

10 Magrosky ID 10

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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC2248-10

AGENCY DKT. NO. SADC ID#1137

FRANK MAGROSKY,

Petitioner,

v.

SOMERSET COUNTY AGRICULTURAL

DEVELOPMENT BOARD & ROBERT EURIK t/a

ROLLING ACRES FLOWER FARM.

Respondents.

Frank Magrosky, petitioner, pro se

William P. Robertson, Deputy County Counsel, for respondent SCADB

Anthony Sposaro, Esq., for respondent Robert Eurick

Record Closed: October 15, 2010 Decided: October 19, 2010

BEFORE **SOLOMON A. METZGER**, ALJ t/a:

Petitioner has appealed a decision of the Somerset County Agriculture Development Board (SCADB), pursuant to the New Jersey Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and regulations promulgated thereunder. The State Agriculture Committee received the appeal and transmitted the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 to -23. Respondent Robert Eurik has filed a motion for summary decision, Brill v. Guardian Life Ins. Co. of Amer., 142 N.J. 520 (1995); no responsive papers were received.

The facts are as set forth in the attachments to the motion. Robert Eurik operates a Green House where he grows flowers, sells eggs and raises poultry on nine acres in Somerset County. Neighbors have complained that his roosters are noisy in the early morning hours. In September 2008, and again in November 2009, the SCADB found that Mr. Eurik's operations were a commercial farming enterprise and that he is raising poultry according to generally accepted agricultural practices entitled to protection. It found also that Mr. Eurik pens these fowl at a reasonable distance from property lines so as to minimize noise. This is the substance of the record.

Through the Right to Farm Act, the legislature has sought to protect farming in an increasingly suburban environment. N.J.S.A. 4:1C-10 creates an irrebuttable presumption that farming conducted according to generally accepted practice is exempt from nuisance ordinances. The SCADB has determined that Mr. Eurik is operating according to accepted practice and there is nothing in the record to the contrary. I am therefore bound by the legislative policy balance and thus the morning call of roosters is simply part of living in proximity to a farm.

Based on the foregoing, the motion for summary decision is granted and Mr. Eurik may continue to raise poultry in accordance with accepted agricultural practice. Petitioner's appeal 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 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 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.

3 October 19, 2010

Date **SOLOMON A. METZGER**, ALJ t/a

Date Received at Agency:

Date Mailed to Parties:

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