

**RESOLUTION OF THE MIDDLESEX COUNTY AGRICULTURE
DEVELOPMENT BOARD REGARDING THE RIGHT TO FARM
CONFLICT BETWEEN BARTON NURSERY AND ANTHONY
RUSSOMANNO**

WHEREAS, the Barton Nursery (hereinafter the “Barton Nursery”) is a horticulture operation located in the Township of Edison, County of Middlesex, State of New Jersey and more particularly located at _____; and

WHEREAS, Barton Nursery consists of approximately 15 acres, 14.5 acres of which is devoted as a production nursery for flowering plants, shrubs and trees; and

WHEREAS, part of Barton Nursery is located in an Industrial District zone and the remaining portion is located in a Residential District zone, and the Township of Edison has previously approved the horticultural use of the property as a valid nonconforming use; and

WHEREAS, Anthony Russomanno (hereinafter “Russomanno”), the primary complainant in this matter, lives at _____, Edison, New Jersey, which property is located across the street from the rear of Barton Nursery; and

WHEREAS, Jane Serey (hereinafter “Serey”) lives on property on _____ in Edison, New Jersey that is directly adjacent to Barton Nursery and shares a right-of-way with Barton Nursery that provides access to her property; and

WHEREAS, a complaint in lieu of prerogative writ was filed in the New Jersey Superior Court, Law Division, by Russomanno and 15 other individuals against the Edison Township Zoning Board, Joseph A. Bartonek, Joseph A. Barton Realty, and Joemike Realty, Inc.; and

WHEREAS, the Superior Court transferred the complaint to the Middlesex County Agriculture Development Board (hereinafter “MCADB”) pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. (hereinafter the “Act”); and

WHEREAS, on September 19, 2001, Russomanno filed a complaint against Barton Nursery with the MCADB on behalf of himself, Serey and other unidentified neighbors; and

WHEREAS, pursuant to N.J.S.A. 4:1C-10.1(c), the MCADB forwarded the Russomanno complaint to the State Agriculture Development Committee (hereinafter

“SADC”) for a public hearing as the activities disputed in the complaint were not addressed by agricultural management practices as adopted by the SADC; and

WHEREAS, in May 2002, the SADC determined that Barton Nursery did not meet the definition of a commercial farm as defined in the Act; and

WHEREAS, Barton Nursery appealed the SADC’s determination and said matter was transferred to the Office of Administrative Law (hereinafter the “OAL”) for a determination of whether the horticultural operation of Barton Nursery met the Act’s definition of a commercial farm; and

WHEREAS, Barton Nursery appealed the Township of Edison’s denial of farmland assessment and the Tax Court of New Jersey ultimately found that Barton Nursery was entitled to farmland assessment, a verdict that was later upheld by the New Jersey Superior Court, Appellate Division in Joseph L. Bartonek, LLC v. Edison Township, No. A-6898-02T3 (App. Div. November 24, 2004); and

WHEREAS, on August 5, 2005, the OAL issued an Initial Decision in which it remanded the matter to the MCADB for a finding on whether Barton Nursery met the remaining eligibility criteria of the Act; and

WHEREAS, pursuant to the Act, the MCADB re-transmitted the matter to the SADC for a public hearing on the matter; and

WHEREAS, on January 24, 2006, a public hearing was held at the New Jersey Department of Agriculture in Trenton, New Jersey, and at said public hearing all interested parties were provided an opportunity to present testimony; and

WHEREAS, testimony was received on the issues of drainage and wetlands, noise, watering practices and irrigation, odors, trees on neighboring property lines, parking, and wells; and

WHEREAS, subsequent to the public hearing, Cassandra A. McCloud, Esq., the Hearing Officer for the SADC, issued a written hearing report (hereinafter the “Report”) summarizing her findings of fact that Barton Nursery meets the definition of a commercial farm as defined by the Act and thus is entitled to the protections of the Act with respect to the afore-mentioned activities, subject to certain conditions; and

WHEREAS, the SADC adopted the Report during its March 23, 2006 meeting; and

WHEREAS, a copy of the Report was distributed to all members of the

MCADB together with letters from Fred S. Dubowsky, Esq., representing Russomanno, and from Lewis Goldshore, Esq., representing Barton Nursery (hereinafter “Goldshore”); and

WHEREAS, on May 17th, 2006, a public hearing was held by the MCADB on the conflict resolution concerning Barton Nursery and Russomanno; and

WHEREAS, Russomanno and Goldshore appeared before the MCADB during the public hearing and provided testimony to the MCADB; and

WHEREAS, after the public hearing was held, the MCADB discussed the issues raised in the Report as well as received in written and oral testimony.

NOW, THEREFORE, BE IT RESOLVED, that the MCADB finds that Barton Nursery meets the definition of a commercial farm as defined in the Act in that it is a farm management unit in excess of five acres, produces horticultural products worth in excess of \$2,500.00 or more annually, and has satisfied the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; and

BE IT FURTHER RESOLVED, that the MCADB finds that with respect to the complaints presented to this Board by Russomanno that Barton Nursery is entitled to the protections of the Act for the following activities, subject to any conditions set forth below:

1. Drainage and wetlands usage, subject to Barton Nursery being in compliance with all relevant State laws and regulations;
2. Noise;
3. Irrigation practices, provided that Barton Nursery (a) conforms with generally accepted horticultural practices regarding frequency of irrigation, time of day irrigation, and duration of sprinkler use; (b) minimizes the impact of the sprinklers on the right-of-way shared by Barton Nursery and its neighbor, Sereby, to the best of its ability; and (c) is not in violation of any court order addressing the respective rights of the parties regarding the shared right-of-way;
4. Odors;
5. Trees on the property lines; and

6. Parking, contingent upon Barton Nursery insuring that trucks do not obstruct the vision of cars turning onto New Durham Road from the right-of-way that Barton Nursery shares with Seredy, and upon Barton Nursery not being in any violation of any court order addressing the respective rights of the parties regarding the shared right-of-way.

Adopted: May 17, 2006
MIDDLESEX COUNTY AGRICULTURE
DEVELOPMENT BOARD

Peter A. Cantu, Chairman

Attest: _____
George M. Ververiades
Director of County Planning
Middlesex County Planning Dept.