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September 15, 2023

Via Electronic Mail Only

Brian Smith, Esq.
Chief Counsel
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625

**Re: Response to Appeals of Cape May County CADB Resolution 2-2023
Granting a Site-Specific Agricultural Management Plan
Applicants: Michael and Robin Halpern
Property: Upper Township, Block 723, Block 37**

Dear Mr. Smith:

As you know, we represent the applicants in the above-referenced matter (the “Halperns”), who obtained an SSAMP allowing them to retrofit the existing pole barn on their fully preserved grape farm/vineyard (“Farm”) into a facility to process those grapes into wine, bottle it, and store it for sale off-site. The SSAMP does **not** include an on-site tasting room, wine sales on the Farm, or permission to conduct any special occasion events.

We are constrained to respond to the appeals of CADB Resolution 2-2023 (“Resolution”) filed by a group of neighboring property owners (“Objectors”) and Upper Township (“Township”). While the record speaks for itself, we must correct some of the assertions put forth by the appellants even before this matter is transmitted to the Office of Administrative Law. As the inaccuracies in the Objectors’ submission are legion, we address only the most glaring.

Claim: The Resolution allows the Farm to utilize “legislation that permits Bacchus parties, weddings, and application of toxic chemicals by men in full hazmat suit.” Objectors’ Appeal, at 2.

Reality: The Resolution specifically provides that the Halperns “agreed not to have a tasting room, commercial tasting, or commercial parking and that the SSAMP...does not include permission to conduct special occasion event or conduct on-farm direct marketing activities.” See Resolution, at 6. Moreover, the SSAMP requires all pesticide applications to comply with N.J.A.C. 2A:76-2A.6 (SADC adoption of the New Jersey Commercial Tree Fruit Production Guide) and the Rutgers Agriculture Experiment

Station's 2019 Commercial Grape Pest Control Recommendation for New Jersey. See Resolution, at 8.

Claim: “[T]he farm at issue is NOT a 5-acre farm.” Objectors’ Appeal, at 2.

Reality: A deed of easement in connection with the SADC’s State Agriculture Development Program restricted 5.208 acres of the Farm’s 5.223 acres to agriculture and horticulture use. See Exhibit D (Deed of Easement);¹ see also Exhibit A (Farm Area Plan (showing 5.126 acres of agriculture usage); Exhibit V (Township resolution approving purchase of development easement of 5.22 acres on Farm).

Claim: Notice of the hearing where the CADB determined the Farm qualified as commercial farm under the Right to Farm Act was defective. See Objectors’ Appeal, at 2.

Reality: The Objectors claim that the Halperns had to provide notice to a 200-foot list notice not only for the Farm, but also an adjacent non-farming lot they also own. As the CADB does not have any jurisdiction over non-farming lots, no such notice was required. In any event, the Halperns provided new notice for a subsequent CADB hearing where the board reaffirmed its initial decision.

Claim: The basis for the CADB approval of commercial farm status was the Halperns other farm “over 60 miles from the subject property.” See Objectors’ Appeal, at 3.

Reality: While the Halperns other vineyard is only 33, not 60 miles away, that was not the basis for the CADB decision. The Resolution specifically found that the Farm lot “consists of more than 5 acres that have been actively devoted to agricultural use for more than 2 years...” Resolution, at 6.

Claim: A CADB member’s statement that he was voting for the proposal because the Halperns’ “got 5.2 acres in a preserved program” was referring to a soil conservation program. See Objectors’ Appeal, at 3.

Reality: While implementation of a soil conservation program is a generally accepted agricultural management practice, see N.J.A.C. 2:76-2A.7, the transcript and record clearly demonstrate the CADB member was referring to the farmland preservation easement. As the Halperns have always been deemed in full compliance during stewardship inspections, that is in fact evidence that the Farm contains at least 5 acres devoted to agricultural use.

Claim: A farm only qualifies for farmland assessment, and commercial farm status, if it has “5 acres of cultivated land.” See Objectors’ Appeal, at 4.

¹ All references to exhibits refer to the exhibits entered into evidence at the CADB hearing and referenced in the Resolution.

Reality: Qualification requires 5 acres “devoted to agricultural or horticultural use.” N.J.S.A. 54:4-23.23. That includes not “only the land that produces agricultural...products for sale...but also land that is supportive and has a relationship to the agricultural products...” including, i.e. “land under and used with barns, sheds, packing house, [and] farm storage facilities,” “land kept fallow during the growing season,” and “land enrolled in a soil conservation program.” N.J.A.C. 18:15-6.2

As Objectors’ appeal is premised almost exclusively on strawman arguments, the above correction of the record is only the tip of the proverbial iceberg.

We would be remiss if we did not point out the purported concern about buffering along the north side of Farm raised in the Township’s appeal is also belied by the record. See Township Appeal, at 2. The Halperns specifically agreed to the Township’s proposed additional buffering in that area, which requirement was encompassed in the Resolution. See Resolution, at 9 (“Applicant has specifically agreed... to provide six-foot solid fencing for the first properties along Lots 43, 44, and 45 [i.e. the north side of the Farm, see Exhibit T (Revised Site Plan)] with some planting and shade trees and for additional buffers as set forth in the approved plan.” See Resolution, at 9.

The types of objections raised to the SSAMP here by the Objectors and the Township underscore the very reason the Right to Farm Act was enacted. The Halperns purchased and operate a fully preserved commercial farm on a property that has been continuously for at least 50 years. Yet, the Objectors and the Township seek to stop it from farming at all, let alone operating an economically viable farm. Should that attempt succeed, the Halperns will have a property that can only be used for farming but on which they are prohibited from farming. The SADC should not allow such an absurd result.

Accordingly, the appeals must be denied.

Very truly yours,

HANKIN SANDMAN PALLADINO
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By: /s/ Colin G. Bell
Colin G. Bell, Esq.

CGB/jb

cc: All counsel (via electronic mail)
Cape May County CADB (via electronic mail)

