Resolution No. 2019-10-2

RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING A SITE SPECIFIC AGRICULTURAL MANAGEMENT
PRACTICE DETERMINATION FOR
BLOCK 70, LOT 21 IN THE TOWNSHIP OF MANALAPAN

Mr. Bullock offered the following resolution and moved its adoption:

WHEREAS, Sangillo Tree Farm, LLC. ["Applicant"] is the current owner of Block 70, Lot 21 in the Township of Manalapan; and

WHEREAS, on May 30, 2019, the Applicant applied for a Site Specific Agricultural Management Practice ("SSAMP") recommendation for Block 70, Lot 21 in the Township of Manalapan, that included a request for protection for an on-farm direct marketing facility on the site; and

WHEREAS, the Applicant requested relief from Manalapan Township's standards for use of a farm stand in the R-AG/4 zone, building size and height, dual use of a barn for storage and as a sales center, multiple farm stands per farm, a farm office, and an overhang extending off of the sales center; and

WHEREAS, in Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), standards had been set allowing the protection given under the Right to Farm Act to trump municipal land use law when appropriate. As per the Court, when exercising primary jurisdiction, the County Agriculture Development Board ("CADB") must first determine whether the Applicant's activities fall within the purview of agricultural management practices. Once established and, upon assuming jurisdiction, the CADB, where appropriate, must consider not only the impact of such practices on the municipality, but the standards established by local ordinances, all within the scope of the CADB's statutory obligation to consider public health and safety. If the CADB determines that the proposed activity falls within the scope of agricultural management practices, it may override the local ordinance; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's ("Committee") rules; and

WHEREAS, N.J.A.C. 2:76-2A.13 details the adopted AMP for On-Farm Direct Marketing Facilities, Activities, and Events; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and the Township of Manalapan of the application and request; and

WHEREAS, Block 70, Lot 21 is subject to a deed of easement held by the Monmouth County Agriculture Development Board; and

WHEREAS, the easement restricts permissible uses and improvements on the farm, and limits the farm to agricultural use and production in compliance with N.J.S.A. 4:1C-11 *et seq.* and all other rules promulgated by the State Agriculture Development Committee; and

WHEREAS, the Applicant is engaged in the agriculture production of Christmas trees and nursery stock; and

WHEREAS, the MCADB conducted a site visit to view the Applicant's property, operation, and proposed plans prior to scheduling a public hearing on the matter. The site visit was held on June 25, 2019 and attended by a minority of Board members, MCADB staff, the Applicant, and the Applicant's consultant; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), (d), upon receipt of a request for an SSAMP, the Board must determine whether the Applicant's agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, on October 1, 2019, after deliberation at the public hearing, the MCADB found that the Applicant's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, and memorialized its findings in Resolution No. 2019-10-1; and

WHEREAS, the Applicant now requests approval for an SSAMP determination from the Board for certain operations on the farm; and

WHEREAS, notice of the request and public hearing for the SSAMP was provided pursuant to N.J.A.C. 2:76-2.3(b) and 2:76-2.8(c); and

WHEREAS, the following documents comprise a list of exhibits and materials submitted for the Board's consideration:

Applicant's Exhibits:

Request for Right to Farm Site Specific Agriculture Management Practice Recommendation Submitted May 30, 2019 with Attachments a to f.....A-1

Select Receipts from November 17, 2018 to December 8, 2018.....A-2

www.anneellenfarms.com Website Screen Capture from June 10, 2019.....A-3

Photo of Price List Submitted June 10, 2019 .....A-4

Exhibits from the Monmouth CADB:

Manalapan Township Development Regulations Schedule of Permitted Uses.....B-2

June 4, 2019 Email from Nancy DeFalco to Harriet Honigfeld with §95-7.49.....B-3

Site Visit Photos from June 25, 2019.....B-4

June 18, 2019 Email from Coral Silsbe to Harriet Honigfeld with Staff Annotation.....B-5; and

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Applicant's request during the Board's public meetings on October 1, 2019; and

WHEREAS, the Applicant was represented by Dana Kelly, an attorney affiliated with Concept Engineering; and

WHEREAS, Coral Silsbe, of Project Expediters Consulting Corp., served as a witness for the Applicant; and

WHEREAS, Jeff Sangillo, of Sangillo Tree Farm, LLC., offered his own testimony in support of the application; and

WHEREAS, the Board carefully considered the testimony of the Applicant in making its determination; and

WHEREAS, after considering the testimony given and the exhibits presented at the hearing, the Board makes the following findings of fact:

1. Block 70, Lot 21 in the Township of Manalapan is approximately 53 acres in size.

2. The property is located within the R-AG/4 Rural Agricultural zone that permits agriculture.

3. The Applicant is currently engaged in the seasonal sale of Christmas trees, nursery stock, and ancillary items such as ornaments, stands and lights and offers pony rides and a petting zoo. Furthermore, the Applicant stores farm-related equipment such as trucks and trailers at the site.

4. The prior farm stand was composed of a trailer that no longer supported the size of the operation on the subject property.

5. The SSAMP request relates to a set of permissible activities listed in N.J.S.A. 4:1C-9, primarily:

    a. Provide for the operation of a farm market in the R-AG/4 zone, including the construction of a new barn that does not conform to municipal standards. Manalapan Township's Schedule of Permitted Uses does not allow for farm stands in the R-AG/4 zone. The township also limits farm stands to 1 story and 900 SF. More than 1 story and 3000 SF are proposed here; and

    b. Allow for a canopy extending off the new barn to provide coverage to patrons as well as off-season storage; and

    c. Allow for more than one farm stand to occupy the property as part of the overall on-farm direct marketing facility and permit storage and sales in designated sections of the new barn, thereby allowing for a dual use of the building; and

    d. Establish a sales threshold in line with the On-farm Direct Marketing AMP so that at least 51% of the annual gross sales of the retail farm market be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area be devoted to the sale of agricultural output of the farm, a departure from the township's 90% requirement; and

    e. Permit a farm office to be operated in the existing single family residence in conjunction with the farm market.

NOW, THEREFORE, BE IT RESOLVED, based on exhibits presented, testimony given and the aforesaid findings of fact, the Monmouth County Agriculture Development Board makes the following determinations:

1. Retail markets are permissible activities on commercial farms as per the On-Farm Direct Marketing AMP [N.J.A.C. 2:76-2A.13]; therefore, the proposed retail market is permissible on the subject property within the R-AG/4 zone.

2. The new barn consisting of 3000 SF and a height greater than one story, while a departure from the township's one (1) story height and 900 SF size limitations for farm stands, and the canopy that will extend out from the top of the building approximately 9 feet, were in the above instances determined by the Board to fall within the scope of generally accepted agricultural management practices, thereby permitting the Board to override the municipal restrictions.

3. Multiple structures devoted to sales is a permissible activity on the subject property as well as the use of part of the retail market for storage purposes. The On-Farm Direct Marketing AMP [N.J.A.C. 2:76-2A.13] defines "On-farm direct marketing facility" or "facility" as "a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to

facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various types and sizes of direct marketing operations, including, but not limited to: farm stands; farm stores; CSA market and distribution areas; and pick-your-own (PYO) market areas. **A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures**. **A facility's structures may also be used for the commercial farm's other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.**"

4. The Board approved a sales threshold in line with the On-farm Direct Marketing AMP so that at least 51% of the annual gross sales of the retail farm market must be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area be devoted to the sale of agricultural output of the farm. Although this is a departure from the township's 90% requirement, it is in line with state standards; and

5. The Board lastly found that the use of the existing single family residence as a farm office that functions as an offshoot of the farm market is an acceptable agricultural management practice and permissible on the subject property.

BE IT FURTHER RESOLVED that the activities on the farm must conform to all relevant Federal and State statutes, rules and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection, and Freehold Soil Conservation District; and

BE IT FURTHER RESOLVED that if over time the subject Farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Applicant, municipality or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Applicant through counsel, the State Agriculture Development Committee, the Township of Manalapan, and the Applicant.

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal 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 Procedure Rules, N.J.A.C. 1:1, within 45 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 45 days, this resolution is binding.

Seconded by Ms. Grbelja and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Bullock	X			
Mr. Buscaglia	X			
Ms. Butch	X			
Mr. Clayton*	X			
Mr. DeFelice	X			
Mr. Foster				X
Mr. Giambrone				X
Ms. Grbelja	X			
Mr. Holmes				X
Mr. Matthews*	X			
Mr. Potter	X			

* Alternate members in 2019

I do hereby certify that the foregoing is a true copy of a resolution adopted on October 1, 2019 and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 6th of November, 2019.

Gary DeFelice, Secretary