

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

FEBRUARY 19, 2013

The meeting opened at 7:42 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  
Brian Hautau  
Jim Hunt  
Joan Snook Smith  
Peter Southway

MEMBERS EXCUSED: Cece Pattison

STAFF PRESENT: Donna Traylor, CADB Coordinator  
Freeholder Liaison Rich Vohden  
Antoinette Wasiewicz, Recording Secretary  
Rudy Dragan, Planning Aide

ALSO PRESENT: Chuck Roohr, SADC  
Jeff Everett, SADC  
Paul Matos, Wantage Township  
Gary Werner, Esq., Attorney for Paul Matos

The Agenda was amended to New Business, C.

The Agenda was further amended to New Business, B and then New Business, A.

**MINUTES CORRECTION/APPROVAL:**

A typo was noted on Page 7, New Business-A, second paragraph. Correct “one-ace” to “one-acre.” A motion was made by Joan Snook Smith to approve the Minutes of December 17, 2012 with the above noted correction. The motion was seconded by Lori Day and carried unanimously.

**CORRESPONDENCE:**

A. FY APPROPRIATION UPDATE:

A memo was received from Susan Payne, SADC with a FY 2013 Appropriation Request Update and SADC Final Approvals Process. The \$83.1 million farmland preservation appropriation request for FY 2013 has been approved by the Legislature and is awaiting the Governor’s signature. This request will utilize the remaining \$73 million in farmland preservation funding from the 2009 bond funds as well as reprogrammed funding and revenues from resales of fee simple properties.

In order to close on as many individual applications as possible during the fiscal year ending June 30, 2013, the SADC will move forward in issuing SADC Final Approvals contingent upon the Governor’s signature of the appropriation bills.

B. ON FARM DIRECT MARKETING AMP COMMENTS, ANTHONY SPOSARO, ESQ., 1/23/13:

A copy of a letter from Anthony Sposaro has been received. Mr. Sposaro has done a lot of work with right to farm cases throughout the State. He presented this to the SADC last month and asked that this letter be distributed to all SCADBs.

Mr. Sposaro wrote, “Based upon my initial review I am gravely concerned that the latest revisions all but give back to the municipalities the right to regulate farming activities, contrary to the doctrine of preemption, the heart and soul of the 1998 amendments to the Right to Farm Act., and all of the judicial decisions thereafter that consistently vest primary jurisdiction in the SADC and CADBs to regulate farming activities.”

“This is tantamount to an open invitation to CADBs to refer applications to municipal planning boards. It also provides municipalities with ammunition to challenge CADB decisions on the basis of its lack of expertise.”

C. UPDATED RTF PAGE, SADC, 1/30/13:

An e-mail was received from Dave Kimmel at the SADC advising that the SADC webpages with RTF decisions have been updated.

D. WIND ENERGY GENERATION ON PRESERVED FARMS, SADC:

A draft policy on Subchapter 25 of the Wind Energy Generation on Preserved Farms has been received. Donna said this will come to the SCADBs in the next month or two to review and comment on. This policy mimics the Solar Policy.

E. ARTICLES OF INTEREST:

None

**RIGHT TO FARM:**

A. WANTAGE (MANURE PILE):

Donna said she is still working on getting information to and from the land owner about the potential horse manure pile.

**AG. AGENT'S REPORT:**

Steve Komar did not attend this evening's meeting. Donna said Steve did a seminar at the State Agriculture Convention on the Nyger Seed Project which was very well prepared.

**OLD BUSINESS:**

A. AGRITOURSIM UPDATE:

Donna said she will be attending Springfest on March 14-17 at the Fairgrounds. She will have an agritourism display and a Birding and Nature Festival display. Donna will also do a presentation on Land Stewardship. The presentation will cover agriculture, open space and large and small scale land stewardship.

Donna reported that the Javitz Center New York Times Travel Show was very productive and that most of the interest was on agritourism.

B. FPP UPDATES (APPRAISALS, SURVEYS, CLOSINGS, TOMMASO, MONITORING):

Donna provided the Board with the State's latest summary on preserved farmland. This summary shows just farms that were preserved with State funds. There are over 2,300 acres that have been preserved with Sussex County dollars alone. The Sella farm should be receiving final approval in about two months. They received the Resolutions today.

The County Engineer asked Donna to prepare summary documents on each of the open farms so that if anyone needs information, it will be available. Donna said Rudy

has been very helpful in getting the maps together. Each farm now has a one-page summary sheet with relevant maps as requested by the County Engineer's office. These will be updated on a quarterly basis.

Donna said she checked with the Land Conservancy of New Jersey on the four farms they are partnering with Sussex County. The landowner for one of the farms is not happy with the values; the other three are progressing. They should be getting the appraisals back in about two months and offers will be made in April/May. Donna confirmed that it is still the policy of this Board that they would want to see a housing opportunity on each preserved farm. She said one farm had a 6.8 acre severable exception but no housing opportunity. Donna advised them to put a one-acre non-severable exception somewhere.

Donna provided the Board with a flyer that is on the SADC's farm link program. Information is available for people looking to sell, purchase or lease farmland.

Donna reported that she has been out monitoring farms. So far, she has monitored 146 farms out of 166. She sent out registered letters to about six or seven landowners she was unable to contact. Five or six did contact her.

Donna said she spoke with Stefanie Miller about funding for the Tommaso farm. The County's PIG money will be \$198,776.28. The federal funds will be \$131,492.00, totaling \$330,268.28. The State can only fund 34 acres that do not have a conservation easement. Last month, this Board approved funding for the 10.7 acre conservation easement in full. However, Green Township passed a Resolution in 2011 saying they would put up to \$125,000 into this application. Since the County is already incurring \$198,000 from the PIG, Donna will talk to County Counsel to suggest that the County ask Green to contribute \$107,253.22.

Today the first appraisal was received for Goldman. The other appraisal should arrive shortly. These will be sent to the State for certification. This will complete the backlog of open farms. Donna reported that new applications and inquiries have been coming in and that in March, a chart of new applications should be available.

The Tommaso farm will probably be the next to close. Closing packages for the other three from last year: Lane, Keyes and MC Land Trust should be going to the State very shortly.

C. TENNESSEE GAS PIPELINE UPDATE/PSE&G UPDATE:

Donna said the only thing new with the Tennessee Gas Pipeline project is that they are looking for additional temporary workspace that was not part of their application with FERC on Shaeffer. This discussion is still at the State level.

Peter Southway said that there was a meeting scheduled today with the Governor's office regarding the PSE&G project. He said all indications are that the State will allow

them to move the line, move the tower and change the deed easement. Mr. Southway said he hopes to hear from Tim Brill tomorrow.

D. AMP FOR ON-FARM DIRECT MARKETING – DISCUSSION:

Jane Brodhecker reported that the AMP for On-Farm Direct Marketing was on the SADC Agenda but was tabled because of a technicality. It will go to the New Jersey Register for comment next week. Lori Day asked that Donna e-mail the Board the new copy when it is available as well as the previous comments made by this Board.

**NEW BUSINESS:**

A. KOLICH FARM VIOLATION, FRANKFORD/HAMPTON TOWNSHIP:

Donna said this is a farm that had been preserved then sold to another farmer. The first owner told the new owner that there was an apartment. At the time of closing, there was no apartment. The current owner said at one time he did have ag. labor housing using the apartment, however at present, the person living in the apartment is not employed on the farm.

On January 28, County Counsel issued Mr. Kolich a letter stating that the apartment is a violation to the deed of easement. There was no provision for any residential units outside the one existing single family house. The apartment exists above a garage which was empty at the time of closing. The present owner expressed great concern about being able to manage without the income from the tenant. Also, the tenant has a lease.

Donna said the original house burned down about four years before the farm was preserved. When the permits were issued to rebuild the house and garage, there was no provision for an apartment that is evident at this time.

B. MATOS FARM VIOLATION – WANTAGE TOWNSHIP:

Donna said this farm was originally one of the four preserved by Scott Lewis on Roy Road. The farm at Block 17, Lot 38 was subsequently sold to Paul Matos. When this farm was preserved it was raw land. Donna said Mr. Matos has done an extremely good job of bringing this rough farm back into productive agricultural land. He put up a number of barns and ag. structures and worked with the municipality to get permits. He has also put up the two structures in question. One structure is approximately just under 185 sq. ft. and the other about 300 sq. ft.

Last year when Donna went out to monitor this farm, Mr. Matos explained that one structure was being used as a hunting cabin and the other was being used for a local day laborer, who was taking care of the livestock. During the monitoring in November 2012, Donna found that the day labor facility (the smaller of the two) had become full-time ag. labor housing.

County Counsel and Donna met with Gary Werner, attorney for Paul Matos during the first week of December 2012. They discussed a number of different items and it was concluded at that meeting that the hunting cabin would not be permitted. It was not an existing use at the time of the easement. In the interpretation of the deed of easement, if this cabin had been there prior to the deed of easement, it would be permitted. But this was a new structure and that is not conducive to the language in the deed of easement. The suggestion was to use that building (since it was the larger of the two) as the ag. labor housing. If not, it would have to be converted to agricultural storage.

Donna also said during her monitoring in November 2012, she discovered that a septic system was being put in for these cabins. She explained to Mr. Matos that the installation of the septic system had to be stopped. There was also equipment on the farm to grind stone for use on the farm roads. Photographs were taken of the cabins, the ag. operation and the stone grinding equipment. These were passed around to the Board members.

Mr. Matos completed a State Application to construct a residential unit for ag. labor employed on a deed restricted farm. (This information was e-mailed to the Board members prior to this evening.)

Gary Werner, Esq. said Paul Matos is a long time client who has become his personal friend. Mr. Matos grew up on a farm in Portugal until his late teen-age years, when he immigrated to the U.S. Mr. Matos owns a construction company but one of his dreams has been to farm. Mr. Werner said that Mr. Matos did not understand the extent of the restrictions of the deed of easement, and added that that may have been the fault of the attorney in his office who handled the closing. Mr. Matos purchased a preserved farm and there was nothing to educate him on the restrictions on the deed of easement. He added that perhaps the State should consider some sort of formal program for second and third owners. Donna said the County and/or the State does not always know when there is a change in ownership.

Mr. Werner provided the Board with documents relating to the animals and livestock currently on the farm. These animals were not on the farm when Mr. Matos purchased the farm and the barns and sheds were built to accommodate them. The animals all need full time care. Mr. Werner also listed the various structures that have been built on the farm: six animal sheds, a dog kennel, three barns, the ag. labor cabin and the hunting cabin. The ag. labor cabin and hunting cabin are at issue tonight. The hunting cabin is a structure with six bunks and a second long room with a folding table that serves as a kitchen, and propane heating. He believes Mr. Matos does meet the guidelines for ag. labor housing. He has a full-time, non-relative worker who is employed just for work on the farm and taking care of the animals. Alfalfa and corn were grown on the farm when Mr. Matos purchased it and he is still growing the same amount of alfalfa and corn. No acres have been taken out of production. A local farmer (Bill Sytsema) does all the field work. The structures that have been built, including the hunting cabin and ag. labor housing, also do not take any farmland out

of production. When asked, Mr. Werner confirmed that the hunting cabin and ag. labor housing combined totals 1,976 sq. ft. He added that he did not measure the structures but took the information off the rendering. Donna said that is in conflict with the letter she received from Mr. Matos last year stating that the hunting cabin is approximately 300 sq. ft. and the ag. labor housing building is approximately 185 sq. ft. It was agreed that the two buildings need to be measured.

Donna said, according to County Counsel, the hunting cabin cannot exist; so they have to decide which building may be for ag. labor housing. Mr. Werner said the application before the Board is to grant the ability to put farm labor housing. They may seek to remove one structure and put up something bigger or put the farm labor in the bigger structure and take down the smaller one. Donna said whatever Mr. Matos decides to do; the application has to reflect it now. Mr. Werner said the problem is that they need guidance from the Board. Jim Hunt asked if there was a limitation on the size of the ag. labor housing. Donna said there is not a limitation but the Board needs to know specifically where it will be located, the size and who it is anticipated to house. Jim Hunt asked why an approval couldn't be given based on a size "up to." Donna said her experience in the past was that she has to have specific plans based on the checklist and application for Ag. Labor Housing. Note: the checklist and the information it requires was not submitted with the application. Mr. Werner suggested that the application be to keep the labor in place, because Mr. Matos can't lose his labor, especially in the winter, and reserve the right to come back with any changes to the structure. Donna said there is also the problem with the septic, which is based on square footage. Lori Day asked if the ag. labor cabin is connected to a septic. Mr. Werner said it does not; there is a port-a-john in the back. He said that the Board should keep in mind that Mr. Matos has a construction company and he knows how to install a septic system. He was under the impression that as long as the structure was not permanent (no footings,) he could build there. He is putting in a septic system. He added that Mr. Matos does have all the proper permits and approvals to do this. Jim Hunt asked what size building the septic permit was based on. Peter Southway pointed out that that information was shown on the last page of the packet. It is shown as one unit, two bedrooms. Mr. Southway voted to approve it. Donna said what is there is one unit with two bedrooms. She asked which building they are talking about. Mr. Werner said there is one building with one bedroom and the other bedroom is a bunkhouse. Brian Hautau said another possibility would be to get rid of one building and if they want to replace the other building with a bigger building it needs to conform to township rules. Joan Snook Smith asked if the two buildings were joined together. Mr. Werner said they are not. Mr. Matos said there is about a four foot walkway between the buildings.

Donna asked if Mr. Matos had any permits from the County for the septic system. Mr. Matos said he did. Donna asked what the status of the septic system was. Mr. Matos said it is on hold. Mr. Matos said the septic is about 60-65% done. Donna said according to Mike Plaza, SC Health Department today, it is 98% done and that it has happened within the last few weeks.

Jim Hunt said if ag. labor housing is allowed, then certainly a septic system is allowed to go with it. Brian Hautau said it seems the operation would need ag. labor and said the ag. labor housing is warranted. There are two buildings, and Mr. Matos needs to get rid of one or merge them into one, as long as it conforms to the septic requirements. Mr. Matos said he needs to know the maximum square footage. Peter Southway said that is determined by the septic permit; he is limited to two bedrooms.

Jim Hunt asked if Mr. Matos went to the township for approvals for the buildings. Mr. Matos said yes and that he has the permits. Mr. Hunt asked if they realize people are going to live in the building. Mr. Matos said, "No, not yet." Mr. Hunt said there may be an issue with the township because the building is on a pad. Mr. Matos said the township wants the building to have another door and bigger windows. The township suggested merging the two buildings. Mr. Matos assured the Board that he was given bad information and was unaware he needed to get permission from the County.

Peter Southway said all the Board has to be concerned with is the fact that farm labor housing is fine. The town will decide on everything to do with the house. There was some discussion about merging the buildings and Donna talked about the square footage of the combined buildings. Mr. Matos said they are unsure about the dimensions because the two documents had conflicting numbers. Peter Southway suggested that the Board pass a motion that the building is not to exceed 1,976 sq. ft.

Lori Day suggested the merging of the two sheds into one building. This would conform to the septic permit for two bedrooms. Peter Southway asked Mr. Roohr what was the average size of a building for farm labor housing. Mr. Roohr said the size varies but lately he has been seeing between 800-1,200 sq. ft. Mr. Southway asked Mr. Werner if they were agreeable to that. Mr. Werner felt the 1,200 sq. ft. building would be adequate. Donna suggested that the Board do a site visit to the farm and take some measurements.

Mr. Werner asked the Board to approve the farm labor housing on the existing location, not to exceed 1,200 sq. ft. Peter Southway agreed and said the Resolution should allow for one unit with two bedrooms.

Mr. Werner brought up the stone crusher which had been on the property. He said that is a piece of equipment that Mr. Matos' company owns. He brought the machine to the farm to crush the stone for farm roads. Mr. Werner said they were not aware that this was also a violation to the deed of easement. Donna explained that if it was being used to crush stone from the farm to be used on farm roads on-site, it was ok; but she had received complaints about it and needed to ascertain its use.

Donna advised the Board that she will prepare the Resolution for the next meeting but she wants County Counsel to review this. Mr. Werner asked if the septic could be completed now. Donna said she wanted the Board to do their site visit. Jim Hunt questioned the need for a site visit with a 1,200 sq. ft. limitation. Joan Snook Smith said she would like to give the applicant a chance to move forward. Jim Hunt said they

already have time issues just with getting approvals from the town. Donna said she was concerned more with the septic. As she understands it, the septic is just about complete but the Health Department will not issue a Certificate of Compliance until the farmland preservation issue is resolved. Mr. Werner said he is concerned that if there isn't a Resolution passed tonight as to the septic, it will not be able to be hooked up until the next meeting. Donna said the septic cannot be hooked up to the hunting cabin and that building either has to be torn down, merged with the other structure or used for agriculture. The septic can't be completed until it is decided what it is being hooked up to.

Peter Southway said the Resolution for farm labor housing can be passed tonight and if County Counsel does not have a problem with it, Mr. Matos will be notified so that he can take the Resolution to the Health Department for the Certificate of Compliance.

**MOTION:**

A motion was made by Lori Day to approve year-round farm labor housing on the Matos farm at the existing location of the septic system. This is for one structure with two bedrooms, not to exceed 1,200 sq. ft. This Resolution is contingent on County Counsel review. The motion was seconded by Peter Southway and carried unanimously.

C. POST CLOSING ISSUES PRESENTATION, CHUCK ROOHR, SADC:

Chuck Roohr, Stewardship Manager with the SADC said at the last State meeting, Donna asked him to talk to the SCADB about some post-closing issues. Mr. Roohr said he has been with the SADC for 10 years and he works primarily with post-closing issues. Jeff Everett, Chief of Ag. Resources also attended the meeting.

Mr. Roohr prepared a summary sheet of the items to be discussed. The Board was provided with the summary sheet along with some "back-up" material. He discussed Post-Closing Options which are explicitly referenced in the Deed of Easement, where additional information could be found on the option and the type of approvals that would be needed.

The options discussed were:

Division of Premises

- Division request must be for an agricultural purpose
- Both new parcels of land must be viable as stand-alone farms for a variety of purposes
- Division must result in an increase in the agricultural diversity, intensity or productivity of the premises.

Additional Information at Policy 30-A. Requires CADB & SADC Approval

House Replacement

- Location should minimize impact on the ability to efficiently farm a parcel

Additional Information at Online Guidance Library. Requires CADB & SADC Approval

Agricultural Labor Housing

- Cannot be for owner or any lineal descendant of the owner
- Must be for someone who is employed full-time by the farm
- Laborer must be engaged in the production activities of the farm

Requires CADB & SADC Approval

Exercising a Residual Dwelling Site Opportunity

- Two procedures depending on year the farm was preserved

Additional Information at Policy 31. Requires CADB & SADC Approval

Options allowed as the result of legislation:

On Farm Energy Generation Facility

Additional Information at NJSA 4:1C-32.4. Requires CADB Review/SADC Approval

Cell Tower Permit

Additional Information at NJAC 2:76-23. Requires CADB & SADC Approval

Commercial Non-Agricultural Use Permit

Additional Information at NJAC 2:76-22. Requires CADB & SADC Approval

Mr. Roohr also discussed Nonagricultural Uses, Exception Areas and Division of the Premises. Mr. Roohr and Mr. Everett answered questions that were raised by the Board. The Board members were also provided with a copy of the SADC Policy for Division of Permanently Preserved Farmland and the SADC Application for same.

Additional information, applications and policies are available at the SADC website located at: <http://www.nj.gov/agriculture/sadc/index.shtml>; <http://www.nj.gov/agriculture/sadc/publications/guidance.html>; and <http://www.nj.gov/agriculture/sadc/applic/>.

**PUBLIC COMMENT:**

None

**ADJOURNMENT:**

All business having been completed, a motion to adjourn the meeting was made by Peter South. The motion was seconded by Joan Snook Smith and carried unanimously. The meeting adjourned at 10:30 p.m.