

FINDINGS OF FACT AND RESOLUTION

TOWNSHIP OF LOPATCONG VS. RAYMOND L. RAUB, III AND GAIL A. RAUB

Michael Selvaggi, Esq. on behalf of Lopatcong Township, Donald Souders, Jr., Esq. appearing for defendants Raub.

WHEREAS, the matter was heard before the Warren County Agricultural Board at special meetings held August 22, 2006 and October 26, 2006 at which time various individuals testified along with numerous documents and photographs supporting the testimony. Attached hereto is a 5 page summary of the testimony on August 22, 2006 and a 4 page summary of the testimony from October 26, 2006.

WHEREAS, respective summaries were received from Mr. Selvaggi on behalf of the Township and Mr. Souders on behalf of the Raubs. Mr. Selvaggi's position was that there were two remaining summons open, one being for violation of setback requirements (009) and having junk equipment on the property (SC011).

WHEREAS, Mr. Souders in his summation stated that there was only one summons open and that being for a violation of setback requirements.

WHEREAS, the board at the start of the fact finding also reviewed a letter dated December 21, 2006 from Mr. Selvaggi requesting the board as a matter of law to affirm the recent Superior Court decision finding that the Raubs created a nuisance by violating the side yard setback. After discussion among the board members and a recommendation of counsel Richard R. Keiling, Esq., the board unanimously voted to disregard Mr. Selvaggi's request and elected to make an independent determination on their own.

WHEREAS, the board then moved to the issue of which summons remained to be decided. After careful discussion the board unanimously agreed that the only open summons to be determined was the alleged violation of the side yard setback (SC009).

WHEREAS, an initial comment was made by member Lou Baduini who commented that this board had heard the Raub application for a site specific determination in August of 2004. At that time he recalls that Lopatcong Twp. supplied an attorney to advance the township's position concerning the trailers and their location. Mr. Baduini also noted that no appeal was filed by Lopatcong to the Agricultural Board and/or the Superior Court. His recommendation was to allow the Raubs to continue to allow their trailers to remain as they are currently parked along the property line in Lopatcong Twp. He further commented that in order to accommodate neighbors concerns he would recommend that evergreen trees at least 3 feet tall and 6 feet on center be planted along property line where the trucks are parked from the common driveway land across to the edge of property that Mr. Raub rents from the NJDEP.

WHEREAS, another board member Mr. Toretta commented that he believed the Raubs total farm had approximately 15 trailers on it and suggested that some sort of number limitation be included in the trailers that can be located in Lopatcong Twp. After further discussion Mr. Toretta suggested that 7 trailers maximum be allowed at any one time within the 40' setback in Lopatcong Twp.

WHEREAS, thereafter board member Sam Race questioned whether or not the trailers constituted structures and had recalled reading something about that in one of the attorneys summations. Mr. Race then went to Mr. Souders summation where in fact he had argued that the trailers were not structures and accordingly could not violate the side yard setback as they are movable with plates on them. He also stated that the Raubs should attempt to take into consideration their neighbors concerns with respect to the location of these trailers.

WHEREAS, Board Chairman Joel Schnetzer stated that he had visited the Raub farm on three separate occasions during different seasons and felt that the Raubs had always been respectful of their neighbors. His opinion was that the trailers should continue to be permitted within the 40' setback requirement and that this was accepted farm practice.

WHEREAS, two other board members Mr. Gibbs and Mr. Gourniak, both agreed that the use of the trailers for the storage of hay was an acceptable farm practice. They concurred with the comments of the other board members that there is no violation and that the Raubs should be permitted to continue to store the trailers in Lopatcong along the property line without compliance with the 40' side yard setback.

NOW THEREFORE BE IT RESOLVED that a unanimous decision having been made, the board finds as follows:

1. A not guilty finding in connection with Summons SC009 issued by the Township of Lopatcong. All other summons having been voluntarily withdrawn by Lopatcong Twp.
2. The Raubs shall be allowed to continue the existing use and placement of 7 trailers along the boundary line in Lopatcong Township conditioned upon evergreen trees being planted at least 3' tall and 6' on center.
3. The aforementioned plantings must be completed on or before May 1, 2007.
4. Raymond L. Raub, III and Gail A. Raub operate a commercial farm in accordance with requirements NJSA 4:1C-9.
5. Raymond L. Raub, III and Gail A. Raub are engaged in a generally accepted agricultural practice or operation pursuant to NJAC: 2:76-2b.2.

CERTIFICATION

I, Janette Hendershot, Secretary to the Warren County Agriculture Development Board, do hereby certify the foregoing to be a true and accurate copy of a Resolution adopted by the Warren County Agriculture Development Board at a meeting of said committee held on January 18, 2007.

IN WITNESS WHEREOF, I have hereunder set my hand in the official seal of this body this 18th day of January, 2007.

SEAL:

Janette Hendershot