

**MINUTES OF THE MEETING
PLANNING BOARD
March 8, 2018
7:00 PM**

MEMBERS PRESENT: Robert Smith, Chairman; Mark Beliveau; Acting Chairman Bedrock Gardens application; David Cedarholm; Edward Bannister; John LaCourse, BOS rep; Howard Hoff, Alternate & Wayne Lehman, Alternate.

OTHERS PRESENT: Bob Munger; Jill Nooney; John Forti; Erick Sawtell; Chuck Cox; Jeanne Livermore; John Silva; Scott Grumbling; Trisha Jenkins; Laura Spector-Morgan; Caren Rossi, Planning & Zoning Administrator.

Robert Smith, Chairman opened the meeting at 7:12 PM.

Review and adopt draft minutes of 1/25/18 & 2/2/18

John LaCourse made a motion to accept the minutes as presented.

David Cedarholm second.

Vote: all, minutes approved

PB1617-11

A continuation of an accepted Site Review Application from Jill Nooney & Robert Munger, 45 High Road, Lee NH. Property is known as Lee Tax Map #24-08-00; 24-08-0100 & 24-09-00. The applicant is proposing to expand their existing garden tours and associated events. This is a possible final hearing.

Robert Smith, Chairman explained that even though his eye sight is back, Mark had been chairing the meeting so he will turn it over to him to continue to run.

Mark Beliveau, Acting Chairman explained that when we last met on this application, we had some conversation as a Board in public with all in attendance, we were questioning whether the proposed uses of the property fit within what was permitted in the zoning ordinance. There were enough uncertainties, growing uncertainties, we felt like we needed to consult with town council to get some guidance on how to properly interpret and apply the zoning ordinance in the context of this application. We did that and contacted Laura Spector Morgan who is here tonight and she reviewed the situation and we met with her in an attorney client confidential non-meeting and she shared with us her opinion and we had some good conversation around that. As a Board, we want to share what are thinking is now after getting advice from our attorney. The Board will help explain as well as Laura Spector Morgan will help. We are not going to treat this as a wide open conversation, we will answer

questions the applicant may have and then talk about where to go from here. Our attorney reviewed the ordinance and the application and materials that the applicant presented and all of the different uses proposed to make, some already make and some proposed to make. This is one of the reason its very helpful to have fresh eyes look at things because through this process we came to realize that the definition of Agriculture in Article III and the definition section doesn't actually included Agriculture Tourism. As a result Agriculture Tourism as its described in our ordinance isn't a permitted use in this district, in the residential agriculture district. Then what we are limited to looking at is how the word agriculture and farm is in fact defined. Out of the uses that you make and propose to make at the property. One of the obvious uses that is clearly listed here as a permitted use is the *production, cultivation, growing, harvesting and sale of any floriculture, or horticultural crops including but not limited to berries, herbs, maple syrup, fruit, vegetables, flowers*, so forth, you are familiar with that provision. Any uses that fall within that description are permitted by right and can be conducted on your property within that district. Much of what you described in the materials that you gave us, in particular the Jan 25, 2018 memo that you gave us we feel do not fall within that definition and because ag tourism is actually not a described permitted use, it falls outside of it.

He briefly went over the items from the Jan 25, 2018 memo.

Education. Continue to provide education opportunities to the community ranging from direct hands-on experiences, classes for credit, and these types of things. Our definition of Agriculture does not include educational activities anywhere in it. Agricultural Tourism does include school tours, because Agricultural Tourism is not a separately permitted use, that does not come into play.

The state law was recently amended, we talked about this at our last meeting, however are zoning ordinance has not been amended to include some of the newer provisions that are in the state law.

Sales. We will continue to maintain a nursery and grow and sell plants. We will also sell locally grown or made products. We also sell branded items, we interpreted that as items with the Bedrock Garden logo. Such as T-shirts, sweatshirts and hats. Our conclusion here is that certainly as I mentioned earlier, growing and sell plants are a permitted use, you also mentioned bee colonies, even though they died previously, you might bring them back, this is expressly permitted as well. We believe the selling of branded items will also be permitted.

Laura Spector Morgan explained that there is a limit as to how much money can be made on those items, sales can't exceed the average yearly dollar volume of the products sold from the plants. If the tee shirts hats, sweat shirts, outsell the plants than that does not fall within your definition of marketing.

Mark Beliveau, Acting Chairman stated that is language that is in the ordinance as well.

Mark Beliveau, Acting Chairman continued addressing the items from the Jan. 25, 2018 memo.

Cultural Events. Some of the things mention in the letter were: *plays, small concerts, sculpture exhibits, photography exhibits, things like this, again, the town's definition of Agriculture does not include cultural events.* However there is some language in the Agricultural Tourism definition that talks about events, however we have the same problem that Agricultural Tourism is not a separately permitted use under the ordinance.

Community. *Members of the community come visit, relax, meet friends, experience the ambience and be exposed to nature. Life celebration events, such as baby showers, wedding ceremonies, and memorial services, have a children's garden.* Again, same issue, not within the definition of agriculture and some of these are not even within the definition of agg tourism. Particular weddings. Those items are not expressly permitted and therefore without a variance from the zoning board can't go forward.

Horticultural Experience. *Seeing and learning about plants, nature, ecological management, and those kinds of things.* It's not entirely clear exactly how that fits in with some of the other things, education and community that you mention but it would essentially be the same analysis.

Laura Spector Morgan stated that the only thing that wasn't specifically addressed were the locally grown or made products that come from other vendors. She didn't know if he wanted to mention these as well.

Mark Beliveau, Acting Chairman continued to explain that under the sales category, you propose to sell local grown or other products. I believe you mentioned items such as scarves, wind chimes and dryer balls and so forth. You gave a comprehensive list, we made the assumption that none of these things are made from plants or things that you grow at Bedrock Gardens, their sale would not fall within the definition of agriculture. It's possible that some of those thing come from products you grow at Bedrock Gardens but to the extent that they don't, they would not fall within the permitted use under agriculture.

Mark Beliveau, Acting Chairman continued based on speaking with council, our conversation with council and conversation here with the Board. I am going to ask for a motion. What we are thinking about as a Board, so you understand this, is to make a finding, that in fact, during the course of the site plan review as your proposal crystallized more for us, are interpretation of the zoning ordinance, as a planning board, many of these uses are not permitted, we don't have the authority to wave that in any way. We would render a decision that spells out in some detail for you in a letter, you would have the right to appeal that decision to the ZBA and you would seek a variance from the ZBA for the uses that are not expressly permitted. A couple more things and then you may have questions. What we talked about as a Board and what we will be willing to do, is if you decide to in fact appeal that decision to the ZBA we would as a Board essentially suspend your application, it would continue to be a pending application. If you resolve things in a way that is acceptable to you thru the ZBA process and want to come back to continue you can come back and pick right up. We will have to send out notices to notify people the date of the meeting but you would not have to refile and start over. One more thing is, in our zoning ordinance in 2006, we amended it and included a

paragraph capture Agriculture Tourism but it did not get included among the uses that are recognized and permitted as agriculture or a farm. In fact there is a NH Supreme Court Case that essentially found that the State definition of agriculture does not include aggr tourism unless you expressly say that it includes aggr tourism. That was a very significant piece for us. That the Supreme Court has interpreted the state statute in that way and our definition for agriculture is substantially similar if not virtually identical. The state statute has changed since then but at the time it was the same. We feel that is a fairly compelling information that we received and need to follow. Even if we were to conclude that aggr tourism somehow was permitted under the ordinance, from my summary, several of the things listed in your letter, don't fall within the aggr tourism definition in any event. Are interpretation is it is not a permitted use in the first instance and even if we were to conclude that it was, many of the things you want to do don't fit within our definition and you need relief from the ZBA anyway.

Mark Beliveau, Acting Chairman asked the Board if they were in agreement with the way he articulated things.

They were. He then asked if any other Board members had anything to add.

Nothing was added.

Mark Beliveau, Acting Chairman asked the applicants if they wished to speak.

Jill Nooney stated they have gathered some of their thoughts. She read a letter into the record. (In file)

Bedrock Gardens is a property engaged in agriculture.

The primary activity occurring on the 37 acres of Bedrock Gardens is horticulture. This includes but is not limited to planting, dividing, harvesting fruit, deadheading, cutting down, removing, staking, pruning, composting, labeling, watering, mulching, potting up and propagating plant material in addition to mowing. We also sell a selection of our products.

This establishes the Gardens' activities as agriculture, and, as such, agritourism is a permitted use.

In addition to plants and seeds, Bedrock Gardens 'sells' an experience of horticulture in situ. The experience, educational and recreational, serves to broaden the public's awareness of ornamental horticulture, and the out-of-doors experience.

A germane analogy was offered by Dave Cedarholm in the last Planning Board Meeting. Loosely paraphrased, he asked: What if there were an orchard of heirloom apple trees open to the public for the purpose of education about and appreciation of these trees, the cultivation of, pruning, pests, storage of crop, etc. The public was invited to view, learn about, taste and appreciate the various varieties but the farm did not engage in retail or wholesale sales of the apples, scion wood or seeds. Would this be considered agriculture and the public's visitation be considered agritourism? Yes. And so thus should Bedrock Gardens.

Mark Beliveau, Acting Chairman stated he appreciates that she shared the letter. They may have been some conversation in our last meeting about the idea of, it was actually in the contexts of the new state statute, recently revised state statute, if there is new language that talks about primary use and ancillary use/accessory use. We had conversation around that, this idea that classically an accessory use is something that is subordinate to the primary use. The easy example is an in-law apt is deemed an accessory use to the primary use of the property of a single family residence. The sense in past conversation and likely still the same is the primary use as a gardens with the proposed use would overwhelm the growing of plants and bushes and trees.

Jill Nooney commented that is why people come, there would be no reason to come if that weren't the draw.

Mark Beliveau, Acting Chairman stated in your letter from January you listed a whole host of things that are not what you just described.

Jill Nooney stated she feels like they have been a lead a little astray by Caren. She said shoot for the moon, this is your wish list and from that you can widdle down. She said shoot high and that is exactly what we did and I am regretting it at this point.

Caren Rossi stated then the Board asked you to outline the activities you want because at every meeting more thing that you have had or are going to have come out in discussion. The Board said to you in December, make a list of everything you are going to have out there.

Jill Nooney stated that we want, not necessarily that we think we are going to get. This is a negotiating document.

Mark Beliveau, Acting Chairman stated that this had a long evolutionary process. I can share with you a significant turning point or when my eyes were opened, it was when you actually submitted this January letter, it was actually much more information, and detailed, and I think it was the same time that during your season, April to October, but I believe the proposal was open every day. Am I remembering this correctly? Essentially 7 days a week, and I think, as I recall, the Board was like, that was the first time we saw that, that combined with all of the things you would like to do, was when we said ok, this is a different proposal. This is something much more than we understood it to be. And so that is what lead us to say, OK, now we are really trying to figure out, what does the zoning ordinance allow? You have this definition under agriculture that lists all these things, then you have the agg tourism definition and you remember last month how we struggled, we talked about what does that mean, we talked about different scenarios, Dave may have laid out some scenarios, I might have, we were playing kind of hypotheticals, well what about this, and what about that and that was in the spirit of trying to understand our ordinance and how it should be applied. Because we couldn't as a group we weren't comfortable that we had a good handle on it, in the context of this applicant that is where we said we need to get outside council to put fresh eyes on this

and guide us on how to interpret this. We don't come to any applicant with a preference. Our job is to listen to the applicant, understand to the best of our ability, read the materials and then apply our ordinance. We are limited by our ordinance, our discretion is very limited. When it comes to permitted uses, we have no discretion. That is what this has turned into. Oh, Ok, can all of this actually take place here? That is where we sought legal advice to all of this.

John Forti (very hard to hear) stated we are here because we were told we need to build a parking lot to get people off the street. We meet twice in a space that we believe was really trying to meet everyone's wishes and we moved it as far as possible from the neighbors and we were told put out everything you could wish for or dream because you will be bargained down. If you say a week, you'll get 3 or 4 days. We were encouraged on many levels to put it every possible activity, record everything we have done and also put in everything we could dream of. This is not our wish list. We don't want to open this year and be open 7 days a week, we don't want to be open dawn to dusk, and this is what we were encouraged to do. What we came here to do though, was get a parking lot approved. And to get parking off the street as we were first requested to do.

Bob Smith, stated he needs to correct this, this is not the case. Last year, Caren informed...

Caren Rossi clarified fall of 2016.

Bob Smith, continued, I apologize, fall of 2016 Caren met with Bedrock Gardens and explained that they are not in compliance with our regulations. You need to come to us before you preceded this next year, meaning 2017. That is actually how it all got started. The fact that we felt that you didn't meet the necessary needs of what existed there, we got talking about a new parking lot, that's because the people on the street had registered complaints about the parking on the street. Furthermore we got complaints from the fire department about the parking on the street. You can't go back to the parking lot, you have to go back further, that is my point. You are correct from the parking lot on.

Jill Nooney stated when we met with you in your office, you said we were under agg tourism. (speaking to Caren)

Caren Rossi, stated yes, that was my mistake.

Jill Nooney stated and we went on this.

Caren Rossi stated and that is why we addressed it. As your list came in of things that you have had there, you have had auto mobile shows, you have had concerts there that is not your wish lists because you have had those. As this list came in we went out for legal review to see if is really allowed. Yes, I told you in the very beginning to have garden tours and sales of plants, things like that were allowed. I have been to Bedrock Gardens for garden tours and that's it. I don't know what else goes on until the list came out what exactly you do there. Yes, I did tell you shoot for the moon because I didn't think you'd get 7 days a week, like Make a Difference isn't allowed to operate on Sundays and they are on Rt. 125. I

absolutely told you that, I tell everyone that. They are not going to give you more than you ask for.

David Cedarholm state that he would like to point out that this is a process, and this is the first time this Board has had to deal with an agg tourism issue. This is the first time our ordinance has been tested in this respect. This is often how the process gets carried out when everyone is breaking new ground. What is really important is to acknowledge that the statues are written to enable us to adopt an ordinance. What is precedent here is our ordinance, and the ordinance currently doesn't included agriculture tourism under agriculture that is the issue or at least one of the issues. There are certain activities that you do that fall under the realm of agriculture tourism but it sounds like there are some that don't. But the obstacle is not that, the obstacle is that agriculture tourism is not in the definition of agriculture in our ordinance.

Erick Sawtelle spoke. Just so everyone is one the same page here, you're saying that any other activity other than growing plants, are not allowed as part of an agriculture operation in the residential zone.

Mark Beliveau, Acting Chairman stated, no, and if that was the impression, he apologizes. In the ordinance page 13 on paper section III, E, gives the lists of what consists agriculture and farming.

Erick Sawtelle asked in #1 under this section. *The words "agriculture" and "farming" shall mean all operations of the farm, but shall not be limited to.* And then it goes through the list and then *L Any other practice or activity on the farm incident to, or in conjunction with such farming operations, including , but not restricted to:* and then #7 *A roadside farm stand or farm market, as defined below, shall be considered part of an agriculture or farming operation and not considered commercial, provided that at least 50% of the average gross sales yearly dollar value is attributable to products produced on the farm or farming operation by the stand or market operator.*

Erick Sawtell continued Farm Market and Roadside Farm Stand are defined below.

Farm Market - Permitted activities include but are not limited to; the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts; pick- your-fruits, vegetables and nuts; community supported agriculture; & agriculture tourism. So how can you say it isn't included in the definition of agriculture? There is also a definition for Roadside Farm Stand and Agriculture tourism below too.

Laura Spector-Morgan stated that he is right.

Mark Beliveau, Acting Chairman stated that how he would respond to this is that it is not separately included. It can be used as part of a farm market. I don't think Bedrock Gardens is a farm market but what is also compelling to us is the Supreme Court weighed in on the

definition of agriculture, which is substantially consistent with our definition of agriculture. And said it did not include agg tourism.

Erick Sawtelle stated but the law has changed.

Mark Beliveau, Acting Chairman stated but our ordinance hasn't changed.

Erick Sawtell asked if you are saying our ordinance trumps the state definition of agriculture.

Mark Beliveau, Acting Chairman no, I am not saying that at all. We are bound by ordinance. Our interpretation of the ordinance is that it does not include agg tourism. In fact that the state has changed the state statute in recent years does not affect our ordinance unless we change our ordinance to track the state.

Erick Sawtell stated that he disagrees. Are you saying that agriculture zoning is under the permissive zoning definition? Do you know that difference between permissive zoning and prohibitory zoning?

Mark Beliveau, Acting Chairman stated he does.

Erick Sawtell asked him to explain what it is then. Agriculture law in NH is more of the prohibitory zoning where if it is not specifically addressed its allowed that is covered in the declaration of purpose in 672:1. He asked if someone can pull it up and read it. He continued while you are looking that up, let me read you something. This comes from *Purpose of Doctrine, New Hampshire Practice, Land Use Planning and Zoning, Third Edition, Atty. Peter Loughlin "Permissive" v. "Prohibitory" Zoning Ordinances*
Most zoning ordinances in New Hampshire are of the so-called 'permissive' variety. That is, in the absence of a variance or special exception, such an ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use. The rule of accessory use is in response to the impossibility of providing expressly by zoning ordinance for every possible lawful use. This is the important part. Even under a permissive ordinance, a given use may be allowed even if it is not explicitly allowed. Those types of uses are said to be accessory to the use that is expressly permitted. Most ordinances expressly provide for some accessory uses, although the common law provides for them when the ordinance is silent on the matter. The opposite of a "permissive" ordinance is a so-called "prohibitory" ordinance which allows all uses not expressly prohibited.

Mark Beliveau, Acting Chairman asked Erick, before you move on from here, what is the point you are trying to make?

Erick Sawtelle replied the point is that agriculture law in NH is more of the prohibitory type.

Mark Beliveau, Acting Chairman asked where does it say that?

Erick Sawtelle stated he is getting to that. He continued to read 672:1 Declaration of Purpose. *Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;*

For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture and agritourism as defined in RSA 21:34-a, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

Mark Beliveau, Acting Chairman stated that is fine, and I'll respond and then Laura can respond as well. The Lee ordinance doesn't do what the statute is saying needs to be done. We have an ordinance that expressly allows agriculture activities. In fact, when we adopted it in 2006 it was virtually identical to what the state required. I think what you are reading, there is a number of areas in the law where the state has weighed in. Where the state has said to municipalities, you can't unduly limit or unduly restrict a certain activity, from what you are reading they have spoken to that vein regarding agriculture uses. If we extremely limited or didn't permit in some fashion. Then I think this will be applicable. We permitted it as broadly as the state statute as was in effect in 2006. I don't think, and I'll look to Laura.

Laura Spector Morgan replied to Mark, I think you are correct. I think the purpose of the statute is to provide that towns can't just by not addressing agriculture there by prohibit it. You do address it and you do permit it. Agriculture tourism has become something in the recent years and you do include a definition of agriculture tourism there and it is in your definition of farm stands and roadside farm stand. I note that those are only permitted if the roadside stand and the farm stand activities, at least 50% of the average gross sales yearly dollar value is attributed to products produced on the farm or farming operation by the standard market operator. While I believe they sell plants I don't believe that any information has been provided to demonstrate the income from plants vs, the income from everything else. Given what the other activities are, I suspect they cannot meet that standard.

Mark Beliveau, Acting Chairman stated the applicant did give us some information on the sales of plants.

Laura Spector Morgan stated she did see it was include but did not see an actual dollar value.

Erick Sawtelle asked so the problem is, if you look could up 21:34a II B 5, the definition of marketing and read it please.

Laura Spector Morgan stated that the state statute does provide marketing includes ag tourism but the town ordinance hasn't been amended to reflect that. There is nothing in the law that requires the town to have the exact same definition of either agriculture or agriculture tourism as the state.

Erick Sawtelle said back to my original question, are you saying that the town ordinance trumps the state definition which says you cannot unreasonably regulate agriculture activities?

Laura Spector Morgan stated I am saying that the town is free to define agriculture differently than 21:34a, the town cannot unreasonably restrict agricultural activities but the way that it is defined is that you cant infer a prohibition from the failure of an ordinance to recognize the use and this ordinance does recognize the use. So I don't think what the town has done violates 672:1.

Erick Sawtelle stated you are saying the use is agriculture but it specifically says activities in accordance, shall not be limited too. How can you prohibit something if it isn't explicitly pointed out where it's an accessory use and that is what 672: III says.

Laura Spector Morgan stated there is case law out there that talks about the use of this phrase, including but not limited too. It says basically, while those lists aren't exhaustive, the other types of uses that you want to fall under that category have to be similar to the uses that are listed. In this case, the accessory uses that are listed, preparation for market, delivery, storage, transportation of farm supplies, transportation of farm workers, forestry or lumbering. Irrigation of crops, the marketing of materials from the farm and then the roadside stand. Provided at least 50% of the average gross sales comes from products of the farm. I don't know the other activities that are proposed here, weddings concerts, such like that, fall within, in fact I am confident in saying that they don't fall in the general category of uses that are permitted as accessory uses.

Erick Sawtell asked then one other question, can you look up 674:32a, Presumption.

Laura Spector Morgan read *NH RSA 674:32-a Presumption. – In accordance with RSA 672:1, III-d, whenever agricultural activities are not explicitly addressed with respect to any zoning district or location, they shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with best management practices adopted by the commissioner of agriculture, markets, and food and with federal and state laws, regulations, and rules.*

Laura Spector Morgan continued this is not a situation where agriculture activities are not explicitly addressed, they are explicitly addressed.

Erick Sawtelle stated but the point that Mr. Beliveau is making is that these activities are not explicitly addressed in there that were pointed out in the letter. They are not allowed because they are in our zoning so then there is a difference of interpretation. What is the activity, is it agriculture or is the activity specific thing you are doing, like growing crops or raising cows or selling items that reflect the culture history of America. Where do you draw the line that is the point. That is where the accessory use comes in it says you can't address every single activity. If its accessory to the primary use of the land, then it should be allowed unless it is specifically prohibited. These activities are not specifically prohibited.

Mark Beliveau, Acting Chairman stated then for the sake of discussion, let's assume what you are saying is accurate, so then taking that as a premise. That if a use is accessory to the primary use, and its not expressly prohibited, then its permitted, right? Are you then also saying then all of the purposed uses that Bedrock Gardens has presented are accessory and therefore should be permitted? It almost sounds like under your construct everything is accessory. That as long as you have a use of a property, anything else you want to do on it is accessory.

Erick Sawtelle stated that is the definition of agg tourism. The wording says, the definition of agriculture *in Article III. The word agriculture and farming shall mean all operations of the farm, but shall not be limited to*, and then the list of examples. And then under L, *Any other practice or activity on the farm incident to, or in conjunction with such farming operations, including, but not restricted to:* My question is, where do you draw the line on whether or not an activity is allowed?

Mark Beliveau, Acting Chairman stated is we look at that language, and as Laura has shared, when you see language such as, but shall not be limited to or including but not limited to. The way the NH Supreme Court has said we should interpret that language is, and I just so happen to have a copy of the case. *The phrase including but not limited to, when used in a statue preceding a list of specified items, limits the applicability to those types of items that are particularized. We call it the term including similarly limits the items intended to be covered by the same type of items specifically listed.* So what the court is saying is that ok, you have in the definition of agriculture you have all this stuff here and then we have got the including but not limiting to. You have to look at the proposal to see if the proposal is similar to those types of things that are specifically limited. Because the law can't cover every scenario, judgement and interpretation have to be applied. In looking at the list the applicant provided us, we in fact applied that interpretation judgement and concluded that the vast majority of those uses don't fit within that category of things listed, within that universe.

Erick Sawtelle asked the category of agriculture?

Mark Beliveau, Acting Chairman stated yes, what the law says, when you have a list like we do, and your list is precede by language that says everything included in this list but not limited to this list, is allowed. The way we figure out what else is allowed, then you have to apply the standard that is given. It's those things that are similar to what is in the list. It's not open ended, if I can do it on the property, therefore it's an accessory.

Robert Smith commented one of the examples that the court gave was a wedding being held on a Christmas tree farm. It didn't fit what the farm or the agg tourism stated.

Mark Beliveau, Acting Chairman asked if we are interpreting it correctly.

Laura Spector Morgan explained that the Forrester case involved a Christmas tree farm, the owner wanted to have weddings on it. The court held that under the state definition at that time, while the weddings might be agriculture tourism, at that time agriculture tourism was not

included in the states definition of agriculture. That has been changed at the state level, but it has not been changed at your level.

Mark Beliveau, Acting Chairman asked when the state changed its statue, are we bound by those changes or can follow our ordinance as written?

Laura Spector Morgan stated I don't think you are bound by the states definition of agriculture, no, I think you get to follow your ordinance as written.

Mark Beliveau, Acting Chairman asked, they didn't put any new language that essential says look municipalities, regardless, we are the state, we are the king, you can only do what we say you can do and we hereby say that you all have to allow agricultural tourism.

Laura Spector Morgan stated that there is a statue that says agriculture tourism can't be prohibited. I don't think your ordinance does strictly prohibits and there is no state law that requires that you use the same definition as the state. In fact the senate bill we were talking about earlier today, I was reading further on it, and it has been amended so now it provides that no town may adopt a definition of agriculture tourism different from that of the state. So the fact that they are looking to add that into the statue, strongly suggests that right now towns have the authority to adopt whatever type of agriculture tourism you want.

Mark Beliveau, Acting Chairman stated we are not required to adopt one, we just aren't allowed to prohibit it?

Laura Spector Morgan stated correct.

Mark Beliveau, Acting Chairman stated he agrees, he doesn't think our ordinance out right prohibits it.

Chuck Cox stated he was at the last meeting and the question then was, was this agriculture? Is this a farm? I think from what I have heard it has been answered in the affirmative. What they are doing is a farm. Or are you saying they are not a farm they are a community garden, id like to get that cleared. That was the question you had before you said you could go on to answer whether they could go on and do agg tourism. If it was a farm I think you said, ok agg tourism is allowed. Now you are coming to what is allowed and what is not. I think there can be some restrictions on what you might allow that is agg tourism. But they are a farm and they should be able to run their program, they should have a parking lot. I don't see how this other thing should get in the way of this. Am I way out of bounds for what you are trying to do?

Mark Beliveau, Acting Chairman stated, no I don't think you. At the last meeting we clearly struggled with trying to interpret our ordinance, so we sought to get advice as we are allowed to do an encouraged to do. We did this and we reported tonight and we shared with you what are belief is. I wouldn't focus too much as to what we said last meeting because we were unclear on how to apply the ordinance to the purposed uses. But now we have obtained better clarity on it. Specifically with regard to your questions, what we have tried to

share tonight is that we have identified certain of the uses that go on there that we believe are permitted, its clear to us the certain things that are permitted. The growing of plants, selling them, the selling of branded items, maintaining a bee hive. Those types of things are clearly within the ordinance. We also included these other uses, reading from the January 25 letter don't fit within that definition of agriculture and therefore we have concluded as a planning board. Sometime we have to interpret a zoning ordinance as part of our site plan review process, and we have done that. State law is when we do that and make a finding on that, applicants are allowed to appeal our decision to the ZBA. Typically in a site plan review or a subdivision role, when we make a decision, the appeal is directly to the NH Superior Court but when we interpret the zoning ordinance and making a decision. The applicant has a limited amount of time, 30 days to appeal to the zoning board. Now, in light of all of this, if the applicant wants to tell us now or later if you want to reframe your proposal and how you are going to use your facility, if you reframe it in a way that is consistent with our interpretation, you don't need to go to the ZBA and we can get on with site plan review. Right?

Laura Spector Morgan replied yes.

Robert Munger asked if the Lee Town adopted the state ordinances as they are, which allows agg tourism, it sounds as though what we are proposing would be permitted. Is that correct?

Mark Beliveau, Acting Chairman stated he would not go that far. He hasn't studied the statue at length. Laura is much more expert on this, correct me if I'm wrong. I don't believe the state statue either says explicitly or even opens the door to if you wanted to have concerts, or weddings. I am not talking about a child or family events. We are talking about third party events.

Laura Spector Morgan stated correct. The definition of agg tourism in the state statue is *attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.* I would say, wedding, concerts, car shows, the yoga, photo shoots, I am not sure those are tradition accessory to agriculture uses.

Robert Munger stated I know that weddings are a hot button, but it sounds like the exposure of people to nature, to plants to horticulture would be permitted under, even doing yoga on the lawn would be permitted under the states regulations so if Lees were the same as the state, those things would be permitted use.

Laura Spector Morgan stated she thinks they might fall under enjoyment of the farm environment.

Mark Beliveau, Acting Chairman asked her to be specific, what are you refering too?

Laura Spector Morgan commented things like garden club visits, small group visits, things like that is what she is referring too.

Robert Munger asked about pruning class with UNH?

Laura Spector Morgan stated she felt that would fall under education.

Jill Nooney asked about yoga?

Laura Spector Morgan replied I doesn't know about yoga.

Mark Beliveau, Acting Chairman stated as you can see, this is not an easy area to interrupt.

Robert Munger asked if there were any plans for Lee to adopt anything in accordance with the state.

Robert Smith replied that there is nothing in front of us at this moment.

Mark Beliveau, Acting Chairman stated he had no idea what a rich source of confusion are agriculture ordinance is.

Laura Spector Morgan stated it's not just you, it's a lot of towns.

Caren Rossi stated, like we said earlier, fresh eyes are what caught this mistake when you look at something over and over you don't see it.

Erick Sawtelle explained his interpretation and involvement of the changes of the agriculture and agriculture tourism NH RSA definitions as well as his opinion of the legislative intent of each. He is just trying to understand where all of a sudden our definition trumps the states definition.

Mark Beliveau, Acting Chairman explained he appreciates everything you contribute to these meetings, I generally do, you are very knowledgeable, you are very engaged in stuff, I very much respect everything that you say, I feel like we have answered this question and out of respect for everyone's time I don't want to want to go through it again, I do feel like we have answered it. What I am going to do at this point, is see if the Board has any other comments they would like to make.

David Cedarholm stated as Erick has pointed out, there is a link back to the farm stand and farm market and the farm market and farm stand each included agri tourism. This is a question for Laura, so what that suggests is that if agg tourism was going to happen, it has to happen at the farm market or the roadside farm stand?

Laura Spector Morgan replied that she thinks it would, and more than that, you have the issue of 50% of sales which is a particular problem here. Yes, the farm market includes agg tourism and the roadside stand includes agg tourism. Agriculture includes those two things, under certain conditions.

David Cedarholm stated so if you want to have agg tourism on your farm, you need a farm market or a farm stand.

Laura Spector Morgan replied she thinks so.

Robert Smith replied according to the state law.

Laura Spector Morgan and Mark Beliveau, Acting Chairman both stated no, according to our regulations.

David Cedarholm continued so that is how we have allowed agg tourism to happen, we haven't prohibited agg tourism, we have allowed it to happen in these two places.

Mark Beliveau, Acting Chairman stated, thank you for brining that back. He then asked any other comments or questions from the Board?

Robert Munger stated our income is all donations. The percentage that we keep talking about for road stands. Our income would be zero.

Laura Spector Morgan stated but you sell plants, you host activities, and you charge fees for your events.

Robert Munger stated we don't charge fees for our events, we have donations.

Laura Spector Morgan asked, do you have a suggested donation?

Robert Munger replied yes, \$10.

Laura Spector Morgan replied for a wedding?

Robert Munger replied, no people coming to an event.

Laura Spector Morgan replied you don't charge anything to host weddings on your property?

Robert Munger stated we haven't, we haven't had that many weddings, 2.

Laura Spector Morgan replied ok. But I think the donations are income, just because you are no setting the amount to come in, if they are paying to come in, that's income.

Robert Munger replied ok.

Mark Beliveau, Acting Chairman stated I think we have had a very good discussion about our ordinance, the way we interpret it, the way we think it applies to the application as it has been presented to us. We are going to in a moment, I am going to ask someone from the Board, it can't be me, to make a motion with regard to what I presented at the outset. And to see if the

Board wants to adopt that motion and move forward in that fashion. The applicant is free to modify their application and present something different to us that fits within our interpretation of the ordinance or if we in fact render, have a motion that gets past, and we render a decision you can appeal that to the ZBA.

Laura Spector Morgan stated and or apply for a variance.

John Forti asked when we frame our application, what is the process for that? Is it beyond tonight and here?

Mark Beliveau, Acting Chairman stated you have submitted, ill use an example of the Jan 25 memo. In fact, ill read the introductory... *At the December 7, 2017, Planning Board meeting, Bedrock Gardens reported that the presented plan met all technical concerns raised. We were charged with providing additional responses to the following:*

1. *Owners make a list of exactly what uses they are proposing for the property.*
2. *What they are proposing for the buffer area between Grumblings as well as both of the parking lots, a planting plan for these areas.*
3. *Firm up the number of dates and the types of events.*
4. *Proof of the sales and the types of items sold.*

Then you set forth responses for all those questions. We had this at the Feb 2 meeting or something like that. That is what is in front of us now, and you are absolutely allowed to supplement your application. Your application is still pending with us. You can supplement it, you can rescind this memo and present a new proposal, and I supposed, but I want to look to Laura to make sure I do this properly, can the applicant if they wanted to tonight say, planning board, we would like to be given an opportunity and substitute it with a new proposal and we ask that you not make a decision tonight. Can they do that?

Laura Spector Morgan replied certainly.

Mark Beliveau, Acting Chairman stated you can do that. If you want to say that to us and say we want to modify this, present something new, more in line with the conversation we had here tonight. Now we have been educated by our town attorney how to properly apply our ordinance, we would welcome to give you the opportunity to design a program, a use of your property that fits within your interpretation and we would continue are meeting tonight. Or maybe to a date certain to consider your new proposal. Is this fair?

Laura Spector Morgan replied sure.

Robert Munger asked do we need to make a decision on that now?

Laura Spector Morgan replied I don't think you need to make a decision now. I think you can have a conversation and report back to Caren what path you would like the Board to take. Would you like the Board to actually issue a decision on your pending application and whether or not it believes it to be a permitted use, or would you like to amend that application

to change what is set forth in your Dec 7 and your Jan 25 letters to further explain exactly what it is you intend to do and to address these other issues that have been raised tonight regarding the income and that sort of thing. But I don't think you have to decide sitting here tonight, we can certainly give you until the next meeting and then the Board can make the decision at the next meeting.

Jill Nooney replied that would be helpful.

Mark Beliveau, Acting Chairman stated if you would like us to advance this conversation to the next meeting, continued in that sense, I'll ask that Board to offer a motion.

Jill Nooney replied that is what we want.

Mark Beliveau, Acting Chairman stated I would ask the Board to continue this public hearing that a date that Caren would suggest to us.

Caren Rossi explained different day/date options and the Board discussed the options.

Robert Munger stated there was a place they could go talk? It seems like there is a lot riding on this.

Caren Rossi directed them to the EOC for their meeting. Jill Nooney, Robert Munger and John Forti left and went into the EOC room to discuss.

Mark Beliveau, Acting Chairman suggested we have very detailed & robust minutes so they are informative for the applicant.

Jill Nooney, Robert Munger and John Forti returned.

Jill Nooney stated we are going to go for a decision now, we are going to appeal to the ZBA.

Mark Beliveau, Acting Chairman stated ok. I am no longer looking for a motion to continue. I think a motion could be along the lines of consistent with the chairman's earlier presentation of our interpretation of the zoning ordinance.

Laura Spector Morgan stated as well as the entirety of the discussion this evening.

Mark Beliveau, Acting Chairman stated, yes as well as the entirety of our discussion this evening. We reddener a decision to that affect. That is the gist of the motion. Would someone like to make a motion like that or some other motion?

John LaCourse stated he would like to make a motion to render a decision that sets forth our interpretation of the zoning ordinance as it applies to the applicant's proposal.

Robert Smith second.

Discussion:

None

Vote: all, motion carried. We will craft a decision and send it in a letter to the applicant.

Mark Beliveau, Acting Chairman continued I would like a second motion to suspend the application but keep it on our docket until such time that we hear from the applicant that they would like to either bring it forward or withdraw it all together.

David Cedarholm stated I would make a motion to suspend the application but keep it on our docket until such time that we hear from the applicant that they would like to either bring it forward or withdraw it all together. A timeline not to exceed 6 months. If the Board has heard nothing, they will revisit it.

Robert Smith, second.

Vote: all, motion carried.

Mark Beliveau, Acting Chairman stated we will write a decision letter and get it out to you in five business days.

Robert Munger stated he wished to thank the Board for their cordial, considerate and long suffering process that we have been through here.

Mark Bellevue, Acting Chairman said and we thank you for your patience.

Chinburg restoration bond.

Caren Rossi explained that they are getting ready to begin construction of the first phase of roadway for Daniels Drive which is the road for the Chinburg Subdivision formerly known as the Cheney subdivision. They will be installing the roadway to the first course of pavement prior to getting any building permits. The only requirement for a bond will be a restoration bond which would cover the costs associated with restoring the land if they were to not complete the pavement and the site needed to be restored. The bond figure is determined by the applicants engineer and agreed upon by the town's engineer. This figure is \$14,600. They will be using a Line of Credit. As part of this LOC they will be replacing the existing passbook account currently held by Walter Cheney for the reclamation bond, which is \$70,000. The total LOC will be \$84,600. If this is approved by the Board tonight it will go before the BOS Monday night for their approval per our regulations.

No Board members had any questions.

David Cedarholm made a motion to accept the restoration bond as presented.

John LaCourse second.
Vote: all, motion approved.

Wayne Lehman made a motion to adjourn at 8:50PM.
Howard Hoff second.
Vote: all, meeting adjourned.

MINUTES TRANSCRIBED BY:

Caren Rossi, Secretary

MINUTES APPROVED BY:

Robert Smith, Chairman

David Cedarholm

John LaCourse, Selectmen's Rep.

Mark Beliveau, Acting Chairman, Bedrock Gardens application

Edward Banister

Wayne Lehman, Alternate

Howard Hoff, Alternate