

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

MAY 16, 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  
Lori Day, Vice Chairperson  
Brian Hautau  
Fred Hough  
Jim Hunt  
Cece Pattison  
Joan Snook Smith

MEMBERS EXCUSED: None

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

ALSO PRESENT: Brian Smith, SADC  
Frank McGovern, Esq., Attorney for Hampton Township  
Ursula Leo, Laddey, Clark & Ryan  
Tom Brodhecker, Brodhecker Farm  
Phil Brodhecker, Brodhecker Farm  
Edward H. Brown  
Scott McGrath, Hampton Twp. farmer  
Frank Abruzzo  
Lisa Gehrig  
Connie & John Dudas, Twin Pond Acres  
Armand Desomend  
Heidi Lentini

**MINUTES CORRECTION/APPROVAL:**

Minutes were not available.

**CORRESPONDENCE:**

A. TENNESSEE GAS PIPELINE, FERC DOCKET NO. CP11-161-000, 4/18/11:

A letter was received from Tennessee Gas Pipeline Company advising that on March 31, 2011 they filed an Application for Certificate of Public Convenience and Necessity with the Federal Energy Regulatory Commission for authorization to construct, install, modify, replace and operate the Project facilities, which include certain pipeline and compression facilities to be located in Pennsylvania and New Jersey. This project will provide access to natural gas supplies from the Marcellus Shale supply area to an existing delivery point on Tennessee's mainline system at Mahwah, NJ, which is an interconnection with another pipeline in northern New Jersey.

Donna said this project has relatively little impact on Sussex County preserved farms. There is a potential that it may affect several farms at which point they will have to work through the SADC and SCADB.

B. CONCERNED CITIZENS/BRODHECKER AND HAMPTON ORDINANCE 2011-1:

C. SCABD-BRODHECKER FARM, LLC RTF & REQUEST FOR SSAMP OAL DOC. ADC-03248-2010N, SADC ID #852 FRANK MCGOVERN, 4/27/2011:

D. HAMPTON TOWNSHIP ORDINANCE, 5/16/11, F. MC GOVERN:

B, C and D are all pieces of correspondence that have come in regarding the Hampton Township Ordinance which will be discussed under New Business. There was a submittal by Laddey, Clark and Ryan to the Board on April 26. There was a letter from McGovern and Roseman to the Board relating to Ag. Management Practices. Today, a letter was hand delivered by McGovern and Roseman regarding the Hampton Township Ordinance on farm stands and farm markets.

**RIGHT TO FARM:**

A. MESSLER, GREEN TOWNSHIP – RESOLUTION ADOPTION:

Last month the Board concluded the hearing on the JMM Realty Holding, LLC of Green Township. As per the discussion last month, Donna prepared a Resolution for the Board's review. Donna read the Resolution into the record.

**MOTION:**

A motion was made to accept the above Resolution as read into the record. The motion was seconded by Brian Hautau and carried unanimously.

Donna said she will forward the Resolution to all appropriate parties.

**AG. AGENT'S REPORT:**

In Steve Komar's absence, Lori Day reported that there will be an Annie's Project II. There will also be webinar updates available. Anyone can log onto the website and see the presentations. They should contact Steve Komar or Duce Tallamy.

**OLD BUSINESS:**

A. AGRITOURISM PROJECTS;

The Chamber of Commerce has been participating in a number of outreach projects throughout the country. This week Tammy Horsfield is attending a show in San Francisco, CA and she asked for a profile sheet. Antoinette put together a sheet with agri and ecotourism information. Tammy also took the "Four Seasons of Agriculture in Sussex County" brochure.

The Birding and Nature Festival will be held on June 11 and 12 at the Fairgrounds Conservatory. On June 12, Carol Decker will be doing the luncheon presentation. Her artwork will also be displayed.

The Farmers Market is into its second month of the season. As more produce is available business will increase. The Farmers Market Committee, a subset of the Sussex County Board of Agriculture is managing the Farmers Market.

B. EVERETT FARM, FRANKFORD TOWNSHIP – UPDATE:

County Counsel sent a letter out on April 26 to Mr. McDermott, who is the attorney for the Everetts. He outlined in the Deed of Easement all the different locations that the Everetts and Mr. McDermott had an issue regarding actual uses of the barn and what constitutes a violation. Mr. McConnell gave Mr. McDermott a deadline of May 10 to respond. He has not responded to date. Donna said when she went by the farm last week the trailer was in the same location. She said it is within this Board's jurisdiction to ask County Counsel to begin legal proceedings for the violations. Discussion followed where it was agreed it was time to take the next step.

The meeting was opened to the public.

Brian Smith, Attorney for the SADC said the proceeding would be to enjoin violation of the Deed of Easement which will take the filing of a complaint and an order to show cause. Since the County is the Grantee on the Deed of Easement, it takes the initiative. He said the only time the State gets concerned is when a County does not enforce its Deed of Easement. He said the Board needs to authorize Dennis McConnell to file suit against the property owner for violating the Deed of Easement.

The meeting was closed to the public.

Dennis McConnell had been working in another part of the building and was called in to this meeting. Dennis McConnell said, with this Board's concurrence, he will advise the Everett's attorney of his intent to file a suit.

**MOTION:**

A motion was made by Jim Hunt that the Board direct County Counsel to send a letter to the Everett's attorney and authorize the institution of the appropriate legal action to enforce those restrictions as set forth in the Deed of Easement. The letter would give the property owner five days to respond to Mr. McConnell with a firm acknowledgement that they will remove those items that are inappropriate. If they fail to acknowledge the violation, Mr. McConnell is directed to file suit. The motion was seconded by Lori Day and carried unanimously.

C. UPDATE ON CLOSINGS AND FINAL APPROVALS:

Donna said that it appears there will be federal funding for the Tommaso farm. The SADC is proceeding. The signed contract has been received. Donna is working with Mr. Sella on his contract and it should be received shortly.

The Afran farm will close next week. The surveys are back for the Crisman farm and the Charles Gordon farm. Mortgage subordination issues are being worked out for the Warren farm.

**NEW BUSINESS:**

A. WILLIAM GORDON HOUSE REQUEST:

Donna said the Bill Gordon farm was closed February 19, 2010. The farm was preserved with County funds. There is one house on the property. Last week Donna drove by the farm and realized the house wasn't there. She called Mr. Gordon the next day to ask what happened and he said he took the house down. Donna explained that he should have come before the Board to show cause, etc.

Mr. Gordon sent Donna a letter from his engineer attesting to the structural condition of the farmhouse. The engineer said that inspection of the entire residence determined that the original portion of the structure was in poor structural condition. The newer addition constructed on the right side of the building was sound and in good condition. Most of the floor framing had deteriorated to a point where it was not salvageable. The floor framing, ceiling framing and roof framing all were severely undersized, creating sagging floors and ceilings throughout. The existing foundation required an enormous amount of work and needed to be replaced as well. The engineer said in his opinion it made absolutely no sense to renovate the existing farmhouse due to the structural condition of the building.

Mr. Gordon has a zoning permit dated March 22, 2011 for replacement of the single family house. He also submitted the house plans. His intention is to rebuild the house in the same footprint. The original house was 36' x 28'. He said that the new house is the same size and in the same location.

A blueprint was provided for the Board's review. Discussion followed.

**MOTION:**

A motion was made by Lori Day that the SCADB retroactively approve construction of the Bill Gordon house as shown on the provided blueprint on the exact existing footprint. Ms. Day added that the only reason the Board is approving this retroactively is because the new house is on the exact footprint, is of similar size house, etc. However, in the future, if Mr. Gordon decides to make any changes to this house or anything else on the property, he needs to abide by the Deed of Easement and come before this Board first. The motion was seconded by Fred Hough. A roll call vote was taken. All were in favor.

**MOTION:**

A motion was made by Lori Day to direct Staff to send a letter to Mr. Gordon advising him of same. The motion was seconded by Brian Hautau and carried unanimously.

B. HAMPTON TOWNSHIP FARM STAND ORDINANCE:

Jane Brodhecker recused herself and left the room. Vice Chairperson Lori Day took over the role as Chairperson.

Lori Day asked Dennis McConnell to begin the discussion. Mr. McConnell said that on April 11, 2011 he corresponded with Judge Theodore Bonzanelis with regard to the Judge's Court Order in the matter of Concerned Residents of Hampton Township vs. Hampton Township and Hampton Township Committee. He advised Judge Bonzanelis that this Board believed it had the right to review this Ordinance under the Agriculture Retention and Development Act instead of the Right to Farm Act. He also wrote that unless he heard to the contrary, the Board would hear it in that fashion.

Mr. McConnell said that Judge Bonzanelis' Order stated that if the Board declined primary jurisdiction on this issue, this case would go back to him. Mr. McConnell said he did not want to start a proceeding without giving the Judge an opportunity to take the case back. Having this case heard by this Board changes the appeal process. If it was heard under the Right to Farm Act, it would be appealed to the State and then the Appellate Court. Here, the Board is making recommendations which will be sent to the Municipality. They can either take the Board's recommendations or not---they are not required to take the recommendations. If the Municipality inserts the recommendations into the Ordinance itself, this Board could still hear a complaint from a farmer on a case-by-case basis.

There are items of correspondence from the parties, including one dated today from Mr. McGovern, who is present this evening. He said this Board is not under any time constraints and does not have to make a decision this evening.

Donna said prior to tonight's meeting the Board received the April 26<sup>th</sup> packet of information from Laddey, Clark and Ryan. This evening they received a letter dated May 16 from McGovern and Roseman. The April 26<sup>th</sup> packet contained a copy of the current Ordinance No. 2011-01, Exhibit A.

The meeting was opened to the public.

Frank McGovern, Esq., attorney for Hampton Township, said that attached to his letter is a more complete copy of the overall Ordinance. Ordinance No. 2011-01, attached to Mr. Clark's letter are the Amendments to the Ordinance. Judge Bonzanelis' order was to review the Ordinance as it was passed in 2008 and amended in 2011. He explained that the copy of the Ordinance he provided is complete. It shows the original Ordinance written in black, the Ordinance as passed in 2008 is written in blue and the amendments from 2011 are written in green. He clarified that what is written in blue and green are the only two parts of the actual Farm Stand Ordinance. The text written in black is there for context.

Lori Day closed the meeting to the public. The Board began by reading through and then discussing each section of the Ordinance.

- It was questioned whether existing farm stands would be grandfathered?
- It was the Board's consensus that limitation on the size of the farm stand directly proportioned to the amount of acreage being farmed is inappropriate. There should be a development of some measurable size of the farm stand based on the production potential of the farm itself.
- Mr. McConnell suggested that the Board make a recommendation that 1,000 sq. ft. should be calculated based on those existing portions of the farm that are used as a farm stand presently or possibly in the future.
- The provision that buildings should have a minimum distance of 35' from the edge of the pavement to the road right-of-way should grandfather existing buildings.
- The maximum height of a display shall be 15 ft. with the exception of farm equipment or farm product used for outdoor display.
- The limitation of farm products not produced on the farm but sold as farm products under the Right to Farm Act as approved by SADC needs further research.
- Existing access points (driveways) should be exempt.
- Two single sided signs should equal one double sided sign.
- Distance of sign from roadway should be dependent on topography.
- Signs should be allowed along road that do not limit sight distance or impede the traveling public.
- Strike "retail business" and add, "selling season."
- Strike entire section about reporting income on an annual basis. Such information can be provided upon request of the municipality.

The meeting was opened to the public.

Frank McGovern said it was his understanding (from what was discussed here) that if the town wanted information on the farmer's income from the farm stands, they can ask the farmer to provide the information. He asked the Board if that would be a provision they would allow. Mr. McConnell said the farmers must comply with the terms of the Right to Farm Act and that is the ratio of 51%/49%. Mr. McGovern asked how a town could enforce that provision.

When asked if there were any grandfathering provisions in the ordinance, Mr. McGovern said there are provisions for pre-existing non-conforming uses but questions relating to this should be addressed to Mr. Morgenstern, the Hampton Twp. Planning Board Attorney.

Mr. McGovern asked for a clarification regarding the limitation on the size of farm stands in proportion to the farm size. Mr. McConnell said there is great diversity of soils in the county. The Board wants to research the methodology because some farms can generate a lot of produce on a small farm because they have great soils. They do not want to eliminate the farmer with great soils from having a larger farm market on a small farm.

Ursula Leo, Esq., of Laddey, Clark and Ryan said she represents the Concerned Residents of Hampton Township. She said according to the Hampton Township Ordinance, if a farmer comes to this Board for a Site Specific Agricultural Management Practice, they still have to go back to the Township for minor site plan approval. This requires a plan, a surveyor and engineer to do the plan. She said there is nothing in the Right to Farm Act which requires that.

She felt the Board understands the issue regarding the farm stand size limitation. She said the 51%/49% requirement is clear to everyone and questions why there needs to be provisions in the Ordinance at all. The provision for the display of one of each product needs to be taken out. She said that three temporary signs on a lot of road frontage are not enough; and that under the Municipal Land Use Law, the farm name is considered a sign.

Ms. Leo said that variances and waivers involve going back to the town. A site plan certified by the preparer of the site plan adds costs. She agrees with the Board's feelings on proof of sales. She added that there aren't any public health or safety justifications and that profits and growth are being limited by this Ordinance.

Jim Hunt asked for a clarification: Ms. Leo said this Ordinance requires minor site plan approval. Her position is if a farmer chooses to come to this Board for a Site Specific Agriculture Management Practice, that farmer should not have to go back to the Hampton Twp. Planning Board for any sort of approval. They do have to comply with construction and parking regulations. The minor site plan involves application fees, review fees, escrow fees, and if they do not meet the Ordinance requirements, variances and waivers also involve costs, including the cost to publish notices.

Tom Brodhecker thanked the people who attended this evening's meeting to show that there are many people who support the Ordinance change. He said up to 75 people attended the Hampton Township meetings when the Ordinance was being drafted. Many of the issues can be solved by complying with the State Right to Farm Act. He said he understands the Township's concern about abuse of the 51%/49% rule. If the farmer is aggrieved by nuisance complaints, the only recourse a farmer has is this Board. He said it is none of the town's business how much income he has and he would fight them on this issue; but he would not fight this Board on the issue. The Right to Farm Act was written to stop nuisance complaints and harassments to

farmers in the operation of their business. He believes the future will have more small operations trying to make a living by innovative means.

Phil Brodhecker referenced Mr. McGovern's letter which said no one commented on the ordinance. He said there have been a lot of people participating. The Town has an Agricultural Advisory Committee on their books that they haven't enacted or enlisted people to participate on it. He made a recommendation that they utilize that Advisory Committee to help them write this Ordinance. He said it is very clear that the people writing the Ordinance do not understand the State Right to Farm Act. There were five to seven people that stepped forward and volunteered to the town. They sent letters to the Township or verbally volunteered in a meeting, and nothing came of it. The requests were not even in the Minutes of the meetings.

Mr. Brodhecker pointed out that no other businesses are restricted on their building size based on the lot size. Regarding the requirement of having only one item on display and the others being out of visible sight, most farms have wide open fields which are extremely visible.

Edward H. Brown said he has grave concerns when he hears statements that are erroneous such as concerned residents not being in attendance at certain meetings. He said there was a meeting that he was about to attend and he found out that a member of the Township Planning Board asked to have police and dogs there to quiet the participants. He said this was nothing more than an effort to have a chilling effect upon the members in support of the Brodheckers and the farming community. He hoped that this Board took this type of behavior into consideration when they make their final determination. He said a number of concerned citizens are of opinion they should not go to any future meetings or bring their children because they couldn't do it in a safe manner.

Scott McGrath said he has a small tree farm for fuel wood and Christmas trees. He asked how he was supposed to compete with other farms throughout the state if only Hampton Township has these restrictions. Mr. McGrath said he was one of the people that volunteered to be on the Advisory Committee, and as Phil Brodhecker said, nothing ever came of it.

When asked if he has a farm stand, Mr. McGrath said he does not have a farm stand but he does sell fuel wood. He has cord wood on the property and if he were to store it all inside, he'd be very close to the 1,600'. He has a big concern about storage. Nobody wants to buy wet firewood. It has to be seasoned. So that means he has to have 10-12 cords ahead of what he can farm in one year so the wood has time to dry out. Tree farms have never been considered through any of the Hampton Township proceedings.

The meeting was closed to the public.

Donna said the State is currently in the process of gathering information on farm stands to develop their own farm stand AMP. This will be discussed and evaluated at the State level in the near future. She said she and Brian Smith, of the SADC, visited half a dozen Sussex County farms last week (small, medium and large farms.) State staff is going throughout New Jersey to visit farm stands in every County so that when

they write their Farm Stand Ordinance it will reflect what exists now statewide for all types of farms, vegetable, Christmas trees, horticulture etc. They are looking at everything. When asked when the State's AMP will be ready, Donna said probably much later this year if not next year based on how long it has taken some of the other AMPs to be developed.

**MOTION:**

A motion was made by Joan Snook Smith directing Mr. McConnell and Donna to meet with Rutgers Cooperative Extension and representatives at the State level to develop recommendations for the concerns discussed this evening to be discussed at the next meeting. The motion was seconded by Jim Hunt. A roll-call vote was taken. All were in favor.

Jane Brodhecker was called back to the meeting.

C. 2011 FPP RANKING DISCUSSION:

Donna advised the Board that the County has \$450,000-\$500,000 for farmland preservation. The State is also has \$1.5 million for each county (the County would have to match the State funds.) The County also has reimbursements coming back. She suggested that the Board go through the list and eliminate the farms that do not meet the criteria. Each farm has to either have 25 acres of tillable land and if it is smaller than 25 acres, it has to have 50% tillable land.

A list of the farms to be ranked was provided to the Board. Jane Brodhecker noted that the Palladino and McPeek farms were not on the list. These farms were added to the list. The Board began by eliminating these farms that did not meet State criteria: the Borne farm in Wantage, the Fredricks farm in Wantage, the Kline farm in Wantage, the Lee farm in Frankford, both Weshnak farms in Wantage and the Palladino farm in Wantage.

The Board discussed each of the remaining farms. They ranked them as follows:

1. The Lane farm in Wantage
2. The Taggart farm in Andover Township
3. The Jouritsma farm in Lafayette
4. The Keyes farm in Wantage
5. The Miller farm (field side) in Green
6. The Miller farm (house side) in Green
7. The Mazza farm in Frankford
8. The McPeek farm in Vernon

**MOTION:**

A motion was made by Lori Day to accept the ranking as listed above. The top seven farms will be recommended for appraisals. The motion was seconded by Brian Hautau and carried unanimously.

**PUBLIC COMMENT:**

None

**ADJOURNMENT:**

All business having been completed, a motion to adjourn the meeting was made by Lori Day. The motion was seconded by Fred Hough and carried unanimously. The meeting adjourned at 10:55 p.m.