

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY04R4(16)

Right to Farm

In the Matter of Gro-Rite, Inc. and Township of Pequannock

April 22, 2004

WHEREAS, this matter arose out of a dispute between the Township of Pequannock (Township) and Gro-Rite, Inc. (Gro-Rite), a landscape nursery business, concerning outdoor storage, sales, and display of nursery products, outdoor storage of garden sheds, and site work (“disputed activities”) conducted by Gro-Rite;

WHEREAS, on April 4, 2003, the SADC’s hearing officer held a hearing on this matter;

WHEREAS, on May 22, 2003, the SADC adopted the hearing officer’s report with one amendment;

WHEREAS, the report concluded that Gro-Rite met the definition of commercial farm in the Right to Farm Act (Act); the disputed activities are eligible for the protections of the Act; and the disputed activities conform with generally accepted agricultural management practices, with the exception of conducting site work without a developer’s agreement;

WHEREAS, the report concluded that the Act did not preempt the Township’s requirement that Gro-Rite enter into a developer’s agreement prior to beginning site work, as the requirement gives the Township the ability to ensure that Gro-Rite is complying with all conditions of its approval, many of which were related to environmental and public health and safety concerns;

WHEREAS, although the Township had filed a complaint with respect to Gro-Rite’s use of the property, it had not formally reviewed the uses;

WHEREAS, in light of the New Jersey Supreme Court decision, Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), aff’d. 172 N.J. 147 (2002), the report concluded that the SADC is required to consider the Township’s findings with respect to Gro-Rite’s use of an outdoor area for the display, sale and storage of plants and landscape materials;

WHEREAS, the SADC found that it cannot determine whether the Right to Farm Act preempts the Township’s determinations with respect to the disputed activities until the Township has reviewed the use and issued its findings;

WHEREAS, the SADC remanded the matter to the Township, but retained jurisdiction of the matter to review the Township's decisions regarding whether the disputed activities pose a threat to public health and safety and to decide whether the Act preempts the Township's decisions;

WHEREAS, subsequent to the SADC's decision, Gro-Rite requested the SADC to reconsider the portion of its determination requiring Gro-Rite to seek the Township's review of the matter;

WHEREAS, at its June 26, 2003 meeting the SADC decided that it was necessary for the Township to review Gro-Rite's use of its property, but agreed to transmit the matter to the Office of Administrative Law (OAL) for a fact-finding hearing on the matter, as the OAL is a neutral forum;

WHEREAS, the SADC transmitted the matter to the OAL on July 9, 2003;

WHEREAS, while the matter was pending at OAL, Gro-Rite and Pequannock entered into a Stipulation of Settlement (Attachment A), whereby the parties agreed to the following:

- there will be no display of sheds in the floodplain
- there will be no outdoor storage on the site except for such storage as shown on the revised site plan prepared and revised in 1995
- the Township evaluated the risks to public health and safety and determined that no such risks were present; and

WHEREAS, the OAL issued a Report and Recommendations incorporating the Stipulation of Settlement and finding that the Stipulation disposes of the limited issue transmitted to the OAL (Attachment A).

NOW THEREFORE BE IT RESOLVED that the SADC accepts and adopts the terms of the Stipulation of Settlement;

BE IT FURTHER RESOLVED that there is no need to determine whether the Act preempts the Township's findings with respect to Gro-Rite, as the parties have reached a settlement regarding Gro-Rite's activities.

BE IT FURTHER RESOLVED, that this action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

DATE

Gregory Romano, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Jack Gallagher, Acting Chair	YES
Ralph Siegel (rep. State Treasurer McCormac)	YES
John Flynn (rep. DEP Comm. Campbell)	YES
Carmen Valentin (rep. DCA Comm. Levin)	YES
Daniel Rossi (rep. Interim Executive Dean Cooper)	YES
William Fox	YES
Gary Mount	YES
Andrew Borisuk, Jr.	YES
Frank Baitinger, III	YES
Lisa Specca	YES
Peter C. Bylone, Sr.	ABSENT

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