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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 743-08

AGENCY REF. NO. SADC #649

RUSSELL F. BOHLIN,

Petitioner,

v.

BRICKYARD, LLC.,

Respondent.

Russell F. Bohlin, petitioner, pro se

Mark M. Roselli, Esq., for respondent (Roselli Griegel, attorneys)

Record Closed: September 17, 2009 Decided: September 29, 2009

BEFORE JOSEPH F. MARTONE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case involves premises owned by Brickyard, L.L.C., located in the Township of Howell and described as Block 224, Lots 10, 17, 17.01, 17.02, 28, 29, 30, 31 and 32. Petitioner and 62 other individuals filed complaints with the Monmouth County Agriculture Development Board pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. alleging that the activities on the premises were not conducted for agricultural purposes, but for the purpose of residential development. The Township of Howell also alleged that Brickyard's activities violated municipal ordinances. The Board forwarded the matter to the State Agriculture Development Committee for a hearing pursuant to the provisions of N.J.S.A. 4:1C-10.1 and the Committee issued findings on June 25, 2007, which it forwarded to the Board. The Board then held a hearing and issued a decision on November 7, 2007, and petitioner Bohlin appealed the Board's decision to the State Agriculture Development Committee on December 19, 2007. The Board then transmitted this matter to the Office of Administrative Law (OAL) on February 21, 2008, for hearing as a contested case. The matter was assigned to me on March 12, 2008, and conferences were conducted in June, July and December 2008. In the meantime, I entered an Order on June 30, 2008, dismissing the Township of Howell

and the Monmouth County Agriculture Development Board as parties, pursuant to their motion. The matter was scheduled for hearing on June 1 and 2, 2009, but that was adjourned because of a court conflict on the part of attorney for respondent. The matter was rescheduled for September 17, 2009. On that date, attorney for respondent submitted a motion to dismiss for lack of jurisdiction based on late filing and the motion was granted at the hearing.

FACTUAL DISCUSSION

The essential facts relating to this matter and relating to respondent's motion to dismiss are not disputed. On October 3, 2007, the Monmouth County Agriculture Development Board made a determination with respect to the within case, and on November 7, 2007, it adopted a resolution memorializing its decision. By letter dated November 9, 2007, the Farmland Preservation Program Coordinator sent a letter to all interested parties providing a copy of the November 7, 2007, resolution of the Board.

On December 19, 2007, the petitioner, Russell F. Bohlin, filed a Notice of Appeal with the New Jersey State Agriculture Development Committee appealing the decision of the Monmouth County Agriculture Development Board memorialized in the resolution of November 7, 2007. Attached to the Notice of Appeal was a copy of the November 9, 2007, letter of the Board's Farmland Preservation Program Coordinator.

It is noted that the November 9, 2007, letter states, "Per State statute, a concerned party has 45 days from the date the resolution was memorialized to file an appeal with the State Agriculture Development Committee". At the hearing of this matter, petitioner's undisputed statement was that he relied upon this letter in submitting his appeal within 43 days of the November 9, 2007, letter.

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](#) and includes the retention of agricultural activities and essential farm practices to serve the best interests of all citizens of this State. The Right to Farm Act preempts municipal land use authority over commercial farms subject to consideration of the impact of such practices on legitimate local public health and safety concerns. [Township of Franklin v. Hollander](#), [172 N.J. 147](#), 150-151 (2002).

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](#). Any person aggrieved by a county agriculture development board's site-specific agricultural management practice decision may appeal the decision to the State Agriculture Development Committee. [N.J.S.A. 4:1C-10.2](#); [N.J.A.C. 2:76-2.3\(f\)](#). Unless the county agriculture development board's determination is appealed to the State Agriculture Development Committee the board's decision is binding. [N.J.A.C. 2:76-2.3\(f\)2](#).

[N.J.S.A. 4:1C-10.1\(d\)](#) provides:

Any person aggrieved by the decision of the county board shall appeal the decision to the committee within 10 days. The committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

The above statutory provision is mirrored by the regulations found at [N.J.A.C. 2:76-2.10\(b\)\(2\)\(ii\)](#), which provides:

Any person aggrieved by the decision of the board shall appeal the decision to the Committee within 10 days of the receipt of the board's final decision. The Committee shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, [N.J.S.A. 52:14B-1 et seq.](#), and the Uniform Administrative Procedure Rules, [N.J.A.C. 1:1](#), and make a determination within 90 days of receipt of the petition for review.

In [Schaible Oil Co. v. New Jersey Dept. of Env'tl. Protection](#), [246 N.J. Super. 29](#) (App. Div. 1991), certif. denied, [126 N.J. 387](#) (1991), the appellant oil company filed an appeal five days after the expiration of the twenty-day time limit for appeal established by [N.J.S.A. 58:10A-10\(d\)](#) and [N.J.A.C. 7:14-8.4\(b\)](#). The Court held:

The statutory time limitation for requesting an adjudicatory hearing is mandatory and jurisdictional. Firmly embedded in our law is the principle that "[e]nlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature ... and not with the agency or the courts. [Citations omitted.]"

[[Schaible Oil Co.](#), *supra*, [246 N.J. Super.](#) at 32.]

The [Schaible](#) court relied on the holding in [Scrudato v. Mascot Sav. & Loan Ass'n.](#), [50 N.J. Super. 264](#), 269 (App. Div. 1958):

Where a statute sets up precise time limits within which an aggrieved party may seek recourse to administrative adjudication, those limits have been held mandatory and not subject to relaxation. The agency is without power to waive them and proceed to hearing and determination notwithstanding noncompliance.

Other cases with similar holdings include [Borough of Park Ridge v. Salimone](#), [21 N.J. 28](#), 47 (1956), affirming [36 N.J. Super. 485](#) (App. Div. 1955), (appeal to Civil Service Commission by removed employee must be within ten days per [N.J.S.A. 11:15-4](#)); [Kaske v. State](#), [34 N.J. Super. 222](#), 226 (App. Div. 1955) (unemployment compensation appeal from Appeal Tribunal's decision, or action taken on Board of Review's own motion, limited to within ten days per [N.J.S.A. 43:21-6\(c\)](#) and (e)); [Borgia v. Board of Review](#), [21 N.J. Super. 462](#), 467 (App. Div. 1952) (seven-day limit to appeal determination of eligibility for disability benefits per [N.J.S.A. 43:21-6\(b\)\(1\)\(c\)](#)).

Based upon the foregoing cases, it is clear that filing an appeal within the statutorily mandated timeframe is a jurisdictional prerequisite. Therefore, if an appeal is not filed within time, an administrative agency has no jurisdiction to hear the appeal as a contested case.

It must be acknowledged that it appears to be patently unfair to a non-attorney individual such as the petitioner in this case, to dismiss his appeal when he relied upon the guidance given by a representative of the County Board. Notwithstanding this appearance of unfairness, it is clear that neither

the Board representative nor any other individual, no matter what their position, has the authority to extend the time for appeal as mandated by the Legislature.

Based upon the foregoing, I CONCLUDE that because the petitioner's appeal in this matter was filed out of time, neither the State Agriculture Development Committee nor the OAL have jurisdiction in this matter and the case must be dismissed.

DECISION AND ORDER

For the reasons stated above, I hereby ORDER that petitioner's appeal in this case is DISMISSED as having been filed out of time.

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.

September 29, 2009

DATE **JOSEPH F. MARTONE**, ALJ

Date Received at Agency: September 29, 2009

Date Mailed to Parties: September 29, 2009

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