
TOWNSHIP OF RARITAN,

STATE AGRICULTURE DEVELOPMENT COMMITTEE

OAL Dkt. No. ADC 00165-23

Agency Dkt. No. SADC ID#1978

Petitioner,

v.

SUSAN and ALLEN FUNK, and
WEST VIEW VINES,

FINAL DECISION

Respondents.

Overview

Raritan Township (township) appeals a November 10, 2022 resolution of the Hunterdon County Agriculture Development Board (HCADB or board) approving a site specific agricultural management practice (SSAMP).

Background

On April 20, 2022, Susan and Allen Funk, owners and operators of West View Vines, LLC (collectively referred to as the "Funks"), applied to the board for SSAMP approval to construct a 15' x 30' concrete pad adjacent to an existing, 30' x 30' detached garage on their property. The construction would enable the Funks to transition from their existing on-site production and sale of wine grapes to the on-site production of their own wine. The application included use of the detached garage for wine fermentation, aging and bottling.

On June 9, 2022, the HCADB held a public meeting at which, among other matters, the board heard testimony from Mr. Funk and determined that the Funks operated a commercial farm as defined in the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA").

Board staff subsequently inspected the farm property to prepare for the public hearing, scheduled at a later date, on the SSAMP application.¹

According to the application and to the testimony presented to the board by the Funks at the public hearing to consider the

¹Paragraph 4 of the board resolution that is the subject of this appeal recited that the inspection took place on July 7, 2021. Since Funks' SSAMP application was filed in April 2022, the paragraph 4 date appears to be a typographical error, and the inspection likely occurred on July 7, 2022.

SSAMP on October 23, 2022, the pad would replace a portion of an existing crushed stone parking area adjacent to the garage. The Funks testified that the pad would make for a cleaner and more efficient winemaking operation, allowing for grapes, bins and related equipment to be rinsed off.

The application was opposed by the township and by some residents in proximity to the Funks' property. Those residents, as well as the township attorney, questioned the board and the Funks at the public hearing, and residents provided their own testimony expressing concerns. At the conclusion of the hearing, the board passed a motion authorizing the granting of the SSAMP and the preparation of a resolution.

The resolution was adopted by the HCADB at its November 10, 2022 meeting. The resolution concluded that the Funks operated a commercial farm on their property and granted them an SSAMP, subject to various conditions.

The township appealed the resolution to the State Agriculture Development Committee (SADC) on December 8, 2022. The SADC transmitted the township's appeal as a contested case to the Office of Administrative Law (OAL) in January 2023.

The SADC has reviewed the October 2, 2023 Initial Decision by the administrative law judge (ALJ) and the voluminous materials relied on by the ALJ that are listed in the decision's appendix (pp. 10-11). The record includes the briefs filed on behalf of the township, the HCADB and the Funks, and the transcripts of the HCADB's October 23 and November 10, 2022 public hearings. The SADC also obtained a copy of the June 9, 2022 HCADB meeting minutes at which commercial farm eligibility was determined. There was no hearing at the OAL, as "the parties agreed to submit briefs and transcripts of the [HCADB] proceedings . . . and [to] permit a determination without additional testimony." *Initial Decision*, p. 2.

The issues raised in this appeal are: (1) whether the Funks satisfied "commercial farm" eligibility criteria; (2) whether and to what extent the board considered township ordinances and municipal knowledge of local conditions; and (3) the extent to which the board considered health and safety concerns raised by neighbors at the public hearing.

The Final Decision summarizes in the "Background" sections key elements of the testimony and exhibits in the HCADB proceedings, and are included to provide context to our review of

the Initial Decision. When appropriate, the SADC will also take administrative notice of facts set forth in available public records. N.J.S.A. 52:14B-10(b); N.J.A.C. 1:1-15.2; N.J.R.E. 101(a)(3). We **ADOPT, MODIFY** and **REJECT** the Initial Decision as set forth in more detail below.

Commercial farm eligibility

Background.

In 2015 the Funks purchased an approximately 6.53-acre property designated as Block 25, Lot 4 in Raritan Township. They began planting grape vineyards in 2018 by converting an existing hayfield. The property is located in the R-1 Rural Residential zone district in which agriculture is a principal permitted use.

The 2022 FA-1 form, completed in August 2021, recites in the Section 2 "Breakdown of Land Use Classes - Actively Devoted Land", 1.8 acres of cropland harvested and 3.73 acres of cropland pastured, for a total of 5.53 acres. The 5.53 acres are listed under "Fruit Crops (Bearing Acres)" as "grapes" under Section 3 "Current Year Farming Activity". The other 1 acre was assigned to the Funks' residence and curtilage.

The "Supplemental Farmland Assessment Gross Sales Form" attached to the 2022 FA-1 listed "Income Acres" at 1.8 and "Non-Income Acres" at 3.73, for "Total Acres Under Farmland" of 5.53. The income-generated acreage was 1.8 acres of grapes earning \$5,000 in sales. The 2022 FA-1 form and supplemental gross sales form were provided to the HCADB as part of the April 2022 SSAMP application.

The board held a public meeting, advertised in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., on June 9, 2022 to consider whether the Funks were operating a commercial farm.

According to the minutes of the board meeting, Mr. Funk testified that: the current agricultural activities involved growing and selling grapes commercially; the operation now wanted to make wine on-site; the property had been farmland assessed by the township since 2015; the farm was 5 acres and generated more than \$2,500 in annual income "confirmed by submitted receipts for grape sales"; agriculture is a permitted use in the zone in which the property is located; and, to his knowledge, the farm operation was in compliance with federal and state laws.

Commercial farm certification for the Funk property was approved by the board. The ensuing public comment portion of the meeting was comprised of statements from the audience in attendance unrelated to the board's commercial farm eligibility determination.

The 2022 FA-1 acreage amounts differ from the testimony provided by Mr. Funk at the October 23, 2022 public hearing on the SSAMP. According to Mr. Funk, while his original intention was to grow 5 acres of grapes, he realized that the plan was too ambitious, and he instead worked with the Northeast Organic Farming Association to add 1.75 acres of Timothy hay within the farm property. Mr. Funk testified that the hay was in the ground and "lush", but that he was waiting for dry weather to cut it. The testimony also reflected that the area currently available for grape production was 3.4 acres, encompassing approximately 1400 vines in active production and generating about a ton of grapes, and some vacant rows requiring "backfilling". These bare areas of the vineyard were trellised to support an additional 600 vines, on order and partially paid for, to be delivered in April 2023. No written evidence was presented to the HCADB that the vines were on order and/or that partial payment had been made.

The township asserts that at the time of the SSAMP application Funk did not farm the requisite 5 acres required for commercial farm eligibility. It contends that, based on Mr. Funk's admission at the October 23, 2022 hearing, as well as on GIS satellite imagery showing 2.66 acres of vines, the farm had less than 5 acres of agricultural production even counting the 1.75-acre area planted in Timothy hay.

In addition, the township cast doubt on the accuracy of the farmland acreage presented during the SSAMP proceedings by submitting to the OAL a certification from the municipal tax assessor with respect to the 2023 FA-1 form. The form lists 3.5 acres of fruit crops and 2 acres of hay, with the remaining 1 acre ascribed to the residence and curtilage.

The assessor's certification stated that she inspected the property in July 2022 and did not observe "a full five (5) acres of land devoted to agricultural or horticultural activities", that she issued a letter dated August 2, 2022 requiring Funk to devote additional land to such uses by November 1 and that, after receiving "documentation [from Funk] that hay and grapes would be added to the property" to achieve the 5-acre threshold, she approved the 2023 FA-1 form on November 22, 2022. The assessor further advised that she "ha[d] not personally observed five (5)

acres of land on the [p]roperty devoted to agricultural and horticultural uses[] and ha[d] not inspected the [p]roperty since my July [2022] inspection." *Assessor's Certification*, ¶7. The assessor observed that between 2015 to the date of the certification, farmland assessment was granted by the township "based upon visual estimations and representations made by [Funk]", and that actual measurements of farmed areas were not taken. *Assessor's Certification*, ¶9.

Both Funk and the board contended that the farm property exceeded 5 acres of land devoted to agricultural production and satisfied farmland assessment criteria, as evidenced by Mr. Funk's testimony and the municipally-approved 2022 and 2023 FA-1 forms.

Initial Decision.

The ALJ, recognizing that the RTFA furthers the legislative intent to protect legitimate farming operations from unreasonable municipal interference, reviewed the applicable statutes and observed that preemption of local ordinances can only apply when the agricultural or horticultural activities for which protection is sought occur on a "commercial farm" as defined in the RTFA.

N.J.S.A. 4:1C-3 provides that a "commercial farm" is

a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually and satisfying eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964", P.L. 1964, c.48 (C.54:4:23.1 et seq.).

The ALJ found that "there is no dispute that the [Funk] property exceeds five acres" and that "[t]he parties do not dispute that the financial threshold was met by [the Funks]". *Initial Decision*, pp. 4 and 6.

The ALJ placed substantial weight on the township's farmland assessment of the property in finding that Funk "satisfie[d] eligibility criteria for differential property taxation" under the farmland assessment act.

The ALJ stated that a municipal assessor's opinion as to the appropriate assessment of real estate for property tax purposes is entitled to deference based on that official's personal observations, review of supporting documentation, the representations of the property owner, and the exercise of the assessor's professional judgment. The ALJ observed that the types

of complaints that can be filed by a property owner, municipality or county board of taxation about assessments, as set forth in N.J.S.A. 54:51A-7, exclude "matters of valuation involving an assessor's opinion or judgment."

The ALJ agreed that Funks' "backfilling" of vineyard areas did not affect the calculation of 3.4 acres of farmland devoted to grape production and did not undermine the assessor's determination that the property was entitled to farmland assessment. The ALJ reasoned that "[a]lthough there might have been some delays in putting the [backfilling] plan into action, [the Funks] prepared the land so that when the vines were received, they would be able to plant them in the appropriate season." *Initial Decision*, p. 6. The ALJ found no evidence in the record proving that the farmland assessment of the Funks' property was based on error or mistake.

The ALJ also stated "[t]he Municipal Tax assessor approved [Funk's] application for commercial farm status"; "the municipal tax assessor. . .certified the property as a commercial farm"; and "the tax assessor determined that the [Funk] property met the requirements of a commercial farm". *Initial Decision*, pp. 2, 4 and 6, respectively.

In another instance, however, the ALJ concluded that the board appropriately relied on the assessor's determination in order for the HCADB to certif[y] the [Funk] property as a commercial farm in June 2023 [sic]." *Initial Decision*, p. 4. [To the extent the ALJ's statement is a finding, the SADC **MODIFIES** it, as commercial farm eligibility was determined by the board on June 9, 2022]. The board's conclusion that the farm satisfied farmland assessment eligibility criteria was, according to the ALJ, buttressed by HCADB staff's inspection of the property.

SADC determination.

Agricultural and horticultural activities are eligible for protection under the RTFA if they are conducted on a "commercial farm." As set forth in the RTFA definition of the term, *supra* at p. 5, and for the purpose of this case, a commercial farm is a farm management unit of at least five acres producing agricultural or horticultural products with an annual value of at least \$2,500, and the farm management unit must satisfy the criteria for obtaining farmland assessment.

A "farm management unit" is defined in N.J.S.A. 4:1C-3 as "a parcel or parcels of land, whether contiguous or noncontiguous,

together with agricultural or horticultural products, and operated as a single enterprise."

The parties do not dispute, the evidentiary record reflects, and the SADC **FINDS**, that the Funk farm management unit, designated as Block 25, Lot 4 in Raritan Township, totals 5.53 acres and that it produced agricultural products in the form of harvested grapes sold to third parties and Timothy hay.

According to Invoice #2021-01 dated October 11, 2021 and attached as an exhibit to the SSAMP application, 1,365 pounds of grapes were harvested for purchase by Grape Finale, LLC. The invoice recites the following: "1,365 lbs. @ \$4,000/ton (0.683 x \$4,000)[Final weights estimated by juice quantities obtained by Grape Finale] = \$2,730.00.² The invoice broke down the sale into grape varieties and respective weights purchased.

No explanation for this invoice is in the minutes of the HCADB's June 9, 2022 meeting at which commercial farm eligibility was approved. Instead, the minutes state that Mr. Funk:

- o Testified regarding the income and acreage criteria to be considered a commercial farm. The farm is 5 acres and income is \$2,500 or greater, confirmed by submitted receipts for grape sales.

No "submitted receipts for grape sales" are in the record but, as the Initial Decision determined and the SADC **FINDS**, there was no dispute during the HCADB and OAL proceedings that the Funks annually produced at least \$2,500 in agricultural products evidenced by the October 11, 2021 invoice of grape sales to Grape Finale, LLC totaling \$2,730.00.

The farm management unit must also satisfy the eligibility criteria for farmland assessment. N.J.S.A. 54:4-23.2 provides:

For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural

²The invoice also included a charge for a "VINE 2 WINE Experience" which appears to be grape-growing educational sessions charged on a per class basis. The total income is recited as "13 shares (or couples) x 5 vineyard visits x \$25.50 = \$1,657.50. The SADC does not count this portion of the invoice as agricultural production value or income for commercial farm eligibility.

purposes.

The amount of gross sales of agricultural or horticultural products produced must average \$1,000 on the five acres during each of the relevant tax years. N.J.A.C. 18:15-6.1(a)1. Property "actively devoted" to agricultural or horticultural use includes, in accordance with N.J.A.C. 18:15-6.2(a), land: "on which crops are produced, harvested, and sold, either at retail or wholesale" [(a)3]; and "kept fallow during a growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural or horticultural production" [(a)7].

In addition, courts have held that land is "actively devoted" to agriculture under the "dominant use" test. Brighton v. Borough of Rumson, 22 N.J. Tax 39, 52-54 (Tax 2005), *aff'd*, 23 N.J. Tax 60 (App. Div. 2006) held that, in evaluating the propriety of farmland assessment, "although there can be multiple uses of land, one use is generally dominant [citations omitted]".

The record reflects that the township tax assessor approved the Funk property for farmland assessment in 2022 and 2023. The assessor's approval is presumed valid. Miele v. Jackson Tp., 11 N.J. Tax 97, 99 (Tax 1989). The SADC in this case will not question the official acts of the assessor, who has specialized knowledge and expertise, whose judgment is overseen by the New Jersey Division of Taxation and the appropriate county board of taxation, and who acts independent of municipal interference. *See, e.g., N.J.S.A. 40A:9-146; N.J.S.A. 54:1-35.25; N.J.S.A. 54:3-16; McMahon v. City of Newark*, 196 N.J. 526, 541 (2008).

We also note that the township had two opportunities to present documentary evidence and witness testimony to the HCADB at publicly-advertised meetings regarding the Funk property's farmland assessment: once at the June 9, 2022 board meeting at which commercial farm eligibility was determined; and once at the HCADB's October 23, 2022 meeting at which the SSAMP was determined. The minutes of the June 9 meeting do not reflect, if the township was in attendance, Raritan's questioning or comments concerning commercial farm eligibility. The transcript of the October 23, 2022 meeting indicates that the municipal attorney appeared on behalf of the township to question the Funks about farmland acreage.³

³The SADC makes no finding concerning Funk's failure to provide the HCADB with a copy of the tax assessor's August 2, 2022 letter, *supra*, p. 4, at the October 23, 2022 meeting, as the agency would be called upon to speculate on whether and how the board would have responded.

Commercial farm eligibility is a determination made by the appropriate county agriculture development board (CADB), or by the SADC in counties with no CADB, because those entities have primary jurisdiction over SSAMP applications and nuisance complaints against farm owners. N.J.S.A. 4:1C-9 and 10.1; Township of Franklin v. den Hollander, 338 N.J.Super. 373, 375 (App.Div. 2001), aff'd, 172 N.J. 147 (2002). We **REJECT** any finding, whether explicit or inferred in the Initial Decision, that the municipal tax assessor had any decision-making authority over the Funks' commercial farm eligibility.

The statutory, regulatory and case authorities make clear that not every square inch of a five acre area must be growing a product in order to be farmland assessed. The SADC **MODIFIES** the Initial Decision and **FINDS**, based on the record, that the 6.53-acre Funk property satisfied the eligibility criteria for farmland assessment at the time of the SSAMP application because the dominant use of the property comprised 3.4 acres of land devoted to vineyards, including areas trellised for "backfilling", and 1.75 acres of Timothy hay, whether growing or in a fallow area of the farm, generating income of at least \$1,000. N.J.A.C. 18:15-6.1(a)1 and 6.2(a)3 and (a)7. The SADC also **MODIFIES** the Initial Decision and **FINDS** that the Funks' 5.53-acre farm management unit produced agricultural products worth \$2,500 or more annually. N.J.S.A. 4:1C-3.

The remaining issue, which neither the HCADB nor the OAL addressed, is whether the Funks' commercial farm operated as a single enterprise.

A "Form B" supplement attached to the SSAMP application lists West View Vines, LLC as the "farm operator" and the Funks as the "landowner". Since no testimony or documentary evidence was elicited by the board or OAL on this issue, the SADC will take administrative notice of filings with the New Jersey Department of Treasury, Division of Revenue and Enterprise Services (DORES) to assist us in the single enterprise analysis.

"West View Vines, LLC" filed a certificate of formation with DORES on December 18, 2017. The certificate lists Susan Adler Funk as the registered agent, with a registered office and main business address at "[REDACTED] [REDACTED] [REDACTED] [sic], Flemington, New Jersey 08822". The member/manager is Allen B. Funk and the business purpose is "To Grow Grapes For Sale To Local Wineries."

Mr. Funk filed an amendment to the certificate of formation on February 17, 2022 amending the company's business purpose to: "To grow grapes and manufacture wine as a farm winery".

On May 17, 2023, Susan Funk, in her capacity as company secretary, filed an alternate name certificate by which West View Vines, LLC would also be known as "Slippery Slope Vineyard".

In Sipos, et al. v. Hunterdon County Agriculture Development Board, OAL Dkt. No. ADC 5173-11, SADC ID #1272, the SADC observed that

[p]roof of a 'single enterprise' enabling a commercial farm's entitlement to the strong protections of the RTFA, and particularly in light of. . . disparate individual and business interests or ownerships. . . , requires reasonably sufficient evidence that includes, but is not limited to, LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses. (Id. at pp. 15-16).

We reiterated the Sipos holding in respect to the "single enterprise" criterion in M. Ville, LLC and Don Vona v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06183-16 and 06269-16, SADC ID #1727 and #1727A, stating:

The "single enterprise" criterion in the "farm management unit" definition is designed to ensure that individuals and business entities engaging in legitimate agricultural activities are eligible for the strong protections of the RTFA, and not that individuals and entities divorced from those activities can be eligible. The degree to which different businesses and individuals occupy, operate and engage in agricultural and/or horticultural activities on the same farm property is fact sensitive and will need to be analyzed on a case-by-case basis. . . (Id. at p. 13).

Sipos involved two distinct LLCs, each owning and operating a different property in adjoining counties; M. Ville engaged in a landscaping business on one of two adjoining parcels, both of which were owned by M. Ville, with the other lot leased to a third party for farming activities.

The only element shared by Sipos, M. Ville and this case is the wholly inadequate record developed on the single enterprise prong of the commercial farm determination. However, after careful consideration, the SADC will not exercise its discretion to remand the matter to the OAL for further findings on whether a single enterprise existed in order to conserve administrative and judicial resources and to save the parties the time, expense and uncertainty associated with another legal outcome in the distant future.

While it is likely that the Funks, as individuals, kept their income, expenses and tax filing records distinct from those of the LLC, the record reflects that they actively and individually engaged in the agricultural activities listed as the LLC's business purposes in the certificate of formation and amended certificate. The SADC **MODIFIES** the Initial Decision and **FINDS** that where, as here, individual owners of a farm management unit who also are the named managers/members of the LLC, and who actively and individually perform the LLC's agricultural activities on that farm management unit, sufficient unity of ownership and control exists to satisfy the single enterprise criterion.

In sum, the SADC **FINDS** that the Funk property was a commercial farm as defined in N.J.S.A. 4:1C-3 because it was a farm management unit of more than 5 acres, producing agricultural products worth at least \$2,500 annually, satisfied the eligibility criteria for farmland assessment, and was operated as a single enterprise.

SSAMP approval

Background.

On March 31, 2022 the Funks applied for but were denied a zoning permit by Raritan Township for: (1) the use of an existing detached garage for winemaking from grapes grown in the Funks' vineyard; (2) the installation of an air conditioner in the garage to maintain inside temperatures; (3) the construction of an approximately 15' x 30' concrete pad next to the garage, replacing an existing portion of a gravel driveway, to facilitate winemaking.

The zoning application proposed that grapes would be sold to other vineyards and that the Funks would make their own wine for "family and friends"; accordingly, "[a]pplicants have no intention of opening a public tasting room or retail facility [or] hosting public events on the property. . .[n]o retail sale of wine, wine tasting events, weddings, etc., are proposed on the premises."

The permit application was denied by the township zoning officer in a letter dated April 1, 2022, which stated that winemaking was not a permitted, accessory or conditional use in Raritan's R-1 zoning district. The zoning officer also advised that the Funks could apply to the HCADB "[i]f you claim wine making [is] protected under the Right to Farm Act. . ."

The Funks applied to the board on April 22, 2022 for an SSAMP for "wine making" and "adding a winery (wine-making) to an existing wine growing operation." The farm operator was identified as West View Vines, LLC (WVV).

An explanatory section annexed to the SSAMP application stated that WVV wanted to apply for a Class A (Manufacturer) Farm Winery license which requires that the licensee make the wine on or adjacent to a vineyard occupying at least 3 acres. The addendum explained the proposed winemaking process to be undertaken on the Funk property: the production (fermentation, aging and bottling) would take place within an existing, detached garage; an outdoor, concrete pad ("crush pad"), 15' x 30', would be constructed upon which the grapes would be crushed and destemmed, with cleanup on the pad being done with a hose. The Funks' current grape production yielded 40 cases of wine and they anticipated production of 200 cases if 5 acres of the vineyard reached maturity.

The SSAMP application stated that the zoning permit for the concrete pad had been denied, repeated that there would be no tasting room or public events, and that the only activities would be those associated with a "normal vineyard and winery": planting, harvesting and bottling.

The annex to the SSAMP application summarized the history of the Funks' zoning permit denial, reviewed applicable zoning ordinances, and explained why the proposed winemaking activities should be allowed in the township's R-1 zone. The annex included links to websites about the increasing importance of winemaking as an agricultural industry in New Jersey.

The HCADB's October 23, 2022 hearing on the SSAMP application consisted largely of testimony by the Funks and neighboring residents, and questioning from board members, neighbors and the municipal attorney, on the Funks' anticipated wine production; on details about the concrete pad and handling of rinse water; and on neighborhood traffic impacts, as the Funks' property is accessed from the end of a cul-de-sac.

While this Final Decision will not describe all of the questioning and testimony in further detail, we observe that of the 102-page transcript of the October 23, 2022 hearing, 30 pages were devoted to questioning the Funks and another 25 pages were comprised of neighbor testimony opposed to and in favor of the application. The record also reflects that pre-hearing written comments were submitted to the board by local residents.

Mr. Funk reiterated that the winemaking would not be for on-site public consumption and there would be no public tasting room, retail sales facility, signage, weddings, or other special occasion events, on the property. Fifty or 60 cases of wine would ultimately be produced, and the wine would be picked-up at the farm by customers, physically delivered to customers' homes, or mailed to them.

Rinse water from cleaning winemaking equipment on the concrete pad would, according to Mr. Funk in answer to a question, "flow into a retention area onsite." [Transcript, 10/23/2022, p. 20, lines 5-6]. He further explained

[W]e're going to put [the retention area] next to the garage and next to the driveway. . . If you're looking at the detached garage, there's kind of a flat area there. Water wants to run there anyway. And I think with a little bit of sculpting, maybe just kind of trap the water there. There could be some stones and dig a little bit of a trench drain kind of thing. . . [W]e haven't finalized that part of the plan, but we're having a contractor come out tomorrow to look at the driveway area, and that's going to be part of the discussion. [Transcript, 10/23/2022, p. 29, lines 1-11].

Mr. Funk responded to a question from a neighbor that about 500 gallons of rinse water would be generated by the winemaking operation. Mr. Funk stated that the rinsing would occur after each "crush" (3 times a year) and after bottling (2 times a year), and equated water usage and runoff as not much different than "washing cars". [Transcript, 10/23/2022, p. 32, lines 22-25; p. 33, lines 2-3 and 11-12].

In response to several questions and the testimony from neighbors about increased vehicular traffic, Mr. Funk stated there would be minimal traffic impacts from his proposed operation due to the absence of retail sales and public events at the winery; and that, with supplies for the operation being delivered by the USPS, FedEx or UPS, there would be no significant increase in neighborhood traffic beyond that already existing from those types of private delivery carriers [Transcript, 10/23/2022, p. 18, lines

15-23; p. 52, line 11; p. 63, lines 3-10; p. 78, line 16]. One individual who formerly worked at a nearby winery testified that "you get one truck a year bringing your bulk supplies. If you're replacing large posts, if you're getting large amounts of ties and clips, steel wire." (Transcript, 10/23/2022, p. 80, lines 3-5].

Mr. Funk assured the board that noise emanating from the property would be almost nonexistent because of the absence of special occasion events and on-site public consumption. He said "[w]inemaking, it's pretty quiet. Wine kind of bubbles and ferments. . . [W]e use the crushing equipment. . . basically three times for about an hour each time, that's it. We don't use cooling fans." [Transcript, 10/23/2022, p. 18, line 25, to p. 19, line 8].

At the conclusion of the hearing, a motion and a second were made by board members "to let [Funk] have his pad. . . to process grapes to improve their value. . . he's producing a crop and he wants to process it." [Transcript, 10/23/2022, p. 90, lines 9-11 and 22-25; p. 91, lines 1-4]. The board's deliberations included a statement that the memorializing resolution would contain "conditions that [Funk] volunteered to"; that Funk did not have the right to sell wine "until he gets a license", and that "we [the HCADB] certified him as a commercial farm, not as a winemaker." [Transcript, 10/23/2022, p. 92, lines 13-19; p. 93, lines 14-15].

The November 10, 2022 board resolution determined, in pertinent part, that:

1. The Funks operate a commercial farm as defined in N.J.S.A. 4:1C-3 and engage in activities permitted by N.J.S.A. 4:1C-9;
2. The Funks' property is located in the R-1 district, where agriculture is a permitted use.
3. The HCADB approved an SSAMP for the construction of a 15' x 30' concrete pad for winemaking and related agricultural activities;
4. The board approval was conditioned on the Funks' compliance with conditions detailed elsewhere in the resolution, including "work[ing] with a contractor to provide a runoff retention area to collect run-off from the pad after rinsing the wine making equipment"; limiting winemaking to the grapes grown on the farm, with no ability to import grapes; the operation would be precluded from holding public events, public tastings, on-site sales and public signage; compliance with the NJ Division of Alcoholic Beverage Control (ABC) was required; the pad could be used by the Funks, prior to obtaining an ABC license, for rinsing grapes and

grape bins after harvesting; any deviations from the conditions listed elsewhere in the resolution would require the Funks to reappear before the board for RTFA protection.

5. There was a legitimate, farm-based reason for not complying with the township zoning ordinance, "as the proposed use is a reasonable agricultural activity";
6. No health, safety and welfare issues were implicated;
7. The HCADB retained jurisdiction.

Initial decision.

The ALJ reviewed the testimony of the witnesses at the HCADB's October 23, 2022 hearing and found that traffic, runoff, noise and water usage issues related to the proposed concrete pad and for winemaking operations had been adequately responded to by Funk, considered by the HCADB and satisfactorily addressed in the board's resolution. The ALJ stated

There was no expert testimony or evidence of a substantial risk of danger in the foreseeable future associated with the construction of the concrete pad at issue. [The township] only speculated about public health or safety issues with the construction of a concrete pad. . . The [Right to Farm] Act requires consideration of these issues, which indeed occurred and was addressed at the [board] hearing and several such concerns were incorporated into the resolution approving the application. [*Initial Decision*, p. 8].

In conclusion, the ALJ determined that Funk operated a commercial farm and "that the production and sale of wine [was] a generally accepted farm-management practice. . . **IT IS HEREBY ORDERED** that SADC [sic] approval of the SSAMP application is **AFFIRMED** and the appeal is **DISMISSED**." [Emphasis in original].

No exceptions to the Initial Decision were filed by any party.

SADC determination.

We initially note the burden of proof in SSAMP cases to provide appropriate context to the review of the legal issues surrounding the HCADB resolution and OAL initial decision.

In Casola v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06462-00, Agency Dkt. No. SADC ID #1318-01, the SADC held that

[o]nce the determination has been made by the CADB that the applicant has met his or her burden of proof, in this case with the issuance of a site-specific agricultural management practice, the burden then shifts to the party or parties contesting the CADB's action. At that point the governmental action is presumed valid unless and until the contrary is determined, with the burden of proof thereof on the attacking party. [Interlocutory Order, September 26, 2001].

See also, Hampton Township, et al. v. Sussex County Agriculture Development Board, et al., OAL Dkt. No. ADC 03248-2010, Agency Dkt. No. SADC ID #852, aff'd, 2016 WL 6156202.

Hampton Township, at p. 20, stated that:

The presumption of validity that attaches to a CADB determination is based on the board's special expertise. 'What continues is the quasi-judicial [OAL] review of the allegations of the objector, namely[,] that the site-specific determination was improperly issued [citing Casola].

The SADC **FINDS** that the township did not meet its burden.

N.J.S.A. 4:1C-9 provides that an eligible commercial farm may preempt municipal ordinances if the farm is located in a zone in which agriculture is a permitted use and engages in one or more of the permitted activities listed in subsections a. through k.

The board and SADC have found that the Funks operated a commercial farm in a zoning district in which agriculture is a principal permitted use, *supra*, pp. 3, 11 and 14. Based on the record, the SADC **MODIFIES** the Initial Decision and further **FINDS** that the Funks produce agricultural crops in the form of grapes from their vineyard (subsection a.) and that the proposed 15' x 30' concrete pad and use of the 30' x 30' detached garage facilitate the production and processing of the grapes into wine and the packaging of the wine into bottles (subsection b.).

After the above section 9 criteria are met, a CADB is required to "balance the interests" of the farmer, the municipality and/or affected persons when considering an SSAMP request. Township of Franklin, supra, 172 N.J. at 151-53; Curzi v. Raub, 415 N.J. Super. 1, 22 (App.Div. 2010); In the Matter of CLC, LLC, OAL Dkt. No. ADC 20659-16, Agency Dkt. No. SADC ID #1580, p. 10.

We first observe that the record is devoid of any documentary evidence from municipal officials relevant to the SSAMP

application aside from the April 1, 2022 letter denying the Funks' application for a zoning permit and the assessor's September 8, 2023 certification submitted long after the conclusion of the HCADB proceedings. Although the township attorney appeared at the board's October 23, 2022 hearing and directed questions to the Funks, no witnesses were called and no other documents were introduced on the municipality's behalf. The SADC cannot give credence to the township's position that the HCADB "wrongfully disregarded the Township's . . . particular knowledge of local conditions" (*Petition of Appeal*, December 8, 2022, p. 3) when no local knowledge by township officials was imparted to the board at the October 23, 2022 hearing.

The SADC also does not agree with the township's contention in the petition of appeal that the board "wrongfully dissuaded public comment". Our review of the record, summarized on pp. 12-14, *supra*, reflects that the board considered a wide variety of questions and comments from the public at the SSAMP hearing. There is no indication in the hearing transcript that the board improperly cut-off commenters. The record shows that the Funks, the township attorney and those providing public comments and posing questions were treated fairly and openly.

The issue is whether, after listening to the parties and the public at the hearing regarding the proposed SSAMP, the winery operation's scope, and traffic, noise and water runoff concerns, the HCADB conducted the required "balancing of interests."

The board resolution states that the HCADB "carefully considered the testimony of [the Funks], Raritan Township Attorney, members of the public and the written comments submitted in making its determination." (*Resolution*, ¶14). The resolution limits the scope of the Funks' winemaking operation to the use of only farm-grown grapes and that there will be no public events, public tastings, on-site sales or public signage in connection with the winemaking; the protection of water resources is addressed by requiring Funk to "work with a contractor to provide a retention area to collect run-off from the pad after rinsing wine making equipment"⁴; and the SSAMP approval is subject to state ABC regulations (*Resolution*, ¶15). The resolution also accommodates the public's concerns by providing that if there is any deviation from paragraph 15 conditions, then the Funks must reapply to the board for RTFA protection, and that the HCADB retains jurisdiction (*Resolution*, p. 6, ¶¶3 and 4). Any person aggrieved by the

⁴The New Jersey Department of Agriculture, Division of Agricultural and Natural Resources, can assist the Funks with the preparation of a conservation plan for the beneficial reuse of rinse water from winemaking activities.

operation of a commercial farm, including a commercial farm that has received an SSAMP approval, can file a complaint in accordance with N.J.S.A. 4:1C-10.1a. The SADC **ADOPTS** the ALJ's determination that "any legitimate issues concerning safety and public welfare were addressed in the resolution. . .[and] that the [H]CADB considered these issues. . ." *Initial Decision*, p. 8. In the future, we encourage the HCADB and all other county agriculture development boards to make more robust and clear explanations of farmer, municipal and neighbor interests and how those interests were balanced.

N.J.S.A. 4:1C-9 also requires that a commercial farm seeking preemption of local ordinances comply with "relevant federal or state statutes or rules and regulations. . ." *Id.* The production of fermented beverages such as wine is heavily regulated by the ABC. See, e.g., N.J.S.A. 33:1-10.2b ("Farm winery license"); N.J.A.C. 13:2-10.1, et seq. In that regard, the HCADB's October 23, 2022 hearing included statements from board members that Funk did not have the right to sell wine "until he gets a license", and that "we [the HCADB] certified him as a commercial farm, not as a winemaker." [Transcript, 10/23/2022, p. 92, lines 13-19; p. 93, lines 14-15]. Consistent with those statements, paragraph 15 of the board's resolution approving the SSAMP includes a provision that "[a]ll winemaking activities are governed by the New Jersey Division of Alcoholic Beverage Control." The SADC **MODIFIES** the Initial Decision and **FINDS** that the SSAMP determination is for the construction of the concrete pad and use of the detached garage for existing grape production and proposed winemaking in compliance with the conditions set forth in the HCADB's November 10, 2022 resolution; the SADC also **MODIFIES** the Initial Decision and **FINDS** that the SSAMP approval is conditioned upon advance and continuing compliance with all relevant federal and state laws and regulations, including those of the New Jersey Division of Alcoholic Beverage Control.

Finally, the Initial Decision orders that the SSAMP application is "affirmed" and the township's appeal is "dismissed." The SADC respectfully reminds the OAL that appeals of RTFA cases transmitted by the agency and arising from county agriculture development board proceedings are the subject of de novo hearings by administrative law judges who make their own independent findings of fact and conclusions of law addressing the parties' dispute irrespective of a board's decision. I/M/O Monmouth County Agriculture Development Board Resolution No. 2017-10-1, Helmlinger's Meadow Hill Farm, LLC, OAL Dkt. No. 1 ADC 18798-17, Agency Dkt. No. SADC ID #1815; Borough of Glassboro v.

Conclusion

Based on the findings in this Final Decision, the SADC:

- **ADOPTS** the finding in the Initial Decision that any legitimate issues concerning public health, safety and welfare were appropriately considered by the HCADB and addressed in the board's November 10, 2022 resolution approving the SSAMP.
- **MODIFIES** the Initial Decision as follows:
 - The Funks' commercial farm eligibility was determined by the board on June 9, 2022.
 - The 6.53-acre Funk property satisfied the eligibility criteria for farmland assessment by having 3.4 acres of land devoted to vineyards, including areas trellised for "backfilling", and 1.75 acres of Timothy hay, whether growing or in a fallow area of the farm, generating income of at least \$1,000.
 - The Funks' 5.53-acre farm management unit produced agricultural products worth \$2,500 or more annually.
 - The Funks' 5.53-acre farm management unit was operated as a single enterprise because the Funks were the individual owners of the parcel of land comprising the unit, were the named managers/members of the LLC engaging in agricultural operations on the unit, and they individually and actively performed those agricultural activities for the LLC, thus demonstrating sufficient unity of ownership and control between themselves and the LLC.
 - The Funks produced agricultural crops in the form of grapes from their vineyard, and the proposed 15' x 30' concrete pad and use of the 30' x 30' detached garage constitute the production, processing and packaging of grapes and wine.
 - The SSAMP approval in this case is for the construction of the 15' x 30' concrete pad and use of the 30' x 30' detached garage to facilitate existing grape growing and proposed winemaking activities in compliance with the conditions set forth in the HCADB resolution; the SSAMP approval is also conditioned upon advance and continuing compliance with all

relevant federal and state laws and regulations, including those of the New Jersey Division of Alcoholic Beverage Control.

- **REJECTS** any finding, whether explicit or inferred in the Initial Decision, that the municipal tax assessor had any decision-making authority over the Funks' commercial farm eligibility.

IT IS SO ORDERED.

Dated: January 25, 2024


Joseph A. Atchison, III
Acting Chairman