

**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2022-02**

RIGHT TO FARM CONFLICT RESOLUTION

**BACKER FARM
BLOCK 109, LOT 23
TOWNSHIP OF MENDHAM, MORRIS COUNTY, NEW JERSEY**

WHEREAS, pursuant to the Right to Farm Act (“RTF Act”), N.J.S.A. 4:1C-10.1(a) and the State Agriculture Development Committee’s (“SADC’s”) Right to Farm Rules (“RTF 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, The Morris County Agriculture Development Board (“Morris CADB”) received complaints filed by Mr. Peter Banos, Mr. David Rainis and Ms. Melissa Rainis, and Mr. Barrett and Ms. Barbara Kolton, against Backer Farm (C-1); and

WHEREAS, the complaints concern noise and traffic related to a live concert that took place on the farm on September 11, 2021; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.8(d)1, on November 9, 2021 and November 10, 2021, the Morris CADB informed the SADC and the Township of Mendham of the receipt of the complaints (B-1); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(b), the CADB shall confirm that the operation is a commercial farm pursuant to the RTF Act; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(c), the CADB shall determine (1) whether the commercial farm meets the eligibility criteria pursuant to the RTF Act, and (2) whether the dispute involves agricultural activities that are included in one or more of the permitted activities set forth in the RTF Act and addressed by an agricultural management practice regulation adopted by the SADC; and

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

WHEREAS, during the December 9, 2021 Morris CADB meeting, Ms. Katherine Coyle presented a Staff Report regarding the complaints (B-2); and

WHEREAS, during the December 9, 2021 Morris CADB meeting, the Morris CADB reviewed exhibits B-1, B-2, B-3, C-1 and F-1, and heard testimony from the following individuals: Mr. George

Koenig, Mr. Peter Banos, Mr. Stephen Dreskin, Mark Critchley, Esq., Nicole Voigt, Esq, Ms. Terrill Doyle, Mr. Glenn Pantel, and Ms. Kimberly Hart; 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 the Backer farm management unit consists of more than 5 acres, to qualify for protections of the RTF Act, it must produce at least \$2,500 of agricultural/horticultural product per year; and

WHEREAS, according to the Commercial Farm Certification submitted by Backer Farm (F-1), Backer Farm produced more than \$2,500 worth of agricultural products in 2019, 2020 and 2021; and

WHEREAS, the Backer farm management unit is comprised of the following parcels: Block 109, Lot 23, Block 107, Lot 59, Block 107, Lots 44 and 45, Block 144, Lots 42 and 43, and Block 109, Lot 22 in Mendham Township, Block 101 Lot 30, Block 101 Lot 32, and Block 2401 Lot 32 in Mendham Borough, and Block 33 Lot 110.02 in Chester Township; and

WHEREAS, according to the Morris County Board of Taxation (F-1), all lots, with the exception of Block 101 Lot 32 in Mendham Borough, are Farmland Assessed. Block 101 Lot 32 is not Farmland Assessed because it is owned by the Borough of Mendham; and

WHEREAS, during the December 9, 2021 Morris CADB meeting, the Morris CADB determined that Backer Farm is a commercial farm as defined in the RTF Act; and

Agricultural Activity:

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, pursuant to N.J.A.C. 2:76-2A.13 (B-3), Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events, "ancillary entertainment-based activities", including background live or recorded music, are permitted 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; and

WHEREAS, during the December 9, 2021 Morris CADB meeting, the Morris CADB determined that the dispute involves agricultural activities that are (1) included in one or more of the permitted activities set forth in the Act and are (2) addressed by an agricultural management practice regulation adopted by the SADC, namely, N.J.A.C. 2:76-2A.13; and

Public Hearing:

WHEREAS, on February 3, 2022, the Morris CADB held a Public Hearing pursuant to N.J.A.C. 2:76-2.8(d); and

WHEREAS, during the February 3, 2022 Public Hearing, Ms. Coyle presented a Staff Report (B-4); and

WHEREAS, during the February 3, 2022 Public Hearing, the Morris CADB reviewed exhibit B-4 and heard testimony from the following individuals: Mr. Richard Watson, Mr. Stephen Dreskin, Mr. Nunzio Esposito, Mr. George Koenig, Ms. Vicki Wayne, Mr. Stephen Wayne, Ms. Nora Bruechner, Ms. Terrill Doyle, Nicole Voigt, Esq., Ms. Kimberly Hart, and Mr. Barrett Kolton; and

Compliance with an Agricultural Management Practice:

WHEREAS, on September 11, 2021, Backer Farm held a concert with three rock bands. The music was amplified and heard for several hours. The event was marketed as a concert. A \$20 fee was charged to attend the concert. The complainants submitted photos and videos of the concert and the parking area to demonstrate the noise levels and the scale of the event, as well comments from other local residents impacted by the event; 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.

WHEREAS, while a variety of marketing efforts are eligible for the protections of the RTF Act, they must be:

- related to marketing the agricultural output of the farm;

- designed to attract customers to the farm by enhancing the experience of purchasing agricultural products;
- 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 the farm; and
- 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 farm; and

INDEX OF EXHIBITS

Exhibits from Complainants:

Complaints (Banos, Rainis, Kolton).....C-1

Exhibits from Farmer:

Commercial Farm Certification proofs:.....F-1

- Statement of Historic and Existing Farming Operations
- Property Tax Records
- IRS Schedule F, Form 1040, Profit or Loss from Farming and receipts

Exhibits from the Morris CADB:

November 9, 2021 and November 10, 2021 letters from Katherine Coyle.....B-1
to SADC and Mendham Township

December 9, 2021 Staff ReportB-2

N.J.A.C. 2:76-2A.13B-3

January 6, 2022 Staff ReportB-4

NOW THEREFORE BE IT RESOLVED, after having considered exhibits B-1 through B-4, C-1 and F-1, and having heard the public comments during the December 9, 2021 Morris CADB meeting and testimony provided during the February 3, 2022 Public Hearing, the Morris CADB makes the following determinations:

1. The concert that took place on September 11, 2021 on the Backer Farm did not comply with N.J.A.C. 2:76-2A.13, SADC regulations for on-farm direct marketing facilities, activities, and events, because the primary purpose of the event was to host a concert. Music, including background live or recorded music, is a permitted "ancillary entertainment-based activity" only if it is an incidental, accessory component of marketing the output of the farm. In this case, the concert was the primary activity; and
2. As the SADC had determined that the concert was a violation of the Backer Deed of Easement, and as such, a violation of N.J.A.C. 2:76-6.15, Deed Restrictions, repeat and continued

violations of the Deed of Easement may result in ineligibility of Backer Farm for the protections of the Right to Farm Act; and

BE IT FURTHER RESOLVED, that the Morris CADB lacks jurisdiction over events such as the one held on September 11, 2021. Such events are subject to the jurisdiction and enforcement of applicable municipal, state or federal agencies; and

BE IT FURTHER RESOLVED, that pursuant to N.J.A.C. 2:76-2.7(d), the decision of the Morris CADB, containing its findings and recommendations, shall be forwarded to the SADC, the aggrieved persons, the municipality in which the commercial farm is located, and the commercial farm owner, and the commercial farm operator, if applicable; and

BE IT FURTHER RESOLVED, that pursuant to N.J.A.C. 2:76-2.7(d), any person aggrieved by the decision of the Morris CADB shall appeal the decision to the SADC within 10 days of the receipt of the CADB's final decision. The SADC shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and make a determination within 90 days of receipt of the petition for review.

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

Dale Davis
Dale David (Mar 9, 2022 10:03 EST)

Dale Davis III, Chairman
Morris CADB

Mar 9, 2022

Date

	Yes	No	Abstain	Recused
Ms. Ashley Myers			✓	
Mr. Carrajat	✓			
Mr. Davis	✓			
Mr. Galfo	✓			
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 March 3, 2022.

K. Coyle