

GLOUCESTER COUNTY AGRICULTURE DEVELOPMENT BOARD

RIGHT TO FARM RESOLUTION

CERTIFYING COMMERCIAL FARM OPERATION AND RECOMMENDING SITE SPECIFIC AGRICULTURE MANAGEMENT PRACTICE FOR JACQUELINE SMITH AND COLLEEN DINGLER/SUMMER JADE STABLES, TOWNSHIP OF MONROE

DATED: OCTOBER 13, 2011

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et. seq. and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the County Agriculture Development Board (hereinafter "CADB" or "Board") to determine if his or her operation constitutes a generally accepted management practice; and

WHEREAS, Colleen M. Dingler (hereinafter "Dingler") is the owner and operator with Jacqueline Smith (hereinafter "Smith") of Summer Jade Stables (hereinafter "Summer Jade"), located at _____, located on Block 5401, Lot 40, Township of Monroe, County of Gloucester, State of New Jersey (hereinafter the Property); and

WHEREAS, on June 6, 2011, Smith and Dingler both hereinafter collectively referred to as "Applicant", made a request in writing to the Board that the operations of Summer Jade at the Property be designated as a "commercial farm" under the Right to Farm Act definition; and

WHEREAS, Applicant also on June 6, 2011 requested in writing to the Board a site-specific Agriculture Management Practice (hereinafter "AMP") determination that would allow Applicant to keep up to sixteen (16) horses at the Property as part of the operation of Summer Jade; and

WHEREAS, the Applicant's request to the Board for a site-specific AMP was precipitated by the following: (i) a Violation Notice having been issued to Applicant by Dan Kozak, Code Enforcement Officer for the Township of Monroe alleging violation of the said municipalities' Ordinance 295-2 (Enumeration of Nuisances) due to an alleged strong odor from piles of horse manure at the Property; (ii) a second Notice of Violation having been issued by the Township of Monroe on June 1, 2011 to Applicant by Fredrick Weikel, Code Enforcement/Zoning Officer, alleging violation of municipal Ordinance § 175-90 (Agriculture) for having and maintaining more than six (6) livestock at the Property; and, (iii) the issuance of Complaints/Summons charging Smith with violation of the Township of Monroe's Ordinance § 175-90E for allegedly exceeding the number of livestock permitted at the Property under and pursuant to that said ordinance; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), the Board advised in writing the State Agriculture Development Committee (hereinafter "SADC"), and the municipality of the Township of Monroe, of the Applicant's request; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (b), the Board requested that the Applicant provide proof that their agricultural operation at the Property is a "commercial farm" as defined by N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (b), the Applicant provided a commercial farm certification, including supporting documentation, that the agricultural operation at the Property is a "commercial farm" as defined at N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1 (generally) and N.J.A.C. 2:76-2B.3(e) (for equine activities); and

WHEREAS, a public hearing regarding the Applicant's request was noticed to take place at the September 8, 2011 Board meeting; and

WHEREAS, notice of the public hearing was provided to all property owners within two hundred (200) feet as suggested by the Court in Curzi v. Raub, 415 N.J.Super.1 (N.J.Super. App. Div. 2010); and

WHEREAS, in accordance with the procedure set forth in N.J.A.C. 2:76-2.10, a public hearing was held on September 8, 2011, when the Applicant presented their case, through their

attorney, William L. Horner, Esquire; and the Township of Monroe appeared through its Solicitor, Charles A. Fiore, Esquire to add input regarding the Applicant's request for and on behalf of the said municipality; and

WHEREAS, the Board received into evidence the following Exhibits:

Exhibit **AG-1** - - Correspondence from Federici and Akin, P.A., Consulting Engineers, to the Board regarding field survey conducted at the Property on July 26, 2011, with attached survey (2 pages);

Exhibit **Monroe-1** Letter brief dated July 15, 2011 from Township of Monroe Solicitor Charles A. Fiore, Esquire to the Board setting out the said municipality's position on the Smith site-specific AMP request to the Board with attached Exhibits A, B and C (10 pages);

Exhibit **SD-1** Commercial Right to Farm Certification form including attachments supporting eligibility from Smith (7 pages);

Exhibit **SD-2** – Application for Farmland Assessment for the Property dated July 21, 2011, and noted as received by the Township of Monroe's Tax Assessor as of July 21, 2011 (1 page);

Exhibit **SD-3**-Conservation Plan for the Property dated September 6, 2011 with attachments (25 pages);

Exhibit **SD-4**-Photograph array of various portions of the Property (26 photographs-color); and

Exhibit **SD-5**-Correspondence dated July 20, 2011 from the New Jersey State SPCA-Law Enforcement Division, to Smith regarding investigation of horse complaints regarding horses at the Property; and,

WHEREAS, all the aforesaid exhibits were received by the Board, and accepted into evidence at the September 8, 2011 public hearing without objection from the Applicant, the Township of Monroe, or any one from the public; and

WHEREAS, the Board has considered Smith's request (application), and the exhibits and testimony presented at the public hearing.

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

1. The Property is owned by Dingler. The commercial farm operator at the property is Smith and Dingler.
2. The Property and agricultural operations being undertaken thereon under the name Summer Jade meet the requirements for a "commercial farm" as defined in N.J.S.A. 4:1C-3 of the Right to Farm Act, and its regulations N.J.A.C. 2:76-2.1 (generally), and N.J.A.C. 2:76-2B.3(e) (for equine activities) in that:
 - a. **The Applicant's "farm management unit" meets the 5-acre minimum requirement for a "commercial farm"**. The Property is a single parcel consisting of 6.2 acres. Approximately 0.73 acres of the Property is occupied by and used in connection with the single-family residential dwelling at the Property. The remaining 5.641 acres of the Property is the "farm management unit", as defined at N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1), which includes agricultural buildings, structures and facilities, and which is operated as a single unit for production of agricultural products. This acreage and usage information was included in the Applicant's Farmland Assessment Form FA-1 for 2012 (Exhibit SD-2), which was filed with the Tax Assessor for Monroe Township on July 21, 2011;
 - b. **The Applicant's farm management unit produces agricultural products worth \$2,500 or more annually**. The Applicant's farm management unit had earned income of

\$4,200 during 2011 “from the sale of a horse that has been bred from a mare owned by the farm operator or owner” (per N.J.A.C. 2:76-2B.3(e)1.(iv)); and,

- c. **The Applicant’s farm management unit satisfies the eligibility requirements for differential property taxation pursuant to the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1, et seq.).** The Applicant filed a Farmland Assessment Form FA-1 for 2012 with the Tax Assessor for Monroe Township on July 21, 2011 confirming that the Property satisfies the farmland assessment eligibility requirements. The Property is not currently qualified for farmland taxation, as this is the first year of eligibility under the Applicant’s ownership and operation (Applicant purchased the Property on December 23, 2010). Accordingly, the Property will not actually qualify for farmland taxation until the third year of eligibility.
3. **The Property is located in Monroe Township’s Agricultural Production Zoning District in which “agriculture” (which by Township definition includes producing horses for sale) is a permitted use.** Agricultural uses in Monroe Township are subject to “design, performance and evaluation standards” which provide, at § 175-90.E.(6), that the number of horses per lot is limited to the size of the lot, and that only one horse per acre is permitted. The design standards also provide, at § 175-90.C.(3), that “agricultural management practices as developed and recommended by the State Agricultural Development Committee shall be the standards to be applied to all agricultural uses in the Township, insofar as applicable”.
4. The Applicant currently keeps fourteen (14) horses at the Property, but believes that the Property can safely and properly accommodate sixteen (16) horses.
5. The Applicant received a Violation Notice from the Monroe Township Board of Health dated May 4, 2011 stating that “an inspection of the Property revealed a strong odor from piles of horse manure” ,which allegedly constituted a nuisance under § 295-2 of the Monroe Township Code.
6. The Applicant received a second Violation Notice from the Monroe Township Zoning Officer dated June 1, 2011 stating that only six (6) livestock are permitted at the Property, per Township Code § 175-90. A municipal court summons was issued on June 27, 2011, followed by a “summons notice” dated June 28, 2011.
7. The Applicant received notice from the New Jersey State S.P.C.A. Law Enforcement Division dated July 20, 2011, stating that at total of three (3) complaints had been registered against the Applicant on regarding the Applicant’s horses. The letter also states that the complaints were investigated on four occasions, and that no violations were found.
8. The Applicant’s commercial farm operations are entitled to Right To Farm Act protections per N.J.S.A. 4:1C-9 in that:
 - a. The Property is located in Monroe Township’s Agricultural Production Zoning District, in which agriculture is a permitted use.
 - b. The Applicant’s commercial farm operations conform to the N.J.A.C. 2:76-2A.10 agricultural management practices for equine activities on commercial farms, and the N.J.A.C. 2:76-2B.3 requirements for eligibility of equine activities for right to farm protections in that:
 - (i) **The Applicant currently engages in the raising, breeding, keeping, training, and rehabilitation of horses as enumerated in N.J.A.C. 2:76-2B.3(b)(1).** The Applicant does not currently engage in the boarding of horses as enumerated in that section. The Applicant does not currently engage in any of the complimentary equine activities enumerated in N.J.A.C. 2:76-2B.3(b)(2). The Applicant does not currently engage in the sale and distribution of manure and composted products enumerated in N.J.A.C. 2:76-2B.3(b)(3);
 - (ii) **The “production area” of the Applicant’s commercial farm is greater than the area occupied by “equine-related infrastructure” in the proportion set forth in N.J.A.C. 2:76-2B.3(c)(3).** As determined by the field survey work that was performed by Federici & Akin, P.A., for and at the direction of the Board pursuant to

N.J.A.C. 2:76-2B.3(c)(3)(i), the percentage of the total useable area of the Property dedicated to equine-related infrastructure is 0.54% (Exhibit AG-1). This is below the fifteen to twenty percent maximum permitted by N.J.A.C. 2:76-2B.3(c)(3);

(iii) **The Applicant's farm management unit had earned income of \$4,200 during 2011 "from the sale of a horse that has been bred from a mare owned by the farm operator or owner" per N.J.A.C. 2:76-2B.3(e)1.(iv).** The Applicant has also earned income of more than \$2,500 annually from such sales, and from sales of horses that were trained or raised on the commercial farm at the Property for at least 120 days prior to the time of sale (per N.J.A.C. 2:76-2B.3(e)4) during 2010 and 2011. The aforesaid amounts do not include any of the non-usable income types enumerated in N.J.A.C. 2:76-2B.3(f); and,

(iv) **The Applicant's commercial equine operation is in compliance with a farm conservation plan (Exhibit SD-3), and an associated grazing management plan, prepared in accordance with the Natural Resources Conservation Service Field Office (Woodstown Service Center), all as required by N.J.A.C. 2:76-2B.3(g).** The Applicant is in compliance with the conservation plan's grazing management plan and animal waste management plan. The Applicant has implemented all recommendations contained in the conservation plan except for the recommendation for a water pipeline to the water drinking facility (which will be implemented following any approval of this application) and the recommendation for a composting facility, which is currently not part of the Applicant's approved animal waste management plan. The farm conservation plan has been signed by a certified planner, and district conservationist, it has not yet been signed by the Gloucester County Soil Conservation District, but will be signed at the next GCSCD meeting.

9. The Applicant seeks a site-specific AMP determination that would allow the Applicant to keep up to sixteen (16) horses at their commercial farm, subject to approval of a revised conservation plan with animal waste management and grazing management plans reflecting the increased number. This is because the N.J.A.C. 2:76-2A.10 AMP for equine activities on commercial farms does not set forth requirements or formulae for determining the allowable stocking rates for such activities when a "drylot regime", such as the Applicant's, is being implemented. Rather, N.J.A.C. 2:76-2A.10(c).3 provides that "stocking rates for farms which utilize a drylot regime...shall be determined by a case-by-case basis by an evaluation of the farm's manure management and dust management practices". Further, N.J.A.C. 2:76-2A.10(g) provides that that the Board can make determinations as to whether any agricultural activity not completely addressed by the regulations complies with generally accepted AMP. Otherwise, the Applicant complies with all agricultural management practices specified in N.J.A.C. 2:76-2A.10, as follows:

- a. The Applicant's current commercial farm operation, which involves fourteen (14) horses, is in compliance with an approved self-certified animal waste management plan that is incorporated into the Applicant's approved farm conservation plan, per N.J.A.C. 2:76-2A.10(d). If the Applicant increased the number of horses to sixteen (16), the animal waste management plan would have to be revised and approved for that number. The Applicant does not operate a concentrated animal feeding operation as referenced in N.J.A.C. 2:76-2A.10(d).1.iii. "The primary goal of manure management is to minimize odor at storage and application sites, as odors can never be completely eliminated" (see N.J.A.C. 2:76-2A.10(d).1.iv);
- b. The Applicant's approved method for manure disposal is "spreading on the farm", per N.J.A.C. 2:76-2A.10(d).2.i.(1). No manure is removed from the farm, or composted or stored at the farm. The spreading of manure at the farm is accomplished by the Applicant in compliance with the approved animal waste management plan that is part of the Applicant's farm conservation plan, and as such is in conformance with the applicable regulations (N.J.A.C. 2:91-1, et seq.);
- c. The Applicant's riding, training and arena areas are located in well-drained areas of the farm meeting the requirements of N.J.A.C. 2:76-2A.10(e) 1 through 3;
- d. The Applicant's dust management practices involve water application in compliance with N.J.A.C. 2:76-2A.10(e).4; and,

- e. The fencing at the Applicant's farm conforms to the requirements of N.J.A.C. 2:76-2A.10(f).

NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, BE IT RESOLVED BY THE BOARD THAT:

- a. Applicant's farm is a "commercial farm" as defined in the Right To Farm Act, and therefore is entitled to the protections of the said act;
- b. The Applicant's commercial farm is being operated in accordance with all applicable Right To Farm Act regulations for equine activities on commercial farms, including, but not limited to, all of the Applicant's practices relating to manure management, and the minimization of odors and pests in connection thereto;
- c. The Applicant's keeping of up to sixteen (16) horses at the commercial farm qualifies as a generally accepted agricultural operation or practice as contemplated in N.J.A.C. 2:76-2A.10(g), and is approved as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3, subject to approval of a revised animal waste management plan to include sixteen (16) horses, which is in excess of the current fourteen (14);
- d. The Applicant's commercial equine farm operation and agricultural activities at the Property are in compliance with applicable Federal and State statutes or rules and regulations adopted thereto; and,
- e. The Applicant's commercial equine farm operation and agricultural activities at the Property do not pose a direct threat to public health and safety.

NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, BE IT FURTHER RESOLVED THAT:

- a. The restrictions of the provisions of Monroe Township Ordinance § 295-2, and § 175-90, are in direct conflict with the established farm management practices for a commercial equine farm operation, and as to the Applicant's commercial equine farm operation and agricultural activities at the Property, so that the Right To Farm Act, and the regulations promulgated thereunder, supersede, and were conflicting, nullify, the regulations imposed by the said local ordinances;
- b. Enforcement of the provisions of Monroe Township Ordinance § 295-2, and § 175-90 against the Property, as it relates to the commercial equine farm operation and agricultural activities being undertaken thereon by the Applicant, are in violation of the Right To Farm Act; and,
- c. The provisions of Monroe Township Ordinance § 295-2, and § 175-90, do not then apply to the commercial equine farm operation and agricultural activities being undertaken by the Applicant at the Property.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT the Board shall forward a copy of this Resolution as its written recommendation of these site specific agriculture management practices to the State Agriculture Development Committee, the Township of Monroe, and the Applicant, within thirty (30) days.

**WEST JAY KANDLE, III, CHAIRPERSON
GLOUCESTER COUNTY AGRICULTURE
DEVELOPMENT BOARD**

**YES:
NO:
ABSTAIN:
ABSENT:**

CERTIFICATION

I, Ken Atkinson, Secretary to the Gloucester County Agriculture Development Board, do hereby certify the foregoing to be a true and accurate copy of the Resolution adopted by the Gloucester County Agriculture Development Board at a meeting of said Committee held on October 13, 2011.

IN WITNESSETH WHEREOF, I have hereunder set my hand and the official seal of this body this 13th day of October, 2011.

SEAL:

KEN ATKINSON, BOARD SECRETARY