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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. [ADC52-04](#)

AGENCY DKT. NO. RTF #0818-04

(On Remand from OAL DKT. NO.

ADC 6192-02)

IN RE ANTHONY TAVALARIO

(APPEAL BY TOWNSHIP OF

WASHINGTON, GLOUCESTER

COUNTY OF DETERMINATION

MADE BY GLOUCESTER COUNTY

AGRICULTURE DEVELOPMENT BOARD),

Michael P. Albano, Esq., for petitioner, Township of Washington (Ragonese, Albano & Viola, attorneys)

Anthony Tavalario, respondent, *pro se*

Timothy Chell, Esq., for respondent, Gloucester County Agriculture Board (Chell and Chell, attorneys)

Record Closed: May 30, 2004 Decided: June 8, 2004

BEFORE **EDGAR R. HOLMES**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Township of Washington appealed the decision of the Gloucester County Agriculture Development Board to the State Agriculture Development Committee. The decision appealed from determined that Anthony Tavalario was the operator of a commercial farm pursuant to [N.J.S.A. 4:1C-11](#), *et seq.*, the Right to Farm Act. The matter was transmitted to the OAL on September 5, 2002, to be heard as a contested case pursuant to [N.J.S.A. 52:14B-1](#) to 15 and 14F-1 to 13.

When Tavalario failed to appear, the matter was mistakenly dismissed by the undersigned. The matter was remanded by the Committee to the undersigned on January 8, 2004, because Tavalario, while an interested party, was not the appellant. On the remand, the parties agreed that the matter should be determined solely on the briefs and exhibits filed by the parties. Tavalario also elected to respond. The record closed when all exhibits were received by the OAL.

SUMMARY OF THE RELEVANT FACTS AND LAW

A. Forte subdivided Block 70, Lot 7 on [redacted] in Washington Township, N.J. The subdivision was approved by the Washington Township Planning Board by resolution on November 20, 1990. (See Tavalario Exhibit B). At the time, the property was situated in an agricultural zone. The area of the three lots is 7.45 acres +/-.

Anthony Tavalario purchased the three lots in December 1993. (See Tavalario Statement of Facts). A survey produced for Tavalario prior to the purchase in October 1993, clearly indicates that the premises were used as a farm for horses. (See Tavalario Exhibit D). The survey includes a training track, a paddock, a stallion pen, a pony pen, a lean-to and three-rail fencing. Tavalario purchased the premises in order to use it as a personal residence and horse farm and began to operate a horse farm there. He paid taxes on the property which was qualified as Farmland. (See Tavalario Exhibit C).

Apparently sometime in 1995, the area in which the property is situate was rezoned as residential. (See Township Exhibit B). It is clear Tavalario still operated a horse farm there. As evidence that he operated the farm, Tavalario showed that in 1997, he advertised Nasty Charger standing at stud at his farm in Washington Township. Nasty Charger has career earnings of \$120,454 and was winner of several allowance races at Garden State Park, Philadelphia Park and Monmouth Park. (See Tavalario Exhibit F).

A foal of Nasty Charger, Lady Winsum, was entered in a maiden race at five furlongs on the turf in Virginia for a purse of \$24,000 as recently as July 16, 2002. Tavalario is the owner of the filly. (See Tavalario Exhibit F).

Another foal of Nasty Charger, Son Chant, a gelding, was entered in a maiden/claiming race at the Meadowlands according to an undated racing program listing Son Chant as a Jersey bred owned by Tavalario. (See Tavalario Exhibit F).

In addition, throughout the period of time prior to this application, Tavalario exhibited other indicia that he operated a horse farm. He qualified in 1999 for farm truck plates and farm use plates. (See Tavalario Exhibit J). He sold horses (one for \$8,000 in 2002). He also boarded horses. (See Tavalario Exhibit K). He registered his equine births and deaths with The Jockey Club and paid veterinary bills. (See Tavalario Exhibits L, M and N).

However, on March 4, 1999, the County Board of Taxation concluded that Tavalario discontinued horse farm operations. (See Township Exhibit F).

Whether this prompted Tavalario to seek a variance is not clear. However, he did file an application with the Washington Township Zoning Board for a conditional use variance. While this application was pending, a municipal court matter involving his farm was adjourned by the Municipal Court Judge while Tavalario sought a determination by the Gloucester County Agriculture Development Board.

The information provided to the Board consisted of numerous exhibits and, in addition, the testimony of Tavalario, a veterinarian, the Zoning Officer of the Township, a former member of the State Agriculture Development Committee, the Rutgers Cooperative Extension Agent and five interested neighbors. See *Gloucester County Agricultural Development Procedural History and Statement of Facts*.

The Board concluded that Tavalario met the conditions imposed by the statute which defines a Commercial Farm under the Farmlands Preservation Act.

Commercial Farm means: 1) a farm management unit of no less than 5 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 2) a farm management unit less than 5 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. 4:1C-3.](#)

The principal objection argued by the Township in its request to set aside the Agriculture Board's determination is that Tavalario does not produce agricultural or horticultural products worth \$2,500 or more annually. It also alleges he has not appealed his farmland assessment for 2000 through 2004 and his property is not zoned for a horse farm.

The latter two objections are not fatal to Tavalario's hopes. The purpose of the Act is to preserve farmland against just such legal encroachments as have been practiced here. [N.J.S.A. 4:1C-2b](#) and e.

The larger question presented is whether the County Agriculture Board's determination that Tavalario's ownership of a stallion and his racing stock meet the \$2,500 threshold irrespective of whether they earn stud fees or win at the track in any given year.

The Committee has already signaled that there are circumstances in which the actual harvesting of a crop need not take place annually. The Committee found that "unharvested trees in a forest...can be deemed production of agricultural products when (certain enumerated criteria) have been met..." See *IMO Joseph P. Arno, Monmouth County, OAL Docket No. ADC 4748-03, Final Decision* February 26, 2004.

The criteria set forth in *Arno* are peculiar to timber. This case involves horses. Unlike Dr. Arno, Tavalario was an owner of racing horses before he purchased the property. He did not buy the property in order to become a farmer. The property was used as a horse farm before he bought it. He brought his racing stock to the property. Thereafter, he continued to race and breed horses. Contrary

to the finding of the County Board of Taxation, he continued to breed and race his horses long after 1999.

In this case, the burden of persuasion was on the Township of Washington to prove that the decision of the Gloucester County Agricultural Development Board was unreasonable, arbitrary and capricious.

This is not an arbitrary, capricious or unreasonable interpretation of the statute. It would, for instance, permit livestock to be withheld from unfavorable markets, despite the running of the annual clock. It would give both livestock and timber an opportunity to mature. It would do little to preserve farmland if a farmer was required to take a loss in order to preserve his status under the statute.

CONCLUSION

I **FIND** and **CONCLUDE** that the Township of Washington has failed to show that the action of the Gloucester County Agriculture Board in determining that Tavalario meets the definition of a commercial farm operator pursuant to the statute was unreasonable, arbitrary and capricious.

ORDER

I **AFFIRM** the action of the Gloucester County Agriculture Development Board.

I notice from the exhibits filed by the Township that petitions were circulated and comments were presented to the Zoning Board of Adjustment in opposition to Tavalario's request for a variance. Some raise health and safety issues. While these opinions are not relevant to the issue before the OAL, I note that in case an issue of public health may arise, the statute provides a process to address it. See [N.J.S.A. 4:1c-10.1](#) Filing of Complaint; process.

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 (45) 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 (13) 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.

6/8/04

Date **EDGAR R. HOLMES, ALJ**

Receipt Acknowledged:

MENT

Mailed to Parties:

Date OFFICE OF ADMINISTRATIVE LAW

sd

WITNESSES

For Petitioner:

None

For Respondent:

None

DOCUMENTS IN EVIDENCE

J-1 Tavalario's Brief and Exhibits

J-2 Township of Washington Brief and Exhibits

J-3 Gloucester County Agriculture Board's Brief and Exhibits

J-4 Township's Rebuttal Letter