

**RESOLUTION
CONCERNING APPLICATION
INVOLVING DAVID DEN HOLLANDER,
GARDEN STATE GROWERS AND QUAKER VALLEY FARMS
BLOCK LOT
BLOCK LOT
BLOCK LOT
FRANKLIN TOWNSHIP**

WHEREAS:

David den Hollander/Garden State Growers/Quaker Valley Farms (referred to collectively as "Garden State Growers") are the owners of Block _____ Lot _____ on the Franklin Township Tax Map.

On November 6, 2002, the Township of Franklin (referred to as the "Township") filed a application with the Hunterdon County Agriculture Development Board (referred to as the "CADB") for the determination of a Right to Farm dispute involving Garden State Growers' properties. Succinctly stated, the complaint arose out of the proposed construction by Garden State Growers of a 103,968 sq. ft. green house.

In a letter dated November 13, 2002, Garden State Growers filed a Certification of David den Hollander for a determination that the Garden State Growers was a commercial farm. It also requested that the Township's complaint be forwarded to the State Agriculture Development Committee (referred to as the "SADC"), since "there is no adopted agricultural management practice concerning greenhouses. Neither is there any site specific management practice."

In a letter dated November 26, 2002, the State Agriculture Development Committee determined that jurisdiction to hear the issues rested with the Hunterdon County Agriculture

Development Board (CADB) and should be treated as a request by Garden State Growers for a site specific agriculture management practice determination.

On December 18, 2002, CADB legal representatives and staff conducted a formal conference between the parties to determine the precise issues in dispute and set a schedule for submissions to the CADB, the exchange of information and discovery. The Township was to share its zoning ordinance and table of bulk zoning requirements with Garden State Growers. After review of the ordinance, Garden State Growers was to inform the CADB of the extent to which its proposed construction of a green house did not comply with the Township's zoning requirements.

As a result of the review of the Township zoning requirements, Garden State Growers informed the CADB that the only issue in dispute in connection with the construction of the green house was the fact that after its erection the proposed green house would exceed the impervious coverage limitations as contained in the Franklin Township Zoning Ordinance. The Township agreed with this assessment by Garden State Growers.

The CADB would then review this issue within the authority defined by the New Jersey Supreme Court in litigation between the Township and Garden State Growers. Township of Franklin v. David den Hollander, et als, Superior Court of New Jersey, A-12, decided May 20, 2002.

The Township represented that although it may have other complaints in connection with Garden State Growers' operation, that it did not seek a review of those issues at that time. The Township would seek to present those complaints after the CADB's determination in regard to the present dispute.

On November 14, 2002, Hunterdon County Agriculture Development Board had determined that the operation of Garden State Growers was a commercial farm. On December 27, 2002, the

Township of Franklin formally objected to the November 14, 2002, determination of the Hunterdon CADB that Garden State Growers was a commercial farm and asked for that issue to be reconsidered. On January 10, 2003, the CADB issued an Administrative Ruling that it felt there was no substantive or procedural defect in its November 14, 2002 determination that Garden State Growers was a commercial farm. However, the CADB indicated it would provide the Township with the opportunity to present factual information at the January 14, 2003 CADB meeting that the statements made in Garden State Growers' commercial farm certification were untrue and, or that Garden State Growers' operation did not meet the definition of a commercial farm.

An initial hearing was scheduled by the Hunterdon County Agriculture Development Board for January 14, 2003. Prior to the hearing, the Hunterdon County Agriculture Development Board conducted a special site visit review which representatives of the Township and Garden State Growers attended. That visit was held on January 10, 2003.

On January 14, 2003, a public hearing was held at which Garden State Growers and the Township provided testimony. Exhibits were marked and a stenographic record was maintained of the proceeding. The complete exhibit list and the stenographic record will be indexed and attached to this Resolution and complete copies available in the CADB records.

Initially, the CADB heard the argument and presentation of Franklin Township on the issue of whether Garden State Growers was a commercial farm. The CADB found there was no reason to reconsider its previous determination and reaffirmed that Garden State Growers was a commercial farm and entitled to the protection of the Act.

At the hearing, the Township argued that the impervious coverage policy of the Hunterdon County Agriculture Development Board dated May 15, 2001, required the referral of the matter to

the Franklin Township Planning Board for a preliminary review. The CADB heard that argument and determined to refer the matter to the Franklin Township Planning Board for their information and comment pursuant to the CADB policy.

On January 16, 2003, the matter was referred to the Franklin Township Planning Board. Garden State Growers met with the Franklin Township Planning Board on February 4, 2003, February 26, 2003 and March 12, 2003. In addition, meetings and discussions took place between Garden State Growers and Township representatives. As a result, the Franklin Township Planning Board issued an advisory report dated March 17, 2003.

Upon receipt of the Advisory Report, the Hunterdon County Agriculture Development Board scheduled an additional public hearing on March 20, 2003. The Township represented to the CADB that if the results of the Franklin Township Planning Board's Advisory Report were adopted by the CADB, then the matter would be resolved. However, Garden State Growers objected to certain provisions of the report.

The Franklin Township Planning Board advisory report and other Exhibits were marked at the March 20, 2003 hearing, and a stenographic record was maintained of the proceeding. The complete exhibit list and the stenographic transcript will be indexed and attached to this Resolution and complete copies available in the CADB records.

The CADB determined that the only remaining issues in dispute were those conditions of the Franklin Township report to which Garden State Growers objected. The Board heard testimony and public comment on the contents of the Franklin Township Advisory Report.

After the public hearing, the Board deliberated and determined that certain provisions of the Advisory Report should be incorporated into a Site Specific Management Practice determination to

on the overall site, existing, and proposed be developed. The plans are to be submitted to the Franklin Township Planning Board for informational purposes only and to the CADB.

2. A FARM CONSERVATION Plan, also referred to as a "Resource Management System" (RMS) is essential for the protection of water quality. The Hunterdon County CADB required such a plan to be implemented in order to address agricultural practices relating to impervious coverage in its policy adopted May 8, 2001. Garden State Growers must obtain approval from NRCS and Hunterdon County Soil Conservation District of a Farm Conservation Plan. The Approved Plan will be filed with the CADB. (This condition was agreed to by the Applicant.)

3. SITE SPECIFIC BEST MANAGEMENT PRACTICES. The Best Management Practices listed in Gary Brown's exhibit submitted to the Franklin Township Planning Board on February 25, 2003, shall be implemented as modified, as a result of other conditions imposed in this Resolution. All BMPs are to be implemented including, but not limited to:

- (a) EFFICIENT IRRIGATION SYSTEM
- (b) BUFFER STRIPS
- (c) FILTER STRIPS
- (d) PLAN for IRRIGATION WATER MANAGEMENT (NEW)
- (e) ROOF RUNOFF MANAGEMENT (NEW)

(The Applicant agrees with the imposition of this condition.)

4. PONDS are recommended to retain water volume onsite, as part of a RECHARGE PROTECTION PLAN to collect runoff generated from the high level of impervious cover, so that water retained can be recycled as a source of irrigation on the farm. Each drop of water so retained and recycled is one drop less that needs to be drawn from the aquifer for irrigation. Water retained

onsite in irrigation ponds, although it does not infiltrate back to the aquifer as does an infiltration basin, achieves the same goal helping preserve recharge. The New Jersey Department of Environmental Protection and the New Jersey Water Authority have proposed a rule to reclaim runoff water and recycle as much as possible as a primary source of irrigation for agriculture.

(a) Garden State Growers' Recharge Protection Plan should achieve a reasonable goal of retaining water. The Franklin Township Planning Board suggests a standard of a volume of water equivalent to 90% of the volume of water that would have been retained on the entire site, assuming the entire site were covered by a meadow in good condition. The CADB does not currently accept this standard. A calculation should be made to determine the volume of water that would have remained onsite available for recharge, assuming a meadow condition, for the 2-, 10- and 10- year storms, and a plan should be devised to retain as much of this volume as reasonably possible on site.

(b) Theoretically, the Recharge Protection Plan can be achieved through infiltration, or some combination of infiltration and retention ponds, although it is noted that soils on this site are not generally suited for infiltration.

The CADB determines that Garden State Growers shall provide a Plan with sufficient background information to the Township's Engineer, which Plan shall be reviewed and negotiated with the Applicant within thirty (30) days of submission. If agreement is not reached within thirty (30) days, the CADB retains jurisdiction to make a determination concerning the sufficiency of the Plan.

(The Applicant agrees with the imposition of this condition).

5. A comprehensive STORMWATER MANAGEMENT PLAN is essential to protect against flooding and erosion and also to protect water quality in the stream corridor in connection

with Proposed Conditions. "Proposed Conditions" should include all improvements existing and proposed for the site.

(a) Garden State Growers represents that it has approved storm water management plans which show all "proposed" structures and clearly delineate all drainage areas, contour lines and time of concentration flow paths. Garden State Growers represents that plans have been prepared, reviewed and approved based upon available calculations showing derivation of composite CN's, time of concentration calculations, and hydrographs for the different storms and drainage areas, all according to TR-55. These Plans were approved at various times.

Garden State Growers will compile existing specific Storm Water Management Plans for portions of all of its parcels into one document and submit it to the CADB. Garden State Growers shall furnish proof in the compiled plan that an approved Storm Water Management Plan exists to accommodate all water resulting from the erection of the proposed green house.

(The Applicant agrees with this condition.)

6. BUFFER and FILTER STRIPS are needed to protect surrounding properties and encroachment of the Lockatong Creek. Certain filter strips were mentioned by Garden State Growers' Engineer Brown in his testimony before the Planning Board and the CADB and were located on Garden State Growers' site plan plat. Except for buffers previously approved by the State in connection with other structures, these buffer strips must be delineated by a metes and bounds description and be marked in the field by Karsonite markers. The headwaters of the Lockatong must be protected from encroachment by drainage structures, by a minimum buffer dictated by the Farm Conservation Plan prepared pursuant to Condition Number 2 above. An LOI is needed to delineate wetlands and wetland buffer areas, which should be protected from encroachment by drainage

structures. Garden State Growers indicates many of these conditions have already been complied with. It will furnish documentary proof of such approvals by the DEP and will comply with any additional provisions in this Paragraph 6 which have not yet been met.

7. Garden State Growers shall provide access for MONITORING of all three lots by the CADB.

8. EASEMENTS are to be included in the deeds for all three parcels reflecting the dependency of all three lots as part of a single RMS, Storm Water Management Plan and Recharge Protection Plan. Easements are necessary for all drainage and water collection structures and ditches on one site that may serve to collect or drain water from another site. Garden State Growers is to prepare easement documents and submit them to the CADB for approval. After approval, the documents are to be recorded and copies of the recorded documents furnished to the CADB.

9. STANDARDS FOR STREAM WATER QUALITY In connection with the head waters of the Lockatong, the CADB makes a determination that the Right-to-Farm statute does not bar action and review by any entity which has legal jurisdiction in non-farm settings to monitor water quality in the stream. Garden State Growers represents that it has existing monitoring reports and approvals from the DEP. Garden State Growers agrees to submit those existing reports to the CADB and will comply with all legal requirements including but not limited to those of the DEP for maintenance of the Creek.

Franklin Township nor Franklin Township Planning Board shall not charge any fees in connection with its review.

This determination , the transcripts and exhibits, and the material to be furnished by Garden State Growers shall be forwarded to the State Agricultural Development Committee within thirty

(30) days, pursuant to N.J.A.C. 2:76-2.3(e).

Any person aggrieved by this decision, may appeal to the State Agriculture Development Committee, pursuant to N.J.A.C. 2:76-2.3(f).
