

January 6, 2009

Mr. Russell K. Hagerty, III
Ms. Linda S. Hagerty
3 Blueberry Run
Southampton, NJ 08088

Ms. Victoria P. Herman
2120 South Firelane Road
Southampton, NJ 08088

Brian D. Wilson, Ag. Res. Specialist
Burlington County Agriculture Development Board
P.O. Box 6000
Mt. Holly, NJ 08060-6000

Re: Right-to-Farm Complaint
Herman Farm - Southampton Township

Ladies and Gentlemen:

Enclosed please find a copy of the Resolution of the State Agriculture Development Committee (SADC) denying "commercial farm" eligibility to the Herman Farm. Attached to the resolution are copies of the schedules ("A" through "G") referred to therein.

I am also returning to the Hagertys the original photographs they submitted to the SADC in August 2008. The photographs were not considered by the agency in light of the finding that the Herman Farm was not entitled to "commercial farm" status.

By copy of this letter, I am transmitting an additional copy of the resolution and schedules to Southampton Township.

The SADC considers its decision to be final agency action and not subject to remand to and rehearing by Burlington County.

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If you have any questions or need anything further please give me a call.

Thank you.

Respectfully,

BRIAN D. SMITH, ESQ.
Chief of Legal Affairs, SADC

cc w/encls.: Michael E. McFadden, Clerk, Southampton Twp.

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STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY09R11(6)

**Right-to-Farm Dispute
Denial of Commercial Farm Eligibility**

Victoria P. Herman

November 6, 2008

Subject Property: Block 3201, Lot 19
Southampton Township, Burlington County

WHEREAS, on July 18, 2008 the Burlington County Department of Resource Conservation received a Right to Farm complaint from Russell K. and Linda H. Hagerty, residing at and owners of 3 Blueberry Run, Southampton, NJ 08088 (Block 3201.05, Lot 38, Southampton Township), against their neighbor, Victoria P. Herman, residing on and the owner of a 10-acre, farmland assessed property at 2120 South Firelane Road, Southampton, NJ 08088 (Block 3201, Lot 19, Southampton Township); and

WHEREAS, Mr. and Mrs. Hagerty alleged in their complaint that Ms. Herman was operating her farm property in violation of state statutes and in a manner creating a public health nuisance (see attached Schedule "A"); and

WHEREAS, by letter dated August 4, 2008 Brian D. Wilson, Senior Agricultural Resource Specialist, Burlington County Department of Resource Conservation, forwarded the Hagerty complaint to the State Agriculture Development Committee (SADC) on behalf of the Burlington County Agricultural Development Board (see attached Schedule "B") pursuant to N.J.S.A. 4:1C-10.1(c) because the disputed activities were neither addressed by an SADC-recommended agricultural management practice nor were the subject of an application to the county for a site specific agricultural management practice determination; and

WHEREAS, the SADC received the Hagerty complaint on August 6, 2008; and

WHEREAS, SADC staff transmitted to Ms. Herman, Mr. and Mrs. Hagerty and Mr. Wilson a "Notice of Pre-Hearing Conference on Right-to-Farm Referral to the State Agriculture Development Committee" dated August 12, 2008 (see attached Schedule "C"), and accompanying the transmittal to Ms. Herman was a "Commercial Farm Certification Form" to be completed by her in order to assist SADC staff's consideration of whether the subject property was entitled to commercial farm eligibility pursuant to N.J.S.A. 4:1C-9; and

WHEREAS, on August 26, 2008 the SADC received Ms. Herman's partially-completed "Commercial Farm Certification Form" (see attached Schedule "D") which, *inter alia*, stated that she raises and sells goats, chickens, ducks, geese and guinea hens and that her annual gross receipts from those activities are approximately \$983.00; she also submitted copies of her Application for Farmland Assessment ("FA-1") forms for 1999 and 2009; and

WHEREAS, Ms. Herman did not complete paragraph 4 of the "Commercial Farm Certification Form" which required her to certify that her farm produces agricultural and/or horticultural products worth \$2,500.00 or more annually and to attach proof of same to the certification form; and

WHEREAS, Ms. Herman did not complete paragraph 6 of the "Commercial Farm Certification Form" which required her to provide proof that her property is located in a zone designating agriculture as a permitted use as of December 1, 1997 or thereafter and is consistent with the municipal master plan, or that the farm was in operation as of July 2, 1998; and

WHEREAS, on September 8, 2008 SADC staff personally conferred by telephone with Mrs. Hagerty to discuss the case; and

WHEREAS, on September 10, 2008 SADC staff personally conferred by telephone with Ms. Herman to discuss her incomplete "Commercial Farm Certification Form"; and

WHEREAS, during the September 10, 2008 telephone conversation with staff, Ms. Herman: reiterated that she raises and sells goats, chickens, ducks, geese and guinea hens directly from her farm or at Harker's, a local livestock auction; also keeps (rather than sells) some of those animals on her property; had no written records evidencing any on- and off-site sales of livestock or livestock-generated products; had no knowledge of the identity of the people to whom she sold farm animals or farm products; had no written proof supporting sales of livestock and/or livestock-generated products totaling \$983.00 as set forth in the certification form, although she stated that that amount was earned in 2007; said she assumed that agriculture was a permitted use in the zone in which her property is located; submitted her FA-1 form for 1999 as proof of farming operations in effect as of July 2, 1998; and indicated that she did not want staff to conduct its customary site visit to her property; and

WHEREAS, by letter to Ms. Herman dated September 15, 2008 SADC staff confirmed the September 10, 2008 telephone conversation and formally requested that she provide, no later than September 30, 2008, more specific information in order for staff to determine whether her property was entitled to commercial farm eligibility (see attached Schedule "E"); and

WHEREAS, on September 18, 2008 the SADC received a September 15, 2008 letter from Ms. Herman along with copies of her FA-1 forms for 1998, 1999 and 2008; a copy of a letter dated April 9, 2006 from Mr. Hagerty to Southampton Township officials alleging health and safety violations at the Herman farm; a letter dated July 7, 2006 from the Burlington County Health Department noting that Ms. Herman's onsite sewage disposal system was functioning properly; and a letter dated September 4, 2008 from the municipal code enforcement officer (see attached Schedule "F"); and

WHEREAS, based on the FA-1 forms submitted by Ms. Herman, her farm has contained no less than 2 acres, and no more than 5 acres, of permanent pasture; no less than 1 acre, and no more than 3 acres, of cropland harvested; and no less than 3 acres, and no more than 4 acres, of appurtenant woodland; and

WHEREAS, on September 22, 2008 the SADC received a September 19, 2008 letter from Ms. Herman stating, in pertinent part, "I do not take in \$2500.00 and never have" (see attached Schedule "G"); and

WHEREAS, as of September 30, 2008 Ms. Herman had not submitted any of the information requested in the SADC's September 15, 2008 letter other than the limited and generally unresponsive material contained in her September 18 and 22, 2008 correspondence; and

WHEREAS, in an effort to determine whether Ms. Herman was experiencing any personal or other problems which would have precluded her from responding to the SADC's September 15, 2008 request for information, staff attempted to contact her by telephone, at the number she provided in prior correspondence, on October 7, 8 and 10, 2008, but each call was unanswered,

NOW, THEREFORE, BE IT RESOLVED that the Committee finds that the Herman property located at 2120 South Firelane Road, Southampton, NJ 08088 and designated as Block 3201, Lot 19 on the tax map of Southampton Township, Burlington County, is not a "commercial farm" as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because Ms. Herman presented no evidence to the SADC that her 10-acre farm management unit produces agricultural or horticultural products worth \$2,500.00 or more annually; she presented no evidence in support of production based on annualized imputed grazing values for the acreage listed on her FA-1 forms; and in a letter submitted to the SADC Ms. Herman affirmatively stated that she has never produced agricultural or horticultural products worth \$2,500.00 or more annually; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to Ms. Victoria P. Herman; Mr. Russell K. and Mrs. Linda H. Hagerty; the Burlington County Department of Resource Conservation; and the Township of Southampton; and

BE IT FURTHER RESOLVED that the SADC's denial of commercial farm eligibility set forth herein is jurisdictional, not subject to remand to and rehearing by Burlington County, and constitutes final agency action upon expiration of the time period set forth in N.J.S.A. 4:1C-4f.

Date

Susan E. Craft, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS

| | |
|--|-----|
| Charles M. Kuperus, Chairperson | YES |
| Cecile Murphy (rep. DEP Commissioner. Jackson) | YES |
| Ben Spinelli (rep. DCA Commissioner. Doria) | YES |
| Ralph Siegel (rep. State Treasurer. Rousseau) | YES |
| Brian Schilling (rep. Executive. Dean Goodman) | YES |
| Jane R. Brodhecker | YES |
| Alan A. Danser | YES |
| James Waltman | YES |
| Denis C. Germano | YES |
| Torrey Reade | YES |
| Stephen P. Dey | YES |