

Lancaster County Agricultural Preserve Board
Meeting Minutes
Thursday, April 26, 2018

Present: Mr. Jeffrey Frey, Chairman
Mr. Gary Landis, Vice Chairman
Mr. Edward C. Goodhart III
Mr. Gene Garber
Mr. Andrew Lehman
Mr. Roger Rohrer
Commissioner Dennis Stuckey
Mr. Matthew Young
Mr. Daniel Zimmerman

Absent: No absentees

Staff: Mr. Matthew Knepper, Director
Mr. Kevin Baer, Farmland Preservation Specialist
Ms. June Mengel, Farmland Preservation Specialist

Guests: Mr. Sheridan Dannelley
Mrs. Linda Dannelley
Mr. Douglas Hottenstein
Mr. John M. Smith, Esq., Nicholas & Hohendal
Mr. George C. Cook, Esq., Blakinger and Thomas
Mr. Jeffrey Swinehart, Deputy Director, Lancaster Farmland Trust

I. Call to Order

Mr. Jeffrey Frey called the meeting to order at 8:50 a.m.

II. Review of Mission Statement

Mr. Eugene Garber read, *"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

Executive Session: The Agricultural Preserve Board (APB) met in executive session on April 26th at 7:15 am to discuss real estate matters and potential litigation regarding a violation of an agricultural conservation easement on the Hottenstein property and the Kauffman property.

IV. Approval of Minutes

Motion to approve the February 22, 2018 meeting minutes made by Mr. Roger Rohrer and seconded by Mr. Gary Landis.

MOTION CARRIED UNANIMOUSLY

V. Business from Guests

- **NO BUSINESS FROM GUESTS at this time during the Meeting.**

VI. Old Business.

- **NO OLD BUSINESS**

VII. New Business

A. Hottenstein / Dannelley Septic Easement

Mr. George C. Cook provided a brief background to the Board and guests present:

- August, 1990, farm preserved with an Agricultural Conservation Easement (ACE) between Kenneth and Nan Garber and the County.
- April, 2010, farm was purchased by Douglas and Christie Hottenstein.
- December, 2017, Monitoring uncovered an Easement Agreement dated 6/21/2017 whereby Mr. and Mrs. Hottenstein granted an Easement to the Mr. and Mrs. Dannelley for a drainfield associated with their septic system.
- This type of Easement is not contemplated by the ACE and therefore not permitted.
- 2/2/2018 – a Notice of Violation was sent to Mr. and Mrs. Hottenstein.
- 2/15/2018 – Attorney John “Jack” M. Smith made a request to George C. Cook for more time to submit additional information to APB.
- 2/23/2018 – George C. Cook verified that more time was permitted.
- 4/9/2018 – Letter from Jack M. Smith to George C. Cook responding to Notice of Violation.

Mr. Jack M. Smith explained to APB:

- First and foremost neither he nor his clients have any opposition to the mission of APB and fully support farmland preservation efforts.
- They desire to avoid litigation.
- Purpose of his 4/9/2018 Letter was to stress that what is the drainfield that is there now is all that will ever be there.
- Mr. and Mrs. Dannelley have lived there for 35 years, this portion of the Hottenstein farm has never been in production and this is unchanged in appearance.
- This land was never in ag production because of the steep bank & would like to be able to keep the drainfield in place.
- His review of the Statute (Act 43) is that it is not absolute. Sewer lines are permitted, this type of exception is similar and might be permissible.
- Dannelley’s situation is unique. Very small lot, no other reasonable option.

Mr. Jeffrey Frey thanked all those in attendance and opened the floor to questions by APB members:

- Mr. Daniel Zimmerman asked what other options had been explored? He commented that it is possible for older systems to be regenerated.
- Mr. Edward C. Goodhart wondered if Marvin Stoner or Thomas H. Erb & Sons looked at any other alternatives, albeit some may have been cost prohibitive.
- Mr. Jeffrey Frey inquired about a sandmound system somewhere on the property?
- Mr. Edward C. Goodhart asked where the current well for the property is located?
- Mr. Gary Landis inquired if there was any plan to make public sewer accessible in the future?

- Mr. Matthew Young indicated that these types of easements on farms for residential septic will cause additional problems on farms because nutrient management requirements.
- Mr. Daniel Zimmerman stated that it would be very helpful for the Board to have additional information from another Sewage Enforcement Officer who is not so directly involved as there may be other option. APB needs as much information as possible in order to devise a reasonable resolution to this violation.
- Mr. Roger Rohrer explained that what the APB could benefit from is for the Dannelleys to approach this situation as if APB had been asked permission to grant this drainfield easement and denied the request – what options would have been explored? It is these options or this exercise that the Board needs to evaluate when making a decision.
- Mr. Matthew Young said that Mr. George Cook has stated that this is a violation of the ACE and while APB wants to be good neighbors, we can't allow this to continue forever.
- Mr. George Cook stated that APB needs to see that alternatives have been explored, expense of those alternatives are out of proportion with the circumstances, modern solutions won't work, etc. In other words, it is critical that if APB is going to consider an Enforcement Agreement and allow this system to remain for even a specified period of time, there must be a paper trail to justify this decision.
- Mr. George Cook said that APB needs a path to follow by which granting an Enforcement Agreement is a reasonable alternative in this situation

Mr. and Mrs. Dannelley, Mr. Douglas Hottenstein and Attorney Jack Smith responded:

- Mr. Sheridan Dannelley said that he was told at least 7 years for a site to regenerate and that was not exclusive of excavation and rehabilitation.
- Mr. Douglas Hottenstein said that there is no level spot on the farm for sandmound, with the exception of the front yard and then it would be too close to the well.
- Mr. Douglas Hottenstein stated that he exports all of his poultry manure.
- Mr. Jack Smith commented that holding tanks are cost prohibitive and not safe.
- Mr. Sheridan Dannelley said they have lived in their home since 1984 and had not pumped their septic. They had some issues, put a standpipe in 7-8 years ago and things seemed to work well. Then they started to have issues again, there was backflow and even with flushing the system, they still had problems. When the Township passed the ordinance that all residents had to get their systems pumped and inspected, that provided the incentive to remedy whatever problem they might be having.
- Mr. Jack Smith stated that he understands what the Board is requesting as a means to demonstrated that all remedies have been exhausted at the present time.
- Mr. Sheridan Dannelley shared with the Board that they had spent \$2,500 on grading and he'd like to finish the process by getting the area seeded. But wanted to know if APB would be agreeable to this action?
- It was also shared that the new system is designed with a valve so that when the old system is ready to be used again, the valve can be turned to push waste to the old system. This was designed to prolong the life of the newer system my alternating uses.

Mr. George Cook wrapped things up by stating:

- A request should be put in writing with reference to planting grass seed, etc. so it could be addressed within the context of the violation
- Mr. Jack Smith and he will stay in touch and a letter will be forwarded to Mr. Jack Smith outlining what APB needs to make an informed decision.
- APB is looking for thoroughness and quality of this information not speed.

B. i) Request for Subdivision / Land Development

Residential Subdivision in conjunction with Additional Dwelling Request: Robert Kirk (Elmer Fry & Megan Santiago), Fulton Township, Acq 0251.1 (total preserved acres: 353.76, this farm 235), 290 Pilottown Rd, Peach Bottom

Mr. Kirk is requesting permission to subdivide 2 acres in a wooded area off of Cherry Hill Road for construction of the permitted additional residential structure for his son, Elmer Fry and his partner, Megan Santiago. The farm that is subject to this ACE was originally preserved by Francis and Ethel Kirk as a 353.76-acre parcel. It was subsequently "separated by tracts" into two farms, one operated by Tom Kirk, the other by Robert Kirk. When this separation occurred, the right to construct the additional residential structure was retained by Robert Kirk.

The Agricultural Conservation Easement to which both farms are subject, incorporate the 2002 Corrective Subdivision Guidelines (originally approved in 1995), which permit an Agricultural Subdivision if it does not create parcels of less than 50 acres OR a residential subdivision for the landowner or an immediate family member.

Staff is recommending Preliminary Approval with Board authorization for staff to grant final approval after reviewing Subdivision Plan as submitted to Township/County and confirmation that other applicable Conditions of Approval have been satisfied.

- 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 new residential lot and one for the residual farm. The deed for the new residential lot shall reference the ACE. The deed for the residual farm shall reference and include the ACE language. Additionally, the new deed for the farm shall indicate that the one additional structure, as permitted by the ACE has been utilized and that no further subdivision is permitted. It shall also reference by recording information the Subdivision Plan.
- APB Staff authorized to provide Final Approval after reviewing final Subdivision Plan as submitted to Township/County & confirmation that the verification of implementation of conservation plan has been completed.
- 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 that is being / has been implemented according to schedule.
- 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, and their respective heirs, successors and assigns.
- No restriction limiting agricultural production is permitted.
- Recommendation – Contact Clean and Green Office in conjunction with the process for filing appropriate continuation of preferential assessment forms.

Motion to award Preliminary Approval of the proposed Lot Add-On as it was presented made by Mr. Edward C. Goodhart III and seconded by Mr. Eugene Garger.

MOTION CARRIED UNANIMOUSLY

B. ii) Request for Construction as associated with FRPP (impervious surface): Paul Lamar and Sheryl J. Hess, Drumore Township, Acq 0823, total preserved acres: 151.29, 1505 Benton Hollow Rd, Drumore

Mr. and Mrs. Paul Hess's farm was preserved with federal monies and the ACE associated with their farm limits the amount of impervious surface and requires that they seek permission for construction to ensure that any proposed building is within the limits of the impervious surface restrictions.

The proposal is for two 40' x 148' bunker silos and a 20' x 80' apron, totaling 13,440 square feet. After this construction, the Hess's would still have 7.20 acres remaining for impervious surface coverage. The maximum they are permitted is 9.05 acres

Motion to approve the proposed construction was made by Mr. Roger Rohrer and seconded by Mr. Edward C. Goodhart III.

MOTION CARRIED UNANIMOUSLY

C. Requests for Rural Enterprise – No Requests Submitted

D. 2017 Ranking, 50% Offers Discussion

Mr. Matthew Knepper provided the Board with background information on 50% bargain sale ACEs over the past three years, as follows (no joint deals):

Farms – 12
Acres – 410
Average Farm Size – 34 (11.6 acrese to 53 acres)
Average Per Acre Easement Value - \$1,800
Total Cost - \$751,682
Percentage of Total – 12%
Percentage of Funds – 7%

Director and APB Discussion:

- Mr. Matthew Knepper stated that these numbers looked reasonable and seemed to be a good deal.
- Mr. Edward Goodhart III said that he is concerned that the farm sizes are small.
- Mr . Roger Rohrer commented that the 50% bargain sale option is an opportunity for smaller farms or larger farms lacking prime soils can get preserved or those that are not near any other preserved acres. It's good PR.
- Mr. Matthew Knepper added that it is also a good thing for the County Commissioners, to be able to present to them in public session a farm that is willing to accept such a reduced offer, it stretches the County's investment. Ithe results of the 2017 Ranking and thanked staff for their work on accomplishing this task for the February Meeting.
- Mr. Matthew Young put forth the sentiment that the Board should continue to review these on a case by case basis. He further said that it would be reasonable if the property owners who had smaller farms and elected to participate in a 50% bargain sale were able to relinquish their right to one additional residential dwelling. He felt as though

a smaller parcel of land that may already have one or more houses, should not be permitted to have more.

- APB always retains the right to deny a 50% bargain sale.
- Mr. Matthew Knepper agreed and said that HB 1550 would allow for this, along with some other things, but was currently in front of the Senate Appropriations Committee. There is no opposition to this Bill; however, no strong push for it either. Board Members were encouraged to contact Senator Scott Martin to move this Bill along.
- Mr. Gary Landis felt as though APB is likely to see more and more smaller farm operations, particularly in Lancaster County and the dynamics of the dairy industry. He also said that these smaller farms also add to the County's economy in a valuable way.
- Mr. Matthew Knepper shared with APB that staff had been discussing the requirement that any 50% bargain sale applicant be required to have an implemented Conservation Plan prior to preservation.

Motion to require that 50% Bargain Sale applications have an implemented Conservation Plan prior to preservation was made by Mr. Roger Rohrer and seconded by Mr. Andrew Lehman.

MOTION CARRIED UNANIMOUSLY

E. Cemeteries on preserved farms

A plain farmer has approached APB about the possibility of establishing an Amish Cemetery on a preserved farm. APB was asked if this is something they would like to contemplate and have written standards for how/when it is permitted, as it would likely have to be handled similar to Amish Parochial Schools, or a rural enterprise of sorts.

After discussion, it was decided that there too many unfavorable factors to permit a cemetery, including but not limited to:

- Unlike an Amish school, which can be removed and the area can be returned to agricultural use, the same is not true of a graveyard. Once the deceased are in the ground, the area can never be farmed again.
- The precedent this would set, may provide a door for other cemeteries or cemetery expansions.

VIII. Adjourn

The meeting adjourned at 10.05 a.m.

The next scheduled meeting of the Agricultural Preserve Board

Thursday, May 24, 2018, at 8:00 a.m.
Lancaster County Government Center
150 North Queen Street, Room 104
Lancaster, Pennsylvania 17603