

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

JANUARY 20, 2011

(Weather rescheduled date and time.)

The meeting opened at 4:05 p.m. by Chairperson Brodhecker in the Freeholder Meeting Room at the Sussex County Administrative Center, One Spring Street, Newton, New Jersey. The meeting was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-1 of 1975, as amended. Notice has been forwarded to the newspapers and posted on the bulletin board maintained at the Sussex County Administrative Center for public announcement.

ROLL CALL:

MEMBERS PRESENT: Jane Brodhecker, Chairperson
Lori Day, Vice Chairperson
Cece Pattison
Fred Hough
Jim Hunt
Joan Snook Smith (5:00 p.m.)

MEMBERS EXCUSED: None

STAFF PRESENT: Donna Traylor, CADB Coordinator
Antoinette Wasiewicz, Recording Secretary
Steve Komar, County Agricultural Agent

ALSO PRESENT: Freeholder Liaison Rich Vohden
Greg Romano, NJ Conservation Foundation
Peter Southway
Lou Tomasso, Pittenger Farm
Sandy Urgo, Land Conservancy of New Jersey

MINUTES CORRECTION/APPROVAL:

A motion was made by CeCe Pattison to approve the minutes of December 20, 2010 as presented. The motion was seconded by Lori Day. All were in favor, with an abstention from Jane Brodhecker. Motion carried.

CORRESPONDENCE:

A. CONSERVATION RESOURCES OUTREACH, 12/22/10:

A letter was received from Conservation Resources, Inc. advising that they have expanded their Conservation Consulting Services to include additional services to local governments. Their staff is now available to assist with the acquisition and management of open space and parkland; the preservation of farmland; natural resource management issues; the monitoring of conservation easements; and other aspect of planning for, acquiring and management of green infrastructure.

B. NJ AGRICULTURE CONVENTION:

The 2011 Annual State Agricultural Convention will be held at the Crowne Plaza Hotel in Cherry Hill, NJ on February 8 and 9, 2011. The convention will start Tuesday morning with two sessions: one on Product Traceability and one on Farm Labor. On Wednesday there will be a session and Farm Regulations and Common Sense and one on Farmland Preservation and Right to Farm. Reservations must be made directly with the hotel by January 25, 2011.

RIGHT TO FARM:

A. MESSLER, GREEN TOWNSHIP (SSAMP – PRELIMINARY BOARD DISCUSSION):

As requested at last month's meeting, the Board was provided with copies of the Green Township Ordinance to amend their Land Use Regulations dealing with Right to Farm and Accessory Buildings. At last month's meeting the Board needed to determine whether the Messler farm in Green Township was considered a commercial farm. The Board found that the Messler farm was a commercial farm. Donna sent the Resolution to the State soon after the meeting. Three and a half weeks later Donna received an e-mail from Dave Kimmel, Right to Farm Program saying that Boarding cannot be used for the determination of the production requirement of \$2,500.00.

The Equine rules say that if you train a horse for 120 days at your facility and then you sell it, that amount can apply toward the \$2,500.00. The Messler's have a contract of sale for a horse for which a partial payment was made for \$1,500.00 (the entire cost will be \$7,500.00.) County Counsel said the transaction must be completed in order to count toward the required \$2,500.00 of income. Therefore the Board will have to wait until the transaction is completed and there is a Bill of Sale and a cancelled check before it can determine the Messler operation is a commercial farm. Meanwhile, it would be wise to undo the Resolution that was done last month.

MOTION:

A motion was made by Lori Day to rescind the production requirement of \$2,500.00 portion of the Resolution recognizing JMM Realty Holding, LLC as a Commercial Farm due to the fact that the proper receipts have not been submitted at this time. This issue will be revisited when the receipts are received. The motion was seconded by Fred Hough. A roll call vote was taken. All were in favor.

Steve Komar visited the Messler Farm and he cited the AMP for an indoor arena or any kind of riding arena on an equine operation. He noted that the farm should be in compliance with the animal waste management rule. His report addressed the fact that indoor arenas are important to the equine industry for training.

Donna said she asked Eric Snyder, Sussex County Planning director to review the previous information on this land dealing with the previously requested use variances that were granted and amended with the prior owner to construct the existing facilities, the commercial warehouse, the barn and run-in sheds. In those requests, the previous owner requested A, B and C and before he got the approval for the use variance, he constructed D, E and F which was larger and more than what was originally requested. He was granted approval for all of the buildings as built. There is a dual use zone on this property and according to the ordinance for accessory buildings; they already exceed the percentage of area that can be used for accessory buildings. Mr. Snyder said there is a process in place for the landowner to go through the township and have this done as another request for a use variance, as the previous owner did.

Donna said that after the sale for the horse trained on this property is concluded, she will advertise for a public hearing on this site specific AMP request.

B. CONCERNED RESIDENTS OF HAMPTON TOWNSHIP V. TOWNSHIP OF HAMPTON AND HAMPTON TOWNSHIP COMMITTEE (UPDATE, IF APPLICABLE):

Donna reported that Judge Bozonelis said this issue would be sent to the Sussex County Agriculture Development Board after February 1, 2011. The Board will make a determination on Hampton Township farm stands. On January 11 a letter went from McGovern and Roseman to Judge Bozonelis requesting an extension, citing that the Hampton Township Committee and the Township Planning Board have been actively working on amending the ordinance and that additional time is needed due to meeting schedules and procedural requirements to have the ordinance ready for first reading and then final adoption. Mr. McGovern discussed this with County Counsel, who also did not have a problem, if there was additional time needed in the hope of coming to some agreement with the citizens of Hampton. Donna said she has not received any correspondence from Judge Bozonelis regarding an extension. Even if the new Ordinance is adopted, it appears that it still must come before this Board for review.

AG. AGENT'S REPORT:

Steve Komar reported that ten people have signed up for Annie's Project. The dates are listed on a flyer that he sent out and it was e-mailed to the Board of Agriculture. When discussing the dates, it was noted that one of the February dates falls on the SCADB and Farm Bureau Board of Directors meeting. Steve said he will try to change the date.

A core credit meeting on Pesticide Safety will be held on March 3. The Annual Crop Meeting is planned for March 16. Formal information will follow.

OLD BUSINESS:

A. **AGRITOURISM PROJECTS (WEBSITE):**

Donna said she submitted a request for a grant for additional funds for eco and agritourism to NJ Travel and Tourism. There is some money left from a previous grant through the Highlands Council. Work continues on website development for sussexfarmvisits.com. One component of that website is a new interactive map where directions can be obtained. There is also talk of pulling the farms out of the list based on growing seasons or commodities.

Steve said that work is being done to identify farm markets as points of interest that can be downloaded from the internet to auto GPS systems. When asked, Steve said that Atlantic County is the only other county in New Jersey using the technology.

NEW BUSINESS:

The Agenda was amended to cover New Business, A at the end of the meeting rather than move to an Executive Session.

B. **SOUTHWAY – ADDITIONAL COMPENSATION ISSUE:**

Donna provided the Board with a summary of the appraisals for Peter and Marilyn Southway's farms. She said there are four Southway applications that were applied for several years ago. They went through the process and all four received funding. The County always has two independent appraisals done and then they are reviewed by a third independent appraiser, who certifies the values. In the case of Lot 8.01, Farm #2 one appraisal came in at \$5,600.00 per acre for the easement and the other came in at \$9,500.00 per acre. The value was certified at \$5,850.00 per acre. Currently, the County is under contract with the Southway's for \$237,720.60 based on the survey. The same information was provided for Lot 8.02, Farm #3 relevant to appraisals, certified value and price.

In late summer, early fall 2010, the NJ Conservation Foundation approached this Board and said that they had funds available through the Federal Farm Bill and they asked if the County had any farms that might meet the criteria for Federal Farm Bill funding. In the past, the County preserved three farms with Federal Farm Bill funding but each Farm Bill has had different criteria that it worked under, resulting in varying easement restrictions for each of the farms. Donna said it has been the unwritten past policy of this Board not to accept federal funding because of the restrictions dealing with the 2% impervious coverage. However, the County is currently in very severe economic times, so it would benefit the County to look for any other funding sources available. From this point forward, the County has to make some changes in its process in order to continue to preserve acreage.

This Board identified the two Southway parcels noted above as potentially appropriate for the federal funding. The property did not qualify based on the soil type but it did qualify based on tillable acres and its proximity to a project area. The Federal organization did grant a waiver for both of the applications to continue with the federal funding process.

Currently, the total Federal funds available are \$229,000.00 for both of the farms. For the first farm, Lot 8.01 (Southway #2,) there is potentially \$109,000.00 available. For the second farm, Southway #2, there is \$120,000.00 available. If Federal funds are to be used, this farm must closed by the end of next week. In both cases, the Federal number is significantly less that the County's certified value. For the first farm, the current scenario is the County would be paying just under \$129,000.00 and the federal farm bill would be putting in \$109,000.00 to total \$237,720.00. For the second farm, the County is now putting in \$212,924.90 and the federal farm bill is going to put in \$120,000.00 to total just under \$333,000.00.

Peter Southway recently made a request to this Board that he would like to receive an increased amount because of the additional restrictions. Donna said the Board is legally allowed to go above the certified value but cannot exceed the higher of the two appraisal amounts. It has been this Board's policy to date never to offer anything higher than the certified value. Donna reminded the Board that of the 154 closings that they've accomplished to date, approximately three have used federal funding. The Board has the ability to provide additional funding but they cannot exceed the \$9,500.00 per acre for Farm #2, Lot 8.01 or the \$8,400.00 per acre for Lot 8.02, Farm #3.

A motion was made by Jim Hunt to open the meeting to the public. The motion was seconded by Lori Day and carried unanimously.

Greg Romano, New Jersey Conservation Foundation said for about 12 years he was Deputy Attorney General and represented the State Farmland Preservation Program. He was the also the Executive Director of the State Agriculture Development Committee for eight years. The Federal Farm and Ranch Land Protection program is able to provide up to 50% of the value of the easement as determined by the federal appraisals.

The USA, through the Natural Resource Conservation Service would be a co-holder of the easement with the County. There is a requirement that a farm conservation plan be obtained within a year of the date of closing and that the landowner's long term objectives have to be in conformance with the plan. There is a specific requirement that the plan be implemented by the landowner. However, in this case under the Federal Farm and Ranch Land Protection Program, for highly erodible lands, there would be a requirement that the plan be implemented on those highly erodible lands.

Mr. Romano pointed out Section 15 B which requires the landowner to identify a building area for farm buildings prior to closing. The farm building envelope can be changed with approval of NRCS. Donna pointed out that each of these properties has an additional two-acre exception for residential site in addition to the building area for farm buildings that Mr. Romano just explained. Mr. Romano said there is an

Impervious Coverage restriction of 2%. The impervious surface restriction is not applied to temporary ag. buildings, such as hoop houses.

Paragraph 17 of the easement prohibits the landowner from leasing, selling or granting an easement for the purpose of construction and installation of underground and above ground public utility systems, including but not limited to water, sewer, power, fuel, sewage pumping stations, windmills, commercial satellite dishes and cellular telephone or other communication towers. It does not prohibit utilities for the farm or the residential structure itself. Donna pointed out that this is the same language as for the State Farmland Preservation Program.

Paragraph 21 says nothing in the easement shall be construed to give rise to the US or the County to exercise physical or control over the day-to-day operations of the property. There is another provision which allows the US to recoup the percentage of the grant they provided if there is an eminent domain or that kind of provision. There is a similar provision within the State program.

Paragraph 30 talks about the rights of the United States and gives NRCS the right to enforce this easement if the County or SADC does not enforce the easement. Mr. Romano said there are two other provisions which are different from the State easement. One says that the Grantor has to warrant that there are no environmental issues on the property, hazardous material or are in violation of any environmental law. They are also asking the landowner to indemnify to hold the county and the State Committee and the United States liable in case there is a judgment against the holder of the easement.

Jim Hunt asked who determines whether or not land is highly erodible. Mr. Romano said that is determined by NRCS. Mr. Hunt also asked if there was a setback issue would the landowner need a formal site plan. Mr. Romano said they would not. There is a farm building envelope that is pre-approved by the NRCS after selected by the landowner and that it is only reflected in the baseline documentation. Donna added that this entire process has involved the Southway's from the beginning.

Peter Southway said that Mr. Romano explained the additional restrictions which included dealing with the federal government. He said he is taking a lot of risk by using federal funds. With the impervious coverage rules, he will never be able to have a greenhouse operation on the lots even though he is in the greenhouse business. Donna pointed out that 2% translates to just over 8/10ths of an acre for one lot and just under an acre on the other lot.

Mr. Southway said he would also be prohibited from having a cell tower on the property. He also said he has a highly erodible land problem and a wetlands conservation problem so he has to file a farm plan and file certificates on an annual basis. Donna questioned how much acreage was highly erodible and Mr. Southway said he did not have that information with him.

Mr. Southway said when you take all of the restrictions into account he believes there should be an increase in the compensation for these two lots. Mr. Southway began quoting the appraised values which led to some discussion on review appraiser's role.

He is looking for a 10% increase in the per acre price which would bring Southway #2's \$5,850 per acre up by \$585 per acre for a total of \$6,435 per acre; and Southway's #3's \$7,700 per acre up by \$700 per acre for a total of \$8,400 per acre. Southway #3 can not exceed the certified value of \$8,400 per acre. Mr. Southway said the extra 10% comprises 20% of the funds the County will receive from the federal government.

Joan Snook Smith joined the meeting.

Jim Hunt asked Mr. Southway if he would be more comfortable getting the certified value for the farm without having federal money (and restrictions) involved. Mr. Southway said if the County is unwilling to put in the extra 10%, he would use just the County program. He said the additional restrictions have a value. Mr. Hunt asked if he was comfortable with that value or would he rather not be put in this position. Mr. Southway said at first he thought the Federal Farm and Ranch Program was fair until he thought about the long term impact.

Jane Brodhecker asked Mr. Southway what part of the Federal Program appealed to him to make him willing to enter into it. Mr. Southway said the initial appeal was the fact that the County would have benefited by \$300,000---it was purely altruistic. He said as he learned more about the program, the red flags started getting brighter and brighter. Discussion followed.

A motion was made by Lori Day for the meeting to go into closed session for purposes of contractual discussion and certified values. The motion was seconded by CeCe Pattison and carried unanimously.

A. APPROVAL OF CERTIFIED VALUES FOR 2010 COUNTY FP ROUND:

This item was discussed in Executive Session.

MOTION:

A motion was made by Jim Hunt to approve the certified values for the 2010 FP Round. The motion was seconded by Joan Snook Smith. A roll call vote was taken. All were in favor.

B. SOUTHWAY – ADDITIONAL COMPENSATION ISSUE:

This issue was discussed before the Executive Session and during Executive Session.

MOTION:

A motion was made by Lori Day to Amend the Southway contract to reflect the following amounts per acre, per farm. Lot 8.01 will now be \$6,435.00 per acre and Lot 8.02 will now be \$8,400.00 per acre. The motion was seconded by CeCe Pattison.

Lori Day said she made the motion under duress and feels the decision is the lesser of two evils.

A roll call vote was taken. Results were as follows: Jane Brodhecker-Yes; Lori Day-Yes; Fred Hough-For the good of the organization, Yes; Jim Hunt-Abstain; CeCe Pattison-Yes; Joan Snook Smith- Yes, with regret. Motion carried.

For the record, Donna Traylor said this Board has decided that they are going to set policy so that this situation does not arise in the future when it becomes important to look for other resources for funding. In these economic times, we are severely underfunded for this program and the Board must be creative in finding partnerships and additional funds to keep the program going to protect more good lands in Sussex County. Hopefully, this policy will be set next month.

D. EVERETT FARM, FRANKFORD TOWNSHIP ISSUE:

The Zoning and Code Official in Frankford Township received a report of a trailer showing up on the property last week. This is not part of the Township Code nor is it something the owner can do as part of Farmland Preservation and the landowner was cited. While doing an investigation, the official found that there were certain accommodations within the barn that should not be there. Frankford Township is starting legal proceedings and it is possible that the County would have to take legal proceedings if the Everett's do not comply with Frankford's Request.

Donna said she received a telephone call from the Everett's asking about Ag. Labor Housing. She had a very long conversation with them and explained it was not allowed. Later that day, the trailer arrived. Donna said she would keep the Board members up to date on this issue.

C. PRESENTATION BY LAND CONSERVANCY OF NJ RE: SADC NON-PROFIT ROUND SUSSEX COUNTY APPLICATIONS:

Donna received a letter from the Land Conservancy of New Jersey advising that they are applying for SADC non-profit funds. (The County has had a working partnership with them.) Donna was not familiar with the lands presented in the letter, so Sandy Urgo said she would give the Board some background on them.

The meeting was opened to the public.

Sandy Urgo provided an aerial for each of the six farms and pointed out the easement and exception areas, where applicable. The easement area for the Carriage House Tree Farm in Frankford Township is 35.8 acres. The second farm is Golden View Farm, in Frankford Township and has a 76 acre easement. There are no exceptions for this farm but there is a house that is on a separate lot next to the farm. The third farm is also in Frankford Township, Meadow View Farm and they are anticipating an easement of 52.4 acres. The farm has a six-acre, severable exception and a one-acre exception around the house. The fourth farm is Wintergreen Tree Farm in Lafayette Township and is 137 acres. The fifth farm is Cold Springs Farm in Stillwater. It is 88 acres and

there is an exception around the house. The last farm is the Syberg farm in Stillwater is 111 acres. This farm had preliminary approval for a 19 unit residential subdivision about six years ago. There is a new owner for this farm.

Ms. Urgo said that none of these farms have been appraised. The anticipated cost is based on discussions with the owners. All of the farms were estimated to be in the area of \$5,000-\$6,200 per acre. The Land Conservancy of NJ's anticipated cost would be almost \$2.8 million and they are hoping their grant will be almost \$1.4 million. The awards will be announced in February or March.

Ms. Urgo said she did a mailing to all the farms that qualified in the towns that they work with in Sussex and Warren County. This year all of the responses came from Sussex County only. All of the farms have more than 25 tillable acres, some have significantly more. None of the farms qualify for Federal Farm and Ranch Land Protection. They are asking for a 50/50 match for contract amounts and expenses. The State will rank the farms and the State requires them to do them in the order they are ranked.

Ms. Urgo provided the Board with copies of the map, a spreadsheet showing the requested funding and acreage and cover sheets which show a photo of each farm, the address, block, lot and acreage.

Chairperson Brodhecker said the next meeting is scheduled for February 22 which is the same night Annie's Project was starting. Jane said she has a different meeting on that date as well. After a brief discussion, Steve Komar said he would try to change the meeting date for Annie's Project.

Donna Traylor announced that Rich Vohden has been appointed the Liaison for the Agriculture Development Board.

PUBLIC COMMENT:

Lou Tomasso, Pittenger Farm commented on the Messler discussion. He wanted to clarify the Green Township ordinance for allowable square footage for accessory buildings. Donna said that based on his documentation, the warehouse, barn and other outbuildings would exceed the percentage for allowable square footage. Mr. Tomasso said the ordinance he provided said on less than 15 acres, the limit is 2%. On 15 acres or more, the allowable square footage is 5%. Mr. Messler has 16 acres and at 5%, he would be under the limit. Donna said the problem is that he is dealing with one lot with a dual use. Based on his letter of October 12, he purchased the property in 2007 with an existing 12,000 sq. ft., one story commercial warehouse and 6,500 sq. ft. horse farm with five sheds, six turnouts and a hot walker. He does not give any square footage for any of the other accessory buildings. Mr. Messler does not want to provide a site plan or ask for a use variance. He wants to be absolved of all that from this Board. There is a methodology available to him through planning to get a use variance for the indoor arena and he has come to this Board asking for a site specific Ag. Management Practice to basically absolve him from doing that. When Mr. Tomasso brought up the cost, Donna said there is a planning process that would

enable Mr. Messler to get a determination from Green Township before he has to spend money.

ADJOURNMENT:

All business having been completed, a motion to adjourn the meeting was made by Lori Day. The motion was seconded by Jim Hunt and carried unanimously. The meeting adjourned at 6:40 p.m.