

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

FEBRUARY 22, 2011

The meeting opened at 7:40 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
Jim Hunt
Cece Pattison
Joan Snook Smith

MEMBERS EXCUSED: Lori Day, Vice Chairperson
Fred Hough

STAFF PRESENT: Donna Traylor, CADB Coordinator
Antoinette Wasiewicz, Recording Secretary
Dennis R. McConnell, Esq.

ALSO PRESENT: Gary Porhorely, SADC
Tom Brodhecker, Hampton Township
Frank McGovern, McGovern & Roseman
Mike Messler, Green Township
Lou Tommaso, Green Township

Donna Traylor said the Board needs to conduct their annual reorganization by nominating a Chair and Vice Chair. Currently the Chairperson is Jane Brodhecker and the Vice Chairperson is Lori Day. A motion was made by Joan Snook Smith to

nominate Jane Brodhecker as Chairperson and Lori Day as Vice Chairperson of the Sussex County Agriculture Development Board. The motion was seconded by Jim Hunt and carried unanimously.

MINUTES CORRECTION/APPROVAL:

In the Minutes of January 20, 2011, Jane Brodhecker's vote was omitted from the motion for 9, B, Southway – Additional Compensation Issue. The minutes will be corrected to reflect a "Yes" vote from Jane Brodhecker.

A motion was made by CeCe Pattison approve the minutes of January 20, 2011, as corrected. The motion was seconded by Jim Hunt and carried unanimously.

A motion was made by CeCe Pattison to approve the Executive Session minutes of January 20, 2011, as presented. The motion was seconded by Joan Snook Smith and carried unanimously.

The Agenda was amended to Right to Farm, B.

CORRESPONDENCE:

A. SADC APPRAISAL CONFERENCE, 6/8/11:

The Annual State Agriculture Development Committee Appraiser's Conference will be held on June 8, 2011 from 9:00 a.m. – 12:30 p.m. at The Conference Center at Mercer County Community College in West Windsor, NJ. Appraisers are required to attend one conference very two years in order to remain on the SADC's list of approved appraisers.

B. TENNESSEE GAS PIPELINE REQUEST FOR INFORMATION, 2/10/11:

The Tennessee Gas Pipeline Company requested that the Sussex County Division of Planning – Office of Farmland Preservation and Open Space Conservation conduct a preliminary review of proposed contractor/pipeyards associated with Loops 323 and 325 of the proposed Northeast Upgrade Project. Tennessee had previously consulted with the County relative to the Project; however the proposed contractor/pipeyards were identified subsequent to these consultations. This information was provided to County GIS since they are already working on this project.

C. DONATION TO SCF&HS RE: W. WELSH:

A letter was received from the Board of Directors of the New Jersey State Fair/Sussex County Farm & Horse Show thanking the Sussex County Agriculture Development Board for the donation given to them in memory of Warren Welsh. Donna read the letter into the record.

D. SPRINGFEST FLOWER AND GARDEN SHOW:

A Press Release was received regarding the Springfest Flower and Garden Show. The 15th Annual 'Garden-Lover's Flower Show' will run March 17 – 20, 2011 at the Sussex County Fairgrounds in Augusta, NJ.

E. SOUTHWAY AMENDMENT, SC FREEHOLDER RESOLUTION, 1/28/11:

The Resolution to Amend the Final Approval for the Peter and Marilyn Southway Farms #2 and #3 in Fredon Township was adopted by the Sussex County Board of Chosen Freeholders at their meeting held on January 28, 2011. Donna added that the Southway farms have closed and the County will receive approximately \$175,000 in federal funds after the additional federal funds are provided to the Southways.

F. COMMON WATERS FUND, E. OLSEN, 2/14/11:

Correspondence was received from Eric Olsen regarding the Common Waters Fund. This new Fund will provide cash grants to support the protection of forests, in places throughout the watershed that are especially critical for protecting drinking water supplies. The Common Waters Fund hopes to award one million dollars in grants over the next 18 months for land protection and forest management actions designed to protect streams and keep forests as forests.

G. GREEN LIGHT APPROVAL: CRISMAN 1 & 2, SADC, 2/16/11:

Two Green Light Approvals have been received from the SADC for Crisman Brothers Farm LLC #1 and #2. Paperwork will be sent to the State to have the values certified.

H. OUTSTANDING YOUNG FARM, K. KRITZ, 2/17/11;

A memo was received from Karen Kritz advising that Todd Applebaum, Duce Tallamy and Tore Anderson were notified of their nomination of NJ's 2012 OYF award. They received applications and were advised that the deadline for returning the completed application is March 12, 2011.

I. CRISMAN FARMS, R. VALENTI, 2/18/11:

A letter was received from the attorney for the Crisman Brothers LLC explaining that there have been some issues with the three farms as far as how the farms were set up as trusts and that in some instances the names on the deeds for particular lots do not match what we have on our contract. Mr. Valenti is working with a title company and has provided a flowchart from the Crisman's previous attorney, Richard Clark showing how the different properties started and where they are now.

RIGHT TO FARM:

A. MESSLER, GREEN TOWNSHIP – SUBMITTAL OF BILL OF SALE FOR HORSE (RESOLUTION UPDATE FINDING AS A COMMERCIAL FARM):

At the last meeting, this Board rescinded the portion of the Resolution dealing with the \$2,500.00 documented to recognize this as a commercial farm. The Board was apprised by Dave Kimmel, the Right to Farm Manager at the State, that the

documentation that was received from the Messler's regarding boarding is not eligible to be used toward the \$2,500 minimum income. They would not satisfy the \$2,500 threshold with just the amount they have in pasture based on the County amount per acre. The only other alternative was that the Messler's would have to show that they have trained a horse on that property for 120 days and then sold that horse. The Messler's did have a sale pending at that point. The sale has since gone through and they have provided a copy of the Bill of Sale showing the amount, the check and deposit of the check.

Donna prepared a new Resolution which was sent to the Board members prior to this evening's meeting. The Resolution determines that the Messler's have produced documentation showing that Block 31, Lot 1.01 is located in the AI District in which agriculture and horticulture are permitted; that a portion of Lot 1.01 is currently receiving Farm Assessment Taxes for approximately 16.3 acres of the total 22.3 acres; and that they have provided bank receipts from the equine operation leaseholder for the sale of a horse that was trained on subject property for at least 120 days before its sale at a price of \$3,500 as evidenced by a Bill of Sale and copy of check number 123 dated February 8, 2011 from Patricia Ashbey to Rose Wilbraham.

MOTION:

A motion was made by Jim Hunt to approve the above Resolution. The motion was seconded by CeCe Pattison and carried unanimously.

Donna said that she has received some draft information from the County Ag. Agent, Steve Komar, who did a site visit on the farm. The report stated that this is an equine operation and that an indoor riding arena is acceptable for an equine based farm. We've also received some information from the County Planning Director, Eric Snyder regarding dual use on a property and the Use Variance process. Donna said she reached out to the State for additional information on protocol. A Right to Farm hearing will be scheduled. Although this is an LLC, the landowner is not required to have counsel at the hearing. Green Township will be notified of the hearing and will probably be represented by a Committee member and/or Counsel. The Board will evaluate the information from the landowner, the County Planning Director, the County Ag. Agent and Green Township. A Site Specific Ag. Management Practice would supersede Municipal Land Use Law. If this Board votes in favor of what JMM Realty Holding LLC is requesting, the Municipality would still be able to appeal the decision to the Administrative Law Office. This Board could also request a scale drawing to see whether or to what extent the arena affects other uses of the land. Donna said she spoke with State Counsel who thought that might not be a bad idea to help the Board in their evaluations. The landowner will also have to prove to this Board that there is a legitimate farm-based reason for being exempt from the municipal ordinance. Donna said before the hearing, she will provide the Board with information regarding the prior variance issued for the existing infrastructure. Joan Snook Smith requested a copy of the scale drawing prior to the meeting.

A motion was made by Jim Hunt to open the meeting to the public. The motion was seconded by CeCe Pattison.

Lou Tommaso said he sits on the Green Township Zoning Board. About three or four months ago Green Township modified an ordinance that stated a maximum of 3,200 sq. ft. of accessory buildings were permitted on five acres or more. He said there is a new ordinance for 15 acres or more and that it is critical that this Board read the ordinance. Based on that ordinance, Mr. Messler should be able to put his arena up.

Donna said she thinks the issue has more to do with the fact that there is dual use of the property and the existing buildings. She said the plan that Mr. Messler will present to this Board should include the square footage and setbacks of all the buildings on the farm, current and proposed.

B. CONCERNED RESIDENTS OF HAMPTON TWP. V. TWP. OF HAMPTON AND HAMPTON TWP. COMMITTEE, DISCUSSION FOR DETERMINING PRIMARY JURISDICTION:

Dennis McConnell, County Counsel said there is a Court Order signed by Judge Bozonelis on November 5, 2010 in the matter known as Concerned Residents of Hampton Township v. Hampton Township and Hampton Township Committee. The Order was amended in January to move the date from February 1 as set forth in this Order to March 16. There is a threshold question to answer, shown in paragraph two of Judge Bozonelis' order. It says that the Sussex County Agriculture Development Board shall determine if it has primary jurisdiction to review said Ordinance under the provisions of the Right to Farm Act and if so, whether and to what extent it will exercise primary jurisdiction. A copy of the transcript of the Judge's decision was received where he cites two cases, the den Hollander case and the Curzi case with regard to issues concerning primary jurisdiction. One of the things he brings up is that in the event that the SCADB says it has primary jurisdiction under the Right to Farm Act, then its decision is final and any appeal of that would go to the State Committee. Then any appeal of that would go to the Appellate Division; so the Judge would be out of it from that point forward.

Since this case not only involves this Board, but also the State Committee, Mr. McConnell forwarded a copy of the orders and transcript to the State. These were reviewed by Brian Smith, the attorney for the State Agriculture Development Committee. Mr. Smith responded on February 17 and said that after reviewing the Order and the Transcript, it is his opinion that the County does not have primary jurisdiction under the Right to Farm Act. He believes the County does have jurisdiction under the Agricultural Retention and Development Act, which is 4:1C-11 et seq. Specifically, in that section there is subsection F under 4:1C-15 which states that every Board shall monitor and make appropriate recommendations to the Committee, the State and the County Municipal governing bodies with respect to Resolutions, Ordinances, Regulations and development approvals which would threaten the continued viability of agricultural activities in farmland preservation programs within the agriculture development areas. This is a second and distinct statute as opposed to the Right to Farm Act. The Case is cited by Judge Bozonelis in two cases. In the den Hollander case there is language that says on Page 427, the CADB and SADC have primary jurisdiction over disputes between municipalities and commercial farms. The Right to Farm Act deals with an aggrieved party, such as a farmer. Mr. McConnell said that in this case, no one has filed a complaint so there is no aggrieved party. In the

Curzi case, there is talk about primary jurisdiction and it gives four different criteria. The last one says if a claim presents some issue that are within an agency's special expertise and others which are not, the proper course is for the court to refer the former to the agency and then to apply the agency's findings or conclusion determinations of the remaining issues. Mr. McConnell said because the legislature has specifically acted and came up with process for the County to review ordinances, he feels that is the appropriate course to follow. Although it does not quite answer what Judge Bozonelis sought to do, the County does have the right to make comment on that particular ordinance and it has a process to go through it.

Mr. McConnell said depending on what this Board votes, he could write a letter to Judge Bozonelis and advise him that he has reviewed those cases; that he has referred the matter to Brian Smith and has reviewed his opinion and the statute and believes the County does have the jurisdiction under the Agricultural Retention Act as opposed to the Right to Farm Act. Under the scenario advocated by Mr. McConnell and Brian Smith, the SCADB would comment on the particular ordinance as to whether or not it would affect agriculture. The State would also have the ability to comment; but then the Township itself, notwithstanding the County's comments, could pass the ordinance. The ordinance would then be in place. However, if a specific individual thought it impacted his agricultural viability to make a living on a commercial farm, that individual could bring a specific complaint to this Board and under the Right to Farm Act, the Board would absolutely have primary jurisdiction there. Another avenue would be that the SCADB could make their comments to the Municipality and the State could make its comments to the Municipality and the ordinance may be brought in line with those comments.

MOTION:

A motion was made by Joan Snook Smith that the SCADB do as County Counsel has suggested and send a letter to Judge Bozonelis stating that the SCADB does not have primary jurisdiction under Right to Farm Act but that it does have primary jurisdiction under the Agriculture Retention Act, under 4:1-C 15 subsection F. The motion was seconded by Jim Hunt. Discussion followed.

Jane Brodhecker said she did not feel she could vote on this issue and if she recuses herself from voting, the meeting does not have a quorum. County Counsel said that was correct. He did point out that this is a jurisdictional issue in general and not specific as to any particular operation. Donna added that if the SCADB makes the recommendation as cited above, then Ms. Brodhecker would be working under the Ag. Retention Act, which controls Farmland Preservation rather than the Right to Farm Act, which is something she has been personally impacted by. Ms. Brodhecker said she did not feel comfortable voting on this issue.

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

Frank McGovern, attorney for Hampton Township said his understanding of the order does not require that this Board make a jurisdictional decision before March 16. Dennis McConnell said he would agree with Mr. McGovern and a special meeting

before March 16 will not be necessary. However, he will look further into the interpretation of the order.

The motion was withdrawn by Joan Snook Smith and Jim Hunt.

The meeting was closed to the public.

C. BRODHECKER FARM LLC, UPDATE:

Donna said that a number of the Board members received a call to potentially join the OAL Judge at her office in Newark. County Counsel determined that this Board acted as a Board and if any further questioning was required, it would have to function again as a Board. The Judge has been meeting with all the parties and a site visit will be conducted at the Brodhecker farm on April 6.

AG. AGENT'S REPORT:

Donna reported that Steve Komar is having the first of many Annie's Project programs this evening. Lori Day is also attending this program.

OLD BUSINESS:

A. AGRITOURISM PROJECTS;

The outreach to the public will begin in March. Springfest will have two tables, one for the Farmers Market and one for Ag. and Ecotourism in the County.

Donna will attend a Trade Show on Friday with the Sussex County Chamber of Commerce as the designated marketing organization for this part of New Jersey. This three day event is a New York Times Trade Show for Travel and Tourism.

The Farmers Market will be opening April 16 and will run through October 29. There is a meeting tomorrow night of the Farmers Market Committee at which time they will be approving the Rules and Regulations that will govern the market for this year. It is being administered through members of both the Board of Agriculture and the Farmers Market. Those Rules and Regulations will go to the full Board of Agriculture next Monday for their adoption. After its adoption, Donna will be able to report more fully to this Board on what will be allowed at the Market this year.

B. EVERETT FARM, FRANKFORD TOWNSHIP – UPDATE:

There is a potential violation on this preserved farm. The Everett's have hired an attorney more so for an issue they're having with the Municipality regarding a barn. Donna said she spoke with their attorney today because a month has gone by and she did not hear of any corrections to the infractions that were discovered. Mr. McDermott said the issue will be resolved very quickly. His clients understand the issues and they are working to resolve them.

The Everett's brought a trailer onto the property. The Township Building Inspector thought it was a trailer with wheels but it was more of a modular trailer home. They were cited on it and told to remove it. Bad weather quickly followed and now the trailer is stuck in ice.

There are issues with usage of the barn and the County and Frankford Township are working to get those issues resolved. There are also some issues with location of the septic system and they are unable to find the final approval for the septic system. There will be site visit of this property next Thursday at 9:00 a.m. Donna will visit the farm and asked Jane Brodhecker, as Chairperson to attend the visit. The invitation was also offered to the other Board members.

C. UPDATE ON CLOSINGS:

The four Southway closings occurred on Thursday, bringing the County total of preserved farms to 158 with about 17,000 acres. Another closing is scheduled for this Friday and about 14 more will follow. Many applications have been submitted to the State for reimbursement. One reimbursement has been received and there are four others that are pending. The reimbursement monies have already been dedicated to the three farms that this Board approved last year and also the Manak farm, a project with Ridge and Valley Conservancy.

Donna advised the Board on information she received last Thursday and today. The dedicated tax has been decreased by 50% each of the last two years. Two years ago the funding source was about \$2.8 million. Last year it was \$1.4 million. The County is proposing to decrease the tax again this year by 50%, leaving about \$700,000 for both the Farmland Preservation and Open Space Conservation Programs. This figure includes the cost of salaries, surveys, appraisals, legal and ancillary costs.

The farms that the Board will give final approval to for the last funding round (Sella & Tommaso) total 200 acres. Donna said she has already received applications for the next funding round which shows that the demand is still there.

NEW BUSINESS:

A. FINAL APPROVAL OF 2010 COUNTY ROUND:

There are five applications for farms that were appraised and for which offer letters were sent. The deadline was several weeks ago. Two landowners accepted their offer: George Sella with a purchase price of \$4,500 per acre and Louis Tommaso, Pittenger Farm with a purchase price of \$9,500 per acre. The Board members were e-mailed a Resolution granting Final Review and Approval for 7 farms in the 2010 County Funding Round. (The Resolution will be corrected from "7 farms" to "2 farms".) Donna pointed out language in the Resolution that says the County will be allowed to utilize funding that may become available through grants to non-profits from the SADC and Federal Farm and Ranch Bill monies with appropriate County funding that becomes available from SADC Planning Incentive Grant reimbursements. This is contingent upon approval by the Board of Chose Freeholders and is not necessarily in rank order.

MOTION:

A motion was made by Joan Snook Smith to approve the above Resolution as corrected. The motion was seconded by Jim Hunt and carried unanimously.

Donna advised the Board that Green Township agreed to fund 25% of the of the County's share in the Tommaso acquisition should federal funding be available. Donna said she is not putting this in the Resolution because authorization has not yet been received from the Federal Farm Bill that these monies will be acceptable for this project. The County is waiting for Mr. Tommaso to close on this property. As the landowner, he will be advised if Federal Farm money can be used on this property.

PUBLIC COMMENT:

Gary Porhorely, SADC gave an update on State funding. He said that in 2009 voters approved a referendum but it is on hold indefinitely. He added that the Governor's office did reach out to them to determine what their financial needs were. He believes they told them they need all of the funding asap. Mr. Porhorely said in the meantime, the SADC is encouraging Counties to continue to process applications and send them in the SADC for final approval.

ADJOURNMENT:

All business having been completed, a motion to adjourn the meeting was made by Jim Hunt. The motion was seconded by Joan Snook Smith and carried unanimously. The meeting adjourned at 9:20 p.m.