



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. ADC 7312-02
AGENCY DKT. NO. RTF #1438-02

**IN THE MATTER OF SUSAN GRUSS'
APPEAL FROM THE MORRIS COUNTY
AGRICULTURE DEVELOPMENT BOARD'S
DETERMINATION REGARDING PLUT
CHRISTMAS TREE FARM**

Susan Gruss, *pro se*

Karolina Plut, for Plut Christmas Tree Farm

W. Randall Bush, Esq., First Assistant, Morris County Counsel (Ronald Kevitz,
County Counsel) for the Morris County Agriculture Development Board

Record Closed: November 26, 2002

Decided: November 27, 2002

BEFORE **MARGARET M. MONACO**, ALJ:

This matter involves an appeal by Susan Gruss arising from the operations of Plut Christmas Tree Farm (Plut Farm). On or about November 30, 2000, the Morris County Agriculture Development Board (Morris CADB) received a complaint from Susan Gruss regarding the lighting of Christmas tree fields on the Plut Farm. Pursuant to the Right to Farm Act, *N.J.S.A. 4:1C-1, et seq.*, and implementing regulations, *N.J.A.C. 2:76-2.1, et seq.*, the Morris CADB forwarded the complaint to the State Agriculture Development Committee (SADC) for determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice. On January 31, 2002, a public hearing was held and the SADC subsequently adopted the findings and recommendations of the hearing officer at its meeting on February 28, 2002. Specifically, the SADC determined that the Plut Farm's agricultural operation and practices (*i.e.*, lighting of Christmas tree fields 24 hours a day) do not conform with

generally accepted agricultural operations and practices with respect to "choose and cut" Christmas tree sales. Under letter dated March 19, 2002, the SADC forwarded the final report summarizing its findings and recommendations to the Morris CADB along with advice that the Morris CADB must hold a public hearing and issue its findings and recommendations. The Morris CADB held a public hearing regarding the Plut Farm operation on April 11, 2002 and a fact-finding site inspection on April 18, 2002. At its meeting on May 9, 2002, the Morris CADB adopted a resolution memorializing its determination that the lighting of Christmas tree fields 24 hours a day is not a generally accepted practice in New Jersey and its site specific recommendation that the Plut Farm's lighting of Christmas tree fields is acceptable in light of site specific circumstances. Specifically, the resolution recites that, although 24 hour lighting is not a generally accepted practice for "choose and cut" Christmas tree farms, the Plut Farm's operation is a "tag and cut" farm with a history of tree theft.

By letter dated May 14, 2002, Ms. Gruss filed an appeal and the SADC transmitted the matter to the Office of Administrative Law where, on August 13, 2002, it was filed for hearing as a contested case. On September 30, 2002, a prehearing conference was conducted, during which the parties engaged in settlement discussions. The undersigned was advised that a settlement had been reached and counsel for the Morris CADB subsequently submitted the attached Settlement Agreement setting forth the terms of the agreement, which the undersigned received on November 26, 2002.

Having reviewed the record and the terms of the settlement, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of *N.J.A.C. 1:1-19.1* and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **SECRETARY OF THE DEPARTMENT OF AGRICULTURE** for consideration.

This recommended decision may be adopted, modified or rejected by the **SECRETARY OF THE DEPARTMENT OF AGRICULTURE**, who by law is authorized to make a final decision in this matter. If the Secretary of the Department of Agriculture 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 **SECRETARY OF THE DEPARTMENT OF AGRICULTURE, 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.

November 27, 2002
DATE

MARGARET M. MONACO, ALJ
Receipt Acknowledged:

12-3-02
DATE

DEPARTMENT OF AGRICULTURE
Mailed to Parties:

DEC 9 2002
DATE
pb

CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
STATE OF NEW JERSEY
OFFICE OF ADMIN. LAW
2002 NOV 26 P 2:32

PLUT CHRISTMAS TREE FARM
OAL DOCKET NUMBER ADC 07312-02N
AGENCY REFERENCE NUMBER – RTF #1438-02

THIS AGREEMENT BETWEEN

LAWRENCE GRUSS and SUSAN GRUSS, 4 Heritage Court, Long Valley, New Jersey (Gruss)

and

KAROLINA PLUT, t/a PLUT CHRISTMAS TREE FARM, 220 Flocktown Road, Long Valley, New Jersey (Plut)

Gruss and Plut hereby agree to settle and resolve the herein dispute and appeal by Gruss of the Morris County Agriculture Development Board Resolution 2002-19 adopted May 9, 2002 with respect to the operation of the *Plut Christmas Tree Farm* located in Block 12.01, Lots 59, 60.03 and 61, Washington Township, Morris County. The terms and conditions of the settlement are:

1. The existing lighting configuration that is currently located on the Plut property in the lower field which is adjacent to the Heritage Court road frontage and the Gruss property is allowed to remain for the 2002 season. The existing lighting will be screened and/or shielded to accomplish directional/downward incandescence so as not to extend illumination beyond the Heritage Court road frontage and to not illuminate or glare onto the Gruss property. The screening or shielding of the existing lighting shall be completed by Plut on or before November 15, 2002;

2. Plut shall install a remedial lighting system on or before November 15, 2003 to consist of the following:

(a) Two (2) permanent light posts, which will be located within the Plut property line, which adjoins the Heritage Court street frontage. Removable poles will be affixed to permanent posts.

(b) The remedial lighting to be installed shall not exceed the height of the existing telephone poles and lighting fixtures in the lower field. The intensity and illumination of the remedial light sources shall not exceed 2 - 80 watt light sources per pole.

(c) The materials comprising the remedial lighting configuration shall be chosen exclusively by Plut.

(d) The remedial lighting configuration shall be directed to illuminate within the Plut property line and not onto Heritage Court or the Gruss property.

(e) After Plut has completed the installation of the remedial lighting configuration, Plut shall remove and/or cut the existing telephone poles in the lower field to a height of no greater than seven (7) feet.

(f) The illumination of the Plut property is permitted 24 hours per day for the period of Thanksgiving to Christmas.

3. Gruss and Plut agree that they will reasonably cooperate with each other to implement the terms of this agreement. In the event that there is a dispute with respect to the terms of this agreement, then in that event the parties agree to allow any future dispute to be mediated by the State Agriculture Development Committee Mediation Program and the parties agree to be bound by the decision of the mediator.

4. Gruss and Plut agree that the foregoing terms and provisions constitute the amicable resolution of the dispute between the parties. The parties further acknowledge that the within agreement will not take effect until final approval and processing by the court and the State Agriculture Development Committee (SADC).

5. The parties further agree that the Morris County Agriculture Development Board (Board) was not a party to the within appeal and the Board did not take a position with respect to the terms and conditions contained in this agreement which constitutes a final resolution between the parties of the matter in dispute.

Witness:

As to Lawrence and Susan Gruss

LAWRENCE GRUSS, APPELLANT

Date: _____

SUSAN GRUSS, APPELLANT

Witness:

PLUT CHRISTMAS TREE FARM

As to Karolina Plut, t/a
PLUT CHRISTMAS TREE FARM

KAROLINA PLUT

Date: _____

The Morris County Agriculture Development Board acknowledges the foregoing terms as agreed upon between the parties.

Witness:

*MORRIS COUNTY AGRICULTURE DEVELOPMENT
BOARD*

JERRY SUK, CHAIRMAN

Date: 11/22/2002

FRANK T. PINTO, JR.
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUGUST 26, 2003