

**RESOLUTION
OF THE SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD
DISMISSING THE APPLICATION OF RIDGE HILL FARMS LLC
FOR A SITE-SPECIFIC DETERMINATION
FOR PROPERTY KNOWN AS LOT 37.01, BLOCK 117**

WHEREAS, Ridge Hill Farms LLC filed an application for a site-specific determination; and

WHEREAS, an application for commercial farm status was granted by the Board on July 15, 2019; and

WHEREAS, William Askin, Esq. of the firm Askin & Hooker represented the Applicant. The Board also received testimony from Kevin Juchniewicz of Ridge Hill Farms LLC and Jason Dunn, the Project Planner; and

WHEREAS, both Mr. Dunn and Mr. Juchniewicz were sworn in. Mr. Dunn testified that he is a Professional Planner and Licensed Landscape Architect and that his New Jersey license is in good standing; and

TESTIMONY AND EXHIBITS

WHEREAS, the Board received the following testimony and exhibits:

1. Mr. Dunn testified that the application is for a Site-Specific Agricultural Management practice for Ridge Hill Farms LLC in Wantage Township. The Applicant seeks to operate a wholesale Christmas tree farm. Mr. Dunn testified that there was no need for a public parking lot or for sewer or water. The property is located on approximately 74 acres on Route 565, in Wantage Township. Mr. Dunn testified that there was one house and two barns on the property. Mr. Dunn further testified that there are approximately five acres above the house and barns where the Applicant wished to plant Christmas trees. He further testified that in order to utilize the fields, grading would be required. The landowner filed a Soil Erosion and Sediment Control Plan, which was certified by the Sussex County Soil Conservation District. Mr. Dunn testified that fill would need to be brought in which would be certified as clean.

2. In response to questioning from the Board, the Applicant agreed that the Christmas tree density would be less than a thousand to an acre. Therefore, his harvest each year would be approximately 700 to 800 trees.

3. The Board questioned where the stockpiled soil shown on Exhibit A-2 would be coming from. Mr. Juchniewicz testified that the soils will either come from a quarry or a soil depot where there will be certification of the soil. Mr. Juchniewicz was asked if he would be complying with the Township's soil testing Ordinance. Mr. Juchniewicz replied that the soil would be certified. Mr. Juchniewicz was asked again if that meant he would be complying with the Township's soil Ordinance, and Mr. Juchniewicz again replied that the soil will be certified.

4. In response to questions from the Board, Mr. Dunn testified that he estimated the one "valley" that would need to be filled would take approximately 30,000 yards of soil.

5. At the conclusion of the Applicant's case, the Township, represented by Mayor Ronald Bassani, and Zoning Officer, Patrick Stefanelli, testified that a stop work order had been issued against the Applicant for the importation of soil in violation of the Township's soil importation ordinance. A discussion took place between the Applicant and the Township representatives about when the stop work order was issued. The Mayor testified that the Township feared that the soil being brought in from off site could be contaminated, as the Applicant had refused to comply with the Township's soil importation ordinance; and

6. The Board had concerns because the Applicant's professional planner testified that, while he wasn't sure of the exact amount of soil that would have to be imported to ready the property for the growing of Christmas trees, it appeared that it would be substantial. The Board asked the Applicant why it would spend what could be upwards of \$150,000.00 to import soil to facilitate the growing of five acres of Christmas trees. The plan did not seem to make sense financially. The Board believed that this was not an agricultural issue, but that it was more of a soil importation issue.

7. A list of exhibits is attached and is part of this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Sussex County Agriculture Development Board makes the following findings, conclusions and resolutions:

CONCLUSIONS

In deciding this matter, the SCADB has weighed both agricultural and municipal interest. In accordance with *N.J.S.A. 4:1C-1 et seq.* the SCADB has considered the relevant municipal Ordinance regarding soil importation; it has also considered the testimony and exhibits, and after weighing the facts and circumstances, makes the following findings, determinations and resolutions:

1. The Board declines jurisdiction and dismisses the application of Ridge Hill Farms LLC for a site-specific determination. The Board determined that this was not an agricultural issue, but a soil importation issue. The Board therefore defers to the municipality.

2. The testimony and proofs given by the Applicant at the aforementioned public hearing and the SCADB's findings of fact and conclusions of law as set forth above are incorporated herein by reference and form the basis of the SCADB's determination herein.

3. If terms and conditions agreed to on the record below are omitted from this resolution the Applicant and the Township are nevertheless bound to abide by same pursuant to *Fieramoseca v. Barnegat Twp.*, 335 NJ Super, 526, 533-534 (Law Div. 2000).

4. The Board shall forward a copy of this resolution as its written recommendation to the State Agriculture Development Committee, the Township of Wantage and Ridge Hill Farms LLC within thirty 30 days.

5. Any person aggrieved by this resolution may appeal the resolution to the SADC in accordance with the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* and the Uniform Administrative Procedures Rules within 45 days from receipt of this resolution and the decision of the SADC shall be considered a final administrative agency decision. If the CADB's resolution is not appealed within 45 days, the resolution is binding.

I certify that the foregoing is a true copy of the resolution adopted by the Sussex County Agriculture Development Board on October 21, 2019.


Jane Brodhecker, Chairperson
Sussex County Agriculture Development Board

EXHIBITS

- A-1 Soil Erosion and Sediment Control Plan dated November 29, 2017, revised to December 1, 2017
- A-2 Proposed Christmas Tree Farm Plan
- A-3 Tree Farm Plan - Overview prepared by Douwe Dykstra of Dykstra Associates, P.C. dated December 14, 2017
- A-4 Minutes of the September 16, 2019 Sussex County Agriculture Development Board meeting

TREE FARM PLAN - OVERVIEW
 RIDGE HILL FARMS - 219 ROUTE 565
 WANTAGE TOWNSHIP, SUSSEX COUNTY, NJ
 BLOCK 117 TAX LOT 37.01

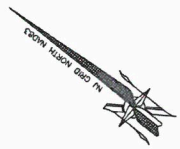
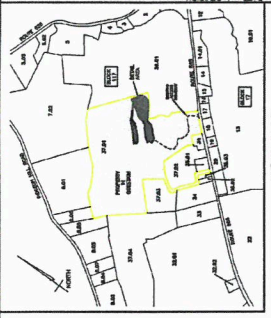
DYKSTRA ASSOCIATES, PC
 11 LAMBROCK ROAD
 NEWTON, NJ 07860
 (973) 578-2177
 PROFESSIONAL PROJECT #
 LAND SURVEY # 1188
 DATE: MAY 9, 2019
 SHEET 1 OF 1

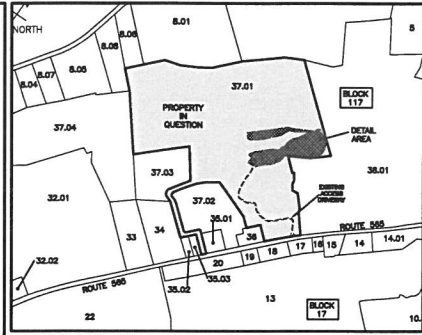
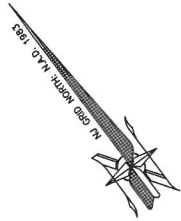
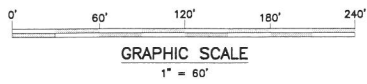


PROJECT NO. WB-117
CONTRACT NO. NA
SCALE: 1" = 200'
DATE: MAY 9, 2019
SHEET 1 OF 1

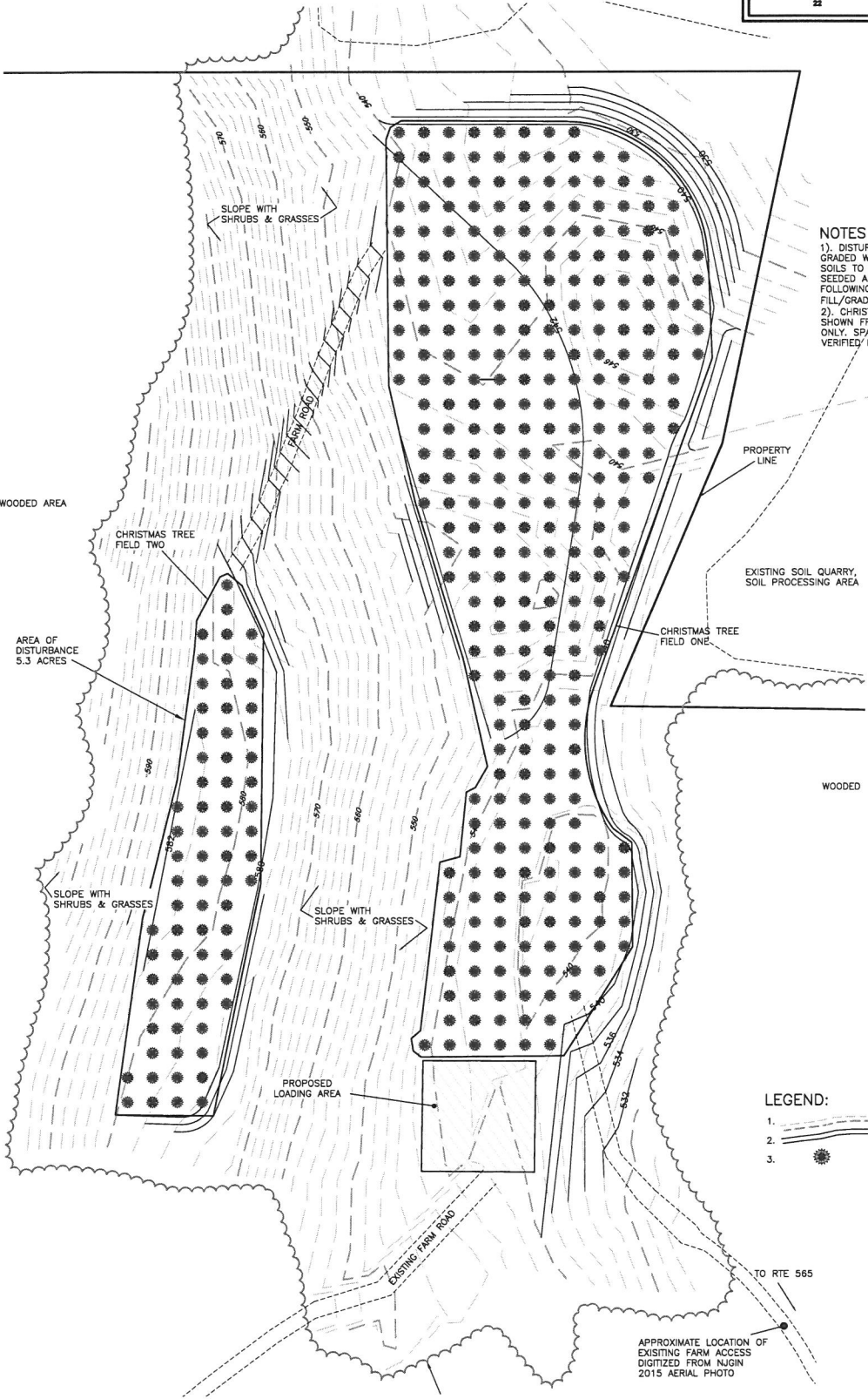


BOUNDARY NOTE:
 BOUNDARY IS APPROXIMATE
 BASED ON FIELD SURVEY





KEY MAP
1" = 1000'



NOTES
 1). DISTURBED AREAS TO BE GRADED WITH OFF-SITE SOILS TO BE STABILIZED, SEEDING AND HAYED FOLLOWING COMPLETION OF FILL/GRADEING/
 2). CHRISTMAS TREES SHOWN FOR REFERENCE ONLY. SPACING TO BE VERIFIED BY OWNER

LEGEND:
 1. DENOTES EXISTING CONTOURS.
 2. DENOTES PROPOSED CONTOURS.
 3. DENOTES PROPOSED CHRISTMAS TREE

DATE	REVISION



PROJECT NO.: WFG-117
CONTOUR INT.: 2 ft
SCALE: 1" = 60'
DATE: FEB. 25, 2019
SHEET 1 OF 1

DYKSTRA ASSOCIATES, PC
 11 LAWRENCE ROAD
 NEWTON, NJ 07860
 (973) 579-2177

PROFESSIONAL ENGINEER &
 LAND SURVEYOR
 No. 11668
 PROFESSIONAL
 N.J. LIC. No. L04344

Douwe Dykstra
 DOUWE DYKSTRA

BLOCK 117 TAX LOT 3701
 RIDGE HILL FARMS -
 WANTAGE TOWNSHIP, SUSSEX COUNTY, NJ

PROPOSED TREE FARM PLAN

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD

MINUTES

SEPTEMBER 16, 2019

The meeting opened at 7:33 p.m. by Chairperson Brodhecker in the Freeholder Meeting Room at the Sussex County Administrative Center, One Spring Street, Newton, New Jersey. The meeting was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-1 of 1975, as amended. Notice has been forwarded to the newspapers and posted on the bulletin board maintained at the Sussex County Administrative Center for public announcement.

ROLL CALL:

MEMBERS PRESENT: Jane Brodhecker, Chairperson
Brian Hautau
Cece Pattison
Peter Southway

EXCUSED MEMBERS: Lori Day, Vice Chairperson ✓
Joan Snook Smith

STAFF PRESENT: Autumn Sylvester, Program Manager
Michael Lavery, Esq., Ag. Counsel
Rudy Dragan, Planning Aide
Antoinette Wasiewicz, Recording Secretary

ALSO PRESENT: Priscilla J. Triolo, Esq., C.U.R. Equestrian
Susan Sapino, C.U.R. Equestrian
Leo Blanco, C.U.R. Equestrian
Kevin Juchniewicz, Ridge Hill Farms, LLC
Enza Juchniewicz, Ridge Hill Farms, LLC
Allan Esenlohr, Green Township
Robert Many, Green Township
Dawn VanAuken, Green Township
Jason Dunn, Dykstra Associates
Ursula Leo, Esq., Green Township
William Askin, Esq., Ridge Hill Farms, LLC
Janet Price, Wantage Township
John Price, Wantage Township
Ronald Bassani, Wantage Township
Patrick Stefanelli, Wantage Township

MINUTES CORRECTION/APPROVAL:

A motion was made by Cece Pattison to accept the Minutes of July 15, 2019, as presented. The motion was seconded by Peter Southway. All were in favor, with an abstention by Brian Hautau. Motion carried.

The Agenda was amended to 7-A, Right-to-Farm.

CORRESPONDENCE:

A. SADC AUGUST UPDATE:

The Board received copies of the August SADC update in their meeting mailing.

B. ARTICLES OF INTEREST:

Autumn provided the Board with a few ag.-related articles of interest.

AG. AGENT'S REPORT:

Steve Komar said he will forgo his report this evening, and after going to the Board of Ag. meeting, he will give a full report next month.

RIGHT TO FARM:

A. CONFLICT RESOLUTION – C.U.R. EQUESTRIAN, GREEN TOWNSHIP:

Autumn Sylvester said that is a continuance from the July 15, 2019 meeting. Mike Lavery, Esq., Counsel for the SCADB, said that the first part of this hearing was held at the last meeting on July 15. The grievance side made their case; then the farmer responded. The remaining issue was the location of the dumpster. It was not 50' off the property line. The understanding was that the farmer was willing to move the dumpster, and he suggested that the farmer make certain that the new location not only complies with the regulations, but also serves the farmer's purposes.

Ms. Triolo, Esq., attorney for the farmer, confirmed that that's where the meeting left off. The issue was the location of the dumpster. She said that since the last meeting, Steven Komar, Rutgers Cooperative Extension, visited the site, inspected the current location of the dumpster and participated with the owner in measuring the site. To supplement the record, she submitted an aerial photograph of the farm with the parameters of the active portions of the farm outlined in red. There is also a measured-off area for the new location of the dumpster. Ms. Triolo said the new location is 60' from the property line in order to clear the horse path and to ensure that the location works with the operation of the farm. The applicant is here for the approval of the new location. Upon the approval, the dumpster will be moved within the next 10 days. The dumpster, as discussed during the last meeting, is sealed on the bottom. At the new dumpster location, the access to put the shavings into the dumpster will be on the high side and will be pushed into the dumpster as it has been. Ms. Triolo said she is also seeking to supplement the record with updated reports from "Down to Earth." As

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shown in the documents, the last dumpster pickup was September 7, 2019. If the proposed dumpster location is approved this evening, the dumpster will be relocated at the time of the next "Down to Earth" pick-up. Mr. Lavery said the aerial photograph will be marked as Exhibit A-5 and the up-to-date pick-up record from "Down to Earth" will be marked as Exhibit A-6.

Steve Komar said the photograph was obtained using GPS data, and that he measured 60' from the side property line. He also said that he measured 100' from the pond. Ms. Triolo said that 60' gives some leeway and assures that the dumpster is located more than 50' from the property line. Ms. Triolo said that she does not have any other exhibits or witnesses.

Mr. Lavery asked if the Township wanted to speak. Ursula Leo said she is an attorney with the firm of Laddey, Clark & Ryan, and that she is here this evening to represent Green Township. She was not here for the July meeting, but she has reviewed the Minutes. The Township has a few concerns and would like to make sure that its ordinances and the AMP are adhered to. Ms. Leo said the Township is concerned about the number of horses. The Township code, Section 30-34.1 says that the first 3.5 acres allows two horses and every acre thereafter allows one horse. Under the Township ordinance, five horses would be permitted on this farm. The tax assessment form submitted says there are seven horses on the farm.

Ms. Leo said that the landowner did not apply for a driveway permit. She understands that the SCADB has jurisdiction regarding the horses under Right-to-Farm, but the extended driveway permit needs to be applied for. She said that as she reads the AMP, the driveway permit is per Green Township Code Section 17-2.3D.

Ms. Leo said that the AMP talks about keeping the manure as dry as possible and that when she read the Minutes, she read that there was some discussion regarding a cover. When moving the dumpster, she wanted to know if there was anything that can be done about covering the manure. The Township wants to see this complied with.

Ms. Leo said that the Green Township code talks about a driveway being 10' from the property line. From Exhibit A-5, it appears to be right on the property line. Ms. Triolo said what she is referring to is not a driveway. It is a cow path for the horses, and it is not on the property line. Ms. Leo said under the Township Code, it is considered a driveway that has access to a township road, so it requires a township permit. Ms. Triolo said that the applicant does comply. The cow path is 10' off the property line. As far as the horses, there are five horses, maximum over a 12-month period.

Mr. Lavery said that the number of horses was discussed. He asked Mr. Komar what is the number under the AMP. Mr. Komar said that the AMP and the manure management rule are two separate things. Whenever he talks about this, it's about the manure management rule from the Department of Agriculture. That's the average number of horse on a farm during the year. When you calculate animal units, it's based on a thousand pounds of animal. The rule is based on the animals per acre across the calendar year. In this case, because the animals are gone for four months out of the year, it turns out to be less than the actual animal numbers that are on the farm. When asked, Mr. Komar said when he visited the farm, there were seven horses

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divided by the amount of time they are on the farm, and at the end of June, it turned out to be five times the estimated weight of the animals. Ms. Supino said since that time, one horse died and one horse was sold. Mr. Lavery reminded Ms. Supino and others present that she was still under oath.

Mr. Lavery said one of the things the Board has to decide is that the town has an ordinance which restricts the number of horses. The State standards for manure management says that this farmer can have up to seven horses. Mr. Komar said it is actually 8, based on the stocking density of the field. Mr. Lavery confirmed with Mr. Komar that under this calculation, the farmer gets a credit because the horses aren't at the farm year round. The density comes down.

Mr. Lavery also said that the town has concerns about the manure dumpster. The applicant will move the dumpster, and then it is up to the Board to decide if that is sufficient. There was discussion regarding the covering of the dumpster. Mr. Lavery said that he is not sure if the Board came to an agreement regarding a cover. Ms. Triolo said that there was a problem with a cover due to the contents and that covering it will create more of a problem. It is a sealed dumpster, and if any water gets in and the dumpster is covered, it creates a different problem. Autumn said that at the last meeting, covering the dumpster with a tarp was a condition. Ms. Triolo said that Ms. Supino testified that a cover will not work because she has a sealed dumpster, it does not drain. Covering it will create combustion and a breeding ground when humidity is covered. Ms. Supino also pointed out that her stalls have shavings. The dumpster contains a mixture of shavings and manure, so there is no odor. There was no testimony about odors. Ms. Leo said she is not an expert, but the AMP says, "... the manure shall be stored in dumpsters or other receptacles, situated on a concrete pad or other surface and manure shall be kept as dry as possible." The town has requested that this be complied with.

Mr. Lavery said that the driveway permit did not come up at the last hearing. He asked if this opening coming out to the street has always been there or is it new. Ms. Supino said that the opening was put in for the barn construction, and when it was complete, she left it there in order to get the manure dumpster deliveries in and out. A tri-axle truck and her horse trailer cannot come in and out of her residential driveway. She said this was part of her construction application. She said the town allows people to put 3/4 stone down anywhere on their property. When asked, she confirmed that this path is used only for manure removal, horse trailers and large hay or shavings deliveries. Ms. Triolo said this path is restricted for horse uses; it is not part of her residence. Ms. Leo said that Township Code 17-2.1 has a Class 4 for farmland access. It says it does not include access to structures. All farmland access must have a permanent, lockable gate or other means to secure access as approved by the Township engineer. She said there are sight distance issues and other concerns. Mr. Lavery said under Franklin vs. Den Hollander, you weigh the farmer's legitimate ag.-based reason for what they're doing vs. what the town ordinance is. With regard to the number of horses, you have a State standard with regard to manure management, and the Township has an ordinance which limits it to less numbers. Right now, it appears the farmer is under those numbers based upon the averaging and the amount of time the horses are there. The Board would be weighing those two standards against one another and then making a decision on the farmer's ag.-based interest or legitimate

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farm-based reason for having more horses than what is allowed under the Township's ordinance. That's a decision for the Board to make. It's the same for the manure dumpster. They've moving it now. The problem last month was that it wasn't 50' off the property line. Now, they've moving it a minimum of 60', maybe more than that. So that's going to comply. The Board has to make decisions about, as Ms. Leo pointed out, it's not on a concrete pad, but it's on crushed stone. The Board has to decide if that's sufficient. Again, the legitimate farm-based reason for not putting a concrete pad vs. the Township's interest in seeing a concrete pad. If the Board finds that what's there now is sufficient, then it's sufficient.

Mr. Lavery said the driveway permit raises another issue. Anytime you enter onto a roadway, there are public safety issues with regard to ingress and egress. Health, safety and welfare issues are to be deferred to the municipality where appropriate. Where appropriate means that this Board would decide that. If it sounds like it's a simple permit or if it sounds like you've already applied for it and it was granted to you, you said you didn't need a permit, that's a different thing. The Board has to be concerned with the curvature of the road, and those are things you might want the town engineer to take a look at. He said that the regulations allow a farmer to have vehicle activity for manure management and things of that nature. If the Board feels comfortable with the farm-based reason for not complying with that, assuming a permit is required, vs. the public safety regarding sight distance and maneuverability of trucks on the road. One of the ways you mitigate that is by putting on conditions that it would only be used for manure management, the horse trailers and hay and shavings deliveries. That's the weighing that the Board has to do on this.

Ms. Triolo said that Green Township did not contact her office, so she was not prepared to dig out all of the records from the Township relative to the original application. Also, she did not think this was an issue before this Board. She asked that the Board make its decision on the application before it: the access for the horses and for manure management. She said these are necessary for the farm to operate, and that it has been operating in this manner before Ms. Supino bought it. If the Township has an issue, it will become an enforcement issue or citation, and then she will go back to Green Township. Ms. Triolo said she needs to review all of the documents. Mr. Lavery said he understands, and that there is an answer to this. There is a Board member present this evening who was not present for the hearing in July. If that Board member has not listened to the tape, he will have to listen to the tape and then sign a certification that says he listened to it before he votes. Without this Board member, we do not have a quorum to vote. This issue will have to be tabled to next month. Ms. Triolo asked if there can be a partial determination, so that Ms. Supino can have the dumpster moved. Mr. Lavery said that would be up to the Board to decide, but the absent member should have the benefit of the tape, because this was all discussed at the last hearing. Ms. Triolo said it is her understanding that the issue was resolved when Ms. Supino had her permits issued for the construction of the barn three years ago. Mr. Lavery said that when there is a complaint, there is a different notice process. The Town received the official notice months ago that there was a complaint filed. Once the Town was made aware that this was proceeding, Mr. Lavery said he received a phone call from them, but he said he does not remember a discussion about a driveway permit. However, the driveway does raise health, safety and welfare issues that need to be addressed. Ms. Triolo thanked the Board for its time. Mr. Lavery said

that the next meeting is scheduled for October 21, and that there will be no further notice or publication.

Mr. Lavery said he wanted to clarify to the Board that the Town questioned if they were noticed about the complaint. There are different notice requirements for a site specific ag. management practice vs. a complaint. On a complaint, the town gets an initial notice, and then there's no public notice that's required. It's incumbent upon the town to follow up on the complaint. The Town called and said they did not know about the public hearing, and then Autumn produced the letters that had notified them. A site-specific ag. management practice is like a land use application; they have to notify people within 200', etc.

B. SSAMP APPLICATION – RIDGE HILL FARM, WANTAGE TOWNSHIP:

William Askin, Esq. said he is here this evening on behalf of the applicant, Kevin Juchniewicz of Ridge Hill Farms. Jason Dunn, the project planner is also here this evening. Mr. Askin said the applicant has owned the property since 2014, and in July, this Board certified the property as a commercial farm. The farming activity has been tree harvesting, and the farm has a Forestry Management Plan. In addition to the tree harvesting, the applicant is looking to add a wholesale Christmas tree operation. Mr. Dunn will discuss the details of the site plan and the aspects of that activity.

Mr. Dunn and Mr. Juchniewicz were sworn by Mike Lavery, Esq. Jason Dunn confirmed that he is a Professional Planner and licensed Landscape Architect. His New Jersey license is in good standing and he has testified before boards before.

Mr. Dunn said that the application is for a site-specific agricultural management practice for Ridge Hill Farm in Wantage Township. The applicant would like to operate a wholesale Christmas tree farm. There is no need for a public parking lot or for sewer or water. The property is about 74 acres and is located off of Route 565 in Wantage Township. There is one house, which is occupied, and two barns on the property. The property is mostly wooded and has a very steep topography, so the areas that can be harvested are limited. There are about five acres above the house and barns where the applicant wishes to plant Christmas trees. In order to make the fields work, grading is required. The landowner filed a Soil Erosion and Sediment Control Plan which was certified by the Soil Conservation District. Some fill will need to be brought in, which will be certified as clean. The Soil Erosion and Sediment Control Plan, dated November 29, 2017, with a last revision of December 1, 2017, was marked as Exhibit A-1. The "Proposed Christmas Tree Farm Plan" was marked as Exhibit A-2. Mr. Dunn said the plan shows the area in question, along with a key map. It has proposed and existing contours. Copies of the plan were distributed to the Board.

Mr. Dunn said the third plan that was submitted is called the "Tree Farm Plan Overview." This is an aerial photograph with a property line overlay. It shows the entire 74 acres and the location of the proposed Christmas tree fields. This plan was marked as Exhibit A-3. The plan also shows the access, an existing driveway from County Route 565. The access goes past the house and crosses in front of the two barns and then up to the fields. The plan shows the proximity of High Point Regional High School and a nearby soil processing operation.

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Mr. Dunn said that the applicant has supplied a compliance report to the NJAC 2:76, Section 2-A.13, which is the Agricultural Management Practices for on-farm marketing, activities and events. This is a guideline for site design of such projects. He said he went through each item and provided answers as to how the proposed operations relate to those. Very little traffic would be generated; however some maintenance vehicles and trucks would be needed throughout the year. The majority of the traffic would happen during the Christmas season. The trucks would be smaller box trucks to take the harvested trees. There is a loading area that is shown on the plan. It is a flat, gravel area that will allow the trucks to turn around to leave the site.

Peter Southway noted the area of 5.3 acres. He asked if that was for both lots or for one. Mr. Dunn said that was for both areas and the farm road that connects the two areas. Mr. Southway asked what the density per acre of trees was. Mr. Dunn did not know the answer to the question. Mr. Juchniewicz said he has not yet decided how it will be laid out. Mr. Dunn said the "Proposed Christmas Tree Farm Plan" does not indicate the density. He said the trees are planted 20' on center. Mr. Southway said his point was that this is not going to be a very large-scale operation, because there is a seven to eight year growth period. He believes that Christmas tree density is less than 1,000 to an acre. Therefore, his harvest each year will be about 700-800 trees. Mr. Juchniewicz said that was correct.

Autumn asked Mr. Dunn to clarify Exhibit A-2. It says that the top field points to an area of disturbance of 5.3 acres. Mr. Dunn said the Soil Erosion Plan more accurately depicts the area. It is five acres between the two areas and the connecting driveway.

Autumn said she also noted that the disturbed areas will be graded with off-site fill or soils. She asked where the fill was coming from. Would it be graded with certified fill? Mr. Juchniewicz said the soils will either come from a quarry or a soil depot where there will be certification on the soil. Mr. Lavery said he is assuming that's the problem the town has with this operation. He noted that the town has a soil testing ordinance. He asked the applicant if he has any intention of complying with the ordinance. Mr. Juchniewicz said, "Yes," and that the soil will have a certification before it is brought to the farm. Autumn also asked Mr. Juchniewicz if he would bring certification documents to the Township for their review. Mr. Juchniewicz said he would.

Autumn said this is more of a site-specific ag. management practice rather than on-farm direct marketing, which is for activities that are used for direct, farmer-to-public sales. Peter Southway asked why the Board was hearing this case. Autumn said the applicant requested a SSAMP determination because of issues from the Township. Mr. Dunn said that the Town gave the applicant this option rather than going through the Town. Mr. Southway asked what the Town objected to. Mr. Lavery said that there are representatives here from the Town and they will be able to speak later. Mr. Southway said that since the applicant can't grade with the soil on-site, he will need to bring in soil from off-site. This is a major concern nowadays. Mr. Lavery said that the applicant would need a legitimate farm-based reason for not complying with soil testing.

Mr. Southway asked how many yards or tons of soil will need to be brought in. Mr. Dunn said the calculations have not been done yet. Autumn asked if anything will be

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done to stabilize the driveway entrance onto the County road in terms of debris. She said there was a driveway permit issued for that and that it is on a County road and the use is being intensified with truck traffic. She asked how wide the driveway is. Mr. Juchniewicz said about 15-20 feet wide. Mr. Lavery said every time you're turning onto a road, there are sight distance issues. The applicant already has a driveway permit. The question for the Board is whether there are health, safety and welfare issues, and do they want the applicant to go back to the Town because of the increased intensity of use. Cece Pattison asked if all the trees will be going out in one season. Mr. Juchniewicz said it will be staggered over a seven year period. Brian Hautau said it would be possible to harvest 700 trees in one year. Autumn asked the applicant when he planned to start his operation. Mr. Juchniewicz said it depends on the approvals. Mr. Hautau asked how long that will take. Mr. Juchniewicz said a minimum of two to three years.

Peter Southway asked how many dump trucks of soil will be needed to be brought in to level the fields. Mr. Dunn said that the calculations have not been done yet. There are limited fill areas that are up to nine feet deep. There is a valley that he would like to bring up. He estimated at 30,000 yards of soil. Autumn asked if the areas of disturbance will be stabilized and what the pad will be constructed from. Mr. Dunn said that it will be four inches of gravel. When asked what the dimensions were, Mr. Dunn said 80' x 80' on a nearly level surface.

Mr. Southway said that he spent 25 years as a banker before transitioning into the farm business 15 years ago. He said the project is not even close to being a feasible business. Mr. Southway said he did a soil calculation and said that there's probably \$150,000.00 worth of soil to be brought in. At 900 trees a year, at its best at \$30.00 per tree, and he said he's being generous with the wholesale price, will yield \$27,000.00 per year on a \$150,000.00 investment. This does not include fertilizer, grass seed, work, gravel and trees. He said the applicant can easily spend \$300,000.00 to bring back \$27,000.00 per year. The whole concept doesn't have a feasible feeling, and he's not quite sure what the project is about. Mr. Dunn said, at face value, it's about the owner's desire to start a Christmas tree farm, whether it's for a hobby or whether he's paying for the fill or not, he's not sure where the \$150,000.00 came from. Mr. Southway said he only used \$5.00 per yard, and topsoil is closer to \$18.00 or \$20.00 per yard, if it's certified. Mr. Dunn said that often people who have access to fill will pay the receiver to bring it to the site. Mr. Southway said that's not the case for topsoil. Mr. Dunn said that he can't answer that question. This is the project the applicant is asking for.

The applicant's presentation was complete and Mr. Lavery asked if anyone had more questions. John Price, a resident of Wantage Township, asked if the main road they will be using is past the farmhouse or will it be from the access road on the other end of the property. Mr. Juchniewicz said it will be past the farmhouse. Mr. Price said his only other concern was if Mr. Juchniewicz intended to clear cut the entire hill, because he lives at the base of the hill. Autumn asked how the disturbance to the slope would be managed during construction. Mr. Dunn said that they need to comply with the soil erosion control measures, which include a siltation fence, possibly placement of hay bales and the wheel cleaning blanket. He said the main effort will be to keep the silt fence maintained and working during construction. If the soils are left open and are

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unstabilized for a certain amount of time, they will have to seed it until it can be moved.

Mr. Lavery called on the representatives from the town. Ronald Bassani said he is the Mayor of Wantage Township and is here with Patrick Stefanneli, the Wantage Township Enforcement and Zoning Officer. He said that the Township is very concerned about this application. He said that he has learned a lot in a very short period of time. They are absolutely dealing with an issue in Sussex County, Warren and other counties with dirty dirt. Wantage has passed a soil ordinance with "as much teeth" as they could put into it, and they are tweaking it as they go when they uncover and discover weaknesses in their laws. He said they are trying to protect their taxpayers to the best of their ability from dirty dirt. Mr. Bassani said the Town is concerned about this application for several reasons. He said the simple math doesn't make sense to them either. There seems to be a huge investment for just planting Christmas trees. They are concerned that the real desire is the importation of dirty dirt or dirt in general. Consistent with that, they've already issued a Stop Work Order on this site, as well as citations for bringing in product outside of Wantage, outside of their ordinance. When the violations were issued, the Township was not allowed on the property. He said they were quickly met with, "Stay off our property. No trespassing or you will be prosecuted."

Mr. Lavery said that since Mr. Bassani and Mr. Stefanelli were testifying, they needed to be sworn. Both were sworn in by Mr. Lavery. For the record, both restated their names.

Mr. Bassani said that while the applicant says he will be in compliance with the Township's ordinance, he has already demonstrated an unwillingness to cooperate and has operated outside of the Town's ordinance. He asked, at a minimum, that the Board put a stay on the project until the Town is able to process both its citations and Stop Work Orders and see it through their system, in order that they may get a better handle on it. He said that is just from a Wantage standpoint. From a practical standpoint, it does not make good business sense, based on the math he's hearing tonight, for them to move forward with this. Mr. Bassani said he believes, or is at least concerned, that there is an alternate desire here. He feels if the applicant can get approval from the Board and management and import soil, rather than move soil on an existing farm, that it will not necessarily be the soil that the Town wants in Wantage. They will be running a huge risk and will all be subject to the consequences of that risk at one point in time, if indeed, their worst fears are met.

Mr. Stefanelli invited all to visit the site before making a decision or conclusion. He said there is a depression on the property that they are filling. He said he's watched the trucks come in, and that they have the trucks on video. There are 20-yard roll-offs bringing in dirt. Brian Hautau asked if the dirt has been certified. Mr. Stefanelli said that they were told, "Not yet." They were told, in writing, not to enter the property by the owner's attorney.

Mr. Juchniewicz asked Mr. Stefanelli when the Stop Work Order was put on the site. Mr. Stefanelli said the Stop Work Order was done in May, but they were out there a year prior with concerns of dirt coming in. He added that there is a large depression on the property that's being actively filled. He called Soil Conservation. This was before the

Town's ordinance was in place, approximately a year ago, possibly a little longer. Soil Conservation said, "Yes, they are bringing in the dirt, so all these records are available to you." They said that it was under their control. Mr. Stefanelli said, at that point, the Town backed off because they did not have anything in place to deal with the situation. There was also not much known about the dirt.

Mr. Stefanelli said that on or around May 17, 2019, the Town received a call that trucks were coming in and out of the site and he was then dispatched out. Mr. Stefanelli said he watched the trucks come off of Route 565, haul the dirt into the yard, unload the materials and then come out. He said he followed them back to the Chatterbox on Route 206 and then they left. A few days later, the Town issued the citations and the (Stop) Work Orders. Mr. Juchniewicz asked when the Stop Work Order was issued. Mr. Stefanelli said that he can't tell him right now. Mr. Juchniewicz asked why the Stop Work Order was issued. Mr. Stefanelli said that the Stop Work Order was issued because the Town has an ordinance in place that says you cannot bring in dirt without it being certified. Mr. Juchniewicz said the Stop Work Order was issued in November. Mr. Stefanelli said, "No, sir." Mr. Juchniewicz said the Stop Work Order was either in October or November of 2018. He said he tried calling the Township for three days and couldn't reach him, he put a letter together and sent it by email. He said that Mr. Stefanelli responded to the email and called him on the phone. He said that's when Mr. Stefanelli told him that the Town put together a soil ordinance. Mr. Stefanelli said, "No, sir. You're incorrect." The soil ordinance was this year. He said the original stop work order of that year was because there was no site plan application. In Wantage, under 16-3, there is an ordinance already in place which requires a zoning permit and/or be granted site plan approval to do site improvements to a property. When he spoke with Soil Conservation, he was told that there was a Soil Conservation permit and that they were monitoring the situation. The Town backed off. He told Mr. Juchniewicz that that's the reason why he didn't hear from the Town in a year and a half. Fast forward to May 2019, the town has a soil ordinance in place; trucks are coming, and now they have a reason to see what's going on.

Mr. Stefanelli attempted to show a video on his phone of the trucks delivering dirt. Mr. Lavery said that by rule, this Board does not abide by the rules of evidence. However, at this point, he told the Board they have a couple of options: Number 1 - the Board could carry this until next month and they could have a subcommittee made up of less than a quorum to go out and visit the site, assuming the applicant allows us to do that; Number 2 - the Board can decline jurisdiction over the application, which means that they would send the applicant back to the Town; or Number 3 - they can approve the applicant, subject to him complying with the Township's soil ordinance. The Town is concerned about the soil ordinance and the soil is obviously a health, safety and welfare issue, to make sure dirty dirt is not being brought into the Town. He said that the Board has not heard a legitimate farm-based reason for not complying with the Town's ordinance. Those are the choices.

Mr. Stefanelli said that he would like to see the Board push this issue back to the Town. If it goes back to the Town, it gives them more control and allows them to have their engineer go out there to view the site and make sure that the site plan is in compliance. It would also allow the Land Use Board to visit the site. If the Board removes the jurisdiction from the Town, their concern is, even though the applicant

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said he would be in compliance, he has demonstrated that he will work outside of the Town's ordinance, as he's done so already.

Mr. Stefanelli said that the Town's biggest problem that they will have moving forward is that the DEP is not involved yet. The Town is putting pressure on the DEP to play a more active role. He brought up the Wallace issue in Vernon. Worst case scenario is that the DEP never went on the property, and when they finally got on the property, they didn't do the job they were supposed to do. It took the public putting an inordinate pressure to get the DEP to collect evidence so the DEP would have probable cause and take the necessary steps. He said that Vernon is light years away from figuring out what they're going to do with the site.

Mr. Stefanelli said they just found out that Wantage Township received compliance paperwork that was "this thick," (motioning with his fingers.) The town is going to have to hire someone to understand the document at \$300.00 a clip. Now they're going to have to change the ordinance to include escrow money. He said the Town has to be diligent because the aftermath is very expensive, very costly and it affects people's lives.

Autumn asked Mr. Stefanelli if the Town's ordinance provides them the opportunity to review the plan and certify the soil that's being brought in. Mr. Bassani responded and said that the ordinance requires that they apply for a permit, get the paperwork in order, pay the necessary fees and to get a certification that the soil is good, and then present it to them. Mr. Lavery said that even if the Board declines jurisdiction and sends the applicant back to the Town, the only teeth the Town has is the soil ordinance anyway, if someone was bringing in dirty dirt. Whether this Board wants to do anything or wants to go and do a site visit [...]

Peter Southway said he wants to put a simple motion on the table. He said this Board handles right-to-farm cases and site specific ag. management plans, and the Board's focus is always on productive agriculture. He said he does not believe that they should be extending jurisdiction over a piece of property where there is going to be 30,000 yards of soil moved in to create a farm on five acres that doesn't exist today. He said he is of the opinion that this is not an agricultural issue. He backed that up by stating that the soil conservation plan for this property goes back to 2017. There was not a request in 2017 to come to this Board to make a Christmas tree farm. The Christmas tree farm concept came way after the soil conservation plan was made to bring this soil in. He said he does not see that as an agricultural use at all. He said that's his opinion as a Board member, and he would make a motion that the Board dismiss the case and not be involved from an agricultural point of view. Cece Pattison said she would like to second the motion and have a discussion.

Ms. Pattison said that this is a land use proposition. She agreed that this isn't a proper application for this Board's purposes. She doesn't feel that this Board has that jurisdiction. It seems it came to the Board because they were worried about the type of soil or that there was being soil brought in.

Jane Brodhecker said she felt that if Soil Conservation had approved it and were keeping track of what was happening and monitoring very closely, as they feel it should

be, then it might be a go. But when Peter discussed the financial situation, she agrees that it doesn't make sense, and if Soil Conservation is not monitoring it at this stage, what are they going to do down the road?

Autumn said that this is the Board's decision to make. Since the applicant applied for a determination and met the eligibility criteria, it came before the Board. Brian Hautau said that agricultural use seems to be an afterthought.

Mr. Askin said that if the plan was approved, he has to do what the plan is and that's it. He can't go in and start something else. He said that he doesn't know that financial rewards to the property owner have any relevance to the application. He does not feel this is an issue the Board should consider. Mr. Southway said it's just a "smell test." Mr. Askin asked if he is using that to test the credibility of the witnesses. Mr. Southway said he is using it to challenge bringing in 30,000 yards of soil. That is a very unusual activity. Mr. Juchniewicz said in 2017, when he went to the town for a soil permit, the Town did not get involved with soil. He was directed by the Town to go to the Soil Conservation of Sussex County. He went through the whole process of having plans drawn up. It was submitted and approved by Sussex County Soil Conservation. At that time, he still didn't bring in any soil onto the property. It was after that when he brought soil onto the property, and it was at that time when the Township came up with a new soil ordinance. That's when Mr. Stefanelli put the stop work order on the property.

Mr. Southway said that on the soil conservation plan, it doesn't say anything about a Christmas tree farm, and when you read the footnotes, it also shows shade trees as being the design of what's being planned there. Mr. Juchniewicz said he needed to bring the soil onto the property first to have a planning area to put the trees. He didn't want to put the cart before the horse until the soil, the project was completed.

Mr. Southway said he does not see this as an ag. issue. Mr. Lavery said that there was a motion and a second. The motion was to decline jurisdiction. A roll-call vote was taken. The Results were as follows: Jane Brodhecker-Yes; Brian Hautau-Yes; Cece Pattison-Yes; and Peter Southway-Yes. Motion carried.

Peter Southway said that he noticed this property is not a preserved farm. He said if you follow a little bit of the guidelines of the Den Hollander case, the new one, it runs into the same issue of soil disturbance. They have 10 and 12 foot fill areas that they're putting in. Since this isn't a preserved farm, it's not comparing apples to apples, but the concept of creating a piece of farmland out that soil that is being brought in.

Mr. Southway also brought up the issue of going into an executive, non-public session. Mr. Lavery said the exemptions are, anything that's attorney/client privilege, or anything that could get us in trouble one way or the other, or if you had a question of law that you wouldn't want to discuss with somebody that might use that to their advantage. For those matters, the Board can always go into executive session. Personnel matters can also be discussed in executive session, so can pending or potential litigation. Mr. Southway said he did not want the financials to be a swaying issue, because he believes that if a person wants to spend money to fulfill his dream of growing a Christmas tree, he should be entitled to do that; but he was concerned for

the rest of the Board, that we understand that this does not have feasibility due to the amount of the soil cost. Therefore, he thinks there's an underlying reason why they're here.

The Agenda returned to item 5, Correspondence.

OLD BUSINESS:

A. HARVEST, HONEY & GARLIC FESTIVAL:

Autumn reported that she and Rudy are working on the Harvest, Honey & Garlic Festival. Rudy said that so far, there are 35 definite vendors. Many said they are coming, but we haven't received their paperwork yet. She estimates that there will be about 50 vendors. Autumn said that she ordered rack cards and provided the Board with a supply of cards to place at various locations.

There are some issues with Frankford Township which are similar to what Peter talked about last month. Autumn said that the Township is requiring a license, even though the County Health Department provides the inspections and enforcement and issues permits. She said she was waiting on additional forms from the Township.

Peter said that he is meeting with Senator Oroho and Freeholder Yardley to get a Bill proposed at the State level which will have Health Certificates roll downhill. He said he is State certified, and as such, he can sell his milk to George's Wine and Liquors in the Township, without any County or township inspection. But if he goes to the Harvest, Honey and Garlic Festival, he would need a County and township license. They want the Bill to include a preemption that is very clearly defined in the law. If the State inspects you, then you're licensed anywhere in the State. If he had an FDA approval, he would be permitted to sell his milk in any of the 50 states.

Autumn discussed advertising/marketing efforts for the Festival. The event's Facebook page was getting a lot of activity. Donna Traylor's band will be performing, and the Boy Scouts of Frankford and More Thyme Café in Frankford are providing food.

B. COUNTY PIG APPLICATION UPDATES:

The Gianattasio and Williams farms are proceeding. The Title Work was received for the Williams farm and is under review. Appraisals for the Roof farm will start soon.

C. FY 2020 FARMLAND PRESERVATION PLAN FUNDING:

The SADC wants every county to update its Farmland Preservation Plan. There is grant money available for the update. Autumn said that the Board should have a discussion about this next month.

There was some discussion about upcoming right-to-farm cases. Peter said he feels that the bigger issue with right-to-farm are the attorneys who are doing land use. They have realized that they can come to this Board rather than going to a Zoning Board

and we don't charge fees. He said we ought to keep that in mind when working with a Consultant on the new Farmland Preservation Plan. Autumn agreed. She said that right-to-farm cases involve a lot of staff time and there have been a lot this year. The SADC has provided right-to-farm educational seminars for Zoning Officers, Attorneys, Planners and the League of Municipalities. Peter said that the Board ought to think about raising the bar a little bit. Autumn said that the Board could request that applicants work through the Ag. Mediation program before coming to them or the Board could require application fees, which is what Morris County does. Peter agreed that the Board should discuss this further.

NEW BUSINESS:

A. RURAL MICROENTERPRISES ON PRESERVED FARMS:

Autumn said that she received a letter from Jeffrey Everett, the Deputy Executive Director of the SADC. They are expanding the opportunity for economic activity on qualified preserved farmland. He sent her a list of all the preserved farmland in Sussex County that qualifies under Microenterprise.

B. FY 2021 PIG APPLICATIONS:

Autumn reported that a letter went out to the towns notifying them that the County is applying for the 2021 PIG Grant.

C. 8-YEAR TERMINATION – VAN WINGERDEN:

The Van Wingerden farm was part of an 8-Year Program and the Board adopted a Resolution terminating the 8-Year Program once they were preserved back in 2011. Autumn said the Resolution needs to be recorded because it was never done.

PUBLIC COMMENT:

None

ADJOURNMENT:

All business having been completed, a motion to adjourn the meeting was made by Brian Hautau. The motion was seconded by Cece Pattison and carried unanimously. The meeting adjourned at 9:17 p.m.