

OK

## **RESOLUTION**

**RE: Right to Farm Application for Hearing  
In the Matter of Hugh E. McGee ads. Pauline Serafin and John Seramba  
Block 5, Lot 3; Township of East Amwell, County of Hunterdon**

**WHEREAS:**

On July 1, 2009, a Right to Farm (“RTF”) Dispute – Application for Hearing was submitted to the Hunterdon County Agriculture Development Board (“CADB”), by Hugh E. McGee with a complaint against neighbor, Pauline Serafin and John Seramba, the farmers and owner of Block 5, Lot 3 in the Township of East Amwell. The RTF Application requested a hearing regarding deterioration and lack of maintenance of a soil conservation berm on Block 5, Lot 3 that was believed to be causing flooding on neighboring properties.

On July 1, 2009, William Millette, Administrator for the CADB wrote to the farmer, Pauline Serafin, advising her of the filed Right to Farm Complaint and requesting her to complete the Commercial Farm Certification to determine if the farmer was eligible for Right to Farm Protection. On July 28, 2009, the farmer, Pauline Serafin submitted a Commercial Farm Certification, together with supporting documents for the farm operation located at Block 5, Lot 3 in the Township of East Amwell.

At its July 9, 2009 meeting, the CADB staff advised the CADB that a Right to Farm Dispute Application had been received by Mr. McGee.

On July 31, 2009, the CADB, through its legal counsel, wrote to the SADC and notified it of the application and asked whether SADC would be assuming jurisdiction in the matter.

On August 4, 2009, the SADC, through its legal counsel, wrote to the CADB's legal counsel and advised they would not be assuming jurisdiction and advised the Hunterdon CADB should assume jurisdiction.

At its September 10, 2009 meeting, the CADB discussed the application and determined that Pauline Serafin and John Seramba's farm was a commercial farm operation in accordance with N.J.A.C. 2:76-2.3. At that meeting, it was determined a site visit would be necessary and a Right to Farm hearing and should be scheduled before the next CADB meeting.

On September 15, 2009, the CADB Administrator, at the direction of the CADB, wrote to East Amwell Township to request that the Township determine if there were any municipal ordinances, regulations or decisions that would assist in governing the issue which was the focus of the complaint filed by Mr. McGee.

On September 24, 2009, the CADB conducted a site visit at the Serafin/Seramba property.

On September 29, 2009, East Amwell Township responded to the CADB's September 15<sup>th</sup> letter and provided a copy of its right to farm ordinance and some background documents regarding the creation of lots off Block 5, Lot 3.

Proof of formal notice and publication was submitted by the applicant to the CADB on May 13, 2010. Formal notice of the hearings was published in the Hunterdon County Democrat on May 3, 2010 and served via certified mail on all landowners within 200 feet of the subject property on April 27, 2010.

On May 13, 2010, the CADB held a public hearing.

Hugh McGee appeared as the complainant. Mr. McGee presented photographs and a power point presentation to the Board, and testified to the following:

1. Hugh and Carol McGee are the owners of a residential lot located at 11 Rosemont-Ringoes Road (Block 5, Lot 3.03).
2. The McGee property borders the farmer's property owned by Pauline Serafin and John Seramba (Block 5, Lot 3) from the North.
3. A Soil Conservation berm runs along the northside of the farmer's property.
4. To the best of his knowledge, the complainant indicated that the previous farm owner installed the berm in the 1980's. The purpose of the berm is to divert stormwater to a retention pond located to the west on an adjacent farm property Block 5, Lot 2), owned by Christopher Stahl.

5. Since acquiring the property in 2000, the farmer has not maintained the berm which caused stormwater to overtop the berm and flood the complainant's property.

6. The complainant displayed several photographs from storm events on April 15, 2007; March 8, 2008; and June 13, 2009, evidencing the amount of water flowing onto his property from the farmer's property.

Christopher Stahl testified on behalf of the complainant as follows:

1. Mr. Stahl is the owner of the farm to the west of the Serafin/Seramba property, known as Block 5, Lot 2.

2. Serafin/Seremba's property (Lot 3), as well as McGee's property (Lot 3.03) were created as a result of a subdivision of Lot 2, and were sold to the current owners in 2000.

3. He created the soil berm in 1985 to divert stormwater down to a retention pond on the westerly border of his property.

4. A tenant farmer for Serafin/Seramba subsequently plowed over portions of the berm to plant soybeans.

5. Mr. Stahl expressed that he has no desire to maintain the berm on his property, even if Serafin/Seramba maintain and restore the berm on their property.

John Seramba provided testimony on behalf of the farmer. He testified as follows:

1. Mr. Seramba and Pauline Serafin are the owners and operators of a commercial farm operation on Block 5, Lot 3.

2. The Soil Conservation Berm/Diversion was installed by Mr. Stahl in cooperation with the USDA Soil Conservation District and National Resource Conservation Service in the 1980's to divert water to a man-made pond on Block 5, Lot 2.

3. Until the subdivision of Lot 2 which created Lots 3, 3.03, and 3.04, all of the property was under the farm management and control of Mr. Stahl.

4. No easements, obligations or restrictions were ever recorded concerning the Soil Conservation Berm/Diversion nor was any sort of obligation disclosed to the farmer upon purchasing the property.

5. Serafin/Seramba purchased the property in 2000. They had a tenant farmer, Roger Everitt, run the farm operation on the property until 2008.

6. In fall of 2008, Serafin/Seramba took over the farm operation and converted the farm operation from crop farming (soybeans), to permanent plantings of ornamental shrubs, brushes, and trees in order to slow the flow of water running downhill.

7. The farmers have taken steps at the direction of the Soil Conservation District to lessen the amount of water coming from their property including: placement of hay bails on top of the berm, cutting the grass along the berm, and repair and deepening the swale and channel on their property.

8. All activities conducted on their property are consistent with generally accepted agricultural management practices.

Frances Gavigan testified on behalf of the farmer. She supplemented her testimony with a power point presentation depicting conditions on the farm and surrounding properties.

Ms. Gavigan testified as follows:

1. There are no easements, obligations or restriction on record obliging the farmers to restore or maintain the Soil Conservation Berm.
2. The Soil Conservation berm had a 25-year life expectancy which expired before Serafin/Seremba acquired ownership to the property.
3. The Soil Conservation Berm was built, breached, and depleted prior to Serafin/Seremba acquiring the property.
4. Serafin/Seremba run a “no till” operation and therefore there minimal disturbance to the soil.
5. The McGees have compounded the drainage problem by placing decks, sheds, and other structures within a 25’ drainage easement contained in their deed.

Michael Mavordi testified on behalf of the farmer. Mr. Mavordi indicated that he is a neighbor of the farmer who has been approached by the farmer to plant ornamentals and plants that take on a lot of water.

The Exhibits introduced at the hearing were marked as follows:

App-1 Proof of Notice of the hearing in the newspaper and to neighboring property owners within 200 feet of the subject property

McGee submissions:

- A – 1 Right to Farm Dispute – Application for Hearing
- A – 2 Proof of Public Notice
- A – 3 Property Aerial View

A – 4 Letter from East Amwell Zoning Officer – Notice to Cease Zoning Violation – February 25, 2008

A – 5 Letter from East Amwell Township Zoning Officer – Second Notice of Violation – July 31, 2008

A – 6 Letter from Hunterdon County Soil Conservation District Site Inspector – Unauthorized Disturbance – July 3, 2008

A – 7 Presentation – Neshanic River Restoration Project – Water Quality Problems by Dr. Qui (NJIT) and C. Testa (HCSCD)

A – 8 NJ-SADC Natural Resources Conservation AMP (2:76-2A7)

A – 9 Letter from Hunterdon County Soil Conservation District – Request for Assistance Erosion Issue on Existing Diversion

A – 10 NRCS Conservation Practice Standard – New Jersey – Diversion

A – 11 Seramba letter to East Amwell Township Committee – October 9, 2008

A – 12 East Amwell Township Engineer – Report to Township Committee on Block 5, lot 3

A – 13 USDA – Soil Conservation Service – Stahl Diversion Design

A – 14 McGee letter to P. Serafin – June 15, 2009

A – 15 McGee Power Point Presentation

Seramba submission:

Seramba – 1 Request to the Hunterdon CADB from Pauline Serafin and John Seramba comprising three (3) pages, together with packet of various accompanying materials.

Seramba – 2 Seramba Power Point Presentation presented by Frances Gavigan.

The Board deliberated the matter and considered the submissions and testimony of all the parties and comments from the public. It was determined that another site visit would be made by Board members to assess the changes that may have taken place since the original site visit on September 24, 2009.

At its meeting of June 10, 2010, the CADB scheduled a second site visit for June 17, 2010.

On June 17, 2010, the CADB conducted a site visit of the Serafin/Seramba farm operation and the surrounding properties.

On July 8, 2010 the public hearing continued. The Board deliberated the matter and combined the submissions and testimony of the parties.

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

1. The property in question is known as Block 5, Lot 3 in the Township of East Amwell.
2. The farm operated by Pauline Serafin and John Seramba is a commercial farming operation in accordance with N.J.A.C. 2:76-2.3 and is entitled to protection under the New Jersey Right-to-Farm law.

3. Hugh and Carol McGee are the owners of Block 5, Lot 3.03 which is adjoining to the commercial farm operation.

4. The farmer has utilized generally acceptable agricultural management practices in conducting their farm operation.

5. The water-run off from the Serafin/Seramba farm onto the McGee property is not a result of or exacerbated by the farming activities on Lot 3.

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

A. Based upon a review of the farmer's agricultural management practices, the CADB determined that the flooding on the McGee property is not a result of his farming operation. Therefore, the CADB does not have the jurisdiction to compel the farmer to restore and maintain the Soil Conservation berm and the Right-to-Farm complaint is hereby dismissed.

B. Any person aggrieved by this decision, may appeal to the State Agricultural Development Committee within ten (10) days of receipt of the Board's final decision, pursuant to N.J.A.C. 2:76-2.10.

Dated: September 9, 2010

  
\_\_\_\_\_  
DAVE BOND, Chairman

Items Comprising the Record as Part of the CADB File

1. Complaint letter to CADB, dated June 26, 2009 from Mr. McGee.
2. RTF Form A – Dated July 1, 2009.
3. Letter from Bill Millette, CADB Admin. Dated July 1, 2009 to Ms. Serafin requesting Commercial Farm Certification.
4. RTF From C completed by Pauline Serafin.
5. Fax from Richard McManus, East Amwell Zoning Officer dated July 21, 2009.
6. Folder of pictures provided by Mr. Serafin.
7. Copy of Proposed Minor Subdivision plat for Block 5, Lot 3 dated received January 19, 1988.
8. Packet of printed emails with most recent dated December 9, 2009.
9. Pictures of Block 5, Lot 3 with attached location map provided by Ms. Serafin.
10. Printed presentation Farmer Request for Letter of Support, East Amwell Township Agricultural Advisory Committee provided by Frances Gavigan
11. Printed email from Carole McGee to Melissa Allen with attached photos dated July 14, 2009.
12. Letter to CADB from Larry and Elsa Swanzer dated July 15, 2009.
13. Handwritten notes re: meeting on August 7, 2009 re: 604 flooding.
14. Letter from CADB to East Amwell Mayor re: CADB request for input dated September 15, 2009.
15. East Amwell Resolution 1986-16, resolution of approval, minor subdivision, Block 5, lot 3.
16. East Amwell Resolution 1988-07, resolution of approval, minor subdivision, Block 5, lot 3.
17. Copy of Chapter 110, East Amwell Township RTF Ordinance.
18. Letter to CADB from East Amwell Clerk in response to #14 dated September 29, 2009.

19. Memo from Bill Millette to CADB members dated 10-1-09.
20. Printed presentation titled Preferred solution provided by Mr. McGee.
21. Letter to CADB from Pauline Serafin and John Seramba, not dated, titled request to the HCADB to affirm the RTF protection...Block 5, lot 3 East Amwell Township.
22. Letter to file from Rick Steffey dated August 5, 2009
23. Letter to Susan Craft, SADC dated July 31, 2009, re: RTF complaint notification
24. Letter to East Amwell Twp Planning Board dated March 31, 1988 re: block 5, lot
25. Hand written list of attendees at 604 flooding meeting held 8-25-09
26. Letter to CADB from East Amwell Township Ag. Advisory Committee dated August 11, 2009 in support of Serafin Farm.
27. Letter to File from Bill Millette dated 8/7/09
28. Letter to file from Rick Steffey dated 8/5/09
29. List of exhibits provided by Mr. McGee dated 2/11/2010
30. Copy of public notice as given to democrat to publish, dated Jan, 28, 2010 provided by Carole McGee
31. Letter to Mr. Merenich from DeSapio Law dated 2/12/10
32. Letter to Sue Dziamara from Pauline Serafin and John Seramba dated 3/6/10
33. Copy of Public notice as published in the 1/28/10 HC Democrat
34. Letter to Mr. and Mrs. McGee from DeSapio Law dated March 29, 2010 re: procedure
35. Letter to Ms. Serafin and Mr. Seramba from DeSapio Law dated March 25, 2010 re: procedure
36. Letter to Mr. DeSapio from Pauline Serafin and John Seramba dated April 28, 2010 re: witness list
37. Copy of OPRA request for as submitted by Mr. Seramba dated 12/9/09
38. Copy of packet of materials as submitted by Ms. Serafin and Mr. Seramba

39. Copy of Letter to DeSapio Law from Hugh McGee dated May 26, 2010 re: last three recorded deeds of their property B 5, L 3.03.