

RESOLUTION

**RE: Right to Farm, N.J.A.C. 2:76-2.2
Request for Site Specific Agricultural Management Practices
In the Matter of Charles W. Fisher (a/k/a Spring Meadow Farm)
Block 21, lots 2 & 2.01; Township of Delaware, County of Hunterdon**

WHEREAS:

On January 22, 2010, a Right to Farm (“RTF”) Application for a Site Specific Agricultural Management Practice/Zoning Dispute determination was submitted to the Hunterdon County Agriculture Development Board (“CADB”), by Charles W. Fisher, owner of Spring Meadow Farm (Block 21, Lots 2 and 2.01; Delaware Township), a farm that produces hay, corn, a few small grains, and a couple of beef cows and hiefers. The RTF Application requested a determination from the CADB that the sale of the spring water on the farm that flows from a natural spring constituted farming. If so, it sought the establishment of a Site Specific Agricultural Management Practice (“SSAMP”) for the operation.

On January 28, 2010, the CADB, through its Administrator, wrote to the SADC and to Delaware Township notifying them that the application had been filed.

At its February 11, 2010 meeting, the CADB discussed the application and determined that Spring Meadow Farm was a commercial farm operation in accordance with N.J.A.C. 2:76-2.3.

At its March 11, 2010 meeting, the CADB determined a site visit would be necessary and a Right to Farm hearing was scheduled for April 8, 2010.

On March 25, 2010, the CADB conducted a site visit at the Fisher Farm also known as Spring Meadow Farm.

On April 8, 2010, the CADB held a public hearing.

Proof of formal notice and publication was submitted by the applicant to the CADB on March 29, 2010. Formal notice of the hearings was published in the Hunterdon County Democrat on March 24, 2010 and served via certified mail on all landowners within 200 feet of the subject property. An Affidavit of Proof of Publication and Notice was provided. (App.-1)

Charles W. Fisher appeared on behalf of Spring Meadow Farms.

The following attorneys appeared to object to the relief sought: Richard P. Cushing, Esq., attorney for the Delaware Township Municipal Utilities Authority; John R. Lanza, Esq., attorney for the objector and neighboring landowner; Robert Hornby; Steven P. Goodell, Esq., attorney for the Delaware Township Zoning Board of Adjustment. Various Township residents and members of the public testified/presented arguments for, and against, the application.

Thirty-two (32) items were marked as comprising the record in this matter. The list of items comprising the record is marked as CADB-1 and is attached to this resolution.

It was noted that the farmer had made an application to the Delaware Township Board of Adjustment for a Variance in order to conduct the spring water harvesting operation. On February 11, 2010 the Delaware Township Board of Adjustment adopted a resolution denying the request for the variance. (Item 15, RKH-11)

Preliminary Issue

The CADB discussed the unique issue which was involved in this application. The farmer sought a recognition that “harvesting” water from the spring on the farmer’s property constituted “farming”.

It appeared to the Board that objectors wished to address a variety of issues including but not limited to how the operation would be conducted, the traffic impact of the operation, and other issues which were typically involved in appearances before Zoning Boards of Adjustment and other Development Applications. These issues would not have to be reviewed and addressed if the Board determined that harvesting spring water was not a farm operation.

Therefore, the Board determined to bifurcate the proceeding. It would initially decide whether harvesting spring water was a farming operation. If the Board determined that it was not, then there would be no need to continue with the balance of the hearing or address the remaining issues. If the Board determined that it was a farming operation, then the Board could proceed to hear all testimony in connection with all issues related to the appropriate Agricultural Management Practices for a spring water harvesting operation and the other issues it would need to decide in determining whether it should grant variances from local township zoning.

Determination of issue of whether harvesting spring water was farming.

Preliminarily the Board was presented by County Counsel with N.J.S.A. 4:1C-9 (Exhibit CADB-2) which defines permissible activities which can be conducted on a commercial farm. The applicant and audience members were made aware of these definitions which the Board intended to use in part to evaluate the testimony.

CHARLES W. FISHER

Charles W. Fisher, the owner, provided testimony in support of the application. He provided a brief history of the farm, as well as past and current operations regarding the SSAMP requested. He also testified as follows:

1. That in regard to the issues of truck traffic which he indicated was a significant issue at the local zoning level, that the trucks which this operation would generate would be less in number than the trucks which traveled the adjoining public road when the farm was an active milking operation.

2. That the water which was on his property flowed from a spring, and now flowed off the property. He presented no specific studies or legal information or other independent material which supported his argument that water harvesting constituted farming. He stated that he knew of another farm in Hunterdon County which did water harvesting which had been preserved under the Agricultural Retention and Development Act. The suggestion was that this constituted acknowledgement that water harvesting was farming.

The CADB reviewed its records and marked as “CADB-3” a Deed of Easement between Bernard S. Beatty and Sharon J. Beatty and the County of Hunterdon dated March 22, 1999. Also marked as “CADB-4” was a survey map for the Beatty farm dated September 22, 1998. A review of the survey map noted that the area on the property in which the spring house existed was in an Exception Area and not covered by the Deed of Easement. Therefore, the Board found no inference could be drawn that the

SADC or the CADB had previously determined that spring water “harvesting” was a farming operation.

COMMUNITY MEMBERS

While various interested community members testified/presented comment, they did not present any facts to address the issue of whether water harvesting was a recognized farming operation. They expressed opinions and restated various facts including, but not limited to Mr. Fisher’s commitment to the community, the impact of the water harvesting operation on the adjoining road, and the activities which the Fisher family engaged in support of the community. It was also noted during the testimony that the spring has existed for a number of years and for a period of time people have taken the water from it.

JOHN LANZA, ESQ.

John Lanza, Esq., representing Robert Hornby, provided a presentation and argument as to why harvesting spring water was not farming.

RICHARD CUSHING, ESQ.

Richard Cushing, Esq., representing the Delaware Township Utilities Authority. He raised questions as to the impact which the Fisher water harvesting operation would have on the water company’s sources of water. He indicated that there have been discussions between the applicant and the Utilities Authority to mitigate any impact but no agreement had been signed. Mr. Cushing also presented a copy of the SIC Manual (North American Industry Classification System) and noted that water harvesting and bottling was not under the classifications for either agriculture, forestry, or fishing and trapping pursuant to N.J.S.A. 4:1C-9.

STEVEN P. GOODELL, ESQ.

Steven P. Goodell, Esq., the attorney for the Township of Delaware and the attorney for the Delaware Township Board of Adjustment, spoke in opposition to determining that the activities were a farm operation.

The CADB discussed the matter and considered the submissions and testimony of the applicant and the objectors.

NOW, THEREFORE, BE IT RESOLVED THAT THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD MAKES THE FOLLOWING FINDINGS OF FACT:

1. The property in question is known as Block 21, Lots 2 & 2.01 in the Township of Delaware.
2. Spring Meadows Farm runs a commercial farming operation on the property and is entitled to protection under the New Jersey Right-to-Farm law.
3. The property is located in a zone that permits agriculture.
4. There exists a natural spring or springs on the farm from which the water has flowed freely for a number of years. The spring water has been used incidentally in the farming operation but excess water generally flows off the site.
5. The applicant wishes to capture the spring water and market it.

NOW, THEREFORE, BE IT RESOLVED BY THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD AS FOLLOWS:

A. The request for Site Specific Agricultural Management Practices determination submitted by Charles W. Fisher, also known as Spring Meadow Farm, is dismissed for the following activities as follows:

1) The applicant has furnished no information or material which indicates that spring water harvesting is a farming activity.

2) The Board has reviewed N.J.S.A. 4:1C-9 and has evaluated the farmers' operation in terms of definitions recited in the statute. The Board hereby determines that "harvesting" spring water is not a protected farm operation pursuant to the statute.

B. This determination shall be forwarded to the State Agricultural Development Committee within thirty (30) days, pursuant to N.J.A.C. 2:76-2.3(e).

C. Any person aggrieved by this decision, may appeal to the State Agricultural Development Committee, pursuant to N.J.A.C. 2:76-2.3(f) within 45 days of this Resolution.

Dated: _____, 2010

DAVE BOND, Chairperson