

PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire
Minutes of January 28, 2015

Members Present: Ivy Vann, Tom Weeks, Audrey Cass, Jerry Galus*, Richard Clark, Matt Waitkins and Barbara Miller

- Mr. Galus arrived at 8:00 p.m.

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. noting “this is a public workshop on an amendment to *Petition Ordinance M* the Town voted to adopt last May.” She explained how she would like to proceed with Mr. Throop giving a presentation followed by public input. She told the audience that they were welcome to ask questions as the presentation proceeded “but please hold your comments until Mr. Throop has finished.” She concluded by asking anyone with a question to please identify themselves for the record.

Mr. Throop began with projecting the presentation agenda which included *Background, Master Plan Update, 2015 Vision Survey Results, Ordinance Amendment Goals, Detailed Review and Next Steps*. Mr. Throop briefly reviewed the original Petition Ordinance (Amendment M) to allow Conditional Use Permit approval to the Agricultural Business Enterprise Zone. This ordinance was not supported by the Planning Board but did pass at Town Meeting. Mr. Throop noted the formation of a subcommittee to work on the amendment of the ordinance and noted a public workshop held in June to gather public input regarding the amendment. “During the summer the Planning Board developed and adopted an application form for conditional uses under the ordinance. In September, an application was submitted to the Planning Board requesting approval of uses under the ordinance” he said. With an active application in hand, work on the ordinance amendment was put on hold.

Mr. Throop noted that an update to the Master Plan was necessary because the ordinance was being proposed as authorized under “*RSA 674:21 Innovative Land Use Controls*” which requires that the proposed land use control is supported by the Master Plan adding “in the 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 draws on the extensive public input received during the ordinance hearing process, the vote to adopt the ordinance at the town meeting, the input received during the public workshop in June and the testimony received during the hearing on the application. He also indicated that there were several relevant questions in the recent Vision Survey sent to every household in town which he would cover briefly.

He indicated that the addendum included recommendations that the town support the additional conditional uses on commercial farms, provided that there were adequate protections in place to protect abutters and the rural character. He said that while a Town Meeting vote was not necessary for the adoption of the addendum, “a public hearing before the Planning Board was necessary before the Board can vote to adopt the addendum as part of the Master Plan.”

He noted the Master Plan would recommend that the Planning Board would have flexibility to work with applicants to design sites to avoid and mitigate impacts and to also limit the scale and frequency of proposed use as appropriate for the various site conditions. Noting the inclusion of *agricultural resources* in the slide outlining the addendum, Ian McSweeney of the Russell Foundation suggested updates on agricultural soils and the farm inventory could be obtained for the Hillsborough County Conservation District.

Moving on to the 2014 Vision Survey results, Mr. Throop noted the survey was a follow-up to the Vision Forum held last April. He noted that just over 600 surveys were returned, although most questions had slightly less than 600 responses. He reviewed the results of seven questions that he felt were relevant to the issues at hand, including three that were directly related to agriculture. He noted that “the attractive natural setting and rural character” of Peterborough were identified as very important characteristics of Peterborough by 69% of the respondents and the “small New England town character” was identified as very important by 66% of the respondents. He went on to say that “protection of agricultural lands for current and future food production” was identified as very important by 50% of the respondents.

The survey indicated that “encouraging on farm production and sale of local agricultural products” was identified as very important to the towns future economic vitality by 45% and somewhat important by 34% of respondents. It also indicated that 44% of the respondents and 32% of the respondents identified “allowing commercial uses (B&B, Farm to Table Café, Farm Events, and Weddings) on farms in the rural district as long as farming remains the primary use” as being very important and somewhat important respectively.

He also related two other statements that while not agriculturally specific reflected what respondents felt Peterborough should be like in 20 years. “Those answers were “Peterborough will be a great place to raise a family” and “people live in Peterborough because of its great quality of life, physical beauty, and the outstanding quality of its natural environment.”

Mr. Throop moved on to review the proposed amendment outline. He briefly reviewed the list of new definitions to be added to Section 245:4 *Definitions*. “Clarifying definitions was a major goal of the amendment as it greatly aids the Board and staff with interpretation in the future” he said. One of the most important definitions added was the definition for commercial agriculture since it is central to the question of applicability of the proposed uses, adding “if the amendment is going to support commercial farms then the uses need to be restricted to commercial farms. This is a critical part of the ordinance.”

He also noted that the uses must be subordinate to commercial agriculture, that more intensive uses would be provided reasonable and appropriate review and the Planning Board would be allowed flexibility to accommodate or limit the proposed scale and frequency of the uses depending on the different site conditions. The last point he made was that this was the Board’s first look at the draft and what goes to public hearing may be different than what they see right now. “We want to be cognizant, we have time to get it right and meet the needs of the community” he said.

Mr. Weeks asked about the relative size of Incidental Farm Related Activities as well as expansions of these types of uses. Mr. Throop noted that “these activities are intended to enhance a visitors experience rather than be one of the primary reasons for visiting the farm.” He added,

“if an activity expanded to the point where it served as a draw to the farm in its own right, then the farm would need to come to the Board for a Conditional Use Permit, or an amendment to a permit if they already had one.” “Enforcement would most likely be a function of a complaint received that would trigger the Code Enforcement Officer going out to investigate” he said. Chair Vann interjected “or seeing an increase in a function or activity and knowing what we have permitted.” Mr. Throop replied “One of my biggest concerns about this use category is the corn maze.” Noting Stonewall Farm in Keene he said “I saw it happen, it became the attraction itself.” He noted “that is why the ordinance takes the size or scale of an activity or event into consideration, so that it cannot get out of control and cause detrimental impacts to the neighborhood. It allows us to review it and *pull it in* so to speak.” He also added “it is difficult to come up with hard numbers because locations, uses and abutters are different in every situation.”

As Mr. Throop moved to the actual Petition Chair Vann explained “everything in italics is new language.” Mr. Throop added “everything else is existing language.” He also told the members the gray shaded area at the beginning of the ordinance is a placeholder for the ordinance description that will appear on the Ballot to clarify the ordinance to the voter. “I am still working on the final language for this section” he said.

As Mr. Throop reviewed the definitions Mr. McSweeney questioned how terms such as incidental and accessory were defined. Mr. Throop noted that the existing definition for accessory was in the amendment with a few modifications. He noted that most importantly “the use would have to be subordinate to the principal use of commercial agriculture.”

Mr. Throop reviewed other definitions including commercial farm, community supported agriculture, events, farm (farm land, farm stand, farm-to-table café, farm-to-table meals, and farm related activities), incidental farm related activities and venue. Mr. Throop spoke briefly about the difference between a café and restaurant. “A café would be small and informal” he said adding “C’est la vie, Twelve Pines and Aesop’s Tables would all be considered cafés.”

Loretta Laurenitis introduced herself and asked for clarification about the space occupied by an accessory use and a brief discussion about the gross floor area in the definition of an accessory use followed. The discussion noted the requirement in the ordinance for a commercial farm to gross \$5000.00 in revenues to be eligible to apply for a Conditional Use Permit. After some discussion about how the definition of accessory was to be applied in a farm context, Mr. Throop agreed that it made sense to take another look at the definition.

With the definition section of the presentation completed, Chair Vann moved on the next section 245:3C and reviewed the distinction between commercial agriculture (permitted only in the Rural District) and non-commercial agriculture (permitted as a primary or accessory use in all Districts subject to conformance with Best Management Practices as set forth in the New Hampshire Department of Agriculture, Markets and Food). Mr. McSweeney asked how conformance would be determined and by what body or Board. Mr. Throop replied this is in the existing ordinance and “no one actively monitors this today.” Mr. Weeks interjected “you probably wouldn’t know unless there was a best management practices complaint to the Code Enforcement Officer.”

Mr. Throop reminded the members that the draft includes existing ordinance language that is not being deleted (shown in the draft with a line through it). “This allows a reader to understand

what is changing” he said, adding “we tried to keep the modifications focused on the uses and topics addressed in the petition amendment.” Chair Vann added “and this relates to non-commercial agriculture which is not regulated anyway.” Ms. Laurenitis asked “what does non-commercial agriculture include? Horses? Cows? Pigs?” Chair Vann noted some districts do have regulations on what is allowed “but we are not addressing non-commercial agriculture tonight.”

Moving on Mr. Throop reviewed commercial agriculture operations with accessory uses such as retail sales, incidental farm related activities and amenities, small scale events that would be subject to an administrative site approval by the Code Enforcement Officer. Mrs. Holmes asked about a road side stand at the farm with Mr. Throop replying “It may be subject to some site plan review.” Mrs. Holmes cited the definition of farm stand/farm store noted “*Retail operations where less than 35 percent of the product sales are produced on the farm or farms of the stand owner shall be considered a commercial retail operation and not an agriculture operation.*” adding “and subject to Site Plan Review.”

Chair Vann looked up and said “Site Plan review does not mean you cannot have the use.” Mr. Weeks agreed adding “the *use* is what is permitted or not, the *layout* is the site plan.”

Mr. Throop moved on to uses permitted by Special Exception and told the members and audience “there was no definition for recreational so we created a commercial recreation definition and put it in.” Ms. Laurenitis asked “why exclude drive-ins?” Mr. Throop replied “it is not a spectator sport, it is not commercial recreation under the new definition.” Ms. Laurenitis replied “so if I have 100 acres and I like soccer – I can put in a soccer field as long as I am not charging to use it?” Mr. Throop said “yes.” Ms. Laurenitis replied “OK.”

Mr. Throop continued with a review of uses permitted by Conditional Use Permits. He noted the creation of a Purpose Statement stating the uses are intended to diversify a farm’s offerings and increase its opportunities to generate on-the-farm revenues through activities, education and events. Mr. Throop noted the purpose statement was created to provide guidance to applicants and the Planning Board as they review the “general criteria” and “factors to consider” that apply to all Agricultural Business Enterprise Uses.

He also reviewed the *burden of persuasion, conditions of approval and waivers and modifications* of the ordinance. He told the members and the audience that specific criteria related to individual uses were located in Article IX.

Ms. Miller interjected “the purpose statement is so important, I think it should be put right up front.” Mr. Throop suggested putting it in a shaded box at the beginning. “Great idea, it is very well written” replied Ms. Miller.

Mr. McSweeney asked for clarification regarding the establishment of reasonable limits for the number of events based on the type of road the event would use for access. Mr. Throop noted the road must be a Class V road or better and that width and surface would also be factors. Ms. Laurenitis asked about agriculture related and non-agriculture related events with Mr. Throop noting “we look at the impact for the standpoint of events are events.” He noted that nowhere in this ordinance do you find the word agritourism. “It is too vague, it is just too broad” he said adding “and the enjoyment of the farm environment may have nothing to do with agriculture.”

Chair Vann reiterated the purpose of the ordinance was to allow local agriculture to survive “but it cannot drive the train or wag the dog” she said.

A brief discussion about frequency and scale followed with Ms. Von Mertens asked “if an event is an event – what about a battle of the bands?” Chair Vann replied “Well if they meet the criteria and can mitigate the sound...” Ms. Von Mertens replied “so if you don’t meet the criteria you don’t get the Condition Use Permit.” “Correct” replied Chair Vann adding “we can safely say that.” Mr. Throop interjected “and if the permit is offended it can be revoked.” Andrea Cadwell introduced herself and stated she wanted to see locally grown food “without it being too onerous to the framers.” With regards to anyone that may try to take advantage of the ordinance she noted “if you are not genuine, you lose your credibility with your customers pretty quickly.”

Moving onto the Site Plan Review Regulations Mr. Throop noted the changes to this section did not require Town Meeting approval. “We do have to have a public hearing on them and then vote but with the exception of Article IX this is wholly owned and operated by the Planning Board” he said.

Mr. Throop reviewed the application process, the procedure for consideration and the granting of the Conditional Use Permit. He also reiterated that in the event of a violation to any of the provisions or conditions of the approval the Code Enforcement Officer had the authority to suspend or revoke the permit. He reviewed the criteria that applied total Agricultural Business Enterprise Uses (parking, hours of operation, structural compliance to building codes, sanitary facilities, environmental sensitivity and life safety and fire protection) as well as **Bed & Breakfast Operations** (establishment provisions including meals, parking and number of rooms), **Farm to Table Cafes** (size and scale and hours of operation), **Venues** (small, medium and large) and **Incidental Farm Related Activity Expansion of Use** (expansion or change of use that is of sufficient magnitude to trigger Planning Board review).

Mr. Throop noted that on a commercial farm a farm stand in excess of 1000 square feet of area would be under the administrative site plan review of the Code Enforcement Officer. He told the members he had done some research (and measuring) and he had not found a farm stand over 1000 square feet in floor space in the area. He went on to say “Anything over 2000 square feet will be subject to Minor Site Plan Review.”

Mr. McSweeney asked for clarification of Community Supported Agriculture noting “the direct words you use to describe it (in Article I, 233-3(A) 4.b.) is something other than what you are saying” adding “it is the operation we care about not the flow of money.” Mr. Holmes asked the difference between a site plan by the Code Enforcement Officer and a regular Site Plan Review. “My questions is about the degree of how high do I have to jump” he said. Mr. Weeks noted the former was a visit by the Code Officer while the latter was a public hearing of the Planning Board. Mr. Clark interjected “and typically you don’t have to wait a month or more for an administrative review.” A brief discussion about the criteria that several of the audience members felt were onerous (including having to hire an expert to meet the criteria) followed. Mr. Weeks noted “it is true to meet the site plan review requirements you may have to hire an expert. Mr. Throop interjected “it is all based on what you are asking for and where it is located.”

Carrie Dumas introduced herself and noted “it is still unclear on how a decision is made.” A brief discussion about the nomenclature of a site plan review followed before Mr. Throop concluded

with a review of how an application gets approved and terms of transferability revocations or termination and the appeals process. Mr. McSweeney asked if the permit ran the lot with Mr. Throop replying “you raise a good point. Everything else is related to the property.” Mr. McSweeney then asked about the established (reasonable) limits for determining the number of events per year based on the type of road the venue was located on. He noted dead-end, through and state roads were mentioned “but nothing about width or road surface” he said. Mr. Weeks pointed out road type, existing traffic volumes and proposed traffic volumes were mentioned in *Factors to Consider* in another part of the ordinance. Mrs. Holmes interjected she thought it was redundant and suggested it be removed from the draft. Mr. Throop relied the subcommittee was meeting shortly and would do their best to reduce redundancy for simplification.

Having concluded the review of the draft ordinance Chair Vann read a letter from Four Winds Farm Road property owner Duncan Spencer. Mr. Spencer began his letter with thanks to the Board for their efforts to amend the ordinance with a better set of guidelines for considering appropriate uses under the ordinance. He did however convey concern and sensitivity over some of the future language “not be crafted to pertain directly to my property on four Winds Farm Road.” Mr. Spencer noted several factors to consider including road types (through roads, state roads and dead-end roads) and the guidelines or standards for establishing reasonable limits for the number of events a property may have dependent on where it is located. He wrote specifically “I find your recommendations heavy-handed and I hope that are not custom tailored to deal with Four Winds Farm. At the least, I feel as if dead-end roads are being singled out. All dead-end road are not the same.”

The full content of this letter is date-stamped 1-28-2015 and is filed with the Planning Board Workshop Minutes of January 28, 2015.

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At the conclusion of reading the letter the Chair Vann called for a 5-minute break.

Resuming from that break Chair Vann explained how she would like to see how the rest of the workshop should go. “Please tell us what you think about the ordinance and what your concerns are” she said adding “and please try to stay with what has *not* been addressed and try to avoid repeating something that has already been said.” Chair Vann also asked anyone wishing to speak to please state their name for the record.

David Bonacci introduced himself and asked for clarification on small events and their level of review. After a brief discussion and references to the draft ordinance he asked if a farm had a Conditional Use Permit and was sold “would the Conditional Use Permit be valid if the land was

not farmed?” Mr. Throop replied “no” adding “the Conditional Use Permit is dependent on the commercial agriculture activity.”

Mr. McSweeney asked “so if a farm is sold a Conditional Use Permit stays in perpetuity or must the new owner re-apply?” Mr. Throop responded that they would only need to re-apply if they were making substantial changes to the operation. Mr. McSweeney then asked “does it expire?” A brief discussion about how the Conditional Use Permit goes with the land as long as the farming activities are active followed. It was also noted that a Conditional Use Permit would expire after one year if the use was not engaged in. Noting special circumstances (an example was converting to an organic farm which may take several years) Mr. McSweeney asked if there were any exceptions or extensions. Chair Vann replied “yes consideration would be given until fallow land becomes productive or you break the rules.”

Francie Von Mertens introduced herself and began by thanking the Board for their work on the draft ordinance. “This is a lot of work” she said. Ms. Von Mertens also asked about annual renewal of permits with Mr. Throop assuring her “only if you are developing the uses in phases” with Chair Vann adding “then you come back because that is somehow changing the use that was previously approved.” Ms. Von Mertens asked “and OCD (the Office of Community Development) will be there to assist the applicant? Adding “it could be quite daunting otherwise.” Mr. Throop looked up and replied “correct.”

As Chair Vann told the audience the subcommittee had been really committed to having some things allowed by right “like a dinner party” she said. Loretta Laurenitis introduced herself and asked if there was a limit on the total number of events in a year. Mr. Throop replied “that depends on the site” citing factors such as access, type of event and abutters. Ms. Laurenitis asked “so potentially there could be an event every day of the year?” Mr. Throop replied “on a state road, with no abutters, perhaps. It would be up to the Board based on their evaluation of the circumstances” with Ms. Laurenitis asking “what about a neighborhood?” Chair Vann interjected the Board’s review of the general criteria and associated factors for all Conditional Use Permit applications. “We are charged to think about all the context to allow uses” she said.

Conrad Dumas introduced himself as a Greenfield resident and sheep farmer. He told the Board “Peterborough is a leader in the region. I appreciate it” adding “but the Devil is in the details.” He told a story of how he and his wife went to the Town of Greenfield for a permit and needed to show parking, signage and hours of operations. “We did not have to open our (financial) books” he said adding “and to me all farmers are farmers regardless of whether they are commercial or not.” Chair Vann replied “we don’t want to see your books either, just a reasonable plan to show you expect to gross \$5000.00” adding “the fact is you can grow zucchini and sell them at our farm stand. You apply for a wedding venue permit and you can receive it but you cannot bring in more money than your zuchinnis.”

Ms. Von Mertens interjected “I have the assurance I came for but I think it would be okay to make more money on retail or special events in a year you have a crop failure.” She went onto say “the fear is that someone with a small crop, a horse and a milking cow may become a wedding venue. But we also cannot be *too* restrictive.” Chair Vann replied “if you were to lose your flock of lambs to predators, the Planning Board will not revoke your Conditional Use Permit.” Mr. Throop added “the purpose and spirit of this amendment is to help agriculture. It is to support farms in the business of being farms and to be reasonable about it.”

A brief review of uses by Conditional Use Permit followed. (Conditional Uses being **Bed & Breakfasts, Farm to Table Cafés, Venue for hosting an event and Incidental Farm Related Activity or Amenity that has expanded**)

Mr. McSweeney told the members while he appreciated and agreed with the intent of the draft “the wording is the wording.” He pointed out saying a sound plan or generation of \$5000.00 in two years “does not give the leniency you talk about.” Mr. Throop asked him “what should it say then?” Mr. McSweeney replied “what you are verbally saying right now.” He also suggested Mr. Throop contact the Department of Agriculture or the Natural Resources Conservation Service for examples of sound plans and who receives them. Mr. Throop replied he would contact them “I would love to add more clarity and would be happy to do so if you could provide me with examples” he said.

Ruth Holmes interjected “I don’t want to belabor this but I have a hard time with the \$5000.00 (gross) within two years.” Looking to the Board she said “*you* can see where this is going but future Boards may not have the same understanding. They have to read it in black and white.” Mrs. Holmes went on to say their first year working Sunnyfield Farm “we made \$642.00” She said she worried the \$5000.00 requirement to qualify as a commercial farm may keep farmers from farming. “This ordinance should help encourage younger farmers, I don’t know if I am asking for a *lower* money requirement or *more than* two years to make it” she said. Mr. Throop replied with an example of a vineyard business. “We know that it can take time” he said. He went on to say “the spirit of this ordinance is why the purpose statement is in there.” Mrs. Holmes thanked Mr. Throop “for understanding what the farmers want and need, we just want future Boards to understand.”

David Bonacci introduced himself noting “I would like to respond to Duncan’s (Spencer’s) letter.” He noted Section D (Venues) 2.a. the limit of events on dead-end roads because of its access. Mr. Throop pointed out the section “provides guidelines not limits.”

Dan Holmes introduced himself and asked for clarity on minor changes to a site plan and when a farmer may have to come back to the Board.

Mr. McSweeney once again asked for clarification between the terms asked the difference between the terms *accessory*, *incidental* and *subordinate* uses. He gave an example of high tunnel and road cover farming.

Ms. Laurenitis said she understood the general criteria did not need to be approved by a town vote but asked “why are traffic, safety issues and property values not addressed?” Mr. Throop replied “that along with other criteria is in Article IX which *is* a part of town meeting approval.” With regards to impacts on property values, Mr. Throop advised “those are not addressed” adding “it is expensive for the farmer and for the abutters to get competing appraisals.” Citing comparative assessments and values he noted “is simply not a good measure, you end up with competing professional opinion not based on real data. I would advise the Board not to include that in the standard.” He concluded by noting “it *is* part of the statute for variances, but that doesn’t make it good idea.” Ms. Laurenitis asked “what about health, safety and welfare, especially at pedestrian crossings and off-street parking?” Mr. Throop replied “that is all in Site

Plan Review.” A brief discussion about pedestrians and cars sharing space on public roads followed.

With other questions the public workshop was closed at 9:30 p.m. and the members began to review the input they had received throughout the evening. Mr. Throop began with Mr. Spencer’s concerns “that we may be picking on his road.” The members reviewed 233:53, specifically the standards used to guide the Board in establishing reasonable limits for the frequency and scale of events per year based on the type of road used to access the event. This included *dead-end*, *through* and *state roads*.

The members also spent time discussing the criteria and factors set forth in the section 245-E.1.c and d as well as the applicable criteria in section 233:53 in categorizing event size. This included *small events* (less than 30 people, no more than 12 per year), *medium size events* (more than 30 but less than 75 people, no more than 16 per year) and *large events* (more than 75 people with an upper limit determined by the Planning Board, no more than 8 per year).

Mr. Throop noted the concerns of the requirement of a plan to gross \$5000.00 in two years to be able to apply for a Conditional Use Permit. “This is the amount the subcommittee came up with but it is open to discussion” he said. Chair Vann noted the subcommittee was scheduled to meet the next afternoon “we’ll take up again there” she said.

In conclusion the Board discussed the land use requirement for permitted accessory use (occupying less than one-third of the combined gross floor area on the premises). They noted Mr. McSweeney’s argument that a farm could in fact grow all of its produce in a very small area using high tunnel greenhouses.

The Workshop adjourned at 10:05 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant