

April 29, 2003

Robert Resker
Warren County Department of Land Preservation

Dear Mr. Resker:

Enclosed please find a copy of the hearing report from the 'Capo/Rainbow Ranch' Right to Farm matter.

At its April 24, 2003 meeting, the State Agriculture Development Committee (SADC) voted to adopt this hearing report with the following amendment: The SADC reserves the right to review any requirements that Washington Township may impose on the Capos regarding parking, and if the SADC finds that such requirements are unduly onerous, it shall have the right to reexamine this matter.

Pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1c, the SADC is sending its findings and recommendations to the Warren County Agriculture Development Board (CADB). The Warren CADB is required to hold a public hearing and issue its findings and recommendations within 60 days of receiving the SADC's decision.

If you have any questions, please contact David Kimmel, Agricultural Resource Specialist, at (609) 984-2504.

Sincerely,

Gregory Romano

Enclosure

c: Michael Lavery, Esq.

State Agriculture Development Committee
Right to Farm Conflict Resolution

Hearing Report

Re: Rainbow Ranch Farm/Joseph Capo

Washington Township, Warren County

Aggrieved Party: Washington Township

Date of Hearing: April 1, 2003

Background

Joseph Capo and Mary Ann Mastorelli-Capo own and operate Rainbow Ranch, a ten-acre farm in Washington Township, Warren County. Their operation involves the following activities:

- breeding, raising and training miniature ponies for sale;
- raising and training miniature horses for sale;
- riding lessons;
- raising small number of sheep and goats for children to pet (sheep and goats are sold when they are full grown);
- birthday parties where children can pet the young animals and ride the miniature horses and ponies;
- “garden area which yields a moderate amount of apples, peaches, plums and pumpkins which are sold to the general public.”
- seven acres of pasture area

The Capos certified to the State Agriculture Development Committee (SADC) that the 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. (Exhibit 1).

On November 22, 2002, Washington Township issued a Violation Notice to Joseph Capo. (Exhibit 2). The Warren County Agriculture Development Board (WCADB) obtained a copy of the Violation Notice and treated it as a complaint filed pursuant to the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. (Apparently, a neighbor complained to the Township about the Capos' operation and this complaint led to the Township issuing the Violation Notice.) The WCADB forwarded the Violation Notice to the SADC for a public hearing pursuant to N.J.S.A. 4:1C-10.1c, as the activities cited in the Violation Notice are not addressed by any agricultural management practices promulgated by the SADC. (Exhibit 3). The SADC scheduled a public hearing for April 1, 2003 pursuant to N.J.S.A. 4:1C-10.1c.

Issues

The issues before the SADC are:

1. Whether the activities on Rainbow Ranch are eligible for protection under the Right to Farm Act.
2. If the activities qualify, whether they conform to generally accepted agricultural management practices.
3. Whether the activities may preempt municipal zoning ordinances.

Summary of Relevant Facts

A hearing was held at the New Jersey Department of Agriculture on April 1, 2003. Joseph Capo and Mary Ann Mastorelli-Capo, owners and operators of Rainbow Ranch, attended the hearing as did Thomas A. Bocko, the Zoning Officer of Washington Township.

A. Capo/Mastorelli Testimony

Mr. Capo and Ms. Mastorelli-Capo purchased the property in September 2001. The Capos testified that they own six miniature ponies, three miniature horses, three goats, one sheep, one steer calf and one donkey.

Mr. Capo and Ms. Mastorelli-Capo breed the miniature ponies with the intention of selling them. They sold one miniature pony last year; however this pony is being boarded on the premises while the purchaser pays for it in monthly installments. The Capos also train the horses and ponies to be ridden and provide riding lessons to groups of up to 10 children. The Capos host birthday parties for children, who ride the miniature horses and ponies and pet the baby farm animals. Mr. Capo and Ms. Mastorelli-Capo held three special events last year for children to ride the ponies and pet the baby animals. One event was for the local Parent Teacher Association, attended by 150 adults and children who arrived in about 75 cars. A local YMCA camp brought 90 children in two buses to the farm. The third event was for approximately 10 special needs children who came to the farm in two vans.

In addition to riding horses and ponies and petting baby animals, other activities at the birthday parties and events include pumpkin picking and painting and hayrides. Mr. Capo and Ms. Mastorelli-Capo also take the ponies off-site for parties.

The farm is open to the public for riding lessons and special events from April through Thanksgiving. Mr. Capo and Ms. Mastorelli-Capo emphasized during their testimony that the “whole operation” is geared towards getting children interested in buying ponies. In a letter to the hearing officer dated April 1, 2003, Mr. and Mrs. Capo stated that the activities cited in the Violation Notice are “supportive activities to the total marketing strategy to sustain Rainbow Ranch’s mission which is to raise, train and sell ponies.” (Exhibit 4). The Capos also presented photographs and a survey plat of the farm (Exhibit 5).

The Capos testified that last year they applied to the Township for permission to host a charity event called a “Shodeo” on their farm. They anticipated the event would attract about 250 vehicles. The Township Committee denied approval to hold this event based upon concern for the public safety. At the meeting, however, a committeeman “commented that the expert on Public Safety (Chief McDonald) felt that, as far as the traffic was concerned, parking and public safety, that it was adequate.” (Exhibit 6).

B. Written Testimony in Support of Capos

1. Joel Schnetzer, President of the Warren County Board of Agriculture, submitted a letter stating that he visited the farm and that the animals were well cared for and clean. He expressed his opinion that “this type of farm operation should be able to receive protection under the Right to Farm Act.” (Exhibit 7.)

2. Leslie B. Meyer-Grimes, M.D., a neighbor of Rainbow Ranch, submitted a letter in support of the Capos’ operation. She referenced the PTA event, stating that it was a “well planned and run operation and caused no disruption to daily life on our road.” She stated that the animals are “well taken care of.” (Exhibit 8).

3. Suzanne Jeffries, President of the Washington Township PTA, wrote a letter about the October 2002 event on Rainbow Ranch. She stated that she was impressed with the event, that there was ample parking and many people directing cars to appropriate parking places. Ms. Jeffries also wrote that the animals were clean, healthy, well behaved, and seemed happy to be around children. There was a wash station for the children to clean up and the children were encouraged by the Capos to wash their hands after feeding and petting the animals. (Exhibit 9).

4. Everett A. Chamberlain, Warren County Agricultural Agent, submitted a letter stating that the farm enterprise includes the raising of livestock, equine, training and agriculture tourism. (Exhibit 10).

As part of the farm’s marketing strategies for their horses and livestock, Mr. Capo conducts agriculture tourism activities that bring people onto the farm to increase income through improved sales of farm commodities. The agriculture tourism activities are consistent with many other small farms in the region.

Mr. Chaimberlain also noted that the farm facilities were clean, neat and appeared to be very suitable to conduct farm activities and agriculture tourism.

5. Lance Giorlando, a personal aide to a special needs student submitted a letter stating that the 15 special needs students who visited Rainbow Ranch last year enjoyed the visit very much. (Exhibit 11).

6. Walter and Peggy Gilligan, neighbors of Rainbow Ranch, submitted a letter stating that their farm is a pleasure to have in the neighborhood and that the Capos are generous hosts of events. They stated that the Capos are a great asset to the community, teaching children about animals and nature through their educational tours and lectures. (Exhibit 12).
7. In other letters, parents thanked the Capos for the good time that their children had at Rainbow Ranch and acknowledged the Capos' interest in doing things that benefit the community. (Exhibit 13).

C. Washington Township's Testimony

The Violation Notice issued by Washington Township cited seven violations of the Washington Code of zoning ordinances. The violations focus on activities that invite the general public onto the property and are as follows:

1. *Uses not permitted under the definition of farm.*

The first violation is of Section 123-2B which defines "farm." Specifically, the zoning ordinances define principal uses of farming as

A lot of at least six acre lot area, which may contain a detached dwelling and which is used for the growing and harvesting of crops and the raising and breeding of certain animals, including truck farms, fruit farms, nurseries and greenhouses, dairies and livestock produce, except that commercial piggeries are prohibited. §123-2, Washington Code.

The Violation Notice states:

The uses (pumpkin painting, animal petting, hay rides, vending machines and similar activities that invite the general public onto your property not associated with the property) do not conform to this section of the zoning ordinance.

Mr. Bocko testified at the hearing that nonpermissible uses would also include the riding lessons, PTA events, special needs programs, and any other activities that invite the public onto the property.

2. *Prohibited Uses*

Section 123-4 of the Washington Code states that “all uses not expressly permitted in this chapter are prohibited.” Mr. Bocko stated that all of the uses cited in the first violation are prohibited and are thus in violation of this section.

3. *Area and yard requirements.*

The Violation Notice states that Section 123-11D of the Washington Code permits recreational activities only on lands with a minimum of 50 acres. Section 123-11D states that the area and yard requirements for “Golf Courses and Recreational Facilities” is 50 acres (emphasis added). The Code does not define recreational activities and it appears that the Township substituted the word “activity” for the word “facility” when issuing its Violation Notice. At the hearing, Mr. Bocko could not offer an explanation as to why the Township deems the Capos’ farm to be a recreational facility and it is questionable whether this ordinance applies to the Capos.

It should be noted that the Code states that the lot area for “Farms, Nursing Homes and Riding Academies” is six acres.

4. *Off Street parking and loading*

The Violation Notice states that Section 123-21 “requires adequate parking for specific uses.” This section includes general regulations for off street parking including lighting, surfacing and curbing, location of parking spaces, landscaping, and parking facility structures. The Violation Notice did not clearly state which provisions of this regulation were being violated, although it seems that if the uses are not permitted, the issue of whether there is adequate parking would be irrelevant.

When questioned whether the Township could work out the parking requirements with the Capos if the uses are permitted, Mr. Bocko replied that the Capos could submit a parking

plan to be endorsed by the land use board. The Capos expressed concern that the neighbor who initiated the complaints against them would use their alleged political connections to influence the board to deny approval.

With respect to lighting, Mr. Capo testified that they never have any activities on the farm after 6:00 p.m.

Upon questioning, Mr. Bocko conceded that the Township does not require approval for parking areas for hayride and pick-your-own operations. He also stated that the Township also does not require site plan approval for parking areas.

Mr. Capo and Ms. Mastorelli-Capo testified that when small groups of people come to the farm for riding lessons or birthday parties, the visitors park on a small grass area by the barn. The grass area can accommodate up to 12 cars. When larger groups come on the property, they park on the pasture field.

5. Adequate Driveways and Turning Areas

The zoning ordinances state that the provision of parking and loading spaces shall also include adequate driveway and necessary turning areas for handling vehicles. At the hearing, the Capos demonstrated that there is adequate ingress/egress and turning areas. There has been a U-shaped driveway on the property that was constructed long before the Capos purchased the property. (Exhibit 5). Mr. Bocko was satisfied that the ordinance was not being violated.

6. Performance standards for all uses

The Violation Notice identifies two provisions of Section 123-22 of which the Capo Farm is in violation. The first is the noise provision, which states

There shall be no noise emanating from the operation which shall be objectionable and clearly heard beyond the boundaries of the immediate site. §123-22E.

At the hearing, Mr. Bocko failed to provide any specific instances or details of noise violations from the Capos' farm.

The Violation Notice also alleges violation of Section 123-22G of the zoning ordinances, which requires appropriate waste disposal. During the hearing the Capos testified that they have a port-a-john on the property. Mr. Bocko conceded that this is an adequate waste disposal method and that it satisfies the zoning ordinance.

7. Signs

The Violation Notice alleged violation of Section 123-24, which prohibits signs from being displayed along the property frontage without proper approvals. During the hearing, Mr. Bocko testified that the main sign identifying the property as “Rainbow Ranch” is permitted as a pre-existing non-conforming use, but that smaller signs are not permitted.

D. SADC Site Inspection

On January 31, 2003, Charles Roohr inspected the Capos’ farm. (Exhibit 14). He noted in his inspection report that the ingress and egress is accommodated by a U-shaped driveway with the entrance and exit clearly marked. Mr. Roohr also noted that there was room for parking in front of and along the side of the main barn as well as along the side of the driveway.

Whether Activities Are Protected

The Right to Farm Act protects various agricultural activities as long as the farm and activities meet the eligibility criteria of the Act. Protected activities include livestock production and agricultural-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm. N.J.S.A. 4:1C-9a and h.

The Capos contend that the activities and events that they host on their farm (birthday parties; events for YMCA, PTA, and handicapped children; riding lessons; animal petting) are related to the marketing of the miniature ponies bred on the farm. They testified that if children are exposed to the miniature ponies through these activities they will develop an interest in owning a pony.

The Capos clearly put a lot of effort into the events and into ensuring that the children have a good time and learn about agriculture. They testified that prior to purchasing this farm, they ran the same operation in Hackettstown for two years. During those two years, they sold two or three ponies.

Although the Capos have not sold many ponies over the past three years, they continue their operation. It was obvious at the hearing that the Capos greatly enjoy giving children the opportunity to ride horses and learn about farm animals. It begs the question of whether the primary purpose of their operation is the sale of ponies or to provide entertainment and agricultural education activities.

The Act, however, does not require that the marketing of agricultural output be the primary purpose of hosting agriculture-related educational and farm-based recreational activities; it merely requires that the activities be “related to” the marketing of agricultural output. N.J.S.A. 4:1C-9h (emphasis added). In this instance, I cannot dispute that the activities on the Capos’ farm are related to the sale of miniature ponies. It is entirely plausible that the greater the number of people who visit Rainbow Ranch, the greater the likelihood the Capos will sell ponies. Indeed, the pony sale last year was a result of a child visiting the farm. I conclude that the disputed activities can be deemed agriculture-related educational and farm-based recreational activities related to the marketing of the agricultural output of the farm.

Whether Activities Conform to Generally Accepted Agriculture Management Practices

SADC staff contacted the Garden State Miniature Horse Association (GSMHA) and a farm in New Jersey that is a member of that organization to determine how miniature horses and ponies are typically marketed. The information provided by the GSMHA is geared towards the marketing of show horses. The Capos’ farm is not listed as a member on the GSMHA website, nor did the Capos state that they show horses or host horse shows.

Shirley Hunt, President of the GSMHA, explained that typical miniature horse farms breed and show miniature horses. Standard marketing is done by word of mouth, especially at shows. Breeders also advertise in miniature horse journals and magazines and market over the Internet. If a horse is registered with the American Miniature Horse Association and the American Miniature Horse Register, it can be sold for more money.

The owner of High Rock Farm in Hackettstown, New Jersey, a miniature horse farm, stated that most marketing and selling is done through the internet and advertising in trade papers.

Given that the Capos do not show their horses and do not appear to be registered with the GSMHA, the information provided by the GSMHA may not be wholly relevant to whether they conform to generally accepted agricultural management practices for the marketing of miniature horses. No other information was provided to show whether the methods employed by the Capos (riding lessons, birthday parties, hosting events on farm) are generally accepted methods of marketing unregistered miniature horses that are not show horses.

As discussed above, however, such activities do appear to be reasonable marketing tools for selling horses. Everett A. Chamberlain, Warren County Agricultural Agent, stated that the agritourism activities are part of the farm's marketing strategies to increase income through improved sales. In his opinion, the agriculture tourism activities are consistent with many other small farms in the region. (Exhibit 10).

It should be noted that the Capos appear extremely conscientious about their operation. They go to great lengths to ensure the safety and well-being of all who visit the farm. This diligence extends from overseeing traffic flow and parking to providing hand-washing stations for the children. The letters submitted in support of the Capos testified to the Capos' care for

the animals and concern for their visitors' health and safety. I therefore conclude that the activities conform to generally accepted agricultural management practices.

Municipal Ordinances

Breeding of livestock and conducting agriculture-related and farm-based recreational activities related to the marketing of the output of a farm may not have to conform to municipal ordinances if the activities conform with generally accepted agriculture management practices. The New Jersey Supreme Court has held that the SADC must consider municipal ordinances when evaluating right to farm cases. Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), *aff'd*, 172 N.J. 147 (2002). If the farmer can comply with the ordinances without reasonable interference with his agricultural operation, then the farmer must comply. If the farmer can demonstrate a legitimate, farm-based need for not complying, then the ordinances may be preempted.

The Township's concerns center around the fact that the public is invited onto the property. The Township contends that the Capos' use of their farm for birthday parties, riding lessons, and events as described above, are not permissible under the definition of "farm." Given that these events can be deemed agricultural-related educational and farm-based recreational activities pursuant to the Right to Farm Act, however, I conclude that they should receive the protections of the Act. I further conclude that the uses may continue despite the Township's contentions that they are not permitted uses, subject to the following.

The violation of off street parking and loading ordinances causes the most concern because the Capos invite the public onto the farm. It is important to note that the Right to Farm Act requires farm markets to be in compliance with municipal parking regulations, even though farm markets are entitled to the protections of the Act. N.J.S.A. 4:1C-9c. The legislature recognized that when the public is invited on a farm, there are safety issues associated with parking that are solely within the jurisdiction of the municipality. While the matter at hand may

not involve a farm market per se, it does involve the public coming onto the property for the purposes of marketing horses.

In light of the Act's parking requirements with respect to farm markets, I conclude that the Right to Farm Act does not preempt the Township's parking ordinances in this matter. While it appears that the Capos have adequate parking for the small number of cars generated from the riding lessons and birthday parties^{*}, I believe that such a determination is more appropriate for the Township. Likewise, it is within the Township's jurisdiction to determine whether the farm can safely and adequately accommodate larger numbers of vehicles.^{**}

With respect to the ordinance for Area and Yard Requirements for Recreational Facilities, I find that this ordinance does not pertain to the Capos' farm. The Violation Notice substituted the term "recreational activities" for "recreational facilities" and the Township presented no evidence as to why the Capos' farm would be deemed a recreational facility under the zoning ordinances.

Mr. Bocko conceded at the hearing that the Capos have sufficient driveway and turning areas for the handling of vehicles when he saw the survey plat of the farm and aerial photographs showing a U-shaped driveway.

^{*} Mrs. Mastorelli-Capo testified that they "are lucky" if they have four cars a week.

^{**} It does not appear that the Township conducted a thorough evaluation of the parking situation before it issued its Violation Notice. For example, at the hearing, the Capos demonstrated to Mr. Bocko's satisfaction that there is adequate ingress and egress through the U-shaped driveway. Upon a more detailed evaluation of the Capos' farm, the Township may find that there is adequate parking for the typically small number of visitors, and for the larger events as well, and may not require any kind of site plan or parking area approvals. It is important to note that the Township does not require site plan or parking area approvals for pick-your-own and hay ride operations at other farms in the Township, according to Mr. Bocko's testimony.

The violation dealing with noise was not adequately detailed in the Violation Notice or at the hearing. Without any specific examples of how the Capos violated this ordinance, I find that it is not an issue.

With respect to storage and waste disposal, Mr. Bocko conceded that the Capos' port-a-john was sufficient and that there was not a violation of this ordinance.

With respect to signs, Mr. Bocko testified that the large "Rainbow Ranch" sign was a preexisting nonconforming use and was not the subject of the violation. He stated that smaller signs were not permitted. The Capos did not object to this and I conclude that the sign ordinance should be respected.

Date: April 22, 2003

Marci D. Green
Public Hearing Officer
State Agriculture Development Committee

S:\RIGHTTOFARM\RTFCASES\WARREN\2117-02 Capo-Rainbow Ranch\SADC hearing 4-1-03\hearing report.doc

S:\RIGHTTOFARM\status-summary reports\SADC final decisions\capo rainbow ranch decision.doc