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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. [ADC4748-03](#)

AGENCY DKT. NO. SADG ID#1328-02

IN THE MATTER OF JOSEPH P. ARNO

(APPEAL OF RESOLUTION ISSUED BY

THE MONMOUTH COUNTY AGRICULTURE

DEVELOPMENT BOARD) RESOLUTION#

5-2003-13, SADC ID# 1328-13, SADC ID# 1328-02,

Joseph P. Arno, petitioner, *pro se*

Gil Messina, Assistant Monmouth County Counsel, for respondent, Monmouth County Agriculture Development Board (Malcolm V. Carton, Monmouth County Counsel)

Ronald H. Gordon, Esq., for Township of Marlboro (DeCotis, Fitzpatrick, Cole & Wisler, attorneys)

Record Closed: September 8, 2003 Decided: January 21, 2004

BEFORE ANTHONY T. BRUNO, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner ("Arno") appeals from the Resolution of the respondent, Monmouth County Agriculture Development Board ("MCADB") adopted April 2, 2003 (Exhibit J-1) dismissing Arno's application for a site-specific agricultural management practice recommendation for lack of subject matter jurisdiction. On July 17, 2003 Arno's appeal was transmitted to the Office of Administrative Law for hearing as a contested case pursuant to [N.J.S.A. 52:14B-1](#) to -15 and [N.J.S.A. 52:14F-1](#) to -13. Before a hearing date could be set, MCADB, on July 31, 2003 filed a Motion for Summary Decision. Arno's response was a letter received on August 12, 2003; MCADB filed a Reply Memorandum on September 5, 2003. Oral argument on the motion for summary decision was held on September 8, 2003. No testimony was taken and no exhibits were offered into evidence. Documents included

with the transmittal and furnished by Arno are listed in the Appendix. No post-hearing submissions being received, the hearing record closed on September 8, 2003.

FACTUAL CONSIDERATIONS

Arno's contentions are detailed in his letter dated June 18, 2003 addressed to the State Agricultural [sic] Development Committee (Exhibit P-1). Arno owns 7.82 acres of land on Shallowbrook Road, Marlboro; the parcel is designated as Lot 1.11, Block 155 on the Township's Tax Map. Arno claims the tract has "3.77 acres of non-appurtenant woodland and 1.28 acres of pasture - - a total of 5.05 acres. The parcel is situation in an LC (Land Conservation) zoning district.

Arno wants to devote the 5.05 acres to farming, harvesting firewood from the 3.77 acres of forest and keeping "several" sheep on the 1.28 acres of pasture. Arno also wants to build 36 feet by 36 feet barn to house the sheep. Marlboro Township denied Arno's application for a variance to build the barn because keeping sheep is not mentioned in the Marlboro Law Use Ordinance as a use permitted in the Land Conversation Zone. Arno's application to the Marlboro Tax Assessor for Farmland Assessment (Exhibit P-2) was denied because "land areas devoted to Agriculture or Horticulture use is less than 5 acres," the land was "not devoted to agriculture or horticulture for 2 successive years preceding the tax year in question," "the gross sales, including payments received under a Soil Conservation Program are less that \$500 per year," and based upon a site inspection of the property (Exhibit P-3).

Among the documentation offered by Arno at the MCADB hearing were a Ten-Year Forest Manager Plan prepared by Gregory R. Hulse, a certified forester (Exhibit P-4), a survey, plot plan and variance sketch prepared by William Kurtz, P.E.,L.S., P.P., and estimates of the money that might result from cutting the trees and shearing the sheep (Exhibit P-5 and -6).

ANALYSIS AND CONCLUSION

The MCADB resolution states one finding of fact; namely, "The Property has not produced sales of farm product of at least \$2500 in a year." Arno argued that the MCADB did not process his application "sincerely," that the MCADB did not consider the "board feet" or cords that the forest would yield, nor was the value of the wool taken from the sheep measured by the MCADB.

The issue in this matter is whether Arno met the threshold necessary to provide MCADB jurisdiction to consider the merits of Arno's application.

Arno's letter of appeal begins with his representation that his application to the MCSDB was "for a Site Specific Agricultural Management Practice Evaluation" for qualification under the "Right to Farm Act." (N.J.S.A. 4:1C-1 to -9). Arno suggests that he did not have a farmland assessment for his land but "must only meet the eligibility criteria for farmland assessment." I disagree.

A commercial farm is defined at *N.J.A.C. 4:1C-3* to mean a farm management unit producing agricultural or horticultural products worth \$2,500 or more annually if the farm management unit is not less than 5 acres or \$50,000 or more annually if the farm management unit is less than 5 acres, and satisfies the eligibility criteria for

a farmland assessment. The statutory definition does not include modifiers to show that production in the future was a consideration. I **CONCLUDE** that in order of a farm management unit to be a commercial farm there must be actual production of agricultural or horticultural products worth, in Arno's case, at least \$2500. I Find as a Fact that Arno's property is not producing agricultural or horticultural products worth \$2500 annually. Therefore, Arno's property is neither a commercial farm nor is it eligible for a farmland assessment.

The Legislative findings ([N.J.S.A. 4:1C-2](#)) state the "express intention" of the Right to Farm Act is the protection of commercial farm operations from nuisance action while providing "a proper balance among the varied and sometimes conflicting interests" of other lawful activities. A purpose of the MCADB is to determine whether the operations of a commercial farm conforms to a generally accepted agricultural operation or practice ([N.J.S.A. 4:1C-9](#)). The *sine qua non* for MCADB action is the finding that the applicant is a commercial farm.

I **CONCLUDE** that the Monmouth County Agricultural Development Board did not have jurisdiction under the Right to Farm Act to hear the application of Joseph Arno for a site-specific agricultural management practice recommendation.

ORDER

Accordingly, it is **ORDERED** that the action of the Monmouth County Agricultural Development Board dismissing the application of Joseph Arno is **AFFIRMED**. It is further **ORDERED** that the appeal of Joseph Arno is **DISMISSED**.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with [N.J.S.A. 52:14B-10](#).

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Date **ANTHONY T. BRUNO, ALJ**

Receipt Acknowledged:

DATE STATE AGRICULTURAL

DEVELOPMENT COMMITTEE

Mailed to Parties:

Date OFFICE OF ADMINISTRATIVE LAW

/tmp

APPENDIX

EXHIBITS

For petitioner:

P-1 Letter of appeal

P-2 Application for farmland assessment

P-3 Denial of farmland assessment

P-4 Ten-Year Forest Management Plan

P-5 Survey Plot Plan and Variance Sketch (attached to transmittal)

P-6 Estimates of receipts from cutting trees and shearing sheep

For the court:

J-1 Resolution of MCADB

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