

CUMBERLAND COUNTY AGRICULTURE DEVELOPMENT BOARD

2008-08

DECISION IN THE MATTER OF THE APPLICATION OF:

**ELIZABETH DRZEWUCKI AND TERRY MCCALMONT FOR A DETERMINATION
THAT CERTAIN ORDINANCES OF THE TOWNSHIP OF DEERFIELD**

ARE CONTRARY TO ACCEPTED FARM PRACTICE AND

INTERFERE WITH THEIR RIGHT TO FARM

Elizabeth Drzewucki, record owner, and Terry McCalmont are the owners and occupiers of Block 42, Lots 5 and 6, on the Tax Map of Deerfield Township, Cumberland County, New Jersey. They operate a commercial farm within the meaning of *N.J.S.A. 4:1C-3* and are entitled to the protections of the New Jersey Right to Farm Act.

On December 18, 2007, Anthony Lamanteer, Zoning Officer for the Township of Deerfield issued a Complaint/Summons charging Elizabeth Drzewucki, as owner of the land in question, with a violation of Deerfield Township Ordinance 1201 B-1 and B-2. This was initially scheduled for the Deerfield Township Municipal Court for hearing on January 3, 2008, but was postponed until May 8, 2008, when the Municipal Court Judge signed an Order declaring the case "inactive" without prejudice to the right of Deerfield Township to revive it in the event the Cumberland County Agriculture Development Board (CCADB) determines it lacks jurisdiction or that the practices followed by defendant are not in accordance with accepted agricultural practices.

On June 17, 2008, this matter came before the CCADB for a hearing at which representations were made by Michael P. Fralinger, Esq., the attorney for Elizabeth Drzewucki, record owner, and Terry McCalmont. and Terry McCalmont testified at length and in detail regarding the nature of the operation.

In the course of the hearing the following exhibits were marked into evidence:

1. A copy of Deerfield Township Ordinance 120-111. Keeping of animals and livestock, and kennels and/or animal hospitals and a copy of Deerfield Township Schedule of District Regulations CR Center Residential Zoning District from the Deerfield Township Land Development Ordinance.
2. A copy of that part of the Deerfield Township Land Development Ordinance defining Agriculture or Horticulture Use.
3. Rutgers Cooperative Extension Bulletin entitled "Agricultural Management Practices for Commercial Equine Operations.

4. Copy of Department of Agriculture, Division of Agricultural and Natural Resources proposed New Rule *N.J.A.C. 2:91 DRAFT – APRIL 2006*.
5. Proposed Amendments: *N.J.A.C. 2:76-2A.8* and *6.15*; Proposed New Rules: *N.J.A.C. 2:76-2A.10*; *2B.3*; and *6.24*.
6. There was no Exhibit 6.
7. Copy of Deerfield Township Tax Map with layout of premises drawn in.
8. Aerial photograph showing premises.
9. Aerial photograph showing premises (enlarged).

The CCADB is satisfied that the underlying facts are not in question. Elizabeth Drzewucki, record owner, and Terry McCalmont are the owners and occupiers of Block 42, Lots 5 and 6, on the Tax Map of Deerfield Township, Cumberland County, New Jersey on which they operate a commercial farm within the parameters of *N.J.S.A. 4:1C-3* having a total area of 11.83 acres. The owner/operators have established a commercial equine operation on their land that complies with the guidelines contained in Exhibits 3 and 4. The provisions of Exhibit 3 have been substantially incorporated into Exhibit 5. A commercial equine operation is a farming or agriculture use that is entitled to the protection of the Right to Farm Act.

The property in question is in a CR Center Residential Zoning District that is zoned specifically for a Farm or Agriculture or Horticulture use.

The CCADB has carefully reviewed the facts of this situation and finds:

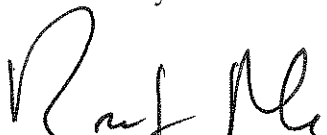
1. Both Joseph W. Veight, III, Esq., the Municipal Prosecutor for Deerfield Township; and Michael P. Fralinger were notified of the hearing scheduled for 7:00 p.m. on June 17, 2008, at Morton Avenue. There was no response from anyone on behalf of the Township of Deerfield.
2. The operation of Elizabeth Drzewucki, record owner, and Terry McCalmont are the owners and occupiers of Block 42, Lots 5 and 6, on the Tax Map of Deerfield Township, Cumberland County, New Jersey is a commercial farm within the parameters of *N.J.S.A. 4:1C-3*, on which premises they maintain a commercial equine farming operation.

3. The two parcels, Block 42, Lots 5 and 6 are zoned CR (center residential) according to the Zoning Map of Deerfield Township in which a farm and agriculture use are not only specifically permitted, but are listed as Principal uses.
4. The provisions of Deerfield Township Ordinance 120-111(B)(1) and (2) conflict with the practices permitted and recognized in Exhibits 3, 4 and 5, which constitute accepted farm management practices for commercial equine farming.
5. To permit a commercial equine farming operation in an the CR (center residential) Zone is not inimical to the zoning plan of Deerfield Township; since a Farm of at least 6 acres minimum lot size and an agricultural use has no minimum lot size, and both are principal uses in the CR zone.
6. The restrictions of Deerfield Township Ordinance 120-111(B)(1) and (2) are in direct conflict with the established farm management practices for a commercial equine farm operation, and as to these premises, Block 42, Lots 5 and 6 supersede and, where conflicting, nullify the regulations imposed by the local ordinance.
7. Enforcement of the provisions of Deerfield Township Ordinance 120-111(B)(1) and (2) against these premises, Block 42, Lots 5 and 6, are in violation of the Right To Farm Act.

FOR THESE REASONS, BE IT RESOLVED BY THE CUMBERLAND COUNTY AGRICULTURE DEVELOPMENT BOARD THAT the provisions of Deerfield Township Ordinance 120-111(B)(1) and (2) do not apply to the commercial equine farm operation located at Block 42, Lots 5 and 6 as shown on the Deerfield Township Tax Map.

Motion Made by: Dr. Ernest Zirkle Motion seconded by: Fred Van Meter

July 15, 2008
Date


Roger J. Ruske, Chairman

This resolution was duly heard and approved at a publicly advertised meeting of the Cumberland County Agriculture Development Board held on July 15, 2008 at 7 pm.