

Lancaster County Agricultural Preserve Board
Meeting Minutes
Thursday, February 25, 2021

Present: Mr. Jeffrey Frey, Chairman
Mr. Edward C. Goodhart, III, Secretary
Commissioner Ray D'Agostino
Mr. Jered Hess
Mr. Andrew Lehman
Mr. Roger Rohrer
Mr. Daniel Zimmerman

Absent: Mr. Matt Young
Mr. Gary Landis, Vice Chairman
Ms. Noelle Fortna, Farmland Preservation Specialist

Staff: Mr. Matthew Knepper, Director
Mr. Kevin Baer, Farmland Preservation Specialist
Ms. Jessica Graham, Farmland Preservation Specialist
Ms. June Mengel, Farmland Preservation Specialist
Mr. Garland Treese, Administrative Assistant

Guests: Mr. Jebb Musser, Director of Land Preservation, Lancaster Farmland Trust
Mr. Todd Hess, East Donegal Township, preserved farm owner/operator
Mr. Steve Gergely, Harbor Engineering, Inc.
Mr. Doug Hottenstein, West Donegal Township, preserved farm owner/operator

I. Call to Order

Mr. Jeffrey Frey called the meeting to order at 8:19 a.m.

II. Review of Mission Statement

Mr. Jeffrey Frey requested the Board read the Mission Statement: *"To forever preserve the beautiful farmland and productive soils in Lancaster County and its agricultural heritage; and to create a healthy environment for the long-term sustainability of the agricultural economy and farming as a way of life."*

III. Announcements

The Agricultural Preserve Board met in Executive Session on February 25, 2021 at 7:15 a.m. to discuss real estate transactions.

Mr. Edward Goodhart III was commended for almost 40 years of service to the Agricultural Preserve Board.

IV. Approval of Minutes

Motion to approve the January 28, 2021 meeting made by Mr. Roger Rohrer and seconded by Mr. Edward Goodhart

MOTION CARRIED UNANIMOUSLY

V. Business from Guests

Mr. Jeb Musser shared that the Lancaster Farmland Trust is seeking to fill at least two positions at the present time, one is a full time farmland preservation position and the other is a part time ag outreach position. Also, the public aspect of the organization's capital campaign will be in full force very soon.

VI. Business

A. Requests for Subdivision/Land Development

i) SUBDIVISION/LOT ADD-ON AND LAND DEVELOPMENT (CONSTRUCTION) BOARD SUMMARY APB Staff: Jessica Graham, Acq. No(s):0134 & 0398, Original Grantor: John Hess, Bonnie Hess, & Kathryn Hess

Todd Hess (Bonnie Hess's son) would like to subdivide two acres for his family home. Mr. Hess's first desire is to build and subdivide on the southern farm but as the ACE does not allow this, he has come up with three different preferences for location on the family's home farm, which are identified on the property map provided with the Meeting materials. He has been in communication with the township as well as Clean and Green.

Mr. Knepper provided some background information, specifically addressing the rather unique language and restrictions added to the one Hess ACE that is located on the South side of Rock Point Road (APB Acq 0398) to give some context. Currently, Bonnie Hess owns the farm to the North of Rock Point Road and Todd Hess and his brother, Brian, own the farm to the South of Rock Point Road.

Mr. Steve Gergley and Mr. Todd Hess stated they have explored all potential lot sites. Only one seems to be potentially feasible and desirable given the ACE restrictions and Township Zoning. The option requested for the Board to consider is a subdivision on the home farm parcel, north of Rock Point Rd OR the parcel south of Rock Point Rd. On the home farm, the most preferred location would be in 'Parcel B'. However, while this site is a portion of the home farm it is actually subject to the ACE for the farm now owned by Todd Hess and Brian Hess and described as Parcel B in the legal description for this ACE (see map submitted with Board materials.) The limitation with this option is that the unique language in the ACE prohibits any subdivisions and there is no subdivision available from the Township's Zoning. Mr. Hess needs both APB approval AND the Township to grant a variance.

APB ACE Regulations and Policies were highlighted for the Board:

1)Home Farm, ACQ 0134, ACE (Act 43), Deed Restrictions, Paragraph 2 Construction of Buildings and Other Structures and Paragraph 3, Subdivision

2)Todd and Brian Farm, ACQ 0398, ACE, Deed Restrictions, Paragraph 4 Subdivision- *"No further subdivision may occur on this property. Parcel 'B' as described in Exhibit 'A' containing 3.2008 acres which is owned by John E. and Bonnie L. Hess and is part of the 'home farm', as described in Deed Book 5218, Page 0174 may only be conveyed as part of the 'home farm' (i.e., that sum total tract as designated in Deed Book 5218 Page 0174). The additional*

residential structure permitted by this Deed of Agricultural Conservation Easement may not be subdivided from the property nor may it be located on Parcel 'B'."

Mr. Knepper posed the question to the Board, "Do we want to see if there is a legal way we can allow for a residential lot and house on Parcel B?"

Mr. Lehman asked, notwithstanding the legal aspect, would APB have an objection to the proposed lot site? Its adjacent to the property boundary, along the road and in proximity to other lots. It appears to be of least impact to the farming activities and what APB, under normal circumstances, would want.

The Board contemplated a "trade-off" of a dwelling right that might exist and suggested that Mr. Hess be financially responsible for APBs legal costs that are unique to this situation.

After further discussion, due to the unique facts and circumstances of the easements, the Board indicated that they would consider a dwelling and subdivision on the Home Farm, or the farm owned by Todd and Brian, but not both, if it could work legally, and if Mr. Hess paid for APBs legal expenses.

Mr. Gergley indicated their next step will be to seek a variance from the Township and if granted, they will come back to APB to seek a means to provide for this subdivision.

ii) SUBDIVISION/LOT ADD-ON AND LAND DEVELOPMENT (CONSTRUCTION) BOARD SUMMARY
Meeting Date for Review: February 25, 2021, APB Staff: Kevin Baer, Acq. No(s):0243, Original Grantor: Donald W. Witmer

(NOTE: in the Meeting, this discussion came AFTER, Mr. Hottenstein's rural enterprise request)

Landowner is requesting permission to agriculturally subdivide the 120.9-acre farm into two tracts of approximately 46 +/- acres (northside of road, Farm 2) and 74.9 +/- acres (southside of road, Farm 1). Don Witmer wishes to create a farm tract for daughter and son in law. Mr. Witmer prefers to do a centerline separation (or subdivision by Indian Marker Road,) though that leaves 46 +/- on northside of road. He understands our 50-acre minimum tract regulation and is willing to use acreage from southside to reach 50 acres. The option to create a 50-acre farm is not ideal from farming, ownership, and monitoring standpoints.

Also, of relevance is that Mr. Witmer has proposed preservation of an adjoining 25 acres tract of land that has been added already, through a lot add-on, to the deed of the preserved area proposed for subdivision. The 25-acre preservation proposal is adjacent to resultant 46 +/- acre tract of the proposed subdivision. Mr. Lehman inquired as to whether the two easements could be merged so this "new" farm configuration would be subject to ONE easement instead of two. Mr. Knepper said that at this time there is no legal mechanism to do so. There may be an option of addressing this concern by utilizing a Declaration of Restriction which could, in effect, join the two easements. Mr. Lehman added that any such Declaration should clearly identify why the easements are being joined.

APB ACE Regulations and Policies were highlighted for the Board:

- ACE (Act 43), Section 914.1 Purchase of agricultural conservation easements
- ACE, Exhibit "B", 1995/ 2002 Corrective Subdivision Guidelines, Intent section, "The Subdivision Guidelines are intended to preserve as much farmland as possible in integral tracts and to promote viable agricultural enterprises. The Board on a case-by-case basis, depending on size of the subdivided tract, township zoning, neighborhood characteristics, and other pertinent factors, will consider special exceptions to these guidelines."

Similar Subdivision Requests Reviewed by the Board:

- January 28, 2021, Ira B. Heistand & Barbara Sue Heistand, Date of ACE 6/30/2003_1995/2002 Subdivision Guidelines Acres Preserved: 142.12_ Request to subdivide the farm by trail Road. Approved.
- October 26, 2006, Ben E. Stoltzfus, Date of ACE 12/28/2004_1995/2002 Subdivision Guidelines Acres Preserved: 116.76_ Request to subdivide the farm by Farmdale Road. APB denied request because it would have created a 33 acre farm on the East side of Farmdale Road.
- June 28, 2012, Chickies Creek Farm, LLC, Date of ACE 10/22/1996_ 1995/2002 Subdivision Guidelines_ Acres Preserved: 93.95_ Request to subdivide farm by Risser Mill Road with 48.2 acres on the North Side and 43.6 acres on the South Side. APB denied the request because both newly created farms would be under 50 acres.
- October 27, 2016, David C. Findley Jr. and Jodie L. Findley, Date of ACE 8/29/2008_1995/2002 AND 2009 Subdivision Guidelines Request to add land to an adjoining preserved farm such a request would have left the parent tract with less than 50 acres. In order to bring the parent tract to 50 acres, 1.17 acres of woodland from across Susquehannock Drive would have had to remain with the parent tract. Board Approved the Lot Add On request that resulted in the parent tract being LESS than 50 acres using the Special Exception provision.

The Board agreed to utilize the "special exception" option to allow for a subdivision by the road because, similar to the decision reached on the Heistand farm (see above), the parcel to the North of Indian Marker Road is over 45 acres and:

- Will be joined to another parcel of land (to be preserved) that is 25 +/- acres, thus creating an 81+/- acre farm (subject to two ACEs)
- APB and landowner will pursue a Declaration of Restriction that will "join" these easements (the approved subdivided 46 acres and the 25 acres)
- The farm is large at 120.9 acres, with 46 acres on the North side of Indian Marker Road and 74.9 acres on the South side of Indian Marker Road.
- From a practical farming standpoint, this subdivision is very reasonable, particularly given the lot addition of 25 acres to the 46 acres, creating an 81-acre farm.
- Requiring land from the South side of Indian Marker Road be added to the tract on the North simply to create 50 acres would be detrimental to the farm on the South side of the Road while at the same time causing future problematic monitoring and enforcement on the North side.

Staff recommends the following Conditions of Approval:

- Applicable APB Standard Plan Notes should be identified on the Plan.
- Subsequent to Subdivision, two new property deeds shall be prepared and recorded in the Lancaster County Recorder of Deeds Office: One for the Farm 1 and one for Farm 2.
 - Both deeds shall reference and include the ACE language.
 - Both deeds shall reference by recording information the Subdivision Plan.
 - Deed for Farm 2 farm shall indicate that the residential structure, as permitted by the ACE, is assigned to this farm. Furthermore, the new property deed shall indicate that no further subdivision is permitted.
 - Deed for Farm 1 farm (the 74.9-acre tract) shall indicate that the residential structure, as permitted by the ACE has been assigned to Farm 2 (the 46-acre tract). The Deeds shall also indicate that no further

subdivision is permitted, except that may be allowed by the 2009 Subdivision and Land Development Guidelines in the form of a lot add-on.

- This approval is contingent on, at all times, verification by the Lancaster County Conservation District or a certified conservation planner (technical service provider) that the farm is following a Conservation Plan / Ag E&S Plan (inclusive of manure/nutrient management plan) that is being / has been implemented according to schedule. (Already secured.)
- All other requirements that may be imposed by the Township or any other regulatory body must be met.
- All provisions of the Application and this approval shall be binding on the applicants, the owner of the land subject to the Agricultural Conservation Easement
- No restriction limiting agricultural production is permitted.
- APB Staff authorized to provide any necessary final approvals after reviewing final Land Development Plan as submitted to Township/County.

Motion to give preliminary approval, which include the recommended Conditions and the pursuit of a Declaration of Restriction, made by Mr. Edward Goodhart, III and seconded by Mr. Roger Rohrer.

MOTION CARRIED UNANIMOUSLY

B. Requests for Rural Enterprise

i) RURAL ENTERPRISE BOARD SUMMARY

APB Staff: Jessica Graham, Acq. No(s):0073, Original Grantor: J. Kenneth & Nan S. Garber

Rural Enterprise Request:

(NOTE: in the Meeting, this discussion came BEFORE Mr. Witmers subdivision request)

The Hottensteins are requesting to tear down a dilapidated two story chicken house on the property and rebuild an implement shed in roughly the same footprint. They will be using this building to store straw from their operation but also want to use a portion of the structure for rented storage to help offset the cost of construction. The existing structure is 43'x85'. The new proposed shed will be 44'x100'. The new structure will use the existing lanes for access. This enterprise will not require any employees. Access would be permitted by appointment only.

Of note, this ACE is currently subject to an Enforcement Agreement due to an unapproved/not-permitted septic easement. Because this Rural Enterprise proposal does not require any septic, it does not conflict with the terms of the Enforcement Agreement and may be considered by the Board.

In May of 2020, APB approved a similar request on the Wayne and Barbara Powell farm. A hog barn was torn down and a pole type/storage barn was rebuilt on the same foundation.

APB ACE Regulations and Policies were again highlighted for the Board:

- ACE (Act 43), Deed Restrictions, Paragraph 6.
"Customary part-time or off-season minor or rural enterprises and activities that are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted.
- Agricultural Conservation Easement Program Guidelines, Approved by APB – 5/22/2014, Approved by State ALPB – 8/22/2013. More Specifically, "Rural Enterprise Guidelines, F 2, Rural Enterprises Requiring County Board Approval, Customary Ag-Compatible Enterprises.
- West Donegal Township has provided confirmation that this activity is permissible.

Mr. Knepper took some time to explain the nuances of this request.

- A Rural Enterprise of this nature can only encompass ½% of the total acres subject to the ACE.
- The only structures permitted to be built on a preserved farm are those related to agricultural production and a residence.
- A new structure built solely for a side business/rural enterprise is not permitted.
- A new structure of which 50% or more would be used for agricultural purposes and 50% or less of which would be used for a rural enterprise could be permissible so long as the rural enterprise component was ½% or less of total acres preserved AND approved by the Board.

Mr. Hottenstein thanked the Board for the opportunity to present his proposal. He explained that he is rebuilding because it would be too expensive to try and fix the current structure. And, most pole barns come in somewhat standard dimensions and he is going to go a little bigger at 44' x 100' or 44' x 96' to provide for a more functional space. He would like to be able to use up to 2/3 for storage rental in order to recoup the cost of the structure. With his existing barn, he is using all of it himself for implements and straw, however it's an older barn and that poses access and storage limitations.

Mr. Knepper noted that the Township considers this proposal a conversion of an existing agricultural structure (see letter submitted with Rural Enterprise Application from West Donegal Township, 2/12/2021)

This led the Board to contemplate the scenario whereby this is NOT a new structure that would be limited to just agricultural use (or only 50% to be utilized with Board approval for a rural enterprise) but the entire structure so long as it less than ½% of the preserved acres could potentially be used for a rural enterprise.

Mr. Goodhart stated that if this structure is placed on the same foundation and is only slightly larger than the existing, he is comfortable permitting 2/3 for a storage rural enterprise.

Mr. Zimmerman added that there is case law that if a structure is built on the same foundation it is considered a replacement structure not a new structure. In effect, this is a replacement structure with a minor expansion.

There was consensus that if this barn is only slightly larger than the existing and built on the same foundation, which it is, it will be viewed as a replacement and not new; therefore, a rural enterprise would be permissible within the ½% limitation as per the Rural Enterprise Guidelines. The Board would like Mr. Hottenstein to limit the building to 44' x 96'. They thanked him for his candor at presenting his intentions to the Board.

Staff recommended the following Conditions of Approval:

- The rural enterprise is to be allowed as described and set forth in the Application, which will be inclusive of any additional information submitted via correspondence and points of clarification made by Board.
- Any changes to the operation must be presented to APB for review and approval prior to undertaking such changes.
- All other requirements that may be imposed by the Township or any other regulatory body must be met.
- All provisions of the Application and this approval shall be binding on the applicants, the owner of the land subject to the Agricultural Conservation Easement
- APB staff is authorized to grant final approval once any outstanding conditions have been met.
- This approval is contingent on, at all times, verification by the Lancaster County Conservation District or a certified conservation technician (technical service provider) that the farm is following a Conservation Plan that is being / has been implemented according to schedule.
- The preserved farm must continue to be used for agricultural production and the rural enterprise may not restrict the use of the farm for agricultural production and/or normal farming operations.

- This Rural Enterprise must continue to meet all the applicable conditions per the Rural Enterprise Guidelines.

Motion to Approve the proposed storage Rural Enterprise with the understanding that the building be no larger than 44ft by 96ft AND the actual storage component not exceed ½% of the total area subject to the ACE made by Mr. Roger Rohrer and seconded by Mr. Andrew Lehman.

MOTION CARRIED UNANIMOUSLY

C. 2020 Ranking

The Board was presented with a spreadsheet detailing the 2020 Application Round (see Board materials)

Mr. Knepper shared with the Board that there were 182 applicants in the 2020 Application Round. Of those 182, 13 were propelled to the top of the list because of their “special project” status. These 13 have ranking scores that range from 16 to 142. The applications are given priority because they are 50% bargain sales, projects with Townships or partially funded with federal money.

Mr. Baer, who manages the annual ranking, presented the Board with an overview of the top ranking farms. He shared maps and important/relevant details about these farms.

The Board thanked Mr. Baer for his presentation and the details he provided.

Motion to Approve made by Mr. Edward Goodhart, III and seconded by Mr. Roger Rohrer.

MOTION CARRIED UNANIMOUSLY

D. Special Project Review – on hold until future meeting

- E. 2021 Allocation of Funds** – Mr. Knepper provided a Summary of the Bureau of Farmland Preservation’s 2021 Allocation of funding for Counties. Lancaster County appropriated \$1,757,654 and in turn received \$2,923,565 in State funding. The funding will be available through December 31, 2022. For comparison, Chester County appropriated over \$3 million and received \$3.2 million in State funding. Lehigh County appropriated almost \$2.2 million and received \$2.7 million.

VII. Adjourn

The meeting adjourned at 10:17 a.m.

The next scheduled meeting of the Agricultural Preserve Board

Thursday, March 25, 2021, at 8:00 a.m.

Lancaster County Public Safety Center

101 Champ Blvd. Manheim, PA 17545