Atlantic County

Department of Regional Planning and Development

Dennis Levinson
County Executive

John Peterson
Department Head

Division of Planning
609/645-5898 FAX: 609/645-5836
TDD: 348-5551

Division of Engineering
609/645-5898 FAX: 609/645-5964

Office of GIS

November 9, 2021

Donald DeFiccio
584 Oak Road
Hammonton, NJ 08037

Thin Place Farm, LLC
600 Oak Road
Hammonton, NJ 08037

Re: Right to Farm Act Hearing and Decision
Complainant: Donald DeFiccio
Commercial Farm: Thin Place Farm, LLC

To All Parties,

Enclosed is a copy of the Atlantic County Agriculture Development Board's memorializing resolution for the Right to Farm hearing held on August 3, 2021, regarding the above-referenced complaint.

In accordance with N.J.A.C. 2:76-2.7(d)1ii., any person aggrieved by the decision of the board regarding a complaint against a commercial farm shall appeal the decision to the State Agriculture Development Committee within 10 days of the receipt of the board's final decision. Thank you.

Sincerely,

Ranae L. Fehr, AICP, PP, CPM
ACADB Administrator
Principal Planner

cc: State Agriculture Development Committee

RESOLUTION OF THE
ATLANTIC COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING A RIGHT TO FARM COMPLAINT CONCERNING THIN PLACE FARM, LLC
BLOCK 5002, LOT 6 IN THE TOWN OF HAMMONTON

WHEREAS, on April 20, 2021 staff of the Atlantic County Agriculture Development Board was forwarded a copy of Municipal Summons #0113-SC-021021, issued to Jason Simmons of 600 Oak Road in the Town of Hammonton. The summons is signed by Donald DeFiccio as the Complaining Witness, references Section 82-20 of the Hammonton Municipal Code and states "control of animal causing disturbance"; and

WHEREAS, Jason Simmons contacted the Board pursuant to the NJ Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), asserting that his dogs, which are the subject of the summons, are livestock guardian dogs utilized in connection with the farming operation at property known and designated as Block 5002, Lot 6 in the Town of Hammonton (600 Oak Road) and operating as Thin Place Farm, LLC; and

WHEREAS, pursuant to N.J.S.A. 4:1C-10.1, any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable County Agriculture Development Board, or the State Agriculture Development Committee in counties where no county board exists, prior to filing an action in court; and

WHEREAS, on April 22, 2021 and June 17, 2021 legal counsel for the ACADB wrote letters to the Municipal Court Judge, asserting the Board's primary jurisdiction in the matter, requesting postponement of scheduled court hearings pending the outcome of the ACADB's review of the matter; and

WHEREAS, a formal written complaint was received by the ACADB on June 4, 2021 from Donald DeFiccio, residing at 544 Oak Road, owner of property located two lots from the Thin Place Farm property; and

WHEREAS, the complaint alleges that 3 large dogs have "... escaped the confines of their fenced yard on multiple occasions and trespassed on our property." The letter further states he and his wife "... both reported previous trespasses to the Hammonton Police Dept. on separate occasions and the police have come out. Additionally, my adjoining neighbor Jose Diaz, who owns the property located at 536 Oak Road, which is the third property from 600 Oak Road, has also reported the dogs trespassing on his property on more than one occasion. In one instance, Mr. Diaz exited his home with his small dog on a leash, intending to walk his dog, unaware that the 3 dogs were loose and on his property. One of the 3 dogs attacked his dog. There is a police report documenting this incident, but I do not have a copy."; and

WHEREAS, Mr. DeFiccio's letter states that his 83 year-old mother-in-law resides at his property and if one of the dogs knocks her over it could be catastrophic; and

WHEREAS, the letter from Mr. DeFiccio further asserts: "This continued trespass is a safety issue, not a right to farm issue and must cease before there is a serious injury."

WHEREAS, Mr. Deficcio's letter included a link to a video from a Nest camera, time-stamped April 8, 2021 at 5:19pm, which shows the three dogs in front of Mr. DeFiccio's house; and

WHEREAS, Mr. DeFiccio's letter was also accompanied by a copy of police report #21-003367 dated April 9, 2021; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.8(d)(1) the Board provided notice of the complaint, in writing, to the commercial farm owner, the Committee, and the municipality in which the farm is located within 10 days of receipt of the complaint; and

WHEREAS, both N.J.S.A. 4:1C-9 and N.J.S.A. 4:1C-10.1 address eligibility requirements for Right to Farm protections for Commercial Farms, including:

a. The operation must conform 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 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

b. The operation must conform to all relevant federal or State statutes or rules and regulations adopted pursuant thereto

c. The operation must not pose a direct threat to public health and safety

WHEREAS, in accordance with N.J.A.C. 2:76-2.7(c), a site visit was conducted on Friday, July 30, 2021 at 600 Oak Road, to confirm commercial farm eligibility, with less than a quorum attending the meeting, including: ACADB Administrator Ranae Fehr, two Board members and the owners of the farm; and

WHEREAS, the ACADB held a hearing on August 3, 2021 to consider the matter and to determine whether or not the allegations presented in the complaint meet the threshold criteria for Right to Farm protections; and

WHEREAS, prior to the start of this matter being heard, Board Chairman Gerard DeFiccio and Assistant County Counsel Anthony Pagano recused themselves due to a conflict; and

WHEREAS, testimony was provided by the following parties at the hearing:

For Complainant:
Donald DeFiccio
Jose Diaz

For Respondent (Thin Place Farm):
Jason Simmons
Meredith Massey

WHEREAS, all four parties provided testimony to the Board and answered any questions that were asked; and

WHEREAS, the Board reviewed the following during the hearing:

1. Copy of Municipal Summons #0113-SC-021021

2. Aerial map of Block 5002, Lot 6 (Thin Place Farm property, Respondent) and Block 5002, Lots 3 & 4 (DeFiccio property, Complainant)
3. Copy of Complaint Submittal dated June 4, 2021 from Donald DeFiccio, including:
    a. Letter
    b. Video from Nest camera in front of DeFiccio home
    c. Copy of police report #21-003367
4. Excerpts from NJ Right to Farm Act

WHEREAS, the Board considered the documentation and testimony presented and determined that the issue of the livestock guardian dogs getting loose from the farm property and entering neighboring properties is a matter of public health and safety and therefore the Board lacks jurisdiction.

NOW THEREFORE BE IT RESOLVED that the Atlantic County Agriculture Development Board makes the following findings:

Jason Simmons and Meredith Massey own 600 Oak Road (Block 5002, Lot 6) in the Town of Hammonton, operating as Thin Place Farm LLC.

Three livestock guardian dogs – specifically Great Pyrenees - are utilized by Thin Place Farm on Block 5002, Lot 6 for protection of livestock.

A formal complaint was filed by Donald DeFiccio, residing at 544 Oak Road, alleging that the three dogs continue to get loose off the Thin Place Farm property and are a threat to public safety.

There is no dispute that there have been occasions where the livestock guardian dogs have gotten loose and onto neighboring properties.

Mr. Simmons and Ms. Massey have taken various efforts to minimize the opportunity for the dogs to get loose from the property, including: 4 of 9 acres are fenced with 6-foot deer fencing, along with a foot and a half of fencing into the ground to prevent digging; the use of remote electric collars; and kennels utilized during deliveries or other activities requiring the dogs to be contained.

There have been no reports to date of injury to persons or damage to property.

Livestock guardian dogs getting loose from the farm property onto neighboring properties presents a threat to public health and safety.

The Board lacks jurisdiction in this matter because the dogs getting loose off the property is a public health and safety issue.

The matter will be remanded to the Town of Hammonton Municipal Court.

BE IT FURTHER RESOLVED that this determination is made solely for the issue of the livestock guardian dogs getting loose from the property. The Board retains primary jurisdiction over any future matters involving Thin Place Farm located at Block 5002, Lot 6 (600 Oak Road) in the Town of Hammonton.

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the commercial farm owner/operator, Donald DeFiccio, the State Agriculture Development Committee, and the Town of Hammonton.

BE IT FURTHER RESOLVED that any person aggrieved by the decision of the Board may appeal to the State Agriculture Development Committee within 10 days of receipt of this resolution. If not appealed within ten days, this resolution is binding.

I certify that the foregoing is a true copy of a resolution adopted by the Atlantic County Agriculture Development Board on Monday, November 1, 2021, to memorialize action taken at a public hearing held on Tuesday, August 3, 2021.

Jon Bitzer 11/5/21

JON BITZER, Vice Chairman — Date
Atlantic County Agriculture Development Board

Member	Yes	No	Abstain	Absent
Jon Bitzer	X			
Gerard DeFiccio				X
Duane Demaree	X			
Michael Macrie, Jr.	X			
David Scheidegg				X
Frank Schoenstein	X			