

# SUSSEX COUNTY SOIL CONSERVATION DISTRICT

Special Board of Supervisors Meeting  
September 6, 2011

7:30 PM SCSCD Office – Conference Room  
186 Halsey Road, Suite 2, Newton, NJ

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**NEXT MEETING:** September 21, 2011–7:30 PM – SCSCD Office (Conference Room)

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**SUPERVISORS PRESENT:** Barbara Rosko, Fred Hough, Winifred Straub, Walter Ricker and James Kilduff.

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**SUPERVISORS ABSENT:** None.

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**OTHERS PRESENT:** Clifford R. Lundin-District Manager, Joseph Sedivy, District Engineer, Robert Bahr (applicant), Judith Bahr (applicant), John Anderson (appellant), Renee Anderson (appellant), Elizabeth Wisniewski (Daughter of John and Renee Anderson and resident), Kenneth A. Wentink, P.E. (Engineer for applicant), Harry Bootsma (co-applicant) and Bill Cloak (excavator for applicant).

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Chairman Rosko called the meeting to order at 7:30 p.m. declaring that adequate notice has been provided in accordance with the NJ Open Public Meetings Act. The members joined in a salute to the flag.

A call of the roll showed all Supervisors to be present and a quorum established.

## **Public Hearing on an Appeal**

Chairman Rosko announced that the primary purpose of this special meeting was to conduct a public hearing on an appeal of an action of District staff to grant certification to application number WT-131 filed by Robert and Judith Bahr for property located at 171 Mudtown Road, Wantage New Jersey. The application seeks approval to disturb 0.605 acres of the rear yard of the premises to allow for the construction of a swimming pool. The plan was certified by the District on July 20, 2011. John and Renee Anderson who are the owners of adjacent property at 173 Mudtown Road, Wantage, filed an appeal on August 1, 2011 with the District and with the State Soil Conservation Committee (SSCC). The SSCC has directed the District to conduct a public hearing on the merits of the appeal. The applicant and appellant have been notified of this appeal and advised of their rights to be present, to present testimony and to have experts testify on their behalf. All parties have also been notified of their right to have counsel on their behalf. The sole issue before the Board is whether or not the proposed plan meets the requirements of the New Jersey Standards for Soil Erosion and Sediment Control.

Chairman Rosko further provided the ground rules for the hearing. She indicated that the Appellants have the burden of proof to demonstrate that the proposed SESC plan does not meet the NJ Standards for Soil Erosion and Sediment Control. The Appellants can present expert and non-expert witnesses. All witnesses are subject to questioning by the applicant and by the Board. At the conclusion of the Appellants' presentation, the applicants will be provided the opportunity to present witnesses or other evidence on their behalf. The Board of Supervisors can establish reasonable time limits for the presentations. The meeting will be opened to the public at the

conclusion of the testimony of each witness for questions related to that witnesses' testimony only. The meeting will also be opened to the public at the conclusion of the presentations by the Appellant and Applicant for general statements.

John Anderson and Renee Anderson jointly presented their arguments as to why the plan should not be certified. They distributed copies of the following materials:

- a) 1990s photos of yard and rear area.
- b) 2002 aerial photo of area.
- c) Photos of Bahr property from 2009 showing removal of vegetation
- d) Current photos of rear yards and adjoining property.
- e) Photos of rocks moved from the Bahr property onto adjoining property.
- f) Photo of Bahr shed allegedly used to divert water flow.
- g) 1979 Topographic surveys.
- h) March 24, 2011 letter from Howard Bach, their consulting engineer.

Mr. and Mrs. Anderson both testified that the amount of stormwater on their property has significantly increased over the years. The increase was noted particularly after the Bahrs cleared the rear of their property in 2009. The Andersons noted that a significant amount of stormwater currently enters their property from a swale on the Bahr property. The Board took note that the 1979 survey revealed a 15 foot wide drainage easement on the Anderson property. This was to apparently allow drainage from a property in the rear. The Board took further note that the area is generally wet and noted that NJDEP had made determinations that freshwater wetlands were present in the rear of both the Bahr and Anderson properties. The NJDEP determinations for both properties are contained in the District file.

Mr. and Mrs. Anderson expressed concern relative to the impact of the stormwater on their septic system. They indicated that their system had failed in 2009 and that they had installed a raised septic disposal field in their rear yard in 2009. They testified that there is no AS BUILT engineering plan for the new system. The Board questioned the Andersons regarding the continued existence of certain yard drains that were shown on their 1979 topographic survey and which were installed as part of their original septic system.

Mr. and Mrs. Anderson also complained of the presence of sink holes in their yard from the stormwater runoff. Their daughter, Elizabeth Wisniewski also expressed her safety concerns relative to ice flows onto Mudtown Road.

The Board questioned the Andersons as to what specific items on the SESC plan failed to meet the NJ Standards for Soil Erosion and Sediment Control. They were unable to cite a specific standard. Instead Mrs. Anderson read aloud a portion of the "Legislative Findings" section of the NJ Soil Erosion and Sediment Control Act.

The Board also took note that the Anderson's appeal included a letter from their consulting engineer, Howard Bach, P.E. The Board questioned if Mr. Bach had reviewed the Bahr plan and if he had any comments. Both Mr. and Mrs. Anderson replied that Mr. Bach had reviewed the Bahr plan and that he had told them that the plan met the NJ Standards. They further indicated that Mr. Bach had informed them it was his opinion that the Bahr plan would eliminate much of the storm water flow to their property and that after project implementation; the remaining stormwater flow from the Bahr site to the Anderson would be limited to sheet flow. The Andersons indicated that they disagreed with Mr. Bach's opinion and that they had lingering concerns relative to the storm water discharges. The Andersons indicated that their primary concern was the continued existence of a drainage swale in the mid-section of the Bahr property. That would continue to divert storm water onto their property.

At this point, Mr. and Mrs. Anderson indicated that they had completed their presentation to the District.

The applicant, Mr. Robert Bahr, addressed the Board. He described the various approvals he had obtained from the Township and from NJDEP. He also indicated that at one point he had filed municipal harassment charges against the Andersons. Mr. Harry Bootsma, co-applicant, provided testimony relative to the long term stormwater conditions in the neighborhood. Mr. Bootsma indicated that, at one point, he and Mr. Bahr had proposed a possible joint drainage project to the Andersons but that the idea had been rejected.

Mr. Kenneth Wentink, engineer for the Bahrs discussed the various factors that went into his proposed plan. Mr. Wentink indicated that there are approximately 20 acres of watershed area above the site. He did not perform a complete analysis of the watershed and water flow above the site. He outlined his work in preparing the plan. He testified that his design will address the bulk of the stormwater on the Bahr site. He certified to the Board that the plan was prepared in accordance with the NJ Standards for Soil Erosion and Sediment Control.

The Board also questioned the District's consulting engineer, Joseph Sedivy. Mr. Sedivy indicated that he had reviewed the plan (dated 5/9/2011, revised through June 16, 2011) and that the plan was in accordance with the NJ Standards for Soil Erosion and Sediment Control.

After all parties had the opportunity to be heard, Chairman Rosko opened the meeting to the public. With no one desiring to speak further, she closed the hearing and asked the Supervisors and Manager Lundin for their opinion. Mr. Lundin outlined the various options available to the Board. Supervisor Kilduff moved, seconded by Supervisor Straub, to deny the appeal and to affirm the action of the District staff in granting certification to the application of Robert and Judith Bahr, application number WT-131. His motion included a finding by the Board, that the proposed SESC Plan satisfied the requirements of the NJ Standards for Soil Erosion and Sediment Control. The motion was approved on the following vote: Mr. Kilduff- yes, Mr. Hough- yes, Mr. Ricker- yes, Mrs. Straub- yes and Chairman Rosko- yes.

The Board took a five minute break prior to reconvening. The Board reconvened at 8:45 p.m.

**Other Business**

- 1) Briefing on Hurricane Irene impact. Mr. Lundin provided the Board with a brief overview of the impacts of Hurricane Irene. He reported on an additional mudslide at the Eagles Nest site in Sparta, NJ on property owned by Maurizi, certification number SP-125D.
- 2) Invoice for payment: On motion of Mrs. Straub seconded by Mr. Kilduff, the Board approved Mr. Lundin's invoice for travel expenses in relation to the NACD Northeast Regional Meeting in the amount of \$839.83. The motion was approved on the following vote: Mr. Kilduff- yes, Mr. Hough- yes, Mr. Ricker- yes, Mrs. Straub- yes and Chairman Rosko- yes.
- 3) Annual NJACD Conference- 10/5/2011-10/6/2011. Mr. Lundin distributed informational materials on the upcoming meeting.
- 4) Personnel- Mr. Lundin reported that Margaret Zvalaren, a part-time clerk with the District had resigned as of September 9, 2011.
- 5) Lowes- HP-2224. The Board provided Mr. Lundin with guidance relative to the recertification of this partially completed commercial project.

**PUBLIC SESSION.**

Chairman Rosko opened the meeting to the public at 9:05 p.m. No one desired to speak. The meeting was closed to the public at 9:06 p.m.

**ADJOURN**

The meeting was adjourned at 9:07 p.m. on motion of Mr. Hough, seconded by Mr. Ricker and the affirmative votes of all.

Respectfully submitted for Walter C. Ricker, Secretary

By Clifford R. Lundin