

**DECISION OF THE GLOUCESTER COUNTY AGRICULTURE
DEVELOPMENT BOARD**

Date Issued: December 30, 2009

RE: COMPLAINT FILED PURSUANT TO THE
NEW JERSEY RIGHT TO FARM ACT
FOR DETERMINATION OF RIGHT TO
FARM PROTECTIONS FOR CERTAIN
DISPUTED ACTIVITIES

Caption

IN RE: LARRY GRIFFIE V. DENNIS E. HADEN AND KELLY A. HADEN

Identification

Farm Site Location: Township of Franklin

Block: 6502 **Lot(s):** 15

Address: _____

Acreage: 22 acres

Owner: Dennis E. and Kelly A. Haden

Operator: Dennis E. and Kelly A. Haden

Complainant: Larry Griffie

Date of Complaint(s): October 26 and 27, 2009

Action

The Gloucester County Agriculture Development Board (hereinafter the "GCADB"), having conducted a Right to Farm hearing pursuant to authority granted under N.J.S.A. 4:1C-10.1, et seq., and N.J.A.C. 2:76-2.1, et seq., on the complaints of the Complainant, Larry Griffie (hereinafter "Griffie"), against the farm of Dennis E. and Kelly A. Haden (hereinafter collectively the "Hadens") on December 10, 2009, renders the following decision:

Appearances:

The parties were not represented by counsel at the hearing.

Witnesses:

Individuals that were sworn to testify at the commencement of the hearing were, as follows:

- (1) Larry Griffie;
- (2) Dennis E. Haden; and
- (3) Kelly A. Haden.

Exhibits:

Documents were presented by Complainant, Griffie during the hearing, and those said documents were marked as exhibits, and included the following:

G-1 Five (5) photographs depicting a spotlight located on the Haden Farm during evening hours, including the light in relationship to the residential dwelling of the Complainant, Griffie, located on his property that is adjacent to the Haden Farm; and

G-2 Township of Franklin Police Department Operations Report dated March 26, 2008 (3 Pages) recounting substance of an investigation of allegations by Complainant, Griffie, that the Hadens had buried one (1) or more deceased horses in a “wetlands buffer” on their farm.

The aforesaid exhibits were moved into evidence, and duly considered by the GCADB.

Background and Facts:

On October 26, 2009, the GCADB received correspondence via e-mail from Complainant, Griffie. Griffie formally requested in his correspondence that the GCADB consider a nuisance complaint regarding operations on the Haden Farm. Specifically, Griffie alleged a nuisance pertaining to the lighting of the “horse riding arena” on the Haden Farm. The said lighting was alleged to be shining onto, and into, the residential dwelling of Griffie located on the property adjacent to the Haden Farm, which he owns.

On October 27, 2009, the GCADB received a second correspondence via e-mail from Complainant, Griffie, wherein Griffie made further allegations against the Hadens’ activities on their farm. Specifically, Griffie alleged that the Hadens had erected an electric fence on their property and that electric fences are not permitted under the Township of Franklin’s Zoning Ordinance governing fences. Griffie further alleged that the Hadens had buried two (2) deceased horses within a “wetlands buffer” located within the boundaries of their property.

Pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. (hereinafter the “Act”), and the State Agriculture Development Committee (herein after the SADC) 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 prior to filing an

action in court. Accordingly, pursuant to the Act, and regulations promulgated thereunder, the GCADB considered the October 26th and 27th correspondence of Complainant, Griffie, and more specifically, the allegations contained therein, as complaints under the Act.

Subsequent to receiving the complaints of Complainant, Griffie, the GCADB contacted the Hadens by correspondence dated November 1, 2009, and December 2, 2009, pursuant to N.J.A.C. 2:76-2.10. The said correspondence requested the Hadens provide evidence that the agricultural operation of the Hadens is a commercial farm pursuant to the definition of “commercial farm” in the Act. By letter dated December 4, 2009, the Hadens forwarded to the GCADB information in furtherance of establishing that its agricultural operation is a commercial farm pursuant to the definition of “commercial farm” in the Act. Based upon the information submitted by the Hadens, the GCADB determined that the Haden Farm was a “commercial farm” as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-9. This determination was made prior to commencement of the hearing on the Griffie complaints.

The GCADB scheduled a public hearing regarding the allegations of Complainant, Griffie, pursuant to N.J.S.A. 4:1C-10.1c for December 10, 2009. Prior to the hearing, the GCADB duly notified Griffie and the Hadens of the hearing date, time and location. The GCADB also noticed the December 10th hearing in compliance with the Open Public Meetings Act.

A quorum of the GCADB being present at the December 10, 2009 regular meeting of the said board, the allegations made by Complainant, Griffie in his October 26th and 27th correspondence were duly considered at a public hearing in accordance with N.J.S.A. 4:1C-10.1c. The hearing was held to determine whether the disputed agricultural activities complained of by Griffie constituted generally accepted agricultural operations or practices under the Act, and regulations promulgated thereunder.

The GCADB considered specifically at the hearing on December 10th, whether the following described activities on the Haden Farm constituted generally accepted agricultural operations or practices:

- a. lighting of the “horse riding arena”;
- b. erecting of an electric fence; and
- c. burying of deceased horses in a “wetlands buffer”.

Complainant, Griffie provided testimony at the hearing. Griffie testified that the single spotlight that illuminated the “horse riding arena” on the Haden Farm shined onto and into his residential dwelling on his property, which was adjacent to the Haden Farm. Griffie testified that the light in question was a single large spotlight, which remained on from dusk until dawn. Griffie testified that the light gives him no privacy; as he cannot enjoy the use of his home due to the light shining through the windows at night. Griffie testified that the light in question could be adjusted downward, so that it no longer illuminated his house, and shown through his windows at night.

The Hadens testified that the light in question is a mercury vapor light on a single pole. The Hadens testified that the light in question was installed by Atlantic Electric at their request to illuminate the “horse riding arena” on their farm; and to illuminate at least partially the pastures, and barn area of their farm. The light was installed by Atlantic Electric at the request of the Hadens sometime in 2004 on a pole that was existing when they purchased the property.

The Hadens testified further that the request that Atlantic Electric install the light on the existing pole occurred shortly after they purchased the property; and that they ultimately built their barn and “horse riding arena” on the property based upon the location of the existing pole. The Hadens testified that the light allows for them to see their pastures, so that they can maintain visual contact with the horses that may be in the pastures at night. The Hadens further testified that the light illuminates the “horse riding arena”, and the area where horses are brought into and out of the barn on the property.

The Hadens testified that they had no input as to the placement of the light on the pole by Atlantic Electric, nor any input into the angle of the light that was installed by Atlantic Electric. The Hadens testified that the light was placed at enough of a downward angle that it did not shine across from their property so as to illuminate the residential dwelling of the Complainant, Griffie. Moreover, the Hadens testified that relocation of the light would cause a significant hardship, as it would require the installation of a new pole by Atlantic Electric; and any placement other than the current placement of the pole and light would impede their ability to utilize their “horse riding arena” and barn at night. The “horse riding arena” and barn were constructed based upon the existing pole placement when they purchased the property in 2004.

Complainant, Griffie in support of his contention that the light illuminating the Haden Farm “horse riding arena” constituted a nuisance presented five (5) pictures taken by him during the evening. The pictures were of the light, his residential dwelling, and how same shown on his house. Griffie testified that he built his home on the property adjacent to Haden Farm sometime after the light had been installed at the Haden Farm; so that the light installation predated the construction of Griffie’s residential dwelling on his property. The pictures presented by Griffie were marked collectively as Exhibit G-1, and duly considered by the Board at the hearing.

Complainant, Griffie testified next that he believed that the Hadens had buried two (2) deceased horses within a “wetlands buffer” on their property. However, upon questioning by the GCADB, Griffie confirmed that he did not witness any such burying; and had no witnesses to present that may have witnessed such burying. Moreover, upon further questioning by the GCADB, Griffie confirmed that he had no evidence of whether a “wetlands buffer” had actually been delineated on the property of the Hadens; or that such delineation had occurred by and through the New Jersey Department of Environmental Protection, or otherwise. Therefore, Griffie presented no testimony, nor documentary evidence, in support of his claim that the Hadens had undertaken to bury two (2) deceased horses within a “wetlands buffer” on their property.

Complainant, Griffie did produce for the GCADB an Operations Report dated March 26, 2008 (3 Pages) of and from the Franklin Township Police Department. The said report was marked as Exhibit G-2, and duly considered by the Board at the hearing. The said report revealed that an investigation had been undertaken by the Franklin Township Police Department based upon a complaint of Griffie that the Hadens had buried deceased horses on their property; and that the horses had been buried in a “wetlands buffer”. The said report revealed that the allegations were thoroughly investigated, and that there was no basis whatsoever for the allegations made by Griffie. Furthermore, the report disclosed that even if horses may have been buried by the Hadens on their property, such activity was not a violation of any criminal statute, nor local ordinance of the Township of Franklin. Finally, the report revealed that the New Jersey Department of Environmental Protection was contacted as part of the investigation; and that an investigation by that agency revealed no violations of any regulations that are enforced by that agency.

Lastly, Complainant, Griffie testified that the Hadens had installed an electric fence on their property; and that electric fences are not permissible under Franklin Township’s current Zoning Ordinance governing fences. However, upon questioning by the GCADB, Griffie neither cited, nor presented, the specific provision of Franklin Township’s Zoning Ordinance indicating that electric fences are or are not permitted within the Township of Franklin. Moreover, upon further questioning by the GCADB, Griffie testified that he was not aware of whether the Township of Franklin had actually cited the Hadens for violating the Township of Franklin’s Zoning Ordinance for having installed an electric fence on their property. Therefore, again, Griffie failed to proffer any documentary evidence or testimony in support of his allegation that the Hadens had installed an electric fence on their property in violation of a Township of Franklin Zoning Ordinance governing fences.

The Hadens testified that they had installed an electric fence on their farm property; but that based upon the request of the Township of Franklin, they were not currently powering the said fence. Rather, the Hadens testified that the Township of Franklin had communicated to them that they could power and utilize their electric fence, if it were determined by the GCADB that the agricultural operation on their property is a commercial farm pursuant to the definition of a “commercial farm” in the Act. In furtherance of this, the Hadens testified that the fence was installed in order to keep the horses that they maintain on their property within their property boundaries; and further testified that the electric fencing posed no threat to the health and safety of the horses, or the public.

Findings and Conclusions:

I. Agricultural activities/operations – Commercial farm.

A. The Haden Farm is a “commercial farm”, which is defined in the Act as a “farm management unit of no less than five acres producing agricultural products worth

\$2,500.00 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the single 'Farmland Assessment Act of 1964';

B. Agriculture is a permitted use on the Haden Farm under the Township of Franklin's Municipal Zoning Ordinance;

C. The operation of Haden Farm is in compliance with relevant state and federal statutes; and,

D. The operation of the Haden Farm does not pose a threat to public health and safety.

Based upon the foregoing, a motion was made by board member Robert Curtis that the Haden Farm is a "commercial farm" as defined in the Act; and therefore, that the Hadens, and their farm are entitled to receive the protections of the Act. That motion was seconded by board member Joe Randazzo.

Board members in favor of motion:

Jay Kandle, Joe Randazzo, Wally Eachus, Robert Curtis, Russell Marino, and George Dean.

Board members opposed:

None.

II. Agricultural activity at issue - Lighting of "horse riding arena".

A. N.J.A.C. 2:76-A.10 sets forth standards for equine operations and activities entitled to the protections of the Act, N.J.S.A. 4:1C-1, et seq.;

B. The standards for riding and training areas for equine operations, as set forth in N.J.A.C. 2:76-2A.10, set out no standards as it relates to the maintenance of lighting of such areas;

C. Since the lighting or illumination of equine riding and training areas is not completely addressed under N.J.A.C. 2:76-2A.10, the lighting at issue was examined to determine whether it complied with generally accepted agricultural operations or practices, as per N.J.A.C. 2:76-2A.10(g);

D. The lighting maintained by the Hadens for their "horse riding arena" has (i) not been demonstrated to be excessive; (ii) been demonstrated to further the safe operation of the horse training activities undertaken by the Hadens on their farm property; (iii) not been shown to be violative of any law or ordinance of the Township of Franklin, County of Gloucester, State of New Jersey, or the United States; and, (iv) the lighting has not been demonstrated to have been installed to harass; and,

E. The lighting maintained by the Hadens on their farm property to illuminate their “horse riding arena” conforms with the requirements and dictates of N.J.A.C. 2:76-2A.10, which governs agricultural management practices of equine activities on commercial farms.

Based upon the foregoing, a motion was made by board member Joe Randazzo to dismiss the Complaint of Complainant, Griffie, that the lighting maintained by the Hadens on their property to illuminate their “horse riding arena” constitutes a nuisance. That motion was seconded by board member Robert Curtis.

Board members in favor of motion:

Jay Kandle, Joe Randazzo, Wally Eachus, Robert Curtis, Russell Marino, and George Dean.

Board members opposed:

None.

III. Agricultural activity at issue – Burying of deceased horses in a “wetlands buffer”.

A. The Complainant, Griffie, presented no documentary evidence, nor testimony, that would allow the Board to make any finding that a “wetlands buffer” exists on the property of the Hadens;

B. The Complainant, Griffie, presented no documentary evidence, nor testimony, to substantiate the claim that the Hadens had buried two (2) deceased horses on their property, whether within a “wetlands buffer”, or elsewhere;

C. The Complainant, Griffie, provided then no documentary evidence, nor testimony, upon which the Board could make any factual findings regarding or relating to the complained activity that the Hadens had buried two (2) deceased horses within a “wetlands buffer” on their property; and,

D. The Board had no facts before it to allow it to make a determination as to whether the complained of activity of burying two (2) deceased horses in a “wetlands buffer” constituted a generally accepted agricultural management practice; as, there was no factual evidence that the activity complained of actually occurred.

Based on the foregoing, a motion was made by board member Jay Kandle to dismiss the Complaint of the Complainant, Griffie, that the Hadens buried two (2) deceased horses in a “wetlands buffer” on their property based upon a lack of any factual substantiation for the said claim. That motion was seconded by board member Wally Eachus.

Board members in favor of motion:

Jay Kandle, Joe Randazzo, Wally Eachus, Robert Curtis, Russell Marino, and George Dean.

Board members opposed:

None.

IV. Agricultural activity at issue – Installation of electric fencing.

A. N.J.A.C. 2:76-2A.10 sets forth the standards for equine operations and activities entitled to the protections of the Act, N.J.S.A. 4:1C-1 et seq.;

B. The standards for fencing for equine operations, as set forth in N.J.A.C. 2:76-2A.10, sets out standards for electric fencing; so that electric fences are allowed for use on a “commercial farm”, and there use is then a generally accepted agricultural management practice;

C. The Complainant, Griffie, and the Township of Franklin, have not proffered any concerns, including those related to health and safety of the public, or to the horses maintained by the Hadens on their property, regarding the Hadens’ use of the electric fence installed by them;

D. The Complainant, Griffie, and the Township of Franklin, have not proffered any proofs to the Board that would allow the Board to make a factual finding that the electric fence installed by the Hadens on their property exceeds any standards set forth in N.J.A.C. 2:76-2A.10(f); and,

E. The Hadens have demonstrated that the electric fence installed by them on their property furthers the Hadens’ interest of ensuring that the horses they maintain on their property pose no danger to the public, or to neighboring property.

Based on the foregoing, a motion was made by board member Robert Curtis to dismiss the Complaint of the Complainant, Griffie, since the Hadens use of an electric fence on their property as part of the equine activities on their “commercial farm” is a generally accepted agricultural management practice for such activities. That motion was seconded by board member Joe Randazzo.

Board members in favor of motion:

Jay Kandle, Joe Randazzo, Wally Eachus, Robert Curtis, Russell Marino, and George Dean.

Board members opposed:

None.

Notice: An appeal of this decision of the GCADB by any party may be made to the State Agriculture Development Committee within ten (10) days after receipt of this decision. (N.J.S.A. 4:1C-10.1d; N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.10(b2ii)).

Date: December 30, 2009

BY: _____
West Jay Kandle, III, Vice-
Chairman
Gloucester County Agriculture
Development Board

Date: December 30, 2009

BY: _____
Ken Atkinson, Secretary
Gloucester County Agriculture
Development Board