

**CANDIA PLANNING BOARD
MEETING MINUTES OF
November 18, 2019
APPROVED -Meeting w/Agric. Comm.**

PB Members Present: Rudy Cartier, Chair; Brien Brock, BOS Rep.; Judi Lindsey; Robert Jones, Alt.; Joyce Bedard

PB Members Absent: Mike Santa, Alt.; Josh Pouliot; Scott Komisarek; Mark Chalbeck, V-Chair

Agricultural Commission Members Present: Matt Cobb, Chair; June Petrin, V-Chair; Jenny Tyler, Treasurer; Tom DiMaggio; William Haas; Jacqueline Wilkins; Patti Davis, Alt.; Deborah Cobb, Alt.; Robin Vergato, Alt., Debbie Graff

*Rudy Cartier, Chair called the PB meeting to order at 7:00pm immediately followed by the Pledge of Allegiance.

Proposed agriculture related zoning amendment concerns:

R. Cartier starts the meeting by having all the members of the PB and Agricultural Commission introduce themselves for the record and thanks everyone for attending on short notice

He continues by stating that the PB received a letter dated 11/12/19 from M. Cobb, Chair of the Ag. Comm. and instead of just responding back, he thought it best that a meeting was necessary to clear up any confusion surrounding the position of the PB on the agricultural community in Candia. This meeting is in hopes to have something in place that is protective of agricultural use in Candia. Contrary to what is said or read in some places, neither me nor the PB are anti-agriculture.

R. Cartier passes out copies of the draft letter/response to the attendees for review. R. Cartier reads through the letter and responses with the group.

The 1st question from the Ag. Comm. is what document was being referred to because there were 2 different drafts and the Comm. was unclear if both were being submitted together, separately or if only 1 was going? The response to that was that the 10/29/19 Draft document was the one being discussed. The proposed changes are Zoning Amendments #14, #15, #16 and #17 (on website for review).

The 2nd question was regarding the removal of “small scale part time” and “large scale full time” being replaced with “Accessory” and “Primary”, and what those definitions are? That response was that these changes were to clarify and codify that agriculture use is allowed anywhere in Candia with minimal restrictions. Currently, the Ordinance is confusing on this point. As far as definitions, we are using the current definitions in the Ordinance (on website for review).

The Ag. Comm. then notes their recommendations to drop modifiers on agriculture in residential and LII zones. The modifiers are not definable, will always be vulnerable to legal challenge and unnecessarily limit agriculture. All other industries are either allowed or not allowed in these tables and they see no reason to attempt to limit agriculture in this way. The response to that the Board believes the modification being proposed will strengthen the rights for agriculture in these zones. They are not proposing any changes to the table, just ensuring a homeowner has the stipulated right to have agricultural operations in the residential or commercial zone as an extension of the primary use of the land and the ability to have full commercial operations in the residential and commercial zones by special exception. This would be a clarification that should stand up to any legal challenge.

The 2nd recommendation from the Ag. Comm. is to change the acreage limitation on equine, bovine and porcine to 2 acres rather than 3. The Board responds that they are open to this suggestion, however, will need to ensure they have some basis for the change. For example, the 3 acres referred to now is a cut point as that is the minimum acreage for a building lot and maintains consistency in the current regulations.

The Ag. Comm. then questions the timeline for the public hearing on these changes? The response to that is, a Public Hearing is tentatively scheduled for Dec. (date TBD). One of the agenda items on the 11/20/19 PB meeting will be a discussion on the proposed amendments sent to the Commission. If time permits, public comments will be allowed so the Board can get an idea of concerns and suggestions.

R. Cartier opens the meeting to public comment.

M. Cobb states that he doesn't see the reason why agriculture shouldn't be considered a "Primary" use of land in that rural residential zone. Is there a reason someone can't have/buy a piece of land in Candia and its primary purpose be agricultural outside of LI1 zone? And this is not a zone well suited to agriculture because someone could really only put in a high concentration thing like a chicken house or pig operation. You couldn't do a deer, or beef or even much of an equine on a lot of that property. R. Cartier states that the way the Board looked at it is with consistency with other regulations. If someone has their own home and the farming or agricultural operations are self-sustaining or small-scale operations such as selling vegetables, is not a primary use of the property. It makes a difference when in the residential zone you have a commercial operation that comes in. For ex., you have a piece of land (approx. 10-20 acres) and you'd like to have horse boarding operations, riding rings and stables. It becomes a larger operation and having more people coming to that location could disrupt the peaceful use of the land for the abutting owners of the property. In similar cases, owners would go to the ZBA and they would determine by examining the plan, what the biggest use would be, how many people, the traffic flow, etc. You're putting commercial operations in a residential zone, so you're looking at infringing on the rights and peaceful enjoyment of the abutting owners. The idea is to work with the developer/owners to minimize such problems. R. Cartier says the Board is open to suggestions.

J. Tyler and another Ag. Comm. member start to discuss the Candia Crossing 55+ development and how that has been disruptive to their livelihood. In that instance, no one came to them and asked if they minded if it was built and would infringe on their peaceful use of their land. R. Cartier notes that particular development was approved many years ago and the current Board was tied in some ways to that approval. Though the developer didn't have to come back to the Board for any modifications, they did, and therefore ended up creating a more community friendly project.

The Ag. Comm. & the Board discuss small-scale operations and the possibility that under these new guidelines, those will not follow the property if ownership changes. R. Cartier clarifies that this is not the case and will not effect current property owners. T. DiMaggio notes that a case in the past regarding an egg farm was in existence before neighbors moved in and started complaining. He says that whoever was in charge at that time, took the neighbors side and put that operation out of business. B. Brock notes that that was actually the town of Auburn. T. DiMaggio states that even though, it was pre-existing, well documented that it was there and what they are saying is that people in town now that have for ex. 2.5 acres and have had 2 horses on it forever and if they want to sell it, the new owners would have to come before the ZBA because it's less than 3 acres. R. Cartier says no, that is a major misconception. If the ordinance changes that makes a property non-conforming, that property will always stay allowable in that non-conforming use, unless you expand the use of the property by making it larger. The PB cannot do ex post facto laws that are retroactive to make a new property owner have to come in to get a variance. The Ag. Comm member (not identified) says but if they have a variance, they have to look at the wording because it doesn't necessarily mean that that variance transfers with the sale of that property. R. Cartier clarifies that it's not a variance but an exception (special exception). He reads the definitions given by the ZBA for a variance and special exception and notes that the variance will not usually go with the house, but a special exception will. The main thing is that if you have that existing non-conforming use to the ordinances, you can continue to do that with that specific property, it's not the homeowners. T. DiMaggio gives another example of a Sawmill being put out of business due to neighbors saying they didn't like the noise and wanted a change. He states that he doesn't think the Town stood up for that business and said, "it is what it is no matter what". That's what the community is afraid of now. The Board can have the best of intentions, but the next Board can come in and say it's not that way anymore. Another Ag. Comm. member (not identified) states that these are reason why they would rather see it, agriculture/residential area w/o limitations/restrictions and then ipso facto if there is an issue and deal with that at that time. What about people that want to move in? You don't find out about all these ordinances and variances until you're already here and now they find out they can't have their dream? Why have a number?

J. Tyler asks if she sold her residence w/horses and the next owner did not want to have horses but the one after that did, that means they have to come before the ZBA? R. Cartier confirms this by referring to RSA 674:32(B). M. Cobb asks what constitutes 'abandonment'? R. Cartier notes that it's not in the RSA but would check with the ZBA on whether it's 1 or 2 years. R. Cartier notes that these operations would be grandfathered in and could be turned into the pre-existing operations again. Ag. Comm. member (not identified) states that she feels "operations" are larger scale rather than what most of Candia is with less than 3 acres, with just a few animals. Maybe they want a pig or don't have exactly 3 acres. Why put those numbers in there at all? Why make it a problem for the little guys? B. Brock states that a lot of this is because the Code Enforcement Officer had some issues and had nothing in the ordinance to correct the situations. It came down to BMP's but they are really general and didn't give him anything more to work with. His best idea of the BMP's may not agree with the homeowner. M. Cobb notes that BMP's are codified specific. B. Brock states that because of this, the Code Enforcement Officer wasn't able to make the clarifications necessary.

Ag. Comm. member (not identified) states that in her opinion, the Code Enforcement Officer shouldn't be making those determinations. B. Brock states that it has come to that in certain situations.

J. Tyler states that Dave (BI) has admittedly said that he's not super savvy w/AG stuff, and another concern is that you're going to have people come to the PB or the ZBA, who are not experts w/agriculture. J. Petrin says "careful, the head of the ZBA is." J. Tyler continues by asking if there could be some type of clause in the ordinance that allows the Ag. Comm. as a governing body, in an advisory capacity, be a part of decisions? She wouldn't want BI to say someone couldn't live in Candia on 4 acres and have 6 horses...but you can actually. R. Cartier notes that the current ordinances allow owners to have that already. What the Board is trying to do is balance everyone's rights to residential enjoyment. To come up with some type of a balance and assist the BI to make these determinations. Currently, if the ordinance is so vague, he can only make a very conservative determination because it does not state the owner can make use of land in certain situations. If it's not in the ordinance, it's considered to not be allowed. M. Cobb states that is a problem and R. Cartier agrees. He states that the way gov. should and does work at most levels, is if it's not prohibited, it is permitted. To say that anything we haven't specifically permitted is prohibited is "un-American". R. Cartier notes that Candia is currently in a court case in the Supreme Court for this exact thing and the Courts all the way up have said, if it's not specifically allowed, it's specifically prohibited and there is case law referenced to confirm this. R. Jones asks if someone researched the case of the egg farm, they would probably eventually find that somewhere it was deemed that it was a nuisance and they were not properly following those BMP's? M. Cobb notes that the case pre-dated BMP's. R. Jones asks if it was an arbitrary decision? T. DiMaggio offers his knowledge of the case and states that the owner expanded one of the chicken barns and when he did, the manure that was being cleaned out was being flushed out into a pool in the back and created an odor. New neighbors complained many times and after exhausting all his funds, he said he was done. R. Jones asks the Ag. Comm. if they look at that example, would that person have been following BMP's? M. Cobb says by today's standards, no. R. Jones states that is today someone was managing an egg farm and following BMP's, then there is no threat to anyone. T. DiMaggio says there is because it depends on who's reading the definitions. R. Jones says he will rephrase and states that it can always go to the court level and it could be changed but if you're following the rules...M. Cobb states that part of the problem is the BMP's don't cover everything that a neighboring resident might consider a nuisance. They are pretty specific to being about manure & water handling and environmental agriculture. There is nothing in BMP's about noise or smell in the case of manure or composting but you can see why someone may see that as a nuisance. R. Cartier states that the Board is trying to protect agriculture. Not by letting people do anything they want but to avoid the situations where neighbors are complaining and suing each other over trivial issues, and the courts coming back and referring to the Town's ordinance for clarifications. With properly adopted ordinances, residents will reasonably know when they move into this area, it's in the country and people have animals. If it's an accessory operation and go out a few times a week to work it, your house is not considered a primary use of that building. If someone moved in and had to build a barn etc., and it was going to be their primary operation, 3 acres may seem by BMP's, but still have to get a building permit. The BI is also the Health Officer, so he'd be looking at it from that perspective as well. Anyone that's existing right now is protected. If you have an existing operation, when/if this ordinance is adopted, you're fine by Candia and the RSA's. Ag. Comm. member (not identified) asks if this it's the owner or the property that is fine? Do the rights belong to the property or the person that owns the property? R. Jones states that the way it's being written as a special exception is so that it goes with the property. R. Cartier states that the Board wants to make it by right but there is that one cutoff point to say we're talking residential areas so is there a reasonable balance, so neighbors won't all of a sudden have a commercial operation.

M. Cobb asks where is that line drawn between accessory and primary? Businesses develop more often than not by living in a residence and buying a few beef cattle to start out for just the family and it works, then getting a few more and selling a couple per year, now you have 30 and selling 10-12 a year and only work outside jobs 3 days a week. Where does that line cross between it being an accessory use of the property and now it's the primary use? The state and USDA codes say if you have a farm, you're allowed to live there. The concern is where along that gradient from it being an accessory use to a primary use when you have someone quite invested. R. Cartier states that he doesn't know the answer to that. R. Jones states that is where the Board would like to the Ag. Comm. to give feedback as to where they feel that line should be. Ag. Comm. member (not identified) states that she is not in the lines. That people would rather have no restrictions per say and then deal with the issues that may or may not come up. The developments are going to have their own covenants and guidelines and rules. R. Jones notes that those covenants are the exceptions and there are very few. R. Cartier states that the regulations that are in place now are very confusing. The Board wants to make it so he can approve those requests. He refers to M. Cobb's example and if they look at that and asks if this is now a primary use, the answer would be yes. M. Cobb says that's where the question and concern comes back to regarding new abutters/neighbors. R. Cartier says that is what we are trying to avoid here by grandfathering

people in, it goes with the property. If someone comes in and wants to have pigs, on 2 acres of land, it could be a problem. What we'd want to make sure of is that person has sat down with someone and knows what they are doing. If there is something the various Board's get and it has to do with agriculture, it's being sent to the Ag. Comm. for review and feedback as well. Ag. Comm. member (not identified) states that the reason the Ag Comm. was established was based on the community outreach. R. Cartier notes that the Board has to balance what we do.

T. DiMaggio states if someone doesn't have 3 acres but want to have a horse, they come before the Board and you people would probably say yes but the next Board may say no. It's happened in the past. Boards change and people change. It depends on who's in charge of the Board. Don't get offended but money rules in this town and it is very obvious. Who's dishing out the money and who's on the Board can push the way the Board thinks. That's why we went to the 2 acres figuring now you're pushing the limit on the size. Someone that wants to have a horse or a couple goats for their 4-H can have it on their 2 acres. That's why we went to the 2 acres instead of the 3. J. Tyler says it should be site specific. Like M. Chalbeck said, he's raised swine before and never had any issues, he has Bear Brook all behind him. There is a specific site where somebody has less than 2 acres, he's done it successfully and he's been responsible and no issues. R. Cartier asks so how do you get that approved? He says you used a term that is very important which is 'site specific'. So, what we did in here is asked, where do we have a cutoff point where we think site specific should be put into place and who's going to do the site specific? The way the structure of gov. is, is site specific is done by the ZBA not the PB. The PB put in 3 acres because, though we have no scientific basis for it, but we do have a 3-acre minimum building lot as of now. The Board felt if we were challenged on this, and asked where we came up with the 3-acre cutoff point? We would refer back to the Candia Zoning for residential areas is 3-acre minimum building lots, so we maintained consistency with that. I don't have a problem going to 2 acres, but my concern is that this could open up a can of worms we don't want to get into at this time, and then have it said well you have 3 acre minimum building lots so why don't you have 2 acre minimum building lots? As of heads up, one of the things the Board is planning on doing this coming year is reviewing why we have 3 acre building lots and whether we have justification for doing that. Right now, in my opinion, and I've asked a lot of people where they came up with minimum 3 acre building lots but have received no answer. There seems to be no basis to it. We can always modify these in the future.

T. DiMaggio says that R. Cartier has already gone around what was just said on this over 55 development because they don't have 3-acre minimum lots. R. Cartier says no. T. DiMaggio says because they have a way around it, they set the precedent. R. Cartier says no and states that if you look at the ordinance for Elderly Housing, that ordinance was a specific ordinance that had criteria in it that may not go along with the rest of the ordinance and it was approved by the town voters that they could do what they did. Again, this was in 2003 that this was approved. T. DiMaggio says it's already gone beyond what the voters said by the 2 story. The point is that they went around it and used the over 55 and then they tried to make it that only 1 person had to be 55. R. Cartier notes that the PB denied that. T. DiMaggio says that was thankful but because they went around it, somebody else could go around it and get away with it. We kind of looked at it and said, and I know that she doesn't agree with me because she doesn't want any minimum, but once you get down to 2 acres, you're kind of pushing it. So, we agreed on the 2 acres and that's why we went that way. Ag. Comm. member (not identified) says she honestly thought the Board would reject it outright and that's why she was alright with it. R. Jones asks the Ag. Comm. what about the 2 acres makes it justifiable? J. Tyler says there isn't. B. Brock says it was a compromise from the 3, and then it would go with all those properties that do exist with 2 acres and less. We have a lot of properties in Town that are far under 2 acres. J. Tyler states that you could have 20 acres but only utilize 1.5 of that and there's nothing in BMP's that says, for instance, you have to pick up manure every day. I do, I live in a residential area. That's a courtesy and I don't want my place to look like that, that's gross. Other than that BMP's and state law, there is nothing that says I have to do that. R. Cartier agrees but states that you can't allow runoff, can't let it go into wetlands or use poorly drained soils. He notes that he doesn't have a problem doing that and notes that's the only reason they had it in there. The Board is going to look at the whole issue. Candia is in a very precarious position as far as what we have for minimum acreage and zoning. Again, because there's no scientific basis for it. J. Tyler notes that is why she gets worried when the Board puts acres to it with just AG. R. Cartier notes that it's not just AG, it goes in accordance with the minimum building lots and you still have 1.5 contiguous acres of buildable land. The Board felt they had to come up with something to put in there but leaves it up to the Board based on the AG. Comm. recommendation that we change it. Is anyone going to challenge it, I have no idea. J. Tyler notes that there's no scientific data that says that you have 2 so it's the same thing.

Ag. Comm. member (not identified) asks if this is something the community will be voting on or once the Board has decided it's done? The Board confirms this will be voted on by the community. Ag. Comm. member (not identified) goes on to say that she knows there are a lot of community members not here that have a vested interest in that aspect, as well as naming the majority of the Town Agriculture. R. Cartier confirms that the Agricultural amendments as well

as the Home Service Contractor. The Board is looking to address known issues in town. On the Home Service Contractor issue, if you're an electrician and you have a van parked at your house because that's your location for your business, you're in violation of the zoning ordinances because that's not allowed. R. Jones notes, as they are written now, and R. Cartier agrees. Ag. Comm. member (not identified) asks when that changed because he thought that was allowed 20 years ago. R. Cartier states that if you were in existence before the ordinances were put into place, you're grandfathered in because you can't pass an ordinance that's retroactive and makes what you were legally allowed to do now illegal for your use. T. DiMaggio asks if home business was allowed back some years ago? R. Cartier notes that Home Office and Home Occupation are allowed by special exception, but we're trying to get rid of that as well. The new one is Home Service Contractor and written up differently because it gives you examples of Home Office and Home Occupation. Now we're looking at doing Home Service Contractor, so we maintain consistency. Though he has heard different numbers, approx. 40-65 people who are Home Service Contractors in Candia (electricians, plumbers, etc.) but that is not allowed, and they are in violation of the ordinance. Ag. Comm. member (not identified) asks the Board if public comment will be allowed at the hearing for this and R. Cartier confirms that.

R. Cartier states that the Board wanted to have this meeting to get their reasoning out and are trying to be as accommodating as they can but within the limitations they have to look at too.

B. Brock asks if the Ag. Comm. has any suggestions on site specifics, if that can be somehow worded and incorporated into it? So even if we do site 2 acres, the verbiage allows the site specifics. Ag. Comm. member (not identified) notes that would still be by special exception and B. Brock states that at least it will be in there and a tool to work with. If it's not in there, they can just deny it. R. Cartier states that is what they are trying to put in there now. The Board and Ag. Comm. discuss further the ideas behind changing the acreage from 3 to 2 as well as having this in place with more specific guidelines so the BI/Health Officer/Code Enforcement Officer can use when situations arise in the community. If the BMP's don't work and details are necessary to determine the outcome, these ordinances and their language can assist with that.

M. Cobb asks what the criteria is that the ZBA is going to look at in the cases that come before them? R. Cartier states that there are 5 criteria for granting a special exception (Zoning Ordinances, Section 15.02) and for variances is Section 14.02 (B) & (C). Ag. Comm. member (not identified) notes that nothing specific to bovine, horse, so would the ZBA need a new set of specifics? R. Cartier says no. M. Cobb says if you having your horse didn't trigger any of those things, which 9 times out of 10 would be the noise, dust glare and odor, that would be where it would come into question? R. Cartier confirms this. M. Cobb asks if both of the variances and special exceptions go through the ZBA and R. Cartier also confirms this. He notes the only time it doesn't, is if the particular ordinance authorizes the PB to do the variances. B. Brock adds or if it's granted by right and it spells that out.

R. Cartier confirms the Public Hearing on the 4 Corners will be held at the Moore School on 11/20/19 at 7pm for review and after that ends, the Board has a few other items on the agenda. Once that is complete, the ZRRC meeting will start and the Board will open the Public Meeting to review the Zoning Amendments. To look specifically at these 17 proposed amendments. The Board has not discussed these in great detail but will be accepting public feedback.

M. Cobb asks if the cases that go before the ZBA it can be written in to say 'with advice from the Ag. Comm.?' R. Cartier notes that is a good idea but The Board will look into this with Town Counsel and get back to the Commission. M. Cobb confirms with the Board that small-scale /large-scaled will be amended to accessory/primary and R. Cartier says yes.

MOTION:

J. Lindsey **motioned** to adjourn at approximately 8:37pm. B. Brock **seconded**. **All were in favor. Motion passed.**

Respectfully submitted,
Lisa Galica
Land Use Secretary
cc: file