

STATE AGRICULTURE DEVELOPMENT COMMITTEE

**Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625**

REGULAR MEETING

September 24, 2015

Chairman Fisher called the meeting to order at 9:07 a.m. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

Members Present

Douglas H. Fisher, Chairman
James Requa (rep. DCA Commissioner Richman)
Cecile Murphy (rep. DEP Commissioner Martin)
Ralph Siegel (rep. Acting State Treasurer Romano)
Alan Danser, Vice Chairman
Peter Johnson
James Waltman
Jane Brodhecker

Members Absent

Brian Schilling (rep. Executive Dean Goodman)
Denis C. Germano, Esq.

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

Others present as recorded on the attendance sheet: Heidi Winzinger, Stefanie Miller, Paul Burns, Dan Knox, Jeffrey Everett, Hope Gruzlovic, Brian Smith, Esq., David Kimmel, Charles Roohr, Alison Reynolds, Esq., Pat O'Connell, Matthew DiStaulo, Hector Weah, Steven Bruder, Sandy Giambrone and Patricia Riccitello, SADC staff; Michael Collins, Esq., Governor's Authorities Unit;

Daniel Pace, Mercer County Agriculture Development Board; Brian Wilson, Burlington County Agriculture Development Board; Tom Beaver, New Jersey Farm Bureau; Donna Rue, Rue Brothers Farm, Warren County; Bridgitte Sherman, Cape May County Agriculture Development Board; Amy Hansen, New Jersey Conservation Foundation; and Andy Rowan, Jay Rajamohan and Ed Farrell, N.J. Office of Information Technology, Mercer County.

Minutes

A. SADC Regular Meeting of August 27, 2015 (Open and Closed Sessions)

It was moved by Mr. Siegel and seconded by Ms. Brodhecker to approve the Open Session and Closed Session minutes of the SADC regular meeting of August 27, 2015. The motion was approved. (Mr. Danser abstained from the vote.)

REPORT OF THE CHAIRPERSON

Secretary Fisher deferred comments due to the length of today's meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Payne made the following comments:

1. Pilot Program for Special Occasion Events on Preserved Farmland

Ms. Payne stated that at the last SADC meeting the SADC adopted some amendments to its Pilot Program dealing with the preserved farm wineries law. That has been conveyed to all of the municipalities, CADBs and all of the wineries individually, so that everyone understands what changes have been made. Staff indicated to the wineries that the SADC is seeking their registration/certification submissions by October 15th and then it would be March 31st for every year after that. Staff will keep the Committee informed as that timeframe comes and goes and we see what type of compliance it looks like.

COMMUNICATIONS

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders.

PUBLIC COMMENT

None

OLD BUSINESS

A. Stewardship

1. Division of the Premises
Gibbs Farm, Allamuchy Township, Warren County

Mr. Roohr referred the Committee to the memorandum to members dated September 24th involving the Keith and Maryann Gibbs farm in Allamuchy Township, Warren County, comprising Blocks 304, 401 and 501, Lots 8, 3 and 4. This was before the Committee at its July meeting for a request for a division of the premises. The property consists of three lots, each separated by a road. It was preserved as a Direct Easement application to the SADC in 1999 by the former owners, Frank and Joan Gibbs. In April of this year the owners transferred title to Block 401, Lot 3 to Lavanta Stables, LLC. Mark Willekes is the principal owner of Lavanta Stables, LLC. The transfer was done without the approval of the SADC for a division of the premises.

Mr. Roohr stated that the property in question is about a 52-acre piece. The Gibbs did not realize they had to have approval by the SADC prior to the transfer. The request is to divide off this 52-acre piece from the remaining roughly 200 acres. At the July meeting staff had some reservations, primarily having to do with the soil quality and the amount of tillable acres. On the 52-acre farm, there are about 25 acres that are tillable, of which about 5 ½ acres are prime soils and the rest are unrated soils so they are not statewide soils or locally important soils. It is a poorer quality soil that is a pretty rocky area with a fairly high depth to seasonal high water table. Sometimes it is zero. Mr. Roohr stated that in previous years the property has been in corn and grain crops. It has been used and has been productive; it is just from a soils rating standard it is not so great soils.

Mr. Roohr stated that at the July meeting the Committee raised a few questions. One was that in North Jersey the soils, in Sussex and Warren Counties in particular, can be not so great, so maybe this is what a common farm is like in Warren County. For that, staff did a comparison of the soils, which has been provided to the Committee in the memorandum. Warren County farms are lands that are in agricultural production. About 46 percent of those are prime soils, 17 percent are statewide important soils and 2 percent are local soils. In Allamuchy Township, it is a little less, about 32 percent prime and 7 percent

statewide important. For the 52-acre piece it would be 12 percent prime and nothing else. It would get a lesser soil comparison when you compare it to either the county or the township as a whole. There is a rock outcrop on a portion of the property and Mr. Willekes' engineer's report showed the facilities, which would be an equine stable, indoor arena and a couple of smaller equipment and hay buildings, being in the rock outcrop area. The Committee was fine with that. Staff looked at everything and asked if there was a revised engineering plan that would include some stormwater management. Their engineer is not 100 percent convinced that they would need it but, based on staff's analysis of the property with how much infrastructure it is going to have, in the Highlands, we are fairly confident that they would need a stormwater basin. When staff received the revised drawing back it showed where that would go. Mr. Roohr showed the Committee on the mapping presented where the facilities would go (stable, parking, indoor arena, smaller barns, the retention basin, the septic field and outdoor riding arena). Those things, if you tally them all up, they total just about an acre but what happens is that the one acre is prime soil so it is of the 5.7 acres of prime soil and a bit is going to be taken up with some of these things. It is a consideration and one of the things that the Committee asked staff to look at. Mr. Roohr stated that there is a portion of the property that is wet woodlands so they wouldn't be able to put the infrastructure in that area.

Mr. Roohr stated that the other thing the Committee had briefly mentioned was how this division would shape up against other divisions. Certainly the SADC has approved smaller pieces of land in South Jersey, in Vineland in particular. We have done 14-acre pieces there and they have been 100 percent prime, 100 percent tillable, so it is a somewhat different scenario. But if we did the comparison of similar-sized farms in that up to 25-30 acres range and did the soils score, this one scores 1.6, which is lower than the five that we have not previously approved in the past few years. All those things added up, the project that Mr. Willekes proposes, which is an equine operation, it certainly appears that it would add more intensity to this operation. He does also intend to build his home on this 5-acre exception area. Chairman Fisher asked if there was a breeding facility. Mr. Roohr stated that Mr. Willekes would be starting it from scratch but they would intend to do breeding and raising and training of European horses. They want to import them, teach them the "American way" of dressage and things like that.

Mr. Willekes addressed the Committee. He stated that as he mentioned at the July meeting, their intention is to import younger horses from Europe, bring them up to the horse shows and get them into the American style and then to sell them, as well as the breeding of young horses, bringing them up and selling those as well. He stated that Mr. Gibbs is present today and can attest that in the past few years his corn yield has been higher than the state average per acre and he has had a number of other crops over the

many years that the properties have been in his family. Mr. Willekes stated that the one image presented to the Committee that showed where his structures would be, they would very easily be able to move this outdoor arena to another location if that would help and it gets it out of the prime soil area. Basically the other structures are placed on the most useless part of the land and that is why they are choosing to erect the structures there. Mr. Willekes stated that the riding arena can go anywhere. They can move it out of the prime soil area. The retention ponds from the gravity perspective, that is where the engineers have indicated would be the most practical location, as shown in the engineer's report. They have to stay away from any buffer zones, wetlands and as already indicated the septic would be in the most practical location. The square in the rear of the map, that would be the outdoor riding arena and that can be easily moved to another location. Basically, what they were looking for at the July meeting was to get somewhat of a conditional approval subject to having to build where the plans say or we can email over the next week or so showing that the outdoor arena can go in a separate location, if that is what the Committee would want. Chairman Fisher stated that you're saying you are willing to make the accommodations adjusting to the prime soils. Mr. Willekes stated absolutely, especially for the outdoor rink. The structures that are going to be erected, he thinks the rock outcrop area is the best place from the property perspective. It is not the most economical from his perspective but they can easily move the outdoor rink. Mr. Siegel asked if they could move the riding rink into the exception area. Mr. Willekes stated that to put that into perspective, this exception area is about 65 to 80 feet above so that is how much rock is there. In response to a question, Mr. Roohr stated that the property is in the Highlands Planning Area.

Mr. Clapp stated that portion of the Highlands is nonconforming so they are not subject to the Highlands agricultural rules. Mr. Danser stated that this is more of a question for our Deputy Attorney General – if this is just a request for a division of the premises, can we put those sort of conditions on an approval for that? Can we create another lot or not and once it is done he doesn't know how we would control where any of these improvements are located. Mr. Stypinski stated that he guesses you can give conditional approval in the resolution. If that is what you want to do, to grant conditional approval subject to these conditions. He doesn't think that would be a problem but it is still going to need to meet the agricultural viability and agricultural purpose tests. Mr. Danser stated he understands that but he is just trying to figure once the deed is created and you have a new property owner, how we would enforce any of that if they just built something somewhere else instead. Mr. Stypinski stated that he thinks you would have to give conditional approval or conditional after the fact in this case.

Ms. Payne stated that we record our division of the premises resolutions so that they are

in title so that when any subsequent purchaser comes along, our resolution and the conditions are in the record of title.

Mr. Waltman stated that he is always interested in this Committee acting in a consistent way so he asked Mr. Roohr to explain how this compares to situations where we actually denied a request for subdivision. Ms. Payne indicated that there is a paragraph in the memorandum that provides prior divisions information. Mr. Roohr stated that there are six properties that the SADC denied requests for in the past five or six years. They were chosen because they were in the rough ballpark of the size of this property. As far as quality of soils goes, this one ranks lower than five of the six. The reason for denying at least four of the properties was the limited amount of tillable soils in those cases, making viability an issue. Chairman Fisher asked if any of those properties were equine. Mr. Roohr stated yes, the Simpson farm was equine and is equine today. Mr. Waltman stated that there is also an equity issue in terms of, we have limited resources to spend to preserve farms and all else being equal he thinks this is borne out in the formulas used. A larger farm is scoring better than a smaller farm. If someone walked into the program and it was subdivided and not preserved yet and the owner came to us saying they want to preserve this piece, what would the response from the program be? Ms. Payne stated that we really cannot answer that question. Mr. Danser stated it wouldn't be out of the question because it would have preservation on part of the border and the thing that would really knock it would be soils. The rest of the scores would be in the ballpark. He doesn't know what the competing ones would be but we cannot say that it would absolutely not be considered. It would be considered and ranked along with whatever was competing with it at the time.

Ms. Murphy stated that following up on what Mr. Waltman was saying, she also is very concerned about consistency. It is very important that we do not seem capricious in our decisions. To approve a subdivision that scores lower than four or five of the ones we have rejected, she thinks we would need a very good reason to be able to document why we were doing that. Otherwise we would be perceived as capricious. She didn't think that was something we would want to do, even from a reputation standpoint and a government standpoint and also a legal standpoint. There were four or five people who had their requests rejected and then they find out that we approved one that had a worse profile than theirs. She didn't think that would be in the best interest of this Committee.

Mr. Siegel asked the landowners how this transaction occurred. Mr. Willekes stated that basically it was the fault of the title company and the attorneys involved in the real estate transaction. Obviously they didn't go through all the documents. He stated that this was his first agricultural purchase. Mr. Gibbs stated that there was supposed to be three

separate lots. His father had preserved the farm. Mr. Gibbs stated that after some time he decided that they would sell this one lot and that was how they went about doing it. Mr. Siegel asked that it was Mr. Gibbs' perception that because they were three separate lots they could be transacted as separate tax lots. Mr. Gibbs stated that was correct. That is how it was always explained when they did this. That is why they made the provision for the house lot up in the top corner so that they could do that down the road. Mr. Gibbs stated that in their area they have sold lots smaller than this one, right next door to them actually. It was a 38-acre lot and that was 18 acres of tillable soil and they covered it with a greenhouse and it was farmland preserved. He doesn't know why that could happen and Mr. Siegel stated that it wouldn't matter why something else happened somewhere else but when your family preserved this farm you were not allowed to divide the farm after you preserved it. Otherwise, it may not have been preserved to begin with. He stated that we cannot look into the past but in 1999 half of the farms didn't get preserved, they didn't get funded. There was only a certain amount of funding and it went so far and this farm got preserved. Had it been smaller, it may not have gotten preserved. Mr. Danser stated that this farm scored much higher because it was 200 acres total and that is what we are dealing with. When this farm was ranked against all the other farms it received a higher score because of the size so it was preserved as a unit. Mr. Gibbs stated that he understands what Mr. Danser is saying, he is just saying that the farm next door they took a chunk of that one the same way – a different tax and lot map so a section of a preserved farm, 200 and some acres and they took a 38-acre section or lot and it was different on the tax map and sold that separately. Mr. Roohr stated that the farm Mr. Gibbs is mentioning is also a Gibbs farm and strangely enough it was sold to someone by the name of Willekes. Mr. Roohr stated that there is no relation. That happened about five or six years ago when the family came in for a division of the premises. It was a dairy farm and they severed off approximately 30 acres. Because they are so close he wanted to see what the difference was, and that difference is that the soils are different on that property and it had a higher soils score. The potential contract buyer came in prior to purchasing it and did the division.

Chairman Fisher stated that this farm is being subdivided, it will produce more as an operation separately than it will continuously if it doesn't have all the operations that are being planned. It would be grain but now it is going to be an equine facility that will breed and bring in high-level agricultural output, a much more intense operation. Mr. Siegel stated that when you talk about agricultural viability we are talking about what the easement requires – that the farm be available for agriculture, the land be available for agriculture, that is the agricultural viability test. But here we have a much higher intensity use and frankly the soils that are not good up there are good soils for equine. If we are going to put equine operations they should be on lower yield soils. Mr. Siegel asked

whether there is an agricultural purpose test that is met here in any way with this division. Mr. Roohr stated that he thinks the purpose test we don't have an issue with. It will certainly have a more intense use being in equine rather than field crops. The agricultural viability test, traditionally staff has rated those based on tillable acres, soils and total use of the property and various uses of the property. Mr. Willekes stated that as it stands right now the property yields more per acre than the state average already.

Ms. Brodhecker stated that they deal with these types of soils all the time up in her area. The farmer knows how to compensate to get the product out of the soils up there. On the chart in the binders, it is hard to pinpoint what we are comparing with these other properties that we denied and with the property we are talking about today because they are so different, but she sees that three of those listed say lack of evidence to support agricultural viability so she thinks they are giving the Committee here a good argument that there would be viability and more production on this area as a piece the way they are planning to do it. She thinks the Committee needs to consider some other factors beyond what we have measured on a chart. Mr. Siegel stated that if you are looking at viability of agriculture, not only are we dividing off a 50-acre piece with limited tillable and very limited state soils, they are also adding infrastructure, which is going to make this an equine operation forever, because no crop farmer is going to buy this with all that infrastructure on there once it is built. Ms. Brodhecker stated that a farmer isn't going to farm the rocks, where the infrastructure would be placed either. Mr. Siegel stated that it will make it more expensive.

Ms. Payne stated that she didn't think it was infrastructure, she thinks the question is if another farmer would buy it and try to put any other kind of agriculture on it besides equine or grain crop. Is 50 acres of soils of this quality capable of sustaining anything else, or anything that is a field-based operation? Ms. Murphy stated that is the question that we consistently asked in the past and we have to ask the same question in order to end up with consistent answers. Mr. Johnson asked if this has ever happened before where someone did a division without SADC approval. Ms. Payne stated yes. If it meets the test of viability we approved it after the fact. We had an interesting case down in South Jersey a few years ago, where what they subdivided wasn't viable and we wound up fortunately being able to attach it to another preserved farm so that it remained a piece of what was considered a viable farm unit. The after-the-fact nature of this to us is not the driver in the decision. It is unfortunate because it means there is a larger investment risk on their end but it is really about the merits of the subdivision. Forget for a minute whether it already happened. Would the Committee approve the subdivision, and that is where staff is.

Chairman Fisher asked if there would be a motion to approve staff's recommendation. Mr. Siegel asked that Mr. Roohr explain again, we have a two prong test – viability and purpose. The intensity of use, the investment, use of equine on a mediocre soil property would seem to be a good use for those soils. That all goes to the agricultural purpose test. Mr. Roohr stated yes. Staff has no issue with the agricultural purpose test. Mr. Siegel stated that agricultural viability is the question that essentially we have all been talking about. Will this be an agriculturally viable farm for other purposes, other than what it is going to be used for here, forever? Mr. Roohr stated correct, from a staff perspective, just strictly based on prime, statewide soils and tillable acres. Mr. Siegel asked if there was any way that the mapping is wrong. Mr. Roohr stated that the only way to absolutely confirm that is to have soil testing done. However, SADC soil conservationist David Clapp visited the property and could talk to the Committee regarding his observations. Mr. Clapp stated that in his estimation the mapping is consistent for the areas. If you noticed on the mapping that the Committee was reviewing today there are quite a few linear features running through that. There are ditches that run through there about a foot deep and a foot to two feet wide. They are drainage ditches so that the water in the soil surface in the roughly 50-100 feet in between them is affected by the drainage ditch. The water in that soil surface as it rises out of the ground gets into the ditch and does down to that wetlands. So that is consistent with the soil that has those characteristics. Because it is ditched it seems to meet those characteristics.

Chairman Fisher asked again if there was anyone who wanted to make a motion. Mr. Waltman asked what the status quo was if we do nothing today. Ms. Payne stated that if the Committee doesn't approve this subdivision, then it becomes an illegal subdivision on a preserved farm and that is a problem for the landowner. Mr. Siegel stated that staff's recommendation is to actively disapprove this application. Ms. Payne stated that staff finds that if the SADC approves this she thinks it would be very inconsistent with its past practice. Mr. Siegel stated that legally you are looking for a motion to adopt staff's recommendation. Chairman Fisher stated that he sometimes cringes when we think we are getting trapped by considerations that have gone over a period of 20 years. Things evolve and he has no sympathy for a bad transaction because if it turns out that a title company didn't do what it was supposed to do he couldn't care less about the consequences for the title company or anyone who doesn't do their due diligence. But that is separate. This is not trying to fix something. This is a transaction that did take place because, in his understanding, the owner thought it was appropriate and didn't know, the title company did or didn't do their job and now we have this operation that wants to be an operation of a higher value and everyone talks about consistency but there are a lot of nuances in every one of the decisions that we make. Mr. Danser stated, no, the conundrum is that we support intensity and higher value use and all those things and that

is what this would do but we also want to maintain a broad-based agricultural viability for the future and however you specialize and invest in agriculture, whether it is an equine barn or a greenhouse or anything, you make it less buyable on a broad-based situation because you increase the cost of the property and someone isn't going to be able to buy it for corn, soybeans or hay. That doesn't lead him to a recommendation one way or the other. It is a hard decision. Those two goals of ours are somewhat at odds. Mr. Siegel stated that the point of the precedent is not empty because Mr. Roohr lists for us these other properties where a division was not approved and the message to them was we should have just gone ahead and done the division, pretending that we didn't know it needed approval because look what the SADC just did, they approved it after the fact. They didn't ask for approval before the transaction. These people were coming in asking for approval, we said no, and now they can look at our decision today if we were to approve this and say, "oh well, that is what we should have done." Ms. Payne stated that the most dangerous thing the Committee could do is approve this because it already happened. That is just an advertisement to just go do what you want and we are stuck with it.

Mr. Siegel asked how does that not be the message. Mr. Danser stated that the only reason that this is being considered, he thinks, is because it is a more intense and therefore a higher value use for that 52 acres if it is converted from a hay field into an equine facility that is doing breeding and training. Chairman Fisher stated 25 tillable, 50 acres, no one is going to make a living that way, is that what you are saying, on just 25 acres of grain. But they will as an equine operation be able to consistently make a living or carry itself. Mr. Willekes stated or for any livestock operation for that matter.

Mr. Siegel stated another thing that he doesn't like about this is the 5-acre exception. This is Warren County, this isn't Morris County. The big risk is the big mansion and this is a 50-acre estate property and that is the reason for the subdivision. We have no way of preventing that from happening now or in the future.

Chairman Fisher stated that if there is no motion it is essentially that they have an illegal transaction. If there is a motion it would be for the purpose of the higher viability for the agricultural viability test for income as a property and for that he would need a motion. Mr. Danser asked if there is a limit for the house size on the exception area at this point. Ms. Payne said no. Mr. Roohr stated that it was done so long ago things were not contemplated back at that time.

Mr. Danser stated that he would move just for the purposes of discussion that because of the higher and better use, increased intensity and the fact that it will increase the value of

the output of that 52 acres that we approve the division of the premises subject to the conditions of where the improvements are located as shown in the presentation and subject to the addition of our standard at this point for residential size limitations on the exception area. Mr. Requa seconded the motion.

Mr. Siegel asked if we can do that. Deputy Attorney General Stypinski stated that it is a condition, you are giving conditional approval, Mr. Siegel stated but on the exception area? Mr. Stypinski stated yes, and he is not sure about the exception area because it is not part of the farm. Mr. Danser stated it is part of the division of the premises application. Mr. Stypinski stated right. He asked if this was a severable or nonseverable exception. Mr. Roohr stated it was a nonseverable exception area. Mr. Stypinski stated that it is listed as part of the farm. Mr. Siegel stated it is the only nonseverable exception on the whole property. Ms. Payne stated that she wanted to clarify that there is no standing house size limitation for houses in our program today. Mr. Danser stated we have done it, 3,500 square feet. Ms. Payne stated on State acquisitions we have sometimes done that. Mercer County has adopted a 4,000 square foot limitation. However, there is not a standard house size limitation on exception areas.

Mr. Danser stated that he would say in his motion 4,000 square feet of heated area then.

Ms. Murphy stated that the resolution is addressing the agricultural purpose with increased intensity. Is the motion addressing the agricultural viability test? Mr. Danser stated that was for discussion. He goes back to what the options are. He doesn't feel the Committee should do nothing. He thinks that if the Committee thinks this is not the right thing to do we should have a motion and have a second, have a discussion and say no, we are not going to approve this division as opposed to just ignoring it and going on to the next item on the agenda.

Mr. Siegel stated to be clear, the staff recommendation is to vote no on this, correct? Mr. Roohr stated the staff recommendation is to not approve the division based on the agricultural viability test, the soils, and the tillable acres. The agricultural purpose is there but not the agricultural viability. Mr. Johnson asked are these all separate tax lots since before the preservation? Mr. Roohr stated yes, and they are all separated by roads. Mr. Waltman felt this would be a bad precedent and inconsistent with past actions. He felt that this should be denied. Having said that, if we deny it he would wish the person who purchased the property well in chasing after the title company and attorney. You can be sympathetic with the applicant here, which he certainly is, but it doesn't mean that we should necessarily support this. He feels that it would raise questions of being inconsistent. Mr. Siegel stated that like Ms. Payne said, the fact that the transaction

