:**

STATEMENT OF THE CASE

This case involves an appeal of the disposition by the Cape May County Agricultural Development Board (“CMCADB”) of a right-to-farm complaint filed by Lawrence Ziemba (“Ziemba”) against respondents CMCADB, Natali Vineyards, LLC and Alfred Natali (“Natali”) owners of property in Cape May Court House, New Jersey. Ziemba seeks to reverse the determination of the issue that the activities conducted on

respondent's vineyard are protected under the provisions of the Right-to-Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA"). For the reasons discussed below, the decision of the CMCADB must be **AFFIRMED**.

PROCEDURAL HISTORY

The petitioner requested a hearing and the matter was filed at the OAL on August 20, 2013, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on January 14, 2014, and the record closed.

FACTUAL DISCUSSION

The following witnesses provided live testimony in connection with this matter.

LAWRENCE ZIEMBA, Petitioner

Mr. Ziemba resides at [REDACTED], New Jersey, along with his wife and three school aged children. He testified that his family moved into their home in 2001. Their home is located one street over from the vineyard. A group of homes are located directly across from the vineyard and the Ziemba home is located on the next street parallel to the vineyard. From 2001 through 2009, the Ziemba family did not experience any adverse impact from the vineyard. In 2009, the type of events held at the vineyard changed to include various festivals, wedding receptions, and fundraisers. These events would consistently feature loud, amplified music.

Mr. Ziemba testified that beginning in 2009, events at the vineyard were held twice a week beginning on Memorial Day weekend. During the non-seasonal months, events were held at least once a month. The events would typically run from 4:00 p.m. until 8:00 p.m., although some would start as early as noon and last until 9:00 p.m. He further testified that the nuisance grew to its greatest height in the Fall of 2011, when the disturbance caused Ziemba to call the police on several occasions.

At that time, Ziembra complained of festivals with “high school kid bands,” loud wedding receptions, and basically any event held at the vineyard that was accompanied by amplified music.

Ziembra provided candid testimony that since 2011, his complaints with the operation of the vineyard have declined. He attributed the decrease in complaints to the decreased noise level generated by the events.

Ziembra provided testimony that the scenario that he complains of is “exactly” similar to the facts presented in In the Matter of Hopewell Valley Vineyards, SADC ID 786. In that matter, Ziembra argues, the State Agricultural Developmental Committee held that the same type of activities conducted at Natali Vineyards were not “generally accepted agricultural operations,” which would enjoy the protections of the RTFA.

On cross-examination, Ziembra acknowledged that he had never attended an event at the vineyard. He also acknowledged that he never attended an event at Hopewell Valley Vineyards. As a result, he acknowledged that he did not know what role wine, or the production of wine, played in the events held at the vineyard.

On further cross-examination, Ziembra acknowledged that his wife works at Cape May Winery, which is located about twenty miles from Natali Vineyards. However, he added that she began working at the competing winery part-time, long after they had filed complaints about the noise nuisance at Natali Vineyards.

BARBARA ERNST

Ms. Ernst is the Director of Cape May County Division of Open Space and Farmland Preservation. She has worked for Cape May County for approximately twenty-four years. Ms. Ernst is also a member of the Cape May County Agriculture Development Board (CMCADB), which is responsible for hearing applications for interpretations of the regulations of the CMCADB.

Ms. Ernst testified that Natali filed an application for a Site Specific Agricultural Management Plan (SSAMP) in September 2009. According to Ms. Ernst, a SSAMP gives a commercial farmer additional protections, that may not have been originally afforded by the RTFA. However, the goal of the CMCADB is to preserve the agricultural production of the farm.

As a result, the CMCADB undertook an investigation of the Natali farm. It concluded that it was commercial farm based upon income tax forms, information gleaned from the application, and a physical inspection. Natali also demonstrated that the farm was zoned for agricultural purposes and that it produced more than \$2,500.00 in agricultural products.

In connection with the application for the SSAMP, Natali specifically sought approval for marketing events that included festivals, live music, and educational events.

Ms. Ernst testified that this application for an SSAMP was unique because it was the first of its kind to be sought from the CMCADB. As a result, she testified that she sought guidance from the State Agricultural Development Committee, and the agricultural development boards in Mercer, Burlington, Ocean, and Cumberland counties.

Notice of the application was provided to the municipality, the zoning officer, the State Agricultural Developmental Committee, and the Cape May County Board of Chosen Freeholders. Additionally, the matter was considered at an open public meeting.

Ultimately, the CMCADB became aware of the complaints of Mr. Ziembra and other neighbors. Ms. Ernst advised him that he would have to appeal to the CMCADB. In connection with the noise complaint, the CMCADB initially hired a noise officer from the County Health Department investigate the claims. Thereafter, the CMCADB hired Russell Acoustics, LLC, an acoustical engineer, to conduct an independent evaluation.

Russell Acoustics prepared a report, wherein it determined that the Natali property did not generate any excessive noise.

On cross-examination, Ms. Ernst's testimony was not compromised. Ziembra attempted to show that the noise evaluation was compromised due to advance knowledge of the test by Natali. However, Ms. Ernst's testimony was unfettered.

ALFRED NATALI

Mr. Natali testified that he is the Managing Partner of Natali Vineyards, LLC. He purchased the farm in 2000 and began to plant vines. Thereafter, he obtained the necessary state and federal permits to operate the winery.

Natali testified that hosting events comprises about 26% of his revenue. He also testified that they host educational tours, wine tasting, and grape stomping events, among others. In 2009, when investigating an opportunity to increase revenue and diversify events, Natali learned that he would need an additional permit, namely, a SSAMP.

After obtaining the SSAMP, the vineyard began hosting large scale events. The SSAMP gave him permission to park 125 cars on his property and host events for 400 to 500 people.

Natali testified that when he started receiving complaints, he took steps to mitigate the sound spilling over to his neighbors. First, he relocated the stage away from Cardinale Drive to the salt marsh in 2011. He then erected sound proof barriers in early 2012. Lastly, in the Summer of 2013, Natali moved the stage to the southwest side of the winery, so that he could use the building as a barrier.

Additionally, Natali testified that he entered into an agreement with another neighbor, whereby he agreed to keep the sound below 65 decibels. As a result, he purchased a decibel meter and had the County Noise Officer calibrate the device.

During events, Natali testified that he patrols the property lines and personally monitors the sound, as a band is playing.

On cross-examination, Natali testified that they previously would attract 400 to 500 people for an event, but that the crowds have significantly declined since 2011. He acknowledged that they had a large event in January 2011 which attracted as many as 1,200 people, but that events held in 2012 and 2013 were much smaller.

Based upon the testimony, I make the following **FINDINGS**:

1. I **FIND** that Natali operates a commercial farm entitled to the protections of the RTFA.
2. I **FIND** that Natali obtained a Site Specific Agricultural Management Plan (SSAMP) in 2009, seeking approval to host events beyond the scope of the RTFA, which afforded the vineyard with an irrefutable presumption that it was engaging in an authorized use of the property.
3. I **FIND** that Natali took affirmative steps to mitigate the sound from his property, although he had no obligation to do so, because he possessed a valid SSAMP.
4. I **FIND** that the Natali farm complied with the terms of the SSAMP, and therefore, is protected by the RTFA.

LEGAL DISCUSSION

The RTFA and the regulations promulgated thereunder, N.J.A.C. 2:76-2.1 to -2B.3, are designed to protect “commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.” N.J.S.A. 4:1C-2(e). To achieve this balance, the protections of the RTFA extend only to an agricultural

operation that qualifies as a “commercial farm.” In re Tavalario, 386 N.J. Super. 435, 441 (App. Div. 2006).

In 1998, the Legislature amended the RTFA “to strengthen the legal protections provided farmers.” Senate Economic Growth, Agriculture and Tourism Committee Statement to Senate, No. 1075 (June 4, 1998); L.1998, c.48. Among the amendments enacted by the Legislature was a revision to the definition of a commercial farm to “allow for noncontiguous parcels of land operated as a single enterprise” and “require that the farm operation meet the eligibility criteria for farmland assessment.” Ibid. Under the RTFA, a “commercial farm” is “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’” or “a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the ‘Farmland Assessment Act of 1964.’” N.J.S.A. 4:1C-3; N.J.A.C. 2:76-2.1. A “farm management unit” is “a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.” Ibid.

The RTFA and its regulations provide specific procedures for resolving conflicts involving the operation of a commercial farm. Under N.J.A.C. 2:76-2.10, “[a]ny person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable [county agriculture development] board or the [State Agriculture Development] Committee in counties where no board exists, prior to filing an action in court.” N.J.A.C. 2:76-2.10(a); N.J.S.A. 4:1C-10.1(a). If a board exists and the dispute concerns activities that are addressed by an agricultural management practice or a site specific agricultural management practice, the board shall contact the commercial farm operator to provide evidence pursuant to N.J.A.C. 2:76-2.3(b) that the agricultural operation is a commercial farm. N.J.A.C. 2:76-2.10(b) and (b)(1). The farm operator must prove that the farm is no less than five acres, produces agricultural/horticultural products worth \$2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964 or, if the

commercial farm is less than five acres, produces agricultural/horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964. N.J.A.C. 2:76-2.3(b)(1). Any person who is aggrieved by a county board's decision may appeal the decision to the State Agriculture Development Committee (SADC) in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15. N.J.A.C. 2:76-2.10(b)(2)(ii); N.J.A.C. 2:76-2.3(f).

In this matter, Ziembra argues that Natali is not entitled to the protection of the provisions of the RTFA, when the farm promoted activities such as, large festivals, band competitions, wedding receptions, fundraisers and other entertainment events that were subordinate and accessory to the production of wine at Natali Vineyards. Ziembra cites In the Matter of Hopewell Valley Vineyards, SADC NO. 786 for support in this regard.

On its face, the facts in Hopewell Valley Vineyards appear to be uncannily similar to the facts in this particular matter. However, upon review of the cited case, one factor distinguishes it from the instant matter, which proves fatal to Ziembra's argument. The vineyard owner in Hopewell Valley Vineyards failed to obtain a Site Specific Agricultural Management Plan pursuant to N.J.S.A. 4:1C-10. N.J.S.A. 4:1C-10 provides that entities holding an SSAMP are entitled to the irrefutable 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 do 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.

In the instant matter, Natali sought and received a SSAMP which gave him the authority to host festivals with live music. He did nothing more than the SSAMP permitted. As a matter of law, Ziembra cannot overcome the irrefutable presumption afforded by the SSAMP.

I **CONCLUDE** that the precedent described in Hopewell Valley Vineyards is not applicable to the attendant facts in the instant matter.

As a result of the foregoing, I **CONCLUDE** that the decision of the CMCADB finding that Natali is permitted to continue to operate the vineyard in compliance with the SSAMP must be **AFFIRMED**.

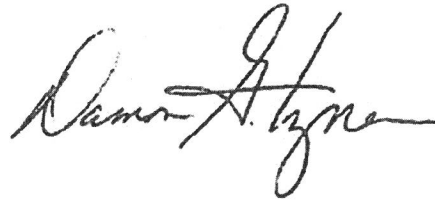
ORDER

I **ORDER** that petitioner's request that Natali Vineyards be deemed to be acting beyond the scope and protection of the RTFA be **DENIED**, and that the decision of the CMCADB be **AFFIRMED**.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



2/28/14
DATE

DAMON G. TYNER, ALJ

Date Received at Agency:

Date Mailed to Parties:

/lam

LIST OF EXHIBITS

For Petitioner:

- P-1 Band Advertising Featured Events
- P-2 Aerial Pictures of Cape May Court House, NJ
- P-3 Middle Township Police Reports
- P-4 Letter to Barbara Ernst, dated October 12, 2012

For Respondent:

- R-1 Commercial Farm Certification
- R-2 SSAMP – Resolution 6-09 of CMCADB
- R-3 Russell Acoustics, LLC Report
- R-4 CMCADB Decision
- R-5 Commercial Farm Proofs
- R-6 Mediation Agreement with Kusic
- R-7 Letter, dated August 25, 2009 from Dr. Gary Pavilis of Rutgers to Barbara Ernst.

WITNESSES

For Petitioner:

Lawrence Ziemba, petitioner

For Respondent:

Barbara Ernst, Director of the Cape May County Agricultural Development Board
Alfred Natali, Managing Member of Natali Vineyards, LLC