

RESOLUTION

**RE: Right to Farm Application for Hearing
In the Matter of Marie Bailey and DuBrow's Nurseries, Inc.
Block 42, lot 1.01, Township of Franklin, County of Hunterdon**

WHEREAS:

On August 10, 2009, a Right to Farm ("RTF") Application for Hearing was submitted by Marie Bailey (the Applicant") to the Hunterdon County Agriculture Development Board ("CADB"), along with a summary of the complaint and supporting documents against DuBrow's Nurseries, Inc. (Block 42, Lot 1.01). The Applicant was requesting the CADB to determine whether the use of the property to run a nursery operation along with the off-site landscaping business is an agricultural and / or horticultural activity(s) entitled to Right to Farm protection. The RTF Application summarizes a history of court proceedings involving the uses and zoning of the property. The relevant procedural history is as follows:

1. On October 15, 1996, the Franklin Township Board of Adjustment held that the farmer's nursery operation, along with the off-site landscaping business, were permitted agricultural uses within the R-130 Zone.

2. The applicant appealed the decision of the Franklin Township Board of Adjustment. On May 18, 1998, the New Jersey Superior Court, Law Division upheld Franklin Township's determination as to the farmer's nursery operation, but reversed its determination as to the farmer's off-site landscaping business. (The decision of the lower court was affirmed by the Appellate Division on May 12, 2000.)

3. On November 17, 1998, the farmer applied for and was granted a variance to permit the off premises landscaping operation as an adjunct to the permitted agricultural use of the nursery operation conducted on the property.

4. On May 10, 2001, the New Jersey Superior Court Appellate Division upheld Franklin Township's resolution of November 17, 1998 granting a variance to permit the off premises landscaping operation.

Counsel for the CADB, after having reviewed the application and procedural history, determined the complaint did not set forth any specific activity of the farmer which the applicant contended was inappropriate or of concern. The application did not set forth any new activity which had not already been addressed and adjudicated by the Court and Franklin Township. Therefore, the application was administratively dismissed. On September 2, 2009, County Counsel, on behalf of the CADB sent a letter to the applicant informing her of this determination.

At its September 10, 2009 meeting, the CADB upheld the administrative dismissal and determined that no further action was needed to be taken by the Board, since there was no specific activity of the farmer set forth in the complaint which required an assertion of jurisdiction by the CADB.

**NOW, THEREFORE, BE IT RESOLVED BY THE HUNTERDON COUNTY
AGRICULTURE DEVELOPMENT BOARD AS FOLLOWS:**

1. The Right to Farm Application for Hearing submitted by Marie Bailey against DuBrow's Nurseries, Inc. on August 10, 2009 is hereby dismissed for failure to specify a claim upon which relief can be granted.

2. This determination shall be forwarded to the State Agricultural Development Committee within thirty (30) days, pursuant to N.J.A.C. 2:76-2.3(e).

3. Any person aggrieved by this decision, may appeal to the State Agricultural Development Committee, pursuant to N.J.A.C. 2:76-2.3(f).

Dated: October ____, 2009

PETER MELICK, Chairperson

ITEMS COMPRISING THE RECORD

1. Letter from Marie Bailey to William Millette, CADB Administrator dated August 10, 2009 enclosing a Right-to-Farm Dispute Application against DuBrow's Nurseries, Inc., together with a summary of the complaint and supporting documents.
2. Right-to-Farm Disputes – Application for Hearing dated August 10, 2009 completed by Marie Bailey against DuBrow's Nurseries, Inc.
3. A three page summary of the matter submitted by Marie Bailey dated August 10, 2009 with attached documents as follows:
 - a. Franklin Township Board of Adjustment Resolution on the hearings of the application of DuBrow's Nursery, Inc. dated October 15, 1996.
 - b. Franklin Township Board of Adjustment Resolution on the continued hearing of the application of DuBrow's Nursery, Inc. dated October 15, 1996.
 - c. Superior Court Order signed by Roger F. Mahon, J.S.C dated May 18, 1998 in the matter of Richard and Marie Bailey v. Board of Adjustment of the Township of Franklin and DuBrow's Nurseries, Inc. under Docket No. HNT-L-691-96.
 - d. Appellate Division decision dated April 12, 2000 under Docket No. A-6103-97T5 on appeal by Marie Bailey.
 - e. Franklin Township Board of Adjustment Resolution on the hearings of the application of DuBrow's Nursery, Inc. for a variance dated November 17, 1998.
 - f. Appellate Division decision dated May 10, 2001 under Docket No. A-2712-99T5 on appeal by DuBrow's Nurseries, Inc.
 - g. Appellate Division decision dated January 19, 2007 under Docket No. A-6732-04T1 on appeal by Richard and Marie Bailey of the Tax Court of New Jersey under Docket No. 5508-2004.
4. Letter from Michael A. De Sapio, Esq. to Marie Bailey dated September 2, 2009 regarding her Application and the administrative dismissal of her Complaint.