

DAVIE AGRICULTURAL ADVISORY BOARD
JANUARY 7, 2013

1. ROLL CALL

The meeting was called to order at 6:30 p.m. Board members present were: Chair Dave Parrish, Vice Chair Scott Weinstein, Julie Aitken, Jason Hurley, and Sam Scott. Also present were Town Administrator Richard Lemack; Intergovernmental Affairs Manager Phil Holste; Parks, Recreation, and Cultural Arts Director David Flaherty; Special Events and Cultural Arts Senior Operations Manager Matt Mlodzinski; Code Compliance Supervisor Rick Berni; Planning and Zoning Division Manager David Quigley; and Board Secretary Janet Gale recording the meeting.

**2. APPROVAL OF MINUTES: October 1, 2012
December 10, 2012**

Ms. Aitken made a motion, seconded by Mr. Hurley, to approve the minutes of the October 1, 2012 meeting. In a voice vote, all voted in favor. (**Motion carried 5-0.**)

Ms. Aitken made a motion, seconded by Mr. Hurley, to approve the minutes of the December 10, 2012 meeting, subject to further amendments by Dr. Scott. In a voice vote, all voted in favor. (**Motion carried 5-0.**)

3. OLD BUSINESS

3.1 Batten's Farmers Market and Davie Agri-Tourism Center Contract Modifications

It was agreed that because this item would involve some degree of contract discussion, and because these negotiations were active and ongoing, Dr. Scott would recuse himself from participating in conversation about this item as a Board member.

Mr. Lemack stated that he had met with Dr. Scott as a representative of the North-South Institute on multiple occasions, and had visited the farm as well. He noted that a Request for Proposal (RFP) was incorporated into the Institute's agreement to provide services. Mr. Lemack said he had been supportive of working with the North-South Institute to make some changes to the agreement, such as the modification of deliverables. Dr. Scott and the North-South Institute had been working under this program for over a year, had learned what the market would bear, and had determined that the entire program could not be accomplished within the original time frame set forth. As a result, Mr. Lemack had brought the program back before the Town Council for reevaluation to determine what could realistically be achieved and what time frames would be appropriate.

Mr. Lemack continued that one item he and Dr. Scott had discussed was rent abatement, as the Town was aware that the North-South Institute had spent more money than anticipated in order to get the project up and running. This entitled the Institute to additional six-month rent abatement. Another topic of great importance to the Institute was the Town's investment of capital in the facility. Mr. Lemack asserted that he was committed to bringing back certain capital expenditures that he felt the Town should provide. He and Dr. Scott had also discussed summer closure hours: while the contract stated that opening hours could be modified, closure hours were not addressed.

Mr. Lemack advised that he was not opposed to these modifications, but pointed out that the changes should be reflected in the contract so the Institute remained in compliance with its agreement with the Town. He concluded that the North-South Institute and the Town were currently in negotiations to modify the existing agreement in order to allow the partnership to be more successful.

Mr. Lemack stated that when he had shared a PowerPoint presentation on the project with Town Council, some photographs had not been displayed on the screen due to time constraints;

however, they were distributed on the dais to the Town Council members. Mr. Lemack asserted that both he and the Council members have visited Batten's Farmers Market and have seen its accomplishments firsthand. He concluded that the Town was working to maintain clear communication and information-sharing with the North-South Institute, and that he would continue to promote the partnership to the community at large. Mr. Lemack said he was looking forward to modifying the agreement as discussed above to ensure a more successful project.

Vice-Chair Weinstein explained to Mr. Lemack that it appeared to him that there was "negative energy" regarding the project at the PowerPoint presentation. He added that having heard Mr. Lemack's description of the proposed contract modifications, it no longer seemed to be the case. Vice-Chair Weinstein emphasized that the Board also felt that the North-South Institute was doing a good job with the project, and was supportive of its efforts. Mr. Lemack explained that he was charged with overseeing the administration operation, and finances of the Town, and had a responsibility to ensure that the business arrangement was operating correctly.

Marcia Scott, Program Manager for the North-South Institute, stated that she wished to clarify some of the actions the Institute has taken at Batten's Farmers Market. She agreed with Vice-Chair Weinstein that the PowerPoint presentation on the project had appeared to have a negative tone, and was pleased that this perception had been addressed and cleared up at tonight's meeting.

Ms. Scott provided copies of the original proposal for Batten's Farmers Market and Davie Agri-Tourism Center, which was based on a three-phase process. She explained that although the PowerPoint presentation had suggested that the North-South Institute might not be performing as it should with regard to the project, the deliverables for the first phase have all been completed, with the exception of the aviary garden and the desired days and hours of operation. She noted that the aviary garden has been modified to include bird feeders rather than an actual aviary.

Ms. Scott continued that the desired days of operation for the Batten's Farmers Market have also been amended. She pointed out that the proposal stated the desired days of operation would be influenced by the business model; as a result, there have been changes to the desired annual hours and weeks of operation, not including special events.

She moved on to the second phase of the project, pointing out that all deliverables have been completed with the exception of the commercial kitchen, which has been amended due to the current lack of equipment. The requirements of the trail path listed among the deliverables have also been amended, as the allotted funds for this item were exhausted during the first phase of the project.

Ms. Scott noted that in the third phase, only the Asian tea garden and the solar energy demonstration have not been completed. While the garden has been developed, the Asian tea elements have not yet been added due to a lack of funds; however, she noted that because this item was included in the project's third phase, there may still be time to accomplish this element within the original time frame. Funds for the solar energy element have been exhausted at this time.

Mr. Lemack clarified that there have been no formal amendments to the agreement thus far: while the Town and the Institute were continuing to discuss potential changes, no amendments have been made yet. Ms. Scott agreed that there has been no amendment to the agreement: based on the original RFP, certain aspects have not been achieved yet. She believed that the contract and the RFP were separate documents, and the changes under discussion would be changes to the RFP.

Mr. Lemack asserted that “there was no difference” between the RFP and the agreement, as the RFP was incorporated into and made a part of the agreement. He concluded that the two documents were “one and the same,” and the agreement cannot be changed without modifying the RFP. Once the RFP’s commitments were incorporated into the agreement, these commitments became deliverables by contract. Mr. Lemack pointed out that it was also part of his role to work to make the partnership successful. This was why he had asked to meet with the Institute and make modifications that would bring the project into compliance.

Vice-Chair Weinstein asked if all that remained was for the two parties to meet and agree on modifications. Mr. Lemack confirmed this, stating that the Town and the Institute agreed upon the areas that need to be modified. This may require either amendment or removal of these items. He added that the Town was seeking to change or remove the requirement of deliverables that were no longer viable, even if they were in the RFP. The Town would also consider extending additional rent abatement and provide capital funds to support the project.

It was suggested that a liaison be appointed between Town Staff and the North-South Institute. Mr. Lemack stated that a liaison was not necessary: his plan was for Administrative Staff to bring a contractual agreement before the Town Council that would highlight the specific changes to deliverables, and the Town Council would then be asked to approve the modified agreement. He concluded that if he did not expect the project to be successful, he would not have invested the current level of time and effort into working toward its success.

Ms. Aitken explained that the Board had been given the impression that there was an adversarial relationship between the Town and the North-South Institute. Mr. Lemack reiterated that this was not the case, and stated again that he wished he had been present for the previous month’s discussion to provide representation and clarification. Vice-Chair Weinstein thanked Mr. Lemack and the other Town representatives for their attendance at tonight’s meeting.

Ms. Marcia Scott introduced Sadeeka Scott, Business Development Manager at the North-South Institute, to make a final point regarding the partnership. Ms. Sadeeka Scott stated that during the televised Town Council meeting at which the PowerPoint presentation was made, the term “breach of contract” had been used at one point. She explained that this had left the North-South Institute with the impression that negotiations of the contract had fallen through; however, as these negotiations are in reality ongoing and consistent, she felt it would simplify the process if a contractual amendment could be emailed to the North-South Institute’s Counsel’s Office for further review. Mr. Lemack said he has been working on this document, which would be emailed as requested in the next few days.

Dr. Scott advised that he had provided a basic update the previous month in the capacity of someone who was familiar with the project; he agreed that there may have been information of which he had not been aware. He thanked Mr. Lemack for his clarification.

3.2 Davie Wetlands Park (formerly Van Kirk property)

Mr. Lemack recalled that the North-South Institute had entered into a lease for this property in 2011; the cost of the lease was approximately \$1200/year, with a one-year renewal. The Institute had raised a concern with the Town when they realized that there could be a significant annual tax liability associated with the property, and provided the Town with a letter asking to be released from their lease in order to avoid this liability.

Mr. Lemack continued that he had acknowledged receipt of the letter; at this point, the Town worked with the Property Appraiser’s Office to obtain agricultural and nonprofit exemptions for the property. Mr. Lemack also proceeded to initiate the necessary steps for wetland mitigation for the Park. He explained that he would provide an update on wetland banking and

other initiatives to the Town Council once this process was farther along, as the land was now vacant.

He advised that once the exemptions were in place, a farmer had contacted the Town to ask why he was no longer allowed to farm on this land. Mr. Lemack subsequently met with ten farmers who had had agreements with the North-South Institute to grow crops on the property, and advised that they could remain on the property until they could harvest their crops. Because the Town was moving forward with the wetland banking initiative, however, the individuals would not be able to return to farm this land following the harvest. Mr. Lemack advised that he was working with these individuals to relocate them within the Town. He concluded that while he was supportive of the farmers, they could no longer remain on the Van Kirk property due to the wetland banking initiatives that have been undertaken.

Ms. Aitken explained that the Board's concern was that the property should not revert to its original wilderness-like condition; they had also hoped that no taxpayer expense would be used to keep the property cleared, which was why farming the property had seemed to be a good solution. Mr. Lemack explained that there were significant restrictions on the property which necessitate the Town to take great care with how the property was used. He agreed that if a way was found to continue the farming of the property without placing the Town at any financial risk, he would like the project to continue.

Vice Chair Weinstein asked if the North-South Institute had expressed interest in farming the property, as the tax conditions were now more favorable than before. Mr. Lemack said this has been suggested "after the fact," as the Institute has encouraged the Town to engage directly with the farmers. Ms. Sadeeka Scott replied that there was no real way to determine that the current tax liability would remain the same; for this reason, the Institute could not expose itself to greater potential liability. All agreements between the Van Kirk farmers and the North-South Institute were terminated as of July 31, 2012, and to the Institute's knowledge, all farmers have left the property.

Ms. Sadeeka Scott added that as a nonprofit entity, the North-South Institute cannot enter into any lease agreements with the farmers. Mr. Lemack explained that the farmers on the Van Kirk property had originally been charged a fee by the Institute to farm the property, which was not allowable under current conditions and could not recur. Ms. Sadeeka Scott explained that these fees were not leases, but were service fee payments used toward the maintenance of the property.

3.3 Sign Code and Banners

Mr. Lemack recalled that the Board had briefly discussed banners, postings, and agricultural exemptions at the previous month's meeting, and explained that he felt it was important for a member of Planning and Zoning Staff to clarify these issues. Vice Chair Weinstein said the Board had believed an agricultural operation might not be required to conform strictly to Code.

David Quigley, Planning and Zoning Division Manager, explained that some items do not require sign permits, such as signs on a farm related to produce and other merchandise. There was also, however, a list of prohibited signs, including fluttering or moving signs. Banners were allowed under specific circumstances, but may not show movement, such as fluttering in the wind. He concluded that the content of the signs at the Batten's Farmers Market had not been an issue, but the form of the signage itself was not allowed.

Vice Chair Weinstein clarified that if the correct form of signage was used, the market would not be required to obtain a permit for their signs. Mr. Quigley confirmed this, and advised that farmers could contact his office for more information on the types of signs that were allowed without a permit.

Ms. Aitken asked how agricultural signs could be exempt, but a specific type of sign could still be prohibited. Mr. Quigley explained that the agricultural exemption was intended to eliminate the procedural requirement of obtaining a permit, but not to allow prohibited types of signs whether or not a permit is required.

Ms. Aitken commented that State law, which supersedes local ordinances, has exempted agriculture and farming from permit requirements. She stated that the sign Code prohibition of fluttering banners seemed to be an attempt to regulate something that the State had exempted from regulation. Mr. Quigley replied that this was not the case, and noted that the requirements for banners and other informal signs were currently under review.

Ms. Aitken asked if banners were considered to be signs. Mr. Quigley said it was difficult to enforce “informal” signs, such as banners, due to their temporary nature; however, the structure of the sign Code allowed for a very broad definition of the term “sign,” irrespective of the material used to construct it. He added that sign Code is intended primarily to control commercial signs. There had been no notice of violation pending with regard to the North-South Institute’s signs on the Batten’s Farmers Market property.

Ms. Aitken reiterated that she felt this amounted to the regulation of agriculture by municipalities, which was prohibited by State law. She felt if a permit was not required for a sign on a farm, the placement of banners should not be considered to violate Code. Mr. Quigley explained that permitting was primarily a risk management issue: permits were required in order to prevent something from becoming a problem. However, even a sign that does not require a permit may constitute a Code violation if it included elements that were prohibited.

Chair Parrish asked how sign Code could supersede State law. Mr. Quigley replied if the Town attempted to regulate farm signage to an extent that farming became impossible or onerous, it would be in conflict with State law; however, he did not feel the current Code constituted a violation.

Ms. Marcia Scott stated that when the Batten’s Farmers Market first opened, they were given a citation that certain signs should come down. She had characterized this as harassment, as she was told that “because you were owned by the Town, they were making an example out of you.” She advised that the discussions provided at tonight’s meeting by Mr. Lemack and Mr. Quigley provided very different viewpoints on some of the issues the Institute has faced; however, she stated that it still seemed the North-South Institute and the Town were on opposite sides of the fence due to issues such as these. She concluded that she would like to formally apologize if her inferences from these actions and issues had been incorrect over the past few months.

Mr. Lemack reiterated that the Town was in the process of revising and modifying sign Code, and advised that he would bring back an update on the signage issue to a forthcoming meeting. He stated that the issue had arisen because it was a Code violation occurring on a property owned by the Town: the Town was obliged to set the example of what was legal or prohibited.

Chair Parrish reiterated that the Town property was being used for agricultural purposes. Mr. Lemack explained that the issue was the use of a prohibited type of sign. Chair Parrish stated that he felt State law superseded this prohibition. Ms. Aitken added that the Board had worked closely with the Town at an earlier time to require the amendment of Town ordinances so they

would not conflict with State law, and did not wish to see any “backsliding” that made conflicting requirements of agricultural properties or signage.

Mr. Lemack stated again that if any changes were required to Town ordinances, this would be done; at present, however, Code Enforcement was simply enforcing the laws that were currently on the books. He advised that Staff would review State law to determine whether or not there might be a conflict or inconsistency, and the item would be discussed further at the Town level.

Dr. Scott said as an individual interested in promoting agriculture in the Town, he would simply like to see “an element of congruency in the implementation or enforcement of those protocols.”

3.4 Community Gardens

Mr. Lemack asserted that the Town was “100% supportive” of the community gardens project, and had put forth a great deal of effort to make this project a reality; however, he agreed that more encouragement was needed in order for more citizens to participate. He asked for the Board’s help in publicizing this project.

David Flaherty, Parks, Recreation, and Cultural Arts Director, recalled that when he had met with the Board at an earlier time, the Town Council had recently passed a community garden initiative. Guidelines, procedures, and an initial location have been established as part of this initiative. Matt Mlodzinski, Special Events and Cultural Arts Senior Operations Manager, advised that at present, three plots have been reserved, and he has spoken with other interested individuals, although there has not been a widespread response thus far.

Mr. Lemack noted that a tent would be erected at the upcoming Orange Blossom Parade, and could contain some information on the program, such as flyers and sign-up sheets. He added that they also hope to involve children and parents. Dr. Scott said the North-South Institute would provide the Town with any emails on this subject that have been sent to them.

Chair Parrish recalled that a local Eagle Scout had offered to build raised boxes and benches for the community garden if the Town provided him with the materials. Mr. Mlodzinski said this was still part of the plan, although he hoped to have more interested gardeners apply for the program before these items were constructed.

The Board members thanked the members of Town Staff and the North-South Institute for their attendance and reports at tonight’s meeting.

4. NEW BUSINESS

There was no new business discussed.

5. ITEMS FOR NEXT AGENDA

The Board agreed that the sign Code would be discussed at the next meeting in order to ensure greater clarity. Ms. Aitken advised that this would fit in with a planned discussion of updating the Davie Farm Guide. Chair Parrish added that he also hoped to reschedule a presentation on the use of organic or non-organic fertilizers and/or pesticides for the community garden project. It was determined that the presentation on fertilizers would be scheduled first, to be followed by the discussions of the Farm Guide and signage.

6. COMMENTS AND/OR SUGGESTIONS

There were no comments and/or suggestions made.

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7. ADJOURNMENT

There being no further business and no objections, the meeting was adjourned at 7:54 p.m.

Date Approved: _____

Chair/Board Member