

FRANK MAGROSKY,

Petitioner,

vs.

SOMERSET COUNTY AGRICULTURE
DEVELOPMENT BOARD; and ROBERT
EURICK t/a ROLLING ACRES
FLOWER FARM,

STATE OF NEW JERSEY
OAL DKT. NO.: ADC 2248-10
AGENCY REF. NO.: SADC #1137

FINAL DECISION

Respondents.

FINDINGS OF FACT

Robert Eurick ("Eurick") owns a 9.5 acre, farmland-assessed parcel in Branchburg Township, Somerset County upon which he operates a retail flower business and raises and sells guinea chicks, hens and their eggs. Eurick's commercial farm business is known as Rolling Acres Flower Farm ("Rolling Acres").

In August 2008 Eurick applied to the Somerset County Agriculture Development Board ("SCADB" or "board") for a site specific agricultural management practice ("SSAMP") determination for his poultry operation. At the time of his SSAMP application, Eurick was raising 54 guinea hens housed approximately 350' from the nearest neighboring property line.

On September 8, 2008, having concluded that Rolling Acres was a "commercial farm" as defined in N.J.S.A. 4:1C-3 of the Right-to-Farm Act ("the Act"), the SCADB approved Eurick's SSAMP application, noting that the guinea hens were kept a reasonable distance from the nearest neighbors in a good faith attempt by Eurick to minimize any noise offensive to the public.

In October 2009 two (2) noise complaints were filed with the SCADB against Rolling Acres by Mr. Frank Magrosky ("Magrosky") and Mr. John Mazellan ("Mazellan"), who stated that 3-5 roosters were now on the Eurick property and located 150' from their property lines. The roosters were said to be extremely noisy between 4:30 a.m. and 7:00 a.m., thus disturbing the peace and quiet of the complainants and their families.

In response to the complaints, Eurick filed a commercial farm certification dated November 7, 2009 indicating that, in addition to his retail flower business, he had on his farm property 27 guinea keets, 25 silver lace Wyandotte laying hens, 3 Wyandotte roosters and 10 partridge Bantams, of which 3 were roosters. The poultry business generated sales of fertile eggs for hatching and free range

eggs. Eurick also stated in his supporting certification that all of his birds were let out later in the morning and were back in their coops by nightfall in order to reduce any offensive noises, and that the coops themselves were located 250' from neighboring property lines and 350' from neighboring houses.

A member of the SCADB, Mark Kirby, went to Mr. Magrosky's property on October 30, 2009 and did not detect any significant noise coming from the Eurick farm. Mr. Kirby was at the Magrosky property at about 6:00 a.m.

On November 13, 2009 the SCADB issued a report disposing of the Magrosky and Mazellan complaints, determining again that Eurick operated a "commercial farm" as defined in the Act and that the raising and keeping of roosters on Rolling Acres was a generally acceptable agricultural management practice. The SCADB found that the roosters were being penned and otherwise kept a reasonable distance from the nearest neighboring property lines, and that this effort by Eurick reduced the amount of noise to the best of his ability. Eurick, Magrosky and Mazellan were copied on the November 13, 2009 SCADB report.

On or about November 18, 2009 Magrosky notified the SCADB that he intended to appeal the board's November 13 determination.

Mr. Kirby made a second visit to the Magrosky property on November 21, 2009, remaining there from 6:45 a.m. to 7:30 a.m., and noted that farm noise from Rolling Acres was even lower than at the time of his October 30 visit.

On November 23, 2009 Eurick submitted another SSAMP application to the SCADB for his poultry operation. At its regular monthly meeting held on December 14, 2009, the board decided not to consider this second SSAMP request and reaffirmed its dismissal of the Magrosky and Mazellan complaints. The board reasoned that its September 8, 2008 SSAMP approval and its November 13, 2009 report had provided Rolling Acres' with right-to-farm protection as a qualified commercial farm whose poultry operations were generally accepted agricultural activities.

Magrosky appealed the SCADB's December 14, 2009 decision to the State Agriculture Development Committee (SADC) on February 2, 2010. No appeal was filed by Mazellan. The SADC forwarded the appeal to the Office of Administrative Law (OAL) as a contested case in accordance with N.J.S.A. 4:1C-10.2 and N.J.A.C. 2:76-2.3(f).

In June 2010 Eurick filed a notice of motion for summary decision seeking an OAL order dismissing the Magrosky appeal. In support of the motion, Eurick submitted

a brief stating that agricultural activities such as his were exempt from state noise control regulations and that the September 2008 SSAMP insulated his poultry operation from Magrosky's October 2009 nuisance complaint. By letter dated October 14, 2009, William P. Robertson, Esq., attorney for the SCADB, notified the OAL that the SCADB did not oppose the motion for summary decision. Magrosky filed no papers in opposition to Eurick's motion.

The OAL granted the motion dismissing Magrosky's appeal in an Initial Decision dated October 19, 2010. In his decision, the administrative law judge (ALJ) found there was nothing in the record refuting the SCADB's determination that Eurick's poultry operation was conducted according to acceptable agricultural management practices.

The 45-day period within which the SADC could affirm, modify or reject the ALJ's Initial Decision expired prior to the SADC's regular monthly meeting on December 9, 2010. Accordingly, on November 18, 2010 the agency obtained an Order of Extension from the OAL allowing for issuance of the Final Decision on or before January 18, 2011.

CONCLUSIONS OF LAW

The SADC hereby **AFFIRMS** the Initial Decision based on the "Findings of Fact" set forth above. The raising and keeping of poultry, and the production of eggs for hatching and human consumption, are specifically recognized as protected agricultural activities in N.J.S.A. 4:1C-9a. We are satisfied that the evidential record supports the finding that Eurick's poultry operation at Rolling Acres is an acceptable agricultural management practice specific to his Branchburg Township property.

The agency further **FINDS** that Eurick's efforts to minimize or eliminate the potential for nuisance arising from noise associated with his poultry business were reasonable under the circumstances.

Eurick's notice of motion for summary decision was uncontested and, consequently, was not analyzed by the ALJ in his Initial Decision. Accordingly, the SADC makes no findings of fact or conclusions of law regarding the substance of that motion.¹

¹The agency notes Eurick's argument in the motion for summary decision that his poultry-raising activities are exempt from the "operational performance standards" of the New Jersey Noise Control Act, N.J.S.A. 13:1G-1, et seq., and the regulation at N.J.A.C. 7:29-1.5. Because the motion was uncontested, there was no discussion concerning whether the roosters are an exempt noise source or whether a nuisance can be proven irrespective of state noise control laws.

IT IS SO ORDERED.

Dated: December 9, 2010

Douglas H. Fisher, Chairman,
State Agriculture Development
Committee

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