

**RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
IN THE MATTER OF A COMPLAINT
AGAINST CURRY FARMS**

Mr. Geran offered the following motion and moved its adoption:

WHEREAS, the Monmouth County Agriculture Development Board (“the Board”) determines that a Complaint against Curry Farms raised issues that involved activities that may not be clearly defined as Generally-Accepted Agriculture Management Practices and that, therefore, the Board was required, by State statute, to refer the entire matter to the State Agriculture Development Committee (hereinafter the “SADC”) for its advisory recommendations; and

WHEREAS, Cassandra A. McCloud, Esq., Legal Affairs Specialist (“Hearing Officer”), for the SADC, held a Hearing on July 24, 2007; and

WHEREAS, the Hearing Officer issued a Hearing Report, dated April 25, 2008 (annexed hereto as Exhibit D); and

WHEREAS, in the Hearing Report, the Hearing Officer concluded that there was not enough documentary evidence to prove that Curry Farms produces agricultural and/or horticultural products worth \$2,500 or more annually, which is the minimum necessary to be considered a commercial farm; and

WHEREAS, the Hearing Officer found that, since Curry Farms did not meet the definition of a commercial farm, it was, therefore, not entitled to receive protection under the Right To Farm Act; and

WHEREAS, the Hearing Officer did not address the issues raised in the original Complaint against Curry Farms; and

WHEREAS, the Hearing Officer referred the matter back to the Monmouth County Agriculture Development Board for its consideration of the Advisory Opinion of the SADC; and

WHEREAS, a Hearing was held on July 3, 2008, due notice of said meeting having been given in accordance with New Jersey Statutes and the Open Public Meeting Act, and a quorum of the Board being present; and

WHEREAS, the Board received into evidence the SADC Hearing Report (annexed hereto as Exhibit D); and

WHEREAS, the Board received sworn testimony from Warren Curry; and

WHEREAS, the Board received into evidence a sworn affidavit from Mary Lu Lucey, dated June 23, 2008 (annexed hereto as Exhibit A); and

WHEREAS, the Board received sworn testimony from David C. Marcks; and

WHEREAS, the Board received into evidence the notarized receipts for the sale of livestock from the Livestock Co-Operative Auction Market Assn. of North Jersey, Inc., all dated December 11, 2007 (annexed hereto as Exhibit B); and

WHEREAS, the Board received sworn testimony from Wendell Nanson; and

WHEREAS, the Board received sworn testimony from John M. Costigan; and

WHEREAS, the Board received unsworn comments from the Complainant, Michael Campbell; and

WHEREAS, the Board received sworn testimony from Russell Bohlin;

NOW, THEREFORE, the Board makes the following independent findings with reference to the SADC Hearing Report:

Background

1. The Board unanimously agrees with *Section I. Background* of the SADC Hearing Report and hereby incorporates it into this Resolution.

Procedural History

2. The Board unanimously agrees with *Section II. Procedural History* of the SADC Hearing Report and hereby incorporates it into this Resolution.

Threshold Eligibility Criteria

3. The Board unanimously agrees with *Section III. Threshold Eligibility* of the SADC Hearing Report, with the sole exception of the last sentence of that Section that concludes that Curry Farms does not meet the definition of a commercial farm, and hereby incorporates the balance of the Section into this Resolution.

Value of Agricultural/Horticultural Products

4. The Board is appropriately appreciative of the detailed analyses presented by the Hearing Officer with respect to the various sources of income reported in the Hearing testimony and documentation submitted by Curry Farms.

5. Nonetheless, the Board finds that the Hearing Officer's references to sources of income from the years 2004, 2005, and 2006 are not relevant to the issue of whether Curry Farms had sufficient income to meet the definition of a commercial farm in 2007.

6. The Board finds that the relevant period for analyzing the annual income of Curry Farms is the 2007 period.

7. The Board agrees with that portion of the analysis, on Page 4 of the Hearing Report, concerning the imputed income from "permanent pasture" land, and hereby incorporates that part of the Hearing Report into this Resolution.

8. The Board finds that the analysis of the 2005 Profit or Loss From Farming, Schedule F, is not relevant to the commercial farm analysis for the 2007 period.

9. The Board finds that the Hearing Officer's reliance on a Bill of Sale, dated June 20, 2005, for a horse sold to Joseph Donato of Howell, New Jersey is not relevant to the commercial farm analysis for the 2007 period.

10. The Board finds that the Hearing Officer's reliance on three (3) invoices for cattle sales to New Holland Sales Stables, Inc., dated in 2004, 2005, and 2006 are not relevant to the commercial farm analysis for the 2007 period.

11. The Board finds that the sworn testimony of Warren Curry was sufficiently credible to find that he did have a valid verbal agreement with David C. Marcks, of many years standing, that profits from the sale of cattle, once they reached maturity and were deemed unfit for the team-penning activity, and some of the horses, would be split equally, after the deduction for Mr. Marck's original investment in the individual calf or young horse.

12. The Board finds that the existence of verbal agreements for the division of proceeds is a common course of dealing practiced amongst farmers.

13. The Board agrees with that portion of the Hearing Officer's analysis, on Page 6, that deals with the *purchase* of four (4) calves on July 31, 2007, which the Hearing Officer appropriately did not include in the income analysis, and hereby incorporates that portion of the Hearing Report into this Resolution.

14. The Board finds that the references to four (4) horse sales in 2005 and 2006, on Pages 6 and 7 of the Hearing Report, are not relevant to the commercial farm analysis for the 2007 period.

15. The Board finds that the sworn testimony of Mr. Curry concerning the 2007 sale of a horse to Jennifer Krimko of Oakhurst, New Jersey for \$3000.00, which horse was named "Schmolkin," was credible, even in the absence of a Bill of Sale or invoice, as the Board acknowledged that, in their professional experience, such sales were often not required to have such documentation, and that such non-documented sales are common in the course of dealing in the equine industry.

16. The Board finds that the sworn Affidavit of Mary Lu Lucey, annexed hereto as Exhibit A, evidencing the fact of a sale of a horse to her late husband for \$2500.00 in 2005, while credible, is not relevant to the commercial farm analysis for the 2007 period.

17. The Board finds that the sworn corroborating testimony of David C. Marcks was sufficiently credible to find that he did have a valid verbal agreement with Warren Curry, of many years standing, that profits from the sale of cattle, once they reached maturity and were deemed unfit for the team-penning activity, and some of the horses, would be split equally, after the deduction for Mr. Marck's original investment in the individual calf or young horse.

18. The Board finds that the sworn testimony of David C. Marcks was sufficiently credible to find that the three (3) receipts from the sale of livestock, described as "Cattle from Curry Farms", all dated December 11, 2007, totaling \$6,330.14 (annexed hereto as Exhibit B), were subject to the verbal agreement between Mr. Curry and Mr. Marcks such that the proceeds of such sales were split among the two individuals.

19. The Board finds that the sworn testimony from Mr. Wendell Nanson of Freehold, New Jersey, who was referenced in the Hearing Report on Page 6 as being unavailable by phone, as credible with respect to his purchase of a horse from Warren Curry in 2005, and the Board accepted his copy of the receipt for such sale as valid (annexed hereto as Exhibit C), but such dated evidence was deemed to be not relevant to the commercial farm analysis for the 2007 period.

20. The Board finds that the sworn testimony of John M. Costigan, the Howell Representative to the Monmouth County Agriculture Development Board, attesting to the character and truthfulness of Warren Curry to be credible.

21. The Board finds it appropriate to admonish Mr. Curry to keep definitive records in the future to establish that Curry Farms meets the continuing annual requirement of providing documentary evidence to meet the definition of a commercial farm.

NOW, THEREFORE, BE IT RESOLVED that, based upon the aforesaid findings of fact and conclusions of law, the Monmouth County Agriculture Development Board finds the following:

1. That, with specific reference to Findings in 7, 15, and 18 above, Curry Farms meets the annual requirement of agricultural and/or horticultural products worth \$2500 or more for the 2007 period and, therefore, the Board finds that Curry Farms meets the statutory definition of a commercial farm.

2. That Curry Farms is admonished to keep definitive records in the future to establish that Curry Farms meets the continuing annual requirement of providing documentary evidence to meet the definition of a commercial farm.

3. The Board directs that this Resolution be forwarded to the SADC, along with the original Complaint, for a public hearing pursuant to N.J.S.A. 4:1C-10.1(c), for its advisory determination on whether the disputed activities qualify as approved Agricultural Management Practices.

Seconded by Mr. Halka and adopted on a roll call by the following vote:

	YES	NO	ABSTAIN	ABSENT
Mr. Bullock				X
Mr. Buscaglia			X	
Mr. DeFelice				X
Mr. Geran	X			
Mr. Giambrone	X			
Mr. Halka	X			
Mr. McCarthy	X			
Mr. Potter	X			
Mr. Puglisi	X			
Mr. Stuart	X			

I certify that foregoing is a true copy of the Resolution of the Monmouth County Agriculture Development Board, duly adopted at a regular meeting of the Board on July 3, 2008, and memorialized on August 6, 2008.

Richard Obal, Secretary