



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 10559-14

AGENCY DKT. NO. SADC ID #1375

MONICA AND RICK LaRUE,

Petitioners,

v.

MONMOUTH COUNTY

AGRICULTURE DEVELOPMENT BOARD,

Respondent.

Monica LaRue and Rick LaRue, petitioners, pro se

Christopher L. Beekman, Esq., for respondent (The Beekman Law Firm, LLC,
attorneys)

Record Closed: November 23, 2015

Decided: August 22, 2016

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

This matter arises from a Right to Farm Act complaint filed against respondent Monmouth County Agriculture Development Board (Monmouth, Board), by petitioners Monica LaRue and Rick LaRue (LaRue) seeking relief from three resolutions adopted by

respondent, specifically 2014-05-04, 2014-06-02, and 2014-06-06 in response to an application for a Site Specific Agriculture Management Practice (SSAMP) recommendation

PROCEDURAL HISTORY

Petitioners requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on August 19, 2014. A hearing was scheduled for, and held on, October 13, 2015, and the record was left open to allow for the submission by the parties of post-hearing briefs. The record closed on November 23, 2015. Orders were entered in this matter to allow for the extension of time in which to file the initial decision.

FACTUAL DISCUSSION

Harriet Honigfeld (Honigfeld) was called to testify on behalf of the Board. She has worked for the County for sixteen years, the last twelve as administrator of Monmouth County Farmland Preservation Program. She also serves as staff to the County Agricultural Development Board. Honigfeld has a Masters in Environmental Studies from the Yale School of Forestry, and is a New Jersey licensed planner. She reviews Right to Farm applications, probably reviewing dozens overall, noting that several per year make it to the Board hearing level.

Honigfeld was familiar with the current matter, and has visited the site in question at least twice. She noted a few issues with the terrain management, that it was a hilly site for Monmouth County, which increased the potential for erosion and earth movement, and indicated that cutting into the hillside was notable and extreme. The witness identified photographs of the exposed hillside; a photograph of the livestock building; a photograph of another altered hillside, which shows significant exposure of soil in the staging area; photographs of the staging area, which was observed on a subsequent visit; and photographs of the milling (R-1 to R-4). Honigfeld noted that the hillside became further altered, and that instead of a 90-degree cut angled in, it was a gentler slope.

With regard to Resolution 2014-05-04 (R-5), Honigfeld stated that site-specific agricultural management practice (SSAMP), determines whether generally accepted

management practices were employed. Due to the nature of the property, the Board looked at the Woodland Management Program Plan, and while it is common to clear-cut, given the steep slope, a plan was recommended which was not met. The petitioners accelerated the plan, and put the parcel at risk for further erosion. A report from Dr. Bill Sciarappa, Agriculture and Resource Management Agent, Rutgers University, (Sciarappa), agreed with the plan that was adopted by the Board (R-6). Because best practices were not followed, no extra protection was given to the application.

With regard to the ordinance violation, it was noted that the driveway did not meet the setback requirements, that ingress and egress were extended, and a staging area added. Furthermore, an engineer was not engaged, and no analysis was done by a professional (R-7). Honigfeld was familiar with Resolution 2014-06-02, and noted that because the petitioners did not meet their burden to overcome the ordinance consideration was not given. She noted that the petitioners' case was not strong enough to overcome the Board's determination, especially considering the neighbor's objections. There was not enough agriculture present to override the municipal ordinance. With regard to sawmill operations and raw materials, Honigfeld noted that the Act does not cover commercial farms processing wood. The farm processes wood that was culled off-site at a property that is not part of the applicants' property. Honigfeld believes the protection is only for processing your own wood. She noted that petitioners appear to be confused over the 51-percent-rule. If the petitioners had established a farm market for their own, they could bring in other wood, up to 49 percent, if processed off-site.

On cross-examination, Honigfeld acknowledged that there was no specific language in the Act treating hilly farmland any differently, but noted that the Board is looking at site-specific accepted practices at a similar site. She noted that it takes time to develop woodland in the pasture, and acknowledged many improvements to the petitioners' property over time, noting that it was why so much of what petitioners sought was approved.

Honigfeld conceded that the angle of the cut was never measured, and identified a demonstrative document depicting a compass (P-1). She stated that 70 degrees would be about 1:00, between 3:00 and 12:00 on a clock face, and was the difference between the slopes described by Sciarappa, versus the Woodland Management Plan (P-2).

It was noted that the opening paragraph in the Woodland Management Plan referenced the selective cut, and systematic procedure schedule, given in the plan. There was an effort to grow pasture. Soil was described as well-drained, and fertile. Honigfeld acknowledged that the sample that was sent by the petitioners showed a pH of four, and was not aware of any DEP penalty for coming out of the Woodland Management Plan early. She stated it is understood that the counties cannot supersede State or Federal law. Honigfeld stated that she did not know who oversees the Woodland Management Plan beyond the scope of her duties and knowledge. Health and safety concerns were not raised by the work area. Honigfeld has been involved with the Department of Environmental Protection (DEP) on a few other Right to Farm applications, and usually, the Department of Public Safety (DPS) generally stays out of these cases.

With regard to Resolution 2014-06-02 (R-7), she stated that on page two, it was noted that a buffer between storage and the neighbor's property was not explicitly required by the Right to Farm Act. Honigfeld did not know who supersedes when the County Agricultural Development Board disagrees with the local zoning boards, with regard to buffer requirement. With regard to the sawmill, she acknowledged that farm markets do bring in other products potentially allowed under the Act, wineries that grow only red grapes bring in green grapes to make white wine, or berries for pies when only apples are grown, which has to be processed on the site. While not certain that was a violation, as it was in the sawmill issue, Honigfeld believes that sawmills have their own specific provisions, and there is potential for wood products to be protected. Honigfeld noticed the Township did not file a complaint, but rather an application was made for a SSAMP that required the Board to reach out to the town. On redirect, she stated that conversion from woodlands to pasture had not been carried out in a safe manner as referenced in a letter from a forester, Ken Taaffe (R-9).

Rick LaRue (LaRue), the petitioner, testified on his own behalf in this matter. He explained that he has had difficulty with his neighbor, and that the way the Board handled the matter has left him no option but to settle with insurance. He explained that he actually removed some of his neighbor's trees due to a faulty survey. The petitioner attempted to correct the matter but his neighbor still sued. The Board deemed that there was not enough income, and while LaRue stated it is old news, he feels the Board seems to keep coming back to it. He stated that most farms abut to the property line, but not in Monmouth

County, and he does not think that is fair. He believes that the Board has an opinion that hardship must be shown in order to seek relief under the Act, and believes that the Board seems to have predetermined its denial of his application. He stated that a local ordinance only needs to be considered when health or safety is an issue.

LaRue stated that his property is 2,000 feet deep, and that he needs to move 3,000 cubic yards of dirt, which would require 150 dump trucks to comply. He is 900 feet away from his neighbor, and believes he should be out of the Woodland Management Plan early because it was completed. He stated that the DEP has jurisdiction over the Woodland Management Plan, and so he did not know why the Board is able to review it. The DPS discharged the petitioner from the obligation to move from Woodland Management pasture for farmland assessment. LaRue stated that the Board has allowed others to do what he wants to do, though he noted that a Board member has said that some places are not meant to be farms. He believes he is being penalized for living on a hill, and referenced a resolution from the Thomas Orgo case (P-4). He believes that case gives him a farm-based reason to overrun the local ordinance. LaRue's neighbor claims to have eroded 1,000 cubic yards of soil from his property, which is not true. Everything petitioner does is designed to keep water on his property.

With regard to the sawmill, LaRue stated that the trees are products of the farm. He sells lumber, and is starting an eBay store with \$50,000 in sales. The issue is that he can only pull certain trees. LaRue simply wants protection for the one time he purchases raw sycamore wood material, and transports it onto the farm to cut. He does not expect trouble because he now has new neighbors, but he still wants protection. LaRue feels he was wronged by the Board, believes that the Board has discretion to overrule local land-use law, and in this case, should have overruled local land-use law. He believes that his approval as a commercial farm should be permanent.

Considering the documentary and testimonial evidence presented in this matter, I **FIND** that the conversion from woodlands to pasture was not done in accordance with the Woodland Management Plan; that the work area for equipment storage does not meet the setback requirements of local ordinance; and that petitioners process and mill wood for sale, some of which is grown on the subject property and some of which is not.

LEGAL ANALYSIS

The Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4 (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). The RTFA “renders its provisions preeminent to ‘any municipal or county ordinance, resolution, or regulation to the contrary’” and its “provisions [are] preeminent over a municipality under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -112.” Bor. of Closter v. Abram Demaree Homestead, Inc., 365 N.J. Super. 338, 347 (App. Div. 2004), certif. denied, 179 N.J. 372 (2004) [citing N.J.S.A. 4:1C-9; Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002)]. However, the protections of the RTFA extend only to an agricultural operation that qualifies as a “commercial farm.” In re Tavalario, 386 N.J. Super. 435, 441 (App. Div. 2006).

Under the RTFA, a “commercial farm” is “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,’ P.L. 1964, c. 48 (C. 54:4-23.1, et seq.).” N.J.S.A. 4:1C-3; N.J.A.C. 2:76-2.1. The RTFA “does not require an applicant to apply for and obtain farmland assessment, but only that he meets the eligibility criteria for farmland assessment.” In re Arno, ADC 4748-03, Final Decision (February 26, 2004), <<http://njlaw.rutgers.edu/collections/oal/>>.

Under the RTFA, a commercial farm operator “may make a request in writing to the county agriculture development board (CADB) to determine if his or her operation constitutes a generally accepted agricultural operation or practice” that is protected by the RTFA from nuisance action. N.J.A.C. 2:76-2.3(a); N.J.S.A. 4:1C-9. This is known as a request for a recommendation of a site-specific agricultural management practice [SSAMP.]

Under this procedure, the CADB requests information about the commercial farm from the owner, including “[p]roof that the commercial farm is no less than five acres,

produces agricultural/horticultural products worth \$2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964” and “[p]roof that the farm is located in an area in 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, or which commercial farm was in operation as of July 2, 1998.” N.J.A.C. 2:76-2.3(b); N.J.S.A. 4:1C-9. The CADB cannot hear the owner’s application for an SSAMP recommendation unless the farm meets these threshold requirements. N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.3; In re Arno, supra.

Upon making a decision, the CADB forwards its determination to the farm owner, the State Agriculture Development Committee (SADC), and any other appropriate party. N.J.A.C. 2:76-2.3(e). Any person aggrieved by the CADB’s determination may file an appeal with the SADC in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15 (APA). N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.3(f). If the SADC determines that the appeal constitutes a contested case, the committee may transmit the matter to the Office of Administrative Law for a hearing. N.J.S.A. 52:14B-2; N.J.A.C. 1:1-2.1. After conducting a de novo hearing, the Administrative Law Judge (ALJ) assigned to the matter shall issue an initial decision that includes his recommended findings of fact and conclusions of law. N.J.S.A. 52:14B-10(c). The initial decision is filed with the SADC, which may adopt, modify, or reject the initial decision, and whose decision, shall be considered a final administrative agency decision. N.J.A.C. 2:76-2.3(f); N.J.S.A. 4:1C-10.2; N.J.S.A. 52:14B-10(c).

In the present matter, petitioners claim to be aggrieved by the Board’s action in response to their application for an SSAMP recommendation. Specifically, they challenge decisions incorporated into three Board Resolutions: 2014-05-04, 2014-06-02, and 2014-06-06.

With regard to Resolution 2014-05-04, petitioners note that the Woodland Management Plan was approved by the NJDEP, and that petitioners were in compliance when it ended. Petitioner argues that preemption prohibits the Board from superseding the decision of a State agency. Respondent relies on the evidence submitted, and relied upon at its own hearing, specifically the letter from Dr. Sciarappa (R-6) and Ken Taaffe (R-9),

petitioners' former forester, which indicated that best practices were not being followed, and that conversion from woodland to pasture was not being carried out in an environmentally sound manner.

Petitioners have argued that the Board has acted in an arbitrary and capricious manner. Respondent noted that petitioners did not retain experts or provide sufficient evidence to dispute the arguments included in the evidence presented. After considering the testimonial and documentary evidence in this matter, I **CONCLUDE** that petitioners have not met, by a preponderance of credible evidence, their burden in demonstrating that the Board's decision in this matter is arbitrary, capricious or unreasonable, or that the Board abused its discretion in providing its response to the SSAMP. I **CONCLUDE** that the Board's findings and conclusions in Resolution 2015-05-04 should be **AFFIRMED**.

With regard to Resolution 2014-06-02, petitioners argue that since an official farming complaint was never received from the Township, that the Right to Farm Act does not require proof of hardship to be relieved of the requirements of the municipal ordinance. Petitioners cite to Twp. of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), aff'd 172 N.J.147, as standing for the proposition that all that needs to be demonstrated is that the practice is an acceptable agricultural practice, which the Board stated in its Resolution it is.

The Board cites to den Hollander, as well as to Curzi v. Raub, 415 N.J. Super. 1 (2010), as standing for the proposition that in seeking to overcome a municipal ordinance, petitioners must demonstrate a legitimate, agriculturally-based reason for overcoming the ordinance. The record reflects that petitioners did not present any expert opinion or any evidence beyond mere assertion to any agriculturally-based reason for overcoming the ten-foot setback requirement of the municipal ordinance, nor did they demonstrate beyond assertion as to the depth of the property or to a hardship created by enforcing the ordinance. The record does reflect that the Board in its deliberation considered the agricultural use, as well as the impact on neighboring properties, as required by the Act. While it is clear that the ACT is preeminent over local ordinance, it is also clear that impact of that is to grant primary jurisdiction of regulation with the Board and the State Agricultural Development Committee, and the den Hollander decision indicates that in exercising that

jurisdiction, the Board and Committee are required to give consideration to the limits imposed by local ordinance. The record reflects that the Board has done so. Accordingly, I **CONCLUDE** that the Board's decision that petitioners were not entitled to relief from the setback requirement was appropriate, and should be **AFFIRMED**.

With regard to Resolution 2014-6-02, petitioners claim that protection under the Right to Farm Act should be extended to cover log milling for wood not grown on the property, but brought on from another site, for sale by the farm. Respondent argues that it is not banning the sale of off-site wood, but that the Board has no jurisdiction over wood milled off-site, and therefore cannot grant protection to that activity. Respondent further argues that the 51-percent-rule governs the definition of what constitutes a farm market, and governs what percentage of goods must be sold that are grown on the farm. Respondent argues that they do not have jurisdiction to offer the relief sought by petitioners.

The Resolution in question states and resolves that the "processing, sale, and us[e] of rough lumber that has been harvested from the site is an accepted general management practice and protected agricultural activity." It also finds that "the processing and sale of lumber harvested from off-site sources is not a protected activity." The Board does not dispute that up to 49 percent of the wood sold by petitioners can come from off-site sources, but it does not recognize the activity of bringing the wood on to be sold as protected agricultural activity under the Right to Farm Act, arguing convincingly, that the purpose of the Act is not to extend its protection to materials acquired off-site. The Act clearly provides that the production of such products, and the processing and packaging of the output of the farm, is protected. It also protects providing for the operation of a farm market [N.J.S.A. 4:1C-9(c)], it does not explicitly offer protection to the sale of items not produced by the applicant farm. Accordingly, I **CONCLUDE** that the Board's decision to not extend protection to the sale of logs milled from wood not grown on the property is appropriate and should be **AFFIRMED**.

ORDER

In consideration of the foregoing, it is hereby **ORDERED** that the Board's Resolutions appealed by petitioner are hereby **AFFIRMED**, and petitioners' appeal is hereby **DISMISSED**.

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 22, 2016
DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

August 22, 2016

Date Mailed to Parties:

/nd

APPENDIX

LIST OF WITNESSES

For Petitioners:

Rick LaRue

For Respondent:

Harriet Honigfeld

EXHIBITS

For Petitioners:

- P-1 Compass
- P-2 Woodland Management Plan, for Monica and Rick LaRue, Block 50, Lot 6.07, Upper Freehold Township, Monmouth County, Planning Period 2003-2012
- P-3 Resolution 2006-39, Burlington County Agriculture Development Board, Recommending a Site-Specific Agricultural Management Practice Under the New Jersey Right to Farm Act
- P-4 Resolution 2002-01-01, Monmouth County Agriculture Development Board, Recommending a Site-Specific Agricultural Management Practice Under the New Jersey Right to Farm Act

For Respondent:

- R-1 Photographs
- R-2 Photographs
- R-3 Photographs
- R-4 Photographs
- R-5 Resolution 2014-05-04, Monmouth County Agriculture Development Board, Recommending a Site-Specific Agricultural Management Practice
- R-6 Letter from Dr. Bill Sciarappa, Monmouth County Agriculture Agent

- R-7 Resolution 2014-06-02, Monmouth County Agriculture Development Board,
Recommending a Site-Specific Agricultural Management Practice
- R-8 Resolution 2014-06-06, Monmouth County Agriculture Development Board,
Recommending a Site-Specific Agricultural Management Practice
- R-9 Letter from Taaffe Forestry Services
- R-10 Letter from Natural Resources Conservation Office.