

**TOWN OF EAST WINDSOR  
PLANNING AND ZONING COMMISSION**

**Public Hearing #1586  
March 8, 2011**

**\*\*\*\*\*Draft Document subject to Commission Approval\*\*\*\*\***

The Meeting was called to order in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT. at 7:00 P. M. by Chairman Ouellette.

**ESTABLISHMENT OF QUORUM:**

A quorum was established as five Regular Members (Devaney, Gowdy, O'Brien, Ouellette, and Thurz) and one Alternate Member (Mulkern) were present. Chairman Ouellette noted all Regular Members would sit in, and vote, on all Items of Business this evening. Following in accordance with the service rotation schedule Alternate Member Mulkern would also join the Board regarding discussion on all Items of Business this evening as well. Also present was Town Planner Whitten.

**GUESTS:** Mark Simmons, Board of Selectmen's Liaison to the Planning and Zoning Commission; Dick Pippin, Selectmen; and Kathy Pippin, Board of Finance.

**ADDED AGENDA ITEMS:** None.

**APPROVAL OF MINUTES/February 22, 2011:**

**MOTION:** To APPROVE the Minutes of Public Hearing #1585 dated February 22, 2011 as written.

**Gowdy moved/Thurz seconded/VOTE: In Favor: Unanimous**

**RECEIPT OF APPLICATIONS:** None.

**WORKSHOP – PROPOSED FARM REGULATIONS:**

Chairman Ouellette thanked the audience for coming to the Farm Workshop, and turned discussion over to Town Planner Whitten. Town Planner Whitten advised the audience the documentation provided for the public tonight is the last draft of regulations which have resulted from discussion over the last couple of years. The Commission is pretty happy with the draft but realize not everyone will be completely satisfied.

Town Planner Whitten summarized a few of the recent changes:

- Crops have been added to the Regulations as a Permitted Use in any zone and under any amount of acreage. Previously a Special Use Permit was required.

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- Livestock is allowed in any zone but the property must contain 1 acre of useable pasture. The number of livestock will be regulated for NON-COMMERCIAL FARMS.
- Animal Shelters – Town Planner Whitten presented a map showing shaded areas which contain 2 acres or less. She noted that it is likely that most of the shaded properties might have issues regarding attaining set back requirements for animal shelters. The Commission has lowered the set back distance; the intent is to try to minimize issues that might arise due to proximity to neighbors.
- The number of chickens allowed to be owned has been lowered at the recommendation of the Health Department – their concern was that the feed might attract rodents. The proposed Regulations now allow a person to own 10 chickens per 1 acre of useable pasture area for NON-COMMERCIAL FARMS. No restriction for commercial farms; the farmer bears the responsibility to use Best Management Practices.
- With regard to little boy chickens the Commission wants to keep them out of higher density areas; rather than banning them entirely they have restricted them to parcels containing 3 or more acres. The waiver provision is available. Town Planner Whitten suggested this is a good beginning point.
- Pig styes must now be located 300’ away from any dwelling unit; owners must follow Health Code guidelines for keeping pigs.
- Regarding Section 305.3c7 (Site Suitability – filing a sketch map/diagram) Town Planner Whitten suggested the whole point from the Commission’s point of view is the need to get compliance, as it is for any citizen. She read the section for the audience. Town Planner Whitten suggested the Commission is basically requiring a sketch map; assistance via the GIS mapping system is available through the Planning Office.
- Regarding Section 305.7 – Other Related Uses, Subsection a – Agriculturally Related Uses – this section has been reformatted for clarity.
- Manure Storage – Town Planner Whitten referenced the specifics of Section 305.7 Other Related Uses, Subsection d – General Livestock Requirements, Bullet 1.

Chairman Ouellette opened discussion to the audience:

**Selectman Dick Pippin, 37 Woolam Road:** felt requiring animal shelters to be located 100’ from a dwelling unit was ok but not from the property line; 100’ from wetlands is excellent but 100’ from a side yard is a little much, especially when there is nothing next door; 60’ would be only 10’ from the building line; 40’ is probably more proper. Town

Planner Whitten requested what his suggestion would be; Selectman Pippin suggested 40' from the property line, and increase the front setback, 150' from wetlands and watercourses, 100' from a neighbor's dwelling, 40' from side or rear, 100' from front line. Selectman Pippin suggested using the same distances for livestock (manure) shelters.

Selectman Pippin questioned why he couldn't have 1 rooster and 9 chickens; he didn't feel roosters should be excluded for being a nuisance.

**Joan Nichols, Connecticut Farm Bureau:** suggested some farmers go to some expense to establish a manure management system, if someone new comes in next door does the farmer have to move the pit (away from the dwelling unit)? Town Planner Whitten and Chairman Ouellette replied negatively. Ms. Nichols suggested no matter what set of numbers you use that condition could exist; she felt the 100' is a little much but it does give the Commission more wiggle room.

Chairman Ouellette suggested the Commission will look at all the numbers again.

**Madeline Thompson, Rye Street:** suggested she is caught in the horse situation, she lives in a location where she has manure stored beside her. She suggested the Commission has to realize that when you say 40' from the property line, and if one horse drops 100 pounds of manure per day, the odor and flies from that situation..... Chairman Ouellette suggested the situation being described by Mrs. Thompson would fall under Best Management Practices. Mrs. Thompson suggested the neighbors are using their back yard as a pasture, they have had 3 horses there last year which would create 300 pounds of manure per day. Chairman Ouellette questioned what Mrs. Thompson's suggestion would be? Mrs. Thompson felt it should be 100' at a minimum. She noted that when you are trying to entertain in your back yard and you have horses next door dropping manure the flies and odor creates an unpleasant situation. Mrs. Thompson suggested she may be the only one in town with this situation but it's a bad situation.

**Sharon Muska, (East Road):** suggested the last time a workshop was held there wasn't time to talk about farm stands, she submitted a written handout of comments regarding these structures. Mrs. Muska indicated their farm stand is 215 square feet, which is smaller than the Commission is proposing. Their suggestion would be a size of 576 square feet, which is the same size as a 2 car garage. Mrs. Muska felt that was more reasonable.

Mrs. Muska gave examples of how people want to be treated at a farm stand. She cited there is considerable competition from supermarkets. Produce needs to be protected and kept under shade or inside; there needs to be room for sampling the produce. Mrs. Muska spoke of the "body ring of retail" which is personal space expected by the customer. Mrs. Muska suggested what this Commission thinks of as a farm stand may be a push cart to another Commission.

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Mrs. Muska did appreciate the waiver provision.

Chairman Ouellette suggested Mrs. Muska brought up a number of good points. He questioned what number triggers the need for a Building Permit? Town Planner Whitten indicated she would check on the specifics with the Building Department, but suggested the farm stand being considered by the Commission could be a shed on wheels. Mrs. Muska questioned why it needs to be mobile? Town Planner Whitten suggested the idea is to be temporary, and the mobility allows the flexibility to move the stand closer to the road. Commissioner Mulkern suggested the difference is a farm store is permanent while a farm stand is temporary. If you have a permanent structure you could be open only 6 months but could also be open 12 months. Commissioner Mulkern felt the intent of the farm stand is a much smaller scaled down operation.

Commissioner Gowdy suggested a 576 square foot structure is 22' x 26' and compared it to the size of the meeting room which is 22' x ????????. He suggested the 576 square foot building was a relatively large structure.

Town Planner Whitten and Chairman Ouellette suggested the area of the regulations being discussed didn't apply to the Muskas as they operate a commercial farm. Tom Muska spoke up to note they want to build a larger structure. Town Planner Whitten suggested that scenario would fall under the Zoning Regulations and require Mr. Muska to come in to file for a Zoning Permit. Mr. Muska indicated they only want to sell their own stuff and be open 4 months of the year. Chairman Ouellette questioned what would the requirements be if they did nothing? Town Planner Whitten suggested the Commission is suggesting a 300 square foot farm stand. Chairman Ouellette questioned what is the requirement today? Town Planner Whitten suggested it's unclear.

**John deRham, Thompson Farm Trust:** suggested defining the size of the farm stand by the size of the farm, as an example allow a 300 square foot structure for a farm 3 acres or less; if you have a 300 acre farm that's a bit different. He suggested Kloter Farms has redefined what is a mobile non- permanent structure. He suggested if a building has a foundation then it's permanent. Town Planner Whitten suggested if a structure has a permanent foundation then it's a farm STORE, and shouldn't be next to the road. She suggested the Commission is allowing very relaxed regulations to allow the stands to be closer to the street. There is also the concern for sightline issues. Chairman Ouellette concurred; the Commission is concerned with proximity to the road. He questioned how a 1000 square foot farm stand placed 200' off the road would be classified? Town Planner Whitten suggested that would really be a shed.

**Rachel Thompson deRham:** suggested if you take a look at the Johnny Appleseed stand owned by Gardner Peterson located near the Ellington town line she felt that was a good looking building; it's large enough to go inside and walk around. Town Planner Whitten questioned if that was a permanent structure? Mrs. deRham replied affirmatively, but suggested they operate it only part of the year. Town Planner Whitten suggested that would qualify as a farm STORE. John deRham again referenced the

Kloter buildings. Commissioner O'Brien concurred, noting a 14' x 40' structure can be moved on the road. Commissioner O'Brien recalled the Muskas building has electricity but is only open 4 months out of the year; he questioned if they remove the electricity? Mr. Muska indicated it's a temporary farm store. Commissioner O'Brien suggested a concern raised by the Commission was that if they had the ability to move that building seasonally and moved it to the road you would have a giant structure next to the road, which could become a visibility issue.

**John deRham:** suggested allowing 300 square feet within a certain set back distance; if a structure is set back further then it could be a larger building. Discussion followed regarding the terminology "temporary" vs. "permanent" in relation to use of the structure vs. physical permanency/immovability of the structure. The issue of how a structure was taxed by the Town was raised. Town Planner Whitten suggested if it's not going to be used seasonally then it should have a Building Permit and Zoning Permit; if it's to be used as a temporary stand then the owner needs to clarify where it's going to be located.

**Selectman Dick Pippin:** suggested if a building is truly portable then it should be moved back behind the building line after completion of the growing season.

**Paul Andersen, Main Street, Broad Brook:** suggested he would have grave concerns with the farm stands being required to be moveable; there are farm stands that are close to the road that were built there and have been there and are closed a number of times during the year. If it's back from the road it would be following regulations that already exist. If it's close to the road he would question why anyone cares if it's moveable? Either it's allowed or not.

**Don Grant, 114 Broad Brook Road:** suggested that if a structure is taxed by the Assessor as part of the real estate it's considered permanent. If the Muska stand has electricity it's probably taxed as permanent. A moveable or temporary structure is taxed as equipment. Discussion followed regarding considering the tax basis of the structure as the basis for the definition of temporary vs. permanent and farm stand vs. stand store. Town Planner Whitten reiterated the intent of the farm stand was to have a small structure of limited size located closer to the road.

**Joan Nichols, Connecticut Farm Bureau:** returned discussion to Section 305.3 – Keeping of Livestock, Subsection c – Site Suitability, Item/Bullet 7 – Site Map. She reiterated that this Commission may consider the GIS map for the site map/sketch, but she has seen situations where if this type of language is put in the regulations the next Commission may not consider the GIS map good enough. If you have a disgruntled neighbor they can cause issues. Her suggestion would be to refer complaints/concerns to the Department of Agriculture (DOA), the Department of Environmental Protection (DEP), UCONN, etc. If it's a setback issue then the Zoning Enforcement Officer can address those, a livestock or manure management issue would be handled by the DOA, water quality issued would be handled by the DEP. Town Planner Whitten suggested something is needed to show the farmer is in compliance. Commissioner Thurz

suggested he thought the State was buried; Ms. Nichols replied negatively, noting you have the DOA, etc. Town Planner Whitten noted the language references a “sketch”, not an A-2 Survey. Discussion followed regarding language revisions to reflect the use of the Town’s GIS system documents rather than surveys. Commissioner Devaney felt the requirement should be listed in the regulations, and if the complaint needs to go to the DOA, fine. Town Planner Whitten pointed out no one will call the DOA, the Town is the first contact, and the Town would go to the GIS.

Commissioner Gowdy questioned the speakers why they opposed the requirement for the sketch? Ms. Nichols suggested she has seen problems. With regard to wetlands issues it’s one thing to look at the GIS system to identify the wetlands but the only person that can identify a wetlands, and give proof of the 150’ distance, is a soil scientist. Commissioner Gowdy felt he hadn’t heard a good reason raised to remove the requirement.

**John deRham:** suggested it’s a dispute resolution clause; the farmer has to prove they are compliant with the regulations and the neighbor must agree. Town Planner Whitten suggested they would need to prove that anyway. Mr. deRham questioned if the problem would go away and that would be the end of a situation if this item remained in the regulations? Town Planner Whitten replied negatively, noting if it’s a wetlands issue the farmer would need to hire the soil scientist to define the wetlands. Mr. deRham questioned how this clause resolves the dispute if the farmer has proved themselves? Town Planner Whitten felt that if this clause wasn’t in the regulations it wouldn’t change a thing; staff would still go through this process. This just defines that the farmer needs to be compliant, as does anyone else.

**Don Grant:** questioned who is responsible for the burden of proof? Town Planner Whitten suggested that would be the responsibility of the farmer. She questioned that if the farmer goes through steps 1 through 6, how do you show to yourself that you’re compliant?

**John Thompson, Rye Street:** suggested he completely supported Town Planner Whitten because the only way to adequately access the impact is to provide this type of information; he didn’t see why it’s such a burden. He felt it should be part of what’s required.

Discussion continued regarding language revisions. Town Planner Whitten suggested moving the language away from being complaint driven and making it a guideline issue. Mr. deRham suggested including language that anything which commences after 2011 would help; everyone in this room is grandfathered.

**John Thompson, Rye Street:** requested that during the Commission’s deliberations of setbacks and manure storage issues they take into account the manner in which it affects the existing homeowner, and how you can degrade their life. He suggested there is a lot

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of wisdom and thought that went into the numbers proposed; if the Commission lowers those numbers you will potentially devalue their lives.

**Tom Muska:** requested to raise a point about temporary signs. He noted he wants to put a 1.5' x 3' sign at intersections which will be for 3 day sales/events/promotions. Chairman Ouellette questioned how people would know it was their sign? Mr. Muska suggested it would be next to another sign. Chairman Ouellette and Town Planner Whitten questioned if he was asking for a second sign? Mr. Muska replied yes. Commissioner Gowdy requested clarification that Mr. Muska wanted 2 signs when the regulations say you can have one? Mr. Muska replied affirmatively, noting it would be just for 3 days. Commissioner Gowdy pointed out the problem if 10 farmers wanted to do the same thing; he suggested the Commission must write regulations which are applicable to everyone. Town Planner Whitten suggested swapping out the 3 day sign with the regular sign. Mr. Muska suggested they also hold special events which would require permits. He questioned if he could put the 3 day sign over the face of the regular sign? Town Planner Whitten suggested he could change the sign daily if he chose to. Don Grant also pointed out the availability of the waiver provision. Paul Andersen questioned if the waiver is an administrative process or must the person come to the PZC for permission? Chairman Ouellette and Commissioner Gowdy suggested the farmer needs to come to the Commission for approval of the waiver. Town Planner Whitten noted the Temporary Special Event Permit is an administrative process.

Mr. Muska referenced the requirement that 70% of the products being sold must be grown by the farmer. He suggested most of their produce is grown on their farm but occasionally – if their crop is damaged - they may need to purchase additional produce. Town Planner Whitten noted everyone is going to be reasonable with regard to implementation of these regulations; if you need to purchase apples from another source it would be difficult for staff to analyze the Muska's produce from another farm.

Chairman Ouellette queried the audience again for comments; no one requested to speak again.

Chairman Ouellette reviewed the continuing process for adoption of these regulations, including referral to CRCOG prior to holding a Public Hearing. He suggested probably nothing will happen before May.

**MOTION: To TAKE A FIVE MINUTE BREAK.**

**Gowdy moved/Devanney seconded/VOTE: In Favor: Unanimous**

The Commission RECESSED at 8:21 p.m. and RECONVENED at 8:30 p.m.

**CONTINUED HEARING: Herb Holden Trucking** – Special Use Permit/Excavation for renewal of earth products removal permit for property located on Wapping Road

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(Rear), owned by Northern Capital Region Disposal Facility, Inc., [M-1 & A-2 Zones; Map 36, Block 49, Lot 17C] (*Deadline to close hearing 4/12/2011*):

Chairman Ouellette read the Hearing description, and opened the Public Hearing on the Application for Herb Holden Trucking. Appearing to discuss this renewal request was Jay Ussery, of J. R. Russo & Associates, LLC. Also available in the audience was Herb Holden, owner of Herb Holden Trucking.

Mr. Ussery opened discussion by reporting the notices were sent out to abutters, and mail forms have been submitted to the Planning Office. He summarized the Application as being a renewal of the gravel operation approved over a year ago; the operation is located on Wapping Road behind the old NORCAP landfill and north of the railroad tracks. The property is owned by NORCAP/Botticello.

Mr. Ussery reported they had appeared at an earlier meeting but because the requirements for groundwater monitoring samples were not complete they had asked for an extension of opening the Hearing. Due to the extensive snow accumulation Mr. Holden had to plow access routes out to the monitoring wells. The samples have now been taken but the results are still pending. Mr. Ussery felt the results would be available for the next meeting, which would give them time within the statutory limits to complete this Application without seeking an extension. Their request at this time is to continue the Hearing until the next meeting.

Chairman Ouellette noted the Hearing has been opened. He queried the Commission for comments for the Applicant; no one had any questions at this time. Mr. Ussery noted he will address Town Engineer Norton's comments at the next meeting.

Chairman Ouellette recalled that Julie Thomas from the DOT (Department of Transportation) had attended previous meetings. Mr. Ussery reported her concerns involved the location and improvements to the railroad crossing, and the cattle crossing. Mr. Holden reported that all that work has been done; all that remains is the installation of the gas sleeve which is scheduled to go in the third week of March. Chairman Ouellette recalled that Ms. Thomas had said she would be in touch with the Planning Office, and had wanted to see some of the hydraulic data.

**MOTION: To CONTINUE the Public Hearing on the Application of Herb Holden Trucking for a Special Use Permit/Excavation for renewal of earth products removal permit for property located on Wapping Road (Rear), owned by Northern Capital Region Disposal Facility, Inc., [M-1 & A-2 Zones; Map 36, Block 49, Lot 17C]. The Hearing is continued until the Commission's next regularly scheduled Meeting on March 22, 2011 at 7:00 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.**

**Devanney moved/Gowdy seconded/VOTE: In Favor: Unanimous**



**BUSINESS MEETING/(1) Incentive Housing Zone** – tabled; no update available.

**BUSINESS MEETING/(2) Route 140 Sewers** – tabled.

**BUSINESS MEETING/(3) Correspondence:**

- Letter dated March 8, 2011 from Tom Muska and Sharon d/b/a Applebrook Farm regarding input to discussion on Farm Regulations
- News article submitted by Tom Muska and Sharon: *Guest News* – “Agriculture Has Changed – So Must Local Policies” written by Stu Nunnery.

**BUSINESS MEETING/(4) Staff Reports:**

- Town Planner Whitten reported the Zoning Enforcement Officer is following up on enforcement for her recent sign sweep.
- Chairman Ouellette noted the Commission recently heard a presentation on the HIFZ (Highway Interchange Floating Zone). As follow up to that presentation Chairman Ouellette reviewed the HIFZ Regulations; he questioned if the HIFZ was intended to be on the east side of Route 5 as well as the west side? Town Planner Whitten read an excerpt from the regulations, noting that it refers to property “abutting Route 5”. She felt the regulation didn’t reference either side specifically. Chairman Ouellette questioned that both of the parcels involved include frontage on Route 5? Town Planner Whitten replied affirmatively. Chairman Ouellette recalled there was extensive discussion during the original Hearings; the Commission was concerned with building height, signage, and other items. Town Planner Whitten noted she wasn’t present during the original Hearings; she re-read the regulations and noted it clearly says “abutting Route 5” which would include both sides.

Chairman Ouellette recalled some of the original discussion, and the intent of the creation of the HIFZ. He felt one of the objectives was to get better projects (he referenced the Wendy’s complex), which is allowed through the flexibility of the regulations.

**SIGNING OF MYLARS/PLANS, MOTIONS:**

- Motion - 53 Bridge Street, LLC.

**ADJOURNMENT:**

**MOTION: To ADJOURN this Meeting at 8:50 p.m.**

**Gowdy moved/Thurz seconded/VOTE: In Favor: Unanimous**

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Respectfully submitted,

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Peg Hoffman, Recording Secretary, East Windsor Planning and Zoning Commission  
(3938)