

The Right to Farm Act in New Jersey



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RTF Act: Dual Protections for Eligible Farms



From Restrictive Local Regulations

Preemption of municipal and county ordinances



From Neighbor & Municipal Nuisance Suits

Irrebuttable presumption that no commercial agricultural operation constitutes a public or private nuisance

Lee Turkey Farm
East Windsor, Mercer County

Google

RTF Act: Process



1. Conflict Resolution

- Complaint against a farmer is filed with CADB by municipality (regarding zoning or other ordinances) or by neighbor (nuisance)

2. Site-Specific Agricultural Management Process (SSAMP) Request

- Application is made by farmer to CADB; if no CADB exists, application is made to SADC
- Acts as a proactive “shield” for farm owner/operator

3. A combination of the above

- Complaint can lead to SSAMP request in the same proceeding before CADB

Agricultural Mediation

Parties can also
use mediation,
an alternative to
the formal RTF
process.

Mediation is
free,
voluntary,
confidential
& easy



Complaints Against Commercial Farms

N.J.S.A. 4:1C-10.1a.:

Any person aggrieved by the operation of a commercial farm **SHALL** file a complaint with the CADB or with the SADC in counties where no CADB exists **PRIOR TO FILING AN ACTION IN COURT.**

But some towns still file complaints in municipal court, and when that happens. . .





To: Municipal Court Judge

CC: Prosecutor, CMA, Zoning Officer

From: Brian D. Smith, Esq., Chief of Legal Affairs, SADC

The purpose of this communication is to advise that any complaint against FARM must be heard by the CADB as a matter of primary jurisdiction pursuant to **Township of Franklin v. den Hollander**, **Borough of Closter v. Abram Demaree Homestead** and **Curzi v. Raub**.

Den Hollander involved alleged municipal ordinance violations; **Closter** involved public nuisance allegations and **Curzi** involved private nuisance allegations.

The Supreme Court and Appellate Division unequivocally stated that any complaint against a farm must first be heard by the CADB pursuant to the Right to Farm Act (RTFA), to determine whether the landowner is operating a "commercial farm" and, if so, whether the disputed activities constitute an agricultural operation or practice that can be protected under the RTFA.

I recommend that Your Honor consider dismissing with prejudice the above matter pending before the municipal court. If Your Honor has any questions or needs anything further, then please contact me at your convenience.


Township of Franklin v. den Hollander, 172 N.J. 147 (2002)

Borough of Closter v. Abram Demaree Homestead, 365 N.J.Super 338 (App.Div.2004)

Curzi v. Raub, 415 N.J.Super.1 (App.Div.2010)

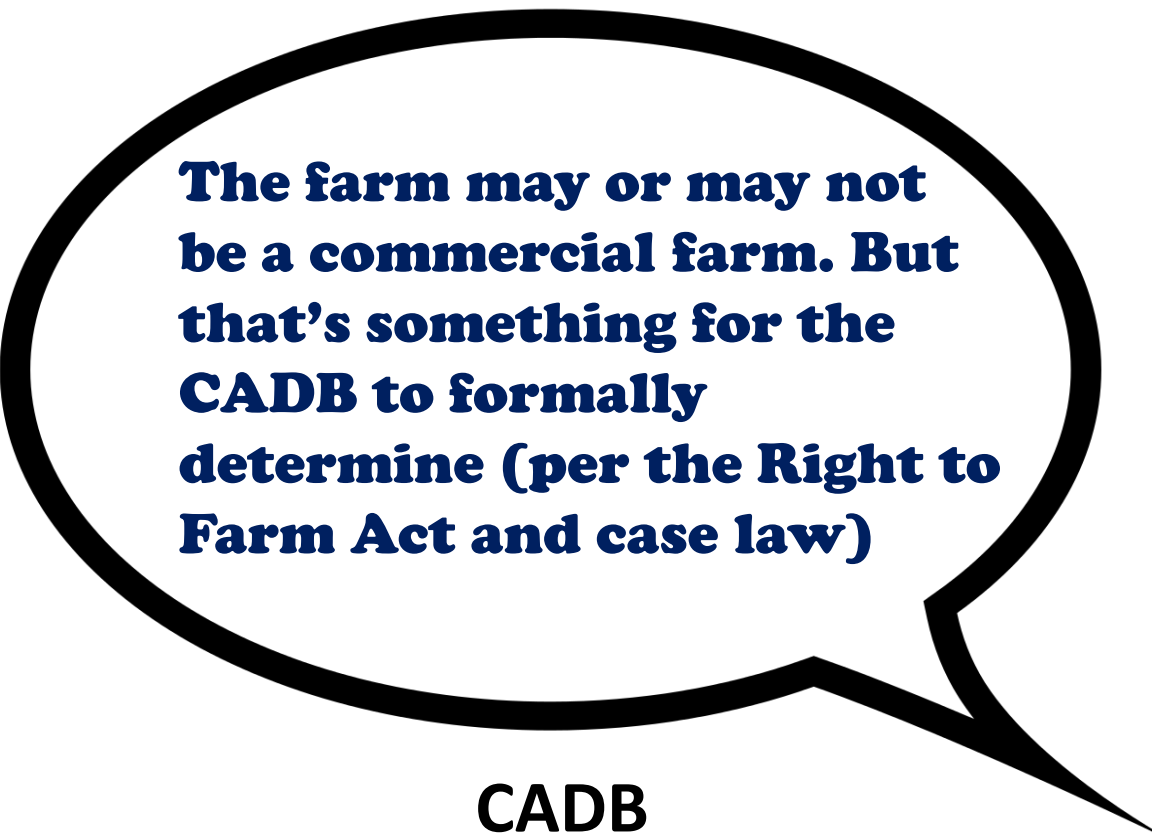
CADB Primary Jurisdiction

The CADB gets to decide whether the farm is a commercial farm. It also determines whether the Right to Farm Act's additional threshold criteria are met and whether protection and preemption are warranted.



But it's not a commercial farm, so we can go to court anyway.

Municipality



The farm may or may not be a commercial farm. But that's something for the CADB to formally determine (per the Right to Farm Act and case law)

CADB

CADB Primary Jurisdiction

- **Abram Demaree Homestead** opinion:

“We hold now that when a farming operation arguably meets the definition of a commercial farm under N.J.S.A. 4:1C-3, it is the CADB or SADC that must first decide whether the farm actually meets the definition. The agency is deprived of jurisdiction only when the operation clearly cannot meet the definition of a commercial farm under the Farm Act.” *365 N.J.Super. at 349-51.*

- **Den Hollander** opinion:

“There may be instances where a CADB or the SADC concludes that an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue, however that determination shall be made by the CAB or SADC *in the first instance*, rather than by the municipality or a court.” *Township of Franklin v. den Hollander, Superior Court of N.J., Appellate Division (2001)*

RTF Act: Criteria to Receive Protections

The Right to Farm Act's threshold criteria are formally determined by CADB (or by SADC where no CADB exists)

Criterion #1: Farm meets the definition of COMMERCIAL FARM in N.J.S.A. 4:1C-3: Farm management unit (FMU) is



5 acres, satisfying FA criteria, & producing products worth **\$2,500 or more annually**; or



5 acres, otherwise satisfying FA criteria, & producing products worth **\$50,000 or more annually**; or



FMU that is a **beekeeping operation** producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth **\$10,000 or more annually**.

RTF Act: Criteria to Receive Protections

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Criterion #2: LOCATION – The farm is located in an area which, as of 12/31/97 or thereafter, agriculture is a permitted use, OR was in operation as of 7/2/98 (N.J.S.A. 4:1C-9)

Criterion #3: PROTECTED ACTIVITY – The activity is included in the list of protected activities in N.J.S.A. 4:1C-9

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities with SIC classifications for agriculture, forestry, fishing and trapping.
- b. Process and package agricultural output of farm.
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards.
- d. Replenish soil nutrients and improve soil tilth.
- e. Control pests, predators and diseases of plants and animals.

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas.
- Conduct on-site disposal of organic agricultural wastes.
- 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.

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of, and the rules and regulations adopted pursuant to, P.L. 2009, c.213
- Engage in any other agricultural activity as determined by the SADC and adopted by rule...

RTF Act: Other Eligibility Requirements

Criterion #4: Compliance with applicable State and federal laws and regulations

Examples:

Stormwater management

Uniform Construction Code

Freshwater wetlands

Animal waste management

RTF Act: Other Eligibility Requirements

Criterion #5: Does not pose a direct threat to public health and safety

Example:

- CSA entrance/exit driveway creates a traffic hazard on intersecting public road



RTF Act: Other Eligibility Requirements

Criterion #6: Activity conforms to generally accepted agricultural management practices (AMPs)

- 12 adopted AMPs; can also get Site-Specific AMP



RTF Act: Agricultural Management Practices (AMPS)/ Regulations



- Apiaries
- Poultry manure
- Land application of food byproducts
- Commercial vegetable production
- Commercial tree fruit production
- Natural resource conservation
- On-farm composting
- Fencing for wildlife control
- Equine activities
- Aquaculture
- Solar energy
- On-farm direct marketing
- Pick Your Own operations (eligible for RTF)

State Laws/Regs. Delegated to Towns

- State laws & regulations must **STILL** be complied with by the commercial farm even though *enforcement has been delegated to the municipality or county* & is set forth in a local ordinance or county resolution.
- **BUT**, if municipality or county requirements exceed State standards, preemption is possible

Example #1: Municipality's storm water management ordinance exceeds State standards and requires a 1,000 foot setback to streams

Example #2: Municipality adopts a septic code requiring > 10 feet to ground water

CADB must still balance local laws with farmer's legitimate need to engage in the agricultural activity

- **AND** CADBs have the right to defer issues back to the municipality if too complex for the CADB

Limits to CADB's Jurisdiction

Health and Safety

“...although the CAB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the CAB is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practice with these standards in mind.”

Township of Franklin v. den Hollander, N.J.

Supreme Court (2002)

“The required attention to public health & safety imposes a limitation on such jurisdiction and requires a CADB to consider the impact of municipal land use ordinances, deferring to the municipality when appropriate.”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

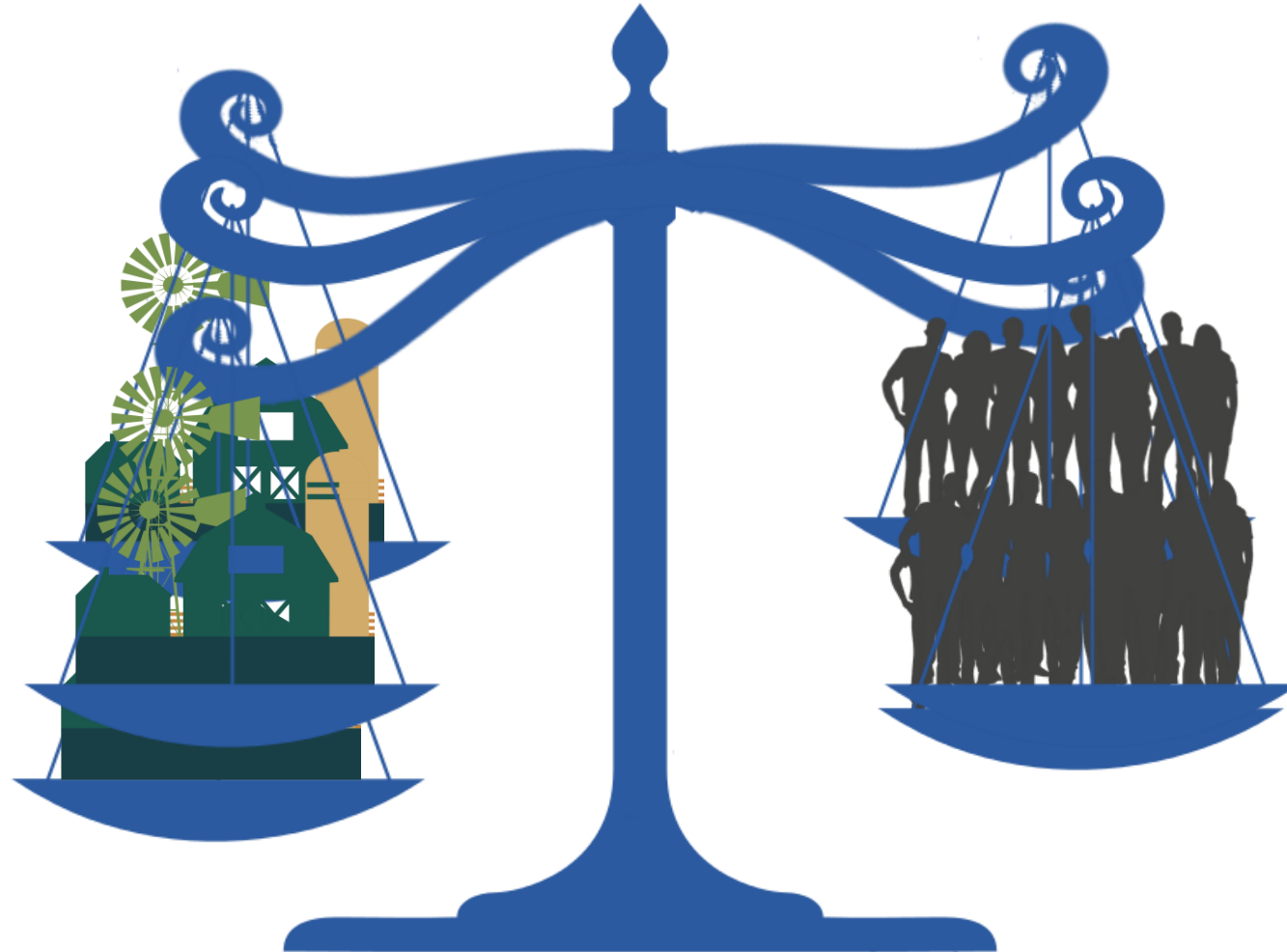
Preemption of Local Regulations

- ✓ Agricultural activities MAY preempt municipal and county regulations.
- ✓ Appropriate consideration and deference MUST be given to local standards.



Balancing Test

**Balance
agricultural
needs...**



**...against
municipal
public
health and
safety
concerns**

Farmer has to show “legitimate agriculturally-based reason” for not complying with municipal regulations

Site Plan Review

But what about SITE PLAN REVIEW?

- Review of site plan elements is often needed (particularly for on-farm direct marketing facilities)
- CADBs maintain primary jurisdiction over local regulations, such as when SSAMP requests are made, but...
- Complexity of site plan review process might exceed the financial or technical capabilities of CADBs
- CADBs do not have statutory jurisdiction to review some elements (e.g., UCC, ADA requirements, other State laws)



Site Plan Review

Farmers may:

Apply to CADB for SSAMP – and CADB can give approval of many site plan elements, but deferring to local review over others

OR

Apply to municipality for site plan review – and seek relief from specific requirements with the CADB afterward

CADBs and/or municipality can:

Waive or reduce requirements based on site-specific considerations, for example:

Scale

Intensity

Farm's Setting

Road

Minimum Improvements Needed For Safety



Formal Right to Farm Determinations

RTF Complaints (Conflict Resolution matters)

www.nj.gov/agriculture/sadc/rtfprogram/formdet/conflictres/index.html

Site-Specific AMPs (SSAMPs)

www.nj.gov/agriculture/sadc/rtfprogram/formdet/ssamp/index.html

SADC Website Navigation

www.nj.gov/agriculture/sadc/

www.nj.gov/agriculture/sadc/rtfprogram/

www.nj.gov/agriculture/sadc/rtfprogram/formdet/



RTF Process / Procedures

- **CADB hears the matter and issues a decision**
- **CADB's decision can be appealed to SADC**
 - ✓ Within 10 days of receipt of resolution in a complaint case
 - ✓ Within 45 days of receipt of resolution in an SSAMP case
- **SADC re-hears the matter (usually at an OAL hearing)**
- **SADC issues a Final Agency Action (final decision)**
- **SADC's decision can be appealed to the Appellate Division of Superior Court**



Agricultural Mediation Program

- The more informal way to resolve conflicts – free service offered by the SADC
- Mediation is a voluntary process in which a trained, impartial mediator facilitates a discussion between parties with a dispute
- Parties express their points of view and interests, and mediator helps them narrow the issues and look for solutions
- CADBs and SADC encourage use of mediation before formal RTF process begins – confidential and easy, can help resolve issues quickly and foster better relationships



For more information:

- **Right to Farm website**
<http://nj.gov/agriculture/sadc/rtfprogram/>
- **Right To Farm Guidebook / Fact sheet**
- **Ag Mediation Guidebook / Fact sheet**
- **Contact your local CADB**
<http://nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>
- **Contact the SADC**
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