HAMPTON TOWNSHIP and
DAVID PIERSON,

Petitioners,

vs.

SUSSEX COUNTY AGRICULTURE
DEVELOPMENT BOARD and
BRODHECKER FARM, LLC,

Respondents.

OAL DKT. NO. ADC 03248-2010
AGENCY DKT. NO. SADC ID #852

FINAL DECISION

Hampton Township in Sussex County (Hampton or the township), and David Pierson, a Hampton Township resident, appeal to the State Agriculture Development Committee (SADC or Committee) from a resolution of the Sussex County Agriculture Development Board (SCADB or board) approving an application by Brodhecker Farm, LLC (Brodhecker or respondent) for a site specific agricultural management practice (SSAMP) determination.

I. PROCEDURAL HISTORY

The dispute in this matter began in August 2007 when the township issued a written notice to Brodhecker to cease and desist retail sales activity from a farm market on the respondent's property. Later that month Brodhecker sought protection for those activities from the SCADB pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. (RTFA).

The board met on September 17, 2007 but took no action because the SCADB chairperson, Jane Brodhecker, is a co-owner of the property upon which the farm market is located. At the request of the SADC, the SCADB sought an advisory opinion from the Local Finance Board (LFB), an agency within the Department of Community Affairs, as to whether SCADB members had a conflict of interest due to their membership on the board with Mrs. Brodhecker. The LFB determined that there was insufficient evidence presented by the SCADB to conclude that board members had a conflict of interest.

On February 24, 2009, Brodhecker filed with the SCADB an application for an SSAMP determination pertaining to the sale of "agricultural products and agricultural accessory items" from the farm market on the Brodhecker property.

The SCADB had a meeting on May 18, 2009 and held hearings in

June, July and August 2009 on the Brodhecker application despite various procedural objections raised by the township attorney. The SCADB approved the Brodhecker SSAMP application at a December 21, 2009 meeting and memorialized the decision by resolution on January 19, 2010.

Hampton and Pierson's appeal of the SCADB resolution were filed with the SADC on January 27 and 29, 2010, respectively. On February 24, 2010, the SADC forwarded the appeals to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 4:1C-10.2 and N.J.A.C. 2:76-2.3(f). The appeals of the SCADB resolution filed by the township and Pierson were substantially similar and, when appropriate, they will jointly be referred to as the "township" or "petitioners". Brodhecker did not appeal the SCADB's decision.

The OAL conducted prehearing and settlement conferences over the next several months, and then held hearings on January 24, January 25 and March 22, 2011. The administrative law judge (ALJ) visited the Brodhecker farm property on March 29, 2011, and on March 30, 2011 the ALJ granted the parties' request that the case be placed on the inactive list in order to afford them an opportunity to mediate the dispute.

The parties were unable to successfully mediate the case and so advised the OAL on April 27, 2012. In May and June 2012 counsel exchanged correspondence with the ALJ regarding the filing of trial briefs. Initial briefs were filed on December 14, 2012 and reply briefs were filed in January and February 2013. The record closed on February 13, 2013.

On July 30, 2013, the SADC received three (3) orders of extension *nunc pro tunc* for the filing of the ALJ's Initial Decision no later than August 15, 2013. The SADC Executive Director signed the orders on July 31, 2013, and the Initial Decision was filed on August 14, 2013. Exceptions to the Initial Decision were filed by Pierson on September 10, and by Hampton and Brodhecker on September 11, 2013. The township filed a reply to Brodhecker's exceptions on September 17, 2013.

Due to the complexity of the case and the sequencing of SADC meeting dates, the SADC obtained four (4) extensions to file a Final Decision no later than March 31, 2014. See, N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-18.8(c) and (e).

The SCADB did not participate in the OAL proceedings.

II. STATEMENT OF FACTS

Thomas and Jane Brodhecker own Block 2701, Lot 5, an approximate 114 acre, farmland assessed parcel in Hampton Township (the property). The Brodheckers have owned the property since 1969 and farm a total of approximately 900 acres of land they either own or lease in Sussex County.

According to a "Survey Plat for Thomas A. Brodhecker and Jane R. Brodhecker, h/w" (Sheet 1 of 2) and a "Site Specific Agricultural Management Plan" (Sheet 2 of 2) prepared by Daniel E. Kent, III, LS and admitted into evidence by both the SCADB and the OAL, an 8-acre portion of the property is occupied by various buildings and "use areas" which in this Final Decision shall collectively be referred to as the "farm market complex". The farm market complex has about 500' of frontage on and access from Branchville-Lawson Road (Sussex County Route 627). The street address of the Brodhecker property is 2 Branchville-Lawson Road. Pierson lives directly across the street from the farm market complex at 1 Branchville-Lawson Road, residential property he purchased in 1998.

On or about August 3, 2007, Hampton issued Brodhecker a letter demanding that retail operations at the farm market complex cease and desist due to alleged violations of the municipal zoning ordinance and the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. (RTFA). By letter dated August 30, 2007, Brodhecker responded to the township's cease and desist notice by filing with the SCADB a "complaint for a determination whether the commercial farming operation of Brodhecker Farms is a commercial farm and farm market which are protected under the Right to Farm Act."

The board began consideration of Brodhecker's application at its meeting on September 17, 2007, attended by the attorneys for Brodhecker and Hampton. Mr. Pierson was also present. The SCADB, through its vice-chairman, sent the SADC a letter dated September 18, 2007 notifying the agency of the pending matter. The September 18, 2007 letter also stated that "Jane Brodhecker sits on the Board and is the current chairperson; this is their [*sic*] family farm that a complaint has been registered against". Accordingly, at the recommendation of board counsel, the SCADB sought to transfer the Hampton-Brodhecker dispute to the SADC "due to the potential conflict and prejudice that the Board may have".

The SADC replied to the board in a letter dated October 15,

2007, advising that it should obtain an advisory opinion from the LFB regarding whether conflicts of interest existed preventing SCADB members from hearing the Brodhecker SSAMP application. N.J.S.A. 40A:9-22.8. Such a request was made by SCADB counsel in an October 23, 2007 letter to the LFB. On March 7, 2008 the LFB provided a written response stating generally that SCADB members did not have a conflict merely because they sat on the board with Jane Brodhecker, but that board members who felt they had a conflict could make individual requests for an advisory opinion.

Board counsel reviewed the March 7, 2008 LFB letter with individual SCADB members, and the members discussed their potential conflicts, at the board meeting on June 16, 2008. On September 10, 2008, a copy of the June 16 meeting minutes was sent to the LFB by SCADB counsel who reiterated that conflicts existed. In a letter dated October 21, 2008, the LFB stated that it could not respond to counsel's September 10 inquiry because SCADB members had not requested individual advisory opinions. However, in a follow-up letter dated January 12, 2009, the DCA Commissioner advised that "none of the [individual board members'] requests have delineated any future proposed activity or conduct they are contemplating which raises personal ethical concerns. . .Further, [SCADB meeting] minutes submitted do not contain any individual discussion regarding members' conflicts with [the] matter."

On February 24, 2009, Brodhecker filed an SSAMP application with the board. The application sought board approval for Brodhecker to conduct, from the farm market complex, the sale of: *i.* livestock; *ii.* livestock shelters, sheds and gazebos; *iii.* animal feed, crops, and livestock supplies; *iv.* seed, lime and fertilizer; *v.* feeders, manure spreaders, waterers, hay wagons, trailers, tractors and related equipment; *vi.* muck boots; and *vii.* fences, gates and fencing supplies. The application stated that the "[r]etail operation meets the 51% criterion pursuant to N.J.A.C. 2:76-2.1" and, under a section of the application entitled "Site Plan", that "building and parking areas. . .conform with *appropriate* municipal standards designed to protect public health and safety" [emphasis in original] and "[a]dequate directional and identification signs, in conformance with municipal standards" existed or would be provided. Finally, the application sought approval for a "[p]roposed new barn for additional storage space and sale of additional accessory items, including clothing, boots and feed."[1]

[1] The SSAMP application was filed on behalf of "Brodhecker Farms, LLC". There

The SSAMP application also sought RTFA protection for "[t]ours and educational programs provided"; "[c]ontinuing educational opportunities"; and "[a]gritourism". Finally, the application listed "[a]dequate directional and identification signs, in conformance with municipal standards."

The record reflects that the SSAMP application was date-stamped as received by the SCADB on February 25, 2009 but that the board failed to provide Hampton and the SADC with notice of the application within ten (10) days of receipt as required by N.J.A.C. 2:76-2.3.[2]

The SCADB held a meeting on the SSAMP application on May 18, 2009 for the purpose of determining whether Brodhecker operated a "commercial farm" as defined in the RTFA.[3] Brodhecker had provided the board with two (2) receipts for the sale of corn harvested from the farm during the previous (2008) growing season in the amounts of $12,000 and $6,000. The Hampton municipal attorney was present at the May 18, 2009 meeting and was given a copy of the SSAMP application by Brodhecker's attorney. Pierson was also in attendance, providing comments and asking questions during the public comment portion of the meeting.

Proof was also presented that Brodhecker had owned and operated the Hampton farm since 1969, began selling the farm's agricultural output in 1970, and that the property was located in a zone in which agriculture has been a permitted use since December 31, 1997. Based on this evidence, the SCADB approved Brodhecker as a "commercial farm" and authorized the scheduling of public hearings on the SSAMP application upon notice to Hampton Township. The board was also advised that a team of agricultural experts would visit the Brodhecker property and provide the SCADB with a written report on their observations and opinions. See, generally, N.J.A.C. 2:76-2.3(d); SADC Policy P-3.

Hearings before the board on the SSAMP application began on June

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is nothing in the record indicating the legal relationship between Mr. and Mrs. Brodhecker, the owners of the property, and "Brodhecker Farms, LLC".

[2] The SADC received a copy of the Brodhecker SSAMP application from the SCADB on July 21, 2009.

[3] SCADB meeting and hearing transcripts of the Brodhecker SSAMP case show that Jane Brodhecker recused herself and left the board meeting room at all relevant times.

15, 2009. The SCADB was provided a copy of a draft report from the team that conducted the site visit. Hampton's attorney objected to the proceedings, including the board's failure to provide the February 24, 2009 SSAMP application to the township in a timely manner; conducting the Brodhecker farm site visit without Hampton officials in attendance; conducting the site visit on May 18, 2009, the same day the board was advised the visit would occur; and hearing the matter despite board members' conflicts of interest. The municipal attorney urged the board not to hear the case and to refer it to the SADC.

The SCADB's counsel advised the board to continue the hearing at its July meeting in order to give Hampton an opportunity to review the site visit report; the board attorney also directed the SCADB to invoke the "Doctrine of Necessity" with respect to hearing the case in light of the LFB determinations and the need to bring the case to a conclusion. Finally, based on the materials submitted in the SSAMP application and a colloquy with Brodhecker's attorney, counsel advised the board that it could find Brodhecker was not in violation of Federal or state laws or regulations.

By letter dated June 15, 2009 to the SADC, the township attorney alleged that SCADB members had "real and perceived conflicts of interest" and that the SADC should assume jurisdiction over the case. Brodhecker's attorney objected to the transfer in a June 26, 2009 letter to the SADC, and Hampton's counsel replied by letter dated July 10, 2009. In three (3) letters dated July 10, 2009, the LFB advised SCADB members Lori Day, James Hunt and Joan Snook-Smith that, in the LFB's opinion, their

> relationship with the Brodhecker Farms does not rise to the level of constituting a direct or indirect financial or personal involvement that might reasonably be expected to impair your ability, your objectivity or independence of judgment. Therefore you would not be prohibited from voting or ruling on the Right to Farm issue between Hampton Township and the Brodhecker Farm.

On July 22, 2009, the SADC provided counsel with a written response that it would not assume jurisdiction because no SCADB member had been advised that a conflict existed.

At the board hearing on July 20, 2009, the SCADB was presented with a final written report prepared by Rutgers Cooperative Extension Office agents from Sussex and Hunterdon counties who had conducted the Brodhecker site visit in May. The report stated, *inter alia*, that "Brodhecker Farm, LLC":

- is a state-licensed feed manufacturer of home grown grains as livestock feeds. They [*sic*] also sell hay and hay products, livestock minerals and supplements, related feeding equipment and supplies that are complimentary [*sic*] to the livestock industry and subsequent sales of items essential to consumers purchasing products from Brodhecker Farm, LLC, i.e.[,] feeding equipment, tools, fencing materials, portable housing sheds, hay wagons, hay feeders, farm implements and ancillary products designed to stimulate and increase consumer traffic to promote the sale of farm products;

- is a diversified livestock farm operation (beef, sheep, swine, poultry) with farm activities devoted to the breeding, rearing, finishing, marketing and final distribution of on-farm grown products, both as live and as processed products. [The business] maintains a 48 head beef cow herd, 20-30 beef animals on an on-going basis for finishing, 40-48 breeding ewes and serviceable rams for the production of breeding and market animals, and 30-40 hogs purchased and raised for finishing and marketing as processed hog products;

- merchandizes meat products as a "value-added production" system, direct to consumers utilizing home grown feeds and feedstuffs. These animals are marketed directly from the farm requiring the maintenance and management of feed lots as an important component of their marketing strategy;

- utilizes a USDA Certified Processing Facility to harvest and process their home grown meat animals for the value added sales to consumers;

- has on file with the Natural Resource Conservation Service (USDA-NRCS) a farm conservation plan and a certified comprehensive nutrient management plan. . .[The business] maintains both new and old farm structures in the pursuit of [its] on-farm activities in order to perform the farm related businesses. Structures are designed to provide storage and holding of both on-farm produced products and complementary farm products as part of the marketing plan;

- utilizes land/properties adjacent and around the buildings on the farm to display and hold items for sale. . .;

- has designed room for egress to the property in order to conduct on-farm activities and associated sale of the farm products. The sale area for the value-added products, livestock, grain, and sheds and out[-]buildings was in close proximity to a prepared roadway and area used for parking.

The report stated that "[t]he above activities are similar in

scope to many diverse agricultural operations in New Jersey".

The July 20, 2009 hearing also included the testimony and cross-examination of individuals and the introduction of written evidence.

Among the exhibits admitted into evidence were "Profit & Loss [% Sales Analysis]" statements (the P&L statements) for "Brodhecker Farm, LLC" in 2007, 2008 and January-May 2009, and a two (2) page site plan showing the outbound survey of the Brodhecker property and a larger-scale plat of the various structures, livestock pens, open areas and uses within the farm market complex (the use analysis plan).

The P&L statements contained an itemized list of income---with percentage, not dollar, figures---generated from sales of the farm's agricultural output, income from sales of items which were not the agricultural output of the Brodhecker farm (such as gazebos, farm vehicles and gravel), and non-sales income such as government grants, shipping fees and late fees.

The use analysis plan contained cross-hatched plottings of structures, livestock holding pens and open space areas of the farm market complex. The plan's "Area Legend" described the cross-hatching as "Direct Farm Product Sales and Storage" and "Non Farm and Farm Produced Product Sales". The plot plan did not contain a drawing of the proposed new barn described in the SSAMP application.

Thomas and Philip Brodhecker testified in support of the SSAMP application and briefly explained the P&L statements and use analysis plan. They also described the items sold at the farm market complex. There was nothing in the record indicating where the new barn was intended to be constructed. Nor was there any testimony in support of the SSAMP application for tours, educational programs and opportunities, and agritourism. The only testimony regarding signage was Thomas Brodhecker's statement that "he [didn't] want anything gaudy, but I think a nice farm sign out there would be good."

Hampton began its presentation on July 20, 2009 by calling its municipal planner as a witness. He testified about the RTFA, the Uniform Construction Code (UCC), the Americans With Disabilities Act (ADA), on-site traffic, parking and pedestrian safety, and sight distances on Branchville-Lawson Road in relation to the outdoor display of items and equipment at the farm market complex along the road.

The township continued its case before the SCADB at the hearing on August 17, 2009. Hampton called Wesley Powers, its fire subcode official, who testified about the interplay between the UCC, building uses and fire safety, and then the township presented the testimony of Andrew Law, a retired employee of the USDA's Rural Development office regarding whether the sales of certain items by Brodhecker could be protected under the RTFA's "farm market" definition. Pierson's testimony included complaints about an increase in traffic on Branchville-Lawson Road caused by the Brodhecker farm market and the eyesore created by the number of gazebos, sheds and farm equipment displayed on the farm directly across the street from his house.

The record before the SCADB closed at the conclusion of the August 17, 2009 hearing. At a board meeting on October 19, 2009, SCADB counsel reported that he would attempt to mediate a resolution of the Brodhecker-Hampton dispute. That attempt was unsuccessful and, after the SCADB cancelled its November 2009 meeting, the board reconvened on December 21, 2009 to review the outline of a resolution drafted by counsel, discuss its findings and make a decision on the Brodhecker SSAMP application. In essence, the draft resolution approved the SSAMP application *in toto*, reciting the filing of the application and the holding of hearings, incorporating the site visit report, and describing the Brodhecker farm market operation contained in the application.

The board met on January 19, 2010 and approved the resolution, "Certifying Commercial Farm Operation and Recommending Site Specific Agriculture [*sic*] Management Practice For Brodhecker Farm, LLC, Hampton Township", which is the subject of Hampton and Pierson's appeal. At the January 19, 2010 meeting, board counsel advised that in October 2009, after the hearing record had closed, he received a revised site plan of the Brodhecker farm market complex. Counsel noted that the revised site plan would not be made part of the evidentiary record.

III. OAL Proceedings

A. Grounds of appeal

Hampton and Pierson presented a number of arguments supporting their January 27 and 29, 2010 appeals of the SCADB's resolution approving the Brodhecker SSAMP application.

Generally, the procedural objections were that the board failed

to provide the township with a copy of the SSAMP application within the ten (10) day period required by N.J.A.C. 2:76-2.3(c); that the township was given no notice of, and therefore did not attend, the Brodhecker farm site visit by the agricultural "team"; that the SCADB was improperly constituted, as two (2) of the members appointed to represent the public were actually farmers; and that board members had a conflict of interest adversely affecting their ability to discharge their duties impartially, including the board's failure to give due consideration to the interests of the township and Pierson.

The petitioners claimed that the SCADB's decision approving the SSAMP was arbitrary, capricious and not supported by the evidence. In specific, they asserted that Brodhecker failed to present sufficient credible evidence that its operation constituted a "farm market" as defined in N.J.S.A. 4:1C-3; that the board erred in approving RTFA protection for the sale of certain items and commodities by Brodhecker; and that Brodhecker's farm operation posed threats to public health and safety.

B. Initial Decision

The Initial Decision recites that at the OAL hearings, Andrew Law and Wesley Powers testified on behalf of the township; David Pierson testified on his own behalf; and Thomas Brodhecker, Philip Brodhecker and Richard Nieuwenhuis testified in support of Brodhecker. All parties were represented by counsel. Many exhibits used during the SCADB hearing were introduced into evidence in the OAL case, including P&L statements not only from the SCADB hearing (2007, 2008 and part of 2009) but also a statement for 2010, and the use analysis plan. During the OAL proceedings, Brodhecker attempted to amend the SSAMP approval to include a revised use analysis plan incorporating a proposed parking area.

Law, who began working for the USDA's Rural Development office in 1970 and was New Jersey State Director for that office prior to retiring in 2009, visited the Brodhecker property in July 2009. Law testified as to whether, in his opinion, the items, commodities and products sold at the farm market could be considered "complementary" or "supplementary" to Brodhecker's agricultural output.

Powers, the municipal fire subcode official, provided testimony regarding the various buildings on the farm property and their UCC classifications. Pierson repeated his SCADB testimony about

the outdoor storage of sheds, gazebos, trailers and farm vehicles, and the noise and traffic generated by the farm market. He also stated that farm market customers park on his property.

Nieuwenhuis was president of the New Jersey Farm Bureau at the time of the OAL hearing. He provided his interpretation of the "farm market" definition in N.J.S.A. 4:1C-3 of the RTFA, including his understanding of "products that contribute to farm income", an important part of the statutory criteria. The Brodheckers testified about the uses of the buildings on the property and that their sales operation caters to "hobby farmers". Thomas Brodhecker stated that the only apparel items sold at the farm market are muck boots; Philip Brodhecker testified that, in his opinion, a "product that contributes to farm income" can be any item generating income, such as televisions, provided the receipts for such items do not exceed 49% of total farm market income.

The ALJ visited the Brodhecker farm on March 29, 2011 and briefly provided her observations in the Initial Decision. She deemed the view of the farm market complex from Pierson's home to be "obtrusive", noting

> sheep pens, geese running around, hen coups [*sic*]. . .large heavy farm equipment parked across the entire span of the farm. . .one truck, one trailer and two tractors. . .nine hay wagons, ten to eleven sheds. . .a small chicken coup [*sic*], feeder gates, hay baskets and manure spreaders.

The Initial Decision rejected all of the procedural and substantive objections raised by Hampton and Pierson except for Brodhecker's request to amend the SSAMP application by submitting a parking plan, which the ALJ denied.

The ALJ found that the township was not prejudiced by the SCADB's failure to provide it notice of the Brodhecker SSAMP application within ten (10) days of the board's February 25, 2009 receipt in accordance with N.J.A.C. 2:76-2.3(d). The court noted that a copy of the application was hand-delivered to the municipal attorney at the May 18, 2009 meeting and that the purpose of that initial board meeting was limited to determining Brodhecker's "commercial farm" eligibility as defined in N.J.S.A. 4:1C-3. At no time during the SCADB or OAL hearings did the township dispute that Brodhecker operated a "commercial farm".

The Initial Decision concluded that it was proper for the

agricultural team consisting of the Rutgers Extension agents from Sussex and Hunterdon counties to conduct the Brodhecker farm site visit without the presence of township officials. The ALJ supported this finding by citing to SADC guidelines that recommend the composition of the inspection team.

With respect to the composition of the SCADB, the ALJ disagreed with the township's position that the board acted improperly on the SSAMP application because two (2) members supposedly designated as public representatives on the board were instead "actively engaged in farming". The judge reviewed and construed the legislation creating county agriculture development boards (CADBs) in arriving at her determination. The ALJ also rejected Hampton's claim that board members had a conflict of interest due to Jane Brodhecker's position as SCADB chairperson.

The ALJ concluded the township failed to meets its burden of proof that Brodhecker did not satisfy the N.J.S.A. 4:1C-3 criteria for a "farm market" and that the farm market operation posed a direct threat to public health and safety. The judge relied on the SADC's decision In the Matter of the Right to Farm Act Application of Casola, OAL Dkt. No. ADC 06462-08, SADC ID #1318-01, in support of her determination that the township had the burden of proof on those issues. The judge also stated that the record demonstrated the SCADB's due consideration of the township's and neighbors' interests.

The Initial Decision also found that it was improper for Brodhecker to introduce a revised site plan showing a proposed parking area within the farm market complex. The ALJ concluded that the SSAMP approval could not be amended. The decision made no references to or findings about Brodhecker's request for an SSAMP pertaining to a new barn, tours, educational events, agritourism and signage.

Finally, the Initial Decision contained a recommendation by the judge that Brodhecker "create a more aesthetically pleasing environment" in order for the farm market to operate more harmoniously within the community. The ALJ suggested that farm equipment, sheds and gazebos be removed to areas behind buildings in the back of the farm, that sale displays visible from Branchville-Lawson Road be limited to one or two of each item, and that large truck deliveries be confined to normal business hours during weekdays.

IV. LEGAL DISCUSSION

A. Procedural issues

1. Composition of the SCADB.

Hampton asserted that the board had no authority to act on and approve the Brodhecker SSAMP application because the SCADB was improperly constituted and, even if properly constituted, board members had a conflict of interest and/or were biased in favor of Brodhecker.

N.J.S.A. 4:1C-14a. of the Agriculture Retention and Development Act (ARDA) grants authority to each county freeholder board to establish a ten-member CADB. The CADB is a public body consisting of seven (7) voting members of whom (4) shall be actively engaged in farming (and a majority of those must own at least a portion of the land they farm); with the other three (3) members representing the general public. The remaining three (3) individuals on the board are nonvoting members comprised of a representative from the county planning board, a member of the county soil conservation district, and the county agricultural extension agent.

At the time of the SCADB meetings and hearings on the Brodhecker SSAMP application, the Sussex board consisted of the following voting members and membership classifications:

Jane Brodhecker (Chair)	Farmer
Warren Welsh (Vice-Chair)	Public member
Lori Day	Public member
Charlotte Pattison	Farmer
Fred Hough	Farmer
James Hunt	Farmer
Joan Snook-Smith	Public Member

Hampton asserted that public members Day and Snook-Smith were in fact "actively engaged in farming". The township based this claim on Day's statements during the SCADB proceedings that "[I] own hay wagons" and "I [am] a farmer who sells things"; and on Snook-Smith's January 30, 2008 letter to the LFB in which she stated "I am a part-time farmer. . .and operate a seasonal farm stand".

The Initial Decision observed that when N.J.S.A. 4:1C-14a. was originally proposed in 1982, the legislative sponsor's statement noted that CADB membership should consist of four (4) farmers

and three (3) "non-farmers". However, the final text of the enacted legislation replaced "non-farmers" with the more ambiguous "represent the general public". According to the township, the test of whether a member "represent[s] the general public" is satisfied if the individual does not have a "direct stake in farming but do[es] have a stake in the impact of farming activities in their communities. . ."

There are several problems with Hampton's interpretation of "represent the general public". As the ALJ noted, the township's position presumes that an individual involved in any way with the farming industry, such as a farm equipment wholesaler, an Agway or Tractor Supply employee, or a residential property owner with an honor stand from which her small garden vegetables are sold, could not be a public member on a CADB. Hampton did not explain why such a person tangentially involved in the farming business is not qualified for appointment to the CADB to represent the general public. Further, other than the quoted statements from Day and Snook-Smith cited by Hampton, there is nothing in the record indicating what, exactly, those individuals' "farming" activities were at the time of the SCADB hearings.

The Initial Decision also determined that equating "represent the general public" with not having a direct stake in farming improperly adds a qualification to CADB membership in N.J.S.A. 4:1C-14a. We agree with the ALJ that Hampton's position improperly grafts another statutory condition on CADB membership. Jablonowska v. Suther, 195 N.J. 91, 105 (2008).

The ALJ made the following finding on p.14 of the Initial Decision: "Therefore, even assuming arguendo, I **FIND** that Smith and Day were 'actively engaged in farming' the SCADB was not improperly constituted." [Citation omitted; emphasis in original]. The ALJ obviously meant that even if, for the sake of argument, Snook-Smith and Day were actively engaged in farming the judge still concluded that the SCADB was properly constituted. The SADC **MODIFIES** the Initial Decision by determining that Day and Snook-Smith were public members, and the SCADB was properly constituted, in accordance with N.J.S.A. 4:1C-14a.

2. SCADB conflicts of interest and bias.

Hampton claimed that SCADB members had disqualifying conflicts of interest due to their familiarity with board chairperson Jane Brodhecker. The township also alleged that two (2) board

members showed "extreme bias in Brodhecker's favor".

The Initial Decision reviewed the types of conflicts recognized by New Jersey courts that can disqualify an elected or appointed official from acting on public business, noting that local government would be "seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official." Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958).

The types of conflicts recited in the Initial Decision were also reviewed with the board at its June 16, 2008 meeting by SCADB counsel. The transcript of that meeting, while not the best due to audio problems and unidentified board speakers, nevertheless clearly shows that board members expressed comments like: "I think I would just be focused on the issue" (from Ms. Pattison), "We're all capable of making an impartial decision", "I can make a decision based on what I hear", "I did say I would keep an open mind. . .I want to hear both sides of the story before I make a decision" and "I have no conflict whatsoever". The issue of board member conflicts was also the subject of correspondence between the SCADB attorney, board members, and the LFB, which on March 7, 2008, January 12, 2009 and July 10, 2009 advised in writing that there was no evidence of disqualifying conflicts of interest.

The township pointed to public comments made by members Hough and Welsh in September 2007, almost 2 years before the hearings on the Brodhecker SSAMP began, expressing their general opinions about what they perceived to be permitted activities at a farm market. In hindsight, such comments should not have been made by CADB members regarding a potential RTFA case that will come before them. We do not believe, however, that these statements rose to the level of what Hampton characterized as "extreme bias", and we are mindful that everyone is entitled to their opinions. These particular SCADB members' views were stated without the benefit of collecting the facts, hearing witnesses and gauging credibility, reviewing evidence, listening to the arguments of counsel for Brodhecker and the township, and considering the advice of SCADB counsel.

Accordingly, we **ADOPT** the Initial Decision finding that there was no conflict of interest among SCADB members, and **MODIFY** the Initial Decision by determining that the board was not biased in favor of Brodhecker.

3. Notice of the SSAMP application and site visit.

N.J.A.C. 2:76-2.3(a) provides, in pertinent part, that a commercial farmer "may make a request in writing to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice". A CADB is required by N.J.A.C. 2:76-2.3(b) to determine whether the commercial farm eligibility requirements set forth in N.J.S.A. 4:1C-3 are met, but that task does not obviate the need for the board to provide notice of the request as required by N.J.A.C. 2:76-2.3(c), which states:

> (c) The board shall advise the Committee and the municipality(ies) in which the commercial farm is located, in writing, of the receipt and nature of the request within 10 days.

Notice to the Committee and to the affected municipality or municipalities is required because section 2.3(c) refers to the "request" identified in section 2.3(a). The purpose of the section 2.3(c) notice is to alert local government officials as to what is going on in their municipality and to understand the subject matter of the SSAMP request; to give local officials the opportunity to seek further information about the SSAMP request; and for municipal government to prepare for, attend and participate in CADB meetings and hearings.

There is no dispute that the Brodhecker SSAMP application was filed with the SCADB on February 25, 2009 and that Hampton was not notified of that filing within 10 days of the board's receipt. However, the township attorney was given a copy of the application at the May 18, 2009 meeting at which the only issue was Brodhecker's "commercial farm" eligibility. We conclude that Hampton had adequate time to prepare for the ensuing board hearings, at no point during the SCADB or OAL proceedings raised any objection to the proofs supporting the finding of commercial farm eligibility, and aggressively litigated the substantive merits of the SSAMP application. Therefore, the SADC **ADOPTS**, for the reasons set forth in the Initial Decision, the ALJ's determination that, although the SCADB technically violated N.J.A.C. 2:76-2.3(c), the township was not prejudiced thereby.

The Initial Decision did not specifically find that Brodhecker operated a "commercial farm" as defined in N.J.S.A. 4:1C-3. Instead, the ALJ stated that the SSAMP approval granted by the SCADB "authorized Brodhecker to operate as a commercial farmer" (Initial Decision, p.2) and the January 19, 2010 board resolution "grant[ed] Brodhecker the right to operate a

commercial farm pursuant to the Right to Farm Act" (Initial Decision, p.3). "Commercial farm" eligibility is a condition precedent to RTFA protection obtained upon issuance of an SSAMP, and we conclude that the quoted statements indicated some confusion on the part of the ALJ.

N.J.S.A. 4:1C-3 provides as follows:

> "Commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.).

There was ample evidence in the record demonstrating that Brodhecker owned and operated a farm management unit exceeding five (5) acres in size, producing agricultural products worth $2,500 or more annually, and satisfying farmland assessment criteria. Based on the foregoing, the SADC **MODIFIES** the Initial Decision by finding that Brodhecker operated a "commercial farm" pursuant to N.J.S.A. 4:1C-3.

The township argued that the SCADB failed to follow SADC guidelines when the May 18, 2009 site visit was conducted by an agricultural "team" without the presence of Hampton representatives.

The ALJ correctly noted that SADC Policy P-3 ("Guidelines for the Development and Recommendation of Site-Specific Agricultural Management Practices ["AMPs"] by County Agriculture Development Boards") recommends that a team of agricultural professionals conduct a site visit to evaluate the SSAMP request and that municipal officials are not included in the professionals listed in the policy.

N.J.A.C. 2:76-2.3(d) and Policy P-3 encourage CADBs to consult with agricultural agencies, organizations and persons in the development of SSAMPs. Those entities most often contacted by CADBs for assistance are:

- The New Jersey Department of Agriculture
- The SADC
- The New Jersey Agricultural Experiment Station, including county agents
- Other CADBs
- The State Soil Conservation Committee and local soil conservation districts
- The United States Department of Agriculture, or any other relevant Federal agency
- Other states' departments of agriculture, land grant colleges or agricultural experiment stations

The site visits are conducted, and written findings by the site visit team are generated, to verify the commercial farming operation and the activities for which an SSAMP is sought, thus helping the CADB make an informed judgment.

It is clear that SSAMP site visits are intended to provide the agricultural expertise needed to undergird the integrity of the RTFA process and the validity of an SSAMP. We therefore see no merit in the township's claim that municipal representatives should have been in attendance at the Brodhecker farm site visit, as local government officials do not possess the same degree of agricultural experience as the entities and individuals listed in Policy P-3. There is also a legitimate concern that opening the site visit to municipal representatives could disrupt the work of, or distract, the agricultural professionals, particularly when local government and the commercial farmer are in conflict.

Hampton also complained that, contrary to Policy P-3, although the township was a "party", it was given no advanced notice of the site visit. The township points to a provision in the policy which states: "It is strongly recommended that at least one farm visit be completed prior to the recommendations of the site-specific AMP and that all parties be given at least three days notice of the farm visit." However, Hampton presented little or no evidence of disadvantage resulting from the lack of notice and, as stated above, the township was not automatically entitled to attend the site visit. Finally, Hampton's objections about the preparation of the site visit report, including the use of photographs and the report's failure to address "sensitive issues" amount, again, to no more than a dispute about technical compliance with Policy P-3 recommendations.

The SADC **ADOPTS** the ALJ's finding that, based on SADC Policy P-3, Hampton was not entitled to participate in the Brodhecker farm site visit on May 18, 2009. Legal support for this finding is also found in N.J.A.C. 2:76-2.3(d). Because the Initial Decision did not address Hampton's other objections set forth above regarding compliance with Policy P-3, the SADC **MODIFIES** the Initial Decision by determining that the lack of advanced notice of the site visit and alleged defects in the preparation of the site visit report were, at best, technical deviations that did not prejudice the rights of the township.

4. Burden of proof.

The Initial Decision repeatedly cited Casola v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06462-00, SADC ID #1318-01, with respect to which party in an OAL case dealing with the appeal of an SSAMP determination has the burden of proof.

Casola involved a commercial farmer's application to the Monmouth CADB (MCADB) for an SSAMP for a farm market and agritourism activities. The MCADB approved Casola's application and the Township of Holmdel appealed to the SADC pursuant to N.J.S.A. 4:1C-10.2. After the matter was transmitted to the OAL, a dispute arose regarding: (1) which party bore the burden of proof in demonstrating whether the agricultural activities for which an SSAMP was sought conform to generally accepted agricultural management practices, and (2) whether the hearing to be held before the ALJ was *de novo*.

The ALJ in Casola held that the commercial farmer had the burden of proof in the OAL and that the hearing was *de novo*. The judge reasoned that the applicant for a permit or approval bears the burden to prove the facts essential to the application and that this burden was to be carried by the commercial farmer in the OAL when a CADB-approved SSAMP is appealed.

The SADC issued an interlocutory order on September 26, 2001 reversing the judge's holding regarding the burden of proof. The SADC held that although the commercial farmer has the initial burden to prove SSAMP eligibility before the CADB,

> [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 a site-specific agricultural management practice, the burden then shifts to the party or parties contesting the

> CADB's action. At that point the governmental action is presumed valid *unless and until the contrary is determined*, with the burden of proof thereof on the attacking party. [Emphasis added].

The presumption of validity that attaches to a CADB determination is based on the board's special expertise in agricultural matters. "What continues is the quasi-judicial [OAL] review of the allegations of the objector, namely[,] that the site-specific determination was improperly issued." (Interlocutory Order, September 26, 2001, p.7). The objector carrying the burden in the Casola case under review by the OAL was Holmdel Township.

But the SADC's interlocutory order also cited Lyons Farms Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970), which stands for the proposition that the presumption of validity attaching to administrative agency decisions is lost when there is a "clear abuse or unreasonable or arbitrary exercise of discretion". Id. at 303.

The SADC also affirmed the ALJ's conclusion in Casola that the OAL hearing was *de novo*. *De novo* proceedings of contested cases under the RTFA have consistently been held in the OAL for at least the past 14 years.

The Initial Decision in the Brodhecker case provided a truncated version of the SADC's interlocutory order in Casola, omitting the important conditional clause that a CADB's decision is presumed valid "unless and until the contrary is determined". The judge also failed to cite to the Lyons Farms ruling pertaining to the circumstances by which the presumption disappears.

Therefore, the SADC **MODIFIES** the Initial Decision by holding that a CADB determination under the RTFA is presumed valid, and the party objecting to the issuance of the SSAMP has the burden of proof in the OAL to show that a commercial farmer's agricultural activities were not entitled to an SSAMP determination, but that such a determination loses its presumption of validity when satisfactory proof is presented to the ALJ that the CADB's decision was not based on sufficient credible evidence. If the presumption of validity is lost, then the burden of proof again shifts to the commercial farmer to demonstrate entitlement to the SSAMP. The rationale for this burden shifting is supported by the *de novo* nature of the proceedings before the OAL.

B. The Brodhecker farm market SSAMP

Preliminarily, the SADC understands that the issues in this case were complicated, and the board spent a significant amount of time at meetings and hearings regarding the Brodhecker farm market SSAMP. However, the transcripts of the hearings in July and August 2009 reflect a lack of detailed fact finding by the board in relation to the P&L statements, the use analysis plan, the agricultural team's report, and the testimony of witnesses, all of which would be needed for the SCADB to gain a better understanding of the evidence presented. The transcript of the December 2009 meeting, at which findings were made supporting the board's draft resolution of approval, indicates little more than a rote adoption of Brodhecker's application with insufficient critical analysis of the evidence adduced at the hearing in the context of RTFA requirements. We must conclude that the board's action overall lacked sufficient findings of fact and conclusions of law required of an administrative agency considering such a complex case.

Further, the SCADB's apparent impatience with Hampton and Pierson's presentations, questioning and testimony and its response to their concerns bear particular scrutiny because RTFA protection must be based on an articulated balancing of the commercial farmer's interest in conducting agricultural practices against those of the municipality, expressed in local ordinances, and those of adjoining property owners. Franklin Township v. den Hollander, 172 N.J. 147, 150-152 (2002); Curzi v. Raub, 415 N.J.Super. 1, 22 (App. Div. 2010).

1. Background.

N.J.S.A. 4:1C-9, which lists the agricultural operations or practices entitled to RTFA protection ("section 9"), provides that a "commercial farmer" may:

> c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;
>
> * * * * * *
>
> h. 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;

A "commercial farm" is defined in N.J.S.A. 4:1C-3, the relevant portion of which was cited on page 17 of this Final Decision. If the SSAMP for an eligible commercial farm is approved, then the commercial farm enjoys broad protections. The SSAMP activities are protected against unreasonable municipal and county ordinances, as set forth in the first sentence of the introductory paragraph of section 9, and are shielded with an irrebuttable presumption that those activities are not a public or private nuisance. N.J.S.A. 4:1C-10. However, the commercial farmer is entitled to these RTFA protections only upon satisfactory proof to the CADBs or the SADC that the commercial farm's operation conforms, as set forth in section 9, with "all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety".

Brodhecker applied for an SSAMP to "[p]rovide for 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-9c. The SSAMP application also sought protection for undescribed tours, educational events, agritourism and signs.

2. Compliance with statutory criteria.

A "farm market" is defined in N.J.S.A. 4:1C-3 as:

> a facility used for the wholesale or retail marketing of the agricultural output of the commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing 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 must be devoted to the sale of the agricultural output of the commercial farm. . .

Therefore, in order for the Brodhecker farm market to be entitled to RTFA protection, it must satisfy the statutory "gross sales" or "sales area" tests, and also engage in the retail marketing of the farm's agricultural output and products that contribute to farm income.

a. Does the Brodhecker retail farm market[4] generate at least 51% of annual gross sales from the agricultural output of the commercial farm?

[4] Thomas Brodhecker testified at the July 20, 2009 SCADB hearing that his operation does not engage in wholesale marketing.

The P&L statements for 2007 through part of 2009 were exhibits before the SCADB and the OAL; in addition, a P&L statement in the same format covering 2010 was admitted as an exhibit in the OAL, with the full year 2009 percentages listed in the column headed "Last Year". Admission of the 2007, 2008 and partial 2009 P&L statements as evidence in the SCADB proceeding was supported by Thomas Brodhecker's testimony that they were computer print-outs based on the farm market's recordkeeping capabilities. The documents were the subject of objections by Hampton because they contained percentages and not dollar figures or other proof of cash receipts.

The board made no in-depth analysis of these materials and the ALJ neither made her own analysis nor inquired why the board hadn't done so. Instead, while the Initial Decision agreed with Hampton that Brodhecker did not provide proof of actual sales revenue generated by the farm market, the ALJ placed the burden on the township to prove that Brodhecker had not met the "sales prong" criterion in N.J.S.A. 4:1C-3. Due to the lack of any meaningful analysis of the P&L statements by the SCADB, the SADC **REJECTS**, for the reasons stated in the Legal Discussion, Section A4., the ALJ's determination that the burden was on Hampton to prove Brodhecker's noncompliance with the annual sales requirements.

The SADC has carefully reviewed the P&L statements and can break down the data on an itemized basis as follows: (1) farm market sales of the agricultural output of the Brodhecker Farm; (2) farm market sales of products that are not the agricultural output of the farm; and (3) items listed that cannot be considered retail farm market sales. Our conclusions are that:

(1) All of the items under "Sales" beginning with "Hay sq" and ending with "Wool" (except for "soy bean meal") are the agricultural output of the commercial farm sold at the farm market. (Mr. Brodhecker testified that soybean meal was not produced by the farm but was sold as an additive to the farm-produced "grain grind" and other feed.)

(2) The following items are sales of products at the farm market that are *not* the agricultural output of the farm: (a) gravel; (b) equipment sales; (c) depreciated items sold; (d) "misc. sales"; (e) sheds.

(3) Consistent with Mr. Brodhecker's testimony, the following items constitute *income* to the farm operation, but are *not*

considered "sales of the retail farm market": government grants/CCC; insurance claim; shipping fees collected; late fees collected; custom work; patronage dividend/refund. We also find that "Commission/Pioneer & Amsoil", which was not discussed by Mr. Brodhecker during the hearing, is *not* a sales item, although the point is moot in view of the entries of 0.0%.

Based on the above, and bearing in mind that there was no clear and comprehensive explanation of the data during the SCADB and OAL proceedings, we can attempt to recapitulate the P&L statements for 2006 through 2010, inclusive, by adding the percentage entries for the agricultural product sales in paragraph (1) above and dividing that percentage into the total percentage of all farm market sale items listed in paragraphs (1) and (2) above. For example, in 2008 the total percentage of agricultural product sales "(1)" was 50.90 and the total percentage of all non-product sale items "(2)" was 43.90, resulting in a total farm market income percentage of 94.80. Dividing 50.90 by 94.80 yields a percentage of 53.69 for annual sales of the farm's agricultural output.

In 2006, only 30.14% of the annual sales were generated from the agricultural output of the farm. However, for the years 2007 through 2010, inclusive, agricultural output sales exceeded the statutory minimum: 51.45%, 53.69%, 55.47% and 57.50%, respectively. The only difference between the 2010 P&L statement of items sold and the years 2007 and 2008 is that the former contained an additional entry of 0.2% for "sunflower", but that entry had no appreciable effect on the final 2009 and 2010 calculations.

There is no SADC precedent for accepting only a print-out of income percentage figures in an RTFA case as proof that the annual gross sales of a farm market is composed of 51% or more of farm-grown products. Because basic eligibility for RTF protection may be dependent, as in the Brodhecker case, on meeting the 51% annual gross sales provision, compliance with the requirement is central to the integrity of the RTFA process. However, we also understand that farm operators may prefer not to disclose publicly every detail of their operations' income, and we also do not want to foreclose the ability of a commercial farmer in the future to present such evidence, as we are mindful that modern commercial transactions, even at farm markets, have evolved beyond the simple cash register and now entail computer-assisted technology.

Consequently, with a view toward balancing current commercial realities with the integrity of the RTFA program, the SADC **MODIFIES** the Initial Decision by determining that the Brodhecker operation which is the subject of the SSAMP application does meet the definition of "farm market" under the RTFA. Our finding, however, is subject to the requirement that Brodhecker obtain an attestation report from a certified public accountant (CPA), in accordance with the Statement on Standards for Attestation Engagements (SSAE) issued by the American Institute of Certified Public Accountants, to review the data from which the percentages for 2008 and 2009 were calculated and to confirm that 51% or more of the Brodhecker farm market's annual gross sales came from the farm's agricultural output sold at retail from the farm market. The attestation report period covers the full calendar year immediately preceding, and the full calendar year of, the filing of the Brodhecker SSAMP application.

The attestation must track the sales classifications delineated in paragraphs (1), (2) and (3) on pages 23-24 of this Final Decision, and shall be provided to the SADC, SCADB and Hampton Township. If, as will be discussed later in this Final Decision, Brodhecker exercises the option of returning to the SCADB to seek approval of the proposed parking area, then an attestation shall be furnished to the board, Hampton and the SADC of the gross sales percentages for 2013, or the most recent complete calendar year.

The SADC believes that any burdens related to obtaining the attestations in this and future cases is far outweighed by the strong protections afforded by the RTFA and by the need to protect the integrity of the RTFA program.

> b. Is at least 51% of the sales area of the Brodhecker retail farm market devoted to the sale of the farm's agricultural output?

We rely on a document introduced into evidence by Brodhecker at the SCADB and OAL hearings---the 2009 use analysis plan prepared by Daniel E. Kent, LS---and note that the SCADB made no analysis of the document and the ALJ did not analyze the plan or inquire why the board hadn't done so. As such, neither the Board nor the ALJ provided specific findings as to what areas are, and are not, considered "sales area" pursuant to the farm market definition and, consequently, whether Brodhecker may rely on the "sales area" test as a basis for RTFA protection. Due to the lack of any meaningful study of the use analysis plan by the SCADB, the SADC **REJECTS**, for the reasons stated in the Legal

Discussion, Section A4., the ALJ's determination that the burden was on Hampton to prove Brodhecker's noncompliance with the sales area criterion in N.J.S.A. 4:1C-3.

As stated earlier, the Kent plot plan shows the buildings and areas of the farm, and the uses to which they are put, in connection with Brodhecker's retail operations. Buildings and areas were categorized as "direct farm market sales and storage" and "non-farm and farm produced products sales". The conclusions that follow are based on the many photographs admitted into evidence during the OAL proceedings and the testimony of the various witnesses before the SCADB and the OAL with regard to the exterior and interior uses of the farm market complex.

The SADC agrees with the use analysis plan identification of the "Existing Office Building" (Building 6, Area "G") and one-half of the "Steel Building" (Building 1, Area "F") as farm market sales areas. The SADC also agrees with the plan's designation of the "non-farm and farm produced products sales" areas. The SADC disagrees with the remainder of the use analysis plan identifications of farm product "sales area" that are primarily used for grazing livestock, storage of bulk product like grain bins and grain processing areas, and dual-purpose structures such as farm storage and livestock shelter.

The SCADB essentially found that any area of the farm at which a customer selects livestock, or picks up hay or grain, constitutes a "sales area" contemplated by N.J.S.A. 4:1C-3. We disagree, and find that pastures, livestock shelters, livestock holding pens, bulk product storage and product-processing buildings are predominantly used for supplying and facilitating the farmowner's operation and, at best, offer a "mixed use" that could incidentally include product sales.

Our conclusion that a sales area must be predominantly used for the marketing of the commercial farm's agricultural output is consistent with the SADC's definition of "sales area" in the proposed Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities and Events ("OFDM-AMP"). See, 45 N.J.R. 1449 (June 17, 2013). The definition in the proposed rule states:

> "Sales area" means the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and

> other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas such as areas used for the storage of equipment and other items; and areas dedicated to farm-based recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies.

However, the SADC agrees that it is a generally accepted commercial agricultural practice to have customers look at livestock in a holding pen to determine whether to buy the animal and to pick-up grain or hay from a storage structure like a barn or silo. Therefore, while these areas cannot be considered statutory "sales areas", and would not be recognized as such in the OFDM-AMP, the practice of allowing customers occasional access to livestock holding pens to inspect animals for potential purchase and to storage structures for commodity pick-ups is entitled to RTFA protection as a component of Brodhecker's retail marketing operation.

In sum, we agree that 1/2 of Building 1 depicted on the Kent use analysis plan of the Brodhecker farm market complex, totaling about 3600 square feet, can be considered "sales area" devoted to sales of the farm's agricultural output. We also agree that Building 6 on the plan is clearly "sales area", although based on the testimony of what is sold in Building 6 and on the photographs of the structure's interior, it is not devoted to the sales of the farm's agricultural output. However, we find that the remaining areas identified on the Kent plan as "sales area" are not, in fact, "sales area", as discussed above. Therefore, the Brodhecker operation cannot rely on "sales area" to meet the definition of a farm market but, rather, must rely on the 51% annual gross sales threshold as discussed above.

> c. What products sold at the farm market are the agricultural output of the Brodhecker farm and what products are, and are not, considered to be "products that contribute to farm income"?

<u>In the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County</u>, SADC ID #786 (Hearing Officer's Report and Recommendations dated March 24, 2011) the SADC ruled that "products that contribute to farm income" was to be construed based on the remaining language in the definition of "farm market" and on the intent of the RTFA:

> The word "products" must be given its plain and ordinary meaning as "items" or "commodities" rather than services, and RTFA protection for the sale of such income-

> contributing items or commodities must be evaluated consistently with the RTFA's primary goal of protecting agricultural production activities. The SADC's analysis is also informed by the Legislature's restriction of RTFA protection for farm markets to the sale of only two (2) types of goods: (a) the agricultural output of the commercial farm; and (b) "products that contribute to farm income". The Committee believes that RTFA protection for farm markets can be rationalized if these two (2) 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. Otherwise, the importance of protecting the sale of the commercial farm's agricultural output would be diminished by protecting products having no or little nexus to that output, and the special status accorded farm markets in the RTFA would be undermined.
>
> Accordingly, the Committee believes "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. The SADC does not agree that a farm market can enjoy RTFA protection if the sale of agricultural commodities is accompanied by the sale of, for example and not by way of limitation, sporting goods, electronic equipment, stationery, and health and beauty aids.

We note that, with respect to "products that contribute to farm income", the SCADB understood that phrase to mean "complementary" and "supplementary" sale items because a February 1994 draft "Agricultural Management Practices for Farmer-to-Consumer Direct Marketing on Farms in New Jersey" (the 1994 draft AMP) was a board exhibit. The SCADB resolution approving the Brodhecker SSAMP incorporated the 1994 draft AMP's interpretation of "products that contribute to farm income" by stating that

> complimentary [*sic*] items. . .are commonly used in conjunction with or for preparation of the agricultural output of the farm. . . [and] supplementary items. . . are commodities produced by other farms and specialty products with a relationship to the farming operation, and food and drink items produced by other commercial farms in New Jersey. . .

Unfortunately, the SCADB merely recited the definitions of "complementary" and "supplementary" products without applying

those rubrics to the specific products sold at the Brodhecker farm market. The 1994 draft AMP and the Hopewell Valley Vineyards decision, both of which discuss "complementary" and "supplementary" products contributing to farm income, were admitted into evidence by the ALJ without analysis in the Initial Decision.

It is understood from the definition of "farm market" (*supra*, p.22) that the RTFA protects farm markets' sale of both the "agricultural output of the commercial farm" as well as "products that contribute to farm income".

The SADC has dealt directly with this issue more clearly in the proposed OFDM-AMP, where such products were categorized as "complementary" or "supplementary" in nature. Proposed N.J.A.C. 2:76-2A.13(b) provides as follows:

> "Complementary products" means items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm. Examples of promotional items include but are not limited to souvenir items such as commercial farm-branded shirts, hats, and bags.
>
> "Supplementary products" means the agricultural output of other farms, and additional customary food and drink items.

As a result, it is necessary to determine what, if any, items sold from the Brodhecker farm market are not "products that contribute to farm income" because they lack the necessary nexus to the farm's agricultural output and, therefore, are not entitled to RTF protection.

As stated above, *supra* at 23, neither the SCADB nor the ALJ made any analysis of product sales, with the ALJ deciding that the burden of proof was on Hampton and Pierson to establish that the sale items were not complementary or supplementary. Therefore, due to the lack of any comparison by the SCADB of Brodhecker's sale items against the complementary/supplementary criteria, the SADC **REJECTS**, for the reasons stated in the Legal Discussion, Section A4., the ALJ's determination that the burden was on Hampton to prove that the items were not complementary or supplementary.

The items and commodities listed in the Brodhecker SSAMP application were substantially the same as those listed in the Initial Decision as being sold at retail from the farm market. This Final Decision will identify all sale items listed in both

the SSAMP and in the Initial Decision for clarity and completeness, and add our conclusions with respect to RTFA classification of the items being "Protected", "Conditionally Protected" and "Not Protected" for sale, with explanations.

We stress that a product "Not Protected" can still be sold at the farm market; instead, the sale of that product is not entitled to RTFA protection.

PROTECTED

Animal feed - PROTECTED as "agricultural output", as the Brodhecker farm produces and processes feed from its own farm-grown products.

Crops - PROTECTED as "agricultural output", as Brodhecker grows and sells hay, corn, oats and wheat on the commercial farm.

Livestock - PROTECTED as "agricultural output", as Brodhecker operates a diversified livestock operation that raises and sells beef, swine and poultry for processing, and rams and ewes for breeding and marketing.

Seed - PROTECTED as "agricultural output" from the farm's sunflowers or, as the agricultural output of another farm, a supplementary "product that contributes to farm income".

CONDITIONALLY PROTECTED

The following items are protected as "products that contribute to farm income" because of the reasonable nexus to the sale of Brodhecker's farm-raised livestock sold to customers for continued raising. Such protection is conditioned on the type and scale of the items sold being consistent with the type of livestock sold at Brodhecker's farm market.

Livestock shelters

Livestock supplies

Livestock feeders

Waterers; watering equipment

Fences, fencing supplies

Gates

NOT PROTECTED

Gazebos - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Sheds - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker. This determination is entirely consistent with our holding in In the Matter of Gro-Rite, Inc. and the Township of Pequannock, SADC Hearing Report dated May 19, 2003, OAL Dkt. No. AGO 11052-03, SADC ID #1431-02. In that case, the SADC concluded that the "sale of garden sheds [was a] generally accepted agricultural management practice" because of the relationship between those items and the marketing of nursery and other garden-related products. Significantly, the SADC's decision pertained to the sale, not the outdoor display or storage, of garden sheds, and specifically stated that the RTFA "should not preempt [Pequannock] Township's. . .re-review of the proposal to display sheds, in light of the New Jersey Supreme Court's holding that the SADC is required to acknowledge and consider relevant municipal interests in zoning disputes. den Hollander, 172 N.J. at 152."

"Related equipment" - not protected due to the lack of evidence before the SCADB and OAL as to what this term means.

Tractors and Trailers - the SADC finds that the phrase "products that contribute to farm income" does not contemplate the commercial farmer as a sales dealer of agricultural motor vehicles, implements or attachments thereto.

Fertilizer and lime - there was no evidence that these materials were produced as the farm's agricultural output, and because there is no complementary or supplementary nexus to the sale of the farm's livestock.

Hay wagons - the SADC finds that the phrase "products that contribute to farm income" does not contemplate the commercial farmer as a sales dealer of agricultural motor vehicles, implements or attachments thereto.

Manure spreaders - the SADC finds that the phrase "products that contribute to farm income" does not contemplate the commercial farmer as a sales dealer of agricultural motor vehicles, implements or attachments thereto.

Cat and dog food - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Ice melt - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Muck boots - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Rock salt - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Wood pellets - there is no relationship between this item and any of the farm-grown agricultural outputs being sold by Brodhecker.

Therefore, we **MODIFY** the Initial Decision as follows:

- Subject to a CPA attestation for the years 2008 and 2009 as described above, the Brodhecker retail farm market complies with the annual gross sales criteria in N.J.S.A. 4:1C-3 because at least 51% of annual gross sales is generated from the agricultural output of the commercial farm;

- The Brodhecker retail farm market does not comply with the requirement in N.J.S.A. 4:1C-3 that at least 51% of the sales area of the retail farm market is devoted to the sale of the farm's agricultural output;

- The agricultural output of the Brodhecker farm that can permissibly be sold at the retail farm market in accordance with N.J.S.A. 4:1C-3 are: animal feed; crops; livestock; and seed if it is the farm's agricultural output.

- Other items that can permissibly be sold at the Brodhecker retail farm market as "products that contribute to farm income" pursuant to N.J.S.A. 4:1C-3, because of the reasonable nexus to the sale of Brodhecker's farm-raised livestock sold to customers for continued raising, are: livestock shelters; livestock supplies; livestock feeders; waterers; watering equipment; fences; fencing supplies; and gates; provided, however, that the type and scale of the items sold are consistent with the type of livestock sold. The sale of seed is permissible as a supplementary "product that contributes to farm income" if it is the agricultural

output of another farm.

- The sale of the following items and commodities from the Brodhecker retail farm market are not entitled to RTFA protection because they are not the agricultural output of the commercial farm and are not "products that contribute to farm income" as required by N.J.S.A. 4:1C-3: gazebos; sheds; tractors and trailers; "related equipment"; fertilizer and lime; hay wagons; manure spreaders; cat and dog food; ice melt; muck boots; rock salt; wood pellets.

d. Proposed new barn; tours; educational events; agritourism; signs.

As stated above, there was no testimony or evidence before the SCADB or the OAL regarding these requests listed in the SSAMP application, and the Initial Decision made no findings on these issues. The SADC **MODIFIES** the Initial Decision by determining that no SSAMP exists for the proposed new barn, tours, educational events, agritourism and signage, although Brodhecker is free to reapply to the SCADB for RTFA protection, subject to the terms and conditions of this Final Decision. We note that any proposed building must comply with relevant provisions of the UCC, and that agriculture-related educational and farm-based recreational activities must be related to marketing the agricultural output of Brodhecker's commercial farm. N.J.S.A. 4:1C-9h.

e. Customer parking and traffic impacts.

During the proceedings, Brodhecker proposed an amendment to the SSAMP to incorporate a proposed parking area plan for the farm market. The SCADB did not permit the amendment because it was submitted after the record had closed, but the board's resolution incorporated a finding from the agricultural team's report that the farm market "sale area. . .was in close proximity to a well prepared parking area." There is no evidence in the board record supporting the statement that the parking area was "well prepared" or that any existing or proposed parking area complied with municipal standards as required by N.J.S.A. 4:1C-9c. Instead, the testimony was limited to Mr. Brodhecker's statement that 20 spaces were or would be provided, including one ADA-compliant parking stall. Brodhecker's attorney argued to the board that parking was the "only site plan issue, type issue, that I see in [N.J.S.A. 4:1C-9c.]." The SCADB resolution merely recited the requirement in N.J.S.A. 4:1C-9c. that the operation of the farm market must be

accompanied by the "construction of any. . . parking area(s). . .in conformance with municipal standards."

Brodhecker's attorney raised the issue of farm market site plan approval during an opening statement in the OAL hearings. Hampton objected to the timeliness of the argument, the fact that Brodhecker did not appeal the SCADB resolution requiring the construction of parking in conformance with municipal standards, and the need for the farm market operation to address public safety issues. The ALJ reserved decision and, after the issues were briefed, found that Brodhecker failed to present credible evidence that the parking area conforms to municipal standards as required by N.J.S.A. 4:1C-9c. The SADC **ADOPTS**, for the reasons stated by the ALJ in the Initial Decision, the judge's determination that Brodhecker did not establish that the farm market parking area is in conformance with municipal standards.

The SADC has previously held that parking, traffic circulation, pedestrian safety and off-site vehicular safety associated with marketing activities are baseline requirements for inclusion in a farm market SSAMP because a commercial farmer's operation is protected under the RTFA only if it does not pose a direct threat to public health and safety (See, In the Matter of Holloway Land, LLC, SADC ID #1243, Hearing Officer's Report and Recommendations dated January 26, 2012; SADC Final Decision, Feinberg v. Hunterdon CADB, at als., OAL Dkt. No. ADC 08445-2012, SADC ID #1342, November 14, 2013). Further, the RTFA conditions protection of a farm market operation only if "the construction of building and parking areas [are] in conformance with municipal standards". N.J.S.A. 4:1C-9c.

The SCADB made only a cursory finding that the Brodhecker farm market operation did not pose a public safety threat; it did include in the resolution approving the farm market SSAMP the statutory condition related to construction of buildings(s) and parking area(s) in conformance with municipal standards. The ALJ did not provide a full factual and legal record on the issue, which is significant because only the township provided expert testimony to the SCADB regarding public safety and traffic impacts posed by the farm market operation. Consequently, the SADC **REJECTS**, for the reasons stated in the Legal Discussion, Section A4., the ALJ's determination that the burden was on Hampton to prove that the Brodhecker farm market did not pose a direct threat to public health and safety.

We also **MODIFY** the Initial Decision by concluding that,

consistent with our holdings in Holloway Land and Feinberg, Brodhecker does not have RTFA protection for the retail farm market until parking and traffic impacts related to the operation are addressed. The farm market's proposed parking area must still be established in accordance with N.J.S.A. 4:1C-9c. so that a determination may be made as to whether it is in conformance with municipal standards. As such, Brodhecker has the option of returning to the SCADB, on notice to Hampton Township and affected property owners, to demonstrate that the proposed parking area complies with municipal standards, including safe on-site traffic circulation and pedestrian safety, as well addressing the nature, intensity and control of vehicular traffic on Branchville-Lawson Road generated by the farm market operation. If Brodhecker proceeds before the SCADB on these issues, then, as stated in the Legal Discussion, Section B2a., above, an attestation of the 2013, or the most recent full calendar year, P&L statement will be required.

Alternatively, Brodhecker may apply to the township for approval of the parking plan and to address on- and off-site traffic impacts. Consistent with our holding in In re Bottone (SADC Report dated September 22, 2005), if Brodhecker believes that the township "is imposing unreasonable requirements. . .with respect to his traffic plan", he can apply to the SCADB for relief in accordance with N.J.A.C. 2:76-2.3.

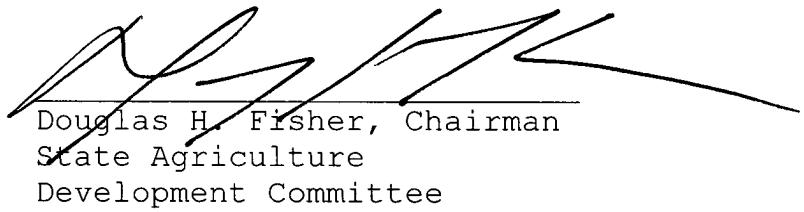
f. Building uses and UCC classifications.

The SCADB and the ALJ heard testimony from the township regarding whether and how the various buildings and the purposes to which they were put affected UCC use classifications. The board made no specific findings other than to recite N.J.S.A. 4:1C-9c. mandating that farm market buildings be constructed in conformance with municipal standards. The Initial Decision described the testimony of the township's subcode official and building classifications but was silent on the extent to which farm market buildings needed to comply with the UCC. Instead, the ALJ concluded that, with respect to UCC compliance, "the burden is not on Brodhecker".

The SADC **REJECTS**, for the reasons stated in the Legal Discussion, Section A4., the ALJ's determination that the burden was not on Brodhecker to prove that buildings are in compliance with state law. No RTFA protection can be afforded unless the commercial farm is in compliance with relevant state laws. Therefore, at a minimum, Buildings 1 and 6 as depicted on the Kent plan must comply with applicable provisions of the UCC and

subcodes because they are clearly considered sales buildings intended to be consistently used and occupied by the public. In addition, to the extent that farm market buildings are classified as "M (Mercantile)" under the UCC, parking plans must comply with applicable state law.

IT IS SO ORDERED



Douglas H. Fisher, Chairman
State Agriculture
Development Committee

Dated: February 27, 2014

ADDENDUM TO FINAL DECISION

By letter of March 20, 2014, Brodhecker sought reconsideration of the SADC's February 27, 2014 Final Decision and Hampton Township objected to the request in correspondence dated March 26, 2014.

In the absence of a legislative restriction, administrative agencies generally have the inherent power to reopen or to modify prior decisions. In re Application of Trantino, 89 N.J. 347, 364 (1982), citing Ruvoldt v. Nolan, 63 N.J. 171, 183 (1973); Castellucci v. Bd. of Review, 168 N.J.Super. 301, 306 (App.Div. 1979). The RTFA contains no legislative restriction on the ability of the SADC to reopen the case.

An administrative agency may reopen a final decision involving the same parties and the identical subject matter, but such authority must be exercised reasonably, with sound discretion reflecting due diligence, and for good and sufficient cause. Trap Rock Industries, Inc. v. Sagner, 133 N.J.Super. 99, 110 (App.Div. 1975), aff'd 69 N.J. 599 (1976). The SADC's reconsideration of its final decision can be justified if there is "[a] new development or new evidence relating to established facts or a material misapprehension concerning an essential matter which is critical to [the] agency determination. . ." Trantino, supra, 89 N.J. at 365.

At its March 27, 2014 meeting, and after hearing the arguments by counsel for Brodhecker and Hampton Township, the SADC decided

to reopen its determination that the sale of certain products at the farm market, listed on pp. 31-32 of the final decision, was not protected under the RTFA. The committee carefully considered Brodhecker's claim that the OAL hearing transcripts, which the agency had not been provided and, therefore, had not reviewed, had a bearing on the SADC's conclusions regarding the sales items. The SADC also heard the arguments of Hampton Township that the dispute had been fully and fairly litigated over an extended period of time and that the final decision, while not entirely acceptable to the township, thoroughly reflected the record in the case.

We balanced the parties' arguments, mindful that the record reviewed by the SADC in preparing the final decision consisted of approximately 750 pages of SCADB and Hampton Township land use board transcripts, over 100 SCADB and OAL exhibits, and hundreds of pages of briefs, correspondence and photographs. Ultimately, the SADC struck the balance in favor of a limited reopening of the case because important public policy questions were implicated as to RTFA protection of sales items, thus justifying review of approximately 650 pages of OAL hearing transcripts. We analyzed the OAL transcripts for relevant, credible and sufficient testimony or evidence crucial to that issue that may have been unavailable in our prior determination and constituting "new developments. . . or even new evidence of old developments" contemplated in Trap Rock.

In the Matter of Raymond Morrison, 216 N.J.Super. 143, 158 (App.Div. 1987), held that "the responsibility and cost of providing the necessary transcript" must be borne by "the party asserting any exceptions which reasonably require agency reference to and review of the relevant part of the [OAL] record." Therefore, we conditioned reconsideration on Brodhecker paying for and transmitting the relevant transcript(s) because it was the party seeking relief from the agency's decision.

Brodhecker and Hampton reached an agreement in which the township would pay for the January 24 and 25, 2011 OAL hearing transcripts and Brodhecker would pay for the March 22, 2011 transcript; all three (3) transcripts were received by the SADC on June 10, 2014.

The SADC has issued this Addendum in a reasonable time given the volume of the transcribed OAL testimony, the complexity of the issues presented, and the sequencing of monthly agency meetings. See generally, Ruvoldt, supra, 63 N.J. at 183-84.

Upon review, we find that the OAL hearing transcripts cast greater light on the nexus between Brodhecker's agricultural output, other than livestock, and the sale of sheds. The transcripts did not, however, provide sufficient justification for RTFA protection for the sale of wood pellets or any other item not previously found to be protected, or conditionally protected, by the agency. Therefore, the SADC now supplements and/or modifies, as appropriate, two (2) separate paragraphs appearing on pp. 31-32 of the Final Decision addressing farm market sales items and captioned as "NOT PROTECTED" under the RTFA:

Sheds - The OAL testimony reflects agreement by the parties that non-livestock storage sheds can be sold to both "hobby farmers" for legitimate agricultural purposes as well as to residential homeowners for purely residential use. Witnesses for both sides testified that the sale of storage sheds for purely residential purposes would not be protected under the RTFA.

However, the fact that "hobby farmers" can utilize sheds is not sufficient justification for extending RTF protection to the sale of those items as part of the farm market operation; rather, our determination regarding RTFA protection for the sale of sheds must be analyzed using the test available to the SCADB and to the OAL at the time of their hearings: whether the sheds are "complementary" to the sale of the agricultural output of the Brodhecker farm.

The record reflects that Brodhecker's farm-produced commodities other than livestock are hay, corn, oats, wheat, feed, and birdseed generated from the growing of sunflowers. The record also reflects that Brodhecker's farm caters to "hobby farms" in the area, meaning small scale farm operations that typically lack the agricultural infrastructure, such as barns, sheds and equipment garages, commonly found on larger scale, more traditional commercial farming operations.

Further, when a "hobby-farm" operator purchases the output of Brodhecker's commodities (hay, corn, oats, wheat, feed, and birdseed) it is not unreasonable to expect that such an operator may need to purchase a small storage shed in which to store those products, some of which, according to the testimony, are sold in 50- and 100-lb. bags. Accordingly, a storage shed to house these commodities can be considered "complementary" because it is used in conjunction with, or facilitates the use of, those items of Brodhecker's agricultural output.

As stated earlier, we are mindful that witnesses for both sides testified that the sale of storage sheds for purely residential purposes would not be protected under the RTFA. However, given the impracticality of requiring disclosure of the ultimate purpose(s) to which a storage shed may be put by any particular buyer, we find the sale of sheds eligible for RTF protection. But, in order to maintain such RTF protection, the type and size of the sheds sold must be commensurate with the quantity and size of the items of Brodhecker farm's agricultural output sold at the farm market.

Further, the number and location of these sheds on the Brodhecker property were key to the complaints expressed by Hampton Township and Pierson. The OAL transcripts contain testimony regarding the rationale for the location of the sheds and Brodhecker's position that their movement to another part of the farm property is impractical. The ALJ recommended in the Initial Decision that the sheds be relocated "in the spirit of creating a balance in the community[,] maintaining and sustaining a peaceful co-existence[,] [and] creat[ing] a more aesthetically pleasing environment".

Accordingly, and in light of the mandate in den Hollander and Curzi to balance the right of the commercial farmer to engage in legitimate agricultural pursuits with the interests of the affected municipality and neighbors, respectively, we **MODIFY** the Initial Decision by holding that: (1) the sale of sheds is conditionally protected under the RTFA provided that the type and size of the sheds are consistent with storing the quantity and size of the items of Brodhecker farm's agricultural output sold at the farm market; (2) the location of the sheds on the farm property is entitled to RTFA protection provided the location is based on a site plan approved by the SCADB or by Hampton Township, with due regard to on- and off-site public safety, including pedestrian and vehicular traffic.

Wood pellets - The extremely limited testimony about the sale of this item was comprised of a statement that, in the past, the Brodhecker farm market began selling a line of wood pellets for bedding and that some customers now purchase the commodity for fuel. Since there was no follow-up questioning or testimony regarding to what animal use the bedding was put, and in light of the vast bedding options for a variety of small and large livestock, the SADC can make no determination whether wood pellets are complementary products at the Brodhecker farm market whose sale is entitled to RTFA protection.

Finally, we reiterate that what makes an item or commodity complementary is its relationships to the agricultural output of the commercial farm, so a complementary item cannot be employed to facilitate the use of another complementary or supplementary item, product or commodity.

IT IS SO ORDERED

Douglas H. Fisher, Chairman
State Agriculture Development
Committee

Dated: October 3, 2014

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