

MINUTES
MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
30 Schuyler Place, 4th Floor, Morristown, New Jersey
March 14, 2013

The meeting was called to order by Chairman Keller at 7:40 p.m. Members present:

Louise Davis
Rick Desiderio
Harvey Ort

Others in attendance:

Landi Simone (departed at 8:39 p.m.)
Paul Simone (departed at 8:39 p.m.)
David Frank, Esq. (departed at 8:39 p.m.)
Stefanie Miller, SADC

Staff in attendance:

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

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 Ort, the Board approved the minutes of the January 10, 2013 regular meeting. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

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. Chairman Keller asked Ms. Coyle to summarize the Staff Report that she had prepared and distributed to the Board prior to the meeting. Copies of the Staff Report were available at the meeting to all attendees. Ms. Coyle stated that the Board had received a letter from Mr. Douglas Cabana regarding Ms. Simone’s operation on the “Ford lot”, which adjoins Mr. Cabana’s property. While the letter will become part of the record, Ms. Coyle stated that it was not relevant to the evening’s proceedings as the only matter that would be addressed is whether Ms. Simone’s operation meets the Right to Farm Act’s definition of a “commercial farm.”

Ms. Coyle provided a summary of Ms. Simone’s application and a summary of the Staff Report. Ms. Simone is the owner and operator of Gooserock Farm, an apiary operation. The operation consists of 10 parcels, which total 0.25211 acres. Seven of the parcels are located in Montville Township and three are located in Boonton Township. Pursuant to the Right to Farm regulations, upon the receipt of a request for a SSAMP, the Morris CADB must determine whether the agricultural operation is a commercial farm as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3. If the board determines that the operation is a commercial farm, it can develop a SSAMP for the operation.

Ms. Coyle informed the Board that Ms. Simone submitted the following financial information about her operation: 1) “Sales by Item Summary” spreadsheets for January through December of 2010 and for January through December of 2011, 2) 2011 U.S. Individual Income Tax Return, and 3) January 28, 2013 spreadsheet showing 2012 income for each parcel within Ms. Simone’s apiary. The documentation was part of the Staff Report as exhibits A-1 through A-3.

Ms. Coyle informed the Board that because Ms. Simone’s apiary/farm management unit consists of less than 5 acres, in order to meet the Right to Farm Act’s definition of a “commercial farm,” it must produce agricultural or horticultural products worth \$50,000 or more annually and must otherwise satisfy the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act. Ms. Coyle also stated that the SADC’s February 23, 2012 final decision in the case of Tibor Sipos and Cecily Gentles vs. the Hunterdon CADB provided a clarification regarding the Right to Farm Act’s eligibility requirements for farm management units consisting of less than 5 acres. Pursuant to the SADC’s decision, 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:

- the farm management unit, as a whole, must produce at least \$50,000 of agricultural or horticultural products per year;
- 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.

Ms. Coyle referred the Board to exhibit B-1 of the Staff Report, a spreadsheet 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. B-1 contained the following 2012 information about each parcel within Ms. Simone's farm management unit: parcel name, size (sq. ft.), size (acres), municipality, information whether agriculture was a permitted use in the zone as of December 31, 1997 or whether the parcel was in operation as of July 2, 1998, when Ms. Simone began operating the parcel, information whether the parcel has been actively operated for the last 2 years, income from honey, wax, propolis, income from nucleus colonies, income from eggs, total income per parcel, a determination whether the parcel meets the eligibility requirements of the Right to Farm Act, and a determination whether the farm management unit meets the eligibility requirements of the Right to Farm Act.

Ms. Coyle stated that the following 2 parcels within Ms. Simone's farm management unit do not meet the eligibility requirements of the Right to Farm Act because they have not been actively operated for the last 2 successive years: Three J's and Ford.

Because the Three J's and Ford parcels do not meet the eligibility requirements of the Right to Farm Act, income generated from these parcels cannot be used to establish "commercial farm" eligibility.

The following parcel *may* meet the eligibility requirements of the Right to Farm Act, however, based on the information submitted by Ms. Simone, it was uncertain whether the parcel has been actively operated for the last 2 years.

Ms. Coyle informed the Board that to she had requested the SADC's guidance with respect to the products sold by Gooserock Farm. The SADC staff informed Ms. Coyle that the Right to Farm Act distinguishes between the sales of the "agricultural or horticultural products" of the farm (which are eligible for the purpose of determining whether a farm is a "commercial farm") and the sales of the "agricultural output" of the farm (and the Right to Farm Act's protections for farm markets). The Right to Farm Act's definition of "commercial farm" refers to "agricultural or horticultural products" while the definition of "farm market" refers to "agricultural output."

Income from the sales of honey, pollen or beeswax is considered to be income earned from the sales of the "agricultural products" of the farm. Income from the sales of cosmetics (lotion, soap, lip balm, etc.) and beeswax candles is considered to be income earned from the sales of the "agricultural output" of the farm and cannot count towards the Right to Farm Act's income requirement. Cosmetics whose ingredients include bee products (honey, beeswax) can be retailed from a farm market that is eligible for the protections of the Right to Farm Act.

To establish "commercial farm" eligibility, income is calculated based on the value of bee products (honey, pollen, beeswax, etc.) harvested from the apiary before they are diverted to other uses such as candles and cosmetics (soaps, lotions, etc.).

The eligible 2012 income generated by Gooserock Farm totals \$46,201 (this includes the O'Brien parcel). Ms. Coyle stated that because Gooserock Farm's annual income does not total \$50,000, the staff's recommendation is that the operation does not meet the Right to Farm Act's

definition of a “commercial farm” and is therefore ineligible for the protections of the Right to Farm Act.

Ms. Coyle stated that because Gooserock Farm is not eligible for the protections of the Right to Farm Act, the Morris CADB lacks jurisdiction over the operation and does not have the authority to develop a SSAMP for Ms. Simone’s operation.

Chairman Keller asked Mr. Frank to make his presentation. Chairman Keller also asked Mr. Frank to state whether the information contained in B-1 is factually correct.

Mr. Frank disagreed with the staff’s position that if a parcel does not meet the requirements of the RTF Act, then the income generated from this parcel cannot be used to establish “commercial farm” eligibility. Mr. Frank stated that while a parcel may be disqualified for RTF, that does not disqualify the income generated by that parcel. He further stated that all of the income produced by all parcels operated by Ms. Simone (whether qualified for RTF or not) should be counted and if it is, then the total income exceeds the \$50,000 requirement.

Mr. Frank and Ms. Simone agreed that all of the factual parcel information listed on B-1 was accurate.

Mr. Frank stated that he disagrees with the SADC’s position in the Sipos case and does not believe that the case is applicable to Ms. Simone’s application. He stated that based on the Sipos case, one could never begin a new farming operation on a parcel smaller than 5 acres. Applying this reasoning to the Simone case, Mr. Frank stated that because a parcel has not been operated for the last 2 successive years, it is not eligible for RTF protections, Ms. Simone can never operate on that parcel.

Mr. Frank agreed that the first step in the process is the review of income and that Ms. Simone has submitted evidence regarding her 2011 income.

Ms. Simone stated that she is in the process of preparing her 2012 income taxes, but that the forms had not been finalized. She provided a report entitled “January through December 2012 Sales by Item Summary”, which was marked A-1. Ms. Coyle stated that exhibit B-1 was based on the same information. Ms. Simone concurred. Ms. Simone stated that her income is tracked through QuickBooks and she uses the program to prepare her income taxes.

With respect to the O’Brien parcel, Ms. Simone stated that she operated this parcel in 2011 and 2012 and harvested 2 crops. Ms. Coyle stated that the income generated by the O’Brien parcel was incorporated in B-1 and was counted towards the total income generated by the farm management unit.

Chairman Keller confirmed that the total eligible income is below the \$50,000 requirement.

Mr. Frank stated that the income is below the \$50,000 requirement because the income generated by the Three J’s and Ford parcels was not counted because the parcels have not been actively

operated for the last 2 successive years. He stated that the exclusion of this income is illogical because it would foreclose the initiation of new agricultural activities.

Mr. Bush disagreed with Mr. Frank. He stated that the exclusion of the income from the Three J's and Ford parcels does not foreclose the use of either of the parcels. The parcels can be operated, but are not eligible for RTF protections. In addition, once the parcels have been operated for 2 successive years, they may then be eligible for RTF. RTF protection is not forever barred.

Chairman Keller asked Mr. Frank which parcels should be included in the income calculations and whether the inclusion of the income from these parcels would meet the \$50,000 requirement.

Mr. Frank stated that the Three J's and Ford parcels should be included and, if they were, the Simone operation would meet the \$50,000 requirement.

With respect to the Ford parcel, Mr. Frank stated that the parcel is independently qualified for Farmland Assessment, but not by Ms. Simone's operation. 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. The parcel is over 5 acres. Mr. Frank asked whether the Board should be looking only at the lands used by Ms. Simone's operation or the entire parcel.

Ms. Coyle asked whether Ms. Simone contends that she operates the entire Ford parcel. Mr. Frank replied that she does not. Ms. Coyle stated that the Board is looking at Ms. Simone's operation and her income, not the Ford operation and its income.

Chairman Keller asked whether Mr. Frank believes that Ms. Simone's operation can bootstrap off of someone else's Farmland Assessment? Mr. Frank replied that since the parcel itself meets the criteria then Ms. Simone's production income from that parcel cannot be disqualified. Ms. Coyle stated that Ms. Simone is leasing 525 square feet (0.01205 acres) of the Ford property. Mr. Frank stated that Ms. Simone can bootstrap off of the Ford operation.

Chairman Keller asked whether there is anything in the statute or regulations or another case that allows for an operation to bootstrap off of another. Mr. Frank stated that he does not know of any cases that he can cite.

Member Ort stated that Ms. Simone farm management unit is a separate entity from the Christmas tree operation. Chairman Keller agreed and stated that the Board cannot look at other operations that are not part of Ms. Simone's operation.

Mr. Frank stated that the RTF Act does not require each parcel to qualify and if the Board were to consider each parcel, it would be impossible for bees to pollinate another farmer's operation because the bees were being provided by an outside operator. He restated that the Ford's land upon which Ms. Simone's bees are kept is qualified for Farmland Assessment. Ms. Coyle replied that Ms. Simone is not in control of the entire Ford operation/parcel. Ms. Simone stated

that the Ford parcel is a commercial farm and qualifies for Right to Farm. Mr. Frank stated that he can submit proofs showing that the Ford parcel is eligible for Farmland Assessment.

Mr. Bush stated that he would welcome Mr. Frank to brief his position and the authority he is using with respect to his presentation. Mr. Bush further stated that he disagrees with Mr. Frank's interpretation of the Sipos case.

Mr. Frank stated that since he did not receive the Staff Report prior to the meeting, he would like the opportunity to review it and to draft a brief. He asked the Board to table the matter.

Chairman Keller asked whether an April meeting was planned. Ms. Coyle confirmed that the meeting is scheduled for April 11th. Mr. Frank stated that he has a conflict on that evening.

Mr. Bush reminded the board that Mr. Cabana, an adjoining property owner, submitted a letter for the Board's consideration and that the Board should not indefinitely delay the resolution of the Simone matter in light of health concerns raised by Mr. Cabana.

Mr. Frank stated that due process requires that he be given ample opportunity to review the Staff Report.

Mr. Bush agreed that Mr. Frank would be given an opportunity to review the Staff Report and to present his answers to the Board at their April meeting. Chairman Keller stated that there is a potential health and welfare issue. Mr. Frank replied that the RTF Act refers to a direct threat to public health and safety.

Ms. Simone discussed the importance of beekeeping. She stated that it is unfortunate that the law does not seem to protect beekeepers and that a beekeeping operation that does not need a lot of land has to show \$50,000 worth of income. She also stated that if the Board agreed to count all of her income from her business (including income from the sales of cosmetics) she would exceed the \$50,000 requirement.

Chairman Keller asked whether Mr. Frank agreed with the exclusion of the income from the sales of cosmetics. Mr. Frank replied that he would reserve that for an appeal and that he disagrees with it.

The Board discussed the option of holding a special meeting or moving the April meeting date. The Board agreed to move the April meeting date to April 4th.

Chairman Keller asked what issues Mr. Frank will be addressing in his brief. Mr. Frank replied that he would address the exclusion of cosmetics and candles. Ms. Simone stated that her cosmetics are made with beeswax, honey and propolis. She also makes candles. Mr. Frank asked about the content of bee ingredients in the cosmetics as opposed to other ingredients she purchases to add to the final products. Ms. Simone replied that soap contains about one-half to one ounce of beeswax per one pound of soap, and that lotion bars and hand creams are about one-quarter to one-third beeswax.

Ms. Coyle explained again why the income generated by the sales of cosmetics is not considered to be the value of the agricultural products produced by the farm. To establish “commercial farm” eligibility, income is calculated based on the value of bee products (honey, pollen, beeswax, etc.) harvested from the apiary before they are diverted to other uses such as candles and cosmetics (soaps, lotions, etc.).

On motion of member L. Davis, seconded by member Ort, the Board agreed to change its April meeting date to April 4th. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

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

CLOSED SESSION

On motion of member L. Davis, seconded by member Ort, 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 10:00 p.m.

ACTIONS RESULTING FROM CLOSED SESSION

Asani, Lincoln Park. On motion of member L. Davis, seconded by member Ort, the Board directed staff to send a letter to the landowner per the Board’s discussion during Closed Session. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

Michel 1, Chester Township. On motion of member L. Davis, seconded by member Ort, the Board directed staff to send an offer letter to the landowner per the Board’s discussion during Closed Session. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

Michel 2, Chester Township. On motion of member L. Davis, seconded by member Ort, the Board directed staff to send an offer letter to the landowner per the Board’s discussion during Closed Session. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

REPORT OF DIRECTOR & ATTORNEY

FY13 Appropriation Request. Ms. Coyle informed the Board that a \$83M appropriation approved by the Legislature and Governor Christie

Farmland Assessment Law changes. Ms. Coyle informed the Board that changes to the law were approved by the Senate and the Assembly.

Meeting with SADC staff to review closing procedures. Ms. Coyle and Ms. Boyer will meet with SADC staff on March 20th to review closing procedures.

2013 Landowner Outreach. Ms. Coyle informed the Board that as part of the 2013 landowner outreach, Ms. Boyer created a Farmland Preservation Program brochure, which will be included in the mailing to targeted property owners. In addition, 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 1st 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.

2013 Monitoring. Ms. Coyle informed the Board that staff will monitor preserved farms in the North-East and Central regions during the months of May and June.

Food Revolution Weekend – Fosterfields. Ms. Boyer informed the Board about a Food Revolution Weekend event at Fosterfields to be held on May 17th and 18th. Ms. Boyer provided information about the event including information about becoming a vendor.

Raritan Basin Agricultural Mini-Grant. Ms. Coyle informed the Board about a grant opportunity offered by the New Jersey Water Supply Authority and the USDA-NRCS.

RIGHT TO FARM #2

Mine Hill Township – Right to Farm Ordinance. Ms. Coyle informed the Board that Mine Hill adopted a Right to Farm ordinance. The township addressed the CADB's concerns regarding livestock density standards. The Board reviewed the ordinance and agreed that it met the Board's requirements. On motion of member L. Davis, seconded by member Ort, the Board directed staff to inform Mine Hill about the Board's approval of the ordinance. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort and Keller

Nay: None Abstain: None

Alex Adams, Denville Township – Complaint. Ms. Coyle reminded the Board that the SADC received a letter dated November 6, 2012 from Denville Township requesting that the SADC find that Mr. Adam's property does not comply with the definition of a "commercial farm" and is not entitled to the protections of the RTF Act. In a letter dated January 22, 2013, the SADC requested the Township to provide a copy of their March 26, 2012 Letter Brief and Exhibits that were submitted to Honorable Stuart Minkowitz, J.S.C. On January 29, 2013, the Township provided the requested documents to the SADC.

Fish Farm, Florham Park – Complaint. Ms. Coyle informed the Board that Florham Park dismissed its complaint against the Fish Farm.

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

- On-Farm Direct Marketing AMP – Ms. Coyle informed the Board that the CADB’s comments regarding the draft version of the rule were not addressed. However, once the rule is published in the NJ Register, the CADB will have another opportunity to submit formal comments.
- RTF Process revisions & RTF Hearing Procedure – Ms. Coyle informed the Board about an SADC meeting with representatives of the farming community and a CADB Administrators’ meeting to discuss concerns about the proposed rules.

Wind Energy Generation on Preserved Farms. Ms. Coyle informed the Board that the SADC is in the process of developing new rules for wind energy generation facilities on preserved farmland.

CORRESPONDENCE

There was no correspondence to review.

OLD BUSINESS

There was no old business to review.

NEW BUSINESS

Policy: P-8 – Ranking System. Ms. Coyle asked the Board to consider amending the policy to clarify that to be eligible for Farmland Preservation, the land must exhibit development potential. The proposed new language mirrors the language from the SADC’s Farmland Preservation regulations. The Board reviewed the proposed language and agreed to amend the policy. On motion of member L. Davis, seconded by member Ort, the Board adopted revised Policy: P-8. A roll call vote was taken.

Aye: L. Davis, Desiderio, Ort 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 L. Davis, seconded by member Ort, the meeting was adjourned at 10:22 p.m.

Respectfully submitted,

K. Coyle

Katherine Coyle
Director