

**MINUTES OF THE MEETING
PLANNING BOARD
January 25, 2018
7:00 PM**

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

OTHERS PRESENT: Jill Nooney; Bob Munger; Nick Jenkins; Tricia Jenkins; John Forti; Jeanne Livermore; John Silvia; Scott Grumbling; John Shea; Chuck Cox; Elizabeth Salamone; Bill Booth, Building Inspector; Caren Rossi, Planning & Zoning Administrator.

Mark Beliveau, Acting Chairman opened the meeting at 7:00 PM.

MINUTES

Robert Smith made a motion to approve the minutes from 1/11/2018.
John LaCourse second.
Vote: majority, motion carried.

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.

Mark Beliveau explained that as acting Chairman he reviewed the file yesterday. In reviewing the most recently submitted items from the applicant and other interested parties and the historic submittals of the application he revisited it in his mind the issue of the use of the property, is it a permitted use under the zoning ordinance. We have chatted about this at past meetings, no resolution was reached but it was talked about. I was with Caren Rossi for over 2 ½ hours trying to assimilate all of the different information received on this project understand it and what's allowed in this district under the umbrella of a farm. In my mind the looking at all of the information that has come in, what was particular most helpful was the letter dated Jan 16 from the applicant. The letter did a good job responding to the open questions from Dec. 7. The more

he looks at the proposed uses for the property, some historic and some expanded the more he can't quiet conceptualize how this fits under the farm category. Caren Rossi has also done a lot of thinking of this. Caren came up that it would be a good idea to get a legal opinion from outside council to determine if what is being proposed is a permitted use under our zoning ordinance. This issue of zoning, permitted use is really the Zoning Administrators job with the BOS authorized to enforce, it does not rest with the planning board. But the planning board needs to understand the use as to how it pertains to the review and the ordinances. Where this intersects with our work, typically it is immediately clear with the Zoning Administrator, Caren and she will either send them to the ZBA or to the planning board for review. As more and more as learned how the property is being used and how it is proposed to be used and expanded. In also looking at the state statute that address farming and ag tourism, that Erick Sawtelle submitted a helpful email, in the contents of recent amendments. Looking at those changes, which are not in our ordinance, Is this an allowed use? As this application has come together it would be the time to have outside council look at the proposed use to see how it fits within the zoning ordinance, if a legal opinion comes back it is a permitted use under the agriculture farm category, then site plan review moves forward if the legal opinion finds it does not fit under the farm agriculture category and its really kind of a public garden with a small flower growing operation where the plants are sold then the applicant will need to go to the ZBA to seek relief and the planning board process will remain on hold until the approvals are/if sought. This is the common practice, if not uniform practice across the state.

Caren Rossi explained that she also struggles with the ag tourism portion of the use. When she originally met with the applicants the fall of 2016, I thought sure, they meet the agg definition because they sell flowers and they have walks and a few other activities, and she never questioned it until yesterday when she and Mark where going through the recent submittals. Specifically the "accessory uses to the primary farm operation". It almost feels that the farm operation is secondary. If they are indeed a farm, it's very unclear to me. When I looked at the new revised law, the most recent submittals and our regulations it's not clear. We want to ensure that we do this correctly. I apologize, I realize it's the 11th hour but in order to do it and do it right, I am not comfortable making the decision as it is very unclear to me it's not black and white it is very gray.

Caren Rossi explained the process. All of the pertinent information gets sent out to an attorney for their opinion of the use. If they determine that the use as presented does comply with our zoning then the planning board will

continue with site review. If not, then the applicants will need to go to the zoning board for approvals on the proposed uses and then back to the planning board for continued site review. She explained if they are going to go to the ZBA it will be a public hearing.

The Board and Caren Rossi discussed how the statute is written, the regulations and discussed these.

Erick Sawtelle commented that the list of uses included in those uses the word "sales" was added as a permitted use not to mean that you have to sell them just to clarify that they are allowed to be sold. The legislative intent was that agg tourism would supplement, was to add to the farm income and there has been a great deal of discussion as to whether the wording should be supplemental or accessory.

Mark Beliveau asked if the word supplemental was used in the most recent amendments because he hasn't seen it.

Erick Sawtelle said they have not changed it yet, its discussion.

Mark Beliveau read our current Ag Tourism Definition.

Robert Smith commented that they have also hired John Forti, an executive director. Show me another farm that does this? He agrees, we need legal advice.

Erick Sawtell commented to be sure to not limit it to it just being a farm, is it agriculture? Not just a farm.

Caren Rossi stated it is not cut and dry, unfortunately.

David Cedarholm and Robert Smith discussed the purpose of the regulation. David Cedarholm explained he was just play devil advocate and not really feel this way.

David Cedarholm stated that the number of other agg tourism events that are around town and we need to be sure to do it correctly.

The Board members discussed the regulations and possible interpretations and scenarios of them.

Public comment

Robert Munger stated that they have been growing, cultivating and producing for over 30 years. Now we have added visitors, and this is what the neighbors are complaining about. Thinks we are losing track of what the neighbors are talking about.

John Forti, Executor Director at Bedrock Gardens, part time employee but generally an educator of Agriculture. We talk about farming as a verb like it's just the activity. But agriculture, farms and farming speaks to the preservation of farms and open space. Lee by the whole states view of things is targeted for tourism and agg tourism. He's an advocate & educator for this. He advocates that we recognize this 1740's farm that has floriculture and horticulture is a farm. He continued to explain that their goal is to teach about farm life.

Scott Grumbling 55 High Rd. He believes the Board is going down the right path by getting legal opinion. In 2006, he built a horse facility. He was hit by the tax assessor as a commercial use. They ended up in litigation to resolve that it was not a commercial. If you choose to run a tack shop or sell an off farm product in the viewing room, you need to get a variance to act a s a commercial operation in the residential zone. Before he can plug the vending machine in, he needs a variance. He needs to play by the rules and they should too. He feels this is a commercial activity and they need to also follow the rules.

Pat Jenkins, lived across from where the proposed parking lot is going to be for 30 years and across the other side of the road for 20 years. She commented that the neighbors did not have a problem with Bedrock Gardens as a private garden, they welcomed it. Jill & Bob have put in a lot of time and money and we appreciate that. But the problem has come because they have, on purpose, formed a public garden, and an executive director. It's a business once it becomes public. You have to have many people come in to support this business. We now have noise, congestion and frequency which have nothing to do with farming. As a neighbor, this is where I stand. They need to bring in many people to support the public garden, she understands it, but don't want to live with it.

Mark Beliveau explained that if everyone in the audience was still in favor of this application, we would still be having this same discussion. It's the job as a planning board member to do their best job to the best of their ability.

Pat Jenkins stated she is also on the Heritage Commission and pointed out that South Lee is a Historic Area. As John Forti pointed out it's a 1740's farm. You are in a historic part of town, you are also on a scenic road. This road is a town road and there are issues to look at this side too. It's not just weather the neighbors want it or it but its other facets that the town residents want.

Mark Beliveau explained we, the planning board are governed by our regulations. There has been much discussion with the agriculture laws and it's not clear to us if the use is allowed or not. Sometimes you need to go to a third party and ask for a legal opinion. Our job is not to say we want it to not. We deal with the facts and our regulations.

Caren Rossi explained that the applicant and the town have the same attorney so it will be another attorney who doesn't interest in either party.

Pat Jenkins asked what the attorney will get.

Caren Rossi stated that the attorney will get everything that has been submitted so far to the file.

Chuck Cox pointed out the equine law and how it's written in the RSA. It's very similar to the horticulture law. Perhaps we need to clarify our town regulations after the outcome.

Robert Munger requested an extension of the application.

Jill Nooney asked what the chances are to use the offsite shuttle until this gets resolved.

The Board determined if the use is allowed or not, they cannot authorize anything.

John LaCourse made a motion to continue the meeting until such time as the Board receives a legal opinion on the use and able to schedule the Planning Board meeting. The direct abutters will be mailed a courtesy mailing of the new meeting.

Robert Smith second.

1/25

Vote: all, motion granted.

Noble Farm Commercial Park Blasting-

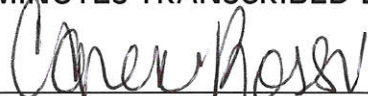
Caren Rossi showed pictures and explained that to continue with the required drainage for the 100,000 sq. ft. warehouse, they need to blast as the ledge is too dense. She showed the Board pictures and the plan.

The Board had no issues with the request.


Robert Smith made a motion to allow the blasting as presented.
John LaCourse second.
Vote: all, allowed to blast.


Wayne Lehman made a motion to adjourn at 9:15PM.
David Cedarholm second.
Vote: all, meeting adjourned.

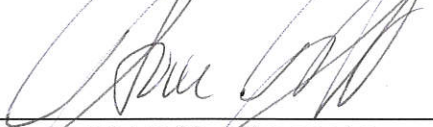
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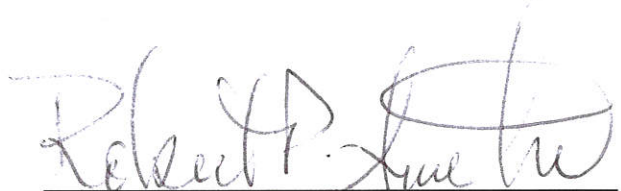

Caren Rossi, Secretary


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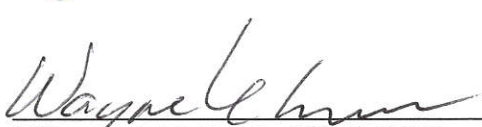

Mark Beliveau, Acting Chairman


David Cedarholm


Howard Hoff, Alternate


Robert Smith


John LaCourse, Selectmen's Rep.


Wayne Lehman, Alternate