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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 07672-06

AGENCY DKT. NO. SADC ID#699

IN THE MATTER OF BARBARA HERTZ,

Petitioner,

vs.

MORRIS COUNTY AGRICULTURE

DEVELOPMENT BOARD,

Respondent.

Barbara Hertz, pro se

W. Randall Bush, Esq., First Assistant Morris County Counsel, for respondent (Ronald Kevitz, County Counsel)

Record Closed: October 23, 2006 Decided: November 28, 2006

BEFORE IMRE KARASZEGI, JR., ALJ:

STATEMENT OF CASE AND PROCEDURAL HISTORY

Pursuant to the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq., the Borough of Lincoln Park (Borough) filed a complaint in May 2006 with the Morris County Agriculture Development Board (CADB) against Barbara Hertz (Petitioner) for violations of the zoning ordinance on her property. Specifically, the Borough alleged that the placement of garbage and litter on the property violated the Borough's zoning ordinance.

Simultaneously, Barbara Hertz applied to the CADB for a site-specific agricultural management practice (AMP) recommendation pursuant to N.J.A.C. 2:76-2.3, proffering that the use of the alleged debris cited by the Borough-jugs and buckets-was for irrigation purposes and therefore constitutes a generally accepted practice. The CADB forwarded the complaint to the State Agriculture Development Committee (SADC) on May 12, 2006 requesting the SADC's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice. The CADB had combined the Borough's complaint and Ms. Hertz's site specific AMP request into a single matter.

On June 8, 2006, the CADB found that Ms. Hertz's operation did not meet the Right to Farm Act's definition of "commercial farm" and therefore could not preempt the application of Borough ordinances to her property. By letter dated June 21, 2006, Barbara Hertz appealed the decision of the CADB to the SADC. Pursuant to the Right to Farm Act and the regulations promulgated thereunder, N.J.S.A. 4:1C-10.1, N.J.A.C. 2:76-2.10 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the SADC transmitted the entire matter as a contested case to the Office of Administrative Law (OAL) on July 19, 2006 for an administrative hearing. A hearing was scheduled and heard before the undersigned on October 23, 2006, on which date the record was closed.

FINDINGS OF FACT

Based upon a consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and to assess their credibility, I **FIND** the following **FACTS**:

1. Barbara J. Hertz is the owner/operator of Joy B's Berry Bush and Bee Farm. This operation consists of over five acres of land located in both Lincoln Park Borough and Montville Township in Morris County.
2. On April 24, 2006, the Borough of Lincoln Park forwarded notices of violations to Ms. Hertz regarding the presence of litter and the removal of trees on her property located in Lincoln Park Borough.
3. On May 12, 2006, Ms. Hertz submitted a site specific agricultural management practice (AMP) determination request to the CADB.
4. On May 23, 2006, the CADB informed Barbara Hertz that the matters regarding the Borough of Lincoln Park zoning violations and her site specific AMP request would be 'collapsed' into a single matter and the CADB would make a determination whether the Hertz agriculture operation is a commercial farm as defined in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-9.
5. At the June 8, 2006 CADB hearing, Petitioner provided the Board with Internal Revenue Service Schedule C-EZ/2005 Net Profit from Business Form which indicates gross receipts for Joy B Berry Bush Farm in the amount of \$ 2,750.00. (Exhibits P-39 and R-10)
6. Barbara Hertz did not provide copies of actual, signed community supported agriculture (CSA) shares as supplemental proof either at the June 8, 2006 Morris CADB hearing or at the present hearing.

LEGAL ANALYSIS AND DISCUSSION

The Right to Farm Act, initially passed in 1983, was enacted to "promote, to the greatest extent practicable and feasible, the continuation of agriculture in the State of New Jersey while recognizing the potential conflicts among all lawful activities in the State." Senate Natural Resources and Agriculture Committee

Statement, Senate, No. 854-L.1983, c.31. The Legislature further stated; "It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action[s], 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-2e.

N.J.S.A. 4:1C-3, as amended in 1998, defines "commercial farm" as (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 'Farmland Assessment Act of 1964', [N.J.S.A. 54:4-23.1 to 23.24], 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 'Farmland Assessment Act of 1964'.

N.J.S.A. 4:1C-9, as amended in 1998, lists permissible activities that can be conducted by owners or operators of "commercial" farms regardless of local zoning. However, the owner or operator must (1) have owned or operated a "commercial farm" in an area in which agriculture was a permitted use under municipal zoning ordinances as of December 31, 1997 and is consistent with the municipal master plan, or (2) have owned or operated a "commercial farm" in operation as of July 3, 1998 that conforms to specific agricultural management practices, conforms to all relevant federal or State statutes or rules and regulations, and does not pose a direct threat to public health and safety.

In order to be afforded the protections of the Right to Farm Act and the Farmland Assessment Act, an individual must first meet a specific monetary threshold. In this case, the Petitioner was required to substantiate the production of agricultural or horticultural products worth \$ 2,500 or more annually in order to qualify as a "commercial farm" under N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1. Petitioner submitted her Internal Revenue Service Schedule C-EZ/2005 Net Profit from Business Form indicating gross receipts in the amount of \$ 2,750.00. (Exhibits P-39 and R-10) At the June 8, 2006 hearing, the CADB found the IRS document provided by Petitioner to be insufficient in that it failed to provide adequate documentary proof as to how the stated income was produced.

During her cross examination of the Assistant Director of the CADB, Petitioner questioned the witness as to what information would be required by the CADB involving a cash operation. The Assistant Director enumerated several possible proofs such as documents regarding expenditures for fertilizer, purchases of equipment, purchases of containers, business log of receipts for sales, as examples of documents that would be acceptable to the CADB for their consideration in evaluating Petitioner's stated income. No acceptable documents containing proof which could substantiate Petitioner's income assertion were provided at the June 8, 2006 meeting of the CADB in order to consider Petitioner's operation to be a "commercial farm". In support of her claim, Petitioner relied solely on the income figure listed in Schedule C-EZ of her 2005 Federal Income Tax Return. In her closing statement, Petitioner asserted, "I thought that my income tax statement was sufficient". Petitioner also did not provide copies of actual, signed contracts evidencing her claim that she has community supported agriculture (CSA) shares which generate the income that she states.

I, therefore, **FIND** that without adequate documentary proof, the income amount of \$ 2,750.00 stated by Petitioner amounts to merely an unsupported assertion that fails to qualify Petitioner's operation as a "commercial farm" as defined in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3. Without qualification as a "commercial farm", Petitioner does not meet the threshold for a site specific agricultural management practice determination pursuant to N.J.A.C. 2:76-2.3 and N.J.S.A. 4:1C-9.

ORDER

Based on the foregoing, I **CONCLUDE** that the decision of the Morris CADB, finding that Petitioner's operation did not qualify as a "commercial farm" pursuant to the Right to Farm Act, is **AFFIRMED**.

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 (45) 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 (13) 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.

November 28, 2006

DATE **IMRE KARASZEGI, JR., ALJ**

Receipt Acknowledged:

DATE STATE AGRICULTURE DEVELOPMENT COMMITTEE

Mailed to Parties:

DATE OFFICE OF ADMINISTRATIVE LAW

db

APPENDIX

Witnesses:

For petitioner:

Barbara Hertz

For respondent:

Katherine Coyle

Frank Pinto

Exhibits in Evidence:

Petitioner:

P-1 Petitioner's affidavit

P- [9 December 5](#), 1996 Star-Ledger article regarding Beeswax

P- [10 August 2](#), 1998 New York Times article regarding CSA farms in New Jersey

P- [11 November 4](#), 1998 Daily Record article regarding Beekeeping

P- [12 April 27](#), 2000 Daily Record article

P-15

-25 1997-2007 Applications for Farmland Assessment

P-39 IRS Schedule C-EZ/2005 Net Profit from Business

P- [49 April 24](#), 2006 Lincoln Park Violation Letter

P- [50 May 23](#), 2006 Morris County Agriculture Development Board letter

P-51

-57 Revised Application for Site-Specific Agricultural Management Practice Recommendation

P-58 Affidavit of Appendix Documents

P-59

-60 Easement Purchase Applicants

P- [61 June 12](#), 2006 Morris County Agriculture Development Board Decision letter

P-62

-63 Appeal letter dated June 21, 2006

P-64 OAL notice of filing dated July 19, 2006

Respondent:

R-1 Notices of Violation dated April 24, 2006

R-2 Katherine Coyle letter to Barbara Hertz dated April 25, 2006

R-3 Katherine Coyle letter to G. McNabb dated April 27, 2006

R-4 Barbara Hertz letter to K. Coyle dated April 27, 2006

R-5 Barbara Hertz letter to D. Kimmel dated April 28, 2006

R-6 G. McNabb letter to K. Coyle dated May 11, 2006

R-7 K. Coyle letter to Barbara Hertz dated May 12, 2006

R-8 K. Coyle letter to G. McNabb dated May 12, 2006

R-9 K. Coyle letter to S. Craft (SADC) dated May 12, 2006

R-10 Site Specific Agricultural Management Practice application dated May 12, 2006 with IRS Schedule C-EZ/2005 Net Profit for Business and Farmland Assessment Applications for 1997-2006

R-11 M. Green letter to K. Coyle dated May 18, 2006

R-12 K. Coyle letter to B. Hertz dated May 23, 2006

R-13 K. Coyle memorandum dated June 2, 2006

R-14 Amended B. Hertz Application for Site-Specific Agricultural Management Practice Recommendation dated June 2, 2006

R-15 Site Inspection Photographs by F. Pinto (June 6, 2006)

R-16 K. Coyle letter to Barbara Hertz dated June 12, 2006

R-17 B. Hertz letter to M. Green, Esq. dated June 21, 2006

R-18 M. Green, Esq. letter to S. Hlaky (OAL) dated June 27, 2006

R-19 B. Hertz letter to M. Green, Esq. dated July 5, 2006 regarding supplemental documents

R-20 K. Coyle letter to M. Green, Esq. dated July 14, 2006

R-21 B. Hertz OAL Notice of filing dated July 19, 2006

R-22 K. Coyle letter to W. Randall Bush, Esq. dated August 17, 2006

R-23 B. Hertz letter to Morris CADB dated August 29, 2006

R-24 K. Coyle letter to W. Randall Bush, Esq. dated August 31, 2006

R-25 W. Randall Bush, Esq. letter to S. Hlaky dated September 7, 2006

R-26 K. Coyle letter to H. Oguje, Superior Court Reporter, dated September 25, 2006

OAL DKT. NO. [ADC07672-06](#)