

**ATLANTIC COUNTY AGRICULTURAL DEVELOPMENT BOARD
BUENA VISTA TOWNSHIP vs. [REDACTED]**

RIGHT TO FARM DECISION

PROCEDURAL SUMMARY & PARTIES IN ATTENDANCE

On June 13, 2023, the Atlantic County Agricultural Development Board (the "Board") held a hearing on a complaint filed by Buena Vista Township (the "Township") against Mr. & Mrs. [REDACTED] which generally alleged that a deer fence previously installed by the [REDACTED] violated the Township's Fence Ordinance. At this hearing, the Board received testimony from the Township Manager, Ms. Lisa Tilton, and legal arguments presented by the Township Solicitor, Matt Lyons, Esq. [REDACTED] (aged 90 and 83, respectively) were present but relied upon their son [REDACTED] to present their position.

The Board also received comments from the public, including commercial farm owners and former NJ Secretary of Agriculture, Art Brown. At the conclusion of that hearing, the Board did not take final action and held the matter for an additional 60 days, so that the parties could pursue a resolution of the dispute based upon an adjustment of the right of way width by a partial vacation. The full decision, signed June 23, 2023, is attached herewith as Exhibit A.

In a letter dated July 24, 2023, the Township advised the Board that its complaint against the [REDACTED] was based on the Township's authority to regulate its rights of way. On or around that date the Board was also advised that the parties were not able to work out a partial vacation of excess right of way.

On August 15, 2023, the Board held a full hearing on this matter. On behalf of the Township, in addition to testimony by Ms. Tilton and legal arguments by Mr. Lyons, the Board was offered testimony by the Township Engineer, David Scheidegg, PE, regarding Yost Road and municipal right of way issues.

On behalf of [REDACTED] provided extensive testimony and during the public session the Board also received remarks from members of the public, including: [REDACTED] (current tenant farmer); Chief Ruga of the Milmay Fire Co.; [REDACTED] Buena Vista Twp. farmer; George Cassidy from Pittsgrove Twp (serves on the Salem County Board of Ag); Kenny Mayhew from Cumberland County, a Fire Chief and farmer. who spoke in support of the [REDACTED]

PRIMARY ISSUES IN DISPUTE

Is a Township attempt to compel removal of a deer fence installed within an area encumbered by a street right of way, through prosecution of municipal court complaints, preempted by the protections of the Right to Farm Act?

1. The current deer fence, in place since 2019, and an earlier deer fence dating back to 2009, had been installed in reliance upon a Zoning Permit and an on-site inspection by the former Zoning Officer directing where the fence could be placed;
2. Yost Road is a dead end street terminating at a railroad right of way that is only improved to a width of approximately 15 feet wide, but has an unusually wide deed description of 60 feet. The unimproved portion of Yost Road has been actively cultivated for decades; and
3. The Township Engineer offered testimony indicating that a gate at the end of the fence line was located in a manner that interfered with the ability of large vehicles, such as trash trucks, to turn around safely, and the farmer conceded that the current gate location had been moved closer to the road, removing a turn around area, for ease of plowing and to maximize the area farmed.

DECISION OF THE BOARD

After considering presentations made on behalf of the [REDACTED] BVT and comments of interested members of the farming community, the Board decided as follows:

1. The [REDACTED] property meets the statutory definition of a commercial farm that is eligible for protection under the NJ Right to Farm Act, based on the following documentation produced by the [REDACTED]
 - a. Commercial Farm Certification Form – prepared with [REDACTED] LLC, who currently leases the property for farming, stating that the farm management unit totals 180 acres over four lots in BVT – including the subject lot – and it also indicates there are 11 other properties owned by [REDACTED] with a total of 250 acres farmed.
 - b. 2023 Farmland Assessment Form for [REDACTED] lot indicates 22.41 acres cropland harvested (corn for grain).
 - c. [REDACTED] produced a single check in the amount of \$11,156.80 from the Landisville Produce Co-Operative Association, Inc.
 - d. For proof that the farm satisfies the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, a copy of the approved 2023 Application for Farmland Assessment received
 - e. Location: The farm must be located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance – Property is located within an Agricultural Production Area

A motion was made by Bitzer that the farm meets the definition of a commercial farm, seconded by Peterson. All members voted in favor.

2. Installation of deer fencing is a generally accepted agricultural management practice (AMP) that is approved by the State and recognized as necessary to prevent depredation of crops by deer.

3. Upon motion by Peterson, seconded by Bitzer, based on the specifics of this site this is a Right to Farm matter and the Board has jurisdiction over the Township's complaints regarding the [REDACTED] farm deer fence under the Township's Fence Ordinance and Right of Way management requirements.

4. For a variety of factors summarized below that are very specific to this property, maintenance of the deer fence in its current location and the farmer's use of the "paper" undeveloped portion of Yost Road's right of way for planting crops are generally protected activities under the Right to Farm Act. The fence and continued use of the unimproved portion of Yost road may continue, unless and until such time as when the Township moves forward with plans to widen the street for public travel.

5. Although the [REDACTED] may continue to maintain a deer fence and cultivate land that is subject to an unused right of way of Yost Road, a gate installed by the [REDACTED] at a location that had been previously used for truck K turns must be moved back, to accommodate turn around movements. The Township Engineer provided credible testimony that the gate formerly was set back farther from the edge of payment and stone had been applied at this area, to accommodate truck K turns. This is necessary to avoid trucks attempting to drive out of Yost Road and back into the County highway, due to the current lack of an area to turn around at the end of Yost Road.

The Township's interest in moving the gate back to accommodate truck turn around movements is a matter of public safety that is not preempted by the Right to Farm Act.

6. There was considerable discussion about how to solve safety concerns expressed by the Township Engineer with the need for an area to accommodate truck turn arounds at the end of Yost Road (i.e., in the vicinity of the [REDACTED] gate). The Township did not present a specific plan at the meeting, but it appears that a turn around area can be developed by using the current 60 wide ROW that encumbers the [REDACTED] property along with properties on the other side of Yost Road. The Township will need some time to work on and implement a plan.

7. Under the Right to Farm Act and the specific facts of this case, dismissal of the municipal Court complaint is appropriate.

FACT FINDINGS

1. The facts detailed in the Board's prior decision, attached as Exhibit A, are incorporated herein.

2. The land in question meets the definition of a commercial farm. The Board has been provided with financial records to document adequate farm income, and the property has been used for agricultural purposes for many decades.

3. Testimony provided by the Township Engineer during the August hearing included the following critical points:

- a. The Township's standard for a municipal street right of way is 50 feet wide.
- b. Vacating the excess 10' wide strip of Yost Road would not solve the issues.
- c. There is no plan to widen Yost Road to 50 feet at this time.
- d. Yost Road is improved to only 15 or so feet wide and is not located in the center of the right of way.
- e. The critical safety issue is not the current location of the fence.
- f. The critical safety issue exists at a point where the paved section of Yost Road ends, and where a gate was installed by the [REDACTED]. The current gate location interferes with the ability of large trucks to make K turns or other safe turn around movements at the end of Yost Road. As a result, trucks may be compelled to drive in reverse for the length of Yost Road and then would have to back into Tuckahoe Road, a County Highway.
- g. Prior to the current layout, the gate was set back from the edge of pavement and the Township had placed some crushed stone in this area, which provided trucks with an area to make K turns.
- h. As of the hearing, the Township did not have an approved final plan to develop a new K turn or cul de sac area at the end of Yost Road.

4. The Township and the [REDACTED] did not consider entering into a license agreement to allow the fence to remain in its current location, on the condition that the [REDACTED] would bear all risks and have no interest in the premises.

5. [REDACTED] emphasized that the fence location was established based on directions provided by the former Twp. Zoning officer, and that the prior fence, which also had a Twp., permit, was even closer to the edge of the paved portion of Yost Road.

6. Yost Road was described as nothing more than a trail for many years, with active farming operations on both sides of the old road.

7. [REDACTED] agreed that the fence area had been moved closer to the road's paved edge. The gate was moved up to the fence line to maximize the area available for farming and for ease of plowing the field.

8. The highway safety issues described by the Township Engineer, and the recommendations to move the gate back to accommodate a safe K turn area within the existing right of way are not unreasonable burdens on the [REDACTED] right to farm.

9. Considering all of the unusual facts related to Yost Road, including no foreseeable plan to widen the road to a 60' width from its current width of 15 feet more or less, and further considering the uncontroverted testimony that the unused portion of the right of way has been

farmed by the [REDACTED] for many decades, and further considering that the fence was installed at a location recommended by the Township Zoning Officer, the Township's Zoning Officer, the Township's attempts to order removal of the fence either under its fence ordinance or its authority to regulate rights of way amount to an unreasonable interference with the [REDACTED] right to farm the premises.

10. The fence and farm use will continue as is, subject to relocation of the gate for a K turn area. If the Township determines that a more formal cul de sac should be developed at the end of Yost Road, the Township will prepare plans, obtain right of way from adjoining landowners and construct the improvements.

By: Gerard DeFiccio

Gerard DeFiccio, Board Chairman