

# **Auburn Planning Board Special Meeting Minutes December 3, 2019**

## **ROLL CALL:**

**Regular Members present:** Evan Cyr – Presiding, Brian Carrier, Katherine Boss, and Mathieu Duvall

**Regular Members absent:** Dan Carroll and Stephen Martelli

**Associate and other Members present:** John Engler and Kyle Pepin

**Associate and other Members absent:** None

**Also present representing City staff:** Eric Cousens, Deputy Director of Economic & Community Development

Chairperson Cyr called the meeting to order at 5:00 pm and asked for a roll call. He stated there were 2 Full members absent so both Associate members, John Engler and Kyle Pepin would have full voting rights for this meeting. He explained the process of the Planning Board meetings and asked City staff to offer their report.

Eric presented a general overview of how we got to this point and said he would summarize the changes in each of the public hearings when they were heard. He went over the 5 objectives that the Planning Board established when deciding on amendments to the Ag & Resource Protection zone. He presented slides of the City Council’s proposed ordinance which were shown at the previous night’s Council meeting.

John Engler asked for clarity about the \$14,093. Is it farming revenue or farming income and Eric agreed that it’s an important distinction to understand and proceeded to explain that if the 30% of household income standard were true, then it would be \$14,000 in gross farming revenue or income but not a net figure.

Eric continued presenting the slides and went over the Implementation Process slide which showed that the 2<sup>nd</sup> reading and public hearing for the Ag Committee & Ag Ordinances is scheduled on December 9.

Chairperson Cyr asked each Board member if they were ok to use the 5 previously approved Planning Board objectives as a set of criteria and all replied yes.

## **NEW BUSINESS and PUBLIC HEARING:**

**(25:00 on Recording)**

### **1. Amending Chapter 60, Sec. 60-2 Definitions in the Agriculture and Resource Protection District (AGRP), Discussion and Recommendation to City Council**

Eric explained the proposed changes and presented slides via PowerPoint.

### **Open Public Input**

A motion was made by Brian Carrier and seconded by Mathieu Duvall to open the public input part of the hearing. After a vote of 6-0-0, the motion carried.

Jim Pross of Hersey Hill Road and acting Counsel for the Lake Auburn Watershed Protection Commission said the proposed language is a much cleaner method for putting the ordinance together.

### **Close Public Input**

A motion was made by Brian Carrier and seconded by John Engler to close the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

**(33:45 on Recording)**

A motion was made by Brian Carrier and seconded by John Engler to make a recommendation to the City Council that they are in agreement with the proposed amendment as presented by staff with the finding that it is simpler and more easily integrated into the overall definition of a farm use. After a vote of 6-0-0, the motion carried.

## **2. Amending Chapter 60, Sec. 60-145 Use Regulations in the Agriculture and Resource Protection District (AGRP), Discussion and Recommendation to City Council**

Eric explained the changes while presenting slides and answered questions from the Board.

**(1:08:05 on Recording)**

### **Open Public Input**

A motion was made by Brian Carrier and seconded by Katie Boss to open the public input part of the hearing. After a vote of 6-0-0, the motion carried.

Joe Gray of Soper's Mill Road thanked the Board for this process and said it's so much better than the process that was done at last night's City Council meeting. He asked that the ordinance reference the State program instead of listing a fee and Eric said it could be crafted that way. Mr. Gray asked if an established farmer would be allowed to build a house on another one of his properties if farming was not currently being done there or would they have to wait 2 years as written in the ordinance. Eric said we would have to look at the situation before answering.

Michelle Melaragnio of Trapp Road said she has an issue about this public hearing as the public has not been properly notified as is the case with many of these meetings. She spoke about the following:

- There's an incorrect date on one of the forms and the December 9 meeting is not on the calendar.
- Lots of things that confuse and misinform the public and we need to fix that
- Language has changed multiple times rapid fire so we cannot keep up with it adequately
- Nowhere in the language is there any protection against a landowner building a road in order to increase their road frontage thereby exponentially increasing the number of 10-acre lots that can be subdivided
- Nowhere in the language is there any protection against anyone requesting the extension of or the re-instatement of dead-end roads that have not officially been discontinued by the City

- Must be added to the language in order to prevent large tracks of land from becoming subdivided in that nature.
- Document that was handed out to Board members is a reminder about the opposition verses the support for these changes and the overwhelming majority in opposition of these changes – 1<sup>st</sup> page lists entities that have issued professional statements in opposition of these changes. (against process)
- Needs to be some accountability about how this has been handled – intimidated and bullying manner

Kathy Shaw of Soper’s Mill Road and owner of Valley View Farms thanked the Board for their work on this subject. She said that the City’s prime farmland is gone, gobbled up by the airport, the malls, etc. and she said what she farms is rocky and difficult to work with soil. She said it’s equally important for clean air & water, forestry & wildlife as it is for the Lake Auburn Overlay. She said there are large parcels of undeveloped land in East Auburn that she would hate to see broken up into 10-acre lots. She suggests backing up the date from January 1, 2018 back to when the discussion first started with the Crossroads Study. She said we’ve made this new proposal very weighty and difficult to understand but appreciates the effort of the Board.

Michelle Melaragnio of Trapp Road asked why farmers are being penalized when they stop farming on their property when other businesses in business and industrial zones don’t. Eric explained that there are only 2 zones in the City that limit residential development to the extent that the Industrial Zone and Ag Zone do. Residential uses are the accessory and only allowed to serve the commercial use. Ms. Melaragnio asked how many times has that happened where someone had to leave their homes because they could no longer keep the business going and Eric said he would have to look at the Industrial files to be able to answer that questions.

Leroy Walker of 41 Broad Street said this started when a person was forced out of her home because the property, was on the Pownal Road and was less than 10 acres. This person reached out to every Councilor that was there at the time and said they are stealing my home. Councilors went to City staff and to the Planning Board for a variance but were told we don’t do that in the City of Auburn. He said all we had to do to fix the problem in the City of Auburn was create a variance for those properties that were less than 10 acres instead of going through all this process. He added that this poor lady has not been happy since she had to sell her home. It could have been very simple but here we are 2 years later or more. It’s mind boggling how many people we have to upset here in this City to get them to come here in front of you and the Council and argue about every little thing and people are only trying to live and do it honestly. He gave more examples of people, including himself, of property owners in the Ag Zone that were able to get permits to either expand or refurbish their homes without any farming happening on their properties.

**(1:30:30 on Recording)**

**Close Public Input**

A motion was made by Katie Boss and seconded by Brian Carrier to close the public input part of the hearing. After a vote of 6-0-0, the motion carried.

Chairperson Cyr suggested that the Board make a recommendation on each of the 2 sections; Permitted Uses and Special Exception. He read the proposed language and then read the 5 objectives. A lengthy discussion ensued amongst Board members and staff.

Chairperson Cyr summarized the discussion with the following points and asked for a motion if Board members accepted his summary:

- The Board finds that the 30% seems somewhat arbitrary but that it does represent a reduction in the 50% income rule, does promote residential use only as accessory to Agriculture,
- Planning Board feels more information is required to make a better assessment as to whether or not a proposed language would prevent sprawl or growth, whether it would favor either small- or large-scale Agriculture or whether it would have an impact on forestry
- That the Board believes there needs to be some consistency in the language to clearly define both household and farm income as either gross or net

A motion was made by Katie Boss who said she would accept what the Chair said as a motion but would like to add a friendly amendment at the very end which is that the Board use the available data about Auburn specific farms to inform decision making. The motion was seconded by Mathieu Duvall. After a vote of 6-0-0, the motion carried.

(1:55:50 on Recording)

Chairperson Cyr said the Board would now be looking at the Special Exception Use. He said his assumption here is that all the Board's recommendations regarding the regular use would apply however the Board needs to discuss the additional requirements. He read the proposed language and went over the criteria and asked for feedback.

(2:04:50 on Recording)

### **Open Public Input**

A motion was made by Katie Boss and seconded by Brian Carrier to open the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

Jim Pross, Counsel for the Lake Auburn Watershed Protection Commission spoke about the watershed overlay district area being protected from the Special Exception use and said for ensuring the protection of the water supply, they are happy to see that language in the ordinance.

### **Close Public Input**

A motion was made by Katie Boss and seconded by Mathieu Duvall to close the public input part of the hearing. After a vote of 6-0-0, the motion carried.

Chairperson Cyr said he would try to encapsulate the discussion with the following points:

- The Planning Board finds that the proposed Section 60-144 B Use 18, under Special Exception does meet the Planning Board objective #1
- Would better meet the objective #2 if C3 were amended to say in the 2 years preceding the date of application rather than in the 2 of the 5 calendar years preceding the date of application
- That further information would be needed to make a better recommendation with regard to whether or not this will promote additional growth or sprawl, whether or not it favors large scale or small scale agriculture and impact it may have on forestry

- Further that C 3 should be amended to remove the requirement of \$2,000 per year and tie that specifically to the State standard outlined in Title 7 M.R.S..A. Section 152.
- Additionally, that D should be amended from a date of January 1, 2018 to the date of the proclamation forming the original AdHoc Committee by Mayor Labonte.

A motion was made by John Engler who said he would recommend that we accept these changes as stated by Chairperson Cyr with the additional suggestions to change the number of years to 2 from 5 and to change the reference of \$2,000 sales to just reference the actual standard in the statute and additionally to modify the date for the grandfathering from January 1, 2018 to the date of former Mayor Labonte’s actual order.

Chairperson Cyr asked if he could make a friendly amendment that the recommendations include the findings that the Board believes the proposed language does meet Planning Board objective # 2 that upon revision of the 2 of 5 years standard to a 2 year preceding standard could better meet Planning Board objective # 2 and that the Board feels they do not have substantial data to make reasonable recommendations with regards to Planning Board objective #'s 3, 4, and 5. Mr. Engler accepted the amendment. The motion was seconded by Brian Carrier. After a vote of 6-0-0, the motion carried.

### **3. Amending Sec. 60-146 Dimensional Regulations in the Agriculture and Resource Protection District (AGRP), Discussion and Recommendation to City Council**

Eric presented slides and explained the proposed changes.

**(2:13:28 on Recording)**

#### **Open Public Input**

A motion was made by Brian Carrier and seconded by Mathieu Duvall to open the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

Kathy Shaw of Soper’s Mill Road and owner of Valley View Farms asked what is the thought on discontinued or inoperable roads that exist in the AG zone and will this require an additional 1<sup>st</sup> reading from the City Council?

#### **Close Public Input**

A motion was made by Katie Boss and seconded by John Engler to close the public input part of the hearing. After a vote of 6-0-0, the motion carried.

Eric explained that the City Attorney has been involved and also asked if this will make a decision as to whether or not a new 1<sup>st</sup> reading will be required.

Katie Boss asked about the discontinued roads in the AG zone and Eric responded that it is possible to create roads in the AG zone under the current standard. A discussion ensued amongst Board members and staff regarding roads.

Chairperson Cyr said he didn’t think that the Planning Board objectives applied to this section however the date referring to January 1, 2018 should be amended to the proclamation of Mayor Labonte to create the original AdHoc Committee.

(2:36:00 on Recording)

A motion was made by Brian Carrier and seconded by John Engler to accept Sec. 60-146 Dimensional Regulations in the Agriculture and Resource Protection District (AGRP), with the only change being in Sec. 1-C where the date should be amended to when the original AdHoc Committee was created by Mayor Labonte. After a vote of 6-0-0, the motion carried.

#### **4. Amending Chapter 60, Article XII. Division 4, Lake Auburn Watershed Overlay District, Sec. 60-952 & Sec. 60-953, Discussion and Recommendation to City Council**

Eric presented slides and explained the proposed changes.

#### **Open Public Input**

A motion was made by Katie Boss and seconded by John Engler to open the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

Kathy Shaw of Soper's Mill Road and owner of Valley View Farms said she wanted to reiterate that as important as our drinking water supply is, it's equally important for our Ag and Resource Protection zone. She said we need to preserve and protect that land.

Jim Pross of Hersey Hill Road and acting Counsel for the Lake Auburn Watershed Protection Commission said the LAWPC only cares about this ordinance insofar as if the remaining proposed ordinances are adopted. He said the main focus is to protect the quality of the water supply as it is and the LAWPC is uniquely charged with ensuring that there are no deviations from those underlying definitions and standards that apply to those zones that underly the overlay. He said these proposed changes are adequate to make sure that there are no changes to the definitions and the performance standards within that underlying zone and will ensure adequate protection for the water supply. He mentioned the 10-acre minimum standard and 50% income rule. He said he agreed with staff that it would be an important technical change for the Board to recommend simply amending the title to say Residential Dwellings Within the Agricultural Resource Protection District so that it's clear the intent here is just with regard to those properties zoned as such within the overlay.

Michelle Melaragnio of Trapp Road said she wanted to clarify that on the document she handed out earlier, she listed the Lake Auburn Watershed Protection Commission on it due to an article on April 25, 2019 where they stated they opposed new agricultural zone rules. Chairperson Cyr said he understood and explained those were previous rules.

#### **Close Public Input**

A motion was made by Brian Carrier and seconded by Katie Boss to close the public input part of the hearing. After a vote of 6-0-0, the motion carried.

After short discussion, the following motion was made:

(2:50:10 on Recording)

A motion was made by Brian Carrier and seconded by Mathieu Duvall to accept the amended title to include Residential Dwellings in the Agricultural Resource Protection District and the overall amendment

as it is written with the date of the original AdHoc Committee with the finding that it protects the City of Auburn drinking water supply. After a vote of 6-0-0, the motion carried.

Chairperson Cyr stated that the Board would now be going over the additional recommendations as mentioned earlier in the meeting.

**1<sup>st</sup> Recommendation to City Council:** That they direct the City Manager to track any growth or changes in the AG zone and the Board highly suggests they do this in conjunction with the AG Committee.

A motion was made by Katie Boss and seconded by Mathieu Duvall to recommend that the Board directs City Council to direct the City Manager to implement a valuation process that would review development and land use in the AG zone and the Board suggests they do so in conjunction with the Agricultural Committee. After a vote of 6-0-0, the motion carried.

**2<sup>nd</sup> Recommendation to City Council:** That they direct the City Manager to provide an annual review in conjunction with staff and the Agricultural Committee and present their findings of any changes in development and land use to the City Council on an annual basis.

A motion was made by Brian Carrier and seconded by Katie Boss to recommend that the City Council direct the City Manager to provide an annual review in conjunction with staff and the Agricultural Committee and present their findings of any changes in development and land use to the City Council on an annual basis. After a vote of 6-0-0, the motion carried.

John Engler said he would like to add a recommendation that the calculation for income standard be clarified; what's the numerator and what's the denominator, is it profit or is it sales and which parcel does it have to come from. Chairperson Cyr asked if the Board thought it should be another recommendation or if they thought this had already been captured in an earlier recommendation with regard to the language in which the Board said that the language needs to be written to clarify whether it is gross or net and be applied to both household income and farm income.

A motion was made by John Engler and seconded by Brian Carrier to recommend that all references to income whether household, farm or personal be defined and be extremely clear as to what they are actually referring to. A discussion ensued as to whether the language should be clear or consistent and the following friendly amendment was suggested by Mathieu Duvall: that we change clarity to consistency or add consistency. Both Mr. Engler and Mr. Carrier accepted the friendly amendment. After a vote of 6-0-0, the motion carried.

Eric asked for clarification on their recommendation and Chairperson Cyr summarized that it's either all gross or all net and that it needs to be clear and consistent.

Brian Carrier asked if the Board wanted to address the discontinued roads and or roads that are being proposed with possible development in the AG zone. A discussion ensued and it was decided that new subdivisions would come before the Planning Board and any new City accepted road would go through the City Engineering Department, so no recommendation is required on this subject.

Joe Gray of Soper's Mill Road said we have to be humane because there are circumstances where you can have a very dedicated farmer, but they've lost everything in one year and it can take a couple of years to get back on their feet. Chairperson Cyr said these circumstances could be heard by the Zoning Board of Appeals to get a variance as long as they can demonstrate that the circumstance was out of their control.

(3:19:55 on Recording)

**ADJOURNMENT**

A motion was made by Mathieu Duvall and seconded by John Engler to adjourn. After a vote of 6-0-0, the motion carried.