

STATE AGRICULTURE DEVELOPMENT COMMITTEE  
**FINAL DECISION**

M. VILLE, LLC and DON VONA,

Petitioners,

v.

MONMOUTH COUNTY AGRICULTURE  
DEVELOPMENT BOARD,

Respondent.

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OAL DKT. NO. ADC 06183-16  
AGENCY DKT. NO. SADC ID #1727

M. VILLE, LLC and DON VONA,

Petitioners,

v.

MONMOUTH COUNTY AGRICULTURE  
DEVELOPMENT BOARD and  
MILLSTONE TOWNSHIP,

Respondents.

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OAL DKT. NO ADC 06269-16  
AGENCY DKT. NO SADC ID #1727A

(Consolidated)

**I. OVERVIEW**

This matter arises from an appeal of a Monmouth County Agriculture Development Board resolution finding that petitioners' operation was not a "commercial farm" as defined in the Right to Farm Act. An initial decision issued by the Office of Administrative Law (OAL) determined, among other things, that the operation was a "commercial farm". For the reasons that follow, and based on the OAL record comprised of some 250 pages of briefs and exhibits, the State Agriculture Development Committee (SADC) **AFFIRMS**, **MODIFIES** and **REJECTS** the initial decision.

**II. PROCEDURAL HISTORY**

On November 25, 2015, Millstone Township filed a complaint with the Monmouth County Agriculture Development Board (MCADB or

board) against Don Vona, d/b/a Dion's Enterprises, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. (RTFA). The complaint alleged that recycling operations were being conducted on property operated by Vona contrary to local zoning ordinances.

By letter dated November 30, 2015, the MCADB asked Vona to provide documentation describing the nature, location and value of agricultural production on the property, and Vona responded by submitting information to the board in early February 2016. An MCADB subcommittee and board staff inspected the property on February 23.

The board held a public hearing on March 1, 2016 and concluded that the property, owned by M. Ville, LLC (M. Ville), was not a "commercial farm" as defined in the RTFA. The determination was memorialized in an April 5, 2016 resolution.

M. Ville and Vona appealed the board's decision to the SADC on April 15, 2016. The SADC transmitted the appeal to the Office of Administrative Law (OAL) as a contested case on April 21. An amended transmittal dated April 22, 2016 added Millstone Township as a party. As a result, two (2) docket numbers were assigned to the appeal by the OAL which, on June 12, 2017, consolidated the cases.

The parties submitted pre-hearing memoranda of law to the OAL in April, May and June 2017, and the court held a hearing on September 13, 2018. The parties submitted factual stipulations on April 24, 2019, and the record closed on May 1 of that year. Several extensions of time were granted by the SADC for the filing of the OAL initial decision, which was issued on August 19, 2020.

The SADC obtained two (2) orders of extension for filing the final decision; the last order, by consent of the parties, extended the filing deadline to December 10, 2020.

### **III. FACTUAL BACKGROUND**

#### **A. M. Ville property.**

M. Ville, whose principal is Don Vona, is the owner of Block 43, Lots 15.012 and 15.013 in Millstone Township, Monmouth County. Lots 15.012 and 15.013, which adjoin and are each farmland-assessed, total approximately 6 acres and 7 acres,

respectively, according to the Millstone Township tax map. A conservation easement is recorded on each lot, although the record does not reflect the amount of acreage within the easement or the uses to which the affected land can be put. Lot 15.012 contains structures, equipment, vehicles, driveways and parking areas associated with a nursery, landscaping and tree-clearing business known as "Dion's Enterprises" or "Dion's Tree Service". When appropriate, the properties will collectively be referred to as "the M. Ville property".

The 2016 FA-1 form for Lot 15.012 dated July 30, 2015 and signed by Mr. Vona listed 4.09 acres of land devoted to agricultural or horticultural use, of which 2 acres were "cropland harvested" and 2.09 acres were "cropland pastured"; 2 acres of land occupied by a farmhouse; and 2 acres of land not devoted to agricultural or horticultural use. The 2016 FA-1 recites that the most recent farming activity on Lot 15.012 was a 2-acre wheat harvest. The harvest generated \$600.00 in income in 2015 according to the Supplemental Farmland Assessment Gross Sales form signed by Mr. Vona and by Mr. Thomas Dancer, the individual who farms the lot.

The 2016 FA-1 form for Lot 15.013, also dated July 30, 2015 and signed by Mr. Vona, lists 6.93 acres of land devoted to agricultural or horticultural use comprised of 5.5 acres of "cropland harvested" and 1.43 acres of "cropland pastured". The 2016 FA-1 recites that the most recent farming activity on Lot 15.013 was a 5.5-acre hay harvest. The harvest generated \$2,000.00 in income in 2015 according to the Supplemental Farmland Assessment Gross Sales form signed by Mr. Vona and Mr. Dancer.

The 2016 FA-1 and supplemental gross sales forms were accompanied by a July 16, 2015 letter signed by Mr. Dancer, under letterhead titled "From the Desk of Thomas L. Dancer - Dancer Farms", to Thomas Davis, Millstone Township tax assessor, stating:

I currently farm this property for Dion. We had wheat on the property and harvested approximately 100 bushels of wheat at \$6.00 per bushel. We planted Timothy Hay in the fall and harvested two cuttings at 200 bales per cutting for a total of 400 bales at \$5.00 per bale for a yearly gross of \$2,000.00.

B. Millstone Township complaint.

Daniel Specht, Millstone Township code enforcement officer, filed a complaint with the MCADB on November 25, 2015 alleging that "illegal recycling operations and related activities" were occurring on Lot 15.013<sup>1</sup>, identifying "Don Vona, d/b/a Dion's Enterprises" as the defendant-property owner. The complaint, accompanied by several color photographs of site conditions, recited that

[d]efendant is conducting recycling operations not permitted in Millstone' R-130 zoning whereby he stockpiles logs, brush and debris imported on the site from Defendant's off site tree cutting business, some of which he mulches. He has also imported soils onto the site without a permit in violation of ordinance 13-10 s3, deposited same onto the roadway in violation of 03-09 and obstructed a conservation easement by stockpiling brush and debris thereon in violation of 10-12, all under the guise of 'Right to Farm.'

C. MCADB request for information; M. Ville response.

Harriet Honigfeld, MCADB program coordinator, notified Mr. Vona of Millstone Township's complaint in a letter dated November 30, 2015, which was accompanied by a commercial farm certification form. Ms. Honigfeld advised that the first step in the complaint process was for Mr. Vona to "complete [the form] to ensure that your farm is eligible for protection under the [RTFA]." The letter also requested written proofs of agricultural production income generated from the property such as sales receipts; IRS Schedule F forms; FA-1 forms; and a map showing the location of agricultural production and nonagricultural activities.

Mr. Vona, through his attorney, provided the following documentation to the MCADB under cover letter dated February 5, 2016:

1. A Millstone Township Agricultural Advisory Council "Right to Farm Commercial Farm Certification Form" dated September 20, 2013, signed by Mr. Vona, certifying that the M. Ville property was over 5 acres in size and generated agricultural products worth over \$2,500.00 annually; the form was signed by the township mayor as "Approved".

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<sup>1</sup>It is evident from the record that the alleged activities were occurring on Lot 15.012.

2. A completed MCADB commercial farm information form listing M. Ville as the operator of Block 43, Lots 15.012 and 15.013, and stating that hay and wheat had been produced on the properties with annual gross receipts of \$2,600.00. Farming activities were described as follows:

Over the past 7 years our neighbor, Tom Dancer, has farmed increasingly on the above referenced parcels. The crops harvested have varied from year to year. We have also harvested woodland products in the past - as well. I own and operate a tree service and at times I bring brush and tree parts that I myself cut down to the property to tub grind into mulch. I use the mulch around the property and for weed prevention and suppression and to insulate the nursery stock.

3. A commercial farm certification form signed by Mr. Vona on January 8, 2016, stating that the M. Ville property is located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under municipal zoning ordinances and is consistent with the municipal master plan, or was in operation as of July 2, 1998. The nature of the operation on the property was described as

[c]ropland harvested for hay, wheat, rye, corn consistently over the last seven years. Timber harvested for millable logs and cordwood. Nursery stock harvested consistently. I own and operate a tree service and at times bring brush and tree parts that I have myself cut down to the property to tub grind into mulch to use around the property for weed suppression and to insulate the nursery stock.

4. A copy of a portion of the municipal tax map.
5. A copy of a portion of the township zoning map indicating that the M. Ville property is located in the R-130 zone.
6. Copies of the 2016 FA-1 forms and supplemental gross sales forms for the M. Ville property previously described, *supra*, p.3.
7. A copy of a handwritten sketch of the M. Ville property with a rectangle on the left-side containing the word "Wheat"; a larger rectangle on the right-side containing the word "Timothy Hay"; between those rectangles, a smaller

rectangle with what appears to be a roofline and within which "Farm House" was written; and the two (2) municipal streets fronting the property.

8. A copy of a letter dated January 21, 2016 from the township tax assessor stating that the M. Ville property was "farmed since 2007 in accordance with the first year application for farmland assessment".
9. A "To Whom It May Concern" letter signed by Mr. Dancer, with a letterhead "From the Desk of. . .Dancer Farms", dated January 22, 2016 stating:

I, Thomas L Dancer of Dancer Farms, currently farm this said property for Dion of Dion's Tree Service.

I have timothy hay planted on his property with a yield of 400 bales (or 5 acres) at a gross of approximately \$2,000 as well as a yield of 100 bushels of wheat (or 2 acres) at a gross of \$600 in 2015.

I am the end user of this hay and also the wheat, which I use to feed mine, as well as my families, horses therefore I cannot supply anyone with receipts.

I have an excellent reputation as being a skilled and responsible farmer and hope to continue to bale hay off this property in the coming years.

10. A copy of what appears to be an enlarged portion of the township tax map showing the M. Ville property with delineations, apparently hand-drawn with a ruler, containing spaces identified as "Crops", "House", "Parking Area", "Nursery Stock", "Driveway" and "Brush Pile".

D. MCADB hearing.

On February 23, 2016, an MCADB subcommittee and board staff met with Mr. Vona at the property, performing a site inspection and taking photographs in preparation for the board hearing.

The MCADB's March 1, 2016 hearing focused on whether the M. Ville property was a commercial farm as defined in the RTFA.

Board members initially reviewed geographic information system (GIS) maps of the property prepared by MCADB staff and the photographs taken at the February site inspection.

Mr. Vona testified generally about the farming activities

on the M. Ville property, confirming, without elaboration, the information set forth in the 2016 farmland assessment materials submitted to the board in February 2016. Mr. Dancer did not testify, and it is not apparent from the record whether he was present at the hearing.

Mr. Specht, the township zoning officer, testified that farming is permitted in Millstone's R-130 residential zone, but that a "Class B recycling facility" was being unlawfully conducted on the property in which "he brings in material from off site, brings it to the property, grinds it up and then brings it somewhere else". (*Hearing transcript*, p.19, lines 20-24).

Board staff redirected the MCADB members to GIS mapping of the M. Ville property and advised that, based on the map scale,

the tilled acreage does not calculate out on these aerials anywhere near as high as the acreage in the farmland assessment forms. . .The middle lot [Lot 15.012] tilled acreage is frankly under an acre. We just can't[, ] no matter what aerial we use, get over or anywhere near two acres, and the eastern lot [Lot 15.013] is closer to three [acres], but the reason this is relevant is because we didn't have actual receipts [of agricultural product sales] presented to us. (*Hearing transcript*, p.22, lines 20-25; p.23, lines 1-5).

Board members questioned the accuracy of the drawings of the farm provided by M. Ville to the MCADB in February 2016, noting that the dispute regarding tillable acreage could be addressed by more definitive evidence such as a professional survey, as opposed to the hand-drawn map (item 7, *supra*, p.5) and the enlarged tax map with hand-drawn areas of crop locations and other property uses (item 10, *supra*, p.6).

Some farmer members stated that while the property might satisfy the farmland assessment annual production threshold of \$1,000, they had difficulty believing from the evidence presented that the farm could have generated the \$2,500 in annual production value justifying commercial farm eligibility under the RTFA. (*Hearing transcript*, pp. 32-36, *passim*). As one member put it: "I just have a concern about the receipts. I understand [w]hat they're saying with the [farmland assessment] certification, but I just without seeing actual receipts. . .verify what was filled out on the [FA-1] form." (*Hearing transcript*, p. 37, lines 3-7).

M. Ville's counsel objected to the introduction of the GIS

aerial mapping by board staff, cast doubt on the maps' accuracy, and reiterated that the February 2016 materials provided by M. Ville and Mr. Vona's sworn testimony were sufficient to prove commercial farm eligibility without further evidence. (*Hearing transcript*, pp. 25-32, *passim*).

The board passed a motion that the M. Ville property did not meet the \$2,500 annual agricultural production minimum needed to satisfy commercial farm eligibility under the RTFA and, therefore, that the board had no jurisdiction to hear the township's complaint.

E. MCADB resolution.

The board's April 5, 2016 resolution (No. 2016-03-3) memorialized the action taken at the March 1 meeting denying the M. Ville property commercial farm eligibility.

The board's decision listed the materials M. Ville provided to the board in February 2016; recited the claims in Millstone Township's November 2015 complaint; noted that the board inspected the M. Ville property; and stated that adequate notice of the March 1, 2016 hearing had been provided to the public.

The resolution described the board's review of the evidentiary materials, of the GIS mapping, and its consideration of the testimony of witnesses and arguments of counsel, noting that no receipts for field crops allegedly grown on the property had been provided by M. Ville. The decision also observed that the MCADB "requested additional site mapping or survey work that would clarify the amount of tillage acreage . . . in order to confirm" that Lot 15.012 contained two (2) acres of farmland producing \$600.00 in agricultural production value.

The board's resolution found that although the M. Ville property was a farm management unit greater than 5 acres and satisfying eligibility criteria under the state farmland assessment law, and was located in an area in which agriculture is a permitted use under local zoning, M. Ville had not provided sufficient proof of producing agricultural or horticultural products worth \$2,500.00 or more annually. Accordingly, the board resolved that it had no jurisdiction over Millstone Township's complaint.



#### IV. OAL INITIAL DECISION

M. Ville's appeal of MCADB Resolution No. 2016-03-3 was heard by the OAL on September 13, 2018. The administrative law judge (ALJ) issued an initial decision dated August 19, 2020 after receipt of prehearing memoranda from counsel for M. Ville, the MCADB and Millstone Township, and hearing the testimony of Mr. Vona, Mr. Dancer and Ms. Honigfeld. The prehearing memoranda provided to the ALJ included all of the exhibits presented at the MCADB as well as a transcript of the board's March 1, 2016 hearing.

The following exhibits were admitted into evidence: (1) the hand-drawn, enlarged portion of the tax map of the M. Ville property showing the portions of the farm being cultivated, the type of agricultural products generated and areas of nonagricultural use; (2) the February 2016 materials M. Ville submitted to the MCADB<sup>2</sup>; (3) Mr. Dancer's January 22, 2016 "To Whom It May Concern" letter; (4) the MCADB resolution; (5) photos of the M. Ville property taken during the board's February 2016 site inspection; and (6) a GIS aerial of the property generated by MCADB staff.

The initial decision recited various stipulations by the parties, the substance of which has already been described in the Procedural History and Factual Background, *supra*, pp. 1-7. The ALJ concluded that "[t]he only remaining matter of issue focuses on whether [M. Ville] met the burden of proving sufficient income proofs to meet the \$2,500 requirement for [sic] qualify for Right to Farm [p]rotection." (*Initial Decision*, p.7).

Mr. Vona testified that he observed Mr. Dancer harvesting wheat and hay on the M. Ville property, estimating the amount of

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<sup>2</sup>These documents included the 2013 "Commercial Farm Certification" signed by the township mayor purportedly approving the M. Ville property as a "commercial farm" (see item 1, *supra*, p.4). The form has no probative value, as only a county agriculture development board (CADB), or the SADC in counties without a CADB, can determine commercial farm eligibility. N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.3(c), 2.4(d) and 2.7(c). The hand-drawn maps (see items 7 and 10, *supra*, pp.5 and 6) have little or no weight in helping determine the actual extent of agricultural production on the M. Ville property.

products harvested and relying on receipts Dancer provided. Vona also stated that Dancer was "the purchaser of crop[s] produced on the farm for the year 2015." (*Initial Decision*, p. 9).

Mr. Dancer testified that the products he harvested from the M. Ville property were used on his home farm to support an equine operation comprised of 20 horses. He stated that the amount of products harvested on the M. Ville property was an estimate based on the acreage and type of crop.

Neither Vona nor Dancer testified that M. Ville's business conducted its own agricultural activities on the property, and the OAL record only contains evidence of production on the M. Ville property by "Dancer Farms."

The ALJ observed that Dancer confirmed "his \$2,600 payment to Vona[,]. . . [that] his estimate may even have been low as to the number of bales, and that he based his pricing on references such as the Chicago Board of Exchange rates." (*Initial Decision*, p.10). Dancer "agreed with the estimation" set forth in the enlarged tax map drawing "and was of the opinion he farms five and a half acres of Vona's land." Id.

Ms. Honigfeld testified that, based on GIS mapping of the property, tillable acreage on Lot 15.012 was under 2 acres, but the only way to properly verify the calculation was by a professional survey. She also questioned the value of the harvested crops as reported by Dancer, stating that MCADB farmer members advised that the value of a given agricultural product is determined by the size, quality and market price of the harvest. (*Initial Decision*, pp.10-11).

The ALJ found all of the witnesses to be knowledgeable and articulate, but that the testimony of Vona and Dancer was more direct and credible than Honigfeld's. The judge stated

I found Vona overall to be credible on the crucial fact of whether he had received the \$2,600 from Dancer he claimed as income. . . Dancer testified credibly regarding the payment. . . Based on [his] longstanding [farming] experience [Dancer] credibly explained how payment for a crop is determined and referenced guides such as rates posted on exchanges. (*Initial Decision*, p.11).

The ALJ determined, on the other hand, that Honigfeld's testimony regarding tillable acreage was based on calculations

from aerial photographs for which no date(s) were given, and that her testimony about whether the alleged \$2,600 in value for the harvested crops was fair "was conclusory at best. She presented no references to actual prices. . .and simply relied on general conversations with unnamed individuals for questioning the pricing." Id.

The initial decision observed that in order to receive RTFA protection, a farm operator "must offer 'clear evidence of actual or future receipt of income from agricultural production' in an annual amount of \$2,500", and concluded that "Vona received \$2,600 from Dancer for crops produced on his farm in 2015". (*Initial Decision*, p.11). Accordingly, the ALJ ordered that the MCADB resolution denying M. Ville commercial farm eligibility was "**REVERSED.**" (Id. at p.13; emphasis in original).

## V. LEGAL DISCUSSION

### A. Introduction.

The RTFA provides legitimate farming activities with protection from unreasonable local ordinances and from public and private nuisance actions, provided the activities are conducted on a "commercial farm". N.J.S.A. 4:1C-9 and 10.

A "commercial farm" is defined as:

(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.), (2) a farm management unit of 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.), or (3) a farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually. [N.J.S.A. 4:1C-3; emphasis added].

A "farm management unit" has its own definition:

. . .a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or

horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. [Id.; emphasis added].

The significant consequences of RTFA protection --- preemption of contrary municipal laws and the presumption, which cannot be rebutted, that the farming activities do not pose a public or private nuisance --- mean that it is critically important that the statutory criteria for commercial farm eligibility be carefully scrutinized.

In addition to the requirement that the property is a farm management unit operated as a single enterprise, commercial farm eligibility hinges on whether there is clear and convincing evidence that the farm management unit satisfies the annual minimum production value of \$2,500 for farms five acres or more in size.

B. Farm operation as a single enterprise.

Neither the MCADB nor the ALJ considered whether the M. Ville property was a "farm management unit" operated as a single enterprise, and CADBs and the OAL will need to address this criterion in future RTFA cases.

In Sipos, et al. v. Hunterdon County Agriculture Development Board, OAL Dkt. No. ADC 5173-11, SADC ID #1272, the SADC observed that

[p]roof of a 'single enterprise' enabling a commercial farm's entitlement to the strong protections of the RTFA, and particularly in light of. . . disparate individual and business interests or ownerships. . . , requires reasonably sufficient evidence that includes, but is not limited to, LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses. (Id. at p.13).

The record before the SADC reflects no proof that M. Ville's landscape and nursery business and the harvesting of crops by the farmer, Mr. Dancer, comprised a single enterprise. Rather, the evidence and testimony indicated that Mr. Dancer, who operates his own business, "Dancer Farms", plants the M.

Ville property and harvests the crops for his own farm use. No written lease was offered by M. Ville memorializing the terms of a Dancer tenancy, and no testimony was provided explaining the terms of a verbal tenancy, which could assist in generating further questions determining the extent to which --- if any --- the M. Ville and Dancer Farms businesses were interrelated. In sum, the only apparent benefit of the parties' arrangement was that the M. Ville property qualified for farmland assessment. Put another way, M. Ville could not validly assert RTFA protection for its business activities which were unrelated to the farm production undertaken on the property by Mr. Dancer benefiting the separate business entity known as "Dancer Farms".

The "single enterprise" criterion in the "farm management unit" definition is designed to ensure that individuals and business entities engaging in legitimate agricultural activities are eligible for the strong protections of the RTFA, and not that individuals and entities divorced from those activities can be eligible. The degree to which different businesses and individuals occupy, operate and engage in agricultural and/or horticultural activities on the same farm property is fact sensitive and will need to be analyzed on a case-by-case basis, but the available evidence in this appeal was wholly inadequate. The SADC **MODIFIES** the initial decision by finding that the M. Ville property was not a commercial farm because there was insufficient evidence that M. Ville's business and "Dancer Farms" operated as a single enterprise as required by N.J.S.A. 4:1C-3.

C. Agricultural production value.

The burden is on the farm owner to present evidence that a farm management unit 5 acres or more in size annually generates agricultural and/or horticultural products worth at least \$2,500. Given the presumption of validity attaching to the MCADB's determination that M. Ville's production value proofs were insufficient, M. Ville continued to carry that burden as the petitioner in the OAL. Casola v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06462-00, SADC ID #1318-01 (*Interlocutory Order*, September 26, 2001, p.7).

Prior SADC decisions in RTFA cases have recognized that agricultural production value can be established in three (3) ways: (1) sales receipts showing the quantity of farm products sold and the price paid by third party purchasers (Hampton Twp. et al. v. Sussex County Agric. Dev. Bd., OAL Dkt. No. ADC 03248-10, SADC ID #852); (2) for standing crops, a written contract of sale between the farmer and a third party purchaser showing a definite amount of product to be sold, at a definite price, and the ability of the farmer to deliver the product amount on a date certain (I/M/O Joseph P. Arno, OAL Dkt. No. ADC 4748-03, SADC ID #1328); (3) written proof of wholesale purchases by a start-up landscaping and nursery business of specialty plants nurtured on-site for ultimate retail sale to individuals and entities other than the start-up business itself (In the Matter of CLC, LLC, OAL Dkt. No. ADC 20659-15, SADC ID #1580).

The above standards of proof are designed to ensure that the evidence of commercial farm eligibility is clear and convincing, thus fostering public confidence in the integrity of the RTFA program. The SADC **ADOPTS** the judge's finding that there must be "clear evidence of actual or future receipt of income from agricultural production" (*Initial Decision*, p.13), a formulation consistent with the first and second tests set forth in the preceding paragraph.

An evaluation of M. Ville's proofs in light of SADC precedent leads to the conclusion that petitioner did not meet its burden in the OAL to demonstrate, clearly and convincingly, the production value criterion for commercial farm eligibility under the RTFA.

The documentary evidence presented to the ALJ, identical to the materials presented to the MCADB, included the substantially similar letters from Mr. Dancer, who farmed the M. Ville property, to the township tax assessor in July 2015 and to the board in January 2016.

The July 2015 letter from Mr. Dancer to the tax assessor used "approximately" to describe the number of bushels of wheat harvested in 2015, and the January 2016 letter from Mr. Dancer "to whom it may concern" at the MCADB stated that "approximately" \$2,000 was the "gross" from the hay cutting and

\$600 was grossed from the wheat harvest. Mr. Dancer was not asked and did not explain at the OAL what he meant by "gross", and his testimony in support of these letters was that "everything in farming is averages. . ." (*Initial Decision*, p. 10). He said that his "estimate may even have been low as to the number of bales, and that he based his pricing on references such as the Chicago Board of Exchange rates." *Id.* But no evidence of the actual exchange rate in effect in 2015 was presented by Vona or Dancer.

In the January 2016 letter Mr. Dancer stated, in addition to the crop production and value estimates, that he "cannot supply anyone with receipts" because he was "the end user of [the] hay and wheat, which I use to feed [my], as well as my famil[y's], horses." This statement further calls into question, for other reasons, the finding in the initial decision that M. Ville operated a commercial farm.

First, in *CLC*, the SADC held that ". . . sales of plant materials by CLC [from its farm] to the CLC construction and landscaping business" could not be counted toward commercial farm production value because the income derived by CLC from an affiliated company cast doubt on the sale as an arms-length transaction (*Final Decision*, *CLC*, pp.6-7). Accordingly, the asserted value of products grown by Mr. Dancer and used by "Dancer Farms" could not be a probative factor in calculating production value on the M. Ville property.

Second, Mr. Dancer's statement in the January 2016 letter that he "cannot provide receipts" is inconsistent with the testimony of Mr. Vona who testified that "he verified the amount harvested and taken by Dancer by estimating the amount and relying on receipts which Dancer provided." (*Initial Decision*, p.9).

Third, there is nothing in the January 2016 letter, and no other supporting evidence in the record, reflecting that Vona paid anything to Dancer, but Vona testified that "he received \$2,600 in income [in 2015] from Thomas Dancer for crop[s] produced on [the M. Ville property]" and "Dancer identified his letter to Vona memorializing his \$2,600 payment to Vona." (*Initial Decision*, pp.9-10).

Given that: (1) Dancer was the end user of the hay and wheat; (2) there were no receipts setting forth a price and product amount; (3) the crop production and value were based on estimates and approximations; (4) no evidence of Chicago exchange rates was introduced; and (5) the reported amount of production value --- \$2,600 --- barely exceeded the statutory commercial farm minimum of \$2,500 annually, the evidence and testimony, taken as a whole, raised serious questions about accuracy and clarity, and should not have formed the basis to conclude that the M. Ville property was a commercial farm.

The SADC **MODIFIES** the ALJ's findings by concluding there is insufficient evidence that: (1) Dancer purchased crops from the M. Ville property in 2015 (*Initial Decision*, p.9); (2) Vona received \$2,600 from Dancer for crops produced on the M. Ville property in 2015 (*Initial Decision*, p.11); (3) Vona received a sum in the amount necessary to qualify as a commercial farm under the RTFA (*Initial Decision*, p.13). The SADC also **MODIFIES** the Initial Decision by finding that there is insufficient evidence that the M. Ville property generated agricultural or horticultural products worth at least \$2,500 in 2015.

The September 26, 2001 interlocutory order in Casola, *supra*, concluded that an OAL hearing on an RTFA appeal is a *de novo* proceeding in which an ALJ is tasked with fact-finding and applying the law to the facts. The OAL forum under the RTFA is not analogous to judicial branch prerogative writ cases or superior court review of, e.g., local land use board decisions. Instead, an ALJ is required to arrive at an independent judgment based on the facts and law pertinent to the underlying controversy, which in this case was whether M. Ville operated a commercial farm in accordance with the RTFA. Accordingly, the SADC **REJECTS** the conclusion in the initial decision that the MCADB's decision denying M. Ville's commercial farm eligibility was "Reversed."

#### **SUMMARY**

As to the initial decision, the SADC:

**MODIFIES** the initial decision by finding that the M. Ville property was not a commercial farm because there was



insufficient evidence that M. Ville's business and "Dancer Farms" operated as a single enterprise.

**ADOPTS** the finding that there must be "clear evidence of actual or future receipt of income from agricultural production".

**MODIFIES** the findings by concluding there is insufficient evidence that: (1) Dancer purchased crops from the M. Ville property in 2015; (2) Vona received \$2,600 from Dancer for crops produced on the M. Ville property in 2015; (3) Vona received a sum in the amount necessary to qualify as a commercial farm under the RTFA.

**MODIFIES** the initial decision by determining that there is insufficient evidence that the M. Ville property generated agricultural or horticultural products worth at least \$2,500 in 2015.

**REJECTS** the conclusion that the MCADB's decision denying M. Ville's commercial farm eligibility can be "Reversed".

**IT IS SO ORDERED.**

December 3, 2020  
Decision approved

*Douglas H. Fisher*

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Douglas H. Fisher, Chairman  
State Agriculture Development Committee