Neighborhood Opposition Group,
Petitioner,

v.

Hionis Greenhouses, Inc. and
Hunterdon County Agriculture
Development Board,
Respondents.

State Agriculture Development
Committee
OAL DOCKET NO. ADC 03247-13
SADC ID #1372A

FINAL DECISION

Overview

This case arises from a February 9, 2012 application to the Hunterdon County Agriculture Development Board (HCADB or board) by Hionis Greenhouses, Inc. (HGI) for a site-specific agricultural management practice (SSAMP) determination for the construction of commercial greenhouses on property owned by Hionis Farms, LLC (HFL) in Clinton Township. We **ADOPT**, **MODIFY** and **REJECT** the Initial Decision as set forth in more detail below.

Factual Background and Procedural History

Background

HFL is the owner of Block 4, Lot 20 in Clinton Township, an approximately 57-acre farm parcel (property). The property is rented and operated by HGI for the production of seasonal ornamental plants and flowers, including but not limited to tulips in the spring and mums in the fall. Peter Hionis is the head operations manager for both entities. (Both entities shall collectively be referred to as "Hionis".) There is one access road leading to the property, Muirfield Lane, a 30-foot wide right-of-way that also services five single-family lots in an adjoining residential subdivision. Muirfield Lane begins at an intersection with Gleneagles Drive and then terminates at the property, leading to a driveway to Hionis' facilities.

HFL acquired the property along with adjacent 54-acre Block 4, Lot 22 on July 15, 2005. The property had previously been farmed for field crops, and according to testimony at the Office of Administrative Law (OAL) hearing, Hionis began its commercial production operation at the time it acquired the property. Plants were initially grown and cultivated in containers at an indoor facility located on a different Hionis property located in Readington Township, NJ and then, once they got to the point where they could withstand the rigors of the outdoors, the plants would be shipped to the property where they would continue

to be grown to their full, marketable size in outside containers using a drip irrigation system. Once the plants were market ready, they would be shipped off the property to wholesale and retail customers.[1]

Soil Conservation District and Department of Environmental Protection approvals

Around 2010, Hionis determined that it would be more efficient to start growing the plants on the property rather than shipping them from the other separate growing location, and that commercial greenhouses should be constructed on the property for that purpose. Hionis obtained a soil conservation district (SCD) certified soil erosion and sediment control plan for the project from the Hunterdon County SCD on January 18, 2012. The SCD certification was conditioned on installation of a detention basin being completed and stabilized prior to the addition of any new impervious area on the property. After Hionis began constructing the project, the Township issued a stop construction order on January 20, 2012 for failure to obtain a building permit. Additionally, the SCD issued a stop construction order on February 6, 2012 when it found that the construction sequence deviated from the approved plan. The SCD's stop construction order was rescinded on April 30, 2012 when the district found that the deficiencies outlined in the stop construction order were corrected. Finally, during this time, Hionis also encountered issues with the Department of Environmental Protection (DEP) for unauthorized activities, notably, the installation of the detention basin and the terracing of a field for crop production within DEP regulated wetland areas. The DEP issues will be discussed further below.

Clinton Township approval

Hionis applied to Clinton Township on January 18, 2012 for a permit to construct 144,000 square feet of gutter-connected greenhouses on the property, along with 17 hoop houses, driveway aisles, parking areas, and a stormwater management system. The property is located in the Township's RR-4S zone where "agricultural uses" are considered principal uses. However, the Township's zoning officer denied Hionis' application on January 24, 2012 based on his determination that commercial greenhouses were excluded from these types of principal uses. This led Hionis to apply to the Hunterdon County Agriculture Development Board (CADB) for a site-specific agricultural management practice (SSAMP) for the construction of the greenhouses on February 9, 2012. However, subsequent to the filing of the SSAMP request, the Township zoning officer rescinded the denial of Hionis' construction permit application on February 23, 2012 based on the Township attorney's advice that "'[S]tand-alone' commercial greenhouses on

[1] Peter Hionis provided testimony on this process with regard to mums at the hearing.

residential properties are prohibited but commercial greenhouses that are accessory structures and uses to a principally permitted farming and growing operation are permitted." The application was granted on condition that Hionis apply for and obtain site plan approval for the greenhouses and related parking areas, driveway, and drainage.

CADB Resolutions

Rather than apply for site plan approval, Hionis proceeded with its SSAMP request. The CADB certified Hionis as a "commercial farm" under N.J.S.A. 4:1C-3 on May 10, 2012 and heard the matter at public hearings held on May 22, June 14, and July 12, 2012, issuing a resolution granting the SSAMP request on August 9, 2012. However, a member of the public sued the CADB claiming that the meetings held on May 22 and August 9 violated the Open Public Meetings Act (OPMA). N.J.S.A. 10:4-6, et seq. By order dated October 26, 2012, the Superior Court held that the actions taken by the CADB at its August 9 meeting must be voided but held that the CADB could take corrective action at a meeting held in accordance with OPMA.

The CADB re-heard the matter at its December 13, 2012 meeting and adopted a resolution finding that the construction of 20 gutter-connected commercial greenhouses on the Hionis property for a horticultural farming operation is a generally accepted agricultural management practice. The resolution recognized the testimony of representatives for Hionis, the Township, and neighboring landowners who opposed the application.

The CADB resolution required that Hionis first obtain site plan approval from the Township before constructing the greenhouses. The resolution contained a timeline in which the Township was to issue the site plan approval and provided that Hionis could seek waivers of any conditions that it found to be unreasonable. The CADB noted that it would be unreasonable to require a traffic study to assess the impacts of traffic travelling to and from the farm, to place restrictions on the number and frequency of delivery vehicles to and from the property, to limit the size and weight of the delivery vehicles, and to control the hours of operation for the truck traffic accessing the property via Muirfield Lane. Further, with regard to delivery vehicles, the CADB prohibited the "loading or unloading of vehicles for the farming operation on Muirfield Lane", and required Hionis to "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 Muirfield Lane."

Additionally, the CADB required that Hionis "submit a restoration plan for the environmentally sensitive areas which have been disturbed on the site, . . . act in good faith to complete the restoration, and comply with all other [DEP] requirements in connection with the

restoration." Finally, the CADB made explicit that the SSAMP approval did not extend to retail sales on the property.

After the CADB's August 9, 2012 meeting but before its December 13, 2012 corrective meeting, Hionis applied to the Township for site plan approval. The Township issued a completeness review resolution on September 4, 2012, and Hionis objected to a couple of the Township's conditions, notably, the amount of escrow fees required by the Township and the Township's denial of Hionis' requested waivers of irrigation well and stormwater management compliance review. Therefore, Hionis brought the matter to the CADB and via resolution dated April 11, 2013, the CADB made the following findings: that it was unreasonable for the Township to review irrigation well and stormwater management compliance as part of the site plan approval, and therefore the CADB waived those conditions provided that DEP maintained jurisdiction over those matters; that Hionis must return to the Township planning board for site plan approval on the issues of landscape buffering, setbacks, lighting, and onsite traffic circulation, loading, and unloading; and that the Township may charge reasonable application and professional review fees for the limited site plan application and review.

Site Plan Approval

The Township planning board held hearings on the site plan application on April 15, 2013 and September 16, 2013. Representatives for both Hionis and the neighborhood group appeared at these hearings. With regard to the neighborhood group's main concern of traffic entering and exiting the property, the planning board made the legal conclusion that it could not deny site plan approval to a permitted use due to off-site traffic issues, and/or condition site-plan approval on vehicular movements, under Dunkin Donuts of NJ v. Tp. Of North Brunswick, 193 N.J. Super. 513, 515 (App. Div. 1984) because "the governing body presumably reviewed such issues when determining that the farming and growing operations were permitted agricultural uses on residentially zoned lands." The planning board did, however, require Hionis to coordinate deliveries so that employees would be on the property at the time delivery vehicles arrived; that no vehicles owned or operated by Hionis were to stop, stand, or idle on Muirfield Lane and the surrounding streets; and that Hionis was to advise all delivery companies that no trucks could stop, stand or idle on Muirfield Lane and the surrounding streets.

Office of Administrative Law

Hionis, the Township, and the neighborhood group appealed the CADB's August 9, 2012 resolution, and the State Agriculture Development Committee (SADC) forwarded the appeals to the Office of Administrative

Law (OAL) on October 22, 2012.[2] The matter was docketed as ADC 14327-12. Due to the corrective action taken at the CADB's December 13, 2012 meeting, new appeals of the December 13 resolution were filed by the neighborhood group and by Hionis. Those appeals were forwarded to the OAL and docketed as ADC 03247-13. Thereafter, the Township withdrew from the matter.

At a case management conference held on September 3, 2013, Administrative Law Judge (ALJ) Masin requested the parties to brief their arguments on the proper standard for OAL review. The neighborhood group argued that that they were entitled to a de novo proceeding under which the SADC would decide the dispute anew. Hionis and the CADB argued that the standard of review was whether the CADB's action was arbitrary and capricious or unreasonable, and that the review was limited to the record in front of the CADB. On October 17, 2013, the ALJ issued an interlocutory order holding that the hearing would be de novo and that the burden of proof to establish whether the CADB's decision was arbitrary and capricious or unreasonable was on the neighborhood group challenging the presumptively valid CADB determination.

On February 23, 2017, Hionis filed a motion for summary decision on the basis that the CADB took no action that preempted the Township and therefore, there was no Right to Farm jurisdiction over the matter. The OAL denied the motion on May 8, 2017, finding that the case still presented genuine issues of material fact in the matter. Hionis then filed an application for interlocutory review of the summary decision denial with the SADC on May 15, 2017, which was opposed by the neighborhood group. The SADC granted the application and remanded the matter to OAL to identify what material facts continued to present genuine issues. In response to the SADC's remand, the OAL issued a clarification order on October 17, 2017, finding that the language in the CADB resolution indicated that the CADB exercised its preemption rights and therefore, there was still a genuine issue of material fact as to whether the CADB exercised their preemption right and as to the scope of such preemption. Since a motion for interlocutory review of the October 17, 2017 order was not filed with the SADC, the case proceeded to a hearing. See N.J.A.C. 1:1-4.10.

A hearing was held in the OAL on April 3 and 4, 2019. Peter Hionis testified and Gary Dean, P.E., P.P. of Doan & Dean Consulting Engineers, LLC testified on behalf of Hionis as an expert witness on traffic issues. Steven Kneizys and William Carver, owners of residences on Muirfield Lane, were the only current neighbors that testified. David Penna, a former resident of Muirfield Lane, also testified. Additionally, the neighborhood group called John Higgins, the Township's mayor, as a witness and Jay Troutman, Jr. P.E. of

[2] Hionis appealed the condition requiring site plan approval.

McDonough & Rea Associates, Inc. testified on behalf of the neighborhood group as an expert witness on traffic issues. There was no appearance on behalf of the CADB at the hearing.

Initial Decision

ALJ Crowley issued an initial decision on June 3, 2019. Her findings of fact included the following: that Hionis was a commercial farm; that the Township determined that construction of greenhouses was permitted; that the CADB "granted the request for the construction of greenhouses" and that it considered the issues of traffic to and from the property; that no appeal was taken from the Township's site plan approval; that no significant issues of public safety were presented by Hionis' farm operations; and that the farm operation is a permitted use on the property. Additionally, with regard to the traffic issues, the ALJ stated that both parties' experts "came up with essentially the same data", but that Hionis' expert concluded that the traffic was not unreasonable and that it did not create public safety issues, in contrast to the neighborhood group's expert's conclusion. She then found that Hionis' expert was more credible than the neighborhood group's expert.

With regard to the actions of the Township planning board vis-a-vis the CADB, ALJ Crowley did not make a finding on preemption.[3] However, the ALJ stated that regardless of who had the right to consider the traffic issues, both entities "considered and rejected the issues relating to traffic on the property." The ALJ declared that she did not have authority to review the planning board's decision, and that the ALJ's jurisdiction was limited to the review of whether the CADB's resolution was arbitrary, capricious, or unreasonable.

The ALJ stated that the CADB found that it would be unreasonable to impose restrictions regarding traffic and to require a traffic study. After referring to ALJ Masin's October 17, 2013 interlocutory order on the burden of proof, ALJ Crowley affirmed the CADB's decision, stating, "[t]here has been no demonstration by the petitioner that this decision by the [CADB] was arbitrary, capricious or unreasonable. On the contrary, the decision of the [CADB] was predicated on the evidence presented, which included the zoning on the property, the existing commercial activity on the site and the limited ability to restrict use of property based on a traffic issue, where the use is consistent with the zone." ALJ Crowley therefore dismissed the neighborhood group's appeal.

Exceptions

[3]Although the ALJ repeatedly referred to action by the "SADC" within the initial decision, based on the context of those portions of the decision, it is presumed that the ALJ intended to reference the "CADB" instead of the "SADC".

The neighborhood group filed exceptions to the initial decision on June 17, 2019. The neighborhood group made the following arguments in their exceptions: it objected to the ALJ limiting her jurisdiction to the CADB's resolution; it argued that the CADB played a "supervisory" role over the planning board during the site plan review and that the planning board's authority to review the site plan was derived from the CADB; it argued that the CADB did not properly supervise the planning board in this role; and it argued that the initial decision was unlawful because it ignored a 1971 planning board approval for Block 4, Lot 22 that was introduced into evidence by the neighborhood group at the hearing.

The neighborhood group also argued they did not receive due process at the hearing. Specifically, the group claimed it was not given adequate time to respond to an objection from Hionis' counsel and it also took issue with the procedures the ALJ required for introducing evidence. Additionally, it argued that the ALJ improperly prohibited it from playing audio from a May 23, 2018 Township working group meeting on the traffic complaints associated with the Hionis property. Specifically, the group claimed the purpose for playing the audio was to refresh Mayor Higgins' memory, but that the ALJ did not allow it based on the mischaracterization that he was the group's witness and therefore, it could not impeach him.

Motion to Reopen the Record

Along with its exceptions, the neighborhood group filed a motion to reopen the record to include two new exhibits: (1) video footage of a tractor trailer trying to back out of Muirfield Lane; and (2) an audio recording of a May 23, 2018 Township work session on the Hionis traffic complaints that was chaired by Mayor Higgins.[4] The video was shot by Mr. Kneizys from his home on June 12, 2019 at 7:21 pm. It is three minutes, 24 seconds long, and depicts a tractor trailer backing out of Muirfield Lane on to the adjoining street. It was offered to rebut Hionis' traffic expert witness' testimony that Muirfield Lane can accommodate such type of vehicle, and that the roads provide sufficient turning radius. The neighborhood group wanted to present the audio recording at the hearing for the purposes of refreshing Mayor Higgins' recollection. The portions of the audio they highlight in their motion include: when Mayor Higgins and the Township attorney discussed their understanding that the CADB and SADC, not the Township, had jurisdiction over the traffic matters; when Mayor Higgins acknowledged that the question of access to the property goes back to 1971; and when he stated that commercial greenhouses are prohibited by ordinance on the property.

[4] The neighborhood group also provided an official transcript of this working group meeting, which was reviewed in the preparation of this final decision.

Hionis did not oppose the motion to reopen the record.

SADC Determination

Factual Discussion and Corrections

As the "FACTUAL DICUSSION" section in the initial decision does not go into the level of detail we find to be required given the complexity and long history of this matter, we hereby **MODIFY** the "FACTUAL DISCUSSION" section of the initial decision by inserting the "Factual Background and Procedural History" section set forth above. Further, as discussed in footnote 3, it appears that ALJ Crowley inadvertently referred to the SADC instead of the CADB in several sections of the initial decision. Therefore, we **MODIFY** the initial decision by substituting "CADB" for "SADC" in the following sections of the initial decision: the five references to "SADC" in the second paragraph on page 4; the one reference to "SADC" in the second paragraph, and the one reference to "SADC" in the third paragraph on page 5; the one reference to "SADC" in the second complete paragraph on page 6; the two references to "SADC" in the final paragraph on page 12; and the one reference to "SADC" in the first complete paragraph on page 13.

Motion to Reopen the Record

Courts have recognized that "[a]dministrative agencies enjoy a great deal of flexibility in selecting the proceedings most suitable to achieving their regulatory aims." In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling, 330 N.J. Super. 65, 106 (App. Div. 2000) (quoting Baily Mfg. Corp. v. New Jersey Casino Control Comm'n, 85 N.J. 325, 338, appeal dismissed, 454 U.S. 804 (1981)) (internal quotations omitted). Additionally, we note the OAL's general rule that evidence merely be relevant for admission purposes unless the ALJ determines that the probative value of the evidence is substantially outweighed by the risk that its admission will either necessitate undue consumption of time, or create substantial danger of undue prejudice or confusion. N.J.A.C. 1:1-15.1

The evidence offered in the motion to reopen the record is relevant, as it pertains to the neighborhood group's main arguments regarding the public safety impacts on Muirfield Lane allegedly caused by traffic to and from the Hionis property. We do not find this evidence prejudicial, as it is largely duplicative of the evidence and arguments that the neighborhood group provided in the proceedings below. Further, we note that Hionis did not oppose the motion. In keeping with our duty to consider the impacts of a commercial farm operation on the neighboring public, Curzi v. Raub, 415 N.J. Super. 1,

22 (App. Div. 2010), we **GRANT** the neighborhood group's motion to reopen the record by considering proposed P-17 and proposed P-18.

Standard of Review

In his October 17, 2013 interlocutory order, ALJ Masin concluded that the hearing was to be held de novo and that the burden of proof to establish whether the CADB's decision was arbitrary and capricious or unreasonable was on the neighborhood group challenging the presumptively valid CADB determination. This standard of review was then applied by ALJ Crowley in her initial decision.

In Casola v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06462-11, SADC ID #1318-01 (2001), we stated the following:

> [o]nce the determination has been made by the CADB that the applicant has met his or her burden of proof [regarding Right to Farm eligibility], 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

Therefore, ALJ Masin correctly observed that Right to Farm hearings are heard de novo, that the CADB's decision is presumed valid, and that the burden of proof is ultimately on the objector to overcome that presumption of validity. However, ALJ Masin's conclusion that the opposing party must show that the CADB's determination is arbitrary and capricious or unreasonable is not correct. The arbitrary and capricious or unreasonable standard is the standard of review applied by the judicial branch when reviewing a decision by a governmental body that has expertise in the subject matter of that case. In other words, this standard of review is based on the judicial branch's deference to the governmental body's expertise in the matter. However, appeals of CADB determinations under the Right to Farm Act are reviewed administratively, not by the judicial branch. Therefore, neither Casola, nor any subsequent SADC decision created "an appellate framework in the OAL similar to the judicial branch's consideration of land use board appeals or prerogative writ cases in which government action is measured by the 'arbitrary, capricious or unreasonable' standard." See Borough of Glassboro v. Gloucester County Agriculture Development Board; Lewis D. DeEugenio, Jr. and Summit City Farms, OAL Dkt. No. ADC 18801-2016, SADC ID #1787 (2019), p. 17. Accordingly, ALJ Masin's interlocutory order, as well as the initial decision, are **MODIFIED** by holding that the role of an ALJ in a de novo hearing of an SSAMP appeal is to make independent findings of fact and conclusions of law regarding whether the commercial farmer is entitled to an SSAMP,

not to determine whether the CADB's issuance of the SSAMP is arbitrary and capricious.

Jurisdiction - preemption

Hionis argued in its motion for summary decision and summation brief that the CADB took no action that preempted the Township and, therefore, the SADC did not have jurisdiction over this matter. Based on the initial decision, it is unclear whether ALJ Crowley made a determination on preemption. She noted that the CADB had the right to preempt the Township but did not state that the CADB had done so. However, while finding that both the CADB and the Township planning board considered traffic issues, however, the ALJ determined that OAL extended only to the CADB's decision. In their exceptions, the neighborhood group disputed this approach. It claimed that the CADB retained a "supervisory" role over the planning board during site plan review, but that the CADB did not properly exercise this role by reviewing and either revising or rejecting the site plan.[5] The neighborhood group also seemed to disagree with the ALJ not exercising jurisdiction over the site plan approval.

First, ALJ Crowley properly determined that she must consider the traffic issues raised by the neighborhood group at an adjudicatory hearing and, therefore, she correctly denied Hionis' motion for summary decision. The CADB resolution made determinations regarding vehicle loading, the necessity of performing a traffic study, and restrictions regarding number, frequency, size, and time constraints on delivery vehicles. Under N.J.S.A. 40:55D-41(b), a site plan ordinance must include standards and requirements related to "safe and efficient vehicular and pedestrian circulation, parking and loading". Ibid. In Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div.), aff'd 172 N.J. 174, (2001), the court found there was a specific legislative intent to preempt and vest primary jurisdiction to regulate agricultural management practices with the CADBs and the SADC. Therefore, by making determinations on vehicle loading and the performance of a traffic study, the CADB preempted applicable local ordinances related to those issues. Therefore, we **MODIFY** the initial decision by finding that the CADB did preempt the Township on the issues of vehicle loading, the necessity of performing a traffic study, and restrictions regarding number, frequency, size, and time constraints on delivery vehicles.

We also agree with ALJ Crowley that the OAL only had jurisdiction over the CADB approval, not over the Township planning board's site plan approval. During SSAMP reviews, CADBs may find that the

[5] The neighborhood group referred to the site plan as "Clinton Township's Site Plan". However, this is not an accurate characterization of the plan. The plan was prepared by representatives for Hionis, but simply approved, with conditions, by the Township planning board.

complexity of a site plan review process might exceed the financial or technical capabilities of CADBs. Therefore, as was the case here, CADBs may approve certain site plan elements, but defer to local review over others. A commercial farm owner may seek relief from the CADB by requesting waivers of certain site plan elements, which occurred here via the CADB's April 11, 2013 resolution. Although those elements over which the CADB exercised its authority are the proper subject of a Right to Farm matter, those elements on which the CADB deferred to the Township are not the proper subject of a Right to Farm matter. SADC is only authorized to hear appeals of CADB decisions and to conduct hearings involving SSAMP requests and Right to Farm complaints in counties where no CADB exists. N.J.S.A. 4:1C-9 and -10.1a. Therefore, allegations regarding the propriety of municipal site plan approval are beyond the jurisdiction of the OAL and the SADC. See Richard Bailey and Marie Bailey v. Hunterdon CADB; Theodore C. Blew, Jr., Eric Blew and Susan Blew, OAL Dkt. No. ADC 2759-09, 2788-09, 8130-09, SADC ID# 864,864A, and 864B (2010), p. 35. We find no legal basis for the neighborhood group's claim that the CADB exercised a "supervisory" role over the planning board. Hence, we **ADOPT** the ALJ's conclusion that OAL jurisdiction applied only to the CADB's resolution.

Commercial Farm

Only a "commercial farm" is eligible for Right to Farm protection. With regard to a farm management unit of five acres or greater, as was the case here, there must be evidence that the farm management unit produced agricultural or horticultural products worth $2,500 or more annually. N.J.S.A. 4:1C-3. Based on invoices for mums produced by Hionis that were provided to the CADB as attachments to an April 10, 2012 letter, we are satisfied that the production criterion was met. Therefore, we **ADOPT** the finding in the initial decision that the property is a "commercial farm". However, ALJ Crowley relied on a certification from Peter Hionis stating, in part, that this production requirement was met based on an application for farmland assessment, which we find insufficient for the "commercial farm" finding in this case. Therefore, we **MODIFY** the basis for the finding as the invoices referenced above.

Locational requirement

In order to be eligible for Right to Farm protection, the commercial farm must be located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use or was in operation as of July 2, 1998. N.J.S.A.4:1C-9. The property is located in the Township's RR-4S zone where agricultural uses are considered principally permitted uses. It is clear, based on the Township's conditional building permit approval and its site plan approval, that commercial greenhouses are permitted when accessory to a principally permitted farming and growing operation.

Although the neighborhood group disputes the conclusion that commercial greenhouses are permitted principal uses, the OAL was not the proper venue to resolve that dispute. As stated above, the SADC is only authorized to hear appeals of CADB decisions and to conduct hearings involving SSAMP requests and Right to Farm complaints in counties where no CADB exists. N.J.S.A. 4:1C-9 and -10.1a. The proper forum for disputing a municipal agency determination is the Superior Court, Law Division, where the disputant may file an action in lieu of prerogative writs. R. 4:69. Further, we are not persuaded by Mayor Higgins statement at the May 23, 2018 work session that commercial greenhouses are not allowed in the zone, as that statement does not constitute official action of the Township. Instead, we defer to the official actions by the municipal zoning officer and planning board finding that commercial greenhouses are a permitted use on the property. Accordingly, we **ADOPT** ALJ Crowley's finding that agriculture is a permitted use, but **MODIFY** that finding to reflect the discussion above.

Compliance with State law

Compliance with relevant State and federal law is another eligibility requirement for Right to Farm protection. N.J.S.A. 4:1C-9. The record reflects that Hionis had State law compliance issues with the DEP. In fact, one of the conditions of the CADB's SSAMP approval was that Hionis "submit a restoration plan for the environmentally sensitive areas which have been disturbed on the site, shall act in good faith to complete the restoration, and comply with all other [DEP] requirements in connection with the restoration." Further, Exhibit P-14 introduced by the neighborhood group is a February 12, 2013 letter from DEP to Hionis' then-counsel in which there is a reference to a draft Administrative Consent Order dated December 3, 2012 issued to Hionis. The letter also references a January 17, 2013 meeting between Hionis and DEP where it was agreed that Hionis "would submit a site plan to [DEP] depicting the restoration of a portion of the unauthorized activities, and on-site compensation for the unauthorized activities/features to remain within regulated areas, notably the detention basin and the terracing of a field for crop production." Further, as discussed in the letter, once the plan was approved, Hionis was required to record an easement conserving the freshwater wetlands, remaining transition areas, and the compensation areas depicted on the plan in perpetuity.

As part of our review of this jurisdictional issue in this matter, the SADC contacted DEP to determine whether these issues had been addressed. It appears that DEP is currently reviewing the required deed restriction with Hionis' engineer, and therefore, the remaining issue is the recordation of an acceptable deed restriction. Therefore, the initial decision is **MODIFIED** by conditioning the Right to Farm

protection for the commercial greenhouses on Hionis' recordation of the DEP-approved deed restriction.

Public health and safety - traffic

We now turn to the heart of the neighborhood group's argument below, that the delivery vehicle traffic on Muirfield Lane created by Hionis' farm operation poses a direct threat to public health and safety. In support of this claim, Jay Troutman, Jr., P.E. of McDonough & Rea Associates, Inc., testified as the neighborhood group's expert. Mr. Troutman also co-authored a traffic impact analysis dated January 26, 2015 with John H. Rea, P.E., from his firm, which was entered into evidence as P-10 at the hearing. The initial decision refers to John H. Rea as the expert that testified on behalf of the neighborhood group at the hearing; however, this is incorrect. Based on the official transcript from the hearing, Mr. Troutman testified on the neighborhood group's behalf. Therefore, the initial decision is **MODIFIED** to reflect that Mr. Troutman is the engineer from McDonough & Rea Associates, Inc. who testified at the hearing.

Jay Troutman, Jr., P.E. - neighborhood group's expert

Mr. Troutman is a NJ licensed engineer whose specialty is traffic engineering. He testified that he has been in practice for 32 years, conducting traffic studies for various types of developments as well as reviewing traffic studies on behalf of planning and zoning boards. Based on this testimony, we **ADOPT** the ALJ's conclusion that Mr. Troutman is qualified as an expert in the field of traffic.

Mr. Troutman's analysis was based on photos taken by the neighbors between August 17, 2014 and October 4, 2014. Over this seven-week period, he calculated 211 passenger car/light trucks, 83 delivery vans, 244 Hionis single unit trucks[6], 14 outside single unit trucks, and 14 tractor trailers coming from the property. In his report, he discussed how each vehicle that accesses the property generates two trips (one trip entering the property and one trip exiting the property). Therefore, Troutman calculated that based on the data produced over this seven-week period, the average daily trip rate for all vehicles was 23.10 trips per day. He also discussed how the average daily traffic generated by a typical single-family home based on traffic data published by the Institute of Transportation Engineers in the "Trip Generation" manual, 9th Edition was 9.52 trips per weekday, 9.91 trips per Saturday, and 8.62 trips per Sunday.

[6] According to the Federal Motor Carrier Safety Administration's website, single-unit trucks "[a]re vehicle configurations designed to transport property, where the cargo carrying capability of the vehicle is integral to the body of the vehicle (i.e. - it does not carry its cargo in an attached trailer)." See https://ai.fmcsa.dot.gov/DataQuality/CrashCollectionTraining/lesson3/trucks.html (last accessed on October 16, 2019).

At the hearing, Mr. Troutman discussed distinctions between the single-unit truck and tractor trailer class of vehicles and the passenger car/light truck and delivery van classification. Based on his analysis, the latter category of vehicles generated an average of 12 trips per day, which he described as being slightly above the average single-family home. By contrast, Troutman stated that the number of average trips generated by single-unit trucks and tractor trailers (11.10 trips/day) was not in keeping with what would be expected in a residential neighborhood, which his report stated "occasionally get deliveries by single unit trucks and rarely get tractor trailers, except when a moving van must access a home."

Mr. Troutman's report went on to say that, from a pavement design perspective, Muirfield Lane, Gleneagles Drive and Heather Hill Way were not capable of supporting the amount of truck traffic generated by the Hionis. However, at the hearing, he acknowledged that he did not take samples of the pavement, and that this opinion was based on observation. Troutman also discussed whether the 30-feet wide Muirfield Lane could accommodate a tractor trailer, especially considering that there are no sidewalks along Muirfield Lane. He discussed how a typical travel lane is 12-feet wide, so that a 30-foot wide right-of-way could accommodate two travel lanes (one for each direction) and leave a three-foot border area on each side of the road. He testified that a typical tractor trailer is eight-and-a-half-feet wide and therefore, it could be accommodated in a 12-foot travel lane,[7] but that the turning radius was the issue. In his report, Mr. Troutman stated that in order for a tractor trailer to make a turn at the intersection of Gleneagles Drive and Muirfield Lane, the tractor trailer required the entire pavement area of the intersection, including the opposing traffic lanes, which could interfere with the residential activities on the streets. Finally, Troutman testified that he did not examine any accident reports or accident figures on Muirfield Lane.

Gary Dean, P.E., P.P. - Hionis' expert

Gary Dean, P.E., P.P. is a consulting civil engineer specializing in traffic engineering and municipal consulting for traffic-related matters and is the principal of Dolan & Dean Consulting Engineers, LLC. He is licensed in multiple states, including New Jersey, and has 28 years of experience in the field. Therefore, we **ADOPT** the OAL's conclusion that he is an expert in the field.

[7] Mr. Troutman also testified that a parked car encompasses seven-feet, so that if cars were parked on both side of the street, only one tractor trailer would be able to pass through at a time.

Mr. Dean was engaged by Hionis to review Troutman's January 26, 2015 traffic impact analysis and he undertook an independent evaluation to measure the traffic activities going to and from the property from April 8 to April 21, 2017. This evaluation consisted of monitoring an automated traffic recorder, an electronic device place on the side of the road which measured total traffic activity entering and exiting the property as well as classified the activity by vehicle size and type. He testified that over an eight-day period, from April 9, 2017 to April 16, 2017, he observed a range of 10 to 45 vehicle trips.[8] Mr. Dean also stated that one tractor trailer was observed during this monitoring period, which he said was consistent with Mr. Troutman's observation of 14 tractor trailers over a seven-week period, as they both resulted in a finding of one to two per week.

Mr. Dean, however, did not understand Mr. Troutman's analysis of the property as one single-family lot. By contrast, Mr. Dean testified as to his understanding that at the time Hionis purchased the property, the zone permitted four-acre lots. Therefore, he deduced that the property, at approximately 55 acres, could have yielded 12 to 14 single-family lots and that if the property had been fully developed, it would have yielded roughly 120 to 140 trips a day, far in excess of the maximum daily trip amount he observed of 45 trips.

Mr. Dean then focused on the carrying capacity of Muirfield Lane itself by consulting with the Residential Site Improvement Standards, N.J.A.C. 5:21 (RSIS). He considered Muirfield Lane to be a residential access street or, as he described it, a street that is not a through street, servicing only the abutting land uses. He testified that under the RSIS standards, the average daily traffic in terms of livability is 1500 vehicles per day, and he said the property produces well below that standard. Dean also addressed pavement thickness. He testified that when he went to visit the site, the adjacent Gleneagles Drive was under construction in order to install a new water line, and he measured the pavement thickness, which he testified ranged from eight and a half to nine inches. He stated that under the RSIS standards, that pavement thickness was sufficient to carry up to 7,500 vehicles per day.

Finally, Mr. Dean testified as to road geometry. His testimony was consistent with that of Mr. Troutman's in that a tractor trailer would need to use the entirety of the roadway in order to make a turn at the intersection of Muirfield Lane and Gleneagles Drive. He disagreed, however, with Troutman's opinion in that this posed a safety risk as, based on his observations, he found there to be plenty of sight lines. Additionally, he observed that the corner radii in the

[8] It is unclear as to why Mr. Dean's testimony and the chart he created that was entered into evidence as Exhibit H-4 only applied to this eight-day period when he actually collected data over a 14-day period (April 8 - April 21, 2017). See Exhibit H-5.

neighborhood comport with the RSIS standards of 25 feet. Dean also did not find the truck activity leaving the property to be out of character with what one would expect in this area. He described the traffic as low volume and that tractor trailer activity was particularly infrequent, and that other types of large vehicles not generated by the property, including school buses, delivery trucks, and garbage and refuse trucks also navigate these roads.

SADC analysis

Although the ALJ provided no rationale or justification for why she found Mr. Dean to be more credible than Mr. Troutman, we do, however, agree with Mr. Dean and find flaws with Mr. Troutman's analysis, as the standard Troutman applied to the property was that for one single-family lot. As noted above, the property is approximately 55 acres. Although Mr. Dean assessed the property based on the zoning that applied at the time the property was acquired in 2005, there was testimony that today 10-acre zoning applies to the property.[9] Regardless, if we apply the more conservative 10-acre zoning, which could yield five single-family residential lots on the property, based on Mr. Troutman's testimony that the average daily trips generated by a single-family home is 9.52, a total of 47.6 trips would be the average number of trips generated from the property. Mr. Troutman observed that the average daily trip rate from the property was 23.10 trips per day. This is less than half of the number of trips that would be acceptable based on the standard espoused by Mr. Troutman if the property were to be fully developed for single-family use. In addition, Mr. Troutman's analysis ignores the fact that single-family residential use is not the only permitted use of the property as agriculture is also a principally permitted use of the property.

In determining whether the traffic generated from the property constitutes a direct threat to public health and safety, we look to one of our recent cases, In the Matter of CLC, LLC, OAL Dkt. No. ADC 20659-15, SADC ID# 1580 (2018), as the underlying facts there are analogous to the case here. In CLC, the neighbors of an adjacent farm that had recently transformed from a field crop operation to a nursery operation generating more traffic, argued that the traffic posed a threat to public health and safety for many of the same reasons presented by the neighborhood group in this case.

CLC's expert applied the same single-family home standard the neighborhood group's expert applied here and found that the average daily traffic generated from the CLC property was less than the average daily traffic generated from a single-family home. However, the expert also acknowledged that traffic would increase based on CLC's plan to

[9] It is unclear what minimum lot size for this zone applied at the time Hionis applied for the SSAMP.

add retail sales to the operation, and he estimated that this increase in traffic would be the equivalent of one or two additional single-family homes. The neighbors' expert in CLC did not dispute these findings, but argued that CLC's expert did not take into account that the nature of the traffic was commercial, not residential.

Ultimately, the ALJ balanced the competing interests between CLC and its neighbors and found that there was no particularized, direct threat to public health and safety and, therefore, there was no basis to deny CLC's Right to Farm protection. While the SADC disagreed with the ALJ that the objectors needed to show that the alleged direct threat to public health and safety needed to be "particularized", we found that the competing interests were properly balanced in coming to the conclusion that Right to Farm protection was proper in the CLC case.

The Hunterdon CADB failed to perform this balancing test when considering Hionis' SSAMP application. The CADB found that the neighborhood group had legitimate concerns regarding the increased truck traffic impact. However, without explanation the Hunterdon CADB concluded that it would be "unreasonable" to impose 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 Muirfield Lane.

In balancing the neighbors' concerns regarding traffic with Hionis' legitimate farm operation, we note that the record reflects only one or two tractor-trailer-type vehicles entering and exiting the property each week. Therefore, we **MODIFY** the initial decision by balancing the neighbors' public safety concerns with Hionis' ability to perform its legitimate agricultural operation, as we are required to do under the Curzi v. Raub decision, supra. Based on all of the data before us, we uphold the CADB's conclusion that there is no direct threat to public health and safety.

The neighborhood group also presented arguments related to a 1971 subdivision approval granted to Hionis' predecessor in interest (Gene Novello, Inc.) in support of their public safety concerns. Specifically, in 1971, the then-property owner, who owned both Block 4, Lot 20 (the property) and the adjoining Block 4, Lot 22, applied for approval of residential subdivisions on portions of both lots. The remaining portions of both lots were zoned industrial.[10] The proposed subdivision on lot 22 included a 50-foot right-of-way that led from Blossom Hill Road through the subdivision to lot 22. The planning board, as a result of concerns regarding the potential for the right-

[10] Hionis acquired the remainder of Lots 22 and 20 (post-subdivision approvals) from Gene Novello, Inc. in 2005.

of-way through the residential subdivision to be used in conjunction with the permitted industrial uses on lots 22 and 20, approved the subdivision on lot 22 with the following condition: that the 50-foot right-of-way be vacated if different access to those lands were obtained unless the lands were re-zoned residential.

The neighborhood group argued that since commercial greenhouses would have been permitted on the industrially zoned parcel, the condition regarding access in the 1971 approval for the minor subdivision means that Muirfield Lane cannot be used for traffic associated with commercial greenhouses. However, we are not persuaded by this argument. First, we find that the neighborhood group is conflating the condition of one subdivision approval with another. Further, the neighborhood group's argument ignores the current set of facts that are in place today, nearly 50 years later, that Lot 20 was subsequently rezoned residential, and further, the Township found that commercial greenhouses are permitted in this zone. As discussed above, if the neighborhood group disagrees with this Township conclusion, the Right to Farm process is not the proper forum for this dispute. Therefore, although we consider the 1971 resolution of approval for the minor subdivision on Lot 22 in our analysis, we are ultimately not persuaded that it should alter the Right to Farm protection approval set forth above with regard the vehicular use of Muirfield Lane associated with Hionis' farm operation.[11]

Due process

Finally, we address the neighborhood group's due process arguments with regard to the hearing in the OAL. First, we note the ALJ's authority to relax procedural rules under N.J.A.C. 1:1-1.3(b). Also, we find that any disputes the neighborhood group has with regard to being unable to fully present their positions in general, and with their inability to present the audio from the May 23, 2018 Township work session in particular, have been cured by the fact that we granted the neighborhood group's motion to reopen the record, and furthermore, that we considered all arguments and evidence presented in each proceeding below de novo. Therefore, we do not find that the neighborhood group has been deprived of due process.

Conclusion

For the foregoing reasons, we **ADOPT**, **MODIFY** and **REJECT** the Initial Decision as set forth in more detail above.

[11] Although the neighborhood group also argues that alternative access should be used for Hionis' farm operation, we find no need to require this as we find that the use of Muirfield Lane as outlined in in the decision above is proper in accordance with the Right to Farm Act.

IT IS SO ORDERED.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Dated: October 24, 2019

By: _____
Monique Purcell, Acting Chairperson

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