

**RESOLUTION OF THE GLOUCESTER COUNTY
AGRICULTURE DEVELOPMENT BOARD**

**RE: DECISION ON THE APPLICATION OF
MARINO BROTHERS GENERAL PARTNERSHIP
FILED PURSUANT TO THE NEW JERSEY RIGHT TO FARM ACT
FOR DETERMINATION OF A
SITE SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE
AT SOUTH HARRISON TOWNSHIP BLOCK 18, LOTS 1 & 5**

WHEREAS, pursuant to the New Jersey Right to Farm Act, *N.J.S.A. 4:1C-1, et seq.* (the “Act”) and *N.J.A.C. 2:76-2.3* of New Jersey’s Right to Farm regulations, a commercial farm owner or operator may make a request to the appropriate County Agriculture Development Board to determine if his or her operation constitutes a generally accepted agricultural management practice that should be recommended to the New Jersey State Agricultural Development Committee (“Committee”) as an approved site specific agricultural management practice (“SSAMP”); and

WHEREAS, the Applicant, Marino Brothers General Partnership, d/b/a Sun Valley Orchards, having its address at 32 Vestry Road, Swedesboro, New Jersey 08085, has requested an SSAMP recommendation from the Gloucester County Agricultural Development Board (“Board”) pursuant to *N.J.A.C. 2:76-2.3* for its agricultural pre-cooling, packing and cold storage facility operations located at property designated as Block 18, Lots 5 & 1 on the South Harrison Township Tax Map (the “Property”) in response to allegations by the South Harrison Township Zoning Officer certain aspects of the operations do not qualify as farming or agriculture and are therefore not entitled to the Act’s preemptive protections against municipal land use regulations; and

WHEREAS, at the Board’s April 10, 2008, regular meeting, proper notice having been given in compliance with the Open Public Meetings Act, a quorum of the Board being present, and Vice Chairman West Jay Kandle, III, officiating (Chairman Russell Marino, Sr., did not sit with the Board or participate as a Board member due to his position as a partner in the Applicant general partnership), the Board conducted a public hearing on the application; and

WHEREAS, the Applicant was represented at the hearing by William L. Horner, Esq.; and

WHEREAS, the South Harrison Township Zoning Officer, Joseph B. Wille, was represented at the hearing by the South Harrison Township Planning Board Solicitor, Gary D. Thompson, Esq.; and

WHEREAS, the Board heard the sworn testimony of Russell Marino, Sr., Joseph M. Marino, David T. Sheppard, Jr., and Ben Sorbello on behalf of the Applicant; and

WHEREAS, the Board received the following exhibits into evidence:

1. Applicant's **Exhibit A** (copy of applicable zoning requirements).
2. Applicant's **Exhibit B** (copies of the following permits and notice relating to the Facility):
 - a. Zoning Permit dated August 20, 2007 (with Zoning Officer's notations stating that the cold storage facility must be used only for Applicant-grown produce).
 - b. Construction Permit dated September 12, 2007.
 - c. Notice of Zoning Violation dated March 27, 2008.
 - d. Certificate of Occupancy dated April 9, 2008.
3. Applicant's **Exhibit C** (Applicant's requested board determinations).
4. Resume of David T. Sheppard, Jr.
5. Copy of letter dated April 9, 2008, from Helen H. Heinrich, P.P., C.L.A., Research Associate of the New Jersey Farm Bureau, to Ken Atkinson (Board Secretary) in support of the Applicant's application.

WHEREAS, the Board has considered the application and testimony presented by the Applicant, all exhibits, and the arguments and objections presented by counsel for the South Harrison Township Zoning Officer, and makes the following determinations:

1. The Applicant is a five-member New Jersey general partnership consisting of brothers Russell Marino, Sr., Harry Marino, and Sebastian Marino, and Russell Marino, Sr.'s sons, Russell Marino, Jr., and Joseph M. Marino.
2. In September of 2007 the Applicant applied for zoning and construction permits to construct an agricultural pre-cooling, packing and cold storage facility (the "Facility") at the Property. The zoning permit, a copy of which was submitted to the Board as part of the Applicant's **Exhibit B**, was originally completed by the Applicant to describe the subject of the permit request as "Addition to farm packing house, pre-cooling and cold storage for our vegetable operation."
3. The zoning permit and construction permit (also included in **Exhibit B**) were issued by Joseph B. Wille (who serves as both the Construction Official and the Zoning Officer in South Harrison Township); however, Mr. Wille added the following restrictive language to the approved zoning permit: "Note – Condition of Approval – to be used strictly for produce grown on the existing farm ONLY!".
4. After the construction of the facility was completed Mr. Wille inspected it and issued a notice dated March 27, 2008 which provided as follows:

The intended use of the building was for the agricultural or horticultural products produced on the farm. (N.J.S.A. 52:27D-121). Presently, all product is being shipped via truck into this building.

This is a violation of the Board of Health Standards, Township Zoning and/or other Township ordinances and State regulations. It is requested that you submit in writing to the Zoning Officer or your intentions of a plan of action in which to remedy the situation within 21 business days, or a Notice of Violation will be filed to Municipal Court for compliance.

5. Prior to issuing the above notice, Mr. Wille, in his capacity as Construction Official for South Harrison Township, had also refused to issue a final certificate of occupancy (“C.O.”) for the Applicant’s facility. The C.O. was later issued on April 9, 2008, the day before the Applicant’s hearing.
6. The Applicant filed this SSAMP application in response to Mr. Wille’s aforesaid determinations.
7. Russell Marino, Sr., testified that he has been a farmer for his entire life, as were his father and grandfather before him. He has served on numerous farm-related boards and committees, including the State Board of Agriculture and the Gloucester County Agricultural Development Board.
8. Joseph M. Marino testified that he has been a farmer for his entire life, and has served as Vice President of the Vegetable Produce Association and Director of the Promotion Council, and was recognized as Young Farmer of the Year in 2001.
9. Based on the above qualifications, Russell Marino, Sr., and Joseph M. Marino were offered as qualified experts in the fields of farming and agriculture. No Board member or other person expressed opposition to these qualifications.
10. Joseph M. Marino testified that the Property consists of approximately 130 acres and constitutes part of the approximately 2,000 acres that are farmed annually by the Applicant; that the Property satisfies the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964 and is currently farmland assessed; and that the Applicant partnership has been in existence as a farming entity since the early 1970s, and sells agricultural products worth more than \$2,500 annually.
11. Joseph M. Marino testified that the Property is located in South Harrison Township’s AR Agricultural Residential zoning district in which farming and agriculture are permitted uses. The applicant submitted, as **Exhibit A**, copies of applicable provisions of the South Harrison Township Land Use and Development Ordinance (Code § 90-5.00, *et seq.*) which confirmed that farming and agriculture are permitted uses in all South Harrison Township zoning districts.

12. Joseph M. Marino testified that the Facility consists of approximately 20,000 square feet of cold storage and pre-cooling areas, a loading dock, and packing areas. The Facility is to be used for the wholesale marketing of farm produce, consisting of the Applicant's produce as well as the produce of other farmers as described below. The Facility is not a farm market, and will not be used for retail sales.
13. Joseph M. Marino testified that the Applicant grows, markets, sells and transports all of its own produce. It has constructed the Facility in part to eliminate its dependence on the cold storage facilities at the Vineland auction. In order to maximize the use and efficiency of the Facility, the Applicant will also provide cold storage for other local, regional, national and international farmers as space permits during the traditional South Jersey farming season, and to a greater extent during the off-season or any periods during which drought or other catastrophic weather events might reduce the Applicant's crop yield. In order to satisfy large wholesale customers the Applicant will also periodically purchase types of produce that the Applicant itself does not regularly grow during the regular season, and all types of produce during the off-season; the Facility will be used to store and pack that produce in order to satisfy all aspects of the Applicant's large customers' produce needs on a year-round basis. The size and scale of the Applicant's farming operation make all of these uses critical to its success. Specifically, year-round use of the Facility to store all manner of produce, whether or not grown by the Applicant, results in improved Facility cooling efficiency and lower maintenance and repair costs, better retention of qualified employees on a year-round basis, improved customer satisfaction and year-round customer relationships, better cooling and storage options for other local farmers who do not have their own cold storage facilities, and a more predictable and reliable income stream through the off-season and unanticipated periods of crop loss. The Facility also provides packing and other work areas that are more likely to comply with increasingly stringent food handling laws and regulations, and the ever-increasing technical demands and requirements of large customers.
14. Joseph M. Marino testified that, prior to its construction of the Facility, the Applicant has regularly had to store some of its produce at cold storage facilities owned and operated by other local and regional farmers, and that it has had, and will continue to maintain collaborative relationships with other farmers, locally and in other parts of the United States and the world, that involve the Applicant's purchase, cooling, packing, and/or storage of produce that the Applicant itself has not grown.
15. Joseph M. Marino testified that to stay in the business of agriculture the Applicant must be a full-service provider of produce, and that all of the aforesaid practices are widespread in the agriculture industry among farmers who grow, market and sell their own produce.
16. Joseph M. Marino testified that, although the Applicant has always endeavored to purchase produce from other farmers whenever such purchases were necessary to fill customer orders, its primary business has always been, and continues to be, selling the produce it grows rather than buying it for resale. He testified that more than 90% of the Applicant's annual income is currently derived from the sale of Applicant-grown

produce; however he also testified that this percentage may fluctuate from year to year, and that because of the uncertainty of crop yield, customer demand, and other market factors, the degree and durations of such fluctuations cannot be predicted with precision.

17. Based on the foregoing testimony, and in addition to his expert qualifications in farming and agriculture, Joseph M. Marino was offered to the Board as a person who can provide expertise concerning the Applicant's particular requested SSAMP, and with whom the Board may therefore consult pursuant to *N.J.A.C. 2:76-2.3(d)(8)*. No Board member or other person expressed opposition to this additional qualification.
18. Joseph M. Marino testified that, in his opinion, the above described cooling, storage and packing of non-Applicant grown produce in the Applicant's Facility is consistent with generally accepted agricultural management practices.
19. Joseph M. Marino testified that there have been no complaints of disturbance or nuisance against the Applicant's existing farming operation and that, given the size of the Property, the fact that it is surrounded almost entirely by farmland-preserved land and other farmland that is not likely to be developed, and the relatively small number of houses near the Property, the Applicant's use of the Facility as intended will not create any disturbance or nuisance to anyone. He also testified that by all outward appearances the Facility will look and operate the same regardless of whether or not the produce being shipped to and from it is Applicant-grown.
20. Joseph M. Marino testified to the authenticity of the permits and notices included in the Applicant's **Exhibit B**, and confirmed facts leading to the Applicant's application as set forth above.
21. David T. Sheppard, Jr., was sworn and testified on behalf of the Applicant. According to his resume, copies of which were distributed to the Board, he is the co-owner and operator of Sheppard Farms, Inc., a 1,400-acre farm that produces fresh market vegetables, and co-owner of Eastern Fresh Growers, Inc., the sales company for Sheppard Farms, Inc., and other growers along the East Coast. Mr. Sheppard is a member or past member of numerous agricultural organizations including the New Jersey State Agricultural Board, the Tomato Advisory Committee, the Pepper Advisory Committee, Rutgers Cooperative Extension Advisory Committee, the New Jersey Vegetable Growers Association (also Past President), the New Jersey Tomato Council Association (also Organizer and Past President), the Cumberland-Atlantic-Cape May Farm Service Agency (Past Chairman), the Cumberland County Agricultural Development Board (Past Chairman), the Cumberland County Board of Agriculture (Secretary), and the Cumberland County Empowerment Zone. He earned a B.A. degree in Vegetable Crops Science from Cornell University in 1972, and an A.A.S. degree in Agronomy from Alfred State College in 1969. Mr. Sheppard grew up in a farm family and has been a full-time farmer since graduating from Cornell in 1972.

22. Based on the above qualifications, David T. Sheppard, Jr., was offered as a qualified expert in the fields of farming and agriculture. No Board member or other person expressed opposition to these qualifications.
23. When questioned, Mr. Sheppard confirmed that he had heard Joseph M. Marino's testimony and agreed that it was consistent with his own experience and his own opinion that the Applicant's intended use of the Facility is consistent with generally accepted agricultural management practices. He testified that the farming operations of which he is co-owner have been doing what the applicant now proposes since 1990 using the same type of cold storage facility, and that the products his farming operations actually produce comprise approximately 75% of their sales. He testified that, in addition to addressing product perishability, cold storage has become particularly important due to current food safety requirements which set specific temperature restrictions for agricultural produce, and that an entire load of produce can be rejected by a buyer if these limits are not satisfied. He testified that he and his two brothers (both of whom were also Cornell graduates) envisioned this need in the 1980s and at that time encouraged cold storage in their area on a farm cooperative basis. He noted that cold storage facilities are very expensive to build, maintain and operate, and that the farmers who need them simply could not afford them if their use were limited to the traditional four- to five-month South Jersey farming season. Mr. Sheppard testified that, for all of the above reasons, the Applicant's intended use of the Facility is consistent with what farmers are now doing all along the East Coast, and also with what is necessary to retain agriculture as a viable New Jersey industry.
24. Mr. Sheppard confirmed that it is common for farmers to purchase, cool, and/or store products that they themselves have not grown, both to fill orders for customers and to provide storage services for or in collaboration with other farmers. He also confirmed that it is most cost-efficient to build cold storage facilities 25% larger than necessary and to keep them as full as possible year round. Finally, he testified that, in his opinion, the Applicant's intended use of the Facility will become even more prevalent with the passage of time because it is what farmers will have to do to stay in business.
25. Based on the foregoing testimony, and in addition to his expert qualifications in farming and agriculture, David T. Sheppard, Jr., was offered to the Board as a person who can provide expertise concerning the Applicant's particular SSAMP request, and with whom the Board may therefore consult pursuant to *N.J.A.C. 2:76-2.3(d)(8)*. No Board member or other person expressed opposition to this additional qualification.
26. Mr. Sheppard testified that, in his opinion, the Applicant's intended use of the Facility for cooling, storage and packing of non-Applicant grown produce is consistent with generally accepted agricultural management practices. He also testified that it is difficult to anticipate year-to-year what percentage of non-Applicant grown produce might be cooled, stored or packed in the Facility, and that in the event of crop loss it would likely be necessary to cool, store and/or pack a large percentage of non-Applicant grown produce in order for the Applicant to stay in business. He also testified that by all

outward appearances the Facility will look and operate the same regardless of whether or not the produce being shipped to and from it is Applicant-grown.

27. The Board received copies of a letter dated April 9, 2008, from Helen H. Heinrich, P.P., C.L.A., Research Associate of the New Jersey Farm Bureau, to Ken Atkinson (Board Secretary) in support of the Applicant's application. Mr. Ben Casella of the Farm Bureau attended the hearing to provide additional testimony.
28. Ben Casella was sworn and testified that he is a staff member with the New Jersey Farm Bureau organization, a nonprofit organization of about 15,000 members that supports agriculture in New Jersey. Prior to that he farmed for seven years and obtained a business degree from Millersville University. He testified that he is familiar with farming and agriculture, both from having been a farmer himself, and from having studied the farming industry, and the state's farming policies from a regulatory standpoint, through his work with the Farm Bureau.
29. Based on the above qualifications, Ben Casella was offered as a qualified expert in the fields of farming and agriculture, as well as the agricultural industry, agricultural industry regulation, and the policies of the state of New Jersey as to agriculture. After it was confirmed that Mr. Casella would not be speaking on behalf of the state of New Jersey or any governmental entity, no Board member or other person expressed opposition to these qualifications.
30. When questioned, Mr. Casella confirmed that he had heard Joseph M. Marino's and David T. Sheppard's testimony and agreed that it was consistent with his own experience, and his own opinion the Applicant's intended use of the Facility is consistent with generally accepted agricultural management practices. He testified that the Farm Bureau promotes New Jersey farmers working with other growers in the same manner as the Applicant, using cold storage facilities as intended by the Applicant, so that they can succeed in the industry by becoming year-round suppliers to their customers; otherwise New Jersey's status as a spot market, or three- to four-month provider, makes it difficult for farmers to maintain markets throughout the year. Mr. Casella confirmed that in his personal experience as a farmer, and also based on his knowledge of the industry, it is common for farmers to purchase, cool, and/or store products that they themselves have not grown, both to fill orders for customers and to provide storage services for or in collaboration with other farmers. He testified that as a farmer he himself has had to store his produce in another farmer's cold storage facilities.
31. Based on the foregoing testimony, and in addition to his expert qualifications in farming and agriculture, as well as the agricultural industry, agricultural industry regulation, and the policies of the state of New Jersey as to agriculture, Ben Casella was offered to the Board as a person who can provide expertise concerning the Applicant's particular SSAMP request, and with whom the Board may therefore consult pursuant to *N.J.A.C. 2:76-2.3(d)(8)*. No Board member or other person expressed opposition to this additional qualification.

32. Mr. Casella testified that, in his opinion, the Applicant's intended use of the Facility for cooling, storage and packing of non-Applicant grown produce is consistent with generally accepted agricultural management practices. He also testified that it is difficult to anticipate year-to-year what percentage of non-Applicant grown produce might be cooled, stored or packed in the Facility, and that in the event of crop loss it would likely be necessary to cool, store and/or pack a large percentage of non-Applicant grown produce in order for the Applicant to stay in business. He testified that by all outward appearances the Facility will look and operate the same regardless of whether or not the produce being shipped to and from it is Applicant-grown.
33. Mr. Casella testified that he is familiar with the contents of Ms. Heinrich's April 9, 2008 letter, which he adopted as his own testimony.
34. At the end of its presentation to the Board, the Applicant submitted **Exhibit C**, which outlined the Board determinations that the Applicant seeks.
35. Mr. Thompson, attorney for the objecting South Harrison Township Zoning Officer, presented no witnesses. He questioned Mr. Casella about whether the State Agricultural Development Committee has issued a regulation that says the Applicant's intended use of the Facility is an on-site-specific agricultural management operation, in response to which Mr. Casella explained that the Committee has not established the Applicant's intended use as an AMP, and that is why the Applicant is requesting an SSAMP for it. Mr. Thompson asked Mr. Casella whether, when he was a farmer, he had to pay other farmers to store his produce, or whether they did it gratis, to which Mr. Casella confirmed that he had had to pay for the storage. Mr. Thompson questioned Mr. Casella about the truck traffic that would be generated throughout the year by the Applicant's intended use of the Facility, in response to which Mr. Casella confirmed that the truck traffic would be the same throughout the year because it would be based on the volume of produce that could be stored in the Facility. Under further questioning, Mr. Casella also confirmed that the Act makes no distinction between agricultural activities that take place on-season versus off-season, or in the summer versus the winter. Mr. Thompson questioned Joseph M. Marino about whether the words "our vegetable operation" on the **Exhibit B** zoning permit included vegetables that were grown by other farmers, to which Mr. Marino answered in the affirmative. Mr. Thompson questioned Mr. Marino about the number of sales contracts and the amounts of revenue earned by the Applicant, to which Mr. Marino responded by repeating his earlier testimony and by refusing to divulge details of the Applicant's business and financial records that he believed were irrelevant to the Application. Mr. Thompson also elicited testimony from Mr. Marino to confirm that the Applicant had not requested use variance or site plan approval for the Facility from the South Harrison Township Planning Board.

NOW, THEREFORE, BE IT RESOLVED, by the Gloucester County Agricultural Development Board, that it hereby grants and approves the Applicant's SSAMP request as follows:

- A. The Applicant's farming operation qualifies as a "commercial farm" as defined in the New Jersey Right to Farm Act and its related regulations (*N.J.S.A. 4:1C-1, et seq.*, and *N.J.A.C. 2:76-2.1, et seq.*), and has been in operation as of and prior to December 31, 1997.
- B. The Applicant's farming operation qualifies as a "farm and agricultural use" and is a permitted use in all South Harrison Township zoning districts pursuant to the South Harrison Township Land Use and Development Ordinance (Code § 90-5.00, *et seq.*).
- C. The three primary witnesses presented by the Applicant (Joseph M. Marino, David T. Sheppard, Jr., and Ben Casella) were properly qualified as experts in their respective fields as set forth above, and also properly qualified as persons who can provide expertise concerning the Applicant's particular requested SSAMP, and with whom the Board may therefore consult in making its SSAMP determination pursuant to *N.J.A.C. 2:76-2.3(d)(8)*.
- D. The use of the Applicant's cold storage facility by and in connection with the Applicant's farming operation to generate revenue through the storage, sorting, packaging, cooling, marketing, sale and distribution of non-Applicant-grown products is hereby determined by the Board to constitute a "generally accepted agricultural operation or practice" pursuant to *N.J.A.C. 2:76-2.3*, provided that the Applicant's farming operation continues to qualify as a "commercial farm". Such use is therefore hereby approved by the Board and recommended to the New Jersey State Agricultural Development Committee as a site specific agricultural management practice.
- E. The aforesaid approved site specific agricultural management practice does not pose a threat to public health or safety, nor does it violate the intent or purpose of any municipal ordinance that may have a peripheral effect on farming without directly conflicting with farming practices.
- F. Any attempt by South Harrison Township or its Zoning Officer or other municipal officials to restrict the use of the Applicant's cold storage facility only to Applicant-grown products would contravene the purposes of the New Jersey Right to Farm Act as set forth at *N.J.S.A. 4:1C-2*, which purposes include insuring the numerous social, economic and environmental benefits that accrue from the agriculture industry, eliminating unnecessary municipal constraints on farm practices, and encouraging the maintenance of a positive agricultural business climate. Moreover, it appears to the Board that the South Harrison Township Land Use and Development Ordinance provides no basis for such a restriction. As set forth at *N.J.S.A. 4:1C-9*, the provisions of the Right to Farm Act are preeminent to "any municipal or county ordinance, resolution or regulation to the contrary". South Harrison Township and its Zoning Officer and other municipal officials must therefore rescind any pending notice of zoning violation (or threat thereof) relating to the aforesaid approved site specific agricultural management practice, dismiss any related court proceedings with prejudice, and issue a new zoning permit that contains no requirement that the Applicant's cold storage facility be used only for Applicant-grown products.

The undersigned, Vice Chairman of the Gloucester County Agricultural Development Board, hereby certifies that the above is a true copy of a resolution adopted by said Board on **May 8, 2008** to memorialize its action taken on **April 10, 2008**.

Attest:

Ken Atkinson, Secretary

West Jay Kandle, Vice Chairman