

ORDINANCE 719

RIGHT TO FARM ORDINANCE

WHEREAS, by virtue of the authority contained in Section 2-410 of the Somerset County Code of Public Local Laws, the County Commissioners of Somerset County are authorized to adopt ordinances or regulations and take other action to protect a person's right to farm or to engage in agricultural and forestry operations; and

WHEREAS, the adoption of this Ordinance is necessary to serve the public interest and the efficient regulation of land use in Somerset County; and

WHEREAS, the County Commissioners of Somerset County duly advertised this Ordinance, conducted a public hearing upon it, and has fully considered its effect.

NOW, THEREFORE, the County Commissioners of Somerset County do hereby ordain as follows:

ARTICLE I.

Section 1. Findings and Policy.

A] It is the declared policy of the County to preserve, protect and encourage the development and improvement of its agricultural and forestry lands for the production of food, fiber and other agricultural and forestry products. When nonagricultural land uses extend into agricultural and forestry areas, agricultural and forestry operations can become the subject of lawsuits. As a result, agricultural and forestry operators are sometimes forced to cease or curtail their operations. Others are discouraged from making investments in agricultural and forestry improvements to the detriment of the economic viability of the County's agricultural and forestry industry as a whole. It is the purpose of this Ordinance to reduce the loss to the County of its agricultural and forestry resources by limiting the circumstances under when agricultural and forestry operations may be deemed to constitute a nuisance, trespass, or other interference with the reasonable use and enjoyment of land, including, but not limited to smoke, odors, flies, dust, noise, chemicals or vibration; provided that nothing in this Ordinance shall in any way restrict or impede the authority of the State and of the County to protect the public health, safety and welfare.

B] It is in the public interest to promote a more clear understanding between agricultural and forestry operations and non-agricultural residential neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.

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This ordinance is not intended to and shall not be construed as in any way modifying or abridging local, state or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality), and the like.

C] An additional purpose of this Ordinance is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural and forestry operations of the inherent potential inconvenience associated with such purchase or use. These potential inconveniences include, but are not limited to, noises, odors, dust, flies, chemicals, smoke, vibration, and hours of operation that may accompany agricultural and forestry operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural and forestry operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

Section 2. Definitions.

A] "Agricultural Land" means all real property within the boundaries of Somerset County that is (1) lying in the Agricultural District or (2) carried on the tax rolls of the State Department of Assessments and Taxation as agricultural or (3) all other land that has been used as an agricultural or forestry operation continuously for one (1) year and (4) woodland which is carried on the tax rolls as agricultural.

B] "Agricultural Operation" includes, but is not limited to, all matters set forth in the definition of "operation" at Md. Cts. & Jud. Proc. Code Ann., Sec.5-308(a), as amended from time to time; the productions of all matters encompassed within the definition of "Farm product" at Md. Agriculture Code Ann., Sec. 10-601(c), as amended from time to time; the cultivation and tillage of the soil; composting; production, harvesting and processing of agricultural crops; raising poultry; production of eggs; production of dairy products; production of livestock, including pasturage; production of bees and their products; production of fish; production of fruit, vegetables and other horticultural crops; production of aquatic plants; aquaculture; production of timber and any commercial agricultural procedure performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market; and usage of land in furtherance of educational and social goals, such as 4-H, Future Farmers of America, and the like.

C] Forestry Operation - Includes, but is not limited to, silviculture and the cultivation, harvesting, and production of all items, products, and the like, derived from the practice of forestry, as encompassed within the definition of "practice forestry", as set forth in Section 7-101(e) of the Business

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Occupations and Professions Article of the Annotated Code of Maryland, as amended from time to time.

D] "Generally Accepted Agricultural and Forestry Practices" means those methods used in connection with agricultural and forestry operations which do not violate applicable federal, state or local laws or public health safety and welfare and which are generally accepted agricultural and forestry practices in the agriculture and forestry industry. Generally Accepted Agricultural and Forestry Practices includes practices which are recognized as best management practices and those methods which are authorized by various governmental agencies, bureaus, and departments, such as the Somerset County Cooperative Extension Service of the University of Maryland, and the like. If no generally accepted agricultural or forestry practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted agricultural and forestry practice.

Section 3. Limitation of Actions.

A] A private legal or administrative action other than an injunction issued on an emergency basis may not be maintained on account of an agricultural or forestry operation conducted on agricultural land on the grounds that the agricultural or forestry operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural or forestry operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural or forestry practices, zoning and other regulatory requirements until final judgement by the Agricultural Reconciliation Board and appeal to the Board of Zoning Appeals.

B] Notwithstanding any provision of this Section, no action alleging that an agricultural or forestry operation conducted in accordance with generally accepted agricultural or forestry practices has interfered with the reasonable use or enjoyment or real property or personal well being shall be maintained if the plaintiff has not sought arbitration through the Agricultural Reconciliation Board and appeal to the Board of Zoning Appeals.

Section 4. Somerset County Agricultural Reconciliation Board.

A] There is hereby created and established the Somerset County Agricultural Reconciliation Board, which shall mediate and arbitrate disputes involving agricultural or forestry operations conducted on agricultural lands and issue opinions on whether such agricultural or forestry operations are conducted in a manner consistent with generally accepted agricultural or forestry practices and to issue orders and resolve disputes and complaints brought hereunder.

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B] The Agricultural Reconciliation Board shall be composed of five persons, all county residents, and shall be appointed by the County Commissioners. Members of the Board shall serve four year terms; however, the initial appointments shall be as follows:

- a. One member shall be chosen to serve a one year term;
- b. Two members shall be chosen to serve a two year term;
- c. Two members shall be chosen to serve a four year term;
- d. After these initial appointments, all terms shall be for a full four year term.

C] Two (2) members of the Board shall be chosen from nominees of the Somerset County Farm Bureau and one (1) member shall be chosen from nominees of the Somerset County Forestry Board.

D] Not less than two but not more than three members of the Board shall be engaged in the agricultural or forestry industries.

E] The Board may elect a chairman and adopt forms and procedures.

F] The Board shall be subject to the State Open Meetings Law.

G] The Board shall meet one time per year and members shall serve as volunteers, with no monetary compensation other than expense reimbursement as provided by the County Commissioners.

H] the County Agricultural Extension Agent, or such agent's designee may serve as a consultant to the Board.

I] In a hearing the Board shall first attempt to mediate and if that fails it shall arbitrate.

Section 5. Procedures for resolution of disputes regarding agricultural and forestry operations.

A] If any conflict cannot amicably be resolved regarding an interference with the use or enjoyment of property from agricultural or forestry operations conducted on agricultural or forestry land, the parties to that conflict shall seek mediation and shall submit the controversy to the Agricultural Board, in writing, through the Somerset County Department of Technical and Community Services. The Director of the Department, or his/her designee, shall then notify all Board members and persons known to have an interest in writing at least thirty days prior to any scheduled hearing. Forms, if provided, shall be used. The fee shall be paid upon filing.

B] The Agricultural Reconciliation Board will conduct its proceeding in an informal manner and the rules of evidence shall

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not apply. The Board has the power to hold hearings and to compel testimony under oath and the production of documents. In each case before it the Agricultural Reconciliation Board shall make findings of fact and issue orders settling or otherwise resolve controversies arising out of agricultural or forestry operations. An order of the Board may be mandatory or directory. The Board shall have the right to issue opinions and make suggestions with respect to matters brought before it and shall have continuing jurisdiction to rehear any matter brought before it to make further findings or issue further orders with respect to the matter. The Board may, as a part of its proceedings, request a report from the County Agricultural Extension Agent, such agent's designee, or such other persons having expertise in the subject matter of the complaint as the Board may reasonably determine. Any cost, not to exceed an amount equal to the application fee, incurred in obtaining such report may be assessed against either party.

C] Three Agricultural Reconciliation Board members shall constitute a quorum.

D] If the hearing ends in a tie vote, no action shall be taken on the complaint that formed the basis of the hearing, but the applicant shall be entitled to an appeal de novo to the Board of Zoning Appeals. No similar case may be brought upon the same set or essentially the same set of facts between the same parties once it has been decided by the Board unless there is a significant change in conditions.

E] Where indicated, orders of the Agricultural Reconciliation Board shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within thirty days of the date of the Board's judgment, a party appeals such order to the Board of Zoning Appeals. Any appeal shall be heard de novo. In hearing the appeal, the Board of Zoning Appeals shall give deference to the decision of the Agricultural Reconciliation Board.

F] If the Agricultural Reconciliation Board or a Court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural or forestry operation conducted on agricultural or forestry land was in bad faith or without substantial justification, the Agricultural Reconciliation Board or Court may require that party to pay the owner of the agricultural or forestry operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees incurred by that party in defending against the action. The Agricultural Reconciliation Board, while finding for either party in a particular case may, in addition, make non-binding recommendations to the parties in an attempt to mediate the situation so that both parties can live and work in harmony in the agricultural area.

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G] Upon the filing of the complaint, the Department charged with administering this law shall make an investigation of the complaint which may include a visit to the site, interviews with witnesses and parties and personal observations of the subject matter of the complaint. In the event the Department determines that there is no reasonable cause to proceed with a hearing before the Agricultural Reconciliation Board, because no condition exists for the Board to resolve or that the complaint is frivolous, petty or unreasonable, the Department may dismiss the application. In the event of dismissal by the Department the applicant shall have the right to file an appeal to the Board of Zoning Appeals within 15 days of notification of the dismissal. All costs associated with such an appeal shall be borne by the applicant and shall be those fees as prescribed in the Board of Zoning Appeals fee schedule as may be amended from time to time.

H] The Agricultural Reconciliation Board shall have broad jurisdiction to resolve all matters relating to disputes involving agricultural or forestry operations conducted on agricultural lands that are brought before it regardless of the exact complaint filed. The Board shall attempt to resolve all issues between the applicant and the farmer or forester involved in the application. The Agricultural Reconciliation Board's determination with respect to an application may resolve the issues brought with respect to the dates upon which the controversies occurred and may resolve such issues for future occurrences.

Section 6. Somerset County Agricultural Reconciliation Board Standards.

A] Any action conducted in accordance with generally accepted agricultural or forestry practices and in accordance with all zoning and other regulatory requirements shall be considered lawful by the Board, but the Board shall attempt, pursuant to its powers to ameliorate any such condition or lessen its impact on neighboring properties.

B] The Board shall consider the nature of the complaint (i.e., dust, odor, noise, drainage, or other complaint) in the light of the necessity, as a part of the agricultural or forestry operation, of creating such dust, noise, drainage, or other complaint.

C] The intensity of the condition caused by the agricultural or forestry practices shall be considered. Physical characteristics of the land and improvements in the area of the agricultural or forestry operation condition complained of.

D] Use and conditions of the land and improvements upon the taking of title to the real estate involved by all parties affected shall be considered.

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E] Difficulty or undue expense in making changes to the agricultural or forestry operation to mitigate the condition complained of shall be considered.

F] Time of onset of such condition shall be considered.

G] If a notice pursuant to subsection (1) hereof was or should have been given it will be considered.

H] Prior decisions of the Board shall be considered.

Section 7. Additional Board requirements and procedures.

A] Standing. Any person filing a complaint before the Board must have standing and be aggrieved which for the purposes of this Section shall require that the person filing the complaint must regularly reside, own, or be engaged in work on a property near the agricultural or forestry operation or adjacent to or so near the property upon which the agricultural or forestry operation is conducted that an improperly conducted operation would have an undue and unwarranted adverse effect on the persons health, quiet enjoyment or property values. All complainants must be natural persons.

B] Fees. The activities of the Agricultural Reconciliation Board shall, where practical, be paid for by application fees; it being the intent that the Board shall be essentially self-sufficient. The application fee shall be set by the County Commissioners by resolution. The applicant seeking relief before the Agricultural Reconciliation Board shall pay the application fee upon the filing of the application.

C] Consolidation. The Agricultural Reconciliation Board may consolidate similar cases.

D] Complaints based upon substantially identical facts other than to enforce a finding or order of the Agricultural Reconciliation Board of Board of Zoning Appeals shall be dismissed by the Department pursuant to Article I, Section 5(G) hereof.

E] Proceedings of the Agricultural Reconciliation Board shall be upon at least thirty (30) days written notice to the parties involved in the proceeding. Notice shall be considered given if sent Certified Mail, Return Receipt Requested, to the address of the applicant as given in the application and to the other parties as reflected by the County tax assessment records. Notice shall be considered given whether actually received or not, but in cases where the certified letter is returned the Department shall make at least two (2) other attempts via other forms of communication to advise the party of the proceeding.

F] Upon request and for good cause shown the Department may schedule a proceeding but new notices of the rescheduled time shall be given in the same manner as notices for an original proceeding. Any person actively engaged in an agricultural or forestry operation shall have the right to a continuance of sufficient time so that if requested, no proceeding of the Agricultural Reconciliation Board shall be held during the period of time from March 15 through May 15 or from September 15 through November 30, provided, however, that the Department may schedule a proceeding during that period of time where the Department determines that there is an emergency situation having a significant effect on the applicant's property rights or reasonable enjoyment of the applicant's property. Continuances must be requested in writing no less than 15 days prior to the hearing.

Section 8. Right to Farm Notice and Real Estate Transfer Disclosure.

A] Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of this Right to Farm Ordinance which shall be in substantially the form set forth in appendix A.

B] In addition, because of the County's desire to maintain a good neighbor policy and the County's desire to provide this information to County real property owners, Somerset County shall publish a "Right to Farm Notice" (Appendix B) once each fiscal year in a newspaper of general circulation.

C] Penalty for Violation. Any person who violates any provision of this section is guilty of an infraction punishable by a civil penalty not exceeding One Hundred Dollars (\$100.00). Failure to comply with any provision of this Right to Farm Notice and Real Estate Transfer Disclosure section shall not prevent the recording of any document, or the title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this Ordinance.

ARTICLE II. SEVERABILITY.

Should any provision, section, paragraph or subparagraph of this Ordinance, including any code or text adopted hereby, be determined null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having competent jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

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ARTICLE III. SECTION HEADINGS, CHAPTER HEADINGS, TITLES.

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or text adopted hereby.

ARTICLE IV. EXISTING LIABILITIES

Except to the extent specifically provided herein, this Ordinance shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing on the date of its enactment. It is not intended hereby that the law of non conforming use be changed, or that the court's rule of construction concerning the application of changes in the law during the pendency of actions be modified hereby, but simply that this Ordinance should not affect a change between private parties.

ARTICLE V. EFFECTIVE DATE.

This Ordinance shall become effective when adopted.

ADOPTED THIS 18th day of April, 2000.

THE BOARD OF COUNTY COMMISSIONERS
FOR SOMERSET COUNTY, MARYLAND

ATTEST:



Charles E. Massey
Clerk


Phillip L. Gerald, President

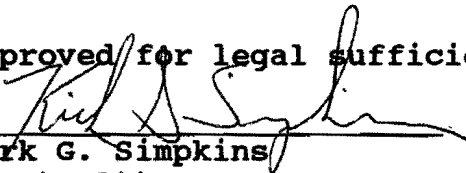

James N. Ring


M. William Ward


Clarence I. Laird


Charles F. Fisher

Approved for legal sufficiency:


Kirk G. Simpkins
County Attorney

APPENDIX A

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF SOMERSET, STATE OF MARYLAND, DESCRIBED AS _____

THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE SOMERSET COUNTY RIGHT TO FARM ORDINANCE IN COMPLIANCE WITH SOMERSET COUNTY ORDINANCE NO. _____ (The Somerset County Right to Farm Ordinance).

SELLER'S INFORMATION

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

SOMERSET COUNTY VALUES AGRICULTURAL AND FORESTRY OPERATIONS (as defined by the Somerset County Right to Farm Ordinance) WITHIN THE COUNTY. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Somerset County has determined that inconveniences or discomforts associated with such agricultural and forestry operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural and forestry management practices. Somerset County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this County regarding whether agricultural and forestry operations conducted on agricultural or forestry lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural and forestry practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Somerset County Department of Technical and Community Services for additional information.

SELLER: _____ DATE: _____

SELLER: _____ DATE: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

BUYER: _____ DATE: _____

BUYER: _____ DATE: _____

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APPENDIX B

SOMERSET COUNTY RIGHT TO FARM NOTICE

Somerset County recognizes and supports the right to farm agricultural and forestry lands in a manner consistent with generally accepted agricultural and forestry management practices. Residents of property on or near agricultural or forestry lands should be prepared to accept the inconveniences or discomforts associated with agricultural or forestry operations, including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Somerset County has determined that inconveniences and discomforts associated with such agricultural and forestry operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural and forestry practices. Somerset County has established an agricultural reconciliation committee to assist in the resolution of disputes which might arise between persons in this County, regarding whether agricultural or forestry operations conducted on agricultural or forestry lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural and forestry practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Somerset County Department of Technical and Community Services.

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BY *JH* 1977

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