

MINUTES
MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
30 Schuyler Place, 4th Floor, Morristown, New Jersey
July 7, 2011

The meeting was called to order by Chairman Keller at 7:38 p.m. Members present:

Aimee Ashley Myers
Louise Davis
Harvey Ort (arrived at 7:46 p.m.)
Kenneth Wightman

Also in attendance:

William Roehrich, Washington Township Liaison (arrived at 8:00 p.m.)
Bryan Lofberg, SADC Liaison
Sarah Jane Noll, Chester Township Liaison (departed at 9:05 p.m.)
Benjamin Spinelli (departed at 9:05 p.m.)
Phil Forte (departed at 9:05 p.m.)
Michael Lavery, Esq. (departed at 9:05 p.m.)
Jim Knox, Esq. (departed at 9:58 p.m.)
Sean Campbell (departed at 9:58 p.m.)
Earle Steves (departed at 9:58 p.m.)

Staff in attendance:

Frank Pinto
W. Randall Bush, Esq.
Katherine Coyle

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.

APPROVAL OF MINUTES

The minutes of the April 14, 2011 meeting were tabled.

OPEN TO PUBLIC FOR NON-AGENDA ITEMS

There were no comments from the public.

NEW BUSINESS

Forte – application to construct agricultural labor housing.

Chairman Keller stated that Ms. Coyle had prepared a Staff Report, which summarized the history of the Forte farm, the information provided by the applicant, and staff review and comments. The report had been provided to the voting members prior to the meeting for their review. Chairman Keller read the report and it was entered into the record.

Chairman Keller invited Mr. Lavery to address the board regarding his client's application to construct agricultural labor housing on his preserved farm.

Mr. Lavery first provided a history of the farm, including Mr. Forte's purchase of the farm in 2003 and the revisions to the language of the Deed of Easement. Mr. Lavery stated that he also represented the Warren County CADB and currently serves as special council to the Sussex County CADB and, as such, has some experience dealing with the SADC. He has had many disagreements with the SADC over the years, disagrees with the SADC interpretation of the Forte Deed and felt that the SADC should not have interpreted the Deed without consulting with Chester Township, since the Township drafted the language of the Deed. Mr. Lavery stated that he had asked Mr. Spinelli (who was the Mayor of Chester Township when the farm was preserved and who negotiated the preservation transaction) to attend the meeting and provide information about the Township's intent when the Deed of Easement was drafted. He further stated that he disagreed with the SADC interpretation of the Forte Deed given that the SADC's Standard Deed of Easement (Paragraph 14, which was deleted from the Forte Deed) allows for the construction of agricultural labor housing. Mr. Lavery felt that the SADC often takes positions regarding what the law should be instead of what the law actually is. As such, he was not surprised by the SADC's position regarding the Forte Deed.

Mr. Lavery explained that Mr. Forte needs housing for agricultural laborers for his equine operation. He was proposing to construct housing units within two existing barns. He stated that Chester Township Planning Board proved Mr. Forte's application for agricultural labor housing, a copy of which was provided to the CADB.

Mr. Lavery asked Mr. Spinelli to provide information about the preservation of the Forte farm. Mr. Spinelli explained that the Township purchased the farm in fee simple from Mr. Schmitz. The Township then sold the farm to Mr. Forte (with the agricultural restriction) and sold the development rights to Morris County. A Township committee had been formed to achieve the preservation of the farm. The committee reviewed many aspects of the preservation transaction. The main issues were agricultural labor housing and construction of new structures (especially greenhouses). The Township incorporated the committee's concerns into the Deed of Easement. The farm was sold to Mr. Forte with 3 existing homes, which are located on adjoining lots, but are not deed-restricted. The Township believed that the 3 homes would adequately address the farm's need for agricultural labor housing and would eliminate the need to construct additional structures for that purpose. Mr. Spinelli stated that the Township never considered that a future owner would wish to convert a portion of a barn into agricultural labor housing.

Mr. Lavery asked Mr. Spinelli whether the intent of Deed of Easement was to prohibit the construction of agricultural labor housing within an existing barn. Mr. Spinelli replied that the Township never considered that possibility.

Mr. Pinto asked Mr. Spinelli whether at the time of drafting of the Deed of Easement language he was familiar with the SADC's interpretation of the use of existing structures, specifically as it pertains to agricultural buildings vs. residential buildings. Mr. Spinelli stated "yes and no." He explained that at the time he did not look at it from that aspect. Mr. Pinto stated that he was involved in the discussions regarding the Forte Deed and does not recall specifically discussing the use of an agricultural structure for agricultural labor housing. However, Mr. Pinto stated that the CADB's interpretation (now and at the time of the Forte farm preservation) is that an agricultural structure is utilized for agricultural activities and that residential structures are utilized for residential activities. In addition, all residential structures are specifically listed in the Deed of Easement.

Ms. Coyle added that while Paragraph 14 was deleted from the Deed of Easement, the key points applicable to Mr. Forte's application are still contained in the Deed of Easement, which states that improvements to agricultural buildings shall be consistent with agricultural uses and improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Agricultural structures are structures that contain agricultural uses. Agricultural labor housing is a residential use, not an agricultural use. Agricultural structures are not considered residential buildings. Accordingly, they cannot be improved for the purpose of creating agricultural labor housing. As there are no pre-existing residential buildings on the preserved farm premises (there is a residential building on an exception area), no agricultural labor units can be constructed on the preserved farm premises.

Mr. Lavery again voiced his opposition to the SADC's interpretation of the Forte Deed of Easement and stated that he would take his chances to challenge the SADC's position in Superior Court. Ms. Coyle stated that the Morris CADB, as the holder of the easement, is the primary interpreter of the Deed of Easement. The SADC, as the entity that cost-shared with the County to preserve the farm, is the secondary interpreter. She also stated that the Forte Deed of Easement was drafted in consultation with Chester Township, the Morris CADB and the SADC. Mr. Lavery disputed the fact that the Forte Deed was drafted through a joint effort and stated that the SADC never mentioned that fact in any correspondence. In addition, Mr. Lavery stated that it took two years to get a letter from the SADC in response to the inquiry regarding the Forte Deed and that the response came in a letter from Ms. Susan Craft (now Susan Payne) dated July 15, 2010.

Mr. Bush asked Mr. Spinelli whether he recalled attending a meeting with the SADC staff in Trenton, during which the plan for the preservation of the Schmitz Farm (now the Forte Farm) was mapped out, including the funding structure and the deed restrictions, which were subsequently memorialized in the Deed of Easement. Mr. Spinelli replied that while he recalled the meeting, he did not recall the details of the conversation, but remembered that the Township wanted to make sure that the SADC and the CADB approved the Township's approach to preserve the farm and would agree to provide funding for the project. Mr. Spinelli added that the Township would have used the SADC's standard deed of easement, except that the Township

wanted to ensure that the construction of new structures (mainly agricultural labor housing and greenhouses) would be prohibited on the preserved farm. Accordingly, the standard deed of easement was amended. Mr. Bush added that the purpose of the meeting in Trenton was to lay out the preservation plan for the farm including the refining of the restrictions contained in the deed. Mr. Spinelli agreed with Mr. Bush's statement adding that the Township did not "just make it (the language of the deed) up," but that the restriction were based on the Township's concerns. Mr. Bush added that there was a significant commitment from three levels of government to accomplish the preservation of the farm.

Mr. Bush then addressed Mr. Lavery and stated that he would agree to disagree with Mr. Lavery's characterization that the SADC was not proactively involved in the formulation of the language of the Deed of Easement. He stated that the language of the Deed of Easement was the product of the Trenton meeting. Mr. Lavery continued to rebut Mr. Bush's statement and replied that the SADC never mentioned the Trenton meeting in its correspondence regarding the Forte proposal for agricultural labor housing. He reiterated that it took two years to receive an answer from the SADC (via the July 15, 2010 letter). Ms. Coyle replied that the July 15, 2010 letter was the second letter from Susan Craft. The first response letter is dated February 9, 2009. Both letters contained the same legal opinion regarding the Forte Deed. [The original inquiry letter addressed to the SADC by Mr. Forte's former attorney, Anthony Sposaro, was dated September 29, 2008.]

Mr. Lavery said that based on his history with the SADC, he would not rely on the SADC's legal opinion contained in the July 15, 2010 letter. Instead he would rely on Mr. Spinelli's testimony. Mr. Lavery stated that his client was getting hamstrung because of a letter from the SADC, who, according to him, did not negotiate the deed restrictions. He referred again to the fact that the SADC never mentioned the Trenton meeting in their correspondence. Ms. Coyle replied that at the time of the Trenton meeting, the executive director of the SADC was Gregory Romano and the attorney was Marci Green and they are both no longer with the SADC. Chairman Keller replied that he did not see the CADB as being hamstrung by the SADC in making a decision regarding Mr. Forte's application. Nor was the CADB limited or confined by the SADC's interpretation. The issue before the members of the CADB was to interpret the Deed of Easement using common sense, their knowledge of the facts, and their own judgment. The SADC's interpretation may have been useful and interesting, but it was not precedent-setting.

Chairman Keller asked Mr. Spinelli to state who drafted the revisions to the Deed of Easement. Mr. Spinelli replied that he believed it was Mr. John Suminski, Chester Township's attorney. Chairman Keller asked whether the ad-hoc committee that was created to review the issues related to the preservation of the farm provided written recommendations to the town council and whether there were minutes of the meetings. Mr. Spinelli replied that the recommendations were provided informally during meetings and minimal minutes were drafted. When asked, Mr. Spinelli stated that the issue before the CADB (construction of agricultural labor housing within existing structures) was never contemplated or anticipated by the ad-hoc committee, Mr. Spinelli (mayor at the time) or town council.

Ms. Coyle asked Mr. Spinelli whether the reason for prohibiting additional agricultural labor units on the preserved farm premises was the fact that several residential structures are located

on adjacent lots (these lots are not subject to the Deed of Easement, but were sold to Mr. Forte together with the preserved farm premises) and these structures could be improved or used for agricultural labor housing. Mr. Spinelli replied that the township could have subdivided the lots that contain the residential structures and sold them separately from the farm. However, the township chose to auction the preserved farm and the adjoining non-preserved lots as one package specifically so that the residential structures could be used for agricultural labor housing.

Ms. Sarah Jane Noll stated that Chester Township permits anyone who owns a 10-acre or larger lot to construct an apartment in an accessory structure. The ordinance was in place at the time of the preservation of the farm. Mr. Spinelli stated that this ordinance would apply to all farms, but that preserved farms come with their own set of restrictions. When asked, Ms. Noll stated that none of the preserved farms in Chester Township have agricultural labor housing units within agricultural structures. Mr. Spinelli stated that while Hideaway Farms does have agricultural labor housing, it is located on an exception area and was in existence prior to the farm's preservation.

Mr. Spinelli stated that at the time of drafting of the Deed of Easement for the Forte Farm, the township tried to address all of the concerns related to the future use of the farm. Mr. Spinelli stated that the township relied on CADB staff and also attended the meeting in Trenton specifically to make sure that both agencies (SADC and CADB) were supportive of the preservation of the farm. The township needed to make sure that both agencies would be willing to provide funding to purchase the development easement from the township. The township bonded to purchase the farm in fee simple and needed to receive the money back from the county and the state for the development easement. Mr. Bush restated that the SADC and the CADB were actively involved in the development of the Deed of Easement language. Mr. Lavery restated that none of the SADC's correspondence mentions the meeting between the CADB, SADC and the township. He further stated that Mr. Spinelli, the person who negotiated the preservation deal, did not intend to prohibit the construction of agricultural labor housing within existing structures. Chairman Keller disagreed and stated that Mr. Spinelli testified that the issue was not contemplated. Mr. Bush stated that Mr. Spinelli testified that at the time of the drafting of the Deed of Easement language, the township addressed all concerns the township had related to the future use of the farm. The future use of the existing residential structures on the adjoining lots for agricultural labor housing was part of the discussion at that time. Mr. Spinelli stated that Mr. Bush's summary of his testimony is correct and added that the township wanted to comply with the policies and regulations of the SADC and the CADB and, at the same time, wanted to accomplish its goal of prohibiting the future construction of structures on the preserved farm premises. Mr. Pinto stated that the interpretation of the Deed of Easement must be based on the SADC's customary definition of "agricultural structures" and "residential structures," as spelled out in the statute and the SADC's regulations and policies. Mr. Spinelli agreed with Mr. Pinto and stated that it is up to the CADB to interpret the Deed of Easement and make a decision regarding Mr. Forte's proposal.

Mr. Lavery referred to Paragraph 12(a) of the Deed of Easement and read a portion of the paragraph, which states that "Grantee may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions."

Ms. Coyle stated that Mr. Lavery should have also read the 4 conditions, which follow the statement that he read. Chairman Keller stated that the CADB's decision would be mainly based on the interpretation of the first condition (Paragraph 12(a)i), which states that "improvements to agricultural buildings shall be consistent with agricultural uses." This condition excludes residential uses. Mr. Lavery replied that he could brief that issue, but stated that he did not believe this was the critical issue. He believed that the critical issue was Mr. Spinelli's testimony that the township did not intend to prohibit the construction of agricultural labor housing within existing structures. Mr. Lavery further objected to the discussion regarding the use of the existing residential structures, which are located on adjoining non-preserved lots, as agricultural labor units. Ms. Coyle replied that it was Mr. Spinelli who testified that the township chose to auction the preserved farm and the adjoining non-preserved lots as one package specifically so that the residential structures could be used for agricultural labor housing. This issue was part of the discussion between the township, the SADC and the CADB when the Deed of Easement language was drafted. Mr. Lavery objected again, stating that the SADC never mentioned in any correspondence that a meeting occurred between the three agencies and that he finds it hard to believe that there is no record of said meeting.

Chairman Keller stated that his decision would be based on interpreting the entire Deed of Easement, in particular (Paragraph 12(a)i), which states that "improvements to agricultural buildings shall be consistent with agricultural uses." He asked Mr. Lavery whether he would argue that this should include agricultural labor units on top of a barn. Mr. Lavery replied that it is a standard practice that occurs on all the other farms in Chester. Mr. Bush stated that this does not occur on preserved farms. Ms. Coyle asked Mr. Lavery whether the definition of "agricultural use" as listed in the statute, the regulations and the Deed of Easement, includes agricultural labor housing. Mr. Lavery stated that this is an accessory use. Ms. Coyle asked again whether agricultural labor housing is listed in the definition of "agricultural use." Mr. Lavery stated that he would take his chances with a judge. Ms. Coyle stated that the answer is "no" - agricultural labor housing is not listed in the definition of "agricultural use." Chairman Keller stated that the terms of the Deed of Easement come directly from the statute and the regulations. Mr. Lavery agreed, but stated that agricultural labor housing is permitted. Ms. Coyle stated that it is permitted subject to conditions. Chairman Keller stated that he was not there to make a decision whether it is a good idea to have agricultural labor housing on top of a barn. He believed that his job was to interpret Paragraph 12(a)i and believed that Mr. Lavery did not provide an adequate argument as to why this paragraph should be interpreted as allowing agricultural labor housing (a residential use) on top of a barn, which is an agricultural structure. Mr. Lavery stated that this paragraph should be interpreted by the person who drafted the paragraph and who testified before the CADB (Mr. Spinelli). Ms. Coyle replied that Mr. Spinelli did not draft that paragraph - that paragraph is part of the SADC's "standard Deed of Easement" and the language comes directly from the statute and the regulations. In addition, the person who drafted the Deed of Easement also used the definition of "agricultural use" as listed in the statute, the regulations and the SADC's "standard Deed of Easement".

Chairman Keller stated that the CADB must interpret the Deed of Easement. He saw a problem with the CADB making decisions based on witnesses testifying ten years after an event occurred, when the CADB has a clear and unambiguous document before them. Based on the rules of

contractual and statutory interpretation, if the language is clear and unambiguous, there should be no testimony.

Chairman Keller asked if any member of the board or staff had any further questions for Mr. Spinelli, Ms. Noll or Mr. Lavery. Mr. Bush stated that the Staff Report should be marked as an exhibit and become part of the record. A copy was provided to Mr. Lavery. Chairman Keller added that the Staff Report contained six exhibits and identified each exhibit:

1. January 20, 2011 “Application to Construct Residential Unit(s) for Agricultural Labor Employed on a Deed-Restricted Farm”.
2. February 9, 2009 letter from Susan Craft to Anthony Sposaro.
3. July 15, 2010 letter from Susan Craft to Anthony Sposaro.
4. January 29, 2009 letter from John Suminski to W. Randall Bush.
5. March 10, 2011 letter from Michael Lavery to Katherine Coyle (with attachments).
6. SADC’s standard Deed of Easement.

Mr. Lavery agreed that the above listed are the exhibits attached to the Staff Report.

Chairman Keller asked Mr. Lavery if he wished to speak with his client in an adjoining room and return to the meeting room to speak with the CADB after the CADB addressed other matters on the evening’s agenda. Mr. Lavery declined the offer.

Chairman Keller restated that he believed that the issue before the CADB was not a policy matter, nor was it a question of whether it is a good idea to have agricultural labor housing on top of a barn. He read the correspondence from the SADC, but felt that the members of the CADB are not bound by it. He thanked Mr. Spinelli for attending the meeting and providing his testimony. Chairman Keller stated that the Deed of Easement is silent on the issue that is before the CADB and that the issue was not contemplated by Mr. Spinelli and Chester Township at the time of the preservation of the farm. Chairman Keller stated that his decision would be based on the terms of the Deed of Easement using common sense. Paragraph 12(a)i) states that “improvements to agricultural buildings shall be consistent with agricultural uses.” “Agricultural use” is narrowly defined and means specific things. Paragraph 12(a)i) does not state “agricultural uses” and “agricultural labor housing.” Chairman Keller stated that he would not approve Mr. Forte’s application.

At this time, Chairman Keller asked for a motion. On motion of member L. Davis, seconded by member Ashley Myers, the board agreed to not approve the Forte application. A roll call vote was taken.

Aye: Ashley Myers, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

The motion passed and the Forte application was denied.

On motion of member Ashley Myers, seconded by member L. Davis, the board directed staff to draft a resolution to memorialize the board's decision regarding the Forte application. A roll call vote was taken.

Aye: Ashley Myers, L. Davis, Ort, Wightman and Keller
Nay: None Abstain: None

At this point, Mr. Spinelli, Ms. Noll, Mr. Forte and Mr. Lavery departed.

At this point, the CADB took a 5 minute break.

The meeting reopened at 9:11 p.m.

CLOSED SESSION

On motion of member L. Davis, seconded by member A. Ashley Myers, the board closed the open portion of the meeting pursuant to P.L. 1975 Ch. 231, the Open Public Meetings Act and per the board's normal resolution language and voted to conduct a closed session.

RETURN TO MEETING

The meeting reopened to the public at 10:07 p.m.

APPROVAL OF MINUTES

On motion of member Wightman, seconded by member Ort, the board approved the minutes of the April 14, 2011 regular meeting. A roll call vote was taken.

Aye: Ort, Wightman and Keller
Nay: None Abstain: A. Ashley Myers, L. Davis

ACTIONS RESULTING FROM CLOSED SESSION

No actions were taken.

REPORT OF DIRECTOR & ATTORNEY

There was no report.

RIGHT TO FARM

There was no RTF business to discuss.

CORRESPONDENCE

There was no correspondence to review.

OLD BUSINESS

There was no old business to discuss.

OPEN TO THE PUBLIC

Mr. Lofberg provided a status report from the SADC including information about solar power regulations, a bill regarding wind power, and the status of appropriations.

Mr. Bush thanked Mr. Lofberg for his help with facilitating closings in Morris County.

ADJOURNMENT

There being no further business, on motion of member Ort, seconded by member L. Davis, the meeting was adjourned at 10:17 p.m.

Respectfully submitted,

Katherine Coyle
Director