



**PASSAIC COUNTY AGRICULTURE
DEVELOPMENT BOARD
MINUTES OF A REGULAR MEETING
Monday, November 8th, 2021
WebEx Meeting**

Chair Bartlett opened the meeting at 6:30 PM and read the notice that the requirements of the Open Public Meeting Act had been met.

MEMBERS PRESENT: Skip Bartlett, Chair; Tim Feeny, Vice Chair; Rocky Hazelman, Commissioner; Michael Eelman, Commissioner; Henry Anderson, Commissioner; Jennifer Papa, Commissioner

EX-OFFICIO MEMBERS: Cecilia Diaz, Rutgers Cooperative Extension of Passaic County, Kenneth Simpson, Passaic County Planning Board

STAFF PRESENT: John Pogorelec, County Counsel; Marc Seemon, Deputy County Administrator; Michael Lysicatos, Planning Director/Board Secretary; Jessie Summers, CADB Administrator; Salvatore Presti, Assistant Planner

OTHERS PRESENT: Cindy Roberts, SADC Development & Training Coordinator; Rachel DeFlumeri, SADC Regional Acquisition Coordinator; Robert L. Moshman, Attorney for Battinelli Family Farms, LLC; Anthony J. Sposaro, Attorney for the Township of West Milford; Anthony Battinelli III and Paige Battinelli, owners of Battinelli Family Farms, LLC; David Sisco-Izak, owner of Harper Turner Farms

MINUTES

A motion to accept the minutes of October 18th, 2021 was made by Commissioner Feeny. The motion was seconded by Commissioner Papa. The motion passed unanimously.

PUBLIC PORTION

**Battinelli Family Farms, LLC – Site Specific Agricultural Management Practice (SSAMP)
Application**

County Counsel Pogorelec outlined the jurisdictional hearing. He stated that this jurisdictional hearing is to determine if the applicant meets the definition of a commercial farm and therefore afforded the protections granted by the Right to Farm Act (hereafter, RTFA) as it relates to specific agricultural management practices. The board is asked to follow the New Jersey Administrative Code 2:76-2.3, which states that the applicant must satisfy the following elements:

In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to NJSA 4:1C-39, the board shall request the commercial farm owner or operator to provide the following in certification form:

1. Proof that the commercial farm is no less than five (5) acres, produces agricultural/horticultural products worth \$2,500 or more, listed said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964; or, if the commercial farm is less than five (5) acres, produces agricultural/horticultural products worth \$50,000, and is otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, and;

2. Proof that the farm is located in an area which as of December 31st, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or the commercial farm was in operation as of July 2nd, 1998.

Robert L. Moshman, located at 179 Cahill Cross Road Suite 206, West Milford, NJ 0480, introduced himself as the attorney representing Battinelli Family Farms, and would be having Anthony Battinelli testify as a witness.

Anthony J. Sposaro, located at 444 East Main Street, Chester, NJ 07930, stated that he was retained as special counsel for for the Township of West Milford in this matter and would be representing one witness.

Anthony Battinelli III, 2 Somerville Road, Hewitt, NJ 07421 was sworn in as a witness.

Anthony Sposaro raised a procedural issue. In regards to the eligibility criteria of the Right to Farm Act, Mr. Sposaro restated the requirement that the property has to be located in an area where commercial farming is a permitted use as of December 31st, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or the commercial farm was in operation as of July 2nd, 1998. Mr. Sposaro reviewed the proofs provided by the applicant and contested that there was not satisfactory proof that the commercial farm was in operation as of the effective date listed above. Mr. Sposaro and the Township of West Milford do not dispute that a farm was in existence, but called attention to the requirement that it must have been a commercial farm as defined by the RTFA. Based on Mr. Sposaro's provided copy of the zoning, the property is not in a zone that permits agriculture and therefore, he feels that unless the applicant could provide immediate proof that the farm was a commercial farm producing the minimum amount of \$2,500 on July 2nd, 1998, the hearing should not go forward.

Robert Moshman responded that Mr. Battinelli does not have access to the revenue and financial records of the farm from the previous owners, but did state that he does have proof in the form of aerial imagery that the farm has been in operation since at least 1931, and has consistently been operated as that same use for the last 90 years. He also stated that he will need to get more information from the previous owners going back to what took place prior to the current owners but continued on to say state the current owners have provided proofs to show that they are above the \$2,500 production threshold and have detailed the projected use is above that figure as well.

Anthony Sposaro responded by stating that the applicant has the burden of proof to demonstrate that the farm meets the definition of a commercial farm as of July 2, 1998. He stated that Mr. Moshman has forthrightly acknowledged that the applicants do not have that proof, and reasserts that the hearing should not go forward tonight. Mr. Sposaro raised a second legal issue that the applicant has been denied farmland assessment for 2022 by the Township's tax assessor. Referencing the case law provided in a letter of objection dated November 5, 2021 (the matter of Joseph P. Arno), the State Agriculture Development Committee (SADC) held that when a municipality has considered an application for farmland assessment, the SADC will defer to the municipality's evaluation and conclusions. Only if there is no previous application does the CADB hold a hearing to determine the eligibility of the property under the Farmland Assessment Act. Mr. Sposaro further stated that because Mr. Battinelli's farmland assessment application was denied, the CADB is bound by the Township's determination.

Mr. Moshman stated that his clients had been pursuing this matter on their own prior to his involvement and were previously informed that because the farm is changing use from existing equine activity to a commercial crop farm, that there is a grace period of either one or two years where no proof of income must be provided. This influenced the nature of the application that was submitted to the local tax assessor which was subsequently denied. Once Mr. Battinelli was informed that this is not the case, he provided proof of \$3,000 worth of revenue for the year by November 1, 2021 as requested. Mr. Moshman clarified that this matter of farmland assessment denial for 2022 must be pursued on appeal. He apologizes for not having the requisite proof but states that there was much more commercial activity on the farm previously above and beyond approximately \$1,000 of hay sales which included horse boarding, horseback riding and will seek proofs of such. Mr. Moshman also stated that the objection to the application was received on Friday, November 5, 2021, only one business day prior to the hearing which is why the matter was still discussed at tonight's meeting.

County Counsel John Pogorelec stated that Mr. Moshman may choose to withdraw his client's application at this time pending further completion of the required elements, or the hearing can proceed, but the Board will make findings of fact and conclusions with only the information presented in the original application submittal.

Mr. Battinelli stated that before any work commenced on his property, he consulted the Hudson Essex Passaic Soil Conservation District representative (Glen Van Olden, hereafter HEPSCD) and the Township of West Milford to ensure that he was doing what he was allowed to do. He was informed that he was allowed to prepare his fields for crops and would receive a one-to-two-year grace period where the income threshold was not required while the farm transitioned to a new use. Mr. Battinelli also referenced that for numerous years before he purchased the property it had been farmland assessed. He stated he is more than willing to do whatever is required to proceed with his farm's change in use but is frustrated and feels misled by conflicting advice and that he wants to resolve this matter as soon as possible given his financial investment in the property and equipment.

Commissioner Hazelman asked if the Board has any jurisdiction to work with the Township of West Milford to work towards a resolution relating to the farmland assessment issue, and also concurred with the previous discussion that the farmland assessment is the precursor to moving forward with the SSAMP application. County Counsel John Pogorelec reiterated that according to the SADC ruling in the matter of Joseph P. Arno (previously mentioned), if the tax assessor has made a determination, the Board is required to abide by that determination. Mr. Sposaro reiterated that as the applicant did not meet the conditions as outlined, and that the hearing should not go forward as the Board does not have authority to intervene in the matter. He also reiterated that by the time the applicant issued proper public notice as required by the RTFA, the hearing would have to be scheduled in January, at which point the board would not have authority as the property will no longer be farmland assessed as of 2022.

Mr. Battinelli testified that he was told about the income threshold grace period on site with the HEPSCD, the Township of West Milford Engineer, zoning officers, and tax assessor. In response, Commissioner Hazelman commented that for whatever reason outside of the CADB, the farmland assessment application for 2022 was denied and per County Counsel Pogorelec's confirmation does not have the ability to put forward a resolution to change that.

Planning Director Lysicatos acknowledged Mr. Battinelli's frustrations, but also clarified that Glen Van Olden's role is with the HEPSCD and advises on that basis; he sits on the County Agriculture

Development Board as a result of that role and is an ex-officio member who provides additional knowledge and expertise to the Board in relation to agriculture and farmland.

Mr. Moshman opted to formally withdraw the application at this time and inquired about the next scheduled Board meeting, which was not until 2022. Chairman Bartlett said that if the application is complete with the required criteria previously mentioned, the Board can schedule an additional meeting in December. Mr. Sposaro explained that the December meeting would be for the jurisdictional hearing and that a subsequent substantive hearing, including proper public notice, would need to be scheduled thereafter which would be in 2022 and therefore not possible due to the farmland assessment application denial.

Planning Director Lysicatos explained that when the application came to the attention of the Board, the property was farmland assessed for the 2021 year. During the preparation for the public hearing, the decision was rendered to deny farmland assessment and as a result the nature of the application has changed with respect to the Board's jurisdiction. He also stated that if that part of the application was to change by virtue of an appeal, Mr. Battinelli is welcome to reapply, and the application would be considered under a different light.

Commissioner Papa asked for clarification if the farmland assessment denial is the reason that the Board could not move forward with the hearing process which County Counsel Pogorelec confirmed by citing the RTFA criteria and offering his legal opinion that the criteria cannot be satisfied at this time. He also confirmed that the tax determination would have to be appealed in tax court and should be considered independent of this Board's function. If the denial is overturned, Commissioner Papa clarified that Mr. Battinelli is able to reapply once the other three elements of jurisdiction are satisfied.

Cecilia Diaz asked Mr. Battinelli if the Township's tax assessor provided a written reason for the application denial. Paige Battinelli, a co-owner of the farm and member of Battinelli Family Farms, LLC, explained her discussions surrounding the new farm with the tax assessor and summarized that certain crops would not be harvested by the August 1, 2021 application deadline and was informed that they could revise their application until November 1, 2021 to provide this income information. She also stated that there was a request for a farm management plan detailing the crops for the next period of time and that this may satisfy the income requirement being that the farm was switching use from an equine farm to crop production. Ms. Battinelli testified that the tax assessor noted that the application is not as straightforward as other applications given that it is transitioning to a new use. Once checks proving the sale of hay bales from the property were provided, they were questioned as to the validity of the sales from the property which is why the Battinelli Family is seeking assistance from the CADB. Mr. Sposaro contested that many statements have been made that are not under oath by Ms. Battinelli and reiterated that the Battinellis should be speaking through their counsel, Mr. Moshman. The applicants formally withdrew the application without prejudice with the intent to return once sufficient proofs the farm's previous commercial farm status have been gathered and appeal of farmland assessment denial has been completed.

Harper Turner Farms – Site Specific Agricultural Management Practice Determination

County Counsel Pogorelec briefed the Board on the current status of the application. The Board met with David Sisco-Izak, owner of Harper Turner Farms, on October 18th at the property in question 38 Castle Rock Road, Hewitt, NJ 07421, regarding his ongoing SSAMP request. County Counsel Pogorelec asked David Sisco-Izak to first elaborate on his meeting with the State Forester in 2018. Mr. Sisco-Izak testified that on January 3, 2018, he met with Jeremy Caggiano from the NJ DEP Parks and Forest as part of an

inspection of the property and tree farm to be farm assessed in New Jersey. During the inspection, the Applicant showed Mr. Caggiano where they were importing soil and how they were using it to build access/logging roads for purposes of the farm. Mr. Caggiano indicated that they were permitted to do this, and simply noted that they must be sure to put up erosion control, which they have done. Since that meeting, Mr. Sisco-Izak has continued to build access roads while performing the primary farm work of tree salvaging on the forest and which he is required to do under the tree management plan.

County Counsel Pogorelec then asked when Mr. Sisco-Izak was served a notice of zoning violation. Mr. Sisco-Izak further testified that he received a Notice of Violation No. ZV-03-19-0040 issued March 14, 2019, from the Township of West Milford, for failing to have a permit for soil movement. Mr. Sisco-Izak stated that if under 50 yards of material is moved, one does not need a permit, and that if one moves 50 to 500 yards of soil, then one needs a minor soil permit; that if one moves over 500 yards of soil, one needs a major soil permit. He testified that he applied for a minor soil moving permit as he was moving under 500 yards, but the Township wanted a major soil moving permit, and that is why he filed his application before the Board.

County Counsel Pogorelec asked David Sisco-Izak to elaborate on his legitimate, agriculturally based reason he had for the first and second requests. David Sisco-Izak responded that the agricultural reasons he had for the first request were that the removed trees in question would be used as firewood and that for the second request the soil in question would be used as soil for composting and tree planting. Mr. Sisco-Izak confirmed that he would require 100 additional yards of soil to complete the necessary functions.

No board members had any follow up questions. No objectors or interested parties were present.

The board's comments on the matter were as follows:

- Chairman Bartlett – stated that he saw no issue with granting Harper Turner Farms the request that they had asked for.
- Vice Chair Feeney – stated that after visiting the farm, he saw that David Sisco-Izak was compliant with his forest management plan and that the State Forester had approved of the project. He stated that he saw the project as viable and necessary for the operation of the farm and supported granting his request.
- Commissioner Hazelman – stated that after his site visit to the site he believes the request should be granted.
- Commissioner Eelman – stated he agreed with the previous comments.
- Commissioner Anderson – stated that he agreed with the previous comments but would like to see a soil test for the next 100 yards of soil.
- Commissioner Papa – stated she agreed with the previous comments and reiterated other comments about ensuring the cleanliness of the soil.
- Cecilia Diaz – stated that she agreed that David Sisco-Izak was in compliance.
- Kenneth Simpson – stated that he had no comments.

A motion to grant the first SSAMP request was made by Commissioner Hazelman. The motion was seconded by Vice Chair Feeney. The vote was as follows:

- Chairman Bartlett – voted yes, stated that he believed he was allowed to bring in the permitted 100 yards of soil.
- Vice Chair Feeney – voted yes, stated that he believed the practice was valid and necessary under the woodland management plan.

Passaic County Agriculture Development Board
Meeting Minutes
October 18, 2021

- Commissioner Hazelman – voted yes, stated that he believed the proposed improvements that the request would be used for are necessary for the farm’s operation.
- Commissioner Eelman – voted yes, stated that he believed the farm is compliant with woodland management practices and that the improvements are necessary to the farm’s operation.
- Commissioner Anderson – voted yes, stated that he believed the roads are in compliance.
- Commissioner Papa – voted yes, stated that she believed the farm is in compliance and the roads necessary.

County Counsel Pogorelec stated that he was providing an updated resolution to correct an error with the block and lot number on Commissioner Hazelman’s resolution. Vice Chair Feeney made a motion to adopt the updated resolution. Commissioner Eelman seconded the resolution. The motion passed unanimously.

NEW BUSINESS – None.

OLD BUSINESS – None.

ADJOURNMENT: Vice Chair Feeney made a motion to adjourn the meeting at 7:31 PM that was seconded by Commissioner Papa. The motion passed unanimously.

Respectfully submitted,
Salvatore Presti for



JESSIE SUMMERS