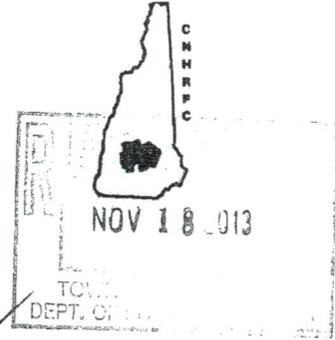


Central New Hampshire Regional Planning Commission

28 Commercial Street ♦ Concord, NH 03301

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DATE: November 14, 2013
TO: DUNBARTON PLANNING BOARD
FROM: MATT MONAHAN, CNHRPC
RE: GIOVAGNOLI SITE PLAN

The applicant, Thomas Giovagnoli, submitted an application for property Tax/Lot Number D6-04-02 totaling 83+/- acres on land owned by the same for the purpose of constructing a 46' x 588' barn to house 20,000 egg laying chickens. The site is located at 57 Twist Hill Road within the Low Density Residential District.

CNHRPC received a set of 11 x 17 plans for the proposed Site Plan by November 7, 2013. The plan sets reviewed were entitled AGRICULTURAL SITE PLAN TAX MAP D6, BLOCK 4, LOT 2 57 TWIST HILL ROAD, DUNBARTON, NH dated August 13, 2013 and consisting of sheets 1 through 5 of 5 as prepared by McCourt Engineering Associates, PLLC of 42 Ezekiel Smith Road, Henniker, NH 03242 and stamped by Jennifer B. McCourt, PE, and Jacques Belanger, LLS.

Pursuant to the request of the Town of Dunbarton Planning Board, CNHRPC has reviewed the plans for compliance with the Dunbarton Zoning Ordinance, Dunbarton Site Plan Regulations and applicable requirements. This memorandum is intended to apprise the Planning Board of requirements of the Dunbarton Site Plan Regulations that are missing from the plan as well as zoning and general planning issues that should be considered with this proposed Site Plan. CNHRPC understands that the application has been accepted as complete (April 17, 2013) and will not assess the completeness of the plan with this review memorandum. It is recommended that all waivers are made in writing and any that are granted are documented on the recorded plan set.

I. TOWN OF DUNBARTON ZONING ORDINANCE & SITE PLAN REGULATION REQUIREMENTS

The following are advisory comments based upon the Town of Dunbarton Zoning Ordinance, Site Plan Regulations and Site Plan Checklist Requirements used during the consideration of materials received by CNHRPC pertaining to this proposal.

Dunbarton Zoning Ordinance Requirements:

ACTIONS REQUIRED BY THE BOARD: NONE IF THE APPLICANT IS NOT PROPOSING SIGNAGE

1. Zoning Compliance – CNHRPC is of the opinion that the proposal is a use permitted by right according to the Table of Uses within the Zoning Ordinance. CNHRPC understands that there are some questions surrounding whether or not the project will require a

Special Exception. CNHRPC staff are not attorneys and recommend that any legal interpretation of the issue should be done so by Town Counsel, who has issued a letter dated May 31, 2013 stating that a Special Exception should not be required. That said, it is also the opinion of CNHRPC that a Special Exception is not required for the project for two reasons:

A) Based upon a planner's understanding of state law, it is the Zoning Ordinance, not the Site Plan Regulations that have the authority to determine where in town certain uses are permitted. As a Special Exception is a way to implement this authority, it seems that the Zoning, not the Site Plan Regulations, have the final say on what is permitted where in town and by what method and the Dunbarton Zoning Ordinance states that the use known as "Livestock, Poultry and Swine" are a use permitted by right, not exception. In short, state law stipulates that the Site Plan Regulations do not have the authority to over-ride the zoning on a question of where uses are permitted. Here is a more detailed explanation:

- i. The purpose of the Zoning Ordinance, in part, is to regulate land uses, including where uses are permitted in town (RSA 674:16.I.d). The purpose of Site Plan Regulations is to guide development (RSA 674:44). Additionally, the Dunbarton Zoning Ordinance echoes the provisions of the RSA when it defines "Site Plan Review." CNHRPC's conclusion here is that state law stipulates that the Zoning Ordinance, not the Site Plan Regulations, governs where in town uses are permitted. This means that what the Zoning Ordinance says in regard to where uses are permitted is the ultimate authority on the topic and the Site Plan Regulations do not have the authority to restrict where uses are in town.
- ii. Dunbarton Zoning Ordinance Article 4 states, in part that: "Except as herein provided, no... land shall be used except for the proposed permitted in the district as described in this section..." This states that the table of uses in Article 4 is the authority on where uses are permitted in town – just like the RSA.
- iii. Within the table of uses there are specific uses listed under five headings. Every application has to fit in one of the 46 or so specific use categories under the various headings. It is CNHRPC's understanding that the proposed use has been defined as "Livestock, Poultry and Swine" by the Planning Board and this use is permitted by right, not Special Exception.

So, taken together, it is the zoning table in Article 4 that has the authority on where uses are permitted in town. State law says this authority rests with the Zoning Ordinance and Article 4 clearly states that the table of uses is for that purpose. Additionally, the Site Plan Regulations, by state law, do not have the authority to indicate where a use is permitted in town – they can only guide how that use is developed, not if it can be. Article 4 says the use is permitted by right, not Special Exception, so we do not think the Town can require a Special Exception in this instance.

- B) It appears that the application of the definition of “commercial” in the Site Plan Regulations is being misinterpreted. In order for this definition to apply as it appears it is being used there would need to be a specific use listed under the “commercial” heading in the table of uses that is more applicable to the proposed use than the “Livestock, Poultry and Swine” use listed under the heading “agricultural.” In short, no matter what that definition says, the use still has to be applied to a specific use in the table of uses (not just the heading) and the one that seems to make sense is “Livestock, Poultry and Swine.” Basically, the term “commercial” appears only as a heading in the Zoning Ordinance Table of Uses – it is not a specific use. Again, we feel the Planning Board should refer to the May 31, 2013 letter from Town Counsel regarding this issue. If further legal clarification is sought Town Counsel should be consulted again, though some of the topics outlined here are discussed in the letter.
2. The property seems to comply with the 100’ setback requirement specified as item number seven as part of the Table of Uses.
 3. Article 13 Signs – The plans reviewed by CNHRPC did not depict signage. Will signs depicting the business be located on the property? If so, they should be depicted on the plan and the requirements of the Dunbarton Sign Ordinance would need to be adhered to.

Dunbarton Site Plan Requirements:

ACTION REQUIRED BY THE BOARD: REVIEW AND CONSIDER EACH ITEM INDIVIDUALLY

4. Section VI.B.5 (Deed Restrictions on Plan) – The deed for the property, Book 233, Page 1467 (MCRD) states that commercial pig farms shall be prohibited on the lot in perpetuity. Per this Section, such a restriction needs to be listed on the plan as a plan note.
5. Section VI.B.6 (Aquifer Locations) – Per this Section, any aquifers need to be delineated on the plan with a note indicating the source of the information. If none exists a plan note could indicate this.
6. Section VI.B.19 (Wetland Delineation) – It appears that only portions of the wetlands were delineated on the site within 75’ of the proposed improvements. This is not an uncommon practice, though a waiver should be requested by the applicant for delineating wetlands on the rest of the property.
7. Section VI.B.29 (Solid Waste & Snow Storage) – The plan does not depict a dumpster location or a snow storage location. Compliance with Section VII.B.L cannot be determined without the dumpster location.
8. Section VI.B.30 (Parking) – Parking areas, including the number of spaces, are not delineated. Without this information in place compliance with Section VII.B.K cannot be determined, though the applicant has indicated in the application there will be two spots.
9. Section VI.B.35 (Utility Contact Information) – Per this Section, utility contact information needs to be indicated on the plan; this information was not provided.

10. Section VI.D.4 (Landscaping Plan) – This Section stipulates that a landscaping plan is required though none was present. In the absence of such a plan, compliance with Section VII.B.I could not be determined.
11. Section VI.F (Other Documents, Approvals and Permits) – A septic tank approval permit has been issued by the New Hampshire Department of Environmental Services for a 300 gallon per day system. Additional permits required include an NHDES Dredge and Fill Permit. Additionally, NHDES Alteration of Terrain (AOT) permit may be required. The roadway will be expanding from 12' to 18' and this change should be part of the calculations. Per a discussion with Ridge Mauck at NHDES the additional disturbance area (i.e. the additional 6') would need to be part of the calculations. The Board should ask that the applicant provide total area of disturbance calculations, to include the additional 6' to widen the road (and the proposed 11' gravel access road), to determine if an AOT will be required. Finally, the Building Permit application initially submitted for this project states that an existing Town driveway permit exists for the property. CNHRPC did not receive a copy of it during this review. All state and local permits in effect for the project should be listed on the plan.
12. Section VII.B (Architectural Design Standards) – Per this Section, the Board needs to determine if, in their opinion, the proposed building is compatible with the surrounding area. It may be useful to compare the proposed structure to other agricultural barns/facilities in town. For reference there are six or seven with various sizes. The most relevant may be Cater Stables who have a structure that is 23,000 + square feet in size.
13. Section VII.D (Exterior Lighting Standards) – The plans reviewed by CNHRPC did not fully depict exterior lighting or lighting details. As such, compliance with this Section could not be determined.
14. Section VII.E (Public Safety) – This Section specifies that the Police Chief and Fire Chief shall weigh in on the public safety concerns. Compliance with this section would be achieved by addressing the concerns of both Chiefs per department head reviews. Details on these reviews are specified below in Section III Other Comments.
15. Section VII.G (Groundwater) – Per this Section, the Planning Board shall determine if the proposal will not contaminate groundwater. To ensure compliance with this Section, the Board should consult the Town Engineer on the issue while assessing stormwater adequacy.
16. Section VII.M (Buffers) – The applicant has depicted the 100' buffer in accordance with the Zoning Ordinance. Details of the buffer strip contents would assist with being able to determine compatibility with this Section. Given the nature of abutter concerns regarding the project, a robust buffer strip is of particular concern.
17. Section VII.O (Signs) – The plans reviewed by CNHRPC did not depict signage. Will signs depicting the business be located on the property? If so, they should be depicted on the plan and the requirements of the Dunbarton Sign Ordinance would need to be adhered to.
18. Section VII.P (Stormwater Management) – This Section indicates that the Health Inspector shall determine the adequacy of the stormwater management standards. The Board should seek the Health Inspector's input, but also rely on the feedback of the Town

Engineer on this issue. Without this feedback compliance with this Section cannot be determined.

19. Section VII.Q.4 (Internal Traffic Patterns) – Though the applicant has provided an access road around the building, along with a widening the access road to 18' to comply with the Fire Chief's concerns, full compliance with this section cannot be determined as the plan does not depict an overall internal traffic pattern consistent with this Section.

Waivers Requested from Site Plan Regulation Items:

ACTION REQUIRED BY THE BOARD: VOTE ON WAIVERS REQUESTED.

CNHRPC understands the applicant has requested the following waivers (though the Planning Board has not acted on them at this time):

20. Site Plan Regulation Section VI.B.1 – For surveyed property lines, utilizing the NH State Plane Coordinate System, showing their bearings and distances and showing monument locations every 1,000 feet. This can be a common waiver request given the size of the parcel and the location of the construction within the middle of the property.
21. Site Plan Regulation Section VI.B.2 – For showing a Boundary survey with a maximum error of closure of 1 in 10,000. Distances shall be to the nearest 100th of a foot and bearings to the nearest 10 seconds.
22. Site Plan Regulation Section VI.B.20 – For features such as existing water courses, water bodies, trees, landscaping, existing foliage lines, other vegetation, rock ledges, stone walls, and any other human made or natural features, in accordance with Section VII.A Design of the Development.

The Planning Board should formally consider either granting or denying the waiver requests as the public hearing process has already begun. Site Plan Regulation Section V.H outlines the process for granting a waiver. The Board should follow this section for each waiver request and vote on each waiver individually based upon the criteria. If waivers are granted they should be listed on final plan set.

II. DEVELOPMENT OF REGIONAL IMPACT

ACTIONS REQUIRED BY THE BOARD: VOTE ON WHETHER OR NOT THE PROJECT IS A DEVELOPMENT OF REGIONAL IMPACT

23. In accordance with RSA 36:56 (and Site Plan Regulation Section V.N), the Board shall determine if the proposal is a development of regional impact:

“A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact.” Site Plan Regulation Section V.N outlines a process for determining regional impact. The Board should follow this criteria and vote on whether or not the proposal is, in the opinion of the Board, a development of regional impact. That said, the proposal does not appear to have a regional impact due to its location in town.

III. OTHER COMMENTS

ACTIONS REQUIRED BY THE BOARD: CONSIDER THE APPLICABILITY OF EACH ISSUE LISTED.

The following are advisory comments based upon commonly held planning principles and the review of the plans received. These comments represent the opinion and professional discretion of the reviewer in considering the materials received in relation to this proposal.

24. The CNHRPC is of the opinion that the Town Engineer should review the proposal for adequate drainage, potential water quality concerns, traffic and other engineering issues.
25. Based upon meeting minutes the Planning Board has asked for a driveway/grading plan – presumably with cross sections. The plans reviewed by CNHRPC did not contain these items.
26. Meeting minutes from the January 31, 2013 Board of Selectmen meeting (the applicant was requesting a reduction of the building permit fees associated with this project) indicated that the project will require 20,000 gallons of water each day for the operation. Subsequent information and testimony by the applicant has indicated that water needs will be 1,200 gallons per day; is one of these numbers in error or do they speak to different components of the project? This should be clarified to indicate what the total water usage will be on the site per gallon, per day.
27. Several department heads have indicated that they have concerns with the proposal. The Board should consider each item individually and determine if the concern has been addressed. Concerns include:
 - a. Police Chief: Adequate site distance at the driveway for the proposal. Is the Chief satisfied with the turning radius document?
 - b. Fire Chief: Concern about access along roadways less than 12'. Applicant is proposing an 18' travel way with one area 12' wide located within the wetland crossing. Is this acceptable to the Chief? Also, are the fire suppression methods adequate and consistent with the requirements for a building/structure of this type and size? The Chief should verify NFPA compliance regarding fire suppression.
 - c. Conservation Commission: Applicant is proposing siltation fencing around the wetlands. Is this acceptable to the Conservation Commission?
 - d. Highway Department: Concern regarding weight limit. Specific mitigation measures, as agreed upon between the Highway Department and the applicant should be listed as plan notes.
28. There are several plan notes that should be added to the final plan set to ensure compliance with discussions at public hearings and abutter concerns. These include, but may not be limited to:
 - a. Deed restriction regarding commercial pig farms as stated above.
 - b. Scratch area cleanup procedures.
 - c. Highway Department Weight limit mitigation measures.
 - d. Snow removal procedures.
 - e. Citing which NH Agricultural best management practices will be followed (also indicating "as amended"), including the dead bird procedure.

- f. Cite the process for removing manure and mitigating smell concerns. This may warrant a detail sheet given the complexity of what will be done.
 - g. The standards of Stan and Pete's contract with the applicant should be part of the plan. Given the complexity of such standards, a detail sheet may be needed. This will ensure that the property, as long as it is used for this purpose, will adhere to those standards regardless of the contractual relationship between the applicant and Stan and Pete.
 - h. A plan note should indicate the number of chickens on the site will not to exceed 20,000 without additional Planning Board approval.
 - i. A plan note should also indicate that the chickens will be kept and housed indoors only.
 - j. A plan note should indicate that the property is in current use and any current use penalties should be assessed at the time the building permit is issued.
29. Any conditions of approval should be listed on the final plan set along with any waiver granted.

IV: APPLICATION SUMMARY

- A) Zoning Compliance: The project appears to comply with zoning requirements if the applicant is not proposing any signage. If the applicant is proposing signage he will need to demonstrate compliance with Article 13 of the Dunbarton Zoning Ordinance.
- B) Site Plan Regulation Compliance: At this time it is not possible to determine full compliance with the Site Plan Regulations due to: 1) the nature and number of missing items; and, 2) Feedback from other individuals/entities (Department Head verification of the adequacy of revisions; Town Engineer and Health Inspector feedback). It is likely that if the items listed above under Site Plan Requirements are met, along with the granting of waivers, the resolution of department head concerns and plan notes are listed then it is likely that the plan will comply with the Site Plan Regulations.

Enclosures:

- Attachment 1: Submittal Details

ATTACHMENT 1: SUBMITTAL DETAILS

CNHRPC has reviewed the following plans and documents:

The following were received by CNHRPC by November 7, 2013:

- A plan set entitled AGRICULTURAL SITE PLAN TAX MAP D6, BLOCK 4, LOT 2 57 TWIST HILL ROAD, DUNBARTON, NH dated August 13, 2013 and consisting of sheets 1 through 5 of 5 as prepared by McCourt Engineering Associates, PLLC of 42 Ezekiel Smith Road, Henniker, NH 03242 and stamped by Jennifer B. McCourt, PE, and Jacques Belanger, LLS.
- Draft Dunbarton Planning Board meeting minutes from October 16, 2013.
- Town of Dunbarton Notes to Site Plan Review.
- Various pieces of correspondence from Abutters and other interested parties including the following:
 - Margaret Watkins, October 13, 2013.
 - Chanti Berube-Labrecque.
 - Linda Landry, Town Clerk.
 - Lawrence Tokar and Jaye Rancourt.
 - Letter from Janice Van de Bogart, Town Administrator, to Stephanie Alexander, CNHRPC.
 - Letter from Stephanie Alexander, CNHRPC, to Janice Van de Bogart.
 - Kathleen and Paul Veilleux.
 - Ann West and Craig Webb.
 - Nancy and Joe Gallagher.
 - Anthony Pinto.
 - Jesse Laflamme of Pete and Gerry's Organic Eggs.
 - John Porter of UNH Cooperative Extension.
- Email thread regarding wetlands.
- A Memorandum from Kyle Parker to the Planning Board dated October 8, 2013.
- A septic approval from NHDES.
- Additional email correspondence from Chanti Berube-Labrecque
- A revised application material submitted by McCourt Engineering. Items included:
 - August 27, 2013 cover letter.
 - September 6, 2013 cover letter.
 - A letter dated August 28, 2013 from McCourt Engineering requesting that the application be continued to the October 16, 2013 Planning Board meeting.
 - A cover letter dated September 24, 2013 from McCourt Engineering.
 - A letter of authorization.
 - An NHDES subsurface application.
 - A reduced copy of the plan set.
 - A copy of a letter from McKeon Appraisal Services to John Cronin of Cronin, Bisson and Salinsky, PC dated September 25, 2013.
 - A copy of a turning radius analysis conducted by McCourt Engineering dated August 2013 and consisting of 3 sheets.
- Copies of information pertaining to appeals to the Dunbarton Zoning Board of Adjustment including:
 - A copy of a canceled ZBA public notice from June 10, 2013.
 - Email correspondence from John Sokul of Hinckley Allen.
 - Correspondence from Kelly Dearborn-Luce to John Sokul of Hinckley Allen.
 - A letter from John Cronin to the ZBA dated June 18, 2013.

- A letter from John Cronin to the ZBA dated June 11, 2013.
- A letter from John Cronin to the ZBA dated June 7, 2013.
- First page of a letter from John Sokul of Hinckley Allen to the Zoning Board of Adjustment dated June 5, 2013.
- A letter from Laura Spector-Morgan to the Dunbarton Planning Board dated May 31, 2013.
- Email from Alison Vallieres to Kelly Dearborn-Luce dated May 20, 2013.
- Letter from John Sokul to the ZBA dated May 17, 2013.
- Initial submittal material, including:
 - A memorandum from Interim Land Use Clerk dated April 5, 2013.
 - A Dunbarton Planning Board Agenda dated May 15, 2013.
 - Planning Board meeting minutes from April 17, 2013.
 - A cover letter from Jacques Belanger of JE Belanger Land Surveying PLLC dated March 18, 2013 and a site plan application package.
 - A land use plan.
 - A warranty deed for the property.
 - A subdivision plan from 2001 for Janice Van de Bogart.
 - A proposed agricultural land for Thomas Giovagnoli.
 - List of abutters.
- Building permit application package.
- Various other materials on barns in town.