

**PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire**

Minutes of February 18, 2015

Members Present: Ivy Vann, Rich Clark, Tom Weeks, Joe Hanlon, Jerry Galus, Alan Zeller and Audrey Cass.

Staff Present: Peter Throop, Director, and Laura Norton, Administrative Assistant, Office of Community Development

Chair Vann called the meeting to order at 6:30 p.m. She introduced the members and staff and welcomed the audience. “We are here for three Public Hearings and with that said I will turn the meeting over to Mr. Throop.”

Public Hearing #1 Proposed Addendum to the Master Plan

This addendum provides background information and recommended policies related to allowing additional commercial uses on Commercial Farms to support their economic viability. At the conclusion of the hearing the Planning Board may vote to adopt this addendum as part of the Master Plan (Town Meeting is not required to adopt this addendum).

Before he began his presentation entitled *Agricultural Business Enterprise Uses* Mr. Throop noted that approval of Petition Ordinance M at Town Meeting last May has necessitated an addendum to the Land Use Chapter of the Master Plan. “Any time you want to use an innovative land use control that use must be supported by the Master Plan” he said adding “in this case the Conditional Use Permit is the innovative control and currently the Master Plan is silent on this use.”

He noted the proposed addendum drew on the extensive public input received during the ordinance hearing process, the vote to adopt the ordinance at Town Meeting and numerous public meetings and workshops since last June. He also indicated that there were several agricultural relevant questions in the recent Vision Survey sent to every household in town last April. He noted the statewide support for agriculture, the role and challenges of agritourism including unclear definitions, potential for abuse and new impacts related to farm operations.

Mr. Throop indicated that the goal of the Addendum is to have the Master Plan support the uses of the ordinance. He specifically noted the supporting the economic viability of commercial farms while also providing reasonable and

appropriate review for more intense uses that would otherwise not be permitted in the rural district.

Mr. Throop went on to touch on the strong local interest and support of local agriculture (noting the long heritage of the farming community, farmer's markets, the Agricultural Commission and the community support of the Petition Ordinance last May), the current Master Plan, zoning ordinances and Site Plan Regulations (including non-commercial agriculture in all districts, commercial agriculture in the Rural District and Site Plan Review) as well as the demonstrated support for local agriculture during the Vision Forum and in the vision survey results.

Mr. Throop discussed some of the variables that could influence the kinds of impacts associated with the proposed uses and how the conditions and characteristics of the farm site, the nature and design of the uses and the frequency and scale of those uses could mitigate some of those impacts. He reviewed some of *factors to consider* in evaluating the potential for impacts including topography, road characteristics, proximity of abutters, and screening available to buffer uses, as well as the consideration of the types of activities proposed and whether or not they would be contained in a building, and finally the number of people attending and the hours of operation or duration of the proposed uses.

Chair Vann thanked Mr. Throop noting "that was reasonable and thorough to me" adding "does the Board have any questions?" With none Chair Vann opened the hearing to the audience for questions and comments. Loretta Laurenitis introduced herself and asked several questions about agritourism and commercial agriculture. She also asked why the Board was using Agricultural Business Enterprise District. "It is not clearly stated in the addendum" she said. Mr. Throop explained that the addendum addresses Agritourism because it is broadly defined in the Statute. "The proposed ordinance does not include the term because the ordinance only addresses specific uses, not all that could be included in the Agritourism definition.

Anne Meiklejohn introduced herself and asked how this addendum impacts applications for Condition Use Permits. Chair Vann replied "this is not what this is about" and briefly reviewed the need for the Master Plan to support the uses of the ordinance (Petition M) approved by town vote last May.

With no other comments Chair Vann closed the Public Hearing at 6:50 p.m. She looked to the Board and said "we have three options, we can adopt this addendum as is, adopt it with minor modifications, or make more substantial modifications and reschedule another public hearing." Mr. Throop noted "there are a few minor modifications as noted during the presentation and earlier discussion." He went on

to say “this addendum may be longer than is needed, but it gives strong support for the ordinance and also provides good guidance for not only this Board, but Boards in the future as well.”

A motion was made/seconded (Zeller/Cass) to adopt the addendum with minor modifications as discussed with all in favor.

Public Hearing #2: Proposed Amendment to the Zoning Ordinance

The proposed amendment modifies the existing zoning ordinance and regulations relating to Agricultural Business Enterprise Uses permitted in the Rural Zoning District. Upon the conclusion of the hearing, the Planning Board may vote to place the proposed ordinance on the Official Ballot or may recommend changes to the ordinance which would require a second Public Hearing to be held on Monday March 9, 2015. Town Meeting vote is required to adopt this amendment.

Mr. Throop noted this proposed amendment (Amendment A) would amend Section 245-4 *Definitions*, Section 245-5C *Agricultural Uses*, Section 245-8 *Rural District* and Chapter 233, Article IX of the Planning Board *Site Plan Regulations*. He pointed out the Purpose and Intent statement telling the Board “this is what the ordinance seeks to accomplish and provides a context to guide interpretation.”

Mr. Throop reviewed the *general criteria* and *factors to consider* that apply to all Agricultural Business Enterprise Uses. He also touched on *burden of persuasion*, *conditions of approval* and *waivers and modifications*.

Mr. Throop briefly reviewed the decision to explicitly exclude forestry as a primary use from the definition of *agriculture* because the statutory definition is has been interpreted by some attorneys as including forestry. “As I understand it, a municipality has the authority to create a definition that is different from the statutory definition and to allow commercial uses in the rural district on a property where Cutting fire wood as the sole use of a property would be inconsistent with the intent of supporting the economic viability of a commercial farm” he said.

He also noted the removal of the revenue threshold for the definition of *commercial agriculture* as well as adding other factors to in determining of the primary use of a property is commercial agriculture. He went on to note the removal of redundant language and the editing of several definitions for clarity and organization.

Chair Vann opened the hearing to the public and read a letter received February 18, 2015 from resident Francie Von Mertens where she expressed her concern about

large events at the farm. Ms. Von Mertens noted the farmer's original intent was that large events not exceed 150 attendees, with tickets sold before the event or at the door to assure the capacity standard was met. She went on to note the Planning Board had changed the 150 total capacity to be at any one time, *not* total. She wrote "the Catch-22 here is that any event that attracts more than 150 in the morning, and 150 at midday and 150 in the evening (as an example), is an event generating more revenue and demanding more work hours and staff support than farming activity would generate or require. Noise and traffic too." Chair Vann continued "and such numbers bring into questions whether any such large events would be ancillary or secondary or accessory to the main use of the property – agriculture/farming. I don't think the farmers would mind going back to the original intent when I brought this up a long time ago, which is 150 for any one event."

David Bonacci introduced himself and asked for clarification on the role of the Planning Board authority on *waivers and modifications*. Chair Vann replied that the town attorney had been "pretty clear about our authority" adding "we can approve waivers in Open Space Residential Development as well." Mr. Bonacci asked "so this is not unique? With Chair Vann replying "no."

Ms. Meiklejohn asked if there was any requirement to notify the abutters if the Board were considering a waiver or modification. Mr. Weeks replied "that would be a part of the application. Chair Vann agreed adding "right up to the time of the hearing we may not know if we are going to consider a waiver." Ms. Meiklejohn asked "is there any restriction on the extent of what you can for?" Mr. Throop replied "sometimes it is an interactive process" adding "an applicant presents a proposal and the Board looks at it and decides if it meets the criteria or not. That may lead to a discussion about conditions and waivers, which may result in the need to re-notice the application to include the requested waivers and provide an opportunity for abutters to comment on the request." Mr. Throop explained "if the Board receives a request for a waiver, they will consider whether the granting of the waiver would properly carry out the spirit and intention of the ordinance."

Mr. Bonacci asked if any part of the application provided guidelines or asks what may have been done to discuss a proposal with the neighbors and abutters. Mr. Throop noted that information was contained in the Purpose and Intent statement. He noted item *iv*. which states "it is the intent of this ordinance that applicants make all best efforts to meet with abutting landowners to discuss the proposal, identify concerns, and seek consensus regarding use designs (frequency, scale, scope, and size) of the proposed use and site designs to address the identified

concerns.” When done, Mr. Throop looked up and said “and it might make sense to add this to the procedures and the application form as well.”

Loretta Laurenitis introduced herself and cited RSA 674:32-c *Other General Provisions* that talks about the authorization of waivers. She noted the RSA stated that “the ZBA, Building Code of Appeals or other applicable local Board, after due notice and hearing shall grant a waiver for such requirement to the extent necessary to reasonable permit the agricultural use, unless such waiver would have a demonstrated adverse effect on public health or safety.” She asked “will that be included in the Conditional Use Permit?” Mr. Throop replied “he did not believe those provisions were applicable to Agricultural Business Enterprise uses because they are not agricultural uses included in the definition of agriculture.”

A brief discussion on how to define subordinate use followed with Chair Vann noting the answer is addressed in the *factors to consider* section of the ordinance. Pointing out 2. ii. She reviewed the three things consideration must be given to: the extent to which the proposed uses occupy or use less space within the structures or land areas compared to the principal uses, the expected investment of resources in the use on an annual basis as compared to actual investment of resources in the commercial agriculture operation and the expected revenue generated by the proposed use in an average year compared to the annual revenues generated by the commercial agriculture operation. Ms. Laurenitis interjected “so you look at a number of factors” with Mr. Throop replying “the Board will be looking at the whole picture.”

Ms. Laurenitis asked about the definitions of *event* and *event venue*. “They both say they are gatherings for events, activities or functions for a fee” and asked “what if there is no fee or the activity or event is sponsored by an organization?” Chair Vann replied “a sponsored event is not a free event if the farmer took money” but conceded that a free event such a family wedding where the farm used could exist. Chair Vann looked to Mr. Throop and asked “should we take it out?” Mr. Throop replied “let me address it for the next public hearing” adding “the whole purpose of the ordinance is to generate money (and) no fee does not mean there is no limitations placed on them.”

A brief discussion of the spirit and intent of the ordinance and how it quite clearly states that any new use may have the potential to generate increased impacts and uses permitted must be appropriate for the site they are on and ensure public and environmental safety and protection for the neighborhood.

Ms. Meiklejohn asked “does a Conditional Use Permit go with the land indefinitely?” Chair Van replied “It depends.” She noted the permit runs with the building, land or lot and is not affected by a change in the ownership “but if someone were to buy a commercial farm and want to do just weddings, they are out of luck.” Mr. Throop referred to Article IX and pointed out the *revocation* for violation of any provisions of the regulation (failure to comply) as well as the *termination and transferability* clause which states if a Conditional Use Permit in the Agricultural Business enterprise Zone is not initiated within twelve months of issue “it is terminated.”

Ms. Meiklejohn asked “what is the mechanism used over time to assure this happens?” Chair Vann replied “it is our experience that we hear about it pretty quickly and the Code Enforcement Officer addresses it.” Ms. Meiklejohn described the location of her home at the end of Four Winds Farms Road and her concern about incidental farm related activities (for example hayrides) on the Class VI road “30 feet from my bedroom.” Chair Vann noted definition of *incidental farm related activities or amenities* and quoted “activities or amenities that are provided to enhance the experience of visitors coming to the farm for other purposes and are of such a small scale that they generate negligible increase in the number of visitors to the farm.” Ms. Meiklejohn said “it is not negligible to *me* if 150 people show up for a hayride.” Chair Vann replied “if 150 people show up it is not incidental.” A brief discussion about the definition of incidental followed with Chair Vann concluding “a concern is filed with the Code Enforcement Officer and it moves forward from there.” Mr. Throop interjected “you also have to understand that is a Class VI road, a public way and the public has a right to use it.”

Ms. Meiklejohn noted recent logging activity and the ongoing impact to the road over the past six months. She asked about regulation of activity on a Class VI road with Chair Vann interjecting “forestry is regulated by the state not by us.” Ms. Meiklejohn referenced a restriction that may be placed by the municipality with Chair Vann replying “Oh, then that would be through the Board of Selectmen”

Mr. Sobe noted the wedding event at the Dancing Ground Farm last October. “The most disruptive thing were the fireworks after 10:00 p.m.” he said adding “but they could be disruptive at 8:00 p.m. as well” and asked “can we just ban them?” A brief discussion followed with Mr. Throop reminding the members “every site is different, I don’t think we want to prohibit fireworks, I think you may want to evaluate each site on a case by case basis.” Chair Vann suggested “we could put it in the application and ask that any use of fireworks be specified.”

Ms. Laurenitis noted that under *Event Venue* (time limitations) “no outdoor activities requiring artificial lighting shall be held after 10:00 p.m.” She asked “can you still have the event with *no* artificial lighting?” Chair Vann replied “again a case by case basis.” Ms. Laurenitis then asked for clarification on the definitions of *farm stand* and *farm store* followed by a brief discussion about Bed & Breakfast establishments with *farm to table* meals. Ms. Laurenitis then asked about the minimum 50-acre requirement which had been removed from the ordinance. Chair Vann noted the *general criteria* and the *factors to consider* for commercial agriculture far outweighed the 50-acre minimum. “There are plenty of commercial farms that do not have 50 acres” she said adding “it is just too arbitrary.” Ms. Laurenitis replied “last thing” and went on to mention a case before the state Supreme Court (Henniker Christmas Tree Farm) noting “that may impact the amendment.” Chair Vann replied “we are aware of that and we have addressed those concerns in the ordinance by affirming all uses must be ancillary and subordinate.” She then thanked Ms. Laurenitis for pointing the case out.

Ms. Meiklejohn asked if any sort of a vote would be taken at the conclusion of the public hearing with Chair Vann noting the Board could vote to place the amendment on the ballot or make modifications and schedule a second public hearing, which would be held on March 9, 2015.

With no further input from the public Chair Vann closed the public hearing at 8:00 p.m. She looked to the members and asked “what do we think? What so we want to do?” She went onto say “I think the biggest question is what to do about the *waivers and modifications* and events that take place without a fee. Mr. Throop noted he would work on that language and get a draft update out to the members as soon as possible.

Mr. Weeks noted the letter submitted by Francie Von Mertens and read by Chair Vann he noted “granted it may start out at 150 people in attendance” and asked “but what is going to stop it from growing?” He noted an example of a Maple Syrup competition “where there was not more than 150 at one time but over the course of the days there were over 500 people involved.” He referred to safety and parking problems created by a local garden event last summer and said “the event was open to the public, you just don’t know.” A brief discussion about the ability to limit those types of impacts followed.

Moving on Mr. Hanlon suggested “doing something with the waivers” adding “clearly these waivers are temporary and in support of the event so when an individual reads the application it drives home that point.” Mr. Throop reminded

the members with the criteria and factors to consider “there is relatively little to waive or modify.”

The members moved on to a brief discussion about temporary signs (size, dimension, location), pollution and disturbance, average lumination and lighting standards (photometric plan) and noise.

A motion was made/seconded (Weeks/Galus) to schedule a second Public Hearing on March 9, 2015 to review the modifications suggested at tonight’s meeting for consideration of the vote to place the proposed ordinance on the Official Ballot with all in favor.

Public Hearing #3: Proposed Amendment to the Site Plan Regulations

The proposed amendment establishes Site Plan Review requirements for agriculture related uses. Upon the conclusion of this hearing, The Planning Board may vote to adopt this amendment as part of the Site Plan Regulations (Town Meeting vote is not required to adopt this amendment).

Mr. Throop briefly reviewed the changes to Section 233-3 *of the Planning Board Regulations* on pages 16 and 17 of the handout. He specifically noted that farm stands in excess of 1000 square feet but not larger than 2000 square feet “shall be subject to administrative site plan review by the Code Enforcement Officer” and that farm stores greater than 2000 square feet would be subject to the Board’s regular review process, with consideration of parking, sanitary facilities, pedestrian safety, directional signage, noise, odors, smoke and lighting. He also noted a change to Section 233-3 B6. Stating “projects of less than 2000 square feet of buildings, structures or parking area, unless otherwise specified herein or in the zoning ordinance, or if in the judgment of the *Planning Board* there are potential significant impacts.” He looked up and said “the Planning Board has been replaced by the *Community Development Director, following consultation with the Planning Board Chair*. “Which is what is happening now” interjected Chair Vann.

There being no public comment or questions,

A motion was made/seconded (Weeks/Galus) to adopt the amendment as part of Site Plan Review Regulations, with all in favor.

Minutes:

A motion was made/seconded (Zeller/Weeks) to approve the minutes of January 28, 2015 as written with all in favor.

Mr. Galus requested it be noted for the record that he arrived at approximately 8:00 p.m. for that meeting.

The meeting adjourned at 8:40 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistantm