

*Adopted April 22, 2016*

**AGRICULTURE COMMITTEE MEETING**

Richard J. Sullivan Center  
Terrence D. Moore Room  
15 C Springfield Road  
New Lisbon, New Jersey

July 31, 2015 – immediately following CMP P&I Committee meeting

**MINUTES**

**MEMBERS IN ATTENDANCE:** Ed McGlinchey (Chairman), Sean Earlen, Ed Lloyd, Richard Prickett, and Mark Lohbauer (Alternate)

**MEMBER ABSENT:** Paul E. Galletta

**STAFF PRESENT:** Executive Director Nancy Wittenberg, Stacey P. Roth, Larry Liggett, Susan R. Grogan, Charles Horner, Paul D. Leakan and Betsy Piner. Also present was Ms. Amy Herbold with the Governor's Authorities Unit.

Chairman McGlinchey called the meeting to order at 11:35 a.m.

**1. Adoption of minutes from the June 16, 2015 Agriculture Committee meeting**

Commissioner Lohbauer moved the adoption of the minutes from the June 16, 2015 Committee meeting. Commissioner Lloyd seconded the motion. The minutes were adopted, with all voting in favor except Commissioner Prickett, who abstained.

**2. Presentation by the State Agriculture Development Committee on its Agricultural Management Practice for On-Farm Direct Marketing**

Chairman McGlinchey thanked Ms. Susan Payne, Executive Director, State Agriculture Development Committee (SADC) for coming to today's meeting and also Mr. Jeff Everett, Chief of Agricultural Resources, for meeting with him earlier in the week.

Ms. Susan Payne recognized Mr. Roger Kumpel, a member of the State Board of Agriculture, present here today. She noted that previously she, Mr. Kumpel and Mr. Bill Cutts had met with Commission staff to discuss matters related to the development of a pilot program for special events and expanded economic opportunities on agricultural lands.

Ms. Payne said there are resources at the Department of Agriculture and the Farm Bureau as well as SADC that should help the Commission deal with this matter but she would talk about the experiences at SADC.

Ms. Payne said that agriculture is changing rapidly and will keep changing. It is difficult to keep up with new opportunities. She said New Jersey had been very much a wholesale state

previously but now retail sales predominate the industry as farmers try to eliminate the middle man. She said the public wants to go to the farm and to experience events at the farm. She referenced the magazine Edible Jersey <http://ediblejersey.com/>, noting that the current issue demonstrates how people are looking for alternate events and places to conduct events.

Ms. Payne said the SADC is an 11-member independent authority, in but not of, the Department of Agriculture. She said SADC administers two parallel and separate programs, the Farmland Preservation Program, (through the Agricultural Retention Act) and the Right to Farm Act. She said the Farmland Preservation Program is a program similar to that administered by Green Acres, through which partnerships with counties, municipalities and non-profits have preserved some 220,000 acres, which is roughly 1/3 of all New Jersey farmland. She said the deed restriction imposed through the Farmland Preservation Program has a huge impact on the farm. When SADC preserves a farm, the landowner is given the opportunity to create an exception area, a portion of the farm that can be retained for future non-farm activities. Ms. Payne said most farms are dependent on some non-farm-related income. Because the farmland easement prohibits non-agricultural uses of the property, this exception area provides a farmer with a location where such non-farm activities can occur.

In response to a question from Commissioner Prickett, Ms. Payne said the exception area is established at the time of preservation and cannot be moved in the future. Often it is located along on a road or around some agriculture buildings since those buildings might be used for some non-farm activities in the future.

Ms. Payne said both the Agriculture Retention Act and Right to Farm were passed at the same time, in 1983. Their goals were to preserve the viability of the agriculture industry and to protect farmers from neighbors' nuisance complaints and municipal requirements. However, Right to Farm is *not* automatic. A farm must operate in compliance with Best Management Practices (BMPs) to protect responsible farmers. She said an example in which Right to Farm prevails is fencing to keep deer out of crops. The municipal ordinance might indicate that fences can be no higher than five feet but, under Right to Farm, the farmer can make a legitimate claim that fences need to be higher than five feet to prevent deer encroachment. She noted that public safety always takes precedence and said, in a case such as a blind entrance to a farm, there is no protection because that entrance presents a safety problem to the public.

Ms. Payne said if someone is aggrieved by a farm operation, one cannot take the farmer to court. Rather the County Agricultural Development Board (CADB) hears the case and determines if it is protected under Right to Farm. There are 18 CADBs, and their decisions are appealable to SADC. Once SADC makes a decision, it can be appealed to Superior Court. She noted that all SADC decisions are posted on their web site. She said Right to Farm is not fast or cheap. There are standards that apply to those seeking protection under the Act and SADC must determine if an activity is on-farm marketing and thus a protected activity.

Ms. Payne said SADC's On Farm Direct Marketing Agricultural Management Practices (AMPs) enumerates the kind of activities that are eligible on commercial farms seeking protection. She said often farm markets evolve into farm festivals. Farm markets are protected under Right to Farm as are agricultural-related education activities and farm-based recreation activities.

Mr. Leakan projected on the Smart Board the provisions of N.J.A.C. 2:76-2A.13 (2015) (*Agricultural Management Practices: generally accepted operations and practices*) that had been included in the meeting packet. Ms. Payne reviewed the definitions of “Agriculture-related educational activities”, “On-farm direct marketing event”, “On-farm direct marketing activity”, and Ancillary entertainment-based activities”.

Ms. Payne said some municipalities are hostile to agriculture and these standards have been adopted to keep farmers in existence and their farms viable. She described two situations in which determinations were made by SADC if a situation was appropriate for a preserved farm. In the first case, an equine operation that bred and boarded Olympic caliber horses wanted to operate horse shows over the objection of the town. The landowner was able to demonstrate that because of the high end nature of these expensive horses, shows were the appropriate marketing tool and the farm was allowed to conduct nine shows per year of 3-4 days each as long as 10% of the horses, the farm product, were owned by the landowner. In the second case, the owner of a preserved farm wanted to establish a paintball operation, claiming it was appropriate under the deed of easement. However, paintball had nothing to do with the output of the farm and the activity was denied.

Commissioner Lohbauer asked about farm-based recreation and the exclusion of athletic fields as a permitted use.

Ms. Payne responded that when the rules were drafted, athletic fields were excluded because there didn't seem to be any relationship between that activity and the product being grown. There was never any contemplation that the output of the farm would be marketed through an athletic event. However, she said she believed if an applicant could demonstrate that the use of athletic fields was a tool to market the product, it could be considered appropriate.

In response to Commissioner Prickett's questions about parking, Ms. Payne referred him to the provisions of N.J.A.C. 2:76-2A.13 (h) regarding parking facilities. She said if one is conducting an event that will generate more traffic and parking than ordinary, a safety plan is required. Some municipalities have Special Events permits, in which case SADC does not require a safety plan. She said it is all about *safety* and these standards apply to all farms.

Ms. Payne said there is no automatic lining up of the Farmland Preservation Program with Right to Farm. When SADC writes Right to Farm rules, they are written to apply to all farms, including preserved farms. Whatever is adopted is a Right to Farm standard.

In response to Mr. Liggett's question if a restaurant would be permitted, Ms. Payne said it depended upon the percentage of the farm product that is being served.

In response to Mr. Liggett's question about accessory uses, e.g. would 100 corn mazes be permitted, Ms. Payne said the improvements are to help the farms and should not dominate the agricultural uses of the land. The size of the farm might be a limiting factor and one must ask if the farm product is still being marketed through this event/activity. She said SADC is interested in seeing that the soil is protected from the activity. It is hard to regulate an activity by income.

Commissioner Earlen said he did not want it to be implied that farmers making money is bad. Commissioner Lohbauer added that if an agricultural use becomes incidental to the special event or activity, then it is no longer a farm.

Commissioner Prickett commented that it was good to see that SADC worked to make farms more successful and he asked if there had been an evaluation of the benefits over time.

Ms. Roth said there needs to be a relationship between the activity and how much product is marketed, e.g. how many horses to conduct an event or how many pumpkins to be sold.

In response to Mr. Liggett's question if a farm market were required to be open during a special event, Ms. Payne said not necessarily but the idea behind the event is an expectation that it will draw people to the market.

Commissioner Prickett asked about the Food Safety Modernization Act and if would affect activities that occur already on a farm.

Ms. Payne said Right to Farm does not allow farmers to violate any state or federal law.

*Commissioner Earlen left at 12:50 p.m.*

Mr. Everett said all the states are wrestling with farm related activity issues.

Chairman McGlinchey said we don't want to lose farms and we want to encourage them. He said that, as a zoning officer, he is sensitive to that problem.

Ms. Payne said she was encouraged that as farmers are retiring, the next generation of farmers is coming forth with new marketing strategies.

#### **4. Public Comment**

Mr. Roger Kumpel noted that the annual Burlington County Tour de Farms (organized farmland bicycle ride) had been a great way to bring people to his farm last year and he had been overwhelmed by the number of first time visitors who had returned to purchase products after the event. He said that with fluctuations in the price of farm products, one cannot depend upon income from the farm product only and this is the sort of event that will bring people out to the farm.

Mr. Ben Casella, with the New Jersey Farm Bureau, thanked the Commission for addressing these issues. He said his organization was working with SADC on the Food Safety Modernization Act. He said the rule will not be released until October and will impact business decisions. The smaller farms may be exempt and certain farms may move out of agriculture or move to a different type of activity.

In response to Chairman McGlinchey's question if there were anything about Right to Farm that he would like to address, Mr. Casella said that he thought there needed to be more flexibility and farmers may need ancillary activities to survive although he concurred that there needed to be a nexus to the farm.

Chairman McGlinchey said he'd like to make a recommendation that, at the next meeting, the Committee discuss a pilot program for conducting special events on Agricultural Production Area (APA) uplands. He said some events have been held for years and the Commission has no interest in changing them.

In response to Commissioner Prickett's question if the Committee wasn't going to seek feedback from farmers, Ms. Grogan noted that these meetings are advertised and noticed and that packet links are sent to the county farmland preservation coordinators, representatives of the Farm Bureau, the members of the Commission's Agriculture Advisory Committee and to the farmers with whom the staff has met.

Commissioner Prickett said he generally supported limiting a pilot program to agriculture in uplands but was concerned with having input from others.

Ms. Grogan said certainly staff wanted input from Commissioner Galletta, who was unable to attend today's meeting. She also said it would be helpful to hear the direction in which the Committee wished to go as staff would like to develop something in writing for the Committee's next discussion.

Ms. Wittenberg said the Commission had been sued by the Pinelands Preservation Alliance. Ms. Roth added the suit was related to the No Call-up letter issued to Tuckahoe Turf Farms.

Ms. Grogan suggested that the Committee next meet in October.

Ms. Wittenberg said she had written to Senator Lesniak regarding the progress toward a pilot program. She said she would distribute a copy of her letter to the Committee members.

Mr. Alan Carter, with Tuckahoe Turf Farms, said it would be helpful if notices of these meetings could appear in the Farm Bureau newsletter.

The meeting adjourned at 1:18 p.m. (moved by Commissioner Lohbauer and seconded by Commissioner Prickett).

Certified as true and correct:



Betsy Piner,  
Principal Planning Assistant

Date: August 21, 2015