State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. ADC 6462-00

AGENCY DKT. NO. RFT1318-01

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

Anthony J. Sposaro, Esq., for applicants Antonio and Kim Casola

Duane O. Davison, Esq., for appellant Township of Holmdel Governing Body (Lomurro, Davison, Eastman & Munoz, attorneys)

Craig M. Goodstadt, Esq., for intervener Township of Holmdel Planning Board (Kirkpatrick & Lockhart, attorneys)

Record Closed: October 23, 2002 Decided: October 24, 2002

BEFORE **JOHN R. TASSINI**, ALJ:

STATEMENT OF THE CASE

Antonio and Kim Casola (farmers), who own and operate a commercial farm in Holmdel Township, requested a decision that, under the Right to Farm Act (RFA), their activities,

including a farm market, hayrides, etc., constitute "a generally accepted agricultural operation or practice" such that, pursuant to the RFA, their activities are permissible notwithstanding Township ordinances. N.J.S.A. 4:1C-9. See generally N.J.S.A. 4:1C-1 to -10.4, N.J.S.A. 40:55D-1 to -112, N.J.A.C. 2:76-1.1 to -2.10. The Monmouth County Agricultural Development Board (CADB) agreed with the farmers and the Township governing body appealed to the State Agricultural Development Committee (SADC) SADC for a final administrative agency decision. N.J.S.A. 4:1C-4, -6, -7, -10.1d, -10.2; N.J.A.C. 2:76-2.3(f).

As shown by the attached Stipulation of Settlement, the parties have settled the case.

PROCEDURAL HISTORY

The farmers requested that the Monmouth CADB determine that their activities constituted "a generally accepted agricultural operation or practice." N.J.S.A. 4:1C-3, -9, -14; N.J.A.C. 2:76-2.1, -2.3(a). On April 5, 2000, the CADB conducted a meeting and, during a June 7, 2000 meeting, it adopted a resolution determining that the operation did constitute a generally accepted agricultural operation or practice. N.J.S.A. 4:1C-3, -9. By letter dated May 11, 2000 and notice, dated May 15, 2000, the Township governing body appealed to the SADC for a final administrative agency decision. N.J.S.A. 4:1C-4, -6, -7, -10.1d, -10.2; N.J.A.C. 2:76-2.3(f). The SADC transmitted the contested case to the Office of Administrative Law (OAL), where it was filed on August 28, 2000. N.J.S.A. 52:14B-2(b), -8. On October 24, 2000, the case was assigned to me and I forwarded a letter to the attorneys, setting a discovery schedule, etc. Conferences with the attorneys followed. Consistent with Casola and State Agricultural Development Committee v. Planning Board of the Township of Holmdel, A-3575-99T5F, A-3576-99T5F, A-6979-99T5F (Appellate Division January 22, 2001), by letter/order, dated February 13, 2001, I granted the Township Planning Board's motion for an order allowing its intervention here. N.J.A.C. 1:1-16.1. I also granted the motion of the New Jersey State League of Municipalities for an order allowing it as a participant; but thereafter, the League withdrew from the case. N.J.A.C. 1:1-16.6. In July 2001, the parties filed cross motions for orders relative to which party would bear the burden of proof etc. On August 10, 2001 in the OAL, the motions were argued and, on August 15, 2001, I issued an order relative to burden of proof etc. (The order included detailed statements of the parties' allegations, related litigation, legal issues, etc.) By orders

dated September 24, 2001, the SADC affirmed my order in part and reversed it in part. (In reversing, the SADC determined that the determination of the CADB was presumed valid and that the party which sought the SADC's order overturning the CADB determination would bear the burden of proof. However, in the SADC's letter dated September 26, 2001, citing N.J.S.A. 4:1C-4f, it wrote that its actions were subject to the Governors' review of its minutes. The SADC also considered the Planning Board's motion for an order disqualifying itself from deciding the case.) Thereafter, the parties continued to negotiate, considering the effect of Township of Franklin v. Hollander, 172 N.J. 147 (2002), which held that the RFA preempts municipal land use authority over a commercial farming operation, although there must be due attention to local interests, etc. By letter dated September 4, 2002, the farmers' attorney submitted the proposed Stipulation of Settlement to the Township and notified the Planning Board's attorney that, by September 13, 2002, he should notify me of any objection to the Stipulation of Settlement as drafted. The Planning Board has not notified me of any objection to the Stipulation of Settlement. On the record closed date, the Stipulation of Settlement, executed by the attorneys on behalf of the farmers and Township, was filed in the OAL.

FINDINGS OF FACT

1. The parties understand the Stipulation of Settlement and voluntarily entered in to it.

2. The Stipulation of Settlement fully disposes of all issues in controversy and is consistent with the law.

The case involved substantial issues of fact. The Stipulation of Settlement avoids the time and expense of full hearing and further litigation. The terms of the Stipulation of Settlement are reasonable.

CONCLUSIONS OF LAW

This Stipulation of Settlement is consistent with law, meets the requirements of N.J.A.C. 1:1-19.1 and should be approved.

ORDER

I **ORDER** that the parties comply with the Stipulation of Settlement and that these proceedings be concluded.

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

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURAL DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agricultural Development Committee does not adopt, modify or reject this decision within forty-five (45) 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.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE John Fitch Plaza, 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.

October 24, 2002
DATE

John R. Tassini, ALJ

Receipt Acknowledged:

DATE

DEPARTMENT OF AGRICULTURE

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

RECEIVED
2002 OCT 23 P 12:30

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Attorney for Applicants Antonio and Kim Casola

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DKT. NO. ADC 6462-00
AGENCY DKT. NO. RFT1318-01

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

STIPULATION OF SETTLEMENT

Applicants Antonio and Kim Casola and Appellant the Township of Holmdel hereby enter into the following Stipulation of Settlement.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. The property in question (PIQ) is located in Holmdel Township. It is about 25 acres, located at the intersection of Schanck Road and State Highway 34, commonly known as 178 Highway 34 and, on the Township tax map, designated as Lot 7 in Block 15.

2. For many years, farming and diesel tractors were used on the PIQ. The PIQ is in the Township's R-4 -residential -zone. The Township's ordinances provide that in

this zone farming is a permitted use and that, where farming is permitted, a farm stand is a permitted use. Adjacent to the PIQ are lots with single-family residences.

3. In 1995, Mr. Casola, 41, a native of Holmdel, whose work has always been farming and Mrs. Casola, his wife, parents of 5, purchased the PIQ.

4. The Township issued appropriate permits and the Casolas have constructed several buildings on the PIQ:

(a) In 1995, the Township issued to the Casolas zoning permits for construction of greenhouses (to grow and display agricultural products.) No building permit was required, but subcode permits were required for plumbing and electrical service in the greenhouses. In 1996, the Casolas constructed four greenhouses. The Township issued plumbing permits for water service and propane-fired appliances and issued electrical permits for lighting and ventilation systems, which are necessary for greenhouses.

(b) In 1995, the Township issued to the Casolas a zoning permit and a building and electrical permit for construction of a pole barn (to sort and pack produce they grow for transportation to market, for storage of farm equipment and for additional growing) on the PIQ. In 1996 the Casolas began construction of the barn. In 1996 also, the Township issued to them a zoning permit for construction of a 1,080 square feet second story farm office within the barn and, thereafter, issued a building and electrical permit for the office.

(c) In April 1996, the Township issued to the Casolas a zoning permit for the farm stand. The Township has never required site plan approval for farm stands and, before December 15, 1997, the Township zoning ordinance

had no standards for farm stands. In 1996, the Casolas erected a temporary farm stand for operation of a farm market to sell their agricultural products and related products.

5. On the PIQ the Casolas, t/a A. Casola Farms, activities have included the following: They have raised and sold nursery stock (deciduous trees, evergreens and conifers), container stock, and strawberries and, in 2 acres of greenhouses, they have raised bedding plants (pansies and perennials), hanging baskets and mums. They have presented classes on farming to schoolchildren. They have sold aquatic/pond plants, live fish for ponds, pond supplies and tropicals. They have also sold blocks and pavers, cement statuary, and seasonal lawn ornaments. They have used diesel tractors for hayrides and to transport customers to "pick-your-own" strawberries and pumpkins. Their advertisements have attracted substantial numbers of customers for activities on the PIQ, including "haunted hayrides," operated until 10 pm. See N.J.S.A. 4:1C-3 "Farm management unit," N.J.S.A. 4:1C-9h.

6. The Casolas' farming activities on other realty have included the following:

(a) On Bayonet Farm, about 85 acres in Holmdel Township, they have raised pumpkins, rye for seed & grain, straw and hay.

(b) On Stillwell Road Farm, about 60 acres in Holmdel Township, they have raised hay and rye for seed and grain, for cover crop and for straw.

(c) On Schanck Road Farm, about 10 acres in Holmdel Township, they have raised nursery stock (deciduous trees, evergreens and conifers) and pumpkins.

(d) On Vanderburg Road Farm, about 18 acres in Marlboro Township, they have raised pumpkins, gourds and fall squash.

(e) On McCampbell Road Farms, about 3 acres in Holrndel Township, they have pastured beef cattle.

(f) On Chase Farm, about 250 acres in Holrndel Township, they have raised straw, hay, sweet corn, string beans, pumpkins, mixed vegetable nursery and they maintain 14 greenhouses.

(g) On Route 79 Farm, corner of East Freehold Road, about 40 acres in Freehold Township, they have raised nursery stock (deciduous trees, evergreens and conifers) and pumpkins.

(h) On Roberts Road Farm, about 11 acres in Holmdel Township, they have raised field corn for stalks.

7. During relevant times, on the PIQ and on each of the above-described properties, the Casolas have produced $2,500 or more in agricultural/horticultural products annually and the PIQ and above-described properties have satisfied the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964. See N.J.S.A. 4:1C-3 "Commercial farm", N.J.S.A. 54:4-23.1 to -23.24.

8. Substantially more than 50% of the annual gross sales by the farm market on the PIQ are generated from the sale of the agricultural output of their farm management unit. See N.J.S.A.4:1C-3.

9. In 1996, in Township of Holmdel et al. v. Casola et al., L-5495-96, Holmdel Township claimed that Township Planning Board site plan review and approval was necessary for the Casolas ' operation of the farm market and they

demanded an injunction of such operation. No injunction was granted; but the applicants agreed to apply for approval, etc.

10. In November 1997, the Casolas applied to the Township Planning Board for preliminary and final site plan approval of uses beyond their existing operation with variances for (1) landscape buffer, (2) rear yard setback, (3) an office on a second floor in the barn, (4) retail display area for nursery stock not grown on the property, (5) fence height, (6) buffer and (7) hours of operation. See N.J.S.A. 40:55D-30 et seq. Additionally, the Casolas applied for design waivers for (1) use of concrete (instead of granite) wheel stops, (2) basin slopes of 5: I (instead of 10:1), (3) HDPE (instead of galvanized steel) piping, and (4) an 18 feet (instead of 20 feet) setback of street trees.

11. Effective December 15, 1997, a Township zoning ordinance provided standards for farm stands and additional standards for farm markets, including restrictions on the size of farm stands, setback requirements, and limitations on the products that can be sold.

12. The Township Planning Board held public meetings on the application on May 26, 1998, August 11, 1998, October 6, 1998, November 10, 1998, and March 2, 1999. The Casolas presented expert testimony. The Board's engineer presented opinion testimony relative to the effect of the Casolas' operation and proposed operation on adjacent residents. Some adjacent residents, objecting to the application and represented by counsel, presented expert testimony. Responding to the objections, etc., the Casolas submitted revisions to their plans.

13. Effective July 2, 1998, amendments to the RFA provided in pertinent part:

> Notwithstanding the provisions of anv municipal or county ordinance. resolution. or regulation to the contrary, the

owner or operator of a commercial farm, located in an area in which, as December 31, 1997 or thereafter , agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of [N.J.S.A. 4:1C-3 et seq.] and the operation of which conforms to agricultural management practices recommended by the [SADC] and adopted pursuant to the provisions of the " Administrative Procedure Act." [N.J.S.A. 52:14B-1 et seq.]...or. whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public heath and safety may:

c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;

h. Conduct agricultural-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm.

[N.J.S.A. 4:IC-9, emphasis added.]

14. Before the Township Planning Board, the Casolas did not assert that their operations and/or proposed operations were permitted by way of the RFA's preemption of the Municipal Land Use Law (MLUL) and/or preemption of the Planning Board's jurisdiction and they did not withdraw their application for variances and/or waiver.

15. The Planning Board's March 23, 1999 resolution approved the site plan and variance with conditions:

1. The resolution notes that the Planning Board made no finding with regard to the legality of the present use, but strictly addresses the applicant's request for site plan approval to operate a "retail farm market" as defined in the ordinance.

2. The resolution notes that the application did not include a request, and no approval was granted, to operate a snow plowing landscape design, landscape installation, equipment sale or repair, unrelated vehicle or equipment storage, or any other business or use not specifically addressed in the Resolution. The Planning Board made no findings as to whether or to what extent the enterprise may be covered under the RFA.

3. The resolution notes that the retail portion of the farm market operation will be limited to a total of 8700 square feet and will be set off by permanent partitions as required by the Ordinance ("Indoor Retail Area"). The Indoor Retail Area shall be used exclusively for the sale of fruits, vegetables, flowers and nursery stock, all of which has been grown on the PIQ (defined as "Indigenous Agricultural Products") and other compatible, complementary, and ancillary goods as set forth in the definition of "farm market, retail" in Ordinance Sec. 30- 3, and for no other purpose. For purposes of the approval, nursery stock shall not be considered an Indigenous Agricultural Product unless (i) it has been grown on the PIQ for at least two growing seasons.

4. The resolution notes that the area located between the semi-circular driveway and Route 34 ("Outdoor Retail Area") consisting of approximately 111,922 square feet shall be used only for the sale of nursery stock and other vegetative agricultural commodities, including those not grown on the PIQ ("Non-indegenous Agricultural Products"). No other items may be sold or displayed in the Outdoor Retail Area. It is specifically intended that the sale or display of compatible, complementary and ancillary goods (as defined in Ord. Sec 30-3) shall not be permitted within the Outdoor Retail Area.

5. The resolution notes that the applicant can continue the Halloween hayrides; however, the hayride route will be relocated as directed by the Planning Board Engineer pursuant to a Special Condition in the Resolution, which states that the plans shall be in strict accordance with a Master letter dated November 14, 1996, last revised October 20, 1998 and the plans will be revised pursuant to a T&M letter, marked as B-5 into evidence.

6. The resolution notes that other than as may be specifically permitted under the RFA, to the extent applicable, members of the public shall not be permitted anywhere on the PIQ except for the Indoor Retail Area, the Outdoor Retail Area and the related parking areas. In October, members of the public shall also be permitted on the hayrides, provided that boarding of hayride wagons shall take place immediately adjacent to the front parking lot and customers shall remain in the wagon until returned to the parking lot. During this time, customers shall not be permitted beyond the Indoor Retail Area and Outdoor Retail Area except in the hayride wagons, and, to the extent the RF A may

expressly permit, on other portions of the PIQ for pumpkin picking, but in no event closer to the rear property line than the approved hayride route.

7. The resolution notes that a berm no less than 6 feet in height shall be maintained at the rear lot line of the PIQ at all times. The berm shall include on its top an 8-foot high board and batten fence of sufficient sound attenuation capabilities to prevent noise from spilling to the rear properties above levels permitted by applicable laws and regulations. The length of the berm shall be as approved by the Planning Board Engineer in accordance with the plans and letters as set forth in item 5 above.

8. The resolution notes that the lighting of the Project will not include stanchions above the height of the fence to the immediate rear of where the stanchion is located. All lights will be shoebox, down-directed lights to minimize light spillage.

9. The resolution notes that a double row of evergreen trees at least 6 feet in height will be maintained along the rear lot line of the PIQ where the berm is not required, extending in a southerly distance to the approximate mid-point of Lot 3.

10. The resolution notes that the chiller units will be sound proofed in accordance with an acoustical design to be approved by the Planning Board Engineer. The acoustical design of the fans for the new greenhouses shall also be approved by the Planning Board Engineer for compliance with applicable noise control standards. The Applicant shall also demonstrate to the satisfaction of the Planning Board Engineer that the fans in the existing greenhouses also comply with applicable noise control standards.

11. The resolution notes that the parking and loading/unloading area for trucks will comply with the 150-foot setback of the Ordinance. Directional signs will be added limiting entry by trucks to the driveway areas that are within 150 feet of the rear property line. The driveway to the rear of the barn and greenhouses shall be for ingress and egress only. No parking, idling, loading or unloading shall take place in the area. Ingress and egress shall be limited to the hours of 7 A.M. to 6 P..M. Trucks with refrigeration units shall be permitted to stand or idle on the Property.

12. The resolution notes that the hours of operation shall be limited pursuant to Ordinance (from dawn to dusk), except that the operations may extend until 10 P.M. during the period from November 15 to January I, and during October for Halloween hayrides.

13. The Resolution notes that the dumpster is to be fully screened, covered and fenced, and shall be relocated to an area approved by the Borough Engineer.

14. The resolution notes that sight triangle easements must be approved by the Township Attorney, accepted by the Township Committee, and recorded with the Office of Monmouth County Clerk.

15. The resolution notes that the definition for "Indigenous Agricultural Products" shall consist of products actually grown on the PIQ (or, to the extent the enterprise may be covered by the RFA, actually grown on the Applicant's "commercial farm", as defined therein). For fruits and vegetables, this shall be defined as an entire growing season; for nursery stock, this shall be defined as at least two entire growing seasons; and for flowers, annuals, bedding plants, and perennials, this shall be defined as having been grown on the PIQ (or, to the extent the enterprise may be covered by the RFA, actually grown on the Applicant's aforesaid commercial farm) from seedlings or cuttings. Non-Indigenous Agricultural Products shall be grown in accordance with accepted agricultural practices; provided, however, that containerized growing of nursery stock shall be limited to a partially fenced-in area consisting of approximately 93,000 square feet and designated on the plans as the "containerized growing area." The plans shall be revised to reflect this. The contention for this condition is that the PIQ is to be used primarily as a farm and a vehicle for the sale of products grown on the PIQ (or, to the extent the "enterprise may be covered by the RF A, actually grown on the Applicant's aforesaid farm), rather than as a retail outlet for products grown or produced elsewhere. In the event of complaints by residents, the Applicant shall supply reasonable proofs requested by the zoning officer in order to demonstrate compliance with this condition.

16. The resolution notes that all signage shall comply in all material aspects with the requirements of Ord. Sec. 30-119(1).

17. The resolution notes that the Applicant will comply with the recommendations set forth in the letter of the Shade Tree Committee dated January 10, 1999.

18. The resolution notes that the Applicant shall contribute $6000 toward onsite improvements associated with Schanck Road. The Township is to install a traffic signal at the corner of the Property of Route 34 and Schanck Road and the Applicant shall contribute the sum of $2500 as a fair share contribution.

16. On May 17, 1999, in Casola v. Township of Holmdel Planning Board, L-2497-99 (appealed to the Appellate Division and decided January 22, 2001, as detailed below), the Casolas claimed that the RFA preempted the Township Planning Board's authority to require the resolution's conditions. The Planning Board answered the complaint.

17. In June 1999, in Township of Holmdel et al. v. Casola et al., L-5495-96, a stipulation of settlement and dismissal with prejudice was filed.

18. On October 4, 1999, in Casola v. Township of Holmdel Planning Board, L-2497-99, the Casolas moved for declaratory judgment. Also, the SADC moved for an order allowing its intervention and, in a December 22, 1999 opinion, the Honorable Lawrence Lawson, A.J.S.C., held that the RF A does not preempt the municipal site plan regulation of retail farm markets and denied the SADC's motion. On January 21,2000, Judge Lawson entered an order incorporating the December 22, 1999 opinion and setting a pretrial conference to address the issue of whether the Planning Board's actions had been arbitrary, capricious and unreasonable.

19. From the order entered in Casola v. Township of Holmdel Planning Board, L-2497- 99, the Casolas and SADC moved in the Appellate Division for interlocutory appeals. These were docketed as A-3575-99T5 and A-3576-99T5 and, on March 16, 2000, the Appellate Division granted the motions and the SADC's motion for intervention.

20. Beginning this administrative case, the Casolas submitted a "request" to the Monmouth CADB that it determine that their activities constituted a "Commercial farm" and a site-specific "generally accepted agricultural operation or practice" under the RFA and implementing regulations. N.J.S.A. 4:1C-3, -9, -14, -15; N.J.A.C. 2:76-2.1, -2.3(a). On February 2, 2000, the Monmouth CADB notified the Township

Governing Body that a meeting on the request was scheduled for that evening; the Governing Body's attorney requested that the meeting be adjourned; and the meeting was adjourned.

21. On April 5, 2000, the Monmouth CADB conducted a meeting on the Casolas' request. Mr. Casola testified in support of his above-described request, i.e., that he operated consistent with generally accepted agricultural practice. James Gorman, Esq., appearing for several individual objectors, cross-examined Mr. Casola. James M. Turteltaub, Esq., appeared for the Township Planning Board. The Township Governing Body did not appear. There is no verbatim record of the April 5, 2000 Monmouth CADB hearing (due to the failure of the tape recorder.) The Monmouth CADB prepared minutes of the hearing. See N.J.S.A. 10:4-14. The Governing Body denies that the Monmouth CADB's minutes are accurate. The Monmouth CADB did not refer to any documented generally accepted agricultural operation or practice in evaluating the application. See N.J.S.A. 4:1C-9. Relative to the Monmouth CADB's April 5, 2000 hearing, Mr. Turteltaub alleges the following: (1) The Monmouth CADB stated that the SADC had not adopted any generally accepted agricultural standard or practice relative to farm stands and farm markets. (2) The Monmouth CADB stated that it did not plan to adopt any site- specific guideline relative to the application. (3) The Monmouth CADB stated that the Casolas were farmers and knew how to operate farms and formal guidelines were unnecessary for it to determine whether they operated consistent with generally accepted agricultural management practices. (4) The Monmouth CADB stated that, these days, anything a farmer must do to survive is a generally accepted agricultural practice. (5) The Monmouth CADB stated that hay rides are a standard part of a farming operation and necessary to supplement farming income. (6) The Monmouth CADB offered him the opportunity to present an expert witness to contradict the Casolas' contention that they operated consistent with generally accepted agricultural practice, but he declined to do so (in the absence of discovery procedure and because he did not have Planning Board authority to retain an expert, etc.) See also N.J.A.C. 2:76-2.3.

22. During a June 7, 2000 meeting, the Monmouth CADB discussed the Casolas' request. Again, the Monmouth CADB's meeting was unrecorded. At that time, the SADC had not issued a policy and/or guidelines for the development and recommendations of site-specific agricultural management practices by county agricultural development boards. Of the Monmouth CADB ' s seven voting members, all were residents of Monmouth County and four. were actively engaged in farming. N.J.S.A.4:IC-14a. On June 7,2000, the Monmouth CADB adopted a resolution determining that the Casolas' operations and practices and proposed operations and practices constituted generally accepted agricultural operations or practices under the RFA. N.J.S.A. 4:IC-,3, -9. At the time of the Monmouth CABD hearing, the SADC had not promulgated agricultural management practices applicable to many of the Casolas' operations: e.g., the haunted hayride. In acting on the Casolas' application, the Monmouth CADB did not consult with: 1. the New Jersey Department of Agriculture, 2. the SADC, 3. the New Jersey Agricultural Experiment Station, 4. any other County Agricultural Development Board, 5. the State Soil Conservation Committee, 6. any other state's department of agriculture, land-grant institutions or Agricultural Experiment Stations, and/or 7. the United States Department of Agriculture or any federal governmental entity. See N.J.A.C. 2:76-2.3(d).

23. On May 3, 2000, in Casola v. Township of Holmdel Planning Board. L-2497-99, Judge Lawson held a trial.

24. By letter dated May 11, 2000 and notice, dated May 15, 2000, the Township Governing Body appealed from the Monmouth CADB to the SADC for a "final administrative agency decision." N.J.S.A. 4:1C-4, -6, -7, -10.1d., -10.2; N.J.A.C. 2:76-2.3(f).

25. On June 30, 2000, in Casola v. Township of Holmdel Planning Board. L-2497-99, Judge Lawson issued an opinion and, on July 19,2000, he entered an order wherein he concluded that the Casolas had not proven that the Planning Board had

acted arbitrarily, etc. He also concluded that a variance was unnecessary for the second story office.

26. The SADC, citing N.J.S.A. 4:1C-1 et seq. and N.J.A.C. 2:76-2.3, effective August 24, 2000, issued a "Policy, Guidelines for the Development and Recommendations of Site Specific Agricultural Management Practices (AMPS) by [CADBs]."

27. The SADC transmitted this case, i.e., the Township governing body's appeal from the Monrnouth CADB's determination, to the OAL where it was filed on August 28, 2000. N.J.S.A. 52: l4B-2(b), -8.

28. In Casola et al. v. Township of Holmdel Planning Board, A-3575-99T5 and A-3576- 99T5, the Appellate Division sua sponte consolidated the appeals and scheduled argument on the consolidated appeals for December 12, 2000. However, the Appellate Division then learned of the SDAC case and, on January 22, 2001, issued a decision, concluding that the administrative forum had primary jurisdiction over the dispute, dismissed the appeals and vacated the Law Division judgment appealed-from. The Appellate Division wrote that the SADC, having primary jurisdiction, should decide a series of issues.

29. The Casolas continue activities, including their retail sales activities. The Township has filed municipal court complaints against the applicants, charging that, during the Halloween season, the violated ordinances relating to hours of operation, lighting and signage. The Casolas, citing N.J.S.A. 4:1C-10.3, moved to dismiss the complaints. The municipal court judge denied the motions and then agreed to reconsider them and has held them for disposition.

30. By letter/order, dated February 13, 2001 consistent with the above-cited Appellate Division decision, the Township Planning Board's motion for an order allowing its intervention was granted. N.J.A.C. 1:1-16.1. The New Jersey State League of Municipalities also moved for an order allowing its intervention which was granted. N.J.A.C. 1:1-16.1

31. Thereafter the parties sought clarification of who bore the burden of proof in these proceedings. The issue was briefed and on August 10, 2001 the parties' motions were argued. Administratively Law Judge Tassini thereafter issued an Order Relative To Burden of Proof on August 15, 2001, wherein he determined that the Casolas bear the burden of proof, going forward and the burden of persuasion that their activities in Holmdel Township constitute a generally accepted agricultural operation or practice such that, pursuant to the RFA, they are permissible notwithstanding Township ordinances.

32. Thereafter the Casolas appealed Judge Tassini's decision to the SADC. On September 24, 2001 the SADC reversed Judge Tassini concluding that in this case Holmdel Township, as the appellant, has the burden of proof and remanded the matter back to Judge Tassini.

33. On May 20,2002 the New Jersey Supreme Court issued a decision in the matter of Township of Franklin v. David den Hollander, et als. The court held that the New Jersey Right To Farm Act preempted municipal regulation of commercial farms through zoning. The power to regulate commercial farming activities is now vested in the CADBs and SADC.

34. On June 11, 2002 counsel for the applicants, the Township of Holmdel, The Holmdel Township Planning Board, the Township Zoning Officer and Judge Tassini conducted a site inspection of the Casola farm market in Holmdel Township. Thereafter extensive settlement discussions ensued. As a result of those discussions

and negotiations applicants Antonio and Kim Casola and the Township of Holmdel stipulate and agree to the following:

A. Nighttime hayrides will commence weekends starting in October through October 31 of each year. On Friday and Saturday operations will cease by 11:00 P.M. On Sundays operations will cease by 10:00 P.M. Notwithstanding the foregoing, ticket holders purchasing tickets prior to 9:30 P.M. shall be permitted to commence and complete hayrides should they extend beyond the above described closing times. The sale of tickets will cease on each of these days at 9:30 P.M., or sooner, depending upon demand. Hayrides will not be offered in the evenings on any other day.

B. For nighttime hayrides, temporary lighting will be permitted in the parking and loading area in the easterly portion of the property from the barns to the highway, together with the south side of the barn near the loading area. Sixty (60) watt bulbs or less shall be used and spaced approximately 40 feet apart.

C. Temporary lighting shall be utilized only when evening hayrides are offered to the public and after dusk in December when Christmas trees are offered for sale to the public.

D. The temporary lighting shall be turned off in the evenings after the public has left the premises, but no later than 12:30 A.M. on Friday and Saturday and 11:30 P.M. on Sundays when hayrides are being offered to the public. In December the temporary lighting shall be turned off no later than 30 minutes after closing.

E. Hours of operation for the sale of Christmas trees shall be 7:00 A.M. to 11:00 P.M., weather permitting.

F. Except for extended hours of operation when hayrides are offered to the public and when Christmas trees are offered for sale the farm market can be open to the public from 7:00 A.M. to 8:00 P.M.

G. In addition to the permanent signs presently erected, two temporary signs not to exceed four feet by eight feet (exclusive of ornamentation which will not exceed 4x8 feet) shall be permitted during the months of September, October and December.

H. Casola shall use reasonable efforts to contain surface water runoff and soil erosion in accordance with all applicable governmental standards.

I. All pending municipal court complaints against the Casolas shall be dismissed.

ANTHONY J. SPOSARO, Attorney
For Applicants Antonio and Kim Casola

DUANE O. DAVISON, Attorney for
Township of Holmdel Governing Body

Dated: October 2002.

AJS.pae.Casola.Twsp.Stip.Settlement.9.04..02.Final