

September 26, 2001

See Service List

Re: **Casola v. Monmouth County Agriculture Development Board**
OAL Docket No. ADC 06462-00S
SADC Docket No. 1318-01

Dear Counsel:

At its meeting on September 20, 2001, the State Agriculture Development Committee (SADC) considered two motions in the above-referenced matter: the Casolas' interlocutory appeal of Judge Tassini's Order dated August 15, 2001 and the Planning Board of the Township of Holmdel's (Planning Board's) motion to disqualify the SADC from rendering final decisions in this matter. Enclosed please find the two orders issued by the SADC on those motions. The Planning Board had requested oral argument on its motion to disqualify; however, the SADC considered the motion without oral argument because not all parties could attend the SADC meeting.

Please note that all actions taken by the SADC are subject to the Governor's review of the minutes of the meeting at which those actions were taken. N.J.S.A 4:1C-4f. In light of the pending hearing, the SADC is requesting an expedited review of the minutes by the Governor's office. We will notify you once the Governor's review period has expired.

Sincerely,

Marci D. Green, Esq.
Chief of Legal Affairs

encl.

3: Joanne M. Restivo, Deputy Clerk
Honorable John R. Tassini, ALJ

ORDER DETERMINING
MOTION FOR DISQUALIFICATION
OAL DOCKET NO. ADC 06462-008
AGENCY DOCKET NO. RTF1318-01

IN THE MATTER OF
THE RIGHT TO FARM ACT
APPLICATION OF CASOLA

This Order determines the motion of the Planning Board of the Township of Holmdel (Planning Board) to disqualify the State Agriculture Development Committee (SADC) from conducting an interlocutory review of the administrative law judge's (ALJ's) Order dated August 15, 2001 and from conducting any other decision making function in this matter. The Township of Holmdel (Township) submitted a Certification in support of the Planning Board's motion. Antonio and Kim Casola (the Casolas) opposed the motion. For the reasons set forth below, the motion is denied.

The basis for the motion is the SADC's participation in the Casolas' action in lieu of prerogative writs in the Law Division, New Jersey Superior Court and its subsequent appeal in the Appellate Division. Casola and State Agriculture Dev. Committee v. Planning Bd. of Twp. of Holmdel, A3579-99T5F, A-3576-99T5F, A-6979-99T5F (App.Div. 2001). The SADC's involvement in both the Law Division and the Appellate Division was limited to the legal issue of whether the Right to Farm Act preempts municipal regulation of agricultural activities. The SADC's briefs clearly stated that the SADC was not taking a position with regard to the specific facts of the matter and that its involvement was limited to its general legal position of whether the Act preempted municipal regulation of certain agricultural activities.

The Right to Farm Act and its implementing regulations specifically give the SADC jurisdiction to hear appeals of site-specific agricultural management practice determinations by county agriculture development boards (CADBs). N.J.S.A. 4:1C-10.2, N.J.A.C. 2:76-2.3(f).

Subsequent to the SADC's transmittal of this matter to the Office of Administrative Law, the Appellate Division issued its decision in Casola and State Agriculture Dev. Committee v. Planning Bd. of Twp. of Holmdel, A3579-99T5F, A-3576-99T5F, A-6979-99T5F (App.Div. 2001). The court stated:

It is our view that primary jurisdiction consequently resides in the SADC to determine whether plaintiffs operate a commercial farm subject to the protections of the Act, whether their proposed activities constitute generally accepted agricultural management practices, and the extent to which, if at all, in view of the preemptive language of N.J.S.A. 4C:1-9, those activities are subject to municipal regulation beyond the assurance of their

conformance with standards relating “to construction of building and parking areas.” [Casola, p.10, emphasis added].

Clearly, the Appellate Division has authorized the SADC to render a final decision in this matter. The administrative law judge assigned to this matter has framed the issues based upon the Appellate Division decision. Accordingly, the SADC’s final decision will address the issues framed by the Appellate Division and considered at the OAL hearing, including “the extent to which, if at all, [the Casolas’] activities are subject to municipal regulation. . .”

Based upon the express statutory authority given to the SADC to hear appeals of CADB decisions and the Appellate Division’s explicit holding that the SADC has primary jurisdiction in this particular matter, the SADC does not have a conflict of interest which prevents it from issuing final decisions in this matter. The Appellate Division was aware of the SADC’s involvement before it and in the Law Division but recognized the SADC’s statutory role in the matter nonetheless.

The motion is denied.

IT IS SO ORDERED.

Date:

Arthur R. Brown, Jr.
Chairperson, State Agriculture
Development Committee

S:\RIGHTTOFARM\RTFCASES\MONMOUTH#1318-01 - CASOLA\OAL Appeal\holmdelorder.wpd