

RESOLUTION

**RE: Hunterdon County Agriculture Development Board
Determination of Site Specific Agriculture Management Practices for
Hionis Greenhouses
Block 4, Lot 20, Township of Clinton, County of Hunterdon**

WHEREAS:

On February 9, 2012, a request for Site Specific Agricultural Management Practice application for hearing was submitted to the Hunterdon County Agriculture ("CADB" or "Board") by Hionis Greenhouses, the owner of Block 4, Lot 20, in Clinton Township (the "Property"). The application sought a determination to permit Hionis Greenhouses to construct greenhouses on the Property to be utilized as part of their horticultural farming operation. Hionis Greenhouses brought the application before the Board after the Township of Clinton Zoning Department denied (on January 24, 2012) their application for a zoning permit, as Clinton Township Zoning does not permit commercial greenhouses. Subsequent to filing the SSAMP, Clinton Township rescinded its initial denial and on February 23, 2012, issued a zoning permit which was conditioned on the applicant applying for and obtaining site plan approval from the Township.

At its May 10, 2012 meeting, the CADB certified Hionis Greenhouses as a commercial farm.

On May 22, 2012, June 14, 2012, and July 12, 2012, the CADB conducted a public hearing to determine whether Hionis Greenhouses is entitled to site specific agricultural management practices approval for the aforementioned construction of greenhouses.

The CADB conducted a site visit at the Hionis Greenhouses property prior to the hearing.

Formal notice of the public hearing was published in the Hunterdon County Democrat and served to all landowners within 200 feet of the property.

At the hearing, which commenced on May 22, 2012, Anthony J. Sposaro, Esq., appeared on behalf of Hionis Greenhouses; John R. Lanza, Esq. appeared on behalf of the neighbors opposing the application; Trishka Waterbury, Esq. appeared on behalf of the Township of Clinton.

The witnesses who testified at the hearing were as follows:

1. Peter Scherr
2. Peter Hionis

1. Cathleen F. Marcelli, Township Engineer

1. William Carver
2. Mark Freeman
3. Susan Molineux
4. Danielle Penna
5. David Penna

1. Exhibit A-1 - Notice of Hearing to property owners within 200 feet
2. Exhibit A-2 - Survey of Property
3. Exhibit A-3 - Letter dated 1/18/2012 from Hunterdon County Soil Conservation
4. Exhibit A-4 - Letter dated 2/15/2012 from Hunterdon County Soil Conservation
5. Exhibit A-5 - Letter dated 2/17/2012 from Hunterdon County Soil Conservation
6. Exhibit A-6 - Letter dated 4/30/2012 from Hunterdon County Soil Conservation
7. Exhibit A-7 - DEP Permit for stormwater discharge
8. Exhibit A-8 - 2/16/2012 from DEP Permit authorizing stormwater discharge
9. Exhibit A-9 - Permit to construct greenhouse and parking lot to Township
10. Exhibit A-10 - Photographs of beginning states and planting areas at Property
11. Exhibit A-11 - Photographs depicting proposed greenhouse at Property
12. Exhibit A-12 - Photographs of finished greenhouse, concrete support at Property
13. Exhibit A-13 - May 2012 Article for Jersey Grown Annuals
14. Exhibit A-14 - Photo of mums right before transplanting
15. Exhibit A-15 - Photos of mums
16. Exhibit A-16 - Photo of alternate access off Blossom Hill Road
17. Exhibit A-17 - Photo looking back at Blossom Hill Road
18. Exhibit A-18 - Photo from Blossom Hill to show where alternate traffic would pass a home

19. Exhibit A-19 - 5/24/2012 Letter to Baptist Camp requesting right of way
20. Exhibit A-20 - Response from Don Smith of Baptist Camp declining right of way request
21. Exhibit T-1 - Stop Construction Order dated 1/20/2012
22. Exhibit T-2 - Application for Construction Permit
23. Exhibit T-3 - Stop Construction Order by Hunterdon County Soil Conservation
24. Exhibit T-4 - Notice of Violation with Penalty by Township Construction Officer
25. Exhibit T-5 - Tax map
26. Exhibit T-6 - Overhead map
27. Exhibit T-7 - Plot plans
28. Exhibit T-8 - Map similar to Exhibit A-2 (with highlights)
29. Exhibit T-9 - Map with detail of clay core
30. Exhibit T-10 - 6/13/2012 email from Don Smith confirming Baptist Camp's willingness to explore access opportunities
31. Exhibit T-11 - Map of aerial photograph of Property
32. Exhibit T-12 - Series of photos of the clearing area
33. Exhibit N-1 - Deed to Block 4, Lot 20 Township of Clinton; Hionis property
34. Exhibit N-2 - 11/18/1971 Application for subdivision approval (31 lots) by Novello
35. Exhibit N-3 - 3/21/1972 Clinton Township Minutes
36. Exhibit N-4 - 5/2/1972 Application approval
37. Exhibit N-5 - 5/16/1972 Clinton Planning Board Minutes w Final Approval of Subdivision
38. Exhibit N-6 - Filed map for the subdivision
39. Exhibit N-7 - Photographs depicting commercial traffic entering Hionis property
40. Exhibit N-8 - Official filed subdivision map
41. Exhibit N-9 - 9/8/2005 Deed to Mr. Carver's home
42. Exhibit N-10 - 2008-2009 photo of Hionis Property entrance
43. Exhibit N-11 - Letter report from Cathy Cadamatori Re: difficulty marketing property because of safety concerns
44. Exhibit N-12 - Ordinance Re: weight limits for trucks

Hionis Greenhouses, Inc.

1. Anthony J. Sposaro, Esq., presented the application on behalf of the applicant.
2. Peter Scherr of Amy Green Environmental Consultants testified on behalf of the applicant that Muirfield Lane was the only viable access over the property, that any other access to be explored would require extensive permitting and environmental disturbance, and such application would probably not be approved by the State of New Jersey.
3. Peter Hionis, a member of Hionis Greenhouses, LLC, testified as to the size and nature of the Hionis Greenhouse operation, the intended expansion of operation at the Property through the construction of greenhouses, and the difficulty in accomplishing the expansion with the Township of Clinton.
4. Peter Hionis stipulated on the record that, if the application was granted, Hionis Greenhouses will (a) Submit all Stormwater Management Plans to the municipal engineer for review; (b) address and correct any and all open environmental issues in compliance with, and to the satisfaction of, the New Jersey Department of Environmental Protection; and (c) will not operate retail sales from the site without first coming back to the CADB for approval of retail operations.
5. Peter Hionis admitted that truck traffic along Muirfield Lane has increased, but that increase is due, in large measure, to the construction being performed at the property. Once the construction is complete, it is likely that truck traffic along Muirfield Lane will decrease.
6. Hionis Greenhouses has not performed a traffic study as to the impact on Muirfield Lane of the increased truck traffic.

Presentation by Clinton Township

1. Trishka Waterbury, Esq., presented the opposition to the application on behalf of Clinton Township.
2. Ms. Waterbury stated that, while the township is supportive of agriculture, the impact of the scale of the proposed improvements and the intensity of the truck traffic to the Property along Muirfield Lane concerns the Township. The proposed greenhouses may present drainage issues on and around the property and the increased truck traffic poses safety concerns. It is the Township's desire to mitigate those potential negative impacts.
3. Clinton Township Engineer, Cathleen Marcelli (Hatch, Mott McDonald) testified on behalf of the Township, and summarized her concerns as an engineer. Those concerns included the drainage issues posed by the proposed improvements at the Property and the potential negative impacts on downstream and upstream facilities.

4. Cathleen Marcelli testified on cross-examination that she had explored other means of access to the Property. She indicated that she could not render an opinion as to whether access from [redacted] would have a negative impact on single family lots along that road. Access from the easterly side of the property would pose DEP regulation issues based on the impact to environmentally sensitive areas. Access over the neighboring Baptist Camp property would require clearing work and the acquisition of property interests from the landowner for access. She testified that she has not, in her experience, seen a property owner compelled to purchase alternative access in a similar situation.

5. Cathleen Marcelli further testified under cross-examination that the average life expectancy of a roadway is 20 years, and that she could not directly attribute the existing road conditions of [redacted] to the increase in truck traffic to and from the Hionis farm. She testified that she has had no review or input on the drainage or construction plans for the Hionis property.

Neighboring Landowner Opposition

John R. Lanza, Esq. presented the opposition to the application on behalf of the homeowners and their families residing in the area of [redacted] and [redacted]

1. The basis of the homeowners opposition was the location of the Hionis Greenhouses farming operation on the Property which is located at the rear of a residential development and the threat to their safety and the negative impact on the roads in their development resulting from the significant increase in truck traffic along [redacted]

2. Counsel for the neighboring landowners represented to the Board that the relief requested by the Applicant was not an anticipated use for the property when it was approved for subdivision by a predecessor in title in 1972.

3. The witnesses who testified were all homeowners residing in the area of [redacted] and [redacted]. Their testimony centered primarily upon the negative impact of the increased truck traffic along [redacted] on (1) the safety and quality of life for the homeowners and their families, (2) the deterioration of the roads and (3) the market value of their properties, which they claim has decreased due, in part, to the increase in truck traffic to and from the Hionis Property.

4. The homeowners testified that there are several school bus stops and an autistic child who resides in the affected neighborhood.

5. Homeowners further testified that there are no sidewalks or shoulders in the neighborhood.

6. The homeowners who testified stated that if they had been aware of the increase in truck traffic along _____, on the scale which it exists now, they would not have purchased their properties. They further testified that they had no notice of the potential for such increased traffic to and from a commercial farm when they purchased the properties.

7. John Lanza, Esq. further argued that the danger and risks to the public posed by the increased truck traffic outweighed the importance of request for right to farm protection sought in the Hionis Greenhouses application, particularly when there were alternative solutions to reduce the negative impacts.

Marie Bailey v. Hunterdon County Agriculture Development Board

1. On October 26, 2012, the Honorable Peter J. Buchsbaum, J.S.C. granted the Plaintiff's motion for summary judgment in the matter of Marie Bailey v. Hunterdon County Agriculture Development Board (Docket No. HNT-L-354-12) and held that the special meetings held by the CADB on May 22, 2012 and August 9, 2012 were not adequately noticed and therefore conducted in violation of the Open Public Meetings Act. The Order for Summary Judgment remanded the matter to the CADB to be heard as set forth in the Memorandum of Decision on Motion issued by the Court with its October 26, 2012 Order.

2. The hearing on the SSAMP application submitted by Hionis Greenhouses commenced at the May 22, 2012 special meeting of the CADB, continued at the June 14, 2012 meeting, concluded at the July 12, 2012 meeting, and was memorialized at the August 9, 2012 special meeting.

3. Judge Buchsbaum granted the Plaintiff's motion for summary judgment only inasmuch as the actions taken by the CADB on August 9, 2012 must be voided. However, the Memorandum of Decision sets forth the appropriate remedy for the CADB to utilize to correct the actions taken by the Board at the August 9, 2012 special meeting. Citing the precedent established by the decision of the New Jersey Supreme Court rendered in *Polillo v. Dean*, 74 N.J. 562 (1977), and the similarity of the *Polillo* case to this matter, Judge Buchsbaum held that the CADB may hold corrective proceedings to redo the August 9, 2012 meeting to memorialize its findings on the Hionis Greenhouses SSAMP application and take formal action.

4. This Resolution, that was previously passed at the August 9, 2012 special meeting which was invalidated by the October 26, 2012 Order for Summary Judgment, was again presented to and reconsidered by the CADB at the December 13, 2012 meeting of the CADB. The CADB again considered the evidence received and testimony given on the record at the Hionis Greenhouses SSAMP hearing conducted at the May 22, 2012 special meeting and the June 14, 2012 and July 12, 2012 regular meetings of the CADB. The December 13, 2012 meeting was adequately noticed in accordance with the Open Public Meetings Act.

NOW, THEREFORE, BE IT RESOLVED THAT THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD MAKES THE FOLLOWING FINDINGS OF FACT:

1. The property in question is known as Block 4, Lot 20 in the Township of Clinton.
2. Farm and agricultural uses are permitted in the zone in which the farm is located.
3. Hionis Greenhouses runs a commercial farming operation on the property. The farm was certified by the Hunterdon County Agricultural Development Board as a commercial farm on March 10, 2012.
4. On January 20, 2012, the Township of Clinton issued a Stop Construction Order to Hionis Greenhouses, for performing the construction of the framing for greenhouses without any permits.
5. On January 24, 2012, the Township of Clinton denied a zoning permit applied for by Hionis Greenhouses for the construction of a wholesale greenhouse operation on the property due to the fact that commercial greenhouses were not permitted under the municipal ordinance. The Township later rescinded (several weeks after Hionis Greenhouses filed an SSAMP application with the Hunterdon County CADB) that denial and issued a zoning permit conditioned on Hionis Greenhouses applying for and obtaining site plan approval.
6. In response to the denial for a construction permit, Hionis Greenhouses was restricted from constructing the commercial greenhouse structures which are necessary for their horticultural farming operation at the property.
7. The construction of commercial greenhouses for a horticultural farming operation is an acceptable agricultural management practice.
8. Based on the testimony of Hionis Greenhouses, the inability to construct commercial greenhouses on the property limits the ability of the owner to continue to conduct a viable wholesale horticultural farming operation at the property in a competitive market.
9. Based on the testimony of Township representatives, there are issues concerning compliance by Hionis Greenhouses with Stormwater Management and NJDEP Rules and Regulations, the result of which may have a detrimental affect on the environment of the property.
10. Based on the testimony of neighboring landowners to the Hionis Greenhouses property, who reside on and around Muirfield Lane, there are legitimate concerns with

9. Based on the testimony of Township representatives, there are issues concerning compliance by Hionis Greenhouses with Stormwater Management and NJDEP Rules and Regulations, the result of which may have a detrimental affect on the environment of the property.

10. Based on the testimony of neighboring landowners to the Hionis Greenhouses property, who reside on and around " " there are legitimate concerns with regard to the impact on the community as a result of increased truck traffic along Muirfield Lane with the expansion of the Hionis Greenhouse operations at the property.

NOW, THEREFORE, BE IT RESOLVED THAT THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD, AFTER REVIEWING THE TESTIMONY, AND BALANCING THE COMPETING INTERESTS OF THE APPLICANT, THE TOWNSHIP OF CLINTON, AND THE OBJECTING NEIGHBORS AFFECTED BY THE FARMING OPERATION, MAKES THE FOLLOWING FINDINGS:

1. The Hionis Greenhouses Site Specific Agricultural Management Practices Application for the construction of twenty (20) gutter connected commercial greenhouses on the property, which is accessed at the terminus of " " is approved subject to the following conditions:

A. Hionis Greenhouses, prior to commencing further construction of greenhouses at the property, must first apply for site plan approval from the Township of Clinton. If the Township has not rendered a final decision on site plan application within 3 months after July 30, 2012, (requiring the decision to be rendered no later than October 30, 2012), Hionis Greenhouses may seek a waiver from this requirement from the CADB. If Hionis Greenhouses objects to any conditions imposed by the Township in response to the site plan application as unreasonable (specifically with regard to conditions which the CADB deliberated on and chose not to impose as reflected in Paragraph 2 below), it may seek a waiver any or all of those conditions from the CADB, which the CADB will address at that time. *As the October 30, 2012 deadline in this paragraph has already passed as of the date of this Resolution, this condition is amended by the CADB to reflect that Hionis Greenhouses may seek a waiver if it can demonstrate that ninety (90) days has elapsed since the date that it submitted a site plan application to the Township of Clinton.*

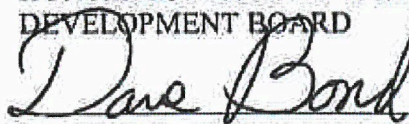
B. Hionis Greenhouses must be in compliance with all applicable State and Federal rules and regulations pertaining to the farming operations and construction at the property.

C. Hionis Greenhouses must be in full compliance with State and local stormwater management regulations. All plans in this regard shall be subject to the review and approval of the Clinton Township Engineer, and Hionis

F. There shall be no loading or unloading of vehicles for the farming operation on [redacted], and Hionis Greenhouses shall make every effort to limit deliveries to times when trucks and delivery vehicles have access to the site in order to prevent trucks and other delivery vehicles from idling along

2. During its deliberations on the application, the Board discussed the imposition of the following conditions, which it determined were unreasonable to impose in connection with Hionis Greenhouses approval for the construction of commercial greenhouses at the property:
 - A. The requirement of a traffic study to assess the impacts on traffic traveling to and from the Farm.
 - B. Restrictions or requirements with regard to the number and frequency of delivery vehicles to and from the property, the size and weight of the delivery vehicles, and the hours of operation for the truck traffic accessing the property via "
3. This determination shall be forwarded to the State Agriculture Development Committee within thirty (30) days, pursuant to N.J.A.C. 2:76-2.3(e).
4. Any person aggrieved by this decision, may appeal to the State Agriculture Development Committee, pursuant to N.J.A.C. 2:76-2-3

HUNTERDON COUNTY AGRICULTURE
DEVELOPMENT BOARD



DAVE BOND, CHAIRMAN

Dated: 12/13/12