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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
GRANTING
SUMMARY DECISION
OAL DKT. NO. ADC 5173-10
AGENCY DKT. NO. SADC ID#1272

TIBOR SIPOS AND CECILY GENTILES,

Petitioners,

v.

HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD,

Respondent.

Mark R. Peck, Esq., for petitioners (Florio, Perrucci, Steinhardt & Fader, attorneys)

Michael A. DeSapio, Esq., for respondent (Law Offices of Gaetano M. DeSapio, attorneys)

Record Closed: October 26, 2011 Decided: December 6, 2011

BEFORE **EDWARD J. DELANOY, JR.**, ALJ:

STATEMENT OF THE CASE

This case involves disposition by the Hunterdon County Agricultural Development Board ("HCADB") of a right-to-farm complaint filed by Dennis H. and Geraldine T. McGill ("McGill") against petitioners Tibor Sipos and Cicily Gentiles ("Sipos") owners of property in Tewksbury Township. McGill lives next to or near the Sipos property. The parties seek through cross-motions for summary decision a determination that the case is ripe for summary decision, and a resolution of the issue of whether petitioners' farm is a commercial farm under the Right-to-Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA"). If Sipos farm is a commercial farm under the RTFA, petitioners should prevail, and if it is not, respondents should prevail.

PROCEDURAL HISTORY

On January 16, 2011, McGill filed a complaint under the RTFA, alleging that roosters on the Sipos property constituted a nuisance and was disturbing the McGill's peaceful enjoyment of their property. The HCADB held a public hearing on March 10, 2011, and based upon the testimony and documentary evidence, decided that Sipos did not satisfy the criteria for commercial farm eligibility in N.J.S.A. 4:1C-3, and thus was not entitled to RTFA protection. The HCADB dismissed McGill's complaint for lack of jurisdiction, and this determination was memorialized by resolution dated April 14, 2011. See Respondent's Brief, Exh. C. Petitioners appealed HCADB's decision to the State Agriculture Development Committee, which transmitted to the Office of Administrative Law ("OAL") where it was filed on May 6, 2011, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On or about October 12, 2011, motions for summary decision were filed by both petitioner and respondent on the issue of whether the Tewksbury parcel is a commercial farm under the RTFA. On October 26, 2011, a reply brief was received from petitioners, and on that date the record closed.

FACTUAL DISCUSSION

Petitioners, who conduct business as Frog Hollow Farm, L.L.C. (Frog Hollow), own a parcel of land located at Block 6, Lot 36.01 in the Township of Tewksbury, County of Hunterdon (Tewksbury parcel) and a parcel of land located at Block 43, Lot 66 in the Township of Washington, County of Morris (Washington parcel). The Tewksbury parcel is 4.8 acres, and the agricultural activity conducted thereon since April, 2010, consists of raising 120 chickens, eight roosters, and five goats. Frog Hollow sells the eggs that are produced by the chickens. The business office for Frog Hollow and petitioners' home are located on the Tewksbury parcel, which is not farmland assessed. The Washington parcel is 141.8 acres and the agricultural activity conducted thereon includes the production, harvesting, and processing of vegetables in connection with Frog Hollow's salsa business, Grandma C's Salsa. The Washington parcel is farmland assessed. Frog Hollow markets Grandma C's Salsa from the Tewksbury parcel. Deliveries for both parcels, including fertilizer and wheat seed, are delivered to the Tewksbury parcel. In 2010, Frog Hollow sold $4,732.26 worth of salsa, vegetables, and eggs.[1] Sipos Cert., ¶ 7.

At the hearing before the HCADB, petitioners testified and submitted documents in support of their contention that the two parcels form a farm management unit that operates as a single enterprise and qualifies as a commercial farm under the RTFA. The HCADB determined that the two parcels did not qualify as a "farm management unit" under N.J.S.A. 4:1C-3 because "it does not appear from the evidence presented that the two parcels operate as a single enterprise." The HCADB further concluded that the Tewksbury parcel could not, by itself, qualify as a commercial farm under the RTFA because the parcel is less than five acres, produces less than $50,000 worth of agricultural products annually, and does not meet the criteria for a farmland

[1] According to the certification of Robert Bonavito, to which HCADB objects, Frog Hollow had a gross income of $10,043 in 2010. I do not know how to reconcile this figure with the $4,732.26 worth of salsa, vegetables, and eggs petitioner Sipos certifies that Frog Hollow sold in 2010. However, I have cited to the $4,732.26 figure because the Right to Farm Act requires a farm management unit to produce $2,500 worth of agricultural products, and the $4,732.26 figure reflects the agricultural products sold by Frog Hollow in 2010.

assessment. Determining that the Tewksbury parcel is not a commercial farm under the RTFA, the HCADB dismissed the complaint against petitioners for lack of jurisdiction.[2]

LEGAL ANALYSIS

Standard for Summary Decision

N.J.A.C. 1:1-12.5, governing motions for summary decision, permits early disposition of a case before the case is heard if, based on the papers and discovery which have been filed, it can be decided "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The provisions of N.J.A.C. 1:1-12.5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. An adverse party does not bear an obligation to oppose the motion, but to survive summary decision, there must be "a genuine issue which can only be determined in an evidentiary proceeding." Ibid. The non-existence of one entitles the moving party to summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). Moreover, even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. "Applying this standard, the ALJ must determine whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." 1106 Ocean Ave. v. Governing Body of Point Pleasant Beach, ABC 4355-02, initial decision, (October 25, 2004) (citing Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 122 (App. Div. 1995)). I am therefore required to do "the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that applies if the matter goes to trial." Brill, supra, 142 N.J. at 539-40. Like the New Jersey Supreme Court's standard for summary judgment, the language for summary decision is designed to "liberalize the standards so as to permit summary [decision] in a larger

[2] The complaint against petitioners was filed by their neighbors, who complained that the roosters on the Tewksbury parcel were/are disturbing them.

number of cases" due to the perception that we live in "a time of great increase in litigation and one in which many meritless cases are filed." Id. at 539 (citation omitted).

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."[3] 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.

[3] The RTFA and its regulations do not define "single enterprise." However, Black's Law defines "enterprise" as "an organization or venture, esp. for business purposes." Black's Law Dictionary 611 (9th ed. 2009).

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).

I. The legislative history of the amendments to the RTFA supports the conclusion that noncontiguous parcels cannot be aggregated to satisfy the eligibility criteria for farmland assessment.

The legislative history of the amendments to the RTFA shows that noncontiguous parcels that form a farm management unit may not be aggregated in order to qualify as a commercial farm.[4] Under the original RTFA, a commercial farm was defined as "any place producing agricultural or horticultural products worth $2,500.00 or more annually,"

[4] There is an absence of case law that addresses this issue.
If a statute is ambiguous, a court can resort to extrinsic aids, including legislative history, in order to determine the legislative intent. Cold Indian Springs Corp. v. Ocean Twp., 154 N.J. Super. 75, 96 (L. 1977), aff'd, Cold Indian Springs Corp. v. Ocean Twp., 161 N.J. Super. 586 (App. Div. 1978), aff'd, Cold Indian Springs Corp. v. Ocean Twp., 81 N.J. 502 (1980). The definitions of "commercial farm" and "farm management unit" are ambiguous.

and had to meet the eligibility criteria for differential property taxation under the Farmland Assessment Act. See former N.J.S.A. 4:1C-3 and -9. (Emphasis added). In its statement to the full Senate regarding the 1998 amendments to the RTFA, the Senate Economic Growth, Agriculture and Tourism Committee explained:

> [t]he [RTFA] was the subject of a comprehensive study conducted by Rutgers University for the Department of Agriculture that included options for improving the act. Subsequently, an Agricultural Right to Farm Task Force was established by the State Board of Agriculture to study the act and to make specific recommendations for its enhancement. This bill would implement the recommendations of the task force.
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> [See Senate Economic Growth, Agriculture and Tourism Committee Statement to Senate, No. 1075 (June 4, 1998), http://law.njstatelib.org/law_files/njlh/lh1998/chap48.htm.]

In a study entitled "Right to Farm Proposal" (April 23, 1996), the State Board of Agriculture (Board) proposed ways to improve the RTFA. In the proposal, the Board stated the following:

> Clearly, based on the study findings [by Rutgers], the definition of a farm in the right to farm statute required examination. Any number of approaches [was] possible. Based on the Board's discussions, it was felt that the definition should be revamped to remove the reference to a farm as a place. Rather, the Board's proposal makes reference to a farm as a 'farm management unit.' In this way, non-contiguous parcels of land, which are part of the same economic enterprise, would be eligible for right-to-farm protections.
>
> ["Right to Farm Proposal," p. 4.]

The Board also proposed that:

> [e]ligible farm management units be those which produce agricultural or horticultural products worth $2,500 or more, removing the requirement related to farmland assessment. This change would base eligibility for right-to-farm protection on the economic contributions of the farm management unit. While those farms with $2500 and 5 acres would continue to be eligible, this allows smaller acreage units which produce

> at the $2500 level or higher to be eligible for right-to-farm protections.
>
> [Ibid.]

The amendments to the RTFA show that the Legislature adopted the Board's proposal regarding noncontiguous parcels, as the word "place" was deleted from the definition of commercial farm and replaced with "farm management unit." N.J.S.A. 4:1C-3. However, the amendments also show that the Legislature did not adopt the Board's proposal to remove the farmland assessment requirement for commercial farms. As amended, N.J.S.A. 4:1C-3 requires a farm management unit of five acres or more to satisfy the eligibility criteria for farmland assessment under the Farmland Assessment Act, N.J.S.A. 54:4-23.1 to -23.24 (FAA). And, while N.J.S.A. 4:1C-3 exempts farm management units less than five acres from the five-acre minimum requirement under the FAA, such a unit must satisfy the other requirements for farmland assessment. Thus, the legislative history of the RTFA reflects the importance of farmland assessment for qualification as a commercial farm.

Moreover, the legislative history does not suggest that the Legislature intended that noncontiguous parcels that form a farm management unit may be aggregated in order to satisfy the farmland assessment requirement for a commercial farm. More particularly, a fair reading of the definitions for "commercial farm" and "farm management unit" does not suggest that a parcel of land that would not otherwise qualify for protection as a commercial farm may be aggregated with another parcel of land that meets the requirements for a commercial farm if the parcels form a farm management unit.

II. The Farmland Assessment Act prohibits the aggregation of parcels in order to satisfy the requirements for differential property taxation. As a result, aggregation is also prohibited under the RTFA.

The FAA, the farmland assessment requirements of which are included in the definition of a commercial farm under the RTFA, prohibits the aggregation of parcels to satisfy the eligibility criteria for farmland assessment. Under the FAA, land must meet certain requirements to be eligible for differential property taxation (farmland assessment): (1) land must be actively devoted to agricultural or horticultural use; (2)

land must be devoted to such use for at least two successive years; and, (3) the area of the land must not be less than five acres. N.J.S.A. 54:4-23.6. The regulations promulgated under the FAA place further restrictions on eligibility for farmland assessment. For example, the regulations provide:

> Where separate, noncontiguous parcels of land in agricultural or horticultural use, in a single ownership, are located in the same taxing district, a separate application for farmland assessment must be made with respect to each parcel. The area of the separate parcels may not be aggregated for the purpose of meeting the five-acre requirement.
> [N.J.A.C. 18:15-3.2(e).]

The FAA regulations do not address noncontiguous parcels located in different taxing districts, but a reasonable inference is that such parcels would similarly require separate applications and may not be aggregated in order to meet the five-acre requirement. Since a farm management unit of more than five acres must satisfy the farmland assessment requirements of the FAA, and the FAA prohibits aggregation, an individual parcel within such a farm management unit cannot qualify as a commercial farm unless the parcel, by itself, is eligible for farmland assessment. This conclusion is strengthened by the different treatment afforded the two definitions of commercial farm under N.J.S.A. 4:1C-3. The Legislature specifically exempted smaller farm management units from the acreage requirement of the FAA. However, the Legislature did not similarly exempt larger farm management units from any of the requirements for farmland assessment. Thus, each noncontiguous parcel within a farm management unit of five acres or more must be eligible for farmland assessment in order to qualify as a commercial farm.

Such an interpretation is bolstered by the SADC's decision in In re Great Swamp Greenhouses, Dkt. No. 1430-04 (December 16, 2004). In that matter, the SADC determined that a farm management unit, Great Swamp Greenhouses, qualified as a commercial farm. The subject property, one of three parcels within the unit, was not farmland assessed. However, the owner certified that, while he had not applied for farmland assessment and did not plan to do so, the property was eligible for farmland

assessment. In finding that Great Swamp Greenhouses qualified as a commercial farm, the SADC stated:

> It is a farm management unit, as defined by the [RTFA]; produces agricultural or horticultural products worth $2,500 or more annually; one component of the farm management unit receives farmland assessment; and the Property at issue which is a component of the farm management unit appears to satisfy the eligibility criteria for differential property taxation pursuant to the [FAA].

Thus, the SADC concluded that an individual parcel within a farm management unit must be eligible for farmland assessment in order to constitute a commercial farm, and by inference, could not aggregate with a farmland assessed parcel to meet the farmland assessment criteria. Importantly, "[t]he interpretation of a statute by the administrative agency charged with its enforcement is entitled to great weight. Nelson v. Bd. of Educ. of the Twp. of Old Bridge, 148 N.J. 358, 364 (1997); N.J.S.A. 4:1C-9.1.

In sum, the prohibition of aggregation under the FAA, the RTFA exemption from the FAA's acreage requirement for smaller parcels, the absence of any exemption from farmland assessment requirements for larger parcels, and the SADC's interpretation of the requirements to qualify as a commercial farm under the RTFA, support the conclusion that an individual parcel cannot be aggregated with another parcel within the same farm management unit in order to satisfy the eligibility criteria for farmland assessment.

III. Frog Hollow, which includes the Tewksbury parcel and the Washington parcel, is a farm management unit. However, the Tewksbury parcel does not qualify as a commercial farm because it is not eligible for farmland assessment.

A. The Tewksbury parcel and the Washington parcel constitute a farm management unit.

While certain documents submitted by petitioners do not conclusively show that Frog Hollow sells eggs that are produced on the Tewksbury parcel, there are other documents that support a finding that eggs are produced and sold from the Tewksbury parcel. First, in the Commercial Farm Certification provided to the HCADB, petitioners stated that the nature of Frog Hollow is "vegetables and livestock." See Sipos Cert.,

Exhibit I. Petitioners did not stipulate on which of their two parcels the livestock was kept. Moreover, Webster's Dictionary defines "livestock" as "animals kept or raised for use or pleasure; *especially*: farm animals kept for use and profit." By merely stating "livestock," petitioners did not clarify in the certification whether the livestock, which could include chickens, was raised for use or pleasure.

Second, in his certification before OAL, Sipos certified that "Frog Hollow Farm produces various agricultural products, including eggs, livestock, vegetables and the production of 'Grandma C's Salsa'" and that "Frog Hollow Farm is presently selling and distributing Grandma C's Salsa, along with livestock, vegetables and eggs." Sipos Cert., ¶¶ 4 and 5. Sipos certified that "[i]n 2010 Frog Hollow Farm made $4,732.26 from sales of salsa, vegetables and eggs." Id. at ¶ 7. He also attached to his certification a spreadsheet showing that Frog Hollow sold $489 worth of eggs in 2010. Sipos Cert., Exhibit G. However, again, Sipos did not stipulate on which parcel the eggs are produced.

While these certifications do not conclusively show that eggs are produced on and sold from the Tewksbury parcel, there is other support for such a finding. According to petitioners, "Mr. Sipos offered unrebutted testimony [before HCADB] that Frog Hollow Farm sold eggs, produced eggs, sold chickens and goats out of the Tewksbury Property." Petitioners' Brief, p. 3, ¶ 12.

Moreover, the HCADB found, and respondents do not contest, that petitioners raise 120 chickens, eight roosters, and five goats on the Tewksbury parcel. This number of chickens would seemingly produce more eggs than one family could consume.

Taken together, the papers support a finding that petitioners sell eggs that are produced on the Tewksbury parcel. And since petitioners sell the eggs produced on the Tewksbury parcel as part of Frog Hollow, the Tewksbury parcel and the Washington parcel, on which vegetables are grown as part of Frog Hollow's salsa business, would constitute a farm management unit because the noncontiguous parcels produce agricultural products and operate as a single enterprise, Frog Hollow.

The conclusion that Frog Hollow is a farm management unit composed of the Tewksbury parcel and the Washington parcel is also supported by the fact that Frog Hollow markets Grandma C's Salsa, which is produced from vegetables grown on the Washington parcel, from the Tewksbury parcel. Moreover, deliveries for both parcels, including fertilizer and wheat seed, are delivered to the Tewksbury parcel.

B. The Tewksbury parcel does not qualify as a commercial farm.

Even though the Tewksbury parcel and the Washington parcel operate as a farm management unit, the Tewksbury parcel does not qualify as a commercial farm because it is not eligible for farmland assessment. The papers submitted by the parties show that the Tewksbury parcel has been a site for agricultural activity for less than two years, and because the FAA requires a parcel to be in agricultural use for at least two successive years, the parcel is not eligible for farmland assessment. And, as discussed above, the FAA and the RTFA prohibit the aggregation of parcels to satisfy the eligibility criteria for farmland assessment, and thus the Tewksbury parcel cannot be aggregated with the Washington parcel to meet the farmland assessment requirement under N.J.S.A. 4:1C-3. As a result, the Tewksbury parcel does not qualify as a commercial farm.

In light of the conclusions reached above, the Tewksbury parcel, though part of a farm management unit, does not qualify as a commercial farm. First, since Frog Hollow sells eggs produced on the Tewksbury parcel and sells vegetables produced on the Washington parcel, the two parcels form a farm management unit because they are noncontiguous parcels that produce agricultural products and operate as a single enterprise, Frog Hollow. However, even though the Washington parcel is farmland assessed, the Tewksbury parcel cannot be aggregated with the Washington parcel in order to qualify as a commercial farm. And, since Frog Hollow has engaged in agricultural activity on the Tewksbury parcel for less than two years, the Tewksbury parcel is not, by itself, eligible for farmland assessment. As a result, I **CONCLUDE** that the HCADB erred in concluding that the Tewksbury parcel and the Washington parcel is not a farm management unit. Notwithstanding, I grant the HCADB's motion for

summary decision because, as a matter of law, the Tewksbury parcel does not qualify as a commercial farm.

CONCLUSION

Respondent's motion for summary decision is **GRANTED** because there is no genuine issue of material fact and because HCADB should prevail as a matter of law. The Tewksbury parcel and the Washington parcel operate as a farm management unit, Frog Hollow, but the Tewksbury parcel is not eligible for farmland assessment. Therefore, the Tewksbury parcel cannot qualify as a commercial farm.

ORDER

I **ORDER** that petitioner's motion for summary decision be **DENIED**, and that respondent's motion for summary decision be **GRANTED.**

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.

12-6-11

DATE

EDWARD J. DELANOY, JR., ALJ

Date Received at Agency: 12/6/11

Date Mailed to Parties: 12/6/11

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