

**MINUTES**  
**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD**  
**30 Schuyler Place, 4<sup>th</sup> Floor, Morristown, New Jersey**  
**April 11, 2013**

The meeting was called to order by Chairman Keller at 7:30 p.m. Members present:

Aimee Ashley Myers  
Dale Davis  
Louise Davis  
Rick Desiderio (arrived at 7:34 p.m.)  
Harvey Ort  
Kenneth Wightman

Others in attendance:

Marjorie Ford (departed at 9:21 p.m.)  
William Ford (departed at 9:21 p.m.)  
Landi Simone (departed at 9:21 p.m.)  
David Frank, Esq. (departed at 9:21 p.m.)  
John DeNeufville (departed at 9:46 p.m.)  
Burton How (departed at 9:46 p.m.)  
Stefanie Miller, SADC  
Peter Nietzsche, RCE  
William Roerich, Washington Twp. (arrived at 7:45 p.m.)

Staff in attendance:

Deena Leary  
Ray Chang  
W. Randall Bush, Esq.  
Katherine Coyle  
Tina Boyer

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**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 March 14, 2013 meeting were not available.

## **OPEN TO THE PUBLIC**

There were no comments from the public.

### **RIGHT TO FARM # 1**

*Landi Simone, Gooserock Farm – Request for SSAMP.* Chairman Keller welcomed Ms. Landi Simone, owner and operator of Gooserock Farm, and David Frank, Esq., Ms. Simone’s attorney. Ms. Coyle distributed Mr. Frank’s April 8, 2013 letter brief and copies of a Staff Report that she had prepared. The Board members and all attendees read the Staff Report and Mr. Frank’s letter brief. Chairman Keller stated that the Board must determine whether Ms. Simone’s operation meets the RTF Act’s definition of a “commercial farm.” Chairman Keller asked Mr. Frank to make his presentation to the Board.

Mr. Frank provided information about his professional background and his interest in beekeeping. With respect to the RTF Act and Ms. Simone’s operation, Mr. Frank stated that the Board must look at four separate issues. First is the size of the farm management unit. Ms. Simone’s operation consists of small parcels of land in several different locations. She does not manage any lands to provide food for the bees. Instead the bees depend on naturally-occurring sources of food. Because Ms. Simone’s bee yards do not amount to 5 acres, in order to qualify for RTF, she must produce at least \$50,000 of agricultural products. Mr. Frank believes that the Board should include income generated by all parcels that Ms. Simone operates, regardless of whether each individual parcel meets the eligibility requirements of the RTF Act. Second, the Board must determine whether Ms. Simone’s operation is a commercial farm. Mr. Frank believes that it is only at this point that the Board should look at the individual parcels that make up Ms. Simone’s operation to determine whether they meet the eligibility criteria of the Farmland Assessment Act and the RTF Act. Mr. Frank disagrees that the Ford parcel is ineligible, because the property is Farmland Assessed. Ms. Simone operates her apiary on 525 square feet (0.01205 acres) of the Ford property. The property is eligible for Farmland Assessment because of the agricultural activities of its owners, William and Marjorie Ford, who operate a Christmas tree farm. Mr. Frank stated that if the Board were to follow the staff’s reasoning as detailed in the Staff Report, then any time that Ms. Simone’s bees are used to pollinate another farmer’s fields, she cannot receive the protection of the RTF Act.

Chairman Keller stated that the issues of income and eligibility for Farmland Assessment have to be addressed in more detail. He asked that the issue of income be addressed first.

Mr. Frank stated that all of the factual parcel information listed on B-1 was accurate (B-1 is a spreadsheet prepared by staff, showing information about each parcel within Ms. Simone’s farm management unit. The spreadsheet was created based on information provided by Ms. Simone on January 28, 2013.). Mr. Frank stated that the income generated by the Three J’s and Ford parcels should be included and, if it were, the Simone operation would meet the \$50,000 requirement. The Three J’s farm is not eligible for RTF because it has not been actively operated for the last 2 successive years. Mr. Frank believes that since the Ford property is Farmland Assessed, it is eligible to be part of Ms. Simone’s farm management unit even though Ms. Simone has not actively operated on this site for the last 2 successive years. The Ford parcel is

operated by its owners, William and Marjorie Ford, as a Christmas tree operation and the income generated from this operation qualifies the parcel for Farmland Assessment. Ms. Simone is leasing 525 square feet of the Ford property. Further, Mr. Frank believes that Ms. Simone's income generated on this parcel should be used to establish "commercial farm" eligibility because the RTF Act talks about a farm management unit and the unit should be treated as a whole, not parcel-based.

Chairman Keller asked Ms. Coyle to respond to Mr. Frank's statements.

Ms. Coyle first addressed a statement Mr. Frank made during the CADB's March 14<sup>th</sup> meeting. Mr. Frank had stated that if the Board were to require that each parcel qualifies for RTF, and if Ms. Simone's bees were to pollinate another farmer's operation, the bees and the pollination would not be protected by the RTF, because the bees were being provided by an outside operator. Ms. Coyle disagreed with Mr. Frank's statement. She stated that the pollination of crops on any farm would be protected by the RTF act as long as that farm being pollinated qualified for RTF. It would be irrelevant whether Ms. Simone's operation was eligible for RTF; the only thing that would matter would be whether the farm that is being pollinated is eligible for RTF.

Ms. Coyle then addressed the income issues. First, she read the definition of a "commercial farm" for farms that are less than 5 acres:

"commercial farm" means (...) (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

Ms. Coyle stated that the Sipos decision clarified the RTF requirements for farms less than 5 acres. The decision stated that a farm management unit, which consists of less than 5 acres must meet the following requirements in order to qualify for the protections of the Right to Farm Act as a commercial farm:

- a. the farm management unit, as a whole, must produce at least \$50,000 of agricultural or horticultural products per year;
- b. each individual parcel within the farm management unit must comply with all Farmland Assessment Act requirements (except for the minimum parcel size) – it is actively devoted to agricultural or horticultural use, and has been so devoted for at least 2 successive years immediately preceding the tax year in question.

Staff's position is that because Ms. Simone's operation is less than 5 acres and is made up of several parcels, the Board has to first review each parcel to determine whether it meets the eligibility criteria, specifically, whether each parcel is actively devoted to agricultural or horticultural use, and has been so devoted for at least 2 successive years immediately preceding the tax year in question. The production value from qualified parcels is then added together and if it totals at least \$50,000, then the farm management unit meets the definition of a commercial

farm. It seems unreasonable that the income generated by an ineligible parcel that does not meet the minimum eligibility criteria of the RTF Act should be used to determine whether the farm management unit meet the minimum eligibility criteria of the RTF Act (whether it meets the definition of a “commercial farm”). If each parcel of the farm management unit must satisfy the eligibility criteria, a parcel that does not satisfy these criteria cannot be considered part of the farm management unit. Thus if a parcel does not meet the criteria, its production value cannot be used to determine whether the farm management unit is a commercial farm.

Ms. Coyle further stated that one cannot divorce the definition of a “commercial farm” from the definition of a “farm management unit.” They are tied together. The definition of a “commercial farm” specifically refers to a “farm management unit.”

Chairman Keller asked Mr. Frank whether he believes that the Board should allow a more expansive definition than is in the statute. Mr. Frank stated that he does – based on Legislative history and the fact that there are two definitions.

Mr. Frank further replied to Ms. Coyle’s statements regarding pollination and its eligibility for RTF. He agreed that the pollination on a farm could be protected if the farm itself is eligible for RTF, but stated that any income generated from the honey produced by an outside beekeeper would not be eligible for RTF if that beekeeper’s operation is not eligible for RTF.

Chairman Keller asked if there are any other cases that address the parcel issue. Mr. Frank replied that there are not. However, Mr. Frank stated that staff misinterpreted the Sipos case. In that case, the farmers tried to bootstrap a non-eligible parcel to an eligible parcel.

Ms. Coyle replied that the Sipos case was solely referenced for the purpose of clarifying the Right to Farm Act’s eligibility requirements for farm management units. Staff never contended that the facts of the Sipos and Simone cases were the same.

Mr. Bush asked Mr. Frank whether he believes that Ms. Simone can bootstrap her operation to the entire Ford property. Mr. Frank replied that the Board should allow the bootstrapping and should not consider the eligibility and the income of each parcels within a farm management unit. Mr. Frank stated that no one can dispute that Ms. Simone’s operation is a commercial farm.

Chairman Keller stated that the RTF Act clearly states that a farm has to meet the minimum income requirement. It is the Board’s obligation to follow the statute and the regulations and ensure that the monetary threshold has been met or exceeded.

Mr. Frank stated that nothing in the Sipos case or the statute suggests that if a property is farmland assessed then the income derived by a separate farm management unit must be excluded from the calculations.

Ms. Coyle stated that she had distributed the Sipos case decision to the Board members. She asked the Board to return to the definition of a “commercial farm.” Mr. Frank’s position that ideally the Board would not look at individual parcels within a farm management unit is a policy question. However, that is not how the statute was written. Further, the Sipos case decision

specifically states that each individual parcel within the farm management unit must comply with all Farmland Assessment Act requirements excluding the size requirement for farm management units less than 5 acres. The Board cannot ignore the RTF Act's definition of a "commercial farm" and how it is rooted in the definition of a "farm management unit." Ms. Coyle stated that nothing in the statute states that income from ineligible parcels can be used to meet the income requirement and prove eligibility.

Mr. Bush stated that the Board should focus on what the statute and the regulations require and should also review the information that the Board asked Ms. Simone to provide.

Ms. Coyle stated that there seem to be 3 issues that staff and Mr. Frank disagree on: 1) whether the income generated by ineligible parcels can be used to determine whether the farm management unit meets the eligibility criteria, 2) whether the Ford parcel can be considered as part of Ms. Simone's farm management based on the fact that the Ford property is farmland assessed, and 3) what type of income can be used to determine whether an operation is a commercial farm. Mr. Frank agreed.

Chairman Keller asked Mr. Frank to address the 2<sup>nd</sup> issue.

Mr. Frank informed the Board that the owners of the Ford property, William and Marjorie Ford, submitted an application seeking recognition for their farm management unit. Chairman Keller asked Mr. Frank to confine the discussion to the Simone application and that the Board would not discuss the merits of the Ford application at this moment. Mr. Frank stated that the Fords will be able to qualify their beekeeping activity on their property as a protected activity. He believes that it is unreasonable that the Fords could receive RTF protection for their beekeeping operation on the same property as Ms. Simone's operation, but that the income generated by Ms. Simone on that same property cannot be counted to meet the eligibility criteria of the RFT Act. Mr. Frank stated that the RTF Act requires that the parcel has to otherwise satisfy the eligibility criteria of the Farmland Assessment Act and that the Ford property does otherwise satisfy the criteria by being farm assessed. Mr. Frank stated that Ms. Simone needs the income from the Ford parcel in order to meet the \$50,000 income requirement of the RTF Act. He stated that the question is whether the fact that the Ford property is farmland assessed meets the requirement to otherwise satisfy the eligibility criteria of the Farmland Assessment Act. He does not understand how being farmland assessed does not mean that it also otherwise qualifies.

Chairman Keller asked Ms. Coyle to respond.

Ms. Coyle stated that the question is not whether the Ford property is farmland assessed and that this fact is irrelevant for the purposes of the discussion. The RTF Act's definition of a "commercial farm" refers to a "farm management unit." Therefore, the Act requires the Board to make a determination whether the applicant's (Ms. Simone's) farm management unit, evaluated individually on its own merit, meets the definition of a "commercial farm." It is irrelevant whether the Ford operation is a commercial farm. The statute clearly states that the definition of a "commercial farm" is based on a "farm management unit." Ms. Simone never claimed that her operation and the Ford operation are part to the same farm management unit. In fact, Mr. Frank specifically stated that the Ford operation and the Simone operation operate as separate farm

management units in his March 22, 2013 letter. The sole question is whether Ms. Simone's farm management unit meets the standards of the Act, not whether the Fords' farm management unit meets the standards of the Act. Whether a farm management unit meets the definition of a "commercial farm" is based on the value of agricultural products produced by that individual farm management unit and that individual unit's eligibility for Farmland Assessment. It cannot be based on another farm management unit's commercial farm status, income status or farmland assessment qualifications. Whether the Ford farm management unit qualifies is irrelevant because it is not part of the Simone farm management unit and the Simone operation. Staff's position is that the RTF Act requires the Board to evaluate each farm management unit individually, and not as it relates to another farm management unit that is not part of the same operation. The Board has to qualify Ms. Simone's operation based solely on the merits of Ms. Simone's farm management unit.

Mr. Bush stated that that he is part of the staff that Ms. Coyle refers to. He reiterated that during the March 14<sup>th</sup> meeting he asked Mr. Frank for the legal authority for his position. What was generated as the Staff Report for this meeting includes Mr. Bush's input based on the information provided by Mr. Frank. Chairman Keller asked Mr. Bush to confirm that the Staff Report also contains conclusions of counsel. Mr. Bush confirmed the statement. He further stated that the position that Mr. Frank wants the Board to take is not supported by the statute.

Chairman Keller stated that it will be a judgment call of the Board whether or not the farm management unit will be strictly interpreted to include the Simone farm management unit or if it can be expanded. Chairman Keller stated that he read Mr. Frank's brief and also conducted some of his own research. He found that there is no case law addressing this issue.

Mr. Frank stated that the Board must think of the ramification of the position taken in the Staff's Report. Mr. Frank turned to Mr. and Mrs. Ford and asked them if they would lease the entire property to Ms. Simone. If they agreed, Mr. Frank stated that they would then have a new tenant on a 7-acre parcel and the entire parcel now qualifies for RTF. Mr. Frank asked whether it is the Board's intent to so narrowly consider its authority that it would keep a legitimate agricultural activity from being protected by the RTF Act because the property is qualified for Farmland Assessment for someone else.

Chairman Keller stated that the Board members took an oath to abide by the laws of the State and the legal decisions of the SADC. The CADB is not a policy-making board. The Board's role is to apply the provisions of the RTF Act to the Simone application and determine whether the operation meets the definition of a "commercial farm."

Mr. Frank stated that the CADB is a policy-making body. It is a quasi-judicial body and has the authority to make policy. If someone does not like the CADB's decision, they can appeal it to the SADC. Mr. Frank stated that staff is reading text into the statute that is not there.

Ms. Coyle replied that staff is reading the exact letter of the law and that it is the Board's job to interpret the statute the way it was written and not to write new policy. The Board's decision has to stand the test of any future appeals, wherever they may take the Board.

Ms. Coyle further stated that she has worked for the Board for about 12 years. Before that she worked for the SADC and was one of the staff people who helped draft the RTF regulations. She stated that she has a long history with the RTF Act. Ms. Coyle believes that it is the Board’s responsibility to follow the letter of the law and stated that if when the law was adopted the Legislature intended for it to read differently, then the law would have been written differently. The staff’s interpretation of the law is based on a plain meaning interpretation.

Mr. Bush stated that the board is charged with applying the law to applications presented to them, not to hypothetical scenarios.

Mr. Frank stated that in response to the request for addition information, Ms. Simone brought copies of several documents. The documents were marked as exhibits:

January through December 2012 Sales by Item Summary .....A-1

April 8, 2013 letter brief from David Frank, Esq. to the Morris CADB .....A-2

How to Pay.....A-3

Honey House Sales .....A-4

January through December 2012 Profit and Loss Standard.....A-5

January through December 2011 Sales by Item Summary .....A-6

Nuc Sales 2011 & 2012 .....A-7

Ms. Simone stated that she sells her honey through the honey house, which is located on her home property, through the internet, farmers markets and craft fairs. Exhibit A-3 is a photograph of a sign in the honey house that tells customers how to pay for the products. The sign asks the customers to leave a receipt and according to Ms. Simone, most customers do. She tallies the sales and uses QuickBooks to track her sales. A-4 contains: 1. description of Honey House receipts and copies for recent sales, 2. tally sheet, 3. QuickBooks sales receipt, and 4. deposit summary of 3-28-13. Ms. Simone and Mr. Frank stated that Ms. Simone does not keep all of the receipts, however she provided copies for a two-week period, which is representative of her typical sales. The sales information is also provided through Profit and Loss and Sales by Item reports (A-5 and A-6). A-7 contains: 1. explanation of nuc sales for 2011 and 2012 , 2. 2011 nuc pickup day tally sheet, 3. invoice 1010 dated 5-12-12, 4. deposit summary dated 5-12-12, 5. PayPal history summary, 6. copy of bank statement dated 5-30-12.

Mr. Frank stated that there is a four-part test: how much income an operation generates, how many acres are operated, is the land farmland assessed or otherwise eligible for farmland assessment, and does the activity comply with generally accepted agricultural management practices. Mr. Frank stated that Ms. Simone has provided proof of substantial income. The question before the Board is whether the Ford parcel meets the eligibility criteria to be considered part of Ms. Simone’s farm management unit and whether the income generated by

Ms. Simone on the Ford parcel can be counted to determine whether her farm management unit produces at least \$50,000 of agricultural products annually.

Mr. Bush asked how long Ms. Simone has been operating on the Ford property. Ms. Simone stated that she began operating in 2008, but took a break from operating on that site until 2012.

Mr. Frank stated that depending on the Board's decision with respect to Ms. Simone's operation on the Ford parcel, the Board would next address whether the apiary conforms to the generally accepted agricultural management practices in the context of the Simone application or as part of the separate Ford application.

Mr. Bush stated that the statute and regulations as well as the Sipos decision are very clear. He stated that Mr. Frank did not provide a legal authority for his position.

Ms. Coyle stated that the eligibility criteria of the RTF Act were set high for a reason. The Act allows the Board to exempt a farming operation from having to comply with municipal ordinances and protects the operation from nuisance law suits. If a farm does not qualify for RTF, it does not mean that the farm cannot operate – it can, however, it has to comply with municipal standards. Most farms operating in Morris County are operating without ever having appeared before the Board for a determination of RTF eligibility. Staff feels very strongly about interpreting the law plainly, the way it was written, because it does not want to jeopardize the strength of this law that has been upheld by the NJ Supreme Court. Ms. Coyle stated that she believes that the NJ RTF Act may be the strongest in the country and that we have to hold ourselves to a very high standard if we want the law to continue to protect farmers in NJ. Boards cannot misinterpret the meaning of the law and provide protections to operations that do not meet the minimum eligibility requirements.

Chairman Keller stated that the Board must decide whether Ms. Simone's farming operation is a "commercial farm" and asked the Board to make a motion.

Member Ort made a motion that Ms. Simone's farming operation is not a "commercial farm" as defined by the RTF Act.

Member L. Davis seconded the motion.

Chairman Keller stated that he appreciates Mr. Frank's position that a more liberal and expansive interpretation of the RTF Act could be afforded for specific policy reasons. He also stated that staff's final comments helped him make a decision. The RTF Act provides an extraordinary remedy to an agricultural enterprise – exemptions and protections from ordinances. Chairman Keller believes that when interpreting the statute the Board should not err on a more liberal and expansive side. The statute provides a balance between different interests and should be interpreted literally. Based on a literal interpretation of the statute, Chairman Keller believes that Ms. Simone's operation is not a commercial farm.

A roll call vote was taken.

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

Nay: None     Abstain: Wightman

The Board’s decision would be memorialized via a resolution at the May 9, 2013 meeting.

The Board took a five minute break.

*William & Marjorie Ford – Request for SSAMP.* Chairman Keller asked Mr. Frank to present the application. Mr. Frank introduced his clients, William and Marjorie Ford. The Fords own a 7.9-acre farm in Boonton Township where they grow Christmas trees. They have submitted a commercial farm certification document and several years of: IRS Form 1040 Schedule F, Farmland Assessment forms, and Notice of Property Tax Assessment. The documents prove that the Fords produce at least \$2,500 of agricultural products annually. The Ford parcel is the site of Ms. Simone’s apiary and the Fords seek protection for their own apiary practice on that property. Mr. Frank stated that the Ford operation meets the RTF Act’s definition of a “commercial farm.”

Mr. Bush marked the exhibits as follows:

March 22, 2013 letter from David Frank, Esq. to the Morris CADB.....F-1  
(including Commercial Farm Certification Form, Boonton Township Notice  
of Property Assessment for 2013, Schedule F of IRS Form 1040 for tax years 2012,  
2011 and 2010, and Applications for Farmland Assessment for tax years 2011, 2010 and 2009)

April 3, 2013 letter from David Frank, Esq. to Susan Payne.....F-2

April 4, 2013 letter from David Frank, Esq. to the Morris CADB (including.....F-3  
copies of receipts for years 2012, 2011 and 2010)

Mr. Frank stated that his clients are not requesting a site specific AMP. Instead they are requesting recognition of a commercial farm status and confirmation that their practice complies with the adopted AMP.

Chairman Keller stated that the Board would only address the commercial farm status during this meeting.

Ms. Coyle stated that it appears that there is a disagreement regarding the procedures, which should be followed. Pursuant to the RTF regulations, there are two avenues for a CADB to review a farming operation: through the conflict resolution process and through the recommendation of a SSAMP. The procedures that the Board must follow are outlined in N.J.A.C. 2:76-2.3, “Recommendations of site specific agricultural management practices where a board exists.” Ms. Coyle confirmed with the SADC’s attorney that these are the correct procedures to follow for the Ford application.

Mr. Frank re-stated that his clients are not requesting a site specific AMP. Instead they are requesting recognition of a commercial farm status and confirmation that their practice complies with the adopted AMP.

The Board members stated that they had reviewed the April 8, 2013 Staff Report.

Mr. Frank reviewed the Staff Report.

Chairman Keller asked how many apiaries are operating on the Ford property – whether there is another apiary in addition to Ms. Simone’s. Mr. Frank answered that the Fords plan to operate an apiary.

Chairman Keller asked if the Fords plan to purchase, assume or transfer Ms. Simone’s apiary operation. Mr. Frank stated that the Fords plan to acquire some bees from Ms. Simone, however it is uncertain whether the bees would come from the Ford site or another site. Chairman Keller asked Mr. Frank to confirm that the Fords do not currently operate an apiary, but that they plan to operate an apiary in the future. Mr. Frank confirmed.

Ms. Coyle asked Mr. Frank to confirm that the Fords plan to operate an apiary in the exact same location as Ms. Simone’s current apiary operation. Mr. Frank confirmed. Ms. Coyle asked whether the Fords are planning on buying or leasing Ms. Simone’s apiary that is located on the Ford property and whether Ms. Simone will continue to operate her apiary in the same location on the Ford parcel. Mr. Frank asked why this mattered.

Mrs. Ford confirmed that she and her husband plan on operating their apiary in the exact same location as Ms. Simone’s current apiary operation. Mr. and Mrs. Ford further stated that they do not want the apiary to be located in the area where they have their Christmas trees, because the public enters that area.

Chairman Keller asked whether there will be two apiaries operating on the site – the Fords’ apiary and Ms. Simone’s apiary. Mr. Frank replied that the Board should only discuss the Ford application at this time. Chairman Keller stated that Ms. Simone has an existing apiary operation at the exact same location. Mr. Frank stated that none of this mattered. Chairman Keller stated that it does matter to the Board so that they can understand what they are reviewing.

Chairman Keller asked staff for their recommendation. Ms. Coyle referred to her April 8, 2013 Staff Report. She stated that the farm management unit consists of over 7 acres, produces agricultural or horticultural products worth \$2,500 or more annually and satisfies the eligibility criteria of the Farmland Assessment Act. Staff recommends that the Board certifies the Ford operation as a “commercial farm” as defined by the RTF Act.

Member L. Davis made a motion that the Ford operation is a “commercial farm” as defined by the RTF Act.

Member Ort seconded the motion.

A roll call vote was taken.

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

Nay: None Abstain: None

Ms. Coyle continued to review the Staff Report and discuss the next steps in the process. Ms. Coyle stated that in order for a commercial farm to qualify for RTF protections, the commercial farm must meet specific eligibility criteria. The Board must determine that the farm:

- is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or that the commercial farm was in operation as of the effective date of the RTF Act;
- conforms to agricultural management practices adopted by the SADC or has been determined by the CADB to constitute a generally accepted agricultural operation or practice;
- conforms to all relevant federal or State statutes or rules and regulations; and
- does not pose a direct threat to public health and safety.

Ms. Coyle stated that the first criterion has been met. The second criterion would be determined during the SSAMP process.

With respect to the third criterion, Ms. Coyle stated that in an email dated April 8, 2013, Mr. Douglas Cabana (who previously submitted comments regarding the Simone application) informed the Morris CADB that the Ford property may be in violation of New Jersey Department of Environmental Protection laws and regulations. Copies of Mr. Cabana's letters and emails were attached to the Staff Report as exhibits:

- February 12, 2013 letter from Douglas Cabana to Katherine Coyle.....C-1
- April 8, 2013 email from Douglas Cabana to Katherine Coyle.....C-2
- April 11, 2013 email from Douglas Cabana to Katherine Coyle.....C-3

Mr. Frank objected.

Chairman Keller stated that since the Board still had to address the remainder of its agenda and already determined that the Ford operation is a commercial farm, the Board would address the compliance issue at its next meeting, which would be held on May 9, 2013. Chairman Keller invited Mr. Frank to submit a letter to the Board one week before the meeting addressing the compliance issue.

Mr. Frank replied that he would submit a letter two weeks before the meeting and asked that he be provided with a copy of the Staff Report prior to the meeting. Chairman Keller stated that he did not know whether the Board is required to provide copies of staff reports to the applicants prior to the Board's meeting. Mr. Bush stated that historically the reports are a product of the Board. Mr. Frank stated that his clients have the right to due process and part of due process is making the documents that the Board bases its decision on available in a timely fashion.

Chairman Keller stated that to avoid allegations of lack of due process, the applicants and the Board would discuss everything at the next meeting.

At this point, Ms. Simone, Mr. and Mrs. Ford, and Mr. Frank departed.

### **CLOSED SESSION #1**

On motion of member L. Davis, seconded by member Wightman, 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 standard resolution language, and voted to conduct a Closed Session.

### **RETURN TO MEETING**

The meeting reopened to the public at 9:44 p.m.

### **ACTIONS RESULTING FROM CLOSED SESSION**

*DeNeufville & How, Mendham Township.* On motion of member L. Davis, seconded by member Ort, the Board directed staff to send a letter to the applicants per the Board's discussion during Closed Session. A roll call vote was taken.

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

Nay: None     Abstain: None

Mr. Bush informed Mr. How and Mr. DeNeufville that he would inform their attorneys, Mr. Malman and Mr. Senesky, regarding the Board's decision.

At this point Mr. How and Mr. DeNeufville departed.

### **CLOSED SESSION #2**

On motion of member L. Davis, seconded by member Wightman, 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 standard resolution language, and voted to conduct a Closed Session.

### **RETURN TO MEETING**

The meeting reopened to the public at 9:58 p.m.

### **ACTIONS RESULTING FROM CLOSED SESSION**

No actions were taken as a result of Closed Session.

### **REPORT OF DIRECTOR & ATTORNEY**

*Meeting with SADC staff to review closing procedures.* Ms. Coyle and Ms. Boyer met with SADC staff on March 20<sup>th</sup> to review closing procedures.

*2013 Landowner Outreach.* Ms. Coyle informed the Board that as part of the 2013 landowner outreach, staff mailed information packets to 40 landowners. A sample packet was distributed to the Board members for their review. The SADC and CADB staff were coordinating the scheduling of a Regional Open House event for landowners interested in preservation. The event will take place on May 1<sup>st</sup> at the Morris County Cultural Center located at 300 Mendham Road in Morristown. The event is scheduled from 4 p.m. to 8 p.m.

*4-H Fair.* Ms. Coyle informed the Board that the CADB was invited to attend the 4-H fair. The Board discussed the matter and agreed that in light of the large landowner outreach this year, staff would not be attending the fair.

## **RIGHT TO FARM # 2**

*Alex Adams, Denville Township – Complaint.* Ms. Ms. Coyle informed the Board members that the SADC determined that the farm is not a commercial farm and is not entitled to the protections of the RTF Act. Ms. Coyle distributed to the Board members a copy of the SADC resolution.

*Proposed new Right to Farm Rules.* Ms. Coyle informed the Board that the SADC approved the following draft rules at their March meeting for publication in the NJ Register.

- On-Farm Direct Marketing AMP; and
- RTF Process revisions & RTF Hearing Procedures (SADC staff will attend a future CADB meeting to make a presentation regarding the new rules).

*Wind Energy Generation on Preserved Farms.* Ms. Coyle informed the Board that the SADC tabled its discussion of the draft rules until their April meeting.

## **CORRESPONDENCE**

There was no correspondence to review.

## **OLD BUSINESS**

There was no old business to review.

## **NEW BUSINESS**

There was no new business to review.

## **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 Ort, the meeting was adjourned at 10:19 p.m.

Respectfully submitted,

*K. Coyle*

Katherine Coyle  
Director