Board of Chosen Freeholders
County of Burlington
New Jersey

Department of Resource Conservation

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BURLINGTON CADB RESOLUTION # 2008-9

Recommendation of a Site-Specific Agricultural Management Practice and Findings Regarding a Filed Complaint Against the Operation of a Commercial Farm Under The New Jersey Right to Farm Act

Block 842, Lot 41.02 Pemberton Township
May 8, 2008

WHEREAS, Rake Pond Farms, LLC ["Rake Pond"] has applied to the Burlington County Agricultural Development Board ["Board"] pursuant to the NJ Right to Farm Act N.J.A.C. 2:76-2.3 ["Act"] requesting a Site Specific Agricultural Management Practice ["SSAMP"] determination as to whether or not the conversion of blueberry fields into cranberry bogs on the subject property has been done in accordance with generally accepted agriculture management practices; and

WHEREAS, Daniel and Lorie Fantauzzi ["Fantauzzi"] , owners of adjoining Block 841 Lot 41.01, have filed a complaint against the operation of a commercial farm pursuant to the Act in which Fantauzzi claims that Rake Pond failed to properly install and maintain the cranberry bogs and related ditches, resulting in extreme, unacceptable and damaging flooding on the Fantauzzi property; and

WHEREAS, Fantauzzi also claims that Rake Pond often engages in aerial spraying/application of pesticides on the subject farm without proper warning/notice to Fantauzzi; and

WHEREAS, the Board conducted its regularly scheduled monthly meeting on May 8, 2008, due notice of said meeting was given in accordance with New Jersey Statutes and the Open Public Meetings Act and a quorum of the Board being present at the meeting; the SSAMP application and the complaint were heard; and

WHEREAS, Rake Pond was represented by owners Jeffrey R. and Sharon Daniel and their attorney Michael S. Rothmel Esq.; and

WHEREAS, Fantauzzi was represented by Daniel and Lorie Fantauzzi and their attorney, Thomas T. Booth, Esq.; and

WHEREAS, the Board received into evidence the following Exhibits:

Submitted by Board staff:

CADB 1 – Right to Farm complaint form as submitted by Fantauzzi

CADB 2- Request for an SSAMP determination as submitted by Rake Pond

CADB 3- Certification of Right to Farm eligibility as submitted by Rake Pond

CADB 4- Letter submitted by Ray Samulis, Rutgers Cooperative Extension Agent, dated April 22, 2008

CADB 5- Letter submitted by Maria Collazo, USDA Natural Resources Conservation Service ["NRCS"], Resource Conservationist, dated April 24, 2008.

CADB 6 – Packet submitted to all Board members prior to the May 8, 2008 public meeting, containing staff memo and information provided to County staff by Fantauzzi and Rake Pond

CADB 7 – Aerial photograph of Rake Pond and Fantauzzi properties

Submitted by Rake Pond:

Rake Pond 1 – Aerial photograph of Fantauzzi property

Rake Pond 2 – Two (2) aerial photographs of Rake Pond and Fantauzzi properties

Rake Pond 3 – Photograph of "berm" along Rake Pond / Fantauzzi property line

Rake Pond 4 – Four (4) photographs, dated 7/16/07, of Rake Pond drainage infrastructure

Rake Pond 5 – Topographic Survey of Rake Pond by Hewitt & Magee Associates, dated 2/2/1995

Submitted by Fantauzzi:

Fantauzzi 1 – Order to Show Cause letter, submitted by Thomas T. Booth, Jr., LLC, dated May 9, 2007

Fantauzzi 2 – Letter from Michael S. Rothmel Esq. to Thomas T. Booth, dated June 8, 2007

Fantauzzi 3 – Complaint by Fantauzzi vs Rake Pond, filed in Burlington County Superior Court, dated 5/07/07.

WHEREAS a site inspection was conducted on March 31, 2008 with Board member Lawrence Durr, Board Staff Brian Wilson, Sr. Assistant County Solicitor Jeffrey N. Rabin, Jeffrey Daniel and, Michael S. Rothmel; and

WHEREAS a later site inspection was conducted on March 31, 2008 with Daniel Fantauzzi, Brian Wilson, Jeffrey N. Rabin, Michael S. Rothmel, Jeffrey Daniel, Ray Samulis, Maria Collazo, NRCS engineer Michael Mirage, NRCS Agricultural Resource Specialist Craig Chianese; and

WHEREAS the Board has considered the application, the applicant's certification and the exhibits presented and testimony presented by staff and both parties;

NOW, THEREFORE BE IT RESOLVED that the Board makes the following findings:

<u>The Board's Consideration of the Eligibility of the Rake Pond Application under the Right to Farm Act as determined during the Board's public meeting of March 13, 2008</u>

1. There are credible exhibits to establish that the commercial farm is no less than five (5) acres.
2. The commercial farm produces agricultural / horticultural products worth at least $2,500 per year.
3. The list of such products is listed in the application.
4. The farm is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964.
5. The farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan and Pinelands Comprehensive Management Plan.
6. The AP (Agricultural Production) Zone in Pemberton allows for agricultural as a permitted use.
7. The AP Zone in question was in place as of December 31, 1997 or thereafter.
8. A complete written application for recommending a Site-Specific Agricultural Management Practice was made to the Board.
9. With all of the criteria above having been satisfied, the Board finds that Rake Pond meets the eligibility criteria under the Right to Farm Act.

The Board's consideration of the complaint regarding the aerial application of pesticides to the cranberry bogs of the subject farm

10. The Board finds, based upon testimony provided by Brian Wilson, that aerial application of pesticides for agricultural purposes is regulated by state and or federal law.
11. The Board finds, based upon testimony provided by Brian Wilson, that notification of aerial pesticide application for agricultural purposes to neighboring property owners is not required.
12. The Board recognizes that it has no authority to supercede and federal or state regulations.

The Board's consideration regarding the crop production of Rake Pond

13. The Board finds, it is common for commercial farm operations to transition from one type of agriculture to another. In the case of Rake Pond, the Board finds, transitioning from blueberry to cranberry production is a Generally Accepted Agriculture Management Practice
14. The Board finds, the production of cranberries is an agricultural / horticultural activity that is protected by the Act.

The Board's consideration of the complaint and SSAMP request regarding the installation and maintenance of the cranberry bogs and associated drainage infrastructure

15. Based on the letters by Maria Collazo, Ray Samulis, evidence submitted and testimony by both parties, it could not be determined whether the bogs and associated drainage infrastructure were designed or installed to sufficiently address on and off-site drainage concerns.
16. The Board finds, the Rake Pond and Fantauzzi properties are in areas prone to flooding and that the Board cannot determine the direct cause of the flooding to the Fantauzzi property. However, based on the letters by Maria Collazo, Ray Samulis, evidence submitted and testimony by both parties, the maintenance of the drainage system surrounding the cranberry bogs appears to have been deficient.
17. The Board finds, the establishment of a routine maintenance plan by the landowners and the NRCS is required.

NOW, THEREFORE, BE IT FURTHER RESOLVED the Board finds it is the responsibility of Rake Pond to ensure compliance with all federal and state laws; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that based on the aforesaid findings of fact, the Burlington County Agricultural Development Board finds that the operation of Rake Pond, specifically the conversion of blueberry fields to cranberry bogs, constitutes a generally accepted Agricultural Management Practice subject to the following:

a. NRCS provides verification that the drainage system has been designed and constructed according to NRCS standards; and
b. If NRCS recommends improvements to the drainage system, they must be implemented within a 12 month period; and
c. NRCS and Rake Pond establish an ongoing and routine maintenance plan for the drainage system of the farm, with a copy of the final maintenance plan provided to Fantauzzi; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that if Rake Pond is unable to provide compliance with the contingencies referenced above within a [12] month time frame, then Rake Pond Farm shall not be afforded protections under the Right to Farm Act in association with the complaint as detailed in exhibit CADB-1; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the time frames detailed above may be adjusted at the discretion of the Board upon request by Rake Pond.

6/12/08
Date

Phillip Prickett
Chairman, Burlington CADB

Yeas: 7
Nays: 0
Abstentions: 1

(names) Freeholder William Harris, Jr.