

Attachment A



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

REPORT AND RECOMMENDATION

OAL DKT. NO. AGO 11052-03
AGENCY DKT. NO. 1431-02

IN THE MATTER OF GRO-RITE, INC. AND
THE TOWNSHIP OF PEQUANNOCK

Anthony J. Sposaro, Esq., for Gro-Rite, Inc.

Robert H. Oostdyk, Esq., for The Township of Pequannock (Johnson, Murphy,
Hubner, McKeon, Wubbenhorst & Appelt, attorneys)

Record Closed: March 23, 2004

Decided: March 31, 2004

BEFORE MARGARET M. MONACO, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The State Agriculture Development Committee (SADC) transmitted this matter to the Office of Administrative Law (OAL) where, on November 7, 2003, it was filed as an uncontested case. More particularly, as memorialized in its letter dated July 9, 2003, SADC requested the OAL to hold an evidentiary hearing on the limited issue of whether Gro-Rite's outdoor sales/display area presents a threat to public health and safety. The matter was assigned to the undersigned on December 11, 2003. The undersigned held telephone conferences with counsel for the respective parties on December 11, 2003, January 23 and February 27, 2004. Under letter dated March 18, 2004, counsel for the Township of Pequannock submitted a Stipulation of Settlement, which the undersigned

received on March 23, 2004. In view of the foregoing, an evidentiary hearing is not necessary to address the limited issue transmitted to this forum.

FINDINGS OF FACT

Having reviewed the record and the terms of the Stipulation of Settlement, which is attached hereto and incorporated herein by reference, I FIND:

1. The parties have voluntarily agreed to the Stipulation of Settlement as evidenced by their signatures or the signatures of their representatives.
2. The Stipulation of Settlement disposes of the limited issue transmitted to the OAL, *i.e.* whether Gro-Rite's outdoor sales/display area presents a threat to public health and safety.

RECOMMENDATION

It is recommended that the State Agriculture Development Committee accept and adopt the terms of the attached Stipulation of Settlement and, thereafter, take such further action as it may deem appropriate in view of the aforesaid Stipulation of Settlement.

I hereby **FILE** my report and recommendation with the Secretary, Department of Agriculture for consideration.

DATE _____

MARGARET M. MONACO, ALJ
/s/ Margaret M. Monaco
Receipt Acknowledged

DATE _____

DEPARTMENT OF AGRICULTURE

Mailed to Parties:

DATE _____

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OFFICE OF ADMINISTRATIVE LAW

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ANTHONY J. SPOSARO

Attorney for Gro-Rite, Inc.

IN THE MATTER OF
GRO-RITE, INC., and
THE TOWNSHIP OF
PEQUANNOCK

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

DOCKET NO.: AGOUC 11052-2003N

AGENCY REF NO.: 1431-02

STIPULATION OF SETTLEMENT

Gro-Rite, Inc. and the Township of Pequannock hereby enter into the following
Stipulation of Settlement.

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1. Gro-Rite, Inc. [hereinafter: "Gro-Rite"] is a nursery landscape business, consisting of 23 acres in Pequannock Township, Morris County and approximately 98 acres in White Township, Warren County. The Pequannock parcel includes a 1.98 acre greenhouse producing spring bedding plants, hanging baskets, perennials, fall garden mums and poinsettias. Another 1.97 acres are used as outdoor planting areas.

2. This matter comes to the Office of Administrative Law [hereinafter: the "OAL"] as the result of a complaint filed with the Morris County Agriculture Development Board [hereinafter: the "CADB"] on September 3, 2002 by the Township of Pequannock [hereinafter: the "Township"] against Gro-Rite, Inc. The complaint alleged three violations of a variance approval the Township Board of Adjustment had issued on February 4, 1999.
3. The violations alleged by the Township included the exterior storage of sheds, the exterior storage of plants, shrubs, trees, cement product and associated materials, and the paving of certain areas within the plant display area, without entering into a developer's agreement.
4. The CADB forwarded the Violation Notice to the State Agriculture Development Committee [hereinafter: the "SADC"] for a public hearing pursuant to N.J.S.A. 4:1C-10.1c, for a determination of whether the disputed agricultural operation constituted a "generally accepted operation or practice."
5. On April 4, 2003, the SADC conducted a hearing in this matter. The hearing and the findings made therein were memorialized in a report dated May 19, 2003. The facts set forth in that report are incorporated herein, and a copy is annexed.
6. By way of summary, the SADC found that Gro-Rite's Pequannock operations satisfied the definition of a commercial farm, and that the activities cited in the Township's Violation Notice are eligible for the protection of the Right to Farm Act. The activities are eligible because they are included in the list of protected activities, meet the Act's definition of farm market, and conform to generally accepted agricultural management practices.

7. In order to receive the protections afforded by the Right to Farm Act, however, a farm must not pose a direct threat to public health and safety, an issue not addressed by the SADC.
8. The SADC has transferred this matter to the OAL for a determination whether Gro-Rite's farming operation poses a direct threat to public health and safety. Specifically, the OAL has been asked to determine whether Gro-Rite's outdoor storage, sale or display of plant materials within a floodplain poses such a threat. Gro-Rite has removed sheds from the floodplain and has stipulated it will not display sheds there in the future.
9. A revised site plan prepared by Robert Mueller dated August 30, 1995, revised on September 23, 1996, and further revised by Paul P. Darmofalski on February 11, 2004, has been reviewed by the Township Engineer. The Township Engineer has determined that the outdoor storage of products shown on the revised site plan is substantially similar to what is shown on the site plan previously approved by the Township Board of Adjustment in 1999, the only difference being the fact that the greenhouse shown as covering a portion of the storage area has not been constructed. Gro-Rite, Inc. agrees and stipulates that there will be no outdoor storage on the site except for outdoor storage shown on this revised site plan.
10. In the course of its approval of the site plan, the Township Board of Adjustment evaluated the risks to public health and safety, and determined that no such risks were present. Specifically, the Board made the following finding:

The Board concludes that the proposed uses are uniquely suitable for this site which is located substantially within the flood hazard area. There is nothing about the nature of this applicant's business which will be injured by flood waters, nor is there anything about the applicant's

business or the products or structures on the site which would cause damage to persons or property if there was a flood.

11. A public hearing on this matter is not necessary. As set forth in the January 28, 2004 letter from Marci Green, Chief of Legal Affairs, the SADC transmitted this matter to the OAL for an evidentiary hearing, to provide Gro-Rite with the opportunity to establish that its uses did not present a threat to public health and safety. Accordingly, a public hearing was not intended and is not necessary.

Anthony J. Sposaro, Esq.
Attorney for Gro-Rite, Inc.

Robert H. Oostdyk, Esq.
Attorney for Township of
Pequannock

Dated: March 12, 2004