

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

MAY 16, 2016

The meeting opened at 7:30 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
Cece Pattison (7:35 p.m.)
Joan Snook Smith
Peter Southway

STAFF PRESENT: Autumn Sylvester, Program Manager
Rudy Dragan, Planning Aide
Antoinette Wasiewicz, Recording Secretary

ALSO PRESENT: Steve Komar, Rutgers Cooperative Extension
Debra Nicholson, Esq. for 56 & 58 Sunset Inn Road
Jason Dunn for 56 & 58 Sunset Inn Road
Jason Wessling
Steve Snook

MINUTES CORRECTION/APPROVAL:

A motion was made by Peter Southway to accept the Minutes of March 21, 2016 as presented. The motion was seconded by Joan Snook Smith. All were in favor, with abstentions from Jane Brodhecker and Lori Day. Motion carried.

CORRESPONDENCE:

A. SADC UPDATE:

The Board was provided with the April and May updates from the SADC. The Board said they read the document and did not have any questions.

B. ARTICLES OF INTEREST:

Autumn provided the Board with articles related to Henry Byma being recognized as one of 100 leaders who are changing rural communities and agriculture for the better and Women farmers who are banding together and becoming a larger demographic in the agricultural community.

C. PROPOSED WATER LINE IN WANTAGE TOWNSHIP:

Autumn reported that at the end of March, she received a telephone call from Judith Yeany from the NJDEP, asking if she was aware of a proposed water line for the Borough of Sussex. The public water line will run from Lake Rutherford down into the Borough. The proposed line is through the preserved Amwell farm on Brink Road. Autumn advised Ms. Yeany that she was not notified of the water. This will require a special hearing with the SADC and the SCADB, as was needed with the Tennessee Gas Pipeline and PSE&G electric lines. They have met with Brian Smith, Esq., counsel for the SADC. Brian Smith advised Autumn that they will be notifying her about this project.

Autumn said there will be a hearing to do an environmental assessment report and examine any and all alternatives. The Borough has to come before the SCADB for a hearing, where it can either be approved or denied. It will then go before the SADC for the same process. ? will also need approval from the Governor.

There are turbidity issues with the water. When there is a high rain event, it causes the storm water system to overflow and the effluent goes into the drinking water. This water line will help solve those issues. All of the land surrounding Lake Rutherford is either owned by the DEP or is a preserved farm.

AG. AGENT'S REPORT:

Steve Komar reported that Allison is now the full time support staff at Rutgers Cooperative Extension. She had been working with them for about eight months on a part-time basis and when the County allowed them to hire a full-time person, they selected Allison.

Steve advised the Board that if they had any kind of weather-related damage over the last few days to let him know. He will make a report and send it to the FSA. There was some hail and a cold snap in the County after planting. He said even if it's grain corn and it may grow out of it, he'll make a report so that it shows there may be a potential for damage.

Steve said the Sussex Community College hired a new coordinator for the Ag. Program. His office is working with them to have agreements in place to go to Rutgers. He said he is also on the Planning Committee for the new Rutgers Ag. Curriculum and will keep the Board up to date on the progress.

The Master Gardens were out this morning getting the Newton Green ready for the Memorial Day Celebration.

Lori said at one point the Sussex County Community College was going to consider reinstating or working closer with Bergen County on the Vet Tech program that they once had. She asked Steve if that was coming under the scope of the Ag. Program. Steve said that would not be part of the Ag. Program. SCCC's program is for horticulture and and agri-business.

Brian asked for more information about the Pesticide Record Keeping and Training. There is a template form to keep track of your pesticides. He also sent an email about making sure to notify the Fire Department.

OLD BUSINESS:

A. FY 2013 APPLICATION UPDATE:

Autumn gave an update on the Fiscal Year 2013 farms. All of the surveys have been received, except for Giantasio. They had to do the lot line readjustment and needed municipal Planning Board approval. It also had to be reviewed by the County Planning Board. Autumn said she spoke with Dan Kent, who said he received it, but is waiting for the attorney to file deeds. The draft deed was received for Paladino, but not for Duddy. The appraisals for Mulvaney were sent to the SADC for review, but have not yet received the certified value. The Sella farm will close on May 23. The Goldman closing should follow shortly after.

B. VAN WINGERDEN APPLICATION:

Autumn reminded the Board that during the March meeting, they discussed whether or not they wanted to preserve this farm. The Board decided to table this issue until there was a full Board present. The April meeting did not have quorum.

There was concern because they planned to use the money from the purchase of the easement to start an agricultural program. Joan asked if there was any change since March. Autumn said the VanWingerden's have five pigs for sale and that they plan on getting more chickens. Joan said they have been clearing the land and have been doing a lot of work. Brian said the real question is whether it is a developable property. He added that it has the potential to be a very nice farm. Lori said she does not believe it is the Board's business to tell people how to spend their money.

When discussing whether the property was developable, Brian said there is a road on either end and a road goes right through it. It may be developable in the future. Autumn said it does not have frontage on Morris Avenue, but it does have an access easement through County-owned property. The access easement language says that they would be able to get an additional housing opportunity from that access.

Jim asked Autumn to refresh his memory about the farm details. She said there are 25 acres of tillable land. She believes there are 80 acres in total. They are not requesting a severable exception. Lori said if the farm was preserved and the landowners use the money to develop the farm, it would increase agriculture. However, the Board does not have any control or say over that. Cece said the Board could ask for a business plan. Peter said the applicant is his cousin and that he must abstain from voting. Jane said they are her neighbors and she must also abstain.

MOTION:

A motion was made by Brian Hautau to approve the VanWingerden application for farmland preservation. The motion was seconded by Lori Day. A roll-call vote was taken. All were in favor, with abstentions from Jane Brodhecker and Peter Southway. Motion carried.

NEW BUSINESS:

A. DIVISION OF PREMISES – SNOOK:

Joan Snook Smith said she and her brother, Steve Snook, are here this evening to propose a subdivision of premises of the Snook Farm. The farm was preserved a number of years ago by her mother, Barbara Snook. She passed away in 2010 and since then, Joan, Steve and another brother, Jack, have been sharing in the farm. Their proposal is to divide the farm into three farms, which would require two new property lines. They are looking to subdivide because each sibling has different plans,

thus each farm would be different. They want to operate independently of one another. Farm number one would be Jack Snook's farm with 52.3 total acres. Farm number two would be Joan's with 53.3 total acres. Farm number 3 would be Steve Snook's with 37 acres. That farm has more tillable acres than the other two.

Joan said they tried to subdivide the property in 2008, while her mother was still alive. It was approved by this Board but the State did not approve it. They felt the subdivision was being done for estate planning purposes. Joan said that was not the reason for the subdivision request. She hopes that things have changed at the State level and that with three distinctive different plans for the farm, she hopes the State will understand the need for the subdivision.

Autumn explained to the Board that for a division of premises the Board has to evaluate the agricultural purpose and agricultural viability. For agricultural purpose, there has to be an enhanced agricultural production activity that does such as expansion, diversification or intensification. Lori said in looking at the future plans by each of the landowners, it appears one farm will be dairy goat, one will be beef, and the other pigs and Christmas trees. This will diversify everything that was previously done on this farm. In 2008, the State felt that the farm was being subdivided to be sold off and the family was moving. She added that each of them all own homes adjacent to the proposed farms.

Jane asked how much of the operations are active on the acreage now. Steve said that, two weeks ago, he planted almost 100 trees. He is also in the process of buying pigs. He said this subdivision will also get the families involved again with the family land. Prior to that, the family watched someone else use the land, through leasing.

Jim asked about the housing. Joan said her house is not part of the preserved property but it is adjacent to the piece of the farm she is proposing. She pointed out the property on a map. Her farm would encircle her house. Her brother Jack has a house and his business next to his proposed farm and her brother Steve owns a house at the other end of the property and is also right next to his proposed farm. Jim asked if the proposal was to annex the houses to the farms. Joan said, "No." It doesn't have anything to do with the houses. He then asked how they would get a housing opportunity on the farms. Joan said the farm is already proposed without housing opportunities. Jim said that was a mistake then, but that they are now creating three small farms without a housing opportunity. He asked how the farms could be sold without a house. Steve said it could be sold with the house that adjoins the farm, separately. He added that his mother's house wasn't attached to the farm either. Joan said in 2008, that wasn't an issue. It can't be changed now, because it is already preserved. Cece felt that the smaller parcels would be more sellable, even without a house. Joan said if the farm weren't subdivided and they sold it, there isn't a house or the opportunity for a house that goes with it. The Board discussed a subdivision of premises that had the same scenario. Peter said if the landowners wanted to, they probably would be able to annex the lot with the house to the preserved parcel.

Autumn asked for a clarification on the drainage issues. Joan said there are drainage ditches on farm number 1, which had been there for quite a while, using State money. Jack takes care of those. The original application they prepared had part of those ditches on farm one and part on farm two, but they changed it to simplify it.

Peter asked about the new lot lines. Joan said there are two new lot lines. Proposed farm number one was originally a separate farm. It was purchased by the family in the 1950's and added to the family farm. They are proposing a new property line to divide farm number one from farm number two and another property line to divide farm number two from farm number three. She pointed the lot lines out on a map. Joan said if this Board approves the subdivision, they will need to go to the State. Autumn added that they must go to the township and the County after the State.

Autumn asked for a clarification on the access to the three farms. Steve Snook said that Pelletown Road runs up through the entire farm. Autumn asked if there were existing driveways each section. Joan said they all go off of Pelletown Road. She added that the new proposed line between farm number two and farm number three is an old farm road that goes through. Autumn asked if there would be an access easement to permit the access. Joan said it can be. Autumn asked if farm number one would share the same farm road. Joan said, "No" because farm number one will be accessed off of Pelletown Road. All of the property is on both sides of Pelletown Road. Autumn asked if there are existing roads. Steve said they are.

Autumn asked if there are any proposed agricultural structures on farm number one. Joan said there is a small shed on barn three which is being used as a shelter for animals. She asked if there were any structures proposed on any of the three farms. Joan said not right now. Lori confirmed that as each of the three farms exists right now, they are completely usable. Joan said that eventually she may need to build something on farm number two, but she does not plan to do that right now. Autumn confirmed that her only access to farm number two was from the shared driveway. Joan said for that part, "Yes." The other part has access from her driveway and both sides of Pelletown Road.

MOTION:

A motion was made by Peter Southway to approve the Subdivision of Premises for the Snook farm. The motion was seconded by Cece Pattison. A roll-call vote was taken. All were in favor with a recusal from Joan Snook Smith.

Autumn said one that once they submit to the township and the County, she will need a copy of the final subdivision plan.

The Agenda was amended to New Business – C.

B. RTF – JR BELLUSH PRELIMINARY INFORMATIONAL SESSION:

Autumn said this was sent to the Board by email. It was to certify that this is a commercial farm. The landowner built a structure without a building or zoning permit. Right to Farm does not protect against violations of State laws or requirements.

MOTION:

A motion was made by Lori Day to deny the Bellush application for Right-to-Farm protection because a commercial farm must comply with relevant State statutes and requirements. The motion was seconded by Jim Hunt and carried unanimously.

C. RTF – 56 & 58 SUNSET INN ROAD:

Debra Nicholson said she is the attorney for the applicant. Jason Dunn, from Dykstra Associates is also here to give testimony about the site plan and about some of the technical aspects of why they believe the site specific agricultural management determination is applicable under all of the codes and regulations. She said this is a very exciting, innovative concept by the next generation of farmers.

Jason Dunn said he is a Professional Planner in New Jersey and works with Dykstra Associates in Sparta. He is also a licensed Landscape Architect. He also has a degree in environmental planning and design. Jason Wessling, the applicant was also present. Jason Dunn and Jason Wessling were sworn by Autumn Sylvester.

Jim Hunt asked why they came before this Board. Debra Nicholson said a Right to Farm Act circumstance as opposed to needing a full approval through the municipal land use process is a chicken and an egg situation. She believes it is appropriate to be determined to be an agriculturally appropriate use and then go through the zoning process at Lafayette for any of the site specific items that they are required to be in compliance with. Autumn said the applicant was certified as a commercial farm and they can proactively come to the Board prior to being denied by a municipality.

Ms. Nicholson said traditional farming has had to evolve because there's not enough income and revenue to survive. Because of this, there are some ideas that are non-traditional and municipalities don't know how to deal with that or interpret Right to Farm. They only apply their strict zoning regulations. The applicant does not fit into that circumstance because this is a farm in a residential zone. They are proposing a commercial activity that's completely related to the farm. At the municipal level and the Land Use Law, there is a clash of ideologies. She believes this Board can set the standard to help farmers survive.

Peter said he thinks Jim is saying that our normal Right to Farm comes after a municipal denial. Jim said he does not know if he can make a judgement without

knowing whether the township has approved or denied. Autumn said if this Board does not want to give approval on certain aspects, they can defer to the municipality. It is permitted. Lori asked if the applicant was aware of the 51% rule. Ms. Nicholson said they were aware of the rule.

Jason Dunn said the applicant is asking the Board to consider is a farm market. The preserved farm would be the source of the food, or at least 51% of it, which would be provided at the farm market. It would be supplemented by other things that are outlined in the map provided to the Board. The map shows how the property would be used.

Mr. Dunn said along the front of the property, along Sunset Inn Road, there would be annual flowers, shrubbery or items showcasing the season. The public would not be wandering into those areas. It will be used for curb appeal. An area that surrounds and infills the parking areas and the building that will be expanded will be an outdoor retail area for hanging plants and seasonal items for sale. There is an existing structure on the site, a single two story, single family home which has been vacant for a few years. The Wessling's would like to add about 1,600 sq. ft. on to the rear of the building to house the retail component of the farm market. It would have a wrap-around, covered-porch on three sides with about six tables for customer's convenience and about six tables throughout the site. There will not be table service or alcohol.

Mr. Dunn said the view from this site is incredible and they want to capitalize on that. They also see it as a critical part of the family's plan to keep this farm profitable. The building will have a variety of items which are listed and acceptable in the agricultural management plans that the State provided in the Right-to-Farm Act. It would include canned goods, baked goods, pies made on-site, meats and cheeses. They are also proposing some supplementary products, such as prepared foods items---sandwiches, soups, smoothies, all tying back to the farm's food products.

Circulation for the cars entering the site is in a one-way pattern. The two entrances and paved areas have already been approved by the County Engineer in 2014. Waivers were granted for site distances and catch basins. Autumn said the plans that were submitted to the County Planning Board and plans that were approved had a paved parking area, not gravel. Jason said the current application proposes to keep the pavement at the entrances but to keep the parking areas graveled. They want to keep down the cost and also feel that the gravel is more in keeping with the farm atmosphere. They will keep the curbing to define the areas of parking. The curbing would be limited to that which is around the house and also the entrances. They will also provide for handicap parking. It was designed and graded in conformance with ADA regulations to access concrete sidewalk and the porch on the south side of the building.

There is an existing well on the site as well as an existing septic system. The septic system has to be appropriate for a farm market retail operation. At the rear of the site

there is a proposed septic area. Test pits were also done and it was witnessed by the County. The soils were found to be appropriate. There is an area for a variety of low-key events to attract customers, such as petting zoos and small animal displays.

The existing first floor of the house would be used for utility purposes, food preparation, canning, food storage, a walk-in refrigeration unit and a place for the employees to get coffee, etc. This section would not be open to the public. It is about 1,250 sq. ft. A commercial kitchen will also be in this area which will comply with all building codes.

Mr. Dunn said they are not proposing any pole lighting on this site. They want to provide light from the building and keep it low-key. Any additional lighting that would be required would be downward pointing.

Mr. Dunn said any approvals this Board may grant would be limited to what the map shows. Cece asked if the Board has the right to approve things. Autumn said there are certain things the Board can approve and there are certain things they have to legally defer to the municipality and the County. The Board can also approve certain elements of site plans. They must consider the health, safety and welfare of the public. Peter said he believes this Board can't approve anything until the applicant has been declined by the town. Autumn said the Board can hear this application. Jim said he supports the project. He asked if the proposal is covered under the Farm Market AMP. Mr. Dunn said "Yes," and that's where they pulled many of their ideas from. Jim asked if the square footage, setbacks, areas were all taken from the AMP. Mr. Dunn said it was not. Autumn said that is because it is an existing structure. They had the AMP for on-farm, direct marketing facilities. There are typical site plan elements that are discussed that in order to receive right to farm protection they have to meet. There is also a section in those regulations that allows an applicant to if they prove a legitimate farm based interest for not complying with a certain setback or buffer requirement, to the Board, then the Board can grant that.

After a lengthy discussion, Autumn said the Board would like additional information from the applicant. Joan said the Board has never done a Right to Farm determination under these circumstances and she feels as though they are doing an "end run" around the municipality. Autumn said the applicant was required to notice the municipality and the Land Use Board Secretary. She said she spoke with the the Land Use Board Attorney and the Township Clerk. They are aware of the application and it was discussed at their May hearing and they did not have any comments or objections to the farm market.

Ms. Nicholson said there is a clash of rules. Because this area is zoned residential, it would require a Use Variance for a farm market to be located on a farm. That would involve five votes, paving, lighting and other things which were not appropriate for this project. Lafayette knows that their rules do not work well for this circumstance. That's why they did not attend tonight's meeting to oppose the project. Brian then asked if

they were here this evening for this Board's approval of a farm market. Autumn said that in order for the applicant to get Right-to-Farm protection, they have to comply with the SADC's AMP for on-farm direct marketing, which includes some site plan approval elements that are typically vested with municipalities. These include setbacks, parking area requirements, signage height and bulk and area regulations. Jim said then they are asking for waivers from some of those elements. Autumn said that was correct and that the Board needs to ask those kinds of questions. Joan said she would be more comfortable if the County's attorney were present. Autumn said she did ask him to attend and review. Jim said he looked at the material that was provided to him but that he was not prepared for this testimony. Peter said that the Board has been asked to preempt something that has not been declined. Site specific applications have the purpose of preempting the local municipality that may decline something, Ms. Nicholson said that process is such that if, for example, the Board agrees that paving is not appropriate or for some reason the town, in evaluating the drainage, said it was. If the applicant disagreed with that determination, he would defer back to the Board for a judgement call. The town is saying that the way the Land Use Law is written, they can't help the applicant with the farming activity.

Autumn said that agriculture is a permitted use in the R-5 zoning district, which is where the farm is located. The applicant will be making a presentation on the use and some of the bulk and area requirements of the AMP. The Board then can listen to that testimony, ask questions and then make a decision either disapproving or approving, or deferring back to the municipality.

Joan said that she would also like County Counsel to be present for this hearing. She asked if this hearing could be deferred until next month. Mr. Dunn said it would help him for the Board and their professionals to identify the areas of concern to them. Jim said that Mr. Dunn should provide the Board with a list of what does not comply to the AMP direct marketing. Mr. Dunn said that he could provide the Board with a list of things that are not in strict compliance. Peter said that if the Board is going to override municipal regulations according to the AMP, but they need to know what they're overriding. They want to make sure that what they approve stands up. Ms. Nicholson said she will work with Mr. Dunn to provide a comparison chart of the zoning regulations and the AMP. The applicant needs a determination, standard by standard, that they have satisfied the Board's analysis and that they're granting the approval. Ms. Nicholson said she will get the information to the Board in advance of the next meeting. Jim said he wants to see as much information as possible.

MOTION:

A motion was made by Peter Southway to table this issue to the next meeting so that County Counsel can be present. No future notice will be required. The motion was seconded by Brian Hautau and carried unanimously.

D. RESOLUTION TO TERMINATE THE GARY & KAREN SMITH 8-YEAR PROGRAM:

Autumn said the Smiths were under the impression that they were no longer under the 8-Year Program. She said the Resolution to terminate the 8-Year Program must be filed with the Clerk.

MOTION:

A motion was made by Jim Hunt to approve the Resolution to terminate the 8-Year Program on the Gary and Karen Smith farm. The motion was seconded by Joan Snook Smith 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 Joan Snook Smith and carried unanimously. The meeting adjourned at 9:20 p.m.