

**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD  
RESOLUTION 2017-06**

**RIGHT TO FARM CONFLICT RESOLUTION  
FINDINGS AND RECOMMENDATIONS**

**THE BOXWOOD FARM – ANDREA FILIPPONE  
BLOCK 60, LOTS 22.02 & 21.04  
TOWNSHIP OF WASHINGTON, MORRIS COUNTY, NEW JERSEY**

**WHEREAS**, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the State Agriculture Development Committee’s (“SADC’s”) Right to Farm Rules, N.J.A.C. 2:76-2.3, et seq., a commercial farm owner or operator may make a request to the County Agriculture Development Board to determine if his or her operation constitutes a generally accepted agricultural operation or practice; and

**WHEREAS**, on May 3, 2017, the Morris County Agriculture Development Board (“Morris CADB”) received a written request from Ms. Andrea Filippone for a site-specific agricultural management practice (“SSAMP”) for her operation, The Boxwood Farm, Block 60, Lots 22.02 and 21.04 located in the Township of Washington (A-1); and

**WHEREAS**, according to Exhibit A-1, Ms. Filippone wishes to host a few weddings a year in order to increase the revenue of The Boxwood Farm operation; and

**WHEREAS**, according to Exhibit A-1, because the use of the property for commercial rental purposes for events such as weddings violates the zoning ordinance and is not a permitted use in the R-5 zone, Ms. Filippone requested relief from Washington Township’s requirement to apply for a use variance before the Zoning Board of Adjustment; and

**WHEREAS**, on May 8, 2017, pursuant to N.J.A.C. 2:76-2.3(b), the Morris CADB informed the SADC and the Township of Washington of the receipt of Ms. Filippone’s request for a SSAMP (B-1); and

**WHEREAS**, on June 2, 2017, Ms. Katherine Coyle drafted a Staff Report regarding Ms. Filippone’s application (B-2); and

**WHEREAS**, the Morris CADB’s review of the application was adjourned until July 13, 2017 per Ms. Filippone’s request; and

**WHEREAS**, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1(a) and the SADC’s Right to Farm Rules, N.J.A.C. 2:76-2.7(a), any person aggrieved by the operation of a commercial farm shall first file a complaint in writing with the applicable county agriculture development board or the SADC in counties where no county board exists, prior to filing an action in court; and,

**WHEREAS**, on June 9, 2017, the Morris CADB received a complaint filed by Ms. Cheryl LaPonte, against Ms. Filippone’s operation (C-1); and

**WHEREAS**, the complaint alleges that Ms. Filippone’s operation creates noise and traffic problems and is disruptive to the neighbors; and

**WHEREAS**, the Morris CADB also received letters from Ms. Filippone's neighbors (P-1); and

**WHEREAS**, on June 12, 2017, the Morris CADB informed Ms. Filippone, the SADC and the Township of Washington of the receipt of the complaint (B-3); and

**WHEREAS**, pursuant to N.J.A.C. 2:76-2.7(b)1, the CADB shall determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9 (the "RTF Act"); and

**WHEREAS**, pursuant to N.J.A.C. 2:76-2.7(d) and N.J.S.A. 4:1C-10.1(b) if the CADB determines that the operation is a commercial farm and meets the eligibility criteria of the RTF Act, and that the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in the RTF Act, the CADB shall hold a Public Hearing and issue findings and recommendations within 60 days of the receipt of the complaint; and

**WHEREAS**, pursuant to N.J.A.C. 2:76-2.7(g), if the CADB determines that the dispute does not involve a commercial farm, or that the operation does not meet the eligibility criteria of the RTF Act, or that the dispute involves agricultural activity(ies) that is not or are not included in one or more of the permitted activities set forth in the RTF Act, then the CADB shall dismiss the complaint; and

**WHEREAS**, on June 22, 2017, Ms. Katherine Coyle drafted a Staff Report regarding the complaint (B-4); and

**WHEREAS**, during the July 13, 2017 meeting, the Morris CADB reviewed exhibits A-1, C-1, P-1, and B-1 through B-4, and heard testimony from the following individuals: Keith Lukachek, Ken McDermott, Cheryl LaPonte, Kathleen McDermott, Alexandra Maynard, Kristin Bernardi and Cindy Entwistle; and

Commercial Farm Eligibility:

**WHEREAS**, pursuant to N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, "commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.); and

**WHEREAS**, because Ms. Filippone's farm management unit consists of more than 5 acres, in order to meet the RTF Act's definition of a "commercial farm," it must produce agricultural or horticultural products worth \$2,500 or more annually, and satisfy the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.); and

**WHEREAS**, according to Exhibit A-1, The Boxwood Farm produces more than \$2,500 worth of agricultural products annually; and

**WHEREAS**, during the July 13, 2017 meeting, the Morris CADB determined that The Boxwood Farm is a commercial farm as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

Agricultural Activity:

**WHEREAS**, according to Exhibits A-1 and C-1, Ms. Filippone hosts weddings at The Boxwood Farm; and

**WHEREAS**, pursuant to N.J.S.A. 4:1C-9, the owner or operator of a commercial farm may conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm; and

**WHEREAS**, N.J.A.C. 2:76-2A.13, "Agricultural Management Practice for On-farm Direct Marketing Facilities, Activities, and Events", sets forth the standards for on-farm direct marketing facilities, activities, and events with which commercial farms must comply to receive the protections of the RTF Act. Pursuant to N.J.A.C. 2:76-2A.13, commercial farms may engage in the following activities as defined in the regulations, subject to conditions listed in the regulations:

- Agriculture-related educational activities,
- Ancillary entertainment-based activities,
- Farm-based recreational activities,
- On-farm direct marketing activities and
- On-farm direct marketing events.

"Agriculture-related educational activities" means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm by enhancing the experience of purchasing agricultural products for the purpose of attracting customers to the commercial farm. Examples of agriculture-related educational activities may include, but are not limited to: school trips, hands-on farming activities, educational displays, farm tours, farm task experiences, wine tastings, agriculture-related lectures for clubs, farm open house days, and agriculture-related classes on topics, such as, but not limited to: canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, and gardening.

"Ancillary entertainment-based activities" means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include, but are not limited to: background live or recorded music, face painting, story telling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the commercial farm.

"Farm-based recreational activities" means recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the

agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. Examples of farm-based recreational activities uniquely suited to occurring on a farm may include, but are not limited to: corn, sunflower, and other crop mazes; hayrides and wagon rides; agricultural animal display or petting areas; farm tours; horseback riding; pony rides; and tractor pulls. Examples of farm-based recreational activities considered common outdoor recreation activities that are compatible with the agricultural use of the farm include, but are not limited to: hiking; bird watching; sleigh rides; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

"On-farm direct marketing activity" means an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include, but are not limited to: agriculture-related educational activities, farm-based recreational activities, and ancillary entertainment-based activities.

"On-farm direct marketing event" or "event" means an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products, may include on-farm direct marketing activities as components, are either product-based or farm-based, and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm.

Pursuant to N.J.A.C. 2:76-2A.13, while a variety of marketing efforts are eligible for the protections of the RTF Act, they are accessory to agricultural production.

While the regulations do not specifically address weddings, the SADC addressed "celebratory life events" such as weddings, graduations, birthdays and anniversaries at 46 N.J.R. 600 as follows:

'Most "celebratory" events would not meet the definition of on-farm direct marketing events at N.J.A.C. 2:76-2A.13(b) in the AMP, and the SADC previously ruled that not every marketing tool employed to attract customers to a winery, including a "celebratory" event, is protected by the RTFA. (*In the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County*, SADC ID No. 786 (Hearing Officer's Findings and Recommendations of the State Agriculture Development Committee, March 24, 2011, pages 21-23)). While it is conceivable that an event such as a wedding could be protected as a type of retail marketing provided that an overwhelming majority of the food and beverages served were produced from the output of the farm, the SADC believes that protecting such

uses would require promulgation of a separate AMP to address the conditions under which RTF protection could be available'; and

**WHEREAS**, in the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County, SADC ID #786 (approved by the SADC on March 24, 2011)(HVV), the SADC concluded that not every marketing tool employed to get customers to a farm is recognized by the RTF Act and there must be a clear link between the event and the marketing of the farm's output. Further, celebratory life events such as weddings and birthday parties are services, not the agricultural output of the farm. The "services" category includes catered events in which food is brought to the farm by a third party; and

**WHEREAS**, the SADC's decision in the Matter of Township of Clinton and Walter and Diane Eriksson v. Hunterdon CADB and Valley Crest Farm & Preserve, SADC ID #1601 (approved by the SADC on January 28, 2017) (VCP), addressed whether the RTF Act protects weddings held at a fruit, vegetable and equine farm. The SADC concluded that:

'Currently, only the preserved farm winery law provides statutory authority permitting the holding of weddings on a farm as a commercial marketing endeavor. Among the various conditions accompanying that permission are that the farm be ARDA-preserved, that it contain a winery, and that the privilege granted in the statute is limited to a 44-month pilot period. The law was enacted after the Governor's conditional veto message unambiguously stated that such events are not entitled to RTFA protection'; and

**WHEREAS**, during the July 13, 2017 meeting, the Morris CADB determined that weddings and celebratory life events are not included on the list of activities permitted by N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2A.13, and are not protected by the RTF Act; and

### **INDEX OF EXHIBITS**

Exhibits from Andrea Filippone:

May 1, 2017 application for a Site-Specific Agricultural Management Practice and.....A-1  
supporting documentation submitted by Anthony Sposaro

Exhibits from Cheryl LaPonte:

June 9, 2017 Complaint .....C-1

Exhibits from the public:

Public comments.....P-1

Exhibits from the Morris CADB:

May 8, 2017 letter from Katherine Coyle to Susan Payne, Exec. Dir., SADC .....B-1

June 2, 2017 Staff Report. ....B-2

June 12, 2017 letter from Katherine Coyle to Anthony J. Sposaro, Esq. ....B-3

**NOW THEREFORE BE IT RESOLVED**, after having considered exhibits A-1, C-2, P-1, and B-1 through B-4, the Morris CADB makes the following determinations:

1. The Boxwood Farm is a commercial farm as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3.
2. Weddings and celebratory life events are not included on the list of activities permitted by N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2A.13, and are not protected by the RTF Act.

**BE IT FURTHER RESOLVED**, that weddings and celebratory life events occurring on The Boxwood Farm property are outside the purview of the Morris CADB and remain under the jurisdiction of applicable local, state and federal authorities.

**BE IT FURTHER RESOLVED**, that pursuant to N.J.A.C. 2:76-2.3(g), the Morris CADB dismisses the requested for a SSAMP.

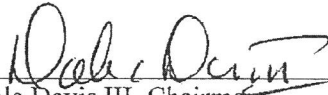
**BE IT FURTHER RESOLVED**, that pursuant to N.J.A.C. 2:76-2.7(g), the Morris CADB dismisses the complaint.

**BE IT FURTHER RESOLVED**, that certified copies of this resolution will be forwarded to the following individuals and agencies:

Cheryl LaPonte  
 Andrea Filippone  
 Township of Washington  
 State Agriculture Development Committee  
 Morris County Board of Chosen Freeholders

**BE IT FURTHER RESOLVED**, that pursuant to N.J.A.C. 2:76-2.7(k), any person aggrieved by the Morris CADB’s decision may appeal the decision to the SADC within 10 days from the receipt of the CADB’s decision. The SADC shall schedule a hearing and make a determination within 90 days of the receipt of the petition for review.

1. The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.
2. Any decision of the Morris CADB that is not appealed shall be binding.

  
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 Dale Davis III, Chairman  
 Morris CADB

8/10/17  
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 Date

	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
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Ms. Ashley Myers	✓			
Mr. Davis			✓	
Mr. Desiderio				✓
Ms. Hammond	✓			
Mr. Keller				✓
Mr. Ort	✓			
Mr. Thomson	✓			

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on August 10, 2017.

*W. Randolph*  
 Attorney At Law State of New Jersey