

MINUTES
MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
30 Schuyler Place, 4th Floor, Morristown, New Jersey
June 13, 2013

The meeting was called to order by Chairman Keller at 7:34 p.m. Members present:

Dale Davis
Louise Davis
Harvey Ort
Kenneth Wightman

Others in attendance:

Peter Nietzsche, RCE
Marjorie Ford (departed at 9:32 p.m.)
William Ford (departed at 9:32 p.m.)
Landi Simone (departed at 9:32 p.m.)
Paul Simone (arrived at 8:13; departed at 9:32 p.m.)
Grant Stiles (departed at 9:32 p.m.)
David Frank, Esq. (departed at 9:32 p.m.)

Staff in attendance:

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

SPECIAL NOTE

Due to equipment failure, the recording of this meeting is not available. Minutes of the meeting were compiled from the hand-written notes drafted by Ms. Katherine Coyle and Ms. Tina Boyer, who attended the meeting.

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

On motion of member L. Davis, seconded by member D. Davis, the Board approved the minutes of the May 9, 2013 regular meeting. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

OPEN TO THE PUBLIC

There were no comments from the public.

RIGHT TO FARM #1

On motion of member L. Davis, seconded by member Wightman, the Board agreed to change the order of the agenda to address the Ford application first. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

William & Marjorie Ford, Boonton Twp. – Request for SSAMP.

Mr. Bush provided a brief history of the application and stated that the CADB had determined that the Ford Farm is a commercial farm. The next step is the evaluation of the farm's eligibility for RTF protections.

Mr. David Frank stated that the next step is for the Board to determine whether or not the proposed Ford application is a generally acceptable management practice. He introduced Exhibit F-4 – N.J.A.C. 2:76-2A.2 – Apiary Agricultural Management Practice. Mr. Frank stated that since a general AMP for apiaries exists, the activity cannot constitute a direct threat to public health and safety. The Fords are seeking protection for their prospective apiary operation.

Chairman Keller stated that if the activity poses a direct threat to public health and safety, the operation would be ineligible for RTF and the Board would not have the authority to approve the application.

Mr. Bush administered oaths. Mr. William Ford, Mrs. Marjorie Ford, Ms. Landi Simone and Mr. Grant Stiles were sworn in.

Mr. Ford testified that he will register his apiary with the NJ Department of Agriculture, that he will not keep more than 300 colonies on his property, that all colonies will be located at least 25 feet from a public sidewalk, alley, street or road., and that all colonies will be kept in movable hives.

Ms. Simone testified that she has 10-12 colonies on the property now. There is a water source on the property – a brook. The bee equipment and hives are maintained in good condition. All colonies are kept in movable hives.

Chairman Keller asked Mr. Ford whether he has any experience operating an apiary.

Mr. Ford stated that he does not.

Chairman Keller asked Mr. Ford whether he has a business plan for the proposed operation.

Mr. Ford stated that he does not.

Chairman Keller asked Mr. Ford whether he has a site plan showing the proposed operation.

Mr. Frank introduced exhibit F-5 – a map showing the location of the proposed Ford apiary and the current Simone apiary.

Chairman Keller asked Mr. Ford whether he has purchased any equipment for his proposed operation.

Mr. Ford stated that he has not.

Mr. Frank stated that the distance between the apiary and Mr. Cabana's home was measured.

Mrs. Ford stated that it was measured with a laser and it is 110 feet away. Mrs. Ford stated that the pictures were taken in April 2013.

Mr. Frank introduced exhibits F-6, F-7 and F-8 – photographs of the Simone apiary.

Mrs. Ford stated that since the Simone apiary is located less than 300 feet from Mr. Cabana's home, it is screened with a 6 foot fence.

Mr. Frank asked whether tall trees serve as a buffer on the property.

Mr. Ford stated that there are trees along the border of the property.

Mr. Bush asked if there is a stockade fence on the edge of the property.

Mrs. Ford replied that there is not.

Member Ort asked if the trees are Christmas trees.

Mrs. Ford stated that they are, but that they are only used as buffers, not for cutting.

Mr. Frank introduced Mr. Grant Stiles as an expert witness. Mr. Stiles provided information about his qualifications and experience.

On motion of member L. Davis, seconded by member Wightman, the Board accepted Mr. Grant Stiles as a witness. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

Member Wightman stated that he is a customer of Mr. Stiles' company, but that this does not affect his ability to judge the Ford case.

Chairman Keller asked Mr. Stiles whether he was paid for his expert witness services.

Mr. Stiles replied that he was not.

Chairman Keller asked Mr. Stiles whether he prepared a written report.

Mr. Stiles replied that he has not.

Mr. Frank asked Mr. Stiles what purpose the fence on the Ford property serves.

Mr. Stiles replied that purpose of the barrier fence is to force the bees from their natural flight path to up and over the heads of people nearby.

Mr. Frank asked whether the fence decreases or limits the number of bees on the neighbor's property that is located 100 feet away.

Mr. Stiles replied that it does not and stated that the fence is there because the apiary is less than 300 feet away from the neighbor's property.

At this point, Mr. Paul Simone arrived.

Mr. Frank asked Mr. Stiles about the behavior of honey bees and when they sting.

Mr. Stiles stated that honey bees only sting when they are threatened or if their colony is disturbed.

Mr. Frank asked how honey bees differ from yellow jackets and wasps.

Mr. Stiles stated that honey bees are typically not aggressive. Wasps or yellow jackets are more aggressive and are more likely to sting with little disturbance.

Mr. Frank introduced Exhibit F-9 – NJ Department of Agriculture: Guidelines for Keeping Bees in Populated Areas.

Mr. Stiles read Item No. 2 of Exhibit F-9: "When a colony is situated less than 10 feet from a property line, the beekeeper must establish a flyway barrier. This should be at least 6 feet tall and extend 10 feet beyond the colony on either side. It can be solid, vegetative or any combination of the two, that forces the bees to cross the property line at a height of 6 feet."

Mr. Frank asked Mr. Stiles whether he had visited the apiary.

Mr. Stiles replied that he visited it this evening (prior to the meeting).

Mr. Frank asked whether there is adequate fencing around the apiary.

Mr. Stiles replied that it is.

Ms. Coyle asked Mr. Stiles what distance (from the location of the apiary to the neighboring property) would limit the number of bees entering the neighboring property.

Mr. Stiles replied that lack of any plants that attract the bees would accomplish that.

Mr. Frank asked how far bees can fly.

Mr. Stiles replied that typically bees fly 1 mile to a food source, but they will fly up to 3 to 5 miles and even 7 to 10 miles.

Chairman Keller asked whether more bees are likely to enter the neighboring property if they are located 100 feet away as opposed to 300 feet away?

Mr. Stiles stated that the distance does not make a difference and that the plants attract the bees.

Chairman Keller asked for the rationale for the 300 foot requirement.

Mr. Stiles stated that the bees' natural flight pattern would ensure that 300 feet from the apiary they are 6 feet from the ground.

Chairman Keller asked whether a hummingbird feeder or a hot dog/hamburger would attract the bees.

Mr. Stiles stated that only flowers are an attraction for honeybees. However, wasps and yellow jackets would be attracted to the feeder and human food.

Chairman Keller asked whether more bees will enter a property that has flowering plants if an apiary is located on a neighboring site.

Mr. Stiles replied "no" and that another colony of bees, or wild bees, could enter the property. Concentration is not the issue whether the bees are wild or managed.

Chairman Keller asked whether Item No. 2 of Exhibit F-9 is more restrictive than Item C of Exhibit F-4.

Mr. Stiles replied "yes" and stated that the Apiary AMP (Exhibit F-4) is for large farms that require pollination and Exhibit F-9 is for more urban areas.

Chairman Keller asked whether Exhibit F-9 is a guideline for human health and safety.

Mr. Stiles replied "yes."

Member Ort asked whether the concentrations of bees in a clover field are higher if the apiary is located 100 feet away as opposed to 300 feet.

Mr. Stiles replied that 100 feet or 300 feet is not significant to bees as they are not aware of distance.

Mr. Frank introduced Ms. Landi Simone as an expert witness. Ms. Simone provided information about her qualifications and experience.

Mr. Bush asked whether Ms. Simone has an interest in the outcome of the proceedings.

Mr. Frank replied that she does.

Mr. Frank asked Ms. Simone whether she had set up the apiary on the Ford property with Exhibit F-9 in mind.

Ms. Simone replied that she had and that there is no other suitable location on the Ford property.

Mr. Ford stated that the location was chosen based on proximity to Christmas trees because of the electric bear fence and customers coming to the farm to purchase Christmas trees.

Mr. Frank stated that the operation does not constitute a threat to public health and safety.

Mr. Bush asked Mr. Frank whether he would address the neighbor's (Mr. Cabana's) concerns.

Mr. Frank stated that he would not because Mr. Cabana is not present to be cross-examined and his emails and letters are hearsay.

Chairman Keller stated that the Board is allowed to relax the rules of evidence. The Board must consider the impact on public health and safety and can review the entire record.

Member Ort stated that he agreed with Chairman Keller.

Ms. Coyle provided copies of Mr. Cabana's emails and letter (all were previously distributed).

Ms. Coyle stated that the RTF Act and the den Hollander Supreme Court decision place the burden on the CADBs and the SADC to address the impact on public health and safety. The CADB must also consider municipal ordinances and standards when reviewing RTF cases.

Chairman Keller stated that the CADB has to review the impact on public health and safety and that Exhibit F-9 may be more applicable to this case.

Mr. Stiles stated that F-9 is more applicable to urban areas and F-4 is more appropriate for large commercial operations.

Chairman Keller stated that more research should be done and that the CADB should seek see further expert opinion.

Member L. Davis asked about the impact of topography on the effectiveness of a fence. She stated that in the photograph the deck on Mr. Cabana's property appears to be higher than the fence.

Mr. Stiles stated that the fence is not directing the bees at the residence.

On motion of member L. Davis, seconded by member Wightman, the Board authorized staff to advise the Board regarding retaining of experts. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

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

At this point, the Board took a five minute break.

CLOSED SESSION

On motion of member L. Davis, seconded by member D. Davis, 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 10:44 p.m.

ACTIONS RESULTING FROM CLOSED SESSION

On motion of member Wightman, seconded by member L. Davis, the Board directed staff to send a letter to Mr. Paschal per the Board's discussion in Closed Session. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

At this point, member Ort left the meeting room.

R. Smith, Washington Township. On motion of member Wightman, seconded by member L. Davis, the Board directed staff to request a 12-month extension of the SADC's Final Approval. A roll call vote was taken.

Aye: D. Davis, L. Davis, Wightman and Keller

Nay: None Abstain: None

At this point, member Ort returned to the meeting room.

On motion of member L. Davis, seconded by member Wightman, the Board directed staff to forward Ms. Susan Payne's May 28, 2013 letter to Mr. Rick Desiderio. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

REPORT OF DIRECTOR & ATTORNEY

Monitoring – North-East and Central Regions. Ms. Coyle informed the Board that she is monitoring the North-East and Central Region farms during the month of June.

Status of SCR138 & S2529. Tabled until July.

Expiration of the Highlands dual-appraisal provision. Ms. Coyle informed the Board that she contacted the CADB Administrators from all counties in the Highlands Region to coordinate a joint effort to secure an extension. A draft letter was prepared and distributed to the CADB's. The Board reviewed the draft letter and agreed with its content. Ms. Coyle would continue working with the CADB Administrators to finalize the letter.

RIGHT TO FARM #2

Landi Simone, Boonton & Montville Townships. Ms. Coyle informed the Board that Mr. David Frank, Ms. Simone's attorney, submitted to the SADC an appeal of the CADB's decision in the Right to Farm matter. Ms. Coyle provided an overview of the appeal procedures. She also informed the Board that the appeal was transmitted by the SADC to the Office of Administrative Law (OAL) on June 11, 2013.

Tranquility Farm, Chester Twp. – Ms. Coyle informed the Board that Mr. Rick Desiderio submitted a request for a site-specific agricultural management practice (SSAMP) for his operation. The Board discussed the fact that the members have a potential conflict of interest with respect to this request because Mr. Desiderio is a current voting member of the CADB. Ms. Coyle stated that she had informed Mr. Desiderio's employee, Ms. Debra Stewart (who submitted the request) regarding the potential conflict. Mr. Bush advised that the CADB should seek guidance from the Local Finance Board (LFB) regarding the conflict. The Board members agreed.

On-Farm Direct Marketing AMP – Ms. Coyle informed the Board that the proposed new rules would be published in the NJ Register on June 17, 2013. The CADB would have 60 days to comment.

RTF Process revisions & RTF Hearing Procedures - Ms. Coyle informed the Board that the proposed new rules would be published in the NJ Register on June 17, 2013. The CADB would have 60 days to comment.

CORRESPONDENCE

There was no correspondence to review.

OLD BUSINESS

Proposed new use – Margaret Noon, Mt. Olive Twp.: temporary residential/storage structure. Ms. Coyle informed the Board that per the Board's direction during the June meeting, she drafted and mailed a letter to Ms. Margaret Noon informing her of the Board's decision regarding the yurt proposal. The Board reviewed the letter.

Amendment to Policy: P-13: Meeting Agenda. Ms. Coyle informed the Board that she had amended the language in Paragraph 3 of Policy: P-13 per the Board's direction during the May 9, 2013 meeting. The amended policy states that:

"If a Staff Report is prepared for the CADB meeting, upon request, a copy will be provided to the petitioner before noon of the CADB meeting day. The report will be provided via email or fax or can be picked up by the petitioner at the office of the Morris County Department of Planning and Development located at 30 Schuyler Place, Morristown, NJ."

On motion of member L. Davis, seconded by member Wightman, the Board approved the revision to Policy: P-14. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

NEW BUSINESS

Greenway Flowers, Washington Twp.: Heath Village request for a zoning change. Ms. Coyle informed the Board that she had submitted comments regarding the proposal to Washington Township. The Board reviewed the letter. Washington Township responded to the letter and stated that the request for re-zoning was discussed and no action was taken. The Planner will be working on a revision to the draft overlay taking into account the Board's comments. This may include private roads to allow for greater setbacks at the border with Greenway Flowers and with Schooley's Mountain Rd.

Resolution 2013-04: Preliminary Approval: Scheller Farm, Washington Twp. On motion of member Wightman, seconded by member L. Davis, the Board approved resolution 2013-04. A roll call vote was taken.

Aye: D. Davis, L. Davis, Ort, Wightman and Keller

Nay: None Abstain: None

OPEN TO THE PUBLIC

There were no comments from the public.

ADJOURNMENT

There being no further business, on motion of member Wightman, seconded by member D. Davis, the meeting was adjourned at 10:56 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "K. Coyle". The "K" is capitalized and has a small dot above it. The "C" is lowercase and has a small dot above it. The "o" is lowercase and has a small dot above it. The "y" is lowercase and has a small dot above it. The "l" is lowercase and has a small dot above it.

Katherine Coyle
Director