

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY2013R2(13)

Right to Farm

In the Matter of Alexander Adams, Oak Shade Farm, LLC

February 28, 2013

WHEREAS, this matter arose out of a dispute between the Township of Denville (Township) and Alexander Adams (Adams), owner/ operator of Oak Shade Farm, LLC, a mushroom farm located at [redacted] (Block 60206, Lot 244), Denville Township, Morris County, New Jersey (Property), concerning outdoor storage conducted by Adams; and

WHEREAS, a Right to Farm complaint was filed by the Township with the Morris County Agriculture Development Board (MCADB or board) on June 11, 2012, and then the MCADB forwarded the complaint to the State Agriculture Development Committee (SADC or Committee) on June 15, 2012 because the complaint concerned the accumulation of tires, leaf bags, compression gas cans and tanks on the Property, which was an activity that was not addressed by an agricultural management practice recommended by the SADC or a site-specific agricultural management practice adopted by the MCADB (see documents attached as SADC 01 - SADC 17); and

WHEREAS, the Township's complaint originated from a September 9, 2010 resident complaint to the Township alleging that Adams had accumulated "excessive junk" on the front yard of his Property (see SADC 03); and

WHEREAS, after the Township's officials inspected the Property, the Township issued Complaint No. 007620 to Adams on November 15, 2010 for alleged violation of Township Ordinance 19-5.714, Outdoor Storage in a Residential Zone (Ordinance) (see SADC 03); and

WHEREAS, on March 31, 2011, photographs were introduced before the Township's Municipal Court that depicted the types of debris, items and/or equipment that Adams was storing on the Property, and Adams was assessed a fine for his violation of the Ordinance (see SADC 04 - SADC 13); and

WHEREAS, Adams subsequently filed a municipal appeal challenging the Township Municipal Court ruling, raising a jurisdictional challenge that the Township Municipal Court and the Superior Court did not have the authority to hear and decide the matter because the Property qualifies as a "commercial farm" under the Right to Farm Act and Farmland Assessment Act of 1964 (FAA) (see SADC 36); and

WHEREAS, on his March 8, 2012 Right to Farm Commercial Farm Certification Form (Certification) submitted to the MCADB, Adams certified that the Property is part of a

farm management unit that is greater than five (5) acres and satisfies the eligibility requirements of both the Right to Farm Act and the FAA (see SADC 20 – SADC 21); and

WHEREAS, Adams certified that he was the owner/operator of Oak Shade Farm, LLC, and described the nature of the farm operation was to:

- (1) obtain logs, leaves, chips or other substrate from trees, windfalls, landscapers, tree services, etc.; inoculate substrate with spawn of desired species; crib, protect and deploy logs; monitor for mushroom fruiting;
- (2) harvest mushrooms; clean, store and market them;
- (3) organize tolls, materials, etc. and present workshops;
- (4) advise and educate participation care and use (see SADC 20); and

WHEREAS, Adams certified that Oak Shade Farm, LLC produces mushrooms (shiitake, oyster, blewit and wild crafted); logs (fresh cut wood, etc. for mushroom growing); inoculated logs (produce mushrooms, typically 5-10 years each); seedlings and various plant crops, including berries (see SADC 21); and

WHEREAS, Adams certified that Oak Shade Farm, LLC is a farm management unit that is five acres or more in size, that it is eligible for differential property taxation pursuant to the FAA, and that it produces agricultural and/or horticultural products worth \$2,500 or more annually (see SADC 21); and

WHEREAS, Adams certified that Oak Shade Farm, LLC is located in an area which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan (see SADC 21); and

WHEREAS, on his Certification, Adams identified the Property in Denville Township, Morris County, New Jersey as being 0.55-acres in size and comprised of three separate parcels, known as Block 60206, Lot 244 (0.28 acres), Lot 273 (0.12 acres) and Lot 275 (0.15 acres) (see SADC 20); and

WHEREAS, on his Certification, Adams identified the 0.55-acre Property as part of a farm management unit, together with a 10-acre parcel in Mount Olive Township (Block 8300, Lot 13) and a 5.6-acre parcel in Rockaway Township (Block 50003, Lot 16), Morris County, New Jersey (see SADC 21); and

WHEREAS, by letter of September 13, 2012, the SADC requested that, within 10 days thereof, Adams provide the SADC with proof that the farm produced agricultural and/or horticultural products worth \$2,500 or more annually and that the farm was located in an area in which, as of December 31, 1997 or thereafter, agriculture was a permitted use under municipal zoning ordinance and was consistent with the municipal master plan (see SADC 18 – SADC 19);

WHEREAS, Adams then provided the SADC with two summary documents (SADC 22 and SADC 23) stating that:

(1) "the Denville properties are in Zone R-2, which allows agriculture"; and the "Rockaway Township and Mount Olive Township Properties are designated as qualified farms on the Morris County Clerk's online database";

(2) Oak Shade Farm, LLC produced "\$1,500 in mushrooms (according to harvest notes) and \$2,490 in inoculated logs (according to on-site inventory), for a total production value of \$3,990, as proof of income for 2011";

(3) Oak Shade Farm, LLC produced "\$1,340 in mushrooms and \$5,180 in inoculated logs, for a total production value of \$6,520, as proof of income for 2012"; and

WHEREAS, by letter of November 6, 2012, the Township provided the SADC with a copy of its March 26, 2012 letter brief that was previously submitted in Adams' municipal appeal action, alleging that Adams/Oak Shade Farm, LLC did not qualify as a "commercial farm" under the Right to Farm Act because Adams improperly aggregated five (5) non-contiguous parcels of land to meet the five-acre requirement for farmland assessment eligibility under the FAA (see SADC 24 - SADC 33); and

WHEREAS, the Township stated that Adams failed to present any documents to establish any form of ownership of any of the properties he listed on his March 8, 2012 Certification submitted to the MCADB as comprising Oak Shade Farm, LLC's farm management unit (see SADC 30); and

WHEREAS, the Township stated that Adams did not provide any documentation of: (1) the Property's entitlement to differential property taxation under the FAA; (2) Oak Shade Farm, LLC's business structure, organization and operations; or (3) the Property's location in an area which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan (see SADC 30 - SADC 31); and

WHEREAS, the Township claimed that the Property in Denville Township is less than five (5) acres in size and that it is located in a Residential Zone that does not permit agricultural activity (see SADC 31); and

WHEREAS, the Township claimed that Adams was not the owner of the 10-acre parcel in Mount Olive Township (Block 8300, Lot 13), Morris County, New Jersey, as he indicated on his March 8, 2012 Certification (see SADC 31, SADC 45 - SADC 48); and

WHEREAS, the property tax card for the Mount Olive Township parcel indicated that the parcel is actually 50.850 acres in size, and that its record owner was Roy M. Hildebrant (see SADC 42 - SADC 44); and

WHEREAS, the Township claimed that Adams was not the owner of the 5.6-acre parcel in Rockaway Township (Block 50003, Lot 16), Morris County, New Jersey, as he indicated on his Certification (see SADC 32); and

WHEREAS, the property tax card for the Rockaway Township parcel indicated that the record owner of the parcel was Linda Bird (see SADC 49 - SADC 50); and

WHEREAS, the Township stated that Adams did not attach any documents to his Certification regarding Oak Shade Farm, LLC's business, organization and economic/financial activities or property tax records to establish that Oak Shade Farm, LLC is a single enterprise (see SADC 32); and

WHEREAS, the Township argued that the holding in an SADC Final Decision in an earlier case, Tibor Sipos and Cecily Gentles v. Hunterdon County Agriculture Development Board, should directly apply to Adams' request for "commercial farm" qualification (see SADC 28 - SADC 33); and

WHEREAS, by letter of January 22, 2013, the SADC requested that the Township provide the SADC with copies of the exhibits that were referenced in its March 26, 2012 letter brief to supplement the case record and enable the SADC to determine whether Adams/Oak Shade Farm, LLC qualified as a "commercial farm" under the Right to Farm Act (see SADC 67); and

WHEREAS, the Township subsequently provided its letter brief exhibits to the SADC on January 30, 2013 (see SADC 68, SADC 34 - SADC 64);

WHEREAS, the definition of "commercial farm," as set forth in the Right to Farm Act, N.J.S.A. 4:1C-3, as amended in 1998, is:

- (1) 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 FAA, or
- (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the FAA; and

WHEREAS, the definition of "farm management unit," as set forth in the Right to Farm Act, N.J.S.A. 4:1C-3, as amended in 1998, 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; and

WHEREAS, in light of the New Jersey Supreme Court decision, Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), *aff'd*, 172 N.J. 147 (2002), the Right to Farm Act (Act) may preempt municipal land use authority over a commercial farm if the farm meets certain eligibility criteria set forth in the Act. First, it must meet the definition of "commercial farm" set forth in N.J.S.A. 4:1C-3. The Act also requires that the commercial farm satisfy at least one of the following two conditions:

- (1) it is located in an area in which, as of December 31, 1997, or thereafter, agriculture is a permitted use under municipal zoning ordinances and is consistent with the municipal master plan, or
- (2) the commercial farm was in operation as of the effective date of the amended Act; July 2, 1998; and

WHEREAS, in the SADC Final Decision, Tibor Sipos and Cecily Gentles v. Hunterdon County Agriculture Development Board, OAL Dkt. No. ADC 5173-11, Agency Ref. No. SADC #1272, the SADC determined that the aggregation of separate, noncontiguous parcels of land in order to achieve the five (5) acre minimum for farmland assessment purposes was not permitted by the FAA, N.J.S.A. 54:4-23.1, et seq.;

NOW THEREFORE BE IT RESOLVED, the SADC finds that Adams has not provided the SADC with sufficient documentation for the SADC to conclude that Oak Shade Farm, LLC has met the criteria for "commercial farm" eligibility; and

BE IT FURTHER RESOLVED, in applying the Sipos decision to the present case, Adams is prohibited from aggregating the noncontiguous parcels of land listed in his Certification in order to meet the minimum five (5) acre requirement for farmland assessment under the FAA, and

BE IT FURTHER RESOLVED, the SADC finds that the 0.55-acre Property in Denville Township that is comprised of three separate parcels (Block 60206, Lots 244, 273 and 275), together with the 10-acre parcel in Mount Olive Township (Block 8300, Lot 13) and the 5.6-acre parcel in Rockaway Township (Block 50003, Lot 16) listed in Adams' Certification, do not meet the criteria of one "farm management unit" as defined in the Act because Adams has not provided the SADC with any required documentation as proof thereof, such as LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses; and


BE IT FURTHER RESOLVED, for purposes of Right to Farm protection, the 0.55-acre Property in Denville Township (Block 60206, Lot 244) must be analyzed on its own, as a farm management unit of less than 5 acres in size; and Adams has not provided the SADC with any documentation proving that the 0.55-acre Property in Denville Township produces agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfies the eligibility criteria for differential property taxation pursuant to the FAA; and

BE IT FURTHER RESOLVED, the SADC finds that the Property is not entitled to the designation of "commercial farm;" and

BE IT FURTHER RESOLVED, the disputed activities on the Property are therefore not eligible for the protections of the Act; and

BE IT FURTHER RESOLVED, that this action is not effective until the Governor's review period expires pursuant to N.J.S.A 4:1C-4f.

2/28/13
DATE



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Monique Purcell, Acting Chairperson	YES
Renee Jones (rep. DEP Commissioner Martin)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
James Requa (rep. DCA Commissioner Constable)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	YES
James Waltman	YES
Torrey Reade	YES
Peter Johnson	YES
Jane R. Brodhecker	ABSENT
Denis C. Germano, Esq.	ABSENT
Alan A. Danser, Vice Chairman	ABSENT

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