

April 28, 2008

(via overnight mail)

Michael Campbell

07727

Warren Curry
Curry Farms

07727

Re: Conflict Resolution
Curry Farms
Farmingdale, Monmouth County
Aggrieved Party: Michael Campbell
SADC ID #768

Dear Gentlemen:

Enclosed please find a copy of the hearing report in the above-captioned matter. The State Agriculture Development Committee (SADC) adopted the report and the recommendations set forth therein at its meeting on April 25, 2008.

By copy of this letter, and pursuant to N.J.S.A. 4:1C-10.1c, the SADC is forwarding a copy of the hearing report to the Monmouth County Agriculture Development Board (CADB). The CADB is required to hold a public hearing and issue its findings and recommendations within 60 days of receipt.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Cassandra A. McCloud, Esq.
Legal Affairs Specialist

Enclosure

c: Harriet Honigfeld, Monmouth CADB

**State Agriculture Development Committee
Right to Farm Conflict Resolution**

Hearing Report

Farm Operator: Curry Farms/Warren Curry
Howell Township, Monmouth County

Aggrieved Party: W. Michael Campbell

Date of Hearing: July 24, 2007

I. Background

Curry Farms (hereinafter “Curry Farms” or “the farm”) is an equine and beef cattle operation located on [redacted] in Howell Township, Monmouth County. The farm is located in an agriculture rural estate zone where agriculture and/or horticulture are a permitted use. Warren Curry has owned and operated Curry Farms for the past 26 years. The farm consists of approximately 12 acres and includes a horse barn with stalls, an arena and a series of paddocks. Mr. Curry lives in a farmhouse on the property with his wife, Ruth.

Approximately 8 acres are devoted to permanent pasture for horses and cows, 3 acres are devoted to equine boarding, rehabilitation and training, and 1 acre is used for the farmhouse. Curry Farm engages in breeding and raising horses and cattle, training horses for dressage and events, training future horse trainers and teaching riding lessons. The cattle are also used for “team penning” events in the Curry Farms arena; the cattle are sold when they become too large. Team penning is a timed competition in which a horseback rider steers a randomly drawn numbered cow away from its herd and into a pen without touching the animal.

The complainant, W. Michael Campbell (hereinafter “Campbell”), lives on [redacted] where an approximate 93 foot long portion of his rear property line abuts the

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rear of Curry Farms. Howell Township has a Right to Farm Ordinance that requires purchasers of improved property adjacent to an active farm must construct and maintain a minimum 50 foot buffer on the non-farm side of the property line. (Howell Township Ordinance 31-3/Exhibit A). Mr. Campbell's residence was built in 2001. There is no buffer that separates the Campbells from the Currys other than woods. (Exhibit B). This matter involves a dispute between these adjoining landowners regarding the team penning events that take place on Curry Farms during the spring, summer and fall.

II. Procedural History

A request for Voluntary Mediation was submitted to the New Jersey Agricultural Mediation Program by Mr. Campbell in September 2006 and the Currys consented. The first mediation session took place on October 17, 2006 resulting in a temporary agreement/action plan agreed to by Campbell and the Currys. (Exhibit C). Mr. Campbell and the Currys reconvened on December 12, 2006 for another session, but no agreement was reached. (Exhibit D).

In March 2007, Mr. Campbell filed a Right To Farm complaint with the Monmouth County Agriculture Development Board (hereinafter "MCADB"). The complaint contained three allegations which are set forth in Section IV of this report. The MCADB forwarded the complaint to the State Agriculture Development Committee (hereinafter "SADC") for a public hearing pursuant to N.J.S.A. 4:1C-10.1(c), as the disputed activities in the complaint are not addressed by agricultural management practices adopted by the SADC. (Exhibit E). The SADC held the public hearing on July 24, 2007.

III. Threshold Eligibility Criteria

To receive the protections of the Right to Farm Act (hereinafter "Act" or "RTFA"), a farm must meet the definition of "commercial farm" as set forth in the Act. A

“commercial farm” is defined as “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.” N.J.S.A. 4:1C-3. In addition, the farm must be located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or the commercial farm must have been in operation as of the effective date of the RTFA amendments (July 2, 1998). Mr. Curry certified to the SADC that his property is five acres or more, produces agricultural and/or horticultural products worth \$2,500 or more annually, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964. N.J.S.A. 54:4-23.1, et seq. (Exhibit F).

I find that Curry Farms is a farm management unit in excess of five acres, that it has satisfied the eligibility criteria for differential property taxation pursuant to the farmland assessment act and that it also meets the other threshold criterion, as the farm has been in operation since 1982. However, I do not find sufficient credible evidence to prove that Curry Farms produces agricultural and/or horticultural products worth \$2,500 or more annually, and thus conclude that the farm does not meet the definition of “commercial farm”.

IV. Value of Agricultural/Horticultural Products

On page 2 of Mr. Curry’s “Commercial Farm Certification Form”, he states in paragraph 5 that his annual gross receipts from his commercial farm are approximately \$35,423. Mr. Curry submitted a letter and six (6) pages of attachments in support of his certification form: 2006 Farmland Assessment Application, 2005 IRS Profit or Loss From

Farming Schedule F Form 1040, cattle sales for 2004, 2005 and 2006 at the New Holland Sales Stables, Inc. and a bill of sale for a horse and the training of same.

The 2006 application for Farmland Assessment lists Warren and Ruth Curry as the owners of 1 _____ and is signed by Warren W. Curry on the signature line provided for an individual or co-owner. In the section entitled "Actively Farmed Land", Mr. Curry lists eight (8) acres under permanent pasture. Permanent pasture is land that is not cultivated because its maximum economic potential is realized from grazing or erosion control programs. Income is then imputed to land for grazing. According to the State of New Jersey's 44th Report of the State Farmland Advisory Committee, Productivity Values for 2008 Tax Year, in Monmouth County, the imputed values for grazing would range as low as \$106 for very poor farmland soil to \$114 for very productive farmland soil. For the eight (8) acres of permanent pasture owned by the Curry's, the imputed value for grazing would therefore range from \$848 to \$912.

The 2005 Profit or Loss From Farming, Schedule F lists Warren Curry as the proprietor, includes livestock and horses boarded as the principal product/activity for the 2005 tax year and designates "cash" as the accounting method. Schedule F is divided into two parts – Part 1 – Farm Income and Part 2 – Farm Expenses. Parts 1 and 2 must be completed if the "cash" method is used. The instructions for Part 1 state that the sales of livestock held for draft, breeding, sport or dairy purposes are not to be included in this section but on Form 4797. Part 1 consists of 11 sections. Sections 1 and 2 were left blank, while Sections 3 through 9 all contained zeros. Section 10, other income including federal and state gasoline or fuel tax credit or refund, and Section 11, Gross income, each contained an entry of \$35,423 but no further breakdown in support of his certification form. Part 2 consists of Sections 12 through 37. The instructions state that personal or living expenses

on a home are not to be included. Mr. Curry included the following expenses: \$1,932 – car and truck expense, \$874 – depreciation, \$20,586 – feed, \$345 – gasoline, fuel and oil, \$2,680 – insurance, \$1,022 – repairs and maintenance, \$1,537 – supplies, \$2,002 – taxes, \$158 – veterinary, breeding, medicine and other expenses which included \$185 – legal and professional fees, \$350 – horse expo, \$2,274 – fences, \$1,080 – portable toilets. All of Mr. Curry's expenses totaled \$35,025, leaving Curry with a profit of \$398.

The bill of sale of a horse is found on Curry Farms letterhead dated June 20, 2005. Curry Farms sold a three (3) month old filly named Davi for \$1,000 to Joseph Fortunato of Howell, NJ. The bill states that the horse is to be kept at Curry Farms for weaning and training and that the details are to be negotiated between Mr. Fortunato and Mr. Curry in the future. The bill of sale is signed by Warren Curry with a note stating “paid in full” initialed by Mr. Curry.

There are three (3) invoices for cattle sales to New Holland Sales Stables, Inc. for 2004, 2005 and 2006. The name that appears on all three (3) invoices as seller is “David C. Marcks” or “Dave Marcks”. The bottom right hand corner of each invoice bears a stamp stating Curry Farms and its mailing address. The invoice dated December 12, 2004 shows the sale of four cows and two (2) bulls for \$2,137.75. The invoice dated December 1, 2005 shows the sale of 17 cows for \$5,858.00. The invoice dated September 6, 2006 shows the sale of 12 cows for \$5,474.15. Mr. Marcks testified during the hearing on July 24, 2007 in support of Curry Farms. It was discovered after the hearing that Mr. Marcks stated on the attendance sheet that his affiliation with Curry Farms was that of a “friend/partner”. There was no testimony during the hearing regarding Mr. Marcks' affiliation as a partner with Mr. Curry or Curry Farms.

The Hearing Officer recently telephoned Mr. Curry and asked him to explain the “partnership” relationship between Curry and Marcks. Mr. Curry stated that there was no formal agreement between himself and Mr. Marcks because they were friends and the partnership was created with a handshake. He stated further that their partnership agreement involved the cattle and some of the horses. Mr. Marcks would purchase the cows while Mr. Curry cared for and fed them on his farm. By housing the cows at Curry Farms at no cost to Mr. Marcks, Mr. Curry was able to use the cows all season for his team pennings. When the cows were large enough to sell, Mr. Marcks would sell the cows and keep the profit. Any money made from the team pennings went directly to Mr. Curry.

During the hearing on July 24, 2007, Mr. Curry testified that he had recently sold some of his livestock. The Hearing Officer asked Mr. Curry to forward receipts proving the sales. On August 17, 2007, the Hearing Officer received an undated letter from Mr. Curry on Curry Farms letterhead and a receipt from Cowtown Auctioneers, Inc. dated July 31, 2007. The receipt from Cowtown Auctioneers shows that Warren Curry *purchased* four (4) calves for one thousand three hundred twenty-seven dollars and fourteen cents (\$1,327.14) on July 31, 2007.

Mr. Curry’s undated letter also listed five (5) horse sales that occurred from 2005 through 2007. Mr. Curry claims that he sold a horse in 2005 to Wendel Nanson of Freehold for \$1,800.00, Wayne Lucey of Howell Township for \$2,500.00 and a horse to Joe Gleason of Texas for \$3,000.00. The Hearing Officer called the number provided for Mr. Nanson and left a message on an unidentified woman’s voicemail requesting a return call if the message was left in error. To date, there has been no response to the message. No telephone numbers were given for Mr. Lucey or Mr. Gleason, thus the Hearing Officer was unable to verify those alleged sales.

In 2006, Mr. Curry claimed to have sold a horse to Jack Soden of Deltona, Florida for \$3,000.00. The Hearing Officer spoke to Mr. Soden and was told that the horse was purchased from Dave Marcks, not Warren Curry, as the result of attending team penning at Curry Farms.

In 2007, Mr. Curry allegedly sold a horse to Jenifer Krimko of Oakhurst for \$3,000.00. The number provided for Ms. Krimko was a fax machine.

V. Conclusion

Upon reviewing all of the documents Mr. Curry submitted to prove his farm produces agricultural or horticultural products worth \$2,500 or more, I make the following conclusions:

1. For 2004, Mr. Curry failed to provide documentation that he produced agricultural or horticultural commodities worth \$2,500 or more. The sole invoice presented for 2004 was that of Dave Marcks' sale of cattle through New Holland Sales Stables, Inc. on December 12, 2004 for \$2,137.75. Using the 2008 imputed grazing value of \$848 (for very poor farmland soil) or \$912 (for very productive farmland soil), Mr. Curry failed to provide the needed additional documentation that Curry Farms sold agricultural or horticultural products from the farm worth \$1,588 to \$1,652 or more.¹
2. For 2005, Mr. Curry failed to sustain the burden of proving that Curry Farms produced agricultural or horticultural commodities worth \$2,500 or more. The 2005 Profit or Loss From Farming

¹ The Hearing Officer chose to use 2008 imputed grazing values because 2004 values and subsequent years were unavailable. The Hearing Officer was advised by the Department of Agriculture, Division of Marketing and Development that the values in 2004 and subsequent years would be similar.

Form, Schedule F, list \$35,423 as income but does not indicate from where that income was derived. The bill of sale for the 3 month old filly was for \$1,000; however, the Hearing Officer was unable to confirm or deny the sale as well as ownership of the filly prior to the sale. The invoice that was presented for the sale of cattle held at New Holland Sales Stables, Inc. by Dave Marcks on December 1, 2005 totaling \$5,858 was a sale by Dave Marcks, not Warren Curry or Curry Farms. Additionally, the Hearing Officer was unable to confirm or deny the sale and ownership of 3 horses that totaled \$7,300.00. Again, using the 2008 imputed grazing value of \$848 (for very poor farmland soil) or \$912 (for very productive farmland soil), Mr. Curry failed to provide documentation of products worth \$1,588 to \$1,652 or more which was needed to supplement the imputed grazing values.

3. For 2006, Mr. Curry failed to provide documentation supporting the production of agricultural or horticultural commodities worth \$2,500 or more. The sole invoice presented for 2006 was that of Dave Marcks' sale of cattle held at New Holland Sales Stables, Inc. on September 6, 2006 for \$5,474.15 and not that of Warren Curry or Curry Farms. The horse that sold for \$3,000.00 belonged to Mr. Marcks and not Mr. Curry. Using the 2008 imputed grazing value of \$848 (for very poor farmland soil) or \$912 (for very productive farmland soil), Mr. Curry failed to provide documentation of products worth \$1,588 to \$1,652 or more.

4. There was no evidence submitted by which the Hearing Officer concludes that the income from Marcks' livestock sales could be attributed to Curry Farms. Indeed, there is no evidence establishing what financial arrangements, if any, existed between Curry Farms and Marcks.

Since Curry Farms does not meet the definition of "commercial farm", I am unable to conclude that Curry Farms is entitled to receive protection under the Right To Farm Act.

Date:

Cassandra A. McCloud
Public Hearing Officer
State Agriculture Development Committee