

**RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
(MCADB) ACCEPTING THE WITHDRAWAL OF A RIGHT TO FARM
COMPLAINT FOR BLOCK 884, LOT 1.03
IN THE TOWNSHIP OF MIDDLETOWN**

Mr. Giambrone offered the following resolution and moved its adoption:

WHEREAS, on July 24, 2017, James Abate (the “Complainant”) filed a Right to Farm Complaint Form (“Complaint”) alleging that his neighbors, located at 719 Navesink River Road, Middletown, NJ, have chosen to abandon care of their vine grapes for two (2) years resulting in black rot spores and other diseases being blown over by the wind onto the Complainant’s property; and

WHEREAS, 713 Navesink River Road, known as Block 884 Lot 1.02 in Middletown Township, is owned by James and Jennifer Abate; and

WHEREAS, the farm at 713 Navesink River Road is known as Locust Hill Vineyard; and

WHEREAS, 719 Navesink River Road, known as Block 884 Lot 1.03 in Middletown Township, is owned by H. Cristina Chen-Oster; and

WHEREAS, the farm at 719 Navesink River Road is operated by CO Properties, LLC (“Operator”); and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee’s rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and the Operator of the Complaint; and

WHEREAS, pursuant to 4:1C-10.1 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court; and

WHEREAS, in the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint; and

WHEREAS, in the event the committee has not recommended an agricultural management practice concerning activities addressed by a complaint, the county board shall forward the complaint to the committee for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the committee shall hold a public hearing and issue its decision, in writing, to the county board. The county board shall hold a public hearing and issue its findings and recommendations within 60 days of the receipt of the committee’s decision; and

WHEREAS, initially the Board must determine whether the Operator’s agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, the MCADB requested proof of agricultural production income to make a determination regarding “commercial farm” eligibility related to the income

threshold requirement for 2017 – proofs were submitted from 2016 to meet this criteria; and

WHEREAS, the agricultural products sold centered on the sale of grapes and other fruits to meet the threshold criteria per the Right to Farm Act; and

WHEREAS, the following exhibits were submitted at the hearings:

Exhibits from Complainant

July 24, 2017 Request for Right to Farm Conflict Resolution Complaint Form with Cover Note	O-1
October 5, 2017 Video of Spraying at Chen-Oster Property	O-2
Photos of Locust Hill Vineyard Emailed to Harriet Honigfeld on October 9, 2017	O-3
2015 Private Applicator Pesticide Use Survey	O-4
2016 Locust Hill Vineyard Log Book	O-5
2017 Locust Hill Vineyard Log Book	O-6
Napa Valley Grape Growers’ “Best Practices for Abandoned and Neglected Vineyards”	O-7
May 8, 2017 Web Page for the State of Victoria Titled “Managing Abandoned Vineyards”	O-8
July 2015 Report to Wine Grape Council of South Australia Titled “Neglected Vineyards”	O-9
September 2010 Government of Western Australia Department of Agriculture Publication titled, “Neglected Vineyards”	O-10
January 8, 2018 Letter to William Potter withdrawing Complaint	O-11

Exhibits from Respondent:

Request for Right to Farm Conflict Resolution Response Forms and Attachments	R-1
September 20, 2017 Printout of www.usclimatedata.com for July 2016	R-2
Photos Emailed to Harriet Honigfeld on September 21, 2017	R-3
December 4, 2017 Email to Harriet Honigfeld with Attachments	R-4
December 19, 2017 letter to Harriet Honigfeld with Attachments	R-5

Exhibits from the Monmouth CADB:

Aerial Map Block 884 Lots 1.02 and 1.03	B-1
Middletown Township Zoning Map	B-2
Site Visit Photos from 10/6/17	B-3
Site Report from Bill Sciarappa Dated October 30, 2017	B-4
December 5, 2017 Summary of Chen-Oster Receipts and Income By Year (Corrected)	B-5

WHEREAS, the Complaint asks the Monmouth County Agriculture Development Board (“MCADB” or “Board”) to investigate and evaluate the growing operations on the subject property and the impact it has to the neighboring property; and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on October 6, 2017 and attended by a minority of board members, MCADB staff, the owner of the property and her husband, and Rutgers Cooperative Extension; and

WHEREAS, staff of Rutgers Cooperative Extension also visited the Complainant’s farm on October 13, 2017; and

WHEREAS, the MCADB finds that notice of the request and public hearing was provided pursuant to N.J.A.C. 2:76-2.3(b) and 2:76-2.8(c); and

WHEREAS, the MCADB heard testimony from the Complainant and Operator, and reviewed submissions and exhibits during the Board’s public meeting on December 5, 2017; and

WHEREAS, the Complainant was self-represented, and offered testimony objecting to the Operator’s ability to meet the eligibility criteria of a commercial farm as identified in the Right to Farm Act; and

WHEREAS, the Operator was represented by Lawrence H. Shapiro, Esq., and offered her own testimony as well as the supporting exhibits identified above to prove Commercial Farm Eligibility; and

WHEREAS, the Board requested that additional information be provided to clarify when the agricultural products (the grapes and fruit) from the subject property were harvested and delivered to the alleged retailers/restaurants; and

WHEREAS, the Board adjourned the matter until the January 9, 2018 to allow the Operator to provide affidavits from customers showing proof of delivery of the harvested grapes and fruit and information about how the products were being used; and

WHEREAS, in response to the Board’s request, the Operator submitted additional documentation on December 19, 2017, including an affidavit from Ryan Martinez of Grape Beginnings in Freehold and Fran Schults of Bacon Beach Grille in Long Branch; and

WHEREAS, following the receipt of the affidavits, the Complainant submitted a letter to the MCADB withdrawing the complaint; and

NOW, THEREFORE, BE IT RESOLVED, based on the Complainant’s withdrawal of the initial Complaint, the matter is no longer pending for a vote before the Monmouth County Agriculture Development Board; however, the above proofs and findings of fact will remain as part of the record per this Resolution; and

BE IT FURTHER RESOLVED that because the Complaint has been withdrawn, the matter will be dismissed without prejudice; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the State Agriculture Development Committee, the Township of Middletown, the Complainants and the Operator.

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 10 days, this resolution is binding.

Seconded by Mr. Foster and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Bullock	X			
Mr. Buscaglia	X			
Ms. Butch	X			
Mr. Clayton*	X			
Mr. DeFelice				X
Mr. Foster	X			
Mr. Giambrone	X			
Ms. Grbelja	X			
Mr. Holmes	X			
Mr. Potter			Recused	

* Alternate member in 2018

I do hereby certify that the foregoing is a true
copy of a resolution adopted on January
9, 2018, and memorialized by the Monmouth
County Agriculture Development Board at a
meeting on the 13th of February, 2018



Gary DeFelice, Secretary