

MINUTES
MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
Schooley's Mountain Lodge
54 Camp Washington Road, Long Valley, New Jersey
May 10, 2010

The meeting was called to order by Chairman Keller at 6:35 p.m. Members present:

Aimee Ashley Myers
Dale Davis
Louise Davis
Ricci Desiderio

Also in attendance:

Timothy Brill, SADC
Robert Smith, owner of Willow Pond Farm
Sam Akin, Chairman, WTMUA
James Gregory, Esq., WTMUA attorney
Paul Costic, Executive Director, WTMUA
Members of the Public

Staff in attendance:

Frank Pinto
Katherine Coyle
W. Randall Bush, Esq.

COMPLIANCE WITH THE OPEN PUBLIC MEETINGS LAW

Chairman Keller announced that in compliance with the Open Public Meetings Act, adequate notice of this meeting has been provided and filed with the Town of Morristown, the Morris County Clerk, the Daily Record and the Star Ledger. Public notice of the Public Hearing was provided in a legal notice dated May 5, 2010.

APPROVAL OF MINUTES

On motion of member Ashley Myers, seconded by member D. Davis, the board approved the minutes of the December 10, 2009 regular meeting. A roll call vote was taken.

Aye: Ashley Myers, D. Davis, and Keller

Nay: None Abstain: L. Davis R. Desiderio

The minutes of the March 11, 2010 meetings were not available.

On motion of member Ashley Myers, seconded by member L. Davis, the board approved the minutes of the April 1, 2010 regular meeting. A roll call vote was taken.

Aye: Ashley Myers, D. Davis, L. Davis, and Keller

Nay: None Abstain: R. Desiderio

OPEN TO PUBLIC FOR NON-AGENDA ITEMS

There were no comments from the public.

PUBLIC HEARING

Involved Premises:

Block 12, Lot 4 (Smith Farm); Washington Twp.

Block 20.1, Lot 44 (Searles Farm); Washington Twp.

Chairman Keller welcomed all attendees and stated the following:

I. Hearing Procedures

- Any person of the general public that intends to provide testimony or comments **must register** in writing.
- The MUA and the owners of both farms will be afforded ten (10) minutes each to summarize their respective issues.
- A person providing testimony or comments must begin by stating their name and address. Each person who registered will be afforded five (5) minutes to provide testimony or comments. If any time remains after the close of all public comments, the CADB reserves the right to allow for any additional comments.
- Legal representation is not required.
- All documents provided will be numbered appropriately as exhibits in this Hearing.

II. Purpose of Hearing/ Statutory Requirements

The Morris County Agriculture Development Board (CADB) is holding this hearing pursuant to N.J.S.A. 4:1C-19, which states that:

- Any public body or public utility, which intends to exercise the power of eminent domain (condemnation) within an agricultural development area (ADA) must file a “Notice of Intent” with the CADB and the State Agriculture Development Committee (SADC) 30 days prior to the initiation of the eminent domain action; and

- The notice must contain a statement of the reasons for the acquisition and an evaluation of all alternatives outside of the ADA.

The CADB and the SADC must review this “Notice of Intent” (NOI) and determine whether the proposed action will have an unreasonably adverse effect on the ADA and upon state agricultural preservation and development policies.

If the CADB or the SADC finds that the proposed action (in this case, condemnation for a public well) would cause unreasonably adverse effects on the agricultural operation, the CADB or the SADC may direct that no action be taken thereon for 60 days. During the 60-day period a public hearing must be held by the CADB or the SADC. Following the public hearing a written report containing the recommendations of the CADB or the SADC concerning the proposed action will be made public.

III. Eminent Domain (Condemnation) Action

On August 24, 2009, the Washington Township Municipal Utilities Authority (WTMUA) filed an NOI for the Smith Farm and on September 1, 2009, an NOI for the Searles Farm. By filing an NOI the WTMUA took action to condemn portions of the Smith and Searles farms for wells, well piping and well housing.

After review of the respective NOIs the CADB deemed both to be incomplete on two separate occasions. The WTMUA provided additional information on January 28, 2010 and on March 2, 2010. Ultimately, on March 11, 2010, the CADB deemed the NOI complete.

The owners of the Searles Farm filed for and received a “Cease and Desist” order from Honorable Deanne M. Wilson of Washington Township Municipal Court.

On December 30, 2010, the WTMUA filed in court for the condemnation of 0.83 acres of the Smith Farm (prior to the CADB deeming the NOI complete or sufficient).

IV. CADB Determination

On March 11, 2010, the CADB reviewed the NOI and determined by unanimous vote that the WTMUA’s proposed action involving the Smith and Searles farms would cause unreasonably adverse effects upon:

1. preservation and enhancement of agriculture in the ADA, and
2. upon overall state agricultural preservation and development policies.

On March 16, 2010, a letter reflecting this CADB decision was sent to the WTMUA. The letter also informed the WTMUA that the CADB scheduled a Public Hearing regarding the

WTMUA's proposed action and directed the WTMUA to take no action with regard to its proposed action prior to the Public Hearing.

The DEP has rescinded the well permits for the Smith farm. On April 8, 2010, the DEP issued a letter to Richard Stothoff (well driller) stating that the well permits "have been cancelled at the request of the current property owner, Mr. Robert Smith...Further, it has come to the Department's attention that the information submitted on the permit application contains false or inaccurate information as submitted under your signature."

The CADB's decision that the WTMUA's proposed action would cause unreasonable adverse effects was based on the CADB's determination that the WTMUA's condemnation of the Smith and Searles farms for public wells would, among other reasons, have the following effects:

- Size of buffer area:

According to DEP regulations:

- N.J.A.C. 7:10-11.4 item (a) 5 – an active farm is considered a "minor pollutant source";
- N.J.A.C. 7:10-11.7 item (c) 1 and 2 – there should be a buffer of 200 days TOT (time to travel) or 500 ft, whichever is greater, within which "active farming" will be prohibited.

The buffer area would result in:

- Prohibition of farming within a radius of 500 ft or 200 days time of travel (for the water), whichever is the *greater* of the two (a minimum of 18 acres). The minimum possible buffer of 500 ft results in over 18 acres being taken out of production.
 - Farming infrastructure will be limited – e.g. ability to grow nursery stock, build greenhouses, agricultural structures, irrigation lines or fencing.
 - Reduced ability to farm a variety of crops or have livestock on the remainder of the farm due to designation of these items as major and minor pollutant sources.
- Farmer's ability to drill a well for agricultural purposes: Any future well cannot be close to WTMUA's well, may have a limit on yield, and will be in an inferior location because the best location was taken by WTMUA.
 - Negative effect on pending preservation of Smith Farm: Delays caused by WTMUA's action may jeopardize CADB's ability to obtain state funding, which is necessary to preserve farm in the Highlands Preservation Area.

Other issues of note:

- Memorial Day 2007 triggered the water shortage and search for more wells: This event has not reoccurred.

- Per the WTMUA’s analysis of the Memorial Day 2007 event, a 100 gal/min source was needed to have prevented interruption of water service.
- The Scheffler well yields 150 gal/min (67% over what is needed) and is outside of the ADA. Mr. P. Costic has stated in the NOI that the Scheffler well “yields an acceptable quantity of good quality water.” Accordingly, the Scheffler well should be sufficient to meet the WTMUA’s need.
- Rate of water loss in the system is rising: According to the DEP, the WTMUA’s rate of loss is documented as 26.6% in 2005, 36% in 2007 and 37.4% in 2008. Until this is addressed by WTMUA and brought below 15% no new wells may be drilled (per Highlands and DEP regulations). By addressing the high water loss, the recaptured water should meet the current water demands and should eliminate the need for new wells.
- The WTMUA did not adequately address the use of conservation methods to address shortages: Most importantly, the WTMUA has not addressed the high loss of water in their system (as described above).
- The WTMUA did not provide an adequate explanation regarding the feasibility of the interconnection to the Long Valley Service Area: The WTMUA has stated that it would be cost-prohibitive, but has not provided documentation or authority supporting that statement.
- WTMUA’s consultants did not adequately evaluate alternatives outside the ADA: The WTMUA’s consultants evaluated the locations with the highest likelihood of locating water in the Schooley’s Mountain Service Area only, which is not the same as an evaluation of all alternatives outside the ADA (which is required by law).

V. Report of CADB Findings

Following the Public Hearing, the CADB shall issue its findings in accordance with N.J.S.A. 4:1C-19.

Mr. Bush stated that copies of two documents were available for the public to review: (1) Public Hearing Procedures (as read by Chairman Keller), and (2) Timeline of Events/ Index of CADB Documents.

WTMUA COMMENT

At this point, Chairman Keller opened the hearing to WTMUA comment.

Mr. James Gregory, attorney for WTMUA, asked Mr. Sam Akin, Chairman of the WTMUA, to present the MUA’s case. Mr. Sam Akin explained the WTMUA’s need for a new well. He

stated that the system is not connected to the Long Valley Service Area due to high cost. He stated that during the 2007 “Memorial Day Event” the system ran out of water. He also stated that the WTMUA has adequate storage capacity, but not enough water sources. Mr. Akin assured the board that water restrictions were imposed as a result of the 2007 “Memorial Day Event”.

When asked regarding the required buffer area, Mr. Gregory disagreed with the board’s position that the DEP will require a buffer of a radius of 500 ft or 200 days time of travel (for the water), whichever is the *greater* of the two (a minimum of 18 acres), and that the minimum possible buffer of 500 ft results in over 18 acres being taken out of production.

Mr. Costic stated that the WTMUA met with Mr. Steven Pudney, DEP, on May 5, 2010. Mr. Pudney assured the WTMUA that only a 50 ft buffer will be required. When asked whether this position was memorialized in writing, Mr. Costic stated that it was not.

Mr. Gregory objected to the SADC’s and the CADB’s assertions that the WTMUA had to consider all alternatives outside of the ADA.

FARMER/LANDOWNER COMMENT

At this point, Chairman Keller opened the hearing to farmer/landowner comment.

Mr. Robert Smith, owner of the Smith Farm (Block 12, Lot 4, Washington Twp.), stated that because of close proximity, a connection to the Long Valley Service Area should be easy. Mr. Smith further commented regarding his conversations with Mr. Pudney (DEP) about the high rate of water loss and stated that due to computer problems, the DEP was not aware of the water loss rates. Had the DEP known about this issue, the well permit would have never been issued.

Chairman Keller asked Mr. Smith if his conversations with Mr. Pudney were memorialized in writing. Mr. Smith said that they were not.

PUBLIC COMMENT

At this point, Chairman Keller opened the hearing to public comment.

Ms. Rose Benson, 342 Flocktown Road, Washington Twp., New Jersey, whose property abuts the Sheffler Farm, asked whether the WTMUA’s public well will have an effect on her private well. Mr. Costic stated that the WTMUA is in the process of conducting preliminary testing to ascertain any effects on private wells.

Mr. Frank Speranza, 71 King Lane, Washington Twp., New Jersey, stated that his family experienced the Memorial Day 2007 water shortage and several smaller shortages since then.

Ms. Debra Post, 22 Oakdale Road, Chester, New Jersey, stated that the WTMUA’s proposal is unconscionable. Ms. Post further stated that the WTMUA must pay fair market value for any property they acquire through condemnation.

Mr. Dick Grotefend, Flocktown Road, Washington Twp., New Jersey, asked who will be legally liable if his private well runs dry. Mr. Gregory stated that the WTMUA is conducting extensive testing to ensure that this does not happen.

Mr. Edward Nagorsky, 2 Emily Place, Washington Twp., New Jersey, stated that the WTMUA's buffer area will preserve the land from development.

Chairman Keller explained that Open Space Preservation differs from Farmland Preservation in that the purpose of Farmland Preservation is to preserve the agricultural land and the agriculture industry.

CLOSE OF PUBLIC HEARING

There being no further public comments, at 7:40 p.m., Chairman Keller closed the Public Hearing. Following a short break, the members of the public departed and the CADB resumed its monthly meeting.

CLOSED SESSION

On motion of member Ashley Myers, seconded by member L. Davis, the board closed the open portion of the meeting and voted to conduct a closed session.

RETURN TO MEETING

The meeting reopened to the public at 9:06 p.m.

ACTIONS RESULTING FROM CLOSED SESSION

Harvestone Farm, Washington Twp: Offer to Purchase Development Easement. On motion of member L. Davis, seconded by member Ashley Myers, the board directed staff to inform the landowner that the board will not reconsider its April 2, 2010 offer and that the April 2, 2010 offer is the board's final offer. A roll call vote was taken.

Aye: Ashley Myers, D. Davis, L. Davis, R. Desiderio and Keller

Nay: None Abstain: None

At this point member D. Davis left the meeting room.

Post Farm, Chester Twp: Offer to Purchase Development Easement. On motion of member L. Davis, seconded by member Ashley Myers, the board directed staff to inform the landowner that the board will not reconsider its April 2, 2010 offer and that the April 2, 2010 offer is the board's final offer. A roll call vote was taken.

Aye: Ashley Myers, L. Davis, R. Desiderio and Keller

Nay: None Abstain: None

At this point member D. Davis returned to the meeting room.

Public Hearing: Washington Twp. MUA – Condemnation in the ADA (Smith & Searles farms). On motion of member L. Davis, seconded by member Ashley Myers, the board directed staff to draft a resolution memorializing the board’s findings and recommendations. A roll call vote was taken.

Aye: Ashley Myers, D. Davis, L. Davis, R. Desiderio and Keller

Nay: None Abstain: None

REPORT OF DIRECTOR & ATTORNEY

Agricultural Water Enhancement Program (AWEP) for 2010. Ms. Coyle stated that funding is available from the AWEP Program to provide financial and technical assistance to owners and operators of agricultural lands in the Raritan River basin to protect water quality. The application deadline is May 14, 2010 for this year’s program.

2010 Monitoring Program. Ms. Coyle informed the board that she is in the process of monitoring farms (94 farms) in the Western and North-Eastern Regions of the County. The SADC’s monitoring deadline is June 30, 2010.

RIGHT TO FARM

Stephens Farm. Ms. Coyle informed the board that a voluntary mediation took place on April 9, 2010. An agreement was reached and it was memorialized in a Memorandum of Agreement. Ms. Coyle shared the memorandum with the board.

Hing Lum, Mt. Olive Twp. Ms. Coyle informed the board that Mr. Hing Lum contacted her regarding agriculture-related recreational activities (corn maze on his farm in the Township of Mt. Olive). Ms. Coyle sent a letter to Mr. Frank Wilpert, Jr., the Mt. Olive Township’s Zoning Officer, informing him about the Right to Farm Act, the Act’s protections for commercial farms, and the fact that anyone aggrieved by a commercial farm operation is required to file a complaint with the CADB prior to filing an action in court.

CORRESPONDENCE

There was no correspondence to review.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

There was no new business to discuss.

OPEN TO THE PUBLIC

There were no comments from the public.

ADJOURNMENT

There being no further business, on motion of member L. Davis, seconded by member Ashley Myers, the meeting was adjourned at 9:29 p.m.

Respectfully submitted,

Katherine Coyle
Director