

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

SEPTEMBER 19, 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
Brian Hautau
Jim Hunt
Cece Pattison
Joan Snook Smith
Peter Southway

MEMBERS EXCUSED: Lori Day, Vice Chairperson

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

ALSO PRESENT: Steve Komar, Rutgers Cooperative Extension
Jason Wesling, for 56 & 58 Sunset Inn Road, LLC
Len Wesling, for 56 & 58 Sunset Inn Road, LLC
John Bellush, JR Bellush Associates, LLC
Angela Paternostro-Pfister, Esq., Attorney for JR Bellush Associates, LLC

MINUTES CORRECTION/APPROVAL:

For the Minutes of May 16, 2016, Joan Snook Smith said there was an error on Page 6, Paragraph four, second sentence. She said “farm number three” should be “farm number one.”

A motion was made by Brian Hautau to accept the Minutes of May 16, 2016 as corrected. The motion was seconded by Cece Pattison. All were in favor, with an abstention from Joan Snook Smith. Motion carried.

When the recording was reviewed, it was determined that Ms. Snook said, “farm three.”

A motion was made by Brian Hautau to accept the Minutes of June 20, 2016. The motion was seconded by Cece Pattison. All were in favor, with abstentions from Joan Snook Smith and Peter Southway. Motion carried.

The Agenda was amended to Old Business, B.

CORRESPONDENCE:

A. SADC LETTER TO BOROUGH OF SUSSEX:

The SADC responded to Sussex Borough’s Hauser Engineering Report and the Notice of Intent for the water easement to go through the Amwell farm. The report addressed all the issues that the Board had which were not provided in the original report. The SADC wanted more information on other possibilities, a breakdown of the total cost, whether the groundwater is a viable source for the Borough, an expansion on the alternative situations, the width of the easement being sought and future details of the transmission infrastructure, including the pipe. Will it be above ground or underground? Will they have to clear any of the woods or trees out of the area? Where will the construction equipment be stored during construction? Are there any post-construction constraints? They also want the Borough to consider alternative funding scenarios.

B. SURVEYING SERVICES INFO – FROM SADC:

Information was received from the SADC regarding proposed changes to the scope of surveying services. There was a summary memo which included updating the surveying requirements and clarified information on sizes and utility and drainage easements.

C. MAY SADC UPDATE:

The Board received this information in May.

D. 2018 PIG APPLICATION LETTER TO MUNICIPALITIES:

Autumn said last week she sent out a notice to all of the municipalities in the ADA area notifying them that the County will be applying for the SADC's Planning Incentive Grant in December. If they have any questions or if they require any information, they should let her know by that time.

E. HARVEST, HONEY & GARLIC FESTIVAL:

The Harvest, Honey and Garlic Festival will be held on October 8. Autumn said she sent out vendor registration forms and vendor information about three weeks ago. The County has been having email issues so the information will be sent out again tomorrow. New signs have been ordered which now show, "Harvest, Honey and Garlic Festival" instead of "Harvest Festival." The new sign can also have the date updated every year. It also says, "Free."

AG. AGENT'S REPORT:

Steve said he has a couple of extra copies of the Right-to-Farm Mediation FAQ Sheets. He said that the Extension office is having some budget issues. The only Counties that are hiring agents are in the southern part of the State. The deadline for pesticide license is in October. There will be pesticide training before the deadline. He will keep the Board posted with an email.

NEW BUSINESS:

A. REAPPOINTMENTS:

Autumn said that Jane, Cece and Joan's terms were to expire on September 30, 2016. They have all agreed to accept another three-year term. The Resolutions will probably be available in time for next month's meeting.

Peter Southway asked if he would have to resign from the SCADB if he brings a Right-to-Farm issue before the Board. Autumn said that he would have to resign if he wanted to preserve his farm, but for a Right-to-Farm issue, he would need to recuse himself from discussion. She will confirm with County Counsel.

B. SADC RTF GUIDE – HANDOUT:

Stephanie Miller provided Autumn with copies of the Right-to-Farm Guide, Agricultural Mediation Guidebook and some FAQ Sheets related to each guidebook. Joan asked if these guidebooks are sent to the towns. Autumn said they are not, but that it was a good idea to provide them with a means to access this information online.

C. FPP APPLICATION CYCLE:

Autumn asked the Board if they could go back to accepting applications with a deadline instead of a rolling process. There is a lot of work involved in preserving a farm. She said she already spoke with Stephanie Miller. She would like to pause the acceptance of applications until March. Rudy said the benefit of having a deadline is that the Board can look at the applications as a whole and judge them against each other. The Board agreed that it was easier when they ranked multiple farms. This also takes away the question of whether they should save the money in case something else comes in. Autumn said the State wanted rolling applications because it helped their workload, but Sussex County is no longer sending the SADC a large number of applications. The Board agreed to go back to the old deadline of March 31. The applications that have already been submitted are being worked on.

MOTION:

A motion was made by Joan Snook Smith that the Board change the application process so that there is a March 31 deadline annually. The motion was seconded by Cece Pattison. A roll-call vote was taken. All were in favor. Motion carried.

OLD BUSINESS:

A. JR BELLUSH, LLC PRELIMINARY HEARING:

Autumn said this hearing is to determine whether JR Bellush, LLC qualifies under Right-to-Farm and to review the requirements for certification of the Commercial Farm definition. All of the documents that were received from the applicant's representative were sent out to the Board members. It includes the farm certification letter, the zoning violation letter, the 2016 Farmland Assessment forms, including 2005 Farmland Assessment forms, a supplemental form and two forms from 1993 and 1994. Their Woodland Management Plan was also submitted. Autumn said she included a copy of the Andover Township Zoning regulations and the Andover Township Zoning Map. A memorandum outlining the Right-to-Farm requirements for a commercial farm certification was provided to the Board members this evening.

Autumn said Mr. Bellush's farmland assessment comes from timber sales and woodland management. Since that is not an explicit Ag. Management Practice (AMP) through the Right-to-Farm regulations, the Board must determine if the production qualifies for a site-specific agricultural management practice.

Angela Paternostro-Pfister said she is an Attorney with the firm of Morris, Downing & Sherrerd. She said under the Right-to-Farm act, Mr. Bellush has the right to have the accessory structures without a principal structure because he is storing materials that are essential to the farming practices. She quoted the petty case that had a similar situation.

Autumn said there's also an issue because the structures were constructed without building permits. That is regulated by the State and the Board cannot supersede that. The Board did not have the official zoning denial. The zoning violation that was submitted seems to end with conversations she had with Mr. Suljic because there were no permits issued for construction. The Board can hear the zoning issues but it does not have jurisdiction over the building permits or any other State or federal regulations that there may be a violation with. Brian confirmed that the only thing the Board was doing this evening was to certify that this is a commercial farm.

Autumn said the property is identified as Block 71, Lots 3.22, 3.23, 3.24, 3.25, 3.26 and 3.27. They are all currently separately qualified under Farmland Assessment. The total acreage is approximately 32 acres. It is located in the R-2 Zoning District, which permits agricultural use. There are some sub-conditions for agricultural and farm uses. Those are related to setbacks for the outbuildings and farm structures. There are also prohibited activities listed, which include feed lot operations where animals are confined to limited areas for fattening prior to slaughtering. The spacing requirement for barns and outbuildings is 75' and from barns, outbuildings and accessory buildings, the minimum distance required between those structures and the property line is 150'. The lots are qualified for farmland assessment.

Tax information has been submitted by the applicant. They also submitted an IRS Form 1065 which showed the income and the amount of \$2,675.00 for the sale of firewood from 2016 and also filed in 2016. Also submitted was the 2016 form FA-1 and form WD-1 which showed income in the amount of \$2,471.00. These timber sales were the result of a harvest conducted in 2012 and 2013. The Farmland Assessment form for 2016 showed that there were 8,261 board feet of timber and six cords of firewood.

Autumn said that the applicant must also comply with all relevant federal and State statutes and regulations. The mapping for this site shows a C-1 stream that runs through the eastern side of the property. It has a 300' buffer on both sides. There are also deciduous wooded wetlands throughout the property. There is a 150' transition area required. She does not know where the structures are in relation to those environmental features, but Mr. Quinn did provide a letter, which was also included, from a prior subdivision application from the DEP which stated that the application that was submitted to their office was exempt from the transition area provisions of the Freshwater Wetlands Protection Act. The letter was issued prior to the 2008 regulations and these structures were built after that. The Freshwater Wetlands Act was revised in 2008, so the requirements were different. Autumn suggested that the applicant prove that those structures are outside of that area or that they can be located within the C-1 buffer.

Mr. Bellush said at the time of the subdivision, the exemption was issued and as long as there has been no change in the subdivision, the exemption is continued. The modification of the statute doesn't change the exemption that was obtained as part of

the subdivision. Autumn said that this only shows the construction of a 49-lot residential subdivision. She asked if that included structures. She did not receive a site plan or subdivision map, which would have shown the wetlands delineation. Mr. Bellush said that a subdivision map was filed with Sussex County. Autumn asked Mr. Bellush to provide her with that map. She also asked him to provide information saying that he is exempt from laws that were passed in 2008.

Peter asked about the size of the building. Mr. Bellush said it was 10'x10'. When asked if it was a permanent or temporary building, Mr. Bellush said the building is on concrete piers. The building was constructed in April or May 2015. There was some discussion regarding the fact that a 10'x10' building is exempt from zoning regulations. Peter questioned why Andover created a zoning issue if its own zoning regulations say that a 10'x10' building is exempt. Autumn said the issue is because there is an accessory structure without a primary structure. She said this issue comes up in many towns. Even though they permit agriculture as a principal use, agricultural structures are not being considered primary structures.

The lot in question is 3.22 and it was pointed out on a map. Peter said that there is a good chance the lot is outside the 300' buffer. Autumn pointed out the river and the 300' buffer boundary. Peter said that particular lot does not have any wetlands on it.

MOTION:

A motion was made by Peter Southway that the Board certify this farm as a commercial farm pending the submission of the requested information. The motion was seconded by Joan Snook Smith. A roll-call vote was taken. All were in favor. Motion carried.

The Agenda returned to Correspondence.

B. RTF – 56 & 58 SUNSET INN ROAD RESOLUTION:

The Board was provided with a draft Resolution which summarizes the two hearings and provides conditions for the 25 space parking area and the on-farm marketing facility. It also included a summary of the Board's facts and conclusions presented from the professionals representing 56 & 58 Sunset Inn Road, LLC.

MOTION:

A motion was made by Brian Hautau to accept the Resolution for 56 & 58 Sunset Inn Road, LLC. The motion was seconded by Jim Hunt. All were in favor, with abstentions from Joan Snook Smith and Peter Southway. Motion carried.

Autumn said a copy of the Resolution will be sent to the SADC, the municipality and the applicant. A draft copy of the Resolution was previously sent to Jason Dunn.

The Agenda was further amended to Old Business, A.

C. SUSSEX BOROUGH WATER LINE RESPONSE:

Autumn said that she and John Williams, Esq. drafted the response to Sussex Borough regarding the water line. Because the State's response was so thorough and addressed all of the County's issues, there did not seem to be a need to file separately. The County stated that it concurs with the SADC's report, that there were no additional issues and that the County joined the State's response.

D. RTF APPLICATION PROCESS DISCUSSION:

Autumn said she sent out the Warren County Right-to-Farm Program application. She said they have a good FAQ Sheet and feels Sussex County should have something similar. The FAQ Sheet includes an explanation of the Act, the eligibility criteria, the formal conflict process, the site specific agricultural management process, instructions and different forms. Currently, the County has the application forms but does not have a FAQ Sheet. She normally sent out the SADC's FAQ Sheet and encouraged them to look into the Agricultural Mediation Program. Burlington and/or Cumberland County has a requirement that either party or parties attempt to solve their issues through mediation before coming before their ADB's. Autumn said this is a good policy. She asked the Board if this is something they would like to start. The mediation process is provided by the State for free to municipalities, neighbors, farmers, etc. They would have to fill out an application and submit it to the State. The issue then goes before a mediator. When asked how mediators are qualified, Autumn said that there is a State list of professional mediators. They are not related to the agricultural industry. It is strictly run through the Office of the Attorney General or the DCA. The Board members agreed that applicants should be required to try mediation before coming before them.

E. UPDATE ON CLOSINGS:

Autumn reported that we are getting ready to close on Duddy. She needs to prepare the final closing documents with County Counsel. Paladino and Gianatasio have to refinance their mortgages before closing. They can either refinance that day, but the State recommends refinancing prior to the closing day. These should be closing before the end of this year.

There are also issues with the Stevens application. They have a subdivision that occurred on both sections of Drew Road, but there is no record on file with the County for a subdivision on two of the lots. They do not have to file subdivisions with the County, but it was a condition of approval. There was also a condition of approval for a drainage easement given to the township that affects the entire property. Autumn said that she and Stephanie of the SADC have been working with Vernon Township to have them either remove the drainage easement or revise it to permit agriculture in order to

proceed with the application. If it is not revised, at a minimum, the SADC will not give it Green Light Approval because agriculture use is not permitted. They are waiting for a response from the township's attorney.

F. LACZ FARM UPDATE:

The Lacz farm is under Green Light review at the State. They had an issue because it was first believed that the Borough was in a sewer area, but the Borough requested that the County revise their sewer service area to remove that, which was done. It also has a center designation in the State Plan in 2000-2001. Andover Borough brought it to their Council and decided they didn't want to have the center designation removed. The SADC has concerns because the farm is located within a center.

Autumn said it is not anticipated to be in a future sewer service area. It is not near the Lackawanna Cutoff Extension and therefore would not qualify for transit oriented development status with the DOT. The site is also not in the County's ADA. She would like to send a letter, either as the Acting Planning Director or on behalf of the ADB, to support the preservation of this farm. The Board agreed that she should send the letter.

Peter Southway said he read the letter from Sussex Borough regarding their waterline. When he was involved with PSE&G power line project, PSE&G took the SADC, the State of New Jersey and himself to court to move their power line to preserved land. The Judge made a decision under the Safety Exemption. He recorded that decision. Sussex Borough talked about safety issues in their letter. He believes that will be their argument. Autumn said that his was an existing easement that needed to be shifted. With Sussex Borough's issue, there is no existing easement. She agrees that the Courts will side with the safety issues.

PUBLIC COMMENT:

None

ADJOURNMENT:

All business having been completed, a motion to adjourn the meeting was made by Jim Hunt. The motion was seconded by Brian Hautau and carried unanimously. The meeting adjourned at 8:30 p.m.