

## RESOLUTION

**RE: Right to Farm Application for Hearing  
In the Matter of Oak Grove Plantation  
Block 42, lot 4; Township of Franklin, County of Hunterdon**

**WHEREAS:**

Ted and Susan Blew trading as Oak Grove Plantation are the owners of Block 42, Lot 4, a farm in Franklin Township in Hunterdon County.

On October 12, 2005, Franklin Township approved a Minor Site Plan for the erection of solar panels on the farm to furnish energy to the farm. As a condition of the approval, the Planning Board indicated that if any property owner made a request during the next year for the Planning Board to consider screening the panels, the Planning Board would review and make a judgment about the request.

In that same month, in October of 2005, Ted and Susan Blew trading as Oak Grove Plantation filed a Right to Farm Application with the Hunterdon County Agriculture Development Board seeking a Site Specific Management Practice determination that the solar panels were permitted as part of the farm operation. In addition, they asked for a determination that the condition imposed by the Planning Board, that screening could be required if a request was made within a year, be removed as a part of the Right to Farm process. In a Resolution dated January 12, 2006, memorializing a December 8, 2005 determination, the CADB granted both requests. No appeal was taken to the SADC from the December 8, 2005 determination.

On or about October 20, 2006, Richard and Marie Bailey filed two law suits. In one the Franklin Township Planning Board was named the defendant as well Theodore and Susan Blew. In the other, the Baileys sued the CADB and Franklin Township. In that suit, they contended that the approvals should not have been given for a variety of reasons. Both suits were consolidated by the Superior Court.

After a conference with the Superior Court, it was agreed that the matters would be transferred to the Franklin Township Planning Board for its consideration. On April 11, 2007, Franklin Township Planning Board had a meeting to hear the request of the Baileys for screening. On May 9, 2007, the Board finished its consideration and determined that the Blews did not have to screen the solar panels.

On June 8, 2007, Mr. and Mrs. Bailey made an application to the Superior Court arguing that there were problems which still needed to be resolved. On November 6, 2007, the Superior Court remanded the matter to the Hunterdon CADB for determination. This proceeding has ensued as a result.

On March 3, 2008, a Right to Farm ("RTF") Application for Hearing was submitted to the Hunterdon County Agriculture Development Board ("CADB"), with a copy of Judge Kumpf's Order dated November 6, 2007 attached. The RTF Application requested, in accordance with the remand of Judge Kumpf, a hearing regarding the December 8, 2005 approval by the Hunterdon County Agriculture Development Board ("CADB") of the

erection of the solar array to produce electricity for the agriculture operation and residence as a Site Specific Agriculture Management Practice and the necessity for additional screening of the solar array.

At its May 8, 2008 meeting, the CADB discussed the application and determined that Oak Grove Plantation was a commercial farm operation in accordance with N.J.A.C. 2:76-2.3. A Right to Farm hearing was scheduled for September 11, 2008.

On September 5, 2008, the CADB, through its legal counsel, wrote to the SADC and notified it of the application and hearing date and inquired whether the SADC would be assuming jurisdiction in the matter.

On September 11, 2008, the SADC, through its counsel, notified the CADB in writing that it would not assume jurisdiction.

The attorney for the owners of the property in question provided an Affidavit of Proof of Publication and Notice, which included an ownership list within 200 feet of the property provided by Franklin Township, copy of the notice in the newspaper, certified mailing receipts, and Proof of Publication in the August 21, 2008 Hunterdon Democrat.

In a letter to the CADB dated August 31, 2008, Richard and Marie Bailey objected to the public notice and set forth therein their reasons for their objection.

On September 11, 2008, the matter came before the CADB and a brief history was presented. At that time, the issue of public notice was reviewed. Although the Board believed that the notice was sufficient, the Board and the attorney for the landowners agreed to provide a new notice and reschedule the hearing.

The CADB thereafter provided notice. Proof of notice by certified mail to property owners within 200 feet of the property set forth in a list provided by Franklin Township, as well as publication on September 25, 2008 in the Hunterdon County Democrat was provided.

The hearing was thereafter postponed until after the CADB concluded a related hearing requesting an SSAMP on the same farm.

On February 19, 2009, the CADB conducted a public hearing.

At the hearing, Ted & Susan Blew appeared on behalf of Oak Grove Plantation. Counsel for the CADB referred to the November 6, 2007 Order of Judge Kumpf and provided a general overview of that Order, the history leading up to the Judge's Order, and the matters that could be involved in the hearing before the CADB that evening.

The CADB initially asked the Baileys to define:

(1) What issue(s) Richard and Marie Bailey, had in connection with the farming activities conducted on the property and/or what issues they wanted the CADB to resolve as a result of the remand order of Judge Kumpf dated November 6, 2007.

Richard Bailey indicated the issues that he and Marie Bailey would like decided. After some brief discussion, it was determined that there was not a quorum of the CADB and the matter was rescheduled for the next regular March CADB meeting of March 12, 2009.

On March 12, 2009, the CADB held a public hearing.

The attorney for the CADB clarified that the hearing was to start from the beginning to address all issues. Comments on information provided at the February 19, 2009 hearing were not to be considered. A brief history of how the matter was before the CADB was given.

The CADB marked the following exhibits at the hearing:

CADB-1 Court Order of Judge Kumpf dated November 6, 2007.

Bailey-1 Letter to the CADB from Richard and Marie Bailey dated February 26, 2009 indicating they would like their application treated as a Right to Farm complaint against the Biews and Oak Grove Plantation. Attachments Exhibits 1 through 7.

CADB-2 Packet of Franklin Township Minutes from April 11, 2007 and May 9, 2007.

Mr. and Mrs. Bailey were asked to clarify exactly what it was they wanted the CADB to determine.

Mrs. Bailey indicated the issue that she and Richard Bailey had was that the Board needed to determine if it had jurisdiction to hear the matter. Mrs. Bailey then indicated she accepted the CADB as having jurisdiction and recognized the farm operation as a commercial farm. The CADB had previously indicated it would accept jurisdiction to hear the matter.

Marie Bailey indicated she wanted the CADB to decide to send the matter to the State Agriculture Development Committee to determine whether the solar arrays are an acceptable management practice.

Counsel for the CADB read into record the Minutes of the Franklin Township Planning Board of April 11, 2007 and May 9, 2007 (CADB-2) wherein the Franklin Township Planning Board had reiterated it had given approval to the solar arrays and determined no screening was required.

After hearing the presentation and the requests of the applicant, the CADB made the following determinations.

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

1. The property in question is known as Block 42, Lot 4 in the Township of Franklin.

2. Oak Grove Plantation runs a commercial farming operation on the property and is entitled to protection under the New Jersey Right-to-Farm law.

3. The Township of Franklin approved the erection of the solar array system on October 12, 2005 and again on May 9, 2007 determining that no additional screening was required for the solar arrays.

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


1. That based upon the case of Township of Franklin v. Hollander, 338 N.J. Super. 373 (App. Div. 2001), the function of the CADB in connection with a Right to Farm Application where local zoning is implicated is limited to making a decision where the farmer requests a variance from the requirements of local zoning. Where there is no dispute between the municipal entity and the farmer, there is nothing for the CADB to determine.

2. The Franklin Township Planning Board determined on October 12, 2005 and again on May 9, 2007 to grant approval for the erection of the solar arrays. Therefore, the CADB finds that the erection of the arrays are in compliance with the local zoning. Therefore, there is no issue for the CADB to decide. The application is moot.

3. Any person aggrieved by this decision, may appeal to the State Agricultural Development Committee, pursuant to N.J.A.C. 2:76-2.3(f).

4. This determination shall be forwarded to the State Agricultural Development Committee within thirty (30) days.

Dated: April 9, 2009

  
WILLIAM BOWLBY, Vice-Chairperson