



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 06183-16

AGENCY DKT. NO. SADC #1727

M. VILLE, LLC AND DON VONA,

Petitioners,

v.

**MONMOUTH COUNTY AGRICULTURE
DEVELOPMENT BOARD,**

Respondent,

and

M. VILLE, LLC AND DON VONA,

Petitioners,

v.

**MONMOUTH COUNTY AGRICULTURE
DEVELOPMENT BOARD AND MILLSTONE
TOWNSHIP,**

Respondents.

OAL DKT NO. ADC 06269-16

AGENCY DKT. NO. SADC #1727

CONSOLIDATED

Fernando M. Pinguelo, Esq., for petitioners (Scarinci Hollenbeck, attorneys)

Christopher Beekman, Esq., for respondent Monmouth County Agriculture Development Board (The Beekman Law Firm, LLC, attorneys)

Robert Munoz, Esq., for respondent Millstone Township (Lomurro, Davison, Eastman and Munoz, attorneys)

Record Closed: May 1, 2019

Decided: August 19, 2020

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The issue presented in these consolidated matters is whether the farm owned by petitioner, Don Vona (Vona) meets the income requirement for a “commercial farm” under the Right to Farm Act (RTFA). Petitioner appealed the decision by respondent Monmouth County Agriculture Development Board (MCADB) that his farm does not qualify as a “commercial farm” under the RTFA, N.J.S.A. 4:1C-1 to -10.8. Respondent MCADB determined that Vona offered insufficient proof that the farm generated at least \$2,500 in agricultural production in 2015.¹

The matters were transmitted to the Office of Administrative Law (OAL) on April 22, 2016 for hearing as contested cases and were consolidated on June 12, 2017. Testimony was taken on September 13, 2018, and the record remained open for the submission of Stipulations of Facts by the parties. The parties did not submit post hearing memoranda or a transcript. The record closed on May 1, 2019. Extensions of time were granted for the filing of the Initial Decision.

¹ The farm is legally owned by M. Ville, LLC, which is also a petitioner in this matter and for whom Vona is the principal. The SADC transmitted the two matters separately and they received different OAL docket numbers. They were consolidated as they concern the same facts and the same parties are involved.

FACTUAL DISCUSSION

The parties agreed to the following stipulations (J-1):

1. This matter stems from an appeal from Resolution Number 2016-03-3 memorialized on April 5, 2016 (the Resolution) by the Monmouth County Agriculture Development Board (MCADB).
2. The specific property subject to the Resolution and this appeal is located at [REDACTED], New Jersey and more specifically described as Block 43, Lots 15.012 and 15.013 in the Township of Millstone, Monmouth County (the Property), owned by M. Ville, LLC whose principal is Don Vona (the Landowner).
3. The Property is greater than five acres.
4. Agricultural operation has been conducted on the Property since at least 2009.
5. The Property receives differential property taxation under the Farmland Assessment Act.
6. Millstone Township provided a "Right to Farm Commercial Certificate" signed by then Mayor Nancy Grbelija to Mr. Vona, dated September 20, 2013, which is attached hereto Exhibit A.
7. Millstone Township filed the original complaint on or about November 17, 2015, alleging recycling operations and related activities in violations of local ordinances and specifically requested the MCADB to evaluate the following: "Defendant is conducting recycling operations not permitted in Millstone's R-130 zoning whereby he stockpiles logs, brush and debris imported onto the site from Defendant's offsite tree cutting business, some of which he mulches. He also has imported soils onto the site without a permit in violation pf ordinance 13-10 s3, deposited same onto the roadway

in violation of 03-39 and obstructed a conservation easement by stockpiling brush and debris thereon in violation of 10-12, all under the guise of 'Right to Farm.'”

8. In response, the MCADB asked the Landowner to provide evidence that the property met the income requirement for commercial farm under the Right to Farm Act (RTFA).
9. On February 5, 2016 the Landowner provided documentation in response to the MCADB's request.
10. On February 23, 2016, MCADB conducted a site visit of the Property. The site visit was attended by a minority of MCADB members, MCADB staff, MCADB counsel, counsel for the Landowner, Thomas Dancer (farmer who conducted agricultural operations on the Property at all times relevant), and the Landowner. MCADB members and MCADB staff in attendance asked the Landowner and Thomas Dancer questions about the Property and its agricultural operations, including specific areas on which agricultural products had grown in 2015.
11. On March 1, 2016, the MCADB held a public meeting (the Hearing) to determine whether the Landowner's agricultural operation qualifies for protection under the RTFA, N.J.S.A. 4:1C-1 to 10.8 for 2015.
12. Mr. Vona testified at the Hearing, among other things, that Thomas Dancer conducted agricultural operations on the Property in 2015, as well as in prior and subsequent years.
13. The Landowner also submitted documents attached as Exhibits (Exhibits B-1 at the Hearing) as evidence of agricultural production income for 2015, of \$2600:
 - a. July 16, 2015 letter from Thomas Dancer, who stated that he farms the Property, and that “[w]e had wheat on the property and harvested approximately 100 bushels of wheat at \$6.00 per bushel,” and that

“[w]e planted Timothy Hay in the fall and harvested two cutting at 200 bales per cutting for a total of 400 bales at \$5.00 per bale for a yearly gross of \$2000;”

- b. “Commercial Farm Information Form,” in which Vona certified \$2,600 in annual gross receipts from hay and wheat production on the Property;
 - c. “Commercial Farm Information Form,” in which Vona certified that the Property is five or more acres and produces agricultural products of at least \$2,500;
 - d. Tax year 2016 “Supplemental Farmland Assessment Gross Sales Forms,” in which Vona declared gross sales of \$600 from wheat production on two acres of Lot 15.012 and gross sales of \$2,000 for hay production of the Property; and
 - e. Maps of the Property.
14. MCADB considered and submitted documents entitled “Supplemental Materials” attached as Exhibits B-2 and the Hearing;
15. MCADB found the Property is more than five acres, receives differential property taxation under the Farmland Assessment Act, and is located within a township zone that permits agriculture, but that Landowner failed to provide sufficient proof of at least \$2,500 of production on the Property resulting in its determination that the property did not qualify for Right to Farm Protection; and that, as a result, the MCADB did not have jurisdiction to proceed with the complaint in order to further determine whether the disputed activities were part of an approved agricultural management practice.

16. Petitioner, Landowner appealed the Resolution to the SADC, which on April 22, 2016, and April 26, 2016, transmitted said appeal to the OAL for a contested hearing.
17. The Parties to the appeal initially agreed to have the matter heard on the papers, however the Honorable Patricia M. Kerins, ALJ, determined the parties raised “genuine issues of material fact” that necessitated the need for a plenary hearing (AL Hearing).
18. The matter had been initially scheduled for the early part of 2018 but was adjourned, by mutual consent, to September 13, 2018.
19. On September 13, 2013, the Parties appeared before the Honorable Patricia M. Kerins, ALJ, for the contested case AL Hearing.
20. Petitioner presented two witnesses, Mr. Vona and Mr. Dancer, to testify at the Hearing.
21. Petitioner also submitted the following exhibits for identification and eventual entry into evidence:
 - a. P-1: Hand drawn map of the Property depicting portions that were cultivated and the type of agricultural product farmed.
 - b. P-2: The Right to Farm Conflict Form with attachments as submitted by petitioner in response to initial complaint submitted by Township of Millstone.
 - c. P-3: January 22, 2016, letter from Thomas Dancer, who stated among other things that he farms the Property, and that yielded \$2600 of crops in 2015.
22. Respondents, MCADB and Township Millstone, presented one witness, Harriet Honigfeld to testify.

23. Respondents submitted the following exhibits for identifications and eventual entry into evidence:
 - a. R-1: Copy of Resolution Number 2016-03-3.
 - b. R-2: Photos of the Property taken during the site visit.
 - c. R-3: Aerial of the Property – entered into evidence for limited purposes.
24. The Parties agreed to not make closing comments to leave the record open for sub-mission of Stipulation of Facts.
25. The only remaining matter of issue focuses on whether petitioner met the burden of proving sufficient income proofs to meet the \$2,500 requirement for qualify for Right to Farm Protection.

Dion’s Farm is located on Block 43, Lots 15.012 and 15.013, in the Township of Millstone, Monmouth County. On November 17, 2015, the Township’s code enforcement officer filed with the MCADB a “Right to Farm Complaint Form” alleging that Dion’s Farm was conducting recycling and other activities in violation of local ordinances.² In response, the MCADB asked Vona to provide evidence that Dion’s Farm met the income requirement for a commercial farm under the RTFA, which defines a commercial farm 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[.]’” MCADB Resolution No. 2016-03-3. On February 5, 2016, Vona provided such documentation,

² According to the complaint,

Defendant is conducting recycling operations not permitted in Millstone’s R-130 zoning whereby he stockpiles logs, brush and debris imported onto the site from Defendant’s off-site tree cutting business, some of which he mulches. He has also imported soils onto the site without a permit in violation of ordinance 13-10 s3, deposited same onto the roadway in violation of 03-39 and obstructed a conservation easement by stockpiling brush and debris thereon in violation of 10-12, all under the guise of ‘Right to Farm.’

[Ibid.]

which is discussed in more detail below, and on February 23, 2016, members of the MCADB inspected Dion's Farm to assess its commercial farm eligibility and to verify whether the disputed activities were approved agricultural management practices.

On March 1, 2016, the MCADB held a public hearing to determine whether Dion's Farm is a commercial farm and whether the disputed activities are permitted under the RTFA. At the hearing, Vona offered proof of income for 2015, including (1) a July 16, 2015, letter from Thomas Dancer, who stated that he farms the property, that "[w]e had wheat on the property and harvested approximately 100 bushels of wheat at \$6.00 per bushel," and that "[w]e planted Timothy Hay in the fall and harvested two cuttings at 200 bales per cutting for a total of 400 bales at \$5.00 per bale for a yearly gross of \$2,000.00;" (2) a "Commercial Farm Information Form," in which Vona claimed \$2,600 in annual gross receipts from hay and wheat production on Dion's Farm; (3) a "Commercial Farm Certification Form," in which Vona certified that Dion's Farm is five or more acres and produces agricultural products of at least \$2,500; and, (4) tax year 2016 "Supplemental Farmland Assessment Gross Sales Forms," in which Vona declared gross sales of \$600 from wheat production on two acres of Lot 15.012 and gross sales of \$2,000 from hay production on five acres of Lot 15.013. Vona also submitted maps of the property.

At the hearing, the MCADB heard testimony from a township representative and a member of the public who both opposed Dion's Farm's commercial farm eligibility. The MCADB also compared its own maps with maps provided by Vona to verify the tillable acreage on Lot 15.012, as asserted on the Supplemental Farmland Assessment Gross Sales Form, and asked Vona for "any additional site mapping or survey work that would clarify the amount of tillable acreage on lot 15.012[.]"

After considering all of the information presented at the hearing, the MCADB found that Dion's Farm is more than five acres, receives differential property taxation under the Farmland Assessment Act, and is located within a township zone that permits agriculture, but that Vona failed to provide sufficient proof of at least \$2,500 in agricultural production on Dion's Farm.³ Ibid. As such, the MCADB adopted a resolution concluding that Dion's

³ The MCADB noted that "the income proofs did not include any actual receipts for field crops allegedly grown on the property[.]" Ibid.

Farm did not qualify as a commercial farm and that, as a result, the MCADB did not have jurisdiction to proceed with the complaint in order to further determine whether the disputed activities were part of an approved agricultural management practice. Ibid.

After transmittal to the OAL, testimony was taken on the issue sent to the OAL by the SADC, whether Vona complied with the requirement that his farm produce \$2,500 a year or more in farm income for the year 2015. In support of his appeal, Vona testified on his own behalf and presented the testimony of Thomas Dancer (Dancer), the purchaser of crop produced on the farm for the year 2015. Respondent presented the testimony of Harriet Honigfeld (Honigfeld), a licensed planner and staff member of the MCADB.

In his testimony Vona reviewed his purchase of the farm property and identified the areas on the farm which were planted for crops as marked on P-1⁴. He then testified as to his response to the MCADB letter of November 30, 2015, requesting that he complete a Commercial Farm Certification Form and provide proofs of his farm income (P-3). He stated he received \$2,600 in income that year from Thomas Dancer for crop produced on acreage as shown on Millstone Township Tax Map Plots 15.013 and 15.012. In support of that certification he submitted a letter from Dancer (P-2) which stated:

I currently farm this property for Dion. We had wheat on the property and harvested approximately 100 bushels of wheat at \$6.00 per bushel. We planted Timothy Hay in the fall and harvested two cuttings at 200 bales per cutting for a total of 400 bales at \$5.00 per bale for a yearly gross of \$2,000.00

Vona testified that he knew Dancer as a fellow landowner and that he observed him farming the acreage and harvesting the wheat and hay. On cross examination he said he verified the amount harvested and taken by Dancer by estimating the amount and relying on receipts which Dancer provided. When questioned regarding those receipts he said he had provided the MCADB whatever he had maintained.

⁴ The parties agreed that P-1 was a Tax Map which sets forth the total acreage for each parcel of the farm.

In support of Vona, Dancer testified. He described his background as a farmer and horseman. He currently maintains approximately twenty horses, and in addition to farming, runs a landscaping business. Dancer described his dealings with Vona and their crop arrangement. He was familiar with Vona's property since he used to reside next to it and was aware that it was fertile. He testified he plants crops on Vona's land, cares for them and harvests them. Dancer explained the crops from Vona's land are used for his twenty horses. According to Dancer his arrangement with Vona is similar to his dealings with other landowners. How the harvest is measured and the amount to be paid is determined by the type of crop, the weather and average amounts. He testified that "everything in farming is averages" and he is aware of how much a given acre may produce of a given crop.

Dancer identified his letter to Vona memorializing his \$2,600 payment to Vona. He said his estimate may even have been low as to the number of bales, and that he based his pricing on references such as the Chicago Board of Exchange rates. As exchange rates vary, he said that \$6 per bushel was a fair price for that crop. He stated his crop estimates and payments had never been questioned by any of the farmers with whom he deals. Most of the landowners do not observe his farming their property but interestingly, Vona does observe his operation. In reviewing the acreage farmed as delineated on P-1, he said he agreed with the estimation and was of the opinion he farms five and a half acres of Vona's land.

In response the MCADB presented the testimony of Honigfeld. Her testimony centered on two areas, the manner in which the price for the farm crop was calculated, and whether Vona had overestimated the amount of acreage he had farmed. Much of her testimony centered on questioning Vona's calculation of tillable acreage on his land. In questioning that calculation she described a site visit she made to the farm in February 2016, and an aerial photo (R-2) of the property from a United States Department of Agriculture computer program. Based on calculations she said were made from those photos she questioned the acreage in the western field where wheat was grown and said it was under two acres. She also questioned the acreage in the other field. However, she admitted that the only way to verify the calculation of tillable acreage was to obtain a survey. She identified photos from her site visit in 2016, but agreed that it was not

possible to tell from the photos which crops had been grown in the fields and she did not recall how far into the property from the driveway she had gone during the site visit.

In her testimony she also questioned the pricing of the crop harvested by Dancer. She said she checked with some of the board members who said the price would be based upon factors such as the size, quality and market price of the crop.

In assessing the credibility of the witnesses in this matter, I found Vona overall to be credible on the crucial fact of whether he had received the \$2,600 from Dancer he claimed as income. The amount was credible and the manner in which he received it from Dancer fit with the informal way they had dealt with each other over the years. Similarly, Dancer testified credibly regarding the payment. He was direct and articulate in his testimony and based much of it on his experience, not only as farmer but as someone who was versed in farming other landowners' fields. Based on that longstanding experience he credibly explained how payment for a crop is determined and referenced guides such as rates posted on exchanges. In his estimation of the amount of Vona's land he farmed he was credible as well. He was familiar with the property even before he farmed it and was aware of the amount of acreage necessary to produce the amount of crop, he testified he had harvested from Vona.

While Honigfeld was a knowledgeable and articulate witness, her contention that the acreage tilled on the farm was less than Vona claimed fell short. She based her calculations on aerial photos but did not specify when they were taken and agreed that only a survey could determine the acreage amount. Her statements on whether the \$2,600 was a fair amount for the crop was conclusory at best. She presented no references to actual prices that year and simply relied on general conversations with unnamed individuals for questioning the pricing.

Based on the sworn credible testimony of Vona and Dancer I **FIND** that Vona received \$2,600 from Dancer for crops produced on his farm in 2015.

LEGAL DISCUSSION

The RTFA and the regulations promulgated thereunder, N.J.A.C. 2:76-2.1 to -2B.3, are designed to protect “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.” N.J.S.A. 4:1C-2(e). To achieve this balance, the protections of the RTFA extend only to an agricultural operation that qualifies as a “commercial farm” which, as noted above, 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[.]’”⁵ In re Tavalario, 386 N.J. Super. 435, 441 (App.Div.2006); N.J.S.A. 4:1C-3; N.J.A.C. 2:76-2.1.

The RTFA and its regulations provide specific procedures for resolving conflicts involving the operation of a commercial farm. For example, “[a]ny person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable [county agriculture development] board . . . prior to filing an action in court.” N.J.A.C. 2:76-2.7(a); N.J.S.A. 4:1C-10.1(a). Upon the filing of such a complaint, the relevant board shall ask the farm owner “to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.” N.J.A.C. 2.76-2.7(b). The Board may also “inspect the farm operation to confirm commercial farm eligibility and/or to verify that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the Board pursuant to N.J.A.C. 2:76-2.3.” N.J.A.C. 2.76-2.7(c).

Thereafter, the Board shall “determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set

⁵ A “farm management unit” is “a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.” N.J.S.A. 4:1C-3; N.J.A.C. 2:76-2.1.

forth in N.J.S.A. 4:1C-9.” N.J.A.C. 2:76-2.7(c)(1). If the Board finds that the conflict does not involve a commercial farm as defined under the RTFA, “then the Board shall dismiss the complaint” and its “decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents.” N.J.A.C. 2:76-2.7(g). Any person who is aggrieved by the county board’s decision may file an appeal with the SADC, which may, in turn, transmit the matter to the OAL for a contested case hearing. N.J.A.C. 2:76-2.7(d)(ii); N.J.S.A. 52:14B-1 to -15.

A farm operator seeking protection under the RFTA as a commercial farm must offer “clear evidence of actual or future receipt of income from agricultural production” in an annual amount of \$2,500, and here the parties dispute whether Dion’s Farm satisfied that requirement. As set forth above, the sworn testimony of Vona and Dancer supported a finding that Vona received a sum in the amount necessary to qualify as a commercial farm under the RTFA.

ORDER

The decision of respondent MCDAB denying petitioners commercial farm status is **REVERSED**.

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.



August 19, 2020

DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

August 19, 2020 (emailed)

Date Mailed to Parties:

/mel

WITNESSES

For Petitioner:

Don Vona
Thomas Dancer

For Respondent:

Harriet Honigfeld

EXHIBITS

For Petitioner:

- P-1 Hand Drawn map of the property depicting portions that were cultivated and the type of agricultural product farmed.
- P-2 The Right to Farm Conflict Form with attachments as submitted by petitioner in response to initial complaint submitted by Township of Millstone.
- P-3 January 22, 2016 letter from Thomas Dancer, who stated among other things that he farms the Property, and the yielded \$2,600 of crops in 2015.

For Respondent:

- R-1 Copy of Resolution Number 2016-03-3
- R-2 Photos of the Property taken during the site visit.
- R-3 Aerial of the Property – entered into evidence for limited purposes.