



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 00165-23

AGENCY DKT. NO. SADC

ID# 1978

TOWNSHIP OF RARITAN,

Petitioner,

v.

SUSAN AND ALLEN FUNK AND

WEST VIEW VINES,

Respondents.

Joseph V. Sordillo, Esq., for petitioner Township of Raritan (DiFrancesco,
Bateman, Kunzman, attorneys)

Steven P. Gruenberg, Esq., for respondents, Susan and Allen Funk (Gruenberg
Law Office, attorneys)

Katrina L. Campbell, Esq., County Counsel, for respondent, Hunterdon County
Agricultural Development Board

Record Closed: October 1, 2023

Decided: November 14, 2023

BEFORE **SARAH G. CROWLEY**, ALJ

STATEMENT OF CASE AND PROCEDURAL HISTORY

This matter arises out of an appeal from the Hunterdon County Agricultural Development Board (CADB) approval of an application for a Site-Specific Agricultural Management Practice (SSAMP), for property located at Block 24, Lot 4, in the Township of Raritan, New Jersey, also known as [REDACTED] Flemington, New Jersey. It involves issues related to the designation and benefits offered by the Right to Farm Act (RTFA), N.J.S.A. 4:1C-1 to -55. The property consists of six+ acres of land, including a dwelling unit and facilities and is in the R-1 zoning district. The R-1 Rural Residential District states that “any form of agriculture or horticulture, including farm product sales, in accordance with the requirements of Subsection E(3), is a principal permitted use and section 296-95(6) designates customary uses incidental to an agricultural or horticultural use permitted in the zone.

The Municipal Tax assessor approved the respondent’s application for commercial farm status. On April 20, 2022, respondents applied for SSAMP approval by the CADB, seeking a determination to permit construction of a concrete pad to be used in their winemaking operation, thereby preempting the municipal land use regulation. On October 13, 2022, the CADB conducted a public hearing and voted in favor of the SSAMP. The petitioner’s appeal is predicated on two grounds. First, the petitioner argues that the CADB did not have jurisdiction to hear this matter due to the property not meeting the requirements of a commercial farm. The petitioner also argues that the issues of the impact of the approval on public health and safety were not considered and thus, the CADB application should be reversed.

The petitioner filed an appeal with the SADC who transferred the appeal to the New Jersey Office of Administrative Law (OAL) on January 4, 2023, where it was filed as a contested matter. The parties concurred regarding the nature of the proceeding to be held to consider the petitioner’s appeal, which included objections to the determination that the CADB Board had jurisdiction to hear the matter and CADB’s finding that the applicant was qualified for protection under the Right to Farm Act (RTFA). With knowledge that the appeal was de novo, the parties agreed to submit briefs and transcripts of the proceedings below and permit a determination to be made

without additional testimony. The parties submitted briefs and arguments were presented on the record on October 1, 2023, and the record closed at that time.

FACTUAL FINDINGS AND CONCLUSIONS

1. Jurisdiction

The first issue to address is whether the CADB had jurisdiction under the Right to Farm Act. In this Act, the Legislature, recognizing the importance of preserving farming as a viable part of New Jersey's economic life, determined that under certain conditions the right to conduct farming operations could supersede municipal enactments that might otherwise interfere with such farming operations.

N.J.S.A. 4:1C-9 provides as follows:

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 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 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or "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:

As the provision indicates, it is intended to benefit "commercial farms." Thus, the fundamental question that must necessarily be addressed regarding any application seeking the protection of this Act is whether the applicant satisfies the requirement that its operation is a "commercial farm." If the answer is affirmative, then the County Board has jurisdiction to consider whether the farm's operation "conforms to agricultural management practices recommended by the committee" or "whose specific operation or practice has been determined by the appropriate county board . . . to constitute a

generally accepted agricultural operation or practice.” If the applicant fails to establish that it is a “commercial farm,” the County Board has no jurisdiction to consider the matter any further.

The definition provided in the Act for a “commercial farm” is in part dependent upon the size of the property in question. Here, there is no dispute that the property exceeds five acres. As such, to qualify as a “commercial farm,” the property must be “(1) a farm management unit of no less than five acres producing agricultural and 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.)” This means that the enterprise conducted on the property must be a “farm management unit,” and if it is, then it must “produce” that required sum of product or more annually. The parties do not dispute that the financial threshold was met by the petitioners. The petitioner challenges the determination by the municipal tax assessor who certified the property as a commercial farm and the determination of the CADB that the petitioner met the requirements and was entitled to the protections of the RTFA.

Relying on the Farmland Assessment approval, the CADB certified the property as a commercial farm in June 2023. In addition, according to respondent Funks’ representations and based on the Farmland Assessment application, the property had at least five acres of land actively devoted to agricultural uses as of June 26, 2023. Although petitioner alludes to the erroneous farmland assessment, the municipal tax assessor was entitled to use her own judgment to grant or deny the application. In addition to the determination by the municipal tax assessor, the board members inspected the property. Moreover, the petitioner has not presented any credible evidence that the property did not meet this standard or that there is any reason not to give deference to the municipal tax assessor’s judgment.

In Interstate 78 Off. Park, Ltd. V. Tewksbury Twp., 11 N.J. Tax 172, 185 (Tax Ct. 1990), the court found that:

The farmland application [was] a necessary factual document without which an assessor [could not] make an informed determination whether to grant or deny the application as required by the Legislature. In reaching his determination, an assessor is entitled to rely on the claims and data contained therein. To conclude otherwise would make the farmland application a sham rendering it ineffectual and meaningless; it would completely thwart the Legislature's scheme of controlling the granting of farmland assessments as evidenced by the acts requiring the filing of the application and its approval or disapproval in the pretax year.

In this case, the tax assessor determined that the property met the requirements of a commercial farm. She relied upon her review of the application as well as representations made by the respondents and concluded that the property would meet all conditions to be granted the farmland assessment. Although there might have been some delays in putting the plan into action, respondents prepared the land so that when the vines were received, they would be able to plant them in the appropriate season. The granting of the farmland assessment application was therefore reasonable, and the assessor's certification of same predicated on her opinion or judgement which are entitled to deference. Moreover, there was no credible or convincing evidence presented by the petitioner to reverse this determination.

N.J.S.A. 54:51A-7 provides in relevant part:

The tax court may, upon the filing of a complaint at any time during the tax year or within the next 3 tax years thereafter, by a property owner, a municipality or a county board of taxation, enter judgment to correct typographical errors, errors in transposing, and mistakes in tax assessments, provided that such complaint shall set forth the facts causing and constituting the error or errors and mistake or mistakes, or either thereof sought to be corrected and that such facts be verified by affidavits submitted by the plaintiff. **The tax court shall not consider under this section any complaint relating to matters of valuation involving an assessor's opinion or judgment.**

According to the municipal tax assessor's certification, the assessment was granted at her own discretion, and there were no errors or mistakes. She relied upon

representations by the applicants, none of which have been proven false. When it considered the SSAMP application in this matter, the CADB considered whether the applicant was operating a “commercial farm,” and, only after determining that this was so, did it then consider whether the intended operations otherwise qualified for the protections afforded by a Site-Specific Agricultural Management Plan. The record demonstrates that the Board relied on several factors in this determination, the principle one being the municipal tax assessor’s certification, as well as a visual inspection of the property. The petitioner has not produced any evidence to demonstrate that the farming enterprise did not involve the requisite five acres or meet the monetary threshold, and they agreed to a determination based upon the record below. There was no additional evidence that the representations about the proposed activities were false or that the representations from the property owner were false or that the farm did not meet the requirements of a commercial farm. The certification from the municipal tax assessor is confusing at best and does not demonstrate any credible reason to reverse the initial determination.

Accordingly, I **FIND** as **FACT** that the property met the requisite five acres of property as certified by the municipal tax assessor and testified to by the respondent at the hearing before the Board. Accordingly, I **CONCLUDE** that the CADB had jurisdiction to entertain the SSAMP plan.

2. Consideration of safety and public health issues by the CADB

The remaining argument made by the petitioner was that the CADC failed to consider factors related to public health and safety which is required for such an application. A review of the transcript below as well as the resolution demonstrates that these issues were considered, and several safeguards were placed on their approval and reflected in the resolution. Prior to the public hearing, the CADB received correspondence from Ron Tonge, the Chaplins, Peter Lisi and Joseph Gill, who raised concerns about traffic, water runoff, noise and overwater usage for winemaking operations. Since the farm was considered a commercial farm, they were all concerned about the commercial size of the operations. During the hearing, residents Ron Tonge, Peter Smith, Roy Quintana, Judge Rubin, Gregg Chaplin, Kimberly Fromme, Devin

Cornia, Mark Carvlin and John Wappel, as well as attorney for the Township, Michael Silbert, commented and objected to the SSAMP for various reasons: the retention pond that respondents Funk refer to the runoff which was not indicated on the application; the runoff will likely include chemicals of the cleaning supplies; concerns about the aquifer, and how the operations would drain the wells; and the size of the operations, causing commercial traffic that could be divested away from the cul-de-sac. The essence of the concerns related to the expansion of the enterprise.

Respondent Funk addressed all of these issues at the public hearing. Moreover, the resolution from the Board included several safeguards addressing these issues. The respondent advises that there have always been runoff issues on the property and steps were being taken to best resolve these issues. In terms of issues related to chemicals, the respondent advised at the hearing that he does not plan to use any chemicals, and any such chemical are low-grade chemicals. Regarding the aquifer, respondent did not plan to drain the wells and indicated his understanding of the limitations. In terms of traffic, there were no plans to employ third parties, or expand the employees at the farm. The respondent did not anticipate any delivery trucks and that any deliveries would be handled by commercial trucks, such as Amazon, UPS or USPS, which already operate on a daily basis. Finally, the respondent testified that there will not be any events or on-site consumptions.

The resolution included the following statement: "This approval is conditioned upon the Applicants specific conditions outlined in Paragraph 15 above. If the Applicant wishes to deviate from any of these previously agreed upon conditions, the Applicant must seek additional Right to Farm Protection from the CADB." Paragraph 15 of the resolution listed the limitations of the SSAMP application, notably that, "[a]ll winemaking activities are governed by the New Jersey Division of Alcoholic Beverage Control," and "[p]rior to obtaining the necessary license to make wine, the Applicant may utilize the concrete pad for activities related to the agricultural output such as rinsing grapes bins and grapes after harvest."

The CADB concluded after hearing all the testimony from the public that, "the Applicant [would] not implicate any health, safety and welfare issues." There was no

expert testimony or evidence of a substantial risk of danger in the foreseeable future associated with the construction of the concrete pad at issue. Petitioner only speculated about public health or safety issues associated with the construction of a concrete pad. Respondent Funk also explained how some issues (e.g., runoff, Amazon or UPS commercial traffic) already existed and should therefore not be linked to the farm operations. The Act requires consideration of these issues, which indeed occurred and was addressed at the hearing and several such concerns were incorporated into the resolution approving the application.

Accordingly, I **FIND** as **FACT** that the CADB considered the concerns of the public and found none. I further **FIND** as **FACT** that any legitimate issues concerning safety and public welfare were addressed in the resolution. I therefore **CONCLUDE** that the CADB considered these issues and that there is no basis to disturb their decision granting the SSAMP application.

CONCLUSION

In conclusion, based upon the evidence and with due regard for the arguments of the parties, I **CONCLUDE** that the applicant has established that it operates a “commercial farm,” and that the production and sale of wine is a generally accepted farm-management practice. I further **CONCLUDE** that the CADB considered issues of public welfare and safety as described in the record, and **IT IS HEREBY ORDERED** that SADC approval of the SSAMP application is **AFFIRMED** and the appeal is **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.

November 14, 2023

DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/kl/lam

APPENDIX

EXHIBITS

It is noted that in submitting briefs and appendices, counsel have, to a great extent, mixed copies of exhibits formally introduced at the CADC hearings with copies of cases and of portions of transcripts from the CADC hearings. Briefs and legal argument are not generally “exhibits,” but are included herein as part of the record.

For County Agricultural Board

C-1 Brief from the County with Exhibits

For petitioner

Brief of the petitioner with the following Exhibits:

- P-1 Zoning Permit Application
- P-2 Denial Letter
- P-3 Raritan Township R-1 Zoning Regulations
- P-4 Resolution of Approval
- P-5 GIS Satellite Mapping Images
- P-6 West View Vines Presentation for Hunterdon County Agricultural Development Board, October 3, 2022
- P-7 letter, dated August 2, 2022
- P-8 Certification, dated September 9, 2023
- P-9 Application for Farmland Assessment, signed June 16, 2023

For respondent

Brief of the respondent with the following Exhibits:

- R-1 Raritan Township R-1 Zoning Regulations
- R-2 Zoning Permit Application
- R-3 Denial Letter
- R-4 Commercial Farm Certification Application
- R-5 SSAMP Application
- R-6 Email correspondence between Township Zoning Officer and HCADB

- R-7 Township Committee Agenda for June 8, 2022, revised June 9, 2022
- R-8 Resolution 022-5
- R-9 Satellite imagery of Property, dated February 22, 2020
- R-10 Tax Assessor Certification of Farmland Assessment
- R-11 Photographs taken by Tax Assessor

Transcripts

- T-1 Transcript of Hunterdon County Agriculture Development Board Proceedings, dated October 23, 2022
- T-2 Transcript of Hunterdon County Agriculture Development Board Proceedings, dated November 10, 2022