

October 3, 2003

Roger Misner

Roy M. Hindermyer

Bob Brewer

Thomas Sheppard

Re: Conflict Resolution Matter
R.E.M's Spotted Saddle Horse Farm
Cedarville, Cumberland County
Aggrieved Party: Roy M. Hindermyer

Dear Sirs:

Enclosed please find a copy of the hearing report from the above referenced conflict resolution matter.

At its September 25, 2003 meeting, the State Agriculture Development Committee (SADC) voted to adopt the hearing officer's report.

Pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1c, this decision is being sent to the Cumberland County Agriculture Development Board (CADB). The Cumberland CADB is required to hold a public hearing and issue its findings and recommendations within 60 days of receiving the SADC's decision.

If you have any questions, please contact David Kimmel, Agricultural Resource Specialist, at (609) 984-2504.

Sincerely,

Gregory Romano

Enclosure

State Agriculture Development Committee
Right to Farm Conflict Resolution

Hearing Report

Farm Operator: Roger and Edna Misner t/a R.E.M.'s Spotted Saddle Horse Farm
Lawrence Township, Cumberland County

Aggrieved Party: Roy M. Hindermeyer

Date of Hearing: May 27, 2003

Background

Roger and Edna Misner own and operate R.E.M.'s Spotted Saddle Horse Farm, a 15-acre horse farm in Lawrence Township, Cumberland County. Their primary operation is the breeding, raising and selling of horses.

Roy Hindermeyer is a co-owner with his son of a residential parcel bordering the Misners' property. Mr. Hindermeyer's son, daughter-in-law and young grandchildren live on the property. After Mr. Misner installed an electric fence along the edge of his property, Mr. Hindermeyer filed a complaint with the Cumberland County Agriculture Development Board (CCADB), dated December 18, 2002, in which he asserted, "by [the Misners] erecting a horse pen on the property lines I feel my right to fully use my property has been voided." (Exhibit 1). The CCADB forwarded the complaint to the State Agriculture Development Committee (SADC) for a public hearing pursuant to N.J.S.A. 4:1C-10.1c as the activities cited in Mr. Hindermeyer's complaint are not addressed by any agricultural management practices promulgated by the SADC. (Exhibit 2).

Mr. Misner certified to the SADC that the property is five acres or more, produces agricultural and/or horticultural products worth \$2,500 or more annually, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964. Mr. Misner sells three to four horses a year for at least \$1,500 per horse. The certification included a Bill of Sale for a horse sold in September 2002 for \$2,800. (Exhibit 3). Based upon the certification, it appears that Mr. Misner's farm meets the definition of "commercial farm" set forth in the Right to Farm Act (Act), N.J.S.A. 4:1C-3.

Mr. And Mrs. Misner sent a letter to the SADC objecting to Mr. Hindermeyer's complaint. (Exhibit 16).

The SADC held a public hearing on May 27, 2003 pursuant to N.J.S.A. 4:1C-10.1c. Roger and Edna Misner and Roy M. Hindermeyer attended.

Issue

The issues before the SADC are whether the electric fence conforms with generally accepted agricultural management practices and whether it poses a direct threat to public health and safety.

Summary of Relevant Facts

Mr. Misner testified that he has been involved with horse breeding and training his whole life and has been a master farrier for 45 years. He and his wife moved to the 15-acre parcel in 1995. Two sides of their property are directly adjacent to a residential development, bordering the backyards of 15 to 20 other properties, including that which is co-owned by Mr. Hindermeyer. (Exhibit 4). The Misner property consists of a house, a few barns, pasture fields for his animals, and a wooded section. At the time of the hearing, the Misners owned one stallion, six mares, and four goats. They sell three to

four horses every year. The Misners also grow vegetables, but their primary operation is the breeding, raising and selling of horses.

Mr. Hindermeyer purchased the adjacent property in 1997, where his son, daughter-in-law, and four young grandchildren reside. Mr. Hindermeyer resides in a house that is located 1 ¼ miles from the subject property but frequently visits his son's house. He testified that he used to visit everyday, but since Mr. Misner electrified the fence he visits less frequently.

In the spring of 2002, Mr. Misner electrified the fence, which is set back two to five feet from the property line. During a site visit to the farm, David Kimmel, Right to Farm Program Specialist for the SADC, observed that the fence is approximately five feet high. Described vertically beginning at the ground, it begins with about six inches of empty space, then has about 48 inches of box wire, another space of about eight inches, and at the time of this visit, was topped with a single electric wire. (Exhibit 5). The wires are connected to a charger, located in the barn.

Originally, Mr. Misner electrified only the top wire, but he testified that after receiving complaints from Mr. Hindermeyer that the goats were escaping through the fence, he electrified one bottom wire. Mr. Kimmel's second visit to the property confirmed the electrification of the bottom wire. (Exhibit 6).

Mr. Misner testified that he electrified the fence to protect his animals, prevent people from stealing his property, including the animals and fruits and vegetables grown on the property, and to keep deer out. He stated that he has problems with people stealing his vegetables, injuring his horses, and damaging his fence.

The wires are electrified all day and are charged at .6 amps and approximately

12,000 volts.* (Amperage is a measurement of electrical current. It “is what you feel when you receive a shock and what determines the intensity and severity of the shock.” Zareba Website (www.zarebasystems.com). Voltage “functions similarly to water pressure in that it ‘pushes’ electrical current through a wire.” Ibid.) Mr. Misner testified that .6 amps is a low current and that it suffices because horses cannot tolerate electricity.

Mr. Misner posted signs on the fence, viewable from Mr. Hindermeyer’s yard, that say “electric fence” and “private property. . . no trespassing.” (Exhibit 5).

At the hearing, Mr. Misner provided photographs of the fence, which were scanned into the SADC’s computer system. (Exhibit 7).

Mr. Hindermeyer has two main concerns about the electric fence. His grandchildren live on the property and play in the yard that is adjacent to the fence. He is concerned that they will receive an electrical shock if they touch the fence. Mr. Hindermeyer has an implanted pacemaker/defibrillator and is also concerned that the fence may trigger the device and deliver an electrical shock. He testified that his doctor advised him to stay away from electrical monitoring devices and machinery.

During the hearing it became clear that the two neighbors harbor much hostility toward each other. Mr. Misner detailed a history of problems he allegedly has had with Mr. Hindermeyer since Mr. Hindermeyer purchased the adjacent property. Mr. Misner testified that Mr. Hindermeyer: injured one of his horses; intentionally placed watermelon just beyond the fence so that the horses would harm themselves on the fence (pre-electric fence) as they tried to reach the watermelon (Exhibit 7); stole firewood from Mr.

* Mr. Misner did not know how much voltage was produced from the 115 volt charger. After he described the charger to David Kimmel, Right to Farm Program Specialist, Mr. Kimmel called Zareba, the manufacturer of the charger and learned that the charger that Mr. Misner probably has transforms the voltage to approximately 12,000 volts.

Misner's property; and reported him to the SPCA for animal abuse (Exhibit 8). Mr. Hindermeyer alleged that Mr. Misner's horses ate his shrubs.

Municipal Standards

Although Lawrence Township has not filed any complaints against the Misners, it is important to note that after Mr. Hindermeyer filed his complaint, the zoning officer of Lawrence Township, David M. Dean, inspected the fence and found that it does not violate any zoning ordinances. Mr. Kimmel also contacted Lawrence Township and learned that it does not have a setback requirement for fences, but encourages people to erect fences a sufficient distance from the property line to enable maintenance of both sides of the fence without trespassing.

In addition, the keeping of horses is permitted on the property, as it is in an agricultural zone. (Exhibit 9).

Based on the above, Mr. Misner's electric fence is not in violation of any municipal regulations. Although there are no fence setback requirements, Mr. Misner erected the fence two to five feet within his property line.

Industry Standards

To receive the protections of the Right to Farm Act, an agricultural activity must be a generally accepted agricultural practice or must comply with a specific agricultural management practice (AMP) if the SADC has promulgated one related to the activity at issue. N.J.S.A. 4:1C-9. Because the SADC has not promulgated any AMPs related to electric fencing, the Misners' fencing must conform with generally accepted agricultural practices.

In a fact sheet entitled “Portable Electric Fencing for Preventing Wildlife Damage,” Rutgers Cooperative Extension (Rutgers) recognizes that electric fencing is a common method to contain livestock and reduce wildlife damage to crops. (Fact Sheet 888) (Exhibit 10). The fact sheet explains that an energizer transforms low voltage into a high voltage, low-amperage pulse lasting approximately 3/10,000 of a second. “This pulse, although high voltage, is low amperage, reducing the electrical hazard to people and mammals.” Ibid. The Misners’ electric fence conforms with the recommendations in this fact sheet, as it produces a high voltage, low-amperage pulse which lasts approximately 4/10,000 of a second. (see “Public Health and Safety” section, infra).

Rutgers Cooperative Extension published another fact sheet entitled “Accident-Proofing Farms and Stables” to provide farm owners and managers with information that will help identify and eliminate “attractive nuisances” and to “help lessen the chance of unwanted visitors becoming injured on your farm.” (Fact Sheet 605). (Exhibit 11). It states:

Livestock fencing should be secure, in good repair and of adequate type and height for the livestock it is housing. If electric fence is in use, the fence line should be marked with warning signs. Ibid.

Lynn Mathews, Equine Specialist for the New Jersey Department of Agriculture, inspected the Misner’s fence and after evaluating the construction, the placement of the wires, and the amperage, concluded that the fence is typical of the fences found on many other equine and livestock operations within the State. She also noted a sign posted on the fence warning that the fence is electric. (Exhibit 12).

Based upon the Rutgers publications, the technical specifications of Mr. Misner's fence, and Ms. Mathew's conclusions, it appears that the fence conforms with generally accepted agricultural practices.

Public Health and Safety

To receive the protections of the Right to Farm Act, the agricultural activity in dispute cannot pose a direct threat to public health and safety. N.J.S.A. 4:1C-9.

Mr. Hindermeyer is concerned about the safety of his grandchildren, who play in the yard that is directly adjacent to the fence. He is also concerned about the effect the fence may have on his pacemaker/defibrillator.

After the hearing, the hearing officer contacted Mr. Hindermeyer and requested that he provide expert evidence regarding the effect of an electric fence on his pacemaker/defibrillator. Mr. Hindermeyer produced a letter from his physician stating the following:

The above captioned is a patient in our office. He has a defibrillator. It can be affected by an electrical fence, electrical shock. (Exhibit 13).

The hearing officer concluded that these statements were not specific enough to address whether the electric fence posed a threat to Mr. Hindermeyer's health and safety and requested Mr. Hindermeyer to provide the following information: how close he would have to be to an electric fence charged at .6 amperage before the defibrillator is affected; how the fence affects the defibrillator and the health implications of such exposure. (Exhibit 14). Mr. Hindermeyer advised the hearing officer in a telephone conversation that he would supply that information within a few days. Instead of supplying the requested information, Mr. Hindermeyer sent a letter objecting to Ms. Mathew's letter

(Exhibit 12) for its failure to address the “hazards associated with the shock to a child or small domestic animal.” (Exhibit 15).

The hearing officer contacted Medtronic, a medical technology company that manufactures implanted defibrillators and received two responses. The first response was from a consultant with Medtronic Tech Services, Daniel Sanchez, who advised that an electric fence could affect an implanted defibrillator that is within three feet of the fence. Mr. Sanchez stated that a person standing at a distance greater than three feet would not be affected. When asked what happens when a person comes within three feet of an electric fence, he replied that there is a “possibility, not a certainty, that the device might feel the magnetic field and maybe provide a therapy shock.” When asked what the effect of an un-needed therapy shock would be, Mr. Sanchez responded that it is “incredibly painful” and could trigger an arrhythmia, possibly requiring another shock to resolve it.

In a subsequent telephone conversation with Medtronic, tech consultant Dean Blosberg advised that the response given by Mr. Sanchez was “very conservative.” Mr. Blosberg said that the defibrillator would not be affected by merely standing near a fence charged to 12,000 volts; that the person would have to touch the fence and receive a shock to affect the defibrillator.

No expert evidence was provided by any of the parties regarding the general health and safety risks of an electric fence to adults and children. Mr. Kimmel contacted the manufacturer of Mr. Misner’s charger, Zareba, to inquire about such potential risks. Mike Tukua from Customer Service said that the charger sends about 53 pulses per minute. Each pulse lasts 4/10,000 of a second. According to Mr. Tukua, if someone

touches the fence, the electric pulse is so short that it cannot cause injury to either an adult and a toddler. The natural body reaction of an adult as well as a toddler is to jump away from the fence, he said, thus limiting the shock to the one instance.

The Zareba website states:

Electric fencing is very safe. There is at least one second between each pulse of electricity in all Zareba capacitive-discharge fencers, which prevents prolonged shocking to animals or people. . . All Zareba capacitive-discharge and direct-discharge fence controllers meet UL specifications. [www.zarebasystems.com].

Another electric fence manufacturer, ElectroBraid Fence, states in its website:

ElectroBraid™ is a psychological barrier. We advise our customers to always maintain at least 5,000 volts and good electrical grounding to ensure their horses receive a significant electric shock - - not just a "bee-sting." A shock from an approved electric fence energizer is not harmful because the shock is low amperage for a tiny fraction of a second (similar in duration to a static shock from your TV set). A UL or CSA approved energizer won't harm a two year old child or new born foal. [www.electrobraid.com/safety.html].

On the other hand, an Australian electric fence manufacturer, Sureguard Fencing, posted the following warning on its website:

Never use electric fencing where it is likely to be touched by children or infants. This applies especially near swimming pools or dams where they are likely to be on wet ground with bare feet. An electric fence energizer can deliver an unexpected shock that may be distressing to small children. [www.sureguard.com.au/safetyfencing.html].

An Ohio-based manufacturer, Power Wizard, also cautioned against installing electric fences where small children, the elderly, or unhealthy persons may come in contact with the live portions of electric fencing. (www.powerwizardinc.com).

It is understandable that a parent or grandparent would be concerned about children playing in a yard bounded by an electric fence. While some companies caution against installing fences with which children could come into contact, it appears that touching the fence would not actually harm a child or an adult. As a precaution, however, Mr. Hindermeyer could install a fence or hedge on the border of his property to prevent his grandchildren from coming into contact with the fence.

With regard to Mr. Hindermeyer's concern that the fence could affect his defibrillator, it appears that this could happen only if Mr. Hindermeyer touches the fence or comes within three feet of the fence. Given that the fence is two to five feet from the property line, it does not appear that the fence poses a direct threat to Mr. Hindermeyer's health.

Based upon the conversations the hearing officer and Mr. Kimmel had with the manufacturers of implanted defibrillators and electric fence chargers, it does not appear that the electric fence poses a direct threat to public health and safety.

Conclusions and Determination

Based upon the foregoing discussion, it appears that Mr. Misner's electric fence conforms to generally accepted agricultural management practices, conforms with municipal standards, and does not pose a direct threat to public health and safety.

Date:

Marci D. Green
Public Hearing Officer
State Agriculture Development Committee