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**INITIAL DECISION**

[OAL DKT. NO. ADC6441-02](#)

AGENCY REF. NO. RTF# 1205-01

**IN RE BARTON NURSERY  
(APPEAL FROM THE DECISION OF  
THE STATE AGRICULTURAL  
DEVELOPMENT COMMITTEE)**

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**Lewis Goldshore, Esq.** for appellant Joseph Bartonek (Goldshore, Cash & Kalac, attorneys)

**Fred S. Dubowsky, Esq.**, for Complainants Jane Seredy, Anthony and Cheryl Russomanno, Arthur and Elizabeth Musicant, Joseph and Eva Moussa, Conchita and Angelito Mendoza, Alma and Anthony Marra, Jyoti and Yogi Shah, Parminder and Avinash Sumal and Nick Banos

**Penny S. Ludman**, Deputy Attorney General, appearing for the State Agricultural Development Committee (Peter C. Harvey, Attorney General of New Jersey, attorney)

Record Closed: August 1, 2005 Decided: August 5, 2005

BEFORE **JOSEPH F. MARTONE**, ALJ:

**STATEMENT OF THE CASE**

Appellants appeal from the preliminary decision of the State Agricultural Development Committee (SADC) dated May 9, 2002, wherein the SADC advised the appellants that their agricultural operation was not a "commercial farm" as defined by the Right to Farm Act because the property does not appear to qualify for differential property taxation pursuant to the Farmland Assessment Act of 1964, [N.J.S.A. 54:4-23.1](#). The SADC therefore concluded that the appellants' property is not eligible for protection under the Right to Farm Act. Appellants then requested a hearing with regard to this determination of the SADC, and the within matter was transmitted to the Office of Administrative Law (OAL) on September 12, 2002, for hearing as a contested case. On October 9, 2002, the matter was assigned to Hon. Steven Reback, ALJ, who scheduled the matter for a number of prehearing conferences in October and December 2002 and March 2003. Because of a disqualifying conflict, the within matter was reassigned to me in March 2003.

I conducted a telephone conference in this matter on April 23, 2003, and scheduled the matter for hearing on December 17, 2003. In the meantime, at a conference held on September 15, 2003, I learned that the Tax Court had determined that appellants' premises were qualified under the Farmland Assessment Act, and therefore, is a "commercial farm" under the Right to Farm Act. However, Edison Township appealed that decision to the Appellate Division. Attorney for appellant requested that the present matter be held in abeyance pending a ruling

by the Appellate Division on the threshold issue of farming qualification. Based on this, I entered an Order of Inactivity awaiting a resolution of the Appellate Division appeal. In the meantime I scheduled additional telephone status conferences, and I was advised on April 15, 2004, that the parties had not yet been given a date by the Appellate Division for oral argument and it was not possible to anticipate when the matter will be finally decided.

At the time of the Appellate Division's decision, it was expected that the Township would apply to the Supreme Court for certification. However, I learned on February 1, 2005, that Edison Township had not petitioned for certification and the Tax Court's determination as to farmland qualification stands. Following this, I was led to believe that the parties would be entering into a stipulation requesting that the SADC direct that this matter be returned to it for a CADB determination of the farmland issue. When this did not occur, I again conferred with the attorneys on August 1, 2005, and indicated that I intended to issue this initial decision. The attorneys agreed to this suggestion and I closed the record in this matter on August 1, 2005.

### **FACTUAL DISCUSSION**

For the purpose of issuing this initial decision, most of the essential facts in this matter are procedural in nature and are not disputed. I have gleaned these facts by reviewing the transmittal from the SADC and the pleadings and other submissions of the parties and the decisions of the Tax Court (C-1) and the Appellate Division (C-2) in related matters.

Based upon the Appellate Division's decision (C-2), it appears that the appellants herein are the owners of an eight acre tract of land designated as Tax lot 4A in Block 21A on the Tax Map of the Township of Edison, located in the R-BB residential zone. Complainants are the owners of contiguous or nearby properties. Complainants herein filed a Complaint in lieu of prerogative writs in the Superior Court of New Jersey, Law Division, Middlesex County. The plaintiffs' therein (complainants herein) central claim in that complaint set forth in the first count is that appellants have used the subject premises for a commercial plant nursery in violation of zoning ordinance standards. By an order dated August 21, 2001, the trial court transferred the matter to the Middlesex County Agricultural Development Board (CADB) pursuant to the Right to Farm Act, *N.J.S.A.* 4:1C-10. By letter dated October 2, 2001, the CADB forwarded the matter to the State Agriculture Development Committee (SADC) for a determination "whether the disputed agricultural operation constitutes a generally accepted operation or practice." By correspondence dated May 9, 2002, the SADC advised the appellants herein that their agricultural operation was not a "commercial farm" as defined by the Right to Farm Act because the property does not appear to qualify for differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A.* 54:4-23.1. The SADC therefore concluded that the subject property is not eligible for protection under the Right to Farm Act. Appellants then requested a hearing with regard to this determination of the SADC, and on September 12, 2002, the within matter was transmitted to the OAL for hearing as a contested case.

In the meantime, the complainants as plaintiffs in the Law Division matter obtained an order on January 21, 2001, transferring the matter from the CADB back to the Law Division. However, upon defendants' motion for reconsideration, the prior order of the trial court was reinstated and the matter was transferred back to the SADC. Complainants then appealed to the Appellate Division from the trial court order of August 21, 2001, and the subsequent order entered sometime in 2002, transferring the matter back to the SADC. On June 20, 2003, the

Appellate Division, with the exception of one issue not relevant to these proceedings, affirmed the trial court's decision. In doing so the Court noted that if the SADC determination is ultimately upheld, the plaintiffs (complainants herein) will obtain the relief they seek in the Appellate Division because the matter will then be referred back to the Law Division by the state agency. If not, "the preemptive decision making process mandated by [N.J.S.A. 4:1C-10.1](#) must be followed `prior to filing an action in court.' " (C-2, slip opinion at page 9).

Based on a June 12, 2003 transcript of a decision in *Bartonek v. Township of Edison* in the Tax Court of New Jersey, Tax Court Docket Nos. 3340-01. 847-02 and 134-03 (C-1), it appears that Joseph L. Bartonek, LLC, the owner of Lots 4A, 3A19 and 2D, Block 21, applied for and had been denied farmland assessment qualification for these four contiguous parcels of land for tax years 2001, 2002 and 2003. In the transcript of the decision in that matter, the Tax Court Judge ruled that farmland assessment be granted for all of the subject premises with the exception of 21,000 square feet of property. A judgment was entered in the matter on August 8, 2003, and the Township of Edison appealed to the Appellate Division on August 26, 2003 (Attachment to C-1). The parties do not dispute that the Township of Edison was unsuccessful in its appeal, and that the subject premises are now farmland qualified.

### **LEGAL DISCUSSION AND ANALYSIS**

This matter arises under the provisions of the Right to Farm Act, [N.J.S.A. 4:1C-1](#) to -10.4. The legislative policy behind the Act is stated in [N.J.S.A. 4:1C-2](#) as follows:

The Legislature finds and declares that:

a. The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;

b. Several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;

c. It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;

d. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;

e. It is the express intention of this act to establish as the policy of this State the protection of 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.

Pursuant to the Act, an owner or operator of a commercial farm may conduct specified agricultural activities notwithstanding municipal ordinances to the contrary if the appropriate county agriculture development board determines that the activities constitute a generally accepted agricultural operation or practice and if other criteria of the Act are met. [N.J.S.A. 4:1C-9](#). The State Agriculture Development Committee has adopted rules for such "site-specific agricultural management practice" determinations. However, [N.J.S.A. 4:1C-9](#) provides that in order to engage in such site-specific agricultural management practices, the commercial farm must meet the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act

of 1964. Thus, whether a farm meets these eligibility criteria is a threshold issue in determining the applicability of the Right to Farm Act.

If so qualified, a commercial farm operator or owner may apply to the CADB in the owner's county for a determination of whether his or her operation constitutes a generally accepted agricultural operation or practice. *N.J.A.C. 2:76-2.3(a)*. The procedure for making such a determination is also set forth in the rule. *Ibid.* Any person aggrieved by a CADB's site-specific agricultural management practice decision may appeal the decision to the SADC. *N.J.S.A. 4:1C-10.2*; *N.J.A.C. 2:76-2.3(f)*. Unless the CADB's determination is appealed to the SADC the CADB's decision is binding. *N.J.A.C. 2:76-2.3(f)2*.

The Legislature has given to the CADB the responsibility of making site-specific agricultural management practice determinations because of their agricultural knowledge and expertise. Each CADB consists of seven voting members who are residents of the county, four of whom are actively engaged in farming, the majority of whom own a portion of the land they farm, and three of whom represent the general public. Three non-voting members also serve on the CADB: a representative of the county planning board, a representative of the local soil conservation district and the county agent of the New Jersey Cooperative Extension Service.

In *Township of Franklin v. Hollander*, [172 N.J. 147](#) (2002), the New Jersey Supreme Court held that the Right to Farm Act preempts municipal land use authority over commercial farms. It pointed out that the Legislature has reposed trust in the County Agricultural Boards and the State Agricultural Development Committee to make the appropriate decisions in respect of whether the operation of a commercial farm implicates agricultural management practices, and, if so, whether those practices affect or threaten public health and safety.

In the present matter, the Tax Court of New Jersey has ruled that appellants' premises meet the eligibility requirement of the Farmland Assessment Act of 1964. Thus, this threshold issue in determining the applicability of the Right to Farm Act has been decided in favor of appellants. Under these circumstances, the appellants herein are entitled to a determination by the CADB whether its operation constitutes a generally accepted agricultural operation or practice pursuant to *N.J.A.C. 2:76-2.3(a)*. Any person aggrieved by the CADB's decision may appeal that to the SADC.

Under these circumstances, it is my opinion that this matter should be returned to the SADC for remand to the CADB in order that the CADB may hear and decide the issue whether appellant's operation constitutes a generally accepted agricultural operation or practice. Accordingly, I intend to issue this initial decision returning this matter to the SADC for appropriate determination. This would conform with the pronouncement by the Appellate Division that the preemptive decision-making process mandated by [N.J.S.A. 4:1C-10.1](#) must be followed prior to filing an action in court. I should note for the record that at the telephone conference call of August 1, 2005, all of the participants agreed that this would be the appropriate step to be followed in this matter.

### **DECISION AND ORDER**

For the reasons stated above, I **ORDER** that this matter is hereby returned to the State Agricultural Development Committee with the recommendation that it remand the matter to the County Agricultural Development Board

for an appropriate hearing and determination on the issue whether appellant's operation constitutes a generally-accepted agricultural operation or practice, pursuant to *N.J.A.C. 2:76-2.3(a)*.

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.

August 5, 2005

Date **JOSEPH F. MARTONE**, ALJ

Receipt Acknowledged:

Date STATE AGRICULTURE DEVELOPMENT COMMITTEE

Mailed to Parties:

Date OFFICE OF ADMINISTRATIVE LAW

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## **APPENDIX**

### LIST OF EXHIBITS

#### **By the ALJ:**

C-1 Transcript of decision June 23, 2003 in *Bartonek v. Township of Edison*,

*Tax Court of New Jersey*, Docket Nos. 3340-01; 847-02 and 143-03

C-2 Appellate Division decision dated June 20, 2003 in *Seredy et al. v. Edison*

*Township Zoning Board, et al.*, Docket No. A-4656-01T3, with Notice

of Appeal attached

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