

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Department of Agriculture
Market and Warren Streets
1st Floor Board Room
Trenton, NJ 08625

SPECIAL MEETING (SUBSTANTIVE MINUTES (Open Session))

September 17, 2010

Acting Chairperson Purcell called the meeting to order at 2:35 p.m. In compliance with the "Open Public Meetings Notice", the following statement was read:

"Pursuant to N.J.S.A. 10:4-6 et seq., adequate public notice of this meeting has been provided by giving written notice of the time, date, location and, to the extent known, the agenda. At least 48 hours in advance, this notice has been posted on the public announcement board, third floor, Health/Agriculture building, John Fitch Plaza, Trenton, NJ, mailed and/or faxed to the Newark Star Ledger, the Times of Trenton, the Camden Courier Post, and filed with the Office of the Secretary of State."

Roll call indicated the following:

Members Present

Monique Purcell, Acting Chairperson
Richard Boornazian (rep. DEP Commissioner Martin)
Donna Rendeiro (rep. DCA Commissioner Grifa)
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)
Brian Schilling (rep. Executive Dean Goodman) (via telephone conferencing)
Jane R. Brodhecker (via telephone conferencing)
Alan A. Danser
James Waltman (Arrived at 2:43 p.m.)
Torrey Reade (via telephone conferencing)
Stephen P. Dey

Members Absent

Denis C. Germano

Susan E. Craft, Executive Director
Jason Stypinski, Deputy Attorney General

Others present as recorded on the attendance sheet: Timothy Brill, Patricia Riccitello, SADC staff, Nicki Goger, New Jersey Farm Bureau, Thomas Hower, Governor's Authorities Unit.

PUBLIC COMMENT

None

OLD BUSINESS

A. Old Business

- A. Draft Report on Review of Non-Agricultural Development Projects in an Agricultural Development Area - Washington Township Municipal Utilities Authority (Morris County)
 - 1. Smith Farm; Block 12, Lot 4, Washington Township, Morris Co.
 - 2. Searles Farm, Block 20.10, Lot 44, Washington Township

SADC staff referred the Committee to the Summary of Findings and Recommendations regarding the eminent domain action initiated by the Washington Township Municipal Utilities Authority on the Robert Smith farm, known as Block 12, Lot 4, Washington Township, Morris County, comprising 101.8 acres and on the Helen Searles farm, known as Block 20.10, Lot 44, Washington Township, Morris County, comprising 56.72 acres. The purpose of the condemnations was to acquire easements for community wells, well housings and piping on the Smith and Searles Farms. The Committee determined at its July 22nd meeting that the proposed actions would cause unreasonably adverse effects upon the agricultural development area (ADA) and State agricultural preservation and development policies, for which a public hearing was subsequently held by the SADC on August 23, 2010 at the Washington Township Municipal Building in Long Valley Township, Morris County.

SADC staff reviewed the findings and recommendations with the Committee as outlined in said summary and listed below:

Findings:

The SADC finds the WTMUA's planned eminent domain actions would have unreasonably adverse impacts on Morris County's ADA and State agriculture preservation and development policies for the following reasons:

1. NJDEP records indicate that the WTMUA has been operating the Schooley's Mountain Water System with a growing and unacceptably high rate of unaccounted water loss approaching 40% of the system's production, which is well above the NJDEP standard acceptable maximum limit of 15%. Even in light of the progress the WTMUA has made in recent years to find and repair leaks (as indicated in Tables II and III of the Water Utilization Analysis from January through June 2010 for the WTMUA Schooley's Mountain Water System submitted with the WTMUA's post hearing responses on September 10, 2010), the Authority's unaccounted for water loss is 25%, still more than 10% above the NJDEP acceptable maximum limit.

2. The WTMUA has not adequately demonstrated through its limited analysis of alternatives which would not include action in the ADA that a combination of water distribution system improvements, reductions in the system's rate of unaccounted for water loss and additional wells outside the ADA, including the new well on the Scheffler property (which produces about 125 gallons per minute), could address the water needs of affected customers in the Schooley's Mountain area. The December 14, 2007 CMX report entitled Schooley's Mountain Water System Review of System Needs for Supply and Storage for the WTMUA established a 146 gallon per minute deficit in the system's capacity to meet peak demands, based on the "Firm Source Capacity" definition in the NJDEP Safe Drinking Water Act regulations (N.J.A.C. 7:10-11.4(a)). The Schooley's Mountain Water Service Area is approximately 3,211 acres in area, of which only 68 acres or 2.1% of the total area is contained in the Morris County ADA. SADC staff have carefully reviewed all of the hydrogeological and professional engineer reports provided by the WTMUA and concluded that the information strongly suggests that the deficit in the Schooley's Mountain Water System network of wells can be addressed by the WTMUA's new well on the Scheffler property, reductions in the system's rate of unaccounted for water loss and/or other wells in locations outside the very limited number of acres in the Morris County ADA but within the Water Service Area, as shown on the attached map.
3. The community wells have the clear potential to impact the existing and future agricultural activities on both the Smith and Searles Farms beyond the fifty (50) foot radius buffers, pipe easements and well houses described in the WTMUA's NOI, including limitations on the use of new wells or ponds for agricultural irrigation; application of fertilizers, pesticides and herbicides; and the construction of fuel storage facilities and septic systems. Further, potential additional buffer requirements of up to 500 feet or 200 days time of travel (whichever is greater) will restrict, if not prohibit, livestock operations and other activities on the farms classified as major pollutant sources pursuant to NJDEP regulations (N.J.A.C. 7:10-11.4 and N.J.A.C. 7:10-11.7).
4. Depending on the ultimate size of the required well buffer area, the proposed community wells on the Smith and Searles Farms will also have the potential to negatively impact the viability of other nearby farms in the Morris County ADA, including more than 800 acres adjacent to the Smith Farm in Mount Olive Township. Furthermore, the two permanently preserved farms immediately adjacent to the Smith Farm (Fellows and Burd Farms) and the permanently preserved Plut Farm, which is approximately 700 feet from the Searles Farm, where the public has already invested significant funding to preserve the opportunity for a variety of agricultural uses in perpetuity, may also be affected.
5. The WTMUA initiated its action to develop wells on the Smith and Searles Farms in violation of the Agriculture Retention and Development Act (N.J.S.A. 4:1C-19). Clearly, the WTMUA should have completed the SADC and MCADB review process before applying for NJDEP permits, drilling a test well on the Smith Farm and filing for condemnation of a portion of the Smith Farm. The

ADA review process set forth in the Act was created for the specific purpose of requiring proper due diligence and alternatives analysis before the construction of public infrastructure in the ADA. Disregard for this process has the effect of frustrating the legislature's intent to protect agriculturally viable areas of the state from unnecessary non-agricultural development, and may lead to wasteful expenditure of taxpayer, or ratepayer, funds where such premature investments are later reversed.

6. The WTMUA misrepresented its interest in the Smith, Searles and Fellows Farms when filing NJDEP permit applications without proper landowner consent or authorization. This misrepresentation lead to the issuance, and subsequent recission of, NJDEP well drilling permits on the Smith and Searles farms. Any deliberate misrepresentation of facts by public agencies should not and cannot be tolerated in this process, or any such governmental review process, as it breeds disrespect for the law and mistrust of the public.

Recommendations:

The Legislature has repeatedly recognized the importance of agriculture in New Jersey and has made the retention of the agricultural industry a high public priority in the Right to Farm Act, the Agriculture Retention and Development Act, and the Garden State Preservation Trust Act:

See N.J.S.A. 4:1C-2 legislative finding that "[t]he retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State. . . ;

N.J.S.A. 4:1C-12 legislative finding that "[t]he strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State and the welfare of the citizens of the State. . . ."; and

N.J.S.A. 13:8C-2 legislative finding that "agriculture plays an integral role in the prosperity and well-being of the State as well as providing a fresh and abundant supply of food for its citizens; that much of the farmland in the State faces an imminent threat of permanent conversion to non-farm uses; and that the retention and development of an economically viable agricultural industry is of high public priority.

As such, it is imperative that the ADA review process as set forth in the Act results in meaningful and tangible actions designed to address the impacts the proposed taking is likely to have. To that end, the SADC offers the following recommendations with regard to this matter:

1. **Require the WTMUA to exhaust all other water supply options prior to consideration of new wells on the Smith and Searles farms.**

Upon full consideration of all testimony and evidence, the SADC recommends that the WTMUA be required to pursue a combination of water distribution system improvements, reductions in the system's rate of water loss, enforcement of additional water conservation restrictions and additional wells outside the ADA, including the well on the Scheffler property, and any other reasonable action to address the water needs of affected customers in the Schooley's Mountain area prior to the issuance of any additional well drilling or water supply permits. The SADC concludes that the wells proposed by the WTMUA on the Smith and Searles Farms may be a convenient response to the Authority's challenge to provide safe and adequate water to its customers, but the wells do not appear to be necessary to meet current demands for water. Furthermore, the projected future demands of the water system are not expected to be significantly higher than existing demands due to development restrictions imposed through the Highlands Water Protection and Planning Act which identified the entire Schooley's Mountain Service Area as part of the Preservation Area.

2. Include ADA review process in pertinent DEP permit procedures.

Upon learning that the WTMUA secured drilling permits prior to compliance with the ADA review process as set forth in the Act, NJDEP was instrumental in assisting SADC in evaluating the NOIs submitted and in improving the SADC's understanding of the technical and procedural requirements of the NJDEP's water supply permit programs. However, the WTMUA's ability to obtain well permits and drill a test well in an ADA prior to compliance with the provisions of N.J.S.A. 4:1C-19 demonstrates the need to better integrate the ADA review process within the applicable permit review procedures within NJDEP. Had NJDEP been aware of the ADA review process, it could have required the permit applicant to prove compliance with the Act prior to issuing permits.

In addition, the SADC suggests that the NJDEP evaluate its current procedures and regulations to ensure that permit applications contain proper landowner authorization, and that the applications are accompanied by proper documentation evidencing such landowner authorization. For example, applicants claiming to be the landowner should be required to provide a copy of the property deed in the applicant's name, and applicants relying on permission from a landowner should have to submit a fully executed agreement or other notification of such permission.

3. Expedite conclusion of the matter so as to not unduly interfere with preservation of the Smith and Searles farms in the New Jersey Farmland Preservation Programs.

The SADC encourages all parties involved in the review of these proposals to expedite the process to enable the permanent preservation of the Smith Farm and the enrollment of the Searles Farm in the Municipally Approved Eight Year Farmland Preservation Program. With considerable demand on the limited State funding available for farmland preservation at present, it is more important than ever that farmland preservation opportunities are completed as quickly as possible.

Staff recommendation is to adopt the report, including the transcript of the public hearing by a motion today.

It was moved by Dr. Dey and seconded by Ms. Rendeiro to accept SADC staff findings and recommendations as listed above regarding the eminent domain action initiated by the Washington Township Municipal Utilities Authority on the Robert Smith farm, known as Block 12, Lot 4, Washington Township, Morris County, comprising 101.8 acres and on the Helen Searles farm, known as Block 20.10, Lot 44, Washington Township, Morris County, comprising 56.72 acres. The motion was (unanimously) approved. (A copy of the Summary of findings and Recommendations in the Eminent domain Action Initiated by the Washington Township Municipal Utilities Authority on the Properties of Robert Smith and Helen Searles, Washington Township, Morris County is attached to and is a part of these minutes.)

**I. Substantive Minutes of Special SADC Meeting of September 17, 2010
(OPEN SESSION Only – No Closed Session)**

A. Old Business

Draft Report on Review of Non-Agricultural Development Projects in an Agricultural Development Area - Washington Township Municipal Utilities Authority (Morris County)

1. Smith Farm; Block 12, Lot 4, Washington Township, Morris Co.
2. Searles Farm, Block 20.10, Lot 44, Washington Township

It was moved by Mr. Mr. Siegel and seconded by Ms. Brodhecker to approve the substantive minutes of the Special Meeting of September 17, 2010, as presented and discussed. The motion was unanimously approved. (A copy of the Substantive Minutes of the Special SADC Meeting of September 17, 2010 is attached.)

PUBLIC COMMENT

None

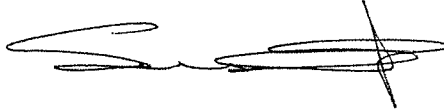
TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, September 23, 2010, beginning at 9:00 a.m.
Location: **Health/Agriculture Building, First Floor Auditorium.**

ADJOURNMENT

There being no further business, it was moved by Dr. Dey and seconded by Mr. Siegel and unanimously approved to adjourn the meeting at 4:35 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Susan E. Craft', with a long horizontal stroke and a vertical line crossing it near the end.

Susan E. Craft, Executive Director
State Agriculture Development Committee

Attachment

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