

RESOLUTION

**RE: Right to Farm Applications for Hearing
In the Matter of Franklin Township ads. Garden State Growers/Quaker
Valley Farms/Quakertown Farms
Block 49, lot 15; Township of Franklin, County of Hunterdon
Block 37, lots 35, 31.04, 42 ad 38.01; Township of Franklin; County of
Hunterdon**

WHEREAS:

On February 20, 2009, the Township of Franklin submitted a Right to Farm (“RTF”) Application for Hearing to the CADB involving various parcels including a noncontiguous parcel in Franklin Township owned by Garden State Growers, Quaker Valley Farms, LLC, and Quakertown Farms, LLC. (collectively referred as the “Farmer”). This application was reviewed at the CADB’s meeting of March 12, 2007, at which time the Board determined that the application as submitted needed to be amended and two separate applications should be filed by Franklin Township. One to address the contiguous parcels, which Franklin Township conceded were commercial farms, and a separate application involving the noncontiguous parcel also known the “golf course” property, which the Township would not concede was a commercial farm.

On March 17, 2009 the Township of Franklin revised the application and submitted two separate revised RTF applications as requested by the CADB.

The first RTF application submitted March 17, 2009 was for Block 37, Lots 35, 31.04, 42 and 38.01 and is owned and operated by two entities, Garden State Growers and Quaker Valley Farms, L.L.C.

The second RTF application submitted March 17, 2009 was for Block 48, Lot 15, (also known as the “golf course property”) is owned and operated by Quakertown Farms, L.L.C. The Township would not concede this farm as a commercial farm. On June 11, 2009, the CADB held a public hearing on the application involving Block 48, Lot 15 and determined that Quakertown Farms, L.L.C. was a commercial farm operation in accordance with N.J.A.C. 2:76-2.3.

On March 12, 2009, Franklin Township also requested that the CADB make a determination as to whether the CADB has jurisdiction to hear issues relating to the State Stormwater Management Act. The Board instructed Franklin Township to submit a position statement indicating its legal arguments as to why it contended the Board does not have jurisdiction in regard to stormwater management issues, with further instructions for the Farmer to respond to the submittal of Franklin Township.

In an email dated March 30, 2009, the farmer raised an issue of potential conflict of interest (Item 8) indicating that the entire CADB had a conflict of interest due to the fact that two separate actions were currently being litigated in which the Hunterdon County Board of Chosen Freeholders, Freeholder Ron Sworen, and Franklin Township were parties to the litigation. In a letter dated April 6, 2009, the farmer reiterated its position that a conflict of interest existed for the entire CADB and its counsel. In a letter dated April 7, 2009, Franklin Township responded to the potential issue of conflict (Item 12) and indicated the Board should proceed with the determination.

On April 6, 2009, the CADB, through its legal counsel, wrote to the SADC and notified it of the application and date for hearing on pending issues and inquired whether the SADC would be assuming jurisdiction in the matter.

On April 8, 2009, the State Agriculture Development Committee provided its position on jurisdiction regarding stormwater management issues. The SADC stated that the CADB would have jurisdiction to hear matters of stormwater management only where the Township's stormwater regulations were more stringent than requirements imposed by the State of New Jersey. That position was relayed to the farmer and Franklin Township on April 9, 2009 (Item 17).

On April 8, 2009, the CADB, through its counsel, wrote to Franklin Township and indicated that the filed applications did not comply with the directive of the CADB and provided no specific activities allegedly conducted by the farmer which the CADB was being asked to evaluate. The CADB recommended the Township's complaints be amended to specifically state facts or activities of the farmer about which Franklin was complaining. On May 1, 2009, Franklin Township submitted a supplement to its RTF applications.

On June 11, 2009, the CADB conducted a public hearing. The Board first addressed the conflict of interest issues raised by the farmer and determined no conflict existed which would serve to disqualify the entire Board, or its counsel. The Board then deliberated on the issue of jurisdiction over the Stormwater Management Act raised by the Township. The Board instructed farmer to submit its Stormwater Application submitted to DEP, and requested Franklin Township to submit its Stormwater

Management Ordinance and to address the issue of whether Franklin's ordinance imposes more stringent provisions than those set forth in the State Regulations.

A public hearing was continued on July 9, 2009. The Board referenced and noted all the submissions of the parties since its public hearing on June 11th, including those items which the Board specifically requested each party to submit, and incorporated them by reference into the record. The Board then deliberated on the issue of whether the CADB had jurisdiction over Stormwater Management issues. It was acknowledged that an application had been filed with the DEP by the farmer. After deliberating, the CADB determined that it concurred with the SADC's interpretation, that the CADB could assume jurisdiction over stormwater management issues in cases where the local stormwater ordinances imposed conditions more stringent than the State, and those issues concern a commercial farm.

After having heard the decision of the Board with regard to jurisdiction over stormwater management issues, Franklin Township withdrew its complaints without prejudice. Accordingly there was no further action taken by the Board.

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

1. The first property in question known as Block 37, Lots 35, 31.04, 42 and 38.01 and is owned and operated by two entities, Garden State Growers and Quaker Valley Farms, L.L.C.

2. The second property in question, also referred to as the "golf course", is known as Block 48, Lot 15, and is owned and operated by Quakertown Farms, L.L.C.

3. The property owned by Garden State Growers and Quaker Valley farms known as Block 37, Lots 35, 31.04, 42 and 38.01 and the property owned by Quakertown Farms, L.L.C. known as Block 48, Lot 15 are commercial farm operations in accordance with N.J.A.C. 2:76-2.3

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

1. Based upon the advice from the State Agriculture Development Committee, the Hunterdon County Agriculture Development Board determines that primary jurisdiction to review activities that are covered by the New Jersey Stormwater Management Act rests with the New Jersey Department of Environmental Protection (“DEP”).

2. Based upon the advice from the State Agriculture Development Committee, and based upon its own perspective, the CADB determines that it has jurisdiction to view issues concerning stormwater management requirements to the extent that the Township of Franklin or the Farmer contends that Franklin’s Stormwater Management Ordinance contains standards which exceed those applicable under State DEP regulations. The CADB also determines that it has jurisdiction to review issues concerning stormwater management whether or not encompassed within state statute, regulation, or local municipal ordinance, to the extent stormwater management is relevant to operation of a commercial farm and agricultural management practices on that farm.

3. The CADB permits Franklin Township to withdraw its applications without prejudice.

4. Any person dissatisfied with this decision, may appeal to the State Agricultural Development Committee pursuant to N.J.A.C 2:76-2.3(f).

5. This determination, the transcripts, the exhibits, and items comprising the record shall be forwarded to the State Agricultural Development Committee within thirty (30) days pursuant to N.J.A.C. 2:76 – 2.3(e).

Dated: September ____, 2009

PETER MELICK, Chairperson

ITEMS COMPRISING THE RECORD

1. Letter from William J. Caldwell, Esq. to Hunterdon County Agriculture Development Board dated February 18, 2009 submitting an undated “Right to Farm Disputes – Application for Hearing”.
2. Letter from William Millette, CADB Administrator to the State Agriculture Development Committee dated February 26, 2009 advising them of the submitted Right to Farm Application and notifying them of a review of the application on March 12, 2009.
3. Letter from Gaetano M. De Sapio, Esq. to William J. Caldwell, Esq. dated March 17, 2009 setting forth procedures for new Right to Farm application.
4. Letter from Gaetano M. De Sapio, Esq. to Robert P. Merenich, Esq. dated March 17, 2009 outlining the procedures for the matter and sending the “Right to Farm Dispute – Application for a Hearing”, together with a copy of the letter sent to his client with the “Commercial Farm Certification”.
5. Letter from Gaetano M. De Sapio, Esq. to Garden State Growers/Quaker Valley Farms dated March 17, 2009 advising of the procedure for the matter and sending the “Right to Farm Dispute – Application for a Hearing”, together with a copy of the “Commercial Farm Certification”.
6. Letter from William J. Caldwell, Esq. to William Millette dated March 17, 2009, together with attached “Right to Farm Dispute – Application for Hearing” dated March 18, 2009.
7. Letter from William J. Caldwell, Esq. to the Hunterdon County Agriculture Development Board dated March 25, 2009 regarding Franklin Township’s legal arguments.
8. Email letter from Robert P. Merenich, Esq. to William Millette dated March 30, 2009, together with attached “Commercial Farm Certification” for Quakertown Farms, LLC dated March 30, 2009, supporting documents regarding farm use, and copy of Complaint filed by Garden State Growers, et als. against Hunterdon County and various other parties.
9. Letter from William Caldwell, Esq. to William Millette dated April 6, 2009 regarding a timeline for submissions.
10. Letter from Gaetano M. De Sapio, Esq. to the State Agriculture Development Committee dated April 6, 2009 providing them with a copy of the revised Right to Farm Application submitted on behalf of Franklin Township.
11. Letter from Robert P. Merenich, Esq. to the Hunterdon County Agriculture Development Board dated April 6, 2009, together with supporting Exhibits A through F

the Commercial Farm operation, potential conflicts of the CADB and jurisdictional issues related to stormwater management.

12. Letter from William J. Caldwell to William Millette dated April 7, 2009 in response to the issue of potential conflict of interest.

13. Letter from William J. Caldwell to William Millette dated April 7, 2009 regarding the late submission by Robert Merenich, Esq. and the request for an adjournment.

14. Letter from Gaetano M. De Sapio, Esq. to William J. Caldwell, Esq. dated April 8, 2009 addressing the deficient Right to Farm applications and in response to his letter of April 6, 2009 to William Millette regarding an adjournment request.

15. Letter from Robert P. Merenich, Esq. to William Millette dated April 8, 2009 clarifying the information and need for an adjournment due to a religious holiday.

16. Letter from William J. Caldwell, Esq. to Aaron R. Culton, Esq. dated April 8, 2009 replying to his April 8, 2009 letter and adjournment request.

17. Letter from Aaron R. Culton, Esq. to Robert P. Merenich, Esq. and William J. Caldwell, Esq. dated April 9, 2009 advising them of the SADC's position in regard to jurisdiction over stormwater management issues.

18. Letter from William J. Caldwell, Esq. to William Millette dated May 1, 2009 amending the initial Right to Farm complaint to be more specific.

19. Letter from Robert P. Merenich, Esq. to the Hunterdon County Agriculture Development Board dated May 11, 2009 in response to the amended complaint.

20. Letter from William J. Caldwell, Esq. to William Millette dated May 12, 2009 replying to Mr. Merenich's letter of May 11, 2009.

21. Letter from Michael A. De Sapio, Esq. to Robert P. Merenich, Esq. and William J. Caldwell, Esq. dated June 4, 2009 with regard to items to review at June CADB meeting.

22. Letter from Michael A. De Sapio, Esq. to Robert P. Merenich, Esq. and William J. Caldwell, Esq. dated June 15, 2009 confirming the request for submissions made by the CADB at its hearing on June 11, 2009.

23. Letter from Robert P. Merenich, Esq. to HCADB dated June 19, 2009 submitting the Application for DEP permits, Existing and Proposed Drainage Area Map for Block 49, Lot 15 dated March 17, 2008, and Stormwater Management Study for Quakertown Farms dated March 17, 2008.

24. Letter from William J. Caldwell, Esq. to Gaetano M. De Sapio, Esq. dated June 19, 2009 with an explanation as to why Franklin Township was proceeding before the Board over stormwater management jurisdiction with a copy of Judge Derman's Order dated June 27, 2007 and a copy of Chapter 296 of the Franklin Township Code regarding stormwater regulations.
25. Letter from Robert P. Merenich, Esq. to HCADB dated July 2, 2009 responding to Franklin's Township June 19, 2009 correspondence with regard to applicability of its Storm Water Management Ordinance.
26. Letter from Robert P. Merenich, Esq. to HCADB dated July 6, 2009 amending comments concerning the Franklin Township's position that they have concurrent jurisdiction with NJDEP to review Quakertown LLC' stormwater management plans.
27. Facsimile transmittal from Rick Roseberry of Maser Consulting to Rick Steffey dated July 7, 2009 in preparation for the upcoming CADB meeting attaching a copy of a letter from himself to William Caldwell, Esq. dated June 17, 2009 regarding review of Quaker Valley Farms 1999 Soil Erosion and Sediment Control Plan and their 2009 Soil Erosion and Sediment Control Plan to determine if proposed concrete driveways will have any negative impacts.
28. Letter from William J. Caldwell, Esq. to Gaetano M. De Sapio, Esq. dated July 8, 2009 enclosing a copy of the decision in the matter of Middlesex County Health Department v. Trees on the Move, Inc.
29. Letter from Robert P. Merenich, Esq. to HCADB dated July 9, 2009 regarding the Middlesex County matter submitted by William J. Caldwell, Esq. and his clients' position regarding review of the stormwater management plan.