

## PLANNING BOARD

## TOWN OF PETERBOROUGH, New Hampshire

Minutes of September 29, 2014

DRAFT

**Members Present:** Barbara Miller, Rich Clark, Tom Weeks, Jerry Galus, Audrey Cass and Alan Zeller

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

**Site Visit to 149 Four Winds Farm Road:**

Approximately 25 people gathered for a tour of the property. Vice Chairman Tom Weeks (Mr. Weeks) opened the Site Visit at the entrance to the Apple Barn off Four Winds Farm Road. Prior to the walk-through with Mr. Dumas, Mr. Weeks reminded the group there was to be no discussion amongst the Board members and no testimony or questions would be heard until the public hearing was re-convened at the Town House 5:00 p.m.

As the group walked around the Apple barn Mr. Dumas pointed out designated parking for attendees and staff and the traffic flow. Going toward the south side of the barn Mr. Dumas (although not visible) pointed out the location of the wetlands, a series of white flags delineating the conservation easement, storm water flow and the poison ivy. Moving to the back of the Apple barn he pointed out the closest abutters (John and Maude Odgers) home through the woods. Making a full circle of the barn Mr. Dumas pointed out an additional 10 parking spots along the north wall of the barn.

The site visit continued across the street with the Studio barn. "This is where the events will be held" explained Mr. Dumas. He pointed out 5 staff parking spots and the staging area for the fire detail to the west. When asked about any wetlands to the northwest Mr. Dumas replied the NRCS (Natural Resources Conservation Service) "knows our fields and it is not on their wetland maps." Moving toward the back of the Studio barn Mr. Weeks asked where the vehicle access stopped. Pointing to a vehicle parked in the area he asked "there, where that car is?" Mr. Spencer replied "although vehicles don't often do it" it was possible to drive all the way around the Studio barn back to the road. " He also pointed to the parked vehicle and noted an old logging trail going from the vehicle (straight north) into the woods.

Before entering the Studio barn Mr. Dumas pointed out where the band would set up

(backs to road, facing the barn) and two locations where event tents may be erected. Once inside the Studio barn Mr. Dumas and Mr. Spencer pointed out the general architecture of the barn and the two means of egress. At the conclusion of the site visit Ms. Laurenitis noted she had a question. Hesitant, Mr. Weeks asked if her question was pertinent to the site visit as they stood there or if it could wait until the public hearing reconvened. Ms. Laurenitis replied she *could* wait but felt her question was pertinent to the site. “I will allow it” replied Mr. Weeks. Ms. Laurenitis then asked about food preparation for events. “There is no facility in the barn and it was not mentioned” she said. She then asked if Mr. Dumas intended on put in a kitchen with Mr. Dumas replying “no, not right now.” With that Mr. Weeks closed the site visit and announced the public hearing would reconvene at 5:00 p.m. at the Town House.

### **Continuation of Public Hearing:**

Vice Chairman Weeks (Mr. Weeks) opened the Public Hearing at 5:00 p.m. He began with “this is a continuation of the public hearing regarding the Dancing Ground Farm LLC Current Use Permit application, but we have a couple of items before we start.”

Mr. Weeks introduced the Board and staff. He also noted “the Fire Chief is here for anyone who may have questions for him.”

### **Minutes:**

A motion was made/seconded (Miller/Zeller) to approve the Minutes of September 8, 2014 with all in favor.

A motion was made/seconded (Miller/Cass) to approve the Minutes of September 15, 2014 with one deletion requested by Mr. Galus with all in favor.

Mr. Weeks then read the application for a Conditional Use Permit for Agricultural Business Enterprise uses submitted by Dancing Ground Farm, LLC. When done he looked up and reviewed the rules of procedure for the meeting which included accepting testimony of new information only, addressing any questions or concerns through the Vice Chairman (“no back and forth” he said), and identifying yourself for the record.

“We are here for new testimony tonight not any further testimony or personal opinions about the Conditional Use Permit ordinance adopted by the voters in May” he said then asked the applicant spokesman, Bryn Dumas to proceed.

Mr. Dumas began by noting the labels he had added to the plans identifying the Apple and Studio barns as well as the location of event tents, a dumpster on the

property and a courtyard on the flat terrain by the Studio barn.

Mr. Dumas reiterated the parking layout, flow of traffic, location of the septic system, wells, fire detail parking, pedestrian crossings and easement boundaries. He noted the application proposed to permit up to four (4) large events per year including weddings and seasonal farm events with up to 175 attendees including staff and service providers and not more than twelve (12) smaller events per year including farm to table dinners and educational events with up to 75 attendees including staff and service providers. Mr. Dumas pointed out their reduction in the original number of large events from eight to four “as a means of reducing some traffic and noise throughout the year.” He also noted they had incorporated several Planning Board concerns regarding emergency contingencies adding “in the event of any emergency, we will ask the attendees to exit the Studio barn and congregate across the street at the Apple barn so emergency personnel will have full access of the road.”

Mr. Dumas continued by showing the group where the outside music would be (facing the barn to prevent sound travel). Mr. Dumas concluded by noting they had tried very hard to consider the impacts on the neighborhood and neighbors and done so in a manner that is safe for the public and those attending the events while at the same time not restricting themselves from being able to do events.

“I would ask for a vote” he said.

Mr. Weeks began with questions from the Board. He asked for clarification on both the large and small events “are they single day events?” he asked. Mr. Dumas replied “the events themselves, yes they are single day.” Mr. Weeks then asked Mr. Dumas about hours of operation noting “you have indicated music until 10:00 p.m. but there is no information in regards to mornings.” He went on to ask “if the Board approves this would you be willing to consider hours of operation between 7:00 a.m. to 10:00 p.m.?” Ms. Cass interjected “that is when the music would stop but not necessarily the event.” This prompted Mr. Weeks to ask “when would the events be over at night?” Mr. Dumas noted it would depend on the nature of the event “but we would certainly consider limitation on hours that seems reasonable” he said adding “I would have to consult with the rest of the group.” Mr. Weeks then noted the noise concerns (especially amplified music) and asked Mr. Dumas if they would consider having *all* amplified music not associated with a wedding procession be inside. Mr. Dumas replied “again I would have to consult with the rest of the group.” Mr. Weeks asked if there were any plans to install a fire sprinkler system in the future. Mr. Dumas and his wife both replied “we plan to hire the fire detail” with Mrs. Dumas noting “we talked to the Fire Chief about it and he said there would not be a scheduling conflict with only four events a year.”

Mr. Weeks looked up and asked Mr. Throop “how would you suggest we proceed?” Mr. Throop offered that the Board take all testimony and then give the applicants a chance to consult with each other on the issues (concessions) he presented. Mr. Dumas interjected “that will work.”

Ms. Cass asked for clarification on the number of 99 attendees and fire details. Chief Walker noted 99 attendees was the break-off number for assembly use. “Anything larger requires a fire detail” he said.

Mr. Zeller noted he was confused about the twelve smaller events and with people coming and going “just how and when does the number of 75 attendees kick in?” he asked. Dan Holmes introduced himself and explained the numbers were really about occupant counting in a building at any given time “and we are not allowed to exceed that number.” A brief discussion about the comings and goings over the course of an event followed with Mr. Dumas suggesting something as simple as selling event tickets would solve any problems. Once the tickets are sold out the event is closed. It seems like the best solution I can think of” he said.

Mr. Galus asked about serving alcohol and how it would be regulated. “If it is a dinner somebody is going to bring wine” he said. A brief discussion about BYOB and when a liquor license may be required followed. Bill Tucker introduced himself as legal counsel for the applicant. He said his law firm was in Manchester, New Hampshire and “I have a small farm of my own.” Mr. Tucker told the Board “if you don’t charge for the drink you are OK” adding “if you do charge you would need to obtain a one-day liquor license.” Ms. Miller interjected “or you can hire a catering company who has a license.”

Mr. Galus asked “for clarification would the applicant be willing to specify what the events are?” adding “I guess weddings and hayrides, but for a silly example, what about a Biker’s Convention?” Noting that the approval goes with the land and the responsibility the Board has to do what is right for the town he concluded “that way we would be approving the events versus approving what *might be* the events.”

Mr. Galus then wondered if the applicant should create an event umbrella “and limit it to specific activities for now.” Mr. Weeks noted the application specifically requested weddings, farm to table dinners, seasonal farm events including harvest feasts, sugar house open house, blueberry pancake breakfasts and educational events.

Mr. Galus asked for clarification on what a large event might be. “Even a broad definition would be helpful” he said. Mr. Dumas replied “milestone events like a 50th birthday party or a 75<sup>th</sup> wedding anniversary.”

A brief discussion about public safety and access followed which included the possibility of a guest turning the wrong way on Four Winds Farm Road and ending up in the Meiklejohn's driveway. Mr. Galus asked if a barrier could be placed to the left of the exit to prevent such a thing with Mr. Throop noting "no, because that would be blocking a public road." Ms. Dumas reiterated they could alleviate that with signage and parking attendants.

Mr. Weeks noted the Fire and Police Chiefs had been invited the meeting. "Chief Walker is here, Chief Guinard was unable to make it but I have an e-mail from him for the record and I would like to read it."

Mr. Weeks read the email response to a question regarding vehicular traffic and pedestrian safety on Four Winds Farm Road. The Chief compared Four Winds Farm Road with Powers Bridge Road which he was very similar (both narrow roads with no sidewalks or lateral support lanes, sharp curves, blind spots and used daily by senior citizens from the Rivermead Retirement Community). Powers Bridge Road was the subject of a traffic study conducted by his department in April of 2014 "for the purpose of altering the speed limit. The study found that 200+ vehicles travel Powers Bridge Road daily between the hours of 9:00 am and 5:00 pm., and that "to date, there have been no reported vehicle/pedestrian accidents on the road." In conclusion the Chief indicated that he believed "the application would not make the road any less safe for pedestrians than other similar roads in town."

In response to the e-mail read by Mr. Weeks, Anne Meiklejohn introduced herself and asked "is Powers Bridge Road a dead-end road?" Does it have a wedding venue on it?" She then said "for the record, I don't think the comparison is accurate."

Sharon Monahan introduced herself and asked if the property was on town water and sewer. Mr. Weeks noted the farm was on neither and that portable toilet facilities would be provided.

Silas Little introduced himself and made a case for additional testimony "that the audience should hear and be able to respond to." Mr. Weeks reiterated the only additional testimony that would be heard was "what is related to *this plan, here, tonight.*" Mr. Little asked about the hours of operation with Mr. Weeks replying "that was discussed at the last meeting."

Mr. Little then pointed out that under Site Plan Review the parking should be gravel or paved. "You have to make lanes and stalls because if you don't mark it parking is not going to be as shown." He used the Peterborough Players and several running events he had attended as examples when he said "I think that with that many vehicles, you have to designated parking with delineations" (and) on a larger issue the town of Peterborough adopted an amendment to an ordinance regarding a

specific zone, the Agricultural Business Enterprise Zone that does not exist. “This amendment has no force, there is no zone designated as such in Peterborough.”

Mr. Weeks interjected “and Rural” with Mr. Little replying “it doesn’t say that, under the statute it is a fatal defect.” Mr. Little also mentioned the reference to standards from Article IX and a brief discussion of an agricultural use as defined followed. Mr. Little concluded by saying “I am a lawyer with 25 apple trees. I spray, prune and sell them. Does that make it an agricultural use?” adding “this is an issue that has been grappled with in the state “and the ordinance does not even address it.”

Mr. Weeks asked Mr. Dumas about parking. “I show up for one of your events but the parking is here, there and everywhere.” Mr. Dumas reiterated that the large events would have parking attendants “physically parking cars” and for the smaller events “I don’t believe an attendant will be necessary” he said adding “but having attendants for all events is simple especially with good signage to facilitate the flow.” He went onto say “it is an old barn yard, if you gravel it over or God forbid pave it over it would drastically change the look of a beautiful spot.”

At this time Mr. Throop gave a brief history of how the application was brought to the town. He indicated that the applicant’s requested uses were positioned as agricultural activities and the application was for a Conditional Use Permit. He noted that under the Planning Board regulations, agricultural activities do not require site plan review, adding “that is why the hearing was noticed for only a Conditional Use Permit.” “There is not an active Site Plan Review application before the Board at this time” he said. He further noted that “if the Board believes that the proposed uses are not agricultural activities and that they constitute a change of use to a commercial use, then under the Board regulations, site plan review would be required.” He noted that “if the Board made a determination that the proposed activities were a change of use, then I would advise the Board to continue the public hearing on the Conditional Use Permit application to a date certain and have the applicant submit an application for Site Plan Review and re-notice all parties.”

Andrea Caldwell introduced herself and said “I though at the beginning to the meeting we were instructed to discuss the Conditional Use Permit and not the ordinance, which we moved right into.” She added that is not helpful, the ordinance is here, this is about the *Conditional Use Permit* “like you said at the beginning of the meeting.” Ms. Caldwell also noted “the amendment was passed by the town, it is not a wedding event. It is an event that is part of the purpose of the farm to supplement the income of the farmers. There is a big difference there.”

Richard Lefko introduced himself and told the Board he did not understand how the Board could make a determination with no plan.” He added “What kind of events? When? How long?” he noted the assembly break-off of 99 people and asked “who do you call when the hundredth person arrives?” Mr. Lefko mentioned food events and said “this is vague, it is not quite a farm and has not been for two generations.” He asked “so there will be cooking?” Ms. Dumas replied that the events would be catered with food and bounty from other local farms to start out. Mr. Lefko asked “so the food is not grown on the property?” “Not yet” replied Mrs. Dumas. Mr. Lefko replied “so the farm to table meals for the time being is from an off-site caterer?” He then asked “are there going to be any time limits to till the land? Or do we just go on faith that they will have enough food to support their catering business?” adding “that is what this is really about.” Mrs. Dumas replied “that is not worth responding to.”

Duncan Spencer introduced himself as Duffy Monahan’s oldest son, administrator of her Estate and now co-owner of the property with his three siblings. “As such I have a duty to the estate and to my mother to make the estate financially solvent” he said. Mr. Spencer noted as many people in the audience may have faced a similar situation in their own lives “the death of my mother and step-father changed the financial situation of the Farm.” He went on to note the easy solutions of selling the property, subdivision and development, wholesale timber harvest, large scale farming of hogs or chickens or commercial agriculture leasing.

He told the audience “I have been urged to choose a simple solution but because I believe in farming and my mother believed in farming I choose a much harder course.” He noted “what once was a Gentleman’s Farm financed by an architectural firm must become a functioning farm again” adding “forest that had not been logged for a generation will carefully become productive again. Keeping the family property together had been my mother’s life’s work. I am not going to destroy the look and feel of the property” adding “but I am not her.” He looked around and said “these issues were always going to come, it is just sooner than any of us thought.”

Mr. Spencer went on to describe the positives of putting the land back to work. He noted increased public access to the farm and its historical buildings, increasing pasture land would open up the majestic views the abutters already enjoy and an increase in the connectivity of trails to other areas of the conserved land to the south.

He noted he had read the abutter letters and understood why they may feel threatened. He noted the absence of agricultural activity on the farm “but that has not always been the case” he said adding “and time does not stand still.”

Mr. Spencer concluded by noting he considered the owners Dancing Ground Farm to be a partner in his endeavor. "They have a good track record, I believe they will be excellent stewards to the land" he said.

Loretta Laurenitis introduced herself. She pointed out that on the application the Fire Chief had suggested a fire detail for events with more than 99 people rather than installing a sprinkler system in the Studio barn "due to the infrequent nature of proposed events." She then referred to the letter written by the Fire Chief where he addressed the long term issues. "He wrote that in order to meet the code requirement as an assembly occupancy the building would need fire sprinklers and a fire alarm system." She went on the report that in the short term the Fire Department would work with the applicant on alternative solutions such as a fire detail "but long term they will need to have a fire code evaluation conducted to see what would be required to bring the space into compliance." She asked "where does the number 99 come from?" Chief Walker replied "the fire code" adding "the cost [of installing a sprinkler system] is huge and it is not uncommon to make accommodations to allow the activity to occur in a safe fashion." He noted the need for two paths of egress, determination of occupant load, exit signs, fire extinguishers, emergency lighting and all other requirements for the assembly permit would be enforced. "The sprinkler system is the only compromise on this" he said adding "and they will have the fire detail on site."

Mr. Galus asked for clarification on the list of things necessary for compliance. Chief Walker replied it was under the Code Enforcement Officer's purview "and then we look at the fire side for compliance."

Maude Odgers introduced herself noting she and her husband were the closest abutters to the farm. "I would like to respond to Duncan" she said adding "we are in favor of farming and the farm, it is the events that we have a problem with." She noted the opening and closing of car doors, car headlights "but mostly it is the event noise."

Ms. Meiklejohn said "we have had a discussion about the intention but that means noting in terms of implementation." She went on to say "the language is open to interpretation" and that as abutters "it is very important that it be addressed." She told the Board that Mr. Little was the legal representation for most of the abutters of Four Winds Farm Road, that the validity of the ordinance was in question, and "any ensuing legal action based on what the Board may decide will be based on that validity." She noted aspects of the ordinance were not consistent with the Master Plan, the Planning Board's guiding document. "You don't have any guidance so you have nothing" she said adding "and you cannot make it up." She spoke briefly about the diametric opposition and the three attorneys involved, all with their own positions. "There is just not enough information, it is as clear as mud" she said and

suggested an extension was in order. “This is not about who has the most rights and the largest property on the road” she said adding “and the permit travels with the land.” Mr. Spencer noted “so does the lease.” He then told the Board “the terms of the lease is 40 years.”

Gill DuVal stood and told the audience he was breaking the cardinal rule adding “if it ain’t in your backyard, it ain’t your business.” He said “that is not a farm, they don’t raise nothing. The sheep up there don’t even belong to them. It is just not right.” Mr. DuVal also noted the land was in current use “which does not allow this. That land is for raising trees not tents to have parties.” He looked to the Board and said “I don’t know how hard your hands are tied to this “but if you approve it you are opening a Panda’s Box.” Before he left the meeting he said “I am just saying, that is not a farm.’

Sarah Laeng-Gilliatt introduced herself as supporting farming. She noted she owned Main Street Cheese in Hancock and speaking “as a human being and a mother” that she valued the democratic process that was being engaged in tonight. She spoke about her concern for the future of the farmers and the economic forces that undermine the farmers, climate changes and the importance of local farms.

Rosalyn’s Matt Gifford introduced himself as co-owner of the largest farm in town “and the oldest organic farm in the state.” He told the Board “events are a way to supplement income *not* a way to get rich and work the system.” He told the audience that a farm stand (a permitted use) could generate 100 cars a day.” He noted the Dumas “would be great stewards of the land.”

Nancy Lefko introduced herself as a resident of Cornish Road. She began with “none of us are against farmers, farms or nature” adding “we love nature that is why we live where we live.” She noted Four Winds Farm Road was a quiet, scenic road adding “it is anybody’s guess what [traffic] a farm stand may generate on a daily basis but with an event you *know* how many cars will be on the road.” She noted the abutters were being portrayed as callous and heartless people who are against farmers, motherhood and nature. “That is not true, that is not our beef” she said.

Mr. Weeks replied “we need to come to grips with this application.”

Dick Estes introduced himself and said he would like to point out that without Rick and Duffy Monahan “the area would not be half as nice as it is.”

Francie Von Mertens noted as a clarification “the goal is to get the family farm back” with a brief discussion of what sort of precedence this might set when other applicants with 50 acres want to be approved for X, Y or Z. Mr. Weeks replied “every application must pass or fail on its own merits.”

Mr. Spencer clarified the property retained three acres (set aside for the Apple Barn) for development and another eleven acres without restrictions. When asked to better pinpoint the land he was talking about Mr. Spencer replied “it is part of the old Paradise land.”

Joseph Hanna introduced himself and noted his support for the applicant. He told the audience he had 28 years’ experience in land development and it would be a great loss if the land were converted to house lots. “It is a beautiful piece of property that I hope can be shared with the community.”

Ms. Monahan suggested the applicant register the farm with the Hillsborough County District as “the concern that farming is the primary use is a legitimate concern.” She also suggested a farm plan for the applicant and “because the farm is leased, some safeguards for compliance be instituted. She noted this was the first application for Conditional Uses so (perhaps) there should be a time limit with a re-evaluation scheduled. “We don’t know what will happen” she said. She cited the Superior Court Case of Bartlett v. City of Manchester where the petitioner appealed a superior court order that vacated a City of Manchester ZBA decision granting intervenor Brookside Congregational Church a Variance. The petitioner argued for a reversal of the decision. They also appealed the court’s order because it ruled Brookside proposed use of its property were permitted as accessory uses as a matter of right under the zoning ordinance.

She encouraged people to look at the larger picture in Peterborough and ways to attract more young people to play, work and stay in town. “Farming is a way of life for many young people. They choose to live the farming life” she said and urged the town to move on with more resilience.

Ms. Cadwell said “I’d like to remind everyone this is about farming and keeping farming alive.” She went on to note “be it raising dairy or chickens, accessory income is always needed” adding “and this would be a small part of that farm.” Ms. Cadwell urged the audience to “look at Peterborough and see how they feel about the farming community.” She noted she felt passionately “about not losing this part of Peterborough.”

Ian Meiklejohn introduced himself saying he had heard a lot of people think the abutters are short-sighted and that they don’t support the farmers. “But that is not true.” He reiterated the safety issues, of subsidizing the farm with commercial uses and “the dollars and cents cost to the value of our land.” He looked to the Board and said “farming is the one word no one is allowed to talk about.” He concluded by saying “it is a very, very broad brush that you paint being a farmer and then allowing these uses. We are not some horrible *not in my back yard* neighbors.”

Attorney Little redirected the discussion by noting the amendment adopted references RSA 21:34, adding “I assume they meant 21:34-a. Farm, Agriculture, Farming.” A brief discussion about the terms (including farms, farmer’s market, agri-tourism, and roadside farm stands) in that RSA followed.

Ruth Holmes introduced herself and said “farm or not we have to start somewhere. We have apple trees and sheep. A farm cannot grow into a fully functional farm overnight” adding “I would rather be shoveling muck than plan an event. It is very tough to make a go of it and start up a farm.” Mrs. Holmes went on to say “our *intent* is” when she stopped and said “we are going to farm that land *intently*.” Mrs. Holmes concluded with “organic farmers go slowly with the land and allow the land to dictate what goes where” adding “we don’t want to do the chicken or hogs, we want to go slowly with the land. I think we need some grace.”

Ann LaPoint introduced herself noting she had been in town since 2000 and said “Sunnyfield Organic Farm is the best farm in town, it is the best farm on the planet” noting the milk, vegetables and cream. Mr. Weeks asked her if she understood the purpose of the public hearing. Ms. LaPoint replied that she did not. Mr. Weeks briefly explained the reason everyone was in the room.

Kathleen Allan introduced herself and cited several events the Monahan’s had hosted at their farm. “Events like this” she said. A member of the audience interjected “not on a 52-week schedule.”

Ian McSweeney asked if there were no new questions he, the applicants and their attorney would like to request a five-minute recess to discuss some of the requests (i.e. hours of operation and amplified music inside buildings only) put to them by the Board. Mr. Weeks replied they would be granted time after all public questions and concerns were heard.

Ms. Meikeljohn raised her hand. She presented an article printed in the Monadnock Transcript Leger dated Thursday, September 25, 2014. She cited an article written by her and asked it be entered into the record. She told the Board “and I am joined in support by the abutters and how we feel about farming.” She referred to numerous correspondences the abutters had written and submitted for the record regarding stripping the abutters of their rights and privileges that were unalienable as property owners and tax payers. She also reiterated with the increase of activity, traffic and noise “no doubt our property values will go down” she said. Ms. Meikeljohn concluded with statements about the road being shared equally and how one property should not be able to debunk everyone else’s. “We all have equal rights and protection under the law” she said.

Ms. Laurenitis cited RSA 21:34 6 *Agri-tourism* and read a portion of the RSA. Mr. Weeks asked “why go there?” Ms. Laurenitis replied “to help us define whether or not to view weddings as an agricultural use.” She went on to note a session on Agriculture, Agri-tourism and Local Land Use Controls at the Office of Energy and Planning’s Municipal Law Lecture Series this past spring. She specifically noted the legal case of Forster v. Town of Henniker which is currently in the Supreme Court venue.

Seth Dugan introduced himself and said “I support the farmers, I would not be here if it were not for them.” He urged the audience to be patient and attempt to find some harmony with the small farms. “They have intrinsic value, preserving small farms is a win-win.” With regards to noise issues he said “noise comes in many different shapes and forms and they are very considerate in their dealing with it.” Mr. Lefko interjected “again, this is not against the farmers.”

Ron, a gentleman from Greenfield noted “this is an issue the nation faces – how to continue to help the farm communities thrive and deal with the concerns of the abutters. “I commend you, you are the examples.” He noted a Charrette in Greenfield and this case came up. It needs to be dealt with. This is where the rubber meets the road when trying to come to grips with this issue.”

Mr. Weeks reiterated the issues for reconsideration that included hours of operation and with the exception of a wedding procession all amplified music would be conducted inside a building. “Go ahead and take a 5-minute break to discuss it” he said.

When the applicants returned to the meeting room Mr. Weeks again noted the issues of reconsideration.

Attorney Tucker stood and noted “with respect to the hours of operation – we are agreeable to limit the hours from 7:00 a.m. to 10:00 p.m. for all events, large and small. All affairs will wrap up by 10:00 p.m.” He told the Board the farm would become registered “and that status would run through the life of the approval so if it were ever sold or transferred to someone else it would survive.” Attorney Tucker went on to say “with respect to amplified music with the exception of a wedding procession all music would be indoors.” He then commended the Board for taking up the application, noting the amendment had been voted in by the town “and this is what you have.” He agreed it was not the best written petition adding “the language is difficult but it *is* what you have to work with and you can attached reasonable conditions.” He reiterated the criteria of 50 acres was clearly met. To be specific about the types of events, he proposed four additional events: anniversaries, birthdays, reunions and funerals. Attorney Tucker added that the proposed uses were in addition to those listed on their application “which is specific and leaves nothing

to the imagination.” He concluded by noting “we meet setbacks and screening, we have met the burden” he said adding “I would like the record to reflect that we feel a site plan approval is not needed as there is not a change in ancillary use. I say that because with the granting of a Conditional Use Permit, the uses become a part of the farming unit.”

Ms. Cass asked for additional clarification on the buffer to the road. Mr. Throop reviewed the standards in 245:8-E *Conditional Uses*. He noted all buildings and infrastructure used for retail and restaurant use (including parking) require a 100-foot setback from abutting properties or must be screened. “It does not say from the road” he said.

Ms. Cass then asked about the intent for a sugar house. Mr. Dumas replied “that is an allowed agricultural use.” Mr. Little inquired about “reunions” noting “I am just curious.” Mrs. Holmes replied “I think family reunions are obvious.” Attorney Tucker added “and High School reunions would be the other big one.”

Thomas Meiklejohn introduced himself and said “I would just like to state my own personal beliefs” adding “I have been here 9 years and I love it.” He noted the tranquility and silence of the neighborhood.” He went on to voice his concern over increased traffic “imagining 100 or so cars driving down the road.”

Ms. Meiklejohn noted she would like to respond to the applicant’s attorney suggesting a Site Plan Review was not in order. She told the Board they needed to recognize that the surveying, maps and plans referred to were done by the applicant. “No offense to Bryn, but that is a major conflict of interest” she said adding “the applicant has essentially done all the site work” and asked “how do you go on that?” Ms. Meiklejohn went on to note that Four Winds Farm was a designated scenic road. She referred the lack of buffering for the 10 parking spaces (north side of the Apple barn and close to the road) and the location of the portable toilet facilities would certainly disrupt the character of the road and the fabric of the neighborhood. “All of this is woeful negligence of the Board” she said.

Ms. Laurenitis noted that if the Conditional Use Permit is approved, “I am assuming each of the uses would be listed separately” adding “this is all general.” Ms. Laurenitis asked about parking and bringing people in on buses “that is not addressed in this application” she said, adding “I just feel like the Board doesn’t plan to give me an answer.”

Mr. Throop explained that the Board had reviewed the application for completeness and that even though it was accepted as complete that does not prevent the Board from asking for additional information if they need it.

Mr. Meiklejohn interjected "I am just curious." He noted the newest uses and said "I think we are all scratching our heads" adding "first we are told how weddings are related to agriculture and now funerals and reunions too?" He added "this is now a commercial venue that happens to have a farm attached. This is setting up a commercial venue in a zone it has no business being in." Mr. Meiklejohn told the Board "anyone can get a farming license. I scratch my head at how a New Hampshire VFW reunion has anything to do with agriculture. It is a commercial opportunity that happens to have a farm attached." Mr. Weeks replied "the Board has to discuss that" adding "I ask myself if they fall under the ordinance as well."

Susie Mansfield introduced herself noting she was an "audio abutter." She noted she had a technical question about the need for a drinking water treatment system. Mrs. Holmes replied "I don't see where that has anything to do with this." Ms. Mansfield noted the high arsenic content in the water. "I just wonder about it" she said. Mr. Dumas interjected they would provide bottled water for events. Mr. Spencer indicated that the water was being treated.

Mr. Weeks noted "we have lost track here, we have four large events and twelve small events before the Board." He reviewed weddings, farm to table meals and educational events as large events adding "and the applicant would like to further add anniversaries, birthdays, reunions and funerals." Mrs. Homes interjected "we were trying to be specific." Mr. Tucker stood and noted "previously the application was open-ended. You asked us to take that broad language and be more specific. That was the request of the Board." Mr. Galus interjected "we asked for further defined language that would limit an otherwise open-ended list" with Ms. Cass adding "and a distinction of what other events could possibly be." Mr. Weeks noted "so you are changing the work 'including' to the word 'are' on the application.

Mr. Meiklejohn interjected "so any one can apply for a concert is someone is having a birthday?"

Mr. Gifford noted "what the events have to do with agriculture is enjoying the venue and the natural beauty of a farm."

Ms. Von Mertens asked for clarification on the educational events. Ms. Meiklejohn asked for clarification of perhaps a smaller event, a hayride. "I am the last house on the road" she said adding "half my property goes into that trail and my bedroom is not far from the route the hay rides would be taking."

Mr. Lefko asked about signage with Mr. Weeks replying "we heard that testimony at the last meeting." Mr. Galus asked about alcohol "I have BYOB written down on my notes" adding "that could be worse than licensed consumption. I am concerned about that, I'm not sure if that is better or worse." Ms. Cass suggested liability issues

with Mr. Galus replying “for us and for them it is something we have to consider.”

Mr. Weeks interjected “I think at this time, if the Board has no more questions, that we discuss Site Plan Review.” Mr. Throop noted “you have heard the argument for Site Plan Review” adding “currently as the uses associated with this application were interpreted as agricultural activities, it is not subject to Site Plan Review.” He went on to say “if the Board feels these uses constitute a change of use to commercial activities, then Site Plan Review would be required.” Mr. Throop went on to explain that Site Plan Review “gives greater flexibility for the Board to request additional studies as well as greater latitude with conditions you may apply in relation to the Site Plan Standards.” Mr. Throop concluded by noting “you have received a lot of testimony” adding “you need to determine if you agree there is a change of use here. That is what you need to debate and decide.” Mr. Throop noted that if a Site Plan Review was deemed necessary the meeting should be continued to a date and time certain to allow the processing of an application and proper notifications and postings.

Mr. Throop then briefly referenced Chapter 233 *Site Plan Review Regulations* for the Town of Peterborough, and reviewed those activities that do *not* require site plan review and those that do. The members briefly discussed agricultural activities and proposals that may involve a change in use or level of activity.

Mr. Clark asked “so if we grant the conditional use permit it will make the activity agricultural?” Mr. Weeks replied “that is up to the Board” adding “I question it myself.” Ms. Cass agreed noting “we need to talk about that.” After a brief discussion about the definition of agriculture Mr. Weeks said “we have to make a decision on it.”

Mr. Clark asked “what is the benefit? What is our end game?” Chair Weeks replied “site plan review allows the Board to go through and request additional information with regards to a more detailed plan.” He went on to mention parking, screening, storm water management, steep slopes, lighting and noise were all subject to more information and review with Site Plan Review. “You could go as far as having a sound engineer assess the noise” he said. He concluded by asking “how does the Board feel?” Ms. Miller replied “I don’t think there is a change of use and we do not need site plan review.”

Mr. Weeks replied “keep in mind the reasons **why** we think it is necessary or not” adding “if the Board is prepared to say it does not require Site Plan Review and does not want to discuss a more detailed plan than what has been submitted, then we should have a motion and vote on it. I feel we need a more detailed plan than submitted and we should require it.”

Ms. Cass interjected “yes, I would prefer that. I think we need to have a Site Plan Review.” Ms. Miller noted “I don’t think we would get much more information than we have.” Mr. Weeks explained additional information may include drive in/back out plans or location and delineation and surface material of parking spaces. “It may even involve a traffic study for the safety of pedestrians” he said. Ms. Miller asked “beyond what the Police Chief has recommended?” Mr. Weeks replied “yes.” Ms. Miller noted “I just think that is such a burden to the applicant.” Ms. Cass interjected “we need to think about the future, this lives with the land. Just the weight of this suggests we gather more information. We are setting an example here whether we request a Site Plan Review or not.” She concluded by noting “if that is the avenue that informs our judgment then that is the way to go and not rush into a decision.”

Mr. Clark asked “how long will that take? After calculating receipt of the application and meeting noticing requirements (public and abutter) Mr. Throop replied “we could meet October 20<sup>th</sup>”

Mr. Clark shook his head and said “it always seems like there is another hoop. We should make the best decision we can.” “I agree” said Mr. Galus adding “we all want to support the farmers but we have a responsibility to everyone in the town. Where do you draw the line? That is art.”

Ms. Miller asked for clarification on the agricultural activity exception with Mr. Throop re-reading it out loud. Ms. Miller interjected “there is also something called *analysis paralysis*.”

Ms. Cass noted her concern that weddings were not agricultural events, “and I worry about future applicants.” Another brief discussion about the definition of agriculture followed with Ms. Cass noting “I would like to move forward, this ordinance did not start well but it got approved and we have to work with it.”

Mr. Weeks asked “do I hear a motion?” Mr. Zeller interjected “before I was convinced a Site Plan Review was in order but now I am not so sure.” He went on to say “the devil is in the details, the noise of an apple falling off a tree is going to be on the radar screen” and asked “what defines what is acceptable in this particular ordinance?”

Mr. Weeks replied with reading a portion of the noise ordinance located in 245:33-c *Noise*. Mr. Throop simply stated “noise is addressed in the zoning ordinance and n applicant must comply with it.” He also noted for the record “you have to decide if the event is an agricultural activity or commercial use that would trigger a change of use.” Mr. Weeks noted “given the zoning definition of agriculture and the proposed uses of anniversaries, birthdays, reunions and funerals, it is my opinion they do not

fall within the definition.”

Mr. Zeller interjected “I think we are getting away for what the town voted on in May.” Mr. Galus and Ms. Cass both disagreed and further review and discussion of RSA 21:34a continued with a good look at the definition of the term agri-tourism.

Mr. Weeks read from RSA 21:34-a. with Mrs. Dumas noting the definition of agri-tourism meaning attracting visitors to a working farm for the purpose of eating a meal, overnight stays, enjoying the farm environment, education of farm operations or active involvement in the activity of a farm that is ancillary to the farm operation.”

Mr. Troop noted the interpretation of a statute was being debated in the courts at the moment adding “there are strong differences of opinion if agri-tourism is included in agriculture” he said. Mr. Week interjected “I don’t believe it is.” Attorney Little interjected “hooking up the milk machines while dressed in a tuxedo.”

As the Board continued to discuss whether or not the applicant should apply for a Site Plan Review several members of the audience voiced their opinions about allowed uses and what was and was not an agricultural use. Attorney Tucker interjected “if the four additional uses have muddied the water we will take them out” and stay with the functions that are allowed under the regulation today, what is part and parcel to agricultural use.”

Mr. Weeks noted “we are back to the question of the need for a Site Plan Review. Do I hear a motion that the proposed uses *do* or *do not* constitute a change in use?”

**A motion was made/seconded (Miller/Clark) that the activities requested in the Conditional Use Permit by Dancing Ground Farm LLC are seen as agricultural and there for do not constitute a change in use.**

Mr. Zeller asked for clarification on what a “yes’ vote meant. He was told a yes vote would result in a Site Plan Review not being required.

**Members Clark, Miller and Zeller voted yes and members Cass, Galus and Weeks voted no. Mr. Throop noted the three to three vote and said “the motion fails.”**

**A motion was made/seconded (Cass Galus) that the activities requested in the Conditional Use Permit by Dancing Ground Farm LLC constitute a change of use and that Site Plan Review is required.**

**Members Clark, Miller and Zeller voted no and members Cass, Galus and Weeks voted yes. Mr. Throop noted the three to three vote and said “the motion fails.”**

The Board briefly discussed what to do with a deadlocked vote with no conclusion.

Mrs. Holmes suggested Ms. Cass should have recused herself as she lives in the neighborhood. Ms. Cass defended her position indicating that she is not an abutter and that she is approaching this application objectively and with an open mind, adding that with the vast amount of land belonging to the Monahon property “almost everyone is in the neighborhood.”

A brief discussion about the time frame of the application followed along with discussion about continuation of the application. Attorney Tucker strongly recommended a vote in the case “you have a Conditional Use Permit request that has been accepted as complete” he said.

Mr. Weeks noted “so the question before the Board is to proceed with the Conditional Use Permit or continue the application.” Ms. Cass asked if the Conditional Use Permit could have conditions attached. Mr. Throop replied “yes, and Mr. Weeks and I are ready to spell them out.” Ms. Meiklejohn interjected “I would like to reiterate that the Board is still required to incorporate the guidance of the Master Plan which is silent on this. You don’t have standards you can apply to this” adding “this is a very slippery slope. This ordinance is flawed, that has been stated by the Board.” Ms. Meiklejohn added “the wording is troublesome” and called for a step-back, “the Board should work on it and come back with a new proposal in the spring” she said.

Attorney Tucker stood and said “I respectfully disagree. You have an ordinance on the books and a specific time period in which to make a decision. We have answered every question put before us.”

With respect to the timeline Mr. Weeks noted the Board had until mid-November (the 15<sup>th</sup> or 17<sup>th</sup>) he said “before the time runs out” and suggested (especially with the deadlock vote) the Board continue the public hearing to get input from the town attorney.

Mr. Throop noted it would allow for additional information to be obtained. “Like questions associated with liquor and research into the case law that has been mentioned during the meeting.”

Mr. Weeks noted the significance of the decision and suggested they continue the application to seek legal counsel. Mr. Clark interjected “I am not in favor of delaying.”

**A motion was made/seconded (Weeks/Cass) to continue the public hearing to a date and time certain of October 20, 2014 at 6:30 p.m. giving the Board the opportunity to meet with town counsel. Mr. Galus, Mr. Zeller, Ms. Miller, Mr. Weeks and Ms. Cass were in favor. Mr. Clark replied “no comment.”**

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant