State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 03248-10

AGENCY DKT. NO. SADC ID# 852

HAMPTON TOWNSHIP AND DAVID PIERSON,

Petitioners,

v.

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD AND BRODHECKER FARM, LLC,

Respondents.

Ronald S. Heymann, Esq., for petitioner (Heymann & Fletcher, attorneys)

Francis J. McGovern, Esq., for Hampton Township (McGovern & Roseman, P.A., attorneys)

Ursula H. Leo, Esq., and **Richard I. Clark**, Esq., for Brodhecker Farm, LLC

Record Closed: February 13, 2013 Decided: August 14, 2013

BEFORE **CARIDAD F. RIGO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Hampton Township in Sussex County (herein after Township) and town resident David Pierson appeal a January 19, 2010, resolution by the Sussex County Agriculture

Development Board (herein after SCADB) approving a site-specific agricultural management practice (hereinafter referred to as SSAMP) determination for a Brodhecker Farm, LLC (herein after Brodhecker) under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. (herein after RTFA). The approval authorized Brodhecker to operate as a commercial farmer.

On November 13, 2006, the Township advised Brodhecker that Brodhecker might need a variance to operate a store. In May 2007, Brodhecker applied for a variance and the Township zoning board held a hearing on the application. Before the zoning board issued the variance, Brodhecker withdrew the application. On August 6, 2007, the zoning board issued a "cease and desist" order regarding the store.

On August 31, 2007, Brodhecker submitted a complaint to the SCADB regarding the cease and desist order. On September 17, 2007, the SCADB considered Brodhecker's complaint. At that meeting, Sussex County counsel advised the SCADB that the complaint presented "a conflict of interest or prejudice by the [SCADB] since the SCADB's chairperson is one of the owner's of Brodhecker Farm." Accordingly, the SCADB forwarded the complaint to the State Agricultural Development Commission (SADC). The SADC advised the SCADB to request an advisory opinion from the Local Finance Board regarding the conflict-of-interest issue. On March 7, 2008, the Local Finance Board requested more information. The same day, the SADC rejected a request by Brodhecker to consider the matter. The SADC noted that since the SCADB may eventually exercise jurisdiction as a result of the Local Finance Board's decision, little sense is made by having the SADC hear the site-specific application at this time, particularly in view of Mrs. Brodhecker's membership on the SCADC.

On July 10, 2009, the Local Finance Board determined that three of six SCADB members did not have a conflict of interest with respect to Brodhecker's application. The Local Finance Board noted that Jane Brodhecker, whose family owns Brodhecker Farm, is also the chair of the SCADB.

On or about February 24, 2009, Brodhecker filed an application for a site-specific agricultural management practice determination from the SCADB in connection with

Brodhecker's wholesale and retail operations at the farm. The SCADB held hearings on the application on May 18, June 15, July 20, and August 17, 2009, and on January 19, 2010, it issued a resolution granting Brodhecker the right to operate a commercial farm pursuant to the Right to Farm Act.

On January 27 and 29, 2010, the Township of Hampton and David Pierson appealed the board's decision to the State Agricultural Development Commission pursuant to N.J.S.A. 4:1C-10.2 and N.J.A.C. 2:76-2.3(f). David Pierson lives across the street from the Brodhecker farm.

The matter was referred to the Office of Administrative Law where it was filed on March 19, 2010. After a series of prehearing and settlement conferences, hearings were held on January 24, 25, 2011, and March 22, 2011. On March 29, 2011, a site visit took place where additional evidence was taken. On or about March 30, 2011, the parties asked the undersigned to place the matter on inactive status while they tried to mediate the issues and perhaps come to an amicable resolution. Their request was granted. However, mediation was not successful and I was so advised on April 27, 2012. Also, in the interim a substitution of counsel occurred. After the parties filed closing briefs and reply briefs the record closed on February 13, 2013. Due to the voluminous work load and the illness of this ALJ, extensions for the writing and issuing of this Initial Decision were requested and received.

ISSUES

1. Was the SCADB improperly constituted?
2. Does Brodhecker's operation qualify as a farm market?
3. Does Brodhecker's operation present public health and safety concerns?
4. Are the products addressed in the SSAMP protected?
5. Did members of the SCADB have a conflict of interest with respect to Brodhecker's application?
6. Should the SSAMP be amended to include Brodhecker's proposed parking area plan?

FACTUAL DISCUSSION

The basic and undisputed **FACTS** include the following:

Brodhecker Farm is an approximately 164-acre farm in Hampton Township, Sussex County, New Jersey. The farm was purchased by Thomas and Jane Brodhecker in 1969. Brodhecker grows corn, hay, mills grain and feed, and raises livestock. Brodhecker sells the products his farm produces. Also within the farm Brodhecker operates a retail store where he sells additional products that are not produced in the farm. Some products that are sold and not produced from the farm land are: gazebos, sheds, livestock shelters, turnout sheds, tractors, hay wagons, manure spreaders, feeders, waterers, muck boots, lime, seed, fertilizer, rock salt, ice melt, cat and dog food, wood pellets, fences, gates, fencing supplies, trailers, and other farm-related mechanized equipment.

In 1998, David Pierson purchased a residence across the street from Brodhecker. In 2006, Pierson became aggrieved by Brodhecker's roadside display and advertisement of sheds, tractors, and other farm equipment. Pierson was further aggrieved by the traffic generated by Brodhecker's retail/commercial farm operation in a residential area.

Summary of Testimony

(Andrew Law)

Andrew Law testified for the Township of Hampton. He is a retired State rural development officer. He has worked for the U.S. Department of Agriculture; been a senior appraiser for Farmers Home Administration; has experience in farming real estate; and has provided farmers with financial advice. He has a Bachelor of Arts degree in horticulture.

Law stated that farming is disappearing in New Jersey, that New Jersey farmers must diversify their operations in order to survive, and that one-product farming is not

enough. Law testified as to what items he thought the Brodheckers sold and considered to be complementary to or supplement the farm's agricultural output. Law said that in July 2009 he went to see the Brodhecker farm. After his site visit Law noted what items Brodhecker does not produce but does sell.

Law testified that the sale of gazebos, hay wagons, trailers, tractors, muck boots, manure spreaders, clothing, and boots are not complementary or supplementary to Brodhecker's agricultural output. Law said that sheds sold for residential use would not be complementary but sheds purchased to store hay, feed, and other agricultural products and by-products are ok. Law said livestock shelters, turnout sheds, feeders, waterers, lime, seed, fertilizer are supplementary and complementary farming products and are therefore related. Law found that the sale of electric fences, gates, and fencing supplies were acceptable to sell as long as they were designed to protect animals and livestock and were not designed for residential use.

(Wesley Powers)

Wesley Powers testified on behalf of Hampton Township. Powers was the Township's sub-code construction official. He has been a licensed code inspector for approximately twenty years. Powers basically testified as to whether or not certain buildings on the farm required a certificate of occupancy (CO) or not. Powers said the requirement depended on the intended use of the building. Powers testified that not all of the buildings on Brodhecker's farm have a certificate of occupancy, only the buildings that were built after 1977 have them.

During his testimony he went through most of the buildings on the farm and explained why or why not certain buildings had or required a certificate of occupancy.

Building # 1 Powers said a CO was required and issued for this building. The CO was issued for a use group "U" meaning utility. According to Powers this type of building is typical of farm buildings, such as barns and silos. A utility building has a very low hazard type use and is not suitable for a retail farm market. Powers explained that a building used for farm market is marked

an “M” building. An “M” building is used as a store or for retail purposes. A building with mercantile classification needs approval from the town’s zoning board. The owner has to submit site plans, architectural drawings, indicating parking, handicapped accessibility, lighting, restroom facilities, electrical and fire. (See Exhibit P1-16A.) Powers said building #1 is used in two very different ways. The Brodhecker’s use that building both for retail and storage purposes. Using this building in two very different ways is fine but the building then requires a fire wall separation and an adequate number of parking spaces. Powers testified the papers submitted for this building was for the less strict “U” use group, and the building was constructed as a “U” building. However, this building is used as a retail store and it needs mercantile use approval.

Building #2 is a feed processing barn. Powers said that a CO was issued for this building as an “S-1” use meaning it is used for storage and has a moderate hazard. He said feed processing can be problematic because it produces a significant amount of combustible dust which can become explosive. Powers said there was a sales area in Building #2 so customers had access to this building. This building should also have approval as mercantile use.

Building #3 is a cattle sales barn with adjoining cattle holding pen. This building is also used to store equipment, crops, and hay. A CO was not issued for this building because this building predates 1977.

Building #4 is basically a silo where grain bins filled with corn and oats are stocked. According to Powers silos are utility structures and impossible to use as part of a farm market.

. . .

Building # 6 according to Powers is problematic because of the numerous code problems with this structure. According to Powers the building is too large to be without a foundation, is used as a mercantile store without any

approval, there are problems with accessibility and electrical installation, and although it is labeled as an office building the Brodhecker's use it as a retail store.

Building #7 is a sheep sales and hay barn building that is used to store hay and house the sheep. It was built before 1977 so no CO is required.

(David Pierson)

David Pierson is a petitioner in the instant matter. He lives directly across the street from the Brodhecker Farm. Pierson lives with his wife and two children. Pierson purchased his property in 1998 and in April 1999 he completed the construction of his house. Around the Brodhecker farm there are similar residences. The area is zoned for two-acre residential use. Pierson testified that when he moved in, the Brodhecker's farm comprised of a few head of cattle and some corn; minor farm activity took place. (See Exhibit P1-24, which is a 1998 photo of the area.)

Pierson testified that around 2006 things started to change on the farm. He said what was a beautiful farm countryside turned into a major gaudy, busy retail farm operation. According to Pierson, Exhibit P2-1 demonstrates best what he is talking about. Now there are huge outdoor displays of sheds, gazebos, tractor trailers, equipment and signs. Pierson's bedroom window overlooks the display area. (See Exhibit photos P-86, P-25, P-26, P-27.) Besides the gaudy display in front of his house Pierson said the noise and traffic coming and going out of Brodhecker's driveway is excessive and annoying. Pierson said the traffic goes on all day every day but it is worse on weekends in the Summer and Fall. He said that he has counted as many as five to six large trucks coming or going in Brodhecker's driveway in a 15 minute period. He said some customers instead of parking on Brodhecker's property or on the Brodhecker side of the street will park across the road, on his side and crowd and encroach upon his property.

Pierson said that the enlargement of the farm has changed the quality of his life in that he has to deal with traffic, look at large mechanized equipment for sale, and

experience a general unwelcoming aesthetically unpleasant residential environment. Basically, Pierson said that in essence he had not had a problem with the farm being there but he wishes that the commercial aspects of the farm were removed. He says the commercial part of the farm is reducing his property value. He wants Brodhecker to limit the display of the sale items and re-direct or limit the flow of traffic. Pierson pointed out that when he built his shed, it had to be way off the road—so why can Brodhecker have a dozen or so sheds displayed right on the road?

Under cross-examination Pierson testified that when he went to the SCADB meetings, if and when he was told of a meeting, he was told to sit down and shut up when he attempted to say anything. He was intimidated when he attended the SCADB meetings.

(Richard Nieuwenhuis)

Richard Nieuwenhuis testified on behalf of Brodhecker. Nieuwenhuis is a distributor of greenhouses for garden centers. He was appointed by former New Jersey Governor Christine Whitman to the State Board of Agriculture Commission and worked on the committee to rewrite the Right to Farm Act. He was president of the New Jersey Farm Bureau for eight years. He was familiar with the Brodhecker farm.

Nieuwenhuis explained that the term “farm market” was added to the 1998 Right to Farm Act. He said the term’s definition was expanded to mean that a farmer could sell his own home-grown products and related products from their own home-grown proceeds. This makes it possible for the farmers to sell or market other farm-related products. The definition included a formula indicating that a farmer can sell 51% of what is actually produced in the farm and sell 49% of what is called a “related” farm product. He gave the example of an apple farm; the farmer could sell apple pie and apple butter but the farmer did not have to make the pies or the butter. In other words, a farmer could sell items not actually produced on the farm. Nieuwenhuis said a farmer in New Jersey cannot rely solely on the wholesale of items produced on the farm, there would be insufficient income. In other words, according to Nieuwenhuis, a farmer can sell products that contribute to the farm’s income.

According to him the new Right to Farm Act gave the County Agricultural Board's power to review farming activities. If an activity was approved by the County Agricultural Board it was preempted by the municipal boards.

Under cross-examination by Mr. McGovern, Nieuwenhuis stated that the sale of livestock would be included in the 51% but the sale of a gazebo would not be within the 49% because a gazebo is not a related product. He opined that feeders, manure spreaders, and hay wagons can be considered within the 49%. He limited himself when discussing tractors in that medium, small, or hobby tractors would be okay to sell. However, not all tractors would be admissible. Farm clothing was also okay to sell.

(Thomas A. Brodhecker)

Thomas Brodhecker is the owner of Brodhecker Farm, LLC. He owns the farm with his wife. They purchased the farm in 1968, at the time they bought it they purchased 112 acres. Today he owns 170 acres. Brodhecker Farm LLC, includes 900 acres that he rents throughout Sussex County. He explained that from 1969 through 1976 he raised steers and made hay and sold the meat. On or about 1990 they became licensed feed manufactures by the State of New Jersey and began selling feed. He credits son Phil with helping to enlarge the retail part of the farm. The farm and its income sustain two families and eight full-time employees.

Brodhecker stated that the farm has nine buildings.

Building #1 is a steel building that is used for storage and has solar panels on the roof. The solar panels supply electricity to the farm.

Building #2 stores equipment and supplies some sales take place in this building. This building houses the feed grinders and it is also used to bag the feed.

Building #3 is a steel-frame building also with solar roof panels.

Building #4 is a storage building for corn and oats and it is also used to grind feed.

Building #5 is used as a work shop and stores equipment.

Building # 6 is the retail store building.

Building #7 is the hay storage and sheep barn.

Building #8 is the junk room.

Building #9 is the family's residence.

Brodhecker testified that the feed business is the heart of his business and he owns seven or eight tractors to handle that part. He said his farm caters to the business of the hobby farmer.

Brodhecker testified he sells 57.8% of the items produced on the farm and 42.92% of his sales come from items they purchase to sell.

Under cross-examination Brodhecker acknowledged that his farm is on a R-2 zone area, that is, residential-agriculture zoning area. He said that the only clothing the farm sells much of is boots. His farm is open seven days a week. He said that on the average about ten vehicles come into the farm on a daily basis. He said that during the corn harvesting season about 600 bushels per truck are harvested daily. He said hay is hauled all day every day. They are open all year round.

(Phillip Brodhecker)

Phillip is the son of Thomas Brodhecker. Phillip said that his father is in charge of the financial management of the farm and that he manages the actual farming. He runs the farm with the help of approximately eight employees. They farm livestock and crops. According to Phillip the farm does the following along with numerous other things: sells freezer meats, produces animal hides that they send out for tanning, grows

corn and sunflower seeds. All of these things he said fall within 51% of his farm market sales. He said he also sells dog and cat food.

Phillip stated that he wants the Brodhecker Farm to be a support and source for other small farmers throughout New Jersey. His farm is considered one of the top three commercial farms in Sussex County.

Under cross-examination Phillip said that 51% of the farm market's gross income is generated from the sales of its agricultural products and that as long as that is maintained with the 49% remaining he can sell whatever he wants, for example if he wants to sell T.V.'s he can.

Phillip Brodhecker admitted that his farm does generate a lot of traffic.

Site Visit

I visited the Brodhecker Farm on March 29, 2011. I noted the following:

The view directly from the front of Pierson's home is obtrusive. Pierson looks at sheep pens, geese running around, hen coups, and stored hay bales. At the time of my visit I saw large heavy farm equipment parked across the entire span of the farm. The equipment was one truck, one trailer, and two tractors. Items displayed for advertisement purposes in front of Pierson's home and driveway were nine hay wagons, ten to eleven sheds of all types and sizes, a small chicken coup, feeder gates, hay baskets, and manure spreaders.

LEGAL DISCUSSION

Hampton Township argues that the SCADB violated procedural provisions by failing to notify the Township in writing of Brodhecker's application outlining the nature of the request, the date of the initial hearing, and of the board's site visit, contrary to N.J.A.C. 2:76-2.3(c). Hampton also contends that the SCADB also ignored State Agriculture Development Committee's (SADC) guideline as required in N.J.A.C. 2:76-

2.3(d). The Township asserts its rights and interests were ignored and thus unduly prejudicing it. The Township claims that because the SCADB did not follow the procedural protocol the Township did not have enough time to consider Brodhecker's application and prepare the presentation of its position and did not have time to prepare for the initial hearing.

I **FIND** that Brodhecker filed his application for a Site Specific Agricultural Management Practice (SSAMP) on February 25, 2009. The initial hearing on the application was held on May 18, 2009. (See Petitioner's Exhibit #4.) The Township's counsel attended the initial hearing. (See Petitioner's Exhibit #4, Tr. 19:14-20.) At that time, Brodhecker's counsel introduced the requirement of notice to the Township and noted that the Township's counsel was present at that initial hearing and proceeded to explain to the SCADB what its procedural notice requirements were to the Township. (The transcript in petitioner's Exhibit # 4, transcript 18:15-19, shows that counsel for Brodhecker gave the Township's attorney a copy of the application/plan.) The only determination the SCADB rendered at that February 25, 2009, meeting was that Brodhecker's operation qualified as a commercial farm pursuant to the Right to Farm Act. The Township does not dispute the only decision rendered at the initial meeting and I **FIND** that the Township was not prejudiced by the SCADB's failure to provide notice within ten days.

Second, the Township argues the SCADB ignored State Agricultural Development Committee guidelines. I **FIND** the Township incorrectly asserts that the SADC guidelines call for all parties to be notified at least three days before a site visit. The SADC document cited does not suggest a municipality should receive notice, at all, about a site visit. The SADC guidelines recommend "that a 'team' of appropriate agricultural professionals be assembled by the CADB for the task of evaluating a site-specific AMP request." Representatives of the municipality are not included in the suggested list of "appropriate agricultural professionals."

The Township argues that because two of the SCADB members may have engaged in farming activities, the SCADB was not properly constituted and, therefore,

not authorized to act. The Act requires that a County Agricultural Development Board (CADB) consist of

> seven voting members who shall be residents of the county, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land they farm, and three of whom shall represent the general public . . . ."
>
> [N.J.S.A. 4:1C-14(a).]

The Township alleges that two SCADB members, Lori Day (Day) and Joan Smith (Smith), "were actively engaged in farming." (Pet'r's Br. 66.) The Township cites a letter from Smith to the Department of Community Affairs, in which Smith wrote "I am a part-time farmer in Sussex County and operate a seasonal farm stand." (Pet'r's Ex. 42.) Second, the Township cites a comment by Day, in the course of questioning Brodhecker during his testimony before the SCADB, that "we've got our own hay wagons." (Pet'r's Es. 6.) Further, the Township cites a comment by Day, in the course of discussing the legal definition of"sales area" during a hearing that "I, as a farmer who sells things, know that farmers sell out of the fields." (Pet'r's Ex. 9.) The Township reasons, without citing any legal authority, that "the obvious intent of the legislation was to ensure that the voice of the general public who do not have a direct stake in farming but do have a stake in the impact of arming activities in their community be heard." (Pet'r's Br. 67.) The Township concludes, without citing any legal authority, that Smith and Day "should not have been appointed to fill the slots dedicated to persons outside of the farming industry; and that the Board was thus not properly constituted and, therefore, had no authority to act in this case." Ibid.

As outlined above, the intent of the legislature is not obvious. Cf. L. 1983 c. 32 § 7; Sponsor's Statement, Statement to Senate Bill No. 867 (N.J. 1982). While the sponsor originally contemplated "non-farmers" should sit on the CADBs, the final text merely provides seats for members who "represent the general public." Cf. L. 1983 c. 32 § 7; Sponsor's Statement, Statement to Senate Bill No. 867 (N.J. 1982). The term "non-farmer" would certainly limit membership to "persons outside the farming industry." However, the requirement that three members "represent the general public" is much more ambiguous, and does not clearly limit such membership to "the general public who

do not have a direct stake in farming but do have a stake in the impact of farming activities in their community." See L. 1983 c. 32 § 7: (Pet'r's Br. 67.)

The Township does not clearly define who is "outside the farming industry," or who does not "have a direct stake in farming but [does] have a stake in the impact of farming activities in their community." The proposed definition suggests that even a non-farmer involved in the farming industry, such as a farm supplier or wholesale purchaser, would not "represent the general public." Indeed, even a non-commercial farmer, or a hobby gardener could have a "direct stake in farming." Thus, the proposed standard is much more expansive than the plain meaning of the statute. Again, a tribunal, such as the instant one, may not "write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment…" DiProspero, supra, 183 N.J. at 492 (quoting Craster, supra, 9 N.J. at 230). Therefore, even assuming, arguendo, I **FIND** that Smith and Day were "actively engaged in farming" the SCADB was not improperly constituted. Cf. Sponsor's Statement, Statement to Senate Bill No. 867 (N.J. 1982); N.J.S.A. 4:1C-14(a).

Township argues that Brodhecker did not present sufficient credible evidence before the SCADB or this Court to find that it operates a "farm market" as defined by the N.J.S.A. 4:1C-3. To qualify as a farm market at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm. N.J.S.A. 4:1C-3. However, the Township, not Brodhecker has the burden of proof on this issue. In re Casola, ADC 06462-00.

In Casola, the SADC explained "in requests for site-specific determinations, the farm owner/operator has the burden of showing that his or her agricultural activities conform with generally accepted agricultural management practices and meets the other statutory criteria." Id. at 7. But, "[o]nce the determination has been made by the CADB that the applicant has met his or her burden of proof, in this case with the issuance of the site-specific agricultural management practice, the burden then shifts to the party or parties contesting the CADB's action." Ibid. The CADB's decision "is presumed valid unless and until the contrary is demonstrated, with the burden of proof

thereof on the attacking party." Ibid. (citing Edelstein v. Asbury Park, 51 N.J. Super. 368, 389 (App. Div. 1958); Lyons Farms Tavern v. Mun. Bd. of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970).

On this issue, the Township further argues that Brodhecker did not produce direct evidence of the gross sales realized from its retail operation, even though it could have easily done so. The Township concedes that Brodhecker "produced print-outs of profit and loss summaries of percentages of retail and other revenue generated by the business brokendown into categories selected by Brodhecker for time periods chosen by Brodhecker. The Township further asserts that Brodhecker was and is in complete control of the income information; that Brodhecker limited its production of such information to a few items it selected to show. And, that Brodhecker did not produce actual proof of sales revenue generated by the farm. Although I agree with the Township, the burden of production on this issue is not on Brodhecker. Casola, supra, ADC 06462-00 at 7. Rather the burden is on the Township to establish that Brodhecker did not meet the sales prong.

Nevertheless, I **FIND** that Brodhecker submitted credible evidence and testimony that 51% of the annual gross sales of the retail farm market are generated from sales of agricultural output of the commercial farm. See N.J.S.A. 4:1C-3. Therefore, as the Township has presented no evidence that Brodhecker's figures are inaccurate, the Township has failed to establish by a preponderance of the credible evidence that Brodhecker did not satisfy the "sales" prong. See, Casola, supra, ADC 06462-00 at 7.

Similarly, the Township argues that "Brodhecker has also presented insufficient credible evidence that it meets the "sales area" requirement of N.J.S.A. 4:1C-3. Brodhecker presented a map to the SCADB, which delineated the sales area of the farm market. The Township asserts, without support, that the bulk of the reputed sales areas are not used for sales but for production and storage. The motivation for Brodhecker to inflate the numbers is clear. The Township concludes that in reality the display area is greatly oversized in proportion to the total sales area and may not be justified at all once the extent of the true sales are is determined. (Pet'r's Br. 71.) Again, the burden is not on Brodhecker. Casola, supra, ADC 06462-00 at 7. Rather,

the burden is on the Township to establish that "at least 51% of the sales area [is not] devoted to the sale of agricultural output of the commercial farm…" See Ibid.; N.J.S.A. 4:1C-3. Since the Township presented no evidence regarding "the extent of the true sales area," the Township has failed to establish by a preponderance of the credible that Brodhecker did not satisfy the "area" prong. See Casola, supra, ADC 06462-00 at 7.

The Township argues that Brodhecker's operation presents public health and safety concerns. The Township says that serious public health and safety issues are present. However, The Right to Farm Act only protects agricultural practices "which do not pose a direct threat to public health and safety . . . ." N.J.S.A. 4:1C-9. The New Jersey Supreme Court acknowledged "the potential for conflict between farming interests and public health and safety. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests." Twp of Franklin v. Den Hollander, 172 N.J. 147, 153 (2002). The Court emphasized "that the boards will conduct those proceedings and reach their determinations in good faith, cognizant that the benchmark for those decisions is the understanding that government has an obligation to deal forthrightly and fairly with property owners and their neighbors." Ibid. Some of the activities at issue in Den Hollander were very similar to the activities at issue here. For example; the building of structures without receiving approval from township agencies, creating a trucking terminal in a residential district of the township, parking areas on-site for non-passenger vehicles without site-plan approval, and trucks parking on land adjacent to the property creating an inappropriate impact on adjoining residential properties. Also, the noise created by the trucks and traffic disrupted the peace and tranquility of the residential neighborhood. The appellate division and New Jersey Supreme Court agree that the CADB "must determine, among other things, whether the practices at issue present a direct threat to public health and safety." Twp. Of Franklin v. Den Hollander,338 N.J. Super 373, (App. Div. 2001) at 394; Twp. Of Franklin v. Den Hollander, 172 N.J. at 153.

The Township asserts that the major traffic generated by the farm in this residential area is dangerous; said assertion was testified to by David Pierson and by

witnesses who appeared before the Hampton Township Zoning Board. I **FIND**, Pierson did not testify that the traffic generated by Brodhecker is dangerous. Rather, Pierson attempted to testify about his understanding of the relevant statutes and regulations, and his disapproval of Brodhecker's activities. Pierson further said it was busy with traffic and the displays were unsightly and obtrusive. Moreover, the Township presented no evidence, expert or otherwise, regarding traffic safety. The transcripts from the SCADB show that many of Brodhecker's neighbors testified, some in favor and some against, Brodhecker's operation. While some neighbors complained about traffic both generally and specifically regarding Brodhecker's operation, none of the neighbors, and neither did Pierson, mentioned any expertise or knowledge of traffic safety. And again, it is the Township that must establish, by a preponderance of the credible evidence, that the SCADB failed to consider any safety concerns. See Casola, supra, ADC 06462-00 Id. at 7.

The Township argues that the SCADB abused its discretion by failing to give sincere consideration and weight to the interests of and impact on the neighbors and Hampton Township. The SCADB is entrusted "to make the appropriate decisions in respect of whether the operation of a commercial farm implicates agricultural management practices, and, if so, whether those practices affect or threaten public health and safety." Den Hollander, supra, 172 N.J. at 150. A CADB must give "appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations. Including land use regulations. That may affect the agricultural practice." Id. at 152. However, the Township concedes that its planning expert, the fire code official and an aggrieved property owner were all permitted to testify at length before the SCADB. (See Pet'r's Br, Ex. 6 and Ex. 7.) Therefore, the Township's exhibits demonstrate that the SCADB did give sincere consideration and weight to the interests of and impact on the neighbors and Hampton Township.

The Township further argues that many activities approved for site specific agricultural management practice recommendation are insufficiently related to Brodhecker's agricultural output and should be precluded. The Act initially provided "for the wholesale and retail marketing of the agricultural output of the commercial farm, and related products that contribute to farm income, including the construction of building

and parking areas in conformance with municipal standards." L. 1983 c. 31 § 6 (emphasis added). In 1998, the Act was amended. L. 1998 c. 48 § 6. The phrase "wholesale and retail marketing of the agricultural output of the commercial farm, and related products that contribute to farm income" was deleted, and replaced with the phrase "operation of a farm." Ibid. The amendment defined a "Farm Market" as a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income . . . ." Ibid.

The SADC has held that "the RTA protection for farm markets can be rationalized if two commodity groupings are interrelated rather than viewed separately, so that the privilege of enjoying RTFA protection means that a farm market's 'contributing' products must have a clear connection to agricultural outputs." In re Hopewell Valley Vineyards, SADC 786, Final Decision (March 24, 2011), www.nj.gov/agriculture/sadc/rtfprogram/conflictres/formal/decisions.html. The SADC concluded "products that contribute to farm income possess the appropriate nexus to the protection of agricultural production activities if they are complementary to or supplement the commercial farm's agricultural output." Id. at 19. The SADC reasoned that examples of products that are not "complementary to or supplement" agricultural output might include "sporting goods, electronic equipment, stationery, and health and beauty aids." Ibid.

Here, the Township and Pierson argue that certain items are not sufficiently related to Brodhecker's agricultural output. Such items include the sales of gazebos and sheds (except turnaround sheds and livestock shelters); tractors; hay wagons; manure spreaders; clothing; rock salt; ice melt; cat and dog food; wood pellets; fences; gates and fencing supplies used for livestock and gardens; and trailers. With respect to each of these items, both Brodhecker and the Township presented a witness who testified that each item could be characterized as complementary or not complementary. The Township suggests that if the product can be used without agricultural output from Brodhecker's farm, the product is not related. For example, sheds bought for residential use would not be complementary. However, Hopewell Valley Vineyards, SADC 786 Id. at 19, stated that a customer's use of the products has no bearing on whether the products are complementary. The fact that some customers

may use the sheds for other non-farm related purposes is not relevant. The same reasoning applies to all of the other products. I **FIND** that the Township or Pierson failed to establish by a preponderance of the credible evidence that the disputed items are not complementary or supplement to the commercial farm's agricultural output.

The Township suggests that members of the SCADB had conflicts of interest, and alternatively, suggests that the doctrine of necessity was improperly invoked. New Jersey courts recognize four types of conflicts of interest. They are: (1) direct pecuniary interest - is when an official votes on a matter that bestows a direct financial gain; (2) indirect pecuniary interest - when an official votes on a matter that financially benefits one closely tied to the official, such as a family member; (3) direct personal interest - when an official votes on a matter of great importance that benefits a blood relative or close friend in a non-financial way; and (4) indirect personal interest - when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies. Wyzykowski v. Rizas, 132 N.J. 509, 525-26 (1993). However, "local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so it would discourage capable men and women from holding public office." Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958).

Here, a co-owner of Brodhecker, Jane Brodhecker (Mrs. Brodhecker) sat on the SCADB. Notably, Mrs. Brodhecker also sits on the SADC. The Township concedes that Mrs. Brodhecker recused herself from all discussion and votes and did nothing improper. Rather, the Township argues that the other members' conflicts of interest are evidenced by their familiarity with Mrs. Brodhecker and her family. I **FIND** that members of the SCADB did not have a conflict of interest with respect to Brodhecker's application, because merely sitting on a governing body with a conflicted member does not create a conflict of interest.

Finally, the Township disputes Brodhecker's request to amend the Site Specific Agricultural Management Practices (SSAMP) to incorporate a proposed parking area plan. With respect to parking, the SCADB determined the operation of the farm market,

including the construction of any building(s) and parking area(s) must be in conformance with municipal standards. This language mirrors the Act's contemplation of "the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards." N.J.S.A. 4:1C-9(c). Because Brodhecker is the moving party on this issue, Brodhecker bears the burden of proof. See Casola, supra, ADC 06462-00 Id. at 7. Here, Brodhecker merely asserts that none of the evidence in the SCADB's hearings or evidence before this Court indicates that the parking is not in compliance or causes a public health or safety issue. However, Brodhecker presented no evidence that the parking area complies with municipal standards. And, the testimony of Wesley Powers as to Bldg. #1 needing an "M" certificate of occupancy. I therefore **FIND** that Brodhecker did not establish by a preponderance of the credible evidence that the SSAMP should be amended. Ibid.

I therefore **CONCLUDE** for all of the foregoing reasons that the SCADB properly issued Brodhecker a SSAMP. The SSAMP should not be amended to include Brodhecker's proposed parking area because Brodhecker failed to present credible evidence that the parking area conforms to municipal standards.

ORDER

I hereby **ORDER** the approval of a SSAMP to Brodhecker Farm **UPHELD**. However, the SSAMP should not be amended to include Brodhecker's proposed parking area.

I further recommend in the spirit of creating a balance in the community and maintaining and sustaining a peaceful co-existence that the Brodhecker's create a more aesthetically pleasing environment by removing large and bulky farm equipment, sheds, and gazebos, and placing them behind buildings in the back of the farm property. The Brodheckers should limit their inventory display to one or two of each item that would greatly improve the pastoral effect of the neighborhood. I also suggest that the Brodhecker's limit the large truck deliveries and other trucking activities to as close to normal business hours as possible during weekdays.

I hereby **FILE** my Initial Decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, P.O. Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 14, 2013
DATE

CARIDAD F. RIGO, ALJ

Date Received at Agency: August 14, 2013

Date Mailed to Parties:

lr

APPENDIX

WITNESSES

For Petitioners:

Andrew Law
Wesley Powers
David Pierson

For Respondents:

Richard Nieuwenhuis
Thomas A. Brodhecker
Phillip Brodhecker

EXHIBITS

P1-1 1/20/10 letter from Director Donna Traylor, Sussex County Agriculture Development Board to State Agriculture Development Committee Executive Director Susan Craft with signed, final form of Resolution

P1-2 Brodhecker Farm February 2009 application for SSAMP determination (2/24/09 letter and application)

P1-3 2/24/94 SADC Agricultural Management Practices for Farmer-to-Consumer Direct Marketing on Farms in New Jersey

P1-4 May 18, 2009, SCADB Transcript

P1-5 June 15, 2009, Transcript

P1-6 July 20, 2009, Transcript of SCADB Proceeding

P1-7 August 17, 2009, Transcript

P1-8 October 19, 2009, Transcript

P1-9 December 21, 2009, Transcript

P1-10 January 19, 2010, Transcript

P1-11 Receipts for certain sales in 2008

P1-12 2009 farmland assessment application

P1-13 State Agriculture Development Committee Policy effective 8/24/00

P1-14 “First Draft” of Site-Specific AMP

P1-15 “New Draft” of Site-Specific AMP

P1-16 Exhibit A-l - Two-page survey and Use Analysis Plan of Block 2701, Lot 5, Hampton Township, Sussex County dated respectively 4/26/07 and 7/16/09 prepared by Daniel E. Kent, III, LS, PP

P1-16A Use Analysis Plan dated 8/29/07 (not presented to the SCADB, but referred to during the administrative hearing for convenience)

P1-17 Exhibit A-2 - Brodhecker Farm, LLC/Profit and Loss (% sales analysis) – three pages: 1/07 through 5/09

P1-18 Exhibit M-l - marked 7/20/09 - 6/23/09 memo from Hampton Township, Administrator Eileen Klose

P1-19 Exhibit M-2 - Document marked A-2 - Brodhecker Farm - 7/26/07 - description of structures with attached copies of portion of map (this was incorrectly referred to in the Resolution as excerpts from the Hampton Zoning Board transcript).

P1-20 Exhibit M-3 - Photos marked as A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11 and A-12

P1-21 Exhibit M-4 - Print-out of Brodhecker Farm web page advertising/printed out on 6/4/09

P1-22 Exhibit M-5 - Complete transcript of proceedings before Hampton Township Zoning Board of Adjustment for date of August 28, 2007 (actually July 26, 2007)

P1-23 2/11/08 letter from Brian D. Smith, Esq. to Hampton Township Administrator

P1-24 9/14/98 photo (Ex. 0-1)

P1-25 Photo of tractors/sheds (Ex. 0-2)

P1-26 Photo of hay sculpture (Ex. 0-4)

P1-27 Excerpts of transcripts of 7/26/07 Hampton Township Zoning Board of Adjustment meeting

P1-28 6/26/06 Sussex County Health and Human Services/Complaint Inspection Report (Ex. O-5)

P1-29 7/17/09 print-out of NJ Department of Agriculture Article entitled “Farm Buildings as Haunted Houses” (Ex. 0-6)

P1-30 11/13/06 Hampton Construction Official warning to Brodhecker re: zoning and site plan requirements for new proposed store

P1-31 5/07 Brodhecker application to Hampton Township Zoning Board

P1-32 8/30/07 letter from Richard Clark, Esq. to SCADB with attached 11/13/06 letter from Hampton Township Zoning Official to Brodhecker Farms

P1-33 8/3/07 letter from Hampton Township Zoning Official to Brodhecker Farms LLC

P1-34 9/13/07 letter from Ursula Leo, Esq. to SCADB with attached 8/3/07 letter from Hampton Township Zoning Official to Brodhecker Farms LLC

P1-35 9/17/07 SCADB meeting transcript

P1-36 9/17/07 SCADB meeting minutes

P1-37 9/18/07 letter from Warren Welsh to Susan Craft, Executive Director, State Agriculture Development Committee

P1-38 10/15/07 letter from Susan Craft, Executive Director, SADC to Donna Traylor

P1-39 10/23/07 letter from Sussex County Counsel Dennis McConnell, Esq. to David Nenno, Local Finance Board

P1-40 11/20/07 letter from James McGovern, Esq. to David Nenno, Division of Local Government Services

P1-41 1/10/08 letter from County Counsel McConnell to David Nenno, Division of Local Government Services

P1-42 1/30/08 letter from Joan Smith to David Nenno, Department of Community Affairs

P1-43 2/25/08 letter from Susan Craft, Executive Director, SADC to Patricia McNamara, Local Finance Board

P1-44 2/26/08 letter from County Counsel Dennis McConnell to David Nenno, Local Finance Board

P1-45 2/28/08 letter from Richard I. Clark, Esq. to Brian Smith, Esq., Chief of Legal Affairs, SADC

P1-46 3/7/08 letter from Susan Jacobucci, Chair, Local Finance Board to County Counsel Dennis McConnell

P1-47 3/7/08 letter from Brian Smith, Esq. to Richard Clark, Esq.

P1-48 3/18/08 letter from David Pierson to Donna Traylor

P1-49 3/19/08 email memo from Mr. and Mrs. Pohludka to Donna Traylor - 2 pages

P1-50 3/20/08 letter from David Pierson to John Eskilson

P1-51 3/25/08 letter from Richard Clark, Esq. to County Counsel Dennis McConnell

P1-52 5/13/08 letter from David Pierson to Dennis R. McConnell, Esq.

P1-53 5/19/08 SCADB meeting transcript

P1-54 6/11/08 letter from Donna Traylor to Hampton Township Administrator

P1-55 6/16708 SCADB meeting transcript

P1-56 6/16/08 SCADB meeting minutes

P1-57 6/19/08 letter from Stephen Roseman, Esq. to Donna Traylor

P1-58 Sussex County Agriculture Development Board members list in response to Roseman letter

P1-59 9/10/08 letter from County Counsel to David Nenno, Local Finance Board

P1-60 10/21/08 letter from Susan Jacobucci, Chair, Local Finance Board to Dennis McConnell, Esq.

P1-61 10/28/08 letter from Susan Craft, Executive Director, SADC to Stephen Roseman, Esq. and Richard Clark, Esq.

P1-62 11/5/08 Memo from Donna Traylor to Sussex County Agriculture Development Board

P1-63 11/17/08 letter from James Hunt of SCADB to Susan Jacobucci, Chair, Local Finance Board

P1-64 11/18/08 letter from Fred Hough to Susan Jacobucci, Chair, Local Finance Board

P1-65 11/18/08 letter from Warren Welsh to Susan Jacobucci, Chair, Local Finance Board

P1-66 12/19/08 letter from Susan Jacobucci, Chair, Local Finance Board to Warren Welsh

P1-67 12/19/08 letter from Susan Jacobucci, Chair, Local Finance Board addressed to Lori Space Day

P1-68 1/12/09 letter from Donna Traylor to Senator Steven Oroho

P1-69 1/12/09 letter from Joseph Dona, Jr., Commissioner, NJDCA to Senator Steven Oroho

P1-70 1/22/09 letter from Richard Clark, Esq. to Donna Traylor

P1-71 6/15/09 letter from Stephen Roseman, Esq. to Susan Craft, Executive Director, SADC with attached 11/20/07 letter of James McGovern, Esq. and of portion of 9/17/07 minutes and "draft" of Site Specific AMP on Brodhecker Farm LLC

P1-72 6/26/09 letter from Richard Clark to SADC Executive Director Susan Craft

P1-73 7/10/09 letter from Stephen Roseman, Esq. to Susan Craft, Executive Director, SADC

P1-74 7/10/09 letter from Susan Jacobucci, Chair, Local Finance Board to Lorelee Space Day

P1-75 7/10/09 letter from Susan Jacobucci, Chair, Local Finance Board to Jim Hunt

P1-76 7/10/09 letter from Susan Jacobucci, Chair, Local Finance Board to Joan S. Smith

P1-77 7/22/09 letter from Susan Craft, Executive Director, SADC to Stephen Roseman

P1-78 "Marked-Up Draft" of AMP

P1-79 6/25/09 Email from Donna Traylor to "Bob and Steve" of Rutgers Extension Service

P1-80 8/17/09 draft of AMP

P1-81 9/21/09 draft of AMP

P1-82 10/19/09 draft of Resolution

P1-83 12/21/09 minutes - identifies some of the speakers who are not identified in the transcript and at pg 18 clarifies the name of competing business to be G&H

P1-84 9/23/05 SADC letter to Ocean County Ag Dev Board

P1-85 1/20/11 print-out of Brodhecker Farm web site

P1-86 Photo - NJ Herald - tractors and other farm equipment

P1-87 Advertisement in NJ Herald

P1-88 Yellow Pages ads (3 pages)

P1-89 New Jersey Farm Bureau web page

P1-90A May 7, 1998, Assembly Bill number 2014

P1-90B June 4, 1998, Legislative Committee Statement to Senate

P1-90C June 1, 1998, Legislative Committee Statement lo Assembly

P1-90D First reprint of P.L. 1998 c. 48

P1-91 In the Matter of Hopewell Valley Vineyards, SADC ID#786

In addition, during the course of the Court's tour of the Brodhecker premises on March 29, 2011, photographs were taken. They were burned onto a CD-ROM and delivered to the Court and counsel for consideration in rendering a determination.

For Petitioner David Pierson (P2):

P2-1 Summer 2010 photograph of Brodhecker operation taken by David Pierson

P2-2 Photograph

P2-3 Photograph

P2-4 Photograph

P2-5 Photograph

P2-6 Photograph – equipment along driveway

P2-7 Photograph – hay wagons, sheds, etc. taken 12/2010

P2-8 Photograph – rock salt sign

For Respondent Brodhecker Farm, LLC (R2):

R2-1 2007 Photograph pf Mr. Pierson operating a Kubota tractor

R2-2 October 13, 2009, Map***

R2-3 2010 Profit and Loss Statement

****The Court specifically limited admission of Exhibit R2-2 to consideration of the relationship of the buildings and display area shown on the map to the activities conducted on the property; i.e., the exhibit is not to be considered for any other purpose, including site plan issues which remain excluded from consideration at this time.*