

**RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
RECOMMENDING A SITE-SPECIFIC
AGRICULTURAL MANAGEMENT PRACTICE
UNDER THE NEW JERSEY RIGHT TO FARM ACT**

Mr. Rifkin offered the following motion and moved its adoption:

WHEREAS, Mr. John Samaha [“Samaha”] has proposed the use of a Liquid Propane Cannon [“Cannon”] for the purpose of protecting sweet corn from bird predation on a farm located at 76 Muhlenbrink Road, in the Township of Colts Neck, County of Monmouth, and State of New Jersey and designated as _____ on the Tax Map of the Township of Colts Neck [“the Property”]; and

WHEREAS, Samaha has applied to the Monmouth County Agriculture Development Board [“the Board”] pursuant to N.J.A.C. 2:76-2.3 requesting a determination as to whether the proposed use of the Cannon to protect his sweet corn crop from bird predation constitutes a generally accepted agricultural management practice; and

WHEREAS, Samaha appeared before the Board on April 3, 2002; May 1, 2002 and August 7, 2002, due notice of said meetings having been given in accordance with the New Jersey Statutes and the Open Public Meetings Act and a quorum of the Board being present at all three meetings; the application was heard; and

WHEREAS, Samaha, having been sworn, and representing himself, presented testimony and exhibits in support of his application; and

WHEREAS, Objectors, represented by Counsel, presented sworn testimony and exhibits in opposition to the Samaha application; and

WHEREAS, the Board received into evidence the following Exhibits:

- Samaha 1 Application for recommendation of a Site-Specific Agricultural Management Practice concerning the use of a Cannon to prevent bird predation of a sweet corn crop;
- Samaha 2 Copy of a Noisemaking Permit issued by the New Jersey Department of Environmental Protection, Division of Fish & Wildlife for the period July 1, 2002 to October 31, 2002;
- Samaha 3 Copy of a Summons from the Colts Neck Municipal Court alleging a violation of the Colts Neck Noise Ordinance filed by an objecting neighbor, Ronald Samson.

- Board 1 Report from Andrew McBride, Principal Biologist, Wildlife Services Section, New Jersey DEP- Division of Fish & Wildlife, dated July 16, 2002, investigating the issuance of a Noisemaking Permit, which concluded that the permit was validly issued and that the operation of the Cannon was within the required limits;
- Board 2 Report from Mr. Gregory Romano, Executive Director, State Agriculture Development Committee [“SADC”], dated April 2, 2002, reporting that the SADC adopts and incorporates by reference the “New Jersey Commercial Vegetable Production Recommendations 2002” and the “New Jersey Commercial Tree Fruit Production Guide 2002” published by the Rutgers Cooperative Extension [“RCE”], New Jersey Agricultural Experiment Station, Rutgers, The State University of New Jersey, New Brunswick, which report stated: “The proposed amendments to N.J.A.C. 2:76-2A.5 and 2A.6 are to

revise the agricultural management practices (“AMPs”) for commercial tree fruit and vegetable production in order to reflect the SADC’s intention to recommend, as generally accepted agricultural management practices, RCE’s recommendations for the 2002 growing season”;

- Board 3 Copy of the Farmland Assessment Certification from the Colts Neck Tax Collector’s Office;
- Board 4 Copy of the audiometric testing report authored by Dr. William Sciarappa, Rutgers Agricultural Extension Agent for Monmouth County as a result of the Site Visit that was conducted on April 23, 2002, with the following in attendance: Dr. William Sciarappa; Karen Colvin, Board Staff Member; Mr. Samaha, Applicant; Mr. McCrane, property owner; and Mrs. Samson, Objector.
- Board 5 Copy of the Colts Neck Noise Ordinance forwarded by letter, dated January 30, 2002, by Timothy Anfuso, Colts Neck Township Planner;
- Board 6 Copy of New Jersey DEP web-site, dated April 10, 2002, concerning Comment 7 to the New Jersey Noise Control Act with respect to procedures for Local Municipalities to follow in enacting more stringent noise ordinances.
- Board 8 Copy of facsimile letter, dated December 21, 2001, from Charles Roohr, SADC, re: transmittal of New Jersey Environment Codified Regulations, § 7:29-1.4 exempting “agricultural activities” from the State Noise Control Act.



- Objector 1 Letter from Mr. Manning, attorney for Objectors, to William M. Kinney, Esq., attorney for the Monmouth County Agriculture Development Board, dated June

25, 2002, setting forth the list of the objections to the Samaha Application for a Site-Specific AMP. Exhibits include the following:

- A. A copy of the relevant pages of the “Commercial Vegetable Production Recommendations 2002” concerning Nuisance Bird Management and Repellency;
- B. A hand-written copy of the Noisemaking Permit originally submitted by Mr. Samaha;
- C. A copy of a letter from Mr. McBride, Principal Biologist, Wildlife Services Section, New Jersey DEP- Division of Fish & Wildlife, to Mr. Manning, attorney for Objectors, dated April 30, 2002, concerning the Noisemaking Permits issued to Samaha;
- D. Redacted copy of a validly issued Noisemaking Permit;
- E. A copy of the Colts Neck Noise Ordinance; and
- F. A copy of the report from Paul Carpenter Associates, Inc. with respect to the results of the audiometric testing done by Objector’s Expert Witness on May 22, 2002;

Objector 2 Letter to Mr. McBride, Principal Biologist, Wildlife Services Section, New Jersey DEP- Division of Fish & Wildlife, from Mr. Manning, attorney for Objectors, dated July 11, 2002, objecting to the issuance of a Noisemaking Permit for 2002;

Objector 3 Letter to the Monmouth County Agriculture Development Board from Mr. Ronald Samson, Objector, dated July 31, 2002; and

Objector 4 Video with sound concerning the operation of the Cannon as it can be heard from the back yard of the Samson's property.

WHEREAS, a Site Review was conducted on April 23, 2002, with the Site Review Team comprised of Karen Colvin, Board Staff Member; Dr. William J. Sciarappa, Rutgers Cooperative Extension Agricultural Agent for Monmouth County; Mr. Samaha, Applicant; Mr. McCrane, property owner; and Mrs. Samson, Objector; and

WHEREAS, the Board has considered the application, the applicant's certification, the testimony and exhibits presented in favor of and in opposition to the application;

NOW, THEREFORE, the Board makes the following findings:

The Board's Consideration of the Eligibility of the Samaha Application under the Right To Farm Act

1. There is credible testimony and exhibits to establish that the commercial farm is no less than 5 acres.
2. The commercial farm produces agricultural/horticultural products worth at least \$2500 per year.
3. The list of such products produced each year is listed in the application.
4. The farm is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964.
5. The farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan.
6. The Samaha Farm Management Unit was in operation as of July 2, 1998.

7. The A-1 Zone in Colts Neck allows for agriculture as a permitted use.
8. The A-1 Zone in question was in place as of December 31, 1997 or thereafter.
9. A complete written application for recommending a Site-Specific Agricultural Management Practice was made to the Monmouth County Agriculture Development Board.
10. With all of the above criteria above having been satisfied, the Board finds that the Samaha Farm Management Unit meets the eligibility criteria under The Right To Farm Act.
11. The Site-Specific Agricultural Management Practice that is being sought is found to be included in one or more of the following eligible activities:
 - a. Production of agricultural and horticultural crops, trees and forest products, livestock and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping;
 - b. Processing and packaging the agricultural output of the commercial farm and/or commercial farm management unit;
 - c. Control of pests, predators and diseases of plants and animals;
 - d. Other activities as adopted by the State Agriculture Development Committee, pursuant to the Administrative Procedure Act, specifically, the use of noisemaking devices to prevent bird predation of sweet corn crops.
12. The Board finds that the Samaha Farm does not engage in Ineligible Activities listed below:
 - a. Agricultural-related services, such as landscape installation.
 - b. Processing commodities produced off the farm management unit.

The Board's consideration of the testimony and exhibits with respect to whether the proposed use of the Cannon meets the requirements for approval of a Site-Specific Agricultural Management Practice

13. The Board finds that, based upon the testimony of Mr. Baumley, the representative from the SADC, the use of a Cannon to prevent bird predation of a sweet corn crop is an approved Agricultural Management Practice as it is specifically referenced in the Rutgers Commercial Vegetable Production Recommendations 2002 adopted by the State Agriculture Development Committee.
14. The Board finds that, although the noise testing device used by Dr. Sciarappa was not as accurate as that used by the Objectors' Experts, the results of both tests show that the use of the cannon does not exceed the decibel limitations prescribed by the New Jersey DEP- Division of Fish & Wildlife Noisemaking Permit. The Board found that the report by Dr. Sciarappa was admissible and that any deficiencies in the accuracy of the testing equipment would go to the weight that the Board would place upon the evidence.
15. The Board finds that the audiometric testing conducted by Paul Carpenter Associates on behalf of the Objectors did not establish that the use of the Cannon was outside of the operating parameters set forth by the New Jersey DEP- Division of Fish & Wildlife Noisemaking Permit.
16. The Board finds that the Monmouth County Agriculture Development Board does have jurisdiction to approve the use of a Cannon, in conjunction with a

valid Noisemaking Permit issued by the New Jersey DEP- Division of Fish & Wildlife.

17. The Board finds that the Noisemaking Permit issued by the New Jersey DEP- Division of Fish & Wildlife for the period July 1, 2002 to October 31, 2002 was valid for the 2002 growing season.
18. The Board finds that the only Local Zoning Ordinance that affects this application is the Colts Neck Noise Ordinance. The Board further finds that, based upon Exhibit Board 6, a municipality that chooses to adopt a noise ordinance to address community concerns must, pursuant to the New Jersey Noise Control Act, propose an ordinance that is more stringent than the State's noise code and that it must be approved by the New Jersey DEP. The Board further finds that, while the Colts Neck Ordinance is more stringent than the State's noise code, based upon testimony from Karen Colvin relating her conversation with Timothy Anfuso, the Colts Neck Township Planner, the Colts Neck Noise Ordinance has not been approved by the New Jersey DEP. Therefore, the Board finds that the Colts Neck Noise Ordinance is not valid and that the Board, under the holding by the New Jersey Supreme Court in its den Hollander Opinion, need not consider an invalid local zoning ordinance.
19. The Board further finds that, notwithstanding the invalidity of the Colts Neck Noise Ordinance, based upon New Jersey Environment Codified Regulations, § 7:29-1.4 - exceptions to the State Noise Control Act, "agricultural activities" are specifically exempted from the State Noise Control Act. Accordingly, the

Board finds that a municipal noise ordinance based upon the State Noise Control Act cannot reach “agricultural activities,” such as in this case.

20. The Board duly considered the Objectors’ position that it take into account the negative impact that the use of the Cannon has on the neighboring residents and that a hardship is imposed upon them.
21. The Board considered the contents of the letter from Mr. Samson to the Monmouth County Agriculture Development Board, dated July 31, 2002.
22. The Board considered the report from Mr. McBride, Principal Biologist, Wildlife Services Section, New Jersey DEP- Division of Fish & Wildlife, on his site inspection visit.

NOW, THEREFORE, BE IT FURTHER RESOLVED that, based on the aforesaid findings of fact, the Monmouth County Agriculture Development Board finds that the operation of the Property by Samaha, specifically the utilization of a Liquid Propane Cannon to prevent bird predation of a sweet corn crop, constitutes a generally accepted Agricultural Management Practice.

NOW, THEREFORE, BE IT FURTHER RESOLVED that, the Board finds it reasonable to impose the following conditions on the use of the Cannon:

- a. The Cannon may only be used during the period one-half hour after sunrise to one-half hour before sunset.
- b. The use of the Cannon will only be used as a last resort and that other methods and devices shall continue to be employed whenever possible.

- c. That Mr. Samaha will endeavor to continue to explore the use of alternative methods of preventing bird predation that are less burdensome on the neighboring residents as such new methodologies become economically available.

Seconded by Mr. Buscaglia and adopted on a roll call by the following vote:

	YES	NO	ABSTAIN	ABSENT
Mr. Buscaglia	X			
Mr. Hom				X
Mr. Illmensee				X
Mr. McCarthy	X			
Mr. McCormack	X			
Mr. Potter	X			
Mr. Puglisi	X			
Mr. Rifkin	X			
Mr. Stuart				X

I certify that the foregoing is a true copy of the Resolution of the Monmouth County Agricultural Development Board, duly adopted at a regular meeting of the Board on August 7, 2002.

Richard Obal, Secretary