

SUSSEX COUNTY OPEN SPACE COMMITTEE

MINUTES

DECEMBER 5, 2013

The meeting opened at 7:33 p.m. by Chairman Lundin 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: Cliff Lundin, Chairman
Glenn Schweizer, Vice Chairman
Louis Caruso
Lisa Chammings (7:43 p.m.)
Wolfgang Gstattenbauer
Donald Ploetner
Wes Powers

MEMBERS EXCUSED: None

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

ALSO PRESENT: Dennis Toft, Esq., Wolfe & Samson for PSE&G
Karen Dillon, PSE&G
John Ribardo, PSE&G
George Sous, PSE&G

MINUTES CORRECTION/APPROVAL:

A motion was made by Glenn Schweizer to approve the Minutes of October 31, 2013, as presented. The motion was seconded by Donald Ploetner. All were in favor, with abstentions from Lou Caruso and Wolfgang Gstattenbauer. Motion carried.

CORRESPONDENCE:

A. REAPPOINTMENT OF GLENN SCHWEIZER TO OPEN SPACE COMMITTEE:

Donna Traylor reported that Glenn Schweizer's term on the Open Space Committee was due to expire on December 31, 2013. He expressed a desire to continue to serve on this Committee and contacted the Clerk of the Board regarding same. His appointment will be extended for another three years.

OLD BUSINESS:

A. UPDATE ON FRANCISCO FARM AGREEMENT/FUNDING:

Donna provided the Committee with a copy of an article that appeared in today's New Jersey Herald. The article was an interview with the Trust for Public Land for an update on the Francisco Farm.

Donna said she reached out to Kathy Haake for an update and today she received an e-mail from her. Donna read, "We have initiated closing of the wells and demolition of the buildings on the property to be taken by the State. The residents were noticed of the subdivision and Planning Board meeting on December 16 to cut out the parcels being retained by the landowner and the lot extensions to the neighbors."

"We received word of two private foundation grants, \$75,000 from Wallerstein Foundation and \$10,000 from Union Foundation. We are still waiting to hear from Victoria Foundation."

"We also are waiting for a response to the Borough's request of Hudson Farms and we have a private individual who is interested in that same lot, so if Hudson Farms doesn't make a grant, Block 12, Lot 6 will be sold privately."

"We are still short funding but have an agreement with the landowner to make a final determination of the purchase price at the end of December and close February 28th."

Donna also reported Engineering and Planning had a site visit to the property for the subdivision. John Risko, Assistant County Engineer, provided a letter on sight distance observations on the properties. Donna read paragraph 2 of this letter, "Location "B" is an existing farm driveway between two barns. A clear sight distance of 596' was available to the west. A clear sight distance of 340' was available to the east. If the use

of the lot is unchanged and the intensity of the use remains the same, this driveway could be considered as “grandfathered.” There were no other locations along the frontage of this lot where better sight distance could be obtained. No waiver would be required for sight distance to the west. The sight distance to the east would be considered safe for an 85th percentile speed of 28 mph.”

Donna said this Committee had concerns in the past about the remainder and how it could potentially be used for a more intense purpose than it is today. There is a sight distance issue on several of the lots. They can apply for a waiver. There is a concern about sight distance if the State Park would put in a parking lot or driveway. Donna said she has not heard in any discussions the idea of having access to the State Park from either of the two locations. A map was used to aid in a discussion about ownership of the lots. There is also an issue with the parcel being acquired as a separate lot. Mr. Risko found the sight distance was not acceptable for the driveway entrance.

Donald Ploetner asked if there was a signed contract. Donna said, “No.” Funding is still a moving target and that if they sign the contract, changes to the funding would necessitate a change to the contract.

At this point, Dennis McConnell, Esq. joined the meeting. Donna asked him if there is a contract yet. Mr. McConnell said there was not. They are still short some money.

Donna explained that she just updated the Committee about sight distance issues on parcels to be retained by the landowner. Trust for Public Land was able to obtain more money but they are still a little short. There is no contract and they need to close by February 28, 2014.

NEW BUSINESS:

A. PSE&G APPLICATION FOR A MAJOR DIVERSION OF PARKLAND IN FREDON TOWNSHIP, BLOCK 1602, LOTS 8 AND 10:

Cliff Lundin said at the last meeting, it was identified that since the County participated in the purchase of this property, the Deed Restriction would require approval of the County. PSE&G was advised of this by letter. He said he and Lisa Chammings attended a meeting in Fredon Township and subsequently this meeting was scheduled.

Dennis Toft said he is an attorney with the firm of Wolfe and Samson and he is here to represent PSE&G. John Ribardo, who is in charge of the Susquehanna/Roseland Project; George Sous and Karen Dillon are also present. Mr. Toft said they were unaware that the County had participated in the acquisition of this property until they received the letter referred to by Mr. Lundin. He expressed his appreciation for the opportunity to describe their intent and asked John Ribardo to talk about the background and answer questions.

John Ribardo was sworn by Mr. McConnell. He said he works for PSE&G and is the Project Director for the Susquehanna/Roseland Project. Mr. Ribardo said PSE&G started the project in 2007. The project is a new 500 kv line along an existing 230 kv right-of-way. They began the site process and the site approval process through the BPU in 2009. At that time there were public meetings and there were several interveners for the project. Two of the interveners were the Fredon Board of Education and Fredon PALS. There was a settlement overseen by the BPU in which PSE&G would move their line away from the Fredon School, along the Southway property, and away from the Camp house. They came up with an alternative alignment. On a map, Mr. Ribardo pointed out the existing alignment, two towers and the Camp House. He also showed the Committee an aerial photo, and pointed out the Fredon School, Coursens Meadow and wetlands. PSE&G proposes to move the right-of-way and vacate the existing right-of-way. He pointed out the area where the new towers will be built and changes to the easement. Mr. Ribardo said they have completed negotiation with Peter Southway and are currently in construction where they are building foundations. In January they will take the line out of service, take the wires and towers down, erect new towers and string new wires. They will have two 30 kv circuits on one side and a 500 kv circuit on the other side. As far as the rest of the State goes, they have completed the middle segment (Segment 2.) They are currently working on Segment 1 which runs from Roseland to Montvale. This is the last segment to be done. They are also currently working in the Delaware Water Gap National Recreation Area. Mr. Ribardo said he was ready to take questions.

Cliff Lundin asked about the size of the vacated area vs. the new area. Mr. Ribardo said the vacated area is 1.3715 acres and they will be occupying 1.22 acres. Mr. Lundin asked about tree removal and disruption. Mr. Ribardo pointed out the area of tree removal. He said under restoration they try to replace what they take out.

Donald Ploetner asked about the timeframe for completion. Mr. Ribardo said they have to be back on line by May 28. Restoration work will be done and they will probably be out of the area sometime in the summer. If the restoration work doesn't take, there could be some fall work. Mr. Ploetner also asked about the tree removal area. Mr. Ribardo pointed out the area. He said it also depends on how tall the trees are. If they are low growing trees that don't meet their vegetation management standards, they can stay; but tall trees can grow up into the wire zone.

Glenn Schweizer said PSE&G negotiated a settlement for the school side of the property. He asked if there was a specific tree replanting plan that was approved. Mr. Ribardo said there was nothing negotiated for tree replacement with the school, just with Mr. Southway. He added that typically, in the eastern part, they have Highlands agreements but they try to replace the same amount of trees or more.

Mr. Lundin asked what other permits are necessary. Mr. Ribardo said they need wetlands approval, which they have. They need soil erosion permits for any of the road work for the lay down pads, which they also have. Of course they need overall site approval from the BPU.

Mr. Ploetner asked if they will be putting a road through the new parcel. Mr. Ribardo said there is a road that gets to the new tower. They can take the wires down and pull new wires up without being on the right-of-way since the work is done by helicopter.

Lisa Chammings asked when they remove the trees is there a difference in topography from the existing right-of-way to the proposed right-of-way. Mr. Ribardo said generally the contours come down the hill. He said they do not rip out the tree roots, they just cut the tree down at grade level. They will take care of any restoration that is needed.

Mr. Schweizer asked if that typically is done through formal agreement. Mr. Lundin said there is a soil erosion and sediment control plan for the overall project. Mr. Schweizer said he was talking about a tree replacement program. Mr. Ribardo said whatever they take out in one area can be replaced in another area. This is what they are doing on the Southway property. He said they are contractually obligated to do this. Donna said on the Southway property, that is agricultural land. Land cannot be taken out of production according to Farmland Preservation. By planting trees, you are taking land out of production. Mr. McConnell said this has nothing to do with tonight's presentation but that it would behoove Mr. Southway and PSE&G to allow him to take a look at the agreement, because we can't upset the existing Deed of Easement. He asked PSE&G to get permission from Mr. Southway in order for him to look at the agreement. Mr. Ribardo said he will speak to Mr. Southway and his attorney.

Mr. Lundin asked if there was any difference between the terms and restrictions in the current easement vs. the new easement. Karen Dillon was sworn by Dennis McConnell. She said the easement that they currently hold across Block 1602, Lots 8 and 10 does not restrict the number of wires, the number of circuits or the number of towers. There are no actual restrictions for how they can utilize operating and maintaining the utility line in that area. She said she believes it will be the same. Mr. Lundin asked if the restrictions limit what can go under it. Mr. Ribardo said what can go under it is controlled by DEP regulations. Mr. Toth said they are required to maintain the right-of-way to a certain condition that protects the wires and electricity going through them. There is specific vegetation that has to be removed in the wire zone and there are height limitations in the border zone outside of the wire areas. The new area will have to conform to that. Mr. Lundin asked if there were any additional berms on the land that would prevent recreational use under the lines. Mr. Toth said there were none that he was aware of. Donna said Fredon was looking potentially to a Wildlife Enhancement Program (WHIP) but she does not know if they received the funding.

There was some confusion and then clarification of the right-of-way areas shown on the map.

Mr. Schweizer asked if there were any restrictions on the County's interest on Lot 8. Donna said there is the notice on Land Use Restriction that was applied at closing when using the County's and Green Acre's funds.

Mr. Lundin asked who the parties are that are contributing to this acquisition. Donna said the County provided \$172,500 and the balance was provided by Fredon Township's Green Acres Planning Incentive Grant. The County contributed more dollars than Fredon did. Mr. Lundin asked if there were any direct Fredon funds. Mr. Schweizer said the Fredon Open Space Fund was \$50,000 and the Green Acres Grant was 2.25% according to the application. Donna said the original application isn't always how it ends up.

Mr. Ribardo said he has an e-mail from DEP with the acquisition figures. They show the State contribution at \$176,375; the County contribution at \$172,500; and Fredon's contribution at \$5,736. Donna said this varies a little from their Schedule B on the Grant Agreement. That said the County was at \$172,500; Green Acres was \$161,500 and the due diligence cost would be taken up by the municipality.

Ms. Chammings questioned why the right of way is for 150' when the application listed it as 100'. Donna said Fredon Township made application to the Open Space Committee and sometimes the original application information is inaccurate. The application is the first thing the Committee sees from an applicant and it sometimes goes through a number of changes before approval.

Mr. Lundin asked Mr. McConnell if there are any factors in terms of easement or in the terms of the statute that they haven't considered. Mr. McConnell said, "Not any longer." He added that the County was recently in court over the issue on Farmland Preservation. Judge Haniford rendered a decision that this right-of-way would take precedence over the easement for Farmland Preservation. He said he is sure the precedent would apply to the Open Space easement as well, because Farmland Preservation is more restrictive than Open Space.

Mr. Schweizer asked if there was a requirement to get a Green Acres agreement and does that require any special action by the State. Ms. Dillon said the PSE&G easement existed before the property was encumbered by Green Acres and that states their easement is 150' wide. For the State diversion process, they've gone through the Scope and Hearing Process, the Public Hearing Process and they are scheduled for the State House Committee to render a decision on the application on December 15.

Ms. Chammings said the right-of-way to be vacated will be redone and fall back to standard and that it could take four to five years. She asked if there is any mitigation that can be requested because it will scar the land for a while and cause erosion. Mr. Ribardo said they will do their standard vegetation management practice. Mr. McConnell said this gets a little complicated because the State also has an interest in this and instead of getting mitigation, the State is accepting financial contribution.

Mr. Toft said in connection with the diversion process, there were appraisals done for the State process. The difference in value between what they are taking and what they are giving back is about \$3,050. Under the State process, you multiply that by 10, so compensation is \$30,500. This was done before they realized the County had made a

contribution, so the County is entitled to a share of that money. Mr. McConnell said not only is the County entitled to it, but they just learned that Fredon is entitled to a tiny bit because they contributed \$5,736. He said he talked to John Flynn at the State and he realizes this. He knows that you can't be compensated for something that you didn't put in. He thinks it is just and fair and feels we should share proportionally as to our initial contribution. It will be worked out precisely based on the monetary contribution and the State has to agree to it. Mr. McConnell does not see this as being a problem.

Mr. Schweizer asked if there was a formal process to amend any documents to allow this diversion. Mr. McConnell said, "Yes, under the recommendation of this body."

With no other questions being raised, the meeting was closed to the public.

Mr. Schweizer suggested the Committee spend some time discussing tree compensation. Lisa asked for a copy of their Best Management Practice for tree compensation. Mr. Toft said there is a tree formula. If you take out a certain size tree, they have to replace them with two or three, depending on the height. They will follow that formula. Mr. Schweizer said PSE&G may already have a specific plan. Mr. Lundin said the Committee would like to see it or at least have it on file. Ms. Dillon said there is an overall Best Management Practice but there are also site specific ones. This property, because it is encumbered by wetlands, has to adhere to the wetlands standards. The restoration standards are set by DEP. Cliff said he would like PSE&G to submit to the Committee the relevant portions of the Best Management Practices that apply to this site and well as the tree replanting plan. Ms. Dillon agreed to do that and said that they have done an inventory of the trees on the site, so they know what they will remove and what they will be replacing them with. Donna asked if they will be natives and species appropriate for this area. Ms. Dillon said, "Yes, absolutely." She added that she can provide the Committee with the study of what the inventory of trees was and the typical species that will be used. She said if the Committee wants to be specific about types of trees they want to see there, that's a request they can accommodate. Mr. Ribardo said they hired a consultant that identified trees based on the typical geographical area. He believes they already have a Restoration Plan for this area and that they can also provide the drawings. Mr. McConnell said the Committee may not want to change the plan because the plan would then have to go back to Green Acres for approval. Mr. Lundin agreed and explained that the Committee would like to have it on file. Mr. Toft said if they did not, by some oversight, do restoration for that particular area, they will give the Best Management Practices that they follow.

Mr. Ploetner asked for more specific information on the Restoration time frame. Mr. Toft said they typically start restoration in the spring or fall. Under their commitment with DEP, they are obligated to maintain that---come back every year or every two years with status on the progress of the restoration. They not only have guarantees written into the contract, they are also required to do reports and submit those reports to DEP on the progress. He said if they come back in a year and there is a dead tree, they are obligated to replace that tree. Mr. Lundin said in addition there is soil erosion

and sediment control and they require that the entire area be stable. There is a provision in the permit that says if it fails for any reason, we can go back to them to require that it be stabilized.

MOTION:

A motion was made by Glenn Schweizer that the Open Space Committee send a recommendation to the Freeholders to approve the project subject to the compensation as determined by the State and submission of the tree replanting plan. The motion was seconded by Donald Ploetner. A roll-call vote was taken. All were in favor.

Lisa Chammings asked if they use EcoSciences. Mr. Toft said they still use EcoSciences and they have a contract with them that will go into 2015. When asked, he said he will make sure there are no species in the area that need to be safeguarded before any work is done.

There was some discussion about whether or not the Open Space Committee needs to meet on December 19. It was agreed that there probably is not a need to meet again in two weeks, but if this issue needs to come back for any reason, the meeting date will be kept open. The meeting will be cancelled at the last minute if no issues arise.

Mr. Lundin said the Freeholders are currently in budget discussions as to what to do with Donna's position. If they decide to eliminate the position, the Committee may need to be proactive and appear before the Freeholders.

Mr. Schweizer said perhaps they should have included in the Resolution a recommendation to the Freeholders that the monetary compensation go to the Open Space Program as opposed to the Farmland Preservation Program. Donna said usually when the County receives reimbursements; it does stay with the original fund.

Ms. Chammings thanked the Committee for accommodating her in scheduling tonight's meeting.

Mr. Schweizer asked Ms. Chammings if she was comfortable with what was being proposed. Ms. Chammings said she was but that PSE&G needs to be held accountable, which is why she requested specific documents. Mr. Schweizer asked if the County has a way of monitoring them. Donna said the County does not have a monitoring protocol for Open Space because the County does not legally own the land. Mr. Lundin said Soil Conservation monitors some portion of the site once a week.

Mr. Ploetner asked if the recommendation to the Freeholders should go to them now or wait until documentation is received. Mr. McConnell said the recommendation will not be on the Freeholder Agenda until January. If documentation is not received by then, he will let them know the recommendation is subject to receipt of the documentation and that we don't have it yet.

PUBLIC COMMENT:

None

ADJOURNMENT:

All business having been completed, a motion to adjourn the meeting was made by Glenn Schweizer. The motion was seconded by Donald Ploetner and carried unanimously. The meeting adjourned at 8:35 p.m.