

April 2, 2007

Richard and Marie Bailey
Pittstown, New Jersey 08867

Re: Rutgers Tree Growers

Dear Mr. and Mrs. Bailey:

Enclosed please find a resolution adopted by the State Agriculture Development Committee (SADC) at its February 22, 2007 meeting in which it affirmed the decision of the Hunterdon County Agriculture Development Board to deny your request for a hearing. At its meeting on March 22, 2007, the SADC approved its minutes from the February meeting.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Marci D. Green
Chief of Legal Affairs

c: Leilani Hershey

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY07R2(23)

**RIGHT TO FARM
APPEAL OF DENIAL OF HEARING BY HUNTERDON COUNTY
AGRICULTURE DEVELOPMENT BOARD**

February 22, 2007

WHEREAS, Rutgers Tree Growers LLC ("RTG") applied to the CADB in June 2006 for a site-specific agricultural management practice recommendation because it intended to construct a retail farm market for the sale of plants, trees and bushes grown on its property in the Township of East Amwell and because it anticipated that the Township might not approve the market;

WHEREAS, the CADB did not hold a hearing on RTG's application, nor did it issue a site-specific agricultural management practice, because RTG and East Amwell reached an agreement regarding the construction of the retail market;

WHEREAS, on November 6, 2006, Marie and Richard Bailey filed a Right to Farm Dispute/ Application for Hearing pursuant to N.J.S.A. 4:1C-10.1 with the Hunterdon County Agriculture Development Board (CADB) regarding RTG in the Township of East Amwell;

WHEREAS, said application requested the CADB to conduct a public hearing "for a decision as to whether Rutgers Tree Growers, LLL (sic) proposal for a 'Retail Farm Market' is a 'Site Specific management Practice' in accordance with the Right to Farm Act. . ."

WHEREAS, the CADB sent a letter to the Baileys on November 16, 2006, stating that RTG and East Amwell Township had advised the CADB that they resolved the issues that prompted the initial filing for Right to Farm protection with the CADB and that there was therefore no basis to conduct a public hearing;

WHEREAS, the CADB further advised the Baileys that it could not identify from the information submitted the specific dispute that the Baileys have with RTG, and gave the Baileys the opportunity to state a specific grievance;

WHEREAS, the Baileys responded by letter dated November 18, 2006, citing: the Borough of Closter v. Abram Demaree, 365 N.J.Super. 338 (App. Div. 2004); various provisions of the Right to Farm Act; a model ordinance for farm markets; the Farmland Assessment Act; and an article from the Star Ledger;

WHEREAS, the CADB gleaned from the Baileys' November 18, 2006 letter that the Baileys had an issue with the fact that retail farm markets are eligible to receive differential property taxation under the Farmland Assessment Act and are generally opposed to the RTG market;

WHEREAS, the CADB denied the Baileys' request for a hearing, stating in a letter dated January 8, 2007, that the CADB does not have the statutory authority to address issues of taxation;

WHEREAS, the Baileys appealed the CADB's denial of their hearing request to the SADC by letter dated January 15, 2007;

WHEREAS, the Right to Farm Act protects qualified commercial farm operations against nuisance complaints and unreasonable municipal regulation, N.J.S.A. 4:1C-9 and 10;

WHEREAS, the Baileys have not stated any claims against RTG in their request for a hearing that identify a nuisance, nor have they identified a specific, personal and legal interest that will be specifically and injuriously affected by the operation or by the denial of a hearing;

WHEREAS, the Baileys live in Franklin Township, RTG's farm market is located in East Amwell Township, and Raritan Township is between Franklin and East Amwell Townships; and

WHEREAS, the Baileys do not live within the immediate vicinity of RTG's farm market.

NOW THEREFORE BE IT RESOLVED, that the SADC finds that the Baileys have not stated any claims against Rutgers Tree Growers, LLC that entitle them to a hearing under the Right to Farm Act.

BE IT FURTHER RESOLVED that although the Right to Farm Act requires persons aggrieved by commercial farm operations to file an action with the appropriate CADB prior to filing an action in court, N.J.S.A. 4:1C-10.1, the Act, when read in its entirety, limits such actions to nuisance complaints and allegations by local government entities of violations of local ordinances, resolutions or regulations.

BE IT FURTHER RESOLVED, that the SADC finds that although the Baileys may be unhappy with the RTG farm market, they are not "persons aggrieved" within the meaning of the Right to Farm Act and do not have standing to contest the farm

market.

-3-

BE IT FURTHER RESOLVED, that the SADC affirms the decision of the Hunterdon CADB to deny the Baileys a hearing regarding RTG's farm market.

BE IT FURTHER RESOLVED, that this action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

DATE

Susan E. Craft, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Charles M. Kuperus, Chairperson	YES
John Flynn (rep. DEP Comm. Jackson)	YES
Courtenay Mercer (rep. DCA Comm. Levin)	ABSENT FOR THIS VOTE
Ralph Siegel (rep. Treas. Abelow)	ABSTAINED
Daniel Rossi (rep. Executive Dean Goodman)	ABSENT
Andrew Borisuk	YES
Peter Bylone, Sr.	ABSENT
John H. Coombs	YES
Gary Mount	YES