

**STATE AGRICULTURE DEVELOPMENT COMMITTEE
RESOLUTION #FY2025R12(1)**

**Dismissal of Right to Farm Appeal
Hopewell Township v. [REDACTED]**

December 5, 2024

**Subject Property:
Block 75, Lot 1.02
Hopewell Township, Mercer County
56.6 - acres**

WHEREAS, [REDACTED] (Owner) is the owner of Lot 1.02, Block 75 in the Township of Hopewell, Mercer County (the Township), by deed dated June 24, 2004, and recorded in the Mercer County Clerk's office in [REDACTED]; and

WHEREAS, the property consists of 56 acres on which his tenant farmers produce vegetable crops and breed and raise sheep; and

WHEREAS, single-family residential dwellings and agriculture are permitted uses in the zoning district in which the property is located; and

WHEREAS, as there is no farmhouse or other structures in which to live on the property, previous tenant farmers have resided in recreational vehicles (RVs) located on the farm; and

WHEREAS, the Owner alleges that it is necessary for a tenant farmer to reside full time on the property to feed, water, care for, breed, and protect the animals from wolves, coyotes, predators and theft; and

WHEREAS, the Township alleges that, since 2022, the current tenant farmer, [REDACTED], has resided, on a full-time basis, in a mobile home located on the property; and

WHEREAS, mobile homes and RVs do not meet the township zoning ordinance definition of a single-family residential dwelling and are not permitted in the zone for permanent habitation; and

WHEREAS, the mobile home site is not connected to a public sewer or on-site septic system, and those persons living in the mobile home use "port-a-johns" for sanitation; and

WHEREAS, the mobile home is not connected to electrical service and an external portable generator is operated on a twenty-hour, seven day a week basis; and

WHEREAS, the Township has not issued a certificate of occupancy, pursuant to the Uniform Construction Code, for the mobile home; and

WHEREAS, on February 18, 2023, [REDACTED], the Township's director of community development and municipal engineer, issued a summons and complaint

against the Owner, returnable in Hopewell Township municipal court, for violating township land use ordinances; and

WHEREAS, in March 2024, the Township municipal court stayed the case to allow the Mercer County Agriculture Development Board (Mercer CADB or board) to determine if it had jurisdiction to consider the Township's complaint under the Right to Farm Act (RTFA); and

WHEREAS, on April 19, 2024, [REDACTED] filed an RTFA complaint on behalf of the Township with the Mercer CADB because of the unpermitted mobile home that the township claimed was unfit for human habitation; and

WHEREAS, the Mercer CADB scheduled a public hearing at its May 18, 2024 meeting; and

WHEREAS, at the May 18, 2024 hearing the tenant farmer, [REDACTED] testified; and

WHEREAS, the Owner also testified that his tenant is required to reside on the property year-round, full-time in order to protect sheep from predators, and that this activity is protected by the RTFA; and

WHEREAS, the Mercer CADB did not determine whether the property was a commercial farm eligible for RTFA protection; and

WHEREAS, at the conclusion of the hearing the board determined that it did not have jurisdiction to consider the complaint because "housing code violations" are not included in the RTFA's list of protected activities in N.J.S.A. 4:1C-9, and further, such violations concern public health and safety; and

WHEREAS, on June 4, 2024, the Mercer CADB adopted a resolution memorializing the findings it made on May 18, 2024, confirming that it had no authority or jurisdiction to consider the matter, and returned the complaint to Hopewell Township municipal court; and

WHEREAS on June 17, 2024, the owner timely appealed the Mercer CADB resolution to the SADC; and

WHEREAS, the Owner argued on appeal that tenant farmers have resided on the premises in RVs since 1990, and that such arrangements are necessary, in the absence of a farmhouse, to properly care for the sheep; and

WHEREAS, at the SADC's October 24, 2024 meeting, the Committee gave the Owner additional time to submit information on commercial farm eligibility and on operations on the premises justifying the need for equine agricultural labor housing, an activity eligible for RTFA protection; and

WHEREAS, the on October 31, 2024, the SADC sent the Owner a questionnaire seeking information on commercial farm eligibility and equine operations on the premises; and

WHEREAS, on November 22, 2024, the Owner submitted written responses that included a recital of \$5,600 in annual agricultural production on the premises in 2024 but did not provide, as requested, proof of agricultural production income in the form of sales receipts, IRS Schedule F or similar documentation; and

WHEREAS, the Owner submitted a 2025 FA-1 form he signed on July 10, 2024 indicating that the premises was 56 acres in size and devoted to 5 acres each of melons, squash, tomatoes and mixed vegetable, 20 acres of appurtenant woodland under a forest stewardship plan, 3 cords of fuelwood, 1 horse and 10 sheep; and

WHEREAS, Owner's written responses also included a statement that he intended to use a horse stall for equine service purposes but did not further describe those purposes and the need for equine agricultural labor; and

WHEREAS, the SADC previously determined that agricultural labor housing is not eligible for RTFA protection in the Final Decision I/M/O Wilkin and Urbano, OAL Dkt. No. ADC 2609-03, SADC ID #1319-15, affirmed in In re Wilkin, 2006 WL 3018047 (A.D. 2006); and

WHEREAS, except for equine farms under the conditions set forth at N.J.S.A. 4:1C-9.3, agricultural labor housing is not an RTFA permitted activity included in N.J.S.A. 4:1C-9; and

WHEREAS, equine agricultural labor housing is eligible for RTFA protection is the following criteria in N.J.S.A. 4:1C-9.3 are met:

c. Full-time, year-round equine-related farm employee housing established in the same building or facility where horses are housed or boarded shall be located:

(1) on a separate floor of the building or facility above a floor where horses are housed or boarded and separated from the floor on which horses are housed or boarded by a ceiling and floor with at least the fire rating required for separation between residential and non-residential uses pursuant to the State Uniform Construction Code; or

(2) on the same level of the building or facility where horses are housed or boarded in an addition that is completely separated from the part of the building or facility where horses are housed or boarded by a wall that qualifies the addition as a separate building for the purposes of the State Uniform Construction Code.

The floor on which, or the addition in which, full-time, year-round farm employee housing is established shall have a ventilation system separate from the ventilation system operating on a floor or in an addition where horses are housed or boarded.

d. The construction, installation, and provision of housing pursuant to this section shall comply with any other provision of the State Uniform Construction Code and Department

of Community Affairs standards and requirements which do not exclude the construction, installation, or provision of housing units in the same building as the boarding of horses under the State Uniform Construction Code.

NOW THEREFORE BE IT RESOLVED:

1. The WHEREAS paragraphs above are hereby incorporated by reference.
2. The Owner has given no reasonable justification of the need for full-time, year-round equine agricultural labor, and proposes no structure for the occupancy of a horse and of the laborer as required by N.J.S.A. 4:1C-9.3c. and d. above.
3. The SADC concludes, based upon review of the Mercer CADB record, In re Wilkin, and the permitted activities listed in N.J.S.A. 4:1C-9, that the use and occupancy of a mobile home for non-equine agricultural labor is ineligible for protection under the RTFA.
4. The SADC determines, based on paragraph 2 above, that it lacks jurisdiction to conduct further proceedings and will not forward the Owner's appeal of the MCADB resolution to the Office of Administrative Law as a contested case.
5. This action is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey.
6. This action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

_12/5/2024
DATE



Charles Roohr, Deputy Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Martin Bullock	YES
Scott Ellis	RECUSED
Pete Johnson	YES
Rich Norz	YES
Charles Rosen	YES
Tiffany Bohlin	ABSENT
Gina Fischetti (rep. DCA Commissioner Suarez)	YES
Lauren Procida (rep. DEP Commissioner LaTourette)	YES
Julie Krause (rep. State Treasurer Muoio)	ABSENT
Brian Schilling (rep. Executive Dean Lawson)	YES
Edward D. Wengryn, Chairperson	YES