

November 20, 2013

Mr. Kenneth Swayze, Chairman
Town of Dunbarton Planning Board
1011 School Street
Dunbarton, NH 03046

Dear Chairman Swayze,

My husband and I live at 80 Twist Hill Road and are interested parties to the chicken farm being proposed by Thomas Giovagnoli at 57 Twist Hill Road. We have reviewed the letter received by the Board on November 1, 2013 from Attorney John Cronin, counsel for Mr. Giovagnoli. We write this response to both the letter and the "revised plans" as we believe items have been misinterpreted and overlooked by Mr. Giovagnoli.

Mr. Giovagnoli continually states that the proposed chicken barn should be allowed as a "matter of right". We do not believe this to be an accurate statement. Just because a proposed use of property is permitted per the zoning ordinances does not mean that the use must be permitted. Otherwise there would be no use for a planning board and any and all Site Plan Review and Regulations would be unnecessary. The Planning Board is granted the powers as stated in the Site Plan Regulations and as such has the power and the responsibility to "protect the public health, safety and welfare: to promote balanced growth...to ensure sound site utilization; **to avoid development which may result in negative environmental impacts; and to guide the character of development.**" (Section II of the Town of Dunbarton Site Plan Review Regulations, emphasis added). The homeowners abutting the proposed site as well as all those homes within a reasonable radius which may be negatively impacted by the proposed chicken barn also have the right to the quiet enjoyment of their land and to not have their property values negatively impacted by the proposed use of land by one home owner, Mr. Giovagnoli. The rights of one individual to build a large scale chicken farm does not trump the rights of dozens of homeowners that will be negatively impacted.

The Planning Board was completely within its power and rightly order Mr. Giovagnoli to undertake a study to determine the economic impact on the surrounding properties that the proposed chicken farm may create. Pursuant to Section VI: Submission Requirements, Subsection F, the Board may require the Applicant to submit "[a]n impact analysis...which takes into account the following items to the extent the Board deems applicable: (d) Economic Impact." An economic impact analysis would necessarily involve the decreased property values of the neighboring properties as well as the economic impact on the Town of Dunbarton. Mr. Giovagnoli's statements that "applicants seeking site plan approval are not required to prove or establish impacts on property values" is simply not accurate.

Mr. Giovagnoli has been quoted numerous times as stating that this proposed chicken farm will have no negative impact on the neighboring properties. Well it is time for him to prove these baseless statements. Mr. Giovagnoli now challenges the statements made by the Assessor for the Town of Dunbarton at the last meeting that property values would diminish and have a negative tax consequence for the Town of Dunbarton. However, Mr. Giovagnoli would like for

this Board to simply take his word for it that there will not be a devastating decrease in property values and no negative impact on the tax base for the Town of Dunbarton. Mr. Giovagnoli wishes to have this Board approve his plans without any further research or study to substantiate his own claims that there will be no negative economic impact.

Mr. Giovagnoli's letter points this Board to the decision of the New Hampshire Supreme Court in Summa Humma Enterprises v. Town of Tilton, 151 NH 75 (2004) for the proposition that the planning board does not have the authority to deny a particular use simply because it does not feel the use is appropriate for the land. Mr. Giovagnoli's November 1st letter fails to cite the remainder of the Court's decision which went on to state, "[n]evertheless, the board has authority under site plan review to impose requirements and conditions that are reasonably related to land use goals and considerations within its purview." Id. at 78. In that same decision the New Hampshire Supreme Court stated:

Site plan review is designed to insure that uses permitted by a zoning ordinance are constructed on a site in such a way that they fit into the area in which they are being constructed without causing drainage, traffic, or lighting problems. Site plan review is also designed to assure that sites will be developed in a safe and attractive manner and in a way that will not involve danger or injury to the health, safety, or **prosperity** of abutting property owners or the general public.

Id. (emphasis added, internal citations omitted). The allegation that a review to determine the economic impact on the neighborhood and the Town of Dunbarton would violate the equal protection clause is completely unfounded and unsupported. The Planning Board has the authority to order the economic impact study and would be remiss in its obligations to the abutters, affected homeowners, and the tax payers of the Town of Dunbarton if it failed to do so.

New Hampshire statutes do not allow all agricultural use in any location, of any size, regardless of all negative impacts as Mr. Giovagnoli continues to state. The State law prohibits the creation of zoning ordinances and/or site plan review which would essential prohibit all agricultural uses. This is not the situation currently faced by Mr. Giovagnoli. This proposal is an enormous building in scale to any other structure within the town. This proposal involves the potential for negative environmental impacts such as ground water contamination, noise, odor and other pollutants. The proposal involves the potential for significant negative economic impact upon a large number of abutters and neighboring properties. Requiring the applicant to expend resources to prove that these negative impacts will not occur is well within the rights of the Planning Board.

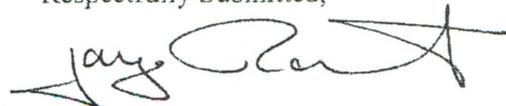
Mr. Giovagnoli fails to properly characterize the concerns expressed by the neighboring homeowners and abutters. He characterizes our objections as an objection to all agricultural uses. This is not the case. In fact, as Mr. Giovagnoli repeatedly states, he currently uses his land for agricultural uses. He currently has cows on this property. No one is objecting to the current agricultural use of the land. The abutting homeowners and neighbors object to the proposal of a large scale industrial chicken farm as an appropriate use of the land. This particular proposal is large in scale, has the potential for negative environmental impact, is not well thought out as proposed and has the potential for negative economic impact. Mr. Giovagnoli has provided this Board with conflicting information about this proposal as far as having a contract with Pete & Gerry's which was apparently never in existence, whether the chickens will free range or not,

whether manure will be spread on his land or sold and hauled off property, and whether or not there is a buffer to protect abutting properties to name just a few. What the neighbors and abutters object to is the proposal that is currently before the Board, not all agricultural uses.

The revised plans still fail to adequately establish a sufficient buffer to protect abutting and neighboring properties from the sight, odor, and other pollutants and negative impacts of the proposed use. Section VII (M) of the Town of Dunbarton Site Plan Review Regulations require that "[a]ppropriate screening/buffers are to be maintained or installed to provide privacy and noise reduction to residential areas abutting non-residential or multi-family sites." "Screening shall be a year-round visually impermeable barrier that may be either existing, constructed, or a combination thereof." (Section VII (M)(1)). "Buffer strips are encouraged to be at least 50 feet deep and should contain vegetation that will screen non-residential uses from sight of the residential uses during winter months." (Section VII (M)(9)). "A landscaping plan **shall** be submitted showing the types and locations of vegetation to be retained or established." (Section VII (M)(13)). The currently proposed 60 foot existing buffer does not provide a year-round visually impermeable barrier. There is no landscaping plan submitted to demonstrate to the Board that this "existing buffer" provides a visual barrier for the abutting properties on Twist Hill Road. Pictures will be submitted at the hearing to document the inadequacy of the proposed buffer.

For the reasons stated in this letter as well as all the previous reasons cited by our neighbors in writing and at the previous hearing we encourage the Planning Board to deny the site plan which is currently pending. To the extent Mr. Giovagnoli does not want to comply with the reasonable and lawful requests of the Town of Dunbarton Planning Board, his site plan should simply be denied.

Respectfully Submitted,



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Cc: John Cronin, Esq.