February 27, 2004

Joanne Restivo, Deputy Clerk
Office of Administrative Law

Re: In the Matter of Joseph P. Arno
(Appeal of Resolution Issued by the Monmouth County Agriculture Development Board)
SADC ID # 1328-02
OAL Docket No. ADC 4748-03

Dear Ms. Restivo:

Enclosed please find a final decision in the above-captioned matter. The State Agriculture Development Committee (SADC) issued this decision at its February 26, 2004 meeting. Please note that the SADC's action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

If you have any questions, please contact me at (609) 984-2504.

Sincerely,

Marci D. Green
Chief of Legal Affairs

Enclosures

c: attached service list

S:\RIGHTTOFARM\RTFCASES\MONMOUTH\1328-02 Arno\final decision ltr.doc

<table>
<tr><td>IN THE MATTER OF JOSEPH P. ARNO
(APPEAL OF RESOLUTION ISSUED BY
MONMOUTH COUNTY AGRICULTURE
DEVELOPMENT BOARD;
RESLUTION #5-2003)</td><td>)
)
)
)
)</td><td>STATE OF NEW JERSEY
OAL DOCKET NO. ADC 4748-03
SADC Docket No. 1328-02</td></tr>
</table>

FINAL DECISION

This matter arises from an appeal of a decision by the Monmouth County Agriculture Development Board (MCADB) to dismiss the application of Joseph P. Arno, M.D., for a site specific agricultural practice recommendation.

PROCEDURAL BACKGROUND

Joseph P. Arno (Dr. Arno) filed an application with the MCADB for a site specific agricultural management practice pursuant to the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. On April 2, 2003, the MCADB found that Dr. Arno's farm failed to meet the Act's definition of commercial farm because "in the absence of sales of farm product of at least $2,500 per year, a property does not qualify as a commercial farm under the Right to Farm Act." (MCADB Resolution No. 5-2003-13). Dr. Arno appealed this determination to the State Agriculture Development Committee (SADC), which transmitted the matter to the Office of Administrative Law as a contested case for a hearing.

The matter was assigned to Administrative Law Judge ("ALJ") Anthony T. Bruno. On July 31, 2003, the MCADB filed a Motion for Summary Decision. Dr. Arno responded by letter dated August 12, 2003 and the MCADB filed a Reply Memorandum

on September 5, 2003. ALJ Bruno held oral argument on the motion on September 8, 2003 and closed the record on September 8, 2003.

In an Initial Decision dated January 21, 2004, ALJ Bruno granted the MCADB's Motion for Summary Decision and ordered that the action of the MCADB dismissing Dr. Arno's application is affirmed. He further ordered that the appeal of Dr. Arno is dismissed. The decision was mailed to the parties on January 26, 2004.

Dr. Arno submitted exceptions on February 17, 2004 in which he objected to the legal conclusions of the administrative law judge. Although these exceptions were submitted after the deadline for filing exceptions, they did not set forth any new argument or fact.

STATEMENT OF FACTS

Dr. Arno owns 7.82 acres of land in Marlboro Township, Monmouth County. The parcel has 3.77 acres of non-appurtenant woodland and 1.28 acres of pasture, totaling 5.05 acres, according to Dr. Arno's application for farmland assessment for tax year 2003 and his submissions to the MCADB, SADC, and ALJ Bruno. The farmland assessment application also states that Dr. Arno keeps two sheep on the property. He indicated in his submissions that he plans to acquire a total of four or five sheep and shear their wool on a yearly basis.

Dr. Arno applied to Marlboro Township (Township) for a variance to construct a barn to house the sheep. The Township advised him that a variance was not required to build the barn, but that the Marlboro Code did not explicitly provide for the keeping of sheep. According to Dr. Arno, Township officials informed him that he would need a variance to keep two sheep on the property.

The Township also denied Dr. Arno's application for farmland assessment. It issued a Notice of Disallowance of Claim denying farmland assessment for the following reasons:

> "Land area devoted to Agricultural or Horticultural use is less than 5 acres."
>
> "Not devoted to Agriculture or Horticulture for 2 successive years preceding the Tax Year in question."
>
> "Gross sales, including payments received under a Soil Conservation Program are less than $500 per year."

The tax assessor also checked a box on the Notice entitled "Other" and typed "Site Inspection." According to a letter from Dr. Arno's forester to the tax assessor, the assessor checked this box because he did not witness enough activity to qualify the land for farmland assessment.

Dr. Arno's forester sent a letter to the tax assessor contesting the tax assessor's conclusion that the "land area devoted to agricultural or horticultural use is less than 5 acres." The tax assessor responded with a letter stating: "Since there seems to be an agreement that a future process is required before a final determination can be made, I will make a final judgement at that time."

In October 2002, Dr. Arno received a Ten-Year Forest Management Plan from a certified forester.

LEGAL ANALYSIS

The issue in this matter is whether Dr. Arno's operation meets the definition of commercial farm contained in the Right to Farm Act. The definition of commercial farm is

> (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500, or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the 'Farmland Assessment Act of 1964,' (citation omitted), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the 'Farmland Assessment Act' (citation omitted). N.J.S.A. 4:1C-3.

The MCADB found that Dr. Arno did not produce agricultural or horticultural products worth $2,500 annually. Dr. Arno submitted a statement from "Tree Service G & O Landscaping" indicating that the market value of wood harvested from his property on three separate occasions in 2003 totaled $525.00. Based on this evidence, Dr. Arno clearly failed to show the MCADB that he produced $2,500 of agricultural or horticultural products in 2002.

Dr. Arno contended that the Right to Farm Act does not require sales, but merely requires production of products worth $2,500 or more. ALJ Bruno disagreed and found that "there must be actual production of agricultural or horticultural products worth, in Arno's case, at least $2,500". The issue before the SADC is whether unharvested trees in a standing forest can be deemed production of agricultural or horticultural products.

ALJ Bruno's legal conclusion that there must be "actual production" of agricultural or horticultural products implies that a product needs to be harvested to be deemed produced. The SADC rejects this general conclusion with respect to unharvested trees in a forest and finds that such trees can be deemed production of agricultural products when all of the following criteria have been met:

1. the farmer has a written contract to provide a specified amount of wood from his trees within a specified timeframe; and

2. the farmer has obtained a woodland management plan prepared by a certified forester; and

3. the farmer has received a signed statement from a certified forester certifying that the farmer has a sufficient amount of trees ready for harvest to fulfill the terms of the written contract.

A review of the record shows that Dr. Arno has not shown that he has a sufficient amount of harvestable trees on his property, pursuant to a forest management plan, to satisfy the production requirement. After the MCADB hearing, he submitted to the SADC a letter with a copy of a check for $2,025.00 representing "the sale of 13.5 cords of firewood, to be delivered on demand." The requirement that the firewood be delivered on demand implies that the wood had not been harvested at the time of payment.

Further, Dr. Arno's forest management plan ("the Plan") states

> "at this time, the harvest of these trees on a selective basis should be considered. Removal of individual trees will open the canopy and allow more sunlight to reach natural and planted seedlings and saplings. . . Any timber trees selected for harvest should be done so on an individual basis. . . If timber trees are to be harvested, they will be marked and tallied to determine their volume and value. One to ten trees will be removed at a time. . . Harvesting of timber should be considered towards the later years of this ten-year plan, after vines, brush, and inferior trees have been removed from the stand. " (Ten Year Forest Management Plan, page 9, emphasis added).

According to the Plan, the majority of trees are not ready to be harvested for timber, but are to be removed on a selective, individual basis, one to ten at a time, for

sale as a "value-added product for farmland assessment income" or "used on the property." (Ibid.)

In light of the Plan's recommendations, the SADC finds that the check for $2,025 does not show that Dr. Arno produced $2,500 worth of trees annually. It merely shows an obligation to provide firewood over an unspecified period of time. Dr. Arno failed to establish that his property contains a sufficient number of trees to satisfy his obligation to provide firewood "on demand," and to show that he is able to satisfy the obligation within one year.

Dr. Arno's property also failed to meet the second requirement of a commercial farm -- satisfying the eligibility criteria for differential property taxation pursuant to the 'Farmland Assessment Act of 1964. The SADC relies upon the Township's finding that Dr. Arno's property was not eligible for differential property taxation.

Dr. Arno contended that he did not have to receive farmland assessment for his land, but "must only meet the eligibility criteria for farmland assessment." ALJ Bruno disagreed with this contention. The SADC rejects ALJ Bruno's position and finds that the Right to Farm Act does not require an applicant to apply for and obtain farmland assessment, but only that he meets the eligibility criteria for farmland assessment. When a Township has considered an application for farmland assessment, however, the SADC will rely upon the Township's evaluation and conclusions. In instances where a Right to Farm applicant has never applied for farmland assessment, an independent evaluation by the SADC is appropriate, if not necessary, to determine whether the applicant meets the eligibility criteria of the Farmland Assessment Act.

In this matter, the SADC relies upon the Township's denial of Dr. Arno's application for farmland assessment to conclude that Dr. Arno's property did not meet the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964.

There were no issues of material fact in this matter and therefore summary disposition is appropriate.

CONCLUSION

For the reasons set forth above, the SADC rejects ALJ Bruno's legal conclusions regarding the production requirements necessary to meet the definition of commercial farm and rejects ALJ Bruno's position that a farm needs to have farmland assessment to meet the definition of commercial farm. The SADC adopts ALJ's Bruno's conclusion that Dr. Arno's property has not satisfied the definition of a commercial farm based on its findings that Dr. Arno failed to establish that he produces $2,500 of agricultural or horticultural products annually and does not meet the eligibility criteria for farmland assessment.

The SADC adopts ALJ Bruno's conclusion that the MCADB did not have jurisdiction under the Right to Farm Act to hear the application of Dr. Arno for a site-specific agricultural management practice recommendation.

IT IS SO ORDERED.

Dated: ____________________

____
Charles M. Kuperus, Chairman
State Agriculture Development Committee

SERVICE LIST:

Gil Messina, Esq.
Cassidy, Messina & Laffey
961 Holmdel Road
Holmdel, New Jersey 07733

Ron Gordon
Decotiis, Fitzpatrick, Cole & Wisler
500 Frank W. Burr Blvd.
Teaneck, New Jersey 07666

Joseph P. Arno
12 Shallowbrook Road
Morganville, New Jersey 07751

S:\RIGHTTOFARM\RTFCASES\MONMOUTH\1328-02 Arno\final decision.doc