

**RESOLUTION OF THE SUSSEX COUNTY AGRICULTURE DEVELOPMENT
BOARD DETERMINING THAT [REDACTED] IS PERMITTED TO
HAVE UP TO SEVEN (7) HORSES ON THE PROPERTY, MAINTAIN THE MANURE
DUMPSTER IN THE APPROVED LOCATION AND DEFERRING APPROVAL OF
THE ACCESS DRIVEWAY TO THE MUNICIPALITY WHILE RETAINING
JURISDICTION OVER SAME**

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the New Jersey Administrative Code Section N.J.A.C. 2:76-2.7 a person aggrieved by the operation of a commercial farm shall first file a complaint with the Board;

WHEREAS, certain neighbors filed complaints against [REDACTED] with the Sussex County Agriculture Development Board (hereinafter referred to as "the Board"); and

WHEREAS, the complaints generally stated that [REDACTED] had too many horses on the premises, questioned the location of the manure dumpster and how it was being utilized and the driveway constructed to access the barn; and

WHEREAS, an application for commercial farm status was granted to [REDACTED] LLC by the Board on May 20, 2019; and

WHEREAS, Priscilla J. Triolo, Esq. of the firm Bittiger, Elias & Triolo represented [REDACTED]

TESTIMONY AND EXHIBITS

WHEREAS, the Board received the following testimony and exhibits:

JULY 15, 2019 HEARING

1. [REDACTED] was sworn in. Mr. [REDACTED] testified that he lives at [REDACTED] and that he was concerned with the number of horses on the farm. He further testified that manure is stored about 175 feet from his well. [REDACTED] questioned the location of the driveway, in that when the driveway gets plowed in the winter, snow and rocks end up on his property. [REDACTED] testified that this creates problems in the spring when he is mowing his lawn due to the rocks. Photographs of the driveway were provided by [REDACTED] and were marked as Exhibits G-1 and G-2. A photo of the container which [REDACTED] used to store manure was marked as Exhibit G-3. [REDACTED] testified that the driveway was created without permits.

2. Ms. Triolo, counsel for [REDACTED], questioned [REDACTED] with regard to photo G-2. In response to questioning, [REDACTED] testified that the driveway was plowed by contractors building a barn on [REDACTED] property.

3. [REDACTED] the owner of [REDACTED] was then sworn in. In response to questioning from her attorney, [REDACTED] testified that she did not instruct anyone

to plow snow onto her neighbor's property. Further, she testified that she was never notified by her neighbor that snow was pushed onto his property.

4. [REDACTED] testified that the photo introduced by [REDACTED] showed the dumpster where the manure is stored. [REDACTED] testified that the dumpster is emptied by a third party on a regular schedule. [REDACTED] further confirmed that it is a solid dumpster with a solid bottom.

5. [REDACTED] was sworn in to testify. [REDACTED] testified that she lives at [REDACTED] adjacent to the [REDACTED] [REDACTED] testified that she lived at this address for 42 years with her mother. [REDACTED] questioned the process before the Sussex County Agriculture Development Board. [REDACTED] testified that her mother wrote a letter that there are six horses on the property, sometimes seven, and two ponies. [REDACTED] quoted the New Jersey Administrative Code dealing with manure practices, stating that manure should be stored in dumpsters on a concrete pad or other surface that complies with the N.R.C.S. recommendations. [REDACTED] testified that the dumpster on [REDACTED] property is not on a concrete pad but is on the ground. [REDACTED] testified that on rainy days, since the manure is not covered, the rain pours through the dumpster and there is a brown trickle which goes down to the pond located on [REDACTED] [REDACTED] also pointed out that the Code requires dumpsters be located 50 feet from property lines, 200 feet from residences on adjacent properties, and away from waters of the State. [REDACTED] testified that the dumpster is presently located on [REDACTED] property line.

6. [REDACTED] testified that she has received information from Rutgers regarding Equine Best Management Practices which talks about the negative impacts of manure, such as pollution of ground or surface water, air quality concerns, odors, dust and vermin. [REDACTED] testified that her mother had her well tested in October of 2019 and it had high bacteria levels. In response to questioning, Ms. [REDACTED] testified that there were four different bacteria, including E. coli. [REDACTED] testified that the farmer is not complying with the Town's ordinance with regard to the number of horses allowed on the property. She also questioned whether the dumpster was being emptied often enough. [REDACTED] testified about dust from the driveway and the riding ring. [REDACTED] testified that the State law requires that water be applied to the riding ring and training areas if dust is a persistent problem.

7. [REDACTED] testified that the Code talks about useable land for farms where the total useable area is 150 acres or less, the area occupied by equine-related infrastructure shall not exceed 15 to 25 percent of the total property. [REDACTED] presented a map titled "Google Map Data 2019" which was marked as Exhibit G-4. [REDACTED] testified that it was her belief that the operation exceeds the 15 to 25 percent of the total useable property.

8. In response to questioning from [REDACTED], [REDACTED] testified that she did not have any photos evidencing a trickle from the manure dumpster to the pond. [REDACTED] said she did not, but that she had witnessed it. Ms. Triolo questioned Ms. [REDACTED] with regard to the topography of the [REDACTED] property as well as her mother's property. In response to questioning, [REDACTED] said that her mother's well was 200 to 300 feet from the manure dumpster. In response to questioning as to whether any testing was done on the bacteria to link it to the farm, [REDACTED] replied that they had not done any such testing. In

response to questioning from Ms. Triolo, [REDACTED] testified that the property is very neat and orderly and that she is not contending that it is not taken care of. In response to questioning from Ms. Triolo about whether or not Ms. [REDACTED] had expressed any of her concerns to Ms. [REDACTED] directly, [REDACTED] stated that, no it has not been a warm and fuzzy relationship.

9. [REDACTED] was sworn in. [REDACTED] testified that he lives at [REDACTED]. [REDACTED] said he had multiple documents which he would share when he was done with his testimony. He had a page from the Highlands mapping tool regarding Bear Brook Stream in Sussex and Warren Counties. [REDACTED] testified to the present state of the vernal pond on the [REDACTED]. [REDACTED] testified that the dumpster is filled to overflowing most of the time. The dumpster is uncovered. It is on gravel, and gravel is a permeable surface. He also testified that there are too many animal units per acre on the [REDACTED] property. Mr. [REDACTED] testified that he has lived at [REDACTED] since 1970 and has had his water tested periodically. He testified that he never had a problem until October of 2018. He testified that he knows you can't guarantee where pollution comes from. The documents discussed by Mr. [REDACTED] were entered as exhibits. The Highlands breakdown of the description of the property was marked as Exhibit G-5, and the seven photos presented by [REDACTED] were marked as one group, Exhibit G-6. Ms. Triolo questioned [REDACTED] with regard to the topography between his property and the [REDACTED] property. Ms. Triolo questioned [REDACTED] with regard to photos taken of the [REDACTED] farm. In response to questioning, [REDACTED] testified that he did not have any test results that indicate his well contamination is linked specifically to the [REDACTED] farm. In response to questioning, Mr. [REDACTED] testified that there were too many horses on the subject property.

10. There were no further witnesses from the complainants.

11. [REDACTED] the owner of [REDACTED] was sworn in. Ms. [REDACTED] testified to a map which was marked as Exhibit A-1 which showed an approximate outline of her farm. [REDACTED] testified to the locations of the dumpster, the driveway, etc. A series of photos were also marked as Exhibit A-2. [REDACTED] testified that she had taken the photos of her property. [REDACTED] testified to the series of photographs showing various aspects of her property and its relation to the neighbors. [REDACTED] testified that she does not have dust on the property. Her riding arena gets watered and there is a special type of footing that she uses that retains water. It has to be wet in order to function properly and prevent damage to the horses' joints and ligaments. [REDACTED] testified that it is an all-weather footing that is designed to prevent dust. [REDACTED] testified that the area is watered when necessary.

12. [REDACTED] testified that she employs an outside company to pick up the manure dumpster and leave an empty dumpster. The company that picks up the manure is "Down to Earth". [REDACTED] produced records from Down to Earth showing the regular pickup of the manure. These records were marked as Exhibit A-3.

13. [REDACTED] confirmed that she had filed a Self-Certified Animal Waste Management Plan with the New Jersey Department of Agriculture. In response to questioning, [REDACTED] testified that she has complied with all of the required agricultural management

practices for a commercial equine operation on the property. [REDACTED] testified that she has a farm management plan and a waste management plan.

14. In response to questioning, [REDACTED] advised that none of the neighbors who complained ever contacted her about any issues with her property.

15. [REDACTED] testified that she purchased the property on December 19, 2013. Ms. [REDACTED] testified that she had the well tested prior to purchasing the property and that the well test disclosed that the well was contaminated by bacteria. [REDACTED] testified that she had an ultraviolet light installed and that her well has been tested regularly since that time. [REDACTED] testified that since the ultraviolet light system was installed the water has been fine.

16. [REDACTED] testified that she was not home when the driveway to the barn was plowed after snowstorms. [REDACTED] testified that she would speak to her contractor and obtain assurances that he will not deposit any snow onto [REDACTED] property. [REDACTED] testified that it is her usual practice when it snows to not plow the access to the barn, and either wait for the snow to melt or put pet safe salt down in order to save the three-quarter inch stone that comprises the driveway access.

17. With regard to the dumpster, [REDACTED] testified that she does not cover the manure dumpster, as she has concerns about combustion since the manure is combined with shavings. [REDACTED] further testified that the manure gets picked up every ten days at most. However, she would cover it if required by the Board. [REDACTED] testified that she does not detect any odors from the manure and that she uses Fly Predator and fly traps as she does not want her horses to be bitten by flies. [REDACTED] further testified that she is not aware of any vermin on her property.

18. [REDACTED] testified that she has never seen a trickle from the dumpster on her property. [REDACTED] further testified that she has never seen evidence of the dumpster leaking and bleeding on the ground. [REDACTED] added that she was comfortable that the dumpster is a sealed container and it keeps the manure contained until it is removed.

19. In response to questions from the Board's professionals, Steve Komar of the Rutgers Cooperative Extension advised that he helped [REDACTED] develop a Self-Certified Nutrient Management Plan and testified that he provided [REDACTED] with the New Jersey Animal Feeding Regulations and the book from the NRCS which helps develop a plan based on individual calculations. The Self-Certified Plan is based on animal density.

20. [REDACTED] in response to questions from the Board's professionals, advised that the subject farm met the animal density requirements for the Self-Certified Management Plan because she and her horses are not at the farm during the winter. [REDACTED] testified that whether horses are in the barn over the winter varies from year to year. [REDACTED] testified that from the winter of 2017 through 2018 there was not one animal on the property. [REDACTED] testified that she left the property on October 1 and did not come back until mid-February. Most of her horses did not come back until March of 2018 and some did not come back until the end of April. [REDACTED] testified that she goes to either Aiken or Wellington every year. The

number of animals she takes south with her depends entirely on which is under saddle and which horses are training and showing. [REDACTED] testified this past winter she had two horses off the property for about 2.5 to 3 months in training. The rest of the horses were there. [REDACTED] confirmed the dumpster is emptied every two weeks, sometimes every ten days. In the winter when there are fewer animals she testified that the dumpster change is less frequent.

21. With regard to the access to the barn, [REDACTED] testified that the only time that access is utilized is to access the manure dumpster, horse trailers and hay or shavings deliveries. Everyone else uses the residential driveway near her house, including the veterinarian and the farrier.

22. Autumn Sylvester advised the Board that the farm assessment application submitted last month stated that there are 5.5 acres in agricultural use. That was approximately 239,580 square feet, 15 percent of which is 35,937 square feet. [REDACTED] testified that the barn is approximately 35 by 80 feet, the riding area is 70 x 110 feet, the dumpster is 240 square feet, and the run-in shed is 30 by 9 feet, for a total of 11,240 square feet. The Board opined that Ms. [REDACTED] would be able to go up to 36,300 square feet.

23. In response to questioning about other areas of the property that might create dust, [REDACTED] testified that the only areas that could become dusty are the horses' in-and-outs which are watered when needed.

24. With regard to a cover for the dumpster, [REDACTED] was requested to work with Steve Komar to develop a covering that would meet the Best Management Practices.

25. In response to a question from one of the complaining witnesses, [REDACTED] testified that the manure dumpster rests on landscape fabric, quarry process and then three-quarter inch stone. [REDACTED] testified that the quarry process and stone was at least eight to ten inches deep.

26. A member of the Board asked if [REDACTED] vendor would be willing to go to a smaller dumpster size and more frequent pickup. [REDACTED] advised that it would cost her more money.

27. A Board member commented that he was disappointed in the whole process, that the subject property is a very neat, high-class operation. He had spent plenty of time there. He goes by there and he farms near there. It was his opinion that you couldn't find a nicer horse farm than this in all of Sussex County.

28. [REDACTED] was asked that the farm access be limited to the manure dumpster pickup, the horse trailers and the hay and shavings deliveries, which [REDACTED] agreed to. In response to questions as to whether there been any accidents at the barn access, [REDACTED] said there had been none.

29. In response to questions as to whether or not the dumpster location could be moved, [REDACTED] testified that it is located at the site of the easiest access for tri-axes, as they

have to come in with an empty dumpster, remove the full dumpster and place the empty dumpster where the full dumpster was. Logistically it made the most sense to place it in its present location. [REDACTED] testified that it would make getting around the whole area logistically impossible if the dumpster were moved. With regard to the dumpster, [REDACTED] agreed to erect a board-on-board or a stockade fence six feet high beginning two feet before the dumpster to the end of the dumpster to help shield it from the neighbors.

30. One of the neighbors brought up the requirement in the equine AMP that the dumpster be located 50 feet from the property line. A discussion ensued with regard to the interpretation of the AMP and where the dumpster would be required to be located. In response, [REDACTED] agreed that she would move the dumpster so that it was in compliance with the AMP. At the suggestion of the Board's professionals, the applicant agreed to appear at the next meeting with a proposed location that was in compliance with the AMP.

SEPTEMBER 16, 2019 HEARING

31. The hearing was continued at the September 16, 2019 meeting of the SCADB. The attorney for [REDACTED] confirmed that the one issue carried over from the last meeting was the location of the dumpster. [REDACTED] attorney advised that Stephen Komar of Rutgers Cooperative Extension visited the site, inspected the current location of the dumpster and participated with the owner in measuring the site to ensure that the dumpster met the requirements of the AMP. An aerial photograph of the farm with the various measurements outlined in red was marked as Exhibit A-5. An updated record from "Down to Earth", the company that supplies the dumpsters, was marked as Exhibit A-6. Mr. Komar testified as to how he conducted the measurements for the location of the dumpster. Ms. Triolo, attorney for Ms. [REDACTED] said she did not have any other exhibits or witnesses.

32. Ursula Leo, Esq. of Laddey, Clark & Ryan appeared on behalf of Green Township. Ms. Leo explained that while she was not present for the July meeting, she had reviewed the minutes and expressed the Township's concerns with regard to the number of horses located on the subject property and cited Township Code Section 30-34.1 which limits the number of horses to two horses for the first 3.5 acres and every acre thereafter allows one horse. Ms. Leo advised that under the Township's Ordinance five horses would be permitted on the farm.

33. Ms. Leo notified the Board that the landowner did not apply to the Township for a driveway permit. It was the Township's position that the extended driveway would require a permit. The requirement for a driveway permit was contained in Green Township Code Section 17-2.3D. Ms. Leo also expressed the Township's desire that the manure located in the dumpster be covered. Ms. Leo expressed the Township's concern that the Township Code required the driveway to be ten feet from the property line and from Exhibit A-5 it appeared the driveway was located on the property line. A discussion took place between Ms. Leo and the property owner's attorney with regard to whether or not the access way was a driveway or a cow path.

34. Mr. Komar explained that the number of horses is based on the manure management rule from the Department of Agriculture. That is the number of horses on a farm

during a particular year. The rule is based on animals per acre across the calendar year. In this case, because the animals are gone for four months out of the year, it turns out to be less than the actual animal numbers that are on the farm. Mr. Komar testified that under the Department of Agriculture standards [REDACTED] would be able to have a stocking density of less than eight horses.

35. The Township's counsel was advised that the landowner had agreed to move the dumpster and it would be up to the Board to decide if the proposed location was sufficient. Ms. Leo advised that it was the Township's position that in accordance with the AMP the manure was to be kept as dry as possible and the Township requested that the manure be covered to comply.

36. With regard to the driveway permit, this issue had not been raised at the prior hearing. Ms. Leo advised that Township Code Section 17-2.1 requires a permit for farmland access. All farmland access must have a permanent, lockable gate or other means to secure access as approved by the Township Engineer. Ms. Leo also advised that there are sight distance issues and other concerns. The Board's professionals advised the Board that under Franklin v. den Hollander, the Board weighs the farmer's legitimate ag-based reason for not complying versus the requirements of the Township Ordinance.

37. With regard to the driveway permit, the Board's professionals advised that there are public safety issues with regard to ingress and egress. Health, safety and welfare issues are to be deferred to the Municipality where appropriate. The Board was advised that regulations allow a farmer to have vehicle activity for manure management and things of that nature. If the Board feels comfortable with the farm based reason for not complying with the Ordinance and assuming a permit is required versus the public safety regarding sight distance and maneuverability of trucks on the road, one of the ways you may mitigate is by placing conditions on the use of the driveway such as it could only be used for manure management, the horse trailers and hay and shaving deliveries.

38. The landowner's attorney advised that she was not aware of the Township's concerns and therefore did not have all of her records with her but asked that the Board make the decision on the application before it, i.e., the access for horses and for manure. It was explained that while the Board had a quorum, one of the members was not present at the hearing in July and would have to listen to the tape and sign a Certification in order to be eligible to vote. Therefore, the parties were advised that a vote could not take place this evening. The matter would be carried to the October 21, 2019 meeting without further notice.

OCTOBER 21, 2019 HEARING

39. An overview was provided by the Board's professionals with regard to the July 15, 2019 and September 16, 2019 hearings. Members who were not otherwise eligible to vote had listened to the tapes of the hearings, had signed the required Certification and were eligible to vote.

40. The Board was provided with a letter from Green Township dated October 8, 2019 setting forth its position with regard to the various issues before the Board.

41. Ms. Triolo, attorney for [REDACTED] requested that her letter dated October 21, 2019 become part of the record we well. Ms. Triolo advised that the path adjacent to the barn previously referred to as the driveway or farm lane was previously approved as a construction entrance.

42. In response to a question from the Board, the Board's attorney confirmed that all of the parties including the Township agreed on the location of the manure dumpster as it now was in compliance with the AMP. The only issue with regard to the manure dumpster was whether or not it would be covered. In response to questioning, Mr. Komar advised that while manure is to be kept as dry as possible there is no requirement in the Best Management Practices to cover manure. Ursula Leo, the attorney for Green Township, requested that the Township's Ordinance requiring manure be kept "as dry as possible" be enforced and that the manure be covered as well as being placed on a concrete pad. Ms. Leo objected to the "construction entrance". The path was a construction entrance that turned into something that was never permitted by the Township. Ms. Leo further reiterated her position that there were sight distance issues for the driveway. The discussion continued with regard to whether or not the Township's Ordinance requirement of keeping manure "as dry as possible" would require that the manure be covered.

43. With regard to the number of horses, Mr. Komar clarified that with regard to the number of horses [REDACTED] would be allowed to have a maximum of eight, but with the eight threshold a high-density plan would be required. Seven horses and below would not require a high-density plan. Board Member Southway advised that he had made a visit to the farm and that the driveway (farm lane) is actually critical in that location. Mr. Southway advised that there is no way to get the dumpster on and off the property from the house driveway. He added that the sight distance from the farm lane is far better than the sight distance from the driveway as well as the neighbor's driveway.

44. The meeting was opened to the public. [REDACTED] who was previously sworn, testified that the proposed new location of the dumpster is closer to the pond on the property. She was concerned about the pad the dumpster will be placed on. Ms. [REDACTED] advised that she was concerned because her water tested positive for E. coli a year ago. Mr. Komar advised that the dumpster was 100 feet from waters of the State as required by the AMP.

45. [REDACTED] who was previously sworn, testified that he had spent a considerable amount of time investigating dumpsters and found that no one that he spoke with provided a sealed dumpster. [REDACTED] also provided calculations for how many gallons of water would be produced based on how many inches of rain fell. [REDACTED] also provided copies of photographs of dumpster covers. The photographs were marked as Exhibit G-7.

46. A list of exhibits is attached and is part of this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Sussex County Agriculture Development Board makes the following findings, conclusions and resolutions:

CONCLUSIONS

The Board, pursuant to Franklin v. den Hollander, weighed the farmer's legitimate agriculturally based reasons for not complying with certain sections of the Green Township Code. Based upon the testimony and the exhibits produced by the various parties, the Board approved the following:

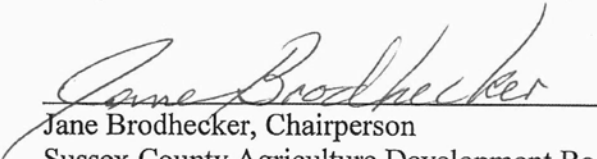
(A) A maximum of seven (7) horses shall be permitted on the property with the understanding that the seven (7) horse limitation will be an average.

(B) The manure storage dumpster is to be relocated to the new site as specified in the plan and that the manure storage dumpster is to be placed on a gravel pad with a landscaping cloth underneath and that the frequency of pickup be maintained to avoid spillage and seepage and that the farmer use the best efforts to avoid runoff.

(C) While the Board retains jurisdiction, the applicant shall apply for a permit from Green Township for the farm lane access. The applicant may return to the Board to request relief if required. The Board also added that the existing farm lane access is the safest location for bringing in supplies, the horse trailer and manure removal.

Any person aggrieved by this resolution may appeal the resolution to the SADC in accordance with the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* and the Uniform Administrative Procedures Rules within 45 days from receipt of this resolution and the decision of the SADC shall be considered a final administrative agency decision. If the CADB's resolution is not appealed within 45 days, the resolution is binding.

I certify that the foregoing is a true copy of the resolution adopted by the Sussex County Agriculture Development Board on December 16, 2019.


Jane Brodhecker, Chairperson
Sussex County Agriculture Development Board

EXHIBITS

- A-1 Map presented by [REDACTED]
- A-2 Photos presented [REDACTED]
- A-3 Down to Earth records
- A-4 Self-Certified Animal Waste Management Plan
- A-5 Aerial photograph of the farm
- A-6 Down to Earth record

- G-1 Photograph of driveway presented by [REDACTED]
- G-2 Photograph of driveway presented by [REDACTED]
- G-3 Photograph of container used to store manure presented by [REDACTED]
- G-4 Map entitled "Google Map Data 2019" presented by [REDACTED]
- G-5 Highlands breakdown of the description of the property presented by [REDACTED]
- G-6 Seven photos presented by [REDACTED]
- G-7 Photographs of dumpster covers presented by [REDACTED]