



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

APPROVING SETTLEMENT

OAL DKT. NO. ADC 10543-2023

AGENCY DKT. NO. SADC ID#2000

**VERONICA AND ED PRICE AND
TOWNSHIP OF UPPER,**

Petitioners,

v.

**CAPE MAY COUNTY AGRICULTURE
DEVELOPMENT COMMUNITIES AND
MICHAEL E. AND ROBIN HALPERN,**

Respondents.

Frank L. Corrado, Esq. for petitioner, (Barry Corrado & Grassi, attorneys)

Richard M. King, Jr., Esq. attorney for petitioner

Jon D. Batastini, Esq., appearing for respondent (Garrett & Batastini, P.A.,
attorneys)

Colin G. Bell, Esq., for other respondent/participants, (Hankin, Sandman,
Palladino & Weintraub, attorneys)

Record Closed: July 3, 2024

Decided: July 29, 2024

BEFORE CARL V. BUCK, III., ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement and joint certification is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

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.



July 29, 2024

DATE

CARL V. BUCK, III., ALJ

Date Received at Agency:

Date Mailed to Parties:

CVB/tat

Settlement Agreement
Site-Specific Agricultural Management Practice for Ocean City Winery
Block 723, Lot 37, Upper Township, Cape May County, New Jersey

The status quo of the approved Site Plan/Resolution/Use/Restrictions/SSAMP will be maintained for a period of 10 years commencing upon the entry of a consent order.

If the property is sold by the present owner in an arms-length, third party transaction, the status quo term is reduced to 7 years.

The neighboring property owners retain the right to object to the 5 acre status of the property after the status quo time period.

Eastern Red Cedars will be staggered and planted along the two properties to the east and the two properties to the west of Allendale Road upon receipt of written confirmation by those property owners that they were represented by counsel at the settlement conference and agreed to that planting.

The Order of the ALJ/State Agricultural Development Committee confirming the settlement will be recorded in the land records.

The appeal will be dismissed.

An action to enforce this Consent Order (or the SSAMP as modified by this Consent Order), shall follow, to the extent applicable, the provisions of N.J.A.C. 2:76-2.7 and 2:76-2.8. The prevailing party in any action to enforce the Consent Order (or the SSAMP as modified by this Consent Order) shall be entitled to attorney's fees against the other party, however, if there is an appeal, such fees are not payable until there is a final determination by the Administrative Law Judge, and the prevailing party on said appeal is entitled to payment of fees as ultimately determined by the Administrative Law Judge.

There will be no Paraquat used in the farming activities. The Property owner will provide notice of any intention to use any other "Restricted Use" product as defined by the most current EPA publication. The notice shall be satisfied by emailing the persons and entities identified on the attached email list (Exhibit 1). The notice shall state the date and approximate time of the use of the product, and the general nature of the product and active ingredient. The notice shall be sent by email at least 24 hours in advance of the intended use, except in the case of exigent circumstances to prevent substantial crop loss, in which case as much advance notice as the emergency permits shall be provided.

The provisions of this Consent Order shall be incorporated into and be a part of the SSAMP, and to the extent the existing SSAMP is contradicted or modified by this Consent Order, the Consent Order shall control.

Richard M. King, Jr. Esquire is authorized to any document necessary to effectuate the settlement consistent with the terms above stated.

The below parties, with the intent to be legally bound, hereby set their hands and seals:

Dated: 02 / 20 / 2024

Andrew Shawl
Andrew Shawl

Dated: 02 / 16 / 2024

Edward Price
Edward Price

Dated: 02 / 16 / 2024

Veronica Price
Veronica Price

Dated: 02 / 15 / 2024

Jack Griffin
Jack Griffin

Dated: 02 / 19 / 2024

Pam Griffin
Pam Griffin

Dated: 02 / 16 / 2024

Maria Busz
Maria Busz

Dated: 02 / 16 / 2024

Rae Jaffe
Rae Jaffe

Dated: 02 / 15 / 2024

Heidi Edwards
Heidi Edwards

Dated: 02 / 15 / 2024

Brian Edwards
Brian Edwards

Dated: 02 / 15 / 2024

Jesse Swartz
Jesse Swartz

Dated: 02 / 15 / 2024

Michelle Swartz
Michelle Swartz

Dated: 02 / 15 / 2024

Karolann Kemenosh
Karolann Kemenosh

Dated: 02 / 23 / 2024

Scott Rullan
SEE ATTACHED PAGE

Dated: _____

Charles Thonsen

Dated: 02 / 15 / 2024

Dated: 02 / 16 / 2024

Dated: 02 / 21 / 2024

Dated: 02 / 21 / 2024

Dated: 02 / 21 / 2024

Dated: 02 / 16 / 2024

Dated: _____

Dated: 02 / 21 / 2024

Dated: 02 / 22 / 2024

Dated: 02 / 22 / 2024

Dated: 02 / 15 / 2024

Dated: 02 / 17 / 2024

Dated: 02 / 21 / 2024

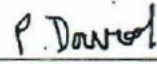
Dated: 02 / 15 / 2024

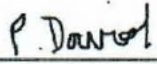
Dated: 3/21/24

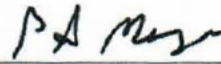
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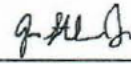

Karol Ruf


Karl Ruf

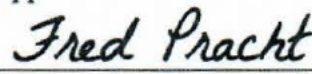

Fran Davish


Penny Davish


Peggy Mayer

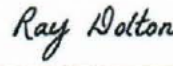

George Steinbronn, Jr.

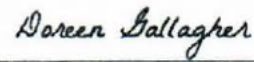
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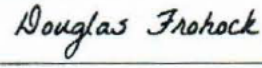
Victor Nappen

Fred Pracht



Raymond Doltun


Linda Doltun

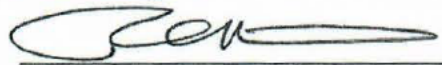

Ray Doltun


Doreen Gallagher


Douglas Frohock


Chuck Griffin


Michael Halpern


Robin Halpern

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Veronica Price

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Jack Griffin

Dated: _____

Pamela Griffin

Dated: _____

Maria Busz

Dated: _____

Rae Jaffee

Dated: _____

Heidi Edwards

Dated: _____

Brian Edwards

Dated: _____

Jesse Swartz

Dated: _____

Michelle Swartz

Dated: _____

Karolann Kemenosh

Dated: _____

Scott Rullan

Dated: 3/3/2024

Charles Thonsen

Charles Thonsen

Richard M. King, Jr., Esquire, NJ Attorney ID: 049431995
Timothy J. Mooney, Esquire, NJ Attorney ID: 306472019
Marisa J. Hermanovich, Esquire, NJ Attorney ID: 071372013

KINGBARNES

Attorneys At Law

2600 New Road, Suite A

Northfield, NJ 08225

(609) 522-7530

Attorneys for Plaintiffs

VERONICA & ED PRICE, et als.

Plaintiffs,

v.

CAPE MAY COUNTY AGRICULTURE
DEVELOPMENT COMMITTEE, et als.

Defendants

: STATE OF NEW JERSEY
: OFFICE OF ADMINISTRATIVE LAW
:
: OAL DOCKET NO: ADC 10543-23

STIPULATION OF DISMISSAL

I hereby dismiss my appeal and relieve Richard M. King, Jr. of KingBarnes as my
counsel in this matter.

Dated: 3-14-
_____, 2024



JOSEPH FALLS

RESOLUTION CADB 2-2023

**RESOLUTION OF THE CAPE MAY COUNTY AGRICULTURE DEVELOPMENT
BOARD GRANTING A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE
FOR OCEAN CITY WINERY**

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, *et seq.* and State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the County Agriculture Development Board (hereinafter "Board") to determine if his or her operation constitutes a generally accepted agricultural management practice; and,

WHEREAS, on July 1, 2021, Michael and Robin Halpern (the "Applicants"), owners and operators of the farm located at [REDACTED], Cape May County (the "Farm"), Block 723, Lot 37 on the most recent Tax map for the Township of Upper, County of Cape May, made a request in writing to the Board for the development of a site-specific agriculture management practice (hereinafter, "AMP") for the operation of a winery; and,

WHEREAS, on September 20, 2021, pursuant to N.J.A.C. 2:76-2.3(c), the Board advised in writing the State Agriculture Development Committee and Upper Township of the Halperns' request; and,

WHEREAS, in with their application, pursuant to N.J.A.C. 2:76-2.3(b), the Applicants provided the Board with documentation to support the claim that their agricultural operation is a commercial farm as defined by N.J.S.A. 4:1-C-3 and N.J.A.C. 2:76-2.1, including a commercial farm certification and supporting documentation; and,

WHEREAS, on October 12, 2021, some of the Board members conducted a site inspection of the Farm; and,

WHEREAS, on October 14, 2021, at its regular meeting, the Board was presented with the findings of the site inspection; and,

WHEREAS, on October 14, 2021, the Applicants presented a proposal for a site-specific AMP ("SSAMP") for the Farm; and,

WHEREAS, the Board sought the assistance of the Rutgers Cooperative Extension, and the Atlantic and Cape May County soil conservation district in the determination of generally accepted agriculture management practices and standards relating to wineries; and

WHEREAS, N.J.S.A. 4:1C-9 states in pertinent part:

Notwithstanding the provisions of any municipal or county ordinance, resolution or regulation to the contrary, the owner or operator of a commercial farm, 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 which a commercial farm is in operation as of the effective date of P.L. 1998, c. 48 (C:4:1C-10.1 et. al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedures Act," P.L. 1968, c. 410 (C.52: 14B-1 et. seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may

- a. Produce agricultural and horticultural crops, trees, and other commodities....
- b. Process and package the agricultural output of the commercial farm
....
- e. Control pests, predators and diseases of plants and animals

WHEREAS, N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3 defines a commercial farm as either

(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, 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; and

WHEREAS, on October 14, 2021, the Board considered the testimony presented by the Applicants and Vincent Orlando, P.E., P.P. on behalf of the Applicants in support of the proposed site plan and SSAMP for the Farm, as well as from officials from Upper Township in opposition thereto and numerous members of the public during a public hearing,

WHEREAS, the Board considered and reviewed the following exhibits entered into evidence during the public hearing:

1. Exhibit A – January 4, 2021 Farm Area Plan and Survey by Stephen C. Martinelli
2. Exhibit B – June 4, 2021 Site Plan by Vincent C. Orlando, P.E., P.P.
3. Exhibit C – October 31, 2005 Deed or [REDACTED]
4. Exhibit D – July 22, 2005 Deed of Easement
5. Exhibit E – Historical Financial and Taxation Documents
6. Exhibit F – July 11, 2018 United States Department of Agriculture Conservation Plan
7. Exhibit G – June 11, 2021 Cape Atlantic Conservation District Conservation Plan
8. Exhibit H – November 6, 2019 Letter from Upper Township
9. Exhibit I – September 2014 SADC Presentation "Agricultural Management Practice" (AMP) for "On Farm Directing Marketing" (OFDM)
10. Exhibit J – June 27, 2013 Resolution of the Gloucester County Agriculture Development Board
11. Exhibit K – October 2, 2013 Resolution of the Monmouth County Agriculture Development Board
12. Exhibit L – Rutgers Agricultural Experiment Station "2019 Commercial Grape Pest Control Recommendations for New Jersey"
13. Exhibit M – Applicants' Pesticide Licenses and Certificates
14. Exhibit N – New Jersey Department of Agriculture "New Jersey Wine Industry"
15. Exhibit O – 2017 HEL Study for [REDACTED]
16. Exhibit P – Upper Township Tax Map Sheet for [REDACTED]
17. Exhibit Q – United States Department of Agriculture Land Plot of [REDACTED]

18. Exhibit R – Upper Township Demolition Approvals
19. Exhibit S – Certificate of Occupancy for Existing Pole Barn;
20. Exhibit T – Revised Site Plan
21. Exhibit U – Revised SSAMPs
22. Exhibit V – DEP Findings for Violations
23. Exhibit W – Township Resolution from 2005 for preservation

WHEREAS, on October 14, 2021 by a vote of 4-1 the Board determined that the Farm is a commercial farm under the Right to Farm Act and therefore is entitled to pursue an SSAMP; and

WHEREAS, thereafter the Township of Upper was represented by Frank Corrado, Esq. and a group of property owners in the area was represented by Richard King, Esq. (the "Objectors") to oppose the application; and

WHEREAS, thereafter at a subsequent hearing to consider the SSAMP on March 31, 2022, the Township of Upper and the Objectors contended that Applicants' initial notice of the hearing was defective and the CADB should therefore reconsider its commercial farm designation vote; and

WHEREAS, after receiving and considering legal briefs on the issue, on June 13, 2022, the CADB by a 4-1 vote determined the initial notice was adequate; and

WHEREAS, the Objectors and Township then appealed the June 13, 2022 jurisdictional decision to the SADC; and

WHEREAS, the SADC dismissed the appeal as premature and determined it would consider the issue after the CADB acted on the SSAMP; and

WHEREAS, prior to the Board's consideration of the SSAMP scheduled for February 27, 2023, the Applicants and the Township discussed potentially mutually agreeable conditions and limitations on the SSAMP, including a revised site plan (Exhibit T); and

WHEREAS, on February 27, 2023 after the Applicant re-noticed and submitted a second revision of the site plan and revised the SSAMPs (Exhibit U), the Board heard testimony as to the requests for the SSAMP and voted 5-0 to approve the SSAMP for the Applicant; and

WHEREAS, at the February 27, 2023 hearing the Applicants advised the Board that the Applicant is expanding the field to the east as shown on the plan and agreed to numerous limitations and conditions of approval in order to address certain concerns raised by Upper Township and the public most significantly removing the request for the development onsite wine tasting and sales room, and presented additional Exhibits V and W; and

WHEREAS, the Objectors testified that the commercial farm did not meet the minimum five (5) acres of farming or otherwise meet the commercial farm requirements; and the Objectors further asserted that the approval for the right to farm would negative impact the neighborhood from the additional traffic; the use of pesticides, fertilizers and herbicides; and general noise from the farming machinery; and

NOW, THEREFORE, BE IT RESOLVED, that upon consideration of the entire record, the Board makes the following findings of fact and conclusion of law:

1. The Farm is located in a residential zone in which agriculture is not a permitted use, and, as such, the applicants must meet the requirements of N.J.S.A. 4:1C-9 for the Board to consider whether it qualifies a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3.

a. The Board has determined that the Farm is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3 because

- i. it has been in operation since 1998 as demonstrated by the tax and historical financial records submitted by the Applicants as well as the testimony provided by the Applicants; and
- ii. The Farm is greater than five acres as demonstrated by the Farm Plan and Survey submitted by the Applicants as well the testimony provided by the Applicant's expert; and
- iii. The Applicants have demonstrated that the farm has produced agricultural and horticultural products worth \$2,500 per year based on the sale of trees and grapes as demonstrated by the tax and historical financial records of the Farm, and as well as the testimony provided by the Applicants, except for the years when the agricultural product was being actively rotated from trees to grapes as permitted by the Right to Farm Act; and
- iv. The Farm is eligible for differential property taxation under the Farmland Assessment Act of 1964 because it consists of more than 5 acres that have been actively devoted to agricultural use for more than 2 years and generates more than \$1,000 in annual revenue; and

BE IT FURTHER RESOLVED, that based on the foregoing determinations, the Applicants' operation is a "commercial farm" as defined by the Right to Farm Act; and

BE IT FURTHER RESOLVED, that based upon the Farm's qualification as a commercial farm, the Board has jurisdiction to review and approve an SSAMP; and

BE IT FURTHER RESOLVED, that upon consideration of the entire record, the Board makes the following additional findings of fact and conclusion of law:

1. The cultivation and harvesting of wine grapes and tree fruit, and the production and packing of those agricultural products into about 1,350 gallons of wine (approximately 6,750 bottles of wine), subject ABC approvals, and associated byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and fruit tree wood, are recognized and generally accepted agricultural management practices in the State of New Jersey.
2. The development of a wine production and bottling facility by retrofitting the existing pole barn as reflected on the Applicants' second revised site plan is consistent with generally accepted agricultural management practices in the operation of wineries.
3. The development of a wine production and bottling facility by retrofitting the existing pole barn as reflected on the applicant's second revised site plan will not implicate any health, safety, or welfare issues, and the Applicants have a legitimate farm-based reason for the same.
4. The following events and activities at the farm are usual and customary in the wine production and bottling business and consistent with generally accepted agricultural management practices and the Applicant has agreed to certain other conditions:
 - a. The production, cultivation, harvesting, and storage of wine grapes and tree fruit, including the application of appropriate pesticides and fertilizers consistent with the requirements of any applicable state and federal law.

b. The application of agricultural and horticultural techniques, including the application of appropriate pesticides and fertilizers, consistent with the Rutgers Agricultural Experiment Station "2019 Commercial Grape Pest Control Recommendations for New Jersey" and N.J.A.C. 2A:76-2A.6 (adopting New Jersey Commercial Tree Fruit Production Guide as an AMP).

c. The implementation of approved farm conservation plans pursuant to N.J.A.C. 2:76-2A.7.

d. The production, bottling, packaging, and/or storage of wine on the Farm for sale offsite and/or online.

e. The production, bottling, packaging and/or storage of wine byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and tree fruit wood, for sale offsite and/or online.

f. The storage of supplementary and complementary agricultural products, such as branded wine glasses, wine accessories, shirts, hats, and similar promotional items for sale offsite and/or online.

g. The Applicant has specifically agreed not to have a tasting room, salesroom, commercial tasting, or commercial parking, and that the SSAMP at issue does not include permission to conduct special occasion events or conduct on-farm directing marketing activities, which the Applicant may seek permission from the Board upon another Application.

h. The Applicant has specifically agreed that traffic would not be significantly increased as a result of the bottling, packaging, and/or storage of wine on the Farm for sale offsite and/or online.

i. The Applicant has specifically agreed that the buffer on the **south** side, consisting of trellis, grape vine, and open space, shall be increased to 30 feet and to provide a six-foot high solid fence for the first three properties along Lots 43, 44 and 45 with some planting and some shade trees and for additional buffers as set forth in the approved plan.

j. The Applicant has agreed not to store any material in the storage area greater than six (6) feet in height.

k. The Applicant has agreed that no tractor-trailers deliveries will be to the site.

l. The Applicant has agreed to maintain and erect the current fences and proposed fences.

m. The Applicant shall revise the site plan to delineate the driveway entrance.

n. The Applicant has agreed that bottling shall be during business hours and shall be in accordance with Upper Township.

BE IT FURTHER RESOLVED, that the Board's approval of development of the winery and the related agricultural activities set forth above shall constitute a site-specific agricultural management plan ("SSAMP") for the Farm and therefore does not require site plan or municipal planning or zoning board approvals and the Township of Upper shall immediately issue all appropriate construction and other permits for the development; and

BE IT FURTHER RESOLVED, that the Board's approval of the SSAMP and site plan for the Farm is subject to the following additional conditions and those set forth above:

1. All retrofitting and construction approved by the SSAMP shall be done in accordance with the applicable construction and building code standards and shall be subject to inspection for compliance with applicable code requirements by the Township of Upper.

2. All wine production, bottling, and storage at the Farm shall be in compliance with applicable ABC laws and regulations.

3. The Farm shall comply with all applicable ABC laws but shall not otherwise provide for the on-site sale of wine and associated byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and fruit tree wood.

4. If the Farm's operations substantially change or deviate from the provisions of this SSAMP in the future, the Applicant or any aggrieved party may return to the Board to seek appropriate relief as provided by law.

BE IT FURTHER RESOLVED, that the Board shall forward a copy of resolution to the Applicant, the Township of Upper, and the SADC within 30 days.



Matthew P. Stiles, Chairman

Offered By: *Alfred Natali*

Seconded By: *Robert Schumann*

Yes: *4*

No: *1*

Absent: *Indelible 1*

Adopted: *July 31, 2023*