

WARREN COUNTY AGRICULTURE DEVELOPMENT BOARD

Department of Land Preservation

P.O. Box 179

500 Mt. Pisgah Avenue

Oxford, NJ 07863

(908) 453-2650

(908) 453-3150 fax

AGENDA

December 16, 2010

7:30 PM

In compliance with Chapter 231 of the Public Laws of 1975, adequate notice of this meeting has been given by forwarding a notice of the date, time and location of the meeting to the Warren County Clerk, THE DAILY RECORD, THE STAR LEDGER, and by posting a copy thereof on the bulletin board in the hall of the Warren County Courthouse and the Department of Land Preservation. In order to assure full public participation, those individuals with disabilities who wish to attend the meeting should submit any requests for special accommodations one week in advance of the meeting.

Pledge of Allegiance

Minutes: Meeting of November 18, 2010

Public Input: Non-Agenda Items

Correspondence:

- December 3, 2010 from R. Keiling Letter re: Raub case
- December 3, 2010 email re: Susan Craft to speak on Solar panels at Admin. Bldg.
- Cost Share for Farm Energy Audits
- County PIG Application 2012 Round
- New Rules on Solar Energy

Old Business:

- Smith/Rasa Farm

New Business:

- Right-to-Farm Hearing - Slack Farms
- Right-to-Farm Hearing - Raub Neighbors Testimonies
- New Rules on Solar Energy

Administrator's Report

Public Input

Adjourn

Next Meeting: January 20, 2011 at 7:30 p.m.

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P.O. Box 179
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Oxford, NJ 07863

Meeting Minutes December 16, 2010

The regular monthly meeting was held at the office of the Department of Land Preservation, 500 Mt. Pisgah Avenue, Oxford, New Jersey. The meeting was called to order by Chairman Schnetzer at 7:32 p.m. An announcement was read as required by the Open Public Meetings Act, N.J.S.A. 10:4-6-21. Chairman Schnetzer led the Pledge of Allegiance.

Members present: Lou Baduini, George Baldwin, Frank Gibbs, Joe Gourniak, Sam Race, Mike Toretta, Joel Schnetzer

Members absent: none

Others present: R. Resker, T. Kaminski, S. Beall, Staff; Michael Lavery, Special County Counsel, Richard Keiling, Attorney; David Slack, John H. Slack, Pohatcong Township; Gary Pohorely, SADC; Gail & Ray Raub, Lopatcong Township, Mr. Handler, Attorney for Raubs

Minutes of the regular session meeting held on November 18, 2010 were approved on a motion by Mr. Race and seconded by Mr. Baduini. Motion carries.

Public Input (Non-agenda Items): None

Correspondence: Noted

Old Business

Rasa/Smith Update – Mr. Lavery informed the Board that an amended ACO is not required now and a signed agreement that does not have to be recorded is sufficient. Cost share is expected after the signed agreement.

New Business

Right-to-Farm - Slack Farms (John H. Slack, Pohatcong Township)

Mr. Lavery informed the Board that Mr. Aaroe said that the Pohatcong Township would not be appearing tonight and felt that Mr. Slack should apply to the Land Use Board and Pohatcong will appeal the CADB's decision. Mr. Lavery swore in David Slack, who spoke on behalf of his father and stated that the zoning requirements for the building designated the location for it in the middle of the field and that the town has an issue with the square footage of the pole barn and was denied a building permit. The pole barn is 4,800 square foot which is over the allowed building size (3,000 sq. ft.) and would require a variance at a cost of \$1,000. Mr. Slack stated that they want to put the building 15 feet from the Rail Road easement. Mr. Slack stated that the Rail Road splits their farm in half and has been abandoned for 15 years and putting the barn at that location would allow more crop yield. Mr. Race makes a motion to grant Mr. Slack relief from Pohatcong Township saving them from a variance and that the 4,800 square foot barn is appropriate for farming activities and can be built within 15 feet of the Rail Road Right of Way. The motion was seconded by Mr. Toretta and the motion carries.

Right-to-Farm Hearing – Raub Neighbors' Testimonies

Mr. Keiling stated that the reason for this hearing was the response to the Appellate Division's decision in regards that if the adjoining property owners had been notified at the original hearing they may have had some input. Mr. Keiling stated that the notice to the neighbors for this hearing was done as if it were a land use application. Mr. Keiling stated that for the record it is the matter of Melody Curzi vs. Raymond & Gail Raub under Appellate Division Docket #A5380-06T1.

Mr. Keiling stated that all property owners within 200 feet were notified, and both Lopatcong and Harmony Township clerks were notified as well as both the Star-Ledger and The Daily Record all with due notice. Mr. Handler noted that there was no state legislature that required property owner notifications for other than Land Use Board. Lopatcong Township was not present at this meeting.

Mr. Handler stated that he finds no precedent for this hearing in the State of New Jersey and a third hearing on the same subject matter and the statutory use of the state legislature is no good and must now send out individual property notifications every time a case comes up, there is no law requirement for that. Mr. Handler felt that the Board already heard from the neighbors in the 2006 hearing and are now doing it again. Mr. Handler said that the first decision in 2004, Mr. Raub could live with, the second decision in 2006 that was imposed upon him planting vegetation and which he took issue and has appealed to the SADC which has been sent down to the Administrative Law Judge for determination on February 3, 2011. Mr. Handler stated that the initial 2004 decision stands and the law is clear. Mr. Handler quoted the law saying that any decision of an Agricultural Development Board that is not appealed shall be binding. Mr. Handler stated that no one appealed the 2004 order but Lopatcong came back with the same arguments in 2006 about the trailers being within the 40 foot set back line. Mr. Handler stated that then the Board decided to impose an additional obligation of planting of trees on the property line in common with the neighbors, which wasn't included in the original decision. Mr. Handler wanted to get on the record placing his position that there should not be a third hearing, and that Mr. Raub objected to this hearing.

Mr. Keiling recognized the objection for the record by Mr. Handler and suggested to the Board that they continue with the hearing. Mr. Keiling stated the Appellate Division did not give suggestion as to the appropriate notice of the neighbors so the land use notification was used. The Board agreed to proceed with the hearing.

Mr. Keiling swore in Mr. William Wright, 1701 Belvidere Road, Lopatcong Township. Mr. Wright gave testimony about the deplorable condition of the Raub's portion of the property line that borders his and Mr. Hendershot's. Mr. Wright said since the Raubs purchased the property, they have been plagued with trailers on the property lines and they are not moved for months or years and provided photos to the Board. Mr. Wright stated that Chairman Schnetzer had visited the Raub farm on three separate occasions and felt that the Raubs had always been respectful of the neighbors but did not speak to any neighbors about the trailers after his visits to the property. Mr. Wright wanted to know why the trailers were still permitted there after the resolution allowing the trailers on condition that required evergreen trees planted for buffering from 2006. Mr. Wright referred to that resolution, Item #3, that trees must be planted on or before May 1, 2007. Mr. Wright stated that there was a rusting truck as well as other junk on the property and felt it was Mr. Raub's private junkyard. Mr. Wright requested the removal of the junk site, the pile of stones, and that trees be planted along his and Mr. Tauriello's property line that connects to the Green Acres property line and the removal of the trailers. Mr. Wright requested that Mr. Raub find another location on the property to place the trailers or at least remove the trailers until the barrier trees are planted as approved by the Board on January 18, 2007.

Mr. Wright said that Mr. Raub was found guilty in Superior Court of NJ for harassment, threatening him and the trailers being on the property line.

Mr. Race asked Mr. Wright if he ever presented those comments before at one of the other hearings. Mr. Wright said no, but was here for the Lopatcong meeting with Mr. Selvaggi, but they did not testify. Mr. Selvaggi represented Lopatcong Township.

Mr. Handler for clarification referred to the minutes of August 22, 2006 that Mr. Wright, Jr. testified on Mr. Wright's behalf on concern of the trailers and felt that this was the second time that Mr. Wright is testifying. Mr. Handler asked Mr. Wright if he was awarded money and Mr. Wright said yes, but the Appellate Division threw the case out because they said that he should have come here first.

Mr. Handler said Mr. Wright, Jr. was extensively questioned at the August 22, 2006 special meeting in regards to what was contained in the trailer, had seen what was inside of them, and he brought in pictures, so the meeting wasn't restricted to the 40 foot set back of the trailers.

Chairman Schnetzer remarked that it's not the Board's worry on what goes on at the Green Acres property since it is not owned by the County. Mr. Handler didn't want Mr. Wright's testimony on the Green Acres property to influence the Board.

Mr. Keiling asked the audience if anyone else would like to testify in opposition of the Raubs to the position of the trailers on the property. Mr. Hendershot said he would just echo what Mr. Wright stated.

Mr. Keiling noted that at 8:20 p.m. the testimony against the Raubs had ended.

At this time, Mr. Handler asked if there was anyone in the audience in support of the Raubs.

Mr. Keiling swore in Bob Matarazzo, 10 Doe Hollow Lane, White Township. Mr. Matarazzo stated that he thought the trees should be on the border of the property owner. Mr. Matarazzo thought it was wrong morally to put the burden on the Raubs to plant the trees.

Mr. Keiling swore in Bob Mackey, 284 County Route 519, White Township. Mr. Mackey stated that farming doesn't change the property, that developers change the property and they plant trees. Mr. Mackey thinks that there should be some cooperation between the Raubs and the neighbors to each plant trees. Mr. Mackey feels that the resolution that the CADB made in 2006 requiring the Raubs to plant trees will set a precedent in the state requiring all farmers to now screen their properties.

Mr. Keiling swore in Patricia Wilkins, 160 Esposito Road, Harmony Township. Ms. Wilkins stated that Mr. Raub leases silos and does his silo corn business on her farm. She stated that he brings the rusty old dump truck to her farm. Ms. Wilkins stated that she felt that she would have to plant trees if the Raubs were required to plant trees on their property line because the edge of her property is a few feet from her neighbors where she has her dump for the horse manure. Ms. Wilkins feels that a precedent is being set and would require every farmer to plant trees at their neighbors request to shield from farm equipment, silos, etc. all along their property lines.

Mr. Keiling swore in Dale Crouse, 160 Brainards Road, Harmony Township. Mr. Crouse stated that farmers want to be productive and that the location where the trailers are parked are the only place on the property where Mr. Raub can yield the most crop.

Mr. Keiling swore in Greg Petty, 1023 Marble Hill Road, Harmony Township. Mr. Petty thinks the whole hearing is a joke. If he doesn't like the way his neighbor's property looks, he will plant his own trees or bamboo.

Mr. Raub stated that he would like to go back to the original Resolution of 2004. Mr. Handler in closing stated that the Board's 2006 Resolution of requiring Mr. Raub to plant trees is setting a precedence that would have all farmers plant borders to please their neighbors.

Mr. Handler stated that the trailers are located on the only flat property on the ground. Mr. Handler said that to impose upon the Raubs, and in respect, the entire farming community, to install living fences is not proper.

Mr. Keiling stated that every case is decided on its own merits, that they are not opening a Pandora's box as stated by Mr. Handler, and that 5 municipal tickets were dismissed (2006) and the one ticket remained of the violation of 40 feet set back from the neighbors property line was to be compromised with planting the evergreen trees. An appeal was filed both by the municipality and the Raubs of the 2006 decision that will be heard in February 2011 by the Administrative Law Judge (includes the placement of the evergreen trees). Mr. Keiling advised the Board that no matter what the Board decides, something will come of the Administrative Law Hearing. Mr. Keiling stated that if they rescind their decision of the trees, Lopatcong Township still intends to proceed with the hearing before the Administrative Law Judge, and if the Board affirms their decision, Mr. Handler, on behalf of Mr. Raub, will proceed at the Administrative Law Hearing.

Mr. Baldwin doesn't think the Board should make any decisions until it's resolved before the Administrative Law Judge.

Mrs. Raub read questions by the Board from WCADB Farm Practice Hearing Report from 2006. A question was posed to Mr. Selvaggi concerning the status of all tickets except ticket 109. Mr. Selvaggi stated that he was dismissing all other tickets except 109 which alleged a violation of the 40 foot set back requirement for structures from the property line. Mrs. Raub stated that the only question the Board had to answer was, is a trailer a structure? Mrs. Raub stated that these trailers have license plates on them, her truck is not a structure, a trailer is not a structure, a combine is not a structure. Mrs. Raub is referencing the Ticket 109 as the trailers being a structure. Mr. Race said it wasn't a structure at that meeting in 2004 and stated again it wasn't a structure at tonight's meeting. Mrs. Raub said since a trailer is not a structure, and that's the only issue before the Board, she personally doesn't see any addition to the decision of 2004 except to say that the Board made a decision without putting any limitation of trailers on them and that they were acceptable and said nothing about trees. Mrs. Raub said in 2006, all the Board was asked to do was to respond to ticket 109, and if the trailers are not a structure, the 40 foot setback is something the Board doesn't even have to discuss. Mr. Baduini said that the Board found them not guilty. Mr. Handler said that it wasn't an issue here tonight. Mr. Handler said the question is what is going to be imposed upon by Mr. Raub by way of the foliage.

Chairman Schnetzer stated to Mr. Handler, the Raubs, and the audience that the reason for this hearing was a response to have a hearing for the neighbors as directed by the Appellate Court because they felt that the neighbors were not properly noticed and the issue was not with the trees. Chairman Schnetzer stated that he is not throwing the farmers away, but according to The Right-to-Farm law when a municipal violation comes before this Board against a farmer, this Board is directed to give deference to the municipality and neighbors in its decision. Chairman Schnetzer said that the Board looked at it all in its decision regarding the Raubs. Mr. Handler said the violation from Lopatcong is no longer against this Board. Chairman Schnetzer again stated the reason for the hearing was to have hearing for the neighbors with proper notice as directed by the Appellate Court. Mr. Handler felt that the Appellate Court was wrong with that decision.

Mr. Keiling stated that the directive from the Appellate Division was to give the neighbors the opportunity to offer some additional testimony or to explain some of their concerns. Mr. Keiling stated that we heard from one neighbor, as well as hearing neighbors in support of the Raubs, and it would be whether the contrary testimony or the favorable testimony will have any impact on what their decision was previously in 2006. Mr. Keiling again stated that it was still going to be heard by the Administrative Law Judge in February, 2011.

Mr. Race asked Mr. Keiling how does a decision made tonight, relate to the first, the second and because the second decision is now being appealed, if we were to reverse that, what will happen to the appeal?

Mr. Keiling stated that nothing will happen to the appeal and if they changed their decision to say that there will be no requirement of planting trees, Mr. Raub's counsel will be happy, because it does away with any requirement for planting, but as far as Lopatcong Township goes, they are not here, they are not bound by it, they still have the right to appeal the Administrative Law Judge. Mr. Keiling stated it will not change the appeal that Lopatcong has with the not guilty ticket with the Administrative Law Judge.

Mr. Race questioned whether the Board had a right to make a decision while this case is under appeal with the Administrative Law Judge and Mr. Handler said that the Board did have a right to make a decision.

Mr. Baduini stated that at least we complied with the Appellate Court and took care of the obligation to have a meeting for neighbor testimony and leave the resolution in tact that was passed in 2006.

Mr. Handler stated that a lawsuit was brought before Judge Coyle was not done properly because of Mr. Curzi who was representing all the neighbors and that Mr. Curzi did not come before this Board as stated in the Right-to-Farm Act.

Mr. Toretta stated that this Board just doesn't rubber stamp the farmers in a Right-to-Farm Hearing just because it's a farmer and respects everybody's opinions and makes a decision for the benefit of the whole.

Mr. Gourniak asked other than Mr. Wright, how many that testified that were properly notified and within 200 feet of the Raub's property? Mr. Handler stated only Mr. Wright.

Mr. Wright asked why Mr. Raub was allowed to park his trailers at the same spot if the evergreen trees were never planted? Mr. Keiling stated subsequent to the 2006 resolution there were separate suits filed by the Raubs and Lopatcong Township with the Administrative Law Judge challenging the planting of trees. Mr. Keiling said that the trailers were allowed to be there.

Mr. Baldwin makes a motion to take no action and keep former resolutions as they are and stated that they have complied with the Appellate Court's request and wait until the Raub case is heard by the Administrative Law Judge. Mr. Baduini seconds the motion.

Roll Call:

Mr. Baldwin – yes	Mr. Schnetzer – yes	Mr. Race – no	
Mr. Baduini – yes	Mr. Toretta – yes	Mr. Gibbs – yes	Mr. Gourniak - no

New Rules on Solar Energy – It seems that if you want to have Right-to-Farm Protection, you will have to follow these rules. These are proposed rules with a 60 day response time for comments. It is noted that a farmer would not want to lose farmland assessment and pay commercial tax.

A motion was made by Mr. Race and seconded by Mr. Toretta to table this discussion on new rules on solar energy until next month. Motion carried.

Administrator's Report:

Mr. Resker briefly went over the important matters on the report. Mr. Resker stated that he did not attend the SADC meeting this month because Warren County had nothing on the agenda.

Singley property – Being held up due to resolution of open space parcel

Sigler Farm, Franklin Twp., will do lot line adjustment with exception area.

S & C Santini Farm, Franklin Twp., needs a lot line adjustment.

R. Santini Farm, Franklin Twp., SADC has an issue with their 16-acre exception for grainery, compromise might be available.

Wattles #1 – Title issue regarding the driveway is holding up closing.

Wattles #2 – Survey issues resolved and attorney is doing corrective deed.

Public Comment: Mr. Mackey wanted to know what the CADB's mission statement is. Mr. Lavery said it was in the statutes and that he would look into it.

On a motion by Mr. Baldwin and seconded by Mr. Race, motion carries and the Board entered into executive session at 9:37 pm.

On a motion by Mr. Race and seconded by Mr. Gourniak, motion carries and the Board came out of Executive Session at 9:45 pm where Mr. Lavery stated that the Schanzlin pending litigation matters and the Singley contractual matters were discussed and no official action was taken.

Adjournment: On a motion by Mr. Baldwin and seconded by Mr. Race, a motion was made to adjourn the meeting. Motion carries. Chairman Schnetzer adjourned the meeting 9:46 p.m.

Respectfully submitted,


Teresa Kaminski