



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. ADC 18801-16

AGENCY DKT. NO. SADC #1787

BOROUGH OF GLASSBORO,

Petitioner,

v.

GLOUCESTER COUNTY AGRICULTURE

DEVELOPMENT BOARD, LEWIS J. DEEUGENIO, JR.,

AND SUMMIT CITY FARMS,

Respondents.

Allen S. Zeller, Esq., for the Borough of Glassboro (Zeller and Wieliczko, LLP,
attorneys)

Eric M. Campo, Esq., for Gloucester County Agriculture Development Board

William L. Horner, Esq., for Summit City Farms

Record Closed: April 9, 2019

Decided: July 2, 2019

BEFORE **ELIA A. PELIOS, ALJ**:

STATEMENT OF THE CASE

In this matter, petitioner Borough of Glassboro (Glassboro) appeals from a determination by respondent Gloucester County Agriculture Development Board (GCADB) that, under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4 (RTFA), respondent Lewis DeEugenio (DeEugenio), who owns Summit City Farms in Glassboro, may use a portion of a public street that abuts his farm for year-round, farm-related parking despite a Glassboro ordinance that only allows residential parking on the street between Labor Day and Memorial Day. Glassboro has filed a motion for summary decision, arguing that DeEugenio's proposed activity is not protected by the RTFA and that, as a matter of law, this matter should be dismissed.

PROCEDURAL HISTORY

On August 30, 2016, DeEugenio applied to the GCADB for a determination that use of the portion of University Boulevard that extends west from Lehigh Road for farm-related on-street parking constitutes a generally accepted agricultural practice under the RTFA, such that Glassboro could not enforce the ordinance against on-street parking associated with Summit City Farms. On October 20, 2016, the GCADB passed a resolution approving DeEugenio's application. The GCADB subsequently forwarded a copy of the resolution to DeEugenio, Glassboro, and the State Agriculture Development Committee (SADC). On or about December 2, 2016, Glassboro appealed the GCADB's determination to the SADC, which transmitted the matter to the Office of Administrative Law (OAL) as a contested case on December 14, 2016.

On February 22, 2018, Glassboro filed the herein motion for summary decision. On March 15, 2018, DeEugenio filed a brief in opposition to Glassboro's motion. Petitioner's reply brief was filed on April 9, 2019 and the record closed on the motion.

FACTUAL DISCUSSION

DeEugenio owns and operates Summit City Farms, which is located at 5 [redacted], Block 360, Lot 2, in Glassboro.¹ Glassboro Brief, p. 5. On May 24, 2016, the Mayor and Council of Glassboro adopted Ordinance #16-26, amending Chapter 445, Section 57 of the Glassboro Code to prohibit non-residential parking on certain streets, including University Boulevard, between Labor Day and Memorial Day.² Ibid. According to Glassboro, “parking, safety, and traffic concerns are significant on these public streets due, in large part, to their proximity to Rowan University, which is located in Glassboro and which over the past decade or more has experienced and will continue to experience substantial growth.” Id. at p. 6.

On August 30, 2016, DeEugenio applied to the GCADB for a determination that use of the portion of University Boulevard that extends west from Lehigh Road for farm-related on-street parking constitutes a generally accepted agricultural practice under the RTFA, such that Glassboro could not enforce the ordinance against on-street parking associated with Summit City Farms. October 20, 2016, GCADB Resolution. As part of his application, DeEugenio also asked the GCADB to require Glassboro to affix on the “parking by permit only” signs along the relevant portion of University Boulevard language reading, “Except Farm-Related Parking.” Ibid.

On September 15, 2016, the GCADB held a public hearing. Ibid. Although Glassboro officials did not attend the hearing, the borough’s attorney, Allen Zeller, Esq., submitted a letter in opposition to DeEugenio’s application. Ibid. In the letter, Glassboro argued that the RTFA “does not protect off-site activity such as that sought by Summit City Farm to enable it to park farm related vehicles and equipment on

¹ According to the farm’s website, Summit City Farms is “[a] vertically integrated agribusiness specializing in both wholesale and retail growing and sales of peaches, nectarines, and apples as well as a variety of other fruits and vegetables. Opening in 2014 is Summit City Winery featuring over thirty wine varieties, tasting room, and farm market in season.” <http://summitcityfarms.com>.

² The ordinance prohibits “[p]arking on the street . . . without a parking permit,” but provides an exception for “[a]ny cars or vehicles making local deliveries or used for any temporary construction purposes” and “holiday weekends (i.e., Friday, Saturday, and Sunday).” Glassboro Code, § 445-57.

University Boulevard which is not a part of the farm or a part of a 'farm management unit' pursuant to N.J.S.A. 4:1C-3." Ibid.

At the hearing, DeEugenio offered testimony in support of the application. He stated that his "agricultural operations extend to more than 500-acres with lands in other municipalities and this parcel in Glassboro has always been utilized as the home base for all their agricultural operations, which means that equipment may be temporarily parked [on University Boulevard] before it heads to another location." Ibid. University Boulevard also "ends up being a staging area for equipment and vehicles needed for the type of agricultural activity that is going on," such that "[i]f a picking operation is going on, then picking equipment will be parked there; if a spraying operation is going on, then spraying equipment will be present." Ibid. However, "depending on the current activity the farm-related vehicles are usually parked along the street from a few hours to half a day, and that they never park any vehicles along the street overnight." Ibid.

DeEugenio further stated that "in addition to his own equipment, suppliers, sales representatives, and tractor trailers making pick-ups or deliveries also park along the road" and that "there is no other access or area for these farm-related vehicles to park, and if he had to extend or create new parking areas he would have to eradicate a large portion of his current production area." Ibid. He stated that "they have regular pick-ups scheduled every day, and that often times if a truck arrives early or another is already using the loading ramp they park along the road to wait until they can access the ramp." Ibid.

DeEugenio's lawyer, William L. Horner, Esq., also testified and provided evidence at the hearing. According to Mr. Horner, "as a result of large recent expansions at Rowan University, Glassboro has been having problems as to student-related parking on residential streets, and as such has adopted residential permit parking only on a number of borough streets." Ibid. Thus, "the new parking ordinance does not target the farm; it targets students." Ibid. He offered a map showing that "it is approximately 1.09 miles from the applicant's farm to the center of

campus” and stated that “it would be highly unlikely for a student to park so far away . . . and then walk to the campus.” Ibid. Mr. Horner also stated that Glassboro “had already made accommodations to a church on University Boulevard to relax the parking restrictions for its parishioners.” Ibid. Mr. Horner argued that “the parking ordinance creates a restrictive burden on the applicant’s agricultural operations and that if the [GCADB] did grant the requested relief it would not change the intent of Glassboro’s ordinance, which they have proved was enacted to address student parking concerns.” Ibid.

The GCADB’s attorney, Eric M. Campo, Esq., also spoke at the hearing. Mr. Campo advised the GCADB that DeEugenio “must show a legitimate agricultural-based reason to depart from the local ordinance.” Ibid. He stated that “municipalities have every right to regulate parking and other activities that occur on municipal streets,” but that the RTFA “does provide a means for commercial farmers to seek relief from these regulations if those regulations unduly restrict the commercial farm’s agricultural activities that are part of a recognized agricultural management practice.” Ibid. He also said that “it is the CADB’s obligation to balance the competing interests of the commercial farm and the municipality in rendering these decisions.” Ibid.

The GCADB concluded that Summit City Farms is a commercial farm, as defined by the RTFA and, on October 20, 2016, passed a resolution approving DeEugenio’s application. Ibid. According to the resolution:

[T]he applicant’s proposal that use of the portion of University Boulevard that extends west from Lehigh Road for farm-related on-street parking (e.g., the applicant’s farm vehicles and equipment, farm employee and contractor vehicles and equipment, vehicles and equipment used to transport farm produce and other farm-related materials to and from the farm, and the vehicles and equipment of farm [non-winery] customers and visitors) conforms with applicable [RTFA] regulations and constitutes a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-2.5c.
Ibid.

The GCADB further resolved that “the aforesaid farm-related on-street parking does not pose a threat to public health and safety, provided that the applicant must continue to display signage on his property directing winery visitors to park in approved off-street parking areas;” that “the farm-related on-street parking constitutes a site-specific agricultural management practice;” and, that Glassboro’s “permit-only parking restriction may not be enforced against the aforesaid farm-related on-street parking.” Ibid. Finally, the GCADB ordered Glassboro to affix to each “parking by permit only” sign along the affected portion of University Boulevard language reading, **EXCEPT FARM-RELATED PARKING.**

The GCADB subsequently forwarded a copy of the resolution to DeEugenio, Glassboro, and the State Agriculture Development Committee (SADC). On or about December 2, 2016, Glassboro appealed the GCADB’s determination to the SADC, which transmitted the matter to the Office of Administrative Law (OAL) as a contested case on December 14, 2016.

On February 22, 2018, Glassboro filed a motion for summary decision finding that: (1) the GCADB lacked jurisdiction to hear DeEugenio’s application because the RTFA only protects agricultural activities occurring on a commercial farm, and not off-farm, on-street parking of farm-related vehicles and equipment; (2) notwithstanding the GCADB’s lack of jurisdiction, the Board should have dismissed DeEugenio’s application because on-street parking of farm vehicles and equipment is not a generally accepted agricultural management practice under N.J.S.A. 4:1C-9; and, (3) the GCADB does not have the authority to order Glassboro affix signage along University Boulevard.

On March 15, 2018, DeEugenio filed a brief in opposition to Glassboro’s motion. DeEugenio argues that summary decision in favor of Glassboro is inappropriate because (1) the RTFA protects off-farm activities such as farm-related, on-street parking; (2) farm-related, on-street parking constitutes a generally accepted agricultural activity under N.J.S.A. 4:1C-9; and, (3) the GCADB has the inherent authority to require Glassboro to post signs excepting farm-related parking from the permit-only parking

ordinance in order to effectuate the site-specific agricultural management practice recommendation for Summit City Farms.

LEGAL ANALYSIS AND CONCLUSION

The RTFA reflects the Legislature's intent to shield "commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey." N.J.S.A. 4:1C-2(e). To gain such statutory protection, an agricultural operation must satisfy several eligibility requirements under N.J.S.A. 4:1C-3 and N.J.S.A. 4:1C-9.

First, the operation must meet the definition of a "commercial farm," which is "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 [FAA],' P.L. 1964, c. 48 (C. 54:4-23.1, et seq.)."³ N.J.S.A. 4:1C-3. A commercial farm must also be "located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan," or have been in operation as of July 2, 1998, the effective date of the RTFA. N.J.S.A. 4:1C-9. The commercial farm must comply with "all relevant federal or State statutes or rules and regulations adopted pursuant thereto" and cannot "pose a direct threat to public health and safety." *Ibid.* Finally, a commercial farm operation must follow the agricultural management practices adopted by the SADC, which is the state agency responsible for administering the RTFA, or the farm owner must apply to the appropriate county agriculture development board (CADB) for a

³ A "farm management unit" is "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." N.J.S.A. 4:1C-3.

Under the FAA, land must meet certain requirements to be eligible for differential property taxation (farmland assessment): (1) land must be actively devoted to agricultural or horticultural use, which includes a requirement of gross sales of agricultural or horticultural products in the amount of \$500.00; (2) land must be devoted to such use for at least two successive years; and, (3) the area of the land must not be less than five acres. N.J.S.A. 54:4-23.5 and -23.6; N.J.A.C. 18:15-3.1 to -3.7.

determination that a site-specific agricultural management practice “constitute[s] a generally accepted agricultural operation or practice.” *Ibid*; N.J.S.A. 4:1C-5.

If a commercial farm satisfies these eligibility requirements, the farm owner or operator may engage in numerous agricultural activities “[n]otwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary.” N.J.S.A. 4:1C-9. Under N.J.S.A. 4:1C-9, these protected activities, which might otherwise be considered nuisances by the farm’s neighbors, include “[p]roduce agricultural and horticultural crops, trees and forest products, livestock, and poultry;” “[p]rocess and package the agricultural output of the commercial farm;” “[p]rovide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;” “[c]ontrol pests, predators and diseases of plants and animal;” and, “[c]onduct on-site disposal of organic agricultural wastes.”

In accordance with its statutory obligations, the SADC has promulgated regulations to further the purposes of the RTFA. N.J.A.C. 2:76-2.1 to -2B.3. The regulations include specific procedures for a determination of a site-specific agricultural management practice (SSAMP) by a CADB. N.J.A.C. 2:76-2.3.

Under these procedures, a commercial farm owner may apply to a CADB “to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.” N.J.A.C. 2:76-2.3(a). Thus, “[i]f a commercial farm owner or operator believes a municipality or county’s standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably withholding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board . . . make a determination in the matter by requesting a [SSAMP] . . .” N.J.A.C. 2:76-2.5(c).

When applying for a SSAMP, the farm owner must certify that he or she meets the eligibility criteria under N.J.S.A. 4:1C-3 and N.J.S.A. 4:1C-9. N.J.A.C. 2:76-2.3(d). If the CADB “determines that the farm operation is not a commercial farm pursuant to

N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the Board shall pass a resolution dismissing the request.” N.J.A.C. 2:76-2.3(g). However, if the CADB concludes that the farm satisfies the eligibility requirements and engages in any of the generally accepted agricultural activities listed under N.J.S.A. 4:1C-9, the farm owner must provide the CADB with relevant data and materials about the proposed operation and the CADB must also consider several “site-specific elements,” including, but not limited to, “[t]he farm’s settings and surroundings;” “[t]he scale and intensity of the proposed operation(s) or practice(s);” “[t]he type and use of the public road on which the operation or practice is located;” and, “[w]hen applicable, the minimum level of improvements necessary to protect public health and safety.” N.J.A.C. 2:76-2.3(h).

If the farm owner provides the required information, the CABD shall hold a public hearing on the application. N.J.A.C. 2:76-2.3(i). After the hearing, “[t]he board shall pass a resolution granting, with or without conditions, or denying the request for a [SSAMP] determination” and “[t]he resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to this section and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents.” N.J.A.C. 2:76-2.3(f).

Any person aggrieved by the CADB’s determination may file an appeal with the SADC in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.3(m). The SADC may then transfer the matter to the OAL for a de novo contested case hearing before an Administrative Law Judge (ALJ). N.J.S.A. 52:14B-2; N.J.A.C. 1:1-2.1; Hampton Twp. v. Sussex Cnty. Agric. Dev. Bd., 2014 N.J. AGEN LEXIS 1351 (Feb. 27, 2014). The SADC has held that, in such hearings:

[A] CADB determination under the RTFA is presumed valid, and the party objecting to the issuance of the SSAMP has the burden of proof in the OAL to show that a commercial farmer’s agricultural activities were not entitled to an SSAMP determination, but that such a determination loses its

presumption of validity when satisfactory proof is presented to the ALJ that the CADB's decision was not based on sufficient credible evidence. If the presumption of validity is lost, then the burden of proof again shifts to the commercial farmer to demonstrate entitlement to the SSAMP. The rationale for this burden shifting is supported by the de novo nature of the proceedings before the OAL.

[Hampton Twp., 2014 N.J. AGEN LEXIS 1351, *40-41.]

After a hearing, the ALJ shall issue an initial decision, which the SADC may adopt, modify, or reject. N.J.A.C. 2:76-2.3(m); N.J.S.A. 4:1C-10.2; N.J.S.A. 52:14B-10(c). In the leading case on the scope of a commercial farm's protection under the RTFA, Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), affirming Twp. of Franklin v. den Hollander, 338 N.J. Super. 373 (App.Div.2001), the Supreme Court announced that, "[a]s a general rule the threshold question will be whether an agricultural management practice is at issue, in which event 'the CAB or SADC must then consider relevant municipal standards in rendering its ultimate decision.'" Id. at 152 (quoting den Hollander, 338 N.J. Super. at 393. Thus, "[e]ven when the CAB or SADC determines that the activity in question is a generally accepted agricultural operation or practice . . . the resolution of that issue in favor of farming interests does not vest the board with a wide-ranging commission to arrogate to itself prerogatives beyond those set forth in the [RTFA]." Ibid. In this regard, "[t]he boards must act in a matter consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the agricultural practice." Ibid. (citing den Hollander, 338 N.J. Super. at 390-91). In the end, "[t]here may be instances where a CAB or the SADC concludes than an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue." den Hollander, 338 N.J. Super. at 392.

This matter, like many RTFA cases, appears to involve an issue of first impression, namely, whether the RTFA protects on-street parking of farm-related vehicles and equipment from the application of a prohibitive municipal parking ordinance. There is no doubt that, under the RTFA, a commercial farm owner may park his farm-related vehicles on his farm. Ciufo v. Somerset Cnty. Agric. Dev. Bd., 2016

N.J AGEN LEXIS 930 (July 28, 2016). However, a prior decision by the SADC suggests that the GCADB should have dismissed DeEugenio's SSAMP determination request because the RTFA does not protect off-site agricultural activities such as parking farm-related vehicles on a street on which such parking is forbidden by a municipal ordinance.

In Bottone Farms, Final Decision (September 22, 2005),⁴ the SADC held that the RTFA does not protect off-farm agricultural activities. In that case, a commercial farm owner, Frank Bottone, operated a farm market, and offered customer parking, on an office parking lot adjacent to his farm. Ibid. The SADC conditionally granted Bottone's request for an SSAMP determination that his farm market operation constituted a generally accepted agricultural practice protected by the RTFA. Ibid. Specifically, the SADC conditioned its approval on Bottone "relocating the farm market to his property" because "right-to-farm protection cannot be extended to agricultural activities occurring off the farm." Ibid.

As the SADC explained:

There is a preliminary issue regarding the off-site location of the farm stand, as right-to-farm protection cannot be extended to agricultural activities occurring off the farm. Mr. Bottone has stated that he will move the farm stand to his own property to make the operation eligible for right-to-farm protection. Thus, this site-specific AMP recommendation and any protection provided by the Right to Farm Act as a result of this recommendation, are subject to Mr. Bottone relocating the farm market to his property. It is the SADC's understanding that Mr. Bottone would like to continue utilizing the parking area of the adjacent office building because it offers a convenient and safe area for his customers to park and to access his farm market. The Right to Farm Act does not preempt municipal regulation of parking areas associated with farm markets. Specifically, the Act states that a farmer may '[p]rovide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards.' N.J.S.A. 4:1C-9c. Regardless of the location of the parking

⁴ This decision is not available through Lexis or the Rutgers Law School website. However, the decision is available on the SADC's website, <http://www.nj.gov/agriculture/sadc/>.

area, therefore, the parking area must comply with municipal standards for parking.
[Ibid.]

In holding that the RTFA protects agricultural activities on, but not off, a commercial farm, the SADC noted that, “[t]he office parking lot used by Mr. Bottone cannot be deemed part of a ‘farm management unit,’ pursuant to N.J.S.A. 4:1C-3, as there is no production of agricultural or horticultural products on the office parking lot.” Ibid. The SADC also cautioned that, although Bottone’s farm market operation would be protected under the RTFA if relocated to his farm, “[t]hese protections do not preempt municipal authority over the parking area associated with the farm market, regardless of whether the parking area is located on the farm, or if Mr. Bottone continues to use the parking lot of the adjacent office building.” Ibid.

Thus, Bottone Farms strongly supports the proposition that the RTFA does not preempt a municipal parking ordinance that prohibits on-street parking of farm-related vehicles and equipment. And, importantly, the location of agricultural activities is a threshold jurisdictional issue, such that, if a SSAMP determination request involves “agricultural activities occurring off the farm,” the RTFA does not apply and the SSAMP request should be dismissed.

The precedential value of the SADC’s decision in Bottone Farms is not diminished by a recent CADB determination in Demarest Farms, Bergen County Agriculture Development Board Resolution 2017-01 (Sept. 6, 2017), on which DeEugenio relies.⁵ In Demarest Farms, the Bergen County Agriculture Development Board (BCADB) determined that, under the RTFA, customers of a commercial farm’s popular pick-your-own events could park on the Borough of Hillsdale’s streets to park despite a municipal ordinance to the contrary. Ibid.

The BCADB recognized that the AMP for on-farm direct marketing activities, such as pick-your-own events, N.J.A.C. 2:76-2A.13, requires that “[p]arking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for traffic volume for the

commercial farm's on-farm direct marketing facilities, activities, and events." Ibid; N.J.A.C. 2:76-2A.13(h)(2). The Board "wrestled with the absence of standards to grant a variance which would justify the *reversal* of the State's AMP's policies" and found "no conceptual or legal grounds to do so through a Site-Specific Agriculture Management plan that would permanently override the Borough's prohibition on parking on the thirty-seven streets nearest to the farm on the grounds that it is a suburban farm." Ibid. Nonetheless, the Board granted the farm's SSAMP determination request on a temporary basis by concluding that the proposed parking arrangement posed a potential, but not a direct threat to public safety, and that "N.J.S.A. 4:1C-9(h) authorizes [t]he BCADB to override provisions of *any* municipal ordinance, including parking ordinances, in granting a site specific agriculture operation or practice which does not pose a direct threat to public health and safety."⁶ Ibid. In this regard, the BCADB found that "under the regulations governing the issuance of a SSAMP, there are legitimate farm-based reasons for a *temporary* departure from the AMP parking standards set forth in N.J.A.C. 2:76-2A.13"⁷ Ibid.

Demarest Farms is unpersuasive not only because the GCADB likely does not have the legal authority to approve an activity that fails to conform to an AMP adopted by the SADC, but also because the Board's decision appears to run counter to the SADC's holding in Bottone Farms regarding the RTFA's protection of off-the-farm agricultural and parking activities.⁸ The RTFA and its implementing regulations do not explicitly state that off-the-farm agricultural activities are not protected. However, in Bottone Farms, the SADC interpreted the RTFA in such a manner. Indeed, all of the permissible activities listed under N.J.S.A. 4:1C-9 involve on-the-farm activities.

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Summary decision may be granted "if the

⁵ This decision is also available only on the SADC's website.

⁶ Under that provision, a commercial farm may "[c]onduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm."

⁷ The Board approved the farm's proposal, subject to certain conditions, for pick-your-owns events in 2017, 2018, and 2019.

⁸ It is unclear whether Hillsdale has appealed the BCADB's decision.

papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

In the present matter, I **FIND** that there is no dispute as to any material fact and that both parties rest on differing interpretations of the law. Although the on-street parking proposed by DeEugenio in the present matter is related to his commercial farm operations, it appears that the RTFA does not protect off-the-farm agricultural activities such as parking farm-related vehicles on a public street in contravention of a municipal ordinance. This is a threshold jurisdictional issue. Accordingly, I **CONCLUDE** that, as a matter of law, the RTFA does not protect on-street parking of farm-related vehicles from a municipal ordinance that prohibits such action, and that petitioner’s motion for Summary Decision should be **GRANTED**.⁹

ORDER

Considering the forgoing, it is **ORDERED** that petitioner’s motion for summary decision be and is hereby **GRANTED**. The decision of the GCABD is hereby reversed.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

⁹ In light of this recommendation, it is unnecessary to specifically address Glassboro’s other arguments such as the GCABD’s authority to order Glassboro to post signs along a public street.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 2, 2019

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

July 2, 2019 (emailed)

Date Mailed to Parties:

EAP/mel